



# **ANIMAL LOBBYING 101: EXAMINING ANIMAL ADVOCACY ON THE LOCAL, STATE AND FEDERAL LEVEL**

***SPONSORED BY THE COMMITTEE ON ANIMAL LAW***

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**NEW YORK CITY BAR ASSOCIATION**

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# OVERVIEW OF LOBBYING LAWS AND REGULATIONS

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# WHAT IS LOBBYING?

❖ **Lobbying: An attempt to influence legislation**

➤ Support of legislation\*/policy

➤ Opposition to legislation\*/policy

*\*IRS definition*

❖ **Utilized by individuals and organizations (for profit and nonprofit) to achieve desired legislative/policy goals**

# LAWS GOVERNING LOBBYING ACTIVITIES

- ❖ Federal Tax Laws (*lobbying by tax-exempt orgs*)
- ❖ Federal Lobbying Disclosure Act
- ❖ State and local lobbying disclosure laws
  
- ❖ Application of lobbying laws depends on
  - Tax status of lobbying organization
    - some laws apply only to certain non-profits
  - Type of lobbying done (federal vs. state/local)
  - Amount of money spent

# LOBBYING BY TAX-EXEMPT ORGANIZATIONS

## ❖ 501(c)(3)

- ❖ Nonprofit charitable organization
- ❖ Contributions are tax deductible
- ❖ **Lobbying is regulated**

## ❖ 501(c)(4)

- ❖ Nonprofit "social welfare" organization (e.g., homeowner assn, volunteer fire dep't)
- ❖ Contributions are generally not tax deductible
- ❖ May engage in unlimited lobbying if related to the org's exempt purpose

## ❖ 501(c)(5)

- ❖ Labor, agricultural organization (e.g., farm bureau)
- ❖ Contributions are generally not tax deductible
- ❖ May engage in unlimited lobbying if related to the org's exempt purpose

## ❖ 501(c)(6)

- ❖ Nonprofit trade association
- ❖ Contributions are generally not tax deductible
- \* May engage in unlimited lobbying if related to the org's exempt purpose

# IRS DEFINITION OF LOBBYING

Any attempt to influence legislation (supporting or opposing proposed or existing legislation) by:

❖ **Direct Lobbying**: Stating a position on *specific legislation* to legislators/legislative gov't employees (federal, state, or local)

*\* Note: Stating a position on a particular issue (e.g. treatment of farmed animals) without reference to specific legislation is not lobbying for IRS purposes.*

❖ **Grassroots Lobbying**: Urging the public/members to contact legislators/legislative gov't employees with a position on specific legislation (a “call to action”)

*\* Note: Educating the public/members about a particular issue or the importance of certain legislation is not lobbying for IRS purposes.*

# 501(C)(3) ORGANIZATIONS AND LOBBYING RESTRICTIONS

- ❖ **Substantial Part Test Restriction:** IRS Code limits the lobbying activities of nonprofits with 501(c)(3) tax status.

*“An organization that devotes a ‘**substantial part**’ of its activities to ‘influencing legislation’ will be found to be an ‘action organization’ and is therefore disqualified from tax exempt status.” Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii).*

- ❖ **Penalties for violation of IRS Code:**
  - ❖ financial penalties
  - ❖ loss of tax exempt status

# SUBSTANTIAL PART TEST AND 501(H) ELECTION

## ❖ Substantial Part Test

- ❖ “*Substantial part*” is not defined by law
- ❖ IRS makes a determination of 501(c)(3)’s compliance using “facts and circumstances” test
  - time devoted by employees & volunteers to lobbying
  - expenditures for lobbying
- ❖ Drawback:
  - ❖ Risk of uncertainty
  - ❖ Need to provide information annually to IRS regarding activities

## ❖ Statutory 501(h) election (*See* IRC §501(h)).

- ❖ Permissible lobbying activities of 501(c)(3) determined by lobbying expenditures in comparison to its total exempt purposes budget.
- ❖ Benefits:


- \* Provides clarity on the exact amount of lobbying an organization can do without running afoul of IRS rules
- \* Activities that might otherwise count as “lobbying” are not considered “lobbying” unless there is an expenditure of funds



# 501(H) ELECTION

Exempt Purpose Expenditures	Total Lobbying Allowance under 501(h)
up to \$500,000	20% (\$100,000 max)
\$500,000 - \$1 million	\$100,000 plus 15% of excess over \$500,000 [note: grassroots lobbying cannot exceed 25% of the lobbying allowance]
\$1 million - \$1.5 million	\$175,000 plus 10% of excess over \$1 million [note: grassroots lobbying cannot exceed 25% of the lobbying allowance]
Above \$1.5 million	\$225,000 plus 5% of excess over \$1.5 million [note: grassroots lobbying cannot exceed 25% of the lobbying allowance]

# **LOBBYING DISCLOSURE LAWS**

- ❖ **Federal, state, local registration and disclosure laws**
  - ❖ **No restrictions on lobbying activities**
  - ❖ **Requirement for registration and disclosure**
  - ❖ **Apply to both non-profits, businesses, and individuals**
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# LOBBYING DISCLOSURE ACT (2 U.S.C. § 1601 ET SEQ.)

- ❖ Requires registration and disclosure of federal lobbying activities by:
  - ❖ Lobbying firm/self-employed lobbyist
    - ❖ Must file separate registration for each client where total income from client is over \$3,000 per quarter
  - ❖ Organization with an in-house lobbyist where org's total lobbying expenses are over \$12,500 per quarter.

*(2 U.S.C. 1603)*

## *(Federal) Lobbying broadly defined*


“**Lobbying activities**” defined as making “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.” (2 U.S.C. 1602 (7))

“**Lobbying contact**” defined as “any oral or written communication ... to a covered executive branch official or a covered (federal) legislative branch official regarding the formulation, modification, or adoption of Federal legislation, rule or regulation, or other Federal program, policy or position (subject to various exceptions) (2 U.S.C. 1602(8))


“**Lobbyist**” defined as “any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact”. (U.S.C. 1602(9))

Exception: **excludes** individual whose lobbying activities in any 3 month period are less than 20% of overall services to client

# **CONTENT OF LOBBYING DISCLOSURE ACT REPORTS (2 U.S.C. 1604)**

- Name, address, contact info of registrant
  - Name, address, contact info of client
  - Description of lobbying activities and specific issues lobbied
  - Disclosure of federal legislators & official contacted
  - Disclosure of contributions over \$5,000
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# STATE AND LOCAL LOBBYING DISCLOSURE LAWS

- ❖ New York State and NYC Lobbying Laws
  - ❖ Do not limit how much lobbying may be done
  - ❖ Require disclosure of lobbying activity once expenditure thresholds are met.
  - ❖ Financial penalties for failure to comply
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# NEW YORK STATE LOBBYING ACT

(N.Y. LEG. LAW § 1-A, *ET SEQ.*)

## Requires registration and disclosure of lobbying activities by

- ❖ Lobbyists whose lobbying expenses (earned or spent) are over \$5,000 per year. (N.Y. Legisl. Law § 1-e)

## Lobbying and Lobbyist broadly defined

### Definition of “lobbying”:

Any attempt to influence introduction, amendment, passage, or defeat of state legislation or local law, or rule of state or local agency (N.Y. Legisl. Law § 1-c(c))

### Definition of "lobbyist" :

“every person or organization retained, employed or designated by any client to engage in lobbying.” (N.Y. Legisl. Law § 1-c(a))

# NEW YORK CITY LOBBYING DISCLOSURE LAW

(NYC CODE SECTIONS 3-211-223)

## *Requires registration and disclosure of lobbying activities by*

- ❖ Lobbyists whose lobbying expenses (earned or spent) in NYC are over \$5,000 per year. (NYC Code Sections 3-211-223)

## *Lobbying and Lobbyist broadly defined*

### Definition of “lobbying”:

“any attempt to influence:

(i) any determination made by the city council or any member thereof with respect to the introduction, passage, defeat, or substance of any local legislation or resolution ...” (NYC Code § 3-211(c))

### Definition of "lobbyist" :

“every person or organization retained, employed or designated by any client to engage in lobbying” (NYC Code § 3-211(a))



# QUESTIONS

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