

Advocating for Policy Change

Involving the Public in Important Policy Debates

Advocacy Campaigns May Involve Lobbying

Nonprofits play an important role in educating the public about policy issues and actions taken by their elected officials. As part of an advocacy campaign, a non-profit may want to pay for advertising in newspapers, on the radio, or online, as well as billboards, mailers and other materials that urge officials to vote in a certain way, that encourage the public to contact legislators on an important policy issue, or praise or criticize the policy positions or votes of elected officials. Some of these advocacy efforts may be considered lobbying and will count against a 501(c)(3)'s federal lobbying limit.

501(c)(3) public charities can lobby within the [limits](#) allowed by federal law. All 501(c)(3) public charities will measure their lobbying under either the "501(h) expenditure" test or the "insubstantial part" test. The insubstantial part test is the default test that applies to 501(c)(3) public charities, unless the organization has elected to use the 501(h) expenditure test by filing [Form 5768](#) with the IRS.¹ What counts as lobbying varies depending upon the test used.

Insubstantial Part Test Filers

The insubstantial part test defines lobbying as "carrying on propaganda, or otherwise attempting to influence legislation" and includes any communication that "contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or advocates for the adoption or rejection of legislation." Under this test, an organization would likely need to count as lobbying, for example, a billboard that "Sportsmen support the Safe Drinking Water Act," while the Safe Drinking Water Act is pending legislation. However, communications that discuss only broad principals would not count as lobbying. For example, it would probably not be considered lobbying to run an ad that says "Sportsmen care about protecting our drinking water. Congressman Taylor, will you join us?"

While 501(c)(3)s are prohibited from supporting and opposing candidates for office, they can criticize or praise incumbents for their official actions or votes, as long as they follow certain guidelines. For more information about mentioning federal, state or local candidates in your communications, please see our fact sheet on [praising and criticizing incumbents](#).

501(h) Electors

Lobbying includes both directly communicating with legislators and their staff to express a view about a specific legislative proposal (what is called "[direct lobbying](#)"), as well as encouraging the public to contact their legislators using a "[call to action](#)" (called "[grassroots lobbying](#)").² For example, it would be considered grassroots lobbying to send an e-mail message that says "Congresswoman Jones can

¹¹ Organizations can elect to take advantage of the clear definitions of lobbying under Section 501(h) at any time by filing the form 5768. Consult with our publication [Worry Free Lobbying](#) for more information on the benefits of Section 501(h).

² For a discussion of the benefits of using the 501(h) Expenditure Test to measure your organization's lobbying, see our publication [Worry Free Lobbying](#).

support clean energy or ignore our need to move away from our dependency on foreign oil. The House is about to vote on the Clean Energy Act. Call her and tell her we need her support for this bill.”

However, not all communications with legislators or the public around a policy debate will necessarily constitute lobbying under the 501(h) Expenditure Test. For example, the following issue advocacy campaigns would not be considered lobbying:³

Although 501(c)(3)s are prohibited [from supporting and opposing candidate](#) for office, federal and state campaign finance laws often regulate advertisements that mention candidates, if the advertisement is run within a certain number of days before an election. For example, broadcast ads thanking a sitting Congressman for action taken, when that Congressman is also a candidate for federal office, which are run within 60 days of a general election and 30 days of a primary may be classified as an “electioneering communication” and be subject to [financial disclosures](#) and need to include additional disclaimers as required by federal campaign finance law.

- **A public communication that does not include a call to action:** For example, it would not be lobbying for a 501(c)(3) to run a radio ad that says “Our country can’t wait any longer to turn to a clean energy future. Congressman Taylor is sponsoring a bill to encourage investment in safe clean energy, and create jobs” or a billboard that says “Congressman Taylor: we need your support for a clean energy future for America. Help us create more jobs here at home.”
- **A public communication that highlights how someone voted without calling on the public to act:** For example, a radio ad that says “Wilderness is important for our state’s economic future. Thanks, Assemblywoman Lopez, for voting for the Global Warming Reduction Act and ensuring that our lands and economy will be protected for future generations.”
- **A public communication that thanks an elected official for acting:** For example, a newspaper ad that says “The Blue Sky Wilderness is a local treasure and important for our economy. Thanks, Congresswoman Lee, for co-sponsoring a bill to protect it.”
- **A public communication that highlights how an elected official voted without calling on the public to act:** For example, a billboard ad that says: “Clean air is important for our children’s future. Unfortunately, Congressman Taylor voted against the Clear Skies bill and put our health at risk. Congressman Taylor, please reconsider your stance.”

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www.bolderadvocacy.org | www.allianceforjustice.org

³ If the organization plans to distribute a mass media communication within the two week window before a vote of the legislative body on what would be considered “highly publicized” legislation (e.g., the DREAM Act), the organization should contact Alliance for Justice’s free technical assistance service for information on a rare exception that might require the organization to count these mass media communications as lobbying.