# Public Charities Can Advocate: How Your Organization Can Influence Policy for the Greater Good

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We build the power of grassroots organizations to reform systems and promote positive policy change.

Learn more about Bolder Advocacy's workshops, technical assistance, and other legal resources.

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# TODAY'S AGENDA

1. Comparing Tax Exempt Organizations
2. Avenues of Advocacy for 501(c)(3) Public Charities
3. Key Takeaways and Resources

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# COMPARING TAX EXEMPT ORGANIZATIONS

| | 501(c)(3) Private Foundations | 501(c)(3) Public Charities | 501(c)(4) Social Welfare Orgs<br>501(c)(5) Unions<br>501(c)(6) Trade Assoc's |
|---|---|---|---|
| **Examples** | McKnight Foundation; Clif Family Foundation | Alliance for Justice; Global Philanthropy Partnership | AFJ Action; NRDC Action Fund |
| **Tax Treatment** | Tax-exempt<br>Tax-deductible contributions | Tax-exempt<br>Tax-deductible contributions | Tax-exempt |
| **Lobbying Activities** | Extremely limited<br>Subject to prohibitive tax | Limited | Unlimited |
| **Partisan Electoral Activities** | Prohibited | Prohibited | Secondary activity |

# AVENUES OF ADVOCACY FOR 501(c)(3) PUBLIC CHARITIES

## What is Advocacy?

**Advocacy** is an umbrella term for any activity that supports a cause.

**Lobbying** is a specific type of advocacy. Different laws & grant agreements may use different definitions of lobbying.

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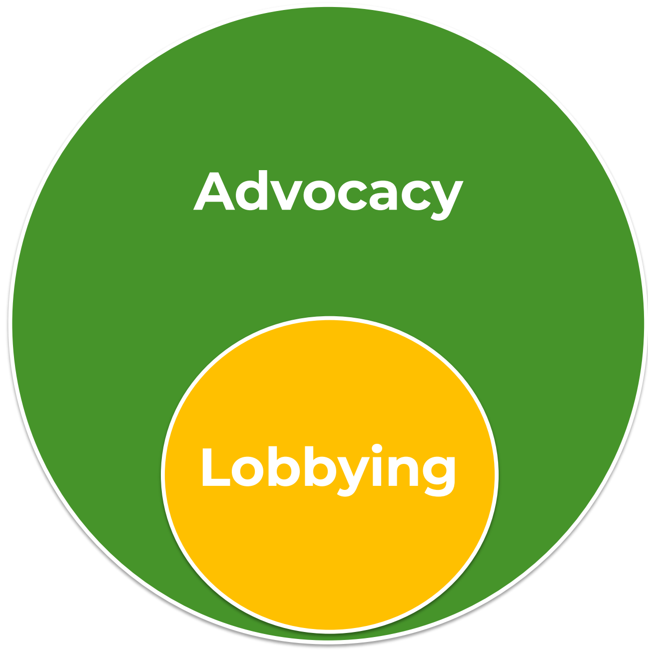
# Not All Advocacy is Lobbying

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# The Wonderful World of Lobbying Rules

- Federal tax law **limits lobbying** by 501(c)(3) public charities — **Our focus today**
- Federal, state, or local disclosure laws may require lobbyist **registration & reporting**
- Government funds & private grants may come with restrictions that **prohibit use of the funds for specific types of lobbying**

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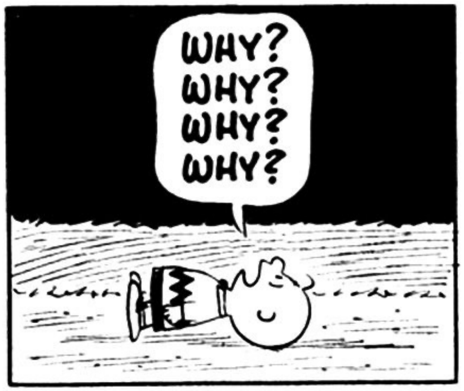
# Why Should You Know the IRS Lobbying Rules?

- If a 501(c)(3) nonprofit exceeds its lobbying limit, IRS may impose excise taxes or revoke tax exemption
- Once you can identify what IS lobbying, you can also identify what IS NOT lobbying
- Understanding the rules helps you confidently engage in advocacy and stay in compliance!

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# Avenues of Advocacy for 501(c)(3) Public Charities

- Partisan Election Activity
- Lobbying (Limited)
- Organizing
- Educating Legislators
- Get to Know Legislators
- Public Education
- Educational Conferences
- Research
- Influencing Corporations
- Regulatory Efforts
- Litigation

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# MEASURING & IDENTIFIYNG LOBBYING

# Two Ways to Measure Lobbying (IRS)

| Insubstantial Part Test | 501(h) Expenditure Test |
| --- | --- |
| • **Default** for all 501(c)(3) public charities<br>• "Insubstantial" is about 3-5% of all an organization's activities<br>• Counts both **paid & unpaid activities** (e.g., a volunteer's lobbying)<br>• Broad definition for lobbying | • **One-time election** by filing IRS Form 5768<br>• **Dollar-based** limits (starting at 20% of exempt purpose expenditures)<br>• Only spending counts (not volunteer time)<br>• Narrow definitions of lobbying (direct and grassroots) |

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# Lobbying Limits Under the 501(h) Test

1. **Calculate Overall Limit**

| Annual Exempt Purpose 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 million |

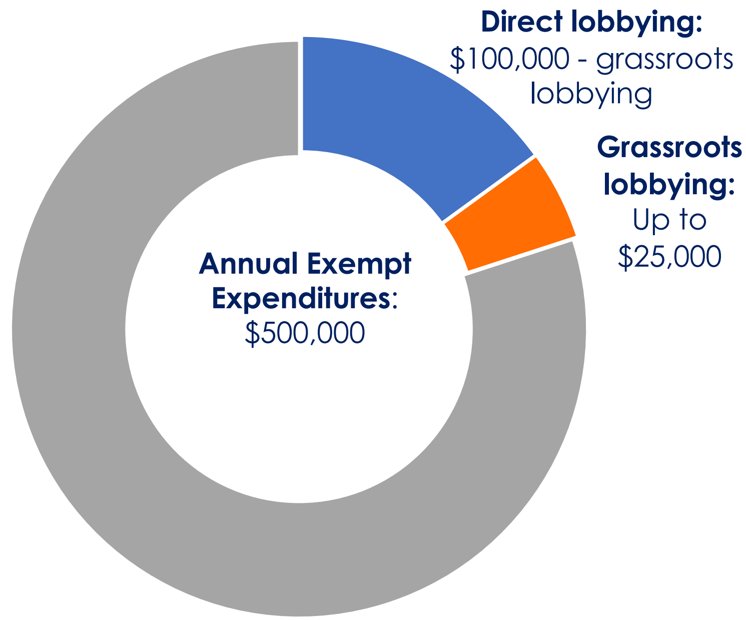
2. **Calculate Grassroots Limit:** Grassroots lobbying limit is **25%** of overall lobbying limit

# Calculating Your 501(h) Lobbying Limit

Example: Public charity with annual exempt purpose expenditures of **$500K**

- Overall lobbying limit: **$100,000**
- Grassroots lobbying limit: **$25,000**

501(h) Lobbying Limits Calculator:

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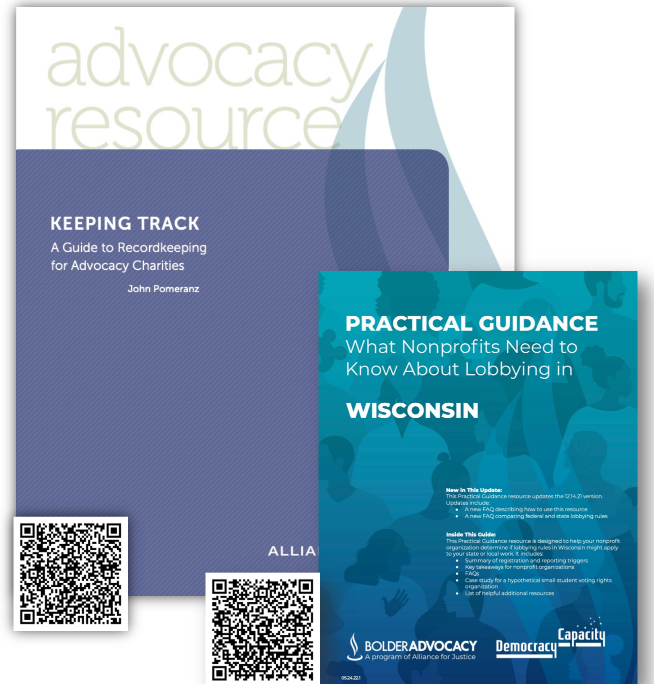
# Lobbying To-Dos

- Track lobbying consistently & in good faith
  - Includes preparation for lobbying (e.g., drafting, research, planning meetings)
- Stay within org's lobbying limits
- Use funds that don't prohibit the lobbying
- Comply with any applicable lobbying disclosure laws



# Definition of Lobbying Under the Insubstantial Part Test

**Default test for public charities**

- 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 for the adoption or rejection of legislation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# Definition of Lobbying Under the 501(h) Test

## DIRECT LOBBYING

- Communication
- Legislator
- Expresses a view about specific legislation

## GRASSROOTS LOBBYING

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

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# Definition of Lobbying Under the 501(h) Test

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## Communication


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## Legislators

(Required for Direct Lobbying)

- Members of any legislative body and their staff

- Executive branch officials or other government employees **when participating in the formulation of legislation**

- The public **when voting on ballot measures** (initiatives, referenda, constitutional amendments, etc.)

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## Not Legislators

- Executive, judicial, administrative, and special purpose bodies
  - Police, sheriffs, district attorneys, county prosecutors
  - School and zoning boards
  - Departments of education, health, housing, etc.

# Definition of Lobbying Under the 501(h) Test

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**expresses a view about specific legislation**

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## Specific Legislation

- Bills, act, ordinances, resolutions (already introduced or just a specific idea for legislative action)
    - Budgets voted on by legislatures
    - Nominations requiring legislative confirmation
- Ballot measures (initiatives, referenda, constitutional amendments, etc.)


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## Not Specific Legislation

- Executive orders
- Regulations
- Agency enforcement of existing law
- Court rulings


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**call to action**

## Call to Action

(Required for Grassroots Lobbying)

1. **Asking to contact** a legislator,
2. **Providing legislator's contact info** (phone, email, mailing address, etc.),
3. **Providing mechanism to contact legislator**, or
4. **Identifying legislators** who will vote on legislation as:
   - Supporting/opposing your view
   - Undecided
   - Recipient's representative, or
   - Member of committee considering the legislation

# Definition of Lobbying Under the 501(h) Test

**DIRECT**

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expresses a view about specific legislation

**GRASSROOTS**

communication

general public

expresses a view about specific legislation

~~call to action~~

## Not Calls to Action

(on their own)

- "Learn more"
- "Take action"
- "Support our efforts"
- "Get involved"
- "Join us"


**NOT Grassroots** Lobbying

# Exceptions to the Definition of Lobbying Under the 501(h) Test

- Nonpartisan analysis, research, or study
- Request for technical assistance
- Self Defense
- Discussion of broad issues

# Exceptions to the Definition of Lobbying Under the 501(h) Test

## Nonpartisan Analysis, Study, or Research

**Must:**

- Provide full and fair discussion of all sides of issue that would allow audience to make an independent conclusion
- Broadly disseminate (may not limit to those on one side of issue)

**May:**

- Express view on specific legislation
- Include an indirect call to action (4$^{th}$ type)

- Keep in mind that subsequent use for grassroots lobbying is subject to limitations

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**The Nonpartisan Analysis, Study, or Research Exception to IRS Lobbying Rules**

For 501(c)(3) Organizations

The nonpartisan analysis, study, or research exception ("nonpartisan analysis exception") is one of four categories of exceptions to the IRS definitions of lobbying communications. This means that although a communication may meet the definition of lobbying, your organization will not have to count it as a lobbying expense.

This factsheet focuses on the nonpartisan analysis exception definition, and highlights the rules about the subsequent use of these communications.

Why is the nonpartisan analysis exception important? Because when used carefully, it is a great way for nonprofits to maximize their advocacy while minimizing their lobbying expenses. Public charities will not need to count the costs of preparing truly educational materials, including those that express a view on legislation, as lobbying. Additionally, private foundations can use this exception as a way to discuss legislation without incurring a taxable expense.

**Required Elements**

To meet the definition of the nonpartisan analysis exception, the communication must meet two tests:

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# Exceptions to the Definition of Lobbying Under the 501(h) Test

## Technical Assistance

**Must:**

- Be invited in writing on behalf of all members of committee or government body
- Make response/testimony available to all members

**May:**

- Express a view on specific legislation

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# Exceptions to the Definition of Lobbying Under the 501(h) Test

## Self Defense

**Only Includes:**

- Communication with legislative body regarding legislation that could affect the org's **existence, powers, duties, tax-exempt status, or deductibility of contributions**
- Does not include most budget legislation

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# Exceptions to the Definition of Lobbying Under the 501(h) Test

## Examinations & Discussion of Broad Social, Economic & Similar Problems

**May:**

- Discuss general topics with the public and legislators

**May Not:**

- Refer to specific legislation to address the problems
- Directly encourage participants to take action related to legislation

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# TEST YOUR KNOWLEDGE!

# IRS Lobbying?

A public charity meets with a state senator and urges her to support a bill that would increase public transportation funding.

**YES, IRS LOBBYING!**
**MUST TRACK AND REPORT TO IRS**

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# IRS Lobbying?

A public charity meets with the U.S. Secretary of Transportation and ask the Secretary to revise a series of transportation regulations.


**NO, NOT IRS LOBBYING**

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# IRS Lobbying?

Public charity posts this

image on its social media:


**YES, IRS LOBBYING!**
**MUST TRACK AND REPORT TO IRS**

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# IRS Lobbying?

Public charity posts this image on its social media:


**INSUBSTANTIAL PART TEST: YES**

**501(H) EXPENDITURE TEST: NO**

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# KEY TAKEAWAYS & RESOURCES

# Key Takeaways

- 501(c)3s **can** legally advocate, including lobby (within limits)!
- When lobbying:
  - ✓ Track and stay within IRS limits
  - ✓ Use funding that permits the lobbying
  - ✓ Comply with any applicable state/local/federal disclosure law requirements to register or report
  - **Bolder Advocacy** is here to help!

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# Resources


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