

Setting the Record Straight:

How Your 501(c)(3) Can Distribute Voting Records or Legislative Scorecards

Distributing Voting Records Is Permissible

Voting records, sometimes referred to as legislative scorecards, are compilations of votes cast by incumbent legislators on bills or ordinances. Unlike voter guides, voting records focus on the legislative votes of incumbents, not positions of candidates – even though many incumbents in the legislature may also be candidates for reelection or seeking some other office. Voting records provide constituents with information about how their representatives performed, and can be a critical part of a lobbying campaign. For example, a scorecard can help an organization and the public target lobbying efforts on legislators who have historically voted in favor of, or against, the organization’s positions.

The IRS has provided guidance for how 501(c)(3) organizations can distribute these guides both to the public and to a more limited audience. Each of these scenarios is described below. If the organization’s scorecard falls outside of the descriptions below, the IRS will consider all of the facts and circumstances to determine whether the voting record was biased or otherwise crossed the line into support or opposing candidates. For example, it could indicate campaign intervention if a charity were to significantly increase distribution of its voting record in election years.

Voting Records Distributed to the Public

The IRS has long advised that 501(c)(3) nonprofits can distribute voting records or legislative scorecards to the general public under the following circumstances (which the IRS calls a “safe harbor”):

- The charity distributes the voting record regularly (typically at the end of each legislative session) – the organization probably should not distribute the guide for the first time in an election year;
- Votes of all incumbent legislators are included, regardless of the legislator’s views – the organization should not reference whether any of the legislators are candidates for office or which legislators are up for reelection;
- It addresses a wide range of legislative subjects (the organization can partner with other organizations to ensure the scorecard addresses sufficient subjects);
- The scorecard does not editorialize or comment on specific votes or voting patterns of any legislator; and
- The organization avoids any explicit or implicit approval or disapproval of any incumbent’s voting record in the content or format of the publication.

Voting Record Distributed Only to the Organization’s Members

In one situation, the IRS found a charity did not support or oppose a candidate for office when it distributed a scorecard under the following circumstances:

- The voting record was distributed only to a few thousand people nationwide, or to the organization’s “members” (including individuals who are frequent volunteers and regular donors);
- The scorecard was not targeted in terms of time or geography to indicate electoral influence;
- It addressed only legislative votes on a narrow set of issues of interest to the organization;
- The organization indicated how it thought the incumbents should have voted on the issues;
- The publication did not identify which incumbents were also candidates, did not refer to the election, and did not endorse or reject any incumbents or their overall qualification for office; and
- The scorecard pointed out the limitations of judging an incumbent on a few selected votes.

Tips for Foundation Funders

Both public and private foundations should feel comfortable funding their grantees to develop legislative scorecards. Both types of foundations can even create scorecards themselves, as an educational tool for their grantees, the public or their members.

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