

Common Interests: How Unions and 501(c)(3) Organizations Can Maximize Their Power To Make Policy Change

Unions and 501(c)(3) organizations can be great allies, and may have common policy-related views and concerns. There are a lot of misconceptions out there about what 501(c)(3) organizations can do, so we answer some frequently asked questions here.

Labor unions engage in various forms of advocacy, including lobbying for policy change. A union and its members may ask legislators to avoid cutting funding for certain programs in the budget, or they may urge the public to let their legislators know their views on an issue before the legislature. For labor unions, as well as 501(c)(4) organizations and other nonprofits, this activity is an important way to speak up on behalf of their members, communities and constituents.

501(c)(3) organizations can and should also be actively involved in advocating on behalf of their communities and in furtherance of their missions. It is important for non-501(c)(3) organizations, such as unions, to remember that 501(c)(3) status imposes certain restrictions, and while working together is legal and effective, 501(c)(3) organizations need to protect their tax status by staying within their legal boundaries.

Q: Can 501(c)(3) public charities lobby?

YES! 501(c)(3) public charities can lobby within the generous limits set by federal tax law. To maximize the amount of lobbying in which a public charity can engage, many public charities choose to come under the 501(h) expenditure test (also called “making the 501(h) election”); organizations that do so are often referred to as “501(h) electors.” The 501(h) expenditure test establishes specific dollar limits that are calculated as a percentage of a charity’s total exempt purpose expenditures. 501(h) electors may use up to 20% of the first \$500,000 of its exempt purpose expenditures to lobby. For organizations with larger budgets, this dollar amount increases, on a sliding scale, to a maximum of \$1 million. Moreover, volunteer and other efforts that do not cost the organization money will not count toward the exhaustion of the lobbying limits. In addition, the 501(h) expenditure test provides clear definitions of what communications count as lobbying—and what does not.

For more information on the benefits of the 501(h) expenditure test, and how to calculate lobbying limits, see AFJ’s publication [Worry Free Lobbying for Nonprofits](#).

Q: Is it lobbying to attend a rally, or encourage people to attend a rally?

It depends. According to the lobbying definitions available to 501(c)(3) organizations that have made the 501(h) election, public communications are lobbying only when they discuss specific legislation and include a call to action, such as urging people to contact legislators. That means that if there is no call to action at a public event like a rally, it likely wouldn’t count as a lobbying activity. See the box below for the specific types of communication that are considered calls to action.

For organizations that measure their lobbying under the 501(h) expenditure test, the definitions for lobbying – direct or grassroots – are quite specific. In order for an action to be considered direct lobbying or grassroots lobbying it must contain all of the elements below. It is not lobbying if one or more of the required elements is missing.

Direct Lobbying occurs when there is a: (1) Communication (2) with a Legislator (3) that expresses a View about Specific Legislation

Grassroots Lobbying occurs when there is a: (1) Communication (2) with the Public (3) that expresses a View about Specific Legislation (4) and includes a Call to Action.

Specific legislation refers to a bill or resolution that has been introduced in a legislative body or a specific proposal to solve a problem. It includes budget appropriations and taxes, and attempts to influence the confirmation of judicial and executive branch nominees. A proposal may qualify as specific legislation even if it has not yet been introduced, been written down, or even fully fleshed out. Specific legislation does not include rulemakings / promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws.

A call to action is a specific means of encouraging the communication's recipient to take lobbying action. It must comprise one of the following actions: 1) tell the recipient to contact a legislator; 2) provide information on how the recipient can contact his legislator, such as providing the phone number or address; 3) provide a mechanism for enabling the recipient to contact his legislator, such as a postcard, petition, or email form; or 4) identify a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator.

For more information on the lobbying definitions, see AFJ fact sheet [What is Lobbying](#).

Example: A union sponsors a rally in front of a state capitol to protest legislation that has been introduced that would prohibit local jurisdictions in the state from passing their own paid sick days laws. A 501(c)(3) that works to empower low-income communities could publicize the rally, highlighting its concern that low-wage workers would be adversely affected by the proposed law. Although the rally is in front of the capitol, the audience for the event is the public, not legislators. The rally organizers do not specifically tell the audience to contact their legislators and do not include any other call to action. The rally does not meet the definition of direct or grassroots lobbying under the 501(h) expenditure test.

Example: In the rally described above, the rally organizers pass out signs that say “Tell your legislator to vote NO on the bill.” These signs are a call to action, and the rally would be considered grassroots lobbying.

Example: A union is sponsoring a rally in front of a state capitol to urge support for public school teachers. A children's literacy-focused public charity fears that a reduction in the number of teachers per school will have a negative impact on literacy. The public charity could publicize the rally and encourage people to attend to call attention to literacy issues. No mention is made of any specific legislation, and the rally organizers do not issue any calls to action. The rally does not meet the definition of either direct or grassroots lobbying.

Q: Can 501(c)(3) organizations endorse candidates?

NO. 501(c)(3) organizations are completely prohibited from supporting or opposing candidates for public office. However, they can engage in nonpartisan activities that do not suggest who the “right” or “wrong” candidates are, such as voter registration drives and organizing candidate debates.

Q: Can 501(c)(3) organizations work with unions and 501(c)(4) organizations?

YES! 501(c)(3) organizations can work with other types of organizations, including unions and 501(c)(4) organizations, as long as the joint activity is nonpartisan. To learn more about the different types of activities that different types of tax-exempt organizations can engage in, see the [AFJ fact sheet](#) that compares 501(c)(3)s, 501(c)(4)s, and Political Organizations. Labor unions, which are found in section 501(c)(5) of the tax code, will generally follow the same rules as 501(c)(4)s when it comes to their advocacy activities.

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