Testing the captions.
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>> JESSICA PODESVA: Hi, welcome, everybody. We're going to get started in just a minute. We're going to let folks join.
Welcome, everybody. I still see we have quite a few folks joining, so I'm going to give it one more minute before we get started.
Okay, we've held our number -- our number has held far minute, so I'm going to get us started. Welcome, everybody. I'm so excited for today's training for those who don't know me, my name is Jessica Podesva. I am so competed because today we are holding a webinar on probably the number one question that I receive which is what constitutes advocacy versus lobbying and how can the IL network engage in lobbying while compiling with federal rules. I'm happy to introduce our presenter, Tim Mooney. Just a few housekeeping details, we have ASL and CART available today to view captions, CART closed captioning, you can click "show subtitle" to turn them on. We also have captions running at AI-media. It is too long of a URL to read, but we will share the link in the chat box.
The ASL Interpreters will always be visible in the gallery view. Please let me know if you cannot see the interpreters. They can be viewed under the interpretation challenge. Public chat is turned on. We ask that you please remain polite and aware of what you enter into the chat. Any offensive or discriminatory chat post will result in immediate removal from the webinar.
We will be answering questions and comments after the presentation today. There are a few ways to participate in that section. If you would like to verbally speak your question or comments, please use the raise hand feature and we will un-mute you in the order in which you raise your hand. And then, you can utilize the chat feature or the Q&A box. Please limit your questions to no more than 30 seconds or comments to about one to two minutes. You can also email your questions to my colleague, Mary-Kate Wells, NCIL's programle director Mary-Kate@NCIL.org and she will be monitoring for questions. I'm going to turn it over to Tim. Thank you for joining us today.
>> TIM MOONEY: Thank you, Jessica. My NCIL is Tim Mooney. I'm senior counsel and I'm excited to share this information with you today. I will be presenting off of a deck, which I will be turning on in a momentum here. We're going to be talking about a variety of things around advocacy and lobbying and understanding the distinctions between the two of them.
>> JESSICA PODESVA: Tim, you are talking very fast and we have interpreters today, can you slow down you a little bit?
>> TIM MOONEY: I will do my best. Believe it or not, that is me talking slow. I will try even harder. Thank you. There we go. So, we're going start by talking about the distinctions between different types of tax organizations. We will start with what some of your organizations are, 501C3 charities. My organization is also a 501C3 charity, the Alliance for Justice. It also includes the National Disability Rights Network and disability rights Texas. The tax treatment is about the best it is under federal tax law and the reason it is, you are tax exempt organizations, which tends to mean that you don't pay taxes to any level of government, state, federal or local. It also means that you're able to confer tax deductibility to your contributors, which means they can write it off on their taxes. The combination of those two together is very favorable, one thing I noticed as I practice law, the better your tax treatment, the more restrictions we see on advocacy activity and that is certainly true around lobbying activity. We are allowed to engage in lobbying activity, just a limited amount of it.
The other area that is relevant in 2024 is election activities. We can't do anything that shows support or opposition to candidates for public always. -- office. There are others, that include 501C4 organizations. Some of those are connected to 501C3, my 501C3 Alliance for Justice has an organization called alliance for justice action. You may be familiar with other 501C4s such as the ACLU and other advocacy organizations. The same rules apply to other tax exempt organizations such as trade associations 501C6. All of those are tax exempt. You will notice one thing is missing, they are not able to confer tax deductibility to their contributors. the tax detuckses are not as good. The flip is also true, if you aren't treated as well under federal tax law, you are allowed to do more advocacy.
The way this manifests for these organizations, they can do an unlimited amount of lobbying. They are handy groups to have in your coalition, since you are limited in how much lobbying you can do, having a 501C4 or labor organization in your coalition can be very handy, since they can do an unlimited amount of lobbying activity.
During election year, you want to notice that these organizations can do something that we cannot and that is to engage in support or opposition to candidates. It is limited in how much they can do, but they are allowed to do that. In this way, these types of organizations are a multitool. They are able to do many different things, things that we're absolutely prohibited from doing as 501C3 organizations. It is handy to know they exist though, because they are also going to be advocating on issues at the same time as you. Sometimes on your side, sometimes maybe opposed to you.
When it comes to the term advocacy, it surprises a lot of people there is no true legal definition of it. And so, this is a slide that shows the variety of different things that I would consider advocacy activity, and it is divided up into the ways that we can approach them. So, as I mentioned before, we absolutely can't engage in my partisan political activity. Such of a red light, meaning we can't go there. Yellow light mining we have to approach with caution. Lobbying activity, meaning there is limits around what we can do around lobbying activity. We're going to talk about that in the next few minutes. Everything else I could think of, at least, is a green light. That includes a whole variety of different ways of advocating your point of view on policy and it is largely unregulated. You do as much as you want in most instances that can include things like organizing, educating, trainings likes this one, conferences, regulatory advocacy, all sorts of different things that you can do as an organization that under the law is not limited at all.
So, advocacy is something that every organization can do. The law is not a barrier to it and there are multiple different paths to achieving it. If there is one takeaway I would like you to have is lobbying is not the only form of advocacy and even though we're limited in how much we can do of it, there are other paths as well to achieve the policy outcomes that we would like to see.
So, as I mentioned lobbying is limited, it is perfectly legal, but it is limited. The first time of limitation that we have I already talked about a little bit, but let's dive in a little bit more. Tax law says we are limited to how much lobbying we can do and there are two different ways that can happen. Either we choose the 50H expenditure test or we work under the insubstantial part test. If you are a 501C organization, you are working under the insubstantial part test, all of our activities count, volunteer or paid work. It is if we don't do something special to work under the other test. The downside to the insubstantial part test is the definitions are broad and some what vague. The limits are even worse. The law says that you can only lobbying an insubstantial part of your activities then it does not define what insubstantial means. So, that is a problem. You don't know really what lobbying is, as well, and you don't know how much you can do. The downside to that is if you do too much, you run the risk of losing your tax exempt status. It is not a favorable test.
The one that I recommend for most organizations is to elect to work under the 501H expenditure test. We have to sign up for. We have to file form 5768 with the IRS. It is a one-time use form and it gives you a whole bunch of benefits compared to the insubstantial part test. First of all, only paid work counts if something counts as lobbying. If you rely on volunteer activity, maybe your Board Members have relationships with legislators and they are not paid that lobbying activity wouldn't end up counting under the 501H expenditure test.
Furthermore, there are clear definitions as to what lobbying is and more importantly, if you know what lobbying is, you know what lobbying is not and if something doesn't count as lobbying, you can do as much of it as you would like. The real advantage for this, however, is very clear limits. It's a function of how much money you spend in a given year and it is very easy to figure out to the dollar how much lobbying you're allowed to do. Contrast that with the insubstantial part test where we're not sure what insubstantial means. Those are the limitations under federal tax law.
The 501H option is generally the best choice because those definitions are clear. Only expenditures made for lobbying count against your lobbying cap. I call it a lobbying cap, again, because our capacity to lobbying is measured in dollars. It is similar if you follow any sports and the salary caps that are applied to teams, it is the same idea here. You're allowed a certain amount of lobbying spend every year, so only expenditures count towards that lobbying cap space. Those limits are very clear and to the dollar and you can calculate it super easy using the IRS rules.
It gives you far more capacity to lobby. The insubstantial part test is undefined. Best practices, if you ask a lawyer like myself or others, insubstantial probably means 3% to 5%. Here, you can lobby up to 20% of your expenditures in a given year under the 501H option. It is far easier in your reporting, form 990 is your annual return. In schedule C., you report just three numbers under this test, your grassroots lobby, and your direct lobbying and then the IRS makes us add them up. For the insubstantial part test, you have to break up your lobbying in seven or eight categories and you have to report in a narrative field all of your cost free or volunteer activity.
If you exceed your lobbying limit under 501H, all that happens is you pay an excised tax on that overage amount. You don't run the risk of losing your tax status. Under the unsubstantial part test, if you go over in one year, you could conceivable lose your tax status in the one yore. The one takeaway from this and it is probably not applicable to most of you, this is not available if you are a private foundation, which is another type of 501C3 or to churches or religious institutions. They are not able to make the 501H selection. I venture to guess that most of you are eligible if you are a 501C3 charity and that would be my recommendation for most of you under most circumstances.
When it comes to calculating your lobbying limit, as I mentioned before, it is based on your annual expenditures. Most organizations can lobby up to 20% of their overall budget that is if your annual expenditures, what you spend money on are $500,000 or less. You will notice if you're able to read the chart, that the overall ability to lobby, the percentage goes down as your expenditures go up, but that means your overall ability to lobby increases in dollars.
There are two different types of lobby and I will talk about those in a minute. There are grassroots lobbying and direct lobbying. The chart here talks about your overall lobbying cap. Grassroots lobby that can only be up to one quarter of your overall lobbying limit. We will talk about the definitions in a minute here. This is a very generous amount of lobby that our allowed to do. In my experience, most 501C3s don't come near their limit.
There is a second limitation and this is really relevant to many of you and that is, you promise to not lobby when someone gives you certain types of funds. When you receive a grant, sometimes in those grants there are restrictions on the use of that money for lobbying activity. It is particularly true for government grants. It is also true for some of private foundation grants and because grants are sometimes like contracts that promise carries weight. It means we cannot use that money for lobbying activity.
You are able to still lobby however, but you must use other funds. We call those nonrestricted funds, so if you have private fundraising that is separate and apart from your government contracts, your government grants that money can be used for lobbying activity. Many organizations in your area are probably more limited by these restrictions than by the IRS restrictions that I talked about before. The most important thing about this limitation is knowing what the definition of lobbying is, because when you know what lobbying is, as as I mentioned before, you know what lobbying isn't. That means all of the different advocacy that does not count as lobbying can be done with government grants for the most part. Knowing what the definitions of lobbying are helps you keep the promise in the second limitation and that is a great time to talk about what lobbying is.
I'm going to be utilizing the definitions under the 501H system. If you are not working under this and you would like to know more about the definitions under the insubstantial part test, you can ask during our Q&A time. As I mentioned, there are two types of lobbying under the 501H rules. There are direct lobbying and grassroots lobbying. Direct lobbying is the traditional type of lobbying that most people think of, it is communication to legislators and in that communication you are expressing a view about specific legislation. You need all three of those elements together as once for it to count as direct lobbying. Grassroots lobbying, we're talking to a different audience. It is a communication to the general public expressing a view along with a call to action. You need all four of the elements together for something to count as grassroots lobbying. I'm going to break down each of these elements one by one, so we have a better understanding of what lobbying is.
Remember, if you're missing any one of these elements, you're not engaged in lobbying activity but there are special rules that apply to some of your grants and I will make sure to highlight those as we go long here.
First element and it is common to both types of lobbying is communication. Communication is very easy. It is any way of getting your point across on advocacy, or anything actually. It can be a text message, email, meeting, a direct message on social media, public displays, any way of getting your point of view across. This is easy to identify no matter what, so we will move on. Legislators, if you're in the direct lobbying analysis, we need to know whether or not your communicating with a legislator. And legislators are probably everybody that you're thinking about right now but also includes a few additional people, too.
So, let's start with the easy stuff. Legislators are the elected officials in legislative bodies at the local, state, and federal level. So, yes, this is a federal tax law. This is federal tax law, but it applies all the way down to the state and local level as well. The staff members for every single one of these legislators also counts. If you're talking to a legislative aide or to a Chief of Staff as a conduit to get to their boss, they count as legislators as well. It is more broad than that though. International or tribal legislative bodies count, too, so does the United Nations. I recognize that most of you are probably not lobbying before the United Nations, but I mention this so you understand this is a broad definition here of what legislative bodies count.
One other thing that is a bit surprising is in the scope of ballot measure advocacy the general public is considered a gigantic legislative body, so speaking to voters in the context of a ballot Murrays, they are all legislators and that might be surprising. If you recall, if we take substances on candidates during elections, I told you a few minutes ago that you run the risk of losing your tax status. If there is a ballot measure and that could be something as important and as broad as a Constitutional amendment statewide or a legislative referral from your state legislator or a library or park bond locally, that is considered legislation and the voters considered a legislative body voting on that legislation. Those are the folks that we consider legislator but there are a few additional folks as well.
Chief executives are sometimes considered legislators, too. Presidents, Governors, mayors or other executive officials who participate in the formulation of legislation are considered legislators. If you're like me and you learned a lot about government through a cartoon called "schoolhouse rock" you are a bit surprised as I was when I learned this rule. Executive branch officials are legislators when they do things that are legislative. For instance, a President, President Biden has submitted a budget each year to the House of representatives. That is a legislative act, so if you're talking to President Biden or any President about what is going into their budget that is considered a legislative act and they are a legislator, so that would probably be direct lobbying. Vice President Harris is the head of the Senate. She has the Constitutional authority to break ties. If you're talking to Vice President Harris about breaking a tie in the Senate, she is a legislator for that conversation. Governors have the ability to veto or sign legislation, so do Presidents, that is a legislative act. Any time you're talking to Governors or mayors or Presidents about legislative activity, they are considered legislators so, that conversation may very well be lobbying activity.
Who doesn't count as a legislator? If you are missing one of the definitions, you are not engaged in lab activity. If someone is not considered a legislator and you're talking to them about the work they do that does not count as legislation under these rules. So, members of school boards, zoning boards, housing authorities, all of these are special purpose bodies that have limited authority. Under the rules, they are not considered legislators, which is interesting because many of these folks have a lot of power and a lot of authority on the issues that we care about. But because their authority is pinned in, they don't have what we call plenary authority under the law, they are not considered legislators. Plenary authority is what Congress has. It can pass any law on any subject in the United States. Your state legislator has plenary authority over your state. A school board can't pass a Civil Rights Act and a housing authority can't pass a clean water act. They have limited authority, and because of that, advocacy to these bodies never counts as lobbying activity under these rules. That is an opportunity for you to engage in advocacy that does not count as lobbying.
Specific legislation is the most important element for direct lobbying and grassroots lobbying. If you're not talking about specific legislation to either the general public or to legislators, you're not engaged in lobbying activity, so you can do that kind of advocacy as much as you'd like. So, what counts as specific legislation? Well, all of the things you're thinking about and maybe a few more things, too.
So, let's start with the easy stuff. Specific legislation includes active bills with a title and a number that have been submitted. But also, draft legislation that is circulating around that also counts. Any kind of votes at any level, like confirmations for Supreme Court Justices or for executive branch agencies, the cheat code here if you're into video games at all, is any vote in any legislative body that is going to be considered specific legislation. So, if you're talking about that, that fulfills the element.
There is one other area worth talking about and it is very important for you to understand where this line is, because if you're in a situation where you are not wanting to talk about specific legislation with a legislator, you have to be aware a specific policy proposal also counts as specific legislation. So, what is that?
Well, unfortunately, it is another example of something that the IRS does not define very well. Essentially, it is identifying a problem and a solution to that problem that can only be accomplished with new legislation. That might be something that has never been introduced, it has never been written down or fully fleshed out. Let me give you an example when this can occur.
Let's say you're going to your favorite coffee shop and on that day, you bump into a State Senator. You end up having a discussion with that State Senator while you're waiting for your coffees to come out and in the conversation, you ask for a new state funds for Independent Living Centers. That is an idea that might be your idea and never been banded about by anyone at pull what did you just do? You are communicating with a legislator and you identified a problem, which is you need more funding for Independent Living Centers with a solution, a new state fund that can only be accomplished through the passage of new legislation. That would be direct lobbying right there.
I give that as an example, not to discourage you from having a conversation with your State Senators in your coffee shop, but be mindful of the fact that if you're going to make specific policy proposals that would turn into lobbying activity. So, when you talk to legislators and you're trying to avoid in being engaged in lobbying activity, then you may want to talk about issues more broadly or take advantage of some of the lobbying exceptions that I'm going to be talking about in the next few minutes.
A lot of folks ask when does lobbying start? When does the clock start ticking is a better way of putting it. Once you make the call within your organization to engage in lobbying activity on a particular piece of legislation, all of the preparation work, all of your meetings, anything having to do with the work to lobby that all counts as lobbying activity. If you are trying to decide if you want to support or oppose legislation, it is probably okay not to come those decision processes until you formerly decide you would like to engage in lobbying activity. One thing I will say about that, you want to do that in good faith. You would not want to suggest you haven't decided if you're going to engage in lobbying activity or not even though you're preparing for lobbying all along. My catchphrase here is, don't be cute.
We live in the real world, and in the real world often, it is hard to say you're only engaged in lobbying during one time and engaged in nonlobbying during others. Sometimes we go to coalition meetings or we have internal meetings where our meetings will include a mix purpose. Some of them might be lobbying and some might be non-lobbying. This is my best practice suggestion for you if you don't already have a policy for this. It's not the only option. If you're doing some lobbying activity and some non-lobbying test, my recommendation is, if most of the meeting, in other words, more than half of the meeting or activity is lobbying activity that is the primarily purpose of the meeting. Count the whole thing. It is far easier to do that than parse the percentages at that point and save a small amount of lobbying cap space. Anything you can do to make your internal recordkeeping better and easier, that is something I recommend. On the other hand, if the lobbying discussion is very small, maybe only five or ten minutes of an hour-long meeting there we want to preserve our lobbying cap space. If it is over half of the length of the meeting, track and report that proportionately. This is a good time to remind you, if you're working under the 501H test rules that you need to be able to convert all of your work on lobbying into dollar figures.
So, for those of you who are paid staff members who work on lobbying, the best way for that is through some kind of a time sheet system. And invariably, most of you will have a system like that, where you will be marking down the hours and some of the details for your lobbying activity or the prep work for your lobbying test that is where this will be happening.
What doesn't count as specific legislation? Remember if something done count as specific legislation, it is not going to be considered lobbying activity under the federal rules. But this is an example of something where many of you have grant obligations and other types of promises that you made regarding funds that have come in that are broader than what the law says. This is a cautionary for you. Let me start with what the law says.
Any work on regulatory activity or Executive Orders or asking for a change in the enforcement of existing laws or engaging in litigation around an existing law or the failure to comply with an existing law, none of that is considered specific legislation. All of those examples, the law has already been passed and in three of those examples, it is the executive branch that is in the enforcement or in the interpretation stage for that particular piece of legislation.
Now, I mentioned before that some of these areas are not considered lobbying by the IRS, but the language in appropriation bills specifically prohibit sills from using federal funding for these activities. You can do this type of advocacy but you cannot use federal funding to pay for it. So, this would be considers lobbying activity the same as if it were specific legislation so, make sure you don't use federal funds for it.
It is just a reminder, you are legally allowed to engage in lobbying activity but you've got to use those nonrestricted funds, same here for regulatory work and Executive Order advocacy.
So, here are a few examples I would like to share with you and the question here is, could this be lobbying? A CIL is submitting written comments on a regulation that would protect people from discrimination and prevent discrimination in programs that receive funding. We going to go through the same analysis that I would go through if someone asked me this question.
Is this is a communication? The answer to that is yes. It is CIL submitting written comments. Is it to legislators? Well, it is written comments on a regulation, so no. These are not to legislators under the rules. Is it expressing a view on specific legislation? No, because this is a regulation, not a new law. So, under the lobbying rules, this would not count as reportable lobbying on your IRS form 990, and that is important. Remember what we said on the last slide, because this is regulatory activity, there are special rules for most of you that receive funds. You must use nongovernment funds, nonfederal funds for this activity. So, you can do it, but make sure you're spending it out of the right bucket of money.
Calls to action. A reminder, grassroots lobby is when we're talking to the general public, expressing a view about a specific legislation and in order for it to count as grassroots lobbying, you must also ask the general public to do something. It's a call to action. There are four different type of calls to action. If you are doing one of these four, what you are doing counts as grassroots lobbying.
So, the first call to action is merely asking them to contact legislators. Call your Senator, contact Senator X. that is considered a call to action. Providing an address or telephone number or some other method to contact legislators, that also counts as a call to action. Providing a mechanism to enable communication with legislators also counts. That could be something online, click here and we'll prefill out an email to your member of Congress that is a mechanism, that is considered a call to action. And last but not least, this is called an indirect call to action, identifying legislators that are opposed or undecided relative to your point of view. That counts as a call to action. One thing I will mention here though, NCILing the sponsors of a bill never is a call to action. That is a way of identifying a bill and does not count.
So, let's take a look at another example. Is this lobbying? Here is an action alert that says keep our budget intact. Call your representatives in the House and tell them not to cut funding for the independent living program. The Senate's draft budget came out at level funding for the independent living program at $128 million. We need you to call your representatives today and tell them not to cut IL funding. Read more about the Senate's draft budget and there is a link there to that budget. And additionally information, too. There is also additional links that say call members of the House Committees on appropriation and a link to find your representative's phone number, visit the House Directory. Is this lobbying activity? Let's run through the analysis.
Is this is a communication? Yes. Is it to the general public? This was on a website or email, I can't remember where I got this example from. I think it was a website, either way that is the general public, so yes, we're communicating to the general public. Are we expressing a view about legislation, the answer to that is yes. When you're talking about the budget that is a piece of legislation, and the budget is an active piece of legislation. Even talking about one line item in a budge bill, like here, the IL funding that counts, too. Yes, this is expressing a view on specific legislation. Last but not least, is there any call to action and if there are, how many of them are there? I will tell you, yes, there are. Let's count them. We need you to call your representatives today. Call your representatives is one. Read more about the Senate's draft budget, well, if on that link, one click away, there are calls to action that would count, too. We call that the one-click rule. It is considered appropriated by reference. In other word, whatever is said one click away, if you have it in this document, too. We will count that one. Call your House on committee on appropriations that is your third. To find your representative's phone number, visit the House Directory, there is four. There are four calls to action in this, does it counselor as four times lobbying? No, it counts as lobbying once. If you are looking to engage in grassroots lobbying, use as many calls to action as you would like. Havement more calls to action does not make it more lobbying, it is the expenditure that you spend on this particular message that counts.
So, I went through what counts as a call to action. What doesn't count as a call to action? If you don't have a call to action to the general public expressing a view about legislation, it is not grass lootsle lobbying. If you say, learn more, take action, support our efforts, get involved, join us or any other type of way of trying to get action from the public that you're speaking to that isn't one of the four calls to action on the list, you are not engaged in grassroots lobbying, which is an interesting advocacy opportunity for you.
Let's take a look at whether or not this is lobbying. We -- this is going to sound very familiar to you and read very familiar to you. Legislative update, IL funding at risk. The House of representatives is considering a cut to the funding for the independent living program. The Senate's draft budget came out at level funding for the independent living program at $128 million. Our organization opposes funding cuts. Stay tuned for future legislative updates. See what I mean? It sounds familiar. It is an edited version of our first example a few minutes ago, so let's go through the analysis on this one.
Is this still a communication? Yes. It is to the general public? Let's assume it is on the same website, so yes. Is it expressing a view on specific legislation? Yes. Our organization opposes funding cuts, so yes, it is. But what's missing? All of the calls to action have been removed, so this is the type of thing you can do that sometimes we call legislative updates. It communicates your point of view. It does not include a call to action and, therefore if it is communicated to the general public then none of it counts as grassroots lobbying.
Forwarding a legislative update like this without adding a call to action of your own is also not lobbying. so, if you receive an eel with this legislative update, you see it does not contain any lobbying communication, you can safely forward it to your mailing list as well, as long as you don't add on a call to action to it, you are also engaged in no lobbying activity, too.
When it comes to lobbying activity in your situation, we are working with limited amounts of money because this is money that we have to raise separately from our government grants, so we're always looking for opportunities for "cheap "lobbying. I also hesitate to use the word cheap because it suggests that it could be ineffective. Sometimes cheap lobbying is very effective. If you make the 501H election, which I recommend for most group, remember only lobbying expenditures count. It is very handy for sills who must use the nonlobbying funds to engage in these types of inexpensive lobbying, sign-on letters, towarding an action alert to your list that does contain a call to action, social media posts, these are all activities that are going to communicate very clearly your position on the issues, all of them maybe grassroots lobbying but they only take a few minutes of staff time to get out to your list. They can have really big impacts, but count a very small amount because they are very inexpensive and don't count towards your lobbying cap space. Remember, you may be in a situation where it is not your lobbying cap space that is the most limiting fact, it is how much of the limited nonfederal funds that you have. It is always important to make sure you know that sometimes these examples of cheap lobbying can have outside impacts and worth doing if it fits into your lobbying strategies.
Lobbying expectations, these are a series of things that the IRS and Congress has decided that even though they are technically within the definitions of lobbying, the way they are packaged are so important for legislators to get from you as issue area experts that they decided to not count it as lobbying. These are accepted from the lobbying definitions. I'm going to talk about two of them, I believe.
The first is the nonpartisan study or research. This is typical the type of policy reports that you will see quite a bit. Within this policy report, it is a full and fair discussion of the policy outcome that you would like to see happen. Also, it's helpful, although not always required to raise other competing policy proposals and you are allowed to raise them up and then reject them for not being as good as your policy proposal. That's what is called a full and fair discussion.
Once you have done that, make sure your report goes out broadly. Put it on your website. Mail it out to all of your allies but also make sure it gets to every single member of the legislative body that you would like to influence with your report. You do all of that, you are allowed to express a view on specific legislation, and it does not counsel -- count as lobbying activity. You may not put any of the first three calls to action in your report or attached to your report, say in a cover letter. You are allowed to include an indirect call to action. For instance, identifying the members of the committee who might be voting on the piece of legislation that you're advocating for, that is allowed to be in there, the indirect call to action. This is a very handy exception because not only does it not count as lobbying for you, these sometimes very expensive reports are often picked up by your allies and they will use it to make their lobbying activity better. Because when they use that in their lobbying meeting, they didn't spend any money on that, so that great information that they are going to be using as part of their messages to convince legislators of the same policy achievements and outcomes that you would like is very, very handy to them and their lobbying is more effective and cheaper because of your report.
There are a lot of synergies that come out of all of this. I work with an organization in Washington, D.C. that any told you the NCIL of it, you -- name of it, you would think, oh, they support a lot of lobbying every year. They lobby almost not at all. They report zero on their form 990 because they live in this exception. It is one of the best ones and I encourage you to take a look at it.
Technical assistance is the exception that I like to call the permission slip rule. In this instance, you have been invited in writing by a Chair of a committee or subcommittee to bring your expertise to the committee or subcommittee and that could be through testimony or helping to write a new law. If you receive that invitation in writing and your information, your testimony, whatever it is they are asking is given to that group as a whole, none of the time that you spend on it, none of the costs to travel to get to that committee or subcommittee, none of it counts as lobbying activity. Like I said, it is kind of like a permission slip. It is a very handy exception to lobbying. Obviously, it does not come out super often. One more time, the invitation has to come in writing and it has to be by the Chair of the committee or the subcommittee for it to count. Anything less than that, does not count.
I would like to talk a little bit more about something here. Lobbying limits versus disclosure. Under federal tax, which I've been talking about this whole time here, the rules apply to you because of your tax exempt status and the rules under federal tax laws, as I talked before limit how much lobbying you can do. State and sometimes local laws will sometimes apply to your activity as well, if you're lobbying before state or local legislative bodies or other covered officials. In those instances, those laws never limit how much lobbying you can do. They do, however, impose a reporting requirement where you disclose your lobbying activity. Sometimes, it can be a little bit confusing because there are different definitions of lobbying that apply compared to the ones I gave you. You have to track those carefully and make sure you're compiling with the recenters. This is similar to the situation where we were talking about regulatory work, how government grants impose different rules upon you. The same thing with state and local laws so, just be aware what I talked about today is just the beginning of the rules that apply to you.
I want to pivot a little bit and we will get to your questions. I am noticing we have great questions and we will get to that in a few minutes. I want to pivot and talk quickly about being in an election year. It is important to reeither rate that we're not allowed to do anything to show support or opposition to any candidate, federal, state or local. That said, we are still allowed to advocate on issues during election season. The thing is, we have to be careful how we go about doing it. One thing that is very important is we do not ever compare candidates on issues or otherwise suggest that one candidate is better than another on the issues that you care about. That is what the IRS calls atasit endorsement. Don't do that. Helping your communities know how to vote in a nonpartisan way as long as you're not supporting or opposing candidates is absolutely permissible. Telling people on your mailing list or on social media, hey, the election is November 5, don't forget to vote. That is permissible and I encourage you to do that. The one thing I say to most organizations that are 501Cs.
, I ask them this question, if you knew that everybody that follows you are is otherwise on your mailing list, if you could do one thing to make sure all of them voted, do you think that would make a difference in your community? Do you think things would be better? And the answer to that is almost always yes and the good news the IRS says that is okay for you to do. there are small things you can do to get out the vote in your community and as long as it is not partisan, it is okay for you to do. I have a resource here that has a very long URL. You will get a copy of this later. It is a fact sheet on things you can do in a nonpartisan way in 2024.
Some other resources that are going to be helpful for you, if you're not tired hearing me talk or me reading and talk, we have a podcast and link to the resources. We have a number of free PDF guides, those rules are accessible as well. A link here as well. And our recommended lobbying guide for the rules they talked about is called being a player. We also have state guides with all of the lobbying disclosure rules in all 50 estates, plus the District of District of Columbia. You can get it at advocacy@afj.org. If something comes up down the line, please feel free to contact us for free technical sentence. I'm a lawyer, my colleagues are lawyers, we can offer technical assistance, not legal advice, but technical assistance if you email us at advocacy@afj or the link that will be companying the resources coming to you. That is it for my presentation. Thank thank you for your attention. We are going to open it up for Q&A.

>> JESSICA PODESVA: Okay, thank you so much, Tim. I certainly learned a lot and some things I didn't know, so thank you so much for that wonderful presentation. We have quite a few questions and a couple hands raised. Really quick, before we dive, in I want to remind folks around some accessibility features, so please utilize the raise hand feature if you would like to verbally ask your question. You can also put your questions in the Q&A box or in the chat or you can email our Program Director Mary-Kate whose email was put in the chat which is Mary-Kate@NCIL.org. Let's get to the good stuff. First, Jerry has his hand up. We're going to un-mute you to ask your question.
>> I don't believe I have one. Thank you.
>> JESSICA PODESVA: Okay, thank you. We have some in the Q&A box. First question is, what would the difference between lobbying and advocacy look like for advocates organizations who are supported by fiscal sponsors who are tied to the state? For example, schools, colleges, universities, direct service providing agencies, etc. Can the explanation be also sent to my email? Tim, this will be recorded, so you can go back and review. It will be posted on our website. Tim, --
>> TIM MOONEY: We're both Times.
>> JESSICA PODESVA: Holy moly.
>> TIM MOONEY: It is the year of the Tim, I'm understanding. The short answer to your question, Tim, there is no difference compared to the rules that I talked about already today. When you are fiscally responded by another organization, you're essentially borrowing their 501C status. The same rules to charities apply to you because they are also 501C3 public charities. Because they are schools, colleges, universities, and other types of entities, they may have the same types of funding restrictions that I talked about earlier as well. So, it is incredibly important that you have communication with your fiscal sponsor to know what -- whether or not you can engage in lobbying pursuant to your agreement with them, and if so, how much? Again, you're borrowing their tax exempt status and their rights and responsibilities around that, so speak to your fiscal sponsor
>> JESSICA PODESVA: Specific policy proposals, aren't ILCs excluded because advocacy is a core service of all ILCs under the Rehab Act, so that is the question about specific policy proposals.
>> TIM MOONEY: Yeah, specific policy proposals are another way of saying specific legislation. So, it would be the same thing as if it were an active bill, so the analysis is exactly the same. If you're restricted from being able to engage in lobbying activity with the federal funds, then you also would not be able to make a specific policy proposal to a legislator as well. If you do have the capability to use the nonfederal funds or the nongovernment grant funds then you would be able to make a specific policy proposal. Just to make sure I'm clear on that, that is just one other way of communicating, that is one that counts as communication under those definitions.
>> JESSICA PODESVA: Next question. If there is a specified public comment period on rules and regulations, is that still under the same category for restrictions appropriates language since it is a specific -- since it is a specific period of entities requesting public feedback?
>> TIM MOONEY: My understanding is that the rules for CILs include work around regulatory activity. Don't know if that extends also to public comment on regulations in other areas of the law that gets accepted but I don't know that answer to that in your particular situation. Someone here may have the answer on that. But this is a specific restriction for folks in your boat. If you are with another type of 501C3 and did not have any federal funding or government funding, that actually would not count under the lobbying definitions, but you have particular restrictions based on your funding and it may or may not apply to -- pardon me -- to regulatory comments when they are pending.
>> JESSICA PODESVA: I believe we are allowed to do regulatory comments under our advocacy core service specification because we are asked to have comment. I will double check the clarity around that and make sure we get out that appropriate information. Tim, maybe we can take that one back and come back with an answer.
If you have the nonpartisan research on legislation in a state, can you present that as public testimony during hearings?
>> TIM MOONEY: The answer to that is probably -- well, know the nonpartisan analysis done count as lobbying. It is accepted. When you do a presentation based on that, it is probably not considered lobbying activity if you do it in public because you would not put a call to action on top of that because then you would lose the exception all together. Your question is, if you are doing it in public testimony to legislators. In that instance, what would -- how the law would probably approach it is, the prep work that you did for the report, all of the research time, all of the money that you spent on that, that still doesn't count, but sitting that in that public testimony for those legislators that would probably count as lobbying activity. If you're in a situation where you want to do that, remember we can't use those federal funds first, but if you do have nonfederal funds, you could pay for that testimony with those nonfederal funds and everything should be legit.
>> JESSICA PODESVA: I saw Olivia raised her hand and then -- okay, you put it down. Olivia, if you still have a question, raise your hand again. Okay, Olivia, let's un-mute you. All right, Olivia.
>> Olivia: I was just kind of echoing what you were saying Jessica, that the regulations do not count as lobbying because that is more along the lines of doing a bill analysis, entering your pros and cons, looking at unintended consequences of certain actions but it is somewhere systemic, you're not focusing on a specific law. You're not lobbying legislators and you're just answering with your expertise of questions that are asked of you.
>> JESSICA PODESVA: Thank you, Olivia. We will take that question back and ensure we get the right answer identified. All right, so another question from Deborah. Can you talk a little bit more about the paid part, volunteer lobbying does not counselor, does per diem count as pay?
>> TIM MOONEY: That is a great question. When we're engaged in lobbying activity, working under those 501H rule, we have to know how much we're spending that's what we end up reporting. So, for staff time, if you are a paid staff member, the time that you spend on the lobbying activity is the amount that -- sorry for the interpreters as I restart my sentence. The amount of the person is engaged in lobbying does is what they are paid that is what we report. So, volunteer lobbying may count under the definitions, but if it doesn't cost my money, it is not reportable. You asked what if they get a per diem for their lobbying activity, well, there that is an expenditure by the organization in furtherance of lobbying, so the per diem would count for a, for instance, am volunteer lobbying day. If you're spending any money on lobbying that is what ends up having to be reported.
>> JESSICA PODESVA: Okay. And I'm going say that that name wrong. Can you help me out?
>> You said it.
>> JESSICA PODESVA: Oh, okay, good. Awesome, thank you. I like to make sure I can pronounce people's names correctly. What is your question?
>> No problem. It is all good. Going back to lobbying, especially during the election season. In your opinion or based on what you've seen over the years, what is your insight the legality or whatnot on tabling or lobbying to fill out information on certain candidates or certain issues near the polls. Is that even legal or wise to do? If it is legal, what would be a way that organizations have done so where they have done lobbying without interfering with the voters, for lack of better words? Because one of the things I face as a voter is when I go to the polls, you have people handing out information on who I should vote for but I'm not supposed to bring in any information to the polling places at all.
>> TIM MOONEY: Yeah, and different states are going to have different rules on what you're able to do nearby polling places. In some states like California, you can't come within 1,000 feet or something like that. Other states, I'm trying to remember, Pennsylvania, I just did a training for Pennsylvania and that rule is 50 feet. It depends on where you're at. When it comes to providing information to folks who are probably going to be voting, the IRS has a whole series of rules about what we as 501C3s are allowed to give to them. We are limited in what we can do because even if it is around issue advocacy, sometimes that issue advocacy if it is not presented in the right way, could be perceived as showing support or opposition to candidates. So, we have to be pretty careful about the type of information we're doing, and even more so in the context of what you're talking about where we're right outside of a polling place. If I had another hour and a half, I could do a whole training on it. In fact, I do that. I will be doing one next week and the week after that, all the way up until November. We do have resources on that and I encourage you to check out our publication, "the rules of the game" and it talks more about those things and you can download those from our website. >> Thank you.
>> TIM MOONEY: You bet.
>> JESSICA PODESVA: The next question is basically the same one that was just answered, so I am going skip that. Another question, in this environment where most issues have become partisan, how do you sound nonpartisan? Very carefully.
>> TIM MOONEY: That is a great question, Deborah. Before 2016, just to pick a date out of the air. It was a lot easier. I remember those days when you could have a conversation on issues and it didn't seem like a partisan type of an event. In recent years, it seems like almost all issues have become partisan and the interesting thing with that is, if everything is partisan then nothing is partisan at the same time. Because all topics seem to be partisan. So, I think the best bit of advice I can give you to talk about issues is if we're getting closer to an election, try to avoid mention candidates at all. That's my first piece of advice. The second thing is, if you do have to, because maybe they are sitting members of a legislative body or a President of the United States or whomever, don't compare your point of view with theirs, if you can avoid that.
I.com have the -- didn't have the opportunity to go into, this but the IRS, if you combine all of their guidance together in issue advocacy they tend to be the most nervous when you combine your issue advocacy with voter engagement. So, you can do both, but don't combine them together that would be my best piece of advice for you when it comes to issue advocacy. Don't combine it with your voter engagement.

>> JESSICA PODESVA: And what is the difference between a lobbyist and activist?
>> TIM MOONEY: That is a great question. There is no legal definition of activist that I'm aware of. Lobbyist has a specific definition under state and federal laws and those laws are different in each state. Most lobbyists when you hit the definitions have to register and report regularly. Your organization can be a lobbyist if it is doing activities that I described that fall within the lobbying definitions and there are reporting requirements that happen because of those. Activism, because it doesn't have a local definition can include a whole host of things. If you remember to one of my earlier slides where I said there was advocacy that was green light activity. That is largely unregulated that is the work that an activist would do. Some people say activist is a positive word and some people say activist is a negative word and that depends on your point of view.

>> JESSICA PODESVA: Mary-Kate, I'm going to call on you in a minute if we have any in the email but I got one in my email. Can an organization take a position on project 2025 and tell be nonpartisan and they said it expressly calling out Project 2025 and I think a lot of people have been curious about this one?
>> TIM MOONEY: The answer to that is yes. But you do have to be careful with how you go about doing it. Obviously, it has become a very major issue in the presidential campaign and probably in a whole different races down the ballot. You have to mistake sure you approach any commentary on Project 2025 purely from the policy perspective. But here is one thing I will mention, the organization that. Published Project 2025, is the heritage foundation. If you want to criticize heritage foundation for insane policy proposals that is something they can do because they are not a candidate. They are not a political party. If you would like to criticize their policy proposals in your area of expertise that is probably going to be okay. I would caution you to make sure that you don't bring the election into it. Don't bring candidates into it. But you can criticize the authors of that report for their poor policy policies and that should be okay.
>> JESSICA PODESVA: All right, thank you. Mary-Kate said there was none in her email. We have one in the chat. Does what you outline today is similar for state employees who work in independent living when speaking with their state legislators, Governor or other state politicians? And I think this, Steve, can you clarify for me, are you talking about, for example, SILC directors who might be employed by their state agency but have autonomy under state regulations? I think that is what they are referring to. We have some SILCs whose staff are employed by state agencies but under our rules and regulations they are supposed to still be autonomous entities.
>> TIM MOONEY: That is a pretty complex question. Assuming that the true then the rules would probably apply but I would caution that because they are also state employees, there may be specific additional rules that apply to them that are going to depend on which estate they -- state they are in. I would approach it with caution and speak with whatever state ethics office you have able to you to make sure you are on the right side of the law.
>> JESSICA PODESVA: I think is a topic that we're looking in from a TA perspective to dive into a little bit more. Because the duties of the SILC and the setup of having them employed in a state agency and all of the rules are often clash. So, it gets very confusing, so one thing we are going to look around doing some technical assistance on. I think that is it. Do we have anyone else who would like to verbally ask a question or you can stick another one in the chat? Did we get through all of them?
We're potentially ending this one a little bit early.
One other question we get a lot is around travel and how that can be broken out, and you kind of hit this in your presentation. If someone is traveling to an event that maybe three-fourths of it is not lobbying but one afternoon is and does have a lobbying component, how would that be categorized?
>> TIM MOONEY: That is pretty easy to parse out. That means you would count one-quarter of all of your costs involved with that conference or event would be considered lobbying activity. That is typical for conferences. We have conferences in Washington. That is usually what we have is one out of three days or one out of four day and they will apply that percentage to the cost because the lobby day counselors and the other days are additional days that do not counselor.
>> JESSICA PODESVA: Thank you. Any additional questions? Okay, with ten minutes to spare, thank you so much, Tim, for such a wonderful webinar. Folks that will not be the last time we're conducting training on this. The recording for this webinar will be available for 90 days once it is posted, so you will have 90 days to view, take any additional notes and watch and share it with staff at your CILs or your SILCs. Let's get this information out to as many people as possible. Thank you so much, Tim. Please do not hesitate to reach out if you have any questions. We put Alliance for Justice's website in the chat. I encourage everyone to check that out, boulder advocacy has amazing toolkits and resources that you can use. Additionally, NCIL has drafted an advocacy versus lobbying fact sheet and FAQ. You can check that out on our website. And without further ado, I will end today's webinar. Thank you so much, everyone. Have a great Friday and excellent weekend.

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