



**Non-profit
advocacy:**

Know Your Rights

Advocacy *courts* change



Through a variety of strategies, advocacy strives to change:

- ✓ Public opinion
- ✓ Community and institutional norms
- ✓ Government policies
- ✓ Outcomes

Non-profit Lobbying is Legitimate, Encouraged, and Protected:

Congress has stated that influencing legislation is an appropriate and legitimate activity for charitable organizations.

In 1976, it passed legislation giving public charities the right to lobby up to defined percentages of their annual expenditures.

Advocacy vs. Lobbying*

ADVOCACY

- Issue **education** (general public or legislators)
- Research and analysis
- **Educational** reports and fact sheets
- Strategies that define problems and solutions
- Convening/engaging stakeholders
- Polling
- Non-partisan voter **education**
- Building relationships with legislators
- Building advocacy capacity

LOBBYING

Communication that:

- Expresses a view about specific legislation, **and**
- Includes a call to action (i.e., vote this way; call a lawmakers)

Types of Lobbying:

- *Direct Lobbying*: Targets lawmakers directly
- *Grassroots Lobbying*: Encourages general public to lobby

* *In the IRS context*

Non-Lobbying Advocacy

Advocacy targeting the following is not considered lobbying by the IRS (state laws may use different definitions):

Regulations
Enforcing Laws
Executive Orders
Litigation



What Agency Leaders Needs to Know About Non-Profit Advocacy

Public Foundations & Non-Profits Must Abide by Same Restrictions

Lobbying	Election-Related
May lobby (within limit)	No partisan activities allowed
Limits established by: -- insubstantial-part test, or -- 501(h) expenditure test	May educate candidates and voters on issues, political process, and voter registration
No limit on non-lobbying advocacy	May host debates and forums
	Nonpartisan get-out-the-vote drives allowed
	No party or candidate contributions

Elect the 501(h) Test to Maximize Effectiveness

501(h) Test	Insubstantial-Part Test
Gives public charities the right to lobby up to defined percentages of their annual expenditures (1976)	Requires that “no substantial part of a charity’s activities... be carrying on propaganda or otherwise attempting to influence legislation.” (1934)
Financial expenditure limits are well defined	“Substantial” is not defined in the law and the limit is vague and open to interpretation
Electing the “501(h) expenditure test can help prevent audits	
Penalty for exceeding limits is a tax imposed on the expenditure exceeding the limits	A “substantial” finding can result in 501c3 non-profit status being revoked

Expenditure Test

Total Annual Expenditures	Total Lobbying Limit
First \$500K in Annual Expenditures	20% (\$100,000)
Next \$500K in Annual Expenditures	15% (\$ 75,000)
Next \$500K in Annual Expenditures	10% (\$ 50,000)
Remaining Expenditures	5% (capped total of \$1M)

Grassroots Lobbying may not exceed 25% of total lobbying limit
(applies whether there are lobbying expenditures or not).

Grassroots Lobbying is defined as activities attempting to influence specific legislation by encouraging the public, other than the organization's members, to contact legislators about that legislation.

How does a 501(c)(3) charity elect 501(h) status?

Submit Form 5768 (one page). Charities with income over \$25,000 already submit Form 990, which requires either reporting on 501(h) expenditure limits *or* detailed description of lobbying activities for those electing the insubstantial test.

Form 5768 <small>(Rev. December 2004)</small> <small>Department of the Treasury Internal Revenue Service</small>	Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation <small>(Under Section 501(h) of the Internal Revenue Code)</small>	For IRS Use Only ►
Name of organization Protect the Environment Now Education Fund		Employer identification number 48 : 1841985
Number and street (or P.O. box no., if mail is not delivered to street address) 800 Vale Street, S.E.		Room/suite N/A
City, town or post office, and state Washington, DC 20018		ZIP + 4
<p>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 <u>12/31/2006</u> and all subsequent tax years until revoked. (Month, day, and year)</p> <p><i>Note: This election must be signed and postmarked within the first taxable year to which it applies.</i></p>		
<p>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 <u>N/A</u> (Month, day, and year)</p> <p><i>Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.</i></p>		
Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ► <input checked="" type="checkbox"/> election <input type="checkbox"/> revocation on behalf of the above named organization.		
(Signature of officer or trustee) Sheila Cummings, Executive Director		(Date)
General Instructions <small>Section references are to the Internal</small>		
<small>To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item</small>		<small>b. An integrated auxiliary of a church or of a convention or association of churches or</small>

Prepare Your Agency

- Create an environment that promotes advocacy involvement
- Look to your mission and programs for priority issues
- Form a policy committee
- Learn the IRS rules
- Make policy/advocacy a standing topic of regular client, staff, board, and community meetings

Assess Your Organization's Advocacy Capacity

- Is the **Board involved** in setting institutional policy positions?
- Does the organization have a process for setting **policy positions**?
Formal or informal?
- How does the organization gather **stakeholder input** on policy?
- How are **policy priorities** set/established within the organization?
- Who **conducts advocacy** for the organization?
- Is there a **culture of advocacy** within the organization?
- How are advocacy issues **communicated** to clients, staff, board, donors, and others?



What Supervisors and Employees Needs to Know About Non-Profit Advocacy

Federally Funded Positions

Challenge:

- No federal funds may be used for lobbying
- Most government funds also restrict lobbying
- Advocacy is generally not restricted

Possible solutions:

- To allow lobbying, create positions that are <100% government funded
- Ensure all government-funded time is spent on project activities and not lobbying
- Individuals not on agency time or representing the agency face no such restrictions on lobbying

Create a culture of advocacy

- *Leadership affirms policy advocacy is permissible*
- *Leadership allows use of office space* for advocacy meetings*
- *Management allows office resources* such as meeting space, use of copy machine, fax, and telephones for policy advocacy*
- *Individuals are encouraged to participate voluntarily in advocacy activities during breaks, lunch-time, or after hours*
- *Employees funded with private, unrestricted funds may use work time to engage in lobbying*

** Provided budget is not 100% public*

Thank you!



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