ADVOCACY AND LOBBYING FOR NON-PROFITS

Ronnie Pawelko
1. What does it mean to be a 501(c)(3) organization?

2. What is “advocacy”?

3. What is “lobbying” and how much can we do?

4. When is advocacy not lobbying?

5. Keeping track

6. Rules for elections
Comparing NONPROFITS
<table>
<thead>
<tr>
<th>501(c)(3) Public Charity</th>
<th>501(c)(4) Social Welfare</th>
<th>527 Political Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Examples</strong></td>
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<td><strong>Examples</strong></td>
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<tr>
<td>URGE</td>
<td>National LGBTQ Task Force Action Fund</td>
<td>Emily’s List</td>
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<tr>
<td>NARAL Pro-Choice Ohio</td>
<td>NARAL Pro-Choice Ohio PAC</td>
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<tr>
<td><strong>Tax Treatment</strong></td>
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<tr>
<td>Tax-Exempt</td>
<td>Tax-Exempt</td>
<td>Tax-Exempt</td>
</tr>
<tr>
<td>Contributions tax-deductible</td>
<td>Private Foundation grants</td>
<td></td>
</tr>
<tr>
<td><strong>Lobbying Activities</strong></td>
<td><strong>Lobbying Activities</strong></td>
<td><strong>Lobbying Activities</strong></td>
</tr>
<tr>
<td>Limited</td>
<td>Unlimited</td>
<td>Rare and usually taxable</td>
</tr>
<tr>
<td><strong>Electoral Activities</strong></td>
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</tr>
<tr>
<td>Cannot support or oppose a candidate for office</td>
<td>Secondary activity</td>
<td>Usually, sole activity</td>
</tr>
<tr>
<td></td>
<td>Follow federal and state election law</td>
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</tr>
</tbody>
</table>
Organize Communities
Educate Public
Nonpartisan Voter Ed.
Change Corporate Behavior
Educate Legislators
IRS Lobbying Exceptions
Regulatory Efforts
Encourage Voting
Educational Conferences
LOBBYING
Litigation
Research
Skills Training
What is ADVOCACY?
Rules that apply to print and verbal communications also apply to *ONLINE COMMUNICATIONS*
Public Charities may **LOBBY**

Must stay within limits set by the IRS

- Insubstantial part test
- OR
- 501(h) expenditure test

Call your senator: Remove Arctic Refuge drilling from the budget!
Remove Alaska’s pristine & wild Arctic Refuge from the budget! [@campaign] #ProtectTheArctic
WHAT IS LOBBYING UNDER THE INSUBSTANTIAL PART TEST?

Contacting legislators to propose, support, or oppose legislation or the government’s budget process.

Urging the public to contact legislators to propose, support, or oppose legislation or the government’s budget process.

Advocating the adoption or rejection of legislation.
TOTAL LOBBYING LIMITS
for 501(c)(3)s making the 501(h) election with annual expenditures of $250,000

Overall Lobbying Limit: $50,000
Grassroots Lobbying Limit: $12,500

Education & Non-Lobbying Advocacy
Direct
Grassroots
1. Calculate organization’s annual expenditures.

2. Overall lobbying limit:

<table>
<thead>
<tr>
<th>ANNUAL EXPENDITURES</th>
<th>OVERALL LOBBYING LIMIT</th>
</tr>
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<tbody>
<tr>
<td>$500,000 or less</td>
<td>20%</td>
</tr>
<tr>
<td>$500,000 to $1 million</td>
<td>$100,000 +15% of excess over $500,000</td>
</tr>
<tr>
<td>$1 million to $1.5 million</td>
<td>$175,000 +10% of excess over $1 million</td>
</tr>
<tr>
<td>$1.5 million to $17 million</td>
<td>$225,000 + 5% of excess over $1.5 million</td>
</tr>
<tr>
<td>Over $17 million</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

3. Grassroots lobbying limit is 25% of overall limit.
DIRECT

Communication

Legislator

Expresses a view about specific legislation

GRASSROOTS

Communication

General public

Expresses a view about specific legislation

Call to action

WHAT IS LOBBYING UNDER THE 501(H) ELECTION?
DIRECT Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation
Call to action
DIRECT Communication
Legislator
Expresses a view about specific legislation

U.S. Legislators and staff

GRASSROOTS Communication
General public
Expresses a view about specific legislation

State Legislators and staff

County Board of Supervisors, City Council and staff

Call to action
President, governor, mayor, or other executive official who participates in the formulation of legislation.

DIRECT Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation
Call to action
DIRECT COMMUNICATION

Legislator

Expresses a view about specific legislation

SPECIAL “LEGISLATOR” RULE

Members of the general public are “legislators.”

Ballot Measures

- ballot initiatives
- referenda
- constitutional amendments
- bond measures

GRASSROOTS COMMUNICATION

General public

Expresses a view about specific legislation

Call to action
School boards
Zoning boards
Housing authorities
Sewer and water districts
Other “special purpose bodies”

NOT LEGISLATORS
115TH CONGRESS
1ST SESSION

S. 1006

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

DIRECT
Communication
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Expresses a view about specific legislation

GRASSROOTS
Communication
General public
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Call to action

BUDGET
OF THE U.S. GOVERNMENT
FISCAL YEAR 2017
OFFICE OF MANAGEMENT AND BUDGET
Still specific legislation even if...

➢ not yet introduced
➢ not yet written
➢ not fully fleshed out
Regulations

Executive orders

Enforcement of existing laws

Litigation

NOT SPECIFIC LEGISLATION
Advocacy on Regulations is NOT LOBBYING
Executive Order -- Enhancing Coordination of National Efforts in the Arctic

EXECUTIVE ORDER

ENHANCING COORDINATION OF NATIONAL EFFORTS IN THE ARCTIC

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to prepare the Nation for a changing Arctic and enhance coordination of national efforts in the Arctic, it is hereby ordered as follows:

Section 1. Policy. The Arctic has critical long-term strategic, ecological, cultural, and economic value, and it is imperative that we continue to protect our national interests in the region, which include: national defense; sovereign rights and responsibilities; maritime safety; energy and economic benefits; environmental stewardship; promotion of science and research; and preservation of the rights, freedoms, and uses of the sea as reflected in international law.

Over the past 60 years, climate change has caused the Alaskan Arctic to warm twice as rapidly as the rest of the United States, and will continue to transform the Arctic as its consequences grow more
GOVERNOR URGED TO TAKE IMMEDIATE ACTION TO IMPLEMENT BACKGROUND CHECK INITIATIVE

5 OCT 2017 |

Letter to Kathryn Reynolds, General Counsel, Office of Governor Sandoval

Letter to Governor Sandoval

Working to change the enforcement of existing law is NOT LOBBYING.
In unusual move, Pittsburgh Foundation files 'friend of court' brief in gerrymandering case

On Wednesday, the state Supreme Court will hear arguments on whether Pennsylvania’s politicians have drawn legislative district maps so favorable to themselves that they violate the rights of voters.

And one of Pittsburgh’s most prominent philanthropic organizations, the Pittsburgh Foundation, is so concerned about the issue that it’s drawn up a new road map for its own activities.

Calling the state’s Congressional districts a “draconian infringement of the constitutional rights of Pennsylvania citizens,” the foundation filed a “friend of the court” brief urging the justices to craft “a reasoned and fair standard that will eliminate unconstitutional partisan gerrymandering.”

Litigation is NOT LOBBYING
SIGN THE PETITION: We rely on the U.S. Census so our government can fairly represent all Americans -- and so government agencies can base their decisions on data and facts. Please oppose any efforts to skew the 2020 Census with politically motivated questions about citizenship status.

Required fields

First name:

Last name:

Your email:

Zip / postal code:

Mobile number:

Send me text message alerts

*Message & data rates may apply. Common Cause may contact you with campaign updates and other offers of engagement. Reply STOP to unsubscribe at any time.

We need your help to stop the Trump Administration from rigging the 2020 Census with an unnecessary and politically motivated question on citizenship status.

The Census is required to count every person who lives here, whether or not they're a citizen. But the Trump Administration's anti-immigrant rhetoric carries a real risk that people might refuse to participate in the Census for fear of targeting or retaliation -- skewing the final count.

The 2020 Census will shape our nation's democracy, public policy and economy for a decade. We simply can't afford to get it wrong -- or let this partisan stunt distort its outcome.

Commerce Secretary Wilbur Ross will make the final decision on whether a citizenship question is included -- so we must speak out NOW to put massive pressure on him. Send your message today!
CALL TO ACTION

DIRECT Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation
Call to action
TELLING TO CONTACT legislator(s)

PROVIDING ADDRESS, telephone number, and/or other contact information of legislator(s)

PROVIDING MECHANISM to enable communication with legislator(s)

IDENTIFYING legislator(s)

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Call to action
Tell your senators to vote NO on @HHSGov nominee @RepTomPrice PriceisWrong conta.cc/2lvsbae
Support the Runaway and Homeless Youth and Trafficking Prevention Act

On January 27, 2015, Sens. Patrick Leahy (D-VT) and Susan Collins (R-ME) introduced the Runaway and Homeless Youth and Trafficking Prevention Act of 2015 (RHYTPA), S 262 followed by a House version, HR 1779, introduced on April 14, 2015 by Rep. John Yarmuth (D-KY). This bill would expand and improve the Runaway and Homeless Youth Act, which has been providing federal grants to communities to deliver critical services to homeless and runaway youth for the last 41 years. Specifically, the RHYTPA would collect data on victims of human trafficking, add a nondiscrimination clause that brings the Act into accordance with the federal regulations that most runaway and homeless youth programs currently follow, and increase the allowable length of stay for Basic Center Programs from 21 to 30 days to give young people more time to access reunification services when needed. It also includes funding to add runaway and homeless youth who have been trafficked to the National Study of the Prevalence Needs and Characteristics of Homeless Youth in America, providing vital information to prevent the trafficking of children and provide appropriate services to survivors.

RECIPIENTS

- Your Senators
- Your Representative

CONTACT

- Required fields
- Title: 
- First Name: Keely
- Last Name: Monroe
- Your Email: keely@afj.org
- Address 1:

MESSAGE

- Subject: Cosponsor Runaway and Homeless Youth and Trafficking Prevention Act

Dear [Decision Maker],

I urge you to support the Runaway and Homeless Youth and Trafficking Prevention Act (RHYTPA), S 262/HR 1779, introduced by Sens. Patrick Leahy (D-VT) and Susan Collins (R-ME) and Rep. John Yarmuth (D-KY). For forty-one years, the Runaway and...
DIRECT
Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS
Communication
General public
Expresses a view about specific legislation
Call to action

**Not** Calls to Action:
“Learn more”
“Take action”
“Support our efforts”
“Get involved”

**NOT** Lobbying
She’ll be your server tonight... and she’s pretty sure it’s contagious.

Nearly half of all workers in Maine lack paid sick days and are forced to work through their illnesses in order to pay the bills.

Support LD 1454, the Paid Sick Days Bill.

www.MainSneeze.org
NO PAID SICK DAYS FOR RESTAURANT EMPLOYEES.

AN "ENHANCED" DINING EXPERIENCE FOR RESTAURANT CUSTOMERS.

Nearly half of all workers in Maine lack paid sick days. Support your fellow Maine workers and their right to recover from illness without endangering public health or losing a day’s pay.

Contact your legislator and share your support of LD 1454, the Paid Sick Days Bill.

www.Mainesneeze.org
Trump wants to cut the EPA budget by 31% -- we can’t afford to go backwards. Tell Congress to reject the proposal.
edf.org/7eT
Trump wants to cut the EPA budget by 31% -- we can’t afford to go backwards.

We need to take action!
Does your ACTIVITY have all the elements of LOBBYING?
If NO, it’s NOT LOBBYING!
Nonpartisan analysis, study, or research

Request for technical assistance

Self-defense

Examinations and discussions of broad social, economic, and similar problems
MUST

Represent full and fair discussion
Be broadly disseminated

Contain indirect call to action

Express a view

Limit subsequent grassroots lobbying

MAY

NONPARTISAN ANALYSIS

Restoring a National Consensus: The Need to End Racial Profiling in America
March 2012
MUST BE
invited in writing on behalf of committee

Available to all members of committee

TECHNICAL ASSISTANCE

MAY
Express a view on Specific legislation
SELF-DEFENSE

MUST RELATE TO

- Powers and duties
- Tax-exempt status
- Deductibility of contributions

SHOULD

- Consult with attorney
ANALYSIS + DISCUSSIONS

NO SPECIFIC LEGISLATION

Blue ribbon panel

Annual reports

Early stages of policy development

NO CALL TO ACTION

Communication does not include call to action
limit lobbying at all levels of government
disclose state / local lobbying
disclose federal lobbying

LOBBYING LIMITS V. DISCLOSURE
• Build public support through community education/list building
• Leave out the call to action until legislative action is pending
• Make use of lobbying exceptions
• Get your issues into the press
• Use social media

Maximizing your advocacy
• Can be structured with no lobbying component. Educate and inform policy makers about issues/programs

• Remember the definitions: encouraging people to take action is grassroots lobbying

• Staff probably incur direct lobbying expenses on lobby days

• Lobby days can be structured to have educational components/costs
RULES OF THE GAME:
ELECTION-RELATED ACTIVITY
FOR 501(c)(3)s
No 501(c)(3) support for or opposition to candidates running for public office.
Who is a “CANDIDATE for PUBLIC OFFICE”? 
Candidate Pledges
ask candidates to sign pledges to support your issue

Contribute to Candidates
donate money, goods, or services to candidates

Partisan Voter Registration & GOTV
registration and GOTV targeting based upon party affiliation

Criticize Candidates Around Election
increase criticism of candidate in proximity of election

Expressly Advocate
distribute communications that urge a vote for/against candidate

Endorse Candidates
explicitly or implicitly favor or oppose a candidate

NOT 501(c)(3) Permissible
Issue Advocacy
Advocating for organization’s issues during election year

Candidate Education
Helping candidates understand the importance of your issues

Voter Education
Educating voters in a nonpartisan way about candidates

Voter Outreach
Registering voters, getting out the vote

Ballot Measures
Support or oppose state or local ballot measures

Permissible c3 Election Year Activities
## Facts and Circumstances Analysis

<table>
<thead>
<tr>
<th>GOOD FACTS</th>
<th>BAD FACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ No reference to candidate or elections</td>
<td>✓ Refers to candidate as a candidate</td>
</tr>
<tr>
<td>✓ External factor driving timing</td>
<td>✓ Timing motivated by election</td>
</tr>
<tr>
<td>✓ Broad range of issues</td>
<td>✓ Politically motivated targeting</td>
</tr>
<tr>
<td>✓ History of similar work or communications</td>
<td>✓ Compares candidate to preferred position</td>
</tr>
<tr>
<td>✓ Part of a series of similar, ongoing communications</td>
<td>✓ Wedge issue that divides candidates</td>
</tr>
</tbody>
</table>

Facts and Circumstances Analysis
Rules apply to 501(c)(3) staff and volunteers acting on behalf of 501(c)(3), not to those acting in individual capacity.
Questions?