

ADVOCACY, LOBBYING AND POLITICAL ACTIVITY

Guidelines for Nonprofits



ARIZONA NONPROFIT COUNSEL

Helping Nonprofits Thrive

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INTRODUCTION



Why Is This Topic Important?

As nonprofit employees and volunteers, you have a unique perspective and special insight about the populations you serve and the obstacles you face in accomplishing your mission.

Dialogue between nonprofits and government is vital to working on issues affecting the public and in filling gaps left by private efforts.

Failure to follow the “rules of engagement” for these communications can lead to serious consequences for nonprofits.

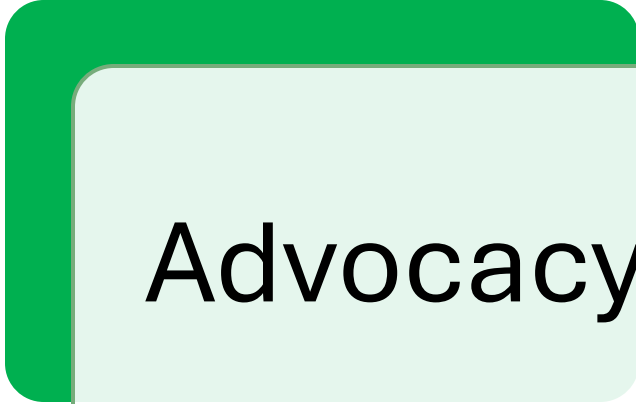
Types of Political Activity



Campaign
Activity



Lobbying



Advocacy

Two Bright-Line Rules

1. 501(c)(3) organizations **may not engage** in Political Campaign Activity.
2. There are **no limits** on the amount of Advocacy a 501(c)(3) or any type of nonprofit may do.

KEY DEFINITIONS



What the Law Says about Prohibited Political Engagement

In describing the types of charities that qualify as 501(c)(3)s, the Internal Revenue Code creates the following exception:

“no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

Political Campaign Activity

Any action or speech/communication that favors or opposes candidates for elected public office, such as endorsements of candidates, contributions to candidates and political action committees, public statements for or against candidates and distribution of materials that favor or oppose candidates.

If the purpose of the communication or speech is to help or hinder the election of an individual to a public office, it is political campaign activity.

Lobbying

Any action or speech that attempts to affect the passing or defeat of specific legislation

- direct contact with voting members of a legislative body to encourage them to vote for or against a particular bill

- encouraging the public to contact legislators about a particular bill

- advocating a position on a public referendum.

If the purpose of the communication or activity is to influence how an individual member of a legislative body will vote, it is lobbying.

Two types of lobbying

Direct lobbying – attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official, including staff, and executive branch officials.

Grassroots lobbying – attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation.

Advocacy

Any action or speech directed to the public for informational or educational purposes regarding an issue of interest to the nonprofit. If the purpose of the speech or activity is general education and information, it is advocacy.

POLITICAL CAMPAIGN ACTIVITY



Examples and Penalties

CANDIDATE QUESTIONNAIRES

Maybe OK to prepare and publish, if:

- Questions are not worded to favor or disfavor a candidate

- All candidates are given the same questions and an equal opportunity to respond

- Questionnaire does not focus on a particular issue that is connected to a particular candidate

- Questions and responses are not edited

- There are no yes or no questions

- No grading of candidates or endorsement (direct or implied) based on responses

SENIOR STAFF AND BOARD STATEMENTS

(about political candidates)

Political activity by the individual must be clearly identified as being in leaders' personal capacity.

Must not occur on nonprofit's property or at its events

May not be published in nonprofit's newsletter, website or organizational email

No comments or endorsements at board meetings.

Political Candidate At Nonprofit Event

All candidates for a particular office must be given the same opportunity to participate

Nonprofit may not indicate any support for or opposition to any candidate, including one who did not appear

No fundraising may occur

Speaking in a Non- Candidate Capacity

A candidate may speak at a nonprofit's event in a non-candidate capacity, but:

- Neither the candidate nor the organization may mention the election
- No campaign activity may occur
- The nonprofit must maintain a nonpartisan atmosphere
- Announcement of the event may not mention candidacy or election.

Committee supporting a ballot initiative

501(c)(3)s may contribute to a ballot measure committee without violating the political activity prohibition, but these expenses are considered lobbying expenses.

Impermissible Political Campaign Activity

The prohibition against contributions of money and public statements of position about a candidate is absolute – if the activity is prohibited, any amount is too much.

Even a single act can trigger penalties; the activity does not need to be a substantial part of the organization's operations or budget.

Penalties for violation include denial or revocation of the organization's tax-exempt status and the imposition of an excise tax (from 10% - 100%) on the amount of money spent on the activity.

LOBBYING



Conflict between First Amendment and Tax-Exempt Law

The Internal Revenue Service recognizes that legislative lobbying is an important and worthwhile activity. The right to advocate on public policy is specifically supported by the First Amendment's protection of "the right . . . to petition the government for redress of grievances."

The Internal Revenue Code states "no substantial part of the activities of [a 501(c)(3) organization may be carrying on propaganda, or otherwise attempting, to influence legislation."

What does “substantial part” mean?

The IRS uses a facts-and-circumstances test to determine whether an organization’s activities are substantial, looking at:

- time spent on lobbying by paid staff and volunteers (subjective test); and
- money spent on lobbying by the organization, including an allocation of staff salaries devoted to lobbying (objective test)

The specific percentage has not been articulated, but some commentary suggests that lobbying activities of **less than 5%** of total activities is not substantial.

*** Nonprofits can run afoul of the lobbying rules whether they spend money or not on lobbying, if they violate the subjective activities test.

Reporting Requirements

Lobbying activities and expenses must be reported on IRS Form 990 or 990-EZ, both on the main form and Schedule C.

Organizations small enough to file the 990-N “postcard” (receipts of less than \$50,000) do not need to report on lobbying.

Organizations of all sizes should keep records of activities and expenditures in case they are subjected to an IRS audit.

Examples of Lobbying that must be Tracked

Contacting, or urging the public to contact (i.e., through a “call to action”) legislators or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation.

Meeting with members of the Appropriations Committee in DC to ask them to support a funding increase for a specific federal program

Calling legislative staff to ask a lawmaker to write a letter to a committee chair in support of passage of a bill

Sending out an action alert to a coalition of stakeholders asking them to write to their representatives in support of increased funding for a program.

Examples of Permissible Advocacy

Distributing materials to legislative offices that describe the success of a government-funded program

Posting an analysis of a specific piece of legislation on your website

Inviting legislators to visit a funded program to see results

Responding to specific written questions from a committee to ask your position on proposed legislation provided your responses are provided to each member.

Responses to informal requests are **lobbying**.

Examples of Advocacy (Continued)

Communicating with legislators about decisions that may affect the organization's existence, powers, duties, 501(c)(3) status or tax deductibility of contributions

Nonpartisan study or analysis made available to the general public, a segment of the general public or governmental bodies or employees, provided it does not refer to specific legislation or encourage the recipient to take action.

The 501(h) Election

Any 501(c)(3) organization can achieve a degree of certainty surrounding its lobbying activities by opting to measure its lobbying only by the objective “expenditures” test. Under this test, time spent is irrelevant. If an activity doesn’t cost anything, it doesn’t count toward lobbying limits.

The National Council on Nonprofits is recommending that eligible nonprofits file a 501(h) election to avoid having to track hours spent by staff and volunteers on lobbying.

Very large nonprofits (those that spend more than \$250,000 annually on grass roots lobbying) are ineligible to file, as are foundations and churches or church-related organizations.

Mechanics of the 501(h) Election

File IRS Form 5768 <https://www.irs.gov/pub/irs-pdf/f5768.pdf>

Information required: Name, street address, fiscal year end of election

Election applies to current year and each following year until revoked, using same form.

If you have an IRS Online Account, you can file Form 5768 online.

No specific approval by the IRS is necessary for the election to become effective.

How does the Expenditures Test work?

501(c)(3) organizations must calculate lobbying expenses as a percentage of “exempt purpose expenditures.”

If Exempt Purpose Expenditures are:	The annual Lobbying nontaxable amount is:
Not over \$500,000	20% of the exempt purpose expenditures (EPEs)
Over \$500,000 up to \$1,000,000	\$100,000, plus 15% of the excess of EPEs over \$500,000
Over \$1,000,000 up to \$1,500,000	\$175,000, plus 10% of the excess of EPEs over \$1,000,000
Over \$1,500,000	\$225,000, plus 5% of the excess of the EPEs over \$1,500,000

Penalties for Exceeding Limits

Must pay excise tax of 25% on amount by which expenditures exceed the annual limit

Risk of losing tax-exempt status (usually not immediate for a single-year excess, but may be if excess is more than 50% over 4-year period) and having all income subject to federal tax

If 501(h) election was not made, organization is also subject to penalties under “substantial part” test.

Separate Requirements for Grassroots Lobbying

Grassroots lobbying expenses fall within the caps described in the last two slides.

No more than 25% of the overall lobbying limit may be spent on grassroots lobbying.

As an example, if your exempt purpose expenditures are \$1,000,000, your total lobbying limit is \$175,000, no more than \$43,750 may be spent on grassroots efforts.

Relevant 990 Questions

In Part IV of the long form 990, questions 3 and 4 ask if there is any political campaign activity or lobbying activity, or if there is a 501(h) election. A “yes” response requires you to complete Schedule C.

In Part V of Form 990-EZ, question 37a asks about political expenditures and 46 asks about political campaign activities. In Part VI of Form 990-EZ, question 47 asks whether you engaged in lobbying activities or have an 501(h) election in effect. “Yes” responses require you to complete Schedule C.

Schedule C to Form 990

Form for reporting “Political Campaign and Lobbying Activities”

<https://www.irs.gov/pub/irs-pdf/f990sc.pdf>

Part I-A, B and C relates to political campaign activities

Part II-A is for 501(c)(3) organizations that have filed the 501(h) election and relates to lobbying expenditures

Part II-B is for 501(c)(3) organizations that did not make the election.

Part III is for 501(c)4, 5 and 6 organizations

Part IV is for supplemental information for all other parts.

Collaborative Efforts



National Advocacy Organizations

- [National Council of Nonprofits](#): The largest network of nonprofits in the U.S., offering federal policy updates, advocacy alerts, and toolkits.
- [Independent Sector](#): A coalition of nonprofits, foundations, and corporate giving programs focused on federal policy, trust-building, and civic engagement.
- [Alliance for Justice – Boulder Advocacy](#): Offers training, legal support, and advocacy resources to help nonprofits and foundations advocate safely and effectively.
- [National Human Services Assembly](#): Connects human services providers to strengthen collective impact and policy engagement.

Additional Reading – IRS Guidance

Political Campaign Activities

<https://www.irs.gov/charities-non-profits/charitable-organizations/frequently-asked-questions-about-the-ban-on-political-campaign-intervention-by-501c3-organizations>

Updated Nov. 2024

Revenue Ruling 2007-41, with examples <https://www.irs.gov/pub/irs-tege/rr2007-41.pdf>

Mini-courses at <https://www.stayexempt.irs.gov>

Lobbying

<https://www.irs.gov/charities-non-profits/lobbying>

Additional Reading -- Other

Lobbying

Alliance for Justice, Worry-Free Lobbying for Nonprofits: https://afj.org/wp-content/uploads/2018/06/Worry_Free_Lobbying_paywall-e.pdf

Limitations on Lobbying Activities: Everything that 501(c)(3) Organizations Need to Know, by Tenenbaum Law Group PLLC (Aug. 24, 2002)

Nonprofit Law BLOG <https://nonprofitlawblog.com/joint-committee-on-taxation-political-and-lobbying-activities-of-tax-exempt-organizations-april-2022/>

<https://endhomelessness.org/wp-content/uploads/2011/02knowing-the-rules-of-nonprofit-lobbying.pdf>

Advocacy

<https://www.naeyc.org/our-work/public-policy-advocacy/rules-501c3-nonprofit-lobbying>

Candidate Questionnaires and Voter Guides Nonpartisan Guidelines for 501(c)(3) Organizations at www.nonprofitvote.org