

NONPARTISAN VOTER MOBILIZATION: KEEPING IT LEGAL

*Throughout this manual, we refer to “nonpartisan voter mobilization” for nonprofit organizations. For organizations with 501(c)(3) status, it is critical that you remain nonpartisan in all aspects of your voter mobilization campaign. However, there is a great deal that nonprofits may do legally to engage with the electoral process. The following chapter provides a basic guide to general rules. However, laws vary by state and circumstance. **When in doubt, always consult a lawyer.***

Partisan political activity involves explicit support for candidates and political parties. For example, individuals or certain groups may use their time or resources to support the Republican Party, the Democratic Party or any other party. Or they may use their time and resources to support Candidate X or Candidate Y in the upcoming election. Individuals and certain groups have the right to support or oppose any candidate or party and to engage in all kinds of partisan activity.

Nonpartisan political activity is different. By definition, nonpartisan political activity does not support or oppose specific candidates or political parties. Instead it engages people in the electoral process itself, without regard to parties or candidates. It encourages democratic participation by enlarging the electorate, informing people of their rights and responsibilities, and educating on issues of concern to various constituencies.

Nonprofit 501(c)(3) organizations are restricted to nonpartisan political activity due to their tax status. Despite some restrictions, they are learning that it is possible to be political without being partisan. In so doing, they are contributing to a renewal of our democracy.

General Rules for 501(c)(3) Organizations in Election Season

Adapted with permission from the Center for Community Change

Remain nonpartisan

501(c)(3) organizations must remain nonpartisan. Never endorse or express a preference for any candidate or political party in an election. Even messages that don't mention a candidate or don't explicitly support or oppose a candidate might be too partisan if the language implicitly suggests support or opposition.

Speak broadly about issues

501(c)(3) organizations must talk about issues in ways that don't appear to favor one candidate over another. Raising important issues in the context of their electoral work is a powerful tool for nonprofits working to mobilize voters, but c3's need to be careful. Mention several issues, not just one or two. You don't want to look as if you're selectively choosing issues to favor one candidate over another. It's OK to remind voters that health care is a critical issue in the election, but a c3 should not promote a particular candidate's plan to address the issue.

Avoid implicit or apparent endorsement

Don't ask candidates to support a particular policy proposal or make it appear that the c3 had endorsed the candidates or asked them to sign a “pledge” to support the issue. You can, however, ask candidates how they propose to solve broad problems such as providing good jobs, quality education, etc.

Provide “equal time”

If you invite a candidate to an event, you should generally make the same offer to that candidate’s opponents and conduct the event in a fair and even-handed manner. If you have an event at which a candidate is invited in his or her non-candidate capacity (for example, asking an incumbent mayor to open a new health clinic), make sure it does not become a political event - don’t mention the person’s candidacy and ban all campaign activities made in connection with the person’s appearance.

Do not coordinate or appear to coordinate with a candidate or campaign

Always be cautious about participating in activities in conjunction with or sponsored by a political organization, such as a candidate, political action committee, or party committee. Because these organizations exist exclusively to get people elected to office, anything they do will be presumed to have that purpose. Organizations that work with them, even on apparently nonpartisan activities, risk their c3 status.

Permissible Election Activities Checklist

Adapted with permission from Alliance for Justice

501(c)(3) public charity organizations are strictly forbidden from engaging in any political activity in support of or in opposition to any candidate for public office. The IRS will consider all of the facts and circumstances surrounding an activity to determine whether the activity violates this prohibition. However, 501(c)(3) public charity organizations can engage in nonpartisan voter education activity and in a limited amount of lobbying.

501(c)(3)’s MAY:

- Engage in limited lobbying, including work on ballot measures
- Conduct nonpartisan public education and training sessions about participation in the political process
- Educate all of the candidates on public interest issues
- Publish legislative scorecards (with certain restrictions)
- Prepare candidate questionnaires and create voter guides (with certain restrictions)
- Canvass the public on issues
- Sponsor candidate debates (with certain restrictions)
- Rent at fair market value mailing lists and facilities to other organizations, legislators, and candidates (with certain restrictions)
- Conduct nonpartisan get-out-the-vote and voter registration drives
- Establish a controlled 501(c)(4) organization
- Work with all political parties to get its positions included on the party’s platform (with certain restrictions)

Note: This handout provides general guidelines only, and is intended to serve as an overview. Because the application of law is fact-sensitive and context is critical, it should not be relied upon as legal advice. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.

501(c)(3)'s MAY NOT:

- Endorse candidates for public office
- Make any campaign contributions
- Make expenditures on behalf of candidates
- Restrict rental of their mailing lists and facilities to certain candidates
- Ask candidates to sign pledges on any issue (tacit endorsement)
- Increase the volume or amount of incumbent criticism as election time approaches
- Publish or communicate anything that explicitly or implicitly favors or opposes a candidate

Election Activities of Individuals Associated with 501(c)(3) Organizations

Adapted with permission from Alliance for Justice

The prohibition on partisan political campaign activity does not apply to the activities of officers, directors, or employees acting in their individual capacity. Staff may work on political campaigns outside work hours, or using their available leave time. However, leaders and volunteers may not use the facilities, equipment, personnel, or other resources of the organization to provide support or oppose a candidate or campaign.

Below are examples of instances when the actions of board members, officers, or employees can be seen as actions on behalf of the organization in a political campaign:

1. The director of an organization makes statements biased for or against candidates for public office during an event sponsored by the organization or in any of its publications.
2. An employee of an organization wears a political button at a public event or function when acting on behalf of the organization.
3. An employee gives the organization's mailing list to a candidate.
4. An organization permits a candidate to use the organization's office for a phone bank without charge.
5. A board of directors thanks an Executive Director for her work on behalf of a candidate.

An organization can help to protect itself from violating these laws by:

1. Requiring officers or employees acting as individuals engaged in partisan political activity to clearly state that they are acting in their individual capacity, not on behalf of the organization, and that any reference to their work for the organization is made only for identification purposes.
2. Notify employees of their limitation on use of their staff time and office facilities. Time sheets should reflect that an employee took leave to participate in partisan activity.
3. Disavowing any partisan actions of officials or employees that appear to be authorized by the organization, taking steps to ensure such actions are not repeated. Such a disavowal should be in writing and done in a timely manner.

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Election Year Activities for 501(c)(4) Social Welfare Organizations

Adapted with permission from Alliance for Justice

501(c)(4) organizations have fewer tax law restrictions than 501(c)(3) organizations with regard to political activity. Provided election activity is not the primary function of the 501(c)(4), they can participate in more partisan election-related activity under tax law than 501(c)(3)s. However, 501(c)(4)s must also be aware of their obligations under federal and state election law.

501(c)(4)s MAY:

- Engage in all of the nonpartisan voter education activity that a 501(c)(3) can engage in
- Engage in unlimited lobbying, including work on ballot measures
- Endorse federal candidates for office to the organization's membership and share the endorsement with the organization's press list
- Expressly advocate for a federal candidate's election or defeat when communicating with the organization's membership
- In some states, make cash or in-kind contributions to state or local candidates
- Create an affiliated 527 organization (more commonly known as a political action committee)

501(c)(4)s MAY NOT:

- Make communications to the general public that include express advocacy for a federal candidate
- Make cash or in-kind contributions to federal candidates
- Coordinate communications with a federal candidate or party
- Engage in electoral activity as the organization's primary activity

Election Year Activities for and 527 Political Action Committees

527 organizations, or political action committees, are established to specifically engage in partisan electoral activities. A 501(c)(4) can pay for the administrative costs of establishing an affiliated federal 527 organization.

527s MAY:

- Engage in electoral activity as its primary activity
- Endorse candidates for office and share their endorsement with the general public
- Make cash or in-kind contributions to a candidate for office (with certain limitations)
- Conduct targeted voter education and voter registration activity
- Conduct voter education for an electoral purpose

527s MAY NOT:

- Engage in lobbying activity without incurring a tax on the amount spent on lobbying

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How to be Nonpartisan

Adapted from the Minnesota Council of Nonprofits Minnesota Participation Project, developed in collaboration with Grassroots Solutions

Voter Registration:

Nonprofits can do nonpartisan voter registration, as long as it is not biased for or against a candidate or political party. Nonprofits are allowed to target specific communities.



What nonprofits CAN say:

Ex: While door-knocking, a person representing a nonprofit can say, “I think it’s important that you register to vote. We need more people in the community to get involved and support candidates that will help our neighborhood flourish.”

Ex: While tabling a person representing a nonprofit can say, “we cannot keep sending politicians to Washington who don’t care about health care. We need to elect officials who will provide for our elderly and our children.”



What nonprofits CANNOT say:

Ex: While door-knocking, a person representing a nonprofit cannot say, “I think it’s important that you register to vote. We need more people in the community to get involved and support all GOP candidates.”

Ex: While tabling, a person representing a nonprofit cannot say, “We cannot let the Republicans control our local politics; we need to register people who will vote the other way.”

When conducting nonpartisan voter registration drives, volunteers and staff of nonprofits are frequently confronted by individuals who would like to engage in a partisan discussion. Here are some helpful suggestions for disengaging from these conversations:



How to respond to partisan statements:

Ex: Which of the two mayoral candidates should I vote for?”

Response: “I’m not here to tell you who to vote for. I respect your ability to make that decision for yourself. I would encourage you to check the candidates’ websites, attend a candidate forum, or speak with the candidates directly to see who is most in line with your values and issues you care about.”

Ex: “We need to get out the vote for Candidate X - I hope you are telling everyone how great she is and to vote for her!”

Response: “This is a nonpartisan voter registration drive. We just want to make sure that everyone is participating in our democratic system and getting their voice heard in the upcoming election!”

- Other important considerations:
 - o When doing voter registration on behalf of a nonprofit, staff and volunteers should make sure that none of their materials or clothing contains candidate or party information or advertising.
 - o Employees are allowed to support a candidate or party and work on behalf of them, as long as they are not working in their official capacity as an employee of a nonprofit.

How to be Nonpartisan continued

Voter Education:

- Nonprofits can educate the public on issues
- Nonprofits can also educate candidates, officials, and parties on issues
- Nonprofits can sponsor candidate forums, as long as they are open to all candidates, run in a nonbiased way, and questions asked are nonpartisan.
 - o Invite all candidates. Get information from the county elections board on who the registered candidates are and make sure they get invited.
 - o Give all candidates equal time and equal footing on stage.
 - o Screen questions to ensure that they do not attack a candidate, and are not biased towards one side.

Ex: This is a question you **SHOULD NOT** allow. “Candidate X, don’t you agree that House Bill 123 irresponsibly harmed seniors who have disabilities? And doesn’t your vote for the bill show that you do not care about seniors?”

Ex: This is a question that could **easily be** allowed. “Candidate X, what is your position on seniors with disabilities - how will you help them?”

Get-Out-The-Vote

- Nonprofits can make phone calls, engage in door knocking, provide rides to the polls, and help with absentee balloting
 - o All these things can be done as long as there is no reference to candidates or parties, and as long as there is not discrimination towards voter’s political beliefs.

Ex: Do NOT pick up a person to take them to the polls in a car that is covered in candidate or party specific bumper stickers.

Ex: do NOT mention candidates on the phone or at the door.

Ex. DO help someone read, translate, and/or understand his or her ballot, and answer procedural questions

Ex: DO drive anyone who needs a ride to the polls.