

Lobbying and the Section 501(h) Election for Public Charities

Lauren A. Koster, Principal Attorney

Katie A. Roy, Managing Attorney

April 5, 2024

Licensed in Massachusetts & Connecticut

Webinar Series

- Part 1: Permissible Activities in an Election Year for 501(c)(3) Public Charities
- Part 2: Lobbying and the 501(h) Election for Public Charities (Friday, April 5th, 2:00 p.m.)
- Part 3: Why Lobbying & Electoral Activities are NOT Permissible for Private Foundations (but Advocacy is!) (Friday, April 26th, 2:00 p.m.)





Agenda

- Campaign interference vs. lobbying
- What is lobbying?
- How do we measure and report lobbying pursuant to federal IRS statutes and regulations?

What today doesn't cover

Consult with an attorney on your state's lobbying rules.

Reminder: NEVER ALLOWED

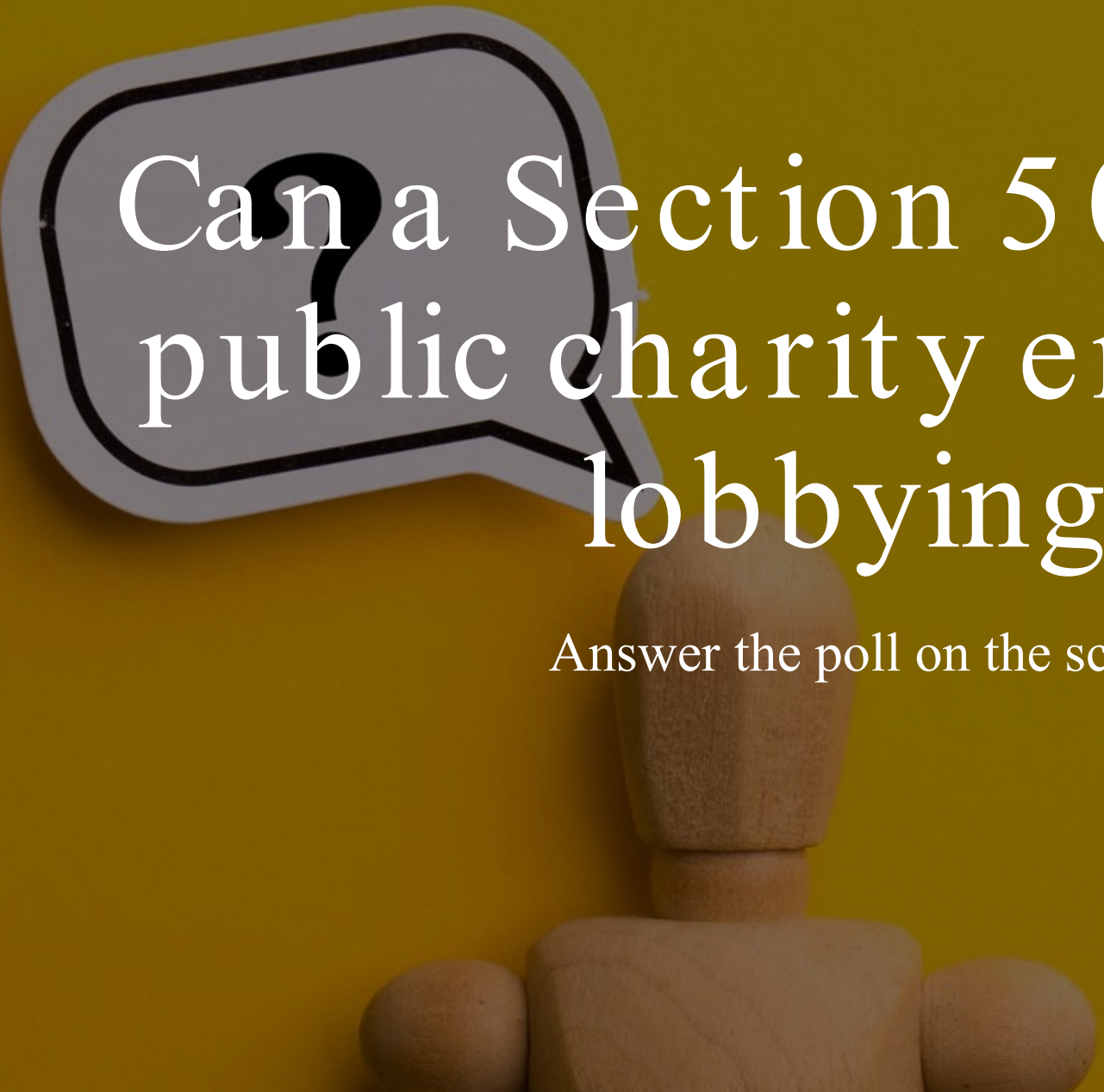


Campaign intervention

Directing votes / call to action

Endorsements (for or against)

Campaign contributions or expenditures

A wooden figure with a question mark in its head, positioned behind the main text. The figure is made of light-colored wood and has a simple, rounded design. The question mark is a dark, solid shape inside the figure's head area.

Can a Section 501(c)(3)
public charity engage in
lobbying?

Answer the poll on the screen.

What is lobbying?

- Attempt to influence specific legislation via communication that expresses a view
- Grassroots vs. direct





Types of lobbying

DIRECT

Legislative members
or employees or other
government officials
Pay attention to intent

GRASSROOTS

Affect opinion of the
general public
Call to action

What is specific legislation?



Bill or resolution



Proposal to solve problem



Budget appropriations or taxes



Ballot measures



Influencing confirmation of judicial or executive branch nominees

What is NOT lobbying?

- Nonpartisan policy studies
- Responses to written requests
- “Self-defense” advocacy
- Issue education
- Communication to organization’s members



Beware: Subsequent use rule

- Later use of non-lobbying materials for lobbying purposes converts entire non-lobbying expenditure into lobbying expenditure
- Two “safe harbors”
 - Primary purpose
 - Timing



So, we can lobby.
What's the big deal?

Answer the poll.

Two measurement methodologies

Substantial test

Expenditure test
(Section 501(h)
election)

Expenditure test (Section 501(h) election)

If the amount of exempt purpose expenditures is:

DIRECT 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

Source: Measuring Lobbying Activity: Expenditure Test, IRS (Dec. 4, 2023), <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>

Other considerations

- Grassroots lobbying limited to one-quarter of overall lobbying limit
- Clear limitations
- Track your expenses!
- No use of federal funds on any lobbying
- Simple reporting means not divulging extensively lobbying strategies



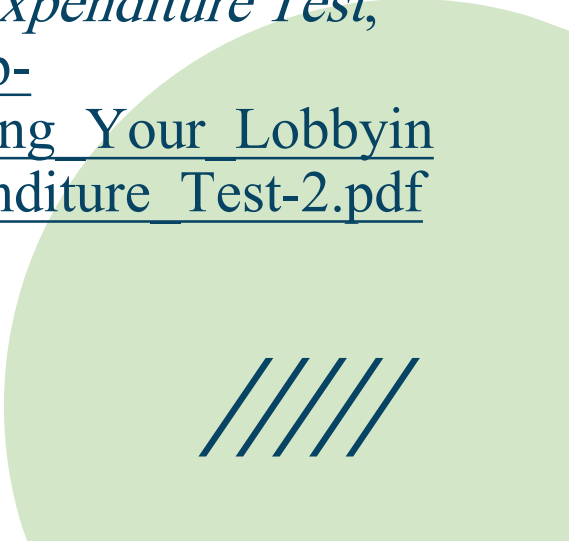
Substantial activity test



- Time devoted by staff (compensated) and volunteers
- Challenge: what is substantial?
- Track your expenses! Detailed reporting requirements
- Consult with an attorney (and an accountant).



References

- 26 U.S.C. § 4911; 26 C.F.R. § 56.4911-2
 - *Benefits of Filing the 501(h) Election*, Nat’l Council of Nonprofits,
<https://www.councilofnonprofits.org/everyday-advocacy/benefits-filing-501h-election>
 - *Lobbying Defined for Private Foundations*, Bolder Advocacy, https://bolderadvocacy.org/wp-content/uploads/2012/05/Lobbying_Defined_for_Private_Foundations.pdf
 - *Maximize Your Lobbying Limit: Elect to Measure Your Lobbying Using the 501(h) Expenditure Test*, Bolder Advocacy, https://afj.org/wp-content/uploads/2018/06/Maximizing_Your_Lobbying_Limit_Electing_the_501h_Expenditure_Test-2.pdf
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References

- *Measuring Lobbying Activity: Expenditure Test*, IRS (Dec. 4, 2023), <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>
- *Measuring Lobbying: Substantial Part Test*, IRS (Dec. 4, 2023), <https://www.irs.gov/charities-non-profits/measuring-lobbying-substantial-part-test>
- *Taking the 501(h) election*, Nat'l Council of Nonprofits, <https://www.councilofnonprofits.org/everyday-advocacy/taking-501h-election>
- *What is Lobbying Under the 501(h) Election?*, Bolder Advocacy, https://afj.org/wp-content/uploads/2018/06/What_is_lobbying.pdf



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Thank you! Questions?

- **Website:**
<https://nonprofitscounsel.com>
- **Phone:** (617) 249-4212
- **Email:**
info@nonprofitscounsel.com