Lobbying Rules for Public Charities

We’ll begin at approximately 2:00 PM Eastern Time
Any tech questions? Contact GoToMeeting Technical Support at (888) 259-8414.
Other questions? Call Christina Peltier at Alliance for Justice at (510)444-6070

Agenda

1. What is “advocacy”?  
2. What are the lobbying limits for 501(c)(3) organizations?  
3. What is “lobbying”?  
4. What are the lobbying exceptions?

What is “Advocacy”?  

- Organizing  
- Educate Legislators  
- Partisan Political  
- Get to Know Legislators  
- Research  
- Organize a Rally  
- Regulatory Efforts  
- Public Education  
- Nonpartisan Voter Ed.  
- Lobbying  
- Educational Conferences  
- Lobbying Exceptions  
- Training  
- Litigation
Nonprofits Can and Should Lobby for Policy Change!

Comparing Nonprofits

<table>
<thead>
<tr>
<th>Lobbying Activities</th>
<th>501(c)(3)</th>
<th>501(c)(4)</th>
<th>527</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Limited</td>
<td>Unlimited</td>
<td>Rare and can be taxable</td>
</tr>
</tbody>
</table>

How do you Determine Your Lobbying Limits?

One of Two tests:

"Insubstantial Part" Test  OR  501(h) Expenditure
### Lobbying Limits

**Insubstantial Part Test**
- Default Test
- What Is Insubstantial?
- Lobbying Not Defined
- Activities-based
- Non-expenditures count
- Penalty

### Lobbying Limits

**501(h) Expenditure Test**
- IRS Form 5768
- Expenditure-based
- Dollar-based Limits
- Defines Lobbying
- Penalty Less Severe
- $1 Million Cap
- Churches Cannot Elect

### Lobbying Limits under 501h

1. Calculate organization’s
2. Overall lobbying limit

<table>
<thead>
<tr>
<th>Annual Expenditures</th>
<th>Overall Lobbying Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500,000 or less</td>
<td>20%</td>
</tr>
<tr>
<td>$500,000 to $1 million</td>
<td>$100,000 plus 15% of excess over $500,000</td>
</tr>
<tr>
<td>$1 million to $1.5 million</td>
<td>$175,000 plus 10% of excess over $1 million</td>
</tr>
<tr>
<td>$1.5 million to $17 million</td>
<td>$225,000 plus 5% of excess over $1.5 million</td>
</tr>
<tr>
<td>Over $17 million</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

3. Grassroots lobbying limit is 25% of overall limit
### Lobbying Limits under 501(h)

Total Lobbying Limits
for most 501(c)(3)s making the 501(h) election with annual expenditures of $2 million

- Overall Lobbying Limit: $250,000
- Grassroots Lobbying Limit: $62,500

### What is Lobbying?

[Caption: Images of various lobbying activities, including protests and meetings with elected officials.]
Direct Lobbying
Communication
Legislator
Expresses a View About Specific Legislation

Legislator
Direct Lobbying
Communication
Legislator
Expresses a View About Specific Legislation

Legislator
Direct Lobbying
Communication
Legislator
Expresses a View About Specific Legislation

Legislator

Members of Congress
State Legislature
City Council Members

President, governor, mayor or other executive official who participates in the formulation of legislation
**Legislator**

- Direct Lobbying
- Communication
- Legislator
- Expresses a View About Specific Legislation

When is US Secretary of Homeland Security Janet Napolitano a “legislator”?

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**NOT Legislator**

- Direct Lobbying
- Communication
- Legislator
- Expresses a View About Specific Legislation

Special Purpose Boards:
- School boards
- Planning commissions
- Zoning commissions
- Water districts

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**Special “Legislator” Rule**

- Direct Lobbying
- Communication
- Legislator
- Expresses a View About Specific Legislation

Members of the general public are “legislators”
- Ballot Measures
  - Ballot initiatives
  - Referenda
  - Constitutional amendments
  - Bond measures
**Specific Legislation**

<table>
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<tr>
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<th>Communication</th>
<th>Legislator</th>
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<td>Expresses a View About Specific Legislation</td>
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<td></td>
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</table>

Still specific legislation even if...
- not yet introduced
- not yet written
- not fully fleshed out

**Not Specific Legislation**

- Regulations
- Enforcing laws
- Executive Orders
- Litigation

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<tr>
<th>Grassroots Lobbying</th>
<th>Communication</th>
<th>General Public</th>
</tr>
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<tbody>
<tr>
<td>Expresses A View About Specific Legislation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Call To Action</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Call to Action

Action Alert: Oppose Alito’s Nomination
The Judiciary Committee is voting today on the nomination of Sam Alito to the US Supreme Court. Members of the Judiciary Committee who are undecided on Sam Alito’s nomination include:

- Patrick Leahy
- Edward Kennedy
- Charles Grassley
- Arlen Specter
- Orrin Hatch
- Joseph Biden
- Herbert Kohl

Communication
General Public
Expresses a View About Specific Legislation
Call to Action

Call to Action

- Telling recipient to contact legislator(s)
- Providing address, telephone number, and/or other contact information of legislator(s)
- Providing mechanism to enable communication with legislator(s)
- Identifying legislator(s)

Grassroots Lobbying
Communication
General Public
Expresses a View About Specific Legislation
Call to Action

Grassroots Lobbying
Not Lobbying

Communication
General Public
Expresses a View About Specific Legislation
Call to Action
Grassroots Lobbying

Communication
General Public
Expresses a View About Specific Legislation
Call to Action

Grassroots Lobbying?

Communication
General Public
Expresses a View About Specific Legislation
Call to Action

Membership Rule: Direct

A Member is defined as an individual who gives more than a “nominal” amount of time or money to an organization.

Communication
GoMemberPublic
Expresses a View About Specific Legislation
Call to Action
## Membership Rule: Grassroots

- Communication
- Members
- Expresses a View About Specific Legislation
- Call to Action

### Lobbying Exceptions

**Must**
- include a “full and fair” discussion of the issue, and
- be broadly disseminated

**May**
- express a view, and
- include an indirect call to action

### Invitation in writing
- On behalf of a governmental body, committee or subcommittee

### Lobbying Exceptions

- Nonpartisan Analysis, Study, or Research
- Request for Technical Assistance
- Self Defense
- Examinations and discussions of broad social, economic, and similar problems
Lobbying Exceptions

- A communication with a legislator
- About a legislative action that affects:
  - its powers and duties
  - its tax-exempt status or
  - the deductibility of contributions

Lobbying Exceptions

- Nonpartisan Analysis, Study, or Research
- Request for Technical Assistance
- Self Defense
- Examinations and discussions of broad social, economic, and similar problems

QUESTIONS?

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