

The Do's and Don'ts of Electoral Advocacy



Use this Guide to Do's and Don'ts of Electoral Advocacy to understand what your organization can and can NOT do when conducting nonpartisan electoral advocacy and ballot initiative activities.

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Understanding the difference between Electoral Advocacy and Lobbying

1 →

What is the difference between Nonpartisan Electoral Advocacy and Lobbying?

Advocacy is the umbrella term, and involves identifying, embracing and promoting a cause. Nonpartisan Electoral Advocacy is performing advocacy efforts during an election year that are not geared toward the support or opposition of a single candidate or party. Lobbying is a specifically focused form of advocacy, with the purpose to influence legislation. Only some methods of advocacy are considered lobbying. Although the terms are often used interchangeably, you need to make sure that you record and report your lobbying activities as defined as state and federal by the IRS.

2 →

What is the difference between directly lobbying and grassroots lobbying?

Direct Lobbying is when an organization attempts to influence *specific legislation* by stating its position to a *legislator* (or other government employee who participates in the formulation of legislation) through its staff or members. Grassroots lobbying is when an organization urges the *general public* (non-members in the field) to take action on specific legislation. Key elements of grassroots lobbying include referring to specific legislation, reflecting or stating a point of view on the legislation's merits, and encourage the general public to contact legislators. Depending on the type of reporting of lobbying expenses the AEYC has selected, they may need to separately report direct lobbying activities and grassroots lobbying activities. For more information on IRS reporting including the 501h designation at

www.councilofnonprofits.org/nonprofit-advocacy/501h-election.

Do's for NAEYC affiliates vs. Don'ts for NAEYC affiliates

Non-partisan Election activities	Partisan Election Activities
<p>Voter Education</p> <ul style="list-style-type: none"> ✓ help new voters understand elections and the voting process ✓ sponsor nonpartisan candidate forums or debates subject to limits on lobbying ✓ distribute nonpartisan questionnaires to candidates ✓ distribute nonpartisan materials on ballot measures ✓ distribute nonpartisan materials regarding all candidates or regarding election process ✓ attend town halls or other forums to raise the issue of the importance of early childhood education <p>Candidate Engagement</p> <ul style="list-style-type: none"> ✓ provide briefings to all candidates on the organization's issues <p>Lobbying</p> <ul style="list-style-type: none"> ✓ direct lobbying activities ✓ grassroots lobbying activities 	<p>Show Favoritism</p> <ul style="list-style-type: none"> ✗ endorse/oppose a candidate ✗ rate candidates on their support for early childhood or specific issues (through a report card, rating card, etc...) ✗ publicize which candidates share the nonprofit's views ✗ nonprofit's leaders say positive/derogatory items re: a candidate at nonprofit events (e.g., board meeting) or in nonprofit publications ✗ ask a candidate to pledge their support for a cause ✗ compare and contrast candidate's responses to your organization's views
<p>Broad Voter Participation</p> <ul style="list-style-type: none"> ✓ encourage and help people get to the polls on election day ✓ register people to vote 	<p>Voter Preference</p> <ul style="list-style-type: none"> ✗ targeting / registering voters for only one party
<p>Can Spend Resources</p> <ul style="list-style-type: none"> ✓ activities that do not support a single party or issue ✓ voter registration ✓ voter education ✓ get out the vote ✓ direct lobbying (within the limits of the IRS, state, and local laws) ✓ ballot initiatives ✓ grassroots lobbying 	<p>No Nonprofit Resources</p> <ul style="list-style-type: none"> ✗ contribute or spend \$ to endorse/oppose ✗ raise \$ for a candidate ✗ let candidates use office space, equipment, mailing lists, etc.

General 501(c)(3) activities

As a 501c3, what are the things my organization can and cannot do during an election?

BALLOT MEASURES AND INITIATIVES

3 → Can I support or oppose a specific ballot measure?

Although they frequently take place at the same time and appear on the same ballot as elections for public office, efforts to influence the outcomes of referenda, initiatives and other ballot measures are not considered to be political campaign activity and therefore are permissible for tax exempt organizations. NAEYC and its affiliates may join and provide financial support to coalitions that are supporting or opposing ballot measures, may distribute literature supporting or opposing ballot measures, and may take people to the polls or provide other assistance to persons who want to vote on the ballot measure. Expenditures to influence ballot measures are, however, treated as direct (not grassroots) lobbying activities by the IRS and therefore are subject to the group's lobbying limits on direct lobbying.

4 → What are the rules my organization must follow when working on a ballot measure?

The most important thing a 501(c)(3) nonprofit should know is that the IRS considers activity on ballot measures a lobbying activity—not electioneering. A 501(c)(3) may work for or against ballot questions up to normal lobbying limits. The IRS makes this distinction because advocacy on ballot measures is an attempt to influence a proposed law or a policy—not the election or defeat of a candidate. 501(c)(3)s may also engage in unlimited activities that neither support nor oppose the ballot measure, such as voter registration, voter education, and get-out-the-vote activities. Your state may have reporting requirements for ballot measure expenditures. Check with your state's campaign finance office or an attorney to see what your state's requirements are if your nonprofit decides to invests resources in advocating a “yes” or “no” vote.

5 → What are the 501(c)(3) lobbying limits in regards to ballot measures?

Your lobbying limits depend on which of two alternative tests your nonprofit chooses to measure its lobbying. If your nonprofit has chosen to measure its lobbying under the so-called 501(h) expenditure test, it has clearer guidance and can do more lobbying. Under this expenditure test, you can spend a certain percentage of your annual budget (as much as 20% for small organizations, less for larger groups) on efforts by you or your members to directly influence the outcome of a ballot question or legislative vote. If your AEYC has not chosen to use the above expenditure test, it may spend an “insubstantial” amount of money and time on lobbying. This includes any efforts to support or oppose a ballot question and other efforts the organization makes to influence more traditional legislative proposals at the local, state, or federal levels. “Insubstantial” lobby expenditures has been interpreted to mean a relatively small percentage of time and money, usually less than 5%. NAEYC does not provide advice on which type of reporting AEYCs use for lobbying expenses.

HONORING LEGISLATORS

6 → Can an AEYC affiliate present an award or otherwise honor a public official for his or her past service on behalf of children and families during an election year?

If the public official has already announced that he or she is running for office, this poses a particular difficulty for the group because it may be perceived as an endorsement of the candidate. It should generally be avoided except under special circumstances, such as where the decision to make the award was made well before the official announced his or her candidacy, or the official is one of several honorees or awardees, some of whom are not candidates. It is also not a good idea to begin an award program for the first time in an election year if the award is being given to a candidate for office, because it may look like the award was created as a way of lending support to the candidate's campaign. If an affiliate decides to honor an official who is running for office, it should review all of its press statements very carefully to make certain that the affiliate does not suggest in its advertisements, e-mails, handouts or other materials that it is endorsing the official's re-election, and the rules described above must be followed at the event to ensure that it does not become a campaign event for the candidate.

INTERACTING WITH CANDIDATES

7 → Can I educate candidates on issues important to my organization and early childhood?

Yes. Your 501(c)(3) nonprofit may provide information to educate candidate on your issues so long as you make these resources available to all the candidates in a particular race and all candidates receive the same level of support and information. These resources should educate the candidates on issues that are important to your organization and early childhood. Candidates can benefit from your expertise. You can send the candidates a policy paper or research findings, and let them know about your program initiatives. A 501(c)(3) may not provide resources in the form of money or time directly to candidates. Your nonprofit may not provide personalized research or similar candidate specific efforts for particular candidates. For example, don't help a single candidate develop a new policy paper on an issue of importance to your organization: It could appear to be a partisan effort to help that candidate get elected.

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What is an example of invitation I would send to a legislator or candidate inviting them to an event?

**Sample Letter
Inviting Candidates
to an Event**

Dear [Candidate]:

The Maryland Association for the Education of Young Children is pleased to invite you to attend its bi-annual legislative breakfast to be held at the Marriott Hotel on February 21, 2004 from 8:00 to 10:00 am. This is our fifth year of holding this event. In past years it has been attended by more than 50 parents, child advocates and service providers who are concerned about improving the lives of low- income children and families. This year we hope to focus the discussion on [list legislative issues].

Because MAEYC is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, we cannot support or oppose any candidate for public office and our legislative breakfast must be conducted in a strictly non-partisan manner. Public officials such as yourself who are invited to speak at the event are asked not to use it as a campaign opportunity in any manner, including asking for votes, soliciting contributions, distributing campaign literature or asking for volunteers to assist in their campaigns. These rules apply to staff and supporters as well.

We hope you will be able to attend the legislative breakfast and we look forward to a productive discussion with you concerning the needs of children and families.

Sincerely,

[Affiliate Contact Name]

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What are some examples of questions I can and can NOT ask candidates at a forum or in a questionnaire?

Permissible:

- ✓ What are views on the needs of children in our state and what specific steps would you take to address these needs.
- ✓ What kind of people will you be looking for to fill the positions of Secretary of Education, Director of the Division of Children’s and Family Services, etc?
- ✓ Our state currently ranks in the bottom 10% nationally in the amount we spend on day-care services for low- income residents. What are your plans for addressing this need?
- ✓ What are your views on raising the compensation of child care workers?

Not allowed:

- ✗ Last year, you voted against the needs of working families when you refused to support S.432, the Day-Care Improvement Act of 2003, which was supported by the AEYC and many other child advocates. Will you pledge to support similar legislation when it is reintroduced in 2004?
- ✗ Governor Smith has said he wants to overhaul the current licensing standards for child care centers to make it easier for for-profit entities to enter this market. The AEYC and other organizations oppose any effort to weaken these standards. What are your views on this critical question?
- ✗ If elected, will you support an increase of \$5 million in the Title XX program?
- ✗ The AEYC is pushing for an increase in the T.E.A.C.H. (or other child care compensation initiative). Will you support increase funding to help raise the salaries of child care workers?

MEETING WITH LEGISLATURES

10 → Can NAEYC affiliates meet with legislators?

NAEYC affiliates may continue to meet with legislators throughout an election year to press their legislative agendas at legislative breakfasts and in other settings such as town-hall meetings. Similarly, affiliates may continue to invite legislators to make program visits to observe effective programs in operation. And, affiliates may invite legislators and other public officials who are running for office to address their annual conferences, attend and speak at fundraising events, etc. Where the legislators who are invited are not running for re-election, these events present no legal risks to the groups. *Incumbent legislators who are up for re-election may also be invited to attend these meetings as long as the events are not used as campaign events.* This means that incumbent legislators who are also candidates must not use affiliate sponsored events to solicit votes, to ask for volunteers or to collect campaign contributions. Supporters of candidates cannot take these actions on their behalf or carry signs supporting the candidate during the affiliate-sponsored event. As a general rule, NAEYC and its affiliates should not show any favoritism in whom they invite to such events. It is a good idea to invite representatives of both political parties and, if possible, to invite both legislators who are running and those who are not. Since many legislators may not be aware of the limits when they are meeting with tax-exempt groups such as NAEYC and its affiliates, it is a good idea to send them a letter before the meeting letting them know that the meeting or event cannot be used as a campaign event.

POSITION STATEMENTS

11 → Can an organization state its position on public policy issues that candidates for public office are divided on?

Yes. An organization may take positions on public policy issues, including issues that divide candidates in an election for public office as long as the message does not in any way favor or oppose a candidate. Be aware that the message does not need to identify the candidate by name to be prohibited political activity. A message that shows a picture of a candidate, refers to a candidate's political party affiliations, or other distinctive features of a candidate's platform or biography may result in prohibited political activity.

POSTING INFORMATION ON WEBSITE

12 → Can an organization post information on its website (or link to other websites) about a candidate for public office?

A website is a form of communication. If an organization posts something on its website that favors or opposes a candidate for public office it is prohibited political activity. It is the same as if the organization distributed printed material, or made oral statements or broadcasts that favored or opposed a candidate. If an organization establishes a link to another website, it is responsible for the consequences of establishing and maintaining that link even if the organization does not have control over the content of the linked site. Because the linked content may change, the organization should monitor the linked content and adjust or remove any links that could result in prohibited political activity.

STAFF PARTICIPATION

13 → Can my staff help out on Election Day?

Yes. Nonprofits are well-positioned to help on Election Day, so long as they participate in nonpartisan activities. The civic mission of nonprofits makes them a good fit not only to encourage their communities to vote, but to provide staff to help at the polls. Nonprofits may allow staff time off to vote, allow staff to spend part or all of Election Day doing nonpartisan get out the vote activities, and encourage staff and volunteers to sign up as poll workers or translators.

14 → Can my staff participate in advocacy on their own time?

Although affiliates themselves may not conduct partisan campaign activities, the officers, directors, employees and members of affiliates are free to engage in such activities on their own time if they are careful not to use any organizational resources (telephones, email, postage, mailing lists, etc.) in these efforts. A person's own time usually includes weekends, holidays, vacations, evenings, and unpaid lunch periods. Even though they are acting as volunteers for a candidate, officers, employees, and members generally should not distribute campaign literature at NAEYC sponsored events. They may, however, place bumper stickers on their cars and wear campaign buttons to affiliate and NAEYC and AEYC events. When acting as a volunteer for a candidate or a political party, individuals should not identify themselves as members, officers, or employees of NAEYC or any other tax exempt organization.

VOTER EDUCATION

15 → Can I educate voters on candidates and ballot measures?

Yes. The IRS has consistently stated that 501(c)(3) nonprofits may carry out voter education on candidates and ballot measures before an election so long as it is nonpartisan. In particular, the IRS cites voter guides and candidate forums as acceptable activities 501(c)(3)s may do on a nonpartisan basis. Commonly used voter guidance materials include one page guides to candidates or ballot measures, a candidate questionnaire, and sample of the official ballot.

WORKING WITH COALITIONS AND 501(C)(4) ORGANIZATIONS

16 → Can I work with coalitions that include unions, political action committees, and other groups that engage in partisan campaign activities?

Yes, as long as the coalition itself is not engaged in partisan campaign activities. For example, an affiliate may continue to be part of a state-wide coalition that is seeking more funding for child care subsidies or that is working to educate families about the child-care tax credit even though unions and other partisan groups are part of these efforts. If a coalition of which an affiliate is a part does get involved in partisan political activities, however, it will usually not be sufficient for the affiliate to avoid participating in those activities; the affiliate will need to remove its name as a supporter of the coalition for all purposes. Also, if an affiliate contributes funds to the coalition, those funds cannot be used to support any candidate.

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What is the difference between what my organization can do and what a 501(c)(4) can do?

Comparison of 501(c)(3) and 501(c)(4) permissible activities (Source: Bolder Advocacy and Alliance for Justice, 2014)		
Activity	501(c)(3) Public Charity	501(c)(4)
Lobby for/against legislation	Limited	Unlimited
Support/oppose ballot measures	Limited	Unlimited
Conduct public education and training sessions about participation in the political process	✓	✓
Educate candidates on issues within purview of the organization	✓ (must offer information to all candidates)	✓
Sponsor a debate between candidates, where all viable candidates are invited and given equal opportunity to speak on a broad range of issues	✓	✓
Distribute voter guides to the public that set out the candidates' views on a broad range of issues	✓	✓
Distribute voter guides to the public that compare candidates on issues of importance to the organization	✗	✓
Rent mailing lists and facilities at fair market value to other organizations, legislators, and candidates	✓ (if rent, must allow any candidate to rent)	✓ (may rent to select candidates only)
Conduct nonpartisan get-out-the-vote activities, voter registration, and education drives	✓	✓
Conduct voter registration and GOTV activities based on party affiliation or how people will vote	✗	✓
Conduct nonpartisan voter protection activities	✓	✓
Establish a 501(c)(4)	✓	✓
Endorse candidates and publicize its endorsements	✗	✓
Fund independent expenditures in support of or opposition to a candidate	✗	✓
Make campaign contributions (monetary or in-kind)	✗	Depends on state election law (prohibited for federal candidates)
Establish and pay for the administrative and fundraising costs of a connected political organization (separate segregated fund)	✗	✓
Criticize sitting elected officials	✓ (may not attack their personal characteristics or attack them in their status as a candidate)	✓
Compare organization's issue position with that of a candidate	✗	✓
Connect organization's criticism of public official to voting in an election	✗	✓
Highlight the differences between candidates for public office on a high-profile issue on which the candidates have diverging views	✗	✓
Ask candidates to sign pledges on any issue	✗	✓
Post partisan political messages on Facebook, Twitter, or Tumblr	✗	✓

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