

# Public Policy Advocacy



- What is lobbying?
  - Grassroots lobbying
  - Direct lobbying
- Can non-profits lobby?
- Should you elect the 501(h) expenditure test?
- How can you influence policy without lobbying?
- What are legislative scorecards?
- How do you get the funds to lobby?

# What is lobbying?

- Direct lobbying =
  - Communication
  - With a legislator (or your members)
  - Expressing a view about specific legislation (or asking your members to be in touch with legislators)
- Grassroots lobbying=
  - Communication
  - With the public
  - Expressing a view about specific legislation
  - Including a call to action

# Communication



- A conversation in person or on the phone, letter, email, fax or other creative mechanism to convey a message

# Legislator

- A member of a legislative body (City Council, State Legislature, U.S. Congress) & staff
- Executives when vetoing or signing a bill
- NOT an administrative body (regulations are not legislation!)



# The Public



- Communication to the public (anyone who is not a legislator or a member of the organization) = grassroots lobbying
- Communication to members (has given > small amount of time or money) = direct lobbying



# Expressing a view about legislation



- Legislation = a bill or resolution introduced in a legislative body or proposed legislation
- Includes budget appropriations & taxes & attempts to influence the confirmation of judicial & executive branch nominees
- Does NOT include regulations, executive orders, litigation, or enforcement of existing legislation
- Does NOT include calls for adequate funding if there is no budget proposal before the legislature

# Call to action

## Grassroots Lobbying Tactics



"Harold will lure the Senator close with cash & liquor. When he stops for a photo op with Nancy & Timmy - you boys swoop in."

- Encouraging the communication's recipient to take lobbying action
  - Tell to contact legislator
  - Provide info on how to contact legislator
  - Provide way to contact legislator
  - Identify a legislator as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee, or recipient's legislator

# Ballot measures

- Ballot measure activity = direct lobbying, not impermissible electoral activity
- The voting public = the legislature in a ballot measure (referenda, bond measures, ballot initiatives)



GETTY IMAGES



# When does it become lobbying?



- Preparation & research time in anticipation of lobbying
- Discussing public issues, formulating & agreeing upon positions, & studying them in preparation of adopting a position for lobbying
- You begin measuring lobbying activity when the primary purpose of your preparation or research is to engage in lobbying activity

# Measuring Lobbying Activities



- The 501(h) expenditure test
  - All costs including photocopying, transportation, staff time, overhead costs aimed at lobbying
- The Insubstantial part test
  - No guidance on how much is "substantial"

# "Insubstantial part"



- Can lobby as long as the lobbying activities do not become a "substantial part" of its overall activities
- Subjective test based on circumstances & facts of each case
- Reimbursements to volunteers for out-of-pocket expenses spent on lobbying counts & must be reported

# "Insubstantial part"



- Factors include:
  - Absolute amount spent
  - Impact
  - Public prominence
  - Unpaid volunteer work

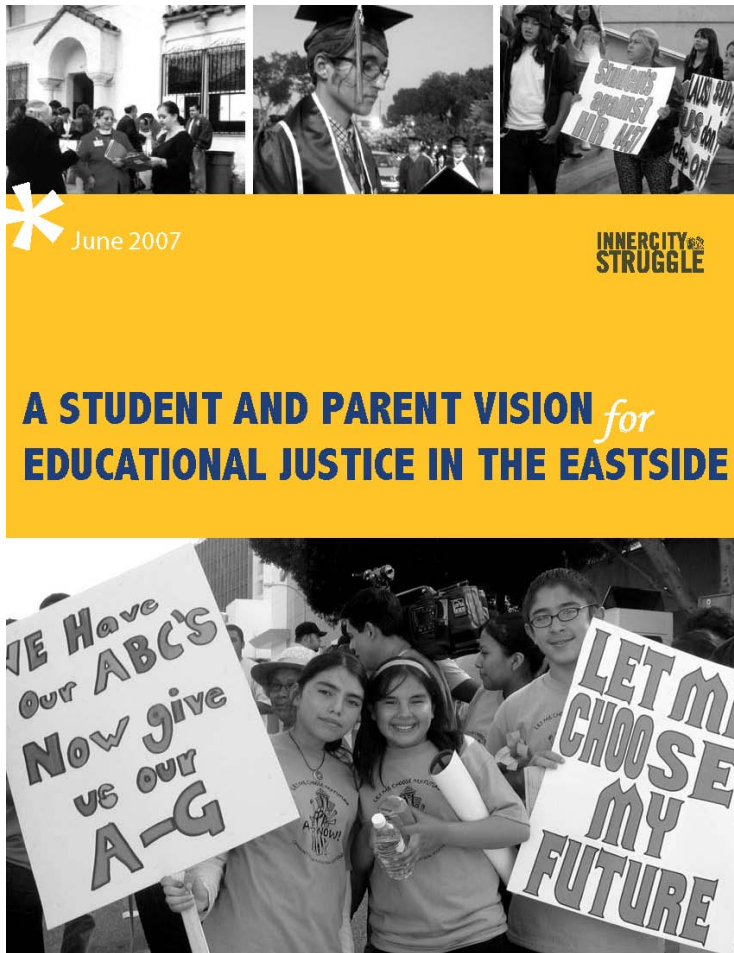
# 501(h) Expenditure test



- Only counts lobbying activity that costs \$
- Limits vary on size of organization budget
  - \$500,000 or less = 20%
  - \$500,000-\$1 million = \$100,000 + 15% of budget over \$500,000
  - \$1-1.5 million = \$175,000 + 10% of budget > \$1 million
  - \$1.5 million + > = \$224,000 + 5% of budget > \$1.5 million
  - Maximum \$1 million/year
- May spend up to  $\frac{1}{4}$  of overall budget on grassroots lobbying



# 501(h) Expenditure Test



- May develop & disseminate a “nonpartisan analysis, study or research” or a substantive report that fully discusses the pros and cons of a legislative proposal without it being considered lobbying

# Making the 501(h) Election



Department of the Treasury  
**Internal Revenue Service**

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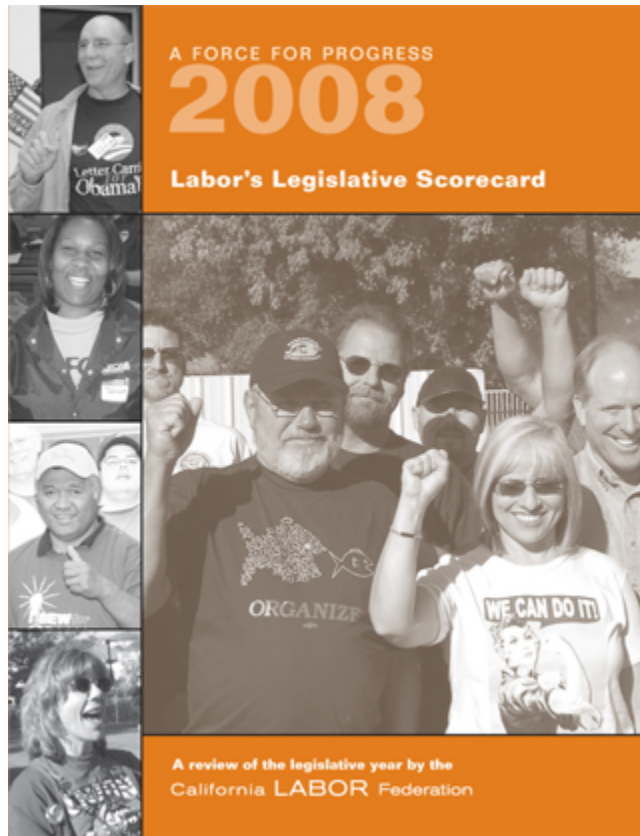
- Board votes to elect
- Complete Form 5768
- Make a copy
- Mail to IRS
- Track lobbying expenditures
  - Direct lobbying = 20% of 1<sup>st</sup> \$500,000 + 15% of next \$500,000 + 10% of next \$500,000 + 5% of remainder
  - < 25% of overall lobbying limit can be spent on grassroots lobbying

# Advocacy that is not lobbying



- Nonpartisan analysis or research
- Communication to members on legislation without a call to action
- Attempts to influence regulations, administrative rules, or executive branch actions (including contact with executive branch or legislators)
- Influencing school boards
- Having a newspaper publish an article or ad stating your organization's view on legislation without a call to action
- Self-defense activity

# 501(h) Legislative Scorecard



- Inform *members* about how *all relevant* legislators have voted (recorded legislative votes, not campaign positions) & what organization thinks about votes on issues of importance to the group
- Don't issue just before election; issue at conclusion of legislative cycle
- Can *score* legislators

# Lobbying on your own time



*David Roberson confers with State Representative Cheryl Gray about a \$1.3 million appropriation for the Lighthouse for the Blind in New Orleans*

- Staff may engage in lobbying on own time **AS LONG AS** they do not indicate their relationship to your organization and are not directed by the organization to engage in the lobbying
- EDs may be considered always on duty unless your Board or personnel policies clarify otherwise



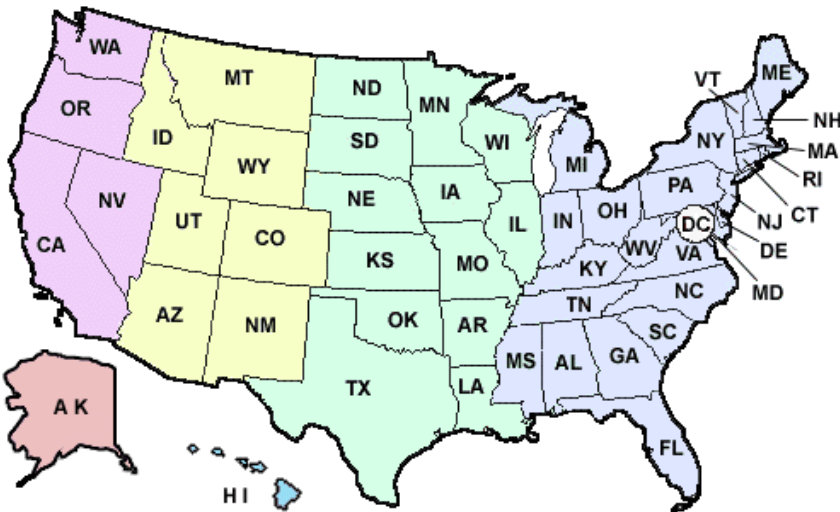
# Prohibited Activities



- Intervening in a political campaign of any candidate for public office (but you *MAY* encourage & register people to vote)
- Engaging in partisan activity of any kind
- Use of government funds to lobby including to lobby for government grants unless Congress expressly authorizes it (i.e., DDCs)

# Registration & Reporting

- State & federal lobby disclosure laws also require certain organizations & individuals who are paid to lobby or whose lobbying expenses are reimbursed to register & file periodic reports on lobbying activities



# Threshold for Reporting



- There is no minimum threshold for reporting on lobbying activities
- Even though the dollar amount may be small, you should report it

# How to report



- IRS accepts any reasonable method for reporting
  - Sampling instead of complete time records to estimate time spent
  - Estimate of overhead costs
  - Actual costs when possible

# Registration



- Lobbying Disclosure Act of 1995
  - If you have any employee that spends at least 20% of time on federal lobbying activities & you spend \$22,500 or more over 6 months on that lobbying activity, they must register as lobbying & file reports



# Sanctions

## Non-electing

- 5% excise tax on excessive lobbying spending
- Similar tax on managers who willfully & unreasonably agree to lobbying expenditures

## Electing

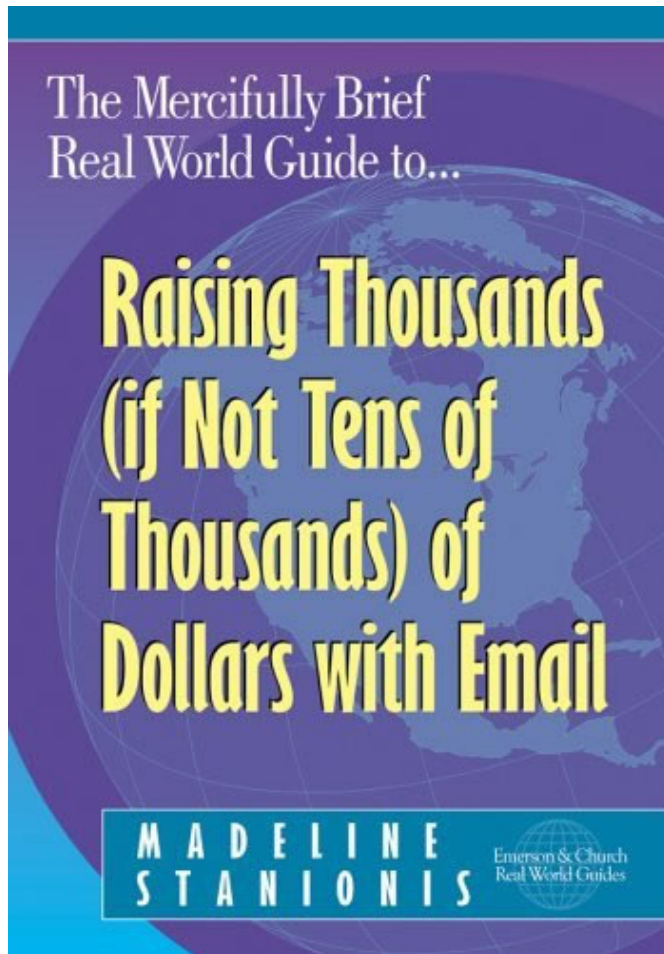
- 25% excise tax on lobbying spending in excess of ceiling

## Death sentence

- Loss of exemption only if spending normally exceeds 150% of either overall or grassroots limit over 4 year period



# Funding Lobbying



- May not use *any* government funds to influence legislation
- May not use foundation funds IF grant agreement letter prohibits it
- May use funds generated by fee for service, contributions, membership dues, sale of materials, etc.

# Other Options

- Get a legislative body to invite you in writing to express your opinion (“technical advice”)
- Set up 501(c) 4
  - No restrictions on the amount of lobbying
  - Gifts to a 501(c) 4 are not tax-deductible





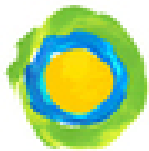
# Take Away messages



- You CAN & SHOULD engage in public policy advocacy & lobbying
- For most non-profits, you SHOULD do the 501(h) election
- You MUST report lobbying activities with your tax return regardless of whether you elect & no matter how little you spend on lobbying



# Other resources



- Alliance for Justice  
[www.afj.org](http://www.afj.org)
- NPAction  
[www.npaction.org](http://www.npaction.org)
- Independent Sector  
[www.independentsector.org](http://www.independentsector.org)
- Idealist  
[www.idealists.org](http://www.idealists.org)
- IRS  
[www.irs.gov/charities](http://www.irs.gov/charities)

# Don't sit on the sidelines, get into the game!

- Empowering family members to participate in advocacy for their children, their community, the larger society, is its own victory, regardless of the specific outcome of any particular effort.
- **Democracy is not a spectator sport!**

