BOLDERADVOCACY
A program of Alliance for Justice

Influencing Public Policy In The Digital Age

The Law of Online Lobbying and Election-Related Activities

FAQ

FREQUENTLY ASKED QUESTIONS

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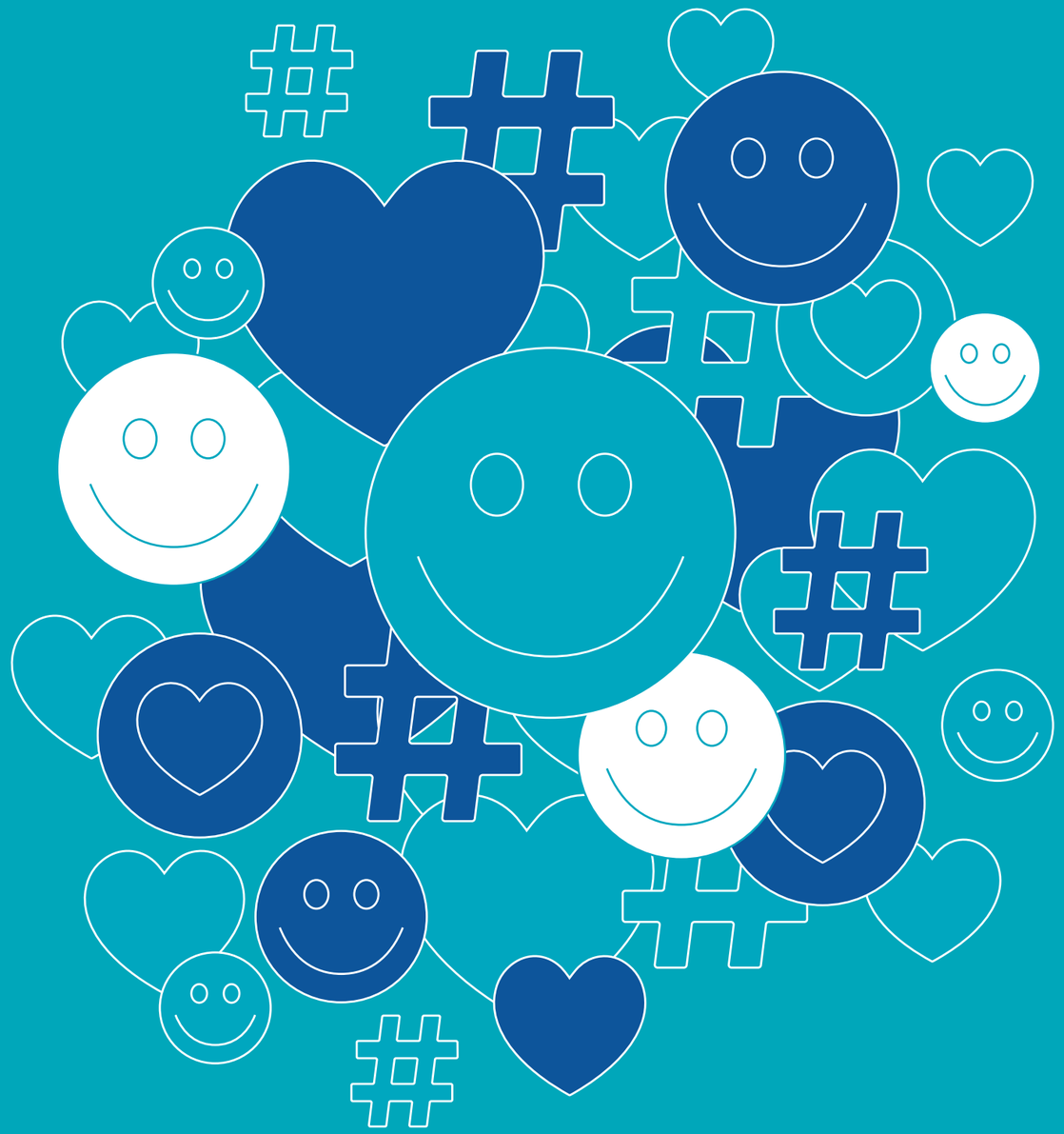

For Your Information:

Please note that this FAQ guide is an accompanying document. For more in-depth information regarding online lobbying and election-related activities, please refer to our **primary guide.** This FAQ guide aims to answer the questions nonprofit managers most frequently face regarding the Internet and social media.

It begins with an overview of the activities that three common types of nonprofit organizations — 501(c)(3)s, 501(c)(4)s, and political organizations tax-exempt under IRC Section 527 — may engage in. Due to the different natures of these activities, we provide separate explanations of the rules applicable to section 501(c)(3) public charities and those applicable to section 501(c)(4)s and political organizations. We also provide answers to frequently asked questions. These FAQs are grouped both by organizational type and by social media type.

May our 501(c)(3) website provide links to candidates' websites?

A 501(c)(3) website may link to candidates' websites only if the links are presented in a neutral, unbiased manner that includes all candidates for a particular office.[1] If the 501(c)(3) website link signals the organization supports or opposes a candidate, that would constitute prohibited campaign intervention by the organization.

Example:
On its website, PEN Education Fund, a 501(c)(3) organization, may post an unbiased, nonpartisan voter guide and include a link to each candidate's website. The links are presented on a consistent, neutral basis, with text saying, "For more information on Candidate X, click here." Similarly, PEN Education Fund could post a list of all candidates for a given office, with links to each candidate's campaign website, as long as the context does not indicate support or opposition to any candidate. PEN Education Fund may not post links only for selected candidates, with text that says, "To learn more about our favorite candidates, click here."

May a 501(c)(3) website include candidate endorsements?

No. An organization's website must follow the same rules that apply to the other communication channels used by the organization. Furthermore, **a 501(c)(3) website may not indirectly provide information about favored candidates,** such as by providing links where the context makes it clear that it is encouraging users to learn about specific candidates. Presenting links in a neutral manner, however, is permissible, such as on a webpage that provides links to all candidates for a given office, without indicating an organizational preference for any candidate.

1: See Rev. Rul. 2007-41, example 19.

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May our 501(c)(3) website include candidates' answers to our issue questionnaire?

Yes, but the organization should take care not to indicate that it views one candidate's answers to be the *"right"* ones or the *"wrong"* ones. The IRS has said 501(c)(3) organizations may publish candidate questionnaires if they select issues solely on the basis of their importance and interest to the electorate as a whole; if the questionnaire and any subsequent voter guide do not contain any biases or show preference for any candidate; and as long as the organization publishes all candidates' responses in their entirety.[2] If an organization publishes candidates' answers to its questionnaire online, it may include links to each candidate's website.[3]

Note, however, that the IRS has indicated it might find even an unbiased, neutral questionnaire to be problematic if an organization posts the candidates' responses on its website, and other sections of the organization's website advocate for a particular position on the same issues mentioned in the questionnaire.[4] The IRS might argue that by including the organization's own viewpoint on the website, the organization is telling readers the *"correct"* position on each issue, and from that readers could then infer which candidates the organization would support.

2: Rev. Rul. 78-248.
3: Rev. Rul. 2007-41 at example 19.
4: See Lerner Memorandum at 3.

May a 501(c)(3) and a 501(c)(4) share a website?

It depends on which organization owns the website. Under certain circumstances it may be possible to do a joint 501(c)(3)/501(c)(4) website, such as if the 501(c)(4) does not engage in political activity, or if the website is owned by the 501(c)(4) and the 501(c)(3) organization pays to post material on the site. Generally, though, if the 501(c)(4) has any partisan electoral content, it will be safer for the 501(c)(3) organization not to share a website. **Maintaining separate websites helps to demonstrate that the two are separate organizations.** In no case should partisan electoral material be included on a 501(c)(3) website, unless the material is so clearly distinguished as belonging to another entity that it is impossible to attribute the content to the 501(c)(3).

May the website of a 501(c)(3) organization link to its affiliated 501(c)(4)'s website?

A 501(c)(3) organization must be careful about its links. During the 2008 election, the IRS said it would not pursue enforcement cases involving a link between a 501(c)(3)'s website "and the homepage of a website operated by a related section 501(c)(4) organization." It is not clear how long this policy will remain in effect, and whether it would apply if the 501(c)(4) home page listed the organization's candidate endorsements. When linking from a 501(c)(3) website to an affiliated 501(c)(4) website — or vice versa — it may be helpful to have a pop-up window appear, emphasizing to users that they are entering the site of a separate organization.

May a 501(c)(3) organization retweet or share another organization's post announcing its own election endorsements?

If a 501(c)(3) organization is prohibited from doing something directly, it is prohibited from doing it indirectly. **The 501(c)(3) will not avoid the prohibition on political intervention simply by sharing another organization's endorsements.** Similarly, it could not engage in a two-step process of directing people to another group's website that contains endorsements. This applies in the context of links from one website to another, and from one type of media to another, such as mailers or ads directing people to a website.

Example: PEN Education Fund, a 501(c)(3) organization, sponsors a radio ad about clean air in the weeks before an election. The ad does not mention any candidates or the election. It ends with, "To learn who's protecting clean air in our area, go to www.CleanAirNow.org." If that website includes candidate endorsements or biased information about the candidates — even if that website is maintained by another organization — the IRS may view the ad's sponsor as engaging in impermissible political activity.

May a 501(c)(4) announce an endorsement on its website?

Yes. If the cost is paid for by the 501(c)(4), and not by a PAC, then the associated expenses may be taxable for the organization.[5] Since the Supreme Court's decision in *Citizens United v. FEC,* **all domestic corporations and various other entities may engage in independent expenditures** — that is, activities supporting or opposing candidates that are not undertaken with the candidate's recommendation, suggestion, direction, control, or cooperation. In federal elections and in approximately half of the states, corporations may not contribute to candidates, so their endorsements generally must be conducted as independent expenditures.

Two important exceptions allow a corporation to coordinate with a candidate regarding an endorsement posted on the organization's own website. First, under the FEC's Internet regulations, *a corporation may coordinate[6] with a candidate regarding an endorsement posted publicly on its website.* Posting a statement on a corporation's own website does not fit within the FEC definition of a *"public communication,"* so the costs related to the posting will not result in a *"coordinated communication"* that would be an in-kind contribution.[7]

Second, *a corporation is free to communicate federal endorsements as it sees fit on a website accessible only to the corporation's members.* The material on the restricted site may be coordinated with candidates. In some circumstances,[8] this spending must be disclosed, but it is not treated as a contribution to the candidate.

5: See IRC § 527(f) (requiring a section 501(c)(4) organization to pay tax on its political expenditures or its investment income, whichever is less, to the extent they exceed $100.)
6: Note, however, that a communication with express advocacy related to a federal candidate, and which is not coordinated with a candidate, is subject to reporting, as an independent expenditure. The definition of "independent expenditure" refers to "an expenditure for a person for a communication expressly advocating the election or defeat of a clearly identified candidate," see 11 C.F.R. § 100.16(a), and is not limited to "public communications" or "electioneering communications," as is the definition of "coordinated communication," see id. at § 109.21(c).
7: See FEC Advisory Opinion 2011-14 (at pp. 4-5).
8: See 11 C.F.R. § 114.3(b

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Because section 501(c)(4) organizations may coordinate with candidates on materials posted to the public on their website, there are two benefits to using a private, members-only page: 1) The costs are not taxable for the organization; and 2) The organization may use the members-only website to solicit contributions to its connected PAC. The FEC will consider a website to be restricted to members if it is protected by a password only given to members, or if the URL or link to the webpage is included only in an email sent to members, but not reachable by links from public portions of the organization's website.[9]

State laws differ from these FEC rules. For more information on state requirements, see the **Alliance for Justice state law resources.**

Under federal law, a website endorsement by a section 501(c)(4) organization or a labor union does not need a disclaimer stating who paid for it, unless the organization purchases an online advertisement on another person's website.

9: See FEC Advisory Opinions 1997-16 (Oregon Natural Resources Council) and 2000-07 (Alcatel USA).

May a 501(c)(3) public charity or 501(c)(4) organization use social media for lobbying?

Yes. Social media provide myriad inexpensive opportunities to influence legislation. Organizations may leverage the relative ease and low cost of emails, tweets, Facebook posts, and other social media to maximize their lobbying influence.

Online petitions enable nonprofits to engage their audience, build their database of supporters,[10] identify volunteers, and lobby elected officials.[11]

Section 501(c)(3) public charities may lobby, but lobbying may not be more than an insubstantial part of the organization's activity. Many small-to mid-sized charities benefit from electing to use the "section 501(h) expenditure test" to measure their lobbying. More information regarding the section 501(h) expenditure test and the lobbying limits imposed on public charities is available in the Alliance for Justice publication, *Worry-Free Lobbying for Nonprofits*, available **here**. The low cost of social media tools means a section 501(c)(3) organization may send numerous email alerts, tweets, online petitions, or other efforts without exceeding the limits on its lobbying activities under the 501(h) expenditure test.

In addition to the limits imposed on *"direct lobbying"* communications to legislators and others, public charities that use the section 501(h) expenditure test lobbying definitions must pay careful attention to the amount they spend on *"grassroots lobbying"* aimed at the public.[12] A public communication is grassroots lobbying if it refers to and reflects a view on a particular bill,[13] and *"encourages the recipient of the communication to take action with respect to such legislation."*[14] Keep in mind that under the IRS definition of grassroots lobbying, encouraging people to take action isn't limited to direct exhortations like, *"Call your Senator."* In addition, the definitions include providing the contact information for a legislator or staff member.[15]

10: If collecting cell numbers, organizations should be sure to get consent to contact them by text message and auto-dialer. See [[insert link to AFJ robocall guide here.]]
11: The rules for delivering prerecorded messages using auto dialers is beyond the scope of this publication, but for those want to know more, Bolder Advocacy has a resource on the Federal robocall law, along with updates **here**.
12: See IRC §§ 501(h), 4911(c).
13: Communications that do not mention a particular bill may still be considered lobbying under IRS regulations. The IRS defines "specific legislation" as including legislation that has already been introduced into a legislative body; ballot initiatives, referenda, and constitutional amendments being circulated among voters for their signatures, as well as, in certain circumstances, proposed legislation. See IRC § 56.4911-2(d)(1).
14: Treas. Reg. § 56.4911-2(b)(2).
15: Treas. Reg. § 56.4911-2(b)(2)(iii)(B).

Due to the definition of "encouraging recipient to take action," the IRS is likely to treat a social media post as grassroots lobbying if an organization includes a legislator's Twitter handle in a tweet: The handle is the legislator's contact information. Consider these two tweets:

1. S. 226 will help kids breathe healthier. Senator Warren should vote yes.
2. S. 226 will help kids breathe healthier. @SenWarren should vote yes.

The first example is not lobbying for a 501(h)-electing charity:[16] It's a communication to the public that reflects a view on legislation, but it does not include any of the elements of "encouraging [a] recipient to take action." The second example, however, by tagging Senator Warren, communicates her contact information to the public, while also reflecting a view on specific legislation, so the second tweet constitutes grassroots lobbying. Similarly, the IRS may find an organization has encouraged the public to take action when a communication links to a landing page with an online form to contact legislators.

Under tax law, communications directed only to an organization's members that reflect a view on legislation and exhort the audience to contact their legislators are treated as direct lobbying, rather than as grassroots lobbying, meaning that organizations may engage their members in more lobbying activities.[17] Posts on Facebook, Twitter, Instagram, and the like, which are not limited to an organization's members, will be treated as grassroots lobbying even if the publicly accessible post encourages only the organization's members to engage in direct lobbying. Organizations that want to limit a lobbying communication to their own members, so the communication will be treated as direct lobbying, should use email; text messages; password-protected websites member management platforms such as Mobilize.io; or other communication platforms in which you can limit membership.

Private foundations can leverage these definitions to maximize their advocacy related to legislation, given that they are prohibited from engaging in direct or grassroots lobbying. In the same vein, charities can maximize their use of restricted grant funds in this manner.

16: For a non-electing charity – that is, one that uses the no-substantial part test – both tweets are lobbying, because both are efforts to influence legislation.
17: Treas. Reg. § 56.4911-5.

However, given the low cost of using email and social media, as compared to other forms of communication, section 501(c)(3) public charities may not find much relative benefit to manipulating their communications to avoid spending grassroots lobbying funds. On the contrary, given the high engagement rates on social media and other digital platforms, **charities that actively encourage people to contact their legislators** – *and provide vehicles for contacting legislators* – **may reap a higher return on investment through online communications than any other media.** The key is to think strategically about all communications, and to spend grassroots lobbying funds only when allowable and when doing so will reap the biggest bang for the buck.

It is important to keep in mind that the IRS may view certain communications about legislation or issues as political advocacy rather than lobbying.[18] A tweet, text, email, WeChat message or TikTok video urging people to contact a particular senator about a piece of legislation may be viewed by the IRS as a political communication under certain circumstances. Factors the IRS will examine include whether the communication mentions a candidate shortly before an election, whether it is targeted to voters in that election district, whether it mentions a candidate's position on an issue that is a hot topic in the campaign, and whether the communication is tied to a specific upcoming legislative vote on the issue.

Example:
PEN Education Fund, a 501(c)(3) organization, posts the following Tweet a week before an election: "Tell @SenSmith thx 4 being a great clean-air champ for the past 6 yrs., and say you want him to vote for the Clean Air Bill next year." Clean air has been a key campaign issue distinguishing the two candidates, and the clean air bill will not be voted on before the election.

18: Rev. Rul. 2007-41 at 8; Rev. Rul. 2004-06 at 4

How should a nonprofit track their time or expenses spent lobbying on social media?

The IRS may view this tweet as political advocacy rather than lobbying. A 501(c)(3) organization must report its lobbying expenditures on Form 990, including both the direct costs for lobbying on social media (e.g., payments for graphics, or to boost posts that contain grassroots lobbying messages), and the costs of staff time to write and execute those lobbying communications. The organization may also be required to report its lobbying activities under state lobbying disclosure laws as well. **When 501(c)(4) organizations receive lobbying-restricted grants from 501(c)(3) organizations, they must track their use of the restricted funds,** because the 501(c)(4) organization must report back to the grantor to demonstrate grant compliance.[19]

Staff must be trained on the applicable lobbying definitions and funding restrictions, if any, first so they can leverage the organization's lobbying budget strategically, and then so they can track and report the time and costs accurately.

For more information on how public charities can comply with federal tax law by tracking their lobbying activities, including sample timekeeping templates, Bolder Advocacy has created a guide, **Keeping Track: A Guide to Recordkeeping for Advocacy Charities.**

19: **The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and Political Organizations**, pp. 47-48.

If a 501(c)(3)'s post that expresses a view on specific legislation is directed to the public, but a legislator follows your social media account, does the post constitute direct lobbying?

No, not if the organization has taken the 501(h) election.[20] The IRS rules allow a communication to be treated as being made to the public even if a small fraction of its recipients are legislators. 26 CFR 56.4911-2(b)(4)(i), Example 7. So if an organization has a broad social media following, and some legislators are among the followers, the IRS should treat its posts as being communications to the public – and thus analyzed under the grassroots lobbying definitions, not those for direct lobbying. For this reason, a communication about legislation, but without encouraging the recipients to take action, will be treated as non-lobbying.

20: For a non-electing charity – that is, one that uses the no-substantial part test – the communication will be treated as lobbying if the IRS views it as an attempt to influence legislation.

Should a 501(c)(3) remove a social media post that contains a partisan message that supports or opposes a candidate for public office?

While it depends on the particular situation, removing impermissible posts is generally useful. Simply deleting the post does not negate the fact that the organization has made an impermissible communication. Further, posts on social media can be recovered indefinitely, so even if an organization deletes a post, proof of the impermissible communication may still be available. Nonetheless, removing or editing a post can demonstrate to the IRS that the post was unauthorized or inadvertent, thus "limiting the damage." Importantly, the organization also should provide staff with additional training and establish safeguards to ensure similar mistakes don't happen again.

May staff or guest bloggers support candidates on our 501(c)(3)'s blog? What about supporters or opponents who add comments to blog posts or social media posts?

Treatment of online comments is a difficult issue for nonprofit organizations. Social media platforms, such as blogs, podcasts, event hosting sites, Tumblr, Instagram, TikTok, etc., are inexpensive ways to broadcast an organization's message to a large audience. Policing every comment and reply, however, can consume an enormous amount of staff resources. The IRS has not answered the question of whether an organization is responsible for the content of every message left in response to a 501(c)(3)'s social media post, leaving organizations with little to help guide their decisions about how to approach comments. In the absence of IRS guidance, organizations may consider the following principles.

Staff Postings: Because staff-written postings carry the imprimatur of the organization, they are likely to be attributed to the organization. Therefore, postings by staff on a 501(c)(3) website or social media profile may not support or oppose candidates, or in any way violate the prohibition on campaign intervention. Staff postings on a 501(c)(4) website or social media profile are permissible, so long as they comply with applicable campaign finance laws. Staff of a 501(c)(3) may post political content on a 501(c)(4) website or social media profile if the two organizations have a written cost-sharing agreement in place, under which the 501(c)(4) pays for the staff member's time, ensuring that no 501(c)(3) funds are used for political advocacy.

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Guest Postings and Communications: How the IRS would treat communications made by guests (i.e., individuals who are not employees or organization officials) on an organization's website or social media platform will depend on the overall context. If the organization follows IRS precedents in which the Service has permitted 501(c)(3) organizations to serve as a public forum for promoting ideas,[21] the Service should not treat guests as speaking on behalf of the organization. To accomplish this, the platform should include a disclaimer stating that the views expressed are those of the guest and not necessarily those of the organization; the organization must not endorse any political candidates; and it must present commentaries in a balanced manner exploring the positions of all viable candidates, without any indication that the organization views one candidate as being preferable over another. Further, if content elsewhere on the organization's website indicates that the organization's views are aligned with one guest commentary's conclusion over another's, the IRS might consider that context in its analysis.[22] That is, the IRS analysis of a guest's communication on a 501(c)(3) platform will follow the same principles as if the organization invited the guest to speak at in-person meeting of the organization.[23]

User Comments: Comments by the general public posted on an organization's platform likely will not be attributed to an organization if the organization allows comments to be made regardless of political viewpoint. To avoid having comments attributed to the organization, a blog or social media profile should include a prominent disclaimer stating the organization does not support or oppose any political candidates. An organization may delete comments that contain vulgar language. It must take care deleting comments that contain political messages, however, even if it finds that the vulgar comments all align with a particular political viewpoint. If an organization deletes only some comments with political content and not all comments with political content, the organization may open itself to an accusation that it is promoting one political message over another. In such a circumstance, it must present clear evidence that it deleted comments based on objective, non-political criteria.

21: See Rev. Rul. 72-513, Rev. Rul. 74-574, Rev. Rul. 86-95.
22: Lerner Memorandum at 3.
23: Rev. Rul. 2007-41 at 11. (If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

May a 501(c)(3) let a 501(c)(4) or a candidate use its lists or to access its database of supporters and donors?

A 501(c)(3) organization may not provide its non-publicly available donor, supporter, or member lists for free to a candidate, to a political party, or to a politically active 501(c)(4) organization, because doing so would allow 501(c)(3) resources to subsidize the activities of the candidate, party, or 501(c)(4). If the 501(c)(3) makes a list available for rent at fair market value to anyone who wants to rent it, then the charity may make its list available on that basis to 501(c)(4)s, candidates, and political parties.[24] A 501(c)(3) may not allow a candidate or political party to use its lists, even with fair compensation, unless the charity also is willing to make its lists available to all candidates and to all political parties. To ensure the list is equally available to all candidates, the 501(c)(3) organization should inform the other candidates that the list is available. Income from list rentals is generally not subject to unrelated business income tax (UBIT) because it is exempt as royalty income. For more information, see **The Connection.**

24: See Judith E. Kindell and John Francis Reilly, U.S. Internal Revenue Service, Exempt Organizations Continuing Professional Education Text FY 2002, Election Year Issues (2002), 383-84, available **here.**

May a 501(c)(4) organization let a candidate or political party use its lists or database of members and donors?

Because an organization's non-publicly available lists and databases have value, giving a list to a candidate is a contribution. Where the law allows corporate contributions, a 501(c)(4) may give its list to a candidate as an in-kind contribution (subject to contribution limits). In jurisdictions that prohibit corporate contributions (e.g., federal elections and in many states), the candidate or political party must pay the 501(c)(4) organization fair market value for using the list. Payment for the list or database must be made to the 501(c)(4) in advance of the organization providing the list or database to the candidate or party. Otherwise, the organization may be found to have made an in-kind contribution to the candidate or party. Unlike a 501(c)(3) organization that rents its lists to candidates, a 501(c)(4) organization may choose to rent, sell, or give its list only to the candidates it supports, subject to applicable campaign-finance laws; a 501(c)(4) organization does not need to make the list available to everyone who requests it.

What are the rules for moderating an email listserv or membership portal?

No clear rules have been set by the IRS or FEC regarding moderation of email listservs or membership portals (such as Microsoft Teams, Slack, WeChat, Google Groups, etc.). Depending on how each is operated, the principles regarding their management may follow those applicable to membership communications or to blogs.

Organizations that want to use the IRS membership rules to treat lobbying communications as direct lobbying rather than grassroots lobbying must consider the IRS definition of membership when designing listservs or membership portals. **Generally, the IRS considers an individual to be a member of an organization if they contribute more than a nominal amount of time or money to the organization,** or are one of a limited number of *"honorary"* or *"life"* members with a connection to the organization who have been chosen for a valid reason.[25]

Under FECA, generally a member is any person who either pays membership dues on at least an annual basis or has a significant organizational attachment, such as having the right to participate directly in organizational governance (e.g., ability to vote for board members or on policy questions that are binding on the board). For platforms open only to FEC-defined members, postings should be treated as membership communications.[26] This means a 501(c)(4) organization may make unlimited communications to support or oppose candidates; participants in the listserv or membership platform may send candidate-related messages without restriction; and those messages may be coordinated with the candidate or his campaign.

25: See Treas. Reg. § 53.4911-5(f)(1).
26: The analysis in this section applies only to federal elections and elections in states whose campaign-finance laws do not treat communications with an organization's members as a contribution. The analysis differs for state laws that do not include a membership communications exception.

FAQ: Lists and Databases

Platforms open to the public or to people who are not members of the organization should be treated somewhat differently. Staff-written emails on a 501(c)(4) listserv may support or oppose candidates only to the extent that they are written as independent expenditures or — where permissible — as in-kind corporate contributions from the organization. Participants on a 501(c)(4)'s public listserv may be permitted to post emails supporting or opposing candidates in three situations:

1. if listserv expenses are allocated as in-kind contributions to the candidate;
2. if the expenses are an independent expenditure for the candidate; or, potentially
3. if the organization includes proper disclaimers stating that the views expressed are those of the individuals making the comments and not necessarily those of the organization.

Do the IRS and FEC rules apply to social networking sites like Facebook, TikTok, YouTube, Twitch and Instagram?

The IRS and FEC rules generally apply to social networking sites just as they do to other online communications channels. A 501(c)(3) organization may not use social networking sites to intervene in elections and 501(c)(4) political activity must follow the relevant state or federal laws regarding corporate campaign contributions, disclaimers and independent expenditures.

What are the rules for paid advertising on social media?

In addition to IRS and campaign finance restrictions, 501(c)(3) and 501(c)(4) organizations must also comply with any social media platform rules that impact their advocacy. As private companies, each platform can impose their own set of rules that users must follow. In the wake of Russian interference with the 2016 elections, social media companies instituted a variety of rules to regulate political speech, and they took additional steps in response to the misinformation that hampered society's response to the COVID-19 pandemic. Some of the companies' responses have been overly broad, restricting nonprofits' ability to communicate on their core issues (e.g., climate change, gun safety), while in some instances simultaneously failing to stop disinformation campaigns. The definition of **"political activity"** or similar terms applied by each company often **has no connection to the IRS or FEC definitions, nor any basis in First Amendment jurisprudence.**

Given the frequently and minimal notice with which companies can change their rules, organizations should monitor the Terms of Service for platforms on which they want to advertise or post content. Searching for terms such as *"political activity," "prohibited conduct,"* and *"paid advertising"* can enable nonprofit managers to be fully informed of each platform's policies on issue advocacy, fundraising, and political activity. Some companies (e.g., Facebook) have implemented policies requiring nonprofits to secure prior authorization before buying ads related to certain issues, a process that can be lengthy and cumbersome. For this reason, nonprofit managers should take the necessary steps well in advance of any planned online advocacy campaigns.

FAQ: Social Networking Sites

What are the rules for "friending," "liking" or "following" politicians?

While no specific "rules" regulate the friending or following of politicians, tax law and IRS regulations provide some principles to guide organizations. Section 501(c)(3) organizations may not intervene in elections, such as by showing bias against or preference for particular candidates.[27] **By acting to friend or like a person on Facebook, the organization is signaling its approval of that person.** If a 501(c)(3) organization links to the profile of a political candidate as a Facebook "friend" or someone they "like," the organization's action likely shows a preference for that candidate over others. Whether the IRS would view "following" a person on Twitter as indicating approval for that person is unclear; organizations may follow someone simply to monitor what that person is saying, without passing judgment on the speaker.

Depending on the circumstances, the analysis may be different if the organization friends or likes the official government profile created by a public official, rather than that of a candidate. It may be preferable to connect to an official's public profile rather than to a campaign profile. In that situation, the IRS might view the organization as signaling approval for the politician's official actions but not passing judgment on the politician's election campaign, which may carry less risk. The analysis would be based on the specific facts and circumstances of the situation, such as the timing in relation to an election, whether the organization likes all members of a particular committee or delegation, comments by the organization on Facebook related to that official, and other factors. However, because friending or liking a public official may be viewed as akin to an endorsement of that person, it is possible the IRS would view any such action by a 501(c)(3) organization to be an impermissible political endorsement, even when done to a politician's official government page.

A 501(c)(4) organization, because it may engage in political activity, is not bound by these restrictions. *A 501(c)(4) may friend, follow, or like any candidate.* The costs involved (which are likely to be de minimis) may be subject to the jurisdiction's campaign finance laws and may need to be reported as an in-kind contribution or an independent expenditure.

27: Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii); Rev. Rul. 2007-41.

May a nonprofit organization's social media profile talk about candidates in tweets, videos, and status updates?

An organization should discuss officeholders and candidates in tweets, videos, and status updates only to the extent they would do so in other communications channels. Section 501(c)(3) organizations may tweet, create TikToks, or post status updates about public officials, as long as those messages do not intervene in the officials' elections. For example, a 501(c)(3) organization could use Twitter, TikTok, or Facebook to rally its supporters to thank or criticize legislators about a bill, but only if such activity is not political activity in disguise.[28] Structuring the message as grassroots lobbying, and reporting the costs as such on IRS Form 990 Schedule C, may help an organization to demonstrate its effort is permissible issue advocacy, and not an illegal effort to intervene in an election. The IRS will consider such factors as the proximity to an election, whether the communication refers to the election or voting, whether it refers to issues that divide the candidates for a given office, and whether its timing is driven by non-electoral events beyond the organization's control.[29]

Example: A section 501(c)(3) organization should be able to post the following tweet as a grassroots lobbying expenditure, without it being viewed as political activity: "Call or email @SenJones today; he's key on health care bill, and we need him to vote yes. Vote is tomorrow, so it's urgent! 202-224-6441."

28: Cf. Rev. Rul. 2007-41 at 8-9.
29: See Rev. Rul. 2007-41 at 8-9

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A 501(c)(3) organization should not, however, tweet, text, or post information about candidates that shows a bias or preference concerning the candidates. For example, retweeting a candidate's announcement for office or information about an upcoming rally could be viewed as favoring that candidate. Similarly, tweeting or posting a link to a newspaper's endorsement of a candidate would be viewed as recommending to the organization's followers that they should read (and, presumably, agree with) the newspaper's endorsement.

The facts and circumstances of a particular message from a 501(c)(3) organization will determine whether it communicates permissible issue advocacy or impermissible political intervention.[30]

A 501(c)(4) organization, in contrast, may use Instagram, Twitter, TikTok, and all other communications channels at its disposal to support or oppose candidates, as long as political activity does not become its primary purpose. For political activity, the relevant federal or state campaign finance law may require reporting of the costs, either as an in-kind contribution to the candidate (where corporate contributions are permitted), or as an independent expenditure.

30: Rev. Rul. 2007-41 at 8-9.

What should we do if a candidate or supporter posts something political on our Facebook wall or in the comments of any social media platform?

If a candidate or other person posts a political message on the Facebook wall of a 501(c)(3) organization, or in response to the organization's status update, tweet, or video, the safest approach is either to delete that message or to post a follow-up from an organizational staff member stating that statements expressed by others on the wall do not necessarily reflect the organization's views and that the organization does not support or oppose candidates. **The organization should take a consistent approach — either deleting the post or following it with a disclaimer statement — regardless of the content of a particular message.** For example, if you delete messages posted by candidates who generally oppose your organization, do not simply post a disclaimer after messages from candidates who generally support your organization; apply your policy consistently regardless of a comment's content. As a prophylactic measure, a 501(c)(3) organization may place a general disclaimer on its social media profile stating that the organization does not endorse candidates or otherwise intervene in political campaigns, and asking people not to post political content in the organization's comments. However, the IRS has not issued guidance about the efficacy of such a disclaimer.

A 501(c)(4) organization, on the other hand, may post political content to its profile and may allow others to post political comments in response to status updates, tweets, videos, etc. Further, because it may engage in political activity, **the 501(c)(4) may delete comments opposing the organization's political positions, while featuring those supporting the organization's endorsed candidates.** The time spent on express advocacy related to candidates is reportable as an independent expenditure or as an in-kind contribution, subject to federal or state campaign finance law, and it counts against the organization's section 501(c)(4) **"primary purpose"** test. Under federal law, the status updates and Facebook pages of corporations do not need disclaimers because the organization does not need to pay Facebook for its service. Paid advertisements placed on Facebook do, however, need a disclaimer identifying the corporation that paid for it. Under certain state laws regulating social media, such as Maryland's, a Facebook page may require a disclaimer.

What should we do if a candidate or another person tweets something about our 501(c)(3) organization that's political, associates a political hashtag with our name, or uses in their content a hashtag we created?

An organization cannot control what others say about the organization, so there is no legal obligation to respond. The IRS likely would not say a 501(c)(3) organization has intervened in a political campaign in this situation, because the organization is not responsible for the tweets. This situation is akin to a letter to the editor in which a candidate mentions the organization: The organization may respond to clear its name or to correct the record by informing the public that it does not support or oppose candidates, but it will not be penalized if it chooses to ignore the offending statement.

May we treat our Facebook friends or other social network followers as "members?"

No. Both the IRS and the FEC treat an organization's communications to its members more favorably than they do communications to non-members. Both the IRS and the FEC have specific regulations defining who qualifies as a member.

IRS regulations permit a section 501(c)(3) organization to treat certain communications to its members as non-lobbying activity, even though they would be lobbying if made to non-members, or as direct lobbying rather than grassroots lobbying. For lobbying purposes, the IRS defines **"member"** *as a person who pays dues or makes a contribution of more than a nominal amount; makes a contribution of more than a nominal amount of time; or is one of a limited number of* **"honorary"** *or* **"life"** *members who have more than a nominal connection with the electing public charity and who have been chosen for a valid reason.*[32] The IRS has given no indication what constitutes volunteering **"more than a nominal amount of time"** for an organization.

The FEC allows corporations to make unlimited express advocacy communications to their members and to coordinate those communications with candidates — activity that would be illegal if the corporation were communicating with non-members.[33] The FEC defines **"member"** as someone who either *has a significant financial attachment to the organization; pays annual dues at least annually, of a specific amount set by the organization; or has a significant organizational attachment to the organization, which includes affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization*.[34]

Merely being Facebook friends with an organization, signing up for its email list, or being connected through another social network does not satisfy either the IRS or the FEC membership definition.

31: Treas. Reg. § 56.4911-5.
32: Treas. Reg. § 56.4911-5(f)(1).
33: 2 U.S.C. § 441b(b)(2)(A).
34: 11 CFR § 100.134(f).

Our 501(c)(3) organization's employees are grassroots organizers, and we encourage them to use their personal Facebook account to publicize work activity. How should they segregate their personal political activity and their non-political work activity?

To the extent an organization is paying people to post work-related information on social networks, the activity likely will be attributed to the organization and must comply with the organization's tax-exempt status – even if posted to the employees' personal accounts.[35] If the employees are identifying themselves as employees (e.g., "Come to my event Tuesday night"), the online activity should comply with the organization's tax status. Additionally, if the employees posted the information because their boss or someone else at the employer directed them to do so, the post may be viewed as part of their work and should comply with the organization's tax status. *If the employees use a social networking tool both for personal and work-related activity, but the predominant use is for the organization, then it may be safest for any posts related to the employees' personal political views to contain a disclaimer that the post is in their personal capacity only*. If the employees primarily use a social media account for personal purposes and also occasionally post work-related content, then their political posts should be written in such a way that the IRS (and other readers) would not mistake the content as being work-related. When examining a social media account to determine whether it is really personal versus employment related, the IRS is likely to consider whether the content is predominantly related to one's work (e.g., repeatedly posting about climate change), or more about a person's social life (e.g., photos of them hiking, playing with their puppy, and recommending favorite novels). *To ensure an employee's political posts are not attributed to the organization, it can help if they include a statement in their bio* along the lines of **"Views are my own,"** or **"Political opinions are mine, not my employer's."** At the outset of an election season, employees may want to evaluate the overall impression of their social media profile; if they anticipate posting political messages, they should consider taking steps to ensure people will view the profile as being their own opinions, such as by updating their bio and ensuring they post personal content in addition to work-related messages. *(See Appendix A for a sample social media policy.)*

35: In addition to issues related to an organization's nonprofit tax status, requiring employees to post information on their personal social media profiles raises employment-law questions that are beyond the scope of this guide. Consult an employment lawyer before requiring employees to use their personal profiles for work-related content.

The president of our organization has a Facebook page and a Twitter account, but our staff manages them and adds much of the content. May the nonprofit's president post about a candidate's latest speech?

In a situation where the organization's staff is maintaining the president's Facebook page and Twitter accounts, those profiles as organizational assets. The Facebook page or the Twitter account in this situation is no different from a speech or op-ed column by the president on behalf of the organization (which also likely are written by the organization's staff). If the staff time to maintain the Facebook page or Twitter account is paid for by a 501(c)(3) organization, the president's statements on the page or account should not take positions in elections — just as the president's speech or op-ed column would not.

If the account is treated as a 501(c)(4) expense, then the President may engage in political activity such as announcing the organization's endorsements or touting a position taken by a politician. However, the applicable state or federal laws regarding contributions, coordination, and independence must be followed. For example, if the president is coordinating with a candidate, the staff time involved with the president's tweets must be allocated as a contribution to the candidate whom they benefit.

May affiliated 501(c)(3)s and 501(c)(4)s share a social media account?

The IRS has not provided clear guidance on this question. If the 501(c)(4) will never post endorsements or any other political content, it is likely the two entities could share a single social media account, with each paying its allocable share of expenses under a cost-sharing agreement. If the 501(c)(4) does engage in political activity, though, the IRS could attribute the political content to the 501(c)(3) organization in various circumstances.[36]
For this reason, **the preferred practice of affiliated organizations is for the 501(c)(4) organization to maintain the social media profile.** By having the 501(c)(4) organization as the lead social-media presence, that organization can build a large following, to which it can communicate political messages during election seasons. This structure also enables the 501(c)(4) the greatest breadth for its grassroots fundraising outreach. When the 501(c)(3) organization has content to post (e.g., an educational report), the 501(c)(4) organization may help the 501(c)(3) to publicize the work by posting it to the social media account. A 501(c)(3)/501(c)(4) tandem that has built a large 501(c)(3) social media following and wants to change its online structure should review the platform's Terms of Service and consult a lawyer well-versed in the relevant IRS rules.

36: Cf. IRS TAM 200908050, available **here**.

May we use photos from candidates' websites on our web pages?

A 501(c)(3) may not use a candidate's photo to show support for or opposition to his or her candidacy. However, a 501(c)(3) may use candidate photos in presenting a neutral, unbiased list of all candidates. A potential problem arises, however, in using photographs taken from a candidate's own website, Instagram account, Facebook page, or another site. *Under federal campaign finance regulations, an organization that distributes or republishes materials produced by a campaign may be making a contribution to that candidate*.[37] The FEC has struggled with the question of whether using a photo from a candidate's website constitutes republication. Past FEC guidance has indicated that in certain situations, copying a photo from a candidate's website does not constitute an in-kind contribution.[38] The matter is not settled at the FEC, however, and various state laws may treat this activity differently.

Furthermore, using photographs copied from the Internet, without permission of the photographs' owner, may violate copyright law. However, some photographs are published pursuant to a Creative Commons license , which states specifically the conditions under which a copyrighted work may be used. In addition to the copyright-holder's decision to grant a Creative Commons license, the terms and conditions of the website on which the photograph appears will govern whether the picture may be used. Often, the terms and conditions will dictate how a user can use content from the particular website. In some circumstances, a nonprofit may have a reasonable "fair use" defense if it were to use the photograph without permission, but any organization should consult legal counsel before relying on "fair use." (Please note, however, that works of the federal government are not protected by copyright and are free for the taking.)

It is also important to consider whether the organization needs permission from any identifiable people in the photographs. Generally, people have a right to control the use of their image for *"commercial"* purposes. A 501(c)(3) or 501(c)(4) organization's purposes are likely not to be considered "commercial," but be aware that an organization will need to obtain permission to use a person's image if your use is commercial in nature.

37: 11 CFR § 109.23(a).
38: See Statement of Reasons of Commissioners Petersen, Hunter and McGahn, MUR 5996 ("[W]e do not believe the republication of photographs from a candidate's website, particularly 'head shot' photos, constitutes republication of campaign materials for purpose of satisfying the content prong of the Commission's coordination regulations"), available **here**; and Statement of Reasons of Commissioners von Spakovsky and Weintraub, MUR 5743, available **here**.

What rules do we need to consider when we post videos on our website or our social media platforms?

When deciding whether to post a video, an organization should consider the content of the video and its copyright protections. From a content perspective, *an organization may host a video if the content is consistent with the organization's tax status.* Just as a section 501(c)(3) organization may not distribute pamphlets with express advocacy, its website may not host videos containing express advocacy — whether those videos are produced by the organization or whether they embed a link from another organization or from a news source.

A section 501(c)(4) organization considering whether to host an express-advocacy video must determine whether doing so would constitute an in-kind contribution or an independent expenditure. In a federal election, for example, hosting a video created by a candidate on a 501(c)(4) website might be viewed as **"republication"** of the candidate's materials, in which case it would be a coordinated in-kind contribution even if the organization did not communicate with the candidate or campaign regarding the video. Corporations are prohibited from making in-kind contributions to candidates under federal law. If the organization posted a link to the video on the candidate's website, rather than hosting the video on the organization's own site, this might be considered an independent expenditure by the 501(c)(4) organization if no coordination had occurred.

From a copyright perspective, it is very important to determine whether an organization is permitted to copy a third party's video and embed it on the organization's website. Check the website's terms and conditions, which usually state what one can and cannot do with content from the site. Some sites include a "Share" button, which may reasonably be interpreted as granting permission to a user to share the particular video in the manner that is intended. A use that is greater than what is authorized (either implicitly or explicitly) would constitute copyright infringement.

Absent permission to copy, distribute, and republish a video, the only safe course of action is to include a link from your website to the website that hosts the video. This way you are not violating copyright law and you are making it clear to the users that they are leaving your website and going to a different website. Embedding a video without permission of the copyright owner would constitute copyright infringement and should not be done.

When do we need a line stating, "Paid for by ___," or other disclaimer language?

Federal PACs: A website created by a federal PAC, and available to the general public, must include a disclaimer stating that it was paid for by that PAC. If the website was authorized by a candidate, the disclaimer must state that fact. If the website is independent of a candidate, the disclaimer must state the full name and permanent street address, telephone number, or URL of the PAC and state that the communication was not authorized by any candidate or candidate's committee.

State PACs: Disclaimer requirements vary by state. To learn more, see the **Alliance for Justice State Law Resources Page** or consult a state's election authority. **Paid Web Ads Mentioning a Candidate —** As discussed above, communications supporting or opposing federal candidates are regulated by the FEC if they are placed for a fee on another's website. Advertisements paid as federal independent expenditures[39] must state the full name of the organization that paid for the ad; give its permanent street address, telephone number, or URL; and state that the communication was not authorized by any candidate or candidate's committee. State campaign-finance requirements vary by jurisdiction; consult the **Alliance for Justice State Law Resources Page** for applicable rules.

Web Videos Mentioning a Candidate but Not Placed for a Fee: If an organization other than a federal PAC creates a video mentioning a federal candidate and posts the video on its own website or on YouTube or makes it available through some other online vehicle — but doesn't pay those other websites to post it as an ad — the video does not need any disclaimer. Depending on the content, though, the costs associated with the ad may be reportable as an independent expenditure, and coordination with candidates may be prohibited.

39: A nonprofit corporation may not pay for communications that are authorized by a candidate and appear on a publicly available website.

Solicitations by 501(c)(4)s, PACs, and Certain Other Organizations (but not 501(c)(3)s): Any fundraising solicitations must include a disclaimer that meets the following four requirements:[40]

§ The solicitation includes whichever of the following statements the organization deems appropriate: *"Contributions or gifts to [name of organization] are not deductible as charitable contributions for federal income tax purposes," "Contributions or gifts to [name of organization] are not tax deductible,"* or *"Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";*

§ The statement is in at least the same size type as the primary message stated in the body of the letter, leaflet, or ad;
§ The statement is included on the message side of any card or tear-off section that the contributor returns with the contribution; and
§ The statement is either the first sentence in a paragraph or itself constitutes a paragraph.

Text Messages: In a 2002 advisory opinion,[41] the Federal Election Commission ruled that text messages that were limited to 160 characters per message did not need disclaimers. This opinion was limited to the facts of the situation presented to the FEC. The FEC might not extend this disclaimer exception to text messages with an unlimited character length.

40: IRC § 6113; see also IRS Notice 88-120, available **here**. IRC section 6113(c)(1) applies to solicitations "made in written or printed form, by television or radio, or by telephone." Although the Code does not explicitly mention online communications, it seems likely the IRS would view electronic communications to be "in written or printed form." Similarly, the IRS could argue that an online video is akin to a communication made "by television," although that may be a more difficult case to prove.
41: FEC AO 2002-09 (Target Wireless).

FAQ: Employees' Personal Activities

May our employees use their work email accounts to send their friends messages supporting candidates?

A 501(c)(3) may not allow its employees to use the organization's property to conduct political activity. For a 501(c)(4) organization, on the other hand, the answer depends on the jurisdiction in which the candidates are running. For federal elections, employees may use their work email accounts to send political emails, as long as this activity is only *"occasional, isolated, or incidental"* and is conducted in their individual capacity.[42] The emails should make clear that the employees are not speaking in their capacity as a corporate employee. *"Occasional, isolated, or incidental"* means the activity does not prevent the employee from completing his or her normal amount of work. Furthermore, the corporation must apply the policy evenly, without favoring employees whose messages support or oppose any particular candidate or political party. If the employee's activity adds to the corporation's costs, the employee must reimburse the organization, so that corporate funds are not subsidizing political activity.

42: See 11 CFR § 114.9(a).

FAQ: Appendix A

Social Media Policy

Having a social media policy serves a variety of purposes: It communicates an organization's expectations to employees; it sets boundaries between work-related and personal use of social media; it protects the organization from harmful statements by employees; and it demonstrates to the IRS the organization's efforts to maintain compliance with rules applicable to its tax-exempt status. Write a policy that fits your organization's situation and needs, involve employees in implementing it, and then set a calendar reminder to review and update it annually or as otherwise necessary. Most importantly, keep in mind that a policy is effective only if followed.

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