

## Permissible Nonpartisan 501(c)(3) and Partisan Campaign Contact on Voter Engagement/Protection Efforts

May 501(c)(3) organizations engaged in nonpartisan election-protection efforts communicate with political parties and candidates who are also concerned about voting system integrity -- albeit from a more partisan perspective? Although 501(c)(3) organizations need to be careful not to violate the ban on intervention in political campaigns when communicating with parties and candidates, not all such communications are prohibited. This fact sheet offers some guidelines for when it's OK for a 501(c)(3) voter-protection group to talk with a candidate or party -- and when it's not.

A 501(c)(3) organization must follow federal tax and federal and state election laws when engaged in any activity relating to candidate campaigns or political parties. That includes a 501(c)(3)'s efforts to protect the exercise of the right to vote, including research, advocacy, activism and administrative actions and litigation to ensure (a) fair and lawful rules and procedures for individuals seeking to register and vote, and (b) appropriate, sufficient and fairly distributed governmental information, voting systems and other resources to enable individuals to do so. Under federal tax law, 501(c)(3) organizations (whether or not they are incorporated) are strictly forbidden from supporting or opposing any candidate for public office. This means, among other things, that they **may not** endorse candidates for public office, make campaign contributions (whether monetary or in-kind), or make expenditures on behalf of candidates, political parties, federal PACs or nonfederal 527 organizations.

Under federal election law, nonprofit corporations<sup>1</sup> (including incorporated 501(c)(3) groups), business corporations and unions are prohibited from making communications to the general public that expressly advocate for or against a federal candidate; contributing (cash or in-kind) to federal candidates; and coordinating certain communications with a federal candidate or political party. And, state election law routinely imposes similar restrictions as to state and local candidate campaigns. Virtually any violation of federal or state election law likely would be inconsistent with 501(c)(3) status as well.

Under these rules, **501(c)(3) organizations may:**

- Provide publicly available information to all candidates or parties—either upon request or at the organization's initiative.
- Issue press releases or post information on their websites describing their nonpartisan voter outreach plans and strategies or concerns about voter intimidation or voting problems in particular districts.
- Share research on voter-protection problems or other issues of general concern, as long as it is made generally available to the public (e.g., posted on the 501(c)(3)'s website) **or** is offered to all candidates in a race or all viable political parties in a jurisdiction.
- Solicit support from all political parties or candidates for a particular office for the 501(c)(3)'s advocacy efforts to ensure a fair and effective voting system (e.g., asking all political parties to submit an amicus brief in support of the 501(c)(3)'s efforts).
- Support litigation brought by a party or candidate that, in the independent judgment of the 501(c)(3), furthers the security of the voting process. In doing so, though, the 501(c)(3) must avoid showing support for the party or candidate and should affirmatively state its neutrality.

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<sup>1</sup> Some exceptions apply, such as "qualified nonprofit corporations" (QNCs) – that is, certain § 501(c)(4) groups that receive no business or union donations and engage in no commercial activities.

## 501(c)(3) organizations may not:

- Explicitly or implicitly endorse any candidate or political party. Nothing should be said, done, or implied that suggests electoral favor or disfavor either for a specified candidate or political party, or for unnamed candidates or parties generally that subscribe to particular issue positions or have particular characteristics. For instance, 501(c)(3)s cannot suggest that any particular political party or candidate has a better or worse position on election-protection issues.
- Make any direct or indirect candidate, party, federal PAC or 527 contribution. A 501(c)(3) should not conduct research on an issue in order to provide it to a particular candidate or party or at the request of a particular candidate or party. In addition, it cannot use any of its resources to pay for or participate in a partisan event.
- Target election-protection efforts to a precinct based on the political party or candidate the precinct is likely to support.
- Consult with a particular party or candidate to determine where to target election-protection efforts.
- Coordinate voter outreach efforts with candidates, parties, federal PACs or other 527 groups, even if the 501(c)(3) itself otherwise follows nonpartisan guidelines. Public charities cannot tailor their efforts to mesh with those of partisan entities or share voter outreach strategies with one candidate or party only.

Even if these standards are satisfied, other groups or the media may raise questions about any 501(c)(3) engagement with a political candidate, party, or partisan group. Therefore, the risk of adverse publicity for your efforts should be considered in deciding whether to deal with them in any manner.

Note that 501(c)(3) organizations may coordinate their voter protection efforts with other 501(c)(3) organizations, and with other kinds of tax-exempt groups, businesses and other organizations, so long as the 501(c)(3)'s collaborators themselves are complying with 501(c)(3) nonpartisan standards in their coordinated efforts.

### Hypotheticals:

***Political Party X invites officials or staff of 501(c)(3) organizations to participate in private briefings to discuss voter engagement (voter registration and GOTV) strategies.***

501(c)(3) organizations cannot participate in such meetings. The danger is that by sharing plans and strategies, either the campaign or a 501(c)(3) will allocate its resources accordingly. For instance, if the 501(c)(3) knows Party X is doing heavy voter registration in a particular neighborhood, the 501(c)(3) could shift its resources elsewhere; or, Party X may choose not to hire workers in State T after hearing that a 501(c)(3) will be doing extensive voter outreach in State T. Such post-meeting conduct could breach 501(c)(3) requirements or amount to an unlawful in-kind contribution to Party X by the 501(c)(3) group. In contrast, if a party hosts a public briefing, a 501(c)(3) organization may attend in order to learn public information, so long as it otherwise acts consistently with its 501(c)(3) status.

***A 501(c)(3) organization prepares a voter outreach plan and wants to share it with candidates running in the jurisdiction.***

The 501(c)(3) can do so only if it previously or simultaneously publicly disseminates the information (such as in a press release or by posting on its website), and it sends the plan to all candidates in a particular race or all political parties in the jurisdiction.

***A 501(c)(3) organization hears about voter intimidation efforts in a particular state, and calls both major political parties to alert them to this.***

A 501(c)(3) organization can encourage voters to exercise their right to vote. In doing so, if a 501(c)(3) identifies voter intimidation practices that interfere with the right to vote, it can contact the local election administration agency or other appropriate election representatives to resolve the issue, contact a bipartisan set of candidates or parties in a race and urge them to weigh in, and contact the news media as well. Note that in some jurisdictions there are viable third parties, and, if so, they should be contacted along with the two major parties.

***Political Party Z is concerned about the voter intimidation efforts in a particular state, and reports it to a 501(c)(3) organization.***

Although there is less risk when a partisan source, uninvited, provides information to a 501(c)(3) organization in a one-way communication, the 501(c)(3) organization must exercise caution in responding and must not use the information in a partisan manner. The organization can investigate and take appropriate steps to protect voters in accordance with its own charitable mission. However, it cannot enter into joint efforts with Party Z to do so or share its findings with Party Z before making the information public. And, if it mentions Party Z as the source of the original information, it must do so without praise and say that it welcomes such information from all sources and will treat all information received on its merits. If the 501(c)(3) organization takes action as a result of information received from a party or campaign committee (especially if the 501(c)(3) alters previously planned activities), it should have clearly articulated reasons why these new activities further its nonpartisan, voter protection goals. If previously planned activities were changed as a result of this information, then the 501(c)(3) must determine that the new activity provides greater nonpartisan voter protection benefits than the previously planned activities.

***A 501(c)(3) organization brings a lawsuit alleging voter registration misconduct in several college towns in a state. Political Party B and Candidate A have factual evidence and legal arguments that they believe will strengthen the 501(c)(3)'s case. Can the 501(c)(3) meet with representatives of the party and the candidate to discuss their suggestions? Can the party or the campaign otherwise provide this information to the 501(c)(3)?***

To avoid partisan coordination or even its appearance, the 501(c)(3) should not meet with representatives of the party or candidate unless representatives from other parties and opposing candidates also attend. Instead, the party, the candidate, or both may provide the information to the 501(c)(3) by (i) issuing a press release or otherwise making the information publicly available or (ii) sending the materials, unsolicited, to the 501(c)(3). The 501(c)(3) must determine whether or not the evidence and/or arguments further its nonpartisan, voter protection litigation goals and not just the partisan goals of Party B or Candidate A. Even if the materials do further its goals, the 501(c)(3) should ensure that its litigation decisions are undertaken independently and incorporate any received legal research or argument in its pleadings after a critical analysis of them and in its own words.

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