

Harnessing the Power of Advocacy in Your Nonprofit:

Lobbying and Political Activities of 501(c)(3)
Organizations

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Partisan Political Activities of 501(c)(3)'s

Absolute Prohibition: 501(c)(3) expressly provides that 501(c)(3) organizations may not “participate in, or intervene in (including the publishing or distribution of any statements), any political campaign on behalf of (or in opposition to) any candidate for political office.” This statutory prohibition is absolute. It applies to both public charities and private foundations.

Policy Behind Prohibition: Contributions to 501(c)(3) entities are tax deductible for federal income tax purposes, but contributions to candidates and political action committees (PACs) - as well as to other 501(c)(3) organizations - are not. Hence, the use of 501(c)(3) entities to support or oppose candidates would circumvent federal tax law by enabling candidates and PACs to attract tax deductible contributions to finance their election activities.

Partisan Political Activities of 501(c)(3)s

Policy Point: 501(c)(3) status is the most favored category of tax exemption due to the tax deductibility of its contributions, reduced postal rates and, in certain states, sales/use and property exemptions. Accordingly, 501(c)(3) entities are subject to the most regulation by the Internal Revenue Service (IRS). The federal government does not want to subsidize political activities with taxpayer dollars through a tax deduction.

In Violation of the First Amendment?

Definition of “Partisan Political Activities”

The technical term used by the Code is “exempt function” activities.

This means *the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any public office or office in a political organization.*

Exempt function activities include advertisements which do not specifically endorse a candidate, but can include many more subtle activities than that.

Definition of Candidate for Public Office

A candidate for public office means “an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local.” This definition includes all levels of candidates who have announced their candidacy.

Attempts to influence appointments of persons to non-elective public offices, such as judicial nominees, do not constitute prohibited political campaign intervention. However, actions during a legislative confirmation process, considering nominees for certain non-elected government offices (such as judgeships and executive cabinet positions) may constitute lobbying.

Participation or Intervention in a Political Campaign

501(c)(3) organizations are prohibited from “directly or indirectly” participating in political campaigns:

Direct or indirect participating in political campaigns

include: Distributing printed statements or making oral statements on behalf of, or in opposition to, a candidate for public office. This clearly applies to a written or oral endorsement of a candidate. However, it also applies to much less express statements. In fact, it applies even if the candidate’s name is not mentioned and certain codes language or references are used as a substitute for a candidate’s name (for example, the use of “code” terms like “pro-choice,” “liberal” etc.)

Other examples: fundraising on behalf of candidates; rating candidates (candidate scorecards); engaging in certain business transactions with a candidate (such as using an organization’s facilities); letting candidates use mailing lists; accepting paid political advertising.

Permissible Election- Related Activities for 501(c)(3)s

Voter Education Activities: Efforts to inform the electorate in a *non-partisan* manner about candidates' positions is not a prohibited political activity so long as there is no bias, express or implied, towards any one or more candidates.

Voter Registration Drives: Voter registration drives conducted by 501(c)(3) organizations must be conducted in a *non-partisan* manner in order to be permissible. Factors illustrating non-partisan drives include naming no candidates or naming all of the candidates; all parties or no parties are mentioned; material distributed to potential voters describe how to register to vote; and all services are provided without regard to the voter's political preferences.

Permissible Election- Related Activities for 501(c)(3)s

Candidate Questionnaires/Voting Records:

Publishing a compilation of candidates' voting records or responses to candidate questionnaires generally does not constitute prohibited activity when a wide range of issues are addressed and the published results do not suggest a bias for or against any candidate. It is important to note that the questionnaire or voters' guide cannot show any implied bias based upon its content or structure.

Ex: a pro-environmental group cannot distribute a candidate questionnaire if the questions only relate to environmental issues because there will be implicit bias in the structure of the guide.

Sanctions

- Loss of tax-exemption
- Excise tax on campaign expenditures
- Loss of deduction for contributions
- Injunction and termination assessment

Lobbying and Advocacy Activities of 501(c)(3)s

Lobbying: “Lobbying” refers to the expenditure of money by an organization for the purpose of attempting to influence legislation. There are two types of lobbying: direct lobbying and grass roots lobbying. Private foundations are prohibited from engaging in either type of lobbying. An organization will be regarded as attempting to influence legislation if the organization: (a) advocates the adoption or rejection of legislation; (b) engages in *direct* lobbying by contacting members of a legislative body with respect to legislation; or (c) engages in what is generally known as *grass roots lobbying* by urging the public to contact members of a legislative body with respect to legislation.

Definition of Legislation

Legislation: “action by Congress, by any State legislature, by a local council or similar governing body or by the public in a referendum, initiative, constitutional amendment or similar procedure.”

Legislation does not include actions by judicial, executive or administrative bodies – actions by school boards, housing authorities, and similar federal, state or local bodies, as they are considered to be administrative, not legislative bodies.

Definition of Specific Legislation

In order for there to be lobbying, either direct or grassroots, there must also be “specific legislation.”

“Legislation becomes ‘specific legislation’ upon the introduction of a bill into a legislative body as well as upon the existence of specific legislative proposals.” It may also become specific legislation at an early time. As to a referendum, ballot initiative, constitutional amendment, or other ballot measure, an item becomes specific legislation when the petition is first circulated among voters.

Types of Lobbying

Direct Lobbying: “Direct Lobbying” means any communication that an organization has about legislation with either legislators or government officials (or their aides) who participate in the formation of legislation. Ballot measures such as referenda, bond measures, and ballot initiatives are determined at the ballot box by the general public. Thus, efforts aimed at convincing the general public to support or oppose ballot measures are considered to be direct lobbying since the voting public is the legislature.

Types of Lobbying

Grass Roots Lobbying: “Grass Roots Lobbying” means any communication which refers to specific legislation; reflects a view on the legislation; and encourages the recipient to take action with respect to the legislation.

A “call to action” includes telling the recipient to contact their legislator for the principal purpose of influencing legislation, stating the contact information of a legislator, or providing a mechanism such as a petition for the recipient to communicate with a legislator for the principal purpose of influencing legislation.

**What
Activities Are
Not
Considered
To Be
Lobbying**

Nonpartisan analysis, study or research:

A private foundation or public charity may make available the results of “nonpartisan analysis, study or research” on a legislative issue provided that such results present a sufficiently full and fair exposition of the pertinent facts to enable the audience to form an independent opinion. This is probably the most important single exception to the lobbying rules and is particularly important because many nonprofits that engage in public policy activities conduct significant amounts of nonpartisan analysis, study and research on legislation.

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Providing Requested Technical Advice: A public charity or private foundation's response to *written* requests from a legislative body (not just a single legislator) for technical advice on pending legislation is not considered lobbying. Thus, if requested in writing by the legislative body, a 501(c)(3) entity may provide testimony on legislation, including taking a position on that legislation and it would not be engaged in lobbying.

Self-Protection: A public charity or private foundation is allowed to lobby to protect its own existence.

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Discussion of Broad Social Issues: A public charity or private foundation may discuss broad social, economic and similar policy issues whose resolution would require legislation – *even if specific legislation on the matter is pending* – so long as the discussion does not address the merits of specific legislation. Representatives of the organizations could even talk directly to legislators on the broad issue of child welfare, so long as there is no reference to *specific legislation* on that issue.

Miscellaneous Non-Lobbying Activities

- Educating legislators (which includes the general public for ballot measures) on broad social issues
- Contacting *executive* branch employees or legislators in support of or opposition to proposed *administrative regulations*
- Influencing regulatory bodies (in that such efforts are before an administrative body which is part of the executive branch of government, not the legislative branch)
- Lobbying by volunteers unless the organization incurs expenses associated with the volunteers' lobbying
- Training grantees how to lobby
- Producing nonpartisan analysis or research
- Encouraging civic participation
- Communicating with legislators about jointly funded projects
- Supporting advocacy through grant-making

Lobbying Limits of 501(c)(3) Organizations

- “insubstantial part test”
- “H” election: If an eligible public charity would like to engage in lobbying activities, it should file Form 5768, *Election/Revocation of Election By Eligible 501(c)(3) Organizations To Make Expenditures to Influence Legislation*, with its next annual Form 990.

Lobbying Limits of 501(c)(3) Organizations

- Calculating the “H” election
- What happens if you exceed your “h” election limit?
- Time sheets and affiliated organizations

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Thank you!

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