



Supreme Court Vacancies and Navigating Other Advocacy, Lobbying, and Political Intervention for Nonprofits

The charged political atmosphere created by the upcoming 2020 elections will create special challenges for 501(c)(3) nonprofits that engage in advocacy activities. While 501(c)(3) nonprofits are free to advocate around public policy issues and on behalf of their constituents—indeed, advocacy and education-related activities are mission-critical for many organizations—they must abide by strict IRS prohibitions on *political campaign intervention* and additional limitations on *lobbying activities*. These restrictions and limitations are particularly relevant in an election year where even some nonpartisan speech or activities may take on a political sheen when made in the context of ongoing, highly publicized partisan campaigns.

Given the recent Supreme Court vacancy, it is also important to note attempts by 501(c)(3) organizations to influence the Senate confirmation of Supreme Court justices is generally considered lobbying activity by the IRS. 501(c)(3) organizations are allowed to do a limited amount of lobbying activities and may have to track and report their lobbying expenditures, depending on whether or not they take the 501(h) lobbying election.

Nonprofits should also exercise extreme caution around Supreme Court-related advocacy that could carry partisan or

election-related connotations, such as calls to reject candidates because of their affiliation or alignment with a specific political party. For more information on this topic, check out Bolder Advocacy's fact sheet: ["Commenting on Judicial Nominees During an Election Year: How 501\(c\)\(3\)s Can Respond During an Election Year on Judicial Nominations and Remain Nonpartisan."](#)

The D.C. Bar Pro Bono Center has a [library of resources](#) to help nonprofits understand the difference between (unrestricted) advocacy activities, (prohibited) political campaign intervention, and (restricted) lobbying activities, including ["A Nonprofit's Guide to Lobbying and Political Activity"](#) and the on-demand webinar ["Nonprofit Advocacy 101 - Lobbying, Political Activity, and IRS Rules for 501\(c\)\(3\)s."](#)

The IRS also provides [21 illustrative examples](#) of how its political intervention rules apply to specific factual situations.

Additional information for nonprofits is at the D.C. Bar Pro Bono Center's online resource center main page: www.probono.center/nonprofits.

If you have questions, feel free to contact us at cedinfo@dcbar.org.