

Advocacy & Lobbying 101

The Fundamentals of Nonprofit Advocacy

Monika Graham
Counsel, Bolder Advocacy



- National association of 140+ organizations.
- Committed to progressive values and the creation of an equitable, just, and free society.
- Advocates for a federal judiciary that advances core constitutional values and even-handed administration of justice for all Americans.
- The leading authority on the laws governing nonprofit advocacy.



Free coaching about laws impacting nonprofit advocacy
advocacy@afj.org 866.675.6229

Para apoyo técnico sobre los derechos y deberes de las
organizaciones comunitarias de cambiar la comunidad
advocacy@afj.org 866.675.6229

For free tools, fact sheets, and publications
www.bolderadvocacy.org






The information contained in this presentation and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code or state law.

Every good lawyer needs a disclaimer ...

Agenda

1. Comparing Tax Exempt Organizations
2. Methods of Measuring Lobbying and Lobbying Limits
3. IRS lobbying definitions: Direct vs Grassroots Lobbying
4. Lobbying Exceptions
5. Key Takeaways

Comparing Tax Exempt Organizations

	501(c)(3) <i>(Public Charities)</i>	501(c)(4), 501(c)(5), 501(c)(6)	527 <i>(Political Orgs)</i>
Examples			
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt	Tax-exempt
Lobbying Activities	Limited	Unlimited	Limited, possibly taxable
Partisan Political Activities	Cannot support or oppose candidates	Secondary activity	Usually, sole activity

Unofficial Working Definition of IRS

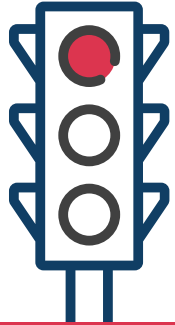
Lobbying:

Communicating with legislators to influence specific legislation, including ballot measures



Image credit @powercanow

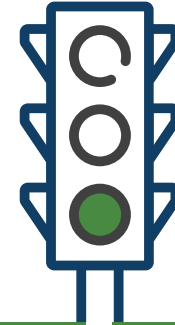
Avenues for Advocacy



Partisan
Political



Lobbying



Organizing

Public
Education

Nonpartisan
Voter Ed.

Influencing
Corporations

Educating
Legislators

Educational
Conferences

Lobbying
Exceptions

Regulatory
Efforts

Get to Know
Legislators

Research

Training

Litigation

Questions?

Methods of Measuring Lobbying and Lobbying Limits

Measuring Lobbying

Two options to define and track your lobbying:

1. Insubstantial Part Test: default
2. 501(h) Expenditure Test: need to choose it to use it



Insubstantial Part Test

1. Default system to define and track your lobbying
2. Harder to figure out if you're lobbying (vague definition)
3. More activities count as lobbying
4. Lower annual lobbying limit for orgs with small or medium budgets
5. Volunteer lobbying counts toward your annual lobbying limit
6. Harsh penalties if you go over your annual lobbying limit



501(h) Expenditure Test

1. Clear definitions and limits: most advocacy doesn't count as lobbying
2. Generous annual lobbying limits
3. You only have to count the money you spend; Volunteer lobbying doesn't count
4. The only orgs who can't choose this system are houses of worship.
5. The only orgs who *might not* want to choose this system are orgs with annual exempt purpose expenditures over \$17 million per year (*they will be capped at \$1M for lobbying*)



1. Calculate organization's

*Exempt
Purpose
Expenditures*

2. Overall lobbying limit

ANNUAL EXPENDITURES

OVERALL LOBBYING LIMIT

\$500,000 or less

20%

\$500,000 to \$1 million

\$100,000 + 15% of excess over \$500,000

\$1 million to \$1.5 million

\$175,000 + 10% of excess over \$1 million

\$1.5 million to \$17 million

\$225,000 + 5% of excess over \$1.5 million

Over \$17 million

\$1,000,000

3. Grassroots lobbying limit is 25% of overall limit

Calculating Your Lobbying Limit (under 501(h))

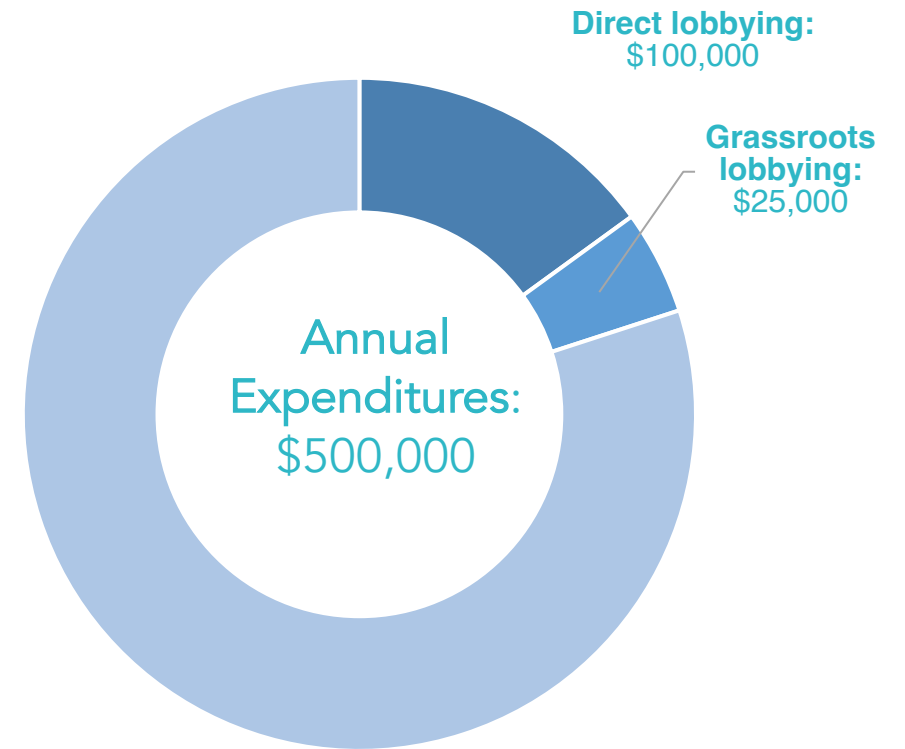
Example: A 501(c)(3) with
annual exempt purpose
expenditures of \$500,000

Overall Lobbying Limit

\$100,000

Grassroots Lobbying Limit

\$25,000



1. Calculate organization's exempt purpose expenditures

2. Overall lobbying limit



Use our online
calculator at
bolderadvocacy.org

3. Grassroots lobbying limit is 25% of overall limit

Lobbying To Dos

Regardless of which system an organization uses, it has a right to lobby, and when it does, it needs to:

1. Track its lobbying
2. Report its lobbying on its IRS Form 990 and
3. Use funds that don't restrict lobbying.



Where Do We Report Our Lobbying?

Form 990 (2021) Page **3**

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i>	<input type="checkbox"/>	<input type="checkbox"/>
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> ? See instructions	<input type="checkbox"/>	<input type="checkbox"/>
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	<input type="checkbox"/>	<input type="checkbox"/>
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i>	<input type="checkbox"/>	<input type="checkbox"/>
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19? <i>If "Yes," complete Schedule C, Part III</i>	<input type="checkbox"/>	<input type="checkbox"/>

SCHEDULE C
(Form 990)

Political Campaign and Lobbying Activities

For Organizations Exempt From Income Tax Under section 501(c) and section 527

▶ Complete if the organization is described below. ▶ Attach to Form 990 or Form 990-EZ.
▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2021

Open to Public Inspection

If the organization answered "Yes," on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.

Questions?

IRS Lobbying Definitions (for 501(h) electing organizations): Direct vs Grassroots Lobbying

Lobbying Definition

(for organizations electing the 501 (h) expenditure test)

Direct

- Communication
- Legislating Gov't Official
- Expresses view about specific legislation

Grassroots

- Communication
- General public
- Expresses view about specific legislation
- Call to action



Direct Lobbying: Communication

Direct

Communication

Legislating Gov't Official

Expresses view about
specific legislation



Direct Lobbying: Legislating Government Official

Direct
Communication
Legislating Gov't
Official

Expresses view about
specific legislation



Federal legislators and staff



Tribal government
representatives and staff



State Legislators and staff



County Commission,
Town Board of Supervisors, City
Council and staff



For ballot measure advocacy,
the general public

Direct Lobbying: Legislating Government Official, cont'd.

Direct

Communication

Legislating Gov't
Official

Expresses view about
specific legislation



President, governor, mayor or other government official who participates in the formulation of legislation

Direct Lobbying: Legislating Government Official, cont'd.

Direct

Communication

Legislating Gov't
Official

Expresses view about
specific legislation

The Public when
voting on....

Ballot Measures

- Ballot initiatives
- Referenda
- Constitutional amendments
- Bond measures



Direct Lobbying: Not Legislators

Direct

Communication

Legislating Gov't
Official

Expresses view about
specific legislation

- Police
- Sheriff
- District Attorney
- School boards
- Planning commissions
- Zoning commissions
- Housing authorities
- Water districts
- CA Department of Social Services
- County Department of Human Services



San Mateo County Sherriff, Christina Corpus

Direct Lobbying: Specific Legislation

Direct

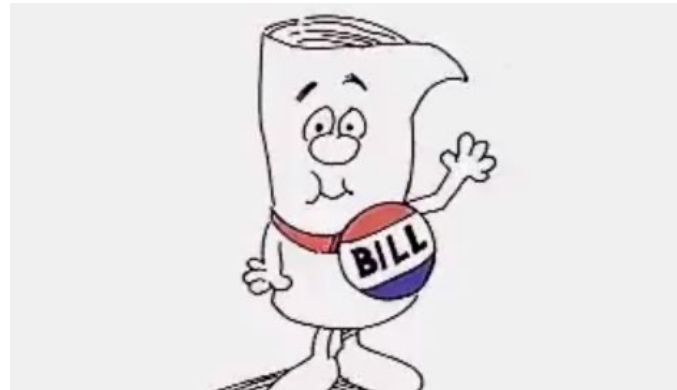
Communication

Legislating Gov't
Official

Expresses view about
specific legislation



Nominations confirmed by legislators



Bills, ordinances
(already proposed, or just a specific idea)



Federal, state, & local budgets
voted on by legislators

Direct Lobbying: Not Specific Legislation

Direct

Communication

Legislating Gov't
Official

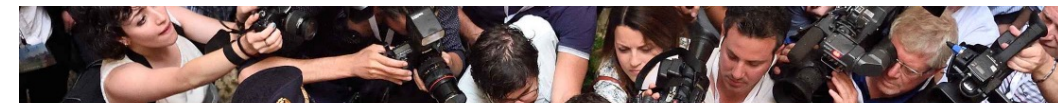
Expresses view about
specific legislation

- Regulations
- Executive Orders and Executive Actions
- Enforcement of Existing Laws
- Litigation

HUD Section 504 Regulations

- Federally-Assisted Programs, Services and Activities

3



ACLU LAWSUIT DEMANDS RELEASE OF IMMIGRANTS AT RISK OF DEATH FROM COVID-19

Direct Lobbying: Measure K Funding

Direct

Communication

Legislating Gov't
Official

Expresses view about
specific legislation

It depends on which “pot” the funds come from and who approves the funds.

If Voted on By
Board of
Supervisors =
Legislation

Decision by a County
Agency that does not
need to be approved
by BOS = Not
Legislation

Questions?

Direct Lobbying: Is this lobbying?

Direct

Communication

Legislator

Expresses a view about
specific legislation

Speaking with your assembly members asking them to amend AB 2405 to include housing for seniors (in addition to “children and families”)



Direct Lobbying: Is this lobbying?

Direct

Communication

Legislator

Expresses a view about
specific legislation

Speaking with your assembly members asking them to amend AB 2405 to include housing for seniors (in addition to “children and families”)



Direct Lobbying!

Direct Lobbying: Is this lobbying?

Direct

Communication

Legislator

Expresses a view about
specific legislation

Asking Governor Newsome to sign an executive order to create a Master Plan for Aging, a blueprint for state and local governments to create communities where people of all ages and abilities are engaged, valued, and afforded equitable opportunities to thrive as we age.



Direct Lobbying: Is this lobbying?

Direct

Communication

Legislator

Expresses a view about
specific legislation

Asking Governor Newsome to sign an executive order to create a Master Plan for Aging, a blueprint for state and local governments to create communities where people of all ages and abilities are engaged, valued, and afforded equitable opportunities to thrive as we age.

Not Lobbying!



Direct Lobbying: Is this lobbying?

Encouraging voters to vote yes on Schools and Communities First, a ballot initiative



Image credit @ Power California

Direct Lobbying: Is this lobbying?

Encouraging voters to vote yes on Schools and Communities First, a ballot initiative

Direct Lobbying!



Image credit @ Power California

Questions?

Lobbying Definition

(for public charities using the 501 (h) expenditure test)

Direct

- Communication
- Legislating Gov't Official
- Expresses view about specific legislation

Grassroots

- Communication
- General public
- Expresses view about specific legislation
- Call to action



Grassroots Lobbying: Communication

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action



Grassroots Lobbying: The General Public

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action

Grassroots lobbying speaks to the general public.



Grassroots Lobbying: Specific Legislation

Grassroots

Communication

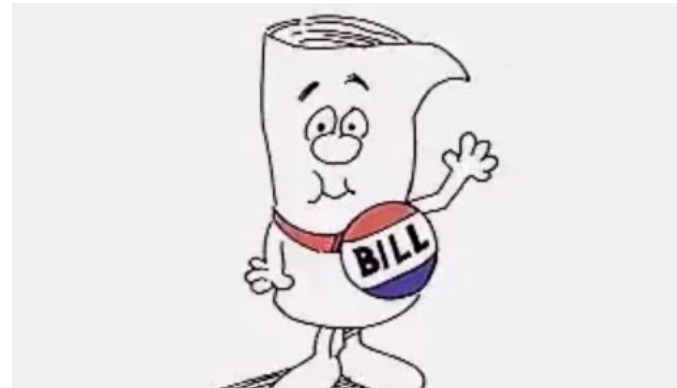
General public

Expresses view about specific legislation

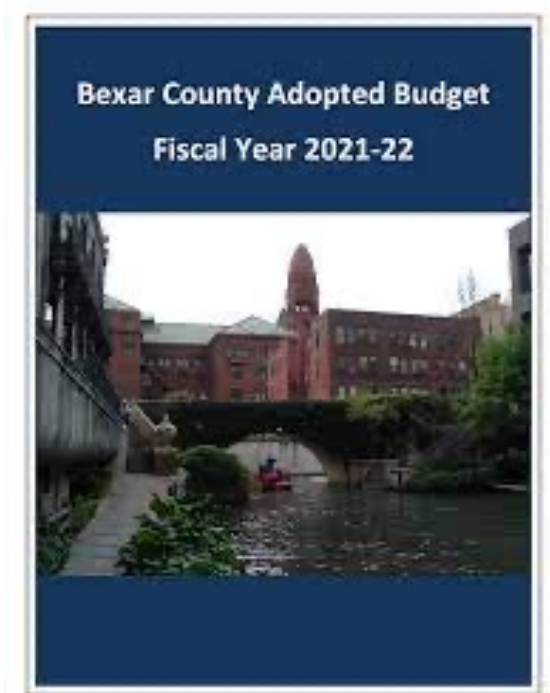
Call to action



Nominations confirmed by legislators



Bills, ordinances
(already proposed, or just a specific idea)



Federal, state, & local budgets voted on by legislators

Grassroots Lobbying: A Call to Action

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action

ASKING TO CONTACT

legislators,

PROVIDING CONTACT INFORMATION

like telephone number, twitter handle, e-mail address,
mailing address, and/or other contact info of legislators,

PROVIDING MECHANISM

to enable communication
with legislators, or

IDENTIFYING

recipient's legislators, undecided legislators, or
legislators opposed to the bill

Grassroots Lobbying: What are not calls to action?

Grassroots

Communication

General public

Expresses a view about
specific legislation

Call to action

**Health care access
shouldn't depend on your
immigration status.**

Take Action



Questions?

Grassroots Lobbying: Is this lobbying?

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action



Image credit @ Power California

Grassroots Lobbying: Is this lobbying?

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action

Not Lobbying
(under the expenditure test)



Image credit @ Power California

Grassroots Lobbying: Is this lobbying?

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action

Asking other organizations to sign a letter asking legislators to eliminate proposed cuts to the Medi-Cal and IHSS budgets to avoid disproportionately harming older adults.



Grassroots Lobbying: Is this lobbying?

Grassroots

Communication

General public

Expresses view about
specific legislation

Call to action

Grassroots Lobbying!

Asking other organizations to sign a letter asking legislators to eliminate proposed cuts to the Medi-Cal and IHSS budgets to avoid disproportionately harming older adults.



Questions?

Lobbying Exceptions

Lobbying Exceptions

- Nonpartisan analysis, study, or research
- Request for technical assistance
- Self defense
- Examinations and discussions of broad social, economic, and similar problems



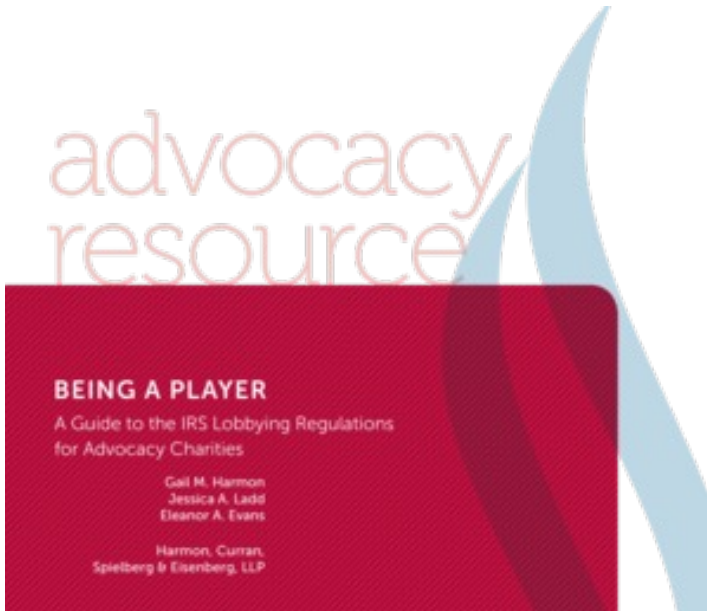
Key Takeaways

Key Takeaways

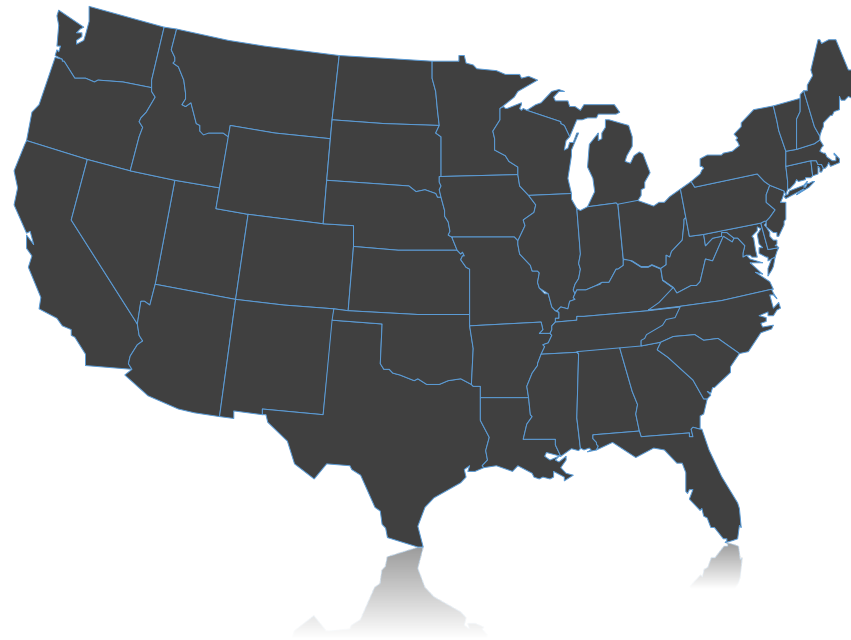
- 501(c)(3) organizations can advocate and lobby!
- 501(c)(3) organizations must track and report their lobbying and stay within their lobbying limit (remember: preparation time for lobbying counts toward an org's lobbying limit)
- 501(c)(3) organizations can maximize the amount of advocacy work they can do by using the 501(h) expenditure test
- Not all advocacy activities are lobbying

Resources

Resources



Free factsheets and guides on these rules: bolderadvocacy.org



For free coaching about laws impacting nonprofit advocacy:

advocacy@afj.org
866-675-6229

 @AFJBeBold

 BolderAdvocacy



bolderadvocacy.org/podcast

Questions?