

Charities, Election-Year Advocacy and Voter Education

Each November (and April in the case of school board elections), New Jerseyans have an opportunity to vote candidates into an array of federal, state, county and local offices. Election outcomes have far-reaching implications for public policy, sometimes long after the office-holder's term(s) have ended. The outcome of these elections is of great importance to non-profits themselves and to their constituencies.

Legislation, appropriations, court appointments and other government actions have a significant impact on the sector and the interests that it represents. Clearly, charitable organizations have a large stake in the electoral process—in terms of general civic duty, and as an integral part of their work for clients and communities. But in order to participate safely, publicly supported 501(c)(3) organizations need to know the boundaries of electoral advocacy—how they can conduct get-out-the-vote (GOTV) and other education programs effectively and legally. Here are some basic tips from the Center for Non-Profits and from *E-Advocacy for Nonprofits: The Law of Lobbying and Election Related Activity on the Net*, a publication of The Alliance for Justice. For more information, contact the Center or consult the resources at the end of this article.

Voter Registration and Get-Out-The-Vote (GOTV) Activities

- Remember that all voter registration and GOTV activities must be completely nonpartisan, intended to promote participation in the voting process rather than to influence the election or defeat of particular candidates. (Non-profits can, however, work for passage or defeat of a bond issue or referendum—this is counted as lobbying, not partisan political activity, and must be tracked as such for IRS and state reporting purposes.)
- If you choose to target a particular constituency, be sure that it is done in a nonpartisan manner. It is permissible to target people in your geographic service area, your clients/audiences and their families, or historically disadvantaged or underrepresented groups such as low-income people, the homeless, minorities, students, the mentally ill, developmentally disabled, or persons residing in traditionally low-turnout areas. You may not base your GOTV drive on party affiliation, ideology (liberal vs. conservative), past voting preferences, or the intent to affect the outcome of a close race. Don't select a target area or group because you believe the voters in that group or area will favor a particular candidate, even if the candidate is a member of a politically disadvantaged group that your organization serves. Before you embark on your voter registration or GOTV activities, it's a good idea for your Board of Trustees to approve a resolution explaining and confirming the nonpartisan reasons behind your targeting decisions.
- Avoid answering questions about voting plans or party preferences. Instead, explain that your purpose is to promote the democratic process and not particular candidates.
- Do not ask persons you are working with how they plan to vote or what their party preference is, or make any direct or indirect effort to find out their allegiance to any candidate or party.
- Particular care should be paid to the context in which a candidate's name is mentioned. Information on high-profile policy issues of importance to your organization must remain completely separate from discussions regarding an upcoming election, in order to avoid linking a candidate to the issue. If you mention a candidate's or party's name, you should mention all of them for identification purposes, again avoiding an appearance of bias.

www.njnonprofits.org

Tel 732.227.0800 | Fax 732.227.0087 | 3575 Quakerbridge Road, Suite 102, Mercerville, NJ 08619 (as of 5/1/2013)

Facebook.com/njnonprofits | twitter.com/nj_nonprofits | linkedin.com/company/center-for-non-profits

Center for Non-Profits is a New Jersey non-profit corporation and a federally recognized 501(c)(3) publicly supported charity.

- Praise or criticism of an elected official is, of course, allowed, but if the official is also running for office, the message must refer only to his/her activities on an issue while in office. Since comments on his/her activities as a candidate are not permitted, the timing and content of such messages may come under scrutiny for possible prejudice. Similarly, articles about, or even endorsements of, the candidates by third parties may be displayed only if clearly part of an ongoing educational effort in which all views are represented.
- Don't forget your own staff and volunteers! In the same unbiased way that you are encouraging others to register and vote, be sure you remind your own personnel to make their opinions count on election day.

Candidate Positions and Voter Education

- It is permissible to provide your position statements to candidates and urge them to support your position, and to attempt to inject your issue(s) into the public debate. However, you should not publish which candidates agree with the position your organization supports; nor should you distribute candidates' statements during a campaign, to your organization's members or others, whether such statements were solicited by your organization or provided by the candidate voluntarily. (Also see the next item regarding candidate questionnaires.)
- Approach the subject of candidate questionnaires with great caution. Generally speaking, candidate questionnaires can be conducted and the results distributed only if the questions are provided to all candidates, cover a wide range of subjects, and are unbiased in their wording. The League of Women Voters, for example, has traditionally conducted questionnaires that cover a broad array of topics at one time, such as welfare reform, the environment, tax and economic issues and many others. However, most 501(c)(3) organizations have a much more narrow issue focus and may be hard-pressed to frame questions that do not reflect a special interest. For many organizations, the IRS has taken the position that distribution of the results of candidate questionnaires implies endorsement of the candidate whose responses are the most favorable.
- If voting records are published, make sure that they are expressed in terms of legislators' votes on a particular bill or issue. Do not distribute legislators' voting records during a campaign unless your organization regularly does so during the rest of the year.
- If non-profits make voting guides and legislative records available to the general public, certain conditions apply. Legislative records released to the general public (including via the Internet) must cover a broad range of issues. Records distributed only to members (including members-only listservs, e-mails or website areas) can cover a narrower range.
- In operating publicly accessible listservs or chat rooms, organizations must make it clear that all postings are the responsibility of the participants, not the organization, and that electioneering messages are prohibited.
- The links an organization includes on its website, too, must reflect an impartial political stance. If a link is provided to one candidate's site, a link must be provided to all. Linking to a single candidate's, party's or PAC's page—or any political advocacy site—may be viewed as a partisan act.
- Avoid any appearance that your GOTV activities are timed to coincide with politically significant events in a particular campaign.
- In addition to providing training in voter registration/GOTV activities, be sure to provide comprehensive training to your staff and volunteers regarding what activities are and are not permissible under the various lobbying and election laws. Ideally, this training session should be recorded so that your organization has evidence that it has advised its representatives to behave within the bounds of the law.

Candidate Forums

- As with candidate questionnaires, candidate forums must cover a broad range of issues and must be nonpartisan in nature. All viable candidates must be given the same opportunity to participate.
- You should explicitly include disclaimers emphasizing that the event is nonpartisan and that your organization does not endorse any particular candidate.

- Prepared questions must not show bias for or against any particular candidate. Open-ended questions (“What is your position on...?”) are preferable to questions that ask candidates to agree with your position or those that imply that one position on an issue is more favorable than the other.
- No political fundraising should be permitted; be sure to make this clear to all candidates/campaigns well in advance.

Candidate Visits

- Be careful if you want to invite candidates to your organization’s event or facility, or if candidates ask to speak at your event.
- If you would like candidates to speak, they need not be invited at the same time, but if they aren’t, they must be given an equivalent chance to appear at an event of equal prominence or stature, and allowed the same manner of presentation.
- Again, you should stress that your organization does not endorse candidates and that the appearance should not be interpreted as an endorsement.

Visits by Candidates in Non-Candidate Capacities

- During an election season, candidates in non-candidate capacities (current officeholders, celebrities, etc.), may visit your facility or address your events if certain guidelines are followed. Be sure to avoid the appearance or reality that the event is orchestrated to promote the candidacy. Document the compelling, non-election-related reason for the individual’s appearance. For example, a person’s status as a current or former officeholder, a celebrity with a distinguished public service record, or his/her expertise on a particular non-political issue are all valid reasons.
- Be sure to emphasize, both to the candidate/campaign, and in any publicity surrounding the event, that the individual is to appear ONLY in his/her non-candidate capacity. Do not mention the individual’s candidacy in any communication or in the introduction of the individual at the event.
- No political fundraising or campaign activity is permitted in connection with the appearance.
- Again, timing can also play a factor. If your organization never holds events during election season, it may be unwise to start now with a “non-candidate candidate” as the featured speaker. The IRS will consider the facts and circumstances of each individual case.
- Remember that the restrictions in this article apply to activities conducted under the auspices of your organization. All non-profit staff and volunteers are free to engage in partisan political activities on their own time and resources and in their capacities as individuals. Keep in mind, however, that especially for a high-level employee who is readily identified with his/her organization, an outsider may not easily recognize the difference between a personal act and one taken on behalf of the non-profit. Be sure to take extra precautions to insulate the organization from any potential legal challenges.

Additional Resources

- **Nonprofit VOTE** – www.nonprofitvote.org
- **National Council of Nonprofits** – www.councilofnonprofits.org
- **Alliance for Justice** – www.afj.org
- **IRS Political Activities Guidance for 501(c)(3)s** - <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charities,-Churches,-and-Educational-Organizations-Political-Campaign-Intervention>

This article focuses on IRS regulations pertaining to 501(c)(3) publicly supported charities. Other federal, state and local election laws may also apply. This document does not constitute legal advice. For answers to specific questions concerning your situation, you should consult a knowledgeable attorney who can advise you regarding your particular circumstances.