



Wisconsin Coalition Against Sexual Assault

**A Guide to Non-Profit
Advocacy in Wisconsin**
Updated February 2017



Disclaimer:

The information contained in this manual is meant to provide general guidelines and is not legal advice. If you are unsure of whether any of your organization's activities constitute lobbying for the purposes of IRS regulations, contact your organization's attorney for legal advice.

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INTRODUCTION

Public policy significantly influences the work we do in the anti-sexual violence movement. It shapes survivor rights laws, funding for survivor services, and how our communities respond to offenders. Unfortunately, many sexual assault service provider (SASP) agencies and their employees are often hesitant to get involved in policy advocacy because they do not fully understand the regulations that apply to nonprofit organizations. As a result, many SASPs unnecessarily limit their policy advocacy activities.

When SASP and victim advocates voices are not heard, the quality of our sexual assault laws and policies suffer. Public policy makers need informed input from victim advocates in order to develop and implement sound sexual assault policies. Often times, SASPs are the most appropriate organizations to educate policy makers on sexual assault related issues. When SASPs get involved with policy advocacy, our communities are provided with laws and policies that treat survivors with dignity and prioritize and value the vital roles played by service providers.

The purpose of this guide is to help educate SASPs and victim advocates about nonprofit advocacy regulations so that they are more comfortable with and willing to get involved in the public policy process. This guide will focus on two specific areas of nonprofit advocacy regulations: federal Internal Revenue Service (IRS) guidelines for lobbying activity by section 501(c)(3) organizations (which most SASPs are) and Wisconsin lobbying and advocacy laws.

This manual will provide guidance in many of the specific areas of policy advocacy about which SASPs have expressed questions or concerns. For example, many agencies are confused about whether they even have the right to lobby policy makers as a 501(c)(3) organization. Other agencies are unsure of how much of their time and resources can be spent on lobbying efforts. Many agencies also want to get involved in electoral politics—such as through voter education or get out the vote efforts—but abstain because they are unfamiliar with the applicable IRS regulations. Some agencies have also been hesitant to lobby their state lawmakers because they are uncertain of Wisconsin’s lobbying laws. This manual will help shed light on these, and other, nonprofit advocacy issues.

This manual is meant to be an overview of nonprofit advocacy regulations. If you have fact-specific questions about advocacy decisions that could affect your agency, you should consult other organizations that provide information and technical assistance about nonprofit advocacy. A list of resources is provided at the end of the manual. In addition, your agency’s governing board and attorney should be consulted before making public policy advocacy decisions.

The information contained in this manual is meant to provide general guidelines and is not legal advice. Please note, laws and regulations about lobbying and political activity are subject to change. If you are unsure about the legal implications of your organization’s activities, contact your organization’s attorney for legal advice.

PART 1: FEDERAL REGULATIONS — 501(C)(3) LAWS ON LOBBYING AND POLITICAL ADVOCACY

LOBBYING

Federal regulations regarding nonprofit advocacy have the most effect on a SASP's ability to engage in lobbying and electoral activities. These regulations allow 501(c)(3) organizations to lobby elected officials, subject to certain restrictions. In fact, nonprofit lobbying is protected by federal law in part because nonprofits make important contributions to public policy debates. SASPs have expert knowledge in the field of sexual assault that should be shared with elected officials so they make informed, survivor-sensitive policies.

Lobbying Defined

What Is Considered Lobbying?

The IRS defines lobbying as attempting to influence legislation.¹ Legislation refers to any of the listed actions taken by the following bodies:

- *Legislative Bodies:* Any action by a legislative body (Congress, any state legislature, any local council, or similar governing body) with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices).
- *General Public:* Action by the general public in a referendum, ballot initiative, constitutional amendment, or similar procedure.

Legislation does *not* include actions by:

- *Executive, Judicial, or Administrative Bodies:* Communications with any of these bodies regarding actions such as administrative rules or regulations are not considered to be lobbying by the IRS.

¹ For more information, see IRS Publication 557, "Tax Exempt Status for Your Organization," page 44. This document can be found here: <http://www.irs.gov/pub/irs-pdf/p557.pdf>.

Examples of Lobbying and Not Lobbying

Lobbying

- Calling your U.S. congresswoman's office while you are working to urge her to vote for renewal of the Violence Against Women Act.
- Asking your state senator, on behalf of your agency, to vote for confirmation of a nominee for Secretary of Health Services.
- Posting flyers asking the public to vote for a crime victim rights amendment to the state constitution.

Not Lobbying

- Contacting the Department of Health Services to request the department require that hospitals provide sexual assault victims with private rooms when being treated in the emergency room.
- Urging the governor to appoint a victim-sensitive district attorney in your county.

What Types of Policy and Advocacy Activities Are Not Lobbying?

The IRS allows 501(c)(3)s that make the 501(h) election to engage in numerous advocacy and policy-related activities that are not considered to be lobbying. The term "attempting to influence" legislation does not include any of the following activities:²

- **Nonpartisan Analysis:** Making available the results of nonpartisan analysis, study or research to the public or to government officials.
 - "Nonpartisan analysis" is analysis of a legislative issue that allows the public to form an independent conclusion about the issue. The analysis cannot include a "call to action" urging recipients to lobby legislators and cannot only be distributed to people interested in only one side of the issue. In addition, the analysis cannot simply be the presentation of unsupported opinions.
 - The analysis must present a fact-based argument in support of the report's conclusions, but it does not require that the report devote equal space to the discussion of alternative points of view. In addition, the analysis can advocate a specific viewpoint and make

² Lobbying activities, see IRS Publication 578, "Tax Information for Private Foundations and Foundation Managers," page 17; IRS Publication 557, page 45; and 26 C.F.R. 56.4911-2.

specific legislative recommendations.

- **Examination and Discussion of Social Issues:** Examining and discussing broad social, economic and similar problems, even if the problems are of the type that governments would be expected to deal with ultimately.
- **Technical Assistance:** Providing advice or assistance to a governmental body, committee or subdivision of that body in response to a written request by that body or subdivision.
- **Self-Defense:** Appearing before, or communicating with, any legislative body about a possible decision of that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization. Lobbying on budget or appropriations items is still considered lobbying. It does not fit the self-defense exclusion, even when those items might end up defunding an organization.³
- **Non-lobbying Communications with Government Employees:** Organizations can communicate with government employees in a manner that does not constitute lobbying. If a communication with a government employee does not attempt to influence legislation, then it is not lobbying.
- **Member Communications:** Communications between an organization and its members about legislation or proposed legislation does not constitute lobbying so long as:
 - The communication is directed only at members
 - The legislation is of direct interest to the organization and its members
 - The communication does not directly encourage the members to attempt to influence the legislation (direct lobbying) AND
 - The communication does not directly encourage the members to urge nonmembers to attempt to influence the legislation (grassroots lobbying).

Important Note: The IRS has two different standards for lobbying restrictions on 501(c)(3) organizations. In general, the amount of lobbying that can be done by an organization that makes what is called a “501(h) election” is set by specific formulas and definitions. The restrictions on organizations that do not make the 501(h) election are much vaguer. The following discussion on what does and does not count as lobbying and the different types of lobbying only applies to organizations that make a 501(h) election. The IRS does not further define lobbying for organizations that do not make the 501(h) election beyond the definition of “attempting to influence legislation.”⁴

³ In regulations, the IRS has included some examples of what qualifies for this exemption and makes clear that budget advocacy does not fit into this exemption. See Treasury Regulations, Section 53.4945-2(d)(3)(ii), Examples 1-4. Per email correspondence with Alliance for Justice / Alliance for Justice Action Campaign.

⁴ See IRS Publication 557, page 45.

“Technical assistance” will usually occur in the context of a legislative committee that specifically asks for your SASP’s expert advice and recommendations on a sexual assault policy issue. Usually if your SASP recommends specific legislative changes to a legislative committee, this is considered direct lobbying. However, if this advice is given in response to a written request from the committee, it is not considered lobbying, even if your advice does not qualify as nonpartisan analysis. Offering opinions or recommendations will ordinarily qualify as technical assistance only if the opinions or recommendations are specifically requested by the governmental body or committee or are directly related to the materials requested.

Technical Assistance Example 1: A state legislative committee is studying the feasibility of legislation that would ensure that victims of sexual assault have the right to have an advocate accompany them throughout the criminal justice process. Your SASP has extensive experience and knowledge in the field of legal advocacy for victims of sexual assault and is asked, in writing, by the committee to describe the challenges victims face when navigating the criminal justice system. Your SASP’s response, which summarizes the difficulties faced by victims within the criminal justice system, is technical assistance and not lobbying.

Technical Assistance Example 2: Assume the same facts given in Example 1, except that your SASP’s response not only includes a description of a victim’s experience navigating through the criminal justice system, but also includes your SASP’s views about whether the state should guarantee victims the right to have an advocate present throughout the criminal justice process. Because these views are directly related to the subject matter of the request for technical assistance, this is considered technical assistance and not lobbying. However, any response that is not directly related to the subject matter of the request for technical advice or assistance would be considered direct lobbying unless the response can qualify as making available nonpartisan analysis.

Two Types of Lobbying

There are two types of activity that the IRS considers to be lobbying for organizations that make the 501(h) election: direct lobbying and grassroots lobbying.

Direct Lobbying

Direct lobbying is any attempt to influence any legislation through communication with any member or staff member of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.⁵ A direct lobbying communication must refer to specific legislation and express a view on it. The IRS and the courts have made it clear that time spent researching, discussing and otherwise preparing for lobbying counts as reportable lobbying.⁶ Direct lobbying includes lobbying contacts with any of the following people to influence legislation:

- *Legislature:* Direct lobbying includes communication with any member or staff member of a legislative body in an attempt to influence legislation.
- *General Public:* A communication that refers to and expresses a view regarding action by the general public on a referendum, ballot initiative, constitutional amendment or similar procedure that is made to members of the general public in the jurisdiction where the vote will occur constitutes direct lobbying.
- *Other Government Employees:* Direct lobbying also includes any communication with a government employee (such as an employee of the executive branch) who may participate in the formulation of legislation.

Grassroots Lobbying⁷

Grassroots lobbying is a communication that attempts to influence specific legislation by encouraging the general public, other than the organization's members, to contact legislators about that legislation. In order to constitute grassroots lobbying, a communication must:

- Refer to specific legislation
- Reflect a view on the legislation AND
- Include a call to action that encourages the recipient to take lobbying action with respect to the legislation.

⁵ See IRS Publication 557, page 44.

⁶ See "When Does Your Activity Become Lobbying? What Your Nonprofit Needs to Know." Bolder Advocacy. Alliance for Justice. 2012. <http://www.bolderadvocacy.org/resource/when-does-your-activity-become-lobbying>.

⁷ See IRS Publication 557, page 44.

Direct Lobbying Example 1: A piece of legislation that provides victims of sexual assault and domestic violence with important housing rights will receive a hearing in a legislative committee tomorrow. The legislator that represents your SASP's legislative district is on the committee that is hearing the bill. As executive director of your SASP, you call your legislator's office on work-time and represent yourself as executive director of your program. You speak with one of the legislator's aides and tell the aide to urge the legislator to vote for the bill. This is an example of direct lobbying because you communicated with a legislative employee in an attempt to influence your legislator's vote on a piece of legislation.

Direct Lobbying Example 2: A ballot referendum to ban gay marriage and civil unions is up for a vote in the upcoming general election. In order for the referendum to pass, a majority of voters must vote in favor of the referendum. Your SASP opposes the referendum and you and your staff distribute leaflets at the local farmer's market on work-time urging voters to oppose the referendum. This is direct lobbying because your agency's employees urged members of the general public to oppose a referendum.

Direct Lobbying Example 3: Your SASP traditionally invites your local legislators to visit your program for a tour and to chat. These visits are a great way for your program to cultivate relationships with your local legislators. You keep the visits informal and do not discuss any legislation. These visits do not constitute direct lobbying because you are not making any attempt to influence legislation during the visit. Communications with your legislators do not necessarily constitute lobbying.

Grassroots Lobbying Example 1: An important piece of legislation that protects victim privacy is up for a vote in the state legislature tomorrow and your SASP wants to encourage members of your community to contact your area legislators to support the bill. You send out a mass email from your work account that states the bill's number, that your SASP strongly supports the bill, and urges the recipients of the email to call their legislators to ask them to vote in favor of the bill. The email goes out to several distribution lists that include hundreds of people who are not members of your SASP. This is an example of grassroots lobbying because it is a communication that urges the general public to lobby their legislators in favor of a specific piece of legislation.

Grassroots Lobbying Example 2: Your SASP's annual report, which is distributed to the general public, mentions that your SASP has engaged in activities to support specific pieces of pending victim rights legislation. The report does not ask the recipients to take lobbying action with their legislator regarding these pieces of legislation. Since the annual report does not include a call to action, it does not constitute grassroots lobbying.

Lobbying Expenditure Limits for 501(c)(3) and 501(h) Electing Organizations

*How Much Money and Time Can My Organization Spend on Lobbying?*⁸

It depends. There are two standards the IRS uses to measure a public charity's compliance with the Internal Revenue Code. Which standard applies to your organization depends on how your organization elects to register with the IRS. The less clear and more restrictive substantial part test applies to nonprofits that use the traditional 501(c)(3) status. Organizations that make a 501(h) election are subject to the clearly defined and more generous "expenditure test."

The 501(c)(3) "Substantial Part Test"

501(c)(3)s may engage in some lobbying activities, but too much lobbying risks loss of tax-exempt status. The substantial part test requires that no substantial part of a nonprofit's activities be "carrying on propaganda or otherwise attempting to influence legislation."⁹ This test is murky because "substantial" is not further defined. Since nonprofits that exceed this standard risk losing their tax-exempt status, many have unnecessarily limited themselves to minimal amounts of lobbying.

What Factors Are Considered in Determining How Much Is a "Substantial Part"?

While there are no clear guidelines for the substantial part test, the IRS determines on the basis of all the pertinent facts and circumstances in each case whether a nonprofit's lobbying activities constitute a substantial part of its overall activities. Direct lobbying and grassroots lobbying are treated equally under this test. Two of the primary factors considered by the IRS include:

- *Time* devoted (by both compensated and volunteer workers) to lobbying activities
- *Expenditures* devoted by the organization to the activity

The expenditure of either substantial time or money can violate the test. Court decisions regarding how much lobbying violates the substantial part test do not provide exact guidance on the matter. Thus, there are no clear guidelines from statutes or the courts about how a "substantial part" should be measured.

⁸ See IRS Publication 557, page 44.

⁹ See IRS Publication 557, pages 44-45; IRS Publication 1828, "Tax Guide for Churches and Religious Organizations" page 6. This document can be found on the internet here: <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

Consequences for Excessive Lobbying Under the Substantial Part Test¹⁰

Worried about the Substantial Parts Test? Think these regulations are unclear? Consider making the 501(h) election. It's easy, fast, safe, and it allows you to retain all other benefits of a 501(c)(3).

A nonprofit that conducts excessive lobbying under this test in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax and other potential penalties. For more information regarding lobbying violations by nonprofits, see the IRS Publication 557, "Tax-Exempt Status for Your Organization," pages 46 and 47 at: <http://www.irs.gov/pub/irs-pdf/p557.pdf>. Due to the unclear guidelines that govern the substantial part test and the relatively harsh penalties for violating it, 501(c)(3)s that wish to engage in more than minimal amounts of lobbying are encouraged to elect for recognition under section 501(h), which provides clear and generous lobbying expenditure limits.

The 501(h) Expenditure Test¹¹

The expenditure test provides clear limits and guidelines for a nonprofit's lobbying activities. This test sets specific dollar limits on the amount that the agency may spend to influence legislation without losing its exempt status or incurring penalty taxes. The limits are calculated as a percentage of the nonprofit's total exempt purpose expenditures. Exempt purpose expenditures are typically the organization's budget minus some fundraising and capital costs. The total lobbying expenditure limits under the 501(h) test are:

- 20% (\$100,000) of the first \$500,000 of exempt purpose expenditures, plus
- 15% (\$75,000) of the next \$500,000 of exempt purpose expenditures, plus
- 10% (\$50,000) of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purpose expenditures up to a total cap of \$1 million
- In real dollar terms, these are quite generous limits. Only organizations with exempt purpose expenditures more than \$17 million will reach the \$1 million cap.

Limit on Grassroots Lobbying

Under the 501(h) election, grassroots lobbying expenditures are limited to 25% of the organization's total lobbying limit as calculated under the formula above. So, for example, if an electing charity has \$500,000 of exempt purpose expenditures, it would be allowed to spend \$25,000 on grassroots lobbying.

¹⁰ See IRS Publication 1828, page 6; IRS Publication 557, page 45.

¹¹ See IRS Publication 557, pages 44-45; IRS Publication 1828, page 6.

Consequences for Excessive Lobbying Activity Under the Expenditure Test¹²

Under the expenditure test, an organization that exceeds their lobbying limits by 50% over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay a tax equal to 25% of the excess.

501(h) Limit Example			
Your organization has a budget of \$1.8 million of exempt purpose expenditures. You make the 501(h) election. Your lobbying limit is \$240,000. You can spend 25% of this sum, or \$60,000, on grassroots lobbying, like mass emailing.			
\$500,000	x 20%	=	\$100,000
\$500,000	x 15%	=	\$ 75,000
\$500,000	x 10%	=	\$ 50,000
\$300,000	x 5%	=	\$ 15,000
+ -----			+ -----
\$1,800,000 (Total budget)			\$ 240,000 (Lobbying limit)
			x 25%
			\$ 60,000 (Grassroots lobbying limit)

Penalties for Exceeding 501(h) Limit	
<u>Violation</u>	<u>Penalty</u>
<ul style="list-style-type: none"> • Exceeding single year limit • Exceeding limit by 50% over a 4 year period 	<ul style="list-style-type: none"> → 25% of the excess money spent → Loss of exempt status for that period

¹² See IRS Publication 1828, page 6.

Why Should My 501(c)(3) Organization Elect 501(h) Status?

Organizations that make the 501(h) election **in no way change their 501(c)(3) status**, except for the fact that they will be governed by clearer and more generous lobbying limits. The following are reasons why organizations should consider making the 501(h) election:

- Higher lobbying expenditure limits and fewer activities that count towards these limits.
- Electing organizations are far less likely to have their tax-exempt status revoked for violating the expenditure test because the IRS can only revoke tax-exempt status from organizations that exceed their lobbying limits by at least 50% averaged over a four year period (a non-electing organization could lose its exemption for a single year's excessive lobbying).
- Making the 501(h) election will not increase your chances of an IRS audit. In fact, the 501(h) election may provide a bit of insurance against an audit.
- There is no limit on lobbying activities that do not require expenditures, such as un-reimbursed activities conducted by bona fide volunteers or other activities that do not cost the organization money (this is not true for non-electing organizations).
- There are clear definitions of various kinds of lobbying communications, which allows electing organizations to know whether they are lobbying or not (there is no authoritative guidance from the IRS on these definitions for non-electing organizations).
- No personal penalty for individual managers of an electing organization that exceeds its lobbying expenditure limits (unlike for those in non-electing organizations).
- Your paperwork may diminish because you will no longer need to track and report volunteer lobbying activities, and with the clear definitions of lobbying activities provided by 501(h), you will be more confident about the expenditures that must be reported.
- The election is easy to make. In addition, the election can be revoked at any time and can be easily reinstated.

How Does My Organization Make the 501(h) Election?

It's easy. All your organization has to do is fill out a simple one page form. The required form is Form 5786, "Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation." The form only asks for your organization's name, address, and first tax year to which it wants the elections to apply. It requires only the signature of an authorized officer, usually the president or treasurer. This form can be found at the IRS website here: <http://www.irs.gov/pub/irs-pdf/f5768.pdf>.

How Do My Grant Restrictions on Lobbying Fit into This?

Some grantors do not allow their grantees to spend money from a particular grant on lobbying activity. The above mentioned guidelines do not take into account any restrictions on lobbying activity that may be conditions of the grants your organization receives. Please review the conditions of your grants closely to ensure that your lobbying activities are in compliance with any restrictions on lobbying contained in your grants.

IMPORTANT: *Make sure to check your grants for any restrictions on lobbying!*

Summary Comparison 501(h) & No 501(h)

	501(h) election	no 501(h) election
How are lobbying expenditure limits determined?	20% of first \$500,000 of “exempt purpose expenditures” and decreasing percentages after that, up to the \$1 million cap	Less than a “substantial” part of activities; IRS employs subjective balancing test; no clear guidelines for determining “substantial”
Do volunteer and other cost-free activities count against lobbying limits?	Do not count against limits on lobbying	Count in determining “substantial”
How is lobbying defined?	Clearly defined, with specific exclusions for invited testimony; nonpartisan analysis, study & research; self-defense, etc.	Not clearly defined, no specific exclusions in statute or regulations
What is the excessive lobbying penalty for my organization?	25% excise tax on excess over limits in any year	5% excise tax on all lobbying expenses if substantial lobbying results in revocation
Is there an excessive lobbying penalty for my organization’s officers / directors?	No specific liability	5% if “substantial” lobbying willfully or unreasonably authorized
What lobbying violation will result in revocation of tax-exempt status?	Lobbying that exceeds 150% of limits generally over 4 years	“Substantial” lobbying in any one year
What information must be included in record keeping?	Must document all lobbying expenses, both grassroots and direct	Most document all lobbying activities <i>and</i> expenses, including volunteer activities
What information is required for tax form 990A?	Only numbers are required: grassroots and overall lobbying expenditures and percentages of “exempt purpose expenditures” that these expenditures comprise	Detailed description of the legislative activities and a classified schedule of the expenses paid or incurred
What are my SASP’s chances of being audited?	No difference, whether electing or non-electing	No difference, whether electing or non-electing

Disclaimer: Any decision to make the 501(h) election should be discussed with and approved by your organization’s governing body or board. If you are still unsure about making the 501(h) election, please contact your organization’s attorney to discuss this option further.

POLITICAL CAMPAIGN AND ELECTORAL ACTIVITY¹³

501(c)(3)s Are Not Allowed to Participate in Political Campaign Intervention on Behalf of or in Opposition to Any Candidate

The IRS prevents all 501(c)(3) organizations from directly or indirectly participating in any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements made by or on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. This prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

What Campaign-Related Activities Can 501(c)(3)s Participate In?

Depending on the facts and circumstances of an individual case, certain activities or expenditures relating to campaign activity may not be prohibited. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a nonpartisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get out the vote drives, do not constitute prohibited political campaign activity, if conducted in a nonpartisan manner.

However, voter education or registration activities are prohibited if the activities contain evidence of bias that:

- Would favor one candidate over another
- Oppose a candidate in some manner OR
- Have the effect of favoring a candidate or group of candidates.

Examples of Permitted Campaign-Related Activities

501(c)(3)s may engage in the following activities, subject to certain restrictions:

Voter Education, Voter Registration and Get Out the Vote Drives:¹⁴ Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a nonpartisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral

¹³ See IRS Publication 1828, page 12.

¹⁴ Ibid.

process through voter registration and get out the vote drives, conducted in a nonpartisan manner. On the other hand, biased voter education or registration activities that favor (or oppose) one or more candidates are prohibited.

Voter Guides:¹⁵ Voter guides are booklets distributed during election campaigns that detail candidate stances on policy issues. These guides may be distributed with the purpose of educating voters; however, they may not be used to attempt to favor or oppose candidates for public elected office. 501(c)(3)s should use caution when creating and distributing voter guides to ensure that they do not constitute prohibited political campaign activity. If the organization's position on one or more issues is set out in the guide so that it can be compared to the candidates' positions, the guide will constitute political campaign intervention. A careful review of the following guidelines may help determine whether an organization's publication or distribution of voter guides constitutes prohibited political campaign activity:

- Whether the candidates' positions are compared to the organization's positions
- Whether the guide includes a broad range of issues that the candidates would address if elected to the office sought
- Whether the description of the issues is neutral
- Whether all candidates for an office are included AND
- Whether the description of candidates' positions are either: the candidates' own words in response to questions, or neutral, unbiased and complete compilation of all candidates' positions.

Engage in Business Activity with a Candidate:¹⁶ The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. If your organization engages in business activity with a candidate, you should make sure that:

- The good, service or facility is available to candidates in the same election on an equal basis
- The good, service, or facility is available to the general public as well as to political candidates
- The fees charged to candidates are at the organization's customary and usual rates AND
- The activity is an ongoing activity of the organization and not conducted only for a particular candidate.

¹⁵ See IRS Publication 1828, pages 12-13.

¹⁶ See IRS Publication 1828, pages 10-11.

Individual Activity by Nonprofit Organization Employees:¹⁷ The political campaign activity prohibition is not intended to restrict the expression of organization employees speaking for themselves, as individuals. However, organization employees cannot make partisan comments in official organization publications or at official organization functions that support or oppose a specific candidate. To avoid potential attribution of their comments when speaking outside of organization functions and publications employees who speak or write in their individual capacities are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization.

Issue Advocacy:¹⁸ 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office
- Whether the statement expresses approval or disapproval for one or more of the candidates' positions and/or actions
- Whether the statement is delivered close in time to the election
- Whether the statement refers to voting or an election
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election AND
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

¹⁷ See IRS Publication 1828, pages 13-14.

¹⁸ See IRS Publication "Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations," FS-2006-17.

*Inviting a Candidate to Speak*¹⁹

Depending on the facts and circumstances, a nonprofit organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates can be invited in their capacity as a candidate, or as an individual (not as a candidate).

Speaking as a Candidate:²⁰ When a nonprofit invites someone to speak as a political candidate, the organization must take steps to ensure that:

- It provides an equal opportunity to the political candidates seeking the same office
- It does not indicate any support of or opposition to the candidate. This should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance AND
- No political fundraising occurs.

Public Forums and Debates:²¹ Sometimes an organization invites several candidates for the same office to speak at a public forum. A public forum involving several candidates for public office may qualify as a permissible educational activity. However, if the forum is operated to show a bias for or against any candidate, then the forum would be a political campaign intervention. When an organization invites several candidates to speak at a forum, it should consider the following factors:

- Whether questions for the candidate are prepared and presented by an independent, nonpartisan panel
- Whether the topics discussed by the candidate cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public
- Whether each candidate is given an equal opportunity to present his or her views on the issues discussed
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization AND
- Whether a moderator comments on the responses or otherwise implies approval or disapproval of the candidates.

Speaking as a Non-Candidate: Nonprofit organizations may invite political candidates to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non-political field; or (c) is a celebrity or has led a distinguished public career. When a candidate is invited to speak at an event in a

¹⁹ See IRS Form 1828, pages 9-12.

²⁰ See IRS Form 1828, pages 9-10.

²¹ See IRS Form 1828, pages 11-12.

non-candidate capacity, it is not necessary for the organization to provide equal access to all political candidates. However, the organization must ensure that:

- The individual speaks only in a non-candidate capacity
- Neither the individual nor any representative of the organization makes any mention of his or her candidacy or the election AND
- No campaign activity occurs in connection with the candidate's attendance.

In addition, the organization should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

What Is an Equal Opportunity to Participate?

In determining whether candidates are given an equal opportunity to participate, an organization should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, a church or religious organization that invites one candidate to speak at its well-attended annual banquet, but invites the opposing candidate to speak at a sparsely-attended general meeting, will likely be found to have violated the political campaign intervention prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Campaign-Related Activity Example 1: Your SASP, a section 501(c)(3) organization that educates the public about rape prevention, prepares and finances a radio advertisement urging an increase in state funding for rape prevention education (RPE), which requires a legislative appropriation. Governor E is the governor of Wisconsin. The radio advertisement is first broadcast on several radio stations in Wisconsin beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by your SASP on the same issue. The advertisement cites numerous statistics indicating that RPE in Wisconsin is underfunded. While the advertisement does not say anything about Governor E's position on funding for RPE, it ends with "Tell Governor E what you think about our underfunded rape prevention education programs." In public appearances and campaign literature, Governor E's opponent has made funding of RPE an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding of RPE. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the Wisconsin Legislature on state funding of RPE. Your SASP has violated the political campaign intervention prohibition because the advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by your SASP on the same issue, is not timed to coincide with a non-election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

Campaign-Related Activity Example 2: Your SASP prepares and finances a newspaper advertisement that is published in local newspapers shortly before an election in which your state senator—Sen. Smith—is a candidate. The advertisement states that SB 24, a pending bill in the state senate, would provide additional opportunities for victim services, but that Sen. Smith has opposed similar measures in the past. The advertisement ends with the statement "Call or write Senator Smith to tell him to vote for SB 24." Victim services funding issues have not been raised as an issue distinguishing Sen. Smith from any opponent. SB 24 is scheduled for a vote in the state senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Sen. Smith's position on the issue as contrary to your SASP's position, this advertisement does not violate IRS regulations. The advertisement does not mention the election or the candidacy of Sen. Smith, victim services funding issues have not been raised as distinguishing Sen. Smith from any opponent, and the timing of the advertisement and the identification of Sen. Smith are directly related to the specifically identified legislation your SASP is supporting and appears immediately before the state senate is scheduled to vote on that particular legislation. The candidate identified, Sen. Smith, is an officeholder who is able to vote on the legislation.

PART 2: WISCONSIN'S LOBBYING AND POLITICAL ACTIVITIES LAWS

In addition to the federal regulations regarding nonprofit advocacy, Wisconsin law also regulates how individuals and organizations can attempt to influence state public policy. Wisconsin's advocacy laws are distinct from the federal regulations discussed above and only apply to efforts aimed at state lawmakers, not your Congressional representatives in D.C. The two most important areas of Wisconsin law on this topic involve regulations regarding lobbying and attempts to influence the outcome of public referenda.

WISCONSIN'S LOBBYING LAWS

Wisconsin state lobbying laws may apply to a SASP's attempts to influence state legislation or state administrative rules. Wisconsin has specific registration requirements for organizations that employ lobbyists and for individual lobbyists. These rules could affect SASPs that choose to contact legislators and administrative agencies in order to influence sexual assault-related policy issues. SASPs and individuals can engage in limited lobbying activity in Wisconsin without having to register as lobbyists with the state. Wisconsin's lobbying regulations are detailed below.

*What Is "Lobbying" in Wisconsin?*²²

Wisconsin law provides a separate definition of lobbying than the definition used by the IRS to regulate 501(c)(3) nonprofits. In Wisconsin, lobbying is defined as attempting to influence legislation or administrative rule-making. Activities that would constitute lobbying include oral or written communications with state elected officials (legislators, the governor, etc.), legislative staff, or appointed government officials to do any of the following: develop or draft, introduce, support, oppose, or amend legislation or an administrative rule. Under Wisconsin law, lobbying also includes time spent in preparation for lobbying communications and appearances at public hearings or meetings or service on the committee in which such preparation or communication occurs.

²² Wis. Stat. §13.62(8) defines lobbying as "the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs."

Lobbying does **not** include:

- Seeking a contract or grant
- Communications with elected or appointed officials that do not attempt to influence legislation or administrative rules (i.e.: educational efforts).

*Do I Have to Register as a Lobbyist?*²³

Wisconsin law requires individuals to register as a licensed lobbyist with the state if the individual lobbying activities meet certain criteria. While the lobbying activities of most SASP employees will not trigger the registration requirements, it is important to keep these registration requirements in mind if your SASP engages in extensive lobbying activities.

You are required to register as a lobbyist if BOTH of the following apply:

- You receive compensation for time spent lobbying AND
- You communicate with state officials on five or more days in a six-month period (January-June or July- December) about legislation or administrative rule-making.

You do not need to be a licensed lobbyist if ANY of the following apply:

- If you are not acting on behalf of anyone but yourself
- If you represent the views of an organization but do so as an unpaid volunteer
- If you represent the views of an organization that pays you, but you only convey those views to the state legislators from the Assembly and Senate districts in which you reside (this means the location of your personal residence, not your SASP's location) OR
- If you represent the views of an organization that pays you and you convey those views to legislators or officials but do so only occasionally, up to four days within the six-month reporting period (January to June or July to December).

²³ See the Wisconsin Elections Commission publication "When Must an Individual Obtain a License to Lobby?" at: <http://ethics.state.wi.us/Forms-Publications/Guidelines/511-licensetolobby.pdf>.

How Much Does It Cost to Register as a Lobbyist?

The lobby license fee is \$250 to lobby on behalf of one organization; \$400 to lobby on behalf of multiple organizations. Lobby licenses become effective when the Ethics Commission receives the completed form and correct fee, and licenses expire December 31 of even-numbered years. Fees may be subject to change. For more information about lobbyist registration, visit the Eye shipped on Lobbying site at: <https://lobbying.wi.gov/Home/Welcome>.

Example 1: An important victim rights bill was introduced in the state Assembly. You want to ensure that the state assemblywoman who represents your SASP's legislative district, Rep. Jones, supports this legislation. Rep. Jones does not represent the district where you reside. You call Rep. Jones' office in Madison on behalf of your SASP, on work-time, on six different days from February to June and leave a message with her legislative aide urging Rep. Jones to support this bill. Because you contacted Rep. Jones' staff on more than four occasions and urged her to support legislation within a six-month reporting period and were paid to do so, you would need to register as a lobbyist with the Ethics Commission. In addition, your SASP would have to register as an organization with the Ethics Commission.

Example 2: Your SASP is very engaged in public policy issues. As executive director, you contact both the state senator (Sen. Davis) and assembly-person (Rep. Jung) that represent your SASP's legislative district on average 10 different days per six-month reporting period. Your residence is also located within your SASP's legislative district, so Sen. Davis and Rep. Jung are your personal legislators, too. You do not have to register with the Ethics Commission because you can have an unlimited number of lobbying contacts with your own legislators.

Example 3: Your SASP is dedicated to educating your area legislators about sexual assault dynamics. Over the past six months, you have met with legislators on five different days on work-time to discuss victim dynamics, offender dynamics, and the services your SASP provides. At no time did you discuss any legislation with the legislators. You do not have to register with the Ethics Commission because you did not attempt to influence any legislation. Strictly educational communications with legislators are unlimited.

Does My SASP Have to Register with the Ethics Commission?

Wisconsin law requires your organization to register with the Wisconsin Ethics Commission if you employ anyone who meets the lobbyist registration requirements listed above. The registration fee for an organization is \$375 plus a \$125 authorization fee for each individual whom your organization will employ as a lobbyist. If your organization's total expenses for lobbying during a calendar year will not exceed \$500, your organization can register as a "limited lobbying principal." The registration fee for such organizations is \$20.

Want More Information About Wisconsin Lobbying Laws?

Wisconsin's lobbying laws expand beyond the scope of this manual. For instance, Wisconsin has strict regulations about how and when lobbyists can contribute to political campaigns. If you would like more information about or have specific questions about Wisconsin's lobbying laws, visit the Wisconsin Ethics Commission at <http://ethics.wi.gov/>. There you will find information sheets regarding lobbying regulations and contact information for technical assistance.

WISCONSIN ELECTORAL LAWS — REFERENDUM ACTIVITY

Wisconsin has extensive campaign finance laws regarding individual and organizational political campaign contributions. Because 501(c)(3) nonprofits are prohibited from contributing to a political candidate's campaign by the IRS, this manual will not discuss Wisconsin's campaign finance laws in depth. If you would like more information about Wisconsin's electoral laws, visit the Wisconsin Elections Commission website at: <http://elections.wi.gov>.

There is one area of campaign activity that the IRS allows 501(c)(3) organizations to be involved in that does trigger Wisconsin campaign finance laws: referenda activity. Remember, IRS regulations consider 501(c)(3) activity that urges the general public to support or oppose referenda or ballot initiatives to be *direct lobbying*. Wisconsin law adds another potential layer of regulations to SASP referenda activity. Under Wisconsin law, SASPs' involvement in referenda activity can trigger certain registration and reporting requirements, as discussed below.

What Is a Referendum?

A referendum is a direct vote in which the entire electorate is asked to either accept or reject a particular proposal. A referendum is placed on the ballot during an election and can change the state constitution, state law, or simply advise the legislature about the sentiment of the public on a particular issue.

Can My SASP Try to Influence the Outcome of a Referendum?

Yes, 501(c)(3) organizations are permitted to urge the public to support or defeat a referendum, so long as they do not exceed the lobbying expenditure limits discussed in Part 1 of this manual. Wisconsin also has laws that regulate how organizations can try to influence the result of state referenda.

What Are Wisconsin's Laws Regarding Referenda?

Wisconsin law requires that organizations or individuals that try to influence the public to support or defeat a referendum must register with the state, county, town or other level at which the referendum is occurring, before making disbursements, receiving contributions or incurring obligations in excess of \$10,000 in a calendar year due to their referendum related efforts. Wisconsin has many other complex requirements concerning referenda. For this and related information, see *Campaign Finance Overview: Referendum Committees* (March 2016), available here:

http://ethics.wi.gov/sites/default/files/general/campaign_finance_overview_referendum_s_2016.pdf.

ADDITIONAL RESOURCES

Bolder Advocacy

- <http://www.bolderadvocacy.org/>
- **Free Technical Assistance**
 - **1-866-NP-LOBBY**
 - http://org2.salsalabs.com/o/6539/p/salsa/web/common/public/signup?signup_page_KEY=8211
- Wisconsin Specific Resources
 - <http://www.bolderadvocacy.org/navigate-the-rules/state-resources?states=Wisconsin#RESOURCES>
- Federal Laws and Other IRS Information
 - <http://www.bolderadvocacy.org/navigate-the-rules/source-materials>

Wisconsin Ethics Commission

- <http://ethics.wi.gov>
- (608) 266-8123

Wisconsin Elections Commission

- <http://elections.wi.gov>
- (608) 266-8005