

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

NEW HAMPSHIRE

Inside This Guide:

This Practical Guidance resource is designed to help your nonprofit organization determine if lobbying rules in New Hampshire might apply to your state or local work. It includes:

- Summary of registration and reporting triggers
- Key takeaways for nonprofit organizations
- FAQs
- Case study for a hypothetical small student voting rights organization
- List of helpful additional resources

What Lobbying Activities Trigger Registration Requirements in New Hampshire?

DIRECT OR GRASSROOTS LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Any effort by your organization's paid personnel to promote or oppose, directly or indirectly, legislation pending or proposed before the state Senate or state House. Note, however, that many if not most indirect grassroots communications fall under an exception to this registration trigger.
State Executive Branch Officials	Yes	Any effort by your organization's paid personnel to promote or oppose, directly or indirectly, any actions by the Governor, Executive Council, or any state agency, with regards to legislation, administrative rules, or contracting. Many if not most indirect grassroots communications fall under an exception to this trigger.
Local Officials	Likely no	New Hampshire state law does not regulate lobbying at the local level, and the largest municipalities in the state do not presently have their own lobbying rules.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN NEW HAMPSHIRE:

- Grassroots lobbying is covered but exceptions often apply:** New Hampshire's lobbying statute covers both direct and indirect support or opposition of pending or proposed legislation and executive branch decisions, but there are some quite broad exceptions available for public communications. In practice, this means that many grassroots lobbying efforts will not trigger lobbyist registration and reporting. See the FAQ section on exceptions for further details.
- Lobbying funds must be segregated from state grant funds:** New Hampshire has a strict rule against using state funding (grants or appropriations received from the state) for lobbying activities. If your organization has received such funding and anticipates doing any lobbying, you are required to keep the state funds physically and financially separate from all funds used for lobbying. You cannot simply rely on bookkeeping for this separation, you need to keep your state funds in a bank account separate from any other funds you might use for lobbying activities.
- Registration and reporting requirements are relatively straightforward:** If you are required to register and report, the requirements are relatively straightforward and infrequent. You will, however, need to make sure you have good systems in place for tracking staff time and organizational expenses in order to meet these reporting requirements.

This resource is current as of May 2022. We do our best to periodically update our resources and welcome any comments or questions regarding new developments in the law. Please e-mail us at advocacy@afj.com or at info@democracycapacity.org with any comments.

This resource is meant to convey the basic principles of sections of state law that are most relevant for nonprofit advocacy and does not cover all aspects or all details of the state statutes. Please refer to the full text of the law for more details. This resource also does not cover details of federal lobbying disclosure law, IRS regulations related to lobbying, or any separate county or municipal regulations that may apply to lobbying-related activities. In some states there is an ongoing movement towards the enactment of additional local county and municipal level lobbying regulations, and organizations are urged to check with the appropriate local jurisdiction before undertaking local lobbying activity.

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Q: How should we think about using this Practical Guidance resource?

This Practical Guidance – What Nonprofits Need to Know About Lobbying resource is designed to help your nonprofit organization determine if state or local regulations might apply to your existing or proposed advocacy work. The answer is surprisingly often – **YES!** – but there are also often many advocacy activities that do not require state lobbyist registration or reporting.

This Guide will help you identify which of your state or local activities might trigger registration and reporting, and also give you potential alternative program design ideas that would allow your program to be in compliance with the regulations but not require registration and reporting.

If you do need to register and report with the state, this Guide will also give you practical tips about what information needs to be included in your reports, and how to try to minimize your operational burden while remaining in compliance with the rules.

While this Guide does provide some information about the federal IRS rules that apply to nonprofit lobbying, it is designed to cover state and local regulations. Links to resources containing more information about federal IRS rules can be found in the federal lobbying FAQ below and on the Additional Resources page of this Guide.

We also hope that this Guide will prove useful to legal counsel and other advocacy advisors who are working to assist nonprofit advocacy organizations, as well as the funders who generously support this work. Advisors and funders are invited to use our free Bolder Advocacy Technical Assistance Hotline and the written legal resources available in our resource library at <https://bolderadvocacy.org/>

Q: What activities count as lobbying in New Hampshire?

Under New Hampshire law, activities that are treated as “lobbying” include any efforts by your paid personnel to promote or oppose, directly or indirectly:

- Any legislation **pending or proposed** before the General Court (which includes the state House and state Senate)
- Any **pending or proposed** legislation, contracts, or administrative rules before the Governor, the Executive Council, or state agencies

Q: What triggers lobbyist registration and reporting with the state?

The main trigger in New Hampshire is using paid staff (whether an employee, a consultant, or a lobbying firm) to do lobbying work, even if it is not a significant part of the staff person’s job duties.

There are two important points to note.

- **Only pending or proposed legislation or executive branch actions count:** If your organization is simply looking to talk to state officials about your mission, or to push issues that are not linked to a specific pending or proposed legislative or executive branch action, this would not trigger lobbying registration. Convening with other organizations to talk about general policy problems or solutions also is not considered work in furtherance of lobbying until you’re working on pending or proposed legislation or executive branch action together.
- **Unpaid volunteers do not trigger registration:** If your organization can effectively use volunteers for some programming, then those activities would not trigger registration.

Q: Are there other exceptions to what counts as lobbying?

YES! Quite a few! The additional exceptions most relevant to nonprofits are:

- **Communications to the general public:** Any communications made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, the Internet or other medium of

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mass communication are not considered to be lobbying communications. This exception covers any communications you make publicly available on your website, your publicly available social media feeds, or through digital ads. The expenses for these public communications actions are also not reportable.

- Note that it is best practice to consider conversational grassroots communications made with a small subset of the public to require registration of at least one staff person in your organization if the activities are carried out by your paid staff and include calls to action for the public to communicate with public officials about pending or proposed legislation. For example, if your paid staff are running canvassing programs and a live phone banking program that calls for the public to call their state legislator to ask them to vote for a pending bill, best practice would be to register at least one of your paid staff and to report these grassroots expenses. If the activities do not contain a call to action about pending or proposed legislation or executive branch action, or are carried out by unpaid volunteers, then registration and reporting is not required.
- **Public testimony:** If your organization is providing public testimony before a legislative committee or subcommittee, or any other state public agency or public body subject to New Hampshire's right-to-know laws, registration and reporting requirements are also not triggered. This would also include written comments, so long as they are required to be made public.
- **State contracts with your organization:** Speaking with public officials about a state contract for the purchase of services (or goods) from your organization does not require registration or reporting.
- **Employment conditions lobbying:** There is also a limited exception to registration and reporting requirements where employees communicate with legislators, executive decision-makers, or other public officials about any matter that may affect their own employment conditions. As an example, if there is a proposed bill that would impact overtime pay for nonprofit employees, your employees may lobby legislators or the Governor – on their own or on your organization's behalf – without registering.

Q: How does this work together with federal IRS lobbying regulations?

All tax-exempt organizations must follow both federal tax law (regulated by the IRS) **and** any state and local lobbying laws that apply to their work.

The IRS rules regulate how much lobbying a nonprofit organization can do, while state and local regulations are transparency rules designed to help the public understand what funds are being spent to influence decision making and by whom. As a result, federal tax law rules related to lobbying and state lobbying regulations are quite different, and state lobbying regulations also vary greatly state to state.

In general, the IRS requires 501(c)(3) organizations to report on their annual Form 990 legislative lobbying at the federal, state, and local levels, but does not count as lobbying advocacy activities relating to executive branch or administrative officials at any level. There is no additional requirement for organizations or individuals to “register” with the IRS to report lobbying activities.

Nonprofits that are public charities under IRS exemption 501(c)(3), including grantmaking public charities like community foundations, can lobby within the generous limits allowed by federal tax law. The amount of lobbying is determined by either using the insubstantial part test or the 501(h) expenditure test. See our resource <https://bolderadvocacy.org/resource/public-charities-can-lobby-guidelines-for-501c3-public-charities-2/>

Organizations that are tax-exempt under 501(c)(4) (social welfare organizations), 501(c)(5) (labor organizations), and 501(c)(6) (trade associations) can do unlimited lobbying. See our <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>

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Your organization will need to ensure that you are keeping track of your lobbying staff time and your expenses in a way that works for both your IRS reporting, and for any required state or local reporting, since the information required in each regime will be different.

Note that there is also a federal law called the Lobbying Disclosure Act that requires some organizations to register and report their federal level lobbying activities. Organizations that have only occasional contacts at the federal level (having occasional meetings with members or staff or sending occasional letters to Congress) will not need to register under the LDA. The thresholds are designed to require only those organizations with sustained lobbying activities and expenses to file. For more information see: https://bolderadvocacy.org/wp-content/uploads/2018/06/Understanding_the_Lobbying_Disclosure_Act.pdf

Q: Does supporting or opposing a constitutional amendment count as lobbying?

It depends on where the amendment is in the process. While legislation calling for the amendment to be on the ballot is proposed or pending before the legislature, advocacy regarding the amendment would count as lobbying. Supporting or opposing a New Hampshire constitutional amendment once it is on the ballot is not regulated as a lobbying activity under New Hampshire law (even though the IRS does still count it as a lobbying activity at the ballot stage). Once the amendment is on the ballot, New Hampshire regulates such activity under the state's campaign finance laws. Nonprofit organizations considering working on constitutional amendments in New Hampshire should seek further advice on how to comply with any applicable state or local lobbying and campaign finance reporting requirements relating to this work.

Q: If we are required to register with the state, how does the process work?

Registration in New Hampshire is relatively simple and involves your paid lobbyist staff submitting a basic registration form and a \$50 annual fee (per registered lobbyist) to the New Hampshire Secretary of State which can cover any of your staff that need to register in one form. **Note that the registration form should be submitted before your staff engage in any direct lobbying communications.**

The registration form requires that the lobbyist (or lobbyists) disclose basic personal information (name, address, etc., which can be your organizational contact information so home addresses and personal telephone numbers of your staff are kept private), basic information about your organization, and the general subject area of the legislative or executive branch actions that your lobbyists will be working on.

The latest registration forms – including the form for multiple registered lobbyists from a single organization – can be located here:

<https://sos.nh.gov/administration/ethics/lobbyists.aspx>

In the context of registering one or more of your staff persons as a lobbyist on behalf of your organization, you would complete the form as follows:

- Section I: List each of your staff persons that are registering as lobbyists.
- Section II: List the contact details for your organization.
- Section III: For each lobbyist, list the relationship (employee, contractor) with your organization.
- Section IV: Complete as appropriate for each paid staff person registering (here “Client” is your organization).
- Section V: List your organization as the Client.
- Section VI: Describe generally what kind of lobbying subjects your organization is going to be working on.

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- Section VII: You should generally not have anything to report in this Section. This question should usually apply only in the context of a lobbying firm, not a nonprofit advocacy program run by staff of the nonprofit.

Note that it is ultimately your lobbyist staff who are responsible for registering and reporting, not the organization itself. Nevertheless, best practice is for your organization to manage and oversee any staff registration and reporting to ensure appropriate compliance.

Q: When are periodic lobbying reports due?

Once your organization has any staff registered as lobbyists, lobbying reports are due on a quarterly schedule. Reports are due even in periods where no lobbying activities take place. Note that **lobbying registrations expire at the end of each calendar year**, and if your organization intends to continue lobbying, a new registration (along with a new \$50 fee per registered lobbyist) will be required annually. Like the registration form, the periodic reports are technically the responsibility of the individual lobbyists, as opposed to your organization, but you will want to review and coordinate the filings to make sure both that they are correct, and that they are filed on time.

Reporting Period	Quarterly Report Due
January 1 – March 31	Last Wednesday of April
April 1 – June 30	Last Wednesday of July
July 1 – September 30	Last Wednesday of October
October 1 – December 31	Last Wednesday of January

If your organization is no longer active on an issue and not pursuing any triggering activities, you can send a letter to the Secretary of State's office to "un-register" before the end of the year in order to eliminate the need to continue filing reports.

Q: What information do the periodic lobbying reports include?

Quarterly lobbying reports generally require the reporting of prorated staffing expenses, as well as prorated internal office expenses and any other direct expenses for the work connected to the lobbying activities (not covered by an exception). Reportable expenses include things like research and monitoring legislation, or the direct costs of outreach such as travel to a Lobby Day event. In the context of nonprofit staff persons lobbying as part of their job duties for your organization, most of these expenses are reported in aggregate, and the compliance burden is relatively manageable.

Q: How do we report our "expenditures" on New Hampshire's quarterly reports?

A recent 2021 guidance letter from the NH Attorney General includes specific recommendations for how organizations whose staff spend a portion of their time lobbying in the context of their job duties should fill out their quarterly lobbyist reports. Groups have found this guidance confusing, and it may well be updated to further clarify in the future. We have outlined our reading of the instructions contained in the September 2021 guidance below.

You can also review the full Attorney General guidance, and check for any updates by the Attorney General's office here: <https://sos.nh.gov/media/vwaa0syx/lobbyist-guidelines-2021.pdf>

The forms for quarterly lobbying reporting are available here: <https://sos.nh.gov/administration/ethics/lobbyists.aspx>

Statement of Income and Expenses: This one page form should generally be completed as follows.

- Section I: List each of your staff persons registered as lobbyists. Note that if you are reporting for multiple staff using one report, then you will need to also attach the Signature Form for Associated Lobbyists available at: <https://sos.nh.gov/administration/ethics/lobbyists.aspx>
- Section II: List the contact details for your organization.
- Section III: Check the first box for “all reportable transactions for your organization” and fill out your organization’s name as the “Client” on the line below.
- Section IV: Check the appropriate report date.
- Section V: This box will generally be checked (since you are not a lobbying firm), and your staffing and internal lobbying expenses are instead reported on Addendum A as outlined below.
- Section IV: if you have done any lobbying activities in this reporting period, check the box for Addendum A and use that form to report your staffing and internal lobbying related expenses (see instructions below). If you did no lobbying work during the quarter **do not** check the Addendum A box in Section VI and submit only the Statement of Income and Expenses.

Addendum A – Fees and Expenses: If you did any lobbying work during the quarter, submit Addendum A attached to your Statement of Income and Expenses.

- Section I: List each of your staff persons registered as lobbyists.
- Section II: List the contact details for your organization.
- Section III: Also list your organization as the “Client.”
- Section IV: Write in “no fees received” (there is a separate place below where you will be reporting staff compensation).
- Section V:
 - In Section V(a) list the aggregate prorated portion of **compensation** (including benefits) paid to any of the listed lobbyists and any other staff that were supporting lobbying work during the quarter, as well as a prorated amount for general office expenses which can be allocated to your organization’s lobbying activities. You can use good faith prorated calculations for any resources that are also used for other non-lobbying work of your organization. These compensation and general office expenses only need to be listed as a total aggregate number.
 - In Section V(b) list any other non-office lobbying expenses of less than \$25 each, aggregated together and reported as a single number. Note there is a separate place in Section VI where non-office lobbying expenses over \$25 each must be itemized individually.
- Section VI: List in Section VI the individual lobbying expense items that cost more than \$25, and which fall outside of the categories of compensation and internal office expenses. Common examples of this category include payments to a marketing firm to develop communications used in a lobbying campaign, external printing costs to prepare lobbying materials for distribution, or a bus to travel to a Lobby Day activity. You would list such an expense on the form as “Bus Company A - \$2,000.” Anything you list as itemized expenses in Section VI is then added together and reported as an aggregated amount in Section V(c).

Addendum B – Honorariums or Expense Reimbursements: Most nonprofit advocacy organizations are not typically making any reporting on Addendum B because these kinds of expenditures can intersect both with state and local gift bans (for more information see below), and also potentially IRS rules, and are often best avoided. If you do contemplate making such expenditures, please seek additional advice about staying

in compliance with applicable gift bans and IRS regulations prohibiting electioneering activities by 501(c)(3) organizations.

Addendum C – Political Contributions: Political contributions by lobbyists are permitted in New Hampshire, but every lobbyist must report on Addendum C all political contributions made in their personal capacity or by their family members in their own personal capacity. “Family members” include spouses, children, parents, or other relatives who live with the lobbyist and share common economic interests). The lobbyist must also report any political contributions made by or on behalf of their employer, which should only potentially occur if your organization is not a 501(c)(3) organization, as public charities are strictly prohibited from making political donations!

Gift ban: It is important to note that regulations relating to lobbying expenditures almost always intersect in complicated ways with state and local ethics and “gift ban” laws. Those state and local rules often apply even if your organization has not triggered lobbyist registration and may apply to a broader range of officials. You should be certain that you understand the intricacies of both sets of rules before giving any gifts to, or paying expenses for, any public officials at the state or local level.

In New Hampshire, all individuals are prohibited from giving gifts to any elected official, public official, or public employee (or their family members). “Gifts” are defined as any sum of money, or any tangible or intangible thing valued at more than \$25. There are several exceptions to the gift ban, and you can read about those exceptions here:

<https://www.doj.nh.gov/ethics-committee/documents/summary.pdf>

Generally, it is best practice for your organization to avoid giving anything of value to public officials unless it clearly fits within an exception.

Q: Do our organization’s donors need to be disclosed on any lobbying reports?

No.

Q: How are our lobbyists required to identify themselves while lobbying?

Anyone who is required to register as a lobbyist is required to wear a name tag that is clearly visible, with the following specifications: (i) white lettering on a hunter orange background; (ii) at least 1.5 inches high and 2.5 inches long; and (iii) including the lobbyist’s first and last name, and the word “lobbyist” or the name of the organization represented, in letters at least 1/4 inch high.

Lobbyist badges can be purchased at most printing shops in Concord.

Q: Are there any other restrictions on lobbyists that we should be aware of?

State grant funds must be separated from lobbying funds: If your organization receives any type of state funding (i.e., grants or appropriations), you are required by New Hampshire law to keep those funds physically and financially separate from any funds used for lobbying. You cannot simply rely on bookkeeping for this separation, you need to actually separate state funds from lobbying funds into different bank accounts.

Reporting political contributions: Political contributions by lobbyists are permitted in New Hampshire, but every lobbyist must report on Addendum C of the quarterly lobbyist reports all political contributions made:

- By or on behalf the lobbyist in their own personal capacity
- By family members of the lobbyist (including spouses, children or parents, or other relatives, who live with the lobbyist and share common economic interests)
- By or on behalf of their employer (please note that 501(c)(3) organizations are strictly prohibited from making political donations!)

Note that this is a stringent requirement. If your advocacy activities trigger registration, then your organization will need to ensure that any of your employees who register as

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lobbyists are fully aware (and make cohabitating family members aware) of this reporting requirement.

Employment restrictions for former public officials: You should make sure that the time period for the employment restrictions contained in the executive branch Code of Ethics has passed before employing or engaging any state public officials or employees to assist in certain pieces of your advocacy work.

For six months after leaving office or employment with the state, executive branch officials and employees are not allowed to:

- Do any legislative lobbying
- Do any executive branch lobbying
- Promote or oppose action or inaction on any matter over which the executive branch official or classified employee had personal and direct responsibility while in state government, even if such matters would not be considered lobbying.





You can still hire or engage such former public officials, but you will need to make sure they are not doing work that would fall within the above prohibitions during the six-month period.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about HB 101 currently pending in the New Hampshire House of Representatives

STUDENTS VOTE NOW IS CONSIDERING:

- Reaching out to its student constituents, via direct physical mailings, e-mails, and volunteer phone banking, in order to get the students to call their state house representative about the bill.
- Doing an in-person Lobby Day at the state capital about HB 101 to meet with legislators, or alternatively arranging a virtual Zoom lobby event. The Lobby Day activity might potentially include renting a bus, buying T-shirts for the volunteer participants, and handing out some small swag type items from the organization to the legislators, or if done by Zoom, the purchase of an upgraded Zoom account.
- Testifying before a committee of the NH House of Representatives regarding the student perspective on HB 101.
- Having an employee engage with the Mayor of Manchester about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>The Student Engagement activities might not require registration and reporting if they all fit within an exception or are done by volunteers. If the same message that is sent out in physical mailings and e-mails is also posted on the organization’s website, then the public communications exception would apply to those aspects of the program.</p> <p>If only volunteers and no paid staff do all phone banking communications, then that aspect of the program would also not require registration or reporting.</p>
 <p>Lobby Day</p>	<p>The Lobby Day activities involve both paid staff and volunteers promoting directly to legislators the passage of pending HB 101. Any paid staff who will be meeting directly with legislators should register before the event and will need to purchase and wear lobbying badges for the meetings. Unpaid volunteers may communicate with the legislators without registering or reporting. Prorated staff time preparing for and attending Lobby Day, and the expenses involved in the Lobby Day – the bus rental, T-shirts, or the Zoom subscription – would need to be reported on Students Vote Now’s lobbyist staff’s next quarterly report.</p> <p>It’s generally best practice for nonprofit groups to avoid giving gifts to legislators and Students Vote Now could bring literature about their organization instead of swag.</p>
 <p>Committee Testimony</p>	<p>Testifying before a legislative committee or subcommittee is an exception to registration and reporting requirements, and the committee testimony on its own would not trigger any need to register or report.</p>
 <p>Mayor</p>	<p>New Hampshire’s state statute does not regulate local lobbying, and Manchester does not presently have a lobbying registration or reporting law, so these meetings would not trigger any registration or reporting requirements.</p>
<p>Bottom Line</p>	<p>Students Vote Now can, for the most part, design their programs to be in compliance with the New Hampshire regulations without needing to register.</p> <p>The Lobby Day activities, however, will likely trigger registration and reporting by at least one Students Vote Now employee, assuming that paid staff are involved. To minimize the operational compliance burden, Students Vote Now might consider designating only one or two staff members to register and report for these activities and have other staff members support the activities but not actively lobbying legislators. Some of the external Lobby Day expenses will need to be itemized on the next quarterly lobbyist report.</p> <p>It is generally simpler to give state public officials literature as opposed to swag. Students Vote Now should also carefully check local rules if it is considering giving swag to the Mayor of Manchester.</p>

ADDITIONAL RESOURCES

BOLDER ADVOCACY'S TECHNICAL HOTLINE:

Bolder Advocacy's free Technical Hotline team is always happy to help nonprofits and advocacy attorneys with more specific questions. You can contact our team of experts by emailing us at advocacy@afj.org or calling us during standard business hours at 866-NP-LOBBY (866-675-6229).

NEW HAMPSHIRE STATE RESOURCES:

- **New Hampshire Secretary of State**
The Secretary of State's website has resources including the various registration and reporting forms, and guidance from the Attorney General: <https://sos.nh.gov/administration/ethics/lobbyists/>
- **Full Text of New Hampshire Lobbying Statutes**
The full text of the New Hampshire lobbying statute can be found at: <https://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-I-15.htm>
- **New Hampshire Executive Branch Code of Ethics**
The full text of the New Hampshire executive branch Code of Ethics, which contains the employment restrictions on former public officials and employees can be found at: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-I-21-G.htm>
- **Attorney General Guidance for Organizational Employees**
The New Hampshire Attorney General, in September of 2021, issued a letter providing guidance on how to register and report the activities of staff who engage in lobbying as part of their job duties: <https://sos.nh.gov/media/vwaa0syx/lobbyist-guidelines-2021.pdf>
- **Additional Questions**
Any questions about lobbyist registration and reporting can be directed to the Secretary of State's office by phone at 603-271-3242 or by e-mail at elections@sos.nh.gov

BOLDER ADVOCACY'S FEDERAL LAW RESOURCES:

While state and local laws regulate which lobbying activities require registration and reporting, the IRS also regulates how much lobbying a 501(c)(3) tax-exempt organization is allowed to do, including at the state and local levels. The way the IRS counts lobbying will almost always be different than how state and local laws count it, and organizations are urged to review our federal law resources to ensure all IRS compliance obligations are being met. See our *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*. <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>



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