Nonprofits and Elections: What’s Legal / What’s Not

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Disclaimer:

• Nonprofit employees are private citizens. They hold the right to fully participate in all forms of partisan political activity, including:
  • Endorsing candidates
  • Donating their own funds to candidates
  • Volunteering for campaigns on their own time
  • Attending campaign events on their own time
  • Caveat:Appearances are everything. If you are a CEO easily recognizable and associated with your NPO, steer clear of the above activities!

• Nonprofit organizations are legally prohibited from participating in any partisan political activity.
The Law (the Johnson Amendment)

• Federal law states that organizations exempt from federal income tax under section 501(c)3 of the Internal Revenue Code, which includes charities and churches, may not participate in, or intervene in, any political campaign on behalf of, or in opposition to, any candidate for public office.
Definitions (for brevity)

• **Charity** = section 501 (c) 3 organization

• **Political campaign intervention** = “participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office”

• **Candidate** = any candidate in any election for a national, state of local public office
Prohibited Campaign Intervention (the rules)

• A charity engages in political campaign intervention when it:
  ✓ Makes or solicits contributions to or for candidates or political organizations
  ✓ Endorses a candidate or rates a candidate (no matter how objective such rating may be)
  ✓ Publishes or distributes partisan campaign literature or a written statement
  ✓ Has its representatives speak out about a candidate
  ✓ Uses its resources to influence an election

▪ All of these activities are prohibited.
Charities are allowed to conduct nonpartisan activities that educate the public and help them participate in the process:

- Voter education guides (Example: League of Women Voters)
- Distribution of sample ballots
- Voter registration drives
- Get-out-the-vote drives
- Candidate forums

* Caution: An Educational activity can sometimes cross into dangerous territory!
Possible Violations

• A charity would violate the ban on political campaign intervention by issuing a statement in support of, or opposed to, a candidate.
• It can depend on “facts and circumstances”
• Even a statement that does not explicitly urge its audience to vote a certain way might implicitly support or oppose a candidate, if:
  • The statement mentions the candidate
  • It expresses approval or disapproval of a candidate’s positions or actions
  • It is published during a political campaign
  • It mentions voting or the election
  • It raises an issue on which the candidates disagree
Social Media: Websites / Twitter / Facebook

• The internet has become the medium of choice for partisan electioneering.

• Websites are now a primary means of communication for a nonprofit.

• Statements on a website or Twitter are treated no differently from statements appearing in print or over television / radio / podcast.

• A charity that posts a statement on its website or Facebook page that favors or opposes a candidate is at as much risk of political campaign intervention as if it had been in print or in oral remarks.

• A charity may also be at risk if it posts links to other websites that advocate for or against a candidate.
Links to other websites

• However, links to the official campaign websites of the candidates are acceptable if:
  • There is a link to every candidate’s official website
  • The links are presented in an educational context and are for information purposes only.
  • The links are presented in a consistent, unbiased manner.

For example: if a charity posts an unbiased, nonpartisan voters’ guide on its website, it may include a link to the official campaign website of each candidate using the text: “For more information on Candidate X, you may consult [URL].”
Permissible Nonpartisan Activities
Blessings from the IRS!

• The IRS affirmatively states that charities may conduct voter engagement activities and connect with candidates on a nonpartisan basis.

• This means that charities may encourage voter participation, educate voters and talk to candidates about issues. In fact, some charities that receive certain federal funds are *required* to proactively offer the people they serve the opportunity to register to vote.

• Here’s our checklist:
Voter Registration

• A charity may conduct voter registration drives and get-out-the-vote (GOTV) drives – as long as they are conducted in an unbiased manner.

• Avoid mentioning candidates or political parties (or use “code” words, like “conservative”) in all written and oral communications about the activity, including publicity, posters, registration materials (including on your website or Facebook page) and any handouts.

• Train your employees and volunteers well!
Voter Registration – Federal Funds Restrictions

- Community Service Block Grant (CSBG) – Community Action Agencies

*CANOT*  Use CSBG funds to pay for staff / materials for voter registration
Use CSBG funds to provide rides to the polls.

*CAN*  Use non-CSBG funds or volunteers to do voter registration so long as it is not identified as a service of the agency.
Use CSBG funds to do any other kinds of nonpartisan voter engagement activities to promote voter education and participation, such as reminding staff and clients about an upcoming election.
Voter Registration – Federal Funds Restrictions

• Head Start – similar restrictions to CSGB but may have outside groups do nonpartisan voter registration drives at their sites.

  **CANNOT**  Use HS funds to conduct or have employees conduct VR activities.
               Use HS funds to provide rides to the polls.

  **CAN**     Have a nonpartisan organization or non-HS personnel do VR at HS facilities during all hours or operation.
               Do any other type of nonpartisan voter education, such as keeping parents and others informed about how, when and where to vote.
Voter Registration –
Federal Funds Restrictions

• Community Development Block Grants

CAN
Unlike CSBG funds, there are no restrictions on doing voter registration or any type of nonpartisan activity.

Any charity with CDBG funds should follow the same rules that apply to any nonprofit organization (barring partisan, political activity to support of oppose candidates)
Voter Education and Assistance

• A charity may provide information on when and where to vote – such as assisting a voter to find their polling location, getting an absentee ballot, providing notary services or contacting their local election office for help.

• A charity may provide transportation to the polling places.

• All services must be offered to all, regardless of their political affiliation.
Voter Guides

• A charity may compile and/or distribute nonpartisan voter guides to help educate the public of the attitudes and actions of candidates.

• A charity may publish voting records and/or candidates’ responses to questionnaires but must refrain from judging the candidates or their positions.
Voter Guides - Mitigating Factors

**Timing:** Using voting records can be considered political campaign intervention if they identify any incumbent as a candidate or compare positions with other candidates or the charity, especially if they are published during a political campaign or distributed where a campaign is occurring.

**Intent:** A charity may publish an annual compilation of voting records that covers a wide range of issues with no editorial opinion.

**Intent:** But if the charity only publishes the records on selective issues and distributes it widely during an election campaign, it may have engaged in political campaign intervention, even if the guide contains no statements that support or oppose candidates.
Candidate Questionnaires

• Questionable value – most candidates don’t send them back.

• A charity must take care to phrase the questions so as not to suggest a preferred answer.

• A charity must not compare the responses to its own positions.
Issue Advocacy - Ballot Measures

• Unlike candidates for office, nonprofits may take sides on a ballot measure. The IRS treats this as a lobbying activity, rather than partisan electioneering.

• A charity may educate the public on the issue within your normal lobbying limits. Track your spending as a lobbying expenditure to report on your 990.

• A charity may not identify whether a candidate agrees with its position on a ballot measure – that’s partisan electioneering.
Issue Advocacy – Meet with Candidates

• A charity may not advocate for or against a candidate for public office.

• But a charity may advocate for or against a particular issue as long as that advocacy furthers its mission.

• A charity may meet with candidates to inform them about their charity and the issues they deal with as long as all candidates are treated equally.
Non-candidate Appearances

• Candidates often speak at charitable events in their role as a public figure, a subject matter expert or celebrity.

• When the candidate appears in a role other than that of a candidate, the host charity should ensure that:
  • It maintains a non-partisan atmosphere at the event
  • None of its representatives mentions the campaign or the speaker’s candidacy
  • No campaign activity occurs during the event.

• The host charity should inform the candidate that the event is not a campaign event and obtain their commitment to appear in their non-candidate capacity and not mention the election.
Candidate Appearances

• A charity that invites one candidate to speak in the role of candidate is engaging in political campaign intervention unless it gives all candidates an equal opportunity to speak.

• “Equal opportunity” may be a separate event – but must be substantially similar.

• The charity must make it clear that it neither supports nor opposes the invitee’s candidacy. No political fundraising should be allowed at any event.
Candidate Forums

• Candidate Forums are an excellent way to give an audience a unique opportunity to evaluate and compare the candidates.

• Must invite all the candidates to appear together on the same stage and answer questions posed by a moderator or by members of the audience.

• The host charity must ensure that all candidates are treated fairly and impartially.
Successful Candidate Forums

A candidate forum is more likely to be fair and impartial if:

• All qualified candidates for a given office are invited to the forum
• The questions are prepared and presented by an independent nonpartisan panel
• The discussion covers a broad range of topics
• Each candidate is given an equal opportunity to speak
• The moderator and the forum sponsors refrain from commenting on the questions, the answers or the candidates.
Summary

• The IRS affirmatively states that charities may conduct voter engagement activities and connect with candidates on a nonpartisan basis. Activities may include:
  
  • Voter Registration
  • Voter Education
  • Get-out-the-Vote Campaigns
  • Candidate Forums
Resources

• Alliance for Justice “Rules of the Game”
  • https://bolderadvocacy.org

• National Council for Nonprofits
  • www.councilofnonprofits.org

• Nonprofit Vote
  • www.nonprofitvote.org

• Internal Revenue Service
  • https://www.stayexempt.irs.gov
Questions

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