

PERMISSABLE 501(C)(3) NONPROFIT POLITICAL ACTIVITIES
S.F. Human Services Network (HSN) Brown Bag, 4-3-13

Yes, you can! Nonprofits are allowed to engage in activities to influence legislation and participate in some electoral activities, as long as we follow some basic rules.

Yes, you should! Both as organizations and as individuals, we need to speak out on behalf of our organizations and the vulnerable populations we serve in order to support public policies and laws that advance our organizational missions and promote social justice.

Understanding the rules: This is a brief summary. For detailed information and excellent resources, including fact sheets, publications and webinars, visit the website of the Alliance for Justice (AFJ) at www.bolderadvocacy.org/navigate-the-rules.

What not to do if you are a 501(c)(3) nonprofit: Don't endorse candidates. Don't use restricted money, including engaging in political activity during work hours if your salary is paid by a government contract.

Lobbying limits on 501(c)(3) nonprofits: Nonprofits are allowed to lobby as long as you stay within very generous federal limits. Your organization can use either of two tests:

Under the default test, lobbying must be an "**insubstantial part**" of your overall activities. This test looks at both expenditures and activity, including lobbying by volunteers.

Under the second test, your organization can file a simple IRS form to have your lobbying activities governed by the **501(h) expenditure test**. This test provides clear dollar limits under a formula based on a percentage (up to 20% for some nonprofits) of your total budget. (For example, a \$2 million organization can spend \$250,000 on lobbying.) Cost-free activities, such as volunteer time, do not count against your limits. The 501(h) test also provides clear definitions of lobbying, and several exceptions that don't count against your limits.

Most nonprofits will be better off electing the 501(h) test. But if your budget exceeds \$17 million, you are subject to a \$1 million expenditure cap, while the insubstantial part test may allow higher expenditures.

(www.bolderadvocacy.org/wp-content/uploads/2012/06/Public_Charities_Can_Lobby.pdf)
(www.bolderadvocacy.org/501h-lobbying-calculator)

What is lobbying under the 501(h) test; Direct and grassroots lobbying:

(www.bolderadvocacy.org/wp-content/uploads/2012/05/What_is_lobbying.pdf)

Direct lobbying: (A) Communication with a (B) Legislator (C) Expressing a View
(D) About Specific Legislation

Communication: Conversation, phone call, letter, email, etc.

Legislator: Elected federal, state and local legislative officials and their staff. Also, executive branch officials and their staff sometimes act as legislators when they participate in formulating legislation (e.g. Mayoral veto, or helping the legislature write a bill). But administrative bodies such as school boards or planning commissions are not legislators.

Expressing a view: Lobbying involves an attempt to influence the legislation.

Specific legislation: It need not be a specific bill already written or introduced. Lobbying may also include proposed legislation, or even statement of a problem and a proposed legislative solution. The annual City budget is legislation. But legislation does not include regulations, executive orders, or litigation.

Grassroots lobbying: (A) Communication to (B) the General public (C) Expressing a View
(D) About Specific Legislation (E) with a Call to Action

Under the 501(h) test, only 25% of your lobbying limit may be spent on grassroots lobbying.

General public: Anybody that is not a legislator. (If you are asking your organization's members to communicate your position to legislators, it **may** be considered direct lobbying. See the AFJ website for more information.)

Call to action: Specific language that encourages the public to lobby, such as providing names and contact information for legislators.

Example: Nonprofits can **influence the City budget process** by educating the Mayor, Supervisors, department staff and Commissioners; attending Commission and Board of Supervisor Committee hearings and speaking in public comment; meeting with legislators; calling and sending letters or emails; and urging members of the public to take action.

Nonprofits can also engage in electoral activities, but must follow certain rules.

(www.bolderadvocacy.org/navigate-the-rules/electoral-activity)

Elections: Ballot measure advocacy is lobbying, and nonprofits may campaign for or against them up to your lobbying limits. However, in the case of ballot measures, the "legislators" are the voters. Therefore, communications to the public are **direct lobbying**, not grassroots lobbying. The 25% lobbying limitation on grassroots spending does not apply.

(www.bolderadvocacy.org/tools-for-effective-advocacy/toolkits/ballot-measures)

Elections: Voter registration drives: San Francisco health and human service nonprofits employ at least 15,000 people, and serve thousands more. We can strengthen our voice on issues we care about by registering staff, and where appropriate, clients. There are simple rules to follow when conducting voter registration drives.

(http://www.sfnhsn.org/documents/hsn_iss_elec_voterreg_04-25-13.pdf)

Elections: Do not endorse candidates. A 501(c)(3) nonprofit cannot support or oppose candidates for public office or contribute to their campaigns. Be cautious to avoid the appearance of bias or partisanship when commenting on candidates and their issues.

Otherwise, nonprofits can engage in educational electoral activities. For example, HSN distributes **candidate questionnaires** and hosts **candidate forums**, both to educate candidates about our issues and to educate voters about candidates' positions.

Nonprofit employees can support candidates, make donations and participate in their campaigns **as individuals** on their own time. However, if your organization has a San Francisco city contract, your CEO, CFO and Board of Directors face extreme restrictions that for the most part, bar them from donating to local candidates for Mayor, Supervisor, and possibly other offices.

(See S.F. Campaign Code 1.126: www.sfethics.org/ethics/2011/01/campaign-finance-reform-ordinance.html.)

Record-keeping: Nonprofits need to keep records of their lobbying activities and expenditures in order to demonstrate compliance with federal limits. Track your total lobbying expenditures, including staff time, a proportional amount of your organization's overhead expenses, and any direct costs such as postage, printing and copying, or ballot measure campaign contributions. In addition, **do not use restricted money** (such as government funding) for political activity. You may need to "clock out" and conduct political activities on your own time in order to remain in compliance. Time sheets can provide a record showing that you have followed the rules.

(www.bolderadvocacy.org/wp-content/uploads/2012/10/Keeping_Track_paywall.pdf)