

# Legal Tips On Using Social Media For Advocacy

## How 501(c)(3) Public Charities Can Use Social Media for Policy Change

*Social media presents great advocacy opportunities for 501(c)(3) public charities, including [public foundations](#).<sup>1</sup> Certain activities may constitute lobbying or partisan political activity on social media networks. Although the IRS has not specifically said how the advocacy laws apply to social networking<sup>2</sup>, its broader rules likely apply to social networking sites just as they do to other communications channels. While a charity is generally not responsible for the lobbying or partisan content<sup>3</sup> of others, these lines can be somewhat blurred on social media platforms. This fact sheet is designed to give public charities a framework to engage audiences and accomplish their missions using social media, now and in the future.*

### Using Social Media to Lobby

Social media provides ample, inexpensive opportunities to influence legislation. Using social media to engage in lobbying activity likely will count against a charity's [lobbying limits](#). Online petitions and sample letters addressed to legislators are two examples.

- ***Rules for Charities Using Section 501(h):*** The low cost of social media tools means a charity may send numerous email alerts, Facebook status updates, or other efforts without exceeding the limits on its lobbying activities under the [501\(h\) expenditure test](#). For charities that have made the 501(h) election, communications on Facebook, Twitter, or a publicly accessible website that express a view about specific legislation and include a “[call to action](#)” likely will be considered [grassroots lobbying by the IRS](#). For example, it would be grassroots lobbying to tweet (or retweet) a link asking people to send a letter to swing legislators supporting the DREAM Act. Additionally, it would be direct lobbying to send a tweet to a legislator’s Twitter address (e.g., “We need immigration reform, @SenRockefeller. The Senate votes tomorrow”). However, a tweet about the importance of passing immigration reform without a “[call to action](#)” would not be lobbying under 501(h). A staff member who tweets or shares a lobbying communication on the organization’s social media would [count as lobbying](#) the staff time spent drafting and posting the communication, even if this takes only a few minutes.
- ***Rules for Charities Using Insubstantial Part Test:*** For charities that have not made the 501(h) election, communications that attempt to influence legislation on social media will be considered lobbying under the [insubstantial part test](#), regardless of whether the communication contains a call to action.

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1 Different rules apply to private foundations using social media for advocacy.

2 Although Facebook and Twitter are currently the most popular social media networks, there will certainly be new innovations in the future. This factsheet is not specifically geared toward Facebook, Twitter, or any other social media platform.

3 501(c)(4) political activity conducted through social media must follow the relevant state or federal laws regarding corporate campaign contributions and independent expenditures, and political activity cannot be the primary purpose of a section 501(c)(4) organization.

- *Member Communications for Charities Using Section 501(h)*: For charities that have made the 501(h) election, communications with members are treated more favorably. For example, a communication that normally would be grassroots lobbying, can be classified as direct lobbying if sent only to members. The IRS defines a member as anyone who contributes more than a nominal amount of time or money to the charity. Twitter followers, email blast recipients, and users who have liked a charity's Facebook page [are not likely to be 'members' by the IRS definition](#), unless they also have contributed more than a nominal amount of time or money.

## Charity Cannot Use Social Media For Partisan Political Activities

A charity can discuss officeholders and candidates in tweets and status updates only to the extent they could legally do so through other communications channels. Public charities may use social media to [discuss public officials](#), as long as those messages do not suggest support for, or opposition to, those public officials as candidates for office. For example, a public charity could use Twitter and Facebook to rally its supporters to contact specific legislators with views about specific legislation, but only if such activity is truly lobbying in nature and is not [a veiled attempt to intervene in the election](#).

## Charity Responsible For Content It Maintains

Although there may be exceptions, a good rule of thumb is that a public charity will be responsible for content over which it maintains editorial control and not likely responsible where it does not. Charities should consider the following general rules about content it maintains or distributes:

- *Liking, Retweeting and Amplifying the Content of Others*. A charity may be responsible for any content it 'likes' or 'retweets' or whenever it in some way shares or amplifies the content of others – in the same way it would be responsible if it distributed a flyer about a 501(c)(4)'s endorsed candidates. A charity needs to think about why it is retweeting or using a Twitter widget, since these tools cannot be used to do indirectly what a charity cannot do directly. If a charity communicates via its own pages on social media platforms (e.g., Facebook, Twitter, Pinterest), which carry its name and goodwill, the charity is responsible for content appearing on these pages. This may even include when a charity starts a discussion on Twitter. If a charity retweets a [call to action](#) posted by another organization or re-posts a photo from a political candidate's Facebook page, the activity could be attributable to the charity (and, in the case of lobbying, it would count – albeit probably not very much – against the charity's lobbying limit, as discussed above).
- *Staff Posts May at Times Be Attributed to the Organization*. To the extent an organization is paying staff members to post work-related information on social networks, the activity likely will be attributed to the organization and must comply with the organization's tax-exempt status. As such, if employees post information on any social media profile (even if not in the name of the organization) only because they are employees, the post may be viewed by the IRS as part of their work and

should comply with the organization's tax status.

- **Creating a Public Forum.** If the charity is providing a forum for public discourse without asserting any editorial control, communications made by [outside commenters are less likely to be attributed to the charity](#). While the IRS has never specifically addressed this issue, two likely important factors are whether the charity asserts editorial control over content (e.g., by moderating the forum) or whether a charity is simply providing a public forum for political discourse. A social media tool that allows for longer and more substantive comments might be more likely seen by the IRS to be a forum for public discourse than would a venue where comments are brief.
- **Use Caution When Responding to Comments.** As described below, a public charity should be cautious in the way it handles user comments on Facebook, blogs, and other platforms for discussion that carry the charity's name.
- **Using Disclaimers May Be Helpful.** To reduce the likelihood of having comments attributed to the organization, a charity should include a prominent disclaimer on its social media profiles stating that the views expressed are those of the people making the comments and not necessarily those of the charity, that the charity does not endorse any candidates, and that the commentaries are presented as a public service in the interest of informing the public.

Example: It is Alliance for Justice's policy not to delete comments posted by the Facebook community, though we may make exceptions when those comments involve copyright infringement, personal attacks, obscenity and/or ethnic slurs. Posts from community members do not necessarily represent the views of AFJ. Comments are included as a public service in the interest of informing the public.

- **Safest Approach is to Delete or Distance Organization from Comments.** If a member of the general public posts a partisan message on a charity's Facebook wall or in response to the charity's status update, the safest approach is either to delete that message or to post a follow-up from a staff member stating that statements expressed by others on the wall do not necessarily reflect the charity's views and that the charity does not support or oppose candidates. There may be circumstances where it would be appropriate (in consultation with an attorney) for the charity not to respond to partisan comments made on its social media platforms.
- **Take a Consistent Approach.** A charity should take a consistent approach by either deleting all partisan comments entirely, responding to them with a follow-up statement posted by an organizational representative, or (as noted above) ignore them and rely on the disclaimer posted on the social media platform. A charity may delete any comments that contain statements that conflict with the organization's disclaimers (as described above), but if it deletes only some comments based on their political content and not all comments with political content, the charity may open itself to an accusation that it is promoting one political message over another.

## Charity Not Responsible For How Others Use Its Content

While the IRS has previously indicated that a charity is responsible for content it creates on its own website (and, likely, by extension, its Facebook page, Twitter feed, blog, or any other place where the charity maintains editorial control), a charity is likely not responsible for how others use that content, unless the charity suggests, promotes, or in some way sanctions the lobbying or partisan use of its content by others.

When a charity creates nonpartisan content (e.g., a blog post, a tweet, or even a hashtag) and that content is used by a member of the general public for a lobbying or partisan purpose, we think the IRS is unlikely to hold the charity responsible for that lobbying or partisan use. For example, at a conference hosted by 501(c)(3) charity **Nonprofit VOTE** where attendees are encouraged to use the hashtag #npvote2012 to promote and discuss the conference on Twitter, if a member of the public uses the #npvote2012 hashtag to engage in either a lobbying communication or a partisan communication, Nonprofit VOTE would likely not be responsible so long as they did nothing to encourage the lobbying or partisan commentary.

Likewise, a charity cannot control what others say or attribute to it in tweets, so we do not believe there would be any legal obligation to respond to a communication from a third party that names the charity or is addressed to one of its social media profiles (e.g., something addressed to the charity's Twitter address), though a charity could certainly reply to any posts where it believes the charity is improperly connected to partisan political content. For more information on how the lobbying and election rules apply to your charity's social media presence, please review our publication [Influencing Public Policy in the Digital Age: The Law of Online Lobbying and Election-Related Activities](#).



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