

Making Your Voice Heard: Lobbying & Advocacy for Nonprofits



Our Speakers



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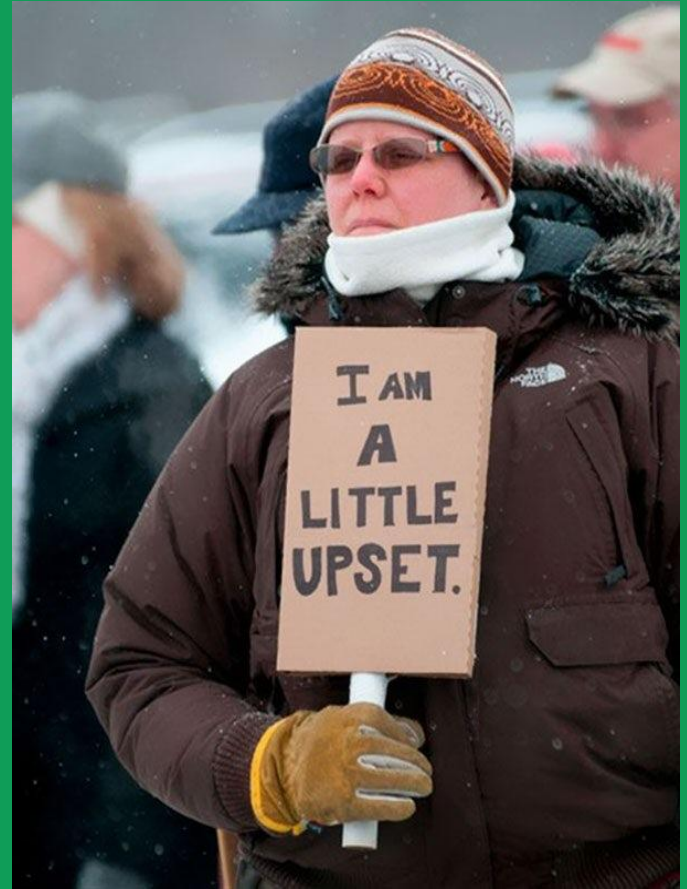
Our goals

- Understand legal definitions of advocacy and lobbying
- Know what activities do and don't count as lobbying
- Tips for tracking lobbying & advocacy activities
- Understand rules regarding civic engagement during election season

Disclaimer:
This is *Not*
Legal Advice



What is advocacy?



Advocacy has a broad definition

- is *taking a position* on an issue and *sharing it* with someone who can do something about it to bring about *systemic, lasting change*.
- A tool to accomplish your mission and ensure that underserved communities have a voice in the policies that impact their lives.
- Encompassing a broad range of activities to influence public policy.

What kinds of activities comprise advocacy?



Organizing

Build power in a community, mobilize, showcase people power.



Public Education

Educational conferences, leadership training, bipartisan voter education.



Nonpartisan Research

Conduct or publish a study, collect data or information about a particular issue.



Lobbying

Advocate on specific legislation, communicate with a legislator.



Educating Legislators

Sharing expertise, highlight proven strategies, site visits.



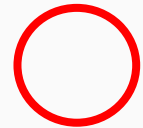
Influence Regulations

Take action at agency level, implementation advocacy.



Litigation

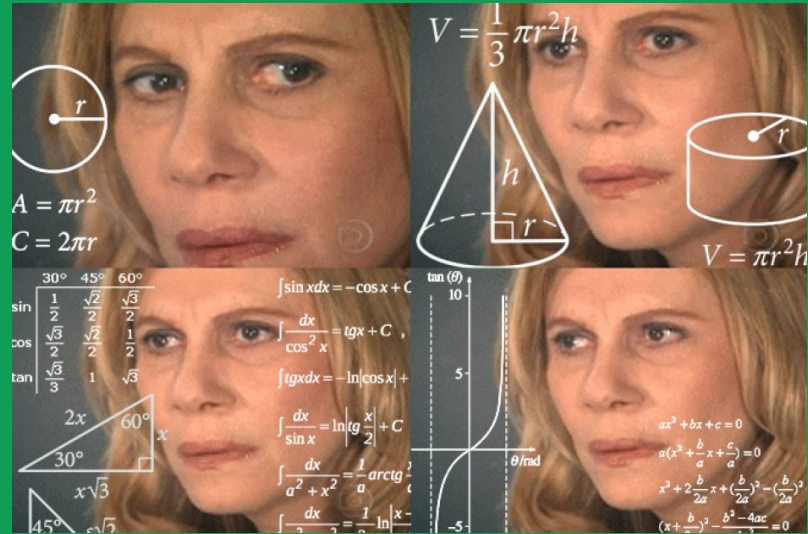
Legal action, file court case for your cause or community.



Partisan Politics

Directly/indirectly participate in, contribution to or support political campaign.

What is lobbying?



Lobbying is narrowly defined by the IRS

The IRS defines lobbying as the attempt to **influence the passage, defeat, introduction or amendment of legislation**. Including:

- Laws, referenda, ballot initiatives and constitutional amendments
- Judicial nominations
- Adoption of international law

Yes, nonprofits can & should lobby!

- 501(c)(3) public charities *can* engage in limited lobbying, but must comply with generous lobbying limits.
 - Internal Revenue Code does not prohibit lobbying, it does set limits.
 - State & city registration and disclosure laws do not limit lobbying, only require reporting.
- If nonprofits aren't speaking up for their communities, chances are nobody else is either.

IRS definition of direct lobbying

- Direct lobbying targets legislators:
 - Refer to specific legislation *and*
 - Take a position on it
- *Legislators* includes federal, state or local representatives AND staff.

IRS definition of grassroots lobbying

- Grassroots lobbying targets the general public:
 - Refer to specific legislation,
 - Take a stand on that specific legislation, *and*
 - Issue a “call to action” that explicitly or implicitly asks the recipient to contact legislators
- Without a call to action, it is NOT lobbying.

NYS – What is Lobbying

- Attempting to influence City or State:
 - legislation (& introduction of legislation) – budget legislation, member items count!
 - agency rules, regulations, and procurement
 - administrative agency action (“having the force and effect of law”)
- Applies to:
 - direct lobbying *and* grassroots lobbying
 - approval or veto of any legislation by the governor
 - Executive order by Governor or Mayor

NYS - What is NOT Lobbying

- Talking to a public official without an “ask” – even if you discuss legislation, rules or procurement.
- Participating in the public proceedings of a government agency.
- Responding to a request for information (including legislative testimony if you were specifically invited by the committee).

NYS - Lobbying on Social Media

Lobbying

- direct message to official
- post on official's page
- tagging a public official
- asking readers to lobby

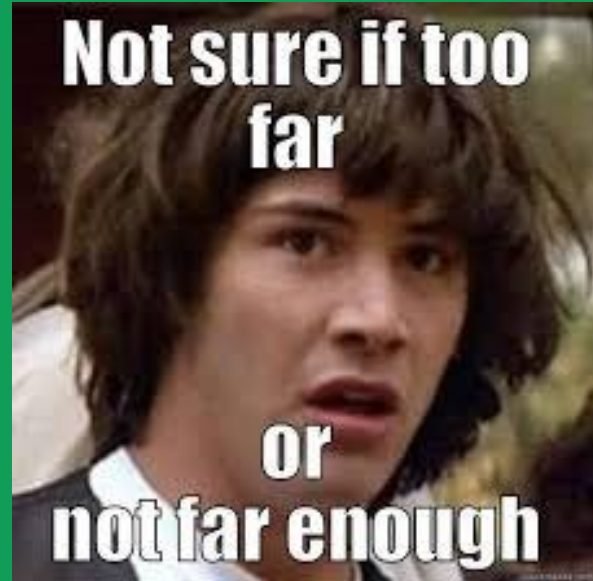
Not Lobbying

- referring to but not tagging official
(even if official is a follower) without call to action

@SenSmith Pass the
Ethics in Government
Act now!

Sen. Smith should
vote yes on the
Ethics in Government
Act now!

How much
lobbying
can you do?



There are two ways to determine how much lobbying you can do

- **The default “Substantial Part” test**
 - Activity based limit
 - Qualitative, not clear what’s measured under test
 - Severe penalties for exceeding limit
- **The optional “Lobbying Expenditure” test**
 - Precise \$ ceiling on the amount you can spend on lobbying
 - Often more generous
 - File a one-time form to choose this test
 - Less severe penalty for exceeding limit

How to measure lobbying activities with “Lobbying Expenditures” test

Organization’s Annual Expenditures	Overall Lobbying Limit
\$500,000 or less	20%
\$500,000 to \$1 million	\$100,000 + 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 + 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 + 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

- Grassroots lobbying limit is 25% of overall limit

Report to the IRS

IRS 990

Form 990 (2014)

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Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i>	1	
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> (see instructions)?	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	3	
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i>	4	<input checked="" type="checkbox"/>

IRS 990-EZ

Form 990-EZ (2013)

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	Yes	No
46 Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	46	

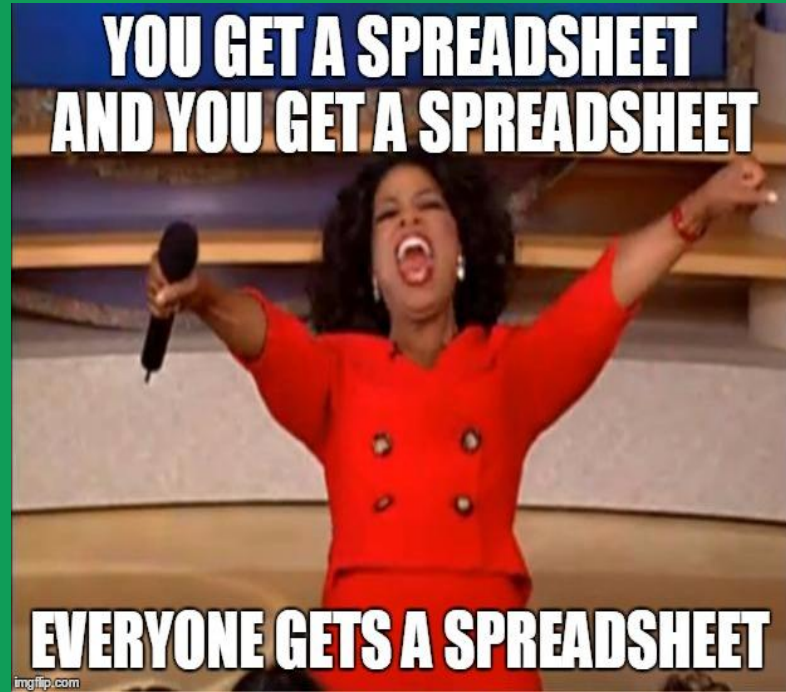
Part VI Section 501(c)(3) organizations only

All section 501(c)(3) organizations must answer questions 47–49b and 52, and complete the tables for lines 50 and 51.

Check if the organization used Schedule O to respond to any question in this Part VI

	Yes	No
47 Did the organization engage in lobbying activities or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i>	47	<input checked="" type="checkbox"/>

Reporting laws & tracking



NYS & NYC disclosure and reporting

NEW YORK STATE

- Applies to all lobbying organizations spending, and lobbyists receiving, \$5,000+ annually
- NYS or NYC lobbying activities both count (not federal).

NEW YORK CITY

- \$5,000+ annual filing threshold
- Only NYC activities count.

*Both require registration as lobbyist, file regular reports, retain documents and complete mandatory online ethics training.

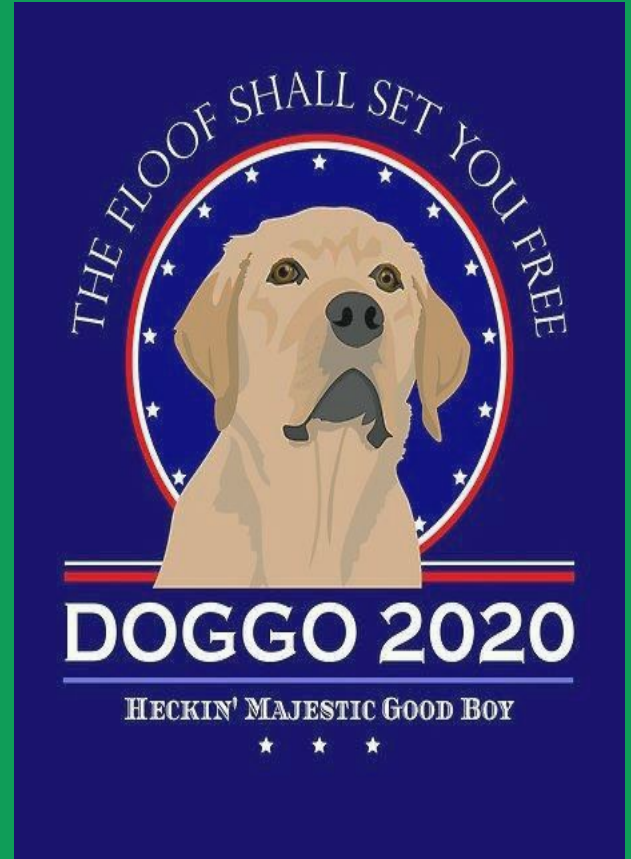
NYC & NYS - Seeking Government Funding

NOT LOBBYING ACTIVITIES	LOBBYING ACTIVITIES
1. Submitting a grant application	1. Contacting Legislator re: Member Item
2. Responding to an RFP	2. Trying to influence State, City Budgets
3. Influencing Agency's award of Grant FOR NYS (but may have to file disbursement of public monies report)	3. Influencing Agency's award of Grant FOR NYC
	4. Procurement lobbying

Tracking obligations

- Tracking and reporting requirements include:
 - staff time (time spent lobbying and preparing for lobbying)
 - direct costs (other than staff time)
 - overhead expenses (office rent, utilities, professional fees for accounting services—any cost that is not a “direct cost” or “staff time”)
- Create a system to track organization activities such as through timesheets, lobbying incident report or annual questionnaire.

Making the
most of
election season



What is Partisan Politics?

Any activity that would tend to help or hurt the chances of a particular candidate, regardless of party affiliation, is not permitted by IRS including...

- coordinating with a candidate
- contributing to candidate, political party, or PAC
- in-kind support such as mailing lists and facilities
- systematically praising or criticizing a candidate, grading or rating in voter guide

IRS Facts & Circumstances Test

There are no bright line rules. Factors under consideration include:

- History of organization's policy campaigns
- Timing
- Focus on one issue or many
- Coordination with other groups
- Target audience
- And more ...

What election-related activity CAN you do?

- Voter registration
- Get out the vote (GOTV)
- Voter guides
- Candidate questionnaires
- Candidate forums & debates
- Candidate education
- Ballot questions
- Issue advocacy campaigns during election season

Personal Activities of Staff & Board

- Everyone has a right to participate in the political process, even if they are affiliated with a nonprofit.
- Use work title for identification purposes only.
- Organization should adopt and disseminate a policy on board & staff participation in campaigns.
- DO NOT use organizational resources (time, mailing list, email computer, copier, letterhead).

Questions?

Survey

<https://www.surveymonkey.com/r/K3FRLSG>

Contacts

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Lawyers Alliance Resource Call Hotline

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Additional Resources

NYC - What is Lobbying

- Covers everything that state covers: legislation, administrative, procurement, Plus...
- zoning, land use, disposition of City's real property
- determination of Board or Commission
- hearings: It's lobbying if you're trying to influence...
 - Agency's decision to hold, or timing of, rate making proceeding
 - Agenda of Board or Commission
 - Calendaring or scope of City Council oversight hearing
- It's lobbying if you're trying to influence decision by city elected official or employee to support/oppose state or federal rule or regulation

Tracking Option 1—timesheets

Lobbyist Name: _____

Date	Subject & bill #	Description of Activity (include whether grassroots or direct lobbying)	Target (individual and/or legislative body)	Time Spent	Additional Expenses (printing, mailing, travel)	NYC	NYS	Federal
Oct. 20-24, 2014	Bill to Reform NYC Lobbying Law (Int 1172)	Draft email asking members to call council members to support law (grassroots)	NYC Council	5%	none	X		
Oct. 27-31, 2014	State Budget – Foster Care	Calls to state legislators (direct)	State Sens. Squadron & Savino	10%	none		X	

Tracking Option 2—lobbying incident report

LOBBYING REPORTING FORM

Employee Name: Jane R. Doe

Date: 02/01/2011

Description of Activity: Researched information on work/study programs for letter to Senator Jones on S.B. 1642(The Higher Education Authorization Act of 2011)

Time (round up to the ½ hour):

Direct Lobbying: 1.5

Grassroots Lobbying: 0

Employee Name	Date	Time (rounded up to the ½ hour)		Notes
		Direct Lobbying	Grassroots Lobbying	
Jane R. Doe	2/01/2011	1.5	0	Strategy meeting

Tracking Option 3—Questionnaire

Lobbying (and Possible Lobbying) Reporting Form

Please complete this form if you engage in or provide support for an activity that you believe might constitute lobbying. If you are not certain whether or not the activity is lobbying and the activity involves expressing a view on a matter of public policy, complete this form. If you have questions about how to complete this form, contact [NAME].

Your Name: _____

Date of Activity: _____ Time Spent (nearest half hour): _____

For (Check one): [NAME OF 501(c)(3)] (501(c)(3)) [NAME OF 501(c)(4)] (501(c)(4))

Briefly describe the activity (including subject matter, bill number (if applicable), actions taken, individuals contacted, workproduct produced (attach copy if applicable)):

Briefly describe any reimbursable expenditures or payments to outside vendors associated with this work (e.g. travel expenses, printing costs, etc.):

Circle the appropriate answer(s) for the questions below and provide additional information as requested:

1. What type of decision is this work an attempt to influence?

- a. Something voted on by a legislative body
- b. Something decided by an administrative agency or the executive branch, without legislative involvement

Resources

- Lawyers Alliance FAQ's on Nonprofits and Lobbying:
<https://lawyersalliance.org/advocacy.php>
- Federal Lobbying Disclosure Act guidance:
http://lobbyingdisclosure.house.gov/amended_lda_guide.html
- NYS Lobbying Act, regulations & guidance:
<http://www.jCOPE.ny.gov>
- NYC Lobbying Law, regulations & guidance:
https://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml

Resources

- A Guide to the IRS Lobbying Regulations for Advocacy Charities:
https://www.bolderadvocacy.org/wp-content/uploads/2012/10/Being_A_Player_paywall.pdf
- Bolder Advocacy Lobbying Limit Calculator:
<https://www.bolderadvocacy.org/resource/501h-lobbying-limit-calculator/>
- A Guide to Recordkeeping for Advocacy Charities:
https://bolderadvocacy.org/wp-content/uploads/2018/06/Keeping_Track_paywall.pdf