



Many Missions. One Voice.

Our Mission: To strengthen Westchester's nonprofit organizations as they transform lives, empower communities, and drive positive change

Advocacy & Lobbying Toolkit

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This toolkit is provided for informational purposes only. This document does not constitute legal advice and should not be construed as such. These materials do not create an attorney-client relationship between the reader and any other person, nor do they offer to create such a relationship.

1. Introduction

A surprising number of people believe that 501(c)(3) organizations cannot lobby. This is not true.

Nonprofits are vehicles for democratic involvement, positive change and social justice, and, if done correctly, are allowed to advocate and lobby.

Without issue-based advocacy and lobbying, nonprofits risk existing only as service providers that achieve some positive outcomes for individuals while perpetuating the systems that have contributed to life-limiting inequities based on race, ethnicity, gender and sexual identity, ability and more.

This toolkit will be a dynamic resource. NPW will add sections to provide updated information, as well as materials about advocacy and lobbying on the County, State and Federal levels.

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 P A R T N E R S H I P



LOBBYING means that the organization is trying to influence legislation

POLITICAL ACTIVITY refers to partisan campaigning or nonpartisan voter involvement

2. Federal Rules On Lobbying And Political Campaign Activities

Overview

A Lobbying and Political Campaign Activities – The Difference

Lobbying and political activity are easily confused. It is vital for 501(c)(3)s to know the difference!

✔ Lobbying

- [Public charities are allowed to lobby](#) but, like most not for profits, they can lose their tax-exempt status if they engage in political campaigns and electioneering. The IRS has set [strict guidelines for public charities](#) and other tax-exempt organizations and expects each of them to pay close attention to these regulations.

From <https://standforyourmission.org/> and <https://boardsource.org/resources/political-activity-public-charities/>

✔ Political Campaign Activities:

- 501 (c)(3) organizations cannot support or oppose candidates for public office.
- This rule is absolute; there is no “501(h)” (defined below) election for political activities and violating this rule could jeopardize the organization’s tax exemption and/or the imposition of excise taxes on the nonprofit and its managers
- A 501(c)(3) can engage in nonpartisan voter education activities, such as candidate forums, voter education activities, and get out the vote drives -if these activities are done very carefully. For example- a 501(c)(3) might be able to host a candidate forum if all candidates are invited and if no favoritism is shown to a particular candidate. **Such activities must be conducted very carefully – speak with your legal advisor first to ensure you are doing these properly!**

501(c)(3) organizations can choose how to measure the amount of their lobbying activities: (1) the substantial part test, or (2) the lobbying expenditure test – also known as the 501(h) election.

Lobbying - The “Substantial Part” Test and the “501(h) Election”

Substantial Part Test

The definition of “substantial” as it relates to the amount of a nonprofit’s lobbying activities is not at all clear. How much lobbying activity might be considered “substantial” is hazy at best. It may depend on how the IRS retroactively weighs the “facts and circumstances” of each situation. Even a small amount of lobbying activities could be considered substantial. And, the risks of violating this test are great: Activities by volunteers may be included (which may be difficult to quantify) ; a 501(c)(3) risks losing its tax exempt status entirely if the rule is violated in a single year; there can be financial liability to organization managers (such as Directors) if the actions are willful.

Lobbying Expenditure Test/the 501(h) Election

To avoid the uncertainty of a nonprofit’s lobbying activities being measured with the subjective “substantial part” test, 50(c)(3) organizations should strongly consider measuring their lobbying activities by making the 501(h) election. This is done by filing a short form with a long name: IRS [Form 5768 \(Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization to Make Expenditures to Influence Legislation\)](#).

Making the 501(h) election allows nonprofits to elect to have their lobbying activities be measured by an objective “expenditure test”, rather than by the subjective “substantial part” test. As noted below, by making this election the 501 (c)(3) can objectively measure its lobbying activities simply by keeping track of how much spends on lobbying activities.

Importantly, a 501(c)(3) charitable nonprofit making the 501(h) election remains a 501(c)(3) charitable nonprofit.

In the opinion of informed attorneys and accountants, filing the 501(h) election is, for the vast majority of nonprofits, the easiest, most effective “insurance” a nonprofit can secure to protect itself from overstepping IRS limitations on lobbying activities.

“Under the expenditure test, the extent of an organization’s lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000.”

If the amount of exempt purpose expenditures is	Lobbying nontaxable amount is
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000

(Source: [IRS Website](#))

The limits that the IRS allows for lobbying expenditures are very generous. For example, a 501(c)(3) that has “exempt purpose expenditures” (essentially, its budget) of \$500,000 could spend 20% of that amount – \$100,000 – on lobbying activities. As you can see, most nonprofits will never spend up to the allowable amounts, and thus will not be in danger of penalties or risk the loss of tax exemption.

There are many advantages of for a 501(c)(3) to making the 501(h) election:

- It provides a clear definition of lobbying
- As noted above, most 501(c)(3)’s will never reach the amounts they are allowed to spend on lobbying activities
- There’s an unlimited use of volunteers (assuming no reimbursed costs)
- It gives organizations a straightforward spending yardstick, thus the ability to plan
- “Soft” factors are irrelevant, only expenditures count
- Only the organization is penalized for violating the rule, not managers (e.g., Directors)
- Organizations are less likely to lose exemption for exceeding their lobbying limits unless the organization exceeds lobbying limits by 50% average over rolling four-year average

Important to Note

Nonprofits that receive federal funds may not use those funds (whether received by the nonprofit as a result of a “contract” or “grant”) to attempt to influence any federal or state legislation, through direct or grassroots lobbying campaigns. See Federal Acquisition Regulations (FAR), 48 C.F.R. §§ 31.205-22; 31-701 et seq.

Private foundations, churches, and integrated auxiliaries of churches are not permitted to file the 501(h) election.

What organizations should consider not making the 501(h) election?

- Possibly organizations that expect to exceed their allowable limits
- Organizations that engage in a substantial amount of grassroots lobbying (defined below); a group that makes the 501(h) election can spend only 25% of its lobbying budget on grassroots lobbying activities.

Worth Reinforcing

Section 501(c)(3) of the Internal Revenue Code has two important restrictions relating to **involvement in political campaigns and lobbying activities**:

- A prohibition against a 501(c)(3) organization participating in or intervening in any political campaign on behalf of, or in opposition to, any candidate seeking public office (Federal, state, or local) – other than carefully engaging in nonpartisan voter education activities.
- No substantial part of a 501(c)(3)’s activities can be directed towards influencing legislation at the federal, state and/or local level (lobbying). Section 501(c)(3) does not absolutely place a ban on all lobbying by charitable nonprofits –rather, it notes that “no substantial part of the activities” of the nonprofit may be for “carrying on propaganda, or otherwise attempting, to influence legislation.” Source: [26 US Code, Section 501 \(c\)\(3\)](#). So, while many people do not realize it, charitable nonprofits may engage in lobbying activities up to a point – the point at which its lobbying activities become a “substantial part” of its activities. Knowing how to properly engage in such activities can ensure your organization’s participation in the public policy process.

NY State Disclosures

If an organization hires or has a lobbyist on staff, New York State requires certain disclosures that lobbyists and their clients must make.

Learn more here: <https://jcope.ny.gov/lobbying-laws-and-regulations>

Take a Deeper Dive

<https://www.councilofnonprofits.org/taking-the-501h-election>

<https://bolderadvocacy.org/resource/worry-free-lobbying-for-nonprofits/>

Federal Rules

<https://conservationtools.org/guides/100-lobbying-rules-and-501-c-3-organizations>

New York State Rules

<https://jcope.ny.gov/lobbying-laws-and-regulations>

<https://boardsource.org/resources/what-is-advocacy/>



3. Advocacy And Lobbying

Advocacy

In a nutshell, the term advocacy encompasses the actions one takes to effect change for a cause they are invested in. (*Source: Salsa Labs*)

Advocacy seeks to provide information and education to lawmakers, elected officials, other stakeholders, and the general community on the broad social issues/problems addressed by your organizations and the solutions you, and your collaborators provide. For example:

- What needs are the families you serve facing?
- What programs are working well and important for those families?
- What do you seek to change and how?

Lobbying is one example of an advocacy activity. In addition to lobbying, here are examples of other advocacy activities:

- **Host a site visit.** Invite a legislator to visit your organization, to meet your staff, board, volunteers, and clients.
- **Meet with legislators.** Schedule meetings with legislators representing the districts your organization serves and legislators that sit on committee(s) with jurisdiction over your policy issues.
- **Testify.** Attend budget and other hearings and offer testimony. Building relationships with legislators as a reliable source of information and subject matter expert.
- **Build awareness of your cause.** Publish information through social and traditional media about your organization and mission and the broader social issues addressed.

Lobbying

Advocacy becomes lobbying when a position on specific legislation is taken.

For IRS purposes, “legislation” includes:

- Ballot initiatives, bond issues, and referenda
- Bills and other legislative proposals
- Judicial confirmations
- Resolutions
- Does not include administrative rules and regulation

Two Forms of Lobbying

Direct lobbying is communication directly with legislators or their staff, or with executive branch officials participating in the formulation of legislation. In order for a communication to be considered direct lobbying, two elements must be present:

- Refers to specific legislation
- Expresses a position on that legislation

Grassroots lobbying attempts to influence legislation by reaching out to the public and rallying them to support a cause. In order for a communication to be considered grassroots lobbying, three elements must be present:

- Refers to specific legislation
- Expresses a position on that legislation
- A call to action – states that recipient should contact legislator; gives address, email, phone number; supplies a tear off card; or identifies legislators to target

To be considered lobbying by the IRS, both direct lobbying and grassroots lobbying must refer to a specific piece of legislation, express a view or an opinion on it, and, in the case of grassroots lobbying, include a call to action. Thus – if you do not express a position on specific legislation, you are not lobbying.

Here are examples of activities that may be considered to be lobbying (if the above factors are in place):

- **Meet with legislators.** Present a case for why they should support your opinion on legislation. Provide a fact sheet for legislators to review.
- **Write or call legislators.** You, board members, staff, clients, and volunteers, as appropriate, write or call legislators to share an opinion on legislation. Volume matters.
- **Testify at hearings.** Publicly support, oppose, or suggest changes to a bill.

Relationship Building

Nonprofits partner with government to deliver government mandated and other services that ensure the health, safety, and economic vitality of our communities. Building relationships with elected officials year-round, outside “session” and budget season, and during these times, is vital for effective advocacy and lobbying.

In both advocacy and lobbying:

- **Collect and share client stories.** Bring life to you work.
- **Engage those you “serve” in advocacy.** Clients and family members, as appropriate, have the first-hand knowledge and the most accurate and personal understanding of how complex the issues are. Their voices should be at the table.



4. Campaigns

Planning is Needed for Successful Advocacy Work

Advocacy is most often a long-term effort; it takes intentionality, time, focus and follow through.

Advocacy for change centers on addressing issues, positive social impact, solutions, and partnerships over an agency-only approach. This is how to build awareness and funding to support your mission, advance systemic change, and foster respect as a sought-after community partner.

Establish a Specific Goal

Have a clear idea of your campaign's goal(s) when reaching out to supporters.

In some cases, you may only be able to determine the scale your campaign and additional goals after recruiting supporters.

Craft a Message

Know Your Audience and Keep Them Engaged

An advocacy plan should be audience focused. Determining who your audience is will help you decide the best messages and tactics to implement. There may be multiple audiences or just one, and it may change over time.

Your base message will need to be specific (but not overly specific) to allow potential advocates to understand your goal(s) and what success will look like for your campaign. This base messaging will keep you focused and can serve as a template for additional audiences, future responses and communications.

What story is your advocacy campaign telling?

People rarely make decisions based on facts and statistics alone.

[Effective storytelling](#) has the potential to keep your audience invested in your advocacy and will give your advocates additional tools to tell the story of your campaign.

Build a Support Base and Engage Community

Advocacy campaigns require considerable outreach and take months or even years. A core and committed support base is essential for the success of any campaign.

Working in coalition will greatly increase impact and reach. Having clear roles and responsibilities, direction and vision for coalition efforts is key to building power and staying focused.

Do Not Silo Your Advocacy Work/Join Allies

Before you begin advocacy or lobbying, learn what you may not know. Welcome new information and diverse perspectives to deepen your understanding, reach and effectiveness. Reach out to other nonprofits and other stakeholders that provide similar services and may already be advocating and/or lobbying for the same or similar issues. Ask to join existing coalitions and/or establish partnership with other organizations not currently advocating. The more voices involved, the stronger the message.

Regardless of the size or scope of your campaign, the larger your supporter base, the better. In massive numbers, constituents contacting their representatives cannot be ignored.

Create an Action Plan

Determine your capacity: Establish an initial plan based on current needs, finances, resources, operating capacity, goal(s) and measurable objectives/actions that relate to the goal(s).

A mix of strategies - hashtags, digital advocacy, community educational forums, face to face meetings with elected officials can help to create a comprehensive campaign that reaches diverse and intersecting audiences.

Make your Work Time Bound

Advocacy *and* lobbying require flexibility and the implementation of a timeline.

Task assignments, benchmarks and deadlines help track progress and hold people and organizations accountable.

Many campaigns are dependent on when specific legislation comes to a vote. Plan based on this timing to build momentum, foster participation, and achieve the change your campaign seeks to advance.



5. Advocacy And Nonprofit Boards Of Directors

(Source: *Stand for Your Mission*)

Board members can serve as powerful champions for nonprofit missions, using a combination of passion and influence that can accelerate an organization's voice and goals.

Take a Deeper Dive

- [Stand for Your Mission](#)
- [Top Resources to Share with Your Board](#)

“The highest performing nonprofit boards understand that public policy affects the work of their organization. They continuously leverage advocacy to stand up for the mission and people they serve.”

6. Resources



<https://boardsource.org/resources/what-is-advocacy/>

<https://boardsource.org/board-support/membership/board-support-nonprofits/>

<https://boardsource.org/resources/political-activity-public-charities/>

<https://bolderadvocacy.org/resource/worry-free-lobbying-for-nonprofits/>

<https://www.councilofnonprofits.org/everyday-advocacy-resources>

<https://www.councilofnonprofits.org/>

<https://hi.advocacy-institute.org/>

<https://info.voterve.net/resources/13-advocacy-strategies-for-running-a-successful-campaign>

<https://lobbyit.com/direct-vs-grassroots-lobbying/>

<https://www.muster.com/blog/advocacy-campaigns#whatareadvocacycampaigns>

<https://www.salsalabs.com/blog/advocacy-campaign-planning>

<https://standforyourmission.org/>

<https://www.thecampaignworkshop.com/blog/advocacy-campaign/advocacy-plan>