

E-Advocacy for Nonprofits:

The Law of Lobbying
and Election Related Activity
on the Net

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Preface

With Internet use on the rise among nonprofits, an increasing number of activists have questions about Internet advocacy and the law:

"Can we post our legislative scorecard on our web site?"

"Is our 501(c)(3) going to get in trouble if people are talking about political candidates on our listserv?"

"How do we report the lobbying expenditures for the legislative action alert we just e-mailed to our members?"

When the Alliance for Justice was launched twenty years ago, the first personal computers were just hitting the market. The web had not yet been invented, and even e-mail was less than ten years old. The Internet was still a government project with its roots in military, not social, uses. The Internet was hardly the type of thing that we could have expected to become an essential tool for advocacy.

How much things have changed! Today I write this on a multi-media computer hooked to the Internet by a high-speed line that lets me watch live video of Congress in session. Activists are using the Internet to organize communities, educate voters, raise funds, build coalitions, and win legislative victories. The ability to acquire and shape information to serve our agenda has never been greater.

And yet the fundamental things haven't changed. Regardless of the new tools we have, the Alliance for Justice, together with our member organizations and partners, still pursues a vision for society based on equal justice. Our publications and workshops are designed to enhance the work of our colleagues who pursue justice - economic justice, environmental justice, criminal justice, racial justice, social justice.

E-Advocacy for Nonprofits answers many of the questions raised by progressive activists about how the laws of nonprofit advocacy apply in cyberspace. It represents the best research and thinking available on how nonprofits can use the Internet for lobbying and electoral advocacy while staying within the law.

While many subtleties exist in the law of Internet advocacy, our analysis suggests that two basic rules can guide nonprofits in many online advocacy situations:

Basic Legal Guidelines

- 1. Treat most communication on the Internet the same as you would any other communication to the general public.** Thus, unless an organization takes steps to make sure that only the organization's members receive the communication, online lobbying by 501(c)(3)s will be grass roots lobbying, and online messages that 501(c)(4)s distribute about a federal election will typically have to avoid "express advocacy" and not be coordinated with any candidate.
- 2. Beware of how the Internet can change the context of your message and create**

unexpected consequences. For example, legislative information that a 501(c)(3) posts on its web site can become lobbying if the site also includes a link to allow users to e-mail their legislators. A message posted on a 501(c)(3) web site during the legislative session that criticizes an incumbent legislator might look more like impermissible electioneering if it is still on the web site when that legislator runs for re-election.

Keeping these guidelines in mind will help clarify the more detailed discussion that follows.



E-Advocacy for Nonprofits attempts to explain the law governing nonprofit advocacy on the Internet, but it does not offer legal advice. While this guide should help nonprofit organizations make basic strategic decisions about Internet advocacy, many of the issues organizations will face turn on a close examination of the particular facts and circumstances in each case. This guide cannot substitute for the assistance of an experienced lawyer.

We have designed *E-Advocacy for Nonprofits* to stand on its own, useful even to those who are not familiar with our other plain-language guides on the law of nonprofit advocacy. Before answering specific questions about activities on the Internet, E-Advocacy sets the context with a brief introduction to Internet advocacy and a summary of the law governing legislative and election-related activity. These summaries help alert those new to this area of law to certain key concepts and refresh the memories of more experienced advocates. At the end of this guide, we have provided a list of our other publications with more details on the law of nonprofit advocacy.

How to Use this Guide

To get an **introduction to the Internet** as a powerful tool for advocates:

Read [Section I](#).

To get a **brief overview of the laws governing lobbying and election-related activity** by nonprofits:

Read [Sections II](#) and [III](#).

To **answer a specific question** about the use of the Internet for advocacy:

Check the [Table of Contents for Section IV](#) to locate a discussion of the issue in [Section IV](#).

To identify important **safe harbors or danger areas**, or to find information specifically about **ballot measure** activities on line:

Look for the appropriate margin icon (see guide below).

To find the **meaning of technical words or phrases**:

Go to the [Glossary](#) at the end of the guide.



Caution

Warning about possible danger area.



Play It Safe

Important techniques for nonprofit advocates to protect themselves and their organization.



Ballot Measure

Point of interest for those working on initiative, referenda, or other ballot measure campaigns.

Because this guide is fairly long and complex, we have tried to make it as accessible as possible. While those who read the guide from cover to cover will find it valuable, we understand that many people will pick up the guide with a specific question in mind, and we have tried to make E-Advocacy useful for those people as well. First of all, people already familiar with the Internet or with the laws governing nonprofit advocacy should feel free to skim or skip Sections I, II, and III of the guide and go directly to the questions and answers about specific Internet advocacy topics in Section IV. People with specific questions should examine the detailed table of contents or the index to go directly to the part of the guide they need. Icons in the margins indicate danger zones or safe harbors or highlight issues specific to ballot measures. Many technical words and phrases with special meanings are defined in the glossary at the end of the guide.

The Alliance will also make the full text of this guide available on our web site at www.afj.org. This will enable us to revise the guide as the law in this area changes - and we expect change in this rapidly evolving area. The web-based version of E-Advocacy will also allow us to link directly between related topics in the guide and to current examples of Internet advocacy.

E-Advocacy for Nonprofits was written by Elizabeth Kingsley and Gail Harmon of the Washington, D.C., law firm of Harmon, Curran, Spielberg & Eisenberg, LLP, and John Pomeranz and Kay Guinane of the Alliance for Justice. The original idea for a guide to the laws governing Internet advocacy by nonprofits was suggested by Rob Stuart of the Rockefeller Family Fund. Special thanks to those who read and commented on earlier drafts of this guide: Minneapolis-based attorney Eve Borenstein; Jeff Chester of the Center for Media Education; Greg Colvin of the San Francisco law firm of Silk, Adler & Colvin; David Desiderato of Northeast Action; Larry Gold, Associate General Counsel for the AFL-CIO; Justin Maxson of the Progressive Technology Project; and Dan Petegorsky of the Western States Center. Thanks are also due to the rest of the staff at the Alliance for Justice who were essential to the completion of this project.

This guide was produced as part of the Alliance's Nonprofit Advocacy Project. The Project provides publications, workshops, and technical assistance to nonprofit organizations in an effort to increase nonprofit involvement in the policymaking process. During the production of this guide, the Nonprofit Advocacy Project received the generous support of the Brainerd Foundation, the Bullitt Foundation, the Nathan Cummings Foundation, the Deer Creek Foundation, the Dorot Foundation, the Ford Foundation, the Wallace Alexander Gerbode Foundation, the Gill Foundation, the Joyce Foundation, the Albert A. List Foundation, the Philanthropic Collaborative Fund, the Public Welfare Foundation, the Rosenberg Foundation,

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*Nan Aron, President
The Alliance for Justice*

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Introduction: Contents

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Introduction

A fundamental change is happening in the way nonprofit organizations engage in grass roots activism, driven by the growth of the Internet. However, while many organizations have recognized the Internet's power and have already begun to use it for organizing and advocacy, the law governing these activities has been slow in expanding to encompass these new techniques for advocacy. This guide tries to fill the gap, offering guidance - in plain language - about how nonprofits can use the Internet to participate in the policymaking process while staying within the law.

A. The Internet and Civic Participation

The Internet is reviving and re-inventing democratic participation in the United States and around the world. Access to the Internet is expanding, giving a voice to many who were previously excluded from the public policy debate either because they lacked the resources to participate or because they were geographically dispersed. The very potential of the Internet to give individuals a worldwide platform to express a view is empowering, giving them confidence to participate in decisions that affect their lives.

The Internet's broad reach, low cost, and powerful ways of presenting information make this possible. The Internet has the potential to reach everyone in the world. The number of households in the United States using the Internet is rapidly expanding.¹ Households that do not have computers or their own Internet access are often connected to civic institutions that do, such as schools, libraries, churches, social service agencies, and grass roots organizations. Federal programs designed to promote universal access contribute to the ever-expanding availability of the Internet in communities, an attempt to address the concern that low-income families and those living in rural areas could be left out.² Yet even now the Internet is helping poor and rural people to organize, overcoming some of the historic barriers to collective action that have faced these communities.³

The Internet is a cost-effective way to send and receive information. Communication costs are frequently high for advocacy organizations, particularly those with a strong grass roots base. The per-message cost of e-mail makes it much cheaper than mail, phone, or fax, and e-mail involves less labor than, for example, canvassing neighborhoods. Organizations can post information on a web page for much less than it would cost to print and distribute it through more traditional means. In addition, an increasing amount of research material and public information are available on the web, putting previously inaccessible information and research into the hands of activists with less effort and at a relatively low cost. Although the

Internet will never supplant other forms of communication, it can substantially reduce the overall cost of sharing information.

The Internet is also a powerful tool for presenting information in a compelling way. The web allows not just text but graphics to help an organization make its point. Detailed information can be nested using links, presenting concise summary information while making more sophisticated arguments available. Interactive databases can be put on line, allowing users to easily extract information that they need. The Internet also allows people to communicate past many prejudices. People of different races, classes, ages, sexes, and sexual orientations can be indistinguishable on the Internet. Certainly, some barriers of this sort still exist - people with limited written English skills and the visually impaired, for example, are at a disadvantage on much of the Internet - but the Internet remains a place in which people are far more willing than much of society to ignore the characteristics of the speaker in evaluating the message.

Of course, the Internet will never replace an essential ingredient for any community-based social change - person-to-person contact. To create change, it remains necessary to talk with people in their neighborhoods, get a mayor's attention with a public protest in front of city hall, and testify at a legislative hearing. The Internet merely offers additional tools - powerful tools - to help with the basic task of organizing community power to make change happen.

Nonetheless, its advantages make the Internet an essential tool and a great opportunity for organizing and advocacy by nonprofits. Nonprofits are using the Internet's power to enhance their legislative advocacy, ballot measure campaigns, voter education, voter participation, electoral advocacy, and more. Nonprofits are also using the Internet to help build their organizations through membership development and fundraising. (Links to examples of some of this activity are available on the Alliance's web site at www.afj.org.)

B. Internet Advocacy and the Law

Nonprofits that want to use the Internet for advocacy need to understand certain legal requirements and regulations. Federal law imposes restrictions on legislative or electoral advocacy for all organizations recognized as tax-exempt under the Internal Revenue Code (IRC). For example, 501(c)(3) organizations are prohibited from supporting or opposing candidates for public office, while 501(c)(4) organizations may endorse candidates, within certain legal constraints. The IRC and the Federal Election Campaign Act (FECA) (or state and local election law, for non-federal elections) set out these rules.

However, neither the Internal Revenue Service (IRS) nor the Federal Election Commission (FEC) has issued much guidance for nonprofits that want to pursue advocacy on the Internet. The trickle of requests for FEC opinions on how the law applied to Internet political advocacy turned into a torrent as the 2000 presidential campaigns began to heat up. Driven by this demand for more information, the FEC issued a broad-ranging request for comments on how it should regulate the Internet, and an astonishing 1200 comments poured in. Many comments (including those filed by the Alliance for Justice) argued for fewer restrictions on Internet advocacy, but it is unknown at this time what direction the FEC will take. The IRS has also indicated that it plans to seek comments on how tax laws apply to Internet activities by tax-exempt organizations, but, as this guide goes to print, the promised

request for comments has not yet materialized. Although these developments promise more guidance eventually, many questions remain unanswered.

This guide applies principles of existing law to Internet activities by tax-exempt organizations. In areas where the IRS or FEC have not given specific guidance, we have tried to extrapolate from analogous situations of non-Internet activities.

It may be that the Internet represents such a fundamental shift in the way people communicate that it is not appropriate to impose mechanically restrictions that were created for other forms of communication. Congress has already decided, for example, that Internet commerce offers such potential to change the way we sell goods and services that there should be a moratorium on state taxation of the activity, unlike other forms of commerce. It may be that the potential of the Internet to re-connect people to the policymaking process deserves even greater protection. The IRS and the FEC - agencies charged with creating and enforcing regulations - are not likely to question the fundamental wisdom of government regulation of advocacy on the Internet. In fact, these agencies may not even be appropriate conveners of such a discussion. However, we believe that this discussion must take place, with ample opportunity for public input, before a body of regulatory law becomes encrusted around Internet advocacy.

The following discussion attempts to suggest what is safe, what is prohibited, and how one can attempt to navigate the territory between those two extremes. The law in this area is so much in flux, however, that some of the information contained in this guide will change or may prove to be wrong. Nonprofits that plan to engage in extensive legislative or electoral advocacy on the Internet are strongly encouraged to get advice from a lawyer. The Alliance will update this guide to reflect new developments. (Watch for updates on our web page at www.afj.org.)

This guide is not intended as a comprehensive discussion of the basic law governing nonprofit advocacy. For more detailed information, consult the series of plain language legal guides that the Alliance for Justice publishes on these topics. (See the complete list at the end of this guide.) Nor does this guide attempt to cover all of the other legal issues that arise from nonprofits' use of the Internet.⁴ (However, we do attempt to identify some of the key concerns in Section IV.E.) Finally, this guide is not a complete discussion of the ways to use the Internet for advocacy. Many excellent sources exist for people who want to learn more about how to use the Internet, and many activists are creating innovative techniques, using those tools to support their work. (An incomplete list of some of these resources is available on the Alliance's web site at www.afj.org.)

While reading the guide, keep in mind the key factors that determine how the IRS and FEC rules affect the organization. These are:

- What type of organization is involved? 501(c)(3), 501(c)(4), Political Action Committee (PAC), or another? Different advocacy rules apply to each.
- Who is the audience? The public, the organization's members, legislators or someone else? Using technological tools to control who has access to e-mail, web, and listserv⁵ messages affects how the rules apply.
- What is the purpose of the communication, in terms of both the organization's intent and the likely result? Is it electoral, legislative, educational, or some other purpose? A

communication may have multiple purposes, which will require the organization to more carefully measure usage and allocate expenses.

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Section I: Internet Tools for Advocates

To understand the relevance of the laws governing nonprofit advocacy to advocacy on the Internet, it is important to know some of the ways an organization can use the Internet to pursue policy goals. This section of the guide describes the most common tools for Internet advocacy - e-mail, listserves, and the web - and the most common ways of using these tools. We will also summarize the ways both to control access to advocacy messages on the Internet and to track usage of each of these Internet tools, which is necessary for organizations that wish to comply with the law.

It is not our intent to teach readers how to use the Internet or how to be effective advocates. We could not fully cover either of these topics in such a limited space. Furthermore, any attempt to do so would be redundant given the number of organizations, web sites, and publications that address these issues. A list of some of these resources is provided on the Alliance's web page at www.afj.org.

A. E-mail

E-mail is still the most common use of the Internet.⁶ With e-mail, an activist can send messages to anyone else who has an Internet e-mail address. Users can send the same message to multiple users simultaneously, and virtually all e-mail software lets users save as one address the e-mail addresses for a group of people to whom they regularly send e-mail. Users can also enclose other computer files with their messages, such as a word-processor document, a graphics file, or a spreadsheet.

E-mail is relatively inexpensive and low-tech, compared to other Internet tools, such as the web. Some people that an organization may want to reach will not have easy access to the web because of the cost of modern, graphics-capable computers that make web access easier. Access to the web is also limited by the speed of Internet connections available to some activists. However, these people may still have access to Internet e-mail through older computers and slower connections. (This situation should improve over the next few years with the greater availability of web-capable computers and better connections.)

E-mail is an efficient way to share information with one or several individuals that an activist has already identified. It allows speedy contact with staff, members, volunteers, partners, experts, reporters, policymakers, and almost anyone else that an activist might need to reach. Activists can e-mail colleagues overseas as easily as they e-mail a neighbor or

a co-worker. Possible uses of e-mail for advocacy include:

- Sending an alert to a select group of activists;
- Sharing plans for a campaign with key partners;
- Contacting a legislative staff member with information on recent developments;
- Collaborating on a draft of a poster, legislative bill, or research report; and
- Sending meeting notices, agendas, and minutes to participants.

Additional uses are limited only by one's creativity.

It is easy to restrict access to e-mail, at least when it is first sent out. Users can simply send e-mail only to the people that they want to receive it. Thus users can, for example, limit communications to members of an organization to avoid grass roots lobbying expenditures or comply with FEC restrictions on federal electoral advocacy.

Similarly, tracking the usage of e-mail for advocacy is simple. Organizations may count the number of messages they send, the number of e-mail addresses that receive messages, or the size of the files. Calculating the amount of lobbying or electoral messages as a percentage of overall e-mail use allows organizations to separate lobbying or electoral expenditures from their overall costs attributable to e-mail use.

B. Listserves

Listserve are basically bulk e-mail. They are lists of e-mail addresses maintained on a computer that distributes messages among a group of recipients. Users transmit messages to the host computer for distribution to everyone on the list. People can "subscribe" to the list, although the owner or moderator of the listserve may restrict the participants or the messages.

Listserve share e-mail's advantages as a lower-tech alternative to the web. However, the mechanics of subscribing to a listserve and posting messages are somewhat more complex, and people who are inexperienced with computers will need to spend some additional time to learn how to use a listserve at first. In addition, the organization that creates the list has additional technical and administrative burdens associated with operating it.

Listserve are most effective for advocacy when communicating with a large group of individuals who share an interest in a common topic or have some other unifying attribute. Unlike e-mail, users do not need to know who these people are in advance since they can create a listserve to which interested people can subscribe. Possible uses of listserve include:

- Sharing information on legislative developments, new research, promising strategies, and emerging threats from around the country or the world;
- Encouraging networking among individuals working on different aspects of the same issue;
- Identifying a community of like-minded people who can be mobilized for further action; and
- Sending an alert to a network to encourage action, such as contacting legislators or attending a rally.

If the list is open to all subscribers, the organization will likely have to treat all

communications on the list as communications to the general public. To the degree that the organization limits subscribers to the list or can identify them as members, the organization may be able to allocate costs of advocacy as member or non-member communications. (See the rules governing lobbying to members (Section [II.A.2.c.4](#)) and electoral communications to members (Section [III.B.2.a](#)) as well as the question concerning grass roots lobbying on listserves (Question [IV.A.14](#)).

Because listserves usually allow subscribers to post their own messages to the list, organizations must also consider the question of when messages posted by others may result in an expenditure by the organization for lobbying or electoral advocacy. For example, a subscriber to the list may post a message that constitutes lobbying or express advocacy for a candidate.



The law is not settled on whether these communications are attributable to the organization that pays the costs of operating the listserv. An organization may be able to protect itself by opening the listserv to opposing views, distributing frequent disclaimers that postings reflect only their authors' positions, or taking other steps to distance the organization from these communications. Of course, the organization may avoid this question by screening messages and not distributing those that include certain forms of advocacy. If an organization creates this type of "moderated" list, however, any lobbying or electoral messages that do appear on it are more likely to be attributed to the organization. (See Sections [IV.A.17](#) and [IV.B.8](#).)

Checklist of Issues for Listserv Managers

- Is the list open to the general public or only members of the organization? This could have consequences for both 501(c)(3)s involved in lobbying and other types of organizations engaged in electoral advocacy. 501(c)(3)s that do not restrict lobbying messages to members must generally count the communications as grass roots lobbying, the most restricted form of lobbying. Other nonprofit organizations can distribute messages that expressly support or oppose a candidate, but they may violate election laws if they send these messages to non-members.
- Must messages to the list be approved by the list manager for posting? This allows the organization to control advocacy communications on the list, but may make the organization responsible for any advocacy that appears on the list. (Controlling messages may also create a risk that the organization could be liable for postings that violate other laws, such as communications that infringe on copyrights or trademarks, or that libel a person. See Question IV.E.1.)
- Do any of the messages on the list include a grass roots "call to action"? If messages on the list encourage readers to contact elected officials to influence legislation, 501(c)(3)s should consider whether some of the cost of creating or operating the list serve must be considered a lobbying expenditure. A call to action can be as blatant as a straightforward plea to call a legislator or as subtle as simply identifying key legislators who will vote on a particular bill. (See Section [II.A.2.c.2](#).)

- Do messages posted to the list concern candidates for public office? If so, 501(c)(3)s should take steps to avoid violating the prohibition on electioneering. Other types of organizations should make sure that they are complying with federal, state, or local election law.



Organizations can track use of the listserv in ways similar to those used to track e-mail. The organization can track the total number of messages posted (by others or itself) or the length of messages posted. Again, costs are allocated by calculating the lobbying or electoral messages as a percentage of overall list traffic. Organizations may also want to archive all messages to the list to be able to document their activities in the unlikely event of an IRS audit or other investigation of their Internet activities.

C. The Web

The web is the most sophisticated Internet tool (so far...). It allows web page creators to embed "links" in a document to related information and organizations, giving users some control over the way information is presented to them. For example, using this "hypertext" function, a web page could let users click on an unfamiliar term in a document, activating a link that takes them to a glossary page on the web site with a definition of the term. The web also allows the use of multiple media. While e-mail and listserves are largely text based, the web permits organizations to present information using graphics, sounds, and animation. Thus, an organization could post a map or a chart instead of being forced to describe the information in text. Finally, the web is interactive. Web pages can be designed to allow users to provide information (such as posting to a web-based chat room) or manipulate information (such as a web-based database from which users can extract information).

The web's point and click format makes it a relatively simple technology to use. Its biggest drawback is expense. Creating a sophisticated web site may require an organization to incur substantial costs for design of the site, equipment dedicated to running it, and staff to update and maintain it. However, a simple site can be created inexpensively with computer equipment the organization may already possess. In accessing the web, there is some advantage to having a relatively expensive connection to the Internet and a more expensive computer with a high-speed processor and graphics capabilities. Low-income activists and those who live in areas with a less developed technological infrastructure will have more limited access to the web, and organizations may have to rely on more traditional methods of communication. However, the price of high-speed Internet connections and computers are dropping, and their availability is increasing, expanding the number and range of people who have access to this powerful communications medium.

The web's strengths as a tool for advocacy lie in its powerful ways of presenting, collecting, sharing, and manipulating information. Uses of the web that take advantage of this capacity include:

- Reports on a particular issue that present the information in a compelling summary form but that also give people the additional details necessary to present a "full and fair" discussion of the issue;
- Graphical displays of a particular problem, such as a map showing sources of

industrial pollution in a state;

- Descriptions of pending legislation that allow people to click on a link and contact their legislators;
- Web-based chat rooms that offer most of the same opportunities as listserves for sharing information and networking around a particular policy issue; and
- Online forms that allow people to join or contribute to an organization.

In general, messages posted on a web page are communications to the general public. It is more difficult to limit access to a web page than to e-mail, but it is possible to limit access to some or all of a web site using passwords or similar techniques. The FEC has ruled that it is not possible to create a "members-only" web site by distributing the URL (the web page's Internet address) only to members of the organization, because the FEC believes that this technique does not sufficiently guarantee a members-only audience.⁷ Whatever technique an organization decides to use to limit access to some or all of its web site, the organization will need to ensure that the restriction stays valid as membership changes.

Technology exists to track web site usage minutely. A web page can be equipped to track the number of times a web site or a particular page on the site is viewed ("hits"). More detailed information can be gathered about the specific pages on the web site a particular user views. This information can be used to calculate the lobbying or electoral expenditures that are part of the sometimes substantial costs of creating and maintaining a sophisticated web site. Organizations may also use less sophisticated techniques, such as calculating the number of pages that include lobbying or electoral advocacy as a percentage of the total number of pages on a site or performing a similar calculation using the size of each computer file that makes up the web site.



Because the content of web sites change so frequently, a nonprofit may wish to have some system for recording the contents of the web site at any given point in time to provide evidence in case the organization's online activities are challenged. For example, it would be useful for a 501(c)(3), in the unlikely event of an IRS audit, to be able to demonstrate the percentage of its web site dedicated to lobbying over the course of an entire year.

Checklist of Issues for Web Masters

- Is access to the web site open to the general public or is there a password-controlled area limited to members of the organization? This could have consequences similar to those described on the Checklist of Issues for Listserve Managers for both 501(c)(3)s involved in lobbying and other types of organizations engaged in electoral advocacy.
- Does the web site include a chat area? If so, many of the same concerns described on the Checklist of Issues for Listserve Managers could be applicable.
- Does the web site include a grass roots "call to action"? If messages on the web site encourage readers to contact elected officials to influence legislation, 501(c)(3)s should consider whether some of the cost of creating or operating the site must be considered a lobbying expenditure, just as with listserves. Possible calls to action include a request for readers to call a

legislator, a link that lets readers send an e-mail to a legislator, or the name of a key opponent of a bill the organization favors. (See Section [II.A.2.c.2.](#))

- Does the web site include any information concerning candidates for public office? As with listserves, this type of information requires that 501(c)(3)s take steps to avoid violating the prohibition on electioneering. Other types of organizations should make sure that they are complying with federal, state, or local election law.

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Section II: Selected Federal Law Governing Lobbying

The Internet provides an effective, low-cost method of getting an organization's lobbying message out. For example, an organization can post material on a web site, provide links to legislators, post model e-mail letters for members to send to legislators, or gather "signatures" on a petition demonstrating support for legislation.

Nonprofit organizations that plan to use the Internet for lobbying must understand the basic

rules governing lobbying in general. A complete discussion is beyond the scope of this guide - readers are urged to consult the Alliance's publication *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*. This section summarizes some of the basic rules and highlights provisions that are particularly important in considering Internet-based lobbying.

In general, any organization that is legally permitted to lobby may do so via the Internet. The rules about what activities are allowed do not change fundamentally in cyberspace. 501(c)(3) organizations face some limits on their lobbying, but 501(c)(3)s can lobby, spending as much as 20 percent of their budget on lobbying. Other types of nonprofits, notably 501(c)(4) organizations, may engage in unlimited lobbying. Political Action Committees (PACs) can lobby as well, but because they are generally subject to tax on their lobbying expenditures, they are a poor choice of organization to conduct such activities. The rules for each of these types of organization are discussed below.

It is important to remember that other laws may affect lobbying by nonprofits. The federal Lobbying Disclosure Act requires reporting of many direct lobbying contacts and expenditures. Further information is available from the Clerk of the House of Representatives clerkweb.house.gov/lrc/pd/lobby/lobby.htm. Most states have similar lobbyist registration and reporting requirements, however each state is different, and coverage of them all is beyond the scope of this guide. Information about state laws governing lobbying is generally available from the secretary of state's office in each state. The federal Lobbying Disclosure Act and similar state laws require



lobbyists to register and report their activities but do not generally restrict the amount of lobbying a nonprofit may do. State (and sometimes local) election laws, on the other hand, may govern advocacy on ballot measures, which federal tax law treats as lobbying, and these laws may impose restrictions on the activities of nonprofits. Information about state election laws is available from the state election commission. Local law information should be available in that jurisdiction. Contact information for the state offices regulating state lobbying and election activity is available on the Alliance for Justice web site at www.afj.org.

A. 501(c)(3) Organizations: Limited Legislative Lobbying

The Internal Revenue Code (IRC) limits the amount of lobbying that can be done by 501(c)(3)s - groups organized for charitable, educational, scientific, or religious purposes. The restrictions do not apply to litigation, attempts to influence agency regulations, or other non-legislative advocacy. Therefore, only activities which constitute legislative lobbying are subject to the restrictions.

The IRS restrictions on legislative work cover many communications to federal, state, and local legislative bodies; their staff; officials in the executive branch when the main purpose of the communication is to influence specific legislation; and certain communications with the general public. The restrictions also apply to public communications concerning a referendum or ballot initiative.

1. The Insubstantial Part Test

Under the IRC, public charities can choose the standard used by the IRS to measure

lobbying activities. If a 501(c)(3) does not select the alternative standard, the IRS will apply the "insubstantial part test."⁸ The insubstantial part test requires that "no substantial part" of a 501(c)(3) organization's activities be "carrying on propaganda or otherwise attempting to influence legislation." Unfortunately, the IRS and courts have not defined exactly how much "substantial" is. Furthermore, unlike the 501(h) expenditure test, described below, the insubstantial part test provides inadequate guidance on what constitutes lobbying. Thus, while many lawyers suggest that five percent of the organization's activities is probably insubstantial, 501(c)(3)s may have to include activities that the 501(h) test excludes, such as legislative information distributed to the public without a "call to action." For most 501(c)(3)s, electing the alternative 501(h) test is a better option, allowing greater certainty and probably increasing the amount of lobbying the organization is permitted to do.⁹

2. The 501(h) Expenditure Test

IRC Section 501(h) offers another standard to measure lobbying.¹⁰ This law provides a much clearer definition of lobbying and easy-to-calculate limits on lobbying based on how much money the organization spends. Activities that do not generate expenses, such as participation of volunteers, do not count toward the limits under this test (but they very well may under the insubstantial part test). Note, however, that churches and some other organizations are not eligible to use the expenditure test.

The relatively low per-message cost of Internet communications is one of many reasons that the 501(h) expenditure test can be advantageous for advocacy organizations. Mass e-mailings can reach large numbers of people quickly and inexpensively and can generate follow-up activity. Web site links to legislators can make it easy for people to respond to calls to action. The relatively low cost of those activities compared to direct mail, mass media advertising, canvassing, and other traditional types of organizing mean that a 501(c)(3) organization can do far more lobbying within its expenditure limits. Under the insubstantial part test, an organization might have to use other ways to measure the extent of advocacy activities - the amount of volunteer activity generated, the public's perception of the organization, etc. - to determine whether it constitutes a "substantial part" of the organization's activities.

a. Electing the 501(h) Test

To take advantage of the clear expenditure-based limits of the 501(h) test, a 501(c)(3) organization must "elect" to do so by filing a simple, one-time, one-page form with the IRS (Form 5768, available from the IRS web site at www.irs.gov). If an organization does not make the election, the IRS will apply the insubstantial part test.

b. Expenditure Limits Under the 501(h) Test

For most 501(c)(3) organizations (those with budgets under \$500,000), the organization can expend as much as 20% of its budget¹¹ on its total "direct" and "grass roots" lobbying. However, it may only spend a quarter of its overall limit (as much as 5% of its budget) on "grass roots" lobbying. As the size of an organization's annual budget increases, the percentage of those expenditures that the organization can spend on lobbying declines (but the limit on grass roots lobbying is always a quarter of the overall limit).

c. Definition of Lobbying Under the 501(h) Test

1. Direct Versus Grass Roots Lobbying

Direct lobbying occurs when a representative of the organization communicates the organization's view on a specific piece of legislation to an official, such as a legislator or council member (or a staff person for such an official). Grass roots lobbying occurs when the organization urges members of the general public to communicate the organization's position on legislation to such officials. Note that only efforts to influence legislative action are considered lobbying under the 501(h) test. Communications about agency rulemaking and other administrative action are not lobbying under federal tax law.

2. Calls to Action

Without this "call to action" - the request to contact a legislator (or other official) about the legislation - a communication is generally not considered grass roots lobbying. The regulations specify that a call to action occurs when the organization either:

- explicitly urges readers to contact a legislator about the legislation;
- provides the address, telephone number, or similar information for a legislator;
- provides a petition, postcard, or similar means for the reader to communicate with a legislator; or
- identifies one or more legislators as being opposed to the organization's position or undecided about the bill, or being a member of the relevant committee or subcommittee that will vote on the bill.

On the Internet, a link on a web page that allows readers to send an e-mail to the chair of a committee considering a piece of legislation discussed on the same web page would meet the call to action requirement and could make portions of the web site grass roots lobbying.¹²

3. Paid Mass Media Advertisements

There is one special rule that requires a 501(c)(3) to treat some public communications as grass roots lobbying even without a call to action. A "paid mass media advertisement" is grass roots lobbying if the advertisement:

- appears within two weeks of a legislative vote on highly publicized legislation,
- reflects a view on the general subject of the legislation, and
- either:
 - refers to the legislation, or
 - encourages the public to communicate with legislators on the general subject of the legislation.¹³

This special rule applies to paid advertisements on "television, radio, billboards, and general circulation newspapers and magazines."¹⁴ It also applies when the 501(c)(3) is itself a mass media publisher or broadcaster. However, a 501(c)(3) need not treat the advertisement as lobbying if it can show that the communication was made without regard to the timing of the vote, such as an advertisement that was part of an ongoing series that happened to coincide with a key vote on the same topic.

4. Lobbying to Members Is Usually Direct Lobbying

A 501(c)(3) can avoid the tighter limits on grass roots lobbying by taking advantage of special rules governing communications to members. An organization's members are treated as a part of the organization, so urging them to contact public officials about legislation is

considered direct, not grass roots, lobbying. (Communications to members that ask them to urge the general public to contact legislators in support of the organization's legislative position would still be grass roots lobbying.)



The IRC defines a member of a 501(c)(3) as a person who contributes more than a "nominal" amount of money or time to an organization, such as paying dues, making other contributions, or volunteering to work for the organization. (Note that the IRC's definition of member is different from the definition of member under the FECA, which has different implications for 501(c)(4)s and other non-501(c)(3) organizations that engage in partisan political activity. See Section [III.B.2.a](#) for a discussion of this different definition of "member.")

5. *Work on Ballot Measures Is Direct Lobbying*



The IRS also considers efforts to influence the public's position on ballot measures - an initiative, referendum, or similar question presented to voters on a ballot - to be lobbying. The rationale is that the voters acting on ballot measures are equivalent to legislators acting on proposed legislation. Under the same



rationale, attempts to influence the general public's position on ballot measures are considered direct, not grass roots, lobbying. 501(c)(3)s should be aware that election laws in their state and locality may apply to their activities related to ballot measures even though federal law characterizes this as a lobbying activity. A discussion of state and local election law is beyond the scope of this guide, and 501(c)(3)s that plan to get involved with ballot measure work are urged to contact a local attorney skilled in this area.

6. *Nonpartisan Analysis, Study, or Research*

There are some specific exceptions for some activities that otherwise might appear to fit the definition of lobbying under the 501(h) expenditure test.¹⁵ For example, it is not lobbying to prepare and widely distribute a "nonpartisan analysis" that fully discusses a legislative proposal, even if the analysis comes to a conclusion on the merits of that proposal, as long as it does not include one of the first three types of grass roots calls to action listed above. (It is permissible to merely identify key legislators who will vote on the bill.) This exception is particularly valuable for Internet advocacy because the Internet makes it easy to disseminate a substantial report to a large audience at low cost. In addition, the web makes it possible to present a detailed report in an accessible, summary format while still providing a full and fair exposition of the facts sufficient to enable readers to form their own opinion.

7. *Subsequent Use for Grass Roots Lobbying*

The law also carves out an exception for advocacy materials about specific legislation that do not originally encourage grass roots lobbying but that are subsequently used for this purpose. The so-called "subsequent use" rule states that the cost of creating the original material will not be treated as a lobbying expenditure if the 501(c)(3) can show that lobbying was not the primary purpose for which it was created. One certain way to demonstrate this is for the 501(c)(3) to make a "substantial" non-lobbying distribution of the material. Also under the subsequent use rule, the cost of materials produced at least six months before their use in grass roots lobbying will not be considered a lobbying expenditure.

8. *Other Exceptions*

There are other exceptions to the definition of lobbying, not as directly relevant to Internet advocacy, but still important. It is not lobbying if an organization testifies or provides assistance in response to a written request from a legislative body. Nor is it lobbying when a 501(c)(3) advocates on a legislative proposal that affects the organization's rights or existence. Finally, a 501(c)(3) is free to discuss issues of broad social importance (as opposed to specific legislation) without counting the cost as a lobbying expenditure.

d. Advantages of the Expenditure Test

The primary advantage of the 501(h) expenditure test is that if an activity does not cost the organization any money - for example, the volunteer activities of the organization's members - there is no restriction on the activity. Limiting expenditures can vastly increase the amount of lobbying the organization can do, even when the 501(c)(3) bears some cost, such as the cost of paid staff to supervise volunteers. The low cost of Internet communications can maximize the impact of money a 501(c)(3) spends on lobbying.

Other advantages of the 501(h) test include the clear definitions of various kinds of lobbying communications, enabling electing 501(c)(3)s to control whether or not they are lobbying. For example, 501(c)(3)s may engage in unlimited advocacy before administrative agencies and may prepare nonpartisan analyses of issues without counting the cost against their lobbying limits.¹⁶ In addition, the 501(h) test arguably allows 501(c)(3)s to do more lobbying than under the insubstantial part test. Electing the 501(h) test also reduces the ability of the IRS to revoke a 501(c)(3)'s tax exemption for violating its lobbying limits because it provides alternative, less extreme penalties for minor infractions.

3. Tracking, Allocating, and Reporting Lobbying Activities

Whichever test it chooses, a 501(c)(3) organization is required to track its lobbying activities. Under the 501(h) test, the organization must track its total expenditures on direct and grass roots lobbying. Under the insubstantial part test, the organization must track not only the cost of its lobbying but also provide a narrative report of its lobbying activities. In addition, federal law and the law in most states requires lobbyists to report their



lobbying expenditures. (Note that the federal Lobbying Disclosure Act and most state lobbyist reporting laws have different definitions of lobbying than the definition in the federal tax code. Organizations must learn which rules apply to them and comply with them.) For all of these reasons, the organization will need a system to track and report its lobbying expenditures.

The lobbying expenditures a 501(c)(3) must track include salaries for staff time spent lobbying (such as the time spent drafting an action alert for the organization's web page), costs specific to certain lobbying activities (such as bus fare for a trip to the state capital), and a portion of overhead costs (such as the rent on the organization's offices). Staff time should be tracked using time sheets to identify the time spent on direct and grass roots lobbying. Direct costs can be allocated on an item-by-item basis. To allocate the amount of overhead costs spent on lobbying, calculate a percentage of the overall costs based on the percentage of staff time spent lobbying.

Example

If the program staff of the organization spent 3% of its time doing direct lobbying over the course of the year, an organization would count 3% of the rent it paid in that year as a direct lobbying expenditure.¹⁷

For organizations electing the 501(h) expenditure test, there are rules for allocating lobbying costs for communications, like many web sites, that include both lobbying and non-lobbying messages or that include both grass roots and direct lobbying messages.¹⁸ (There are no equivalent rules for organizations using the insubstantial part test.) The allocation will vary depending on who receives the communication and what it says.

To apply the rules, a 501(c)(3) will need to know the approximate percentage of its members in the audience for the communication. For Internet advocacy, this means that the organization will need to understand the ways to control access to the messages it sends using the e-mail, listserves, and the web, as discussed in the first Section of this guide.

501(c)(3)s will also need some way to divide each communication into parts to determine what parts are and are not lobbying. For Internet advocacy, this will require the organization to know how to measure the size or usage of different parts of its Internet communications, such as measuring message size or counting web pages, as discussed in the first Section of this guide.

When calculating the percentage of lobbying in a communication that includes both lobbying and non-lobbying messages, targeting communications primarily toward the organization's members can substantially decrease lobbying expenditures. In these communications, 501(c)(3)s should apply the basic definition of lobbying to make a reasonable allocation between lobbying and non-lobbying.

Example

Only one sixth of the cost of a six page newsletter that included a one-page action alert on a pending welfare-reform bill would count as lobbying if the newsletter were sent to members of the organization. (However, it would be unreasonable to calculate the cost of only the single column inch of text that includes the call to action as a lobbying expenditure.)

In communications directed mostly or entirely to non-members, 501(c)(3)s should count as lobbying not only the portion of the communication that meets the definition of lobbying but also all other parts of the communication on the same subject.

Example

If the newsletter in the example above were sent primarily to the general public and the newsletter also included a one-page article on the impact of welfare reform, one third of the newsletter - the action alert and the article - would count as lobbying.

When calculating the percentages of grass roots and direct lobbying in a communication that

includes both, targeting members is again to a 501(c)(3)'s advantage. The rule that members are part of the organization for purposes of lobbying communications allows a 501(c)(3) to treat more of the communication as direct rather than grass roots lobbying:

Communications that the 501(c)(3) directs...		
Mostly or entirely to non-members	Mostly (>50%) to members	Entirely to members
Generally, all lobbying is grass roots.	Can apportion costs for communication that encourages direct lobbying based on percentage of members and nonmembers receiving the communication.	Generally, direct, unless call to action encourages members to activate general public.

B. 501(c)(4) Organizations: Unrestricted Lobbying

Groups classified by the IRS under Section 501(c)(4) - "civic," "action," or "social welfare" organizations, such as the Sierra Club and the League of Women Voters - have no limit on the amount of lobbying they can do, as long as it is related to the purpose of the organization. This includes 501(c)(4)s that are wholly controlled by 501(c)(3) organizations. As a result, 501(c)(4) groups can make extensive use of the Internet for lobbying purposes without federal tax reporting requirements that require them to track costs or distinguish between grass roots and direct lobbying. 501(c)(4)s may nonetheless have to track and report lobbying activities under the federal Lobbying Disclosure Act or similar state laws.

C. PACs: Lobbying Is Usually Taxable

Although political organizations such as PACs are allowed to engage in any of the activities allowable for 501(c)(3) or 501(c)(4)s, PACs are taxed on any expenditures they make for activities other than "exempt functions." An "exempt function" for a PAC is an activity designed to influence a candidate election. Unless lobbying communications are carefully planned to influence the outcome of an election, lobbying is generally not an exempt function, so PACs that lobby may be subject to tax on the associated costs.¹⁹



Although using PAC money to lobby is not prohibited, if not conducted carefully it can lead to serious negative consequences in addition to the potential tax on all activities not designed to influence a candidate election. In particular, PACs risk their tax-exempt status if these activities are funded out of the same bank account as the PAC's electoral, exempt functions.

Organizations seeking to lobby with PAC money should seek legal advice.

D. Funder-Based Restrictions on Lobbying

In addition to restrictions on lobbying based on the tax status of the organization, nonprofits frequently face additional restrictions on lobbying imposed by funders. To the degree that

nonprofits face such restrictions, it is important that they take steps to ensure that restricted funds are not used to support Internet lobbying.

1. Government Funding



The federal government and most (if not all) state governments prohibit recipients of public funds from using those funds for lobbying. Note that the definition of lobbying frequently varies from the IRS definition. Under federal law, federal funds may not be used to support lobbying either directly or indirectly. Thus, if a nonprofit organization that receives federal funds occasionally uses its Internet access to lobby, it must be certain that at least some of the cost of that access is paid by non-federal funds.

2. Foundation Funding

Private foundations face some legal restrictions on funding lobbying, and many impose additional restrictions on their grantees. Federal law prohibits private foundations from "earmarking" funds for lobbying, but foundations may fund organizations that lobby, and the law provides certain safe harbors to protect foundations that do.

Many foundations, however, go beyond the requirements of the law and insert language into their grant agreements that forbids their grantees from using foundation funds for lobbying. An organization that has such restrictive language in its grant agreements must not spend these funds to support lobbying, whether on the Internet or through more traditional means.

For more information about the rules governing foundations and lobbying, see the Alliance for Justice publication *Myth v. Fact: Foundation Support of Advocacy*.

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Section III: Selected Federal Law Governing Election-Related Advocacy

Election season presents many opportunities for nonprofits to put their message before the public at a time when attention is most focused on public policy. Depending on their category of tax-exempt status, groups may engage in everything from nonpartisan get-out-the-vote (GOTV) efforts to candidate endorsements and other support.

This section summarizes some of the basic rules and highlights provisions that are particularly important in considering Internet-based electoral activity. Readers who would like a more complete discussion of the rules governing election-related activities by nonprofits are urged to consult the Alliance's publications *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations* and *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and PACs*.

As with lobbying, the general legal rules that apply to an organization's electoral advocacy communications and activities will likely carry over into Internet-based activity. Federal,

state, and sometimes local laws govern electoral activity. 501(c)(3)s are regulated primarily by the IRC, which restricts them to nonpartisan educational activities, forbidding intervention for or against candidates. 501(c)(4)s have more latitude under the IRC, but their federal election activities must comply with the Federal Election Campaign Act (FECA), which restricts corporate activity in federal elections.²⁰ Unlike 501(c)(4)s, the FECA allows PACs to directly support federal candidates, but they must comply with federal campaign contribution limits and may face fundraising restrictions.

In state and local elections, state and local laws govern electoral activity for nonprofits and may offer more opportunities for electoral advocacy by 501(c)(4)s and PACs. For example, some states allow corporations, including 501(c)(4)s, to contribute to



candidates. State and local election law is largely irrelevant to 501(c)(3)s because, even at the state and local level, federal tax law prohibits 501(c)(3)s from engaging in partisan political activity. However, 501(c)(3)s should be aware that state and local election law may govern the organization's advocacy on ballot measures, an activity that federal law treats as

permissible 501(c)(3) lobbying. As with state lobbying laws, coverage of state and local election law is beyond the scope of this guide, but information is available from each state's election commission and local governments. Contact information for state election offices is available on the Alliance for Justice web site .

A. 501(c)(3) Organizations: Nonpartisan Electoral Activities

501(c)(3)s can conduct voter education activities and promote participation in the electoral process as long as they do so in a nonpartisan manner. Both the substance and form of these activities must be strictly educational. 501(c)(3)s are forbidden from promoting



or opposing the election of any candidate to public office, either expressly or by implication. Nor may 501(c)(3)s support or oppose political parties.²¹ The rule applies to all candidates and parties in federal, state, and local elections.

The IRS uses a very broad definition of "candidate." People may be considered candidates even if they have not taken any action to put themselves into the race but other people have formed a draft committee or otherwise support their candidacy. The sanctions for violation of the prohibition on partisan activities are severe, ranging from revocation of exempt status to fines on the organization, individual managers, and board members who knowingly allow the activity to take place.

In spite of this, a broad range of educational, nonpartisan electoral activities remain available to 501(c)(3)s, such as voter registration drives, GOTV activity, candidate forums, and candidate questionnaires. Groups need to make sure these activities are conducted in a nonpartisan manner. It is essential to avoid the



appearance of endorsing or opposing any candidate when the activity is considered in light of all the facts and circumstances. At a minimum there should be no formal or informal coordination of activity between the group, a candidate, political party, or PAC. In addition, all educational literature should have disclaimers stating that the group is nonpartisan and that the publication does not reflect the endorsement of any candidate or party.

The application of these rules is very context specific. Unlike the clear lobbying guidelines provided by the Section 501(h) expenditure test, the IRS has issued very little specific guidance on electoral activity by 501(c)(3)s. Instead, the permissibility of electoral activities by 501(c)(3)s depends on the facts and circumstances surrounding those activities. For example, an advertisement promoting the group's stance on childhood immunization would ordinarily be appropriate, but it may be considered impermissible electioneering if the ad runs during a contentious gubernatorial race in which funding for children's health is a key issue.

Within these general guidelines, 501(c)(3)s have successfully pursued many activities to inform and empower voters in an election year. Many of these election-related activities - policy advocacy, voter guides, voting records, and more - are finding renewed success when coupled with the power of the Internet to distribute information.

1. Policy Advocacy

Elections are an excellent opportunity for 501(c)(3)s to educate the public on important issues because the public is more likely to focus on policy concerns during an election season. 501(c)(3)s must be certain, however, that their policy advocacy does not appear to be intervention that supports or opposes candidates for office. For example, a newspaper advertisement about the need for more shelters for the homeless may constitute an impermissible campaign intervention in a town where housing concerns are the key issues of a heated mayoral campaign. The advocacy should likewise not refer to candidates using "code words" such as "conservative," "liberal," "pro-choice," or "green," which can be seen as labels by which voters can identify the organization's favored candidates. An organization with a history of advocacy around the issues is in a better position to demonstrate that its election-year advocacy is part of its ongoing activities and not an attempt to influence voters' support for particular candidates.

2. Candidate Questionnaires and Voter Guides

501(c)(3)s can produce nonpartisan voter guides to educate the public on the candidates' positions on the issues based on the candidates' responses to a questionnaire. (Candidate questionnaires that are based on the candidates' publicly stated positions or press reports may also be permissible, but the IRS has not specifically approved such voter guides.)

Questionnaires must be distributed to all candidates, address a broad range of topics, and be written to avoid suggesting the organization's position on the issue. The format of the guide should not give one candidate prominence or otherwise create an appearance that one or more candidates is acceptable or unacceptable to the organization.²²

3. Legislative Voting Records

501(c)(3)s may publish legislative voting records or legislative scorecards as an educational or lobbying activity if there is no appearance of endorsement or opposition to candidates based on evaluation of their past voting records. Release of the voting record or scorecard must not be deliberately timed to coincide with the election and is frequently done soon after the legislative session ends. The 501(c)(3) must publish the records for all legislators (or all representing the organization's region) and must not indicate which ones are up for reelection.

The IRS has issued only two rulings that describe permissible voting records. The IRS has

stated that a 501(c)(3) may prepare records that cover votes on a broad range of issues and distribute them to the general public. Release of this voting record may not be deliberately timed to coincide with an election.²³

The IRS has also approved a regularly published legislative scorecard that focused on a narrower range of issues and that indicated whether the 501(c)(3) agreed with the position each legislator took. In the case of this scorecard, the 501(c)(3) distributed it via its newsletter to its regular mailing list, comprised mostly of the organization's members.²⁴

It is likely that a 501(c)(3) could post the first type of voting



record - covering a broad range of issues - on its web site. However, because most web pages are available to the general public, the IRS could well challenge a 501(c)(3) that posted a more narrowly focused legislative scorecard for public distribution on the web.

4. Candidate Debates and Forums

501(c)(3) organizations can sponsor or conduct candidate debates or forums as long as all candidates are treated in a fair and impartial manner. All candidates (or perhaps all viable candidates²⁵) must be invited, and the location for the forum must be based on non-political considerations. The event or events must cover a broad range of issues and the format should include elements to insure its impartiality, such as a neutral moderator, an independent panel of questioners, etc. Results of the forum may be reported without editorial comment and circulated through the group's normal channels of communication. This can include posting a report on the organization's web page.

5. Voter Registration and Get-Out-the-Vote Activity

Voter registration and GOTV must also be nonpartisan. Both the content of the message and the choice of audience must reflect a limited agenda: encouraging the exercise of the right to vote. The organization may not ask people it contacts how they intend to vote. The geographic area selected as the target for the voter registration or GOTV drive should be selected based on neutral, nonpartisan criteria, not reasons related to the results of the election. For example, it is permissible to select locations based on the number of the organization's members in the community or the proximity to the organization's headquarters, but a 501(c)(3) could not choose to conduct a GOTV drive in a legislative district because it is represented by a key congressional supporter of the organization.

Likewise, the choice of people that a 501(c)(3) targets in voter registration and GOTV drives must be made to further the legitimate charitable purpose of encouraging voting, and not based on political criteria. However, a 501(c)(3) may target disadvantaged or under-represented groups, such as African-Americans or women, even if their historical voting pattern favors one party over another. The 501(c)(3) can also target its members or other groups defined by a set of common interests or problems that are broadly shared, such as farmers or factory workers, if the choice is made because of that organizational connection and not with an eye toward influencing the outcome of an election.

The messages the organization uses to encourage registration and voting should not discuss issues in a way that conveys an implicit endorsement.



Example

It would be appropriate to encourage people to vote because "this election will determine the quality of our children's education," but it might not be appropriate to encourage people to vote because "our children need more computers in their schools." The latter message might be perceived as an attack on the incumbent candidate who failed to fund school computers.

B. 501(c)(4) Organizations: Some Advocacy of Candidates Permitted

1. 501(c)(4) Electoral Activity Under the Federal Tax Code

Unlike 501(c)(3)s, federal tax law allows 501(c)(4) organizations to participate in partisan political activities. As long as these activities are not the organization's primary purpose - and they comply with federal, state, and local election laws described below - 501(c)(4)s can endorse candidates, distribute statements for or against candidates, and publish comparative ratings of candidates. They may also make direct and in-kind contributions to campaigns where permitted by state and local law. (The FECA generally prohibits such contributions in federal races.) There is no fixed rule about how to measure "primary," but the IRS is likely to look at both expenditures and activities in measuring a 501(c)(4)'s partisan activity. This limitation does not restrict nonpartisan activity that would be educational or promote exercise of the right to vote, such as the types of issue advocacy, debates, voter guides, voter registration, and GOTV drives discussed above.

Although the tax law permits 501(c)(4)s to engage in political activities, 501(c)(4)s may have to pay taxes on any expenditures for political purposes.²⁶ The 501(c)(4) can avoid the tax if it pays these political expenditures out of a separate segregated fund, a kind of PAC described below.

2. 501(c)(4) Activity in Federal Elections

The FECA applies when 501(c)(4) organizations get involved in federal elections.²⁷ The FECA prohibits almost all corporations, including most 501(c)(4) nonprofit corporations, from making contributions to candidates, political parties, or PACs. This prohibition applies to both cash and "in-kind" contributions in the form of goods or services.

The FECA also prohibits most incorporated 501(c)(4)s from making or spending the organization's funds on "independent expenditures," defined as communications made without coordination with a candidate or campaign that include "express advocacy." In turn, "express advocacy" is defined as statements that urge the election or defeat of a candidate for federal office. In determining whether a communication is express advocacy, the FEC considers whether:

- i. the communication refers to a clearly identified federal candidate with phrases such as "vote for," "support," "defeat," "reelect your Democratic nominee," or "reject the incumbent." Also included are campaign slogans such as "Carter '76" and phrases such as "vote pro-choice" with a list of names or photographs of candidates supporting or opposing choice, and "reject the incumbent"; or

- ii. a reasonable person could only interpret the communication to advocate the election or defeat of a clearly identified federal candidate, because its electoral message is unambiguous and unmistakable in light of the language and external facts, such as the proximity of the election.²⁸

Federal courts currently disagree about the constitutional validity of the second half of this test, which substantially broadens the definition of "express advocacy" beyond the first.²⁹

In addition to communications that contain express advocacy, the FEC may treat some other political communications that do not contain express advocacy as prohibited in-kind contributions if they are coordinated with a party or candidate. Recent court decisions have cut back on the FEC's ability to regulate such communications,³⁰ and the Commission is in the middle of a rule-making process to define precisely the types of communications and extent of coordination necessary to make a political communication a prohibited in-kind



contribution.³¹ Because the law is in such flux, it is difficult to give precise advice. A safe approach would be not to discuss the timing, content, or distribution of any public communications which mention candidates with any candidate or political party. This is a conservative approach that may impinge on an organization's ability to make bona fide grass roots lobbying communications. Organizations seeking to explore the limits of the prohibition on coordinated communications should seek advice from a lawyer knowledgeable about this area of law.

There are two important exceptions that allow a 501(c)(4) to support or oppose federal candidates despite the general FECA prohibition on express advocacy.

a. Membership Communications Exception

The ban on express advocacy applies to communications with the general public, not with a group's members, executive and administrative personnel, and their families. For purposes of FECA, a "member" is someone who either:

- i. pays annual dues to the organization or
- ii. has a significant attachment to the organization, such as the right to participate in the governance of the organization (for example, by electing one or more members of the organization's board) and affirms their intention to be a member at least annually.³²

Under this exception, a 501(c)(4) can send an e-mail to its members endorsing a candidate or even encourage members to make contributions directly to the candidate by providing an address for sending checks. The 501(c)(4) may coordinate these communications with a political party or campaign. The member communication exception also allows voter registration and GOTV activities targeted to members that are specifically designed to solicit support for candidates or parties.

A 501(c)(4) can also endorse a candidate to its membership and



announce that endorsement to its usual press list, as well as in newsletters and other communications that go to members. A 501(c)(4) may not coordinate its press release or press conference announcing its endorsement with the campaign, but the campaign may independently publicize the 501(c)(4)'s endorsement.

The 501(c)(4) organization must keep track of all expenditures for express advocacy to its membership. If the aggregate amount exceeds \$2,000 for any election (primary, general, or special), the 501(c)(4) must report the expenditures to the FEC.

b. Qualified Nonprofit Corporations (the MCFL Exception)

A few incorporated 501(c)(4)s that meet strict criteria can make independent expenditures for communications that advocate election or defeat of federal candidates to the general public, not merely the organization's members. The FEC created this exception as the result of a U.S. Supreme Court case, *FEC v. Massachusetts Citizens for Life*, which successfully challenged the FEC's rules as an unconstitutional limit on speech.³³ The rules now provide that a 501(c)(4) that meets the standards for a "qualified nonprofit corporation" may make independent expenditures for communications to the general public in support of or in opposition to candidates.³⁴ To qualify, a 501(c)(4) may not have been operated by or received support from a business (for-profit) corporation or labor union. In addition, such organizations may not engage in business activities (this does not include fundraising) or have officials or shareholders who may have a claim on the organization's assets.

Expenditures of these "MCFL" groups must be truly independent. There can be absolutely no coordination, cooperation, or consulting with a candidate, campaign, or party. Each communication must include a notice identifying the group as its source of funding. If an MCFL group spends more than \$250 for these communications in any year, it must report the expenditures to the FEC.

3. 501(c)(4) Activity in State Elections

FECA applies to federal elections, but each state has its own election laws that govern 501(c)(4) electoral activities around state and local elections. In a few



jurisdictions, there are also local election laws with which 501(c)(4)s must comply. In some states, corporations are permitted to make expenditures to support or oppose candidates. In these states, a 501(c)(4) may be permitted to contribute to a candidate or fund express advocacy communications to the general public. Furthermore, state and local election laws, which vary from state to state, may regulate 501(c)(4) participation in ballot measure campaigns.



Note that although the federal election law does not apply to state and local elections, IRC restrictions on 501(c)(4) electoral activity still apply. Thus, even if state or local law permits a greater degree of electoral advocacy by 501(c)(4)s, it must still not become the primary purpose of the organization, and the 501(c)(4) may still be subject to tax on those activities.

C. PACs: Maximum Electoral Advocacy

Political committees organized under Section 527 of the IRC are created with the specific purpose of influencing the nomination or election of candidates for public office. They may endorse candidates, create and distribute partisan material, operate voter registration and GOTV drives designed to favor a particular candidate or party, and conduct other types of electoral activity that would be impermissible for 501(c)(3)s or 501(c)(4)s.

There are two types of PACs.³⁵ Connected PACs (also known as separate segregated funds

or SSFs) are PACs sponsored by another organization, such as a 501(c)(4). Typically, the connected PAC exists simply as a separate bank account, controlled by the connected organization and governed by the reporting and expenditure requirements of federal (or state) election law. Because of the federal tax law prohibition on campaign intervention by 501(c)(3)s, a 501(c)(3) may not create a connected PAC. The greatest drawback of connected PACs is that they may only solicit funds for their activities from the connected organization's members and qualifying employees. However, the connected organization may pay all of the administrative and fundraising costs for the connected PAC.

Nonconnected (or independent) PACs, as the name implies, are PACs that are not sponsored by any other organization, but are instead created by individuals. Although nonconnected PACs must pay their own administrative expenses, they are permitted to solicit the general public for contributions.

Federal and most, if not all, state election laws require extensive



reporting of a PAC's expenditures. (However, each state's laws differ from the federal law and those of other states.) The reporting and expenditure laws governing nonconnected PACs and connected PACs are very similar. It is advisable to seek the help of an election law attorney in creating a system to comply with these laws.

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Section IV:

Questions and Answers on Specific Internet Activities

This section answers questions about laws governing some common uses of the Internet for advocacy. This section is generally organized according to the different types of advocacy and other activities in which nonprofits can engage:

- legislative advocacy, including ballot measure campaigns;
- activity around candidate elections;
- affiliations with other organizations such as affiliated 501(c)(4)s and PACs;
- organizational issues such as membership and fundraising; and
- a few non-advocacy legal issues raised by the Internet.

In most cases, the rules for a particular type of advocacy will be the same whether it is distributed via web site, listserv, e-mail, or other Internet tools - assume the answers below apply to all of these types of Internet communication unless the answer specifies otherwise.

Examples

A 501(c)(3) organization that sends information to the general public and encourages readers to contact their senators in support of a particular bill will have to treat the communication as lobbying whether the information is posted on a web page, distributed through a listserv, or sent to selected people via e-mail. If the organization only sends the message to its members, it will be able to treat the expenditure as direct lobbying. If the organization sends the message to the general public, the organization will have to treat the communication as grass roots lobbying.

As discussed above, the methods for limiting the communication to members will vary depending on which Internet tool the organization uses to send the message. For web pages, the organization would probably have to post the message on a password-protected site for it to be considered limited to members. Similarly for a listserv, the organization would have to post the message on a listserv that only its members could join. For e-mail, the organization could simply mail the message only to the e-mail addresses of its members.

Much of the focus of this section is on 501(c)(3) organizations, but some questions discuss the implications of Internet advocacy for 501(c)(4)s or PACs. The answers in this section assume that all 501(c)(3) organizations have elected to have their lobbying activity measured by the 501(h) expenditure test.

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A. Legislative Advocacy



1. Can a 501(c)(3) use the Internet for public policy advocacy?

A nonprofit may use the Internet to make any communications that it could through more traditional media. Materials that are relevant to the organization's purpose and follow the rules outlined above may be distributed in print, via the broadcast media, or on the Internet. For example, 501(c)(3)s and 501(c)(4)s can post educational information about legislative proposals on a web site, or they may use the Internet to lobby through an action alert that asks people to contact legislators. However, nonprofits must comply with laws restricting legislative or electoral advocacy.

Examples

A 501(c)(3) that uses the Internet to communicate about the organization's position on specific legislation must evaluate the communications to determine whether they constitute lobbying.

A 501(c)(3) could not use the Internet to endorse a candidate for office.



2. What are the basic rules about using the Internet to generate support for a legislative agenda?

The same rules that govern lobbying in general apply on the Internet. Because 501(c)(4) organizations can engage in an unlimited amount of lobbying, they may do unlimited lobbying using the Internet. 501(c)(3) organizations must calculate the cost of Internet lobbying as part of their efforts to stay within their 501(h) expenditure limits. Thus, 501(c)(3)s must either ensure that their communications do not constitute lobbying based on the definitions and exceptions in the IRS regulations or track and report the cost of these communications as lobbying expenditures. (See Questions [15 through 17](#) below for information on how to calculate the costs of Internet lobbying communications.)

Example

Posting the text of a report that meets the test for the nonpartisan analysis exception would not constitute a lobbying expenditure. However, an action alert that encouraged readers to send an e-mail to a legislator opposing a piece of legislation would be lobbying.

Any organization can use a web page, e-mail, or listserve to advocate on legislative matters. For example, an organization can:



- send an e-mail alert to its members urging them to contact key legislators on the eve of an important vote;
- make model legislative language and supporting documents available on its web page for use by its state level activists; or
- use a listserve to identify and contact people to sign a ballot measure petition.



3. When should a 501(c)(3) treat an Internet communication as lobbying?

501(c)(3)s that use the Internet to lobby need to know which communications on the net constitute lobbying so that they can stay within their expenditure limits. As with more traditional forms of communication, materials distributed to the public through the Internet that refer to legislation and that include a call to action will be considered grass roots lobbying. (See Section [II.A.2.c](#) for more details on the definition of grass roots lobbying.) Most web communications will be treated as communications to the general public because most web sites are open to the public. In contrast, the same materials in a members-only area on a web site or distributed only to members by e-mail or restricted listserve will be treated as direct lobbying. To be subject to the more favorable rules for communications made primarily or exclusively to members, a web site must require a password or PIN that is provided only to current members. (See box below.)

Members-Only Web Access

Because of the more favorable rules governing communications with members (as opposed to the general public), many 501(c)(3)s want to make some web pages accessible only to members of the organization.

Password-protected access should certainly allow a 501(c)(3) to treat the site as a members-only communication. If the organization can identify visitors, such as by using a registration process for their initial visit, it may be possible to demonstrate that the audience is, in fact, primarily members. Because of the complexity involved in this sort of tracking, it may not be useful for many organizations. Anecdotal evidence about who is visiting the site (for example, data based on who is choosing to fill-out an on-line guest book) is probably not sufficient for a 501(c)(3) to demonstrate that most of the people visiting its web site are members.

Public web sites and other Internet communications to the general public are subject to the allocation principles covering communications made primarily to non-members, described more fully in Section [II.A.3](#). Thus, all material on the same subject as the lobbying communication (such as related articles on the topic of the legislation) must be treated as

lobbying when allocating costs between lobbying and non-lobbying. If there is a call to action anywhere on a public web site that is associated with a discussion of specific legislation, the organization must treat all materials on the same specific subject as part of the grass roots lobbying communication.



4. May a 501(c)(3) generate e-mail messages to legislators to encourage support for the 501(c)(3)'s legislative agenda?

A 501(c)(3) may send e-mail messages to legislators itself or may encourage others to send such messages. If the organization sends an e-mail to a legislator that reflects a view on a specific legislative proposal, the cost of sending that message will be a direct lobbying expenditure under the 501(h) test.

Instead of contacting legislators directly, an organization can also use the Internet to encourage others to do so. Whether it sends the message using e-mail, a listserve, or a web page, communications that a 501(c)(3) sends to its members asking them to communicate with legislators regarding a specific legislative proposal will be direct lobbying. However, the same Internet message sent to the general public will count as grass roots lobbying. Posting the message on a web site will likely be considered a public communication (and therefore grass roots lobbying) unless it is in an area restricted to members only, using a password or PIN system.

Example

Posting the text of a report that meets the test for the nonpartisan analysis exception would not constitute a lobbying expenditure. However, an action alert that encouraged readers to send an e-mail to a legislator opposing a piece of legislation would be lobbying.



5. May a 501(c)(3) web site provide links to elected officials or government employees so that visitors to its web site can send comments on legislation or other issues?

A web site may include links that allow visitors to send e-mail or other communications directly to a legislator or other government official. In some cases, the link may create a grass roots lobbying communication because providing contact information for a legislator is considered a call to action under the grass roots lobbying rules. (See Section [II.A.2.c.2.](#)) For example, a flyer that discusses the organization's position on a pending gun control bill will be considered lobbying if it includes the names and phone numbers of key members of the committee considering the legislation. Similarly, on the Internet, an e-mail link to a legislator would be a call to action.



Not every communication linked to a legislator is lobbying under the 501(h) test. If one of the other elements of lobbying is missing, the page will not be considered a lobbying communication. For example, if the page does not refer to specific legislation, it will not be considered lobbying. (However, see [Question 10](#), below, regarding the risk of the IRS applying the mass media rule to Internet communications made just prior to a legislative vote.)

Links to other policymakers often do not involve lobbying. For example, a link to an agency's web site is not lobbying because regulations are not legislation. Likewise, creating

a link to let users send e-mail to the President about the issuance of an executive order is not lobbying.



6. When is a link to a legislator from a 501(c)(3)'s web site a grass roots lobbying "call to action"?

Without a call to action, online information about legislation is just information, not lobbying under the 501(h) test. A challenge unique to the web is determining how much of a site's discussion of legislative issues becomes grass roots lobbying because it is associated with something that the IRS might consider a grass roots call to action, such as an e-mail link to an elected official.

The best way to approach this issue is probably to view the site from the perspective of the user. If the lobbying call to action, for example an e-mail link to legislators, is found only on a section of the web site that is relatively distinct from other sections that discuss legislative matters, it is probably reasonable not to treat the legislative information as lobbying. On the other hand, if there is a link back from every issue discussion to the legislative link, or if the link appears on a section of the site that users typically view before they get to discussions of legislative materials (such as the front page of the site), the link should reasonably be considered a call to action. An e-mail link that is part of a "Take Action" page included on a navigation bar that appears on each page in the site is likely to be associated with any discussion on the site. However, if the legislative link is associated with discussions of some legislative issues, but not all of them, it is probably safe to treat as lobbying only the legislative discussions that include the link. In short, requiring many "clicks" between a call to action and the information about the specific legislation should prevent the legislative information from being treated as lobbying.

Many organizations link to another site to provide "e-mail your representative" capabilities. Accessing the actual call to action through another site does not mean it is not part of the organization's lobbying communication. If a user reasonably perceives the call to action to be associated with the legislative discussion, the 501(c)(3) should treat that portion of the web site as grass roots lobbying.



We think that it is extremely unlikely that the IRS would treat an entire web site as a single "communication," and consider a link anywhere to "taint" otherwise non-lobbying parts of the web site. However, if a 501(c)(3) wants to be perfectly safe, it will either avoid all links to public officials (including linking to other sites that link to public officials) on any web site that includes a discussion of specific legislative proposals or it will treat all of the legislative discussions on the web site as lobbying.



Remember, also, that communications with the public on ballot measures are direct rather than grass roots lobbying. Because the public acts as the legislature on ballot measures, there is no "call to action" requirement. Any communication that reflects a view on the ballot measure will be lobbying.



7. How can a 501(c)(3) do more lobbying by minimizing lobbying expenditures?

Not all of a 501(c)(3)'s activity in the legislative arena will be "lobbying." By making strategic use of the definition of lobbying and the exceptions available under IRC Section 501(h) (see Section [II.A.2](#)), a 501(c)(3) can achieve maximum

impact with its Internet advocacy while staying within its lobbying budget. The following Sections suggest three particularly effective ways for a 501(c)(3) to make the most of their lobbying limits:

a. Minimizing Grass Roots Lobbying by Limiting Calls to Action

In particular, most Internet communications will not be considered lobbying if they do not include a "call to action." (See Section [II.A.2.c.2.](#))

Example

A bulletin on the status of legislation opposed by a 501(c)(3) could be e-mailed to a large list composed primarily of non-members, explain the basis for opposition, and suggest alternatives without becoming a grass roots lobbying activity because the bulletin contains no call to action. However, communications about ballot measures may be lobbying, even without a call to action.)



501(c)(3)s that want to use this strategy for minimizing lobbying expenditures should be careful to avoid unintentional calls to action, especially on the web. Even if the document does not itself contain a call to action, once posted on the web page it may be in a context that is associated with a call, such as an e-mail link to legislators. This could turn the entire document into grass roots lobbying. See the previous Question for more details.

b. Publishing Reports - The Nonpartisan Analysis Exception

The Internet also lends itself to use of the lobbying exception for nonpartisan analysis, study, and research. Organizations can post information on legislative proposals that include a "full and fair" discussion of the underlying facts, sufficient to allow the reader to draw an independent conclusion, and the communication will not be lobbying. In fact, posting the document on the Internet can help 501(c)(3)s meet the distribution requirement for the nonpartisan analysis exception.

Example

Youth for Security (YFS) is a nonprofit organization opposed to proposals to privatize the Social Security system. The organization hires a consultant with a background in economics to study three different privatization proposals and predict the result of each in 50 years. The consultant writes a 30-page report that explains the specific provisions of each proposal, sets out the assumptions underlying her economic analysis, and demonstrates how that analysis predicts negative results from each of the three proposals. Each proposal is identified by the name of its sponsor, for example "the Smith-Jones bill." The report concludes that none of the proposals for privatization would guarantee adequate security for retirement funds of today's school children.

Proponents of each of the three proposals would challenge the economic assumptions underlying the report. They would also contend that the report does not acknowledge their policy goal of giving individual workers more control over their own retirement savings.

YFS publishes the report electronically. It announces its release with a press

conference, and posts the report in a prominent location on its web site. The web site does not contain any links to legislators or other lobbying calls to action. The report qualifies as nonpartisan study and analysis. The costs of creating the report are not lobbying expenses.

YFS later wants to add an appendix that identifies the current status of each of the three proposals covered, the committee or subcommittee considering each bill, and the names of each committee's members. Identifying these legislators is a call to action, but it is considered indirect. Therefore, the report still qualifies as nonpartisan analysis and research.

The organization also e-mails a copy of the report to select, "friendly" legislators who are known to oppose privatizing Social Security. The marginal expenses of e-mailing it to the legislators (a minimal amount of staff time) are direct lobbying costs.



If an organization posts a report on the web to help satisfy the public distribution requirement for nonpartisan analysis, study, or research, it is important to ensure that the document, as posted, is not connected to an e-mail link to legislators. Such a link would be considered a direct call to action, and the 501(c)(3) would likely have to treat the report as lobbying.

c. Reduced Costs

Even when it is impossible to completely avoid incurring lobbying expenditures, Internet communications are generally less expensive than using printed copy and paying postage expenses, which permits a 501(c)(3) to do more lobbying within its 501(h) expenditure limits. Remember, however, the staff time, overhead, and other costs related to creating the communication will count as lobbying expenditures if the communication is lobbying. (See [Question 15](#) below.)



8. May an organization post its membership newsletter on the web?

A 501(c)(3) may post its newsletter on its web site. In general, if a newsletter discusses legislative issues without a call to action, it will not be considered lobbying. However, if the newsletter becomes associated with a call to action on line, those same discussions become grass roots lobbying. (See [Question 6](#) above regarding when web site materials should be treated as associated with a call to action on the site.) If the newsletter does contain lobbying, the way the IRS treats the costs of producing that newsletter and distributing it via the Internet will vary depending on the newsletter's audience.

A newsletter distributed on the Internet in such a way that it is read only by members of the 501(c)(3) (via e-mail, listserv, or a web site that allows only members to access the newsletter) may be treated the same way as a printed membership newsletter. Using the newsletter to encourage members to contact legislators about legislation will be direct, not grass roots, lobbying.

If the 501(c)(3) distributes the newsletter only through a publicly-accessible web site or listserv, it must treat it as a communication to the public. If such a newsletter contains lobbying, the costs of producing the lobbying portions (including articles on the same topic as the legislation) and web posting costs for those portions will be grass roots lobbying expenditures.

Many organizations routinely post newsletters on line that were originally distributed and sent to their members in a more traditional printed form. Web posting is simply a supplemental distribution mechanism, and the newsletter a useful tool for providing information about the organization's activities, boosting web site content, and recruiting new members. The proper way to treat the costs of lobbying contained in such newsletters is open to debate.

The IRS may argue that when these newsletters are posted to publicly accessible web sites, the audience for these newsletters becomes the general public. If so, the IRS would rule that the entire cost of any lobbying in the newsletter would be a grass roots lobbying expenditure, including the original costs of writing the articles. (Furthermore, the IRS would then rule that any material in the newsletter on the same subject as any lobbying would also be grass roots lobbying.)

However, we think that posting a regularly published newsletter on a public web site after a substantial distribution to a 501(c)(3)'s members constitutes a separate use of this material. If we are correct, the costs of creating any advocacy materials that contain a direct lobbying call to action in the newsletter may be treated as direct lobbying expenditures, and only the incremental costs of posting to the web would be a grass roots lobbying expenditure.



It is important to bear in mind that our interpretation of the rules does not have the approval (or disapproval) of the IRS. Until official guidance is available, the safest approach would be to delete any lobbying calls to action before posting newsletters or other membership materials to the web. Other "safe" options would be posting newsletters to a members-only area, or treating the publication as a grass roots lobbying communication.

If an organization can demonstrate that the number of visitors who read the newsletter on line is less than the number of members who received a hard copy, it may be able to treat the communication as made primarily to members and allocate costs for the lobbying portion between direct and grass roots accordingly. (See Section [II.A.3](#) for a summary of the rules for allocating the costs of mixed audience communications.) To do this, the organization would track the number of "hits" to the section of its web site containing newsletters with lobbying content. If the number of members who received the newsletter exceeds the number of hits plus the number of non-members that received the paper newsletter, we believe that the organization is justified in claiming a primarily membership audience.

Even if a newsletter must be analyzed under the mixed audience rules, it may be possible to allocate at least some costs to direct lobbying. The allocation rules provide that even if the audience is primarily nonmembers, the organization may make a reasonable allocation between the direct and grass roots lobbying purposes if it can show that the primary purpose of the communication was direct lobbying. Arguably, if a newsletter is routinely sent to an organization's members and is used by the organization primarily as a vehicle for communicating with members, any lobbying communications it contains could reasonably be considered made primarily for direct lobbying purposes.



Example

Save Our Rivers regularly sends a newsletter to its members. The July issue contains four articles, one of which describes the need for Congress to enact legislation that creates financial incentives for removing certain dams from rivers. The article clearly supports the need for this legislation, which has not yet been introduced, but does not encourage the reader to take any lobbying action on the issue.

The Save Our Rivers newsletter is posted to the web site. The site contains a navigation bar down the side of each page that allows the visitor to jump directly to certain sections. One of the buttons on this bar is titled "Take Action!" It links to a page containing several suggested kinds of action, including, "Let your elected representatives hear from you." This in turn links to a system that allows users to enter a zip code and send e-mail to their congressional representatives.

Because this button appears on every page, the newsletter has now become associated with a call to action. The costs of the article on financial incentives for removing dams will have to be treated as grass roots lobbying.



Both 501(c)(3)s and 501(c)(4)s are permitted to make certain communications to members that would be risky or prohibited if made to the general public. A legislative scorecard in a newsletter that goes primarily to members may be a proper publication for a 501(c)(3), but putting the same document on the web may be improper. (See Question [IV.B.2.a.](#)) A 501(c)(4) may communicate candidate endorsements to its members, but must use PAC funds to communicate those endorsements to the public. (See Question [IV.B.3.b.](#)) 501(c)(3)s and 501(c)(4)s should screen member newsletters for problematic material like this before newsletters are posted to a web site.



9. How can a 501(c)(3) use the Internet to distribute legislative information prepared by others?

A 501(c)(3) may distribute information on legislative issues prepared by others, including other organizations and the press. However, any communication a 501(c)(3) sends will be treated as a communication from the 501(c)(3) and may result in lobbying expenditures.

Example

A 501(c)(3) will incur a lobbying expenditure if it sends legislators an otherwise non-lobbying e-mail message that includes a lobbying fact sheet prepared by another organization as an attachment. (See Question [IV.B.9](#) regarding distribution of election-related material prepared by others.)



Organizations posting third-party materials in an online forum must also be careful to avoid copyright infringement. Generally, this means obtaining permission from authors to reproduce their work. The fact that information has been made publicly available does not mean that it is in the public domain for copyright purposes. Careless copying of other people's material can lead to significant liabilities. (See Question [IV.E.1.](#))

10. Are Internet communications subject to the special rule governing



paid mass media advertisements?

Communications via paid mass media advertisements regarding highly publicized legislation are subject to special rules under the 501(h) test that may cause the costs to be treated as grass roots lobbying even without the call to action usually required. (See Section [II.A.2.c.3.](#)) The IRS might try to apply this rule to Internet communications. However, there are several reasons why the rule should not apply to the Internet.

The IRS has suggested that it is considering whether Internet communications may be subject to these unfavorable rules.³⁶ Its basis for doing so seems to be analogies drawn between the Internet and mass media such as television and newspapers.

However, we believe that there are good arguments to be made that the mass media rule should not apply to the Internet. Due to the language of the current regulations, we believe that the IRS would have to conduct a rulemaking process to modify the regulations before applying the rule to Internet communications. The current rule includes an explicit list of media that are included in the definition of "mass media" - a list that includes "television, radio, billboards, and general circulation newspapers and magazines" but not the Internet.³⁷ On a more conceptual level, we think it inappropriate to apply the mass media rule to the Internet because of the fundamental differences between Internet communications and advertising communications in traditional print or broadcast media.³⁸



Despite these reasons that the rule should not apply, cautious 501(c)(3)s should remember this rule when evaluating both their own web communications on the subject of highly publicized legislation and any paid Internet advertising they place on another web site. If the communication appears within two weeks before a vote by a legislative body or committee on highly publicized legislation and reflects a view on the general subject of the legislation and either refers to the legislation or encourages the public to communicate with legislators on the general subject of the legislation, it may be safest to treat it as grass roots lobbying.

Even if these regulations were to be applied to the Internet, however, materials about public policy issues that the organization routinely makes available on its web site do not automatically become grass roots lobbying. Because they are not timed to coincide with an imminent vote, these materials should not be treated as grass roots lobbying under the rule.



11. May a nonprofit use its web site, listserve, or e-mail to support or oppose a ballot measure campaign?

Because 501(c)(3)s may support or oppose ballot measures as a legitimate lobbying activity, a 501(c)(3) organization may use the Internet to assist in ballot measure work. 501(c)(4)s, which may engage in unlimited ballot measure work, may also use the Internet to support or oppose a ballot measure.

Because in this context the general public is acting as a legislative body, the 501(c)(3) should treat as direct lobbying any public communications reflecting a view on a ballot measure (except those that qualify under the nonpartisan analysis exception). Thus, a 501(c)(3) can use its web site to build support for a ballot question without incurring grass roots lobbying costs. However, because this is direct lobbying, the web site content will be

lobbying even without a grass roots call to action. Track and allocate associated costs as discussed in [Question 16](#) below.

Example

Parents of Children (PoC) works to promote elementary school education in State X. In addition to tutoring programs, skills training for parents, and a series of anti-truancy public service announcements, PoC advocates for greater funding for public schools in X. Question 66 would reduce the property taxes that are currently used to fund public schools.

PoC adds a notice to the home page of its web site that says "No on 66!" The notice links to a set of bullet points outlining why PoC believes Question 66 would harm the quality of education received by X's elementary students. The costs of adding this new material are direct lobbying expenditures.



Some states require organizations involved in ballot advocacy to register and report their expenditures. Organizations that wish to support or oppose a ballot measure should check their state laws before launching such efforts.



12. Can a nonprofit use its web site, listserve, or e-mail to circulate ballot measure petitions?

With its relatively low cost, the Internet has great advantages as a tool for circulating ballot measure petitions. However, until new laws are

passed, nonprofit supporters of ballot measures will still have to collect the actual signatures by hand.

An initiative or referendum becomes "specific legislation" for purposes of the IRS lobbying rules as soon as petitions to put the question on the ballot begin circulating. Therefore, the cost of gathering signatures is a lobbying expenditure for 501(c)(3)s. Because the cost of Internet communication is so much lower than other means and given the volume of signatures usually required, organizations that must comply with the 501(h) expenditure limits will preserve their limited lobbying dollars by distributing petitions via the Internet. (501(c)(3)s that have not made the 501(h) election and that apply the insubstantial part test to their lobbying will have to account for their total activities and visibility in evaluating their lobbying.)

Under current laws, the best use of electronic communications is to circulate forms that petitioners can print out to gather signatures. Unless and until states pass new laws regarding digital signatures for ballot measures, it will not be possible to qualify a ballot measure using only online communications.



13. How can a 501(c)(3) eliminate or reduce any lobbying expenditures when it operates a listserve or chat room?

501(c)(3)s can operate a listserve or chat area without treating any of the costs of creating or operating the discussion as lobbying expenditures if the 501(c)(3) adopts and enforces policies for the forum and guidelines for participants that promote the forum's use for non-lobbying purposes. The

listserve or chat area should have a clearly stated purpose that is not related to attempts by the 501(c)(3) to influence legislation, and guidelines for participants should indicate this non-lobbying purpose. The 501(c)(3) should clearly and regularly state that the participants, not the sponsoring 501(c)(3), are responsible for contents of individual postings. If a participant posts a single lobbying message, it is probably not necessary to allocate a portion of the 501(c)(3)'s costs of operating the discussion as a lobbying expenditure, but the user should be reminded of the non-lobbying purpose of the discussion and asked to comply with the participant guidelines. Users who repeatedly post lobbying messages may need to be removed. If the lobbying use of the forum becomes significant, or if the 501(c)(3) repeatedly looks the other way while it is used for lobbying purposes, some or all of the costs may need to be treated as lobbying expenditures.

On listserves in which a moderator must approve all messages posted, the sponsoring 501(c)(3) is more likely to be held responsible for the content of messages. If the 501(c)(3) does not want to incur any lobbying expenditures, it should screen out any lobbying messages on moderated lists. If it allows such messages to be posted, an appropriate portion of the costs of operating the forum should be allocated to lobbying. (See [Question 17](#) below about how to allocate these costs. See [Question IV.B.8](#) below about political messages on listserves and chat areas.)



14. Is lobbying on a listserve or chat area direct or grass roots lobbying?

If subscription to the listserve or chat area is open, the audience for any posting is the general public. A 501(c)(3) must treat as grass roots lobbying any communications that it posts on a public listserve that contain a call to action and that reflect a view on specific legislation. Communications on listserves or chat rooms that are accessible only to members of the 501(c)(3) will generally be direct, not grass roots, lobbying.



15. What costs associated with Internet communications must a 501(c)(3) count as lobbying expenditures?

A 501(c)(3) that uses the Internet for lobbying must report a portion of the cost of creating and operating its web page, listserve, or other Internet communication as a lobbying expenditure under 501(h). The IRS has issued no guidance on how to make these calculations. The



basic rule is that allocation methods must represent a good-faith attempt to reflect costs and be consistently applied. Since there is no pre-approved legal model to follow, an organization would be wise to document at the time that it adopts a particular method why it is a reasonable reflection of actual costs and use.

Here are some reasonable ways that a 501(c)(3) can measure some common costs associated with lobbying on the web:

- Staff or consultant time to create content for the web site. Track this cost using time sheets that reflect time developing lobbying and non-lobbying content for the web site. For example, a staff person who spends two hours drafting a legislative action alert and one hour drafting a report on the organization's annual fundraising dinner should indicate two hours of lobbying on his or her time sheet.
- Staff or consultant time to maintain the site. The most accurate way to treat the costs

of staff and consultant time to maintain the site, post new content, and perform other maintenance is to allocate these costs according to the percentage of lobbying the site contains. Measure the portion of web site content devoted to lobbying over a period of time - a week, a month, a quarter, or even the entire year - and allocate that portion of web support costs for the time period to lobbying. For example, if the site is 3% grass roots lobbying, then the 501(c)(3) should treat 3% of the costs of maintaining it as a grass roots lobbying expenditure.

It may also be acceptable to treat these costs as general overhead and allocate to lobbying based on the overall proportion of program staff time dedicated to lobbying. This method would not be appropriate if web-related costs are substantial and the amount of lobbying on the site is disproportionate to the overall amount of lobbying the organization does.

- Internet access charges, including web-hosting costs. As with staff time for web and Internet support, these must either be allocated based on use of the site or treated as an overhead item, analogous to telephone or fax service.
- Set-up and design costs and equipment purchases. An organization that contracts with an outside consultant to design a web site can incur substantial charges. Purchasing a web server or installing high-speed Internet access capabilities can add to the bill. Often, an organization that creates a web site will not know how much it will use the site for lobbying. Nor can the organization be certain that the use in the first year of operation, when these costs are incurred, will reflect the true use over time.

Organizations must generally account for consultant fees in the year they are incurred, while equipment costs must be capitalized and depreciated over time. A 501(c)(3) could allocate a share of each of these costs between lobbying and non-lobbying based on a good faith estimate of the lobbying use of the web site (perhaps based on lobbying content as measured during the initial period or a reasonable projection of anticipated use). Depreciation in subsequent years would then be allocated based on each subsequent year's percentage of lobbying on the site. Alternatively, a 501(c)(3) could treat each of these expenditures as overhead and allocate them with other overhead according to the overall percentage of the program devoted to lobbying activities each year. Depreciable overhead costs would be carried over and added to the costs of organizational overhead in each subsequent year and allocated accordingly.

It may be possible to argue that none of the costs of setting up a web site and other online capabilities need to be allocated to lobbying, so long as the site has a substantial non-lobbying purpose. Similarly, staff time setting up a listserv (recruiting participants, drafting guidelines, configuring technical aspects) that will have substantial non-lobbying uses may probably be treated as a non-lobbying activity. The organization should make this determination based on the particular facts of the organization's use of the Internet and in consultation with appropriate legal and accounting professionals.



Given the uncertainty in this area about how much of the cost of operating their Internet capacity should be counted as lobbying expenditures, 501(c)(3)s may deliberately chose to over-report lobbying expenditures. While this reduces the amount of funds the organization may spend on lobbying overall, it also reduces the chance of under-reporting the lobbying expenditures associated with Internet activities.



16. How should a 501(c)(3) calculate the amount of its web site devoted to lobbying and non-lobbying?

The lobbying content of a web site can be measured using techniques similar to those for measuring the percentage of lobbying in more traditional forms of communication. Many organizations are accustomed to allocating costs of a newsletter with some lobbying and some non-lobbying content by counting the number of column inches or pages for each type of content and applying the resulting percentage to the general costs of putting out the publication. A web site poses a new challenge in measuring the "amount" of content to treat as lobbying, especially as the content of a web site is dynamic, liable to change rapidly over time. There is no distinct "issue" as with a periodical publication. It is possible to estimate the amount of a site devoted to lobbying at a given point in time by applying an analysis similar to counting column inches - either by comparing disk space used by files for different parts of the site or by counting pages or screens of information. Depending how often the site changes, this measurement could be repeated at regular intervals to determine an average percentage of lobbying which could be used for allocating the costs discussed above.

Example

Advocates for the Homeless has a web site with four main sections: Resources (a list of agencies in Metro City, the services they can provide to homeless people, and contact information); About Advocates (a detailed description of all of the organization's programs, including an online donation system); Learn More (information refuting common misconceptions about the homeless); and Get Involved (regularly updated information about current issues of concern to the homeless in Metro City).

The web site has been up for two years. For that entire time, the Get Involved section has included materials about a proposal pending before the city's zoning board to place a homeless shelter in an affluent neighborhood conveniently located to public transportation. It has also included a changing set of materials that from time to time include pending legislative issues. The main Get Involved page includes a link to allow the visitor to e-mail the City Council representative for her district.

The entire site contains approximately 100 pages of information. 40 of those relate to the Get Involved area, with the content of that area divided equally between zoning (administrative agency action) and the other section. Advocates determines that for 6 months in year 1 (50% of the year) and 8 months in year two (66% of the year), the "other" topic was legislative.

Advocates calculates the lobbying content of its web site during year 1 as 10% (40% (for Get Involved) X 50% (zoning versus "other") X 50% (the portion of the year that legislative issues were in "other")). For year two, it calculates 13% (40% X 50% X 66%). All lobbying costs for the site are grass roots lobbying expenses.

Advocates may allocate its web costs as follows:

- ***\$5000 for consultant time to set up the web site.*** Advocates paid these costs in the year before the site was up and running. It allocated 20% to lobbying, estimating that Get Involved would always be one-half legislative.

- **Staff time to produce materials that are used on the site.** Advocates staff keep time sheets, and track their time as lobbying if they are writing materials for the site about legislative issues, and non-lobbying for all other materials.
- **Staff time to maintain the site.** Advocates pays a part-time web master \$24,000 a year (including benefits and payroll taxes) to post updates, verify links, and maintain the site. In year one, \$2,400 (10% of \$24,000) is allocated to lobbying. In year two, \$3,120 (13% of \$24,000) is treated as lobbying.
- **ISP and web-hosting charges.** Advocates pays an average \$100 per month in ISP, web-hosting, and domain name registration charges. Every month, Advocates estimates the percentage of lobbying on the site and allocates the charges accordingly. In year one, this resulted in 10% of the \$1200 total, or \$120, being charged to grass roots lobbying. In year two, the amount was \$156.

Advocates is considering switching to a new system that would always allocate 20% of maintenance and ISP charges to lobbying. Given the history of use, this would probably slightly over-allocate costs to lobbying, but would simplify Advocates' administrative burden. Unless the structure of the site changes, or the breakdown of Get Involved ceases to be one-half zoning and one-half other/legislative, allocating this 20% to lobbying would always be safe.

Alternatively, if the site content changes frequently, it may be reasonable and simpler to allocate the associated costs based on the percentages of lobbying and non-lobbying time spent by the staff to generate the content.

It is important to remember that there is, at least as yet, no single right way to make this measurement, but the IRS is unlikely to challenge a method adopted in a good faith effort to provide a reasonable measure of the use of the site.



17. How should a 501(c)(3) allocate listserv costs between lobbying and nonlobbying uses?

To determine the percentage of the listserv costs to allocate to lobbying, the organization could make a reasonable estimate from time to time of how listserv use breaks down between lobbying and non-lobbying communications. For example, the 501(c)(3) could calculate the number of lobbying messages posted over the course of a month as a percentage of the total number of messages posted.

On the other hand, running a listserv to facilitate discussion of a policy issue probably need not be treated as a lobbying cost if participants only occasionally post a lobbying message.

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B. Voter Education and Election-Related Advocacy



1. How may a 501(c)(3) use the Internet to educate people about issues and candidates during an election?

Elections are great opportunities for 501(c)(3)s to bring their issues to the attention of the public. 501(c)(3)s may also encourage voter involvement and promote an informed electorate by registering voters, encouraging them to go to the polls, and providing unbiased information about candidates. 501(c)(3)s may use the Internet to engage in this work, but, as with any election-related activity,

501(c)(3)s must be sure that the activity genuinely promotes public education and voter awareness and that it does not tend, directly or indirectly, to encourage support for or opposition to any candidate. In evaluating whether an Internet message (or any other activity, whether on line or off) indirectly or subtly supports or opposes a candidate, a 501(c)(3) must consider not just the message itself, but all of the surrounding facts and circumstances. Thus, a 501(c)(3) must consider a message on a web page in the context of the whole web site, and all of this must be considered against the background of the organization's ongoing political and non-political activity in the community, the proximity to an election, and the role of an issue in the campaign.

501(c)(3)s may advocate or inform the public on key public policy issues during an election. However, a 501(c)(3) should avoid references to specific candidates that, when combined with policy advocacy statements, may appear to show a bias toward one candidate. Advocacy on issues that are very high profile or sharply divide candidates in a race may be seen as a proxy for candidate names. Similarly, code words such as "pro-choice" or "conservative" can be interpreted as support of one party or candidate.



An organization is free to continue its normal policy advocacy during an election campaign, but a 501(c)(3) should be careful not to combine policy advocacy on high profile or divisive issues with discussions of elections or voting. For example, a web page discussing the issue of logging in old-growth forests would not, by itself, be considered impermissible electioneering.

However, the IRS may find that a 501(c)(3) has violated the ban on partisan electioneering if the page also included links to the web sites of candidates running on a no-logging platform. To protect itself, the 501(c)(3) would have to be able to produce facts to demonstrate that the links were part of a legislative, not electoral, discussion. (See [Section IV.B.5](#) for a discussion of permissible links to candidates.) The 501(c)(3) would be at even greater risk if the web site encouraged readers to "vote green";



2. How can nonprofits distribute voter guides and legislative scorecards via the Internet?

All nonprofit organizations may use the Internet to distribute voter guides and legislative voting records. Because they are prohibited from partisan electioneering, 501(c)(3)s must be sure that all such materials they distribute are nonpartisan and comply with IRS guidelines. 501(c)(4)s have more latitude in the types of voter education materials they can distribute and may, under some circumstances, distribute more biased voter guides. PACs may distribute voter guides and other materials that are clearly partisan, although PACs may have to treat the costs of these activities as in-kind candidate contributions.

a. 501(c)(3)s

As discussed in more detail in Section III.A above, 501(c)(3)s are permitted to distribute voter guides and legislative reports that are strictly nonpartisan. Under the limited IRS guidance available, a 501(c)(3) may use its web site, listserv, or e-mail to distribute voter guides based on candidate questionnaires that cover a broad range of issues, that give equal prominence to all candidates, and that do not betray the organization's preferred position on the issues. 501(c)(3)s may also post legislative voting records that are within the scope of current IRS guidelines if the voting records include all incumbents without indicating which are running for reelection, cover a broad range of issues, and do not evaluate a particular

legislative vote as good or bad. The 501(c)(3) may not time the release of such a voting record to coincide with an election.

The IRS has also said that 501(c)(3)s may distribute legislative scorecards to their members. These scorecards differ from the legislative voting records described above because the IRS has said that they may focus on a narrow range of issues and indicate the organization's favored position on each vote. On the Internet, a 501(c)(3) could clearly distribute this type of legislative scorecard



through a members-only listserve or e-mail message or through a web page accessible only to members. However, posting this type of legislative scorecard to a public web site may be viewed by the IRS as impermissible electioneering. At a minimum, a 501(c)(3) considering posting a voting record or legislative scorecard that does not comply with the IRS safe harbor guidelines should consult legal counsel.

b. 501(c)(4)s

501(c)(4)s may distribute more "biased" voter guides and legislative scorecards - those that focus on a narrow range of issues during an election season or that indicate the organization's preferred position on an issue. However, in races for federal office (and some state elections, as well), any 501(c)(4) voter education material distributed through a public web site (or similar public communication) generally may not expressly support or oppose any candidate, and the activity must not be coordinated with a candidate, party, or campaign.

In communications limited to "members" in federal elections, 501(c)(4) materials may include express advocacy, and the 501(c)(4) may coordinate their distribution with a candidate or party. (However, the material must communicate the organization's own views and may not merely republish candidate-provided materials.) To be a member of a 501(c)(4), a person must meet the test described in Section [III.B.2.a](#). (See Question [IV.D.2](#) about how members can join a 501(c)(4) on line.)

In a few cases, 501(c)(4)s that meet the test for a "qualified nonprofit corporation" (described in Section [III.B.2.b](#)) may distribute voter guides and scorecards about federal elections to the general public even if these materials contain express advocacy. 501(c)(4)s that hope to take advantage of this so-called "MCFL exception" should consult an attorney first, to make sure that they qualify.

c. PACs

Unlike most 501(c)(4)s, PAC communications with the general public may explicitly favor a candidate. PACs may use the Internet to send the general public voter guides, legislative scorecards, and other materials that explicitly support or oppose certain candidates. If not coordinated with a candidate, the costs of producing these materials are "independent expenditures," not limited in amount by FECA. If the PAC coordinates the communications with a candidate, they are contributions, subject to FECA's cap on contributions per candidate per election. PACs must also comply with all federal, state, and local election laws requiring identification of the organization paying for partisan communications.

Although the costs of creating these materials are reportable, the costs of posting them on the web may not be. A recent FEC Advisory Opinion suggests that the cost of maintaining a

web site may be treated as an operating expense of a PAC, not subject to the requirements imposed on contributions and independent expenditures.³⁹ (See the next Question for a more complete discussion of this ruling.)



3. May nonprofits endorse candidates on the Internet?

a. 501(c)(3)s

A 501(c)(3) may not support or oppose candidates for office, neither on its web site nor elsewhere.

b. 501(c)(4)s

Unlike 501(c)(3)s, 501(c)(4)s are permitted to endorse candidates so long as they comply with applicable federal, state, and local election laws.

In federal elections, any 501(c)(4) may communicate candidate endorsements to its members and may encourage them to support candidates with contributions of money and volunteer time. The FEC has ruled that if a 501(c)(4) pays to post a candidate endorsement on its web site, it must do so on a portion of the site that is accessible only to members.⁴⁰ The FEC stated that assigning a PIN to qualifying members and allowing only those with valid PINs to view the web page would be an acceptable way of ensuring that web communications are limited to the restricted class. A 501(c)(4) that posts its endorsements on a members-only web site may provide an address for sending contributions but may not provide a contribution mechanism, such as online credit card donation system.⁴¹

If a 501(c)(4) is a qualified nonprofit corporation under the MCFL exception (described above in Section [III.B.2.b](#)), it may post endorsements of federal candidates to a public area of its web site as long as the communication is not coordinated with a candidate or party. (The costs would be treated as an independent expenditure.)

If a 501(c)(4) has a connected PAC, the 501(c)(4) may post endorsements of federal candidates to a public area of the web site if the PAC pays the costs. The PAC-paid endorsement must include the standard FEC disclaimers, identifying the PAC that paid for the communication and stating that it was not authorized by any candidate. This expenditure would be treated either as an independent expenditure or, if coordinated with the candidate or candidates endorsed, a contribution.

c. PACs

PACs may endorse candidates on the Internet. PAC web pages containing endorsements or other express advocacy communications must include the standard FEC disclaimer language for general public political advertising, indicating the organization that paid for the communication and that it was not authorized by any candidate.⁴²

Unlike a 501(c)(4), a PAC is not prohibited from facilitating candidate contributions. On the web, it may provide links or even mechanisms that enable online giving. The associated costs, as with the costs of posting endorsements, must be treated as a contribution to the candidate or candidates in question. The PAC should also take steps to screen out prohibited contributions, such as those from corporations or foreign citizens (other than permanent U.S. residents). In brief, this requires posting with the solicitation form an explanation of FECA's contribution limits and source restrictions, asking contributors for identifying information, and asking donors to affirmatively agree to a series of statements designed to screen

improper contributions. For further details, see [Question 10](#), below.

In a recent Advisory Opinion, the FEC began to address some of the questions about what costs must be reported in connection with online PAC communications.⁴³ Specifically, the Commission recognized that the costs of creating and operating a web site may be treated as operating expenses (overhead) of a nonconnected PAC, not expenditures on behalf of endorsed candidates. The PAC in question planned to post advertisements supporting candidates to its web site and to disseminate them as e-mail attachments. The ads were developed in-house using commercially available software. Because the work was performed by volunteers, there were no costs directly attributable to creating each ad. The incremental costs to host the ads on the web site were minimal. Therefore, the PAC had no web costs to report as independent expenditures. Further, the PAC was only responsible for its initial e-mail distribution. If recipients forwarded the e-mails or if users downloaded and redistributed the ads, the PAC would incur no reporting obligations.

Although the FEC has not ruled beyond this particular factual situation, the logical implication of this ruling is that many, if not all, web site costs for a connected PAC could also be treated as overhead costs, which can be paid by a connected 501(c)(4). Only the staff time associated with creating particular communications would have to be reported as an expenditure or contribution. In unusual circumstances, some other expenses might also be attributable to a specific communication - for instance, if the organization purchases a software package in order to create a particular advertisement.



4. May a 501(c)(3) publish statements that praise or criticize elected officials who are currently candidates for office?

501(c)(3) organizations may praise or criticize an elected official who is also a candidate for office, but they must ensure that the message cannot be interpreted as support of, or opposition to, the official's candidacy. 501(c)(3)s should never publish favorable or critical statements about candidates as candidates and should not comment on candidates' qualifications for office. 501(c)(3) communications made in other contexts that praise or criticize individuals who happen to be candidates are judged in light of all surrounding facts and circumstances. Any message, positive or negative, about a person who is a candidate should be examined closely for evidence of bias. The 501(c)(3) should craft the communication to accomplish a non-electoral purpose. Circumstances such as timing, tone, and targeting of the message should not indicate a surreptitious attempt to influence the electoral process.

Example

A 501(c)(3) web site may include a lobbying message that reflects disagreement with a particular legislator's position on pending legislation. The message is probably permissible if it is timed to influence a legislative vote; if the focus is on the representative's policy position, rather than her moral character; and if the target is selected because of her role in the legislative process, such as her position on a key committee. The communication is probably an illegal campaign intervention if it is timed to appear shortly before an election when no legislative vote is pending; if it uses the issue as an excuse to comment negatively on the representative's overall performance in office; and if the target is selected because she is in a close race for reelection.



5. May a 501(c)(3) link from its web site to web sites for candidates, PACs, and other organizations involved in political activity?

A 501(c)(3) web site may link to candidates' web sites as part of the 501(c)(3)'s nonpartisan voter education activities (see Section [III.A](#), above).

As long as the 501(c)(3) treats all candidates in a race equally, its web site may include links to all of the campaigns as well as additional information to help voters contact the campaigns. If one or more candidates in a race do not have a web site, it may be acceptable for a voter education site to provide a link to the other candidate or candidates as long as the 501(c)(3) site also provides information - such as a phone number and mailing address for the campaign headquarters - to let voters contact the candidate or candidates without a web site. A 501(c)(3) could probably also link to a broad range of politically diverse PACs or other political organizations that provide candidate profiles, voting history, and similar information.

A 501(c)(3) that is related to a 501(c)(4) organization should certainly be able to provide a link to the 501(c)(4)'s home page, especially if the 501(c)(4) also links back to the 501(c)(3). (See Question [IV.C.1](#) below for discussion of joint 501(c)(3)/501(c)(4) web sites.)

In general, however, it is risky for a 501(c)(3) to provide a link to only one candidate, political party, PAC, or other organization that engages in partisan political activity because this might suggest impermissible partisan favoritism on the part of the 501(c)(3). A 501(c)(3) may not use its resources to develop a web page and attract visitors whom it then directs to sites with material the 501(c)(3) could not itself post, such as a particular candidate or the endorsement list of a PAC.



Despite this, it is possible that a 501(c)(3) could link to a political site if that site is the best available source for information on an issue of interest to the 501(c)(3). However, the 501(c)(3) must try to ensure that the facts and circumstances demonstrate that it is not engaged in partisan political activity.

If there is no other relationship between the 501(c)(3) and the candidate and the link is part of a larger discussion of the issue along with other links to online sources, it might be acceptable. It might also reduce the risk to the 501(c)(3) if any link to a candidate is included as part of a list of resources, including links to other 501(c)(3) and 501(c)(4) organizations with web pages addressing a particular issue. If possible, the 501(c)(3) should also make any links to organizations engaged in political activities consistent features of the 501(c)(3)'s site, not appearing only during election cycles. It is safer to link to a 501(c)(4) that engages in some partisan political activity than linking to a candidate, party, or PAC, because the primary focus of the latter organizations is partisan activity. If a 501(c)(3) links to a part of



another organization's site other than the home page, the 501(c)(3) should never link directly to a specific web page on the other site that contains political advocacy.

Until further guidance is available, a cautious 501(c)(3) should avoid links to a single candidate, political party, or PAC.

6. May a 501(c)(4) link to web sites of candidates, PACs, and other organizations involved in political activity?



Because 501(c)(4)s need not maintain the absolute impartiality of 501(c)(3)s, they have somewhat more flexibility in terms of links from their web sites. As with 501(c)(3)s, 501(c)(4)s can create nonpartisan links to all candidates in a race. And, as described above, affiliated 501(c)(4)s and 501(c)(3)s can link to each other's web sites. However, 501(c)(4) web sites are also able to include links that would be impermissible for 501(c)(3)s.

Under federal election law, 501(c)(4)s can probably link to other organizations that engage in political advocacy. The FEC has stated that a link constitutes a contribution only to the degree that it is provided at less than the usual charge for links to non-political web sites. Therefore, if a 501(c)(4) does not ordinarily charge for its links, a link to a partisan web site - including a candidate's - should not be treated as a contribution.⁴⁴



Because federal election law prohibits non-MCFL 501(c)(4)s from contributing to a candidate or expressly advocating to non-members the election or defeat of a clearly identified federal candidate, most 501(c)(4)s should be careful to ensure that any link to a candidate's web site does not constitute express advocacy. In general, the context of the link should not clearly suggest that the 501(c)(4) supports or opposes that candidate unless the link is on a members-only web site.

Communications about state races are governed by each state's election law, and some local jurisdictions have additional laws governing local elections. Those states that follow the federal model in their substantive law, prohibiting corporate contributions, are likely to follow the FEC's lead on application of these rules to the Internet.



7. How can nonprofits use the Internet to allow candidates and voters to interact?

Part of the promise of the Internet is its capacity for two-way, interactive communication, distinguishing the Internet from more passive media such as television. The FEC recently approved a proposal by a 501(c)(3) organization to establish a complex web site that will allow substantive discussions and online debates in which candidates and voters participate directly.⁴⁵ The site will also contain a variety of information designed to promote voter education and involvement, including information about the candidates (including links to the candidates' web sites) and

Factors the FEC Reviewed in Determining the Site's Nonpartisan Nature

- Standards for inviting candidates and degree of participation by each candidate: All candidates will be invited to attend, and placement of candidate information on the site will be based on objective criteria.
- Audience targeted: The site will be available to the general public, and no effort will be made to determine a visitor's party or candidate preference.
- Selection of materials about the candidates: The site will provide links to neutral sources of information and a representative sample of editorial endorsements.
- Degree of coordination between the site operators and the campaigns: Communication with the campaigns will not concern substantive

information on voting and voter registration. The FEC was persuaded that the site provided nonpartisan voter education and did not promote any of the participating candidates. (See sidebar.)

IRS officials have commented favorably on the FEC's analysis of the 501(c)(3) voter education program.⁴⁶ It is likely that the IRS would evaluate similar factors in deciding whether this type of activity violates the 501(c)(3) prohibition on political campaign activity.

A second FEC ruling approved a similar voter involvement and education site operated by a for-profit corporation.⁴⁷ Apparently, the type of the organization operating the site is not significant, so long as it does not support or oppose candidates.

policy issues but will be limited to that necessary for the effective operation of the site, such as inviting participation and providing technical advice on use of the site.

- Statements by the site operators: The organization itself will not score or rate the candidates or advocate the election or defeat of any candidate or the candidates of a political party.



8. How can a 501(c)(3) operate a listserv or chat room without violating the IRS restriction on electioneering messages?

501(c)(3)s that operate a listserv or chat area must take steps to ensure that the forum does not violate the IRS prohibition against communications that support or oppose candidates for public office. The 501(c)(3) should adopt and enforce policies for the forum and guidelines for participants that promote the forum's use for non-electoral purposes and prohibit posting of electioneering messages. The 501(c)(3) should clearly and regularly state that the participants, and not the sponsoring 501(c)(3), are responsible for contents of individual postings. If a 501(c)(3) takes these precautionary steps, the organization's tax exemption will probably not be threatened by a single unauthorized electioneering message. However, if such a message is posted, the 501(c)(3) should take the opportunity to remind list participants of the list guidelines, and promptly remove the message (including deletion from publicly available archives of a listserv). Users who repeatedly post political messages must be removed from participation.

On listserves in which a moderator must approve all messages posted, the IRS is likely to consider the sponsoring 501(c)(3) to be more responsible for the content of messages. 501(c)(3)s that sponsor moderated lists must be certain to screen out any partisan electoral messages. (See Question [IV.A.13](#) above about lobbying messages on listserves.)



9. May a 501(c)(3) use the Internet to distribute election-related materials prepared by others?

A 501(c)(3) may post third-party educational material, such as news articles or other information that refer to candidate positions on issues of interest, if the materials are selected in an unbiased manner without an attempt to favor any candidate. For example, a comprehensive voter education web site would probably be safe providing links to a representative sample of endorsements by newspapers in a race, so long as the linked sites are not selected with an intent to benefit one candidate over another. (See [Question 7](#) above.)

However, a 501(c)(3) may not use another speaker's materials to send a message that the 501(c)(3) could not send itself, such as a candidate endorsement. Thus, a 501(c)(3) should not distribute materials prepared by others that tend to favor a particular candidate or candidates.

A 501(c)(3) should also be careful if it distributes news articles written by others about one candidate's support for the organization's position on an issue because it may suggest a tacit endorsement of the candidate. There is less risk to the 501(c)(3) if it distributes these articles as part of an ongoing effort to distribute articles related to the issue so that the mention of the candidates' positions is merely an incidental part of the education effort. A 501(c)(3) runs more risk if it only distributes articles on the issue during the election season or if it only distributes articles that highlight the views of one candidate. (See Question [IV.A.9](#) above regarding distribution of legislative material prepared by others.)



Organizations posting third-party materials in an online forum must also be careful to avoid copyright infringement. Generally, this means obtaining permission from the authors to reproduce their work. The fact that information has been made publicly available does not mean that it is in the public domain for copyright purposes. Careless copying of other people's material can lead to significant liabilities. (See Question [IV.E.1.](#))



10. How are the rules about Internet use different for nonconnected PACs?

Nonconnected PACs may solicit contributions from any member of the public eligible to contribute to political campaigns. Unlike a 501(c)(4)'s connected PAC, nonconnected PACs may use any method of online fundraising that allows the organization to comply with applicable FEC or state regulations (such as not accepting corporate contributions, and using "best efforts" to gather and report information about individual contributors). The FECA does not require them to limit their fundraising efforts to qualifying members. (See Question [IV.D.3](#) for a discussion of online fundraising issues.)

Like all PACs and federal candidates, nonconnected PACs may not accept contributions from corporations or labor unions, from foreign citizens, or from a person using someone else's funds. Any online PAC or candidate solicitation must include measures to screen out these prohibited contributions. The FEC has approved an online screening method with several elements: first, language informing donors of FECA's source restrictions and contribution limits; second, an electronic form requiring detailed identifying information; third, a cross check of the donor's residential address against a credit card billing address (to check for corporate or business credit cards); and fourth, a series of statements for donors to affirm that verify the legality of the contribution.⁴⁸

A nonconnected PAC's web site may contain candidate endorsements and may encourage visitors to make monetary contributions or volunteer for candidates. Specific costs attributable to those endorsements or solicitations must be treated as a contribution to (or independent expenditure on behalf of) the endorsed candidates.

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C. Related Organizations



1. **May related 501(c)(3)s, 501(c)(4)s, or PACs share a web site?**

It often makes sense for related 501(c)(3)s and 501(c)(4)s to share a single web site, and it is possible for them to do so. However, the more that the 501(c)(4) engages in political activity, the more it may have to separate its Internet activity from that of a related 501(c)(3).

There are clear reasons why related 501(c)(3)s and 501(c)(4)s might want to share a web site: Having two separate sites adds expense and may cause confusion to web surfers if the names of the two organizations are similar. In many cases, the program activities of sister organizations are so intertwined that it does not make sense to divide their communications into two separate sites.

Just as 501(c)(3) and 501(c)(4) sister organizations can share office space and staff and publish a joint newsletter, they should be able to maintain a joint web site if it is carefully structured. The 501(c)(4) should pay for any lobbying portions of the site unless the 501(c)(3) tracks and reports its share of the costs as lobbying expenditures. If the 501(c)(4) does not engage in any political activities that would be prohibited to the 501(c)(3), the organizations may operate the web site as a seamless, unified whole, with each organization paying its share of the costs, allocated according to the content of the site.

If the 501(c)(4) partner engages in political activities - and especially if it maintains a connected PAC - the shared web site must reflect a greater separation between the

organizations. Any material relating to 501(c)(4) political or PAC activity should be clearly separated from the 501(c)(3) portion of the web site to avoid even the appearance that 501(c)(3) resources are underwriting political communications. At a minimum, no material paid for by or attributed to the 501(c)(3) should appear on pages containing political communications. Furthermore, no 501(c)(3) pages should contain direct links to pages containing political communications. Material that must be separated from the 501(c)(3) pages includes both express advocacy communications paid for by the PAC as well as 501(c)(4) publications such as voting records and voter guides that do not meet the 501(c)(3) standards.

Example

Citizens for Accountable Government (CAG) is a 501(c)(4) lobbying organization that advocates for public access to government information. It has a sister 501(c)(3), Citizens for Accountability Education Fund (CAEF), that funds non-lobbying work on issues relating to government accountability.

CAG sets up a web site that contains a total of 50 pages of material, broken down as follows:

- 1 home page maps the site;

- 1 page describes CAEF's mission and provides an e-mail contact for further information;

- 2 pages describe CAG's mission and activities and encourage visitors to join as members by providing a credit card to pay annual dues;

- 25 pages contain reports analyzing the impact of increased public access to information on governmental decision-making;

- 15 pages describe legislative proposals that CAG supports, including an e-mail link to the user's congressional representative;

- 5 pages contain model documents for members of the public to file a Freedom of Information Act request; and

- 1 page provides links to a range of sites on similar topics, including other 501(c)(3) and 501(c)(4) organizations as well as government sites.

Every page on the site includes a navigation bar that links to other major areas of the site: Home, About CAG, About CAEF, Reports, Legislation, FOIA Documents, and Resources.

CAG and CAEF determine that 17 pages of the site are exclusively 501(c)(4) (lobbying and about CAG), 31 pages are 501(c)(3) (educational reports, FOIA materials, and about CAEF), and 2 pages are shared (home page and links page). They allocate all web costs 36% to CAG (17 plus one-half of 2 pages out of 50) and 64% to CAEF (31 plus one-half of 2 pages out of 50).

Note that while it did not do so in this example, CAEF could choose to pay for some of the lobbying expenses of the site and count the costs against its annual lobbying

expenditure limits.

Any navigation bar that appears throughout the 501(c)(3) and 501(c)(4) sections of the site should not include links to any page that contains partisan election-related material. Instead, political material must be kept in a segregated section of the site accessible only from the 501(c)(4) areas. It is probably permissible to link from the 501(c)(3) pages to a 501(c)(4) home page that does not contain political advocacy and from there to political communications.

Example

If CAG forms the CAG PAC and decides to include it on the web site, it may not be integrated into the site as it currently exists, because every page links to CAEF. CAG PAC may set up its own site, or the site may be restructured so that the visitor sees CAG and CAEF on the home page, but, after linking further down the site, arrives in either a CAG or CAEF area. From the CAG area, there may be links to PAC pages. Each page of the entire site may contain a "home" link back to the home page, but should not have a navigation bar that allows direct connections between PAC and 501(c)(3) pages.

CAG may pay the costs of modifying the web site to separate CAG PAC pages from CAEF pages. CAG staff must track time used to create and post material endorsing or opposing candidates, and the associated costs must be paid in advance by CAG PAC and reported as contributions or expenditures.



Because of the risk to the 501(c)(3) when it shares a web site with a related 501(c)(4) that engages in partisan election-related activity, the simplest approach is for the 501(c)(3) and 501(c)(4) to have separate web sites providing information about each organization's activities. Each could mention the related organization and provide a link to its home page.

Based on a recent FEC ruling concerning a nonconnected PAC's web site, a 501(c)(4) with a connected PAC may probably pay the costs of setting up and maintaining a web site shared by the 501(c)(4) and its PAC. (For more details on this ruling, see Question [IV.B.3.c](#), above.) However, costs attributable to a specific PAC communication are a contribution to or expenditure for (or against) a candidate, and the PAC should pay and report these costs. Of course, the PAC must include appropriate FEC disclaimers.



Because the FEC has not explicitly authorized treating the costs of a connected PAC's web site as overhead that may be paid by the connected organization, a cautious approach would be to allocate all costs associated with a shared web site based on the PAC and 501(c)(4) content of the site. Costs attributable to the PAC share would be divided among endorsed candidates based on the space devoted to each.

2. May a 501(c)(4) discuss the existence of its connected PAC on a public web site?

The FEC has said that a connected organization may publicly announce the existence of the PAC and explain the legal requirements that apply to its



activities; provide information about how much money the PAC has raised, the number of contributors, and the number of candidates supported; and identify federal candidates who have been supported by the PAC as long as the communication does not suggest that support for the PAC would help elect or defeat those candidates.

Therefore, a 501(c)(4) could put this information on a publicly accessible web site.



However, any discussion of a connected federal PAC on a public web site must be careful to avoid straying into a prohibited solicitation of non-members for PAC support. The FEC will interpret a communication as a solicitation if it encourages or facilitates support of the PAC, such as by suggesting that a non-member can lawfully contribute to the PAC.

D. Organization Building



1. How can people become members of a 501(c)(3) using the Internet?

For 501(c)(3) advocacy organizations, a strong membership base strengthens the organization's lobbying capacity because most lobbying communications to members count as direct lobbying, not the more limited grass roots lobbying. Fortunately, 501(c)(3)s can use the Internet to turn people into members, as that term is defined by the IRC. (People can also join 501(c)(4)s over the Internet, becoming members according to the FECA's definition of member. See the next Question below.)

The IRC defines a member of an electing 501(c)(3) as someone who contributes more than "a nominal amount" of time or money to the 501(c)(3). A person can either volunteer for a 501(c)(3) or contribute money using the Internet.

Example

Students for Democracy (StuDem) is a 501(c)(3) organization devoted to educating young people about the need for citizen participation in a vital democracy, advocating for the rights of young people, and training young leaders in organizing skills. StuDem's members are generally high school and college students. Members are invited to participate in an annual conference and receive the organization's monthly newsletter. Members may choose to receive the newsletter electronically or in paper form.

StuDem encourages visitors to its web site to join as members. They may do so by paying annual dues of \$20 or more or by agreeing to respond to at least ten of the frequent Action Alerts sent out electronically by StuDem during the next year. Members who choose to receive Action Alerts register identifying information, including their e-mail address and full name.

Each Action Alert provides a summary of a current issue and the needed action. It contains a link that directs the recipient to a portion of the StuDem web site that is configured to allow e-mails to be sent to targeted decision-makers. Depending on the issue, the target may be a key legislator, a corporate official, or the head of a regulatory

agency. Before entering this area of the site, visitors are asked to log in with their e-mail address. When an e-mail is sent from the StuDem web site, the organization receives confirmation of the sender's e-mail address. Members who do not respond to three consecutive Action Alerts receive a reminder of their commitment to take action on at least ten Alerts per year. Online members who do not meet their commitment are removed from the organization's membership list.

Online members receive the newsletter electronically, although they may request a that paper copy be sent instead. They are invited to attend the annual conference and generally have all the privileges of paying members. These volunteers may be treated as members for purposes of § 501(h).

It is becoming increasingly easy to donate money on line. 501(c)(3)s may solicit contributions via e-mail, listserv, or their web site, and simple products exist to build into the web site the capacity to accept credit card contributions on line. Alternatively, 501(c)(3)s may receive membership dues and contributions from one of several online-giving web sites. Contributions made on line may be treated the same as a check sent in the mail. See Question 3 below for more details on Internet fundraising.

In addition to financial supporters, a 501(c)(3)'s members include people who volunteer time for the organization. This includes, for instance, activists who agree to take certain actions on a regular basis, such as writing a monthly letter on an issue that the organization targets for action. Volunteers can undertake this activity on line, such as by e-mailing their congressional representatives. To treat these people as members for purposes of lobbying under the 501(h) expenditure test, the volunteer commitment must be set at a level that is above "nominal." In addition, a 501(c)(3) can only continue to treat volunteers as members so long as they remain active volunteers. The organization must be able to track whether the members actually take the promised action regularly. This can be as simple as having these activists send copies of their communications to the organization, or as technologically complex as asking them to send their messages to Congress using a password-protected "action alert" page on the 501(c)(3)'s web site that can automatically track the member's activity.



2. How can people become members of a 501(c)(4) using the Internet?

The FECA allows 501(c)(4)s to send partisan electoral communications to members that most 501(c)(4)s could not send to the general public in a federal election. Furthermore, 501(c)(4)s can solicit members, but not the general public, for contributions to the 501(c)(4)'s connected PAC. The FECA's definition of members is quite different from the IRC's definition of member discussed above in the context of the 501(c)(3) lobbying rules (see [Question 1](#), above).

However, people can just as easily join a 501(c)(4) using the Internet. Remember, though, that online PAC contributions from 501(c)(4) members must still be screened for prohibited contributions, such as those from foreign citizens. (See [Question IV.B.10](#), above.)

Under the FECA definition, a member must *either* pay annual dues to the 501(c)(4) *or* have some form of governing rights within the organization and annually affirm their membership. (For a more detailed description of the requirements, see [Section III.B.2.a.](#))

As discussed above, it has become relatively simple to solicit and collect dues payments on line. Alternatively, a 501(c)(4) may simply collect sufficient information on line to allow its new members to exercise governing rights over the organization, for example, a



mailing address to which the organization can send a membership card and a ballot to vote for the organization's board of directors. An organization that wishes to allow its members to vote by e-mail or other online communications should seek legal advice about whether state nonprofit corporation law permits an organization's members to exercise their voting rights electronically.



3. How can an organization use a web site, listserve, or e-mail to raise funds?

In a relatively short time, the number of opportunities for nonprofits to raise funds on line has proliferated. The possibilities include:

- accepting credit card contributions on a secure web page operated by the organization;
- accepting donations through a third-party donation page;
- charity shopping sites where a percentage of each purchase is sent to a nonprofit of the shopper's choice;
- affinity arrangements with online merchants that provide payments to a nonprofit that refers shoppers to the merchants' sites;
- corporate web site sponsorship agreements; and
- sale of electronic "scrip" purchased by a charity from a merchant at a discount that individuals buy at face value and use for online purchases.

More techniques for online fundraising are being invented every day.

A complete discussion of the legal issues involved in all these forms of fundraising is beyond the scope of this document. We can suggest a few issues for nonprofits to consider when entering into online fundraising arrangements.

- **Tax-Deductible Contributions to 501(c)(3)s:** If contributions are raised for charity through a for-profit venture, is the contribution actually deductible? Who issues a receipt to the donor? Can the charity assert that the contribution was in fact made to it, and not to the for-profit? (Different models of affiliation will affect the answers to these questions.) Does the organization obtain sufficient information to acknowledge donors? Are donors or shoppers being led to believe they may claim a tax deduction when that is not true?
- **Non-Deductible Contributions to 501(c)(4)s and PACs:** A fundraising solicitation for a 501(c)(4) or PAC with annual gross receipts over \$100,000 must affirmatively notify donors that contributions are not deductible as charitable contributions. PACs are also responsible for gathering and reporting certain information about contributors under federal, state, and local election laws, and the online arrangement must provide some way to gather that information.
- **Use of the Organization's Name:** For legal and policy reasons, it is important not to let a third party such as a commercial fundraiser or online mall use a nonprofit's name

without adequate oversight. This is especially true if donors are asked for tax-deductible contributions. A charity must have actual control over both solicitations and funds raised in its name.

- **State and Local Registration Laws:** Many states and some localities regulate the solicitation of charitable contributions. Before the advent of the Internet, it was relatively straightforward to determine when these laws applied, as an organization can reasonably know when it is sending mail or making calls to individuals in a state with registration requirements. The explosion of online fundraising has brought increasing concern by state regulators, and at least one state has attempted to assert jurisdiction over transactions on any web page accessible to its residents, including both direct solicitations and arrangements with "commercial co-venturers."

We cannot provide definitive advice on this matter until the law in this area is better developed. However, at a minimum, an organization that conducts Internet solicitations, whether directly or through an arrangement with an online fundraising service, should register with any states with which it has a substantial connection, such as states in which the organization maintains facilities or in which an organization's employees travel regularly on organization business. Of course if the organization conducts direct mail or telemarketing fundraising anywhere, state registration will be required.



Organizations should examine the rules of those states where they are already registered to determine whether Internet fundraising requires modifications to the registration or disclosure. Remember also that many of these state laws define "charitable" very broadly, so that non-501(c)(3) organizations, such as 501(c)(4)s, that solicit public contributions may also come under their scope.

- **Unrelated Business Income Tax (UBIT):** Nonprofits should consider whether funds they receive from corporate sponsors are



taxable advertising income or nontaxable contributions. The key here is the nature of the benefits provided by the nonprofit in return for the corporate payment. IRS officials have suggested that a link from a nonprofit's web site to the corporate sponsor's e-commerce site could transform the acknowledgment into a taxable payment for advertising. While this may not ultimately prove to be the law, the safe course for now would be to link to a general corporate information page rather than a merchandising site. In relationships with online partners, nonprofits and their attorneys should examine the organization's role and especially any written agreement to ensure that funds received may be treated as tax-free royalties.

- **Credit Card Agreements:** If an organization uses a third-party vendor to accept credit card donations on its behalf, the organization should ask the merchant to verify that the arrangement does not violate the merchant's credit card agreement, which often prohibits using the merchant account to process transactions for another entity.

E. Special Legal Problems



1. What steps can an organization take to minimize liability for third-party communications in a listserve or other

interactive forum?

In general, the risks to organizations operating a listserve, chat area, or other interactive Internet forum are small, but an organization would be wise to protect itself from possible trouble through some simple preventive measures.

A nonprofit running an online forum that allows others to post content should set ground rules for its use. The operating organization should make clear to users what it can and cannot do to accommodate concerns over site content. Disclaimers provide an important tool for dealing with liability issues and help ensure that operation of the site is consistent with the organization's tax-exempt purpose. When forming a content policy, consider the legal constraints that apply to nonprofits' activities, such as the rules governing lobbying and election-related activity discussed in this guide, as well as concerns about postings that could injure third parties, such as defamatory material or copyrighted work reproduced without permission.

The site should ask users to read and indicate their agreement to the site's policy, including a disclaimer on responsibility for user-provided content. There is no guarantee that a court will uphold this kind of contractual agreement, but requiring affirmative acceptance is more likely to be legally effective than just posting the policy on the site. Furthermore, it may deter users from risky behavior.

A nonprofit can increase its legal protection by requiring a registration process that includes assent to a user agreement before allowing access to a bulletin board (see sidebar for sample). Such a process would require users to

Sample User Agreement

By clicking below to proceed with the registration process, you agree that all information you have provided is true and correct. You agree that you will not use this board to post any material which is knowingly false and/or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or that otherwise violates any law. You agree not to post any copyrighted material unless the copyright is owned by you, this organization, or properly licensed for this use. Users who violate this policy, particularly by posting unauthorized copyrighted information, will not be permitted to continue to post messages.

Although [organization] does not and cannot review the messages posted and is not responsible for the content of any of these messages, we at [organization] reserve the right to delete any message for any or no reason whatsoever. You remain solely responsible for the content of your messages, and you agree to indemnify and hold harmless [organization] and their agents with respect to any claim based upon transmission of your message(s).

We at [organization] will not use any personal information you have provided for commercial purposes or to contact you without your consent. However, we reserve the right to reveal your identity (or any information we know about you) in the event of a complaint or legal action arising from any message posted by you.



provide identifying information - at minimum a full name, address, and e-mail address - to support enforcement of provisions in the user agreement. The nonprofit needs this information to identify users who transmit information that may injure an individual's reputation, infringe intellectual property rights, or otherwise violate the guidelines for the forum. For the protection of the users, nonprofits may also want to include a privacy statement indicating limits on the organization's use of the information it collects.

Once the site has set terms of agreement and enacted a policy regarding content, it is important to take steps to make sure procedures are in place to monitor compliance by users. Recent legislation provides protection from copyright law violations for operators of services such as bulletin boards and chat rooms.⁴⁹ To take advantage of this law, an organization must:

- adopt, reasonably implement, and inform users of a termination policy;
- promptly remove or disable access to infringing material after receiving proper notice of a potential infringement of the policy;
- designate an agent on the web site for receipt of such notice, including the name, address, phone number, and e-mail address of the agent; and
- provide the name of the agent to the Copyright Office.



2. Another organization is using our name as its domain name. What can we do?

A domain name identifies an organization on the Internet. Getting a domain name clearly related to the organization's name - such as the Alliance for Justice's domain of afj.org - makes it easier for people to use the Internet to contact an organization. Conversely, someone else using a domain name that includes or suggests the name of a different organization can create confusion.

The application of trademark law (which is what protects use of an organization's name against use by others) to the Internet is still evolving. It is clear that registering a trademark does not automatically confer ownership of a domain name using the mark. Federal legislation enacted in the fall of 1999 imposes penalties on those who in bad faith register or use a certain domain names that are protected under the trademark act.⁵⁰ However, this will not solve all the possible conflicts. Many organizations may share abbreviated names without infringing one another's trademarks, so a domain name using the abbreviation would not infringe the trademark that protects an organization's full name. Furthermore, trademark protection is limited to a geographic area, while a domain name can be registered once in the whole world. How this area of law will develop is unclear, and organizations encountering problems will need to seek competent legal advice.

Conclusion

In a sense, the Internet promises to fulfill the dreams of centuries of progressive activists - creating a world in which everyone has a voice and in which everyday people can effectively compete with the rich and powerful in the policy debate. However, this promise may go unfulfilled if the laws governing nonprofit advocacy are applied without appreciating the aspects that make this new medium unique.

This guide has attempted to apply the laws that govern nonprofit advocacy to this new medium. We have attempted to interpret these laws in this new framework in a way that protects the opportunities for nonprofits to use the Internet for legislative and political advocacy. We have also tried to identify areas in which overly aggressive regulators might unduly restrict nonprofit advocacy through extreme interpretations of laws that were written before the creation of the Internet.

The Internet may represent a new paradigm, a new way of conducting society. In particular, the opportunities that it presents for organizing people for social change may completely transform progressive activism. Because that possibility exists, we believe that Internet advocacy should be left largely free from new regulation, at least until it has the opportunity to evolve and mature.

This guide will help nonprofits incorporate Internet tools into their advocacy. We also expect that it can help the Internet to become what it has the potential to be - an exciting and essential new tool for social change.

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Glossary

501(c)(3) - An organization exempt from tax under Section 501(c)(3) of the IRC. 501(c)(3)s may engage in some lobbying but may not engage in partisan electoral activity. Contributions to 501(c)(3)s are generally tax deductible.

501(c)(4) - An organization exempt from tax under Section 501(c)(4) of the IRC. 501(c)(4)s may engage in unlimited lobbying and some partisan electoral activity. Contributions to a 501(c)(4) are generally not tax deductible.

501(h) Election/Expenditure Test - 501(h) is a section of the IRC that offers one of two possible mechanisms for defining and regulating lobbying activities by 501(c)(3) organizations. The mechanism is expenditure-based, with limits on lobbying defined as a monetary cap on lobbying expenditures. The test only applies to 501(c)(3)s that choose it through an "election."

Call to Action - An explicit or implicit suggestion from a 501(c)(3) that people receiving the call to action communicate with a legislator or other public official concerning a piece of specific legislation. A call to action is usually necessary before a communication can be characterized as "grass roots lobbying."

Direct Lobbying - Activities or communications by a 501(c)(3) organization designed to communicate the organization's views in support or opposition to specific legislation to a legislator or other public official with a role in the legislative process. Also includes communications with voters urging support or opposition to a ballot measure. Contrasted with grass roots lobbying in which the general public, rather than the 501(c)(3) itself, is encouraged to contact legislators.

Domain - An Internet designation for a group of e-mail addresses, web pages, etc. that point to a particular individual or organization. Frequently the names of domains are selected to indicate the name or characteristics of the individual or organization. For example, the domain of the Alliance for Justice is afj.org.

E-mail - An electronic message delivered to a specific electronic address or addresses over the Internet.

Express Advocacy - A statement that urges the election or defeat of a candidate for federal office, either through clear language that identifies a federal candidate and includes phrases such as "vote for" or, possibly, through other language that, combined with other facts and circumstances, makes it impossible for a reasonable person to conclude that the statement is anything except support or opposition to a candidate.

FEC - Federal Election Commission.

FECA - Federal Election Campaign Act.

Federal Election Campaign Act - The primary federal law governing the activities of organizations and individuals in federal elections.

Federal Election Commission - The federal agency charged with regulating the activities of organizations and individuals in federal elections.

General Public - See Public.

Grass Roots Lobbying - Activities or communications by a 501(c)(3) organization designed to encourage members of the general public to communicate their views on specific legislation to a legislator or other public official with a role in the legislative process. Contrasted with direct lobbying in which the 501(c)(3) itself communicates with legislators.

Hit - One access of a particular web page (or web page element) by an individual. Individuals that view several pages on a particular web site may be responsible for several "hits."

Hyperlink - See Link

Hypertext - Electronic text, typically found on a web site, that includes links to enable readers to display a different section of the document or an entirely different document. Typically used to connect resources on related topics, allowing the user to pursue an idea in greater depth, to pursue an interesting tangent, or to examine a source document.

Independent Expenditure - A communication made without coordination with a candidate or campaign that includes "express advocacy" in support of or in opposition to a candidate.

Insubstantial Part Test - One of two possible mechanisms for defining and regulating lobbying activities by 501(c)(3) organizations. The insubstantial part test permits lobbying by 501(c)(3)s as long as that lobbying is "no substantial part" of the organization's activities. ("Substantial" is not defined.) The test applies to 501(c)(3)s that do not make the 501(h) election.

Internal Revenue Service - The federal agency charged with enforcing federal law governing the taxation of individuals and organizations and the activities of tax-exempt organizations.

Internal Revenue Code - The federal law governing the taxation of individuals and organizations and the activities of tax-exempt organizations.

IRC - Internal Revenue Code.

IRS - Internal Revenue Service.

Legislative Scorecard - As used in this guide, a report of one or more incumbent legislator's legislative votes combined with statements that indicate an organization's support or opposition to those votes.

Legislative Voting Record - As used in this guide, a report of one or more incumbent legislator's legislative votes without any additional indication of an organization's support or opposition to those votes.

Link - A mechanism for readers of an electronic document to quickly display a different section of a document or an entirely different document. Typically used to connect resources

on related topics, allowing the user to pursue an idea in greater depth, to pursue an interesting tangent, or to examine a source document.

Listserve - A list of e-mail addresses maintained on a computer that distributes messages among a group of recipients. Users transmit messages to the host computer for distribution to everyone on the list. People can "subscribe" to the list, although the creator of the listserve may restrict the participants or the messages. The word "listserve" derives from "Listserv," a trademark of the L-Soft corporation for its software to manage and operate listserves.

Lobbying - An effort to win the support of legislators or other public officials for a position on a piece of specific legislation or a specific legislative proposal. See also, Direct Lobbying and Grass Roots Lobbying.

MCFL - Common name for an exception to the general prohibition on express advocacy for or against federal candidates directed by corporations to the general public. Derived from the name of the case Massachusetts Citizens for Life, Inc. v. FEC, which first suggested the constitutional right that underlies the exception.

Member - A person affiliated with an organization in ways that confer certain legal privileges on communication between the organization and the person. Under the IRC, a member of and electing 501(c)(3) is a person who contributes more than a nominal amount of time or money to the organization. Under the FECA, a member is a person who either pays regular dues to the organization or who has a significant organizational attachment to the organization, such as the right to participate in the governance of the organization (for example, by electing one or more members of the organization's board) and who annually affirms membership in the organization.

Moderated List - A listserve in which one or more individuals ("moderators") must review all messages before they are distributed to the subscribers to the list.

PAC - Political Action Committee. For purposes of this guide, an organization organized under Section 527 of the IRC in order to intervene in partisan electoral campaigns. Connected PACs (also known as separate segregated funds or SSFs) are sponsored by another organization. Nonconnected (or independent) PACs are free-standing entities.

Partisan - For purposes of this guide, an activity or statement designed to support or oppose a candidate for office or a political party.

Password - A word (or string of letters and numbers) kept secret by an individual and presented to authenticate the individual's identity on the Internet or similar electronic forum.

PIN - "Personal Identification Number." A type of password.

Post - To place a communication on a web page or listserve. As a noun, "post" or "posting" refers to such a message.

Public - For purposes of this guide, all persons who are not members of the organization in question.

Qualified Nonprofit Corporation - An organization qualified to take advantage of the

MCFL exception to the FECA because it meets the criteria laid out in 11 C.F.R § 114.10. Among other requirements, the organization may not have received any funding from a labor union or a business (for-profit) corporation.

Scorecard - See Legislative Scorecard

Separate Segregated Fund - A connected PAC.

SSF - Separate Segregated Fund.

UBIT - Unrelated Business Income Tax.

Unrelated Business Income Tax - Tax paid by an otherwise tax-exempt organization on income from activities that are not part of the organization's exempt purpose and that do not fall under several specific exceptions to the tax contained in the IRC.

URL - Uniform Resource Locator. The Internet address for a web page or other Internet content.

Voter Guide - A publication providing information on one or more candidates running for office. Typically, a voter guide contains information on the candidates' qualifications for office and their positions on one or more public policy issues.

Voting Record - See Legislative Voting Record

Web - A part of the Internet distinguished by its extensive use of hypertext, graphics, and multi-media presentation techniques. The name is derived from the multi-dimensional linkages between different portions of the web made possible by the links. Sometimes called the "World Wide Web."

Web Site - A connected group of web pages, typically created by a single organization or individual.

Web Page - A single, scrollable screen of information presented on users' computers that typically includes hypertext, graphics, and multi-media presentation techniques. The basic component of the Web.

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Notes

1 In 1997, 18.6% of households used the Internet. In 1998, 26.2% of households used the Internet. *Falling Through the Net: Defining the Digital Divide*, National Telecommunications and Information Administration (1999).

2 Since 1996, the federal Universal Service program has been expanded to cover telecommunications and information technologies in addition to its original mandate of supporting universal telephone service. As part of this program, the Federal Communication Commission's Universal Service Fund underwrites part of the cost of providing service to rural and other under-served areas. The Link-Up America program and the Lifeline Assistance program help low income households pay the connection and monthly service charges for telephone service. The Department of Agriculture's Rural Utilities Service is making loans and providing technical assistance to improve the telecommunications infrastructure in rural communities. Thousands of needy schools and libraries are receiving discounted telecommunications services through the E-rate program. Other government programs make grants to fund telecommunications facilities in communities.

3 Links to examples of innovative uses of the Internet for advocacy can be found on the Alliance for Justice web site at www.afj.org.

4 The sudden impact of the Internet on exempt organizations has spawned a cottage industry in the trade press. For a quick overview on the subject, see Christina Nooney, *Tax Exempt Organizations and the Internet*, 27 Exempt Org. Tax Rev. 33 (2000). The law firm Venable has an online publication, *So You Want to Be on the Internet*, on diverse legal issues raised by the Internet with planned periodic updates available at www.venable.com/Internet/toc.htm. For discussion on UBIT and general exemption issues see Catherine Livingston & Amy R. Segal, *Exempt Organizations on the Internet Face Exemption and UBIT Issues in New Contexts*, J. Tax'n Exempt Org. Sept.-Oct. 1999, at 63. For a focus exclusively on UBIT, see Cynthia F. Reaves & Jefferey R. Bennett, *UBIT.COM? Can the Old Laws Apply in the New Cyber Frontier?*, 27 Exempt Org. Tax Rev. 251 (2000). For the IRS's view (subject to the usual disclaimers) on Internet fundraising and advertising, see Cheryl Chasin, Susan Ruth, & Robert Harper, *Tax Exempt Organizations and World Wide Web Fundraising and Advertising on the Internet*, IRS CPE Exempt Org. Tech. Instruction Prog. FY 2000, at 119 (1999). Bob Harper, chief of Branch 3 of the Service's Exempt Organization Division, participated in an interview in a D.C. Bar program on the IRS's experience with the Internet. For a transcript see *D.C. Bar Internet Discussion Featured IRS's Bob Harper*, Paul Streckfus's EO Tax J. Dec.-Jan. 2000, at 28.

5 Throughout this guide, we have used the term "listserve" to refer to automated e-mail lists. The term is similar to the "Listserv," a trademark referring to a software product for operating these lists that is produced by L-Soft International, Inc. (www.lsoft.com). The Listserv software is such a dominant product in this software category that e-mail lists are most commonly known as "listservs." We use the term listserve out of a combination of respect for L-Soft's trademark and a desire to avoid the confusion that using uncommon terms like "automated e-mail lists" can create. This guide will use the term "listserve" to

refer to e-mail lists generally, including those operated using Listserv software and other software products.

6 In 1998, 77.9% of the people using the Internet at home used it for e-mail - more than any other single use. *Falling Through the Net: Defining the Digital Divide*, National Telecommunications and Information Administration, Chart II-32 (1999).

7 A.O. 1997-16 (F.E.C. 1997).

8 I.R.C. § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii).

9 There are exceptions to this general rule. Churches and some other organizations are not permitted to make the 501(h) election. In addition, organizations with very large budgets may find the \$1 million cap on lobbying expenditures under the 501(h) election more confining than the insubstantial part test. Organizations with questions about which test to choose should consult a knowledgeable lawyer.

10 I.R.C. §§ 501(h) and 4911; Treas. Reg. §§ 1.501(h)-1 through 3 and 56.4911-0 through 10.

11 Technically, the limits a 501(c)(3)'s lobbying expenditures are calculated as a percentage of its "exempt purpose expenditures." Exempt purpose expenditures exclude some budget items such as funds spent for an outside or separate fundraising operation and funds spent to generate unrelated business income. See I.R.C. § 4911(e)(1) and *Being a Player* at 17.

12 It is not clear whether the IRS would classify as a call to action links to legislators which appear on different web pages than those that discuss the organization's legislative positions. We believe that greater separation between the legislative posting and the links to legislators - a larger number of "clicks" and clear design distinctions between the two pages - would make it less likely that links to legislators would constitute a call to action. (See Question IV.A.6.)

13 Treas. Reg. § 56.4911-2(b)(5).

14 Treas. Reg. § 56.4911-2(b)(5)(iii)(A).

15 I.R.C. § 4911(d)(2) and Treas. Reg. § 56.4911-2(c).

16 Although the IRS has made no statement on which we can legally rely, it is possible that the exception for nonpartisan analyses and other exceptions to the definition of lobbying apply to non-electing 501(c)(3)s as well. For a discussion, see Judith E. Kindell & John F. Reilly, *Lobbying Issues* in Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996).

17 Many organizations calculate the value of clerical and administrative work in support of lobbying using the same technique. Thus the organization in this example could charge 3% of the salaries for its clerical support staff as a lobbying expenditure.

18 While the basic concepts are simple, the rules are somewhat complex. For a more detailed discussion of these rules, see *Being a Player* at 36.

19 But see PLR 1999 25051 (allowing as exempt function activities lobbying, ballot

measure activities, and other activities conducted with the purpose of supporting or opposing candidates for office).

20 2 U.S.C. §§ 431-455.

21 In addition to the ban on partisan intervention in campaigns, the IRS has also challenged activities by 501(c)(3)s that support particular parties or campaigns on the grounds that these activities constitute an "improper private benefit." See, *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989) (finding against the Academy because it benefited the Republican party). Under this theory, a 501(c)(3) could lose its exemption even without reference to a candidate or an election if the purpose of the activity is to confer a substantial benefit on particular political interests. For example, a 501(c)(3) could not create a web site that provided information on participating in the nominating conventions for every state Republican party because this would confer a benefit on the Republican party that was denied to other parties.

22 A group of attorneys associated with the American Bar Association has sought additional guidance from the IRS regarding voting guides, but the IRS has not responded to date. *Ideas Exchanged With ABA Members Over Voter Guides*, TAX EXEMPT ADVISER, June 1999.

23 Rev. Rul. 78-248, 1978-1 C.B. 154.

24 Rev. Rul. 80-282, 1980-2 C.B. 178.

25 Federal Election Commission regulations permit a nonpartisan debate that does not include all candidates if objective criteria are used to determine which minor candidates to exclude. 11 C.F.R. § 110.13(c). It seems likely, but is not certain, that the IRS would permit a 501(c)(3) to organize a candidate debate that excluded one or more candidates based on objective, nonpartisan criteria.

26 I.R.C. 527(f). 501(c)(4)s must pay a tax at the highest corporate rate on the lesser of either the annual net investment income of the organization or the aggregate amount spent on political activities in the year. Thus, a 501(c)(4) that has no investment income may make political expenditures without paying tax.

27 2 U.S.C. §§ 431-455. Additional information on electoral activity for 501(c)(4)s is available in the FEC publication, *Campaign Guide for Corporations and Labor Organizations* (1997).

28 11 C.F.R. § 100.22.

29 The first prong of the test is derived from *Buckley v. Valeo*, 424 U.S. 1, 44 n.2 (1976). See also, *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 248-50 (1986). A recent case in the United States Court of Appeals for the First Circuit struck down the second prong of the FEC's test for express advocacy. See *Maine Right to Life Committee v. FEC*, 98 F.3d 1 (1st Cir. 1996), cert. *denied*, 118 S. Ct. 52 (1997) (upholding a federal district court decision that found the reasonable interpretation standard overbroad). See also, *FEC v. Christian Action Network*, 110 F.3d 1049, 1055 (4th Cir., 1997); *Virginia Society for Human Life, Inc. v. FEC*, No. 3:99CV559 (E.D.Va., Richmond Div., Jan. 4, 2000) (imposing nationwide injunction against FEC enforcement of the second prong). These

cases are arguably at odds with a Ninth Circuit ruling that provided the basis for the second prong: *FEC v. Furgatch*, No. 83-0956-GT(M) (S.D. Cal. 1984), (unpublished opinion), *rev'd*, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987) (upholding the reasonable interpretation standard). Despite the various adverse rulings, the FEC has decided not to revise its regulations at this time.

30 See, e.g., *FEC v. The Christian Coalition*, 52 F.Supp.2d 45 (D.D.C. 1999) (rejecting most FEC allegations of improper coordination of Christian Coalition activities with candidates, campaigns, and parties).

31 Supplemental Notice of Proposed Rulemaking: General Public Political Communications Coordinated with Candidates. 64 Fed. Reg. 68951 (Dec. 9, 1999). The comments that the Alliance for Justice filed in response to this notice are available on the Alliance's web site at www.afj.org.

32 11 C.F.R. § 100.8(b)(4)(iv)(B) and 114.1(e)(1). A person may also qualify as a member of a membership organization by having a "significant financial attachment" to the organization, but this test is almost never relevant for nonprofit advocacy organizations.

33 *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986).

34 11 C.F.R. § 114.10

35 In addition to the two types of PACs discussed here, Section 527 of the IRC also governs other types of political organizations, including political parties and campaigns.

36 *D.C. Bar Internet Discussion Featured IRS's* Bob Harper, Paul Streckfus's EO Tax J. Dec.-Jan. 2000, at 34-5.

37 Treas. Reg. §56.4911-2(b)(5)(iii)(A).

38 The IRS's paid mass media rule was developed as an anti-abuse provision to cover cases where an issue is so familiar to the public that a grass roots communication can be expected to generate lobbying contacts without all the usual elements of grass roots lobbying. The perceived abuses involved expensive, effective media campaigns which the IRS felt should fairly be counted as grassroots lobbying. In contrast to traditional mass media, the diversity of voices on the Internet diminishes the impact of a single communication, and the lower cost of Internet communications reduces the barriers to opposing speech.

Despite our reluctance to draw this analogy here, the Alliance for Justice has filed comments with the Federal Election Commission arguing that the so-called "news exception" to the Federal Election Campaign Act should protect political speech on the Internet. That argument was based, in part, on the similarities between the Internet and traditional media outlets. We believe that these two positions are compatible: The FECA's news exception is designed to encourage diverse viewpoints in the public debate - a goal embodied by the Internet's promise as the electronic soapbox available to every member of society.

39 A.O. 1999-37 (F.E.C. 1999).

40 A.O. 1997-16 (F.E.C. 1997).

41 In the non-Internet world, a 501(c)(4) may urge its members to contribute to federal

candidates and may provide a postal address but not a pre-addressed envelope. 11 C.F.R. § 114.2(f)(2)(ii). It is unclear whether a hyper-link would be treated more like a mailing address or a pre-addressed envelope. We believe that simply pointing members to a campaign web site should not be construed to violate this prohibition on "facilitation" of contributions, but it is possible that the FEC would disagree. Until clear guidance is available, organizations may wish to avoid combining statements encouraging support for candidates with links to candidate web sites that include online contribution mechanisms on sites not paid for with PAC funds.

42 The laws governing required disclaimers for communications that are independent expenditures are complex, and organizations should consult an expert in federal election law before making any independent expenditures. The FEC's *Campaign Guide for Nonconnected Committees* (1995) (available at www.fec.gov/finance-law.html) provides a useful reference on the subject.

43 A.O. 1999-37 (F.E.C. 1999).

44 A.O. 1999-17 (F.E.C. 1999).

45 A.O. 1999-25 (F.E.C. 1999).

46 Exempt Organization Tax Review Weekly, Vol. 16, No. 9, at 50 (Nov. 29, 1999).

47 A.O. 1999-24 (F.E.C. 1999).

48 A.O. 1999-9 (F.E.C. 1999).

49 17 U.S.C. §512.

50 Pub. Law. 106-113; 15 U.S.C. § 1125(d).

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E-Advocacy for Nonprofits: The Law of Lobbying and Election-Related Activity on the Net

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The Alliance for Justice is a national association of environmental, civil rights, mental health, women's, and consumer advocacy organizations. The Alliance works to secure access to justice for all Americans, strengthen the role of nonprofit organizations in public policy, and foster a new generation of advocates. Through its nonprofit advocacy program, the Alliance works to increase nonprofit involvement in the policymaking process. In addition to publications like this one, the Alliance supports nonprofit advocacy with workshops and individualized technical assistance. The Alliance also monitors legislative

activity related to nonprofit advocacy, providing information to the charitable community and lobbying to reduce restrictions on nonprofits.

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