

# Another Way to Sink the Ship: Too Much Lobbying

08.14.14 | Linda J. Rosenthal, JD



Along with prohibited political activity, another way a 501(c)(3) organization can risk its tax exemption is too much lobbying.

Why? Because a tax exemption is a taxpayer subsidy to your organization — without it, you'd have to pay tax on your revenue. So Congress has wanted to make sure that a 501(c)(3)'s activities don't veer too far into the partisan arena.

But the lawmakers have also realized that many nonprofits have valuable insight and information about policy matters:

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All nonprofits have a vital role to play in strengthening democracy, advancing freedom of expression, and adding richness and diversity to community life. Throughout our history, Americans have turned to nonprofit organizations to provide a strong, collective voice to inform and influence public policy.

So political activity in any amount is not ok, but public charities are allowed to engage in some lobbying activity unless it is too substantial.

***But What Exactly does "Lobbying" Mean?***

Since the lobbying rules include determinations of how much is too much, we have to know exactly what we're talking about.

Is “lobbying” something like “obscenity”: a term that Supreme Court justices can’t define but they know it when they see it?

Let’s go back to the statute again: section 501(c)(3) of the Internal Revenue Code. Organizations that qualify for this preferred tax exemption status are defined for what they do and for what they can’t do:

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Corporations, . . . organized and operated for . . . [exempt purposes] . . . , no part of the net earnings of which inures to the benefit of any private shareholder or individual, **no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))**, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. (emph. added)

Notice it doesn’t actually use the word “lobbying.” That’s shorthand. And, sometimes, the term is used interchangeably with “advocacy” – though they aren’t the same, particularly when these terms refer to what is or is not permitted under the tax exemption rules.

Simply stated, all lobbying is advocacy, but not all advocacy is lobbying:

Advocacy is a broad term covering a range of activities that seek to bring about systemic social change. One form of advocacy is lobbying – attempts to influence specific legislation through direct or grassroots communications with legislators or their staff – but advocacy also includes executive branch activities, issue organizing, and nonpartisan voter engagement.

So, “advocacy is more broadly urging or advancing public policy rather than specific legislation.” And public charities should be encouraged to engage in advocacy; it’s a “powerful tool” to “advance their mission.”

By contrast, lobbying – that is, “attempting to influence legislation” – occurs if an organization “contacts, or urges the public to contact, members or employees of a legislative body for purposes of proposing, supporting or opposing legislation, or advocates the adoption or rejection of legislation.”

Stated another way, “lobbying is any attempt to influence legislation by:

- stating a position on specific legislation to legislators or other government employees who participate in the formulation of legislation (known as direct lobbying); or
- urging your members or the general public to contact their legislators with a position on specific legislation (a “call to action”) (known as grassroots lobbying).

There are separate sets of rules regarding how much and what kind of lobbying is acceptable for public charities and private foundations.

***Examples of Lobbying vs. Advocacy***

Here are a few examples of permissible advocacy:

- Presenting nonpartisan analysis or research;
- Discussions of broad social or economic problems;
- A charity telling its members about the issues and its position on a specific piece of legislation – so long as it does not encourage them to contact elected officials; and
- Distributing educational fact sheets to the general public about important issues, but without any call to action directed at specific legislation.

For an excellent, detailed guide to this topic, check out Alliance for Justice's "[Being A Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.](#)"