



## CHILDREN'S ALLIANCE

# Nonprofits Can Lobby

### A Brief Overview of Federal and State Regulations

September 2005

#### Introduction

The nonprofit sector plays an indispensable role within our society. Nonprofit organizations address a myriad of community needs in relation to human services, health care, education, the arts and the environment. However, despite their best efforts, nonprofits cannot do it all.

One of the nonprofit sector's most important partners in meeting community needs is government. The scale of resources available to government, if properly utilized, can contribute greatly to an enhanced quality of life for all. But if public policy is to be well-crafted and thoughtfully implemented, nonprofits must fulfill their responsibility to participate in the public policy arena.

Unfortunately, many nonprofits are fearful of becoming involved in lobbying and advocacy. Much misinformation exists concerning the definitions of lobbying, the amount of lobbying allowed and the complexity of complying with reporting requirements. In truth, both federal and state law are quite permissive and nonprofit organizations have the opportunity to become salient actors in the public policy process.

What follows is a brief overview of federal and state regulations related to lobbying. It is intended to cover some of the key areas of concern so that nonprofits have a clearer understanding of how they can engage in lobbying. Also included are a short bibliography of relevant publications and a list of knowledgeable resource people who can be contacted if one has questions.

Nonprofit organizations have much to contribute to the public policy process and public officials benefit greatly from their expertise. By understanding some of the rules which were established to encourage participation by not for profit organizations, you can feel confident in joining your colleagues in working for more humane, enlightened and just public policy.



# FEDERAL LAW

## Standards to Measure Lobbying by Public Charities

The Internal Revenue Code limits the amount of lobbying activities in which section 501 © (3) public charities may engage. Charities may choose one of two standards by which their compliance will be measured:

1. The “**insubstantial part test**,” which applies by default, requires that “no substantial part of a charity’s activities... be carrying on propaganda or otherwise attempting to influence legislation.” This is generally interpreted as meaning no more than one to three per cent of an organization’s operating budget.
2. The “**section 501 (h) expenditure test**” sets specific dollar limits, calculated as a percentage of a charity’s total exempt purpose expenditures (e.g., 20 percent of the first \$500,000...), on the amount public charities electing to follow this method may spend to influence legislation without incurring penalty taxes or losing their exempt status. A charity wishing to use this test must “elect” to do so by filing a simple, one-time form. Charities that do not file an election are subject to the “insubstantial part test”.

### Electing 501 (h): Filing the Form

Most 501(c)(3) organizations (public charities) will benefit from “electing” the 501 (h) lobbying expenditure test. The rules that govern lobbying under 501 (h) are clearer than those that apply under the “insubstantial” standard. Accordingly the 501 (h) rules also allow for better organizational planning.

#### **Step One—Complete a One-Page Form**

IRS Form 5768 (Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation) is the first step in electing to be governed by the 501 (h) expenditure test. Your organization simply supplies its name, address and the first tax year to which it wants the election to apply and then has the form signed by an authorized officer. The election applies retroactively to the whole of the year in which the form is filed and, generally, to all subsequent years.

#### **Step Two—Make a Copy**

Make a copy of Form 5768 before mailing it to the IRS because the Agency will not send you a confirmation letter.

#### **Step Three—Track Your Expenditures**

Working with your accountant to keep track of expenditures is essential. This is not any more difficult than tracking volunteer and staff time spent attempting to influence legislation under the “insubstantial” standard. In fact, record-keeping can be easier under 501 (h) because lobbying and the expenditures attached to it are clearly defined and because you need not track volunteer time.



## Step Four—Train your Staff

A key to tracking your expenditures accurately is to train your staff about the 501 (h) rules and corresponding time sheets.

### Grass Roots versus Direct Lobbying for 501 © (3) Charities Electing the 501 (h) Expenditure Test

**Lobbying** in general consists of communications intended to influence specific legislation.

**Legislation** is action by a legislative body whether federal, state or local. Action by judicial, executive and administrative bodies (including special purpose bodies like school and zoning boards) is not legislation, since these are not legislative bodies.

**Specific legislation** includes both legislation that has been introduced in a legislative body and a specific legislative proposal the organization supports or opposes.

**Direct Lobbying** is a communication made to a legislator; employee of a legislative body; or any other government employee who may participate in the formulation of legislation (but only if the principal purpose of the communication is to influence legislation); and which:

- v refers to specific legislation; and
- v expresses a view on that legislation.

It is also direct lobbying when an organization asks its members to contact legislators in support of or in opposition to legislation. For this purpose, members are individuals who contribute more than a nominal amount of time or money to the organization.

**Grass Roots Lobbying** encourages the public to contact legislators about legislation. A grass roots lobbying communication:

- v refers to specific legislation;
- v reflects a view on that specific legislation; and
- v encourages the recipient of the communication to take lobbying action with respect to the specific legislation.

This last requirement, the “grass roots lobbying call to action”, can take one of four forms:

- v state that the recipient should contact a legislator or other relevant government employee for purposes of influencing the legislation;
- v state the address, phone number, or similar contact information of a legislator or legislative body employee;
- v provide a petition, post card, or similar means for the recipient to contact a legislator or legislative body employee; or
- v specifically identify a legislator(s) who will vote on the legislation as being: opposed to or undecided about the organization’s view on the legislation; the recipient’s legislator(s); or a member of a legislative (sub)committee which will vote on the legislation. Identifying the sponsor(s) of a piece of legislation does not constitute a grass roots lobbying call to action.

### The Exceptions: What is not Lobbying

#### 1) Nonpartisan Analysis, Study and Research



Nonpartisan analysis, study or research may reflect a view on specific legislation. Nevertheless, it is not lobbying for electing charities if the communication passes two tests: a “content” test and a “distribution” test. To satisfy the content test the communication must be a “full and fair exposition of the facts” that is sufficient to allow the reader to develop an independent viewpoint. To satisfy the distribution test the communication must be made available to the general public, not just to people connected to one side of the relevant issue.

**2) Examinations and Discussions of Broad Social/Economic Problems**

Examinations and discussions of broad social/economic problems are communications that address the public, legislators or government employees on general topics that are also the subject of specific legislation. The communications may not, however, refer to specific legislation or directly encourage the recipients to take action.

**3) Requests for Technical Advice or Assistance**

Requests for technical advice or assistance must be in response to a written request by a legislative body or committee and must be made available to all members of the requesting body. Information provided in response to the request (oral or written) of a single legislator does not fit this exception.

**4) “Self Defense” Communications**

“Self defense” communications must be with a legislative body regarding possible actions of that body which could affect the organization’s existence, powers, duties, tax-exempt status or the deductibility of contributions to the organization. As long as the subject matter of the communication is limited to these specific areas, an organization may make unlimited expenditures to communicate with legislators or their staff. This exception does not apply to grass roots lobbying.

**Washington’s Lobbyist Disclosure Law:  
A Different Definition of Lobbying**

Like most states and the federal government, the state of Washington has a law that requires lobbyists to register with the government and report their activities on a regular basis. The laws apply to people that lobby for nonprofit organizations as well as for-profit lobbyists.

Washington’s law exempts some people from the registration and reporting requirements--- for example, people who lobby as unpaid volunteers or people who lobby no more than four days in any three month period. Other lobbyists must register and make regular reports to the Washington State Public Disclosure Commission.

The definition of “lobbying” for purposes of disclosure laws frequently differs from the definition under the federal tax code. For example, the federal Lobbying Disclosure Act uses a different definition of lobbying, although the law permits public charities that have made the election under 501 (h) to use the tax code definition. The Washington State law, however, requires public charities to report different activities as lobbying than those defined as lobbying for purposes of the federal limits on lobbying expenditures. Some of the key differences in the two definitions of lobbying include:

Washington State Law	Federal Tax Code
Only applies to attempts to influence	Applies to activities at the federal, state



Legislation at the state level, not the Federal or local levels.	And local level.
Lobbying includes attempts to influence Rulemaking by administrative agencies.	Attempts to influence rulemaking by Administrative agencies are not considered Lobbying.
No communications to the members of Your organization are reportable as Lobbying.	While some communications to the members of the organization are not Considered lobbying, some may be direct, Or even grassroots lobbying.
Grassroots lobbying is defined as a Communication to the public of which a Substantial portion is primarily intended to influence legislation.	Grassroots lobbying requires a "call to Action."
Grassroots lobbying expenditures that do Not exceed \$1000 in any three months or \$500 in any one month are not reportable.	All grassroots lobbying expenditures Count against an organization's overall Limits on grassroots lobbying.

Details on Washington's lobbying disclosure law are available from:

Washington State Public Disclosure Commission  
711 Capitol Way, Room 403  
P.O. Box 40908  
Olympia, Washington 98504-0908  
Phone: (360) 753-1111; Fax: (360) 753-1112  
<http://www.pdc.wa.gov>

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## Brief Bibliography

The following publications are available through the **Alliance for Justice** (<http://www.allianceforjustice.org/>)

**Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities**, (1995) 57pp., \$15.00

This primer provides a plain English roadmap through IRS lobbying Regulations and is designed for nonprofits that currently lobby and for those interested in becoming more active.

**Worry-Free Lobbying for Nonprofits: How to Use the 501(h) Election to Maximize Effectiveness**, (2003) 13pp., No charge

This brief guide explains the 501(h) election and how it works, provides answers to common questions about the 501(h) election, and includes a copy of Form 5768, which charities use to elect under 501(h).

**Investing in Change: A Funder's Guide to Supporting Advocacy**, (2004), 58pp.

This guide contains just about everything a foundation might need to know about supporting or engaging in advocacy and policy change. The Guide defines advocacy, discusses grant agreements, and outlines strategies for building grantees' capacity for advocacy. It delineates the rules for public and private foundations that support advocacy as well as the rules for engaging in advocacy.

**The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations**, (1996) 52pp., \$20.00

A user-friendly guide that reviews federal tax and election law which govern nonprofits in an election year and explains the right (and wrong) ways to organize specific voter education activities.

**Seize the Initiative**, (1996) 60pp., \$20.00

The initiative/referendum has gained popularity as more and more Citizen groups use the process to advance their issues. This book answers frequently asked questions by nonprofits about work on Ballot measures.

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