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## MEMO

**TO:** Community Executive Directors/CEOs

**FROM:** Josh Evans, Legislative Liaison

**DATE:** August 28, 2006

**SUBJECT:** Lobbying and 501(c)(3)s\*

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The laws pertaining to 501(c)(3)s participating in campaigns may produce misunderstandings about the extent to which these entities are allowed to affect public policy. Due in part to these misunderstandings, some 501(c)(3)s may be underutilizing their legal privileges to lobby public officials. The following information can be used for educational purposes to help clarify the allowable activities 501(c)(3)s may employ when wishing to educate staff, public officials, and the citizenry.

Federal tax law has *always* permitted some lobbying by nonprofits. In 1976, Congress passed Public Law 94-455, which included a section (Section 1307) on recognizing lobbying as an entirely proper function of nonprofits. In 1990, after 14 years, the Internal Revenue Service (IRS) issued final regulations under the 1976 law. These final regulations greatly extended the lobbying rights of nonprofits.

501(c)(3)s have two standards by which their compliance can be measured by Federal tax law. These two standards are known as the insubstantial part test and the 501(h) expenditure test. The insubstantial part test requires that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." There are no clear standards on what constitutes lobbying under the insubstantial part test. Should 501(c)(3)s exceed this vague standard in a single year, then they risk losing their exemptions.

\* The information contained in this document is for educational purposes and should not replace legal counsel.

The 1976 Tax Reform Act also established the 501(h) expenditure test. This test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures. The 501(h) expenditure test makes it easier to determine the amount a 501(c)(3) can spend on lobbying, as the code clearly defines lobbying communications and exceptions to lobbying. An electing 501(c)(3) is a public charity that has "elected" to be governed by the 501(h) expenditure test.

Bob Smucker's *The Nonprofit Lobbying Guide* explains that for 501(c)(3)s taking the 501(h) election, "lobbying is only the expenditure of money by the organization for the purpose of attempting to influence legislation. Where there is no expenditure by the organization for lobbying, there is no lobbying by the organization." Since lobbying is tied intrinsically to the expenditure of funds for nonprofits who take the 501 (h) election under the 1976 law, it is essential to understand that there are two kinds of lobbying, *direct lobbying* and *grassroots lobbying*. Both types of lobbying have significant differences, notably the amount of allowed expenditures for each.

***Direct lobbying*** is simplified as communications that the organization has about legislation with legislators or government officials who participate in the formulation of legislation and similar communications with an organization's own members. *Direct lobbying* can include visits with legislators or government officials about a bill and urging your membership to contact legislators. When directed solely to members, a communication is not lobbying if it only indirectly encourages members to engage in lobbying. An example of such a communication would be a status report on the movement of legislation that an organization has previously taken a position on, but the status report does not issue a "call to action."

***Grassroots lobbying*** is an attempt to influence legislation through affecting the opinion of the general public. *Grassroots lobbying* also occurs when an organization encourages its membership to engage non-members for the purpose of lobbying by urging the public to contact public officials, giving out the contact information of public officials to the public, giving a petition to the public, and/or identifying legislators who will vote on the item or issue being referred to in the communication. Nonprofits that call the general public to action on specific legislation are engaging in *grassroots lobbying*. However, in the case of referenda, the public is essentially the legislature. In these cases, nonprofits are considered to be engaging in *direct lobbying*.

Attached with this memo is a brief primer that discusses both allowable and unallowable activities by 501(c)(3)s with regards to lobbying, campaigns, voter activity, and public awareness/education.

If you have any questions, please contact [Matt Keppler](#), Legislative Director, or [Josh Evans](#), Legislative Liaison, at 217/753-1190 or [mkeppler@hso.net](mailto:mkeppler@hso.net) or [jevans@hso.net](mailto:jevans@hso.net).

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