



Advocacy and Civic Engagement Toolkit

Civic Engagement

This **Advocacy and Civic Engagement Toolkit** is designed for nonprofit organizations that want to educate and encourage their members about getting involved in civic and policy activities to increase organizational capacity and impact. This has been adapted from Foundations for Civic Impact Advocacy and Civic Engagement Toolkit for Private Foundations. This toolkit also contains excerpts from the Legal Resource Guide in Innovations Best Practices from the State Voices Network.

Why Advocacy and Civic Engagement?

1. Policy and civic engagement enables nonprofit organizations to address the root causes of social problems and to create lasting, systemic change.
2. It's solving social problems. The nonprofit and philanthropy sector alone cannot solve society's most pressing challenges. It must partner with government and business, and also hold them accountable in order to create systemic change. Whether they relate to human services, civil rights, economic security, education or the environment, nonprofit advocacy and civic engagement activities have been critical to large- scale social progress from the beginnings of our nation.
3. It's democracy. An informed and responsive democracy requires that a wide range of voices and interests be heard in shaping and implementing public policy. Nonprofits are among our nation's best vehicles for civic participation, which is the cornerstone of our nation of, by and for the people.

General Advocacy is Legal and Unlimited

Advocacy and civic engagement that is not regulated by the IRS as lobbying or partisan political activity is generally permissible and unlimited nonprofits.

Permissible activities include but are not limited to:

- Public Education

- Community Organizing
- Grassroots Organizing
- Issue or Policy Advocacy
- Nonpartisan Voter Education and Engagement

Nonprofits may use advocacy to support or oppose federal administrative regulations, litigation, and other non-legislative governmental action, as well as private sector decisions.

Internal Revenue Code Section 501(c)(3) Prohibited Activities

501(c)(3) organizations are prohibited from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office. This rule comes from the language in section 501(c)(3) of the Internal Revenue Code (IRC). Generally, this means an organization cannot make contributions to candidates (whether cash or in-kind); cannot make endorsements (whether in support or in opposition to a candidate); and cannot allow the use of the organization's resources without giving equal opportunity to other candidates.

The penalty for violating this prohibition is revocation of tax-exempt status. The IRS does however have the option to impose intermediate sanctions provided for in IRC section 4955. The intermediate sanctions are excise taxes on the political expenditure with an initial 10% on the organization and 2.5% on an organizational manager who knowingly approved the political expenditure. The IRS has given warnings to organizations for violations in the past but there is no rule that the IRS must give a warning in lieu of or before imposing a penalty.

Internal Revenue Code 501(c) 3 Permissible Activities

The IRS uses a facts and circumstances test and will look to factors such as content, timing, and scope. Thus, organizations should proceed with caution when they engage in political or election-related activities.

501(c)(3) organizations are permitted to engage in issue advocacy which is advocacy related to the charitable mission and the charity's agenda (i.e. environmental justice, healthcare, etc.,). However, issue advocacy may cross into prohibited political campaign activity under certain circumstances, especially during election years. For example, an organization that engages in advocacy related to a particular issue only during election years and close to the election may be viewed by the IRS as engaging in political campaign activity even if the organization does not mention any candidate names or party affiliations. By contrast, it is a much more favorable set of facts and circumstances for the organization if the organization has a pattern of engaging in such advocacy during non-election years using the same means and scope.

Examples of permissible election-related activities include voter education such as voter guides and candidate debates; voter registration such as get-out-the-vote drives; and, candidate education such as public policy reports created on behalf of the organization distributed to all candidates. The overarching theme of the electioneering prohibition that 501(c)(3) organizations be neutral and nonpartisan with respect to publicly elected offices must be a

main consideration when undertaking any election-related activity. Thus, for example, voter education guides should not rank candidates; voter registrations should not be based on party affiliation; and candidate education should not be done in response to a candidate's request or show favoritism to certain candidates. Organizations should become knowledgeable about the 501(c)(3) prohibition on electioneering and when unsure, seek the assistance of nonprofit legal experts.

Prohibition as Applied to Websites and Social Media

501(c)(3) organizations should not only ensure their printed material is in compliance, but also their online material as well. This is a particular tricky area because organizations can connect to candidates in so many different ways (e.g., providing links to candidates' websites; "friending" or "liking" on Facebook; "following" or "tweeting/re-tweeting" on Twitter) and the law in the area is still developing. Generally speaking, certain online activity can constitute violations of the electioneering prohibition and organizations should therefore apply just as much care to their online conduct.

Civic Engagement in Action

California Calls

California Calls is a growing alliance of 31 grassroots, community-based organizations spanning urban, rural and suburban counties across California. California Calls engages, educates and motivates new and infrequent voters among young people, from communities of color, and from poor and working-class neighborhoods to make California's electorate reflect the state's diverse population. Through a bottom-up approach, California Calls is organizing voters most impacted by budget cuts and deteriorating public services in support of systemic, progressive solutions to our state's fiscal crisis.

In the November 2012 election, 440,000 California Calls' supportive voters – new and infrequent voters including youth, immigrants, voters of color and low-income Californians – turned out to the polls at a rate 9% higher than the rest of the state. The GOTV campaign by the California Calls Action Fund identified 293,583 voters who committed to vote “yes” on Prop 30, a ballot initiative to increase taxes to prevent \$6 billion cuts to the education budget for California state schools. Proposition 30 provides for personal income tax increase over seven years for California residents with an annual income over \$250,000, to be implemented retroactively starting January 1, 2012 through the end of 2018. The measure also provides for an increase in the state sales tax by 0.25 percent over four years (from January 1, 2013 through December 31, 2016). The measure was approved by California voters by a margin of 55 to 45 percent. Out of the nearly 300,000 supporters engaged by California Calls, election data show that 80% of them turned out to vote, making up 3.36% of the total vote for Prop 30.

Florida New Majority

Florida New Majority is a statewide voter participation organization working to empower women, African-Americans, Latinos, new immigrant communities, and young people to fully participate in the political process toward an inclusive, fair, and vibrant democracy. FNM trains grassroots citizens to be leaders, mobilize communities to vote. Through deep partnerships with organizations, leaders, and networks, FNM organizes people, ideas, and resources to build a powerful new vision for Florida's new majority. A

cornerstone of FNM's beliefs is defending and expanding the voting rights of all citizens, including those who are new to the US, raising children on their own, struggling to make a living, or returning from incarceration. Through street-level organizing FNM is overcoming the dark days of racism and divisiveness to bring the new light of fairness and equity to all residents.

In 2012, FNM's mobilization efforts resulted in the election of ten new progressive Federal and State legislators in Florida. Through a Breakthrough campaign, FNM reached more than 250,000 voters across the state, 76% of which turned out on election day.

Lobbying and Voter Engagement Activities

Two primary areas of nonprofit advocacy that are regulated by the IRS are lobbying and voter engagement activities. Nonprofits may generally engage in unlimited advocacy and civic engagement that does not fall within specific prohibitions or restrictions within these two areas.

Lobbying

Lobbying is activity directed toward influencing specific legislation. Activities directed toward influencing legislation are divided into two categories, direct lobbying and grassroots lobbying.

Direct lobbying is an attempt to influence legislation by communicating with members or staff of a legislative body to encourage them to introduce, support, oppose, repeal, or otherwise influence legislation. It also includes contacts with any other government employee who participates in the legislative process if the principal purpose of the communication is to influence legislation. Therefore, contacts with the administrative agency staff are also included if the primary purpose of the contact is to influence legislation. Telephone calls, letters and office visits to a member of Congress, testimony at a public hearing (unless in response to a written request by a legislative committee) or publication of material to encourage passage of a bill are all lobbying activities if they:

1. **Refer** to specific legislation;
2. **Reflect** a view on the legislation; and,
3. **Address a legislator**, an employee of a legislative body or other government official participating in the formulation of legislation.

Grassroots lobbying is communication with the general public, directly or through members, to encourage non-members to take action with respect to specific legislation. For example, sending letters to a Senator's constituents requesting that they write to the Senator to oppose a piece of legislation is grassroots lobbying if the letters contain all three of the following elements:

1. reference to a specific legislation
2. reflection of a view on the legislation, and
3. a call to action such as:
 - encouraging recipients to contact legislators;
 - providing a legislator's name, address, phone number or similar information
 - providing a petition tear-off postcard to send to a legislator, or identifying a legislator as being opposed to a particular view, undecided, the recipient's legislator, or a member of the committee or subcommittee that will consider the legislation. Identifying the sponsor of legislation is not a call to action.

WHAT IS NOT LOBBYING?

Some activities while they are related to the legislative process are not considered lobbying for 501(c)3 organizations. Expenses for these activities are not considered lobbying expenses for

these activities are not considered lobbying expenditures and should not be recorded as lobbying on timesheets.

No Specific Legislation: A communication that refers to broad policy issues or objectives and not to specific legislation is generally not lobbying.

Executive or Agency Actions: Attempts to influence executive orders, administrative actions and similar items are generally not considered lobbying.

Technical Advice: If an organization receives a written request from a legislative committee or body to testify or to advise on legislation, this assistance is not lobbying within the following restrictions:

1. The request must be official (from a committee or legislature, not simply an individual member) and in writing;
2. The organization's response must be directly related to the advice requested, and
3. Every member of the legislative body making the request must have access to the information provided.

Nonpartisan Analysis, Studies, or Research: An organization may distribute non partisan analysis and studies on legislative issues to the general public, including legislators. The materials must be made available to the public, a segment of the public, or to governmental bodies, officials and employees.

While they may express a particular point of view about legislation, they must also provide a sufficiently full and fair exposition of the underlying facts that the reader may develop his or her own point of view.

Self Defense Lobbying: Organizations take action on legislation that has a potential effect on the existence of the organization, its duties, tax-exempt status or deductibility of contributions without that action being considered lobbying.

Member Communications: Communications to members about proposed or pending legislation of direct interest to the organization do not constitute lobbying so long as there is no direct request to take an action to support the legislation.

Examinations of Broad Social, Economic and Other Problems: Communications that do not address specific legislation or directly encourage recipients to take action with respect to legislation can fall under this exception. Examinations of broad issues include discussions of general issues that may be the subject of legislation but do not mention specific legislation.

Other: Other activities such as training workshops on general lobbying skills, communications with government officials about administrative procedures, regulations, and enforcement, and volunteer lobbying do not generally qualify as lobbying by an organization.

Voter Engagement Activities

501(c) 3 organizations may conduct voter registration and get out the vote (GOTV) activities provided the activities are nonpartisan and in accordance with applicable tax and election laws. The literature for the voter registration/GOTV activity must either avoid any reference to a candidate or list all candidates for a particular office without stating or implying any preference. No political party may be named except to identify the party affiliation of all candidates.

- The activity should be limited to encouraging people to register and to vote and to providing information about the hours and places to register and vote.
- Voter registration and GOTV drives may discuss issues and encourage people to be informed voters. An appeal to individuals to register to vote in order to have a more effective voice in government is allowable. If the drive raises issues important to your organization, do not discuss how a candidate voted on these issues or distribute voter guides that may indicate a candidate preference.
- Distribution of voter registration forms by mail or canvassing or in the organization's offices to the general public is permitted. In addition, maintaining booths at fairs, shopping centers or other locations and advertising in the media urging people to register to vote are acceptable activities.
- Registration and GOTV activities may not be coordinated with or targeted to assist a candidate or political party.
- Voter registration materials and activities must be made available to all individuals without regard to political views.
- Voter registration and GOTV drives may select areas for coverage but only on a nonpartisan basis. An organization may use voter registration lists to identify unregistered voters.

A drive also could be focused on registering students and other groups that have a community of interests. However, targeting may not be based on the political or ideological interests or candidate preference of any group. A 501(c) 3 organization may choose areas based on proximity. Thus, a charity with a small budget may work in its community. A charity also may choose to work where its members are or where those most likely to be interested in the organization's issues are.

- A registration of GOTV drive may be directed to commonly disenfranchised or traditionally underrepresented groups, including minorities, women, the poor, the homeless or the unemployed. In developing the literature for these drives, it is important to discuss why these groups have been targeted. Facts that demonstrate historic patterns of underrepresentation in the political process should be highlighted.
- • A disclaimer of any affiliation or preference for a candidate or political party is advisable for all literature (i.e. This voter registration project sponsored by _____ is nonpartisan and does not reflect an endorsement of any candidate or political party).

Federal election law imposes the following restrictions on corporations (including nonprofit corporations) that seek to engage in voter registration and GOTV activities:

- The corporation must register anyone who wants to sign up regardless of a person’s political preference. The voter registration/GOTV effort may not be directed primarily at people who intend to register with a particular political party. The corporation may not ask a person whether he or she is going to vote for a particular candidate or register with a particular political party.
- Individuals may not be paid on the basis of the number of people registered or transported who support one or more political candidates or a political party.
- The corporation must provide written notice of the non-preferential nature of the service to those who receive the information or assistance. The sign, displayed prominently, or flyers handed to those receiving information, must include the following statement:

“Voter registration and GOTV services are made available without regard to a voter’s political preference. In addition, information and other assistance regarding registration or voting are not withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.”

- Finally, state election law may also provide additional requirements or restrictions on voter registration and GOTV activities 501(c) 3 organizations should consult with the Secretary of State.

Candidate Forums and Events

A candidate event is a great way to engage your community around an upcoming election, to build clout for the issues that matter to your organization and to learn more about the candidates. Because nonprofits are considered to be neutral brokers with the best interest of the community in mind, your forum is a vital opportunity to increase public understanding of the democratic process and the issues affecting your community. A candidate forum is a powerful tool for achieving the public policy goals of your nonprofit. Whether your organization needs funding, has a goal of changing state law, or simply wants to increase awareness of your issues or constituency, a successful candidate forum during a major election year will build awareness of your organization and the communities you serve. Hosting a successful forum depends on one factor: planning. And don’t forget: when it comes to planning a candidate event — turnout is everything! By following the guideposts set out in this publication, and by carefully developing plans and executing them, any nonprofit should be able to achieve its goal of hosting a successful candidate forum.

Moderator

The moderator should be neutral and act in an unbiased manner, and should make a statement at the beginning and the end of the program noting the views expressed were not those of the sponsoring organization. If the head of the charity has publicly known opinions on the topics debated during the event, the organization may want to select another individual to moderate the debate. The moderator should treat each candidate fairly, and not provide one candidate with more favorable treatment, such as allowing only one candidate to exceed the pre-set time limit.

Questions

Questions for the candidates should be prepared and presented by an independent and nonpartisan individual or panel – though questions from the audience may be permitted as well;

Questions should represent a broad range of interests rather than a narrow perspective, as a narrow set of issues may suggest support for a candidate, particularly if it looks like the answer is being sought to mirror the

organization’s views on those issues. The charity may need to partner with other organizations to ensure a broad range of topics can be discussed during the debate.

Candidates should not be asked whether they agree or disagree with the positions, agendas, platforms, or statements of the organization.

Rules

Each candidate must be given an equal opportunity to present his or her views on each of the issues discussed;

The goal of the debate cannot be to suggest (whether implicitly or explicitly) which candidate is “good” or “better” on the issues; the charity must avoid comparing its views with those of the candidates;

The organization should avoid permitting candidates to distribute campaign literature at the event unless all candidates are participating.

While it is permissible to conduct a candidate debate, a charity cannot publish a final report of the event containing any ratings or evaluations of the candidates, as this would constitute support for or against a candidate.

Alternative Formats

Rather than having the candidates debate, some charities prefer to have the candidates appear at sequential events, or to allow the candidates to make open-ended statements about their qualifications and opinions (often called a candidate forum). Organizations interested in hosting a sequential event should consult our fact sheet on candidate appearances as well as review the guidelines described above for candidate debates (to ensure candidates are given equal treatment).

In addition, organizations may also be required to comply with applicable federal or state election law. Under federal election law, for example, 501(c)(3)s are faced with even further restrictions when hosting a forum involving candidates for federal office. Federal election law generally prohibits corporations (including 501(c)(3) charities) from hosting a forum for federal candidates unless it meets strict criteria. The only time a candidate forum is specifically allowed under federal election law is if a 501(c)(3) educational institution either makes its facilities available “in the ordinary course of

business and at the usual and normal charge” to candidates and party representatives, or if it takes steps to make the event an “academic setting” rather than a “campaign rally.” As such, an organization wishing to host this type of event for federal candidates will likely need to work in partnership with an educational institution.

Center for Lobbying in the Public Interest. Foundations for Civic Impact: Advocacy and Civic Engagement Toolkit for Private Foundations, 2010.

http://www.cfleads.org/resources/commleadership_pubs/docs/CLPI_Toolkit_FINAL%209-7-10.pdf

Bolder Advocacy. Hosting Candidate Debates, http://bolderadvocacy.org/wp-content/uploads/2012/05/Hosting_Candidate_Debates.pdf

Legal Guidelines for Lobbying and Voter Engagement Activities

Lobbying

Nonprofits May:

Engage in legislative communications comprising specific exceptions to the charitable lobbying rules, including:

- ✓✓ Nonpartisan analysis, study or research; ✓✓ Technical assistance requested in writing by a government body;
- ✓✓ Self-defense communications on matters affecting the organization’s existence (not its budget), tax-exempt status, powers and duties, or deductibility of contributions to the organization; and,
- ✓✓ Communications with government official about jointly funded projects

Nonprofits May Not:

⊗⊗ Engage in lobbying as defined by the IRS without incurring prohibitive taxable expenditures (i.e. supporting or opposing specific legislation directly to a legislative body or indirectly.

Voter Engagement Activities

Nonprofits May:

- ✓✓ Engage in a wide range of nonpartisan voter education and engagement activities, including nonpartisan voter registration, get-out-the-vote, voter guides, issue advocacy and candidate forums.
- ✓✓ Engage in nonpartisan voter registration

Nonprofits May not:

⊗⊗ Engage in partisan political activities such as supporting or opposing a candidate for public office or a political party. The IRS determines whether particular voting-related activities are nonpartisan and permissible by examining the “facts and circumstances” of each case.

**These rules apply to federal, state and local elections. Federal, state and local election laws may provide other rules related to registration, disclosure and political activities within their jurisdictions.

501(c) 3s MAY:	501(C) 3s MAY NOT:
<ul style="list-style-type: none"> • 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 (with certain restrictions) • 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 501(c)(4) organization • Work with all political parties to get its positions included on the party’s platform 	<ul style="list-style-type: none"> • 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 and publicize their response to the request (it may be viewed as a 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 <p>** This checklist provides general guidelines only. Organizations should consult with funders and/or a legal professional for additional information regarding restrictions.</p>

Coalition Activities

501(c) 3 nonprofits often work in coalitions with other organizations, but it is important to remember that a 501(c) 3 organization may not do indirectly through a coalition what it is not permitted to do directly. The Tax Status Comparison Chart outlines specific activities organizations with different tax statuses are permitted to engage in.

	501(c)3	501(c)4	Political Organizations
Tax Status	Tax exempt; contributions to a 501(c)3 are generally tax-deductible contributions are not subject to federal gift tax.	Tax exempt; contributions to a 501(c)4 are not generally tax-deductible contributions may be subject to gift tax	Tax exempt contributions to a PO are not tax deductible; contributions are not subject to gift tax
Related Organizations	May establish a 501(c)4	May establish a 501(c)3 and PO	May be established by a 501(c)4
Lobbying Activities	Limited expenditures to influence legislation, ballot measures and judicial nominations	No limit on lobbying expenditures	Limited (insubstantial) lobbying expenditures permissible but may be subject to tax if no furthering political purposes
Political Activities	<p>Prohibited from engaging in any partisan political activities may conduct nonpartisan voter engagement activities</p> <p>May not establish a PO for political activities</p> <p>Penalties; Revocation of tax exempt status and excise taxes on both the organization and its managers</p>	<p>May carry on partisan political activities subject to federal and state campaign finance laws</p> <p>May not be the primary purpose of the organization must be secondary</p> <p>May establish a PO for political activities</p> <p>Tax on political expenditures</p>	No limit on aggregate expenditures; subject to state and federal campaign finance laws including limits on contributions

<p>IRS Requirements for Disclosing the Non-Deductibility of Contributions on Fundraising Solicitations</p>	<p>Not required</p>	<p>For contributions, disclosure of non- deductibility required on all solicitations by writing, television, radio, or telephone (with limited exceptions)</p> <p>For business expense deductions may be required to disclose percentage of dues used for lobbying and political activities (with limited exceptions)</p>	<p>Disclosure of non- deductibility required on all solicitations by writing, television, radio or telephone; other disclosures and requirements may apply under state or federal campaign laws</p>
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