

## **501(c)(3) Contact with Parties and Candidates Concerning Election Protection Efforts**

501(c)(3) organizations engaged in nonpartisan election-protection efforts may communicate with political parties and candidates that are also concerned about our system of voting administration -- even though the concerns of the parties and candidates may come 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, and being overly cautious can sometimes undermine a 501(c)(3)'s legitimate efforts by keeping the 501(c)(3) from working with non-501(c)(3)s in permissible ways. This fact sheet offers some guidelines for when it's appropriate for a 501(c)(3) group working on election protection issues to talk with a candidate or party -- and when it's not.

501(c)(3) organizations may work to protect the exercise of the right to vote, including taking steps to ensure (a) fair and lawful rules and procedures for individuals seeking to register and vote, and (b) sufficient and fairly distributed governmental information, voting systems and other resources to enable individuals to do so. On the other hand, under federal tax law, all 501(c)(3) organizations 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.

In determining whether a 501(c)(3) organization is supporting or opposing a candidate, the IRS applies a "facts and circumstances test." Consequently, this fact sheet does not (and may not) provide absolute guidance in every situation. Rather, it sets out general guidelines for groups to use. Whenever in doubt, consult with legal counsel to determine how best to apply the "facts and circumstances" to your activities.

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

- Provide publicly available information to all candidates or parties<sup>1</sup> at the organization's initiative.
- Respond to requests from candidates or parties when it is the organization's practice to respond to such queries from others, such as legislators or the media.
- Issue press releases or post information on their websites describing their nonpartisan voter protection 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, blog, Facebook page, Twitter account).

---

<sup>1</sup> Throughout this document, "all" candidates should be taken to include all those running in a given race. However, if that is too large a pool to be practical, the organization may narrow it using reasonable, objective criteria.

- 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).
- Encourage all parties or candidates for a particular office to provide the organization with information about voter suppression or other election protection issues. Once a 501(c)(3) receives this information, however, it must scrutinize it to ensure that any use of the information furthers its independent 501(c)(3) purposes.
- 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, the 501(c)(3) may discuss litigation-related matters with the party or candidate but must avoid showing support for the party or candidate and should affirmatively state the 501(c)(3)'s neutrality.
- Allow a party or candidate to support election-protection litigation brought by the 501(c)(3) and discuss litigation-related matters with the party or candidate.
- Engage in joint voter protection efforts with 501(c)(4) organizations or labor unions as long as the joint efforts are consistent with 501(c)(3) rules.
- Allow candidates, parties, unions, 501(c)(4)s to attend trainings, forums, or other events that are open to the public.

#### **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.
- Make any direct or indirect candidate, party, state or 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. 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.

#### **Hypotheticals:**

***A 501(c)(3) organization posts information on its website to help voters find their polling place, register to vote, and report perceived impediments to voting. May 501(c)(4) organizations and labor unions link to this information (or include a widget) from their websites?***

Absolutely! Any entity, even those engaged in partisan electoral activities, may link to resources provided by a 501(c)(3) organization. The 501(c)(3) organization may even invite all candidates for a particular office or parties to refer people to its website.

***A 501(c)(3) organization writes a report discussing voter suppression efforts in the state. May it share it with candidates running in the state?***

The 501(c)(3) may do so only if it previously or simultaneously publicly disseminates the information (such as in a press release or by posting on its website), or 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. Are there any limits about who it may contact to alert them to this? May it contact political parties or candidates?***

A 501(c)(3) organization may 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 may contact the local election administration agency or other appropriate election representatives to resolve the issue, contact all parties or candidates 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. What may the 501(c)(3) do with this information?***

The 501(c)(3) organization must exercise caution in responding and must not use the information in a partisan manner. The organization may investigate and take appropriate steps to protect voters in accordance with its own charitable mission and nonpartisan priorities. However, it should not enter into joint efforts with Party Z to do so or share its findings with Party Z before making the information public. 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. May the 501(c)(3) meet with representatives of the party and the candidate to discuss their information?***

The 501(c)(3) may meet with representatives of the party or candidate if the 501(c)(3) believes the evidence may 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.

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 partners themselves are complying with 501(c)(3) nonpartisan standards in their coordinated efforts.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.