

## **Election Checklist for 501(c)(3) Public Charities**

### Ensuring Election Year Advocacy Efforts Remain Nonpartisan

Federal tax law explicitly prohibits activity by 501(c)(3) organizations that supports or opposes candidates for public office, but it also recognizes the importance of their participation in the democratic process. The law allows charities to engage in a wide variety of nonpartisan election-related activities, including voter registration and education as well as ballot measure campaigns.

The IRS prohibits what it calls “campaign intervention” by 501(c)(3) organizations. A 501(c)(3) organization may not help or hurt the chances for election of any particular candidate or group of candidates, regardless of political party affiliation. For instance, a 501(c)(3) could not campaign to get specific women or Latinos elected, even if they do not care whether the candidates are Republican, Democrat, or even if the election is non-partisan (no party affiliation).

A 501(c)(3)’s role during an election must be educational – and to encourage civic participation. Although there is a lot a 501(c)(3) can do around an election, the organization needs to stop short of directly or indirectly telling people how to vote or for whom to vote.

### **Permissible Election Activities by 501(c)(3) Public Charities**

With certain restrictions, a 501(c)(3) MAY do the following:

- engage in limited lobbying, including work on [ballot measures](#)
- continue to advocate for the organization’s issues during an election year
- educate all of the candidates on public interest issues within the purview of the organization
- [criticize sitting elected officials](#), especially if the organization has a history of doing so
- publish [legislative scorecards](#)
- conduct nonpartisan public education and training sessions about participation in the political process
- prepare candidate [questionnaires and create voter guides](#)
- rent, at fair market value, mailing lists and facilities to other organizations, legislators, and candidates if an on-going activity and not arranged only for a particular candidate or party
- conduct nonpartisan get-out-the-vote and voter registration drives<sup>1</sup>
- canvass the public on issues
- sponsor [candidate debates](#)
- work with all political parties to get its positions included on the party’s platform
- distribute communications in close proximity to the election that do not expressly advocate for the election or defeat of the candidate, but refer to a candidate (often described as “electioneering communications”)<sup>2</sup>

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<sup>1</sup> This fact sheet addresses the rules for 501(c)(3) public charities. There are additional rules regulating voter registration and get-out-the-vote activities of [private foundations](#).

- Conduct [voter protection activities](#)
- establish an [affiliated 501\(c\)\(4\) organization](#), which can engage in partisan electoral activity as a secondary activity

The IRS considers [ballot measure advocacy to be lobbying](#), not election activity. A 501(c)(3) public charity can support or oppose ballot measures (and should count the cost against its lobbying limits), but should avoid tying its ballot measure messages to candidates or political parties.

## What 501(c)(3)s Cannot Do

While there are a number of activities 501(c)(3) public charities can do, there are a few activities they cannot do. 501(c)(3)s are prohibited from:

- endorsing candidates for public office
- making any campaign contributions (whether monetary or in-kind)
- making expenditures on behalf of candidates
- restricting rental of their mailing lists and facilities to certain candidates or engaging in such business transactions for the first time with candidates
- asking candidates to sign pledges on any issue (for instance, ask candidates if they promise to support the DREAM Act if elected)
- increasing the volume or amount of criticism of sitting officials who are also candidates, as election time approaches
- publishing or communicating anything that explicitly or implicitly favors or opposes a candidate
- highlighting the differences between candidates for public office on a high-profile issue on which the candidates in an election have diverging views
- making a positive or critical reference to someone in his or her status as a candidate
- engaging in issue advocacy when your organization cannot articulate a clear non-electoral purpose for the activity or communication
- criticizing sitting legislators or other elected officials by attacking their personal characteristics or attacking them in their status as a candidate, rather than focusing on the substance of a policy issue

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<sup>2</sup> Federal and state election laws often require disclosure of electioneering communications (including at times the donors who helped pay for the communication) and may require the inclusion of disclaimers identifying who paid for the communication.