

Lobbying Under the Insubstantial Part Test

501(c)(3) public charities¹ can lobby — including supporting or opposing specific legislation and ballot measures — within generous limits allowed by federal law. How much lobbying the organization can do depends on which of two sets of rules the organization uses when measuring its lobbying limits — [the 501\(h\) expenditure test](#) or the insubstantial part test. In issuing regulations on lobbying, the Internal Revenue Service stated that, under either test, public charities “may lobby freely” so long as lobbying is within specified limits.²

The insubstantial part test is the default test that applies if the public charity does not make the affirmative step of choosing to use the 501(h) expenditure test.³ The insubstantial part test also applies to churches or other houses of worship, which are unable to make the 501(h) election. While the 501(h) election provides a clearer standard for measuring lobbying, public charities that have not taken the 501(h) election can still boldly lobby for change in their communities.

What is Considered an “Insubstantial” Amount of Lobbying?

The insubstantial part test requires that “no substantial part of a charity’s activities . . . be carrying on propaganda or otherwise attempting to influence legislation.” Therefore, a charity’s lobbying must be an “insubstantial” part of its overall activities. The IRS has provided no absolute guidance on how much lobbying is “substantial.” A 1952 federal court decision states that 5% of an organization’s “time and effort” was an insubstantial part of its overall activities.⁴ Most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying under this test.

As an example, a 501(c)(3) public charity not normally involved in influencing legislation can sign onto a letter that endorses specific legislation (e.g., support the Health Care for Children Act). This activity would be considered lobbying, but because the time spent by the organization signing onto the letter is not a substantial part of its overall activities, it is permissible to engage in this type of policy advocacy.⁵

¹ Different rules apply to [private foundations](#).

² Lobbying by Public Charities; Lobbying by Private Foundations, 55 Fed. Reg. 35,579, 35,584 (Aug. 31, 1990).

³ Public charities make the 501(h) election by filing Form 5768 with the IRS.

⁴ *Seasongood v. Commissioner*, 227 F.2d 907, 912 (6th Cir. 1955)

⁵ Organizations generally cannot use federal funds to lobby. If your organization is completely funded by federal grants it will likely not be able to sign on to a letter of this type.

Activities Based Test

The lobbying limit imposed by the insubstantial part test is based on an organization's overall activities, not just its expenditures. The IRS considers not only the funds spent on lobbying by the organization, but will also look at factors such as the amount of time and energy devoted to legislative matters. Volunteer lobbying efforts on behalf of the organization will count towards its lobbying limits.

For example, a 501(c)(3) public charity that provides housing services in low-income neighborhoods is concerned about proposed cuts in the state budget to key housing programs. The 501(c)(3) decides to organize a bus trip for its volunteers and clients to the state capitol to protest the budget cuts. Under the insubstantial part test, the time of the volunteers and clients, the cost of chartering the bus, the cost of meals provided, any additional costs of the trip, and any staff time associated with organizing and attending the trip would all be lobbying.

The organization should make a reasonable estimate of the total number of hours that volunteers devote to the organization and then allocate such time between legislative and non-legislative activities to determine the percentage of overall volunteer activities devoted to lobbying. Organizations probably need only track efforts by those who volunteer in some type of organized capacity.

Examples of Lobbying Under the Insubstantial Part Test

- Calling a member of the Texas House of Representatives to express your organization's support for HB270, a bill under consideration by the House.
- Encouraging your organization's volunteers to call their city council members in support of adopting an ordinance that would create a cite and release policy for those possessing small quantities of marijuana in the city.
- Posting an announcement on your organization's Facebook page that expresses your opposition to a proposed bond that will be voted on in an upcoming election.

What is Considered Lobbying?⁶

Guidance as to what constitutes lobbying under the insubstantial part test is vague. An organization will be regarded as lobbying if it:⁷

⁶ While these activities qualify as lobbying under the tax code's insubstantial part test and need to be counted against the organization's lobbying limits, they may not qualify as lobbying for the purposes of registering and reporting as a lobbyist in Texas. Conversely, at the state-level, some activities that trigger lobbying disclosure in Texas do not count against an organization's lobbying limits since the activities do not meet the tax code definitions of lobbying. [Click here](#) for more information on Texas lobbying disclosure rules.

⁷ Instructions for IRS Form 990, Schedule C, Part II-B

- Contacts members of a legislative body (local, state, federal, even international) for the purpose of proposing, supporting, or opposing legislation, 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, OR
- Communicates with the general public and reflects a view on a [ballot initiative](#)

What Is Not Considered Lobbying?

Communications that discuss only broad principles, as opposed to legislation, would not count as lobbying. For example, it would probably not be considered lobbying to run an ad that says “Texans 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 public 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 AFJ’s fact sheet on [praising and criticizing incumbents](#).

What Kind of Lobbying Records Must a Nonprofit Keep?

Organizations using the insubstantial part test must report their lobbying activities on Form 990, Schedule C. Organizations need to describe whether they lobbied via volunteers, paid staff, advertisements, mailings (to members, legislators, or the public), published statements, grants to others for lobbying, direct contact with legislators, public events, or other means and to report any expenditures for each such activity. Charities using the insubstantial part test must also provide a “detailed description” of any lobbying activities that fall outside of those categories, which the form’s instructions state “should include all lobbying activities, whether expenses are incurred or not.”⁸ See the AFJ publication [Keeping Track](#) for a more detailed discussion of implementing a system to track and report lobbying to the IRS.

⁸ Instructions for Form 990 Schedule C, Part II-B



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