

Affinity Bar Associations: Using Your Voice to Effectuate Change

FACTSHEET

All nonprofits can engage in advocacy, although the scope and extent of allowable activities vary according to the tax-exempt status of the organization. Nonprofit organizations that dedicate their resources to charitable, religious, scientific, literary, or educational purposes may apply for tax exemption under section 501(c)(3) of the Internal Revenue Code. A 501(c)(3) organization generally pays no federal taxes on its income, and contributions it receives may be tax deductible by the donor. It may engage in a broad range of advocacy activities, although it is subject to limits on lobbying and is prohibited from engaging in any political activity on behalf of or in opposition to a candidate for public office.

Most bar associations are organized and exempt from federal income tax under 501(c)(6) of the Internal Revenue Code, typically as business leagues or trade associations. While these organizations are also exempted from federal income tax, unlike 501(c)(3) organizations, contributions to 501(c)(6)s are not tax deductible to donors. Also, unlike 501(c)(3)s, 501(c)(6) organizations may conduct unlimited lobbying, and they may engage in partisan political campaign work, as long as it is a secondary activity.

Affinity bar associations, in particular, serve many critical advocacy needs - not only for their members, but also for the communities they represent. However, like many 501(c)(6) organizations, bar associations sometimes shy away from lobbying and other politically related activities out of concern for their tax status. By failing to employ allowable lobbying and political activities, your association may be overlooking activities that may be enormously helpful in carrying out your mission. Here, we will consider some of the most common questions in this area. The focus will be on 501(c)(6) organizations. However, as associations are sometimes established as 501(c)(3) public charities, we have included a comparison chart showing how the rules pertaining to those organizations differ.

1. Is our 501(c)(6) bar association limited in how much lobbying we can do?

NO! Neither federal tax law nor the IRS have put any limits on how much a 501(c)(6) organization can spend on lobbying. However, the lobbying should relate to your association's exempt purpose. When engaging in lobbying and political activity, your association also must comply with federal, state, and local lobbying disclosure and election laws.

For example, State X Asian American Bar Association ("AABAX"), which is organized as a 501(c)(6), is made up of lawyers who aim to promote the interests of Asian American lawyers in the state and enhance the administration of justice. In State X, there has

been growing concern among lawyers in the AABAX about increased acts of hate against Asian Americans in the state and nationwide. They believe that certain laws and practices need reform to ensure improved safety. AABAX may undertake the following activities:

- AABAX establishes an internal committee to research the issues and propose specific reforms. The committee meets with legislators and government officials to discuss their concerns and present arguments in support of the proposed changes.
- AABAX members collaborate with lawmakers to draft bills that address identified problems and propose solutions. These bills could include measures to strengthen official response to hate crimes.
- AABAX launches a public awareness campaign to educate the public about the need for reform. This involves producing informational materials, hosting community forums, and utilizing social media to garner public support.
- AABAX mobilizes grassroots efforts, encouraging community members to contact their elected representatives to express support for the proposed reforms.
- AABAX representatives provide expert testimony at legislative hearings to present their case for reform. Additionally, they publish op-eds and articles in newspapers and online platforms to further promote their stance.

2. Can our 501(c)(6) bar association endorse candidates for elected office?

YES. Provided that it is not your association's primary activity, a 501(c)(6) can endorse federal or state candidates for public office. An organization may communicate an endorsement to its membership and share the endorsement with the community. In its communications to members, the organization can engage in express advocacy for the election or defeat of a specific candidate. Under the 2010 Supreme Court decision in *Citizens United v. FEC*, 501(c)(6) organizations may also spend money to advocate to the general public for the election or defeat of a candidate, as long as those activities are not coordinated with candidates [See "[Independent Expenditures: What are they and what are the rules](#)"]. Associations should be aware that, like 501(c)(4) social welfare organizations, 501(c)(6) organizations may be subject to tax on certain political activities (see "[Election Year Activities for 501\(c\)\(4\) Social Welfare Organizations](#)").

For example, after a thorough review and discussion among its members, AABAX decides to endorse a candidate for an upcoming mayoral election. The candidate is an experienced lawyer with a strong track record of advocating for legal reforms, civil rights, and community engagement. She has been actively involved in AABAX's events and initiatives, making her a natural choice for their endorsement. As a 501(c)(6) organization, AABAX must not engage in extensive political activity, as it could risk jeopardizing its tax-exempt status. In compliance with federal tax and election laws, AABAX avoids making monetary contributions or providing any direct financial support to the campaign. Instead, they use their communication platforms to express their endorsement and encourage their members to support the campaign on a voluntary, individual basis.

3. Can our 501(c)(6) bar association publish a voter guide or legislative scorecard?

YES. A 501(c)(6) may produce a voter guide even if it is intended to influence the election through its issue selection and targeted distribution so long as any partisan activity designed to support or oppose candidates remains a secondary activity of the organization. The guide may also contain express advocacy for particular federal candidates, as long as the guide is reported to the FEC as an independent expenditure. [See "[Independent Expenditures: What are they and what are the rules?](#)"] Associations should also check and comply with their respective state and local laws in the event that reporting of independent expenditures is required for state and local candidates.

For example, AABAX publishes a voter guide, which includes the candidates for the upcoming State X gubernatorial election. In the guide, AABAX gives examples of anti-Asian statements made by the incumbent candidate, along with the statement, "Anti-Asian hate must stop! Vote for change!" AABAX distributes the guide to its members and includes a sample ballot.

4. Can our bar association respond to candidates if, for example, a candidate makes anti-Asian, or homophobic, or other derogatory remarks targeting communities our association represents? What if our association is organized as a 501(c)(3) rather than a 501(c)(6)? Does it matter whether the candidate is an incumbent or not?

YES, but 501(c)(3)s should proceed with caution. A 501(c)(6) can engage in political activity, including commenting on and criticizing candidates for public office, provided that it is not the association's primary activity. However, because 501(c)(3) organizations are strictly prohibited from supporting or opposing candidates for public office, measures should be in place to ensure that 501(c)(3) bar associations remain nonpartisan. For example, an association that has a record of criticizing incumbents, lobbying them, and working to hold them accountable, may continue those activities during an election year. [See [Praising and Criticizing Incumbents: How 501\(c\)\(3\)s Can Hold Elected Officials Accountable for Official Actions](#)]. When it comes to statements made by candidates for public office in the context of an election, a 501(c)(3) may comment, but it should have a good non-election related reason (e.g., to correct a factual error), and the subject of the 501(c)(3)'s comment should be one that is important and relevant to the association's mission. [See [Commenting on Candidates & Campaigns: How 501\(c\)\(3\)s Can Respond During an Election Year](#)].

For example, Bar Association X, organized as a 501(c)(3) public charity, has as part of its mission the advancement and protection of the civil rights of Asian Americans. Candidate A makes remarks at a campaign rally that are perceived to be disparaging members of the X community and, further, during a speech on national security, Candidate B makes remarks that appear to be stoking anti-Chinese sentiment ("The Chinese are stealing our jobs and technology and must be stopped!"). In formulating its comments to the candidates' statements, Bar Association X should:

- Focus on what was said (the issue), not who said it (the candidate).
- Avoid talking about a candidate's qualifications or whether someone is a good or bad candidate.
- Avoid discussing a candidate's record; commenting on a candidate's record is very close to commenting on a candidate's qualifications or whether he or she should be elected.
- Avoid talking about voters and making references to the election, e.g., 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 debate, statements were made about X. We disagree..."
- Issue a disclaimer ("As you know, we're a 501(c)(3) and can't endorse candidates") in a one-on-one conversation or in a press release.

5. Can our 501(c)(6) bar association hold get-out-the-vote (GOTV) and voter registration drives?

YES. A 501(c)(6) can conduct nonpartisan or partisan GOTV and voter registration drives, but it is important to know that voter registration laws vary by state. Both the IRS and FEC allow a 501(c)(6) to conduct theme-based voter registration or get-out-the-vote drives aimed at both its members and the general public. The association may expressly advocate for a particular candidate's election or defeat, as long as it is not coordinated with the candidate. [See [state-specific Voter Assistance Guides](#)]

For example, in preparation for an upcoming election, AABAX decides to conduct a GOTV drive to encourage voter participation and ensure that their members and the public exercise their right to vote. As a 501(c)(6) organization, they may plan the following permissible activities:

- AABAX organizes a series of voter education workshops. These workshops are aimed at providing unbiased and non-partisan information about the voting process, voter registration, and the importance of civic engagement. The workshops also cover the various candidates and issues on the ballot, presenting an objective overview of their positions and platforms.
- AABAX collaborates with local community organizations to set up voter registration drives. Their members volunteer to assist individuals to complete voter registration forms and answer questions about the voting process.
- AABAX launches a voter information campaign. They create informative brochures and online resources detailing the date, time, and location of the election, as well as provide sample ballots and information on how to access unbiased voter guides.
- AABAX hosts a GOTV rally to encourage community members to head to the polls.
- AABAX sends voter registration cards to its members, along with a note encouraging the members to vote for Candidate "X."

6. If our 501(c)(6) bar association engages in lobbying, can our members still deduct their membership dues as business expenses?

Not necessarily. Membership dues paid to 501(c)(6) trade or professional associations are treated as nondeductible business expenses to the extent of the association's lobbying and political activity. Therefore, 501(c)(6) associations that lobby must track their lobbying and political activity expenditures and then report to their members each year the percentage of their membership dues that are nondeductible as a result of these expenditures (or, alternatively, the association can elect to pay a "proxy tax" directly on these amounts to the IRS).

For example, AABAX collects \$100/year in dues from its members, which makes up its entire budget for 2023. AABAX has allocated 25% of its budget towards lobbying and political campaign expenditures. AABAX notifies its members that \$25 is considered a nondeductible business expense.









7. Our 501(c)(6) bar association has been invited to join a coalition to advocate for bills strengthening the response to hate crimes, as well the nomination of more AANHPI judges to the federal courts. However, the coalition includes 501(c)(3) public charities. Will this impact what we can do?

It depends. By pooling resources, engaging in joint policy discussions, and strategizing, coalitions can stretch dollars, draw on collective expertise, and maximize advocacy. However, when coalitions are composed of a mix of organizations, questions arise about the scope of discussions and strategies in which c3s may engage in without jeopardizing their tax status. Although both 501(c)(3) and 501(c)(6) organizations are tax-exempt from federal income taxes, the rules relating to permissible lobbying and political campaign intervention differ greatly between the two. For example, while partisan political campaign activities (if not substantial) are permissible for a (c)(6), such activities are prohibited for (c)(3) organizations, which are prohibited from supporting or opposing candidates for public office. Lobbying is permissible for both types of organizations, but 501(c)(3)s are limited in how much lobbying they are permitted to do. With careful planning, however, it is possible to work together to support common lobbying initiatives and nonpartisan voter engagement activities. See [The Connection: Strategies for Creating and Operating 501\(c\)\(3\)s, 501\(c\)\(4\)s, and Political Organizations](#) and [Coalition Checklist](#).

For example, AABAX has joined a national coalition to advocate for the passage of a new anti-hate crime bill by the state assembly. The coalition includes other 501(c)(6) bar associations, as well as various 501(c)(3) community organizations. The coalition has decided to participate in a "Lobby Day on the Hill" to educate members of Congress and Congressional staffers on issues of importance to the AANHPI community.

COMPARISON OF PERMISSIBLE ACTIVITIES: 501(C)(6)S AND 501(C)(3)S

This chart provides examples of different kinds of advocacy activities that 501(c)(3) public charities and 501(c)(6) organizations, such as trade associations and business leagues, are permitted to do under federal tax law. Under federal tax law, partisan political activity cannot be the primary purpose of a 501(c)(6) organization, and 501(c)(3) organizations should avoid any support or opposition of candidates for public office. When engaging in any lobbying or election related activities, organizations must also remember to comply with federal, state, and local election and lobbying disclosure laws.

ACTIVITY	501(C)(6)	501(C)(3)
Lobby for/against legislation	Unlimited	Limited
Support/oppose ballot measures	Unlimited	Limited (support or opposition of ballot measures is a type of direct lobbying)
Conduct public education and training sessions about participation in the political process		
Educate candidates on issues within purview of the organization		 (must offer information to all candidates)
Sponsor a debate between candidates, where all viable candidates are invited and given equal opportunity to speak on a broad range of issues		 (see Nonpartisan Candidate Education: How 501(c)(3)s Can Talk to Candidates During an Election Year)
Distribute voter guides to the public that set out all viable candidates' views on a broad range of issues		







COMPARISON OF PERMISSIBLE ACTIVITIES: 501(C)(6)S AND 501(C)(3)S

(Continued)

ACTIVITY	501(C)(6)	501(C)(3)
Distribute voter guides to the public that compare candidates on issues of importance to the organization		
Conduct nonpartisan get-out-the-vote activities, voter registration, and education drives		
Conduct voter registration and GOTV activities based on party affiliation or how people will vote		
Endorse candidates and publicize its endorsements		
Fund independent expenditures in support of or opposition to a candidate		
Criticize sitting elected officials		 (may not attack their personal characteristics or attack them in their status as a candidate)
Criticize candidates		

COMPARISON OF PERMISSIBLE ACTIVITIES: 501(C)(6)S AND 501(C)(3)S

(Continued)

ACTIVITY	501(C)(6)	501(C)(3)
Compare organization’s issue position with that of a candidate		
Post partisan political messages on social media or websites		
Partisan political activities of staff, volunteers and board members	 (in your own personal capacity and on your own time)	 (in your own personal capacity and on your own time)

A resource provided by Alliance for Justice in partnership with NAPABA.
 Updated as of November 17, 2023.

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