



## WHAT IS ADVOCACY?

Advocacy helps nonprofits advance their mission, increase their funding sources, and solve community and societal problems. Many nonprofit organizations' missions address the needs, misfortunes, and inadequacies of individuals and communities, and even help individuals and communities aspire and dream for a better quality of life. Effective communication is the key for nonprofits to achieve these objectives, and advocacy is the method to get these nonprofit voices heard. Advocacy allows nonprofits to advance the issues they care about and helps bring about lasting change for the people and communities they serve.

Advocacy for public charities is a broad concept and incorporates communication about the mission, lobbying for legal change, and even nonpartisan voter education. "*Nonprofit advocacy is legal, needed, and easy,*" to quote the National Council of Nonprofits.

However, it is very important for nonprofits to understand the differences between the various activities associated with advocacy as well as what is and what is not allowed for a specific type of tax-exempt organization.

### Sharing the mission

The broadest form of advocacy is sharing and communicating the mission of the organization to others, activities sometimes referred to as ambassadorship. Staff and board members are ambassadors for the organization. As such, they represent the organization in the community, articulate its mission, and support and defend its message. Nonprofits increase their mission impact through this kind of advocacy work.

Advocacy happens everywhere. For example, to better leverage their mission, nonprofits often connect with others who work on similar or complementary issues. This is the core of advocacy — organizations and individuals working together to move the mission forward.

All nonprofit leaders can and should engage in this form of advocacy!

### Lobbying

Unfortunately, there is still a persistent misconception that nonprofits cannot lobby. On the contrary, for most nonprofits, lobbying is legal and recommended within the limits outlined below.

The IRS defines lobbying as "carrying on propaganda, or otherwise attempting, to influence legislation." This means activities that try to influence legislators to pass laws that are favorable or overturn laws that are unfavorable to one's cause.

There are two categories of lobbying:

- Direct lobbying occurs when the organization contacts legislators or government officials directly.

- Grassroots lobbying occurs when organizations try to influence legislation indirectly by attempting to mold the general public's opinion on an issue and includes a call to action for the public.

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.

What is not lobbying? There are numerous activities that resemble lobbying but are not considered lobbying by the IRS because they do not fulfill the above-mentioned criteria. These activities, which include the following, are legal activities.

- Communication with the judicial or executive branch or administrative agencies
- Discussion of broad issues that does not refer to a specific piece of legislation
- Providing a strong opinion on a specific piece of legislation but omitting a call for action
- Naming legislators in favor of or against an action and omitting a request to contact them
- Preparing and distributing a nonpartisan analysis of a legislative proposal
- Testifying for or providing assistance to a legislative committee after a written request
- Self-defense lobbying where the organization's future is threatened
- Lobbying as private citizens and not as representatives of the organization

These activities are not limited, and they can be extremely valuable to educate the public, the government, and administrative agencies about issues impacting your mission.

For public charities, lobbying itself is recommended but within specific limits:

- The IRS allows 501(c)(3)s to engage in lobbying as long as it is not a "substantial part" of their activities. As this definition is quite ambiguous, charities (excluding churches) have an option to elect an expenditure test under Section 501(h). Please visit the IRS website and additional resources on the Stand For Your Mission website for more information about this option.
- Federal grant funds may not be spent on lobbying.

Private foundations may not engage in any lobbying activities or earmark funds specifically for a lobbying activity; however, they can and should support nonprofits that lobby and advocate on issues.

Naturally, an individual, even when associated with a nonprofit, can participate in any legal activity as a private citizen.

### Electing under 501(h).

Any charity that is active in lobbying should elect 501(h). Benefits include the following:

- It is easier for the nonprofit to survey and control its lobbying activities.
- Only actual expenses are included in the calculation, thus eliminating volunteer time from lobbying totals.
- If no expenses occur, there is no lobbying to report.
- By managing the costs well, a nonprofit may be able to increase its lobbying activities without penalties.

Constraints include the following:

- The organization must keep accurate records of all activities that relate to lobbying.
- The organization must clearly separate direct and grassroots lobbying expenses, as only 25 percent of the total expenses can be spent on grassroots lobbying.

### Political activity

Lobbying and political activity are often and easily confused, and it is vital for public charities to know the difference. Lobbying refers to the activities a charity does to influence legislation that affects its mission fulfillment. Political activity refers to partisan campaigning and nonpartisan voter education.

Public charities are allowed to lobby, but, like most nonprofits, can lose their tax-exempt status if they engage in partisan political campaigns, i.e., electioneering. This is because public charities serve and are supported by the general public. It therefore is not fitting for an organization to influence the political affairs of the government in one direction or another. Remaining nonpartisan is the only way a charity can represent its constituents in an unbiased manner while fulfilling its public purpose.

The IRS has set strict guidelines for public charities and other tax-exempt organizations regarding political activity and expects them to pay close attention to these regulations. Partisan political campaign activity is strictly prohibited for a 501(c)(3) organization, but is allowed for a Section 527 organization. However, a public charity can and should pursue nonpartisan voter education activities. The distinction between these activities follows:

1. Partisan political campaign activity is called electioneering and includes participating or intervening in political campaigns for or against a candidate for national, state, or local elective office. It does not apply to nominees for appointed offices. Electioneering is strictly prohibited for 501(c)(3)s.
2. Nonpartisan voter education is allowed and can take the form of educational and get-out-the-vote activities. Taking sides is forbidden, however.

### Partisan Political Campaign Activity/Electioneering

Electioneering includes written or oral endorsement of a candidate, rating candidates, forming a Political Action Committee (PAC), coordinating educational or lobbying activities with a campaign, or contributing or soliciting funds for campaigns or candidates.

As mentioned above, electioneering is strictly prohibited for 501(c)(3)s, but it is allowed for Section 527 organizations (as defined by the IRS).

### Nonpartisan Voter Education

Nonpartisan voter education is legal, and is recommended for a public charity to increase public awareness of issues impacting its mission. A public charity can

- educate the public on issues in a nonpartisan manner
- engage in voter registration
- hold nonpartisan candidate debates/forums
- allow its staff to participate in political campaign activities as private individuals

When engaging in voter education, the organization must not endorse a particular side of the issue or campaign. More specifically, this means that the organization must not

- name candidates when encouraging people to vote.
- use registration lists to target voters who are of one political party
- select a specific area for a voter registration drive because a certain candidate in that area is a favorite
  - The organization must be able to provide contemporaneous reasoning for its voter registration drives and not rely on after-the-fact rationales. If questions arise, it must be able to show what motivated it to make decisions before the event.
- define subgroups by political or ideological criteria
  - However, the organization may focus on
    - specific minority groups, even if statistical data indicate a political preference
    - subgroups tied to discrimination (race, gender, language, low-income, unemployed)
    - subgroups sharing common problems (farmers, business people)

When planning voter education programs, a charity should be attentive to the following guidelines:

- Don't introduce new issues close to election time.
- Don't coordinate activities with a candidate's campaign schedule.
- Do focus on broad issues and avoid addressing high-profile issues that divide candidates.

When organizing candidate debates/forums, a public charity must

- show no bias when choosing the location, the expert panel, and when allowing the candidates to express their opinions address issues that have regularly been of concern to the organization
- invite all viable candidates to the forum — even if they are unable to attend
- refrain from editorializing informational reports.

The line between nonpartisan voter education and partisan campaign activity can be very thin. This paper only touches some issues. If a public charity is not sure about an activity, it should seek legal counsel.

### Are there other options?

Do not let the above regulations and limits discourage your public charity from engaging in advocacy work. While it is critically important to know the regulations and limits to lobbying and political engagement, options exist for charities, and different laws guide non-charitable nonprofits.

**Form a 501(c)(4) organization.** A public charity can form a separate affiliate — a 501(c)(4) organization — to participate in lobbying activities on its behalf. Keeping accurate and separate records for each entity is a key to proving that the public charity does not or did not divert funds to its subsidiary and its lobbying or political activity.

501(c)(4)s can create special funds — Political Action Committees (PACs) — under section 527 of the tax code to carry out electoral activity (see below). A public charity that has an affiliate 501(c)(4), that in turn has formed a PAC, needs to be particularly careful to avoid accusations that it is engaged indirectly in activities that are beyond its direct scope.

501(c)(4) social welfare organizations and 501(c)(6) trade associations may engage in lobbying activities without limits.

**Section 527 organizations** may have a purely political mission. The IRS defines these groups carefully and monitors their activities via detailed annual reporting.

According to the IRS, a political organization subject to Section 527 is a party, committee, association, fund, or other organization structured and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for the purpose of influencing the selection, nomination, election, or appointment of an individual to a federal, state, or local public office, or office in a political organization. Political parties and PACs are the best examples of Section 527 organizations.

Section 527 organizations are exempt from federal income tax when receiving political donation; income from investments and other non-exempt activities is taxed at a rate of 35 percent; donations are not tax-deductible.

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