

NONPROFITS, VOTING & ELECTIONS

A Guide for 501(c)(3) Organizations
on non-partisan voter participation
and education

WHO THIS GUIDE IS FOR

This guide is primarily for nonprofit organizations organized as 501(c)(3) charities. It is not intended for private foundations or for non-charitable entities. The term “nonprofit” in this guide refers to 501(c)(3) nonprofits. The guide is meant to be used by 501(c)(3)s interested in encouraging voting and voter participation among their staff, board, clients, constituents and communities.

WHAT THIS GUIDE IS NOT

This guide is not a guide about lobbying. It is about voting and elections. Lobbying rules differ from rules about voting and elections. Nonprofits have limits on how much lobbying they can do. There are no similar limits on voter and election activity. A nonprofit can spend as much as it wants on voter education and encouraging people to vote so long as it remains “nonpartisan” and does not support or oppose a candidate for elective office.

There is one exception — ballot measures. Ballot measures are where elections and lobbying meet. The IRS treats ballot measures as a “lobbying activity,” subject to lobbying rules. A nonprofit may advocate for or against a ballot measure up to its normal lobbying limits. This is discussed in the ballot measure section of the guide.

ACKNOWLEDGMENTS

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ABOUT THE GUIDE'S AUTHOR

George Pillsbury has worked for 501(c)(3) nonprofits for over 30 years. A founder of the Funding Exchange of New York (1979), he has spent his career with a wide variety of nonprofits — from foundations and grant making institutions to advocacy and voting rights organizations. During this time, he has worked extensively with nonprofits on their involvement with voting and elections. In 1999 he co-founded MassVOTE to work with Massachusetts' nonprofit community on issues of voter participation and election administration. Today he serves as Policy and Development Director of the national Nonprofit Voter Engagement Network.

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A GUIDE FOR 501(C)(3) ORGANIZATIONS ON NONPARTISAN VOTER PARTICIPATION AND EDUCATION

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www.nonprofitvote.org

A national nonpartisan program of the Minnesota Council of Nonprofits

The **Nonprofit Voter Engagement Network (NVEN)** is dedicated to expanding the role of America’s nonprofits in voting and elections. NVEN works with state nonprofit VOTE initiatives to provide resources and tools for 501(c)(3) nonprofits to help their communities participate and vote. NVEN’s national website: nonprofitvote.org provides nonpartisan voter and civic engagement resources for the entire nonprofit sector. A Nonprofit’s Guide to Hosting a Candidate Forum was created in cooperation with the Minnesota Participation Project, www.mncn/mpp.

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INTRODUCTION

NONPROFIT ORGANIZATIONS: LEADERS IN CIVIC ENGAGEMENT AND VOTER PARTICIPATION

Voting is a foundation and sign of strong communities. Voting correlates with citizenship, education, income and other kinds of civic health. It takes an active and engaged public to ensure broad representation and public officials responsive to community concerns.

Today, our democracy is challenged by gaps in voter participation by age, income and education. Younger, lower-income and less educated voters participate at much lower rates than older, higher income or better educated voters. These gaps lead to other disparities in involvement with government or public policy and other kinds of civic participation.

Many issues affect participation. Sometimes all that is needed is voter education on the process of voting and what is at stake in a particular election. In other cases, it is about voting rights issues or procedural barriers that disproportionately impact newer voters and less enfranchised populations.

Nonprofit organizations are uniquely well suited to address issues of voter participation — and help close participation gaps and strengthen democracy:

- Nonprofit organizations are often located in and serve communities impacted most by lower voter participation.
- Nonprofit organizations bring to bear a group of individuals strongly dedicated to changing their communities for the better and with the ability to make positive change.
- Nonprofit organizations, as much as any other type of organization, have the credibility and respect necessary to reach out to discouraged or disengaged voters or people new to voting and politics.
- Many nonprofits wish to incorporate voter participation work into their other activities but have been uncertain about what the law allows them to do. This guide answers questions on what they can do to encourage voter participation through outreach and education to voters in their communities.

GENERAL RULES FOR 501(C)(3) ELECTORAL ACTIVITY

501(c)(3) nonprofits can play an important role in the democratic process. There is one basic rule: 501(c)(3)s may not support or oppose any candidate for public office. This means 501(c)(3)s may not endorse candidates, rate candidates, contribute to candidates, or do anything else that might seem intended to help or hurt a candidate.

Of course, there are many things that a 501(c)(3) can legally do to help their communities participate and vote. 501(c)(3)s may educate voters or candidates on the issues, provide opportunities for voters to hear the candidates' positions, encourage citizens to register to vote, help new voters navigate the voting process and get people to go to the polls on Election Day.

Fortunately, the IRS has provided some useful guidance for nonprofits to help them get involved in voter participation and election-related work. If a question arises the IRS asks you to consider the "facts and circumstances" of the situation. How would it look to an outside observer?

This guide discusses many possible activities and the ways that nonprofits can try to make sure that they remain nonpartisan.

YES	NO
<ul style="list-style-type: none">• Register people to vote• Distribute nonpartisan materials on candidates or ballot measures• Sponsor nonpartisan candidate forums or debates subject to limits on lobbying• Help new voters understand elections and the voting process• Provide briefings to all candidates on the organization's issues• Encourage and help people get to the polls on election day	<ul style="list-style-type: none">• Endorse candidates for office• Contribute money to candidates• Let candidates use office space, equipment, mailing lists, or other 501(c)(3) resources (unless equally available to all candidates at fair market value)• Rate candidates• Publicize which candidates share the organization's view on contested issues

WHAT A 501(C)(3) NONPROFIT ORGANIZATION CAN DO ON VOTER REGISTRATION, VOTER EDUCATION AND GETTING OUT THE VOTE

501(c)(3) organizations may participate in a wide variety of electoral activities that do not support or oppose a candidate for public office.

The following are ten common activities your nonprofit organization may do to encourage voting in a nonpartisan manner.

1 VOTER REGISTRATION

Voter registration is a common nonpartisan activity for nonprofits. Voter registration activities for nonprofits often include:

- Registering staff, board and volunteers.
- Registering clients at intake or in the process of the organization's nonprofit activities.
- Having registration forms available at events or meetings.
- Setting up a table at a busy neighborhood location.

Your election officials or a local **nonpartisan** organization can help by providing voter registration forms, training, and information about registration deadlines and other laws governing voter registration in your community.

The registration activities may not be partisan. Nonprofit staff or volunteers may not suggest what candidate to support or party to join or whom to vote for. You may, however, explain to voters the difference between joining a party and registering without party affiliation. Nonprofits may target communities or people that they serve, but nonprofits should not target voter registration efforts in an attempt to support or oppose particular candidates or political parties.

Finally, watch out for limits on the use of certain funds for voter registration such as a grant from a private foundation.



2 VOTER EDUCATION ON THE PROCESS OF VOTING

A helpful role for nonprofits is to help members or clients understand the basics of voting. When is the next election? What's on the ballot? What do you need to know about voting on or before Election Day?

All of these are examples of nonpartisan ways to educate your constituencies and communities:

- Announce dates of elections and registration deadlines.
- Display nonpartisan sample ballots before the election.
- Include lessons about voting in an adult or youth education class.
- Encourage your constituents to volunteer at the polls on Election Day.
- Set up a mock voting machine/ballot in your lobby so people can practice voting.
- Provide your community with nonpartisan information about upcoming elections.

3 VOTER GUIDES ON CANDIDATES AND BALLOT MEASURES

The IRS has consistently stated that 501(c)(3) nonprofits may carry out voter education on candidates and ballot measures before an election so long as it is nonpartisan. In particular, the IRS cites voter guides and candidate forums as acceptable activities 501(c)(3)s may do on a nonpartisan basis. This section discusses three commonly used voter guides: —

- One page guide to candidates or ballot measures.
- Candidate questionnaire, or
- Sample of the official ballot.
- A Voter Guide takes time to prepare and is ordinarily prepared by coalitions or broader, nonpartisan voter engagement entities.



ONE PAGE GUIDE TO CANDIDATES OR BALLOT MEASURES

Voters appreciate a short nonpartisan guide to the candidates for a specific office or important ballot measures — something that fits on one page. These are easy to distribute and translate into different languages.

A one page guide may include:

Guide to CANDIDATES (include all running for a particular office)	Guide to BALLOT MEASURES
<ul style="list-style-type: none"> Name and photo of candidates Current occupation, party affiliation List of major endorsements provided by the candidate Campaign contact information 	<ul style="list-style-type: none"> Brief summary of what a “yes” or “no” vote means List of major endorsements provided by Yes/No ballot measure committees A list of top financial contributors to each side

ATTENTION Boston Voters!

YOU DECIDE! NOVEMBER 8
Polls Open 7am-8pm
WHERE TO VOTE? CALL: 617-635-4635
MORE INFO? 617-542-VOTE (6833), www.BostonVOTE.org

AT-LARGE CITY COUNCIL CANDIDATES: Vote for up to 4.

At-Large Candidates	Endorsements	Campaign Contact
 Felix D. Arroyo Incumbent City Councilor	<ul style="list-style-type: none"> State Representative Gloria Fox City Councilor Chuck Turner (Boston) City Councilor Charles Turner (Dorchester and Mattapan) Senior Employees International Union (SEIU) Local 815 Senior Employees International Union (SEIU) Local 2020 	617-323-0408 www.felixarroyo.net
 John R. Connolly Attorney	<ul style="list-style-type: none"> State Representative Martin J. Walsh Ward 10 Democratic Committee Ward 9 Democratic Committee Ward 15 Democratic Committee Ward 16 Democratic Committee 	617-553-0707 www.connollyforcouncil.com
 Michael F. Flaherty Incumbent City Councilor	<ul style="list-style-type: none"> AFCME Boston Teacher's Union Greater Boston Labor Council Senior Employees International Union (SEIU) Massachusetts Sierra Club 	617-269-8683 www.michaelflaherty.com
 Edward M. Flynn Boston Public School Teacher	<ul style="list-style-type: none"> First Mayor (Boston), First U.S. Ambassador (Vietnam) Ray Flynn State Representative Brian Wallace (St. Boston) Massachusetts ACORN First Police Commissioner Francis "Mickey" Roache First Tax Commissioner Leo Stapleton 	617-269-2005 flynncandidate@verizon.net
 Stephen J. Murphy Incumbent City Councilor	<ul style="list-style-type: none"> Greater Boston Labor Council Boston Building Trades Boston Teacher's Union Boston Police Patrolmen's Association Boston Firefighter's Association 	617-333-9923 www.stevemurphy.com
 Matt O'Malley Consultant	<ul style="list-style-type: none"> Suffolk County Sheriff Andrea J. Cabral National Organization for Women, Gt. Boston Chapter Massachusetts ACORN State Representative Liz Malia Greater Boston Labor Council 	617-325-8683 www.votemattomalley.com
 Patricia White Director, Literacy Program Partner in Education	<ul style="list-style-type: none"> Congressman Barney Frank Senator President Robert Tronchetti New England Regional Council of Carpenters IAFT Brotherhood of Electrical Workers Caribbean American Peoples Action Committee 	617-323-3010 www.votepatriciawhite.com
 Sam Yoon Housing Director, Asian Comm. Development Corp.	<ul style="list-style-type: none"> Speaker of the House of Reps. Salvatore D'Amato State Senator Dianna Wilentz Black Political Taskforce Massachusetts ACORN Massachusetts Sierra Club 	617-268-1241 www.samyoon.com

MAYORAL CANDIDATES: Vote for One.

 Maura Hennigan City Councilor At-Large	<ul style="list-style-type: none"> DPA of Boston United Fratros of Boston Miss Victoria Margaret "Peggy" Mays, vet. SLP of SPS Met King 	617-522-2005 www.maurahennigan.com
 Thomas M. Menino Incumbent Mayor	<ul style="list-style-type: none"> Greater Boston Labor Council, AFL-CIO Boston Building and Construction Trades City Councilor Rob Combs Senior Employees International Union (SEIU) 82020 Hotel and Restaurant Workers K26 	617-556-4016 www.fortmayormenino.com

¡ATENCIÓN ELECTORES DE BOSTON!

¡USTED DECIDE! NOVIEMBRE 8
Urmas abiertas de las 7am-8pm
¿DONDE VOTAR? LLAME AL: 617-635-4635
(MAS INFO? 617-542-VOTE (6833), www.BostonVOTE.org)

CANDIDATOS POR ASAMBEISTAPOR ACUMULACIÓN: Vote hasta 4 candidatos.

Candidatos por Asamblea por Acumulación	Endorso	Contacto de Campaña
 Felix D. Arroyo Asamblea por Acumulación	<ul style="list-style-type: none"> Representante Estatal Gloria Fox Consejal de la Ciudad Chuck Turner (Boston) Consejal de la Ciudad Charles Turner (Dorchester, Mattapan) Comiteo Internacional de Empleados de Servicio (SEIU) Local 815 Comiteo Internacional de Empleados de Servicio (SEIU) Local 2020 	617-323-0408 www.felixarroyo.net
 John R. Connolly Abogado	<ul style="list-style-type: none"> Representante Estatal Martin J. Walsh Ward 10 Comiteo Democratico Distrito Ward 9 Comiteo Democratico Distrito Ward 15 Comiteo Democratico Distrito Ward 16 Comiteo Democratico Distrito 	617-553-0707 www.connollyforcouncil.com
 Michael F. Flaherty Asamblea por Acumulación	<ul style="list-style-type: none"> AFCME Comiteo de Maestros de Boston Comiteo de Obreros de Area Metropolitana de Boston Comiteo Internacional de Empleados de Servicio (SEIU) Massachusetts Sierra Club 	617-269-8683 www.michaelflaherty.com
 Edward M. Flynn Miembro de las Escuelas Publicas de Boston	<ul style="list-style-type: none"> Ex. Alcalde (Boston), Ex. EE.UU. Embajador (Vietnam) Ray Flynn Representante Estatal Brian Wallace (St. Boston) Massachusetts ACORN Ex. Comisionado de Policia Francis "Mickey" Roache Ex. Comisionado de Bomberos Leo Stapleton 	617-269-2005 flynncandidate@verizon.net
 Stephen J. Murphy Asamblea por Acumulación	<ul style="list-style-type: none"> Consejo de Trabajo del Gran Boston Asociacion de Edificacion de Boston Comiteo de Maestros de Boston Asociacion de Policia Patrolores de Boston Asociacion de Bomberos de Boston 	617-333-9923 www.stevemurphy.com
 Matt O'Malley Consultor	<ul style="list-style-type: none"> Sheriff de Condado de Suffolk Andrea J. Cabral Organizacion Nacional para Mujeres, Capital de Boston Massachusetts ACORN Representante Estatal Liz Malia Consejo de Trabajo del Gran Boston 	617-325-8683 www.votemattomalley.com
 Patricia White Directora Programa Literario Socia en Educacion de Boston	<ul style="list-style-type: none"> Diputado Barney Frank Presidente del Senado Robert Tronchetti Consejo Regional de Nueva Inglaterra de Carpinteros Hermandad Internacional de Trabajadores Electricos Comiteo de Accion Popular de Caribeanos Americanos 	617-323-3010 www.votepatriciawhite.com
 Sam Yoon Director de Inmigracion, Corp. De Desarrollo de la Comunidad Austral	<ul style="list-style-type: none"> Presidente de la asamblea legislativa, Salvatore D'Amato Senadora Estatal Dianna Wilentz Comiteo Operario Politico Negro (Black Political Taskforce) Massachusetts ACORN Massachusetts Sierra Club 	617-268-1241 www.samyoon.com

ALCALDE DE BOSTON: Elija Uno.

 Maura Hennigan Consejal de la Ciudad	<ul style="list-style-type: none"> DPA de Boston Fratros Unidos de Boston Miss Victoria Margaret "Peggy" Mays, vet. SLP de SPS Met King 	617-522-2005 www.maurahennigan.com
 Thomas M. Menino Actual Alcalde	<ul style="list-style-type: none"> Consejo de Trabajo del Gran Boston, AFL-CIO Asociacion de Edificacion y Construccion de Boston Consejal de la Ciudad Rob Combs Comiteo Internacional de Empleados de Servicio (SEIU) 82020 Trabajadores de Hoteles y Restaurantes K26 	617-556-4016 www.fortmayormenino.com

CANDIDATE QUESTIONNAIRE

Candidate questionnaires serve two purposes. First, they collect information about the candidates for voters. Second, they let candidates know the range of issues of concern to the organization(s) preparing the guide. Questionnaires do take time to prepare and require care to ensure they are nonpartisan.

If you wish to do a candidate questionnaire, consider these key factors that help determine whether or not a voter guide is nonpartisan.

- Do the questions cover a broad range of issues related to the broad interests of the electorate? For example, do the questions address all issues of importance to a specific elected office or reflect a truly broad range of concerns with your issue area? (Note: It may be easier or advisable to create these materials with a group of organizations representing different issue areas.)
- Are the questions or any description of the issues clear and unbiased in both structure and content?
- Are the questions posed to candidates identical to the questions as presented in the voter guide?
- Are the candidates given a reasonable amount of time to respond?
- If the questions ask the candidates to respond with “Yes” or “No” or “Undecided,” are candidates given the opportunity to give short one or two sentence explanations to explain their positions in their own words and is that explanation printed in the guide?
- Have all major candidates responded?

Q. What if the candidate does not respond?

A. You may list “Did Not Respond”. When a candidate fails to respond, some 501(c)(3)s choose to provide information about the candidate that is a matter of public record, but the IRS has never OK’d this approach and thus it comes with some risk. 501(c)(3)s could reduce the risk by sticking to strictly factual information — name, address, etc. — and avoid efforts to summarize the candidate’s positions on issues, which might appear to be slanted to favor or disfavor the candidate.

You should provide candidates a reasonable time period — for example three weeks — to give their responses and information. As the deadline nears, let the candidates know that if they don’t respond, you will print “did not respond”. While not required, it is a good practice to give the candidates the chance to review the final draft of their information and make any last minute corrections.

SAMPLE BALLOTS

An easy and often effective educational activity is to distribute a sample ballot for your jurisdiction- ideally an official sample ballot prepared by local elections officials.

Sample ballots help voters have a picture ahead of time of what’s on the ballot and what the ballot will look like. If you wish you may add short explanations of the office up for election. You may also wish to translate it into languages relevant to your community.

4

CANDIDATE FORUMS AND CANDIDATE APPEARANCES



Candidate forums require a time commitment to recruit the attendance of candidates and your audience. This may be easier in collaboration with other nonprofits in your area.

Holding a forum demonstrates to the candidates that your community cares about what the candidates' positions are and the election outcome. It shows that your organization is a leader in local civic affairs.

Among factors that make a candidate forum nonpartisan are —

- All candidates for an office are invited. (Even if all are invited, there is a risk that the event could appear partisan if some candidates refuse to participate. If only one candidate agrees to attend, it is no longer a forum.)
- The rules of the forum don't favor any candidate over another. (Consider using an independent moderator, setting time limits for replies, etc.)
- The questions are fair: They should address a broad range of issues, they should not suggest the response the forum sponsor prefers, and they should not be selected to show particular candidates in a better or worse light. (This doesn't mean they can't be controversial!)

As opposed to a nonpartisan candidate forum, a forum on a ballot measure may be partisan — intended to educate or even persuade your constituents towards a yes or no vote. At your discretion, it can also be nonpartisan. For more, go to "Ballot Measures" pages 11–12.

Q: May a candidate appear at a nonprofit function?

A: The IRS says that candidates may be invited to or attend a nonprofit function on a nonpartisan basis. A candidate may appear in the following capacities

In their capacity as candidate if the nonprofit:

- Provides an equal opportunity to other candidates for the same office — such as a similar time, venue and presentation format
- Does not indicate support for or opposition to the candidate. State this when the candidate is introduced and in communications about the appearance
- No political fundraising occurs

In their capacity as a public figure such as an elected official or expert in their field if:

- The candidate is chosen to speak solely for reasons other than their candidacy and speaks only in a non-candidate capacity
- There is no mention their candidacy during the presentation and the atmosphere is kept nonpartisan and free of campaign activity

Without invitation on the candidate's own initiative at a public event sponsored by a nonprofit:

- In such a case, it is important to be especially careful that there is no actual or implied endorsement. For example, don't give the candidate a chance to address the gathering

5 EDUCATING THE CANDIDATES

Your 501(c)(3) nonprofit may provide information to educate candidate on your issues so long as you make these resources available to all the candidates in a particular race and all candidates receive the same level of support and information.

- Educate the candidates on your issue.
- Send the candidates a policy paper or research findings. Let them know about your program initiatives. Candidates can benefit from your expertise.

However, your nonprofit may not provide personalized research or similar candidate-specific efforts for particular candidates. For example, don't help a single candidate develop a new policy paper on an issue of importance to your organization: It could appear to be a partisan effort to help that candidate get elected.

6 ENCOURAGING VOTING — GETTING OUT THE VOTE

Getting out the vote — encouraging and facilitating your communities to vote — is a primary goal of voter participation work. It is nonpartisan as long as you're not telling or suggesting to someone whom to vote for.

501(c)(3)s must leave the partisan work to the parties, candidates, or other more political organizations such as 501(c)(4) advocacy organizations. A 501(c)(3) should generally not work in partnership with these types of organizations unless absolutely certain that the activity will be conducted in a nonpartisan fashion.

Common ways to get out the vote include:

- Remind people to vote with posters in your office, announcements at meetings or events, signs around the neighborhood, etc.
- Educate voters by highlighting reasons to vote as well as information on the voting process
- Provide an 800 number or other numbers to call for nonpartisan voter information like "Where Do I Vote?" or "When do the polls open or close?"
- Advertise rides to the polls offered by community organizations and agencies
- Mail or hand out postcards with voter information with the date of the election, highlights of what's on the ballot and a number to call for more information.
- Use local radio or cable shows, to make public service announcements and the like
- Canvass your neighborhood and give out non-partisan voter information before the election or on Election Day itself
- Call clients, constituents and community members on or before Election Day
- Provide voting rights information for voters informing them of their rights on Election Day and numbers to call for help

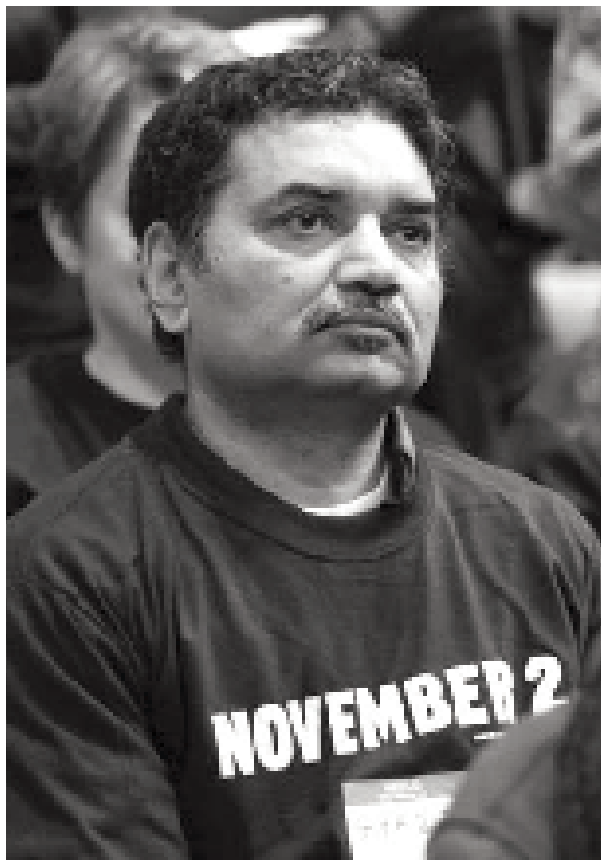


7 HELPING ON ELECTION DAY

Nonprofits are well-positioned to help on Election Day. The civic mission of nonprofits makes them a good fit not only to encourage their communities to vote, but to provide staff to help at the polls.

Nonprofits may:

- Allow staff time off to vote
- Allow staff to spend part or all of Election Day doing nonpartisan get out the vote activities
- Encourage your staff and volunteers to sign up as poll workers or translators
- Involve staff members as nonpartisan election observers



8 VOTING RIGHTS AND ELECTION REFORM

Nonprofits may want to help their staff, constituents and community understand their right to vote. Or, nonprofits may support election reforms that provide better access for voters, more choices on the ballot and a level playing field for elections. These are nonpartisan issues that fit well within what 501(c)(3)s can do in terms of public education or, in some cases, lobbying.

Sample activities could include:

- Distribute information around election time on a voter's rights at the polls
- Contact your local election official to discuss concerns you may have about voting in your community — like the recruitment of poll workers or poll procedures
- Become an advocate for voting rights and election reform. Incorporate these issues into your voter education. Take a stand on a reform initiative — such as Election Day Registration, public funding of campaigns or replacing our now partisan run elections with nonpartisan districting and election administration

9 ISSUE ADVOCACY BY 501(C)(3)S DURING AN ELECTION

Most nonprofits care deeply about particular issues of public policy — issues such as education, housing, the environment or budget priorities that go to the heart of the nonprofit’s mission.

The IRS explicitly states that nonprofits may continue lobbying activities during an election:

“Under federal tax law, section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office.”
Internal Revenue Service, Fact Sheet 2006—17, February 2006.

However, it is possible that communications on issues during an election could be considered a partisan if they appear to be an effort to support or oppose a candidate. There is a greater risk of appearing partisan when you mention the names of candidates or upcoming elections in a communication. As always in evaluating 501(c)(3) activities, there are no bright lines. It depends on the “facts and circumstances”. Here are some basic guidelines.

GENERAL GUIDELINES FOR ISSUE ADVOCACY UNRELATED TO AN ELECTION

1. You may continue to lobby or engage in other advocacy activities in the months leading up to an election, but be careful before increasing these advocacy activities during the election season. If you step up your advocacy on a particular issue at the same time that this same issue is a key point of disagreement between two or more candidates, it may seem as if you are trying to favor the candidate who most closely shares your organization’s views.
2. A history of work on an issue in the past is a key factor the IRS will consider in evaluating whether your current advocacy is an effort to influence the outcome of the upcoming election. Your activity is far more likely to be seen as nonpartisan if you have engaged in the same or similar activities in non-election years.
3. Responding to an external event is often safer. Frequently organizations get involved in an issue in response to external events beyond their control — a shelter closing, an imminent vote on a bill in the legislature, etc. This type of external impetus sometimes occurs just before an election. Organizations want to get involved, but may be nervous because the candidates may be talking about the same issue. The external event helps to demonstrate that your organization was not motivated by a desire to influence the election.

10 BALLOT QUESTION EDUCATION AND ADVOCACY

Many states have ballot questions — initiatives, referenda, or constitutional amendments. How are these different from candidate elections?



In general, there are three things to know about working on ballot measures:

1. The most important thing a 501(c)(3) nonprofit should know is that the IRS considers activity on ballot measures a lobbying activity – not electioneering. A 501(c)(3) may work for or against ballot questions up to normal lobbying limits. The IRS makes this distinction because advocacy on ballot measures is an attempt to influence a proposed law or a policy — not the election or defeat of a candidate.
2. 501(c)(3)s may also engage in unlimited activities that neither support nor oppose the ballot measure, such as voter registration, voter education, and get-out-the-vote activities.

3. Your state may have reporting requirements for ballot measure expenditures. Check with your state’s campaign finance office or an attorney to see what your state’s requirements are if your nonprofit decides to invests resources in advocating a “yes” or “no” vote.

Q: What are the 501(c)(3) lobbying limits in regards to ballot measures?

A: Your lobbying limits depend on which of two alternative tests your nonprofit chooses to measure its lobbying:

- If your nonprofit has chosen to measure its lobbying under the so-called 501(h) expenditure test, it has clearer guidance and can do more lobbying. Under this expenditure test, you can spend a certain percentage of your annual budget (as much as 20% for small organizations, less for larger groups) on efforts by you or your members to directly influence the outcome of a ballot question or legislative vote.
- If your 501(c)(3) has not chosen to use the above expenditure test, it may spend an “insubstantial” amount of money and time on lobbying. This includes any efforts to support or oppose a ballot question and other efforts the organization makes to influence more traditional legislative proposals at the local, state, or federal levels. “Insubstantial” lobby expenditures has been interpreted to mean a relatively small percentage of time and money, for example less than 5%.

Q. How does my nonprofit opt for the 501(h) lobbying expenditure test?

A. File a one-page, one-time form with the IRS-Form 5768. Once submitted and approved your nonprofit has higher and defined lobbying limits. It includes annual reporting of expenditures on your Form 990. For more information and the application form, go to the Alliance for Justice website (www.allianceforjustice.org) and look for their “Worry Free Lobbying for Nonprofits” in their resource and publication section.

Q: How should a 501(c)(3) track its lobbying on ballot questions?

A: Whichever of the two lobbying expenditure tests you use, you will need some type of system to keep track of how much lobbying you do.

- Track the money you spend on direct expenses such as flyers, signs, advertising, and snacks for your volunteers.
- Keep track (via timesheets or some other mechanism) of the time that any paid staff spend supporting your lobbying effort.
- Add some portion of your organization’s overhead costs — rent, utilities, etc. (You could base allocation of overhead costs on the percentage of your overall staff time spent lobbying or use some other reasonable measure.) You’ll need to report this lobbying information to the IRS on your organization’s annual tax return (your Form 990 for nonprofits).

Also, as mentioned above, any organization spending funds to influence the outcome of a ballot question may have to register and file disclosure reports with a state or local campaign finance office — which you can find by contacting your Secretary of State’s office.

If you need additional information, consult an expert like an experienced nonprofit professional in your area or the publications of the Alliance for Justice (for example: [Seize the Initiative at www.allianceforjustice.org](http://www.allianceforjustice.org)).

Form 5768 <small>(Rev. December 2004)</small> Department of the Treasury Internal Revenue Service		Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation <small>(Under Section 501(h) of the Internal Revenue Code)</small>		For IRS Use Only ▶
Name of organization		Employer identification number		
Number and street (or P.O. box no., if mail is not delivered to street address)		Room/suite		
City, town or post office, and state		ZIP + 4		
<p>1 Election—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending and all subsequent tax years until revoked. <small>(Month, day, and year)</small></p> <p>Note: This election must be signed and postmarked within the first taxable year to which it applies.</p> <p>2 Revocation—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending</p> <p>Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.</p> <p>Under penalties of perjury, I declare that I am authorized to make this (check applicable box) <input type="checkbox"/> election <input type="checkbox"/> revocation on behalf of the above named organization.</p> <p>Signature of officer or trustee Date</p>				
<p>General Instructions</p> <p>Section references are to the Internal Revenue Code.</p> <p>Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.</p> <p>To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item 1 or 2, as applicable, and sign and date the form in the spaces provided.</p> <p>Eligible Organizations.—A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:</p> <ol style="list-style-type: none"> 1. Section 170(b)(1)(A)(ii) (relating to educational institutions), 2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations), 3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools), 4. Section 170(b)(1)(A)(v) (relating to organizations publicly supported by charitable contributions), 5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or 6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations). <p>Disqualified Organizations.—The following types of organizations are not permitted to make the election:</p> <ol style="list-style-type: none"> a. Section 170(b)(1)(A)(i) organizations (relating to churches), b. An integrated auxiliary of a church or of a convention or association of churches, or c. A member of an affiliated group of organizations if one or more members of such group is described in a or b of this paragraph. <p>Affiliated Organizations.—Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.</p> <p>For more details, see section 4911 and section 501(h).</p> <p>Note: A private foundation (including a private operating foundation) is not an eligible organization.</p> <p>Where To File.—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.</p>				
Cat. No. 12125M		Form 5768 (Rev. 12-2004)		

NONPROFIT STAFF AND ELECTIONS

BEING PARTISAN . . . STAYING NONPARTISAN

Staff members of 501(c)(3)s are frequently involved in campaigns or asked to support candidates. Since nonprofit staff are involved in community affairs, they may want to support a candidate who has helped their organization or neighborhood.

What you or another nonprofit staff member does in your personal personal time is a private choice. However, a staff member cannot be seen as representing the organization on a campaign nor may they use organizational resources for a candidate.

Q: When is it personal time?

A: Nonprofit staff can support the candidate of their choice outside of normal work hours. If staff members want to engage in partisan activities during normal work hours, they should take vacation or personal leave.

Q: Can the organization be mentioned?

A: Your organization cannot support a candidate. As a rule, it's safer if the organization's name is not mentioned if a staff member's name appears on candidate literature in the course of that staff member's personal political work. However, it is permissible to list the organization along with the staff member's name if it is clearly stated that the

organization name may be listed if noted "for identification purposes only." This can be helpful in clarifying that organizational leaders are involved in their individual, not official roles. Always remember that there may be other reasons you may not want your nonprofit's name associated with a campaign. For example, it might be awkward seeking public funds for your organization if a candidate you opposed wins the election!

Overall, as a nonprofit staff member you'll find that there is a great deal you can do for candidates when not representing the organization.

Q: What about board members and volunteers?

A: Board members and volunteers should follow the same rules for staff described above when they are working for your organization. What they do outside of your organization is their choice.

Q: What if a candidate lists my name and organization without my permission?

A: Over-eager candidates may list your nonprofit on a campaign brochure. If they did this without your permission you are not at fault. Just ask them to remove your organization's name from the list. Save a copy of your e-mail or written request to the candidate in your files.

PERMISSIBLE VOTER AND ELECTION ACTIVITIES FOR 501(C)(3) NONPROFIT ORGANIZATIONS

10 ACTIVITIES 501(C)(3) ORGANIZATIONS CAN DO ON A NONPARTISAN BASIS

- 1 Voter Registration***
- 2 Voter Education on the Process of Voting:**
Where to vote, information on elections and election process
- 3 Voter Guides on Candidates and Ballot Measures**
- 4 Candidate Forums and Candidate Appearances**
- 5 Educating the Candidates**
- 6 Encouraging Voter Participation. Get Out the Vote:**
Encourage and help your staff, clients, constituents and other people in your community to get to the polls
- 7 Voting Rights and Election Reform**
- 8 Helping on Election Day:**
Volunteer poll workers, election monitors, etc.
- 9 Issue Advocacy During an Election**
- 10 Supporting and Opposing Ballot Questions:**
Subject to normal lobbying limits

** Watch out for restrictions from sources other than federal tax law. For example, federal government regulations sometimes prohibit the use of certain federal funds to do voter registration. (For more information on restrictions on use of federal funds, visit the legal resource section of our website.)*

RESOURCES AND BIBLIOGRAPHY

ALLIANCE FOR JUSTICE

E-mail: advocacy@allianceforjustice.org

Website: www.allianceforjustice.org

For advocacy/voting questions, call the AFJ hotline at 1-866-NPLOBBY (866-675-6229).

BIBLIOGRAPHY

Revenue Ruling 2007-41, June 2007, <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>, twenty-one helpful examples from the IRS of permissible and impermissible 501(c)(3) election-related activities.

Election Year Issues, Judith E. Kindell and John Francis Reilly, Internal Revenue Service publication, 2004. www.irs.gov/pub/irs-tege/teotopici02.pdf

Private Foundations and Policymaking, Thomas A. Troyer and Douglas Varley, paper commissioned by the Center on Philanthropy and Public Policy, 2002

The Real Rules: Congregations and IRS Guidelines on Advocacy, Lobbying and Elections, Unitarian Universalist Association-Washington Office http://www25.uua.org/luuawo/pdf/the_real_rules.pdf

The Rules of the Game: An Election Year Guide for Nonprofit Organizations, Alliance for Justice, Washington, DC, 2006 www.allianceforjustice.org

The Public Charity's Guide to the California Imitative Process, Northern California Grantmakers, www.ncg.org

Worry-Free Lobbying for Nonprofits: How to use the 501(h) Election to Maximize Effectiveness, Alliance for Justice, Washington, DC, 1999, www.allianceforjustice.org

