

## **Standing Up for Your Community Influencing the Redistricting Process**

The redistricting process presents an excellent opportunity for nonprofit organizations to engage in the democratic process – to help ensure, among other things, that the minority vote is not diluted and that communities of interest are not unnecessarily split apart. 501(c)(3) public charities can safely and legally participate in the redistricting process. When doing so, however, they need to be aware that some activities will count as lobbying toward their federal lobbying limit and they need to ensure their activities do not cross over into impermissible campaign intervention (supporting or opposing candidates).

***Attempts to influence a redistricting process will count as lobbying by a public charity if the approval process requires a legislative body (including a City Council, Board of Supervisors, or the State Legislature) to vote to approve the plan.*** Every state is permitted to adopt its own process for drawing legislative and congressional districts, and to influence the legislative boundaries of cities, counties, or other localities. Not all states (or localities) require approval of redistricting plans by a legislative body – instead, they delegate this authority to an administrative body. Before your public charity attempts to influence a redistricting process, you should research the process in order to determine whether a legislative body must vote to approve the redistricting plan.

For example, in Arizona, an independent redistricting commission is charged with drawing legislative and congressional districts based upon set criteria established in the state constitution. Since the new plan is adopted by the redistricting commission, not a legislative body, attempts to influence the redistricting process in Arizona would not count as lobbying against the organization’s lobbying limit. By comparison, in Iowa, the legislature is responsible for voting to approve a new redistricting plan using nonpartisan criteria. Because the Iowa redistricting plan must be approved by a legislative body, attempts to influence the drawing of districts in Iowa would count as a lobbying expenditure by a public charity. A number of organizations provide information on the redistricting process in the 50 states, including the [National Conference of State Legislatures](#), the [Brennan Center](#), the [Minnesota Geographic Information Service](#), and the [Public Mapping Project](#).

If your state’s procedures will require the state legislature or a local legislative body to approve a new map, then attempting to influence the redistricting process will likely count as lobbying against your organization’s federal lobbying limit. Your organization must treat as lobbying any communications with legislators that express a view on redistricting maps, as well as time spent on preparation and research for those communications – including time spent drafting your organization’s own redistricting maps. For more information on when preparation activity constitutes lobbying, please review our fact sheet titled [When Does Your Activity Become Lobbying?](#)

***Not all activities related to the redistricting process will count as lobbying.*** Under the 501(h) Expenditure Test, lobbying is defined as an attempt to influence public officials in support of, or in opposition to, legislative proposals.<sup>1</sup> Lobbying includes both directly

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<sup>1</sup> 501(c)(3) public charities can lobby within the limits allowed by federal law. All 501(c)(3) public charities will measure their lobbying under either the “501(h) Expenditure Test” or the

communicating with legislators and their staff, as well as encouraging others to contact their legislators (using a [“call to action”](#)). However, not all communications with legislators or the public around the issue of redistricting will necessarily constitute lobbying against the organization’s federal lobbying limit:

- **No reference to specific legislation.** It is not lobbying to meet with legislators in order to educate them about a broad social problem, as long as you do not express a preference for a specific legislative proposal to address that problem. For example, you could educate legislators about how current legislative districts unfairly divide communities of interest, without counting it toward your federal lobbying limit, provided you do not express a preference for a specific legislative proposal to address that unfairness. Generally, a communication to a legislator is “specific” enough to count as specific legislation if it includes enough details that a legislator could take what has been communicated and introduce a bill, even if the ideas in the communication are not fully fleshed out or do not include all pertinent details. Therefore, efforts to draft your own redistricting plan should count as lobbying, even if the legislature has yet to introduce a bill.
- **No call to action.** If your organization has made the 501(h) election, you can communicate with the general public (e.g., through letters to the editor, OpEds, news releases, e-mail blasts, etc.) with a view about redistricting plans, and not count it as lobbying against the federal limit, provided you do not include a “call to action” that encourages the public to contact a legislator. For more information on what is considered a call to action, please review our [What is Lobbying?](#) fact sheet
- **Nonpartisan analysis, study, research.** Your organization could present a comprehensive, accurate study or analysis of a policy issue without counting the staff time and expenses of preparing the report as lobbying, so long as: (1) the document provides enough factual information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion; and (2) the report is widely distributed to the public (e.g., it is available on the organization’s website) and not shared exclusively with audiences who agree with the authors. In addition, the report may not direct readers to contact legislators about the issue. For more information on these rules, please see our publication entitled [Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities](#).
- **Participation in administrative advocacy.** Attempting to influence a rule, regulation, or administrative decision made by a state or federal agency will not count as lobbying against an organization’s lobbying limit. For example, your organization could attempt to influence the Section 5 preclearance of the redistricting plan by the Civil Rights Division of the US Department of Justice, or file a lawsuit or friend of the court brief challenging or affirming Section 5 preclearance, without treating the expenses as lobbying.

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“Insubstantial Part Test.” The activities discussed in this section of the fact sheet apply to organizations that measure their lobbying using the 501(h) Expenditure Test. If your organization does not currently measure its lobbying using the 501(h) Expenditure Test, please review publication [Worry Free Lobbying](#) for more information on the benefits of using this test and how to inform the IRS you would like to take advantage of this test.

- **Requests for technical assistance.** For organizations that have made the 501(h) election, submitting a response to written requests for assistance from a government body is not lobbying. For example, if the chair of the legislative committee on redistricting and reapportionment wrote to your organization and requested that you testify in support of a particular redistricting plan, such testimony would not count as lobbying if the testimony is made available to all members of the committee.

**Public charities can influence the redistricting process by urging the legislature or redistricting commission to consider nonpartisan factors in drawing district boundaries.** 501(c)(3) public charities may take positions on public policy issues and advocate for policy change, so long as the 501(c)(3)'s advocacy does not constitute intervention in a election. (IRS Rev. Ruling 2007-41.) Given that the redistricting process could impact which candidates for office are ultimately elected, charities participating in the redistricting process must ensure they are not intervening in the electoral process.

Whether an organization is intervening in a political campaign on behalf of, or in opposition to, a candidate for public office depends upon all of the facts and circumstances of each case. The IRS has not specifically addressed which facts and circumstances are relevant in the context of the redistricting process. Nevertheless, we believe that the IRS would conclude that a charity's activity constitutes impermissible intervention in a campaign if that charity takes positions in conjunction with a political party, attempts to preserve "safe" seats, or ensures that incumbents can continue to hold a particular seat. By comparison, it would likely not constitute impermissible intervention in a campaign for a charity to conduct nonpartisan public education about the importance of the redistricting process, or urge the body developing the redistricting plans to consider nonpartisan criteria (e.g., population equality; contiguity of districts; or respect for communities of interest) during the redistricting process.

For more information on how your organization can safely and legally participate in the redistricting process, please feel free to call Alliance for Justice's toll free technical assistance line at 866-NPLOBBY or email us at [advocacy@afj.org](mailto:advocacy@afj.org).

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