Office of the New York State Attorney General Letitia James

Non-Profit Challenges Helping nonprofits navigate evolving issues in the sector Part six: Navigating political limits and organizational changes

July 16, 2026

Overview

Federal Limits on Charities’ Political Activities

Certificate Amendment Requirements and Winding Down a Charity

Office of the New York State Attorney General Letitia James

This is general information for non-profits. Individual organizations should seek legal advice for their specific organization.

Lawyers Alliance FOR NEW YORK
Connecting Lawyers, Nonprofits, and Communities

Election Season Compliance for 501(c)(3) Organizations

Presented By : **Laura Abel**
Legal Director

Nonprofits & Democracy

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501(c)(3) organizations play vital roles in our democratic process

- Help people register to vote and get to the polls
- Educate voters about the candidates and fight disinformation
- Educate candidates about community needs
- Monitor elections
- Advocate for government to safeguard elections
- Support government elections personnel, election volunteers, and other nonprofits
- Engage in issue advocacy to educate policymakers & the public

501(c)(3) Status & Elections

Takeaways

- ✓Be careful not to help or oppose a particular candidate.
- ✓Make clear to everyone that your organization is not supporting any candidates or political parties.
- ✓IRS has guidelines for how to conduct each activity. Make sure you learn about them by talking to a lawyer or attending a training.
- ✓Know how much legislative lobbying your organization can engage in.
- ✓Exercise smart risk management around protests and law enforcement observation.

501(c)(3) Status & Elections

501(c)(3) organizations

- Cannot "participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office."
- Absolute prohibition.
- Violation can → lose tax exempt status.
- This ban is known as the "Johnson Amendment"

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501(c)(3) Status & Elections

Activities for 501(c)(3)'s to Avoid

- endorse candidates

VOTE FOR COLLINS !!

- contribute to candidates -- $, mailing list, nonpublic information
- grade candidates

A+ Jekyll
D Hyde

- ask candidates to sign a pledge
- reference status as candidate when criticizing/praising

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501(c)(3) Status & Elections

The ban covers federal, state & local elections

Mayor	Governor	President
Senator	Public Advocate	City Council

Not covered: confirmations & ballot initiatives

501(c)(3) Status & Elections

Enforcement & Religious Organizations

- The IRS has limited recent enforcement of the Johnson Amendment ban on election related activity by charitable organizations.
  - In *National Religious Broadcasters v. Bessent*, the IRS asserted "bona fide communications internal to a house of worship," including with its congregation in connection with religious services and via customary channels on matters of faith, are not prohibited political campaign intervention under current law.
  - The IRS stated that as early as this fall, "forthcoming guidance will provide clear, administrable standards for houses of worship. . ."
- The Johnson Amendment is still the law
- The IRS could start enforcing it against nonprofits whose activities this administration disfavors
- A next administration could also enforce it, and there's a 3-year lookback
- The certificate of incorporation, State laws and government and private grant agreements may also prohibit or limit political activity

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501(c)(3) Status & Elections

How to Avoid Contributing to a Candidate

- Don’t use organization funding or time to attend a political campaign event.
- If you are invited to a fundraiser involving an elected official, ask: “Is this a campaign-related event?”
- Know your rights: elected officials cannot require your organization to make a campaign donation in exchange for receiving government funding.
- Be careful about in-kind contributions:
  - Don’t provide nonpublic information
  - Don’t give free or discounted use of meeting space, other facilities, or equipment
  - Don’t let a campaign use your organization’s mailing list
  - Don’t require or allow staff to use paid time to help a candidate’s campaign

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Candidate Questionnaires & Voter Guides

Do

- Focus on civic engagement (not your advocacy work)
  - Include a wide range of issues (at least 3!)
- Send questions to ALL candidates & follow up
  - If no response, you can collect information from published sources, but make clear that you're doing this
- Make guide generally available to the public
- Use disclaimers: organization is non-partisan; voter guide is for informational purposes only and is not an endorsement of any candidate

Candidate Questionnaires & Voter Guides

Don't

- Rate the candidates
- Compare candidate's positions with your own
- Edit candidates' responses – set a word limit instead

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Candidate Appearance at Organization's Event

If inviting in capacity as a candidate (for example, a candidate forum):

– Invite all candidates or have a neutral threshold for participation

– Ask questions that cover a wide range of topics

– Don't ask candidates to agree or disagree with your position

If inviting in capacity as a current government official, send an email that:

– Makes clear reason for invitation

– Notes that it is not a campaign appearance

– Says that they should not solicit contributions or distribute campaign materials

****Either way, use a disclaimer: Our organization is nonpartisan and does not support or oppose any candidates for public office.**

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Issue Advocacy

Do

- Make sure organization has a real, non-electoral reason for your advocacy
- Document the non-electoral purposes in board minutes, resolutions, or organizational materials

Don't

- Start a new or special advocacy campaign timed around an election
- Focus on individual candidates – instead, focus on the substance of the issue

Personal Election-Related Activities

Everyone has a right to participate in the political process – even if they are affiliated with a nonprofit.

Don't

Use organizational resources:

- – Time -Computer/copier/printer
- – Money -Letterhead
- – Email -Mailing list

Do

- Have a policy on how to separate personal political activities from organization: should apply to volunteers too
- Use work title for identification purposes only
- Be clear that all political work is performed in personal capacity

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Summary: Election Season Activities

Know the rules

- **501(c)(3) cannot "support or oppose the election of a candidate for public office"**
- **total ban – can't do even a little**
- **but can do nonpartisan civic engagement and issue advocacy**

Compliance essentials

✓use disclaimers
✓adopt a policy on employees' personal political activities
✓train staff
✓don't model your activities on what political organizations are doing

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501(c)(3) Status & Lobbying

Yes, there is a ban on partisan political activity by 501(c)(3) organizations.

But 501(c)(3) public charities can engage in issue advocacy.

- There is a limit on the amount of legislative lobbying they can do. This is not a ban.
- You need to learn what counts as lobbying, and how much lobbying your particular organization is allowed to do
- It's worth figuring that out. Example: Organization with a $500,000 budget might be able to spend up to $100,000 on direct lobbying in a tax year & $25,000 on grassroots lobbying. *Ask a lawyer.*

Grants, Contracts, and Lobbying

Read the funding agreement carefully - it may:

- Prohibit the use of the funds for “lobbying” without defining the term
- Prohibit the use of the funds for lobbying to influence legislation
  – *Example: NYS Master K for Grants (Jan 2025) – Standard Terms & Conditions*
- Require a certification that the organization complies with lobbyist registration laws (which may or may not require your organization to register)
  – *Example: NY City Council Discretionary Funding*
- Require disclosure of any lobbying in connection with the award of that funding
  – *Example: some federal funding streams*
- Prohibit the use of the funds for partisan political activity

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Protests & Law Enforcement Observations

Increasing focus of federal scrutiny

- **National Security Presidential Memo 7**
- **Indictments of people participating in a Jan. 2026 protest at a Minnesota church (Feb. 2026)**
- **Long criminal sentences for people participating in a July 2025 protest at Prairieland ICE facility in Texas (June 2026)**
- **Indictments of 15 Minnesota ICE protestors (June 2026)**

The First Amendment still protects the right to protest and to observe federal law enforcement.

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Protests & Law Enforcement Observations

Risk management – things to consider in advance

- Adopt a policy setting out the scope of authorized activities. Document board approval.
  - Prohibit violence, threats of violence, and obstructing law enforcement.
  - Require compliance with all applicable laws.
- Train any staff and volunteers who will engage in those activities.
- Make sure the activity is consistent with the purposes in the Certificate of Incorporation.
- Know whether the organization's general liability policy and/or event insurance will cover the organization for this activity. Get additional insurance if necessary.
- Make reasonable risk assessments regarding employee well being. When appropriate, offer PPE and allow employees to stop work to avoid dangerous situations.
- Know your coalition partners: What are their policies regarding the conduct of this activity? Have an MOU committing all to nonviolence and to legal compliance.

Resources

Written materials

- **NY Charities Bureau, Guidance for Tax-Exempt Organizations on Political Activity and Lobbying (2025), https://ag.ny.gov/sites/default/files/regulatory-documents/PolActivityGuidance.pdf**
- **Lawyers Alliance**
  - FAQs on Nonprofits and Lobbying, https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofits_and_Lobbying_FAQ.pdf
  - Federal legal compliance resources https://lawyersalliance.org/federal-legal-compliance
- **Bolder Advocacy fact sheets on lobbying and election season activities www.bolderadvocacy.org**

Resources

Contact Lawyers Alliance

- **Ask a question about nonprofits and the law https://lawyersalliance.org/resource-calls**
- **Learn about how to become a client https://lawyersalliance.org/becoming-a-client**
- **Sign up for our legal alerts and training announcements https://lawyersalliance.org/mailing-list**

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Not-for-Profit Corporations
Purpose Amendments

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Amendments to Certificates of Incorporation

NY Not-for-Profit Corporations formed by filing of COI with the Department of State

- Name
- Corporate purposes
- Corporate form
- Address

Can be modified by filing:

- Certificate of Correction: solely for typos & other minor corrections
- Certificate of Amendment: extension of the originally filed Certificate
- Restated Certificate of Incorporation: similar to Certificate of Amendment; replaces the entire Certificate of Incorporation, useful to consolidate amendments

Minor changes (eg address) do not require OAG approval. Amending charitable purposes require OAG authorization before filing with DOS.

Charitable Purpose Amendments

- Adding new or adjusting existing purposes
  - Provider of mental health services expanding into substance use programs
- Proposing new complementary purposes
  - Domestic violence prevention advocates plan to expand into residential services
- Conforming purposes to account for evolution of operations over time
  - Organization formed in 1926 to “help the poor’ provides specifics to advance such purposes in 2026
- Modifying language to address “illegal” purposes
- Modernizing obsolete or problematic language

Other Common Purpose Amendments

- Alternative to Affiliation or Merger (Dissolution & Transfer)
- Transitioning Noncharitable Nonprofits to Charitable Organizations
- Purpose-Related Geographic Limitations
- Purpose-Related Governance

Amendment Takeaways

- Always follow OAG guidance documents
- Easier to form a new nonprofit correctly than address deficiencies by filing a Certificate of Amendment
- Changing Bylaws is not a substitute for amending COI
  - COI always preempts By-Laws
- Supporting documents:
  - Affidavit of Use
  - Governing Body Resolution

Certificate Amendment Requirements

Lori Moses, AAG, Charities Bureau

Certificate of Incorporation Amendments

- Why does the Attorney General have to be involved.
- “ Every Certificate of amendment of a charitable corporation which seeks to change or eliminate a purpose not enumerated therein, shall have endorsed thereon . . the approval of either the (A) the attorney general or (B) a justice of the supreme court in which the corporation is located. N-PCL § 804(a)(ii)(A)
- Reasons a charity might amend its Cert of Incorporation:
- change purpose; add a sole member
- What might be a “red flag” for us?
  - Missing governmental approvals
  - Indirect transaction/transferring powers to new member/parent

OAG Required Documents

- Corporate Documents
  - Copy of the original COI and any prior amendments
  - Bylaws
- Government Approvals
- Proposed COI or Restated Certificate
- Affidavit of Use
  - Organization current assets must be used for its current purposes, and future assets will be used for future purposes.
  - Signed by an officer or director
  - Statement as to whether the corporation has ceased operations or intends to transfer any assets post amendment.
- Resolutions
  - Board of Directors
  - Members, if any

Not-for-Profit Corporations Asset & No Asset Dissolutions

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Not-for-Profit Corporate Dissolutions: No Assets Versus Assets

- **No Assets Dissolution**: When a charity has no assets remaining for distribution other than a statutory reserve for wind-up expenses.

- **Assets Dissolution**: When charitable assets remain after payment of liabilities & dissolution expenses. Charity must provide plan for remaining assets, proposed beneficiaries and how they will be distributed.

Dissolution Factors — Financial Sustainability

- **Insolvency**: Inability to make timely payments on debts
  - Cash-Flow Insolvency: Nonprofit has valuable assets (often property equity or restricted fund balances) that cannot be used for payment purposes
    - *Common Causes*: Unanticipated business expenditures, costly repairs, maintenance or capital improvement projects
    - *Resolution*: Greater likelihood of success through negotiation as charity ultimately has the financial resources necessary to address debt considerations
  - Balance-Sheet Insolvency: Nonprofit doesn't have assets to pay all debts.
    - *Common Causes*: Unsustainable business model
    - *Resolution*: Not easily resolved, requires discharge of debt in an Involuntary Dissolution or Bankruptcy, creditor forgiveness of debt or Director bail-out

Dissolution Factors – Additional Concerns

- **Catastrophic Funding Loss**: Nonprofit without diversified funding streams
  - Loss of government license, primary funding contract or major grant funds
- **Leadership Vacuum:** inability to recruit & retain talented stakeholders
  - Founder retires w/o succession plan or even at odds with future stakeholders
- **Declining Demand & Interest:** programs lack relevance revenue declines—stakeholders move on
- **Mission Accomplished:** Nonprofit successfully advances its charitable purposes without further reason to continue
- **Merger or Affiliation**
  - Dissolution & Asset Transfer dictate corporate wind-down

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Dissolution Takeaways

- Dissolution Does Not Mean Failure!
- Don’t wait until it’s too late. Dissolution takes time, effort & resources
- All Debts must be fully reconciled to consider voluntary Dissolution
- All Assets must also be appraised, declared & properly disposed
- Focus on Correctly Identifying Restricted Assets: donor imposed versus board designated, temporary versus permanent, etc.
  - *Cy Pres* Doctrine & Restricted Gifts: Anticipate heightened OAG scrutiny
  - Verifiable records are generally a challenge to locate & confirm

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NYCON Resources

Legal Services

- Nonprofit legal assistance, including incorporations, amendments, dissolutions, governance & compliance, bylaw and personnel policy reviews, severance agreements and more. Questions: mmaniccia@nycon.org

Leadership Development

- Executive Director Leadership Retreat (August 19-21) and Executive Coaching Services

Financial Management

- Camp Finance , October 7-8

Ongoing Learning

- Training for staff and board members Upcoming Events - New York Council of Nonprofits

Membership

- Technical assistance, expert guidance, exclusive resources, and discounts on programs and events!

nycon.org · info@nycon.org · (800) 515-5012

Asset and No Asset Dissolutions

Lori Moses, AAG, Charities Bureau

Dissolutions: How to Dissolve a Charity

- What do we look for?
  - Reason for Dissolution
  - Members/No members
- Where did the money go?
  - **Foundations**
    - Money spent in the ordinary course of business
  - **Nonprofit Organizations**
    - Money spent unusually – unusual salaries, affiliate organizations, related party transactions

Two Ways to Dissolve

Under Nonprofit Corporation Law (N-PCL)

- Article 10: Nonjudicial Dissolution
  - Dissolution without Assets
  - Dissolution with Assets

- Article 11: Judicial Dissolution
  - For Nonprofits who have more debts than assets
  - AG Action for dissolution under NPCL 1101

Dissolution without Assets

Finances

- Per N-PCL allowed to have $25,000 for wind up fees, including liabilities that do not exceed $10,000
- Current financial statement for at least 3 years and filed 990s, if any

Petition

- Under penalties of perjury, a statement that the organization has no assets

Plan

- Statement that organization has no assets

Dissolution with Assets

STEP 1

- Assets to distribute to other nonprofit organizations
  - 1 or more nonprofit organizations
  - Restricted assets
- Choosing a nonprofit
  - substantially similar purposes
- Petition
- Recipient Affidavit
  - Purposes
  - 501c3
  - Registered
- Plan
  - Amounts to be distributed

STEP 2

- Petition

Choosing a nonprofit

<u>Follow the Cy Pres doctrine</u>

- From the French: *cy pres comme possible (as close as possible)*
- Provides direction when the settlor's original charitable purpose becomes impracticable or impossible

Choosing a Nonprofit: Substantially Similar Organizations

Quasi cy pres

- *In re Multiple Sclerosis Service Organization (NY Court of Appeals, 1986)* established criteria for distribution of assets under the Not-for-Profit Corporation Law of a dissolving corporation to charities with "substantially similar activities."

Factors include:

- The source of the funds to be distributed, whether from contributions, a will or trust instrument
- The purposes of the corporation as stated in its certificate of incorporation
- The activities in fact carried out and the services actually provided by the corporation
- The relationship of the purposes and activities to the proposed distributees

OAG Required Documents

- **Registration Requirements** – CHAR500s (up-to-date for last 3 years)
- **Cover Letter**
  - Contact Information for Attorney or Individual Submitting the Petition
- **Petition**
  - When incorporated
  - Names and addresses of Board members
  - Why are you dissolving?
- **Corporate Documents**
  - Certificate of Incorporation and any amendments
  - Bylaws
- **Financial Reports (At least 3 years of financial reports)**
- **Resolutions**
  - Board of Directors
  - Members, if any
- **Any Required Governmental Body and Officer Approvals**
- **Plan of Dissolution** (Petition to Attorney General for Approval of Certificate of Dissolution)
- **Certificate of Dissolution**

Resources

- Lawyers Alliance for New York
- OAG Questions - Questions.transactions@ag.ny.gov
- Guidance docs from our website
    - Procedures for Forming and Changing a New York Not-For-Profit Corporation
    - Voluntary Dissolution of Not-For-Profit Corporations with No Assets
    - Voluntary Dissolution of Not-for-Profit Corporations with Assets

Contact us:

Office of the New York State Attorney General

www.ag.ny.gov

Charities Bureau Email (Transactions):

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518-776-2146

Charities Bureau Website

https://ag.ny.gov/resources/government-organizations/charities-nonprofits-fundraisers/transactions

Charities Bureau Email (General Questions)

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