

Can We Really Say That?

Post-Election Advocacy for 501(c)(3) Organizations

Most 501(c)(3) organizations are familiar with the restrictions that prohibit 501(c)(3)s from supporting or opposing any candidate for public office. Once an election is over, however, many public charities are unsure about which rules apply. Can they congratulate a winning candidate? Ask the winner to take action on their charity’s main priorities? The answers are “Yes” and “Yes” – within limits.

A few basic rules can help 501(c)(3)s plan post-election activities without violating the restriction on partisan election activity, particularly in the time after the election and prior to a new public official taking the oath of office. During this [transition period](#), a public charity does not need to avoid communications about the election or previous candidates. There are actually quite a few ways in which a 501(c)(3) can safely add its voice to the public debate about election outcomes, former candidates and the proposed policies and officials of the incoming administration.

What can public charities say?

Here’s a list of safe and permissible activities that public charities can consider in the post-election period. Be mindful, though, that some constitute [lobbying](#):

- Commenting on the results of the election—such as looking at the demographics of who voted or didn’t vote, comparing voter turnout to previous elections, or commenting on the election process and reforms that may be needed.
- Congratulating the newly elected official, or thanking a former candidate for their hard work during the election or in a prior elected position.

SAY THIS: “People for the Environment Joins in Congratulating Jane Doe, Springfield’s New County Executive”

NOT THIS: “People for the Environment Is Proud that Our Ecology-Minded Voters Helped Elect Jane Doe”

NOT THIS: “People for the Environment Mobilized Ecology-Minded Voters to Defeat Corporate Polluter Rick Roe”

- Focusing on policy issues the organization would like the new administration or official to support or oppose. Public charities can encourage the newly elected official to support their agenda, to provide funding for a priority or to continue existing policies. Likewise, public charities can encourage newly elected officials not to cut funding or advocate for the creation of new policies or programs.
- Calling for the adoption or repeal of executive orders.

LOBBYING: Meeting with members of Congress to encourage them to repeal the Hyde Amendment.

NOT LOBBYING: Talking with members of Congress about the importance of protecting women's health.

NOT LOBBYING: Urging the new Administration to recognize climate change.

Inviting the newly elected official to visit your program to learn more about your organization and its work.

- Praising or criticizing the *positions* of the newly elected official, without making representations about that person's character or promising reward or retribution at the ballot box.

SAY THIS: "We are disappointed that President-elect Trump has selected wealthy, out-of-touch extremists to serve in his cabinet."

NOT THIS: "If Trump and the Republican Congress repeal the Affordable Care Act, we will remember in 2018 and 2020 and make them pay."

- Praising or criticizing individuals who are being named as officials in the new administration. Public charities can criticize the records and positions of nominees, encourage elected officials to confirm or reject their nomination, or suggest names or

qualities of people for key positions.

LOBBYING: Writing to your senators asking them to reject the nomination of Scott Pruitt as EPA administrator.

NOT LOBBYING: Writing to President-elect Trump to remove Steve Bannon as White House advisor (not lobbying since Bannon's appointment does not require Senate approval).

NOT LOBBYING: Signing on to an open letter in the Washington Post highlighting why Scott Pruitt is unfit to serve as EPA administrator.

Remember: [Public charities can lobby](#), subject to generous lobbying limits. They need to make sure they properly [track and report](#) lobbying.

What can private foundations say?

[Private foundations](#) can use their influence with a new administration-- as long as the activities do not constitute [lobbying](#).

Wait – don't say that!

Even though the election is over, public charities and private foundations still need to exercise caution to make sure they don't violate the [prohibition on partisan campaign intervention](#). This includes avoiding statements that suggest that the organization DID engage in partisan campaign activity while the election was under way. Public charities and private foundations should stay away from the following activities:

- Taking credit for any election result or outcome, including claiming credit for voter turnout that was designed to benefit a particular candidate or party. Public charities can claim credit in general for encouraging citizens to vote, but need to be careful they do not imply their efforts were conducted on a partisan basis.
- Encouraging a named person, or supporting efforts to draft a named person to run for office.
- Indicating that the organization or voters will hold the elected official accountable in the next election. Public charities should not in any way indicate that they engage in partisan electoral activity at any time, be it the past, present or future.

Although there are restrictions on partisan campaign intervention and limits on lobbying after an election, public charities and private foundations still have lots of options to advance their missions and the well-being of the populations they serve.

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