

## Lobbying Guide for 501(c)(3) Organizations

501(c)(3) organizations have experienced much uncertainty surrounding their role in politics. Many do not participate in the legislative process at all for fear of losing their tax-exempt status. While it is true that there are restrictions and specific limitations set forth by the IRS for 501(c)(3) organization political activity, it is a common misconception that nonprofits are not allowed to participate in politics. The purpose of this document is to acknowledge all of the ways in which 501(c)(3) organizations can legally participate in politics, in addition to reiterating those actions that could result in the loss of a 501(c)(3) status.

### Political Campaigns

With respect to the nonprofit role in political campaigns, 501(c)(3) organizations CANNOT:

- Endorse or oppose a political candidate
- Make monetary contributions to a candidate's campaign
- Make public statements about your organization's position on an election
- Make any kind of candidate endorsements, either in favor or opposition
- Distribute third-party statements that support or oppose a candidate
- Allow one candidate to use the organization's assets or facilities without providing equal access to the others

**As a rule of thumb, nonprofits should steer clear of anything having to do with political candidates, just to be safe.**

With respect to the nonprofit role in political campaigns, 501(c)(3) organizations CAN:

- Participate in nonpartisan voter engagement efforts (voter registration, voter education, and voter mobilization)
- Allow candidates to appear at their facilities, so long as there are equal opportunities for all candidates, neutral organizational communications regarding the event, and a restriction on political fundraising
- Engage in issue advocacy as long as it does not equate to political campaign intervention
- Engage in normal business activity of the organization related to a political campaign (i.e. selling mailing lists, renting office space, paid advertising, etc.) so long as there are equal opportunities for all candidates

### Lobbying Limitations and Opportunities

501(c)(3) organizations ARE allowed to take part in small amounts of political lobbying. There are two ways to determine how much nonprofits can legally lobby: 1) Insubstantial Part Test and, 2) Expenditure Test. In the first option, an organization's lobbying activities cannot constitute a

substantial part of the organization’s total activities and expenditures in any tax year. This option is somewhat vague, as it does not define “lobbying activities,” “substantial amount,” or how that amount will be calculated. The second option is somewhat clearer. The Expenditure Test defines permissible lobbying activities and measures an 501(c)(3)’s lobbying activities only by the amount of money spent on lobbying activities.

For those lobbying under the Insubstantial Part Test, the following expenses need to be reported to the IRS as lobbying expenditures:

- Staff time/salary spent on lobbying throughout the tax year
- Direct and grassroots lobbying activity
- Transportation costs
- Communication costs (materials, printing, mailing, etc.)
- Overhead administrative costs, including facilities, systems, subscriptions, salaries, etc.

**If more than 20% of the organization’s time and expenditures are devoted to lobbying under the Insubstantial Parts Test, there is a strong chance that the 501(c)(3)’s tax-exempt status may be jeopardized.**

If an organization elects to be measured by the Expenditure Test, they must file an IRS Form 5768; otherwise, they will be measured by the Insubstantial Part Test. Once the Form 5768 is filed, the organization must then report its lobbying expenditures to the IRS. Below you can find the specific restrictions placed on nonprofit lobbying expenditures under the Expenditure Test.

Exempt-Purpose Expenditures	Total Lobbying Expenditures	Amount of Total Allowable for Grassroots Lobbying
Up to \$500,000	20% of exempt-purpose expenditures	25%
\$500,000 - \$1 million	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1 million - \$1.5 million	\$175,000 + 10% of excess over \$1 million	\$43,750 + 2.5% of excess over \$1 million
\$1.5 million - \$17 million	\$225,000 + 5% of excess over \$1.5 million	\$56,250 + 1.25% of \$1.5 million
Over \$17 million	\$1 million	\$250,000

There are two ways that the IRS defines lobbying under the Expenditure Test: 1) direct lobbying, or an attempt to influence legislation through direct contact with public officials, or 2) grassroots lobbying, or appealing to officials through the general public. Direct lobbying entails any type of

communication (phone, email, in person) to a legislator or their staff referring to a specific piece of legislation and expressing an opinion on it. Grassroots lobbying, on the other hand, is communication with the general public that reflects a view about specific legislation encouraging the public to contact their legislators, usually through what's known as a call to action. This generally entails the 501(c)(3) providing legislator contact information, a mechanism for contacting the legislators, and/or a list of legislators voting on the legislation to the public. Once a 501(c)(3) organization has filed the Form 5768 with the IRS, both direct and grassroots lobbying are allowable actions if kept within the spending limits set forth above.

Additionally, there are a number of political activities that do not constitute lobbying that are available as a tool for 501(c)(3) organizations. Because these activities are not considered lobbying, those nonprofits that measure their lobbying expenditures through the Insubstantial Parts Test and the Expenditure Test do not need to include them in their lobbying expenses. The following activities are examples of political activities that do not fall under the definition of lobbying:

- Providing requested technical advice on legislation to a committee
- Distributing or making available nonpartisan analysis, studies, or research to the general public, including legislators
- Communicating with public officials without attempting to influence legislation (i.e. discuss broad issues or organization's activities)
- Conducting "self-defense" lobbying (i.e. cost of lobbying for or against legislation that has a potential to impact the existence of the organization are not considered lobbying expenses)
- Actions and communications regarding administrative regulations
- Lobbying by volunteers if the organization has no expenses