

What is Lobbying Under the 501(h) Election?

501(c)(3) public charities can lobby. Federal tax law controls how much lobbying they can do. Organizations can choose to measure their lobbying under either the “[insubstantial part test](#)” or the “501(h) expenditure test.” While lobbying is not clearly defined under the insubstantial part test, this fact sheet provides an overview of how lobbying is defined for organizations that measure their lobbying under the 501(h) expenditure test.

Under the 501(h) expenditure test, lobbying is divided into two kinds — direct lobbying and grassroots:

Direct Lobbying	For Lobbying Expenditures
1. Communication	1. Communication
2. with a Legislator	2. with a Legislator
3. that Expresses a View about Specific Legislation	3. that Expresses a View about Specific Legislation
	4. and contains a Call to Action

In order for an action to be considered direct lobbying or grassroots lobbying it must contain all of the above elements. Understanding the meaning of each element is key because it *is not lobbying if one or more of the required elements is missing.*

Communication: a conversation (in person or by phone), letter, email, tweet, or other creative mechanism to convey a message.

Legislator: a member of a legislative body or their staff. In addition, executive branch officials who participate in the formulation of legislation may be considered legislators (such as the governor or mayor when vetoing a bill or an agency staff-person when helping the legislature write a bill). However, members of administrative bodies such as school boards, sewer and water districts, housing authorities, zoning boards, and other special purposes bodies, whether elected or appointed, are not considered legislators.

The general public also qualifies as a legislator when it comes to ballot measures such as bonds and referenda. For this reason, ballot measure activity is considered direct lobbying. See *below*.

General Public: anyone but a legislator or member of the organization. A member of an organization is someone who has given more than a nominal amount of time or money to the organization. Communication to an organization's members that urges them to contact legislators to express a view about specific legislation is considered direct lobbying.

Expresses a view about specific legislation: Specific legislation includes a bill or resolution that has been introduced in a legislative body or a specific proposal to solve a problem. Specific legislation also includes budget appropriations and taxes, and attempts to influence the confirmation of judicial and executive branch nominees that need legislative approval. A proposal may qualify as specific legislation even if it has not yet been introduced, been written down, or even fully fleshed out. Specific legislation does not include rulemakings, promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws.

Call to action: a specific means of encouraging the communication's recipient to take lobbying action. A call to action must comprise **one** of the following actions:
tell the recipient to contact a legislator;

- provide information on how the recipient can contact a legislator, such as providing the legislator's phone number or address;
- provide a mechanism for enabling the recipient to contact a legislator, such as a postcard, petition, or email form; or
- identify a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator.

What About Ballot Measures?

Members of the general public qualify as legislators in the ballot measure context because the public will vote on the measure. For this reason, ballot measure activity is considered direct lobbying. Although the success of ballot measures, such as referenda, bond measures, and ballot initiatives are decided at the voting booth, efforts for or against them are considered direct lobbying according to the tax code, not impermissible electoral activity. So yes, as a public charity, you can urge the public to "Vote Yes on Prop B!"

What is Not Considered Lobbying?

There are four principal exceptions to these definitions. *Any communication that meets one of these exceptions does not count as lobbying, so any related expenditures would not be counted against a public charity's lobbying limit.*

- **Nonpartisan analysis, study or research** that presents all sides of an issue. The communication must provide a full and fair exposition of the underlying facts, and it must be made available to the general public, a segment of the general public, or to governmental bodies or employees. The document should provide enough

information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion. For example, an organization might write a paper discussing the need for access to healthcare by low-income children, which might conclude with a recommendation for increased funding for state child health insurance.

- **Responses to written requests for assistance** from committees or other legislative bodies. The communication must be in response to a written request by a legislative body, committee or subcommittee (not an individual legislator), and the assistance must be made available to all members of the requesting body. As an example, the executive director of a public charity, in response to a written request from the chair of a legislative committee, could testify in support of a clean indoor air bill without counting the expenses against the organization’s lobbying limits.
- **Challenges to or support for legislative proposals that would change the organization’s rights or its right to exist.** The communication must be with a legislative body regarding possible actions of that body which could affect the organization’s existence, powers, duties, tax-exempt status or the deductibility of contributions to the organization. For instance, advocacy around proposed legislation to eliminate the tax-deductibility of contributions to 501(c)(3) organizations would fall within this **“self defense”** exception.
- **Examinations and discussions of broad social, economic, and similar problems.** Communications on general topics which are also the subject of specific legislation must not refer to specific legislation or directly encourage the recipients to take action.



This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue

Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.

