

Election-Season Activity for 501(c)(3)s

Tim Mooney, Senior Counsel





- National association of 120 organizations.
- Committed to progressive values and the creation of an equitable, just, and free society.
- Advocates for a federal judiciary that advances core constitutional values, preserves human rights and access to the courts, and adheres to the even-handed administration of justice for all Americans.
- The leading authority on the laws governing nonprofit advocacy.

501(c)(3)
Public Charities

501(c)(4)s,
501(c)(5)s, 501(c)(6)s

527 Political
Organizations

Examples



Tax
Treatment

Tax-exempt
Contributions
tax-deductible

Tax-exempt

Tax-exempt

Lobbying
Activities

LIMITED

UNLIMITED

RARE AND
USUALLY TAXABLE

Electoral
Activities

CANNOT SUPPORT OR
OPPOSE A CANDIDATE
FOR OFFICE. MUST BE
"NONPARTISAN."

SECONDARY ACTIVITY

USUALLY SOLE ACTIVITY

501(c)(3)s can be active participants in
election season



501(c)(3)s cannot support or
oppose **candidates**
running for **public office**



Facts and Circumstances Analysis

- Some communications become riskier the closer to an election
- Context matters, intent does not



501(c)(3) Election-Related Activity

- Voter registration and get-out-the-vote (GOTV)

- Voter protection

Rules of the Game Part 1
January 28

- Issue advocacy
- Voter education
- Candidate education

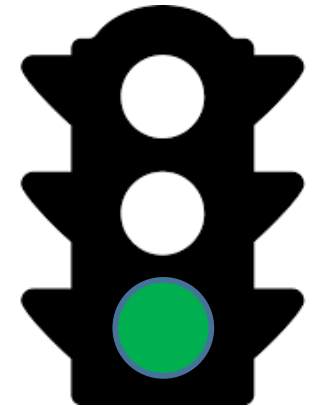
Guidelines during election season

- Focus more on issues than criticizing/supporting people that are running
- Avoid talking about issues in a way that it seems like a candidate's qualifications
- Avoid referring to voters or the election
- The closer to the election, avoid identifying candidates by name or image
- Disclaimers are sometimes helpful

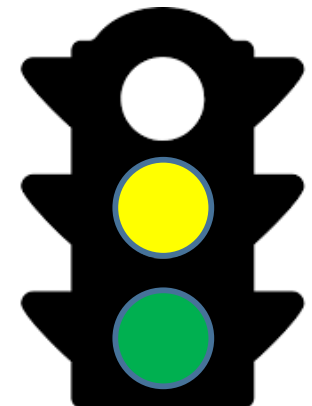


Conservation Lands Foundation @ConservationLF · Jan 13

Senators [@RonWyden](#) and [@SenJeffMerkley](#) have introduced legislation to permanent the Owyhee region of Oregon. One special attraction in this high desert: The 750 mile Oregon Desert Trail. Read more in [@ThatOregonLife: bit.ly/2N4edeQ](#) #WildForTheOwyhee #publiclands



January 2020



October 2020



Conservation Lands Foundation

@ConservationLF



RT [@RepDebHaaland](#): [#BearsEars](#) & Grand Staircase Escalante are sacred ground. The Trump administration is attacking our communities and didn't consult Tribes when they shrunk our public lands.



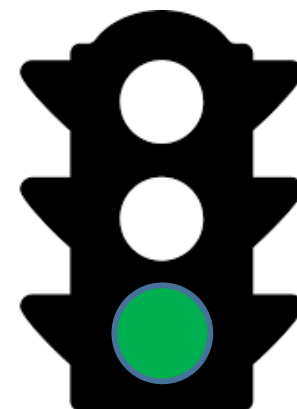
Rep. Haaland Probes Trump Admin Official Lack of Tribal C...

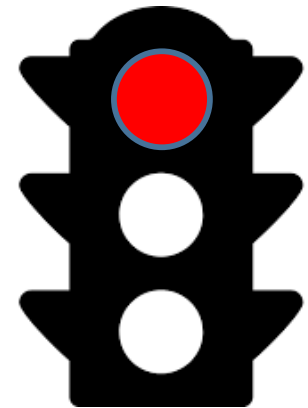
Rep. Haaland Probes Scott Cameron, Principal Deputy Assistant Secretary of the Interior for Policy, Management, ...

[youtube.com](#)

6:05 PM · Feb 6, 2020 · [Hootsuite Inc.](#)

4 Retweets **13** Likes



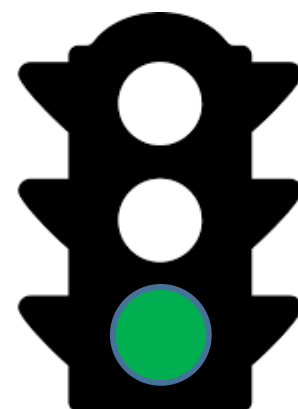
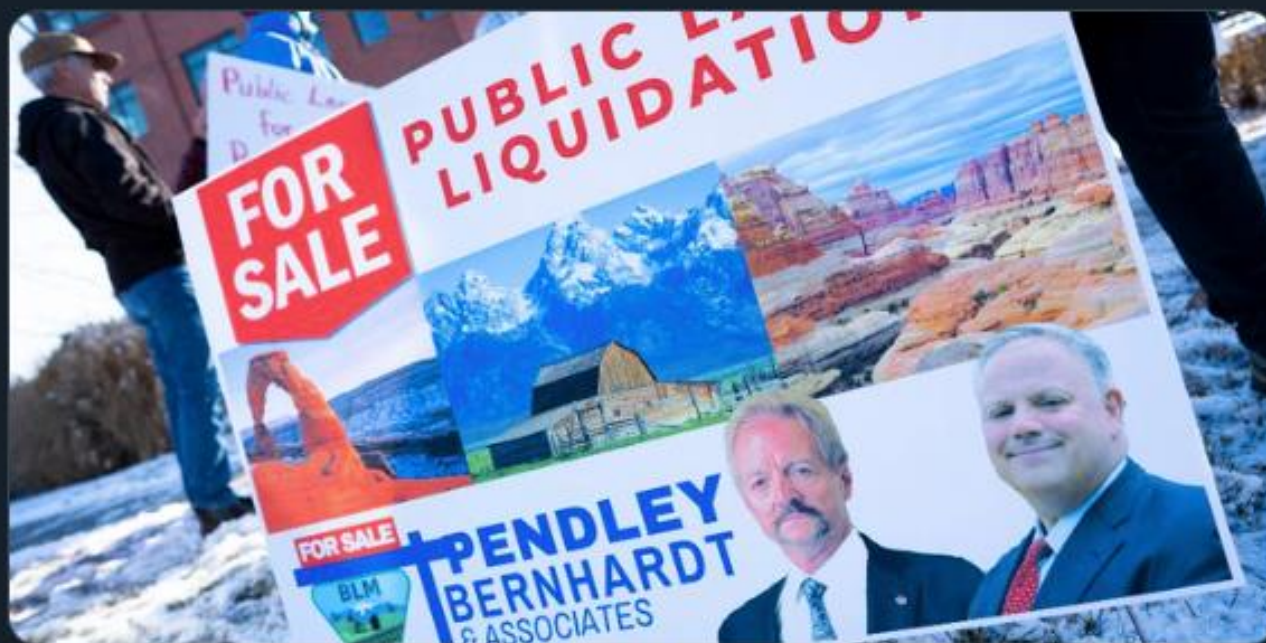




Conservation Lands Foundation

@ConservationLF

Pendley, Bernhardt & Associates may not be a real estate company, but they are using their positions to sell off our [#PublicLands](#). Activists held an "open house" protest in [#GrandJunction](#) to remind [@Interior](#) their responsibility is to the American people, not the highest bidder!



Social Media



File under, “should go without saying” but...

Rules that apply to
print and verbal
communications also
apply online.

Retweets, likes and links



- Be sure you know what you're liking, retweeting and linking to. The IRS considers everything you directly link as part of your message.
- Be particularly careful linking to non-(c)(3) organizations



The Reflective Democracy Campai...

@WhoLeadsUs

Follow



Reflective democracy is on the rise. See you
at the polls!

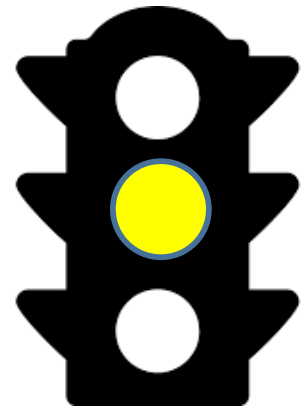


A day before the election, some results are clear: The next Congress will be y...

The changes are mostly confined to Democrats, however, with Republicans in Washington largely reflecting the white voters of their party.

washingtonpost.com

7:50 AM - 6 Nov 2018



Following and friending

- Be mindful of following and friending non-(c)(3) organizations
 - Organizations that do non-electoral advocacy are probably ok
 - Organizations that are purely partisan are probably not ok
- Official accounts versus candidate accounts
 - Ok to follow/friend a lawmaker's official account
 - Very risky to follow a candidate account



Elizabeth Warren ✓

6,531 Tweets

**WE WILL
REBUILD THE MIDDLE CLASS**



...

Follow

Elizabeth Warren ✓

@ewarren

U.S. Senator, former teacher, and candidate for president. Wife, mom (Amelia, Alex, Bailey, @CFPB), grandmother, and Okie. She/her. **Official campaign account.**

📍 Massachusetts 🔗 ewar.ren/chip-in 📅 Joined August 2011

508 Following **3.4M** Followers



Followed by Racism WatchDog 🎃, Sally Yates, and 86 others you follow



Elizabeth Warren ✓

4,755 Tweets



...

Follow

Elizabeth Warren ✓

@SenWarren

U.S. Senator, Massachusetts. She/her/hers. **Official Senate account.**

warren.senate.gov Born June 22 Joined November 2012

493 Following **5.5M** Followers



Followed by Mueller, She Wrote Podcast, Susan Rice, and 73 others you follow

Tweets

Tweets & replies

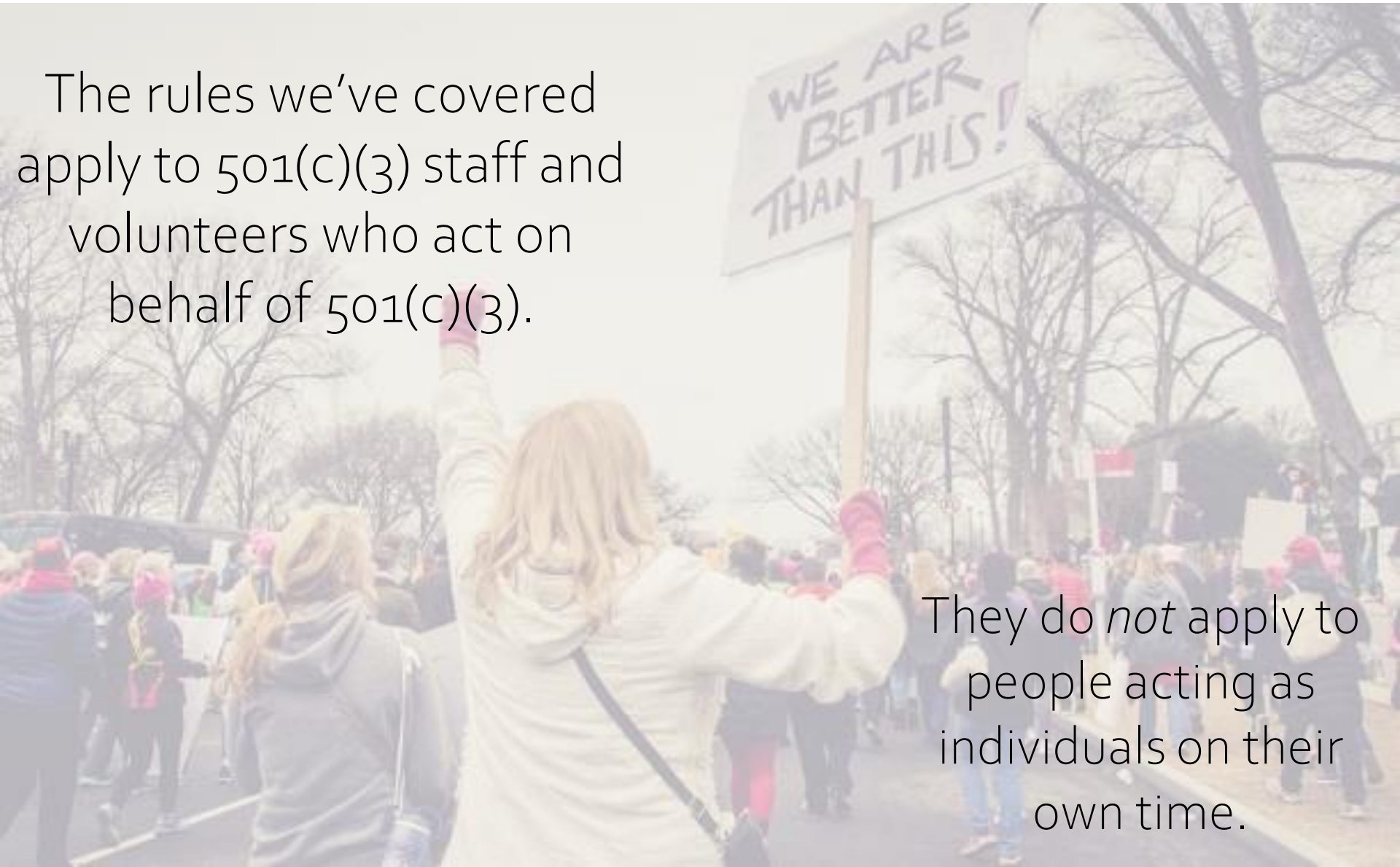
Media

Likes

Personal partisan activity

The rules we've covered apply to 501(c)(3) staff and volunteers who act on behalf of 501(c)(3).

They do *not* apply to people acting as individuals on their own time.



Personal partisan activity

1. Don't use your organization resources (staff time, email, copier, etc.) or
2. Distinguish yourself as an organization representative and you as an individual.
3. Use disclaimers as appropriate:

"Organization name for identification purposes only"

"I'm not representing my 501(c)(3) right now. I'm at this event as a private citizen."

4. Remember which hat you have on and when.



501(c)(3) Election-Related Activity

- Voter registration and get-out-the-vote (GOTV)
- Voter protection
- Issue advocacy
- Voter education
- Candidate education

Voter Education

- Voter Guides
- Candidate Debates



Candidate Questionnaires

- Broad range of issues
 - IRS – Too easy to make any candidate look good or bad when focusing on a single issue
- How broad?
 - Position on one issue should not suggest position on another
 - Several issues – four? five? more?
- Unbiased questions
- No pledges
- Give to all candidates



Union County Board of Freeholders

- What are the three most important issues facing Union County?
- Drug Rehabilitation is in the news. What should Union County do to assure treatment for its citizens?
- Accessibility and responsiveness to the public is always very important to the voters. How do you propose to assure that?

Voter Guides

- Present candidate responses equally
- Similar format
- No editing responses



Bette Jane Kowalski
(Dem)
Freeholder



Peter Kane (Rep)
President - Marist High
School



Biographical Information

Website www.ucnj.org

Website www.kane4freeholder.com

What are the three most important issues facing Union County?

Bette Jane Kowalski:

1. Transportation: Union County has grown, with new businesses and residences. But our transportation system has not kept up. As a trustee of the Raritan Valley Rail Coalition, I have been meeting with residents and with NJ Transit to get better

Peter Kane:

The single most important issue is the total elimination of all County government. Connecticut and Rhode Island have no county government. Massachusetts has eliminated county government over the last several years.

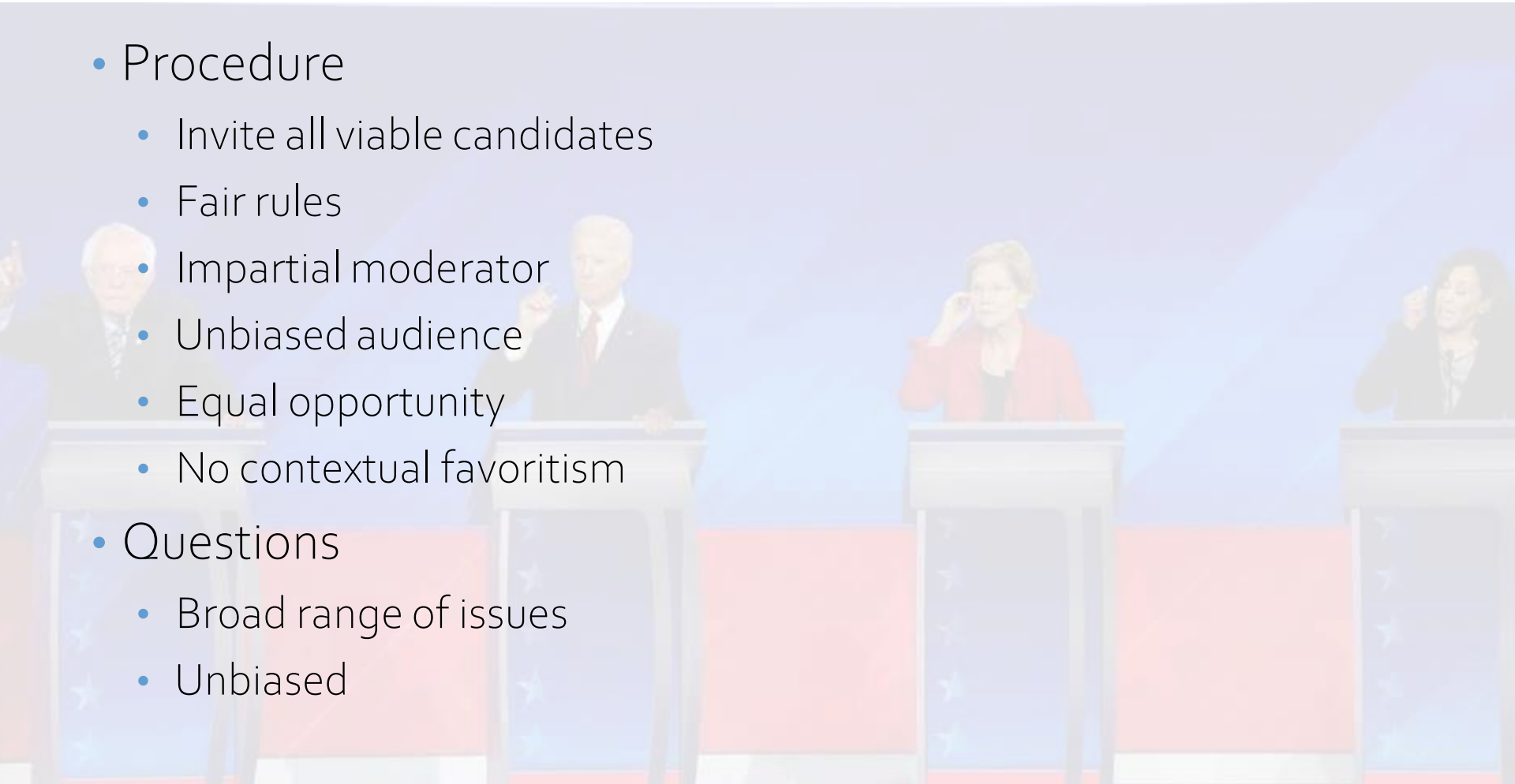
Voter Education

- Voter Guides
- Candidate Debates



Candidate Debates & Forums

- Procedure
 - Invite all viable candidates
 - Fair rules
 - Impartial moderator
 - Unbiased audience
 - Equal opportunity
 - No contextual favoritism
- Questions
 - Broad range of issues
 - Unbiased



Debate question topics

- Broad range of issues?
 - Climate change
 - Food safety
 - Localizing food
 - Public health
 - Labor issues
 - Trade
 - Corporate influence
 - Immigration
 - Diversity and racial injustice
 - Farm income
 - Economic issues
 - Organic rules



Example question

Producers in NH need access to legal labor. What kind of immigration policies can give producers assurance that they will be able to have the kind of labor they require to run their business effectively?



- Not biased toward any candidate or party
- Doesn't suggest a correct answer
- Isn't phrased in a way that obviously pits candidates against each other in a way that looks like any organization or the coalition supports one candidate over another
- Open-ended to elicit a long-form response rather than a binary answer (those sometimes appear biased for or against candidates based on whether they agree with you)

Non-candidacy events



- Invitations extended to candidates for reasons *unrelated* to their candidacy
 - Awards
 - Policy updates
- Avoid mentioning candidacy
- Don't time to coincide with election
- No equal opportunity required
- Explain ground rules to candidate in writing

501(c)(3) Election-Related Activity

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Candidate education

- You can educate candidates on your issues
- Offer the information to all viable candidates
- Do not to create original information any candidate
- Do not republish anything from a candidate or campaign





Transition team advocacy

- It's ok to
 - Educate transition teams on issues important to your organization
 - Recommend transition team members
 - Recommend people for key positions (cabinet, etc.)
- Be mindful of lobbying rules
 - Some issue advocacy may count as lobbying
 - Some advocacy may fall under exceptions if presented properly

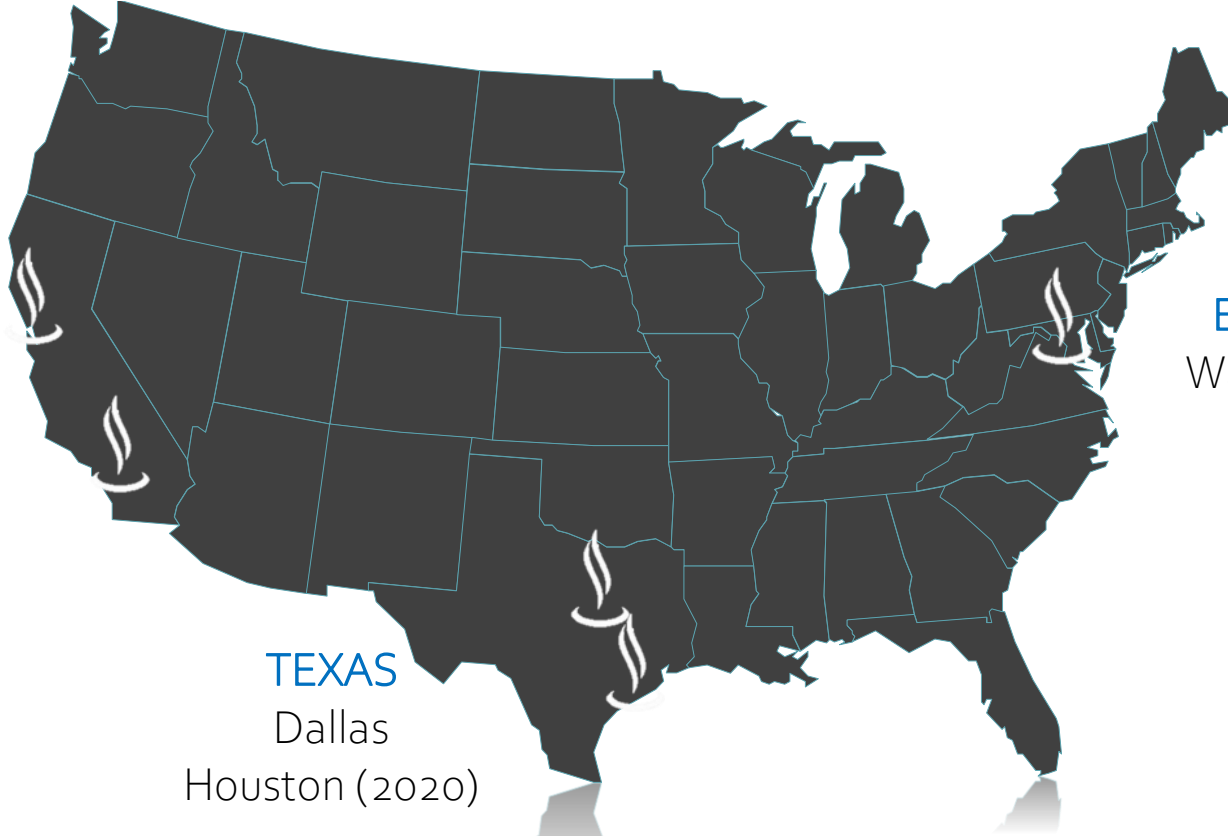


BOLDERADVOCACY

An initiative of Alliance for Justice

WEST COAST

San Francisco
Los Angeles



EAST COAST

Washington, DC

TEXAS

Dallas
Houston (2020)

866-675-6229

advocacy@afj.org

bolderadvocacy.org

@AFJBeBold | @AFJTim

facebook.com/BolderAdvocacy



Questions?

