

Influencing the Redistricting Process

By Standing Up for Your Community

What is Redistricting?

Redistricting begins in 2021, once the 2020 Census results are delivered to the states.¹ Redistricting is how the U.S. divides up communities for the purposes of establishing government representation. Every 10 years, there is a reapportionment of most elected bodies, such as the state legislature or the federal House of Representatives, based on the loss or gain of population in a state reported by the Census. Redistricting is not an automatic process, but one in which an entity, usually a state legislature or commission, draws the lines. It is important that nonprofits participate to ensure that the voices of communities (whether Black, refugee, religious minority, ethnic, or other commonality) are not diluted or intentionally split apart. Consequently, nonprofits serve an important role in engaging with elected officials when lines on a map are drawn.

It's Usually All About Community

The redistricting process varies from state to state, but 501(c)(3) public charities can safely and legally participate regardless of the state's process. In many states, in fact, a community-led redistricting process is a key opportunity to ensure that whatever community your nonprofit serves, it is represented when establishing a fair and even split for new districts, new City Council seats, or even state commissions.

Some redistricting-related activity will constitute lobbying, while others fall in the category of administrative advocacy. Understanding the process in your state is key so you understand how to track your activities for lobbying reporting purposes, stay within your generous lobbying limits, and ensure you are adhering to all funder requirements. This fact sheet provides best practices and reminders for nonprofits to consider when advocating related to redistricting. As always, while this fact sheet discusses general rules, many states have unique commissions or processes set up to handle this common event.² If you have trouble getting information on how the process works in your state, give us a call so we can help you boldly advocate.

Reminder About Lobbying

Not all activities related to the redistricting process will count as lobbying. Lobbying requires a legislative process and varies according to whether your nonprofit uses the default rule, known as the insubstantial part test, or the 501(h) expenditure test when reporting lobbying to the Internal Revenue Service (IRS) at the end of the year on your Form 990. If you are not familiar with basic lobbying definitions and the two tests for

¹ Census data is usually delivered by April 1. However, the timing may vary in 2021. See [State Redistricting Deadlines \(ncsl.org\)](https://www.ncsl.org/state-info/state-redistricting-deadlines) by National Conference of State Legislatures for more information about the deadlines.

² For additional information about the state-by-state process, see [Redistricting Systems: A 50-State Overview \(ncsl.org\)](https://www.ncsl.org/state-info/redistricting-systems-a-50-state-overview).

measuring lobbying limits under the Tax Code, click here to access our fact sheet about how public charities can safely and legally lobby for specific legislation. Understanding the lobbying definitions is key to recognizing what does not constitute lobbying.

Attempts to influence a redistricting process will count as lobbying if the approval process requires a legislative body, including a City Council, Board of Supervisors, or the State Legislature, to vote to approve the redistricting plan. Every state is permitted to adopt its own process for drawing legislative and congressional districts, and to influence the legislative boundaries of cities, counties, or other localities. Not all states or localities require approval of redistricting plans by a legislative body. Instead, some delegate this authority to an administrative body. Before your public charity tries to influence a redistricting process, you should research the process to determine whether a legislative body must vote to approve the redistricting plan.

For example, in Arizona an independent redistricting commission is charged with drawing legislative and congressional districts based on set criteria established in the state constitution. Since the new plan is adopted by the redistricting commission, instead of a legislative body, attempts to influence the redistricting process in Arizona would not count as lobbying against your organization's lobbying limit.

By comparison, in Iowa the legislature is responsible for voting to approve a new redistricting plan using nonpartisan criteria. Because the Iowa redistricting plan must be approved by a legislative body, attempts to influence the drawing of districts in Iowa would count as a lobbying expenditure by a public charity.

A number of organizations provide information on the redistricting process in the 50 states, including the [National Conference of State Legislatures](#), the [Brennan Center for Justice](#), and the [Public Mapping Project](#).

If your state's procedures require the state legislature or a local legislative body to approve a new map, then attempting to influence the redistricting process will likely count as lobbying against your organization's lobbying limit. Your organization must treat any communications with legislators that express a view on redistricting maps as lobbying, as well as time spent on preparation and research for those communications. This includes time spent drafting your organization's own redistricting maps. For more information on when preparation activity constitutes lobbying, please review our fact sheet titled [When Does Your Activity Become Lobbying?](#)

WHAT ABOUT GENERAL ADVOCACY?

Not all activities related to the redistricting process will count as lobbying. For example, as your nonprofit considers creating a campaign around this "once-in-a-decade" opportunity, be sure to consider some of these activities that would not be lobbying but are generally great advocacy tools for organizations that have made the 501(h) election³:

- *Educate Elected Officials About the Community You Serve.* It is not lobbying to meet with legislators to educate them about a broad social problem, as long as you do not express a preference for a specific legislative proposal to address that

³ Remember that if your nonprofit is reporting lobbying under the default rule (the insubstantial part test), many of these mundane advocacy tasks may need to be reported as lobbying on your Form 990 at the end of the year. As always, make sure you know how your nonprofit reports lobbying, and consider making the 501(h) election to reduce the administrative burden of reporting lobbying expenditures.

problem. For example, you could educate legislators about how current legislative districts unfairly divide your community, or how the current district lines force certain members of your community to take long bus routes or drive long distances to public meetings.

- ***Create a Strong Communication Plan Without a Call to Action.*** Sometimes, simply drawing attention to the fact that your community is being impacted by “lines on a map” is important to ensure broad civic engagement for robust representation of all communities at all levels of government. If your organization has made the 501(h) election, any grassroots communication without a call to action is simply good old-fashioned advocacy and education. You can communicate with the general public – using communications including letters to the editor, Op-eds, news releases, e-mail blasts, etc. – with a view about redistricting plans without counting it as lobbying against the federal limit, as long as you do not include a call to action that encourages the public to contact a legislator. For more information on what is considered a call to action, please review our [What is Lobbying?](#) fact sheet.
- ***Be the Expert: Nonpartisan Analysis, Study, or Research.*** Your organization can present a comprehensive, accurate study or analysis of this or any other policy issue without counting the staff time and expenses of preparing the report as lobbying. To meet this criteria, the document must provide enough factual information to let readers draw their own conclusions about the issue, even if the report itself contains a specific conclusion. It must also be widely distributed to the public, such as being posted on the organization’s website, and not shared exclusively with audiences that agree with the authors. In addition, the report may not direct readers to contact legislators about the issue. This is another example of how a nonprofit can educate and encourage greater community participation. For more information on the rules applying to nonpartisan analysis, study, and research, please see our publication [Being a Player: A Guide to IRS Lobbying Regulations for Advocacy Charities](#).
- ***Participate in Administrative Advocacy.*** Attempting to influence a rule, regulation, or administrative decision made by a state or federal agency charged with organizing the redistricting commission, or perhaps hearing public testimony from the community, will not count as lobbying against an organization’s lobbying limit under either the 501(h) election or insubstantial part test. For example, your organization could attempt to influence the Section 5 preclearance of the redistricting plan by the Civil Rights Division of the U.S. Department of Justice, or file a lawsuit or friend of the court brief challenging or affirming Section 5 preclearance, without treating the expenses as lobbying.⁴
- ***Requests for Technical Assistance.*** Submitting a response to written requests for assistance from a government body is not lobbying. For example, if the chair of the legislative committee on redistricting and reapportionment wrote to your organization and requested that you testify in support of a particular redistricting plan, such testimony would not count as lobbying if the testimony is made available to all members of the committee.

⁴ Locally, in a state where an administrative entity is charged with drawing the map, remember to check whether your local or state laws require you to disclose your activities — a different requirement than the one focused on here when we discuss reporting lobbying to the IRS.

As Always, Avoid Partisanship But Be Bold With Policies

Given that the redistricting process could impact which candidates for office are ultimately elected, charities participating in the redistricting process must ensure that they are not intervening in the electoral process. For any 501(c)(3) public charity, staff must be clear when taking positions on public policy issues and advocating for policy change, while avoiding partisan engagement in an election or future election.

Whether an organization is intervening in a political campaign on behalf of, or in opposition to, a candidate for public office depends on all the facts and circumstances of each case. The IRS has not specifically addressed which facts and circumstances are relevant in the context of the redistricting process. However, we believe the IRS would conclude that a charity's activity constitutes impermissible intervention in a campaign if that charity takes positions in conjunction with a political party, attempts to preserve "safe" seats, or ensures that incumbents can continue to hold a particular elected position.⁵ By comparison, it would likely not be an impermissible intervention in a campaign for elected office if a charity conducts nonpartisan public education about the importance of the redistricting process. Another likely permissible intervention would be urging the body developing the redistricting plans to consider nonpartisan criteria such as population equality, contiguity of districts, or respect for communities of interest during the redistricting process. This is why it is important for public charities to know the rules of the game.

Engage in Some Way

Redistricting is the first step in determining how a community is represented at all levels of government. That is why public charities should work to influence the redistricting process by urging the legislature or redistricting commission to consider nonpartisan factors in drawing district boundaries. By doing so, every 501(c)(3) public charity can encourage its community to be civically engaged and to promote the idea of good governance.

⁵ For an interesting analysis of the impact of redistricting on communities of color, we recommend [Redistricting in YOUR Community: A Guide to Redistricting](#), by NAACP Legal Defense and Educational Fund, Inc., Asian American Justice Center, Mexican American Legal Defense and Educational Fund.



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