Legal Considerations for Nonprofit Organizations
• Training on Legal Landscape of Elections for 501(c)(3) Nonprofits
  • Tim Mooney, senior counsel, Bolder Advocacy program of the Alliance for Justice

• Considerations for Federally Funded Organizations
  • Gabby Ross, housing advocacy organizer, NLIHC
Welcome

Gabby Ross
Housing Advocacy Organizer
National Low Income Housing Coalition

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Monday, May 2: Legal Considerations

This session includes a breakdown of do’s and don’ts for non-profit organizations looking to participate in elections but want to be careful of preserving their 501(c)(3) status. The webinar will detail what activities are permissible as well as considerations for organizations that receive particular types of federal funding.
Training on Legal Landscape of Elections for 501(c)(3) Nonprofits

Tim Mooney
Senior Counsel
Bolder Advocacy program of the Alliance for Justice

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Today’s topics

- Understanding the rules on electioneering for 501(c)(3)s
- What 501(c)(3)s can do around elections
- What you can do during your personal time
<table>
<thead>
<tr>
<th>Tax Treatment</th>
<th>501(c)(3) (Public Charities)</th>
<th>501(c)(4), 501(c)(5), 501(c)(6)</th>
<th>527 (Political Orgs)</th>
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<tbody>
<tr>
<td>Tax-exempt</td>
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<td>Tax-exempt</td>
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<td>Tax-deductible contributions</td>
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<tr>
<td>Lobbying Activities</td>
<td>Limited</td>
<td>Unlimited</td>
<td>Limited, unusual</td>
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<tr>
<td>Electoral Activities</td>
<td>Cannot support/oppose candidates</td>
<td>Tax law: secondary activity</td>
<td>Tax law: unlimited</td>
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<td></td>
<td></td>
<td>Election laws: some limits</td>
<td>Election laws: some limits</td>
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Examples:
- **Alliance for Justice**
- **American Friends of Justice**
- **National Low Income Housing Coalition**
- **ACTION**
- **ACLU**
- **SEIU**
- **LCV**
- **Victory Fund**
- **Emily's List**

Source: BOLDER ADOVOCACY, A program of Advocacy for Justice
501(c)(3)s cannot support or oppose candidates running for public office
501(c)(3)s can engage in nonpartisan voter education, GOTV and voter registrations efforts
501(c)(3)s can continue **issue advocacy** during election season, but it can’t look or feel like support/opposition to candidates.

- Hey, this Magic 8-ball just keeps saying ‘it depends’!
- Oh, that’s the Special ‘Lawyer Edition’.

**BOLDER ADVOCACY**
A program of Alliance for Justice
Timing and Context

• Some communications become riskier the closer to an election
• Context matters, intent does not
## Facts and Circumstances Analysis

<table>
<thead>
<tr>
<th>NONPARTISAN</th>
<th>PARTISAN</th>
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</thead>
<tbody>
<tr>
<td>✔ No reference to candidate or elections</td>
<td>✔ Refers to candidate as a candidate</td>
</tr>
<tr>
<td>✔ External factor driving timing</td>
<td>✔ Timing motivated by election</td>
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<tr>
<td>✔ Broad range of issues</td>
<td>✔ Politically motivated targeting</td>
</tr>
<tr>
<td>✔ History of similar work or communications</td>
<td>✔ Compares candidate to preferred position</td>
</tr>
<tr>
<td>✔ Part of a series of similar, ongoing communications</td>
<td>✔ Wedge issue that divides candidates</td>
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Some of the Things You Can Do Around Elections
Issue advocacy best practices during election season

- Focus more on issues — avoid criticizing/supporting the people running
- Avoid talking about issues in a way that it comments on a candidate’s qualifications
- Don’t mix issue advocacy with nonpartisan GOTV, voter registration
- The closer to the election, avoid identifying candidates by name or image
- Remember: context matters, intent doesn’t
Risk Assessment

High Risk

Low Risk

Some Risk
National Low Income Housing Coalition @NLIHC - Aug 5, 2020

"Republican lawmakers, alarmed at the prospect of a nationwide wave of evictions as the coronavirus batters the U.S. three months before the election, are starting to back the move to provide #rentalassistance to tenants." politi.co/3i2p2uK

KEEP PUSHING FOR #RENTRELIEFNOW!

politico.com

GOP lawmakers embrace tenant protection as mass evictions loom

Red states dealing with new coronavirus outbreaks are staring down the possibility of a rash of evictions in the coming months.
Senators @RonWyden and @SenJeffMerkley have introduced legislation to protect the Owyhee region of Oregon. One special attraction in this high desert: The 750 mile Oregon Desert Trail. Read more in @ThatOregonLife: bit.ly/2N4edeQ #WildForTheOwyhee #publiclands
Voter Registration Deadlines Approach: The Time to Act is Now!

Sep 10, 2018

Low income renters register to vote and go to polls at dramatically lower
rates than higher income homeowners. This disparity can—and must—be addressed through active nonpartisan voter registration campaigns. The more low income renters and their allies vote, the more likely candidates for elected office will make affordable housing a priority! Voter registration deadlines vary from state to state—and many are coming up soon. To find the voter registration deadlines in your state, click here: https://bit.ly/2PCNID9
Nonpartisan voter registration

- Must register everyone who wants to be registered (no withholding based on party affiliation, not agreeing with your positions, etc.)
- Don’t give anything of value in exchange for voter registration, BUT you can have free pizza/donuts available to everyone, not just to people who register
- Always check STATE laws – many have more specific limitations and restrictions on what nonprofits can do, even for nonpartisan efforts
Nonpartisan voter registration

- Train staff/volunteers on what it means to be nonpartisan
- "Who are you all supporting?"
- "What’s the best candidates/party on these issues?"
- "Who are you voting for personally?"
- Answers for all the above… we’re nonpartisan and don’t take a stance on the election. We only care that every eligible person is registered and has their vote count.
Nonpartisan how-to-vote education
Targeting Messages

- Permissible to target activities if based on nonpartisan criteria
  - Location
  - Audience
- Discuss a broad range of issues
- Don’t suggest a correct position (leave for the (c)(4)s)

May **not** target based upon the way a group votes

May target because it is a disadvantaged or underrepresented group or the targeted group has a common interest or problem
501(c)(3) Voter Guides

- Broad range of issues
- Unbiased questions
- No pledges
- Present candidate responses equally
- Similar format
- No editing responses
Debates and Forums

- Broad range of issues
- Unbiased questions
- Give candidates equal opportunity
- Safe harbor is only for debates... everything else is “facts & circumstances”
Personal activity

The rules we’ve covered apply to 501(c)(3) staff and volunteers who act on behalf of 501(c)(3).

They do not apply to people acting as individuals on their own time.
Personal partisan activity

1. Remember which hat you have on and when.
2. Don’t use your organization resources (staff time, email, copier, etc.).
3. Distinguish yourself as an organization representative and you as an individual.
4. Use disclaimers as appropriate:
   “Organization name for identification purposes only.”
   “I’m not representing my 501(c)(3) right now. I’m at this event as a private citizen.”
Resources

🎉 Free PDF guides and fact sheets

 микрофон bolderadvocacy.org/podcast
Public Housing Authorities (PHAs) CAN participate in voter registration activities!

- Providing household documentation of residence (e.g., address verification) to public housing residents upon request.
- Applying to states to operate as a voter registration agency.
- Making voter registration resources (e.g., voter registration forms) available to residents and (if state law allows) accepting completed voter registration application forms and transmitting them to election officials, as well as running PHA-initiated voter registration drives.
- Permitting the use of PHA community spaces to hold meetings, candidate forums, and voter registration.
- Collaborating with local election administrators to permit the use of PHA spaces for voter drop boxes and voting sites, including early voting.
Federal Funds Do Place Restrictions on Certain Organizations:

- Staff who are paid through AmeriCorps or HeadStart funding cannot participate in voter registration activities.
- Legal Services groups cannot participate in any election activity, even if nonpartisan.
- Recipients of Community Services Block Grant funding can participate in voter registration and engagement, but CSBG funds cannot be used.
- More information on federal funds and voter registration restrictions can be found at: https://bit.ly/3MAVV16
Monday, May 16: With a Little Help from Our Friends…

The next webinar will describe the tools and templates housing organizations can use to jumpstart their election initiatives. Maggie Bush from the League of Women Voters and Dominique Espinoza from the Coalition on Human Needs, will be presenting on what kind of partnerships housing organizations can form on the local and national scale to launch their voter and candidate engagement work.
Be Inspired.
Be Engaged.
Go Vote!

Newsletter

• National updates, field updates, NLIHC resources, research, upcoming and past events, and more!
Follow the Campaign!

Twitter: @OurHomesVotes

Facebook @OHOV2022

Email: ourhomes@nlihc.org

Website: ourhomes-ourvotes.org
OUR HOMES
OUR VOTES
BECAUSE HOUSING IS BUILT WITH BALLOTS

OURHOMES-OURVOTES.ORG