

Praising and Criticizing Incumbents

How 501(c)(3)s Can Hold Elected Officials Accountable for Official Actions

Public charities play an important role in educating the public about policy issues and actions taken by their elected officials. Elected officials vote on bills, make public statements and executive decisions, or 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 her actions in paid advertising in newspapers, on the radio, or online, as well as billboards, mailers and other materials that praise or criticize the policy positions or votes of elected officials.

Praising or Criticizing Official Actions or Votes of Incumbents

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 "intervention" in the campaign. The IRS will apply a "facts and circumstances" analysis to determine whether a nonprofit's public communication regarding an issue of concern to the organization is conducted in a non-partisan manner or is instead an impermissible attempt for the 501(c)(3) organization 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. Click here for information on commenting on a candidate in the context of an election.
- **Time communications to coincide with policy actions** — A communication that is timed to coincide with, and discusses a specific upcoming legislative vote or administrative hearing, is less likely to be viewed as partisan political activity. Similarly, if the communication occurs directly after or in close proximity to a vote or other official decision, with a view toward influencing future actions, it is more likely to be viewed as nonpartisan advocacy. For example, it would likely be viewed as non-electoral for a group that has a history of working on immigration reform to urge the public to contact the President, who is also running for re-election, and ask him to show leadership.
- **Include legislators not up for re-election** — If ads are being run or communications distributed in multiple places, it is safer for a public charity to focus the communications on a mix of legislators running for re-election as well as legislators not up for election to demonstrate the organization's nonpartisan targeting.
- **Be particularly cautious close to the election** — Broadcast ads praising or criticizing candidates within 30 days of a primary or 60 days of a general election are considered "electioneering activity." Other activities, like presenting awards or thanking them on social media, are not officially subject to these limits, but should be handled very carefully, particularly if such activity is rare for your organization.

Additional Resources

- http://bolderadvocacy.org/wp-content/uploads/2012/08/Commenting_on_Candidates_and_Campaigns.pdf
- http://bolderadvocacy.org/wp-content/uploads/2012/05/Hosting_Candidates_at_Charitable_Events.pdf
- http://bolderadvocacy.org/wp-content/uploads/2012/05/Election_Checklist_for_501c3_Public_Charities.pdf