

Lobbying as a 501(c)(3)? Yes, You Can!

For some time, the [Texas Alliance for America's Fish & Wildlife](#) has been actively educating individuals, organizations, and companies about the need for greater funding to protect at-risk wildlife species. We have spoken to hundreds of interested individuals and organizations. A common refrain we hear from nonprofit organizations is that, while they support increased funding for fish and wildlife conservation, they are afraid to get involved because they think lobbying would result in loss of their 501(c)(3) nonprofit status. This is an unfortunate misconception based on inaccurate information.

Limitations on Lobbying

There *are* limitations placed on nonprofit organization's ability to lobby. But a nonprofit is NOT banned from lobbying. In fact, the limitations are probably much more minimal than most people think. According to the [IRS](#), "in general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying)." It is the use of the subjective word "substantial" that has led to concern by nonprofits in the past.

In determining whether an organization has lobbied as a "substantial" part of its overall activities, there are two tests an NGO can use. First, the IRS can examine the time devoted to lobbying by the organization (including both employees and volunteers time) as well as the expenditures associated with lobbying. Many organizations rely on this test, especially those for whom lobbying is a very small part of their expenditures. Because this measurement is rather subjective, and an organization won't know for sure whether the IRS has determined they lobbied "too much" until after the fact, some nonprofits choose the second test.

Rather than using the "Substantial Part Test" an organization can opt into what is referred to as the "[Expenditure Test](#)" by [taking the 501\(h\) election](#). This test states that "lobbying activity will not jeopardize its tax-exempt status, provided that its expenditures, related to such activity, do not normally exceed an amount specified" based on the size of the organization (see chart [below](#)). "Exempt purpose expenditures" typically includes all expenditures of an organization except for certain fundraising costs, unrelated business income tax, and capital expenditures.

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000

In order to use the Expenditure Test, organizations must file [Form 5768](#), *Election/Revocation of Election by an Eligible IRC 501(c)(3) Organization to Make Expenditures to Influence Legislation*. This election remains in effect for succeeding years unless the organization chooses to revoke it.



Regardless of whether an organization chooses to use the “Substantial Part” or “Expenditure Test,” lobbying expenditures must be reported on IRS [Form 990](#). Organizations with less than \$50,000 in annual gross receipts do not have to file Form 990 and instead may file [Form 990-N \(e-Postcard\)](#). An organization of this size would not have to report lobbying expenses to the IRS; however, organizations do have to keep track of lobbying expenses and activities in case they are audited or are accused of excessive lobbying.

Lobbying Disclosure Act

The final federal limitation placed on lobbying relates to the difference between having employees who lobby and employing lobbyists. Under the [Lobbying Disclosure Act](#), if “an organization has at least one employee who devotes at least 20% of his or her time to lobbying activities at the federal level and spends \$11,500 or more every 3 months (January through March, April through June, July through September, October through December) on federal lobbying activities, the organization must register and file reports under the act.” As the Lobbying Disclosure Act has slightly different definitions of lobbying than the IRS does, and frequently changes its guidance for nonprofits, organizations not taking the 501(h) election (who are permitted to use the 501(h) lobbying definitions) should check the [lobbying disclosure web page](#) for the most up to date information.

What Activities Count As Lobbying?

The IRS considers lobbying to be limited to attempting to influence legislation. Lobbying is specifically defined as when an organization, “contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation. Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.”

Under this definition, there is a broad range of activities in which organizations can engage with no limitations as they are not considered lobbying. Some [examples of advocacy](#) not considered lobbying include:

- Working to encourage an administrative agency to change its policies, rules, or regulations, or to adopt new ones.
- Developing a general policy position directed at an issue rather than a specific piece of legislation.
- Providing summaries and status updates of specific pieces of legislation as long as readers are not encouraged to take action with respect to any specific bill.
- Publishing editorial columns that reflect a view on a specific bill, so long as the editorial does not encourage readers to take a specific action in regards to the bill.
- Hosting forums, meetings, etc. with the goal of educating the public on a specific issue.

Prohibition Against Electioneering

It is also worth noting that there are some activities that are prohibited even though they are not considered lobbying. Intervening in a political campaign of any candidate for public office and engaging in any sort of partisan activity are strictly prohibited for nonprofits. Additionally, nonprofits may not use government funds (government grants, contracts, etc.) to lobby, including lobbying for additional federal grants or contracts.

Direct vs. Grassroots Lobbying

There are two types of lobbying, direct and grassroots (also called indirect). Direct lobbying is attempting to influence legislation through direct communication with a government official or employee (including any members or employees of a legislative body) who may participate in the formulation of legislation. Grassroots lobbying, on the other hand, is attempting to influence legislation by getting members of the general public to get involved with the issue, *provided* the effort includes all of the following three elements:

- Refers to specific legislation
- Provides a view point on the legislation
- Encourages recipients to take some sort of action with respect to the legislation

One caveat, however: If a nonprofit states its position on a specific piece of legislation *to its members* and NOT to the general public, and asks those members to contact legislators, it is considered direct lobbying, not grassroots lobbying.

It is important that organization understand these distinctions because a nonprofit organization is only allowed to spend up to 25% of its total lobbying expenditures on grassroots lobbying. For example, though an organization with annual exempt purchase expenditures of \$200,000 can legally spend up to \$40,000 on lobbying, it can only spend \$10,000 on grassroots lobbying campaigns. This limitation is not placed on direct lobbying, so that same organization could spend its entire \$40,000 lobbying budget on direct lobbying.

What About Individuals?

All of the limitations and rules discussed above apply only to organizations and not to individuals as long as they are acting as private citizens and not as a representative of the organization. This includes staff, volunteers, board members, etc. Being an employee or a member of a 501(c)(3) does not remove an individual's rights as a private citizen. If, however, the individual is representing the organization, then any compensation to the individual, or expenditures by the individual on behalf of the organization, are subject to the organization's limitations.

If an individual wishes to participate in lobbying activities outside of involvement with a 501(c)(3) organization, they must be careful not to exhibit the association with their organization during lobbying activities. This would include actions such as not wearing clothing with that organization's logo, making no specific mention of the organization (verbally or in writing), not using an organization's letterhead or email system, etc.

Additional Information

<https://www.irs.gov/charities-non-profits/lobbying>

<http://www.njnonprofits.org/NPsCanLobby.html>

<https://lobbyingdisclosure.house.gov/>

<https://nonprofitquarterly.org/2000/09/21/advocacy>

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

<https://www.law.cornell.edu/cfr/text/26/56.4911-4>

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