

Non-Profit Lobbying & Electioneering Fact Sheet

Yes, nonprofit organizations can engage in both lobbying and electioneering activities. This document clarifies what activities are permissible and how to track the election and lobbying activities conducted by your organization.

Electioneering

Nonprofit Organizations and Election/Voter Activities

The confusion many nonprofit organizations have around lobbying and election activities often results because charitable nonprofits (designated as 501(C)(3) organizations) are prohibited from participating in partisan politics – working for a political party or candidate. Even as they avoid partisan politics, nonprofits can still engage in legislative and social change work.

Although there are rules governing what charitable nonprofit organizations can and cannot do, leading up to and during an election, the most important thing to remember is that a nonprofit must *remain nonpartisan at all times*. Nonpartisan is defined as “not supporting or controlled by a political party, special interest group, or the like”.

Don't hold back.

Too many nonprofit organizations believe that lobbying activities will jeopardize their organization's tax-exempt status. On the contrary: If you're not lobbying, you're not exercising your full rights under the tax laws. The IRS actually encourages nonprofits to engage in lobbying and other advocacy activities, as long as they adhere to some broad spending limitations. The guidelines are easy to follow

An organization may support or challenge a piece of legislation, a ballot initiative, or an issue, but may not support or criticize an elected official or candidate for office. If a particular issue is a hot partisan item and each candidate has a clear and opposing view on the issue, nonprofits should exercise caution in how outspoken they are about that issue so that they do not appear to be supporting one candidate over the other.

Acceptable Election & Voter Activities

The following are examples of voter and election activities that all nonprofits can do on a non-partisan basis:

- Promote voter registration (*subject to restrictions of funding sources. For example, the federal government sometimes prohibits use of federal funds for voter registration.*)
- Encourage voter participation/ “Get out the vote” activities
- Help on Election Day: volunteer poll workers, election monitors, etc.
- Create and distribute voter education on the process of voting – where to vote, etc.
- Create and distribute nonpartisan voter guides on candidates and ballot measures.

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Acceptable Election & Voter Activities continued...

- Provide advocacy on behalf of an issue during an election.
- Educate the candidates.
- Host/sponsor Candidate forums.
- Promote voting rights and election reform.
- Support or oppose ballot questions – subject to normal lobbying limits

Prohibited Election & Voter Activities

Nonprofit organizations may not support or oppose any candidate for public office. The following are activities which nonprofit organizations may not engage in:

- May not endorse candidates for office.
- May not make a campaign contribution or expenditure for a candidate.
- May not let candidates use its facilities, resources, or mailing lists, unless *equally* available to all candidates.
- May not use an election communication explicitly designed to favor or oppose a candidate – such as using a single issue to compare the candidates during an election.
- May not ask candidate to sign pledges on any issue (considered tacit endorsement).

- From the CCADV Domestic Violence Public Policy Toolkit

Lobbying

Definitions within Lobbying

- ❖ **Lobbying** is defined as a *specific type of advocacy which includes both direct and grassroots lobbying.*
- ❖ **Direct lobbying** is defined as communication *with a legislator that expresses a view about specific legislation.* Examples of direct lobbying include visiting a legislator to discuss a particular bill or contacting a legislator to ask them to support a bill. The key element of lobbying is mentioning or discussing specific bills or pieces of legislation. If you are not talking about specific legislation, you are not lobbying.
- ❖ **Grassroots lobbying** is defined as *communication with the public that expresses a view about specific legislation and includes a call to action.* Examples of grassroots lobbying include requesting in a newsletter that readers contact their legislator to ask for more funding for domestic violence programs or giving a television interview and stating your organization's support for a particular bill.

For an action to be considered direct lobbying or grassroots lobbying under the federal lobbying limitations, it must contain all of the above elements. **It is not lobbying if one or more of the required elements is missing.**

This distinction between lobbying and non-lobbying activities is important only in recording the total time and/or money invested in such activities each year (see Measuring Lobbying, below).

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Examples of Allowable Lobbying Activities

- Sending a letter to your local or state legislators asking them to support or oppose a bill.
- Calling your local or state legislators and asking them to vote a specific way on a specific bill.
- Testifying in front of a legislative committee.
- A Call to Action: Requesting that community members contact a legislator in support or opposition to a bill.

Why is it Important to have a Lobbying Policy?

Most federal and state government funding sources require that their funds not be used to support any lobbying activity. This does not mean that the organization receiving the funds cannot lobby, it simply means that those federal or state funds cannot be used to fund or support the lobbying activity and that the funder may require the recipient organization to have a policy stating as much. Nonprofits typically use discretionary or nonrestricted funds to support their lobbying activities.

Measuring Lobbying

Federal laws govern lobbying limits by 501(C)(3) organizations. Nonprofit organizations are required to use **one of two options** to calculate the organization's lobbying limits; Option I: IRS Substantial Part Test or Option II: IRS 501(h) Expenditure Test. A nonprofit organization may change which option it chooses to use from year to year.

➤ Option I – IRS Substantial Part Test

Nonprofit organizations can participate in lobbying activities so long as those activities are not a “substantial” part of the organization's total activities.

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. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations, are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for exemption.

Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status.

Private foundations are subject to a different set of [taxes on their lobbying expenditures](#); churches are not subject to excise taxes on excessive lobbying. Organizations that choose to use the Substantial Part Test to calculate their organization's lobbying limits will need to use the IRS Schedule C Form 990. *Shared directly from:* <https://www.irs.gov/charities-non-profits/measuring-lobbying-substantial-part-test>

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➤ Option II – IRS Expenditure Test

Based on their overall expenditures, most charities can spend as much as 20 percent of their budget on direct lobbying activities intended to influence legislation. You can use these generous limits by filing a simple, one-page form with the IRS to make the “501(h) election”.

Because the limits are based on the money you spend there are no limits on volunteer efforts and other cost-free activities. Likewise, there are no limits on other kinds of public policy work, *such as litigation, research, public education, and attempting to influence decisions by administrative agencies.*

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

Under the expenditure test, the extent of an organization’s lobbying activity will not jeopardize its tax-exempt status, provided its lobbying-related expenditures do not exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000, as indicated in the table below.

If the amount of exempt purpose expenditures is: (Your annual budget)	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000

Organizations that chose to use the expenditure test must file Form 5768, *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed. Shared directly from: <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>

Find more Information and resources here:

<https://www.bolderadvocacy.org/tools-for-effective-advocacy>

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

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