

# Raise Your Voice

## Advocacy + Lobbying Toolkit for Nonprofits

### Part of The Nonprofit Voice Project

*This toolkit is part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.*

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- ▶ Maine Commission on Governmental Ethics and Election Practices – [www.maine.gov/ethics/](http://www.maine.gov/ethics/)
- ▶ James Phipps, Executive Director, The Iris Network, formerly with Preti Flaherty, specializing in nonprofit law

## Can Charities Lobby?

Yes, they can and they should!

With the 1976 Lobby Law and the IRS Regulations set forth in 1990, Congress made it clear that influencing legislation is an appropriate and legitimate activity for charitable organizations. The confusion often results because charitable nonprofits (designated as 501(c)(3) organizations) are prohibited from participating in partisan politics – working for a political party or candidate. However, it is imperative that nonprofits get involved in the political process as it affects government funding for their programs and policies that impact their ability to carry out their charitable missions.

## What is Lobbying?

Lobbying is defined by federal tax law as any attempt to influence specific legislation. Lobbying can be done by (1) contacting or urging the public to contact policy makers for the purpose of proposing, supporting, or opposing legislation or (2) by advocating the adoption or rejection of legislation.

Policy Maker refers to anyone who has direct influence over the outcome of a piece of legislation and could include:

- ▶ Legislators
- ▶ Legislative aides
- ▶ Governor
- ▶ Lt. Governor
- ▶ President
- ▶ Others

In the case of a ballot initiative or referendum, voters are considered policy makers, because they decide the outcome of legislation.

## Direct vs. Grassroots Lobbying

Regulations divide lobbying into two types, direct and grassroots. Specific rules apply to each type.

### **Direct Lobbying**

Direct lobbying is any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official who may participate in the formulation of legislation. A specific activity constitutes direct lobbying if:

1. The principal purpose is to influence legislation,
2. There is reference to a specific piece of legislation (even if the legislation is not currently under consideration), and
3. A point of view is expressed.

Asking members of your organization to contact legislators is considered direct lobbying since they are part of the organization and presumably working on its behalf.

### **Examples of Direct Lobbying**

- ▶ Communicating your organization's views on a specific legislative proposal to a legislator, a staff member, or any government employee who may help develop legislation

- ▶ Asking a legislator or related staff member to take action that would require legislation
- ▶ Asking your organization's members (those who contribute more than a nominal amount of money or time) to lobby for a particular bill
- ▶ Attempting to influence the opinion of the general public on referenda or ballot initiatives

### **Grassroots Lobbying**

Grassroots lobbying is any attempt to influence legislation by affecting the opinion of the general public. In this case the organization encourages the public to lobby. The organization refers to a specific piece of legislation and provides information to the public on how to contact decision makers. Under certain circumstances mass media ads are an example of grassroots lobbying.

### **Examples of Grassroots Lobbying**

- ▶ Urging the general public to express a particular view to their legislators about a specific legislative proposal, including simply posting legislators' contact information
- ▶ Identifying legislators who are opposed to or undecided on a particular piece of legislation, identifying the audience's legislators, or naming the members on a committee that will vote on a piece of legislation

## **What is NOT Lobbying?**

The following examples are activities that are NOT considered lobbying by the IRS:

- ▶ An effort to influence an administrative agency (such as, federal and state agencies and local school and zoning boards) to change its policies, rules or regulations
- ▶ A general policy position (such as "government has a role in low-income housing"), given that the position does not speak to specific legislation
- ▶ Testimony before a legislative committee when your organization has received a written request from the committee to appear
- ▶ Nonpartisan analyses, which need not be neutral or objective, that present facts fully and fairly, are widely available and do not include a call to action (such as, request the reader contact their legislator) *Note: If these materials are used later in a lobbying effort, the cost of preparing these materials must be counted as a lobbying expense.*
- ▶ Responses to written requests for information or technical assistance from legislators
- ▶ Discussion with government officials concerning legislation that directly impacts the organizations (such as its existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions). However, calling for programs or policies in your organization's field (such as the environment or healthcare, etc.) is considered lobbying.

## **Lobbying Standards and Financial Limits**

Your organization must choose one of two standards by which your compliance with the Internal Revenue Code will be measured. These standards apply to lobbying activities with federal officials. You should also consult your state's laws.

### **Standard One - Insubstantial Part Test**

Organizations that choose not to file Section 501 (h) of the IRS Code are still subject to the IRS guidelines set forth in 1934. Known as the "insubstantial part test," these guidelines require that "no substantial part of a charity's activities consist of carrying on propaganda or

otherwise attempting to influence legislation.” “Substantial” has never been fully defined. However, the courts have made clear that the definition of lobbying under the “insubstantial part test” is not only related to an expenditure of money. For example, activities conducted by volunteers to influence legislation must be considered lobbying.

### **Standard Two - Expenditure Test**

Those charitable organizations that choose the Section 501(h) election must apply the “expenditure test.” Under this standard, lobbying only occurs when there is an expenditure of money. It sets forth specific dollar limits, calculated as a percentage of a charity’s total exempt purpose expenditures.

These limits are:

- ▶ 20% of the first \$500,000 of exempt purpose expenditures, plus
- ▶ 15% of the next \$500,000 of exempt purpose expenditures, plus
- ▶ 10% of the next \$500,000 of exempt purpose expenditures, plus
- ▶ 5% of the remaining exempt purposes expenditures, up to a total cap of \$1 million.

The organization’s grassroots lobbying efforts (described in greater detail below) are limited to 25% of the organization’s total lobbying activities as calculated using the formula above. Even if the organization chooses to spend very little on direct lobbying efforts, it may still spend up to 25% of the total limit under the law on grassroots lobbying.

#### **Example:**

A nonprofit with a \$100,000 budget, that has chosen the 501(h) election, may spend up to \$20,000 on direct and grassroots lobbying combined. Of this \$20,000, no more than \$5,000 can be spent on grassroots lobbying.

It should be noted - churches and their affiliates are not allowed to elect 501(h) status, although they may lobby under the “insubstantial part test”.

### **Making the 501(h) Status Election**

To elect 501(h) status, your organization will need to file a single page form: IRS Form 5768 “Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation”. It requires only the organization’s name, address, and the first tax year to which the election will apply. This form can be found online at <http://www.irs.gov/pub/irs-pdf/f5768.pdf>.

### **501(h) Election, Worry Free Lobbying**

The 501(h) expenditure election provides significant benefits over the “insubstantial part test,” including:

- ▶ No limit on lobbying activities that do not require expenditures
- ▶ Clear definitions of various kinds of lobbying communications, which allows your organization to more easily determine whether or not it is engaging in lobbying activities
- ▶ Higher lobbying limits and fewer items that count toward the exhaustion of those limits
- ▶ Your organization is less likely to lose its exemption status, since the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50% averaged over a 4-year period (a non-electing organization may lose its status for a single year’s excessive lobbying activities)

- ▶ No personal penalties assessed for individual organization managers whose organization exceeds its lobbying expenditures limits

### Sanctions for Violation of 501(h) Standards

Under the 1976 Lobby Law, an organization that either exceeds their overall expenditure limit OR the 25% grassroots-lobbying limit in any year will be assessed a 25% excise tax on its excess lobbying expenses. You do not lose your 501(c)(3) status. The IRS uses a four-year averaging period, and only if you exceed the limits by more than 50% over the entire period are you in danger of losing your exemption.

### Record Keeping

Many organizations are understandably concerned that the rules are complicated and require substantial record keeping. It is essential to keep track of your lobbying, whether you elect 501(h) status or not, in order to calculate your total exempt purpose expenditures. However, reporting your organization's lobbying expenditures actually requires very little extra paperwork. The amount of money your organization spends on lobbying each year only needs to be reported in one section of your IRS form 990.

Careful bookkeeping will help you keep track of your lobbying. Your bookkeeping system should include line items for total lobbying expenses as well as grassroots expenses. Since a large portion of your lobbying efforts will be staff oriented, your timesheets should have a method of tracking both direct and grassroots lobbying efforts. It is highly recommended that one employee be designated as the authority on the organization's lobbying efforts. A bookkeeping method is necessary to track all postage, copying, faxing and printed materials used in association with any lobbying efforts. This system need not be complicated, but it should be detailed and easy to maintain.

### Funding Lobbying Efforts

#### Foundations

- ▶ Under the 1976 Lobby Law, a foundation may make (without tax liability) a general-purpose grant to a nonprofit that lobbies, whether or not the nonprofit chooses the 501(h) election; however, a foundation cannot earmark funds for lobbying.
- ▶ A private foundation may also make a grant to support a specific project that includes lobbying, as long as the amount of the grant is less than the amount budgeted for the non-lobbying portion of the project. The fact that another private foundation may have provided grant funds to the same project need not be a consideration.
- ▶ A foundation may not supply grant funds that support research in an area where that foundation has a primary lobbying interest.
- ▶ Grants by community foundations are subject to the same laws as grants by private foundations. They may also make a grant that directly funds lobbying; however, it will have to treat the grant as a lobbying expenditure of its own, with the same system of limits that apply to 501(c)(3) organizations.

#### Federal Grants

- ▶ Nonprofits that receive federal grants, contracts or cooperative agreements cannot use any portion of their federal funds to lobby. The Office of Management and Budget (OMB) Circular A-122 issues cost principals covering most nonprofits on the

prohibition of lobbying with federal grants. (For more info please go to <http://www.whitehouse.gov/omb/circulars/a122/a122.html>)

- ▶ Often it is unavoidable for organizations that contract with the federal government to use federal funds to lobby at the local level; therefore it is not prohibited.
- ▶ Grantees are subject to audits to verify that grant funds have not been used either directly or indirectly for any unallowable expenses.
- ▶ **The following activities are not considered lobbying activities (according to the OMB Circular A-122):**
  - Providing technical and factual information in response to a documented request.
  - Lobbying at the state level in order to directly reduce the costs or avoid material impairment of the organization's authority to perform the grant, contract or agreement. However, lobbying for the purposes of improving performance is not exempt.
  - Anything specifically authorized by statute to be undertaken with funds from the grant, contract or agreement.

### Using the Internet

This is an area of increasing scrutiny. The IRS is interested and involved in the issues surrounding lobbying and charitable giving using the Internet, listservs and websites. Please review the Alliance For Justice's document titled "Influencing Public Policy in the Digital Age". It is available on their website at [http://www.afj.org/for-nonprofits-foundations/resources-and-publications/digital\\_age\\_public\\_policy.pdf](http://www.afj.org/for-nonprofits-foundations/resources-and-publications/digital_age_public_policy.pdf).

### Activities during Elections

There are rules governing what charitable nonprofit organizations can and cannot do leading up to and during an election. The most important thing to remember is that a 501(c)(3) nonprofit must remain nonpartisan at all times. An organization may support or challenge a piece of legislation or an issue, but may not support or criticize an elected official or candidate for office.

**Your organization can do nothing to influence a federal, state or local candidate's election; it is cause for losing your tax-exempt status!**

There are acceptable activities surrounding elections. They include:

#### Ballot Measures

- ▶ 501(c)(3) organizations may propose, oppose, or endorse ballot measures, which include ballot initiatives, constitutional amendments, bond measures, and referenda. Ballot measures are typically created when a threshold number of signatures are gathered on a petition; after the signature threshold is met the measure is certified for the election and placed on a ballot for the voters' final decision.
- ▶ The IRS considers ballot measure work to be lobbying activity and must be counted as such; it is considered direct lobbying under the 501(h) expenditure test.

#### Voter Education and Registration

Your organization may:

- ▶ Participate in voter education and registration activities provided that your activities are nonpartisan.

- ▶ Sell, trade or rent your member list to candidates as long as the your organization is paid fair value for its use.

Your organization may not:

- ▶ Endorse any candidate or support them (for example, by letting them use your office space).
- ▶ If your organization registers voters, you cannot ask them for whom they plan to vote.
- ▶ When conducting voter education, you cannot target a particular population group that may affect the outcome of the election. However, it is acceptable to focus on certain blocks of the community, such as minority groups, students, recent immigrants, etc., as long as the targeted groups are defined in terms of historical deprivation or discrimination, or as those groups who broadly share specific problems or have a community of interests.

### **Candidate Forums and Appearances**

- ▶ Your organization may organize candidate forums, yet all candidates must be treated fairly and impartially and the forum must address a broad range of issues. It can focus on one general topic, such as economic policy, but not on one specific issue, such as the minimum wage. It must have a nonpartisan person as the moderator.
- ▶ Candidate visits to your organization's events are risky. Candidates can appear at your organization's event, as long as they do so in a non-candidate capacity (for example, as an elected official). There can be no reference to their candidacy.

### **Publishing Voting Records**

- ▶ Your organization may communicate how legislators actually vote on issues of concern to your organization.
- ▶ You must avoid the appearance of endorsing or opposing candidates based on their votes. Publishing voting records, in the midst of an election campaign, could cross the line into "electioneering", especially if your organization does not regularly publish voting records.

### **Candidate Questionnaires and Public Opinion Polls**

- ▶ Your organization may inform candidates of your position on particular issues and urge them to pledge their support on record. Candidates may distribute their responses, but your organization cannot. This also holds true for statements made by the candidate to the media. Your organization can distribute such statements following the election.
- ▶ The key to protecting your organization is to question all candidates, frame questions without a bias and cover a wide range of issues. You can include their responses in "voter's guides", as long as there is no evaluation of their responses.
- ▶ A public opinion poll can be an effective tool to convince candidates and elected officials to take your organization's issues seriously. Since the poll uses scientific techniques and questions do not directly or indirectly concern the records/positions of particular candidates/parties, your organization can do this during an election cycle. You should not release polls to the press during an election (especially if you do not have a history of conducting polls). If it appears that your organization is trying to influence the public on issues central to the campaign, your nonprofit status could be at stake.



## Other Considerations

### Lobbying as a 501(c)(4)

If your organization plans to do a substantial amount of lobbying, consider establishing a 501(c)(4) organization. Under IRS rules, a 501(c)(4) organization may use dues and contributions for independent political spending, which must be reported to the Federal Elections Commission. However, 501(c)(4) organizations cannot make campaign contributions to federal candidates.

Organizations that are tax-exempt under section 501(c)(4) do not have limitations on lobbying on behalf of their exempt purpose. Charitable contributions to 501(c)(4) organizations are not tax exempt. According to a 1983 U.S. Supreme Court decision, the first amendment requires that a 501(c)(3) organization be permitted to lobby indirectly through a 501(c)(4). However, the 501(c)(4) organization must be run as a separate legal entity and must pay all its costs with nondeductible funds. The IRS monitors this very closely! Again, it is very important to keep clear records.

### Political Action Committees

Organizations that are tax-exempt under 501(c)(3) of the Internal Revenue Code are not permitted to establish political action committees. There is nothing in the law to prohibit 501(c)(4) organizations from setting up Political Action Committees (PAC). These entities are permitted to raise and disburse money in a federal election campaign.

## Lobbying In Maine

### Frequently Asked Questions about Maine's Lobbying Laws

Federal, not Maine, laws regulate how much and what type of lobbying nonprofit corporations can do. Maine Laws dictate who must register as a Lobbyist and the reporting requirements of registered Lobbyists.

#### **Maine's Lobbying Definition**

*Lobbying* means to communicate directly with an official in the legislative branch, an official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action, or with the Governor or the Governor's cabinet and staff for the purpose of influencing the approval or veto of a legislative action when compensation or reimbursement for expenditures is made for those activities. Lobbying includes time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral or written proposals for, or testimony or analyses concerning, a legislative action.

Under Maine law, an activity must have these four elements to count as lobbying. A lobbyist:

1. must communicate with a covered government official
2. for the purpose of influencing that official
3. regarding a legislative action
4. and must be compensated for that activity or reimbursed for related expenditures

#### **Indirect Lobbying Definition**

This term refers to communicating with members of the general public to solicit them to communicate with a covered official for the purpose of influencing legislative action. This

covers communication made through broadcast, cable, or satellite transmission, print media, and literature sent by mail or comparable delivery service. Solicitations made by e-mail, websites and telephone do not count as indirect lobbying. Lobbyists need to include in their monthly reports any expenditures for indirect lobbying that exceed \$15,000 for that month. This only covers expenditures by the lobbyist and the lobbyist’s client and does not extend to expenditures made by other persons or organizations.

<b>Does lobbying include...*</b>	
...sitting and waiting for an opportunity to communicate with Legislators?	No. Only direct communication is considered lobbying.
...monitoring legislation?	No. Attending a hearing or work session to monitor the progress of legislation is not lobbying, as long as the lobbyist does not communicate with a Legislator.
...travel time to the State House or other event for the purpose of communicating with Legislators?	No.
...speaking to a Legislator about general issues of interest to the employer?	As long as the communication with the Legislator is not intended to influence the drafting or consideration of a specific legislative action, the communication is not considered lobbying.
...educational seminars for Legislators?	No, provided the seminar is to educate Legislators about the employer’s business or general issues of interest and not specific legislation as outlined above.
...communicating with the employer regarding a specific LD?	If the communication is part of preparing a proposal, testimony, or analysis concerning a legislative action, the communication is lobbying. If it is for another purpose (e.g., reporting to the client on the progress of legislation), the communication is not lobbying.
...research for a specific LD?	Yes, if the research will be used for a proposal, testimony, or analysis concerning a legislative action. Otherwise, the research is not lobbying.
...communicating with staff of the Legislature?	Yes. If the communication deals with specific matters as outlined above.

*\* Provided by the Maine Commission on Governmental Ethics and Election Practices*

**Registering as a Lobbyist**

“Lobbyist” is defined as any person who is specifically employed by another person for the purpose of, and who engages in, lobbying, or any person who, as a regular employee of another person, spends an amount of time in excess of 8 hours in any calendar month lobbying.

Any person acting as a lobbyist must jointly register; that is, the lobbyist and their employer must file with the office of the Commission on Governmental Ethics and Election Practices (The Commission) no later than 15 business days after the lobbyist has lobbied more than 8 hours in a calendar month. A fee of \$200 for each lobbyist (and \$100 for each Associate Lobbyist) must be paid to the Commission and the registration is for one year’s time. The

Commission defines a "Lobbyist Year" as December 1<sup>st</sup> through November 30<sup>th</sup>. Any person failing to register may be assessed a fine of \$200.

Lobbyists can register and pay online on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics), or they can file a paper registration at the Commission's office.

▶ **Volunteers**

As of September 12, 2009, anyone who lobbies on behalf of an organization on a volunteer basis is exempt from registration and reporting requirements. The bill exempts individuals who receive no compensation from the organization other than reimbursement for out-of-pocket expenditures made in connection with lobbying for in-state travel, printing, postage, and food and lodging.

▶ **Lobbyist Nametags**

Lobbyists and lobbyist associates are required to wear a nametag when engaging in lobbying. The tag should include the lobbyist's name, as well as the client's name, the lobbyist's firm, or the term "lobbyist".

▶ **Contributions by Lobbyists**

As of September 12, 2009, political contributions from lobbyists to political action committees closely associated with a Legislator, Governor or constitutional officer are prohibited. The new bill amends the laws governing legislative ethics by expanding upon the prohibitions on certain campaign contributions from and solicitations of lobbyists, lobbyist associates or employers.

### ***Lobbyist Reporting Requirements***

All lobbyists must file monthly and annual reports through the Commission's electronic filing system. The Commission will provide the lobbyist with a user code, temporary password and instructions on how to file.

- ▶ **Monthly Session Reports** – When the legislature is in session, every registered lobbyist must file a monthly report no later than 15<sup>th</sup> of the following month via a form prescribed by the Commission.
- ▶ **Monthly Non-session Reports** – When the Legislature is not in regular session; every registered lobbyist must file a monthly report in a fashion similar to a monthly session report if they are engaged in lobbying during any of those months, or, if a lobbyist does not expect to engage in additional lobbying through the end of the year, the lobbyist can request a non-session waiver to be exempted from the monthly reporting requirements.
- ▶ **Annual Reports** – Beginning in 2011, annual reports are no longer required. Monthly reports will be electronically compiled by the Ethics Commission.
- ▶ **Late Filing Penalties** – Any person failing to file a monthly report prior to the 15<sup>th</sup> of the following month, is subject to a late fee. If the report is filed within 24 hours of the due date, the fee is \$50. After the initial 24 hour period, the fine increases to \$100 per month.

### ***For More Information***

Visit the Ethics Commission online

- ▶ 2012 Guidebook for Maine Lobbyists  
<http://www.maine.gov/ethics/pdf/2012MaineLobbyistGuidebookFinal.pdf>
- ▶ Full list of legal definitions in Maine Statute  
<http://www.maine.gov/ethics/lobbyists/definitions.htm>

## Ballot Measure Activities

### Ballot Measures

Ballot measures allow voters to propose and enact laws. They include ballot initiatives, constitutional amendments, bond measures, and referenda. The IRS considers ballot measure work to be lobbying activity and must be counted as such.

Typically, ballot measures are created when a threshold number of signatures are gathered on a petition to express public support. After the signature threshold has been met, the measure is certified for the election and then presented to the public on a ballot for the voters' final decision. In some states, however, measures are placed on the ballot by a legislative body through a process known as the "indirect initiative." Indirect initiatives may be first passed by the legislative body, then subsequently placed before the voters by a referendum petition. Other indirect initiatives may require a state constitutional amendment or must be submitted to the voters to repeal or amend a prior initiative measure.

Ballot measure work is considered *direct* lobbying under the 501(h) expenditure test.

### Federal Guidelines for 501(c)(3) Organizations Engaged in Ballot Initiative Work

In general, regardless of how it measures its lobbying, a 501(c)(3) can:

- ▶ Publicly endorse or oppose ballot measures;
- ▶ Propose ballot measures;
- ▶ Draft language for ballot measures;
- ▶ Organize volunteers to gather signatures on petitions;
- ▶ Send staff to gather signatures or conduct other ballot measure campaign work;
- ▶ Contribute money to ballot measure campaigns;
- ▶ Loan money to ballot measure campaigns;
- ▶ Host ballot measure campaign events at their offices; and
- ▶ Register people to vote and encourage them to vote for or against a ballot measure.

**501(c)(3)s can proactively initiate ballot measures or react to measures proposed by others.**

501(c)(3)s may propose ballot measures (including indirect initiatives) and collect signatures so a ballot measure can be certified. Additionally, 501(c)(3)s can challenge the certification of any proposed ballot measure or oppose indirect initiatives by lobbying the legislative body.

**501(c)(3)s can support or oppose ballot measures and encourage the public to vote accordingly.**

Even though 501(c)(3)s cannot support or oppose *candidates for public office*, they can urge voters to support or oppose particular *ballot measures*. The IRS considers ballot measure work to be a *lobbying* activity because members of the voting public act as legislators when they vote "yes" or "no" on the legislation proposed in ballot measures.

**Note that activity on a ballot measure may count against your organization's lobbying limit.**

If your organization measures its lobbying under the 501(h) expenditure test, a 501(c)(3) will need to count work on a ballot measure as direct lobbying once a petition is circulated among voters for signatures. Your organization will also count as direct lobbying its opposition to or support of the measure once it has been certified. In states that require an act of the legislative body to place a measure on the ballot, your 501(c)(3) will follow the same direct and grassroots lobbying rules as it does for other types of legislation (e.g., count as direct lobbying any communications with legislators asking them to support or oppose the measure).

If your organization measures its lobbying under the insubstantial part test, there are no clear rules defining when ballot measure activity counts as lobbying. Presumably, any work to place a measure on the ballot, including petitions or acts of legislative bodies, as well as any work to support or oppose a ballot measure will count as lobbying.

**Examples of ballot measure activities that have been treated as lobbying under IRS rules include:**

- ▶ Buying TV, radio, or newspaper ads to publicize the 501(c)(3)'s views on the ballot measure
- ▶ Hiring people to circulate petitions
- ▶ Allocating one page of the organization's four-page newsletter to urging readers to vote "no" on the ballot measure (one-quarter of the cost of staff time, printing, and mailing the newsletter counts as lobbying)
- ▶ Contributions of money, property, or paid staff to a committee established to campaign for or against a ballot measure

**Examples of expenses that fall outside the definition of lobbying include:**

- ▶ Researching the issues, conducting surveys of voter attitudes, and possibly community organizing or holding conferences, so long as these activities are not primarily focused on the ballot measure and are not a form of preparation for lobbying
- ▶ Communications to the public that refer to the ballot measure, but do not reflect a view on it
- ▶ Communications to the public on the general subject addressed by the ballot measure, which do not refer directly or indirectly to the ballot measure itself

**Just because a 501(c)(3) may work on a ballot measure does not mean that it may also comment on candidates included on the same ballot.**

A 501(c)(3) cannot use its support of or opposition to a ballot initiative as a way to indirectly support or oppose a candidate. Even though the legislative measure appears on a ballot during an election, the IRS considers ballot measure work as lobbying, not electoral, activity.

**Note that many states, including Maine, consider ballot measure activity to be electoral activity.**

Regardless of federal tax law definitions, some states require all organizations—including 501(c)(3) organizations—that work on ballot measures to report their contributions and expenditures under state campaign finance and disclosure laws.

## Complying with Maine Election Practices

**Unlike the IRS, Maine is one of the states that considers ballot measure activity to be electoral activity.** So for the state of Maine, not the IRS, charities must record their activities as such.

501(c)(3) Organizations may engage in any federally allowable ballot measure activity. Maine further states:

*"Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question shall register with the Commission as a ballot question committee within 7 days of receiving contributions or making expenditures that exceed \$5000." (21-A M.R.S.A. §1056-B)*

Within seven days of an organization reaching this \$5,000 threshold, they need to complete the state's Form 1056-B. This form, "Registration: Ballot Question Committees", can be found on the state's website at <http://www.maine.gov/ethics/bqcs/forms.htm>.

Organizations that:

- ▶ establish any separate or segregated fund whose purpose is to influence the outcome of an election, including a candidate or question; or
- ▶ hold as their major purpose advocating the passage or defeat of a ballot question;

must form a PAC. Federal law prohibits 501(c)(3)s from forming PACs so avoid the above.

Once an entity has registered as a Ballot Question Committee, the on-time filing of periodic financial reports is required. This form and the reporting schedule can also be found on the state's website at <http://www.maine.gov/ethics/bqcs/forms.htm>.

The Maine Ethics Commission has created some very helpful documents:

- ▶ Frequently Asked Questions on Ballot Question Committee Reporting - <http://www.maine.gov/ethics/bqcs/guidance.htm>
- ▶ Guidance on Expenditure Reporting for Ballot Question Committees - <http://www.maine.gov/ethics/bqcs/stafftime.htm>

The Commission is very receptive to questions by phone. It is always advisable to get clarification from their office on any gray areas. (207) 287-4179

## Lobbying Tips and Resources

### Tips for Contacting Legislators

*Adapted from a handout by Mary Kay Hogan, Aponté and Hogan (Colorado Nonprofit Association's lobbyists)*

Whether it is a phone call or personal letter, communication from constituents is appreciated and welcomed by legislators. Writing an effective letter or email is not a difficult task. Here are a few guidelines.

#### Personal Letterhead

Write on personal or business letterhead, if possible, and sign your name over your typed signature.

#### Return Address

Be sure your exact return address is on the letter, not just the envelope. Envelopes often get discarded. Even though your address is on the letter, be sure to also state that you are a constituent or that you work in the legislator's district, if applicable.

### **Identify the Subject**

Identify your subject matter clearly. State the name and bill number of the legislation you are writing about at the top of the page.

### **State Reason**

State your reasons for writing. Your own personal experience is your best supporting evidence. Explain how the issue would affect you, your business or your profession, or what effect it could have on your community or the state.

### **NO FORM LETTERS**

Avoid stereotyped phrases and sentences that give the appearance of form letters. They tend to identify your message as part of an organized pressure campaign, and are often discarded. Make your own letter, in your own style, incorporating your organization's key message.

### **Be Reasonable**

Don't ask for the impossible, don't threaten, and don't say "I'll never vote for you again unless...".

### **Be Brief**

All of your letters should be one page, one sided. Attachments to support your views are fine. Always say thank you!

### **Address style**

The Honorable \_\_\_\_\_, Maine House of Representatives  
2 State House Station  
Augusta, ME 04333

### **Tips for Hosting a Legislative Visit**

*Adapted from a handout by Mary Kay Hogan, Aponté and Hogan (Colorado Nonprofit Association's lobbyists)*

Personal visits are an extremely effective means of engaging your legislator(s) on issues of interest to your organization. Legislators want to meet and hear from their constituents, and learn about organizations that help their constituents. However, they are very busy people, so it is crucial to make the most of the time you have with your representatives and senators.

The best time to schedule a legislative visit is during the summer and fall, when the legislature is not in session.

You can learn who represents you personally or the area where your organization is located by calling your county clerk or visiting [www.vote-smart.org](http://www.vote-smart.org).

### **Before Your Visit**

- ▶ Invite your legislator in advance by phone, and follow up with a letter confirming the date and time of the meeting. Expect no more than one hour for a typical site visit.

- ▶ Make it easy for your legislator to meet with you. Offer several possibilities and do your best to accommodate their schedule.
- ▶ Prepare a good fact sheet about your organization or legislative issue (tips below).
- ▶ Learn in advance where your legislator stands on your issue or the mission of your organization.
- ▶ Be prepared to explain how your organization affects voters in the legislator's district.
- ▶ Dress appropriately for the visit – normal business attire is acceptable.

### ***During the Visit***

- ▶ Be on time, prepared, and polite.
- ▶ Start by concisely introducing your organization. Include the following information:
  - ▶ Who you are
  - ▶ What your organization does
  - ▶ What you need from your legislator
  - ▶ A reference to the fact sheet you have prepared
- ▶ Don't attack the legislator for his/her record on your issue(s), and don't disparage government or politics.
- ▶ Don't use technical terms or acronyms, unless you are certain that your legislator will understand them.
- ▶ If you don't know the answer to a question, say you'll find out and get back to him/her – and follow through.
- ▶ Before s/he leaves, ask how you can be of help to him/her.
- ▶ Thank him/her for his/her time.

### ***After the Visit***

- ▶ Follow up with a thank you note along with any information that you promised during the visit.
- ▶ Keep in touch during legislative session – contact your legislator on issues of interest to your organization, and remind him/her of his/her visit to your facility.

## **Lobbying and Advocacy Resources**

### **General Nonprofit Advocacy Resources**

Advocacy Institute  
1629 K St, NW, #200  
Washington, DC 20006  
(202) 777-7575  
Email: [info@advocacy.org](mailto:info@advocacy.org)  
Web: [www.advocacy.org](http://www.advocacy.org)

Email: [charity.lobbying@clpi.org](mailto:charity.lobbying@clpi.org)  
Web: [www.clpi.org](http://www.clpi.org)

Alliance for Justice  
11 Dupont Circle, NW, 2nd Floor,  
Washington,  
DC 20036  
(202) 822-6070  
Email: [alliance@afj.org](mailto:alliance@afj.org)  
Web: [www.allianceforjustice.org](http://www.allianceforjustice.org)

Center for Lobbying in the Public Interest  
2040 S Street NW, Ste 301  
Washington, DC 20009  
(202) 387-5048 - Fax (202) 387-5149

Maine Association of Nonprofits

[www.NonprofitMaine.org](http://www.NonprofitMaine.org)



Independent Sector  
1200 18th St NW, Ste 200  
Washington, DC 20036-2506  
(202) 467-6100  
Email: [info@independentsector.org](mailto:info@independentsector.org)  
Web: [www.independentsector.org](http://www.independentsector.org)

Maine Association of Nonprofits  
565 Congress Street, Suite 301  
Portland, ME 04101-3308

Voice (207) 871-1885  
Web: [www.nonprofitmaine.org/advocacy.asp](http://www.nonprofitmaine.org/advocacy.asp)

OMB Watch  
1742 Connecticut Ave, NW  
Washington, DC 20009  
202-234-8494  
Web: [www.ombwatch.org](http://www.ombwatch.org)

### State of Maine Information:

- ▶ State webpage: [www.maine.gov](http://www.maine.gov)
- ▶ Secretary of State: [www.maine.gov/sos](http://www.maine.gov/sos)
- ▶ Maine State Legislature: [www.maine.gov/legis/](http://www.maine.gov/legis/)
- ▶ The Maine Commission on Governmental Ethics and Election Practices
  - Web site for Lobbyist information: <http://www.maine.gov/ethics/lobbyists/index.htm>
  - Lobbyist/Employer Join Registration: <http://www.maine.gov/ethics/lobbyists/registration.htm>
  - Lobbyist Registrar: (207) 287-4179

### Find your elected officials

- ▶ Maine Representatives in the US House & Senate:
  - Representative Chellie Pingree - <http://pingree.house.gov/>
  - Representative Mike Michaud - <http://www.house.gov/michaud/>
  - Senator Susan Collins - <http://collins.senate.gov/>
  - Senator Angus King - <http://king.senate.gov/>
- ▶ Your State Representative: <http://www.maine.gov/legis/house/townlist.htm>
- ▶ Your State Senator: <http://www.maine.gov/legis/senate/>
- ▶ Joint Standing Committee Members: <http://www.maine.gov/legis/house/jtcomlst.htm>

### IRS Tax Exempt and Government Agencies

[www.irs.gov/charities](http://www.irs.gov/charities) or [www.irs.gov/eo](http://www.irs.gov/eo) (exempt organizations)