



## **PARTICIPATION IN LEGISLATIVE LOBBYING & BALLOT MEASURE CAMPAIGNS BY NON-PROFIT ORGANIZATIONS**

Under the Internal Revenue Code, nonprofit (c)(3) public charity organizations, such as many land trusts, have the right and the ability to engage in lobbying activities. Expenditures for legislative lobbying and for supporting or opposing ballot questions, including contributions to 501(c)(4) organizations such as The Conservation Campaign, are considered direct lobbying expenses by the IRS and are therefore allowed for (c)(3) organizations, within certain financial limits. The IRS defines direct lobbying as follows:

- (1) A communication;
- (2) to a legislator or legislative staff, or to the public in the case of a ballot measure,
- (3) expressing an opinion
- (4) on a specific item of legislation.<sup>1</sup>

Nonprofits may actively engage in direct lobbying themselves or contract with lobbyists to represent their interests, be it directly, through a coalition, or through a 501(c)(4) social welfare organization like The Conservation Campaign.

There are two ways to calculate the amount of expenditures that a (c)(3) can make for direct lobbying under the Internal Revenue Code. The general standard is that a public charity cannot spend a “substantial part of [its] activities” on lobbying. The IRS and the courts have not defined what “substantial” means with any clarity. The more definite way for (c)(3) organizations to determine their lobbying limit is to make the Internal Revenue Code Section 501(h) election.

Generally, under Section 501(h) of the IRS Code, nonprofit organizations, as public charities, are allowed to have up to 20 percent of their “exempt-purpose” expenses as lobbying. Exempt purpose expenditures include program services, administration and lobbying costs but do not include fundraising expenses. The 501(h) election is easy to do – a nonprofit organization only needs to file one form (Form 5768) with the IRS and then it can take advantage of the clearly defined limits of that section. The chart on the next page details how much an organization can spend on lobbying under Section 501(h).

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<sup>1</sup> In contrast, grassroots lobbying is defined as (1) a communication (2) to the general public (3) expressing a view (4) about specific legislation with a (5) call to action.



### Lobbying Ceilings under Section 501(h)

Total Exempt-Purpose Expenditures	Total Direct Lobbying Expenditures Allowable
Up to \$500,000	20% of exempt-purpose expenditures
\$500,000-\$1 million	\$100,000 + 15% of amount over \$500,000
\$1 million-\$1.5 million	\$175,000 + 10% of amount over \$1 million
\$1.5 million-\$17 million	\$225,000 + 5% of amount over \$1.5 million
Over \$17 million	\$1 million

A nonprofit organization may engage in the following lobbying activities so long as the activities fall within its lobbying limit:

- Contribute money to hire a lobbyist, support a legislative lobbying effort, and support or oppose a ballot question campaign. Such contributions may be made to a 501(c)(4) organization, such as The Conservation Campaign, to support lobbying activities.
- Donate staff time for lobbying activities.
- Donate organizational resources such as space, phones, computers, copiers.
- Put an article in its newsletter.
- Do a mailing to members.
- Encourage other groups to endorse and to support a legislative lobbying effort.

In contrast, prohibited activities on the part of a nonprofit organization include the following:

- Support or oppose *political candidates* (as opposed to questions). This is an absolute prohibition.
- Dedicate a “substantial” portion of its activities to lobbying (if it is a “non-electing charity”) or overspend its Section 501(h) lobbying ceiling (if it is an “electing” charity).
- Use federal grant funds for lobbying activities.
- Use private foundation grants to support lobbying activities if that foundation expressly prohibits the use of grant funds for lobbying in its grant agreement.

### Helpful Resources:

Alliance for Justice: [www.afj.org](http://www.afj.org)

Center for Lobbying in the Public Interest: <http://www.clpi.org/>

**This summary is not meant to replace advice from legal counsel.**