

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

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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.

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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.

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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

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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 ...

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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)

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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

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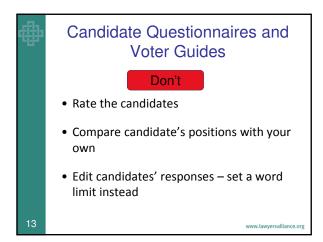


Candidate Questionnaires and Voter Guides

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

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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

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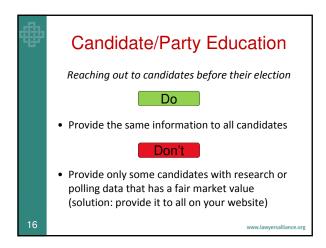
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Candidate Forums & Debates

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



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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

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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

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Candidate Appearances at Organization Events

- If inviting in capacity as candidate, invite all candidates to same or similar event (see guidelines for forums)
 - But <u>federal</u> 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

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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?

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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?

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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

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Ballot Questions & Referendums

- IRS rule: (c)(3)'s <u>can</u> 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

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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?

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Questions?

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

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