



*This article presents general guidelines for Ohio 501(c)(3) public charities as of the date written and should not be construed as legal advice. Always consult an attorney to address your situation.*

## FAQs: Election-Related Activities and 501(c)(3) Public Charities

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When it comes to 501(c)(3) public charities and any involvement in election-related activities, misconceptions abound. Due to confusion around the rules and the potential loss of an organization's tax-exempt status as a result of breaking them, the limitations on lobbying and ban on political campaign activity tend to create a chilling effect on nonprofit advocacy.

In reality, public charities can and should be advocates for change. Public charities can express opposition to laws, they can work towards change, and they can get out the vote. They are often in the best position to advocate on behalf of those they work tirelessly to serve every day in order to bring about a more just and equitable community.

With an election coming soon and much at stake for the nonprofit community and those we serve, this article aims to address common questions 501(c)(3) public charities have about what they can and cannot do in terms of election-related activity. While we strived to keep the answers straightforward, the real answers typically depend on the specific facts and circumstances surrounding an organization's activities, including whether it is engaged in more than one type of an activity. If your organization is planning any of these activities, it is important to discuss the details of your plans with an attorney to make a determination based on your particular circumstances.

### Candidates

**Can we endorse, express support of, or voice opposition to a candidate on the ballot this November?**

No. The rule is clear: A 501(c)(3) organization risks losing its tax-exempt status if it engages in political campaign intervention. This prohibition includes direct or indirect participation in, or intervention in, any political campaign on behalf of or in opposition to any candidate for elective public office. It applies to elections at any level of government, including federal, state, and local levels.

**Can our board president run for public office or support candidates running for office?**

Yes. The prohibition on political campaign intervention encompasses the activities of individuals in connection with their official responsibilities on behalf of the organization, but it does not include their personal activities.

To protect the organization's tax-exempt status, it cannot directly or indirectly authorize or ratify these activities, nor should organization resources be used. The board president should not make partisan



comments in either the organization's publications or at its events. When he or she does verbally or in writing express partisan comments, it should be made clear that the comments are personal and are not intended to represent the views of the public charity.

If this becomes a common area of concern, the organization may want to consider establishing a clear policy governing the political campaign activities of your staff and board. This type of policy could also help your organization communicate how staff should handle social media posts, emails, calls, and other related activities during an election season.

## Voter Education, Registration, Get out the Vote

### Can we publish our own voter guide or candidate questionnaire?

Yes, if it is non-partisan. This is an area where your organization will want to be particularly careful as there are many criteria to meet to make this type of activity allowable. Factors to consider include whether the document covers a broad range of topics and whether all candidates were invited to participate. For example, if your organization is focused on preserving the environment, it cannot simply limit the candidate questionnaire or voter guide to topics related to the environment. It should also avoid comparing the candidates' positions to those of the organization. And, the organization should refrain from criticizing or praising candidates, grading, or ranking them.

### Can we host a voter registration or get-out-the-vote drive?

Yes, a 501(c)(3) public charity can do both if it remains nonpartisan in its approach, mentions either all or none of the candidates, and refrains from targeting members of a specific political party. For example, an organization may target underrepresented demographic groups, but if it only targets individuals in specific neighborhoods that are known to be largely supportive of one political party, that could be prohibited political campaign activity. Or, if an organization is particularly concerned with immigration policy, and it asks voters about their stance on immigration and only reminds them of voter registration deadlines if they reply in a certain way, that would be considered impermissible political campaign activity.

## Lobbying

### Can we support an initiative on the ballot this November?

Yes. This is considered lobbying—an attempt to influence legislation—and is perfectly ok as long as your organization stays within the legal limits on lobbying and complies with state and federal recordkeeping and reporting requirements. For more information on lobbying limits and requirements, read this [PBPO article](#). If your organization is spending money in support of the initiative, you should review state and local campaign finance laws.



**Can we spend money and staff time contacting lawmakers to push for the repeal of an existing law?**

Yes, this is considered direct lobbying. As mentioned earlier, your public charity is still limited in the amount of lobbying it can engage in and it must comply with state and federal recordkeeping and reporting requirements.

**Can we urge our members and the public to contact their representatives and encourage them to vote a certain way on a proposed law?**

Yes. This is a form of lobbying called indirect or grassroots lobbying. Again, this is allowable but limited and has certain recordkeeping and reporting requirements.

**Can we influence judicial nominations or Senate confirmation of judicial appointments to federal courts and the U.S. Supreme Court?**

Yes, this is also considered lobbying, and is subject to limitations, recordkeeping, and reporting requirements.

**What about if we try to influence the election of local judges or school board members?**

No. These are elected officials, and this is considered political campaign activity, which is prohibited for 501(c)(3) public charities.

## Issue Advocacy

**Can we express support of a specific local cause or advocate against a certain state or federal policy?**

Yes. This is a type of issue advocacy, and if it is not in relation to specific legislation, 501(c)(3) public charities can engage in an unlimited amount of it as long as it does not rise to the level of political campaign intervention. Issue advocacy refers to an organization communicating its position on social, economic, or philosophical issues that are related to its exempt purpose. Examples include educating the public on gun safety or access to healthcare.

When an organization engages in issue advocacy, it is important to make sure it is not actually functioning as political campaign intervention. A statement could be viewed as crossing the line into impermissible campaign intervention if, for example, an organization states its position on the death penalty and then describes candidates' positions on that issue. Or, if it uses phrases like "conservative" or "vote pro-choice" even without explicitly mentioning candidates.

This is a very fact-specific area of law. Factors the IRS takes into consideration when determining whether issue advocacy crosses the line into campaign intervention include:

- Whether the statement identifies one or more candidates for a given public office
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions
- Whether the statement is delivered close in time to the election



- Whether the statement makes reference to voting or an election
- Whether the issue addressed has been raised as an issue distinguishing candidates for a given office
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office

Practical tips include ensuring the organization has a real (and unrelated to an election) reason for the advocacy and documenting those reasons in either board meeting minutes or other materials. And, it is typically not a good idea to start a new advocacy campaign close to an election.

## Next Steps

While this is not an exhaustive list, it is meant to provide basic guidance to some commonly asked questions. To determine whether the activity your 501(c)(3) organization is planning is allowable, all of the facts and circumstances need to be examined together. We strongly suggest your organization consult with your attorney prior to engaging in any of these activities.

## Need Legal Advice?

If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please contact us at [info@pbpohio.org](mailto:info@pbpohio.org) (513) 977-0304.

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