

Preparing for Change:

How Nonprofits Can Shape Policy By Engaging Transition Teams

Perhaps the best kept secret of nonprofit advocates is the importance of the time between a candidate's election and the time they're sworn in. This period features whirlwind planning, appointing, and hiring, but it's also when election promises become legislative plans. The newly-elected's transition team staff drives the agenda and speaking with them can be as important as any policy conversation for the next several years. It might seem premature to be considering transition team advocacy before a single vote is cast, however early preparation is critical for successful transition team advocacy.

The Candidates Are Looking Ahead Too

Even while they are running for office, many candidates have transition teams in place. In fact, Presidential transition teams begin organizing as early as the April of an election year and are eligible for office space and government support following the party nominating conventions. Nonprofit advocates should identify who are on these teams as early as possible, and, when appropriate, build relationships and offer to be part of the policy discussion.

See [Center for Presidential Transition, Presidential Transition Guide](#).

Pre-Election Candidate Education

Communications before the election are generally treated as candidate education by the IRS. The best practice in any pre-election communications by 501(c)(3)s is to follow the candidate education rules and make all information available to all viable candidates. If a candidate requests information, a 501(c)(3) should ensure it only offers what is publicly available, especially if it is not reaching out to other candidates. 501(c)(3)s should be careful not to have conversations or take actions that support or oppose any candidate running for office because tax law prohibits that.

See the Bolder Advocacy factsheet [Nonpartisan Candidate Education: How 501\(c\)\(3\)s Can Talk to Candidates During an Election Year](#) for more details.

It's important to distinguish the difference between official transition teams and informal ones, because the former are not a part of a candidate's campaign and the latter often are made up of campaign staff. This matters for 501(c)(3)s because speaking with campaign officials prior to an election may be riskier unless they offer similar information to all candidates running, following IRS guidance on candidate education.

For transition teams that are not part of the campaign, such as presidential transition teams, the risk is lower but 501(c)(3)s should still be aware that the IRS will consider all of the facts and circumstances of any interaction they have to determine whether they are supporting or opposing any candidates.

Non-501(c)(3) nonprofits are freer to engage in pre-election candidate education, but they should be mindful of state and federal campaign finance laws that often prohibit contributions to candidates.

We Have A Winner: Now What Can You Talk About?

For non-501(c)(3)s there are no limits on transition conversations, but, if they include lobbying communications, they may be subject to state or federal reporting requirements.

Once the winner is declared, 501(c)(3)s won't have to worry about the prohibition on supporting or opposing candidates until the next cycle. However, lobbying conversations with transition teams brings in a different set of rules and limits to keep in mind. For 501(c)(3)s, federal tax law limits how much lobbying they can do, so it's important to track those efforts and report them appropriately on Form 990 for that year.

See the Bolder Advocacy publication [Being a Player](#) for more details.

A 501(c)(3) public charity engages in direct lobbying if it is communicating with a legislator and expressing a view about specific legislation, including the nomination of people to positions that must be confirmed by a legislative body.

The (c)(3) is grassroots lobbying if it makes a communication with the general public that reflects a view on a specific piece of legislation (including a vote to confirm a nominee) and includes a call to action that encourages people to contact a legislative representative.

LOBBYING ACTIVITIES DURING THE TRANSITION PERIOD

A Legislative Policy Blueprint

Transition advocacy is a prime opportunity to educate newly elected officials about your budget and policy priorities and urge them to adopt your goals as their own. These policy priority Blueprints are lobbying when they contain support for specific legislative proposals and are shared with legislators or their staff, which could include members of the transition team.

Meeting with Transition Team Members

Often, transition teams hold public meetings that are an opportunity for nonprofits to attend and share their policy Blueprint in public testimony. If the transition team members include legislative staff, this may be direct lobbying.

Publicizing the Policy Blueprint

Organizations may want to inform their supporters about their transition advocacy and encourage them to act. Any communication that asks members of the public to contact a legislator or executive level official to support or oppose specific legislation would be considered grassroots lobbying.

Offering a List of Potential Nominees for Key Positions

For positions that require a legislative body to confirm the nomination, it is direct lobbying to share with an executive branch official the name of a candidate you support, including a candidate for nomination to a federal court. If you encourage members of the legislature to confirm or vote against any nominee, that activity is direct lobbying as confirmation involves a vote of a legislative body.

NOT ALL TRANSITION TEAM ADVOCACY COUNTS AS LOBBYING

Recommending Transition Team Members

An effective way to have your policy positions prioritized is to have a member of the transition team who already supports your policy agenda appointed to the team. Recommending people to serve on the transition team is not considered lobbying because the positions are appointed by the candidate or the newly elected official without an advise and consent process.

A Regulatory Policy Blueprint

Like the legislative Blueprint, this document can lay out a range of policy options important to your organization for executive orders and other administrative issues, such as the repeal or adoption of regulations. Unlike the legislative blueprint, this does not count as a lobbying communication under federal tax law, so public charities are not limited in how much of this they can do.

Offering a List of Potential Candidates or Suggesting Qualifications for Key Positions

New administrations have many jobs to fill and having people who support your organization's goals will help move your policy priorities. Making recommendations for jobs that are appointed and not subject to legislative advise and consent is not lobbying activity.

Making Your Policy Recommendations Using a Lobbying Exception

A public charity can shape its transition-related advocacy to fit into the nonpartisan analysis, study, or research exception to lobbying. This exception offers an opportunity to disseminate truly educational materials which reflect a view on an issue, but it must be done carefully.

In order to qualify for this exception, a communication must:

- provide a sufficiently full and fair discussion of the underlying facts to enable a member of the general public to form an independent opinion; and
- be widely disseminated to the general public.

If a communication meets those requirements it can contain specific policy proposals—including bills that are pending before a legislative body—so long as it does not include a call to action to contact legislators.

For example, a gun safety group could urge support for universal background checks in a publication that explores the experiences of states with such laws to the experiences of states without extensive background check laws. Similarly, a health care access group could encourage expansion of Medicaid in its state by comparing the health outcomes of low-income residents in its state with those of low-income residents in states that have already expanded Medicaid coverage.

For more information on this exception, see Bolder Advocacy's publication, [Being a Player](#).

Bottom Line: Early Engagement Pays Off

It is never too early to build relationships and advocate for the issues your nonprofit cares about. By engaging transition teams before a winning candidate begins their term, you increase the chances for success in making sustained positive change.



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