



Connecting lawyers, nonprofits, and communities

October 10, 2013

**New Board of Elections Opinion Requires 501(c)(4)  
Organizations to Register as Political Committees Before  
Endorsing or Opposing Candidates**

While federal tax law prohibits 501(c)(3) nonprofit organizations from endorsing or opposing candidates for public office, it permits 501(c)(4) organizations to do so as long as that activity is secondary to the organization's primary purpose. However, any 501(c)(4) organization that endorses a candidate should be aware of a new opinion by the New York Board of Elections, stating that an organization that endorses a candidate for public office must first register as a political committee, even if the organization does not engage in any additional activity to support that candidate.<sup>1</sup>

The requirement to register as a political committee comes with significant obligations, including:

- The committee must designate a treasurer and bank account before receiving or spending any money or incurring any liabilities.<sup>2</sup>
- The treasurer must "keep detailed, bound accounts of all receipts, transfers, loans, liabilities, contributions and expenditures," whether or not those items are related to election activity.<sup>3</sup>
- The committee must report to the Board of Elections on contributions (including the amount, name, and address of person from whom it is received, and date of receipt) and expenditures (including the amount, name, and address of the person to whom it was made, and purpose).<sup>4</sup> The reporting requirement covers all of the organization's expenditures and contributions, whether or not they are related to an election.<sup>5</sup> However, it does not cover expenditures and contributions by a legally separate entity affiliated with the organization.
- Periodic reports are due twice a year, and reports are due more frequently around election time.
- The committee may not accept cash contributions in excess of \$100, and all expenditures in excess of \$100 must be in the form of a check.<sup>6</sup>
- The committee cannot accept contributions related to candidate elections in excess of statutory contribution limits, including a \$5,000 aggregate limit for corporate donors, a \$150,000 aggregate limit for individual donors, and specific limits applicable to individual candidates.<sup>7</sup>

501(c)(4) organizations that support or oppose candidates must comply with a number of other obligations, in addition to the state's Election Law.

- **Federal tax law** requires 501(c)(4) organizations to ensure that political activity is secondary to the organization's primary purpose; there is no bright line rule regarding precisely how much political activity they may conduct.<sup>8</sup>

- If the organization is a charity required to register with the **Charities Bureau of the New York Attorney General**, then it must report certain types of in-state and out-of-state political activity to the Charities Bureau on its annual financial report.<sup>9</sup> For a more complete description of this requirement, see Lawyers Alliance for New York, Legal Alert: New Disclosure Requirements for Communications That Support, Oppose or Mention a NY Candidate or Ballot Proposal, [http://www.lawyersalliance.org/pdfs/news\\_legal/Disclosure\\_Requirements\\_NY\\_candidates\\_Legal\\_Alert\\_June\\_2013\\_final.pdf](http://www.lawyersalliance.org/pdfs/news_legal/Disclosure_Requirements_NY_candidates_Legal_Alert_June_2013_final.pdf).
- Depending on where the election is held, there may be additional municipal disclosure requirements. For instance, the **New York City Campaign Finance Board** requires disclosure of certain political activity in connection with New York City elections.<sup>10</sup> For a more complete description of the NYC Campaign Finance Board requirements, see Lawyers Alliance for New York, Legal Alert: NYC Campaign Finance Board rules on disclosure of independent expenditures in NYC elections to take effect May 16, 2012, [http://lawyersalliance.org/pdfs/news\\_legal/Legal\\_Alert\\_CFB\\_Final\\_Rules\\_4-18-12.pdf](http://lawyersalliance.org/pdfs/news_legal/Legal_Alert_CFB_Final_Rules_4-18-12.pdf).

The Attorney General and NYC Campaign Finance Board rules require the disclosure of political activity but do not place limits on that activity.

*Lawyers Alliance staff are available to help qualifying nonprofits comply with the Internal Revenue Code, NY Election Law, regulations of the Attorney General’s Charities Bureau, NYC Campaign Finance Board regulations, and other regulations regarding political activity and lobbying. Please contact Senior Policy Counsel Laura Abel at (212) 219-1800 x 283 or visit our website [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. This alert is meant to provide general information only, not legal advice.*

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.

---

<sup>1</sup> New York Board of Elections 2013 Opinion #1 (citing NY Election Law Art. 14), <http://www.elections.ny.gov/NYSBOE/download/law/Opinions07292013.pdf>.

This requirement may surprise some organizations, because a 1978 Board of Elections opinion had stated that a labor union need not register as a political committee if it endorses a given candidate to the public, through a press conference or other media, “as long as the union does not solicit or expend funds in giving its endorsement.” Board of Elections 1978 Opinion #16.

<sup>2</sup> Election Law § 14-118.

<sup>3</sup> *Id.*

<sup>4</sup> Election Law § 14-102.1.

<sup>5</sup> Expenditures under \$50 and contributions aggregating \$99 or less from one person do not have to be itemized. *Id.* There is one other exception to the rule that all contributions must be itemized: a

---

political committee can limit its contribution reporting solely to those contributions made exclusively to promote the success or defeat of a ballot proposal if its spending on the ballot proposal constitutes: 1) less than \$5,000, and 2) less than 50% of the committee's total expenditures that year. Other than these exceptions, there does not appear to be an option to protect the identity of donors by segregating or earmarking their contributions.

<sup>6</sup> Election Law § 14-118.2.

<sup>7</sup> Election Law §§ 14-114(8), 14-116(2); NY State Board of Elections, Campaign Finance Handbook 28 (2013).

<sup>8</sup> I.R.S. Pub. No. 4221-NC, Compliance Guide for Tax-Exempt Organizations (2010), available at <http://www.irs.gov/pub/irs-pdf/p4221nc.pdf>.

<sup>9</sup> 13 NYCRR Part 91.6, available at <http://www.charitiesnys.com/pdfs/RevisedRegulations91.6.pdf>.

<sup>10</sup> NYC Campaign Finance Board, Rule 13-1 et seq., available at <http://www.nycfb.info/act-program/rules/index.aspx#top13>.