

501(c)(3) TAX DEDUCTIBLE  
CORPORATIONS:

OPPORTUNITIES & RESTRICTIONS  
ON LOBBYING &  
ELECTION-RELATED ACTIVITIES

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**Issues to be addressed:**

What is lobbying?  
What are your lobbying limits?  
What election-related activities can 501(c)(3)  
organizations do?

**CAVEAT:** This presentation is not meant to  
be legal advice, but an introduction to the  
issues you should be aware of.

**Consult with an attorney before  
undertaking major activities.**

## What is Lobbying?

A communication  
in reference to specific legislation, OR  
even *potential* legislation,  
that  
presents a specific view on the legislation.

## Grassroots or Direct Lobbying

If the communication is addressed to a legislator or employee of a legislative body, it is **Direct Lobbying**.

If the communication is a “Call to Action” that encourages members of the general public to contact their legislators, it is **Grassroots lobbying**.

Note that there are limits on direct and grassroots lobbying for 501(c)(3) groups.

## 501(c)(3)s May Lobby – Just Not “Substantially”

*Standard:* No substantial part of a public charity’s activities can be “carrying on propaganda, or otherwise attempting, to influence legislation.”

## What’s “not substantially”?

- **Insubstantial Part Test**
  - Lobbying must be an “insubstantial part” of overall activities
  - Includes cost-free activities, such as volunteer time
  - Penalty: lose exempt status if “over insubstantial” part
- **501(h) Election -- Expenditure Test**
  - Elect by filing IRS form 5768 once
  - Clear dollar based limits
  - Only expenditures count towards limits
  - Clear definition of lobbying
  - Penalty: lose exempt status if expenditures 150% over limits over a 4 year period

## Expenditure Test - 501(h) Election

- 1) Exempt purpose expenditures (\$ spent to achieve charitable purpose)
- 2) Overall lobbying expenditure limit is:
  - 20% of first \$500,000 exempt purpose expenditures
  - + 15% of next \$500,000
  - + 10% of next \$500,000
  - + 5% of the remaining amount
- 3) Grassroots lobbying limit is 25% of overall lobbying limit

*Example:* \$100,000 spending on exempt purpose =

**Total Lobbying Limit: \$20,000**

**Grassroots Limit: \$5,000**

## Record Keeping

- Allocations must be reasonable
- Track direct costs, staff time and overhead

Activity	M	T	W	Th	F	Total Hours
Research	2	3	4	2	4	15
Education	3	0	2	4	3	12
Direct Lobby	2	2	2	2	0	8
Grassroots Lobby	1	1	2	0	1	5

What  
election-related activities  
can 501(c)(3)s do?

A lot...but seek legal advice!

First, what a 501(c)(3) can not do!

- Absolute prohibition on 501(c)(3) participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office
- Contribute funds or anything of value to candidates or political action committees
- Penalty: Taxes imposed on organization and managers, and possible revocation of exempt status

## What a 501(c)(3) can do.

- Engage in **non-partisan** election related activity
- But is the activity non-partisan?
  - *Maybe*– Does it **look like** you are supporting or opposing a candidate for public office, given the “facts and circumstances” surrounding the activity?

## “Facts & Circumstances” Test to Assess Election-related Activity

- Is the timing close to an election?
- Is timing outside of organization’s control?
- Do you focus on a single issue or a breadth of issues?
- Do you identify specific candidates or Political Parties?
- What is candidate’s position compared to expressed position of organization?
- Do you have a track record of doing the activity over time?
- Do any questions/answers printed reflect a bias?
- Are all candidates invited or included?
- Do you target voters?

## **Permissible Election-Related Activities by a 501(c)(3) (Subject to Facts & Circumstances Test)**

- Issue Advocacy
- Voter Registration & Get Out the Vote activities
- Voter Education
  - Candidate Questionnaires & Voter Guides
  - Candidate Debates & Forums
- Candidate Education
- Individual Activity

## **Issue Advocacy**

- **Timing:** Is the statement timed to coincide with the election? Do you have a history of work on the issue?
- **Content:**
  - Are candidates identified?
  - Do you express approval/disapproval for candidate positions?
  - Do you reference the election?
  - Do you target voters?
  - Does the issue clearly distinguish the candidates?

## Non Partisan Voter Registration & Get-Out-the-Vote...

- Materials and activities must be made available to all individuals without regard to political views
- No reference to candidate or party
- No suggestion of who to vote for
- Permissible to target activities if for nonpartisan purposes: i.e. region served by your organization
- Permissible to target voters with historically poor turnout

## ...Voter Registration & GOTV

- Message
  - Discuss broad range of issues
  - Don't suggest a "correct position"

A GOTV message of "Vote for the Environment" may be permissible under certain circumstances

A safer model is:

"You can have an impact on the decisions affecting your life. Register to vote now!"

## Candidate Questionnaires & Voter Guides

- Tips:
  - Good to partner with other organizations and cover a broad range of issues
  - Distribute it to ALL candidates
  - Unbiased questions (beware of 'do you oppose/support' questions and do not suggest the correct answer)
  - Do not edit any responses
  - Be as fair and even-handed as possible

## Candidate Debates & Forums

- Cover a broad range of issues
- Ensure unbiased questions
- Invite all viable candidates
- Apply rules fairly
- Have an impartial moderator (i.e. reporter)
- Ensure an unbiased audience

## Candidate Education

- Permissible if:
  - Offering information to all candidates
  - Providing information that is already gathered or that is regularly sent out to your members
- DO NOT create information specifically for candidates

## What may a 501(c)(3) staff person do in an individual capacity?

- Individuals acting in their own capacity can engage in electoral activity
- Must be off the clock or on personal leave
- Must make clear that he or she is not acting on behalf of organization
- Organization cannot ratify the individual's acts expressly or implicitly
- May not use facilities, equipment, personnel or other resources of the organization

## Be Careful About Business Dealings

Providing mailing lists, office space, ads, or other organization resources to a candidate or PAC is prohibited, unless:

- The services are available to all candidates
- The services available to general public
- Candidates are charged the customary and usual rates for those services
- This an on-going activity, not something provided special for a particular candidate

## Where to start?

- Get Out the Vote in non-partisan ways—
  - Include general, non-partisan “Get Out the Vote” messages in newsletters, emails—‘get out and vote because it makes all the difference on the issues you care about.’
  - Encourage your members to ask their candidates questions on your issues.
- Candidate Forums & Debates—
  - Consider partnering with the League of Women Voters or other broad-based organizations.
- Consult with an attorney!

## Resources

- Alliance for Justice
  - [www.allianceforjustice.org](http://www.allianceforjustice.org)
  - Technical support: [advocacy@afj.org](mailto:advocacy@afj.org)
- Nonprofit Voter Engagement Network,  
[www.noprofitvote.org](http://www.noprofitvote.org)
- For the use of mailing lists, contact Carrie Clark, [carrie@conservationcouncilnc.org](mailto:carrie@conservationcouncilnc.org)