

# Advocating for Your Grant

## Advocacy by tax-exempt organizations

### Organizational Defense Briefing

Presented by NRDC Office of General Counsel  
May 2025

# Agenda

1. Framing/Intros



2. Goals for today



3. Advocacy by 501(c)(3) Organizations

4. What is Lobbying



5. How to Advocate for My Grant



6. Q&A



# Disclaimer—not legal advice!

- Providing information and resources, **not legal advice**
- These issues (lobbying and advocacy) are very fact-specific and can vary based on your organization's size, mission, and tax status
- Strongly endorse advocacy resources developed by **Bolder Advocacy**, a project of the Alliance for Justice
- <https://afj.org/bolder-advocacy/>



# Goals of this briefing

## This briefing should give you:

- An understanding of the distinction between 501(c)(3) and 501(c)(4) organizations;
- An overview of the types of advocacy (c)(3) organizations can engage in — *and* relevant limits; and
- Parameters for advocacy federal grants to relevant policymakers.



# Key Takeaways

- 501(c)(3) public charities can lobby (within limits and according to certain rules);
- Know which lobbying rules/test apply (more on that later); and
- Don't use federal funds on legislative lobbying.



# 501(c)(3) vs. 501(c)(4) Basics

## Flavors of tax-exempt entities

# 501(c)(3) vs. 501(c)(4)

	501(c)(3)	501(c)(4)
Type of entity	Public Charity*	Social Welfare Organization
What does that mean?	Activities must be predominantly educational, charitable, or scientific purposes. Donations are tax deductible	Activities must further the common good and general welfare of the people of the community. Donations are <b>not</b> tax deductible
Influencing legislation (“legislative lobbying”)	501(h) election or No Substantial Part Test—relevant limits	Unlimited!
Electoral activity	May not “intervene” in an election in any way—whether on purpose or accidentally	May intervene in elections as long as doing so is not the entity’s “primary purpose”

*\*not providing advice today relevant to 501(c)(3) private foundations; please refer to Bolder Advocacy*

# IRS Legislative Lobbying—Core Principles

# Why cover this?

- **Breadth** - IRS rules regulate **all** public charity activities, at the local, state, federal, and international levels.
- **Consequences** – Failing to comply with relevant lobbying caps could cost a charity fines or its 501(c)(3) status.
- **Prohibitions** – some funders, including the U.S. federal government, prohibit the use of their funds on any lobbying.

But most importantly

- **Peace of mind** – By keeping some key rules in mind, you can be confident you're doing what's needed.

# Advocacy by 501(c)(3)s

- Federal law limits – but does not prohibit – 501(c)(3) lobbying.
  - Cannot be a “substantial” part of the org’s work
  - Cannot use federal funds for legislative lobbying, but federal grant recipients can use other funds.
  - Must report all legislative lobbying on Form 990, Schedule C.
- **Lobbying vs. Advocacy** – for IRS purposes, lobbying means specifically attempting to influence *future legislative action*.
- **Electoral work** – 501(c)(3) organizations cannot attempt to or actually intervene in or influence an election for public office.

# Poll: (h) election vs. NSP Test

Do you know if your organization reports its lobbying activity to the IRS under the:

- *No Substantial Part (NSP) test?*
- *501(h) election?*

# No Substantial Part Test

Default test for public charities

- **Statute:** *"no substantial part of a charity's activities...be carrying on propaganda or otherwise attempting to influence legislation."*
- **Definition:** a facts and circumstances test; or, "it depends"

**Note!** No specific definition of grassroots lobbying.

# No Substantial Part Test

**Limit:** financial and perception components

- Financial: no defined rule, courts/practitioners have ranged from 2-5% of tax-exempt expenditures
- Perception: how central lobbying appears to be to the organization's mission and perception

**Compliance:** important to have system to track staff time and expenses, and overall organizational posture

# 501(h) Election—affirmative filing

- Must submit form to IRS in tax year; applicable until revoked.
- **Benefits:**
  - Ability to plan/budget
  - Larger limits (sometimes)
  - Less exposure to exemption revocation; 4-year average
  - No personal penalty taxes

# 501(h) Election—affirmative filing

- **Limit:** sliding scale based on organizational budget; maximum of \$1M/FY in total lobbying expenditures, maximum of \$250,000/FY in total grassroots expenditures.
- *See IRS guidance to determine the cap for your organization.*

# What is Legislative Lobbying under (h) election?

**Direct Lobbying** Definition:

A **Communication** +

That **Expresses a View** +

On **Specific Legislation** +

To a **Covered Decisionmaker** =

**Direct Lobbying**

# Specific Legislation

**Action by a legislature, but more than just legislation that has been introduced:**

- A bill (e.g. H.R. 7, S. 42)
- Proposed legislation (e.g. model bills)
- Draft amendments
- Specific legislative policy proposals



# Specific Legislative Policy Proposals

**Policy proposals that are specific enough to enable a legislator to reasonably know what legislation would be necessary to enact such a proposal, for example:**

- “A 10% carbon tax must be part of Congress’s climate package this year.”
- “The City Council should vote to install 500 new bike lanes.”

**Compare those to:**

- “Congress should consider all options, including carbon taxes and permitting reform.”
- “Illinois legislators have a duty to address the climate crisis this year.”

# **Don't Get Cute**

## **AKA “I’m not lobbying, I’m educating”**

# Specific Legislation (cont.)

**Action by a legislature, but more than just legislation that has been introduced:**

- A bill (e.g. H.R. 7, S. 42)
- Proposed legislation (e.g. model bills)
- Draft amendments
- Specific legislative policy proposals
- **Congressional resolutions**
- **Treaties requiring Senate ratification**
- **Judicial and executive nominees**



# NOT Specific Legislation

- **Administrative rules**
- **Agency decisions**
- **Executive orders**
- Court opinions
- Private (non-government)  
actions

# Who is a Covered Decisionmaker?

**A member of a legislative body or their staff.**

Federal  
(e.g., U.S.  
Senator)

State or Local  
(State Assembly or  
Local Council)

Foreign National,  
Regional, or Local

# Who is a Covered Decisionmaker?

## Executive Branch Employee only if:

- The person can influence the formulation of legislation, and
- The primary purpose of the communication is to influence legislation.

For ballot measures, **the general public** is considered the “legislature.”

State election laws may treat organizations working on ballot measures as “political committees” and state campaign finance laws may apply.

# What is Legislative Lobbying (cont)?



**Direct Lobbying Definition:**

**A Communication +**

**That Expresses a View +**

**On Specific Legislation +**

**To a Covered  
Decisionmaker =**

**Direct Lobbying**



**Grassroots Lobbying Definition:**

**A Communication +**

**That Expresses a View +**

**On Specific Legislation +**

**To the General Public +**

**With a Call to Action =**

**Grassroots Lobbying**

# What is a Call to Action (CTA)?

## A Call to Action could appear as:

- Urging people to contact their legislator
- Providing contact information for a legislator
- Providing a postcard, petition, web link, or other means to contact a legislator

## Identifying legislators who are:

- On a relevant committee
- Undecided on legislation
- Opposed to your view
- Representing the reader

Generally, if there is no call to action, there is no grassroots lobbying.

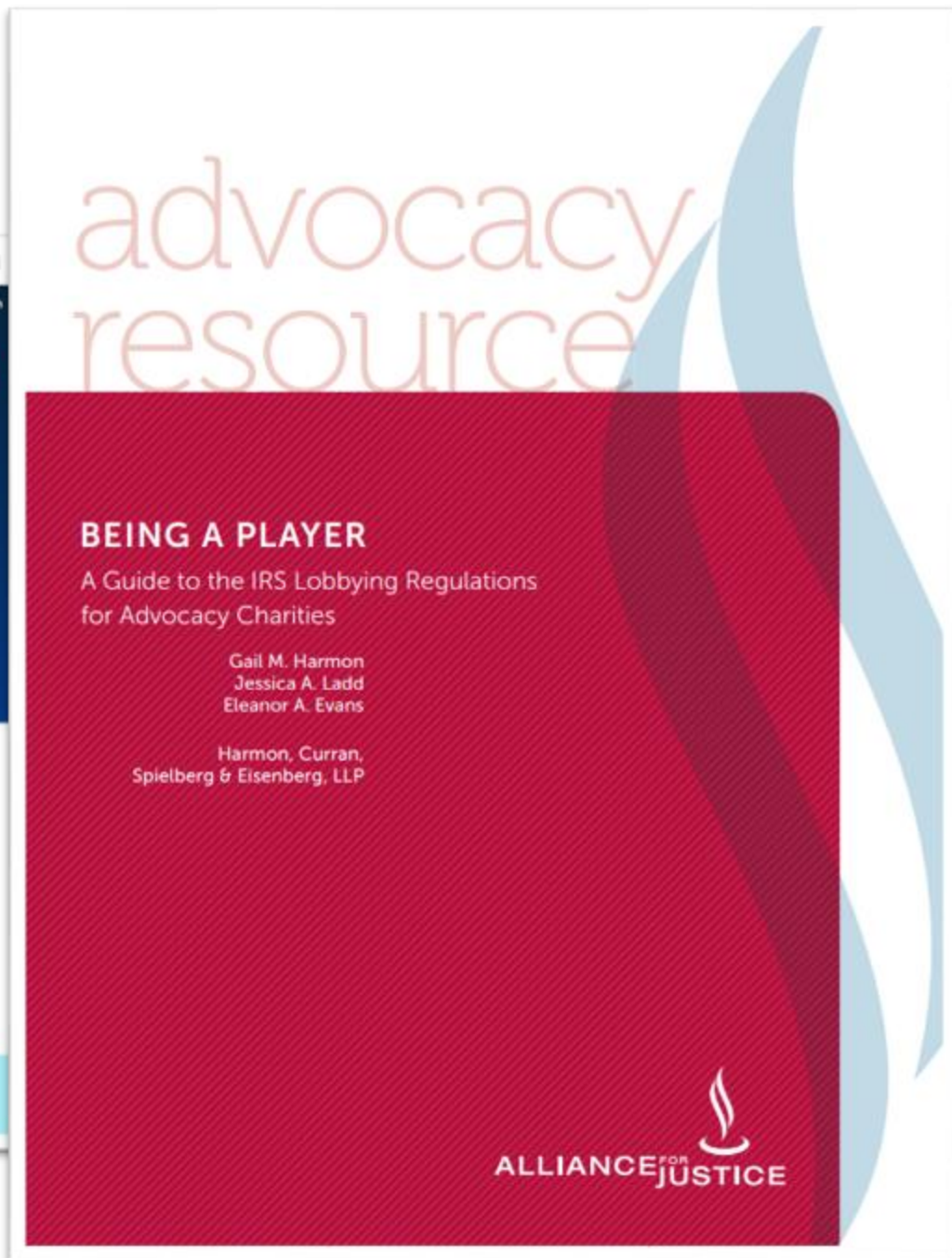
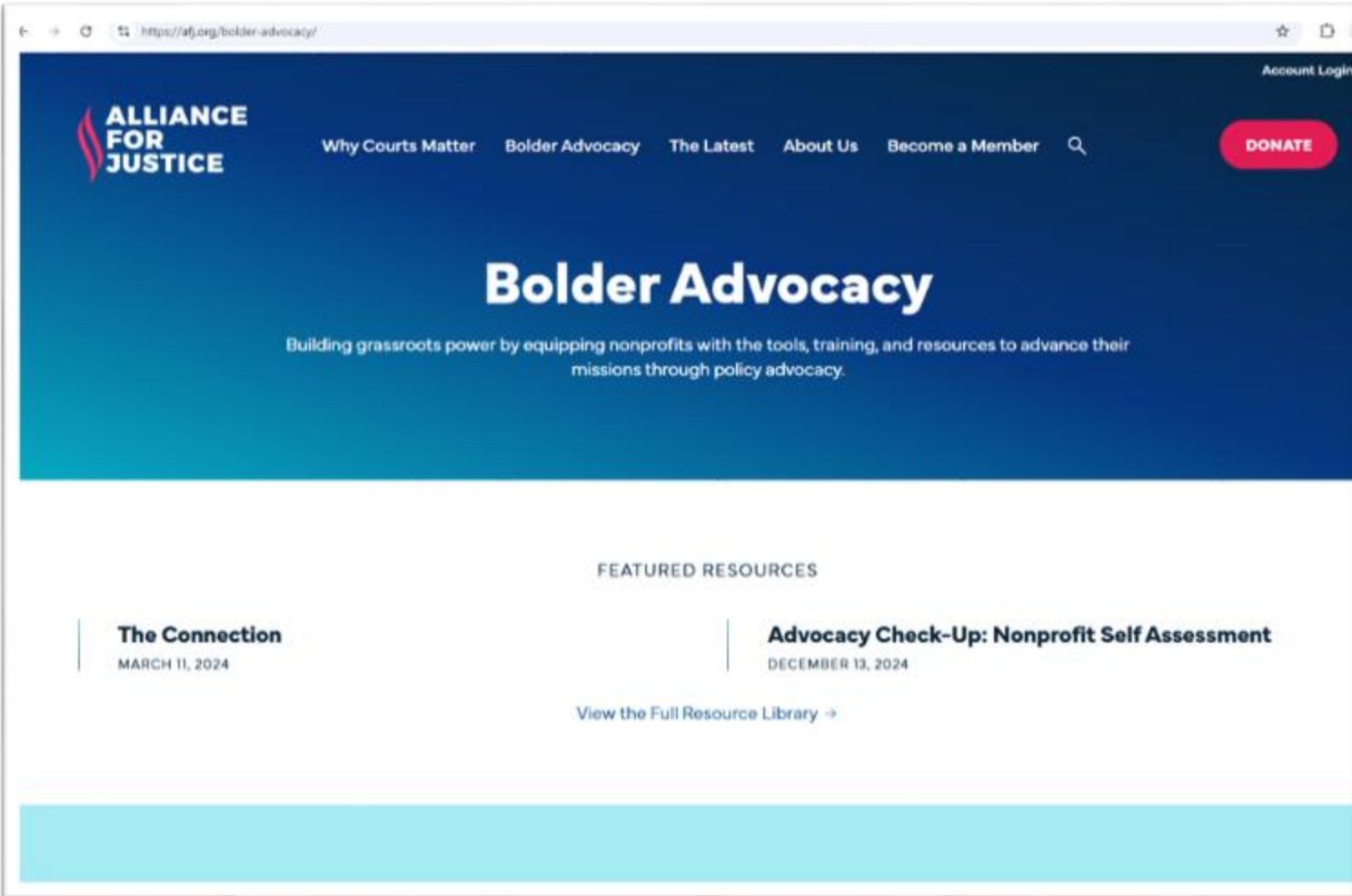
# What activities count as lobbying?

IRS lobbying covers both the time actually spent on communications **and** time/expenses that primarily support that communication.

- Time spent deciding your organization's position on a given policy/legislation and/or whether to engage in advocacy on it = **not lobbying**
- Time spent deciding your organization's advocacy strategy, polling/research to build our argument, coalition meetings to discuss targets, drafting and making actual communications = **Lobbying**

**Secondary/Subsequent lobbying:** Activities that initially or primarily support non-lobbying communications **do not** count as lobbying, even if they are later used for lobbying communications.

# Bolder Advocacy



# Discussion