

Nonpartisan Advocacy in Partisan Times

The Fundamentals of Nonprofit Advocacy

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About Alliance for Justice and Bolder Advocacy



Free technical assistance about rules impacting your nonprofit advocacy: advocacy@afj.org or 866-675-6229 (866-NP-LOBBY)



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Agenda

- Nonprofit advocacy: Which rules apply to you?
- Facts & Circumstances: How do 501(c)(3)s remain nonpartisan?
- Permissible activities: What can 501(c)(3)s do during an election season?
- Individual political activities: What can your staff do?



Why advocacy?

- Advocacy can be the most effective strategy in your toolbox to fulfill your mission
- There is no one way to advocate, and it's not all lobbying
- Advocacy is an investment for future policy success



Advocacy Increases Donations

According to a 2023 study by Independent Sector, engaging in advocacy can result in **more donations toward a nonprofit's mission.**



Advocacy Increases Donations

Over 6 in 10 voters are more likely to donate to a nonprofit organization that has advocated for an issue impacting their community (66%), helped them advocate on an issue they care about (65%), or advocated for an issue impacting disadvantaged groups (60%)








Advocacy Increases Donations

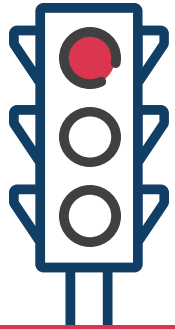
More than half of voters are more likely to donate to a nonprofit organization that has conducted nonpartisan activities to help people in their community vote (54%) or conducted nonpartisan activities to help people from disadvantaged groups vote (53%).



Types of Nonprofits

	501(c)(3) <i>(Public Charities)</i>	501(c)(4), 501(c)(5), 501(c)(6)	527 <i>(Political Orgs)</i>
Examples	 	 	
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt	Tax-exempt
Lobbying Activities	Limited	Unlimited	Rare & usually taxed
Electoral Activities	Cannot support or oppose candidates	Secondary activity	Usually sole activity

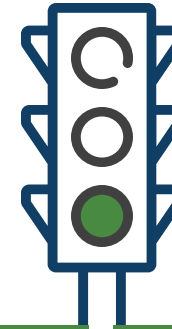
Types of Advocacy for 501(c)(3) Public Charities



Partisan
Political



Lobbying



Organizing

Public
Education

Nonpartisan
Voter Ed.

Influencing
Corporations

Educating
Legislators

Educational
Conferences

Lobbying
Exceptions

Regulatory
Efforts

Get to Know
Legislators

Research

Training

Litigation

Rule: 501(c)(3)s must remain Nonpartisan

What is a **partisan** activity?

A 501(c)(3) tax-exempt organization may not **intervene** in any political campaign **on behalf of (or in opposition to)** any **candidate** for public office.

*-1954 amendment to US Tax Code
(The Johnson Amendment)**

*The words “or in opposition to” added by Congress in 1987.

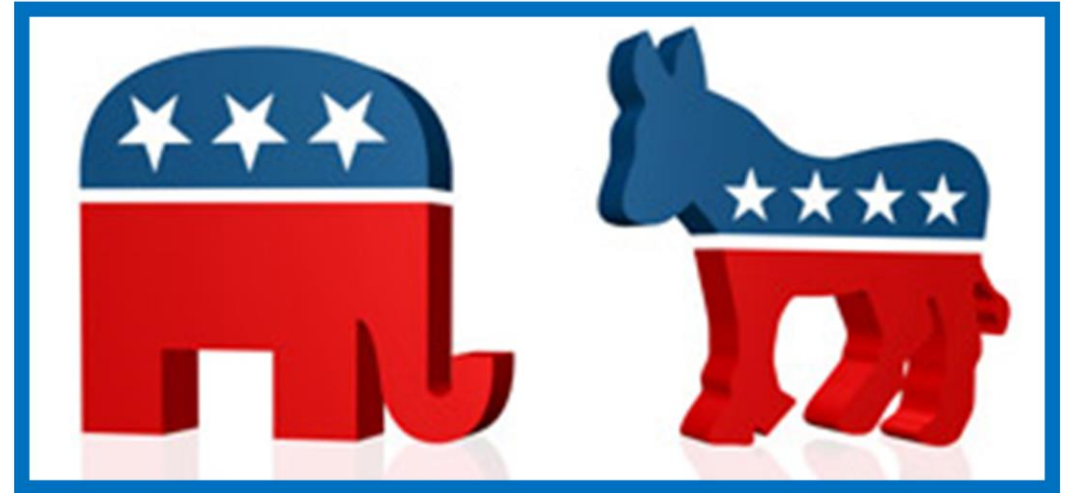


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What that means

A 501(c)(3) organization may **not**:

- Endorse a candidate for public office or support a political party
- Donate money or resources to a candidate or party
- Conduct any partisan election-related activity



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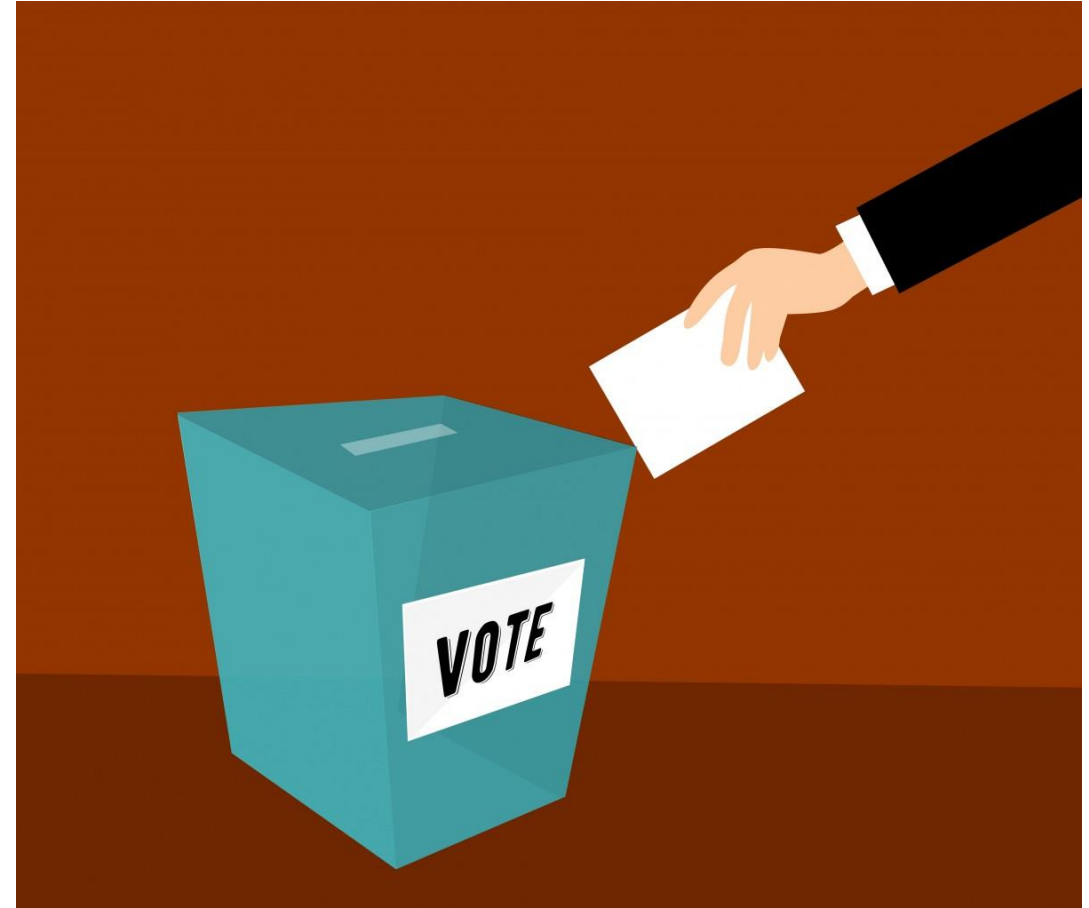
Who is a Candidate?

- Any individual who offers themselves, or is proposed by others, as a contestant for an elective public office
- Includes an officially declared candidate as well as a person who is widely recognized as a potential candidate



What is a public office?

- Office created by statute
- On-going position
- Fixed term
- Requires oath of office
- Includes school boards



How do 501(c)(3)s remain Nonpartisan?



Some examples of partisan-related activities

- Direct or in-kind contribution
- Endorsing a candidate (“Vote for”)
- Comparing candidates to each other
- Commenting on a candidate’s fitness to hold office
- Doing research for a candidate
- Giving candidates preferential access to organizational resources
- Training people to run for office with partisan materials or strategies
- Letting a candidate use your organization’s name for partisan activity
- And more...depending on the **facts and circumstances**



Facts and Circumstances Analysis

NONPARTISAN FACTS	PARTISAN FACTS
✓ No reference to candidate or elections	✗ Refers to candidate as a candidate
✓ External factor driving timing	✗ Timing motivated by election
✓ Broad range of issues	✗ Politically motivated targeting
✓ History of similar work or communications	✗ Compares candidate to preferred position
✓ Part of a series of similar, ongoing communications	✗ Wedge issue that divides candidates

How do we determine partisanship?

The IRS's Facts and Circumstances Test

Think of it as a risk spectrum

1. Why are you communicating?
2. Who is the audience?
3. What is the purpose?



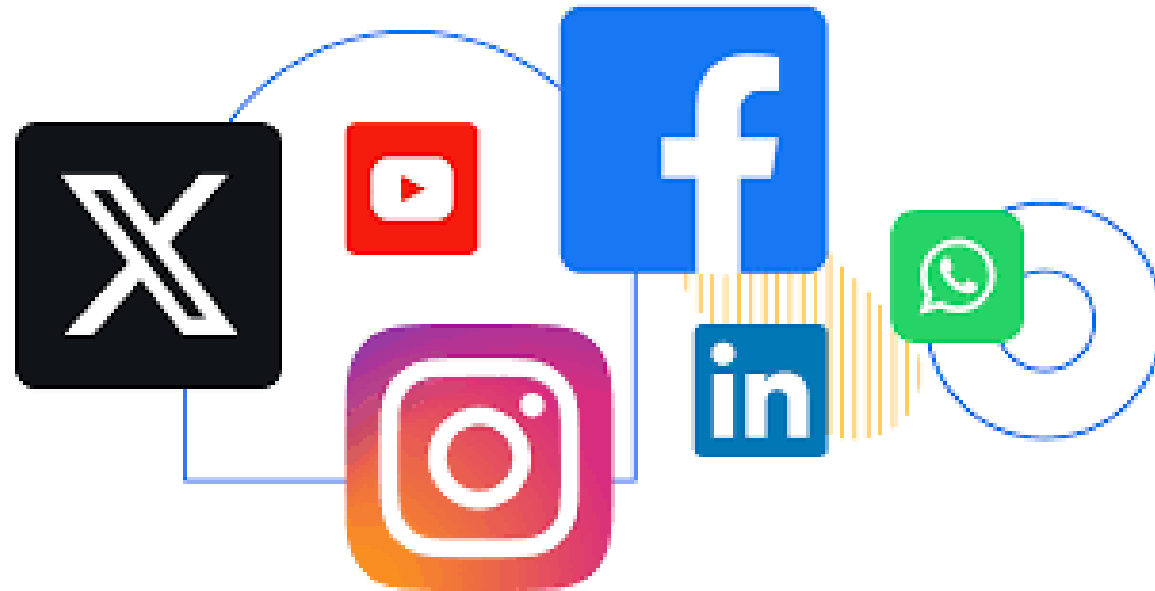
Timing and Context

- Some communications become riskier the closer to an election
- Context matters, intent does not



What about social media?

Rules that apply to print and verbal communications also apply to **online communications**



What CAN 501(c)(3)s do during election season?

Permissible Election Activities for 501(c)(3)s

- ☒ Issue Advocacy (includes ballot measure work)
- ☒ Candidate Engagement
- ☒ Voter Education
- ☒ Voter Registration & Get out the vote (GOTV)

Permissible Election Activities for 501(c)(3)s



Issue Advocacy

Advocating for issues
important to your
organization's mission

Issue Advocacy: Lobbying

- Do not refer to politicians as candidates or reference the election
- Be aware of perceptions when commenting on contentious issues
- Issue disclaimers if impermissible statements are made



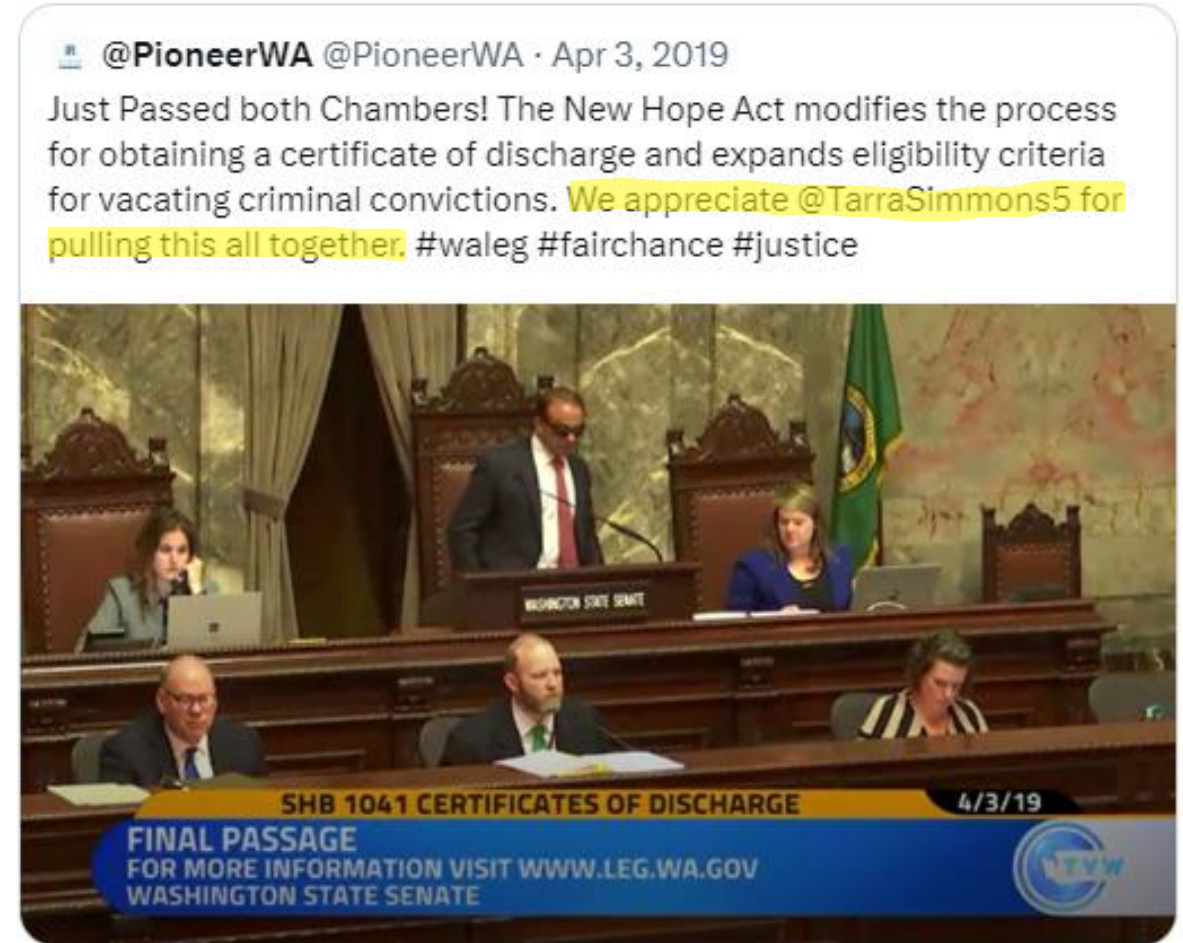
Issue Advocacy: Not Lobbying

- Regulations
- Executive orders
- Enforcing existing laws
- Litigation



Issue Advocacy: Responding to Incumbents

- Focus on official actions
- Don't criticize personal characteristics
- Time communications to coincide with policy actions (not the election)
- Have a track record of working on the issue
- Include legislators not up for re-election



Legislative Scorecards

SENT TO PUBLIC

- Published regularly
- Include all legislators
- Broad Range of Issues
- AVOID commentary on specific votes or voting patterns
- AVOID explicit or implicit approval of voting record in content or format of publication



Ballot Measures

- Ballot measure work...
 - is not prohibited campaign intervention,
 - and may constitute lobbying.
- 501(c)(3) public charities may engage in a limited amount of lobbying. Be sure to track and report it.



Ballot Measure Work

Nonpartisan Activities

- Circulating petitions
- Endorsing measures
- Registering voters
- Telling voters how to vote on the ballot measure

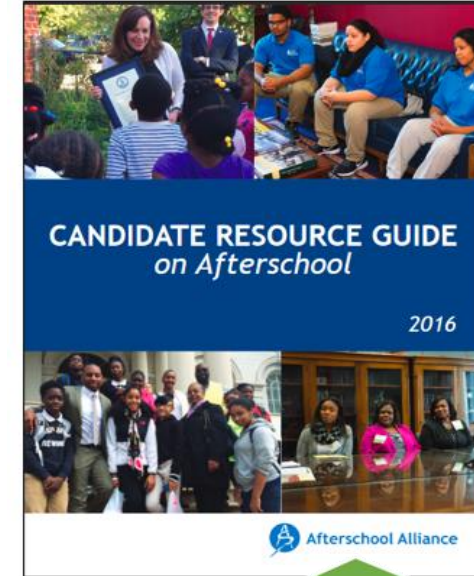
Partisan Activities

- Align organization's position with a candidate or political party
- Targeting outreach due to how voters will vote on candidates

Permissible Election Activities for 501(c)(3)s

Nonpartisan Candidate Education

- Offer to ALL candidates
- Use only information previously gathered
- Only create new information if organization has an independent reason to do so



Candidate Education

Educating candidates on
your organization's issues
and their importance

Permissible Election Activities for 501(c)(3)s



Voter Education

Educating voters about candidates in a nonpartisan manner



Voter Engagement

Voter registration, get out the vote (GOTV) campaign

Voter Education: Candidate Questionnaires

QUESTIONS:

- Unbiased Questions
- Open-ended questions
- Distribute to all candidates
- Broad range of issues
- No pledges

FORMATTING:

- No editing
- Present responses equally
- Disclaimers



Minnesota Housing Partnership (MHP) and Habitat for Humanity of Minnesota (Habitat Minnesota) have invited candidates for the Minnesota House of Representatives and Minnesota Senate to complete our **2022 Candidate Questionnaire on Housing Issues**. All candidates, regardless of party affiliation, have been invited to complete the questionnaire. The purpose of the questionnaire is to educate and inform residents of candidate responses to housing issues. This questionnaire is not meant to serve as an endorsement of or for any candidate or political party.

<https://mhponline.org/candidate-questionnaire-2022/>

Candidate Scorecards

THE RANKINGS

Click on a candidate to learn more

GREENPEACE

WHERE'S YOUR 2020 CANDIDATE ON CLIMATE?

Greenpeace asked the 2020 candidates how they'll act on the **climate crisis** if they become president. Here's what they said... or didn't say.



1. JOE BIDEN (D)

GREEN NEW DEAL
39.5/50

NO FOSSIL FUELS
36/50

75.5/100



PRAISE



SHAME

HOW THEY SCORED

Biden's climate plan shows how far the baseline for political action to advance environmental justice and tackle the climate crisis has shifted. But more transformative action is still needed to fully address the scale of the interlocking crises of climate catastrophe, racial injustice, and the global pandemic. Biden has committed to net-zero greenhouse gas emissions by 2050 and carbon pollution-free electric power by 2035, although his plan doubles down on risky carbon capture and sequestration technology. He's pledged to eliminate coal, gas, and oil subsidies and hold polluters accountable, but has not pledged to reject permits for new fossil fuel infrastructure. He made strong commitments to coal and power plant workers, but has not promised to guarantee wages and benefits to all workers impacted by the energy transition. Biden wants to re-establish U.S. global leadership to tackle the climate crisis, but more pressure is needed to ensure a Biden Administration would confront the fossil fuel companies fueling the crisis. [Read more.](#)



2. DONALD TRUMP (R)

GREEN NEW DEAL
0/50

NO FOSSIL FUELS
0/50

0/100



PRAISE



SHAME

HOW THEY SCORED

Trump denies the reality of the climate crisis and is actively promoting fossil fuels while weakening existing climate protections. His Cabinet is filled with former coal and oil lobbyists. Trump gets an "F" for putting our most vulnerable communities — and our very futures — at risk. [Read more.](#)



Voter Education: Candidate Debates & Forums

QUESTIONS:

- Unbiased questions
- Broad range of issues

FORMAT:

- Invite all viable candidates
- Fair Rules
- Impartial Moderator
- Unbiased Audience
- Equal Opportunity
- No contextual favoritism




Voter Education: Candidate Appearances

Equal opportunity required

No contextual favoritism

Invite all viable candidates



 Alliance for Education
School Board Directors Election ...

Appearances Unrelated to the Candidacy

- Awards & Policy Updates
- No equal opportunity required
- Avoid mentioning candidacy
- Don't time event to coincide with election
- Disclaimers and letters to candidate



Thank you [@VTomorrow](#)
for welcoming DEEL & [@MayorofSeattle](#)
to see learning in action in your dual language Somali
[#SeattlePreschoolProgram](#) classroom!

Practical Tip: Use Disclaimers

It's best practice for 501(c)(3)s to have a disclaimer in all voter education activities.

Neither the League of Women Voters Education Fund nor any of its partners takes any position on or expresses any preference about the issues or candidates displayed on this site. The League of Women Voters does not support or oppose candidates or political parties.

Permissible Election Activities for 501(c)(3)s



Voter Engagement

Voter registration, get out the vote (GOTV) campaign

Voter Engagement: Voter Registration

- NO reference to political parties or candidates
- DO NOT suggest who people should vote for
- Make your service available to everyone
- DO NOT give anything of value in exchange for voter registration
- Follow federal & state election laws

Voter Engagement: Voter Registration



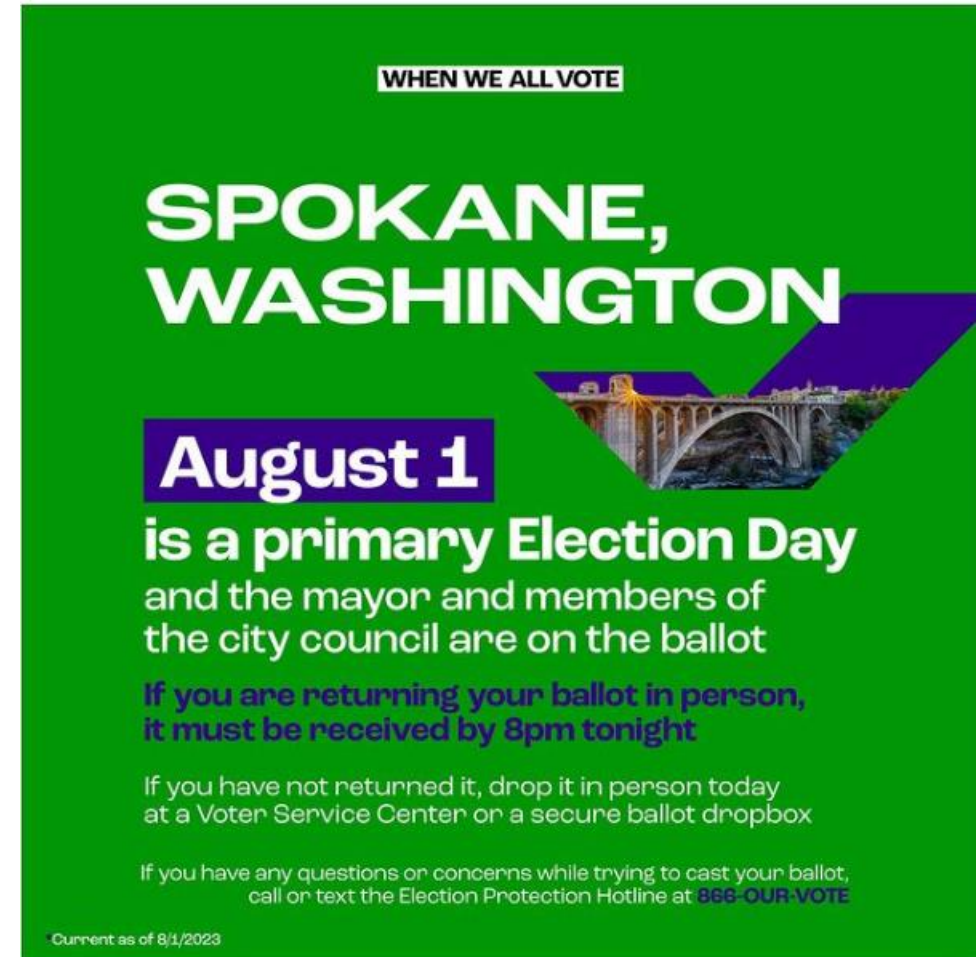
Voter Engagement: Voter Education

- Information about voting process
- No candidates or party mentioned
- Targeting – general public / nonpartisan targeting



Voter Engagement: GOTV

- Encourage all eligible voters to vote
- No bias for or against a party or a candidate
- Not coordinated with any party or candidate
- Targeting for NONPARTISAN reason



Prioritizing Voter Outreach

501(c)(3)s MAY target voters because they are:

1. Your natural constituency
 - A. People who live in the region your nonprofit operates
 - B. The people your nonprofit serves (clients, patients, ethnic community)
 - C. The people your organization hopes to serve
2. Historically under-represented at the polls (Black voters, young voters, etc.)

**YOUR VOTE IS
YOUR VOICE.**

We are working with When We All Vote to make sure every eligible person is registered to vote. Join us to shift the culture around voting!



Point your
smartphone's
camera here
to register.

Use the QR code above or visit
weall.vote/ywca to register to vote.

Consider these examples



Practical Tip: Train Staff and Volunteers

Be sure staff and volunteers at a voter registration drive/GOTV know how to answer FAQs:

- Can you help me fill out this form?
- Which party should I register with?
- When is the deadline to turn this form in?
- Who do you think I should vote for?

Remain nonpartisan if you're representing a 501(c)(3)



Individual Political Activities

Keep Your Partisan Work Personal

Individual Rights

Rules apply to 501(c)(3)
staff, board members,
and volunteers acting on
behalf of the (c)(3), NOT
to those acting in an
INDIVIDUAL CAPACITY
on their own
free time



Individual Partisan Electoral Activities

Personal capacity only

Not on company time

Use disclaimer as appropriate

Have a policy in place



SAMPLE 501(C)(3) ORGANIZATIONAL POLICY FOR ELECTION SEASON



SAMPLE LANGUAGE

Alliance for Justice (AFJ) is a 501(c)(3) organization. By law, none of its staff time or resources can be used for partisan political purposes—that is, to support or oppose any candidate running for public office. This is a strict prohibition and any perceived violation could result in a costly investigation by the public, media, and/or IRS, and possibly the loss of our tax-exempt status.

EXAMPLES OF ACTIVITIES TO AVOID

Making statements that favor or oppose candidates or political parties at any AFJ event or meeting or in any AFJ official publication, including the website.

Posting comments that favor or oppose candidates or political parties on any AFJ social media, including our blogs, Facebook pages, Twitter accounts (including staff accounts associated with AFJ), etc.

501(c)(3) Disclaimer

Share



The Obama Foundation's mission is to inspire, empower, and connect people to change their world. We support the expression and discussion of ideas and opinions and encourage people to be informed citizens and engage in their communities. The Obama Foundation is a non-partisan 501(c)(3) tax-exempt charitable organization that is subject to federal, state, and local laws and regulations regarding political activities, such as campaign activities and lobbying. While individuals in the Obama Foundation network, including program participants, have the right to express their political opinions and engage in political activities, it is very important that they do so only in their individual capacities and avoid even the appearance that they are speaking or acting for the Foundation. The Obama Foundation expressly disavows any partisan opinions or activities that are not made in accordance with these provisions: such opinions and activities are not authorized and may not be attributed to the Obama Foundation.

Practical tips for nonprofit staff

✓ Remember which hat you are wearing



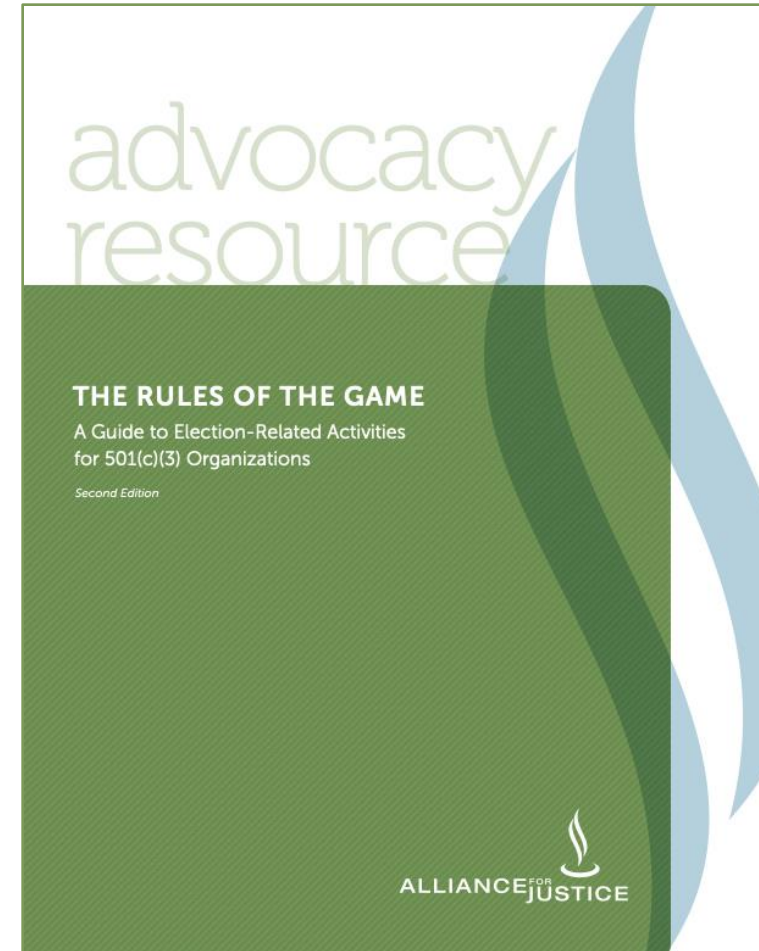
- ✗ **Don't** use nonprofit resources for partisan political purposes, including:
 - Organization-provided phones, laptops, printers
 - Work-related email and social media accounts
 - (Paid) work time
- ✗ **Don't** be partisan when representing your nonprofit at/outside of work, including
 - Wearing campaign buttons, shirts, swag, etc.
 - Identifying yourself as an employee at your nonprofit when working on campaigns

Resources

 bolderadvocacy.org/podcast



bolderadvocacy.org/resource-library



ACT!
Advocacy Capacity Tool

ACT!
Quick

Questions?

