




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

Laura Abel, Senior Policy Counsel
(212) 219-1800 x283
label@lawyersalliance.org

September 17, 2018



Lawyers Alliance
for New York
Centering lawyers, nonprofits, and communities



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.

2

www.lawyersalliance.org



Internal Revenue Code

501(c)(4)


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

Political action committee (state) or PAC (federal)

- May engage in partisan political activities.

3

www.lawyersalliance.org



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

www.lawyersalliance.org



Hoax Alert!

Trump Files Early With FEC For 2020 Candidacy, Outmaneuvers Nonprofits



by William Craddock
Jan 30, 2017 10:38 PM

4.6K
SHARES








A [document](#) from the Federal Elections Commission (FEC) indicates that Donald Trump took steps last week to outmaneuver nonprofit organizations, leaving them unable to officially campaign against him over the next few years of his Presidency.

Filed on January 20th, 2017, the letter states that, while not an official announcement for reelection, Donald Trump has filed an FEC Form 2 in order to "ensure compliance with the Federal Election Campaign Act." This is an unprecedented, although legal, move for the President to make. Barack Obama did not file for his 2012 re-election bid until April 2011. Having filed (even if not formally

www.lawyersalliance.org



Which elections are covered?


Federal, state and local elections

Mayor
Governor
President

Senator
Public Advocate
City Council

(Confirmations aren't covered)

www.lawyersalliance.org




What does it mean to participate or intervene in the political process?

Any activity that would tend to help or hurt the chances of a particular candidate, regardless of party affiliation, including...

- coordinating with a candidate
- contributing to candidate, political party, or PAC
 - in-kind support such as mailing lists and facilities
- systematically praising or criticizing a candidate, including grading or rating in voter guide

7 www.lawyersalliance.org



IRS Facts and Circumstances Test

There are no bright line rules.

Factors include:

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


8 www.lawyersalliance.org



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


9 www.lawyersalliance.org



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)


10
www.lawyersalliance.org



Voting Records/Legislative Scorecards

- Compilation of legislators' votes is allowed if it does 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

11
www.lawyersalliance.org




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

12
www.lawyersalliance.org




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

13

www.lawyersalliance.org




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

14

www.lawyersalliance.org




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 (less risky for groups with wider missions)
- Allow candidates to distribute campaign materials

15

www.lawyersalliance.org



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)

16
www.lawyersalliance.org



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

17
www.lawyersalliance.org



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 -Computer/copier
 - Mailing list -Letterhead
 - Email

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

18
www.lawyersalliance.org




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


19 www.lawyersalliance.org



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

20 www.lawyersalliance.org




Internet Issues

Links

- Organizations are responsible for links – even if the webpages have changed!
- Factors to consider:
 - context
 - charitable purpose (or not)
 - number of clicks
 - for link to candidate, are all candidates included?

21 www.lawyersalliance.org




Internet Issues

Facebook & other online forums

Factors to consider

- Is the organization the moderator of the forum?
- Is the organization responsible for content contributed by others?
- Does allowing partisan comments foster a charitable purpose?

22 www.lawyersalliance.org




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


23 www.lawyersalliance.org



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

24 www.lawyersalliance.org



Next steps

- Adopt policies:
 - social & traditional media
 - personal political activities
 - providing space or other resources to candidates
 - NYC lobbyists report fundraising/paid political consulting
- 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?

www.lawyersalliance.org

25



Questions?

Laura Abel
label@lawyersalliance.org
(212) 219-1800 x283

Lawyers Alliance’s Resource Call Hotline
(212) 219-1800 x224

www.lawyersalliance.org

26
