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Arizona



# LIMITLESS

2023 ANNUAL CONFERENCE

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We-Ko-Pa Conference Center • Scottsdale, Arizona

[ArizonaLeadingAge.org](http://ArizonaLeadingAge.org)



# NONPROFITS & LOBBYING

## What's Permitted, and What's Not

*But first, of course there's a disclaimer:*

*This presentation is for general information purposes only, and should not be construed as legal advice or a legal opinion regarding any particular facts or circumstances. Please consult with us directly for advice and information concerning fact-specific situations and any specific legal questions you may have.*

COPPERSMITH  
BROCKELMAN  
LAWYERS

**Sam Coppersmith**  
[scoppersmith@cblawyers.com](mailto:scoppersmith@cblawyers.com)

PH. (602) 381-5461

FAX (602) 224-6020

2800 N. Central Ave., Suite 1900

Phoenix, AZ 85004-1241

CBLAWYERS.COM

# ***First, Ask a Rabbi\****

If I am not for myself, who is for me?  
When I am for myself, what am I?  
If not now, when?

– Hillel (circa 70 B.C. - 10 A.D.)

- Second: The usual rule is that if you don't like that rabbi's answer, ask a different rabbi
- Third: \* "Church" is the IRS word for all houses of worship, so a "tax rabbi" must be a universal term, too



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# ***TYPES OF EXEMPT ORGANIZATIONS (EOs)***

## 501(c)(3) Charities

- Charitable, educational, religious, or community benefit organizations
- Tax-exempt\* and tax-deductible
- Limited lobbying activities permitted
- No election activity for or against candidates

\* *As if* any of you could be profitable and taxable?



# ***OTHER KEY TYPE OF EO***

## 501(c)(4)—Public Education & Social Welfare

- Tax-exempt, but not tax-deductible
- Unlimited lobbying
- Can do “secondary” electioneering, but must follow federal and state election laws
- Only option for initiative or referendum committees
- Potential *Citizens United* vehicles
  - Essentially no disclosure, plus anything you can do, they can do 10 or 100X more

# ***CHURCHES & RELIGIOUS ORGANIZATIONS***

- Must meet requirements for 501(c)(3) status
  - Organized and operated exclusively for religious, educational, scientific, or other charitable purposes
  - Net earnings may not inure to benefit any private individual
  - “No substantial part” of activity is influencing legislation
  - Absolutely no intervention in “political campaigns”
  - Purposes and activities are not illegal and do not violate fundamental public policy
- Churches that meet these requirements are automatically exempt, no need to apply to IRS
  - May apply (PFs, donor letters) but aren’t required





LIMITLESS

# ***LOBBYING BY 501(c)(3)s***

- Lobbying is permitted, but must be “no substantial part” of activities
  - Qualitative test—5% OK, but 10% too much (?)
  - Quantitative “Safe harbor”: Election under 501(h)
    - Clear dollar limits & definition of lobbying
    - Must elect by filing Form 5768
    - Churches and auxiliaries cannot make this election, but religious organizations may

# ***QUANTITATIVE “SAFE HARBOR” TEST***

Overall limit under Section 501(h):

- 20% of first \$500,000
- + 15% of next \$500,000
- + 10% of next \$500,000
- + 5% of remaining, subject to overall cap of \$1 million

Plus separate “grassroots lobbying” sub-limit of 25%







# SECTION 501(h) EXAMPLES

- EO with a \$2 million budget:
  - 20% of \$500,000 = \$100,000
  - 15% of \$500,000 = 75,000
  - 10% of \$500,000 = 50,000
  - 5% of \$500,000 = 25,000
- Total permitted \$250,000, with \$62,500 (25%) cap on grassroots lobbying
- EO with > \$17 million probably could exceed \$1 million cap in 501(h), don't elect?
- Tracks expenditures only – volunteers?

# ***POLITICAL CANDIDATE ACTIVITY - PROHIBITED***

- Can't support or oppose "any candidate for public office"
  - Can't favor one candidate over another
  - Can't oppose a candidate in some manner
  - Can't do things that ***have the effect*** of favoring a candidate or group of candidates, says the IRS
- Includes nonpartisan elections (judicial retention voting)
- Initiative or referendum campaigns involve legislation—and thus permissible lobbying





**LIMITLESS**

# ***WHAT IS LOBBYING?***

- Attempting to influence specific legislation
- Includes contacting staff as well as elected officials
- Grassroots lobbying—contacting members of public to urge them to contact legislators (“call to action”)
- Initiative or referendum campaigns (“no candidate, no problem”— but within limits)

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# ***WHAT ISN'T LOBBYING?***

- Nonpartisan analysis, study, or research
  - Full and fair discussion, no direct call to action, no broad dissemination
- Written requests for advice or assistance
- Organizational “self defense”
- Communication to “bona fide” members if no call to action (no grassroots lobbying)
- “Administrative” bodies
  - School & zoning boards, tax districts
- If no money, then no 501(h) accounting



# ***WHAT IS (AND ISN'T) LOBBYING?***

- “Specific legislation” **does not** include:
  - Regulations
  - Executive Orders
  - Enforcement of existing laws
  - Litigation
- “Specific legislation” **does** include:
  - Constitutional amendments
  - Bond measures



# ***DIFFICULT CASES***

- Individual activity by entity leaders
- Issue advocacy vs. campaign intervention
- Inviting officeholder or candidate to speak
- Voter education, registration, and GOTV
- Business activity (leasing space, rental or sale of mailing lists)
- Web sites
- Timing of activity



# ***YOU MUST REMEMBER THIS***

- IRC limits lobbying by EOs to “no substantial part” of activities (or within 501(h) limits, if you aren’t a church)
- But within those limits, lobbying is legitimate, encouraged, and protected



# QUESTIONS?

- For further information: [www.afj.org](http://www.afj.org) or [www.bolderadvocacy.org](http://www.bolderadvocacy.org)

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