

EXPLANATION OF ADVOCACY VS LOBBYING FOR PURPOSES OF IRC§501(c)(3)

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There have been questions from numerous League members about the differences between advocacy and lobbying for Leagues which have converted to §501(c)(3) or are considering whether to convert. The following material about lobbying activities is largely drawn from IRS Regs. §56.4911-2. The beginning part of this narrative has been slightly edited to make it more readable. I have not edited the regulations' examples. I have tried to select examples which are similar to the kinds of activities conducted by many Leagues so that the reader can easily substitute a League's name for the actual names used in the example.

To begin with, lobbying activities encompass two distinct types of activities, **direct lobbying communications** and **grass roots lobbying communications**. Assuming that an election is made under §501(h), for purposes of determining whether expenditures for lobbying activities constitute a "substantial part" of an organization's total activities, there is a 20% limit on an organization's expenditures for combined lobbying activities and a 5% sublimit for its expenditures for grass roots lobbying activities. (These percentages are applicable for organizations with no more than \$500,000 of normal annual expenditures; for larger organizations there is a sliding scale as the total increases.)

Direct Lobbying Communications

A **direct lobbying communication** is any attempt to influence any legislation through communication with either one of the following:

(A) Any member or employee of a legislative body; **or**

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

"Legislation" includes action (1) by Congress, any state legislature, any local council, or similar legislative body, or (2) by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. Where a communication refers to and reflects a view on a measure that is the subject of a referendum, ballot initiative or similar procedure, the general public in the State or locality where the vote will take place constitutes the legislative body, and individual members of the general public area, for purposes of this paragraph, "legislators." Accordingly, if such a communication is made to one or more members of the general public in that state or locality, the communication is a direct lobbying communication.

A communication with a legislator or government official will be treated as a direct lobbying communication if, but only if, the communication **both**:

(A) Refers to specific legislation (see below for a definition of the term “specific legislation”); **and**

(B) Reflects a view on such legislation.

“Specific legislation” includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes. In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, an item becomes “specific legislation” when the petition is first circulated among voters for signature.

Grass Roots Lobbying Communications

A **grass roots lobbying communication** is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof. A communication will be treated as a grass roots lobbying communication if, but only if, the communication does all of the following:

(A) Refers to specific legislation (see above for a definition of the term “specific legislation”);

(B) Reflects a view on such legislation; **and**

(C) Encourages the recipient of the communication to take action with respect to such legislation.

For purposes of this discussion, “encouraging a recipient to take action with respect to legislation” means that the communication does **any** of the following:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(C) Provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); **or**

(D) Specifically identifies one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature;

or being a member of the legislative committee or subcommittee that will consider the legislation.

Examples Regarding Direct Lobbying Communications:

Example 1. Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example 2. Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write an administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency state the Congresswoman's support of M's application for a particular type of permit granted by the agency. The letter written by M's president is not a direct lobbying communication.

Example 3. Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

Example 4. State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

Example 5. On the organization's own initiative, representatives of Organization F present written testimony to a Congressional committee. The news media report on the testimony of Organization F, detailing F's opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

Example 6. Organization R's monthly newsletter contains an editorial column that refers to and reflects a view on specific pending bills. R sends the newsletter to 10,000 nonmember subscribers. Senator Doe is among the subscribers. The editorial column in the newsletter copy sent to Senator Doe is not a direct lobbying communication because the newsletter is sent to Senator Doe in her capacity as a subscriber rather than her capacity as a legislator.

Example 7. Assume the same facts as in Example (6), except that one of Senator Doe's staff members sees Senator Doe's copy of the editorial and writes to R requesting additional information. R responds with a letter that refers to and reflects a view on specific legislation. R's letter is a direct lobbying communication.

Communications that are grass roots lobbying communications.

Example 1. A pamphlet distributed by organization Y states that the “President's plan for a drug-free America,” which will establish a drug control program, should be passed. The pamphlet encourages readers to “write or call your senators and representatives and tell them to vote for the President's plan.” No legislative proposal formally bears the name “President's plan for a drug-free America,” but that and similar terms have been widely used in connection with specific legislation pending in Congress that was initially proposed by the President. Thus, the pamphlet refers to specific legislation, reflects a view on the legislation, and encourages readers to take action with respect to the legislation. The pamphlet is a grass roots lobbying communication.

Example 2. Assume the same facts as in Example (1), except that the pamphlet encourages readers to “write the President to urge him to make the bill a top legislative priority” rather than encouraging readers to communicate with members of Congress. The pamphlet is a grass roots lobbying communication.

Example 3. Organization B, a nonmembership organization, includes in one of three sections of its newsletter an endorsement of two pending bills and opposition to another pending bill and also identifies several legislators as undecided on the three bills. The section of the newsletter devoted to the three pending bills is a grass roots lobbying communication.

Communications that are not grass roots lobbying communications.

Example 1. Organization L places in its newsletter an article that asserts that lack of new capital is hurting State W's economy. The article recommends that State W residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. The article is an attempt to influence opinions with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals. However, the article does not refer to specific legislation that is pending in a legislative body, nor does the article refer to a specific legislative proposal the organization either supports or opposes. The article is not a grass roots lobbying communication.

Example 2. Assume the same facts as Example (1), except that the article refers to a bill pending in State W's legislature that is intended to provide tax incentives for private savings. The article praises the pending bill and recommends that it be enacted. However, the article does not encourage readers to take action with respect to the legislation. The article is not a grass roots lobbying communication.

Example 3. Organization B sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation. The letter is not a grass roots lobbying communication.

Example 4. A pamphlet distributed by organization Z discusses the dangers of drugs and encourages the public to send their legislators a coupon, printed with the statement “I support a

drug-free America.” The term “drug-free America” is not widely identified with any of the many specific pending legislative proposals regarding drug issues. The pamphlet does not refer to any of the numerous pending legislative proposals, nor does the organization support or oppose a specific legislative proposal. The pamphlet is not a grass roots lobbying communication.

Example 5. A pamphlet distributed by organization B encourages readers to join an organization and “get involved in the fight against drugs.” The text states, in the course of a discussion of several current drug issues, that organization B supports a specific bill before Congress that would establish an expanded drug control program. The pamphlet does not encourage readers to communicate with legislators about the bill (such as by including the names of undecided or opposed legislators). The pamphlet is not a grass roots lobbying communication.

Additional examples

Example 1. The newsletter of an organization concerned with drug issues is circulated primarily to individuals who are not members of the organization. A story in the newsletter reports on the prospects for passage of a specifically identified bill, stating that the organization supports the bill. The newsletter story identifies certain legislators as undecided, but does not state that readers should contact the undecided legislators. The story does not provide a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is a grass roots lobbying communication.

Example 2. Assume the same facts as in Example (1), except that the newsletter story provides a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is not a grass roots lobbying communication because it is within the exception for nonpartisan analysis, study or research (since it does not directly encourage recipients to take action).

Example 3. Assume the same facts as in Example (1), except that the story does not identify any undecided legislators. The story is not a grass roots lobbying communication.

Example 4. X organization places an advertisement that specifically identifies and opposes a bill that X asserts would harm the farm economy. The advertisement of this section and does not directly encourage readers to take action with respect to the bill. However, the advertisement does state that Senator Y favors the legislation. Because the advertisement refers to and reflects a view on specific legislation, and also encourages the readers to take action with respect to the legislation by specifically identifying a legislator who opposes X's views on the legislation, the advertisement is a grass roots lobbying communication.