

## Grant Space –A service of the Foundation Center Knowledge Base

### Q: Can nonprofits engage in advocacy or lobbying efforts?

A:

In general, [according to the IRS](#), "no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as *lobbying*). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status."

Whether a 501(c)(3) nonprofit's activities constitute a "substantial part" of their overall activities is ultimately up to the IRS to decide on a case-by-case basis. The IRS makes its determination based upon the amount of time spent (by both volunteers and staff), as well as the amount of money expended for such activities. Organizations that fail to meet the [substantial part test](#) and/or the [expenditure test](#) are at risk of losing their tax-exempt status and may be subject to excise taxes.

Keep in mind that 501(c)(3) nonprofits are strictly prohibited by the IRS from participating in campaigns for (or against) political candidates to public office. The [IRS page on political activities](#) explains this rule more thoroughly.

You will need to seek counsel from a legal consultant in the event that your organization has specific legal questions pertaining to these federal rules. For more information on locating legal help for your nonprofit, please see our Knowledge Base article, [Where can I find technical assistance or a consultant for my nonprofit?](#)

Selected resources below may also be helpful.

#### Web Sites (\* indicates staff pick)

- [\\* Center for Lobbying in the Public Interest](#)

CLPI works to promote nonprofit advocacy and create systemic change

- [\\* Introduction to Lobbying by Public Charities | Nonprofit Law Blog](#)

General Rule: No substantial part of the activities of an organization described by IRC Section 501(c)(3) may be the carrying on of propaganda or otherwise attempting to influence legislation.

- [\\* Lobbying Rules | Independent Sector](#)

The resources on this page explain what is considered lobbying, how much lobbying a 501(c)(3) organization can do, and whether an organization that does federal lobbying needs to register with Congress and follow Congressional gift rules.

- [\\* Lobbying | IRS](#)

In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

- [\\*Citizens United: What Now? | Alliance for Justice](#)

Alliance for Justice is committed to providing nonprofits with the information needed to navigate the post Citizens United legal landscape.

- [Can nonprofits engage in lobbying activities? | BoardSource](#)

All nonprofits are encouraged to be active advocates of their mission. However, the IRS allows 501(c)(3)s to engage in lobbying as long as it is not a "substantial part" of their activities.

- [Center for Non-Profits | Non-Profits CAN Lobby](#)

Knowing what constitutes lobbying under the law, and what the limits are, is the key to being able to lobby legally and safely. This article represents a vastly simplified summary of some of the laws and regulations governing charitable lobbying.

- [How Can Foundations and Nonprofits Participate in Advocacy and Lobbying? | Donors Forum](#)

Nonprofits and Foundations play a vital role in the development and implementation of public policy to promote an informed, healthy and strong democratic society. Both foundations and nonprofit organizations may engage in advocacy and lobbying but must be aware of the limitations of each activity.

- [How to Take a Public Policy Stand, with sample criteria | Blue Avocado](#)

Includes: Sample procedure for how organizations take stands; a questionnaire that one organization uses when asked to sign onto letters; and links to more information.

- [Independent Sector | Advocacy Materials](#)

Use these documents as reference materials and leave behinds when meeting with elected officials. Download and print the materials to bring to your meeting, and share them with your members and affiliates.

- [Lobbying | Alliance for Justice](#)

The amount of lobbying a nonprofit organization can engage in depends on how the nonprofit is classified. 501(c)(3) organizations can engage in a limited amount of lobbying, 501(c)(4) organizations can engage in an unlimited amount of lobbying, and political organizations may make very limited lobbying expenditures, but these expenditures may be subject to tax if not furthering political purpose.

- [Measuring Lobbying Activity: Expenditure Test | IRS](#)

Organizations other than churches and private foundations may elect the expenditure test under section 501(h) as an alternative method for measuring lobbying activity.

- [Measuring Lobbying: Substantial Part Test | IRS](#)

Whether an organization's attempts to influence legislation, i.e., lobbying, constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case.

- [Nonprofit Advocacy | National Council of Nonprofits](#)

At its core, this portion of our website is about democracy. When nonprofits engage in advocacy and lobbying activities, they can advance their individual missions.

- [Nonprofits and Lobbying: Yes, They Can! | American Bar Association](#)

When many people think about nonprofits and lobbying, they might think of a relationship like oil and water: they don't mix. There is a widespread perception that nonprofits cannot lobby, or if they do lobby, they are exploiting some kind of legal loophole.

- [Online Marketing Nonprofit Benchmark Index Study | Convio \(48 pages, PDF\)](#)

Online giving is the fastest growing fundraising channel for nonprofits, while online engagement and legislative advocacy are assuming an expanded role in the sector, based on data from nearly

600 nonprofits with 2010 fundraising revenue totaling more than \$1.15 billion in this annual study from fundraising software provider Convio. Published March 2011.

- **Prohibitions on Political and Legislative Activities | Citizen Media Law Project**

Explains the IRS regulations prohibiting 501(c)(3) nonprofit organizations from engaging in certain political activities.

- **The Law Office of Gene Takagi: Nonprofit Law Essentials | Lobbying**

IRC §501(c)(3) provides that no substantial part of the activities of an otherwise qualified organization may be the carrying on of propaganda or otherwise attempting to influence legislation (i.e., lobbying).

- **The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations | IRS**

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.

[Source: Grant Space –a Service of the Foundation Center

[http://grantspace.org/Tools/Knowledge-Base/Nonprofit Management/Accountability/Lobbying](http://grantspace.org/Tools/Knowledge-Base/Nonprofit%20Management/Accountability/Lobbying) ]

## **Lobbying and the Law for Nonprofits under section 501(c)(3)**

**Lobbying can be an effective means through which a nonprofit can achieve its mission**

- Lobbying is a form of advocacy that focuses on changing laws that affect individuals' lives and issues communities care about.
- Lobbying is an appropriate way to educate and even influence government and has resulted in many important policies from clean air, civil rights, labor laws, foster care and recognition for arts and culture.

### **Is lobbying legal?**

YES! Lobbying by charitable nonprofits – tax-exempt under section 501(c)(3) of the Internal Revenue Code – is absolutely legal.

## What do I need to know to follow the IRS rules for lobbying by 501(c)(3) s?

Organizations have a choice between two sets of rules to follow. They can choose either the Substantial Part Test or the Expenditure Test, also known as the 501(h) election.

### The Choice: Substantial Part vs. Expenditure Test

#### Substantial Part

Allowable amounts of lobbying expenditures are not clearly defined

A single year violation may result in the loss of tax-exempt status

Determining whether an issue may affect the existence, nature, powers, or tax-exempt status of your organization is a key factor in deciding if something is lobbying. This determination is subjective and open to interpretation by IRS auditors.

IRS requires detailed descriptions of a wide range of activities related to lobbying

#### Expenditure Test- 501(h)

Simple formula defines dollar amount allowable for lobbying expenditures

A four-year violation may result in the loss of tax-exempt status; a single year violation is not enough to impact tax-exempt status.

The importance or relevance of an issue is not a factor in measuring permissible lobbying activities

The only IRS requirement is to report how much was spent on lobbying and the total amount spent

on grassroots lobbying.

To sign up for Expenditure Test, you only have to file the simple one-page IRS election form (5768) one time.

<http://www.irs.gov/pub/irs-pdf/f5768.pdf>

[see sample IRS form 5768 \(PDF\)](#)

**Will IRS “red flag” a 501(c)(3) for an audit if it elects 501 (h) Expenditure Test?**

Absolutely not and the IRS has gone on record to that effect. The IRS *recommends* non-profits elect to go with the Expenditure Test.

**How much can my organization spend on lobbying under the Expenditure Test?**

A generous amount:

20% of the first \$500,000 of annual expenditures

15% of the next \$500,000;

And so on *up to* \$1 million a year

**What about grassroots lobbying expenditures?**

Charitable nonprofits may spend ¼ of the total amount of their lobbying budget on grassroots lobbying.

Sample budget:

ABC charity has annual expenditures of \$250,000.

20% of \$250,000= \$50,000 = Direct lobbying limit

25% of \$50,000 = \$12,500 = Grassroots lobbying limit

Nonprofits can spend a significant amount on lobbying under the Expenditure Test.

### **How do I keep track of lobbying expenses for reporting purposes?**

It is important to track employee time, supplies, postage, travel, and any other related expense by date and activity.

[see sample Lobbying Activity Reporting Form \(PDF\)](#)

### **May nonprofits use federal funds to lobby?**

No. Except in certain situations, federal grants cannot be used to lobby on legislative matters at the federal or state levels.

Federal contract funds cannot be used to lobby at the federal, state or local levels.

Federal funds also cannot be used for electioneering purposes.

### **May nonprofits use private foundation funds to lobby?**

Yes. Nonprofits may use “non-earmarked” or general-purpose funds to lobby.

However, private foundations cannot earmark grant funds for lobbying.

Community foundations can earmark grants for lobbying (they are exempt under 501(c)(3) and not private foundations).

### **What is direct lobbying?**

Direct lobbying is when an organization attempts to influence specific legislation by stating its position or urges a legislator to support, oppose or otherwise take action on a bill or proposed legislation.

Direct lobbying examples:

- A state association of human service organizations takes a position to support legislation to increase the state’s budget for human service programs. Staff of the association then meet with members of the legislature and encourage them to support the pending legislation.

- A local housing organization takes a position against proposed legislation that would change the eligibility of families for affordable apartments. The organization sends a letter to each of its bona fide members who are residents, asking that they contact their City

Council member and provides them contact information and some sample text to include in their letter.

**Examples of things considered to be *not lobbying*:**

- Contact with Executive Branch employees in support of, or opposition to, proposed regulations.
- Communications to organization members on legislation – even if the organization takes a position on the legislation – so long as it doesn't directly encourage members or others to lobby.
- Responding to written requests from a legislative body for technical advice on pending legislation, even if the organization takes a position on the legislation. For example, a nonprofit could be asked to provide testimony at a hearing. However, this cannot be a request from an individual legislator.
- Discussion of broad social, economic and similar policy issues whose resolution would require legislation so long as the discussion does not address the merits of specific legislation. This holds true even if specific legislation on the matter is pending.
- Making available the results of nonpartisan analysis, study or research on a legislative issue, even if the organization takes a position on the merits of the legislation. Provided the information is made generally available; the information contains the facts needed to enable the readers to form an independent opinion; and the material does not include a direct call on the audience to contact legislators.



## **Self-defense lobbying**

Lobbying matters affecting a nonprofit's own status is considered to be **not lobbying**

Self defense lobbying examples:

- Opposing proposals to curtail lobbying
- Lobbying in support of a change in the law to discontinue itemizing charitable tax deductions

Not self-defense lobbying (and therefore **lobbying**):

- Lobbying for programs in the nonprofit's field (e.g. a children's nonprofit lobbying for increased school appropriations)

## **What is grassroots lobbying?**

When an organization urges the public to take action on specific legislation

Key elements of grassroots lobbying are:

- Refer to specific legislation
- Reflect a point of view on its merits
- Encourage the general public to contact legislators, and
- Supply the public with legislative contact information

## **Basic components of a grassroots lobbying and advocacy plan**

### **Letter-writing campaign or call to action**

Arts organizations can make a big difference by encouraging their supporters to write or contact decision makers. The costs associated with creating and disseminating information encouraging your supporters to write to decision makers does count against the lobbying budget of your organization.

[see sample Call to Action](#)

Example: In one mid-sized city, arts supporters' hand delivered en masse and in wheel barrels, nearly 15,000 letters in support of the arts to a U.S. Senator's district office. The media had been

alerted to the event in advance and the arts community received notable coverage. The Senator held a key leadership position, but had not declared his position on the arts yet. Since that constituent-driven event, the Senator has been steadfast in his support of the arts.

### **Put together a local or regional advocacy day**

Gather arts advocates together under the banner of raising awareness for all arts activity through this event. You might consider using Arts Advocacy Day or another celebration as a rallying point for the local advocates. In one city, the arts groups worked in cooperation with the local public radio station and organized a full day of coverage and celebration on the arts and culture. Following the station's regular live formatting they profiled regional and local artists and projects that had received public funding. Throughout the day, the arts advocates encouraged their listeners to call their elected officials to encourage support of arts activity.

### **Make regular telephone calls to your decision maker's offices.**

Put yourself in the position of being a resource or expert for the decision makers and their staff members.

### **Put together candidate forums in the months leading up to elections.**

Invite all candidates to a forum so that arts constituents can discuss issues and ask questions. Consider developing a survey that can be sent prior to the forum so that candidates that cannot attend will be represented.

### **Write op-eds and letters to the editor in local, regional, and national publications.**

In some cities, representatives from arts organizations write regular columns about the arts in the local newspapers. Letters are usually in response to a local issue of importance or a recent article or editorial.

### **Tips on writing Op-Eds:**

Feel free to call the paper and present your idea briefly to the editorial page editor, who should give you a good sense of whether it is something the paper is interested in. The editor may even suggest a direction for you to pursue. Op-eds should raise general awareness of an issue while

educating policy makers and positioning your agency as a resource for the media and the public. When writing an op-ed, it is important to underscore your broader message with examples and statistics of local significance.

### **General guidelines for writing an Op-Ed:**

- **Be clear and concise.** Your op-ed should only be about 500-800 words. Include a suggested headline and byline, as well as a very short (one sentence) biographical statement about the author.
- **Remember the reader.** Don't get carried away with jargon. Keep your statements short and punchy. Assume your reader does not know as much as you do about the subject.
- **Be creative.** Take a fresh approach. Find a way to engage your reader from start to finish.
- **Know your timeline.** Newspapers take up to two weeks sometimes to publish an op-ed. Try to be patient, but keep in touch to find out the status of the piece once you have submitted it.
- **Include your name and contact information** (address, phone number, and email). Most newspapers will not publish letters without confirmed attribution.
- **Proof your work carefully!** Allow time to have other people proof the piece for typos and clarity before it is sent.

[see sample Op-Ed](#)

**Invite decision makers and their staff to performances or to visit school programs or other activities with either a large audience or a good photo opportunity.**

If possible, find an arts supporter who knows the decision maker to call and follow-up the invitation with an offer to bring them to the event and share the experience. If they come to your event, be sure to acknowledge their presence and/or get the photos taken.

**Actively recruit key political contributors who are also arts and cultural supporters.**

Research who contributes funds to the campaigns of local, county, state, and national elected officials. The contributors are recruited as board members, committee chairs, or advisors for advocacy efforts. To find a list of political contributors, do research at these websites:

[www.followthemoney.org](http://www.followthemoney.org) and [www.opensecrets.org](http://www.opensecrets.org)

**Invite decision makers to write a column in your newsletter or to be interviewed.**

This opportunity offers some exposure through your publication for the decision maker and builds a stronger advocate at the same time.

**Participate in meetings, hearings and activities hosted by decision makers.**

Attend meetings throughout the year and allow decision makers to register your presence. In some communities, arts representatives have been asked to wear T-shirts or buttons to identify themselves during these gatherings and have created quite a sensation.