

# COMMENTING ON CANDIDATES & CAMPAIGNS

## HOW 501(C)(3)S CAN RESPOND DURING AN ELECTION YEAR

Candidates for public office sometimes say things that are incorrect, or with which nonprofits disagree, and nonprofits may wish to set the record straight. While 501(c)(3) organizations may continue to engage in education and nonpartisan advocacy to promote their issues during an election season, they are strictly prohibited from supporting or opposing candidates for public office. So how can 501(c)(3) organizations respond to candidates or political parties and remain nonpartisan? By being very deliberate and careful with their statements.

### COMMENTING ON A CANDIDATE OR PARTY IN THE CONTEXT OF AN ELECTION

501(c)(3) organizations that want to comment on candidate or political party statements need to be careful. The IRS has provided little guidance on how to handle such communications. A 501(c)(3) should have a good non-election related reason to speak up in these situations – like correcting a factual error – and the subject of the 501(c)(3)'s comment should be one that is important and relevant to the organization's mission.

For example, imagine that a candidate makes the following statement: "Cigarettes are neither addictive nor unhealthy." A 501(c)(3) health organization that is working on a campaign to prohibit smoking in bars and restaurants may want to correct this statement. The 501(c)(3) should determine who will speak for the 501(c)(3) and think through how to phrase its response – both what to say and what to avoid saying.

Representatives of a 501(c)(3) should:

- Focus on what was said (the issue), not who said it (the candidate).
- Decide who will speak publicly on behalf of the 501(c)(3) organization, so that non-designated staff will not inadvertently say something partisan.
- Script responses before talking to reporters.
- Avoid talking about a candidate's qualifications or whether someone is a good or bad candidate.

- ✓ Avoid discussing a candidate's policy record; commenting on a candidate's record is very close to commenting on a candidate's qualifications or whether they should be elected.
- ✓ Avoid talking about voters or making references to the election. For example, instead of saying "Voters will not accept..." say, "Americans won't accept..."
- ✓ Avoid identifying the candidate by name. It is better to say: "During the recent Republican debate, statements were made about X. We disagree..."
- ✓ Be very cautious if a reporter asks about which candidate is better on the 501(c)(3)'s issues, or whether the 501(c)(3) agrees with a statement a candidate made.
- ✓ Issue a disclaimer in one-on-one conversations or press releases reminding the listener or reader that as a 501(c)(3) organization you do not support or oppose candidates for public office.

It is permissible to monitor information about what candidates say and do during the campaign. The risk for 501(c)(3) organizations arises when their communications could be perceived as attempting to influence voters. Organizations can gather information, but must be careful about using that information publicly, including in communications with allies, coalition partners, and members.

A 501(c)(3) organization may want to urge all candidates to take a stand or act on an issue, without commenting on specific candidate statements. For example, a 501(c)(3) organization may want to urge both major party candidates in the presidential race to take more forceful action on the issue of illegal guns and violence. A 501(c)(3) making this kind of communication should be careful to avoid criticizing any candidate or suggesting that a candidate who doesn't take a stand shouldn't be elected, and should focus on the need for all candidates to take action.

## COMMENTING ON A CANDIDATE OR PARTY IN THE CONTEXT OF A LOBBYING CAMPAIGN

501(c)(3) organizations can engage in issue advocacy. This may include criticizing, praising, or even mentioning legislators who happen to be running for office or even, in certain instances, referencing political parties. For more information on

how to ensure a 501(c)(3)'s comments about incumbent office holders are legal, as well as to learn more about whether these communications may be considered **“electioneering communications”** under election law, see our fact sheet **“[Praising and Criticizing Incumbents.](#)”**

Below are examples of issue-focused statements or comments that mention policy matters and party affiliation, and that are generally acceptable for 501(c)(3) organizations:

- ▶ *“Despite public outcry, the Senate Majority Leader refuses to bring sensible gun control legislation to the floor.”*
- ▶ *“We take issue with many of the provisions of the ‘Pledge to America’ put forth by Republican leadership in Congress.”*
- ▶ *“Please thank Senator Smith for her recent vote on legislation to maintain funding for affordable housing.” (Statement made while Senator Smith is in office as well as a candidate for re-election).*



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