

Lobbying Under the Insubstantial Part Test

501(c)(3) public charities¹ can lobby—including supporting or opposing specific legislation and ballot measures—within the generous limits allowed by federal law. How much lobbying the organization can do depends on which of two sets of rules the organization chooses to use -- the [501\(h\) expenditure test](#) or the insubstantial part test. In issuing regulations on lobbying, the Internal Revenue Service stated that, under either test, public charities “may lobby freely” so long as lobbying is within specified limits.²

The insubstantial part test is the default test that applies if the public charity does not make the affirmative step of electing to use 501(h)³—and to churches, which are unable to use 501(h). While the 501(h) election provides a clearer standard for measuring lobbying, public charities that have not taken the 501(h) election should not be deterred from lobbying.

What is Considered an “Insubstantial” Amount of Lobbying?

The insubstantial part test requires that “no substantial part of a charity’s activities...be carrying on propaganda or otherwise attempting to influence legislation.” Therefore, a charity’s lobbying must be an “insubstantial” part of its overall activities. The IRS has provided no absolute guidance on how much lobbying is “substantial.” A 1952 federal court decision states that 5% of an organization’s “time and effort” was an insubstantial part of its overall activities.⁴ Most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying.

As an example, a 501(c)(3) public charity not normally involved in influencing legislation wishes to sign onto a letter that endorses specific legislation (e.g., support the Health Care for Children Act). This activity would be considered lobbying, but because the time spent by the organization to sign onto the letter would not be a substantial part of the its overall activities, it is permissible to engage in this type of policy advocacy.⁵

Activities Based Test

The lobbying limit imposed by the insubstantial part test is based on an organization’s overall activities, not just its expenditures. The IRS considers not only the funds spent on lobbying by the organization, but will look at factors such as the amount of time and energy devoted to legislative matters regardless of cost. Volunteer lobbying efforts on behalf of the organization will count towards its lobbying limits.

For example, a 501(c)(3) public charity that provides housing services in low-income neighborhoods is concerned about proposed cuts in the state budget to key housing programs. The 501(c)(3) decides to organize a bus trip for its volunteers and clients to the state capitol to protest the budget cuts. Under the insubstantial part test, the time of the volunteers and clients, the cost of chartering the bus, the cost of meals provided, any additional costs of the trip, and any staff time associated with organizing and attending the trip would be lobbying.

¹ Different rules apply to [private foundations](#).

² Lobbying by Public Charities; Lobbying by Private Foundations, 55 Fed. Reg. 35,579, 35,584 (Aug. 31, 1990).

³ Public charities make the 501(h) election by a one-time filing of Form 5768 with the IRS.

⁴ *Seasongood v. Commissioner*, 227 F.2d 907, 912 (6th Cir. 1955)

⁵ Organizations generally cannot use federal funds to lobby. If your organization is completely funded by federal grants it will likely not be able to sign onto a letter of this type.

The organization should make a reasonable estimate of the total number of hours that volunteers devote to the organization and then allocate such time between legislative and non-legislative activities to determine the percentage of overall volunteer activities devoted to lobbying. Organizations probably need only track efforts by those who volunteer in some type of organized capacity.

What is Considered Lobbying?

Guidance as to what constitutes lobbying under the insubstantial part test is vague. An organization will be regarded as lobbying if it:⁶

- Contacts members of a legislative body (local, state, federal, even international) for the purpose of proposing, supporting, or opposing legislation, OR
- Urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation, OR
- Advocates for the adoption or rejection of legislation, OR
- Communicates with the general public and reflects a view on a [ballot initiative](#)

What Is Not Considered Lobbying?

Communications that discuss only broad principles, as opposed to specific legislation, would not count as lobbying. For example, it would probably not be considered lobbying to run an ad that says “Minnesotans care about protecting our drinking water. Congressman Taylor, will you join us?”

While 501(c)(3)s are prohibited from supporting and opposing candidates for public office, they can criticize or praise incumbents for their official actions or votes, as long as they follow certain guidelines. For more information about mentioning federal, state or local candidates in your communications, please see AFJ’s fact sheet on [praising and criticizing incumbents](#).

What Kind of Lobbying Records Must a Nonprofit Keep?

Schedule C of the Form 990 requires charities using the insubstantial part test to report whether the charity lobbied via volunteers, paid staff, advertisements, mailings (to members, legislators, or the public), published statements, grants to others for lobbying, direct contact with legislators, public events, or other means and to report any expenditures for each such activity. Charities using the insubstantial part test must also provide a “detailed description” of any lobbying activities that fall outside of those categories, which the form’s instructions clearly state “should include all lobbying activities, whether expenses are incurred or not.”⁷ See the AFJ publication [Keeping Track](#) for a more detailed discussion of implementing a system to track and report lobbying to the IRS.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.

www.bolderadvocacy.org | www.allianceforjustice.org

⁶Instructions for IRS Form 990, Schedule C, Part II-B

⁷ Instructions for Form 990 Schedule C, Part II-B