



# 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 property<sup>TM</sup>
- Rent an office or buy a building
- Draft waivers and releases





# 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

VOTE FOR  
COLLINS !!

- contribute to candidates -- \$, mailing list, nonpublic information

- rate candidates

A+ Jekyll  
D Hyde

- ask candidates to sign a pledge
- reference status as candidate when criticizing/praising



# 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 (less risky for groups with wider missions)
- 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 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?



# 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?



# 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 [info@lawyersalliance.org](mailto:info@lawyersalliance.org)
- Bolder Advocacy fact sheets & webinars <https://bolderadvocacy.org/>