



Making the Most of Election Season: Civic Engagement & Nonpartisan Advocacy Within the Rules

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What Lawyers Alliance Does

- Negotiate or review a contract
- Update bylaws & conflict of interest policy
- Protect intellectual propertyTM
- Rent an office or buy a building
- Draft waivers and releases



TM



I give my
child
permission
to...

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Internal Revenue Code

Ability to engage in political activity depends on tax status...

501(c)(3)

- May not "participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office."
- Absolute prohibition.
- Violation can → lose tax exempt status.



Internal Revenue Code

501(c)(4)

- May engage in partisan political activities so long as they are not the organization's primary purpose.

Political committee or PAC

- May engage in partisan political activities.



Who is a candidate?

Who?

An individual who offers himself or herself, or is proposed by others

When?

- Exploratory advance work = candidate
- Unencouraged speculation ≠ candidate

Campaign related activity includes: effort to draft someone



Which elections are covered?

Federal, state and local elections

Mayor

Governor

President

Senator

Public Advocate

City Council

(Confirmations aren't covered)



Don't Do It

- endorse candidates
- contribute to candidates -- \$, mailing list, nonpublic information
- rate candidates
- ask candidates to sign a pledge
- reference status as candidate when criticizing/praising

VOTE FOR
COLLINS !!

A+ Jekyll
D Hyde



IRS Facts and Circumstances Test

Factors include:

- History of organization's policy campaigns
- Timing
- Focus on one issue or many
- Coordination with other groups
- Target audience
- And more ...



So, what election-related activity CAN you do?

- Voter registration
- Get out the vote (GOTV)
- Voter guides
- Candidate questionnaires
- Candidate forums & debates
- Candidate education
- Staff's personal activities
- Ballot questions
- Advocacy campaigns during election season



Voter Registration & GOTV

- *Must* be nonpartisan in design and implementation
- *May* target specific demographic groups because they are underrepresented, but not to affect the election
- *Do* focus on multiple issues, not just one
- For people hired to carry out the drive, *don't* pay on the basis of the number of voters registered or transported (FEC rule for federal elections)



Voting Records/Legislative Scorecards

- Compiling legislators' votes is allowed if you do not reflect a bias for one candidate or party
- To take advantage of IRS safe harbor for voting records:
 - publish regularly (e.g. at end of legislative session), not just during elections
 - include all incumbents
 - address wide range of topics
 - avoid editorializing



Candidate Questionnaires and Voter Guides

Do

- Focus on civic engagement (not your advocacy work)
 - Include a wide range of issues (at least 3!)
- Send questions to ALL candidates & follow up
 - If no response, you can collect information from published sources, but make clear that you're doing this
- Make guide generally available to the public
- Use Disclaimers: organization is non-partisan; guide is for informational purposes only



Candidate Questionnaires and Voter Guides

Don't

- Rate the candidates
- Compare candidate's positions with your own
- Edit candidates' responses – set a word limit instead



Candidate Forums & Debates

Do

- Make sure design *and* implementation are nonpartisan
- Ensure there are at least 2 candidates (FEC rules: federal elections)
 - Choose a neutral threshold for participation
- Ask questions that cover a wide range of topics



Candidate Forums & Debates

Don't

- Frame questions/format in partisan manner
 - **Don't ask candidates to agree or disagree with your organization's platform***
- Invite only audience members with a particular viewpoint
- Allow candidates to distribute campaign materials



Candidate Appearances at Organization Events

- If inviting in capacity as candidate, invite all candidates to same or similar event (see guidelines for forums)
 - But federal candidates, even sitting officials, should not be invited unless ALL candidates are invited (FEC rule)
- In written invitations/confirmations to sitting officials:
 - Make clear reason for invitation
 - Note that it is not a campaign appearance
 - Say that they should not solicit contributions or distribute campaign materials



Candidate/Party Education

Reaching out to candidates before their election

Do

- Provide the same information to all candidates

Don't

- Provide only some candidates with research or polling data that has a fair market value
(solution: provide it to all on your website)



Issue Advocacy

Do

- Make sure you have a real, non-electoral reason for your advocacy
- Document the non-electoral purposes in board minutes, resolutions, or organizational materials
- Adopt traditional and social media policies to help staff avoid involvement in partisan politics

Don't

- Start a new or special advocacy campaign timed around an election
- Focus on individual people – instead, focus on the substance of the issue



Personal Activities of Staff & Board

Everyone has a right to participate in the political process, even if they are affiliated with a nonprofit

Don't

- Use organizational resources:
 - Time
 - Mailing list
 - Email
 - Computer/copier
 - Letterhead

Do

- Use work title for identification purposes only
- Adopt a policy on board & staff participation in campaigns
- Report fundraising/paid political consulting if you are a NYC lobbyist



Business Activities

Lists, event space, volunteers, data all have a value. To avoid “donating” them to a candidate:

- Provide same services/access to all candidates
- Charge usual, market rate fees



Internet & Social Media

- Social Media: Be careful about liking or forwarding
 - posts from a candidate's election account
 - posts by someone else about a candidate
- Links: Organizations are responsible for links – even if the webpages have changed
- Online Forums: Will you allow public to post political content?



Campaign Finance Reporting: Candidate Communications

a 501(c)(3) organization could be covered by:

- FEC rules – if it pays for broadcast, cable or satellite communication mentioning a federal candidate in the months before a federal election
- NYS Board of Elections rules – if it sends out a communication during an election year that refers to & advocates for/against a state/local candidate



Ballot Questions & Referendums

- IRS rule: (c)(3)'s can work to influence ballot questions & referendums
- But may need to report to:
 - IRS (counts towards lobbying limit)
 - State Board of Elections
 - NYC Campaign Finance Board



Next steps

- Adopt policies:
 - social & traditional media
 - personal political activities
 - providing space or other resources to candidates
- Document:
 - nonpartisan goal of issue advocacy & civic engagement work
 - nonpartisan goal of appearance by sitting official, and prohibition against campaigning or fundraising
- Set up affiliate that can engage in political activity?



Resources

- Lawyers Alliance's advocacy compliance materials: <https://lawyersalliance.org/advocacy>
- Lawyers Alliance's resource call hotline: call (212) 219-1800 x 224 or email resourcecall@lawyersalliance.org
- Bolder Advocacy fact sheets & webinars <https://bolderadvocacy.org/>