

## **Commenting on Candidates and Campaigns**

### **How 501(c)(3)s Can Respond During an Election Year on Judicial Nominations and Remain Nonpartisan**

Candidates for elected public office sometimes say things that are 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 the election season, they are strictly prohibited from supporting or opposing candidates for public office. So how can 501(c)(3) organizations respond to candidates or political parties and remain nonpartisan? By being very deliberate and careful with their statements.

### **Commenting on a Candidate or Party in the Context of an Election**

501(c)(3) organizations that want to comment on candidate or political party statements—such as the current Supreme Court vacancy—need to be careful. 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 important to the organization.

For example, imagine that a candidate makes the following statement: “It is unconstitutional for the President to nominate a Supreme Court justice with the presidential election happening so soon.” A 501(c)(3) organization that is already working on a campaign to ensure a timely confirmation may want to correct this statement. The 501(c)(3) should determine who will speak for the 501(c)(3) and think through how to phrase its response—both what to say and what to avoid saying.

Representatives of a 501(c)(3) should:

- Focus on what was said (the issue), not who said it (the candidate).
- Decide who will speak publicly on behalf of the 501(c)(3) organization, 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 he or she 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 Republican debate, statements were made about the current Supreme Court vacancy. We disagree...”
- Be very cautious if a reporter asks about which candidate is better on the 501(c)(3)’s issues or whether the 501(c)(3) agrees with a statement a candidate made.
- Issue a disclaimer (“As you know, we’re a 501(c)(3) and can’t endorse candidates”) in a one-on-one conversation or in a press release.

It is permissible to monitor information about what candidates say and do regarding the Supreme Court justice vacancy during the campaign. The risk for 501(c)(3) organizations arises when they communicate something that could be perceived as attempting to influence voters. Organizations can

gather information, but 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 statements. For example, a 501(c)(3) organization may want to urge both major party candidates in the presidential race to support the swift nomination and confirmation of a Supreme Court justice. A 501(c)(3) making this kind of communication should be careful to avoid criticizing any candidate, and should focus on the need for all candidates to take action.

## **Commenting on a Candidate or Party in the Context of a Lobbying Campaign**

501(c)(3) organizations can engage in issue advocacy related to judicial vacancies and nominations. This may include criticizing, praising, or even mentioning legislators who happen to be running for office or even, in certain instances, referencing political parties. For more information on how to ensure a 501(c)(3)'s comments about incumbent office holders are legal, as well as to learn more about whether these communications may be considered "electioneering communications" under election law, see our fact sheet "[Praising and Criticizing Incumbents](#)."

Below are examples of issue-focused statements or comments that mention policy matters and party affiliation that are generally acceptable for 501(c)(3) organizations:

- "Despite pressure from the public, the Senate Majority Leader continues to block the Supreme Court justice confirmation process."
- "We take issue with Congressional Republican leadership saying that the Supreme Court vacancy should not be filled until a new President is elected."
- "Please thank Senator Smith for her recent comments on the President's constitutional right to nominate a Supreme Court justice and the Senate's duty not to delay that confirmation due to an election." (Statement made while Senator Smith is in office as well as a candidate for re-election.)

If a 501(c)(3) organization wishes to respond to a candidate's public statement, the organization should work with an attorney to minimize the risk of appearing to support or oppose candidates. This fact sheet does not provide legal advice, but instead provides tips on how to minimize the risk.

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