**Advocacy, Lobbying, and Election-Related Activity by 501(c)(3) Non-Profits**

Partnership for the Public Good

September 12, 2018

1. **Advocacy is allowed.** Under federal tax law, 501(c)(3) non-profits may advocate as much as they want, with two main exceptions:
	1. **Lobbying** cannot be a “substantial part” of the organization’s activity.
	2. **Political activity.** Organizations can’t participate in a political campaign on behalf of or in opposition to a candidate.
2. **What is lobbying.** Lobbying is “attempting influence legislation.”
	1. **Legislation** means actions by *elected bodies* with respect to bills or resolutions. It does not include actions taken by courts, administrative agencies, executive branch bodies, or special purpose boards like school boards, planning boards, etc.
	2. There are two kinds of lobbying:
		1. **Direct lobbying**
			1. communication with a legislator or government employee who may participate in forming legislation if
				1. the principal purpose of the communication is to influence the legislation and
				2. it refers to a specific piece of legislation; and
				3. it expresses a view on that legislation; or
			2. asking your members to contact legislators in support or opposition to legislation; or
			3. attempting to influence the public on referenda or ballot initiatives.
		2. **Grassroots lobbying**
			1. Trying to influence specific legislation by urging the public to contact legislators about it if you
				1. Refer to specific legislation;
				2. Reflect a view of it; and
				3. Encourage the recipient to take lobbying action regarding it.
	3. **Four things that are not lobbying**
		1. **Nonpartisan analysis, study, or research**
			1. **Content** must provide a sufficiently full and fair exposition of the facts to allow the public to form an independent conclusion; and
			2. **Distribution** must be to the general public or a segment of it or to governmental bodies or employees – not limited to people only interested in one side of the issue.
		2. **Examinations and discussions of broad social, economic, and similar problems**
		3. **Responses to requests from a legislative body for technical advice or assistance** (not just one member of that body).
		4. **Self-defense.** I.e., communications with a legislative body about actions it might take that would affect your existence, powers, duties, tax-exempt status, etc.
3. **Substantial Part.** There are two different standards to measure compliance.
	1. One is vague: “no substantial part” of your activities can be lobbying.
	2. The other is the section 501(h) expenditure test, which sets specific dollar amounts, based on how large you are, on how much lobbying you can do: i.e., 20% of the first $500,000, 15% of the next $500,000, 10% of the third $500,000, and 5% of remaining exempt purpose expenditures, but in no case more than $1 million.
		1. Grassroots lobbying may be at most 25% of your lobbying total.
4. **If you lobby you must:**
	1. Report on your lobbying activities in your 990 each year; and
	2. Register as a lobbyist with the State of New York if you spend more than $5,000 in a year on lobbying.
5. **Political Activity Defined**
	1. Organizations can’t “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.”
	2. **Candidate** includes efforts to draft someone to run and exploratory advance work, as well as efforts to prevent an official from being re-elected, re-nominated, etc. (i.e., “Dump Johnson” campaign)
	3. **Public office** includes all *elected* officials, from President to party committee person. *Appointed* officials are not included, but attempts to influence appointment are likely *lobbying.*
	4. **Your actions should not be designed to** help or hurt the chances of any particular candidate or group of candidates.
6. **Examples: Is this Political Activity?**
	1. **Issue advocacy.** Issue advocacy during a campaign may be a problem if it invites the audience to compare a candidate’s position to its own views, especially if:
		1. It’s a high profile issue being used to distinguish the candidates;
		2. The communication
			1. Names candidates
			2. Is close to election time
			3. Is not a typical part of ongoing communication
	2. **Commentary on incumbents.** Use the same factors as listed above under “issue advocacy.”
	3. **Having candidates at your events.**
		1. No candidate fundraising at your event;
		2. Give all candidates equal opportunity to appear – at same time or different times;
		3. If you’re inviting them in another capacity (not as a candidate), you don’t have to invite other candidates, but make sure the reason for invite is clear and that it doesn’t turn into campaign event – i.e., make no mention of candidacy and write to candidate requiring them to do the same.
	4. **Influencing candidates’ positions.**
		1. Offer same communication to all candidates, and don’t prepare materials in response to one candidate’s requests
	5. **Voting records.** You can publish incumbents’ voting records if you
		1. do so regularly;
		2. include all incumbents;
		3. address wide range of subjects;
		4. don’t include any opinions.
	6. **Candidate guides or questionnaires.**
		1. Include a broad range of issues;
		2. Questions should not reflect your organization’s “agenda,” because otherwise answers will suggest which candidate you favor.
			1. So don’t include your own positions in the questionnaire or guide;
			2. Open-ended questions can be better than yes/no
		3. Send it to all candidates
		4. Print answers in full
		5. Remind public that you don’t endorse and that candidates should be chosen for reasons beyond responses to a set of questions.
	7. **Candidate forums or debates**
		1. Have questions prepared by independent nonpartisan panel and have them reflect broad range of issues
		2. If not all candidates are invited, have objective criteria for choosing which (i.e., level of popular support).
	8. **Voter registration, GOTV, and training of voters or candidates**
		1. You can target specific populations or areas if the criteria are nonpartisan (i.e., low income, minority, student populations).
		2. You can mention critical issues if you don’t do so in a way that favors one candidate or party. Don’t say “Vote to protect the environment. Register here.” But you can say “The next election will set the country’s course on civil rights, health care, jobs, and the environment. Your vote counts. Register here.”
		3. Trainings must be nonpartisan in recruitment of instructors and students, curriculum, placement of graduates, and all other aspects.
	9. **Commercial transactions.**
		1. Is it available to all candidates on equal basis;
		2. Is it available to the general public;
		3. Are you charging your usual fees;
		4. Is it part of your ongoing activity.
	10. **Staff, board, volunteers.**
		1. If they endorse and your org is identified, make sure it says “organization stated for identification purposes only” or something similar
		2. Your personnel manual should make it clear that no assets or facilities may be used for political purposes (phones, email accounts, printers, etc.)
		3. No staff time for electioneering, and even unpaid staff time is a problem if used preferentially and/or outside of normal policy limits
7. **Additional Resources**
	1. Alliance for Justice, especially:
		1. Being a Player: a Guide to IRS Lobbying Regulations for Advocacy Charities
		2. The Rules of the Game: a Guide to Election-Related Activities for 501(c)(3) Organizations
		3. Election Checklist for 501(c)(3) Public Charities
		4. Keeping Track: a Guide to Recordkeeping for Advocacy Charities
		5. New York Lobbying Disclosure
	2. United Way Voter Engagement Toolkit
	3. Lawyers Alliance for New York FAQs About Nonprofit Organizations and Legislative Lobbying