

“ While many people do not realize it, all charitable nonprofits may freely engage in legislative lobbying as long as that activity amounts to only an ‘insubstantial’ amount of the nonprofit’s activities.” – THE COUNCIL OF NONPROFITS

TO ADVOCATE is to support or argue for a cause or policy.ⁱ Advocacy includes providing nonpartisan education, information, research, and analysis to the public and political officials. According to the IRS, tax-exempt organizations can advocate for or against a particular issue as long as that advocacy furthers its mission.ⁱⁱ

TO LOBBY is to conduct activities aimed at influencing public officials and especially members of a legislative body on legislation.ⁱⁱⁱ Lobbying includes asking an elected official to vote a certain way on a bill. **GRASSROOTS LOBBYING** is encouraging members of the public to contact their elected or appointed officials to ask them to take a certain action.^{iv} According to the IRS, tax-exempt organizations may seek to influence legislation that is mission-related as long as attempting to influence legislation is not a substantial part of its activities.^v

LOBBYING WITH LIMITS: The “Substantial” Test and the “H Election”

According to the IRS, whether an organization’s attempts to influence legislation (lobbying) constitute a “substantial” part of its overall activities is based on one of two tests.^{vi}

- a. The first test is determined based on all of the pertinent facts and circumstances in each case. Generally, **less than five percent of activities and expenditures is considered insubstantial.**
- b. The second test is **based on expenditures only; however, an organization must elect to be covered by this test. See Section 501(h) and Form 5768**, “Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation.”

Filing for the “H Election” — IRS Form 5768

In order for an organization’s lobbying activity to be assessed based on expenditures only, the organization must file [Form 5768](#).

Filing Form 5768 removes the subjective nature of determining if an organization’s lobbying is a “substantial” part of its overall activities.

INFLUENCING ELECTIONS: DON'T DO IT!

What can’t opera organizations do? Influence an election! Do NOT engage in partisan electioneering. Do NOT try to get one candidate elected over another. See *OPERA America’s Advocacy Guide “Get Out the Vote and Voter Education”* for more information on participating in a general election.

FEDERAL GRANTS CANNOT SUPPORT LOBBYING

A friendly reminder that funds from the National Endowment for the Arts, or any other federal agency, cannot be used to cover lobbying expenses or voter registration drives and related activities. It is up to each grant recipient to be informed of their funder’s restrictions, particularly relating to advocacy and lobbying.^{vii}

Can opera organizations advocate for issues and causes?
YES! WITHOUT LIMITS!

Can opera organizations ask officials to vote a specific way on legislation?
YES - WITH LIMITS!

Can opera organizations campaign for specific candidates?
NO!

PERMISSABLE ACTIVITIES, ACCORDING TO THE IRS

- Advocating for or against a particular issue as long as that advocacy furthers its mission.
- Making available the results of nonpartisan analysis, study, or research.
- Providing technical advice or assistance to a governmental body, committee, or subdivision in response to its written request.
- Making appearances before any legislative body or communicating with it regarding a possible decision by the body that might affect the exempt organization.
- Communicating with its members regarding legislation or proposed legislation of direct interest to the members.
- Communicating with a government official or employee who is not connected with a legislative body.
- Conducting nonpartisan activities that educate the public and help them participate in the electoral process. A charity furthers a valid educational purpose when it offers instruction. Such instruction can take various forms, including voter education guides, voter registration and get-out-the-vote drives, and candidate forums.

Source: Exempt Organizations Technical Guide. TG 3-1 Overview, Applications, Exemption Requirements — IRS Section 501(c)(3), <https://www.irs.gov/pub/irs-pdf/p5859.pdf>

PROHIBITED ACTIVITIES, ACCORDING TO THE IRS

- Making or soliciting contributions to or for candidates or political organizations.
- Endorsing a candidate or rating the candidates (no matter how objective such rating may be).
- Publishing or distributing partisan campaign literature or written statements.
- Having its representatives speak out about a candidate.
- Using its resources to influence an election.
- Spending a substantial financial amount to influence legislation. (See previous section on the “substantial” test and “H election.”)

Source: IRS’ Stay Exempt Website: https://www.stayexempt.irs.gov/se/files/downloads/PoliticalCampaigns_Print.pdf

OPERA America’s advocacy guides were developed in 2024 by Amy Fitterer, consultant, with support from The Music Man Foundation.

ⁱ “Advocate,” merriam-webster.com, 2024; <https://www.merriam-webster.com> (29 February 2024).

ⁱⁱ “Issue Advocacy,” irs.gov, 2024; https://www.stayexempt.irs.gov/se/files/downloads/PoliticalCampaigns_Print.pdf.

ⁱⁱⁱ “Lobbying,” merriam-webster.com, 2024; <https://merriam-webster.com> (29 February 2024).

^{iv} “Grassroots Lobbying,” Venable Law Firm LLC, 2013; “Grassroots Lobbying: A Legal Primer.”

^v “Legislative and Lobbying Activity,” irs.gov, 2023; Exempt Organizations Technical Guide 3-1, <https://www.irs.gov/pub/irs-pdf/p5859.pdf>.

^v “Legislative and Lobbying Activity,” irs.gov, 2023; Exempt Organizations Technical Guide 3-1, <https://www.irs.gov/pub/irs-pdf/p5859.pdf>.

^{vi} “What We Do Not Fund,” nea.gov, 2024; <https://www.arts.gov/grants/grants-for-arts-projects/what-we-do-not-fund> (29 February 2024).