

# **Civic Engagement and the Role of Non-profits**

**January 11, 2011**

# Non-profits and Lobbying

## Non-profits and Political Action



What are the limits?

There is a wide spread perception that non-profits cannot lobby.

In fact, even 501(c)(3) organizations, the most restrictive type of non-profits, may legally lobby.



It is not only an appropriate role for non-profits, it is a vitally important role.



If non-profits are not speaking on behalf of often-vulnerable communities, in all likelihood, nobody else is either.

# But, the ability of non-profits to lobby is not without legal limitation

- It is important to understand these limits and to operate within your legal authority in order to avoid jeopardizing your non-profit status.

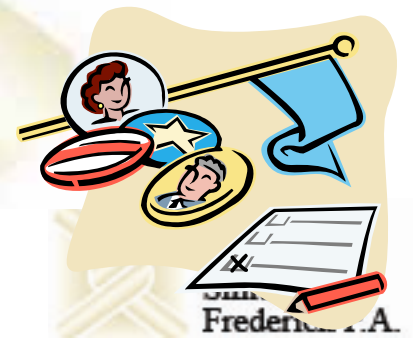
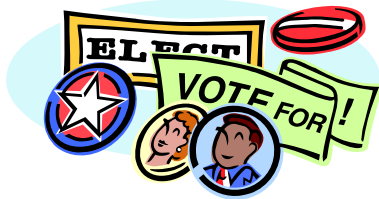


Public charities – 501(c)(3) organizations receive the best tax treatment under federal law: they are tax exempt and contributions to them are tax deductible.



The trade-off for this preferential tax treatment is a limitation on certain activities. 501(c)(3) organizations may not support or oppose a candidate for public office.

**Political campaign activity is strictly forbidden!**



# More on the absolute prohibition on partisan political activity, a non-profit:

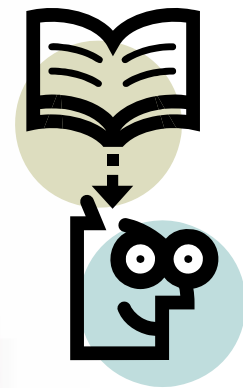
- May not support or oppose any candidate for public office
- May not endorse any candidate
- May not contribute to any candidate



For many 501(c)(3) organizations, policy work, including lobbying, is consistent with their charitable and educational missions.

“Lobbying” is one specific form of “advocacy”.

- Advocacy = educating policymakers or the public about broad policy issues
- Encouraging people to vote
- Educating voters about candidate positions
- Litigating



Except for lobbying and partisan political activity, all of the forms of advocacy listed above are unrestricted for non-profit organizations.



# How to properly characterize and report your lobbying activity.

Two Options



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graph TD; A[Two Options] --> B[Insustantial Part Test]; A --> C[501(h) Expenditure Test (established in 1976)];
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Insustantial Part Test

501(h) Expenditure Test  
(established in 1976)

# Insubstantial Part Test

- Lobbying may not be a substantial part of the 501(c)(3) organization's overall activity
  - No IRS guidance either on lobbying activity or what constitutes an “insubstantial” amount of the organization's activity

# 501(h) Expenditure Test

- Clear dollar limits
- Clear definitions of what constitutes lobbying
- Simple process for reporting on **Form 5768** (attached)



Form **5768**

(Rev. September 2009)

Department of the Treasury  
Internal Revenue Service

### Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation

(Under Section 501(h) of the Internal Revenue Code)

For IRS  
Use Only ▶

Name of organization

Employer identification number

Number and street (or P.O. box no., if mail is not delivered to street address)

Room/suite

City, town or post office, and state

ZIP + 4

**1 Election**—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending.....and all subsequent tax years until revoked. (Month, day, and year)

**Note:** This election must be signed and postmarked within the first taxable year to which it applies.

**2 Revocation**—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending..... (Month, day, and year)

**Note:** This revocation must be signed and postmarked before the first day of the tax year to which it applies.

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ▶  election  revocation on behalf of the above named organization.

(Signature of officer or trustee)

(Type or print name and title)

(Date)

### General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible section 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Part II-A of Schedule C (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item 1 or 2, as applicable, and sign and date the form in the spaces provided.

**Eligible organizations.** A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

**Disqualified organizations.** The following types of organizations are not permitted to make the election:

- a. Section 170(b)(1)(A)(i) organizations (relating to churches).

- b. An integrated auxiliary of a church or of a convention or association of churches, or
- c. A member of an affiliated group of organizations if one or more members of such group is described in a or b of this paragraph.

**Affiliated organizations.** Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

**Note.** A private foundation (including a private operating foundation) is not an eligible organization.

**Where to file.** Mail Form 5768 to the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

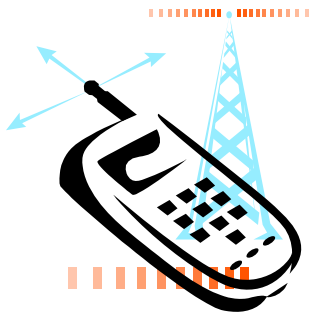
# Lobbying

- Any communications
- With a legislator
- That expresses a view about specific legislation



# Grassroots Lobbying

- Any communications
- With the general public
- That expresses a view about specific legislation
- And includes a call to action
  - (to call, write, e-mail or visit your legislator and providing the means to follow-through)



# 501(h) Expenditure Test – Allowable Expenditures

Total Annual Exempt Purchase Expenditures	Percent that may be spent on Lobbying
\$500,000 or less	20%
\$500,000 to \$1,000,000	\$100,000 plus 15% of budget over \$500,000
\$1,000,000 to \$1,500,000	\$100,075 plus 10% of budget over \$1,000,000
\$1,500,000 and over	\$224,000 plus 5% of budget over \$1,500,000 (not to exceed \$1,000,000)

# State Public Disclosure Laws

- Federal reporting does not exempt a non-profit from complying with state public disclosure laws.
- If a non-profit is even minimally engaged in lobbying of state or local government bodies, they must register with the Campaign Finance & Public Disclosure Board
- If you have paid a “lobbyist”, they must register and the organization must register as a “lobbyist principal”
- The state reporting process is rather simple and can be accomplished on-line



# Review

- Non-profits, Even 501(c)(3) organizations may lobby
- 501(c)(3) organizations must not participate in any partisan political activity
- Lobbying activity is one form of allowable advocacy
- Lobbying involves expressing a view about specific Legislation
- Federal Reporting is required - - One of two methods
- Insubstantial Part Test
- 501(h) Expenditure Test – Form 5768 Specific Limits
- State Reporting is also required

*“Lobbying in an effective form of advocacy that can help non-profits ...fulfill their missions”*



(Nayantara Mehta, Counsel,  
Justice for Alliance)

author of ABA business article:  
Non-Profit and Lobbying: Yes, They Can!

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