

JUSTICE & EQUITY

THE ADVOCACY PLAYBOOK FOR CRIMINAL LEGAL REFORM



ABOUT ALLIANCE FOR JUSTICE AND BOLDER ADVOCACY

Alliance for Justice (AFJ) is a national association of more than 130 organizations representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. For over 40 years, AFJ has promoted active engagement in the democratic process by giving nonprofits and foundations the confidence to engage in effective advocacy campaigns. A program of AFJ, Bolder Advocacy (BA) supports this engagement by helping nonprofits understand the rules governing advocacy, building their power to impact policy change. Bolder Advocacy offers written legal resources, best practices, tools, training, and free technical assistance. BA also works to protect and expand the rights of nonprofits and foundations to engage in effective advocacy.

ABOUT THIS RESOURCE

This publication, designed specifically for organizations working to improve the criminal justice system and reform criminal legal policies, provides a short overview of the laws and regulations that apply to 501(c)(3) public charities when they engage in lobbying and advocacy, including election season advocacy. This resource should be considered an informational overview of the rules that apply to nonprofit advocacy and is not intended as legal advice. For more comprehensive information, please visit Alliance for Justice's [website](#), where you can find an extensive library of Bolder Advocacy resources, including factsheets, in-depth publications, and our [Rules of the Game podcast](#).

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What is *advocacy*?

NEW JAILS
DON'T
STOP CRIME

STOP THE JAIL
INVEST IN PEOPLE

AÉROPOSTALE
EST. 1887
ATHLETIC

WHAT IS ADVOCACY?

The term **advocacy** encompasses a broad range of activities intended to influence public policy. From research and public education to lobbying and voter education, advocacy is one of the most effective ways nonprofits can advance the issues they care about and help bring about systemic, lasting change.

Effective advocacy enables **criminal legal reform advocates** to shape the public discourse on all issues surrounding criminal investigations, prosecutions, appeals, and more! It also allows them to address systemic inequities in the criminal justice system and emphasize the importance of fairness and justice for all.

HOW IS ADVOCACY DIFFERENT FROM LOBBYING?

Lobbying is only one kind of advocacy that is designed to influence specific legislation. Nonprofits can engage in many types of advocacy that do not constitute lobbying.

Use our [Advocacy Capacity Tool \(ACT\)](#) to assess your advocacy, identify gaps and strategic opportunities, and focus resources to strengthen your organization.

WHAT KIND OF WORK GOES INTO ADVOCACY?

Want to know what advocacy looks like in the field? Here are some examples from **criminal legal reform** organizations:

Organize: Build power at the base. Alliance for Justice (AFJ) member, [The Groundwork Project](#), supports local community organizers executing non-partisan, grassroots civic engagement strategies in areas of the country where justice, equity, and democracy are most at risk.

Educate legislators: Provide information on issues. AFJ member, [National Center for Youth Law](#), publishes carefully crafted reports to provide policymakers with the information they need to make informed policy decisions. Their report entitled, “The Urgent Need for Child-Centered Artificial Intelligence Policies,” urges government officials to prioritize the interests of young people when engaging in discussions about AI regulation and policy, including its expansion into sensitive domains like the criminal justice system.

Educate the public:

- **Provide information on their legal rights.** AFJ member, [Appleseed Network](#), is comprised of 18 justice centers located in the United States and Mexico.

These centers provide training and information about the legal rights afforded to local communities. For example, Texas Appleseed teamed up with Texas Fair Defense Project to create a [comprehensive toolkit](#) detailing the rights of Texans confronted with unpaid fines and fees.

- **Provide information on legislative initiatives and regulations.** AFJ member, [National Association of Criminal Defense Lawyers](#) (NACDL), maintains a database of state-level criminal justice legislation and provides daily updates regarding the status of pending bills.
- **Provide information on elected officials and their role in government decision-making.** AFJ member, [DC Justice Lab](#), works to inform members of the public about the role of government officials in establishing and enforcing DC law, and it maintains information about individuals who hold key policymaking positions in the District.

Conduct research: Produce resources that reflect the real story of the community. AFJ member, [Drug Policy Alliance](#), diligently works to end the war on drugs and repair its harms. In doing so, they convene researchers to discuss emerging drug policy issues. They also compile and synthesize research to create factsheets designed to empower individuals to make informed choices about drug usage.

Executive branch advocacy: Advocate for executive orders or other executive branch actions. AFJ member, [Lawyers’ Committee for Civil Rights Under Law](#), signed-on to a [letter](#) to President Biden, alongside several other nonprofits, calling for him to sign an executive order ensuring the protection of individual rights and civil liberties when integrating AI into government systems such as those used by law enforcement when attempting to predict and solve crimes.

Hold a rally: Mobilize for your cause. On June 26, 2024, nonprofit advocates in Michigan [held a rally](#) at the state capitol to call for the passage of stalled criminal justice reform bills pending before the state legislature. The bills, if passed, would provide for sentencing reforms including the end of life without parole sentences for young offenders.

Regulatory advocacy: Work to make changes at state and federal agencies and respond to requests for comments. On May 28, 2024, several nonprofit organizations [joined forces](#) to respond to a request for input issued by the Department of Justice in response to EO 14110 related to the use of artificial intelligence by government actors. They urged the agency to establish guardrails for AI usage and to focus on the mitigation of AI-bias, including in situations where AI is used for policing and criminal justice.

Trainings and conferences: Host a virtual, in-person, or hybrid training or conference. AFJ member, [Legal Aid Association of California](#), regularly hosts convenings and workshops to strengthen the knowledge base of its more than 100 nonprofit members, who provide legal assistance to low-income Californians.

Write an op-ed: Share your expertise on the issue with the public through local, state, or national media. AFJ member, [For The People](#), publishes op-eds to inform the public about the importance of prosecutor-initiated resentencing and their vision for a more just and equitable criminal justice system.

Litigation: File a lawsuit or write an amicus brief on issues your organization cares about. AFJ member, [MacArthur Justice Center](#), engages in and supports litigation challenging the use of cash bail, which effectively punishes people as a result of their poverty.

Lobby: Demand legislative change. AFJ member, [Innocence Project](#), actively works to advance legislation designed to improve access to post-conviction relief, compensate exonerated persons, and prevent wrongful convictions. Their efforts have led to the passage of more than 250 state and federal criminal justice system reforms.

Ballot measure advocacy: Advocate for or against specific ballot measures (direct lobbying). AFJ member, [Advancement Project](#), joined forces with nonprofit allies, via the Florida Rights Restoration Coalition, to successfully advocate for a ballot measure that amended Florida's constitution to end lifetime disenfranchisement.

HOW CAN YOUR ORGANIZATION GET MORE INVOLVED IN ADVOCACY?



EDUCATE

Inform your organization's supporters about the current policies and problems affecting your community.

EVALUATE

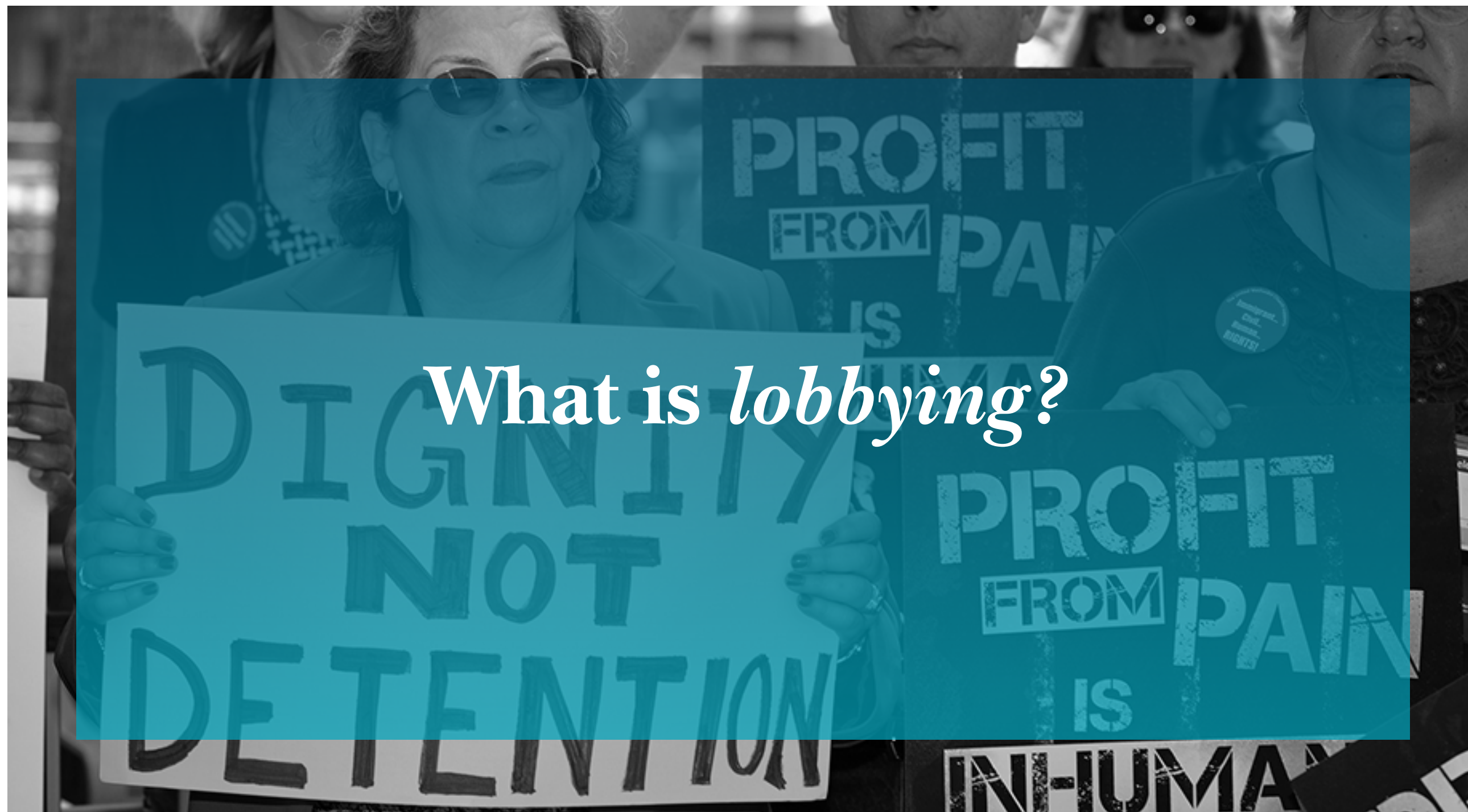
Evaluate your organization's mission and goals. Examine whether your current programs effectively incorporate advocacy to address problems in the community. If not, how could advocacy play a larger role in your organization's programs?

COLLABORATE

Work in coalition with groups whose vision and goals resonate with yours. Together, with pooled staff and resources, the coalition will be better equipped to take on campaigns and work for change.

ASSESS

Use AFJ's free online [Advocacy Capacity Tool](#) to assess advocacy, identify gaps and strategic opportunities, and focus resources to build power and maximize your organization's impact.



What is *lobbying*?

WHAT IS LOBBYING?

LOBBYING: INFLUENCING LOCAL, STATE, FEDERAL, AND INTERNATIONAL LEGISLATION

There are times when lobbying is essential to create policy change. Under the Internal Revenue Code, lobbying generally consists of communications that are intended to influence specific legislation.

Nonprofits can and should lobby, but 501(c)(3) public charities need to stay within their annual lobbying limits. They should also track their lobbying and report it to the IRS on their annual 990.

That said, many advocacy activities, including most efforts to influence executive branch actions, do not constitute lobbying for IRS purposes.

501(C)(3) PUBLIC CHARITIES CAN LOBBY

Contrary to popular misconception, 501(c)(3) public charities — including houses of worship and community or public foundations — can lobby. In fact, the IRS has stated that public charities may lobby freely so long as their lobbying is within specified limits.

How much lobbying your organization can engage in depends on the test it uses to calculate its lobbying limit — the optional 501(h) expenditure test or the default insubstantial part test.

HOW IS LOBBYING DEFINED?

While lobbying is not as clearly defined under the insubstantial part test as it is under the **501(h) expenditure test**, insubstantial part test filers can still lobby, but they need to count all of their activities and communications that advocate for or against legislation against their lobbying limits. Legislation includes bills, acts, nominations requiring legislative confirmation, the budget, ballot measures, and more!

The following provides an overview of how lobbying is more narrowly defined for organizations that measure their lobbying under the 501(h) expenditure test.

DIRECT LOBBYING

Communication with a legislator that expresses a view about specific legislation.

vs.

GRASSROOTS LOBBYING

Communication with the general public that expresses a view about specific legislation and includes a call to action.

KEY TERMS

Communication: A conversation (in-person, virtual, or by phone), letter, email, social media post, or other creative mechanism to convey a message.

Communications to an organization's members that urge them to contact legislators to express a view about specific legislation are considered direct lobbying. For this purpose, a member is someone who has given more than a small amount of time or money to the organization.

Legislator: A member of a legislative body or their staff. Additionally, executive branch officials who participate in the formulation of legislation are considered legislators (such as the governor or mayor when vetoing, signing, or proposing a bill). However, members of administrative bodies, such as school boards, housing authorities, and other special purpose bodies, whether elected or appointed, are not considered legislators.

General public: Anyone who is not a legislator or member of an organization.

Specific legislation: A bill or resolution introduced in a legislative body or a specific legislative proposal to solve a problem. A proposal may qualify as specific legislation even if it has not yet been introduced, written down, or even fully fleshed out.

Specific legislation includes budget appropriations, ballot measures, and attempts to influence the confirmation of judicial or executive branch nominees.

Specific legislation does not include rulemakings or promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws.

Call to action: A call to action must include one of the following actions:

1. Telling the recipient to contact a legislator;
2. Providing information on how the recipient can contact their legislator, such as providing the phone number, email address, or social media handle for the legislator;
3. Providing a mechanism to enable the recipient to contact their legislator, such as a postcard, petition, or email form;
4. Identifying a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator.

Ballot measures: Advocacy on ballot measures (referenda, bonds, ballot initiatives, constitutional amendments) is considered direct lobbying because the public serves as a legislative body when voting on ballot measures. The Internal Revenue Code permits this type of electoral activity for (c)(3) public charities so long as it is conducted in a nonpartisan way that does not indicate support or opposition of candidates for public office. Please refer to local and state law for additional ballot measure advocacy tracking and reporting requirements as many states regulate this type of activity under state election and campaign finance law.



LOBBYING EXCEPTIONS

There are four lobbying exceptions under the 501(h) expenditure test. Any communication that meets one of these exceptions does not count as lobbying for 501(h)-electing public charities.

NONPARTISAN ANALYSIS, STUDY, OR RESEARCH

The communication must provide a full and fair discussion of the underlying facts, and it must be made available to the general public. The document should provide enough information to allow readers to draw their own conclusions about the issue, even if the report contains a specific conclusion. For example, an organization might write a well-researched paper discussing the effects of solitary confinement, which might conclude with a recommendation for states to reexamine the use of the practice in state prisons.

EXAMINATIONS AND DISCUSSIONS OF BROAD SOCIAL, ECONOMIC, AND SIMILAR PROBLEMS

Communications on general topics that are also the subject of specific legislation. To qualify, the communications must not refer to specific legislation or directly encourage the recipients of the communication to act.

TECHNICAL ASSISTANCE

The communication must be in response to a written request by a legislative body, committee, or subcommittee (not an individual legislator), and it must be made available to all members of the requesting body. As an example, in response to a written request from the chair of a legislative committee (on the committee's letterhead), the executive director of a public charity could testify in support of a bill that requires the recording of custodial interrogations, without counting the expenses toward the organization's lobbying limits.

SELF-DEFENSE

The communication must be with a legislative body regarding possible actions of that body that could affect the organization's existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization. For instance, proposed legislation to eliminate the tax-deductibility of contributions to 501(c)(3) organizations would fall within this exception.

MAXIMIZING YOUR LOBBYING LIMIT

Public charities are often able to engage in more lobbying by electing to measure their lobbying under Section 501(h) of the Internal Revenue Code.

Churches and other houses of worship cannot take advantage of the 501(h) expenditure test and must instead operate under the default insubstantial part test.

LOBBYING LIMITS UNDER THE 501(H) EXPENDITURE TEST

For most public charities, the 501(h) expenditure test offers more generous lobbying limits than the insubstantial part test.

It provides a clear dollar amount that an electing public charity may spend on lobbying based on the organization's annual exempt-purpose expenditures. For example, organizations with overall exempt-purpose expenditures of \$500,000 or less per year can spend as much as 20% of those expenditures on lobbying.

Under the 501(h) test, an electing public charity may spend up to a quarter (25%) of its overall lobbying limit on grassroots lobbying or up to the entire amount on direct lobbying. For example, if your organization's overall lobbying limit is \$100,000, you could spend up to \$25,000 on grassroots lobbying and then \$75,000 on direct lobbying or, alternatively, spend the full \$100,000 on direct lobbying.

You can use the chart below or our [online calculator](#) to determine your organization's lobbying limit under the 501(h) expenditure test.

Organization's Exempt Expenditures	\$500,000 or less	\$500,000 to \$1 million	\$1 million to \$1.5 million	\$500,000 to \$1 million	Over \$17 million
Overall Lobbying Limit	20%	\$100,000 + 15% of excess over \$500,000	\$175,000 + 10% of excess over \$1 million	\$225,000 + 5% of excess over \$1.5 million	\$1,000,000

Under the 501(h) election, organizations are only required to report their lobbying expenditures on their 990. Cost-free activities, such as volunteer time, do not count against the organization's lobbying limits because the organization does not pay for these activities.

You may also split the costs of activities that have both lobbying and non-lobbying purposes under the 501(h) election. For example, if an executive director flies to Washington, DC, for a four-day trip, of which three days will be spent at an educational conference while the fourth day is spent lobbying, it is appropriate to count 25% of the amount the organization paid for travel as a lobbying expenditure.

Complete Form 5768 to make the 501(h) election.

A 501(c)(3) public charity may use the 501(h) expenditure test (commonly referred to as making the 501(h) election) by filing Form 5768 with the IRS. All you need is your organization's basic information, such as address and employer identification number. You only have to file Form 5768 once. The election applies retroactively to the first day of the organization's fiscal year in which the form is filed. It is effective until your organization files a revocation using the same form.

It's good practice to keep a copy of the completed Form 5768 for your records since you will not receive an acknowledgment from the IRS. Additionally, it'll be easy to confirm which lobbying test your organization operates under regardless of staff transitions.

What kind of lobbying records must an electing nonprofit keep?

Electing public charities need to track and report their lobbying expenditures, including direct and indirect costs, on Schedule C of the Form 990. For a more detailed discussion on this topic, please see our resource, [Keeping Track: A Guide to Recordkeeping for Advocacy Charities](#).

LOBBYING UNDER THE INSUBSTANTIAL PART TEST

The **insubstantial part test** is the default test that applies if a public charity does not take the affirmative step of electing to use 501(h) — and to churches, which are unable to use 501(h). While the 501(h) election provides a clearer standard for measuring lobbying, public charities that have not taken the 501(h) election should not be deterred from lobbying. Organizations with exempt purpose expenditures greater than \$17 million per year will be limited to a \$1 million cap on lobbying expenditures under the expenditure test but might be allowed to do more lobbying under the insubstantial part test

What is considered an “insubstantial” amount of lobbying?

The insubstantial part test requires that “no substantial part of a charity's activities... be carrying on propaganda or otherwise attempting to influence legislation.”

Therefore, a charity's lobbying must be an "insubstantial" part of its overall activities. The IRS has provided no clear guidance on how much lobbying is substantial. Most tax practitioners generally advise that public charities can safely devote 3-5% of their overall activities toward lobbying under this test.

As an example, a public charity, not normally involved in influencing legislation, wishes to sign on to a letter that endorses specific legislation (e.g., a bill that eliminates cash bail). This activity would be considered lobbying, but because the time spent by the organization to sign on to the letter would not be a substantial part of its overall activities, it is permissible to engage in this type of policy advocacy.

The lobbying limit imposed by the insubstantial part test is based on an organization's overall activities, not just its expenditures.

The IRS also counts the amount of time and energy an organization spends on legislative matters, regardless of cost, as part of its lobbying efforts. As such, volunteer lobbying efforts on behalf of the organization will count towards its lobbying limits.

For example, a 501(c)(3) public charity opposes legislation that will increase criminal penalties for the possession of certain drugs. The (c)(3) decides to organize a bus trip for its volunteers and clients to the state capitol to protest the legislation. Under the insubstantial part test, the time of the volunteers and clients, the cost of chartering the bus, the cost of meals provided, any additional costs of the trip, and any staff time associated with organizing and attending the trip would be lobbying.

The organization should make a reasonable estimate of the total number of hours that volunteers devoted to the organization and then allocate such time between legislative and non-legislative activities to determine the percentage of overall volunteer activities devoted to lobbying.

What is considered lobbying under the insubstantial part test?

Guidance as to what constitutes lobbying under the insubstantial part test is vague. An organization is lobbying if it:

- ✓ Contacts members of a legislative body (at any level of government) for the purpose of proposing, supporting, or opposing legislation (includes contacting members of the public to support or oppose a ballot measure), OR
- ✓ Urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation, OR
- ✓ Advocates for the adoption or rejection of legislation.

What is not considered lobbying under the insubstantial part test?

Communications that discuss only broad principles, as opposed to specific legislation, would not count as lobbying. For example, it would not be considered lobbying to run an ad that says, "Do your part, speak out for criminal justice reform."

HOW DOES LOBBYING GET REPORTED TO THE IRS?

What kind of lobbying records must a nonprofit keep?

Charities need to keep records that are sufficient to report their activities to the IRS on their annual 990. Schedule C of Form 990 requires a public charity that has made the 510(h) election to calculate and report its overall lobbying limit and grassroots lobbying limit. The charity will also report its expenditures in both categories.

Public charities using the insubstantial part test also report whether the charity lobbied via volunteers, paid staff, advertisements, mailings (to members, legislators, or the public), published statements, grants to others for lobbying, direct contact with legislators, public events, or other means, and they must report any expenditures for each such activity on Schedule C. Charities using the insubstantial part test must also provide a "detailed description" of any lobbying activities that fall outside of those categories, which the form's instructions clearly state "should include all lobbying activities, whether expenses are incurred or not."

WHAT ACTIVITIES COUNT TOWARDS YOUR LOBBYING LIMIT?

If your organization is a 501(h) electing charity, IRS regulations clearly state that costs, such as transportation, photocopying, and other similar expenses spent in support of lobbying are expenditures for lobbying communications. This includes all staff time and overhead costs that support lobbying.

When does the clock start ticking under the 501(h) election?

You must begin measuring your lobbying activity when the primary purpose of your preparation or research is to engage in lobbying activity.

Example:

An organization researches, prepares, and prints a safety code for electrical wiring. The organization sells the code to the public where it is widely used by professionals in the installation of electrical wiring. Several states codify all, or part, of the code of standards as mandatory safety standards.

On occasion, the organization lobbied state legislators for passage of the code of standards for safety reasons.

Because the primary purpose of preparing the code of standards was the promotion of public safety and the standards were specifically used in a profession for that purpose, separate from any legislative requirement, the research, preparation, printing, and public distribution of the code of standards is not an expenditure for a lobbying communication.

Example:

The same organization prepares the safety code primarily to have it codified in the state legislature. All the preparation costs, including staff time spent on research, transportation costs, photocopying, and other similar expenses, incurred in lobbying state legislators for passage of the code of standards into law are reportable lobbying expenditures.

When does the clock start ticking under the insubstantial part test?

Attempting to influence legislation does not necessarily begin when the organization first addresses itself to the public or to the legislature. All of the facts and circumstances are considered when determining when preparation and research is considered to be in support of lobbying communications.

Time spent discussing public issues, formulating and agreeing upon positions, and studying them in preparation for adopting a position all counts as lobbying.

**Example:**

An organization actively promotes legislation to increase compensation for persons wrongfully convicted of criminal offenses. The time spent on the lobbying activity counts towards the “insubstantial part” of the organization’s activities. In addition, the time spent preparing publications that indicate a position on the legislation is counted against the organization’s lobbying limit as lobbying preparation. However, prior statements or articles setting forth the organization’s general positions that do not relate to any specific legislation are not included as lobbying.

LOBBYING DO'S AND DON'TS

Most lobbying meetings are short – perhaps 15 minutes or less. Be prepared to get the most out of your meeting.

Do's



Expect unpredictability.

If you are lobbying on a day the legislature is in session, don't be surprised if a legislator's schedule changes. Offer to meet the legislator or staff member at a different time or place if appropriate.



Have a plan for the meeting.

You should have a lobbying plan before you meet with a legislator or their staff. Decide in advance who will speak on which topics. Tell stories to bring your points to life and leave an impact. Don't allow yourself to be diverted from the purpose of the meeting.



Listen.

At a lobby visit, you are there to get an answer to your ask and to learn about the legislator's thoughts about your bill or issue. Listen to what the legislator has to say. You can often learn valuable information about the status of a bill.



Have the solution.

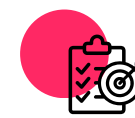
Is the purpose of your meeting to make the legislator aware of a problem? If yes, your position will be significantly stronger if you can also propose a solution. You could draft amendments to a law or proposed legislation or draft a new law or a resolution that the legislator could consider introducing.



Have a leave-behind.

Summarize the issue and your ask in a one-pager with your organization's name and contact information. Give it to the legislator or their staff at the end of your meeting.

Don't's



Forget your "ask."

Every lobby meeting should have an ask. Do you want the legislator to support a bill? If yes, ask for their support. You can also ask a legislator to sponsor or co-sponsor a piece of legislation, to talk to their colleagues about supporting the bill, or for help in getting it on a committee or floor agenda.



Overlook the importance of staff.

Legislative staff act as the eyes and ears of the legislator. Staff will often have more expertise in an issue area than the legislator, especially when legislators are term-limited and only work on an issue temporarily. If you meet with staff, ask them where the legislator stands on the issue and what concerns the legislator may have on it.



Make up answers.

No one knows everything. If the legislator asks a question you cannot answer, say you will follow up with the information, or offer to connect the legislator with an expert who can answer their question. Either offer leaves a great opening for a follow-up visit and/or communication.




Forget to say thank you.

Remember to thank the people you meet with for their time.

LOBBYING DISCLOSURE RULES

Remember: the lobbying definitions and limits discussed in this toolkit reflect the Internal Revenue Code limits and definitions that apply when 501(c)(3) public charities engage in lobbying activities. These definitions are different than the lobbying definitions that apply under the federal [Lobbying Disclosure Act \(LDA\)](#) and state law. While the LDA and state law require lobbyist registration and lobbying disclosure in some instances, they do not place limits on how much lobbying a nonprofit can do. Please see our [state law lobbying resources](#) for more information on state-based rules.



Advocacy in an *Election Year*

ADVOCACY IN AN ELECTION YEAR

WHAT CAN 501(C)(3)S DO DURING ELECTION SEASON?

Federal tax law explicitly prohibits activity by 501(c)(3) organizations that supports or opposes candidates running for public office. Said another way, 501(c)(3)s must be **nonpartisan** and not directly or indirectly tell people who to vote for, even if a candidate is running for a “nonpartisan office.”

That does not mean that (c)(3)s can’t play an important role in the democratic process as trusted messengers to their communities. The Internal Revenue Code allows public charities to engage in a wide variety of nonpartisan election-related activities, such as:

- ✓ Engaging in limited lobbying, including work on ballot measures
- ✓ Continuing to advocate for the organization’s issues during an election year
- ✓ Educating *all* the candidates on issues of importance to the organization’s mission
- ✓ Criticizing (or praising) sitting elected officials, especially if the organization has a history of doing so in non-election cycles
- ✓ Publishing nonpartisan legislative scorecards that educate voters on a broad range of issues
- ✓ Conducting nonpartisan public education and training sessions about participation in the political process
- ✓ Preparing candidate questionnaires and creating nonpartisan voter guides
- ✓ Renting, at fair market value, mailing lists and facilities to other organizations, legislators, and candidates if it’s an ongoing activity and not arranged only for a particular candidate or party
- ✓ Conducting nonpartisan get-out-the-vote (GOTV) and voter registration drives
- ✓ Canvassing the public on issues
- ✓ Sponsoring nonpartisan candidate debates and townhalls
- ✓ Working with all political parties to get the nonprofit’s positions included on the party’s platform
- ✓ Establishing an affiliated 501(c)(4) organization, which can engage in partisan electoral activity as a secondary activity

CAN 501(C)(3)S ENGAGE IN BALLOT MEASURE ADVOCACY?

The IRS considers ballot measure advocacy to be lobbying, not prohibited electioneering activity. A 501(c)(3) public charity can support or oppose ballot measures (and should count the cost against its lobbying limits), but it should avoid tying its ballot measure messaging to candidates or political parties and ensure that it is also complying with relevant state and local election laws.





WHAT CAN'T 501(C)(3)S DO DURING ELECTION SEASON?

- ✗ Support or oppose candidates for public office
- ✗ Make any campaign contributions (whether monetary or in-kind)
- ✗ Make expenditures on behalf of candidates
- ✗ Restrict rental or sale of the organization's mailing lists and facilities to certain candidates or political parties
- ✗ Ask candidates to sign pledges on any issue
- ✗ Increase the volume or amount of criticism of sitting officials, who are also candidates, as election time approaches
- ✗ Publish or communicate anything that explicitly or implicitly favors or opposes a candidate
- ✗ Highlight the differences between candidates for public office on a high-profile issue on which the candidates in an election have diverging views
- ✗ Engage in issue advocacy when your organization does not have a clear non-electoral purpose for the activity or communication
- ✗ Criticize sitting legislators or other elected officials by attacking their personal characteristics or attacking them in their status as a candidate, rather than focusing on the substance of a policy issue

COMMENTING ON A CANDIDATE OR PARTY DURING AN ELECTION

Candidates for public office sometimes say things that are factually 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 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)s respond to candidates or political parties and remain nonpartisan? By being very deliberate and careful with their statements.

The IRS has provided little guidance on how to handle such communications. A 501(c)(3) should have a good reason to speak up in these situations — like correcting a factual error — and the subject should be one that is relevant to the organization's work and mission.

Below is a short list of what representatives of 501(c)(3)s should do.

- Focus on what was said (the issue), not *who* said it (the candidate).
- Decide who will speak publicly on behalf of the (c)(3), so that non-designated staff will not inadvertently say something inappropriate.
- 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 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 and 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 gubernatorial debate, statements were made about X. We disagree..."
- Be very cautious if a reporter asks about which candidate is better on the (c)(3)'s issues, or whether the (c)(3) agrees with a statement a candidate made.
- Issue a disclaimer ("We're a 501(c)(3) and can't support or oppose candidates or political parties.") in one-on-one conversations and when issuing press releases, and on social media.

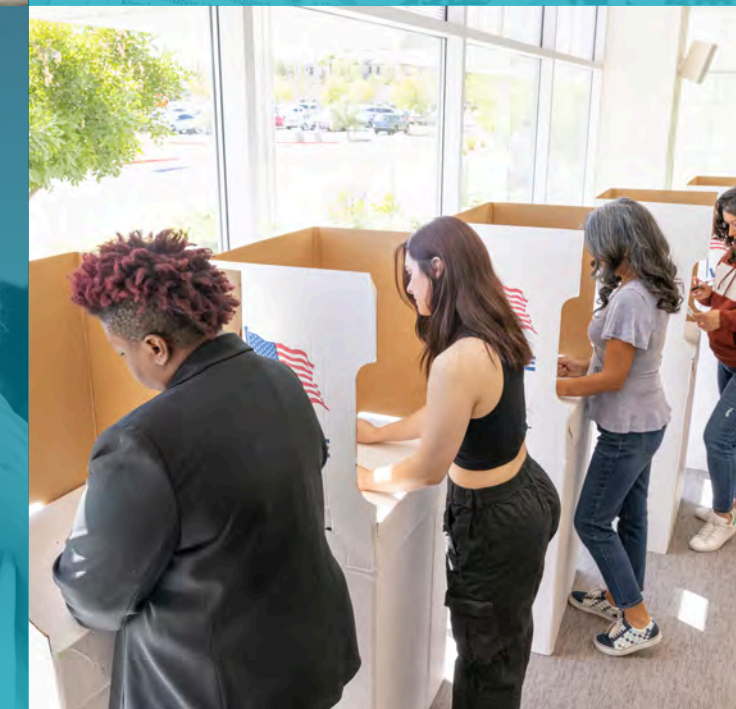
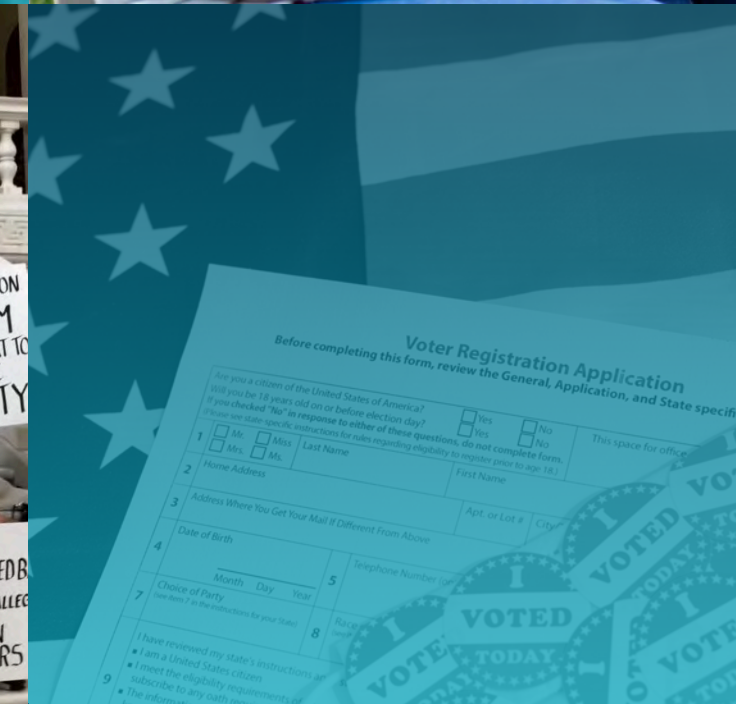
It is permissible to monitor information about what candidates say and do during the campaign. The risk for 501(c)(3) public charities arises when they communicate something that could be perceived as attempting to influence voters. Public charities can gather information, but they must be careful about 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 actions. For example, a (c)(3) may want to urge both major party candidates in the presidential race to take more forceful action on the issue of police accountability. A (c)(3) making this kind of communication should avoid discussing candidates' positions and should instead focus on the need for all candidates to take action.

PRAISING AND CRITICIZING INCUMBENTS

Public charities play an important role in educating the public about policy decisions and actions taken by their elected officials. Elected officials vote on bills, make public statements and executive decisions, and take other actions as part of their official duties. These actions may be consistent with or conflict with a nonprofit's position on an issue. As part of an advocacy campaign, a nonprofit may want to publicize its views by criticizing or praising an elected public official for their official actions.

501(c)(3) public charities can criticize or praise the votes or official actions of incumbent legislators or executive branch officials. However, in the months preceding an election, the IRS may view positive or negative comments about an incumbent, who is also a candidate, as impermissible campaign intervention. The IRS will apply a facts and circumstances analysis to determine whether a nonprofit's communication



regarding an issue of concern to the organization is conducted in a nonpartisan manner or whether it constitutes an impermissible attempt by the (c)(3) to support or oppose a candidate.

To avoid campaign intervention, a 501(c)(3) conducting public communications in an election year should:

Focus on official actions only. Comment on official actions; do not mention an incumbent's candidacy or re-election.

Time communications to coincide with policy actions. A communication that discusses an upcoming legislative vote or administrative hearing is less likely to be viewed as partisan political activity. Similarly, if the communication occurs directly after or near a vote or other official decision, with a view toward influencing future actions, it is more likely to be viewed as nonpartisan advocacy.

Have a track record of working on the issue. Include the communication as part of an ongoing series of communications by the organization on the same issue. The public charity should be able to demonstrate to the IRS a history of engagement on the issue during non-election times. For example, if an organization sponsors a blog that comments on the actions and votes of elected officials on a regular basis, it is less likely to raise concern when the organization continues similar comments on legislators in an election year. Or, if a public charity has been pressuring legislators to adopt its views on certain legislation, and a legislator votes against those recommendations, the group is permitted to continue calling public attention to how the incumbent voted, even during an election campaign.

Use nonpartisan criteria only. Ensure that the criteria used to choose the legislators featured in a communication are nonpartisan and not related to their candidacy. For example, an advertisement or mailer might focus on the positions of legislators who are on a key committee and therefore in important decision-making roles related to the issue at hand or represent a part of the state or country where the nonprofit has a lot of members or has historically been active. Conversely, focusing communications on legislators in swing districts would not likely be viewed by the IRS as appropriate nonpartisan criteria.

Include legislators not up for re-election. If communications are distributed in multiple places, it is less risky for a public charity to focus the communications on a mix of legislators running for re-election as well as legislators not up for re-election to demonstrate the organization's nonpartisan targeting.

Pay attention to timing. Ensure communications are not appearing in print, on the radio, or TV, too close to an election. The closer to an election, the more likely the communication will be treated by the IRS as a campaign activity.

Use caution when the issue distinguishes candidates. Do not raise an issue in your communication to indicate support or opposition of candidates.

Avoid overlap with affiliated 501(c)(4). A public charity should not sponsor communications about an elected official running for re-election when it also has an affiliated organization, such as a 501(c)(4), that is conducting partisan political activity regarding the same candidate.

In no circumstance should an organization consult with a candidate before ads are run or communications are distributed. A nonprofit is permitted to deliver copies of an ad to an incumbent once it has been shown to the public.

Other activities to avoid include:

- Increasing the organization's level of criticism or praise of an official closer to an election;
- Devoting a special issue of its publication to an incumbent's favorable or unfavorable record;
- Focusing on the personal characteristics or qualifications of an incumbent;
- Connecting the organization's criticisms or praise of an incumbent to voting in an election (for example, publicly remarking that an official is anti-death penalty and mentioning that people should register to vote); and
- Pointing out that a particular candidate's comments (as opposed to official actions) or views are incorrect. For example, a 501(c)(3) should not urge the public to withhold campaign contributions for a Senator's re-election if they vocalize opposition to guaranteeing counsel prior to the interrogation of young people or remark that they would be more tough-on-crime than another candidate.

Tip:

Although 501(c)(3)s are prohibited from supporting and opposing candidates for public office, federal and state campaign finance laws often regulate advertisements that mention candidates if the advertisement is run within a certain number of days before an election. For example, broadcast ads thanking a sitting Congress member for action taken, when that member is also a candidate for federal office, which are run within 60 days of a general election or 30 days of a primary, is classified as an “electioneering communication.” Donors contributing to the organization for the specific purpose of funding these electioneering communications must be disclosed.

501(C)(3) STAFF OR BOARD MEMBERS RUNNING FOR PUBLIC OFFICE

Individuals who work for 501(c)(3)s are not prohibited from supporting or opposing candidates in their personal capacity and outside of work hours. They may also choose to run for office. It is important for the (c)(3) associated with the candidate to avoid giving the appearance that it supports or opposes their candidacy.

Here are some best practices for 501(c)(3)s to remain nonpartisan when an employee runs for office:

- Have a written policy on when leaves of absence are available and apply it fairly to any employee who seeks time off, whether to run for office or for other personal reasons.
- Do not allow employee-candidates to use 501(c)(3) resources such as office space, computers, email lists, or office supplies for their campaign.
- Don't mention the employee's candidacy in the organization's newsletter, on its website, or in other communications.
- Don't share the employee-candidate's fundraising solicitation at the office.
- Ask the employee-candidate to refrain from saying or implying that the organization supports their candidacy.

The tips above also apply to 501(c)(3) board members and volunteers running for office. For more, check out [our factsheet](#) on this topic.

VOTER EDUCATION

501(c)(3) public charities have many ways to engage in nonpartisan voter education. In doing so, they can help educate the public on the election process while also increasing awareness about the organization. When engaging in voter education activities, it is always a good idea to prominently include a disclaimer that your 501(c)(3) does not support or oppose any candidates running for public office.

Candidate questionnaires and voter guides

Many nonprofit organizations develop or distribute materials about candidates' positions on issues, and the IRS has approved only one purpose for such activities by a public charity: to educate the voters impartially on a nonpartisan basis. Candidate questionnaires and voter guides can be an effective tool in ensuring your organization's issues remain in the forefront during an election year.

Here are some guidelines to help your 501(c)(3) stay nonpartisan when creating and distributing candidate questionnaires and voter guides:

- Send your questions to all viable candidates for the same office.
- Ask open-ended questions on a broad range of topics.
- Do not ask for pledges from candidates.
- Do not compare a candidate's responses to your nonprofit's position on an issue or to other candidates.
- Publish all responses without editing or summarizing.
- Use the same font and font size to publish the responses.
- Make the questionnaires and voter guides available to the general public.
- Do not coordinate with a candidate or political party when conducting these activities.

If a candidate does not respond to your questions, you can note that in the published response and try to determine the candidate's position on the issues based on a neutral, unbiased, and complete compilation prepared from publicly available sources. The publication should indicate that the answer was not given by the candidate and should include citations to the source material. If no clear determination can be made, you may describe the candidate's position as “unknown” or “unclear.” If only one of two candidates responds, the organization will need to consider carefully whether to publish the questionnaire or voter guide, as it runs the risk of appearing as though it supports only candidates who responded.

Please see our [Candidate Questionnaires and Voter Guides](#) factsheet for more information.

Hosting Candidate Debates and Forums

501(c)(3) public charities can educate and encourage voter participation by sponsoring candidate debates or forums before primaries or general elections. A debate is where candidates directly engage each other at the same time on particular topics in accordance with carefully drawn rules. A forum provides an opportunity for the community to learn about the election process and hear directly from all the candidates for a particular race. Both federal tax law and federal election law permit public charities to sponsor candidate debates and forums. These events must be carried out in a fair and impartial manner that does not favor one candidate over another.

Here are some best practices to ensure that your candidate debate or forum remains nonpartisan:

- Make invitations to all viable candidates running for the same office. While it is preferable to invite all candidates, the IRS has indicated that when it is impracticable to invite every candidate, 501(c)(3)s may set objective criteria to decide whom to invite. Those criteria must be consistently applied and cannot be designed to exclude a particular candidate.
- If one or more candidates decide not to participate, consult with counsel before holding the event. If only one candidate agrees to participate, it is particularly risky to proceed.
- Advertise the debate or forum widely, and invite the public to attend to ensure an unbiased audience. The goal is to avoid an audience that is hostile to one candidate and supportive of another.
- Use a neutral and unbiased moderator, and ensure that the moderator treats each candidate fairly.
- Ask open-ended questions on a broad range of issues.
- Avoid asking candidates for pledges to take (or not take) certain actions if elected.

Please see our factsheet on [Hosting Candidate Debates](#) for more tips to consider when hosting a candidate event of this type.

VOTER ENGAGEMENT

Want to conduct a voter registration drive?

Registering people to vote on a nonpartisan basis is an appropriate voter engagement activity for 501(c)(3) public charities. 501(c)(3) voter registration drives must be designed solely to register voters and educate the public about the importance of voting. They may not show any bias for or against any candidate or party. As such, staff and volunteers should be trained on how to ensure their voter registration work remains nonpartisan in addition to how to comply with any state or federal laws governing voter registration activities.

It should also be noted that Section 4945(f) of the Internal Revenue Code places restrictions on when private foundations can earmark grants for voter registration purposes. For this reason, it is important to speak with your funders before you submit a proposal to support your voter registration activities. Please see our [“Want to Conduct or Fund a Voter Registration Drive?”](#) factsheet for more information.

What about GOTV campaigns?

Get-Out-the-Vote (GOTV) campaigns, initiatives intended to encourage voters to turn out to the polls on election day, must also be nonpartisan if 501(c)(3)s are involved. While engaging in GOTV work, (c)(3)s can educate voters on the voting process and the ballot design. For example, a nonprofit could say “Don’t forget to vote your entire ballot – state and local officials have a big impact on your life!” So long as this type of messaging and communication is nonpartisan (without suggesting *who* people should vote for), encouraging voters to make their voices heard all the way down the ballot should be a low-risk activity for a 501(c)(3). A (c)(3) could also create social media graphics to educate the public on when, how, and where to vote so long as it avoids suggesting which candidates (or types of candidates) people should vote for.

Unlike candidates for public office, 501(c)(3)s can tell voters how to vote on a ballot measure when the measure advances (or runs contrary to) the nonprofit’s mission. This would count as direct lobbying and needs to count against a public charity’s lobbying limit. Be careful not to say or imply which candidates also support or oppose the measure. In other words, do not compare your organization’s position on a measure to where candidates or political parties stand on that measure or issue.

Encouraging voters to vote uncommitted or express no preference is considered partisan activity for a nonprofit organization. Why? Sending a message to demonstrate a lack of support for candidates on the ballot or their political parties is akin to expressing opposition to the candidacy. This would be considered high-risk activity for a 501(c)(3).





If you ever wondered whether state or local regulations may apply to a GOTV activity, check out our [Practical Guidance: Nonprofit Voter Assistance](#) series. It is designed to help you choose the activities that make the most sense for your nonprofit's civic engagement work.

WORKING IN COALITION

Working in coalition is an effective way for advocacy organizations to share and maximize resources to achieve a common goal. Coalitions can draw on the expertise of partner organizations, harness the power of supporters, and speak with a unified voice to promote policy change. Coalition partners should have a clear understanding of each other's obligations, how they will work together, and how resources will be used.

When coalition members have the same tax-exempt status, few tax code-related legal issues are likely to arise when engaging in coalition work. However, when a (c)(3) participates in coalition with other types of organizations, like 501(c)(4)s, 501(c)(5)s, or 501(c)(6)s, it is important to structure the coalition's activities so that they do not put the 501(c)(3) partners at risk and so that all coalition members continue to operate within the realm of allowable activities for their tax-exempt status. This means that any joint activities conducted by the coalition need to remain nonpartisan.

For more information, check out our [Coalition Checklist](#). There are sample list-sharing agreements and coalition operating agreements that you can customize to your coalition's needs.

Coalition in Action:

The **Florida Rights Restoration Coalition** actively engages in grassroots advocacy to end the disenfranchisement of and discrimination against persons with criminal convictions. The organization, which is run by returning citizens, works in coalition alongside nonprofit allies to reduce recidivism, increase government accountability, and ensure full access to democracy for formerly incarcerated persons.

The information contained in this toolkit and any linked resources 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 it may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code or state law.

