501(c)(3)'s AND POLITICAL ELECTION ACTIVITY

Here is a link to a handout booklet: 10 Mistakes Nonprofits Should Avoid in an Election Year http://www.harmoncurran.com/library/10%20Election%20Year%20Mistakes%2006.11.15.pdf

Prohibition on Political Activity by 501(c)(3)'s.

501(c)(3) organizations are strictly prohibited from engaging in electoral political activity, i.e., activity for or against a candidate for elected public office. The prohibition is absolute, and it applies to all elections federal, state, local, even foreign. A single violation, no matter how small or inadvertent, can potentially cause the organization to lose its 501(c)(3) exempt status.

This means a 501(c)(3) may not:

- contribute money or value (such as mailing lists, staff time, office space) to a campaign for a candidate for office, a political party or a political action committee;

- endorse a candidate for public office (although the executive director or board president of a 501(c)(3) acting in her individual capacity can endorse a candidate and may use the organization's name for identification);

- publish or distribute statements for or against a candidate.

This prohibition extends to direct or indirect support for a candidate. The set of activities that will be considered impermissibly "political" for a 501(c)(3) is much broader than those activities regulated under the federal election law (see below). The IRS uses a facts and circumstances approach, weighing all relevant factors to determine whether a 501(c)(3) has improperly intervened in an election.

Special Rules on Voter Guides and Other Communications.

501(c)(3) organizations are not prohibited from voter education and registration, and in fact play an important role in these activities. The general rule is that voter education and registration communications cannot reflect a bias or preference in favor of or against a candidate and cannot be coordinated with a campaign or a political party. Specific types of acceptable activities include:
A. Incumbent Voting Records. A 501(c)(3) may publish a report on the voting records of incumbent members of a legislature. The report may list specific legislation or types of legislation and indicate how the member voted. If the report is going to be distributed broadly, it must cover a broad range of issues and may not indicate a "correct" position on any of the issues. If it will be distributed only to members and is produced regularly, not only in election years, it can be limited to a narrow range of issues important to the organization and indicate whether the candidate voted in accordance with the 501(c)(3)'s views on an issue; otherwise it can contain no editorial comment.

B. Voter Guide. A 501(c)(3) can distribute a voter guide which compares candidates. The guide must cover a wide range of issues framed in language which doesn't show preference or bias. For example, while a (c)(3) can say that member X opposes a late term abortion ban, it cannot say that the member "supports baby killing."

A 501(c)(3) may distribute voter guides to members or to the general public, but may not target distribution with intent to influence an election.

C. Candidate Questionnaires. A 501(c)(3) may distribute the results of a questionnaire so long as the questionnaire has been sent to all candidates running for the office and covers a broad range of issues. The questions cannot be written in a way that reflects a bias on the issues or preference for one candidate or another.

D. Candidate Forums or Debates. A 501(c)(3) can hold a public forum or debate for candidates to publicize their views on issues so long as all candidates are invited to participate, the forum covers a broad range of issues, and each candidate has an equal opportunity to present his or her views. Questions should be prepared and presented by an independent nonpartisan panel and should not reflect a preference or bias for one candidate, and the moderator should not comment on the questions or otherwise make comments that imply approval or disapproval of any of the candidates.

E. Get Out the Vote and Voter Registration Efforts. 501(c)(3) organizations may: Contact their members or the general public to urge them to vote or register to vote so long as geographical areas that reflect particular viewpoints are not targeted, encouragement to register and vote doesn't reflect a view on a campaign issue, and there is no formal or informal coordination with a political party or a candidate.

F. Criticism of Incumbents. A 501(c)(3) need not suspend its advocacy efforts merely because they involve making unfavorable public comments on legislative positions taken by incumbents. However, personal attacks on an elected official who is running for reelection may cross the line into prohibited political activity. The closer in time to an election, the more carefully a 501(c)(3) must examine its public communications to ensure they promote a legitimate 501(c)(3) purpose, such as lobbying on a bill that is coming up for a vote, and do not turn into veiled campaign ads.