

PBPA Podcast Transcript

Episode 31 - How Your Nonprofit Can Participate in “Get Out the Vote” Initiatives (21:56 minutes)



Sireesha ([00:00](#)):

As election season is coming upon us, you may be wondering if and how your nonprofit can get involved with “get out the vote” initiatives. In this episode of the PBPA podcast, Robyn Miller will share some insight and guidance on how 501(c)(3)s can encourage voter turnout without risking their tax-exempt status.

Sireesha ([00:28](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel. Contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:38](#)):

Robyn Miller is Senior Corporate and Tax Counsel with the Pro Bono Partnership of Atlanta. She has been advising tax-exempt entities on their corporate and tax matters for years and as a staff attorney with PBPA, she knows well the issues and concerns of small community-based nonprofits. I'm thrilled you can be here to talk with us today, Robyn.

Robyn ([02:03](#)):

My pleasure. Thanks for having me!

Sireesha ([02:06](#)):

Robyn, let's start off by talking about the general framework around restrictions on how nonprofits engage in political activity. I mean, why are these restrictions even in place?

Robyn ([02:19](#)):

So that's a really good question, Sireesha. So, 501(c)(3) organizations, as opposed to other 501(c) organizations, have special benefits. They are able to take people that donate to them, or entities that donate to them can take a tax deduction potentially for those donations. And so, with that, that benefit comes responsibilities or restrictions. And one of those restrictions is the inability to participate in political activity. Uh, so, you know, what does political activity consist of is the next obvious question, which is: you cannot support or oppose a candidate for office, and you cannot support or oppose a political party. Now that's a very broad definition and there's case law and rulings and regulations that clarify what that means in far more detail than we have time to go into. But, Pro Bono Partnership of Atlanta does have a webcast on the subject and other materials that you can find on our website.

Robyn ([03:23](#)):

So, as you're, if you're thinking about participating or if you're a 501(c)(3), and you're thinking about participating in something that might constitute political activity, it's a good idea to dig a little deeper and then if you're a client, to contact Pro Bono Partnership of Atlanta. But you're correct in that 501(c)(3)s can participate in "get out the vote" initiatives. They have to do it in a very specific and very neutral, uh, when, when conducting such activities. And "neutral" is really the key word in everything that you think of when you're thinking about a "get out the vote" initiative. So, some of the things that they can do related to candidates running for office is they can provide legislative scorecards. Again, there's very specific rules about how to create those and, and present those. They can conduct candidate forums. Again, very specific rules about how to do that. Um, and they can participate in civic engagement. Um, and these are all activities, 501(c)(3)s can engage in and civic engagement includes voter registration and "get out the vote" initiatives. And I do have to caution that while they can do these things right now, there have been, there has been legislation introduced multiple times into Congress to eliminate the ability of 501(c)(3)s to do this. So who knows where this will go, but right, as of today, in 2022, these are permissible so long as they're done in the proper way.

Sireesha ([04:54](#)):

Oh, wow. That's really interesting that this legislation is being introduced and could change in the near future. But I feel like I've seen organizations that are closely affiliated with (c)(3)s that seem to be more politically engaged. Do (c)(3)s have "sister" organizations who can conduct political activity?

Robyn ([05:17](#)):

So, some do. You can create a, a sister, quote, unquote "sister organization," a 501(c)(4) social welfare organization. Social welfare organizations, uh, people, anyone that donates to a 501(c)(4) social welfare organization cannot take a tax deduction for those donations. So, they don't have the same restrictions. They do have some restrictions, cause they clearly are still getting the benefit of not having to pay income tax. But they have more ability to conduct political activities and more lobbying activities. And so some (c)(3)s create (c)(4) sister organizations to do that work. However, (c)(3)s have to be really careful not to cross over between them. A (c)(3) cannot give money to a (c)(4) that would then use that money to conduct political activity, that would affect the (c)(3). So, there's a lot of rules involved in (c)(3)-(c)(4) relationships and I believe Pro Bono Partnership of Atlanta has some materials on that as well. I tend to see that mostly in larger organizations, than I do in smaller organizations, cause they really need to be kept separate.

Sireesha ([06:29](#)):

And thank you for mentioning those resources. I will drop a link to those other resources from PBPA's website on the page for this podcast episode. And now Robyn, let's talk a little bit more about the civic engagement that (c)(3)s are permitted to conduct. Can a 501(c)(3) organization conduct "get out the vote" drives?

Robyn ([06:54](#)):

Absolutely they can. As long as they do it in an unbiased and nonpartisan manner. It's a form of civic engagement. And so, what does civic engagement mean? Well, it means encouraging people to do their civic duty and to vote, and it's the fundamental of our democratic society. And you are permitted as a (c)(3) to encourage democracy and voting. So, what can they do and how does it work? If you're going to conduct a "get out the vote" initiative as a 501(c)(3), you can remind voters of the date and time of the election, the location of the voting, of the polling places. You can help individuals figure out where their

polling places are. You can make sure, you can ask them if they have recently moved and whether they changed their polling location. So that before the day of the election they know: do I have to go back to my old polling place, or can I go to my new polling place?

Robyn ([07:56](#)):

501(c)(3)s can also have their volunteers or employees tell voters what they have to bring to, to the polling place. For instance, in Georgia, you're required to have a photo ID to vote. Not all states require that, but Georgia does. So that's something that they can remind them to bring. They can even drive them to the polls to vote and wait for them while they're voting and then bring them home. But there are some restrictions they do need to, to be careful about. Another thing that they can do, before we get into some of those restrictions, is they can provide sample ballots to voters. They can also provide nonpartisan voter guides, but again, those need to be very carefully created. They have to follow the rules and the regulations around creating these nonpartisan voter guides.

Robyn ([08:55](#)):

And the guides, and I will say one really important thing, cause this is something that I think surprises some 501(c)(3)s, if you are, for instance, an environmental focused organization, your nonpartisan voter guide can't just talk about where the candidates stand on environmental issues. They have to cover the wide range of issues that voters need to consider when choosing, when electing a can, you know, a candidate, when deciding who to choose and they have to do it in a very nonpartisan way. So, if you're environmental and there's, you know, you're talking about two issues and it's clear one candidate's, you know, and you only covered the environmental issues and it's clear one candidate is for your issues and one is opposed, that makes it very partisan. So that's why you have to cover a wide range of issues, which is why a lot of 501(c)(3)s don't do it because they don't want to be responsible for understanding and have knowledge of all those issues. But it is possible and you can do that.

Robyn ([09:53](#)):

Another factor to consider when you're doing a "get out the vote" initiative as a 501(c)(3) is most "get out the vote" initiatives are focused on a geographical area, right? Are you going door to door to educate that community about making sure they understand when the election is, you know, what the polling hours are, where the polling is? Can they give them a ride to the polls and bring them back? So, they're usually geographical focused. The key there is that you can't pick an area because it's predominantly one party focused or another, or because one area is predominantly conservative, or one area is predominantly liberal. You can, you, so you can't pick based on that, but you can pick your geographic area based on things like low income. It's an elderly, you know, there's a lot of elderly people that live in that community.

Robyn ([10:51](#)):

Um, maybe it's people of color in that community. So there are some things that you can choose, but you have to be really careful. So, let's say you've chosen this little community and you're going door to door. If your organization, you know, is leans one way or another personally, or the people that are working for you, the volunteers lean one way or another personally on their, in their voting preferences, they can't have that affect them when they go door to door. So, if, if there's a political sign in the front yard of a house and then next door, there's a different political sign in that yard, they have to go to both houses. They have to treat everyone equally, regardless. And they have to offer to take them to the polls

regardless. So, it has to be evenhanded and nonpartisan all the way through. So you shouldn't avoid a home because of a political sign or things like that.

Robyn ([11:55](#)):

You also need to train your volunteers, usually if volunteers are involved in these “get out the vote” initiatives and are doing a lot of this canvassing work, you have to spend time training your volunteers not to talk about politics. It's very difficult because they're there to educate people to vote. Well, if you come to a person's door and you're telling them about going to the polling place, what the hours are, here's a sample ballot, they're assuming that you want to engage in a political discussion too potentially, and you are not permitted to do that. So every, so the volunteers really need to understand that if somebody asks them who to vote for, what party to vote for, what party they represent, they simply have to say, “I'm here helping with, helping to do, educate people about their civic duty and voting.” “I'm not here to, to talk about politics or to, or to present a viewpoint. I'm just trying to educate you so that you can go out and vote.”

Robyn ([12:55](#)):

Um, and, and they're going to need to do some role playing so that they don't get caught up and do the wrong thing. It's important for them to know how to not answer questions. So that's one of, those are some of the, the risky sort of areas or things that you need to think about when you're going out to do these “get out the vote” initiatives and just really make sure that you're confident in your volunteers that are going out to help with this process.

Sireesha ([13:23](#)):

That is some really great insight. And in there, you also mentioned that while (c)(3)s can give voters rides to the polls, you mentioned there might be some restrictions around that. Can you talk to us a little more about those restrictions?

Robyn ([13:40](#)):

So, you can give a ride to people to the polls, but you have to be willing to give anybody a ride to the polls and you have to make sure that, like, you're taking them to the right polling place. Um, but, um, you want to make sure that you're doing it in a very evenhanded way and that, and that you're just transporting them there and transporting them home. You also need to make sure you're not, like, offering them lunch for doing it. So, like, “Hey, I'll take you to the polls. Afterward, we'll stop and I'll get you some lunch and bring you home.” That is illegal. That's paying for votes. So, you really cannot offer any kind of food or inducement of any kind to, to get someone to go to the polls and vote. In fact, in Georgia, they just passed a law or not just, but in the last year, passed a law that said that you can't even give people water or snacks when they're in line to vote. And sometimes the voting lines in Georgia can be hours and hours and hours long, but you still can't give people any kind of food or snacks in line. Even if you're wearing nonpartisan, you know, you're not wearing any partisan clothing or doing anything partisan, you still cannot do that. It's an inducement to vote under Georgia law.

Sireesha ([15:01](#)):

Wow. It's a good thing this next election is in November then, when the weather's not too hot.

Robyn ([15:06](#)):

Good point.

Sireesha ([15:08](#)):

So, my next question, Robyn, is about ballot measures. If there is a measure on the ballot that could impact a nonprofit's mission, what can a (c)(3) do? Can it remind people who are interested in their mission to "get out the vote" for, or against that specific measure?

Robyn ([15:31](#)):

So, ballot initiatives are really interesting because it's on the ballot, so you assume that it's political, but in fact, it's, it's really not. So, a ballot initiative is essentially legislation. And in this case, the voters are sitting in the place of the legislators. So not all states permit this, but a lot of them do. And basically, what it's saying is we're going to let the voters create the law. As opposed to the legislature of that state to create the law. And so, it's not what you would think of as political activity, it's now legislation and lobbying activity.

Robyn ([16:17](#)):

501(c)(3)s can lobby. There's rules about lobbying. They can't conduct a substantial amount of lobbying, but they can do an insubstantial amount and they can choose to fall under one of two different tests for lobbying, but they can also always lobby on issues that truly affect their mission. There has to be a really direct causal relationship to their mission, but they can lobby on those issues. So, so it's kind of separate and apart from this political activity issue. And we do have resources on lobbying activities at, at the Pro Bono Partnership of Atlanta's website. So perhaps you can include some links about lobbying there as well.

Sireesha ([17:08](#)):

Definitely. And Robyn, do you have any other tips for "get out the vote" initiatives?

Robyn ([17:15](#)):

You know, so we've talked about the fact that, you know, they have to, you, you really want to train your volunteers about what they're covering and what they're not covering. Talked about, you know, the, they can talk about the date of the election, the hours of voting precincts to vote, what's on the ballot in terms of a sample ballot, or a nonpartisan, you know, legislative card, something like that. They can also mention the initiatives, these referendums that are on the ballot, so they can educate about what is on the ballot in a nonpartisan way. They can take them there, take them home. So we kind of talked through all that.

Robyn ([17:57](#)):

The key thing is if you've got people driving, you've got special issues, right? So, if your volunteers are driving people on your behalf, you want to make sure you're checking their driving records, that your insurance is up to date, and that you've talked to your insurance broker as an organization to make sure your insurance will cover any issues that arise. You would probably go with their insurance first, but you can talk through that with their broker. But you also want to get a liability release from these volunteers because they're driving on your behalf in their capacity as a volunteer. The other thing you want to think about is: now you're driving individuals. So, you're going to this community and you're offering to drive people, or at least your volunteers are, you probably want them to sign some kind of release before they get into that volunteer's car because accidents happen every day. Um, and so that's probably one of the biggest additional risks out there. That's a very practical risk for nonprofits engaged in driving people to the polls.

Sireesha ([19:00](#)):

And finally, Robyn, do you have any additional thoughts for nonprofits who are thinking about other ways that they might get more political?

Robyn ([19:11](#)):

Yeah, so, well, I think civic engagement is important and sharing neutral information about candidates is, is essential. (c)(3)s do need to be careful. If an organization is controversial in some way, someone could report their activities, even if they are being neutral. So, you have to be extra careful and document and have more than one person there. But somebody could report their activities to the IRS, to the Georgia Secretary of State, to the Attorney General and even if you're doing everything right, you could be embroiled in a really lengthy audit that could take time and resources away from your organization's mission. So, if an important part of your mission is civic engagement, it makes perfect sense for you to participate in this. But if you're kind of a lightning rod 501(c)(3), you need to be super careful about what you're doing if you're going to engage in civil engagement.

Robyn ([20:07](#)):

Because if you're volunteer comes up to somebody's door and that person doesn't like that organization and thinks you're being political, they can videotape the conversation and send it to the IRS or to the Attorney General or Secretary of State and the person that's standing there talking to them might not even know they're doing it. So, you know, there's Ring doorbells everywhere. So, you do need to really be careful or whatever, you know, kind of doorbells, but the ones that videotape. So, you do need to make sure everybody's being trained carefully and be really careful about doing it. And if you're a lightning rod kind of organization that is polarizing in the community, you might want to think twice about conducting "get out the vote" activities.

Sireesha ([20:51](#)):

Robyn, this is all really great insight. Thank you for joining me today to answer these questions about civic engagement and "get out the vote" activities. I always love having these conversations with you, and we appreciate all you do for the clients of PBPA.

Robyn ([21:10](#)):

My pleasure. Thanks for having me.

Sireesha ([21:14](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.