



**LOBBYING** means that the organization is trying to influence legislation

**POLITICAL ACTIVITY** refers to partisan campaigning or nonpartisan voter involvement

## 2. Federal Rules On Lobbying And Political Campaign Activities

### Overview

#### A Lobbying and Political Campaign Activities – The Difference

Lobbying and political activity are easily confused. It is vital for 501(c)(3)s to know the difference!

#### ✔ Lobbying

- [Public charities are allowed to lobby](#) but, like most not for profits, they can lose their tax-exempt status if they engage in political campaigns and electioneering. The IRS has set [strict guidelines for public charities](#) and other tax-exempt organizations and expects each of them to pay close attention to these regulations.

*From <https://standforyourmission.org/> and <https://boardsource.org/resources/political-activity-public-charities/>*

#### ✔ Political Campaign Activities:

- 501 (c)(3) organizations cannot support or oppose candidates for public office.
- This rule is absolute; there is no “501(h)” (defined below) election for political activities and violating this rule could jeopardize the organization’s tax exemption and/or the imposition of excise taxes on the nonprofit and its managers
- A 501(c)(3) can engage in nonpartisan voter education activities, such as candidate forums, voter education activities, and get out the vote drives -if these activities are done very carefully. For example- a 501(c)(3) might be able to host a candidate forum if all candidates are invited and if no favoritism is shown to a particular candidate. **Such activities must be conducted very carefully – speak with your legal advisor first to ensure you are doing these properly!**

501(c)(3) organizations can choose how to measure the amount of their lobbying activities: (1) the substantial part test, or (2) the lobbying expenditure test – also known as the 501(h) election.

## Lobbying - The “Substantial Part” Test and the “501(h) Election”

### Substantial Part Test

The definition of “substantial” as it relates to the amount of a nonprofit’s lobbying activities is not at all clear. How much lobbying activity might be considered “substantial” is hazy at best. It may depend on how the IRS retroactively weighs the “facts and circumstances” of each situation. Even a small amount of lobbying activities could be considered substantial. And, the risks of violating this test are great: Activities by volunteers may be included (which may be difficult to quantify); a 501(c)(3) risks losing its tax exempt status entirely if the rule is violated in a single year; there can be financial liability to organization managers (such as Directors) if the actions are willful.

### Lobbying Expenditure Test/the 501(h) Election

To avoid the uncertainty of a nonprofit’s lobbying activities being measured with the subjective “substantial part” test, 501(c)(3) organizations should strongly consider measuring their lobbying activities by making the 501(h) election. This is done by filing a short form with a long name: IRS [Form 5768 \(Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization to Make Expenditures to Influence Legislation\)](#).

Making the 501(h) election allows nonprofits to elect to have their lobbying activities be measured by an objective “expenditure test”, rather than by the subjective “substantial part” test. As noted below, by making this election the 501(c)(3) can objectively measure its lobbying activities simply by keeping track of how much spends on lobbying activities.

Importantly, a 501(c)(3) charitable nonprofit making the 501(h) election remains a 501(c)(3) charitable nonprofit.

In the opinion of informed attorneys and accountants, filing the 501(h) election is, for the vast majority of nonprofits, the easiest, most effective “insurance” a nonprofit can secure to protect itself from overstepping IRS limitations on lobbying activities.

**“Under the expenditure test, the extent of an organization’s lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000, as indicated in the table below.”**

If the amount of exempt purpose expenditures is	Lobbying nontaxable amount is
<b>≤ \$500,000</b>	20% of the exempt purpose expenditures
<b>&gt;\$500,00 but ≤ \$1,000,000</b>	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
<b>&gt; \$1,000,000 but ≤ \$1,500,000</b>	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
<b>&gt;\$1,500,000</b>	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000

(Source: [IRS Website](#))

The limits that the IRS allows for lobbying expenditures are very generous. For example, a 501(c)(3) that has “exempt purpose expenditures” (essentially, its budget) of \$500,000 could spend 20% of that amount – \$100,000 – on lobbying activities. As you can see, most nonprofits will never spend up to the allowable amounts, and thus will not be in danger of penalties or risk the loss of tax exemption.

There are many advantages of for a 501(c)(3) to making the 501(h) election:

- It provides a clear definition of lobbying
- As noted above, most 501(c)(3)’s will never reach the amounts they are allowed to spend on lobbying activities
- There’s an unlimited use of volunteers (assuming no reimbursed costs)
- It gives organizations a straightforward spending yardstick, thus the ability to plan
- “Soft” factors are irrelevant, only expenditures count
- Only the organization is penalized for violating the rule, not managers (e.g., Directors)
- Organizations are less likely to lose exemption for exceeding their lobbying limits unless the organization exceeds lobbying limits by 50% average over rolling four-year average

## Important to Note

Nonprofits that receive federal funds may not use those funds (whether received by the nonprofit as a result of a “contract” or “grant”) to attempt to influence any federal or state legislation, through direct or grassroots lobbying campaigns. See Federal Acquisition Regulations (FAR), 48 C.F.R. §§ 31.205-22; 31-701 et seq.

Private foundations, churches, and integrated auxiliaries of churches are not permitted to file the 501(h) election.

What organizations shouldn't make the 501(h) election?

- Possibly organizations that expect to exceed their allowable limits
- Organizations that engage in a substantial amount of grassroots lobbying (defined below); a group that makes the 501(h) election can spend only 25% of its lobbying budget on grassroots lobbying activities.

## Worth Reinforcing

Section 501(c)(3) of the Internal Revenue Code has two important restrictions relating to **involvement in political campaigns and lobbying activities**:

- A prohibition against a 501(c)(3) organization participating in or intervening in any political campaign on behalf of, or in opposition to, any candidate seeking public office (Federal, state, or local) – other than carefully engaging in nonpartisan voter education activities.
- No substantial part of a 501(c)(3)'s activities can be directed towards influencing legislation at the federal, state and/or local level (lobbying). Section 501(c)(3) does not absolutely place a ban on all lobbying by charitable nonprofits – rather, it notes that “no substantial part of the activities” of the nonprofit may be for “carrying on propaganda, or otherwise attempting, to influence legislation.” Source: [26 US Code, Section 501 \(c\)\(3\)](#). So, while many people do not realize it, charitable nonprofits may engage in lobbying activities up to a point – the point at which its lobbying activities become a “substantial part” of its activities. Knowing how to properly engage in such activities can ensure your organization's participation in the public policy process.

## NY State Disclosures

If an organization hires or has a lobbyist on staff, New York State requires certain disclosures that lobbyists and their clients must make.

Learn more here: <https://jcope.ny.gov/lobbying-laws-and-regulations>

## Take a Deeper Dive

<https://www.councilofnonprofits.org/taking-the-501h-election>

<https://bolderadvocacy.org/resource/worry-free-lobbying-for-nonprofits/>

Federal Rules

<https://conservationtools.org/guides/100-lobbying-rules-and-501-c-3-organizations>

New York State Rules

<https://jcope.ny.gov/lobbying-laws-and-regulations>

<https://boardsource.org/resources/what-is-advocacy/>