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IMPORTANT LOBBYING EXCLUSIONS UNDER THE 1976 LAW

Critical to the 1976 law are the provisions declaring that many expenditures that have some relationship to public policy and legislative issues are not treated as lobbying and so are permitted without limit. (See “The 1976 Law Governing Nonprofit Lobbying.”) For example:

EXECUTIVE BRANCH CONTACTS

Contacts with executive branch employees or legislators in support of or opposition to proposed regulations are not considered lobbying. So, if your nonprofit is trying to get a regulation changed, it may contact both members of the Executive Branch as well as legislators to urge support for your position on the regulation and the action is not considered lobbying.

VOLUNTEER LOBBYING

Lobbying by volunteers is considered a lobbying expenditure only to the extent that the 501(c)(3) incurs expenses associated with the volunteers’ lobbying. For example, volunteers working for a nonprofit could organize a huge rally of volunteers at the state capitol to lobby on an issue and the only expenses related to the rally paid by the nonprofit would count as a lobbying expenditure.

MEMBER COMMUNICATIONS

A nonprofit’s communications to its members on legislation—even if it takes a position on the legislation—is not lobbying so long as the nonprofit doesn’t directly encourage its members or others to lobby. For example, a group could send out a public affairs bulletin to its members, take a position on legislation in the bulletin, and it would not count as lobbying if the nonprofit didn’t ask its members to take action on the measure.

TECHNICAL ADVICE TO A LEGISLATIVE BODY

A nonprofit’s response to written requests from a legislative body (not just a single legislator) for technical advice on pending legislation is not considered lobbying. So, if requested in writing, a group could provide testimony on legislation, take a position in the testimony on that legislation, and it would not be considered lobbying.

SELF-DEFENSE ACTIVITY

Lobbying legislators (but not the general public) on matters that may affect the organization’s own existence, powers, tax-exempt status, and similar matters would not be lobbying. For example, lobbying in opposition to proposals in Congress to curtail nonprofit lobbying, or lobbying in support of a charitable tax deduction for nonitemizers, would not be a lobbying expenditure. It would become lobbying only if you asked for support from the general public.

[NOTE: *Lobbying for programs in the organization’s field, (e.g., health, welfare, environment, education, etc.) however, is not self-defense lobbying. For example, an organization that is fighting to cure cancer could not consider working for increased appropriations for cancer research to be self-defense lobbying.*]

(over)

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NONPARTISAN ANALYSIS, STUDY, OR RESEARCH

Making available the results of “nonpartisan analysis, study or research” on a legislative issue that presents a sufficiently full and fair exposition of the pertinent facts to enable the audience to form an independent opinion, would not be considered lobbying. The regulations make clear that such research and analysis need not be “neutral” or “objective” to fall within this “nonpartisan” exclusion. The exclusion is available to research and analysis that take direct positions on the merits of legislation, as long as the organization presents facts fully and fairly, makes the material generally available, and does not include a direct call to the reader to contact legislators. This exception is particularly important because many nonprofits that engage in public policy do conduct significant amounts of nonpartisan analysis, study and research on legislation.

BROAD ISSUES

A nonprofit’s discussion of broad social, economic and similar policy issues whose resolution would require legislation—even if specific legislation on the matter is pending—is not considered lobbying so long

as the discussion does not address the merits of specific legislation. For example, a session at a nonprofit’s annual meeting regarding the importance of enacting child welfare legislation, would not be lobbying so long as the organization is not addressing merits of specific child welfare legislation pending in the legislature. Representatives of the organizations would even talk directly to legislators on the broad issue of child welfare, so long as there is no reference to specific legislation on that issue.

BALLOT INITIATIVES/REFERENDUM

It’s not grassroots lobbying if a nonprofit urges the public, through the media or other means, to vote for or against a ballot initiative or referendum. (It’s direct lobbying, not grassroots, because the public in this situation becomes the legislature. Lobbying the public through the media is therefore considered a direct lobbying expenditure, not a grassroots expenditure. This is an advantage because nonprofits are permitted to spend more on direct lobbying than on grassroots lobbying.)

From the foregoing, it is very clear that there are many activities related to legislation that do not count toward lobbying expenditure limits.