

You Can Influence the Selection of Federal Judges

Guidelines for 501(c)(3) Organizations

501(c)(3) organizations are legally allowed to influence the selection of federal judges. Notably, the Internal Revenue Service has recognized that influencing the confirmation of federal judges is exactly like influencing any other legislative vote through lobbying. In Notice 88-76, 1988-2 C.B. 392, the IRS explained that, “the Senate’s action of advice and consent on a judicial nomination is an action with respect to a resolution or similar item, the Senate’s confirmation vote constitutes a vote on legislation.”

Of course 501(c)(3)s CAN lobby within the generous limits allowed by law. Because influencing judicial nominations is clearly lobbying activity, you need only to consider the application of the general lobbying rules to maximize your lobbying efforts on judicial nominees.

Remember These Key Points

Electing to use the 501(h) expenditure test can maximize your lobbying activity.

- Lobbying limits under 501(h) are based upon how much money the organization spends on lobbying so cost-free activities, such as volunteer time, do not count against the organization’s lobbying limits.
- 501(h) provides a clear dollar limit on the amount of money an electing 501(c)(3) can spend on lobbying. While the limits vary depending on the size of the organization’s budget, an organization can often expend as much as 20% of its budget on lobbying.
- An electing 501(c)(3) may spend a up to a quarter of its overall lobbying limit on “grass roots” lobbying (urging the general public to communicate the organization’s position on the nominee to their US Senators) or up to the entire amount on “direct” lobbying (telling the Senators or their staff to support or oppose a judicial nominee or urging the organization’s members to do so).
- A 501(c)(3) may elect the 501(h) expenditure test to govern its lobbying activity by filing the simple Form 5768 once with the IRS.

If the 501(c)(3) has not elected 501(h), it may still lobby on judicial nominations and other issues as long as its lobbying activities do not become a “substantial” part of the 501(c)(3)’s activities.

If your 501(c)(3) wishes to engage in more lobbying than is permitted for 501(c)(3) organizations, consider creating an affiliated 501(c)(4) organization. A 501(c)(4) can engage in an unlimited amount of lobbying, including judicial selection work.

This handout provides general guidelines only, and is intended to serve as an overview. Because the application of law is fact-sensitive and context is critical, it should not be relied on as legal advice. An organization should consult with an attorney to receive guidance on special rules governing its conduct.

For additional information contact the Alliance for Justice. The Alliance publishes plain-language guides on nonprofit advocacy topics, offers workshops, and provides technical assistance for nonprofits engaging in advocacy.



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