

# Public Charities Can Lobby

How Your 501(c)(3) Can Influence Policy  
for the Greater Good

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Melissa Marichal Zayas  
Counsel, Bolder Advocacy

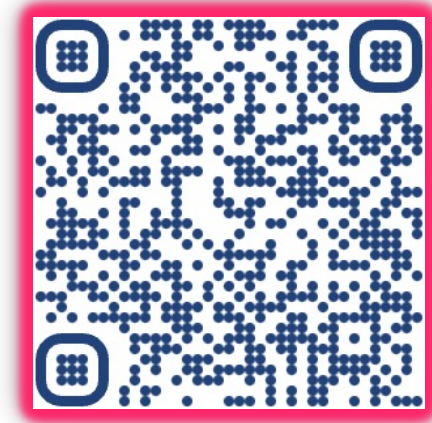


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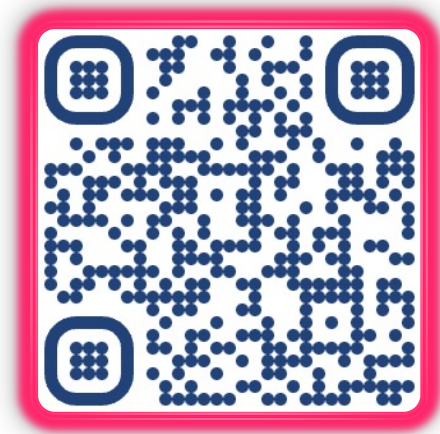


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# Today's Agenda




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- Comparing Tax Exempt Organizations
- Advocacy Activities for 501(c)(3) Public Charities
- Measuring Your Lobbying Limit
- Lobbying Definitions & Exceptions
- Key Takeaways & Resources



# Comparing Tax Exempt Organizations

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	<b>501(c)(3) Public Charities &amp; Community Foundations</b>	<b>501(c)(3) Private Foundations</b>	<b>501(c)(4) Social Welfare Organizations</b>
<b>Examples</b>			
<b>Tax Treatment</b>	Tax-exempt Tax-deductible contributions	Tax-exempt Tax-deductible contributions	Tax-exempt
<b>Lobbying Activities</b>	Limited	Avoid	Unlimited
<b>Electoral Activities</b>	No support/opposition for candidates	No support/opposition for candidates	Limited support/opposition for candidates

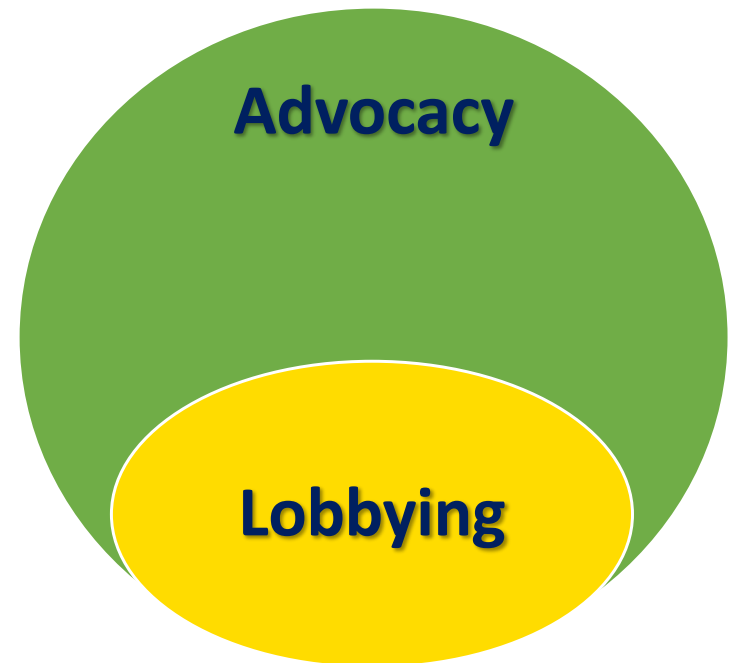
# Advocacy Activities for 501(c)(3) Public Charities

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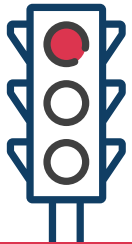
# “Advocacy” vs “Lobbying”

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- **Advocacy** is an activity that aims to create change in policy. It’s a tool used by nonprofits to advance their missions.
- **Lobbying is a specific type** of advocacy designed to influence legislation.



# Advocacy for 501(c)(3) Public Charities



Partisan  
Political



Lobbying  
(Limited)



Organizing

Public  
Education

Nonpartisan  
Voter Ed.

Influencing  
Corporations

Educating  
Legislators

Educational  
Conferences

Lobbying  
Exceptions

Regulatory  
Efforts

Get to Know  
Legislators

Research

Training

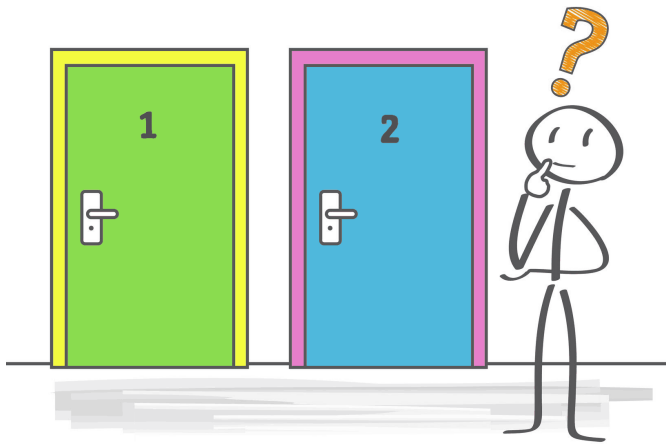
Litigation

# Measuring Your IRS Lobbying Limit

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# How much can your public charity lobby?

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It depends...

Door 1: the **Insubstantial Part Test**

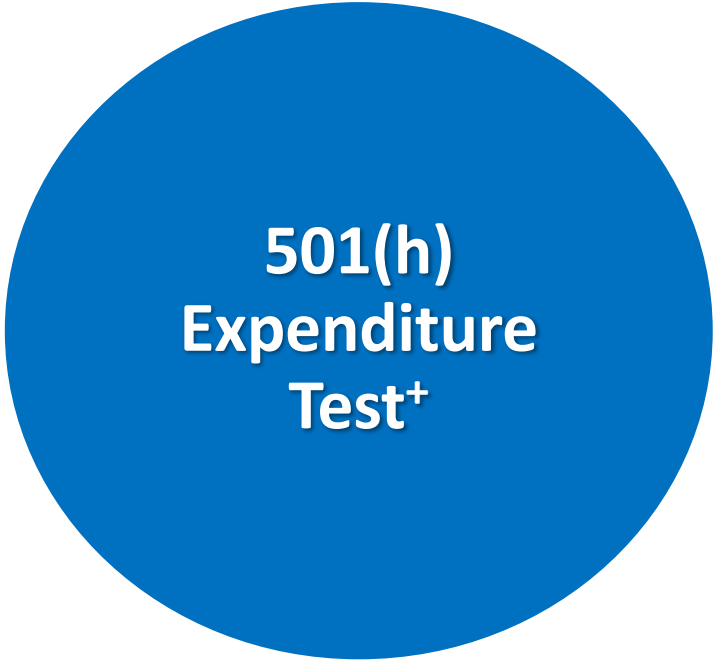
Door 2: the **501(h) Expenditure Test**



# Two Ways to Measure Lobbying:



**Insubstantial  
Part Test**



**501(h)  
Expenditure  
Test<sup>+</sup>**

<sup>+</sup>Not an option for houses of worship

## Insubstantial Part Test

- **Default** for all 501(c)(3) public charities
- Unclear limit: About 3-5% of all activities
- Includes **paid & unpaid** (volunteer) activities
- Unclear lobbying definition
- One-time failure to comply could lead to loss of tax exemption

## Insubstantial Part Test

- **Default** for all 501(c)(3) public charities
- Unclear limit: About 3-5% of all activities
- Includes **paid & unpaid** (volunteer) activities
- Unclear lobbying definition
- One-time failure to comply could lead to loss of tax exemption

## 501(h) Expenditure Test

- **One time election:**  
IRS Form 5768
- Clear, dollar-based limits
- Only includes **expenditures** (volunteer time not counted)
- Clear lobbying definitions
- Revocation of tax exemption only possible if 4-year average exceeds a limit by 50%



# Lobbying Limits Under the 501(h) Test

Annual Exempt Purpose Expenditures	Overall Lobbying Limit
\$500,000 or less	20%
\$500,000 to \$1 million	\$100,000 + 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 + 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 + 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

The **grassroots lobbying limit is 25%** of overall lobbying limit

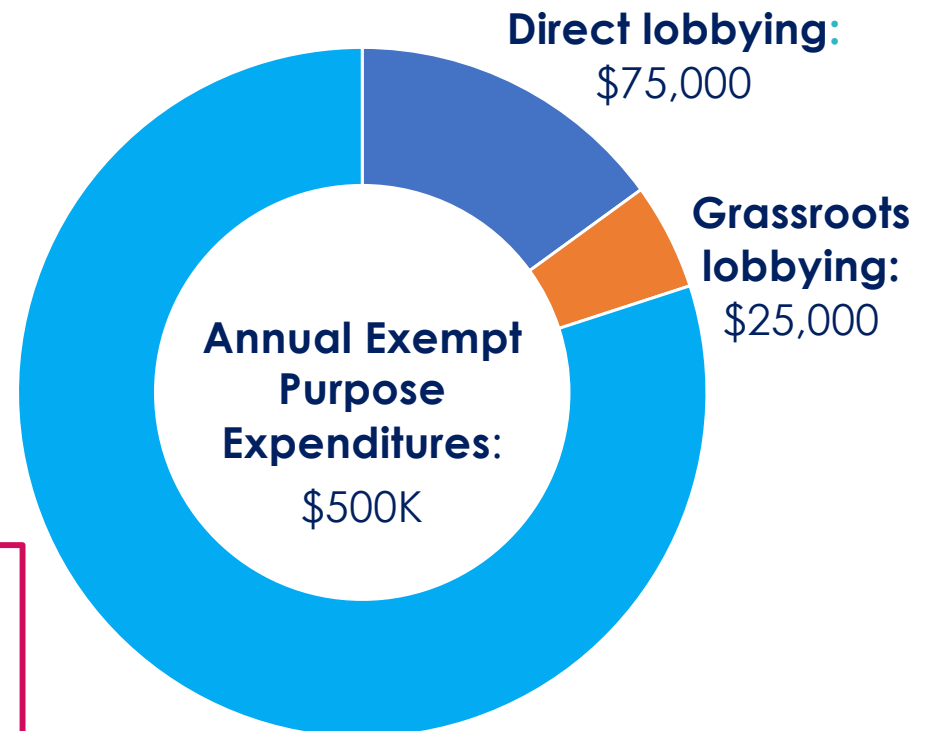
# 501(h) Test Example

501(c)(3) public charity with  
annual exempt purpose  
expenditures of **\$500,000**

Overall Limit: **\$100,000**

Grassroots Limit: **\$25,000**

501(h) Lobbying  
Limits [Calculator](#)

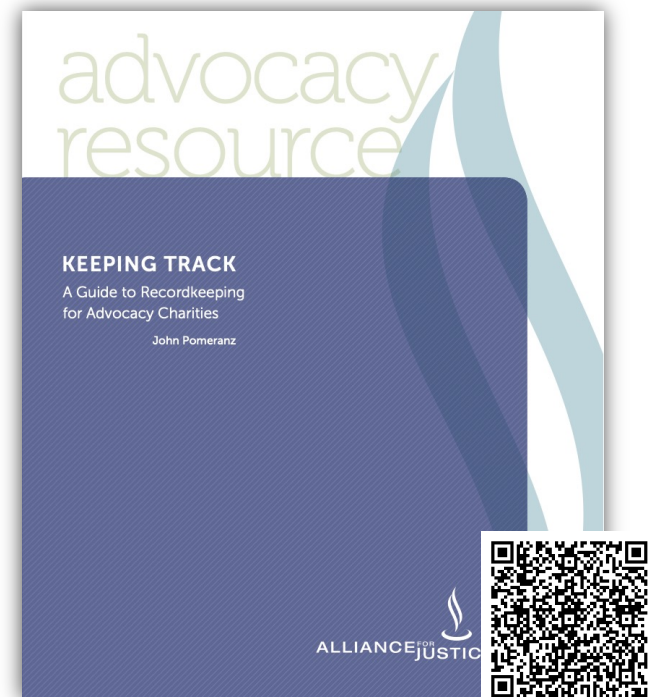


# Lobbying To Dos

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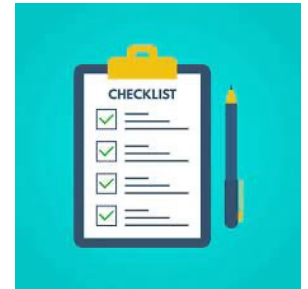
Regardless of which test used, **501(c)(3) public charities have a right to lobby**

- Remember to:
  - Track your lobbying (including prep time) & count against your limits
  - Report lobbying on annual IRS Form 990
  - Use funds that don't prohibit their use for lobbying



# Tracking IRS Lobbying

- Public charities using the Insubstantial Part Test must track & maintain records showing **lobbying activities**
- 501 (h)-electing charities must maintain records showing **direct & grassroots lobbying expenditures**
  - Staff time spent on lobbying & prep (e.g., planning, research, strategy meetings)
  - Direct costs
  - Portion of overhead expenses



# When to Start the Clock?

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- When primary purpose of preparation or research is to engage in lobbying.
  - Preparation for lobbying counts as lobbying
  - May include strategy sessions, drafting legislative proposals, drafting testimony, conversations with coalitions partners, etc.





# IRS Lobbying Definitions

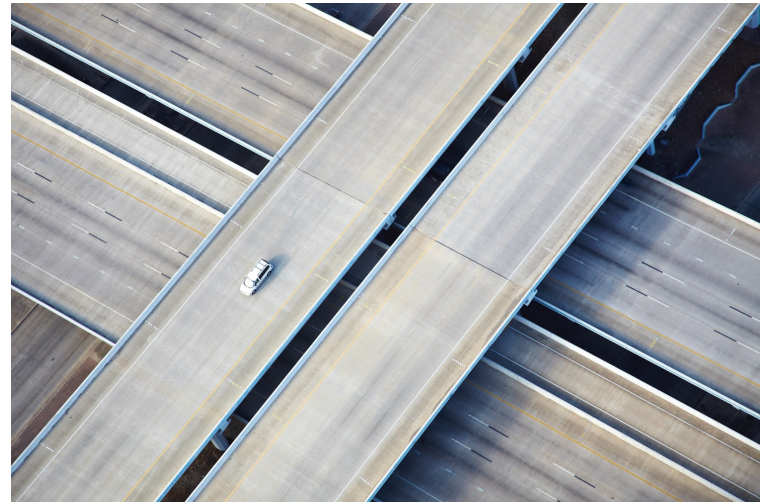
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# Insubstantial Part Test Definition

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**Any advocacy that attempts to influence legislation:**

- Communication to lawmakers to influence legislation
- Encouraging the public to contact lawmakers to influence legislation
- Any other activity that advocates for or against legislation



# 501(h) Expenditure Test Definitions

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Direct  
Lobbying

&

Grassroots  
Lobbying



# 501(h) Expenditure Test Definitions

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## Direct Lobbying

- Communication
- Legislator
- Expresses view about specific legislation

## Grassroots Lobbying

- Communication
- General public
- Expresses view about specific legislation
- Call to action

**Not lobbying if any elements of the definition are missing**

# Communication

## Direct Lobbying

- **Communication**
- Legislator
- Expresses view about specific legislation



# Legislator

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## Direct Lobbying

- Communication
  - **Legislator**
  - Expresses view about specific legislation
- Members of U.S., state, county, city, and tribal legislative bodies & staff
  - Executive branch officials **when participating in formulation of legislation**
  - The public **when voting on ballot measures** (initiatives, referenda, constitutional amendments, etc.)



# Not Legislators:

- School boards
- Planning & zoning commissions
- Water Districts
- Police, sheriff, district attorney, county prosecutors
- Departments of health
- Other government agencies & non-legislative bodies

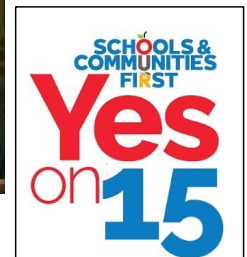
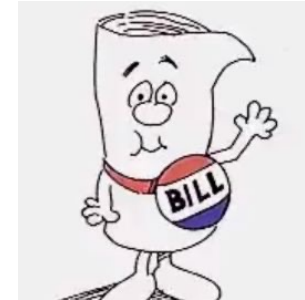


# Specific Legislation

## Direct Lobbying

- Communication
- Legislator
- ***Expresses view about specific legislation***

- Bills & ordinances (officially introduced or just specific idea for legislation)
- Budgets voted on by legislators
- Nominations requiring legislative confirmation
- Ballot measures





# Not Specific Legislation:

- Enforcement of existing laws
  - Regulations
  - Executive orders
  - Court litigation





TEST YOUR  
KNOWLEDGE!

# Is this IRS lobbying?

Speaking at a school board meeting to denounce the board's decision to remove books from school libraries



**NO, not lobbying under either test!**

**Not legislators & not specific legislation**

## Is this IRS lobbying?

Meeting with state legislators  
and asking them to support a  
child tax credit bill

**YES, direct lobbying under  
501(h) expenditure test!**

**YES, lobbying under  
insubstantial part test!**



**Must track & report to IRS!**

## Is this IRS lobbying?

Re-posting this message on organization's social media account:

**YES, direct lobbying under 501(h) expenditure test.**

**YES, lobbying under insubstantial part test.**



**Must track & report to IRS!**

# 501(h) Expenditure Test Definitions

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## Direct Lobbying

- Communication
- Legislating gov't official
- Expresses view about specific legislation

## Grassroots Lobbying

- Communication
- **General public**
- Expresses view about specific legislation
- **Call to action**

**Not lobbying if any elements of the definition are missing**

# Call to Action (four types)

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## Grassroots Lobbying

- Communication
- General public
- Expresses view about specific legislation
- **Call to action**

1. **Asking to contact** a legislator,
2. Providing legislator's **contact info**,
3. Providing **mechanism to contact** legislator, or
4. **Identifying certain legislators**  
(recipient's legislator, undecided/opposed legislator, or legislator on committee voting on legislation)

# Not Calls to Action (on their own):

- “Learn more”
- “Take Action”
- “Support the Act”
- “Get Involved”
- “Join Us”





# Grassroots Lobbying

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## Grassroots Lobbying

- Communication
- General public
- Expresses view about specific legislation
- ~~Call to action~~



If no call to action,  
**not** grassroots lobbying



TEST YOUR  
KNOWLEDGE!

# Is this IRS Lobbying?

Posting this image on organization's website:

**YES, grassroots lobbying under the 501(h) Expenditure Test!**

**YES, lobbying under the Insubstantial Part Test!**

**Must track & report to IRS!**



MONTANA LEGISLATIVE SESSION 2023

**HB 649**

**ACTION ALERT!**

Please contact your House Representative today in support of HB 649 that will grant care providers to be paid a fair wage allowing older adults & people with disabilities to continue living independent lives in their own communities.

CLICK THE LINK IN OUR BIO FOR MORE INFO!

**ABILITY MONTANA**

## Is this IRS Lobbying?

Posting this image on organization's social media account:

**YES, grassroots lobbying under the 501(h) Expenditure Test!**

**YES, lobbying under the Insubstantial Part Test!**

**Must track & report to IRS!**



## Is this IRS Lobbying?

Posting this image on your organization's social media page:

**Under the 501(h) expenditure test, NO!**

**Under the insubstantial part test, YES! Must track and report to IRS if using this test.**



**SHE'LL BE YOUR SERVER  
TONIGHT... AND SHE'S PRETTY  
SURE IT'S CONTAGIOUS.**

Nearly half of all workers in Maine lack paid sick days and are forced to work through their illnesses in order to pay the bills.  
Support LD 1454, the Paid Sick Days Bill.

## Is this IRS Lobbying?

Posting this image on your organization's website:

**NO, under either test!**

**No view on specific  
legislation & no call to action**



# 501(h) Test Exceptions

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Non-partisan analysis, research, or study

Request for Technical Assistance

Self Defense

Discussion of Broad Issues

# Nonpartisan Analysis

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## Must Include

- Full & fair discussion of all sides of issue that allows reader to make independent conclusion
- Broadly disseminated

## May Include

- View on specific legislation

## May Not

- Include “direct” call to action, 1 of first 3 types

## Keep in Mind

- Subsequent grassroots lobbying use is limited





# Request for Technical Assistance

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## Must Include

- Written invitation on behalf of all members
- Testimony must be available to all members

## May

- Express a view on specific legislation



# Self Defense

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## Must Involve

- Legislation that could affect the organization's existence, powers, duties, tax-exempt status, or deductibility of contributions



# Examinations & Discussion of Broad Social, Economic & Similar Problems

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Communications on general topics, e.g., roundtable with legislators

## May Not

- Refer to specific legislation to address these issues or encourage recipients to take action



# IRS Lobbying Limits vs Disclosure Laws

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## IRS Lobbying Limits



**Limits** the amount of lobbying by 501(c)(3)s at any level of government – and requires annual reporting

(What we focused on today!)

## Lobbying Disclosure Laws



Federal, state, or local laws that **may require registration and/or reporting** of certain activities (& often use different lobbying definitions!)

# IRS Lobbying Limits vs Disclosure Laws

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Limits  
501(c)(3)  
lobbying at  
**all** levels of  
government



Federal  
Lobbying  
Disclosure  
Act



State  
disclosure laws

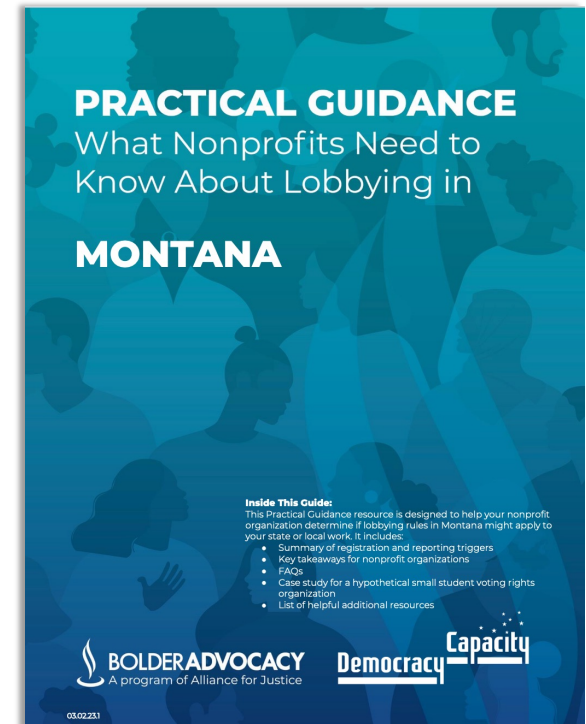


Local  
disclosure  
laws

# Montana Lobbying Disclosure Law

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- Montana may require lobbyist licensing & reporting if certain triggers are met
- Check Out Bolder Advocacy's Montana [Practical Guidance](#) for more info!



# Individual Rights

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- IRS lobbying limits **only apply when you're acting on behalf of your organization**
- When lobbying as an individual:
  - ✓ Do **not** use org's resources (email, copier, staff time, etc.)
  - ✓ Make clear you're not representing org
  - ✓ Keep in mind that state/local disclosure laws may still apply



# Key Takeaways

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Public charities can advocate & lobby!



Most public charities can maximize their lobbying by electing the 501(h) Test.



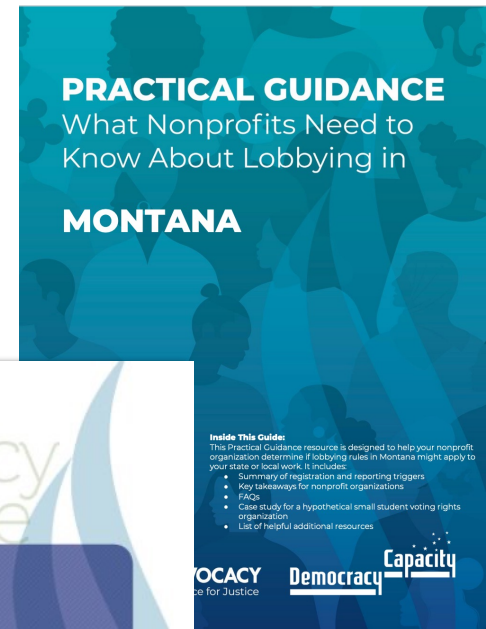
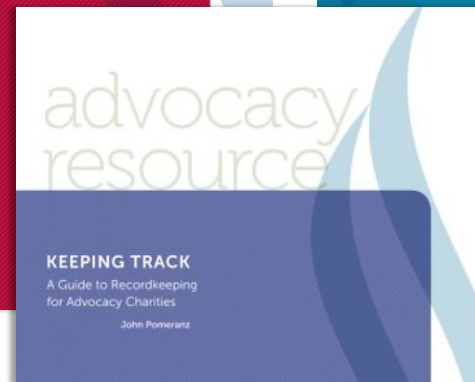
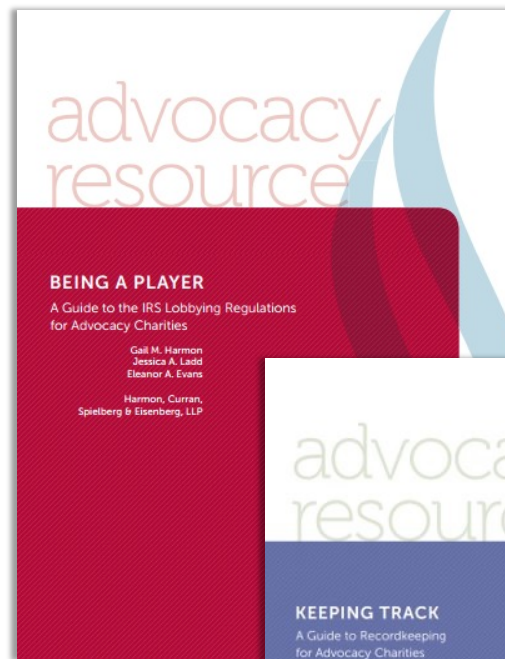
Public charities must stay within lobbying limits & report on 990.

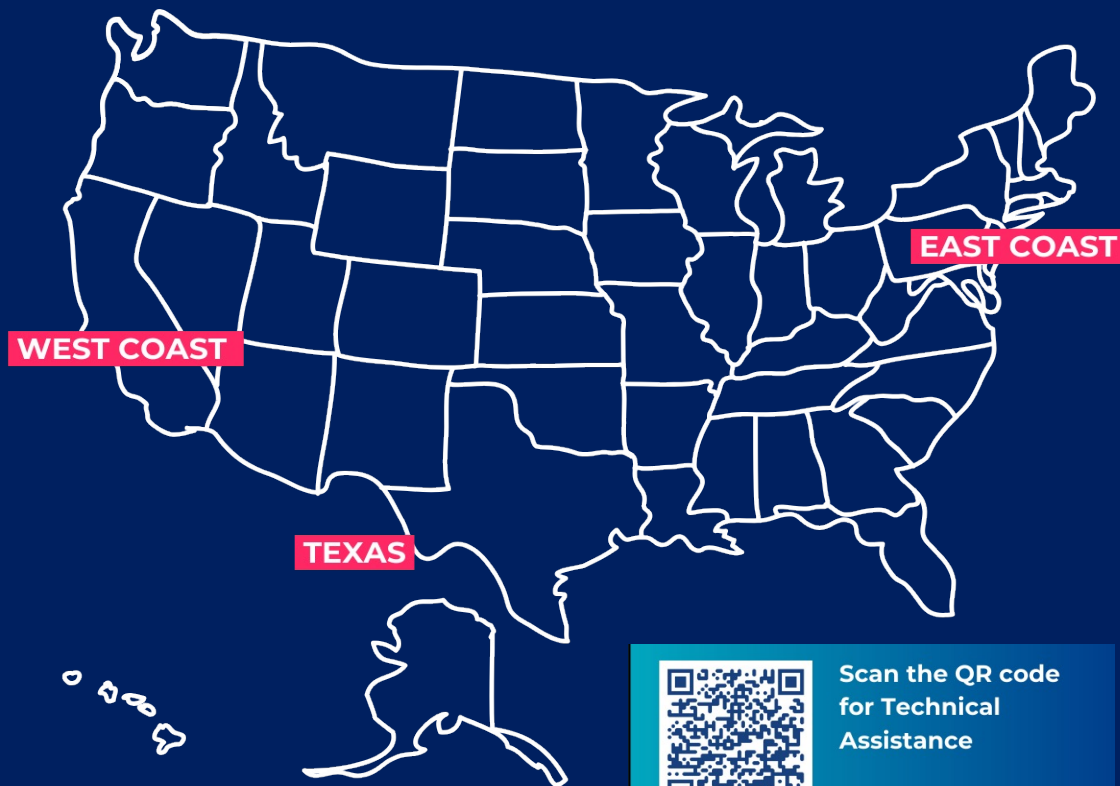


Bolder Advocacy is here to help!



# Resources





Scan the QR code  
for Technical  
Assistance

## CONNECT WITH US



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