

NONPROFIT ADVOCACY 101

PRESENTATION FOR

FORWARD COMMUNITY
INVESTMENTS

MAY 20, 2021

Prepared by Melissa Auchard Scholz,
© Scholz Nonprofit Law LLC 2021
All rights reserved.

HOUSEKEEPING NOTES

- The presentation is being recorded

The screenshot shows a Zoom Webinar window with the following details:

- Talking:** Tom Behnke
- Meeting Topic:** Webinar Test
- Host:** Tom Behnke
- Passcode:** 368318
- Invite Link:** https://us02web.zoom.us/webinar/register/WN_OJphWLMx...
[Copy Link](#)
- Participant ID:** 332120

Below the details are three main action buttons:

- Join Audio:** Computer Audio Connected
- Share Screen:** Indicated by two large red arrows pointing downwards.
- Invite Others:** Represented by a person icon with a plus sign.

The bottom toolbar includes: Mute, Start Video, Participants (1), Q&A, Polls, Chat, Share Screen (highlighted with a green icon), Record, More, and End.

NONPROFIT ADVOCACY 101

PRESENTATION FOR

FORWARD COMMUNITY
INVESTMENTS

MAY 20, 2021

Prepared by Melissa Auchard Scholz,
© Scholz Nonprofit Law LLC 2021
All rights reserved.

KEY CONCEPTS FOR TODAY

- Different rules for different kinds of “nonprofits”
 - Focus is on 501(c)(3)s
- 501(c)(3) prohibits political activity
- 501(c)(3) permits lobbying if it is “insubstantial”
- MUCH of advocacy is NOT lobbying
- IRS rules are not the same as state and federal ethics rules

ADVOCACY IS NOT “POLITICAL”

Nonprofits meet their mission by educating the public and policymakers about policy issues

- **Political:** 501(c)(3)s cannot promote, attack, support or oppose a candidate for public office
- **Lobbying:** “propaganda” or attempting to influence legislation
 - Lobbying is permissible within limits and with reporting
 - Important to understand what is and is not “lobbying”
 - convince, educate, explain, persuade, support, etc.

WHEN ADVOCACY BECOMES ILLICIT “POLITICAL ACTIVITY”

Advocacy or lobbying communication can become “political” when it:

- Identifies or targets a particular candidate
- Occurs only during an electoral campaign and is targeted at voters
 - E.g., Is not part of an ongoing advocacy campaign
- Shows a candidate’s position to distinguish the candidate from others
- See BA: Can We Say That?

“I was just giving her a few examples and she passed out.”



HOW MUCH LOBBYING IS ALLOWED?

501(c)(3) public charities can influence legislation as long as lobbying activity is “insubstantial”

- No statutory definition of “insubstantial”; vague test
- Note: private foundations cannot lobby

501(h) election or “expenditure test” gives parameters

- 20% of expense budget (for budget <\$500,000;15%;10%) for all lobbying;
- 25% of lobbying amount for grassroots
- 501(h) gives definitions that clarify definition of lobbying

501(H): DEFINITION OF DIRECT LOBBYING

Two types: **direct lobbying** and **grassroots lobbying**

Direct Lobbying:

- Any attempt to influence **legislation** through **communication** with any member or employee of a **legislative body**
 - **Legislation:** development, drafting, introduction, modification of legislation
 - both introduced in a legislative body and specific legislative proposal
- <http://bolderadvocacy.org/navigate-the-rules/influencing-legislation>

501(H): DEFINITION OF DIRECT LOBBYING

Communication:

- must refer to specific piece of legislation; **and**
- express a view on that legislation.
 - Description of bill may be sufficient to refer to specific legislation, regardless of bill's name or number.
 - E.g., message to legislator to support bill to protect wolves
 - NOT: message to legislator to urge them to encourage Fish and Wildlife Service to keep wolves on endangered species list

501(H): DEFINITION OF DIRECT LOBBYING

Member of **legislative body**:

- includes members of Congress, state legislators, county commissioners, city council and international bodies that have legislative power **and**
- any actions by the general public in a referendum question, initiative petition, or proposed constitutional amendment.

Legislator **usually*** does **not** include officials in judicial, executive and administrative bodies:

- E.g. President Biden, Governors, Executive Agencies
- Members of local “special purpose bodies” (e.g., zoning board)

***BUT** executive officials can be legislators if participate in formulation of legislation

- Signing bills into law or vetoing
- Influencing budget passed by legislature
- Senate confirmation of executive and judicial branch nominees and proposed treaties requiring Senate approval

501(H): DEFINITION OF DIRECT LOBBYING

No limits on administrative advocacy under 501(h):

- E.g., with EPA on regulations of coal-burning power plants
- Or asking Governor to enforce Clean Water Act (for 501c(3) test)

501(H): DEFINITION OF GRASSROOTS LOBBYING

25% of lobbying amount can be for grassroots lobbying.

Grassroots Lobbying:

- Communication with the Public that
- Expresses a View about specific Legislation, **and**;
- Encourages taking "lobbying action" ("Call to Action")

<http://bolderadvocacy.org/navigate-the-rules/influencing-legislation>

501(H): DEFINITION OF GRASSROOTS LOBBYING

Grassroots Lobbying “Call to Action” must have one of the following:

- Direct contact of a legislator or other relevant government employee for purposes of influencing the legislation;
- Give address, telephone number or similar information regarding legislator or legislative body employee;
- Provide petition, post card or similar means for the recipient to contact a legislator or legislative body employee; **OR**
- Identify legislator(s) who will vote on it as being opposed or undecided re: legislation; recipient’s legislator(s); or member of legislative committee which will vote on the legislation.
 - Doesn’t include identifying sponsor(s)

501(H): DEFINITION OF GRASSROOTS LOBBYING

Exception for Members:

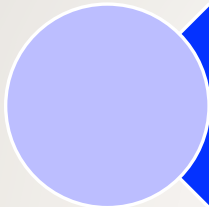
- Grassroots lobbying activity changes to Direct Lobbying when directed primarily at members
 - E.g., ask members to contact legislators in support of or in opposition to legislation.
- Members include persons who volunteer more than a nominal amount of time; do not need to have voting privileges

NOT LOBBYING UNDER 501(H)

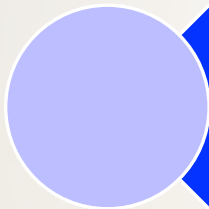
Law carves out activities that aren't lobbying

- Conducting public education campaigns that do not include calls to action or mention of specific legislation are not lobbying
 - E.g. email or tweets without call to action
- It is also considered direct lobbying when an organization asks its members to contact legislators in support of or in opposition to legislation.
 - Or, not lobbying at all if no encouragement to lobby

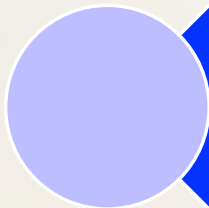
NOT LOBBYING UNDER 501(H)



Discussing broad social/policy issues, without mentioning specific legislation

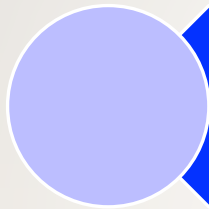


Responding to request for technical advice or assistance from a governmental body/committee, not an individual legislator

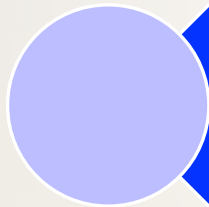


Preparing and distributing “nonpartisan analysis and research,” which can address specific legislative proposals

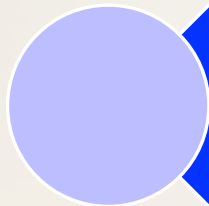
NOT LOBBYING UNDER 501(H)



Litigation (e.g., signing on to *amicus briefs*)



Testifying before a “special purpose body,”
such as a school or zoning board



Lobbying in “self-defense” of
organization’s existence

NOT LOBBYING UNDER 501(H)

- Time spent by volunteers does not count
- Tracking activities of legislators, including votes, positions taken, contributions accepted, etc.
- Advocating for better enforcement of existing laws

FEDERAL TAX V. STATE ETHICS RULES

- Federal test relates to 501(c)(3) status and is an “expenditure test” under 501(h)
- State rules relate to ethics rules and registration/reporting
- Federal Lobbying Disclosure Act also governs registration and reporting
 - expenditure test and higher threshold than states

FEDERAL TAX V. WI ETHICS RULES

- Most states regulate only Direct Lobbying
- Usually implicates only persons who are paid compensation to lobby (i.e., not volunteers)
- Carve outs for contacting own legislators

WI LOBBYING LAW: REGISTRATION AND LICENSING

- Organization must register as lobbying “principal” in WI if it employs/hires individual:
 - for compensation
 - to communicate with state officials
 - to attempt to influence state legislation or administrative rule-making on its behalf, and
 - that individual communicates with state officials on 5 or more days during either the first or last six months of the year

WI: WHO IS A LOBBYIST?



An individual, who
for compensation

Communicates with state officials
For the purpose of lobbying
On 5 or more days in a six-month
period
• 1/1 - 6/30 and 7/1 - 12/31



Lobbyist must have a
license to lobby

<https://ethics.wi.gov/Pages/Lobbying/ReportActivity.aspx>

Wisconsin Lobbying or Not: Common Scenarios

Factual Background	Lobbying Or Not?
You communicate with a legislator's chief of staff in order to secure an amendment to a pending bill on behalf of a client for compensation.	Lobbying, as this is an effort to influence legislative action. Exception-if you communicate with the legislator that represents the district you reside in.
You communicate with the Governor's chief of staff and ask for a pending regulation to be modified on behalf of a client for compensation.	Lobbying, as this is an effort to influence administrative rulemaking.
You communicate with a contact at Department of Natural Resources and inquire about the status of a grant on behalf of a client.	Not lobbying, as seeking a grant is not lobbying under the Lobbying Law.
You communicate with a contact at the Wisconsin Housing and Economic Development Authority to request information about complying with a particular law on behalf of a client.	Not lobbying, as requesting information regarding compliance with a law is considered communicating on a routine, ministerial matter.
You request information regarding a matter before an Administrative Law Judge on behalf of a client.	Not lobbying, as requesting the status of an administrative matter is considered communicating on a routine, ministerial matter.
An organization circulates a mailer to the general public urging people to contact their legislator to vote "No" on a particular bill.	This type of grass roots lobbying alone will not trigger registration requirements, but if you are registered as a lobbyist, you must report this as "other lobbying expenses"
An organization circulates a mailer to the general public urging voters to vote "No" on a public question on the ballot at the next general election.	Not lobbying, but will be considered a political communication for campaign finance purposes and may require registration and reporting depending on amount spent.

NOTE: With each advocacy communication, an organization must determine whether the communication constitutes lobbying for Wisconsin disclosure purposes but also whether the communication constitutes lobbying for IRS 990 purposes.

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

COMPARISON: FEDERAL V. WI WHAT IS LOBBYING?

- Attempting to influence legislation or administrative rulemaking
 - Includes development of proposal before introduction or attempting to block introduction of a proposal
- Does not include seeking a contract or grant
- Does not include individual speaking to own legislator

COMPARISON: FEDERAL V. WI WHAT IS LOBBYING?

- Discussing broad social/policy issues, without mentioning specific legislation
 - WI: maybe, if with government official; no, if to public
- Responding to request for technical advice or assistance from a governmental committee
 - WI: yes, if to legislator; no, if to agency official
- Communication with 501c3' s members
 - WI: no
- Conducting public education “grassroots” campaigns
 - WI: no

COMPARISON: FEDERAL V. WI WHAT IS LOBBYING?

- Lobbying in “self-defense” of organization
 - WI: yes
- Time spent by volunteers lobbying (if no paid staff or consultants)
 - WI: no
- Tracking activities of legislators, including votes, positions taken, contributions accepted, etc.
 - WI: no
- Advocating for better enforcement of existing laws
 - WI: no

IRS REGISTRATION AND REPORTING

- File 5768 one time to make 501(h) election

- Track lobbying expenditures



Track lobbying expenditures



Timesheet

- Report on Form 990, Schedule C

WI: REPORTING REQUIREMENTS

- If Organization and Lobbyist register then must report
 - Bills, rules, and budget subjects within 15 days of first communication, after introduction
 - Lobbying topics not yet assigned a bill or rule number within 15 days of first communication
- Lobbyist Time Report
 - Provide a daily itemization of time
 - Meeting and preparation time
 - Lobbyists and non-lobbyist employees – *except* clerical employees, individuals devoting less than 10 hours to lobbying, unpaid volunteers
- To report online:
 - <https://ethics.wi.gov/Pages/Lobbying/ReportActivity.aspx>

WI: REPORTING REQUIREMENTS AT END OF REPORTING PERIOD

- Organization's 6 month statement of Lobbying Activities and Expenditures
 - Report online:
<https://ethics.wi.gov/Pages/Lobbying/ReportActivity.aspx>
- **Caution:** Registered lobbyists cannot provide food, money, anything of pecuniary value and cannot make campaign contributions during legislative sessions.

MORE INFORMATION

- BoardSource: [Stand for Your Mission](#)
- Alliance for Justice, Bolder Advocacy Campaign
<https://www.bolderadvocacy.org/>
- WI Ethics Commission:
<https://ethics.wi.gov/Pages/Lobbying/ReportActivity.aspx>
- IRS at irs.gov or www.stayexempt.irs.gov

CONTACT

Melissa Auchard Scholz

Scholz Nonprofit Law LLC

Melissa@scholznonprofitlaw.com

www.scholznonprofitlaw.com

This presentation is intended for informational purposes only and is not intended as legal advice on specific matters, factual situations, or issues. Different facts, information or developments in the law may affect the material in this presentation.

UPCOMING WEBINAR

THURSDAY, JUNE 24, 12P

- Nonprofit Advocacy 102: Preparing your Policy Vision and Legislative Agenda
- Presented by Carousel Bayrd of Community Justice, Inc.
- More details to follow, stay tuned!