

# ENGAGING WITH PUBLIC OFFICIALS

## INTRODUCTION

In an election year, it is essential that nonprofit staff are familiar with the legal limitations and restrictions on their organizations' involvement with candidates for public office and elections. This overview is intended to provide guidance on how your organization can effectively navigate these issues while you continue to advocate for policy, systems, and environmental change.

**Below are three overarching takeaways to keep in mind:**

1. We're deep into election season, from the Presidential election to a slew of local campaigns, so it's important for all of us to know the do's and don'ts of working with elected officials and candidates for public office. Section 501(c)(3) nonprofit organizations are prohibited from taking any actions that indicate support for, or opposition to, a candidate for public office. During election season, 501(c)(3) organizations can continue to advocate for public policy change, and can play important roles in educating the public about candidates and encouraging people to vote. But staff must remember to avoid any actions, either in their professional or personal capacity, that could suggest their organization supports or opposes a candidate for public office.
2. Relationships with lawmakers and other public officials are important to achieving your organization's goals. In general, it is useful to invite these officials to your organization's events. However, having a candidate participate in your event could create the perception of an endorsement by your organization, so you need to proceed carefully. Your event must satisfy the IRS rules regarding candidate appearances. The context must make it clear that your organization is not indicating support for any particular candidates. When making decisions on candidate involvement, talk to a lawyer with expertise in these issues.
3. The IRS recognizes that section 501(c)(3) organizations have the right to weigh in on public officials' actions, even during election season. To determine whether communication is allowable issue advocacy, or whether it is prohibited electioneering, the IRS has [outlined the factors](#) it will consider, including the proximity to an election, whether the issue in the communication is one that divides the candidates in the election, and whether the timing of the communication coincides with a non-electoral event beyond the organization's control.

### BACKGROUND

- As a tax-exempt charitable organization under section 501(c)(3) of the Internal Revenue Code, your organization can legally engage in a variety of advocacy activities for public policies that support your mission, including lobbying. This includes advocating for ballot measures relating to your mission (these are treated as direct lobbying by the IRS, and are likely to be subject to regulation under your state’s campaign finance laws).
- Section 501(c)(3) nonprofits **cannot** engage in any actions that directly or indirectly support or oppose a candidate for elected office or a political party.
- Violating these restrictions on political campaign activity could be grounds for the IRS to revoke the organization’s tax-exempt status. It could also trigger a penalty tax on the organization and, in certain circumstances, its officers, directors and the manager involved in the violation.
- The prohibition on supporting or opposing candidates is quite broad – no organizational resources may be used to advocate for or against candidates, including staff time, technology equipment, or other resources. For example, staff should not use their work email to send a message to the organization’s donors, soliciting contributions to a candidate. But, these restrictions do not apply to actions by organizational staff acting as individual private citizens – as long as the staff conduct their activities while “off the clock” and not with organizational resources (e.g., not their work email address, and not using the organization’s donor or supporter list).
- Other organizations in your coalition may be legally structured in ways that allow them to engage in election activities that are prohibited for a 501(c)(3). During an election season, be particularly careful to keep your organization’s activities separate from political activities conducted by others in your coalition that are allowed to endorse candidates.

### NONPROFIT COMMUNICATIONS PRIOR TO AN ELECTION

- Communications about public policy and advocacy must always be nonpartisan.
- To help ensure communications are not misinterpreted as political or partisan, staff should:
  - ▶ Ensure communications cannot reasonably be viewed as favoring or opposing any candidate or political party.
  - ▶ Carefully craft your message to align with [the IRS rules on allowable issue advocacy](#).

### INVITING PUBLIC OFFICIALS TO ORGANIZATIONAL EVENTS

- During an election season, inviting lawmakers and other public officials to a nonprofit organization's events must be handled carefully to avoid the perception of endorsement. There's no specific timing for when is "too close" to an election, but the closer in time to an election, the greater the risk for the organization. The degree of participation also matters: Having a candidate speak at an event is treated differently than having the candidate attend solely for that person's own education about the organization and your policy issues.
- In general, candidates for public office may attend a nonprofit's events just like any member of the public, but they should not have a speaking role unless it is very clearly in their official capacity and not in their role as a candidate (e.g., opening a new Head Start center, and this Senator secured the government funding to build the center). Absent special circumstances, your organization should not announce the candidate's attendance or recognize them in some way that could be interpreted as supporting their candidacy. Candidates should never be allowed to distribute campaign materials (e.g., buttons, stickers, signs, literature) at a nonprofit organization's event, even if that event is election-related, like a nonpartisan candidate debate.
- The benefits and risks must be carefully weighed when determining whether to invite a lawmaker or public official to a nonprofit event. If an invitation is extended, it must adhere to the following criteria:
  - ▶ If any speaking opportunity is offered to a candidate, the candidate must speak solely in their official capacity (e.g., as Mayor or Senator).
  - ▶ Neither the candidate nor any organizational representative may make any mention of his/her candidacy or the election.
  - ▶ No campaign promotion or activity may occur in connection with the candidate's attendance.
  - ▶ The host organization must maintain a nonpartisan atmosphere before, during and immediately after the event (e.g., no political signs may be posted and host staff must ask audience members to refrain from wearing political pins or other campaign paraphernalia).

### STAFF ATTENDANCE AT EVENTS OF PUBLIC OFFICIALS OR CANDIDATES

- Organizational staff should not attend campaign events in their work capacity, as that could be treated as the organization supporting the candidate (e.g., using paid staff time to build a crowd, or tacit organizational support of the candidacy). For official government events hosted by an officeholder who is also a candidate, organization staff may attend and participate, but only after first confirming:
  - ▶ The event is being conducted as an official government event;
  - ▶ Any candidates who will speak are doing so only in their official capacity;

## ADDITIONAL RESOURCES: ENGAGING WITH PUBLIC OFFICIALS

- ▶ No speakers will mention the election or voting, and not campaign materials will be allowed at the event; and
- ▶ The event is very clearly tied to a non-election event that is core to your organization's mission (e.g., passage of legislation).
- Nonprofit staff may choose to attend a campaign or candidate event **in their individual capacity**. Those choosing to do so:
  - ▶ Should not represent themselves at the event in association with the nonprofit, and should not use their organizational title and role unless done in a manner consistent with their organization's policy (e.g., some organizations allow use of the title if the material specifically notes "Organizational affiliation for identification purposes only; not a candidate endorsement").
  - ▶ Should not bring materials from their nonprofit, or wear organization-branded clothing/accessories to the event.
  - ▶ Should make it clear they are attending the event as an individual and not on behalf of the organization.
  - ▶ Should take PTO for the time spent if the event takes place during working hours or otherwise make up the hours in a manner consistent with organizational policy.

## ACTIVITIES AS PRIVATE CITIZENS

- Regardless of their employer's 501(c)(3) nonprofit status, organizational staff may participate in the political process and exercise their voting rights as they see fit.
- However, an employee's participation in the electoral process must be **separate and apart** from their association with the organization.
- Organizational staff should not:
  - ▶ Share personal opinions about candidates or elections in official organization communications or on the organization's social media accounts, or in other ways that could confuse people about whether they are speaking in their personal capacity or on behalf of their organization.
  - ▶ Display campaign materials relating to an active candidate while conducting official organization business.
  - ▶ Utilize the organization's funds, equipment, technology or other resources in any way that could be interpreted as supporting or opposing a candidate or political party. For example, people should only use their personal email account when communicating about a campaign.
  - ▶ For an organizational leader whose public profile is closely associated with the nonprofit, it may be appropriate to clarify proactively that you are participating in a campaign event or activity as an individual and not as an organizational representative. (e.g. "My views are my own.")

### CANDIDATE EDUCATION DURING ELECTION SEASON

- Election season can be a great time to educate candidates and the public at large about your organization's positions on priority issues, because they tend to be paying closer attention to policy discussions Staff and volunteers may:
  - ▶ Explain the organization's position on public policy issues.
  - ▶ Give candidates or campaigns organizational materials describing our public policy positions.
  - ▶ Pose questions at campaign events that objectively ask for a candidate's positions on public policy issues.
- The information must be provided to all candidates on an equal basis.
- These efforts improve understanding and elevate the importance of mission-critical public policy priorities. They are in no way intended to support or oppose a particular candidate or political party.
- The organization cannot praise or thank a candidate for adopting its policy position or criticize a candidate for not doing so. Similarly, the organization cannot ask candidates to pledge publicly that they will implement the organization's policy if elected, as that is akin to a tacit endorsement by the organization.

### SOCIAL MEDIA

An employee may use their personal social media account to advocate for candidates, but they cannot post political content to an organizational account. It sometimes can be difficult to determine whether the IRS will treat a particular social media account as being that of an organizational account, or an employee's own personal account. Factors the IRS may consider include:

- Whether the account includes a disclaimer along the lines of "views are my own," etc.;
- Whether and how the social media bio identifies the employee's work role;
- Whether the person's social media handle includes the organization's name (e.g., @NancyatHeart);
- Whether the content is mostly work-related, or also includes significant other content connected to the person's hobbies and other interests; and
- Does the person post all of their own content, or does an organizational communications staffer sometimes post content to the account.

Note that no single factor will be dispositive: Depending on the circumstances, the IRS may consider some to carry more weight than others.

*This guidance does not constitute legal advice. All organizations should seek counsel from a lawyer experienced in navigating the election-season rules applicable to section 501(c)(3) organizations.*