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Do's & Don'ts: Public Charities in an Election Year

You're a public charity. Maybe you're brand new; or maybe you've existed for years but suddenly have an issue your constituents need to know about on the ballot this year.

Maybe one of your Board members is a candidate for elective office. Maybe you'd like to host a debate. Maybe you want to register your underserved population to vote. Whatever your situation, to run an effective and legally compliant organization, you need to be familiar with the rules surrounding advocacy and elections for public charities.

The following list of *do's* and *don'ts* focuses on a few common issues affecting 501(c)(3) public charities. Public charities are strictly prohibited from endorsing or opposing candidates for elective office, but not from engaging in truly nonpartisan, educational activities. Each of the activities discussed below may be safely conducted by a charity, provided IRS rules are carefully followed. This post does not address the rules specific to private foundations, social welfare organizations, or other tax-exempt entities. Moreover, this list does not address election law issues, such as campaign finance limits and disclosures. Charities should seek election law counsel to navigate the rules that apply beyond the realm of tax law.

Voter Registration

Do: Offer information on how and where to vote in a strictly nonpartisan manner, in both the content of your messaging and the way that you target geographic areas or populations. Refer to [Revenue Ruling 2007-41](#), Situations 1 and 2, for relevant examples.

Don't: Target voters or refuse to register voters based on how they expect to vote, or use particular issues to encourage registration by those only on one side of those issues.

But . . . targeting those historically underrepresented in the democratic process (e.g., homeless, poor, racial minorities), or an organization's natural constituency (e.g., patients at a local drop-in clinic), will generally not, without more, convert a nonpartisan activity to a partisan one, even if the targeted group is statistically more likely to vote for candidates of one party than the other.

Publishing or Distributing Voter Guides from Candidate Questionnaires

Do: Publish the responses of all candidates in a particular race, and cover a wide variety of issues based on their importance and interest to the electorate as a whole. Refer to the safe harbor rules in [Revenue Ruling 78-248](#) (Situations 2 and 3).

RELATED CATEGORIES

- [Public Charities](#)
- [Tax Treatment of Lobbying & Political Activities](#)

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ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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Don't:

- › Indicate any bias or preference (in the wording of questions, or in the content or format of the voter guide) for or against any candidate or group of candidates;
- › Publish rankings or ratings of candidates, even if the ratings were determined without regard to political affiliation and resulted from a neutral and unbiased process.

But . . . be aware that these rules apply regardless of whether the charity itself prepares the voter guide, or distributes one prepared by someone else.

Candidate Forums and Debates**Do:**

- › Invite all legally-qualified candidates;
- › Cover a broad range of issues prepared and presented by a nonpartisan, independent panel of experts;
- › Provide each candidate with an equal opportunity to present views;
- › Include a moderator to assure that ground rules are followed, and have the moderator explain that the sponsoring organization does not endorse any candidate;
- › Refer to [Revenue Ruling 86-95](#) for the framework required to ensure nonpartisanship.

Don't: Comply with only some but not all of the above requirements.

But . . . the IRS has indicated that fewer than all candidates *may* be invited if reasonable, objective criteria are consistently and non-arbitrarily applied to decide whom to invite, especially if inviting all candidates is impractical.

Ballot Measures**Do:**

- › Familiarize yourself with the tax rules concerning legislative lobbying to understand the limits on permissible ballot measure activities, since ballot measures are considered legislation for federal tax purposes.
- › Verify whether your organization has filed [Form 5768](#), electing to have its lobbying expenditures measured under Internal Revenue Code Section 501(h). For more information on the 501(h) lobbying rules, refer to Greg Colvin's article [here](#).

Don't: Refer generically to election outcomes when you talk about ballot measures – such language *can* imply endorsement for, or opposition to, candidates on the ballot.

But . . . ballot measures entail a number of issues that don't arise with other forms of legislation, since the voters, not legislators, decide the issues. Don't engage in ballot measure activity without a solid understanding of the applicable campaign finance and disclosure rules.

This is only a small sample of the many issues that arise for charities during an election year. Seek counsel if you are considering engaging in an election-related activity and are unsure how the rules apply, including inviting candidates to speak at an event, providing website links to potentially political content, lobbying for or against legislation, engaging in advocacy on wedge issues that distinguish the candidates in a race, or building coalitions with other tax-exempt organizations, to name a few common scenarios not covered above.