

**C15. Land Trusts Can Lobby Too: A Guide to Lobbying and Other
Advocacy**

Friday, October 18 | 3:30 p.m. - 5 p.m.

Room 202

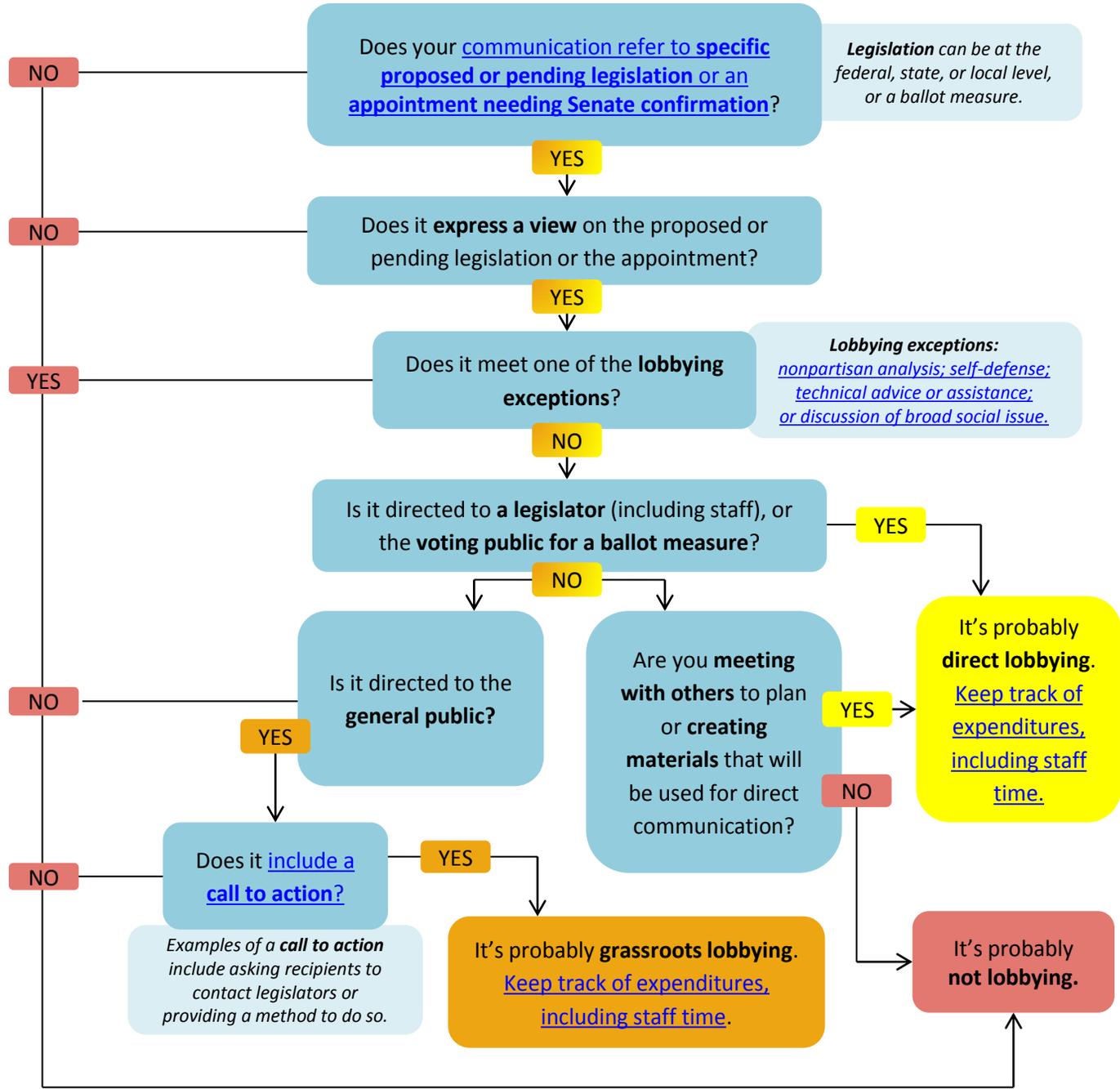
Session Faculty:
Cameron Tommey
Shelley Robbins

Rally 2019: The National Land Conservation Conference
Raleigh, NC



IRS Lobbying Flowchart

This graphic can help you determine if your communication is considered lobbying under federal tax law rules for electing 501(c)(3) organizations. It does not cover situations or communications that take place in a candidate election context.



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The Nonpartisan Analysis, Study, or Research Exception to IRS Lobbying Rules

For 501(c)(3) Organizations

The nonpartisan analysis, study, or research exception (“nonpartisan analysis exception”) is one of four categories of exceptions to the IRS definitions of [lobbying communications](#). This means that although a communication may meet the definition of lobbying, your organization will not have to count it as a lobbying expense.

This factsheet focuses on the nonpartisan analysis exception definition, and highlights the rules about the subsequent use of these communications.

Why is the nonpartisan analysis exception important? Because when used carefully, it is a great way for nonprofits to maximize their advocacy while minimizing their lobbying expenses. Public charities will not need to count the costs of preparing truly educational materials, including those that express a view on legislation, as lobbying. Additionally, private foundations can use this exception as a way to discuss legislation without incurring a [taxable expense](#).

Required Elements

To meet the definition of the nonpartisan analysis exception, the communication must meet two tests:

1. **Full and Fair Discussion:** a communication must include a sufficiently full and fair discussion of the underlying facts to allow the general public to form an independent conclusion or opinion on the subject. For example, an organization establishes a research project to determine the pros and cons of investing in alternate fuel sources, and the report analyzes and presents the advantages, disadvantages, and economic cost of such investment.

Even if the report concludes that the advantages, as a result of investing in alternative fuel sources, are greater than the disadvantages and that prompt legislative regulation of the use of pesticides is needed, the project will be considered to provide a full and fair discussion on the issue because it is designed to present information on both sides of the legislative controversy.

Some common examples that usually do NOT meet the full and fair discussion threshold are a bumper sticker or mass media communications (like a TV or radio advertisement). Most “fact sheets” are unlikely to offer enough detail and complex discussion on the topic to qualify.

2. **Broadly Disseminated:** a communication must be made available to the general public, a segment of the general public, or to governmental bodies or employees. This includes distribution through articles and reports, conferences, meetings and discussions, or dissemination to the news media and other public forums. However, such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

Look to how your organization, or comparable organizations, normally disseminates similar materials to gauge how widely a specific communication should be distributed. While a report on your website or copies in your office are helpful in increasing dissemination, either by itself probably won't be enough for a communication to be considered broadly disseminated.

For example, if an organization mails copies of a report that meets the full and fair discussion test to all legislators of a legislative body, that would be considered broadly disseminated. However, if an organization only sent copies of the report to legislators of a particular party, that would not qualify for the exception.



Permissible Actions

If the communication includes a full and fair discussion of the issues, and the communication is broadly disseminated, then the organization may do the following in the communication without turning it into a lobbying communication:

- **Express a View:** As long as there is a full and fair discussion of the subject, an organization may advocate a particular position or viewpoint on the issue. They may even identify a piece of legislation that addresses the issue and express a view about it.
- **Include an Indirect Call to Action:** An organization is allowed to indirectly encourage readers to take action on the issue covered in the communication. An indirect call to action identifies a legislator or legislators who will vote on the legislation. An organization *may not* use a direct call to action (telling the reader to contact their legislator, providing a legislator's contact information, or providing a mechanism, such as a sign-on letter, to contact the legislator).

For example, an organization may list the names of legislators who are undecided on a piece of legislation in the organization's nonpartisan analysis report. Listing the names of legislators who are undecided or opposed is considered an *indirect* call to action, and it is permissible under the nonpartisan analysis exception. This communication technically meets the definition of grassroots lobbying because it is a (1) communication, (2) to the general public, (3) that expresses a view on a specific piece of legislation, and (4) has a call to action. But because it meets all the elements of the nonpartisan analysis exception, *it would not count as a lobbying expense*.

Subsequent Use Rule

Once an organization has created a nonpartisan analysis report, it is important to think carefully about the later use of the report because of the "subsequent use rule." If the nonpartisan analysis report is later used as part of a grassroots lobbying communication with a direct call to action, the IRS presumes that both the expense of the original communication and the later communication should be counted as a grassroots lobbying expense.

For example, imagine an organization creates a nonpartisan analysis report that has a full and fair discussion of an issue and the report is disseminated broadly. Then a week later the organization distributes that report with a flier urging community members to contact their legislators about a bill recommended in the report. The costs associated with the report as well as the costs for the flier will be treated as grassroots lobbying expenses.

However, there are two safe harbors (two ways you can use nonpartisan analysis in later communications without incurring a lobbying expense) from the subsequent use rule:

- The *primary purpose* safe harbor: if an organization can show that the primary purpose of the original report was a non-lobbying purpose, the subsequent use rule will not apply, and the expense of the research and report will not count as lobbying. In other words, the organization would need to show that the reason for the original report wasn't primarily lobbying. The IRS will look at the facts surrounding the report, including the organization's normal distribution patterns for similar materials, in making this determination. Additionally, for this safe harbor to apply, the non-lobbying distribution must be at least as extensive as the lobbying distribution.

Or

- The *timing of subsequent use* safe harbor: if an organization waits for six months before using the original report in a grassroots lobbying communication, the subsequent use rule will not apply.



In Practice

The nonpartisan analysis exception allows nonprofits to disseminate educational materials that refer to and reflect a view on legislation as part of an advocacy campaign, and will not need to count the expenses associated with those materials as grassroots lobbying expenses.

Here are some examples of how the nonpartisan analysis exception, the subsequent use rule, and the safe harbors work:

Example 1: An environmental organization creates and distributes a report about how the Clean Water Act must be expanded. The report meets both the “full and fair discussion” test and the “broadly disseminated” test. The report refers to specific legislation and includes a view on the legislation (the Clean Water Act expansion), and does not include a direct call to action. Later, the organization brings the report to a lobbying visit with a legislator. Because the report falls within the nonpartisan analysis exception, the original cost of the report will not be considered a direct lobbying expense, although any other costs around the visit itself would be lobbying expenditures. This is because the subsequent use rule only applies to later grassroots lobbying communications.

Example 2: An environmental organization creates and distributes a report about how the Clean Water Act must be expanded. The report presents a “full and fair discussion” of the issue. The report refers to specific legislation and includes a view on the legislation (the Clean Water Act expansion), and includes the list of legislators who are undecided on the piece of legislation. However, the report is only distributed to the organization’s members and related organizations. In this case, the report would not qualify for the nonpartisan analysis exception as it would not be broadly disseminated, and therefore the cost of the report would be considered a grassroots lobbying expense.

Example 3: A migrant’s rights group creates and distributes a report on the economic impact of comprehensive immigration reform that meets both the “full and fair discussion” test and the “broadly disseminated” test. There is legislation in the Senate advocating for comprehensive immigration reform, and the report refers to bill and includes a view on it, and encourages readers to contact their Congressional representatives in support of the legislation. In this case, because the report includes a direct call to action, it does not qualify for the nonpartisan analysis exception. The cost of the report would be considered a grassroots lobbying expense.

Example 4: A migrant’s rights group creates and distributes a report on the economic impact of comprehensive immigration reform that meets both the “full and fair discussion” test and the “broadly disseminated” test. There is legislation in the Senate advocating for comprehensive immigration reform, and the report refers to the bill and includes a view on it, though there is no call to action. The next week, the organization uses the report in a grassroots communication with a direct call to action (reading, “Call your senators!”). Even though the nonpartisan analysis exception is met in the original report, the subsequent use rule would apply, and the costs associated with the report would be counted as grassroots lobbying expenses.

Example 5: A reproductive rights organization creates and distributes a report on how abortions performed by physician’s assistants are just as effective as those performed by doctors. The report meets both the “full and fair discussion” test and the “broadly disseminated” test. There is legislation in the Senate regarding the issue, and the report refers to the bill and includes a view on it, though there is no call to action. Six months after publishing and distributing the report, the organization uses the report in a grassroots communication with a direct call to action (reading, “Call your senators!”). In this case, the “timing of subsequent use” safe harbor would apply, and the costs associated with the report would not be counted as grassroots lobbying expenses.

Example 6: A reproductive rights organization creates and distributes a report on how abortions performed by physician’s assistants are just as effective as those performed by doctors. The report meets both the “full and fair discussion” test and the “broadly disseminated” test. There is legislation in the



Senate regarding the issue, and the report refers to the bill and includes a view on it, though there is no call to action. The organization distributes the report in its original form to 10,000 nonmembers. At the same time, the organization sends the memo to 1,000 different nonmembers with a cover letter asking them to call their Senators about the bill. The organization's substantial non-lobbying distribution demonstrates that the primary reason for the report was not lobbying. Therefore, the "primary purpose" safe harbor would apply, and the costs associated with creating the report would not be counted as grass roots lobbying expenses.

For more information or examples, please refer to Bolder Advocacy's guide [Being a Player](#).

For more information on what constitutes a lobbying communication, please see our factsheet [What is Lobbying Under the 501\(h\) Election?](#)

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[on letterhead of public entity]

DATE

Charity contact

Charity contact position

Charity name

Charity address

Dear *[contact names]*:

The *[legislative committee, county commission, city council]* requests technical advice and assistance from *[Charity Name]* in connection with our efforts to *[describe policy or legislative activity with as much detail as possible while leaving room for some variation in scope]*.

As part of your advice and assistance, I understand you will conduct research with affected groups to develop recommendations for the *[legislative committee, county commission, city council]* on strategies for *[policy or legislative activity]*.

We are interested not only in the factual information that you can provide, but also your opinions and recommendations on public funding measures available to us and strategies to enact such measures. That would include understanding the public's priorities and attitudes concerning *[describe such as]*--and how the public would respond to different methods of presenting those issues.

Information provided to the *[legislative committee, county commission, city council]* will be public record as a matter of law. This request does not in any way commit public funds to the efforts of *[Charity Name]* related to this request, nor does it require public disclosure of any confidential information of either organization.

This request will continue in effect for any advice you offer or presentations you submit for the use of this body related to such matters. In addition, we would like to take this opportunity to request that you continue to be available to provide technical advice and assistance in this area and on related matters in the future.

Thank you.

Sincerely,

[signatory must be chair of legislative committee, county commission or city council chair, or all members]

Mays and May Nots: for 501(c)(3)/501(c)(4) Coalition Meetings

Working in coalitions is an effective way for nonprofits to maximize resources and impact when working to create social change.

By pooling resources, engaging in joint policy discussions and strategizing, coalitions can stretch dollars, draw on collective expertise, and maximize efforts to create a more just society. When coalitions are composed of a mix of organizations, questions arise about the scope of discussions and strategies in which c3s may engage in without jeopardizing their tax status. This factsheet offers tips on the types of discussions and activities that 501(c)(3) public charity members of mixed tax status coalitions may participate in without jeopardizing their tax status.

In meetings of c3/c4 coalition members held to discuss goals and strategies, 501(c)(3) organizations:

MAY be present when groups share plans about what each organization is doing, including discussions about lobbying/ballot measure/voter registration efforts and the election-related goals of non-public charity members such as c4s and unions. It is ok for c3s to hear about these efforts by others, but a public charity should not use the information to make decisions about its own activities.

MAY engage in joint discussions to plan how to address a shared goal, such as passing immigration reform or raising the minimum wage.

MAY strategize, contribute to, and participate in lobbying and nonpartisan ballot measure efforts.

MAY strategize, contribute to, and participate in nonpartisan voter education, voter registration, and GOTV activities.

MAY NOT be part of discussions when c4 organizations strategize on projects and activities they will engage in to accomplish c4 political goals.

MAY NOT strategize on, contribute to, or engage in activities designed to influence the outcome of an election.

MAY NOT strategize on how the c3 can supplement the partisan work of c4 participants in the coalition. For instance, after hearing a discussion of a tight gubernatorial race in Michigan, a 501(c)(3) should not offer to do GOTV in the key swing district for the purpose of influencing the outcome of the election.

For more information, see Bolder Advocacy's [The Connection](#), and [Coalition Checklist](#).

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Mays and May Nots: 501(c)(3)/501(c)(4) Funder Groups

Funder groups have a vital role in creating social change by supporting advocacy.

By pooling resources, engaging in joint policy discussions, and strategizing, funder groups can stretch dollars and maximize efforts to create a more just society. When funder groups are composed of a mix of private foundations, community foundations, and 501(c)(4) funds, questions arise about the scope of discussions and strategies that c3 funders may engage in without jeopardizing their tax status. This factsheet offers tips on the types of discussions and activities that mixed tax status funder groups may participate in within the bounds of nonprofit laws and regulations.

In meetings of c3/c4 funders held to discuss funding goals and strategies, private foundation funders:

- MAY** be present when groups share plans about what each organization is doing.
- MAY** be present when groups discuss their lobbying, ballot measure, voter registration, and other election-related efforts. It is ok for private foundation to hear about these efforts by others, but cannot use the information to make decisions about its own activities).
- MAY** engage in joint discussions to broadly plan how to address a shared goal, such as passing immigration reform or raising the minimum wage.
- MAY** share information about what its grantees are doing
- MAY NOT** strategize or contribute to lobbying/ballot measure efforts.
- MAY** share its own plans and ideas, including how much money it wants to spend, the issues it will address, and the states it will work in.
- MAY NOT** be part of discussions when c4 funders strategize on projects and organizations they will fund to accomplish c4 goals.

When making grants, private foundations:

- MAY** agree to fund c3 advocacy efforts (see caveats below about lobbying and voter registration activities).
- MAY** agree to provide specific project grants up to the non-lobbying amount to public charities for projects with a lobbying component. This same rule applies to voter registration drives.
- MAY** agree to provide general operating support to public charities that engage in lobbying or voter registration activities.
- MAY NOT** earmark grants for lobbying activities or voter registration drives (unless the voter registration drive meets the section 4945(f) rules).
- MAY NOT** agree to fund c4 partisan activities.
- MAY NOT** fund c3 activities designed to supplement c4 partisan goals. Private foundations must have a private foundation-permissible reason to engage in the activity or grant-making strategy.
- MAY NOT** agree to fund an organization for the purpose of influencing the outcome of an election.

In reports to private foundation boards about the activities of a c3/c4 funder group, the board:

- MAY**, for informational purposes, know what the funder group has agreed to work on, including any partisan work the c4 participants will be doing.
- MAY NOT** approve any grants earmarked for lobbying or voter registration drives (except those that meet the section 4945(f) requirements).
- MAY NOT** vote to approve or strategize on any c4 plans or activities.
- MAY NOT** strategize on how the private foundation can supplement the partisan work of c4 participants in the funders group. For instance, after hearing a discussion of a tight gubernatorial race in Michigan, a private foundation program officer could not offer to fund groups to do GOTV in the key swing districts.

For more information, see Bolder Advocacy's [Philanthropy Advocacy Playbook](#), and [Investing in Change: A Funder's Guide to Supporting Advocacy](#).

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