

## Legal Training – Winning Policy Campaigns With Non-Lobbying Funds

Webinar Summary - June 23, 2015

### Presenters:

**Allen Mattison**, Partner, Trister, Ross, Schadler & Gold, PLLC, Washington, DC.

**Winifred Quinn**, PhD, Director, Advocacy & Consumer Affairs, Center to Champion Nursing in America (CCNA)

### Webinar Goals:

- Learn how to maximize the campaign's branding for lobbying efforts.
- Understand ways to rally the public and legislators behind your policy goals, without crossing the line into "lobbying" to save your lobbying dollars for when they'll have the greatest impact.
- Gain strategies for crafting advocacy messages without violating grant restrictions.

We know that Action Coalition work is sometimes advocacy related in the sense that you are working towards change and policy improvements.

We also know that Action Coalitions face limits on their "lobbying," but that may not be as restrictive as you think.

Too often, nonprofits fail to take full advantage of their grant dollars because they misunderstand what the lobbying prohibition really covers.

Across the country, there is a movement to advance the field of nursing so that all Americans have access to high quality, patient-centered care in a health care system where nurses contribute as essential partners in achieving success. This national level [Future of Nursing: Campaign for Action](#) is a result of the Institute of Medicine's landmark 2010 report on the [Future of Nursing: Leading Change, Advancing Health](#).

The *Campaign for Action's* field-based teams, the [Action Coalitions](#) (ACs), are leading this movement and are equipping themselves with knowledge gained from technical assistance provided by the Center to Champion Nursing in America (CCNA), a joint initiative of AARP, the AARP Foundation, and the Robert Wood Johnson Foundation. Such technical assistance comes in the form of webinars, face-to-face interactions, and other facilitated engagements with public policy leaders, content experts, consultants, and Action Coalition peers across the country.



**Winifred Quinn, PhD**, Director, Advocacy & Consumer Affairs  
Center to Champion Nursing in America

“We have held webinars on issues related to lobbying in the past, but we know that this is a topic that needs revisiting often – especially in light of upcoming legislative cycles.”

Action Coalitions face limits on their "lobbying," but those limits likely aren't as restrictive as you think. This training aims to help Action Coalitions maximize their ability to influence public policy.

**First**, we'll learn exactly what is meant by "lobbying" - and what isn't covered by the definition. Too few people really understand the term, and too many people have misconceptions.

**Second**, we'll address strategies for stretching your non-lobbying dollars to maximize the organization's effectiveness. Armed with this knowledge, you can plan your communications strategically to increase your ability to achieve policy goals - and, you can assure potential donors their funds will be used in a savvy yet legally compliant manner.

To maximize your advocacy and the knowledge what is and isn't lobbying, you can plan your communications strategically to increase your ability to achieve policy goals.

Attorney **Allen Mattison** is a consultant to the *Campaign for Action* to help Action Coalitions with technical assistance on legal issues.

He represents nonprofit organizations at all stages of their lifecycles. He specializes in helping nonprofit leaders to maximize their advocacy within the section 501(c)(3) and 501(c)(4) restrictions on lobbying and political activity. Before becoming a lawyer, he worked in the communications departments for a U.S. Senator, for a national nonprofit organization and on political campaigns.



His background in political and nonprofit communications enables him to help clients find ways to amplify their message within the restrictions imposed by federal and state campaign finance, lobbying and tax laws

The goal is to maximize resources and the power of Action Coalitions by planning activities strategically. Mattison said it is critical for Action Coalitions “to influence public policy and to improve the lot of nurses and patients.” Mattison addresses issues like:

- What is lobbying?
- How to plan strategically to get the biggest bang for your bucks.
- Apply theory to real-world situations.

### Mattison’s observations based on the law

Section 501(c)(3) charities may lobby but Not with Robert Wood Johnson Foundation funds.

However, public charity 501(c)(3)s legally may conduct a limited amount of lobbying.

- ✓ Charities may spend a certain percentage of their expenditures on direct and grass roots lobbying under the section 501(h) “expenditure test.”
- ✓ “Grass roots lobbying” may be 25 percent of total lobbying.

Private foundation 501(c)(3)s may not directly pay for lobbying and no RWJF funds may be spent on lobbying.

### May Action Coalitions Lobby?

Action Coalitions may conduct direct and grassroots lobbying but Not With RWJF or CCNA funds. If Action Coalitions and their members plan to lobby or conduct political activities in a coordinated way, they must:

- Provide advance notice to CCNA
- Include a disclaimer
- Not use RWJF/CCNA names, logo, funds or other resources

### Two Types of Lobbying

For CCNA's purposes, the IRS regulates two types of lobbying:

- Direct lobbying
- Grass roots lobbying

### What is Direct Lobbying?

Direct lobbying has three elements:

- A communication directly with legislators or staff
- On specific legislation
- That reflects the organization's view on the legislation

#### 1. Communication Directly with Legislators or Staff

- Face-to-face meeting with legislator or staff
- Also certain executive branch officials/staff (but only if the executive branch official or staff member is involved with formulating the legislation you are trying to influence, and your communication with that person is primarily for the purpose of influencing the legislation; most conversations with executive branch are not lobbying)
- By letter, email or phone call
- Includes Congress, state legislators, city councils, tribal governments, town meetings.
- Does not include school boards, zoning boards, or other administrative agencies.

#### 2. On Specific Legislation

- “Specific legislation” includes: Bills that have been introduced
- Resolutions
- Appropriation bills
- Confirmations and nominations to Senate-confirmable posts
- Ballot measures Specific legislative proposals not yet introduced
  - This covers proposals where the communication provides the legislator with enough information to know what legislation to introduce (e.g., telling a Harrisburg lawmaker: “Pennsylvania should adopt New Jersey’s law regarding APRN scope of practice”).

**Specific Legislation” does *not* include:**

- Regulatory Actions
- Executive Actions
- School Board Decisions
- Zoning Board Decision
- Corporate Actions
- Institutional Actions (e.g., churches, hospitals, universities, community centers)

**3. Reflecting the Organization’s Viewpoint**

- Endorsement or opposition of legislation (“Vote for the Buskirk Bill”)
- Urging legislators to fix a problem in a bill
- Explaining a bill’s consequences
- No viewpoint communicated if the organization is providing truly neutral, objective information

**What is Grassroots Lobbying?**

## Grassroots Lobbying has Four Elements

- A communication
  - To the public
  - Includes advertisements and speeches
- On specific legislation
- That reflects the organization's view on the legislation, and
- **Includes a call to action**

### **Grassroots Lobbying: Call to Action**

**Call to Action** is the key distinction between grassroots and direct lobbying

- Call to action asks the audience to contact their legislator such as "Call Senator Smith, and tell her to vote yes on ..."

### **Grassroots Lobbying: Call to Action**

#### **Other Forms of "Call to Action"**

- Identifying the audience's legislative representative
- Providing contact information for legislator
- Identifying legislator as being neutral or opposed to the organization's position on the legislation



- Providing vehicle for contacting the legislator (form email, petition, etc.)
- Identifying the legislator as a member of the committee that will vote on the legislation

**Call to Action Exception:**

**Highly Publicized Legislation**

- No call to action needed for paid advertising that runs two weeks before a committee or floor vote on “highly publicized” legislation
  - “Highly publicized” if, for example, it’s frequently on the evening television news
  - Automatically grassroots lobbying if it is:
    - Paid advertising,
    - Within two weeks of a vote
    - On specific “highly publicized” legislation, and
    - Reflects the organization’s view on the legislation

- If it satisfies all of these requirements, then it's a grassroots lobbying communication even if it does not have a "call to action" under the IRS definition.

### Activities to Prepare for Lobbying

Preparing for Lobbying = Lobbying Cost. Activities whose only purpose is to prepare for lobbying must be paid with lobbying dollars.

Examples:

- Meetings to set lobbying strategy.
- Polls used only for lobbying.
- Writing handouts used only in lobbying

### Beware of the "Subsequent Use" Rule

- All costs for purely educational materials are presumed to be grassroots lobbying if the materials are used for any lobbying within **six months** of being produced. The IRS assumes you created the communication for lobbying if it is used for lobbying within the first six months after you release the communication.
- To rebut the presumption, the organization must demonstrate its primary purpose in developing the materials was not for lobbying and that you distributed it widely as an educational effort before any lobbying use.
- No risk if materials are used only for education in the first six months.

To rebut the presumption, demonstrate that you distributed your communication widely. As an example of broad distribution, **Mattison** used a Minnesota example, in which an organization that produced a poll used the following distribution channels. The organization later used the poll for lobbying, but the broad dissemination described below would enable the organization to rebut the IRS presumption and demonstrate that the poll was conducted for educational purposes – not for lobbying.

"Briefing on poll results and **talking points distributed to coalition members** before public release.



Coalition members provided with **sample tweets** and **Facebook posts** prior to release – timed for drumbeat into legislative session.

Poll results released publicly through a **news release** and in one-on-one **briefings with legislative reporters** and reporters in targeted districts.

Briefings with key **editorial-page editors** and key **bloggers**.

**Radio news actuality** produced and distributed to radio stations statewide.

**Letters to the editor** and **op-eds** crafted and submitted to key newspapers

Coalition members to distribute poll **summary to supporters** and followers.”

### Nonpartisan Analysis, Study and Research

This exception allows organizations to produced thoroughly researched reports, even if they take a position on legislation. To qualify, the report must be:

- Independent, objective analysis
- Distributed broadly, not just to one side
- May advocate a viewpoint, if it includes a full and fair examination. A person must be able to form an independent conclusion.

### What is Not Lobbying?

#### **Technical Advice or Assistance**

- Oral or written assistance provided in response to a written request by a governmental body, legislative committee or subcommittee
  - Request must be made in the name of the entity, not just from an individual member, such as the Health Department director asking on behalf of the department
- Advice must be available to all members of the requesting entity

- May advocate a viewpoint, if the request specifically asks for opinions or recommendations

### Examples



Is the example above lobbying?

**Mattison** said you need more information on this ad. If there's a specific bill, then it's grassroots lobbying. However, if this is just about the importance of a general policy on climate change, it's not lobbying, because there is no reference to specific legislation – even though it includes an IRS “call to action.”

In the example below, **Mattison** said this is not lobbying because the two senators are already considered supportive. An IRS “call to action” includes identifying a legislator as being neutral or opposed to the position taken by the communication on the legislation – but the definition does not extend to merely identifying a legislator as being supportive of the speaker's position.



# Thank you,

**Senators Lamar Alexander and Bob Corker,  
for your unwavering leadership in  
preserving Tennessee's great outdoors.**

## **The Tennessee Wilderness Act**

would protect our heritage and time-tested outdoor traditions for future generations. It would boost our local economy through outdoor recreation and tourism jobs.

The Cherokee National Forest is East Tennessee's  
"Big Backyard." We thank you  
for putting Tennessee first.

## **The Tennessee Wilderness Act**

*Made by Tennesseans for Tennessee*

In the example below, **Mattison** said there is no call to action here under the IRS definition. Asking people to sign up for the organization's email list is not a call to action under the IRS definition.



## WHY INVEST NOW

We need to expand Medicaid in Missouri. In this tough economy, more Missourians than ever are out of jobs and many are single parents making barely enough to survive, let alone support a family. Under the national health reform law, Missouri has an opportunity to expand Medicaid to provide health insurance to single parents and childless adults who earn up to 138% of the federal poverty level, or about \$25,000 for a family of three. Taking advantage of this expansion is both the right thing to do and the smart thing to do for Missouri.

### EXPANDING MEDICAID IS THE RIGHT THING TO DO.

- **Being able to see a doctor is a right, not a privilege.** Working families should have the right to receive basic medical care when they need it, but tens of thousands of working Missourians can't qualify for basic health care, and 877,000 currently have no health insurance at all. That's why we need to expand Medicaid coverage to help insure those who need it the most, like families with children who are working hard to make ends meet. Now is not the time for Missouri to start neglecting its working families.
- **Medicaid saves lives and prevent thousands of deaths every year in Missouri..** Expanding Medicaid will help allow 260,000 more hardworking Missourians who earn just a fraction of the federal poverty line to purchase insurance. A recent study shows that expanding coverage could even save the lives of as many as 6% of the people who enroll.
- **Missouri currently makes it harder than almost any other state to qualify for Medicaid.** Under today's rules, a single mother of two can't qualify for basic health care through Medicaid if she makes anything more than \$3,504 per year – just 18% of the

Like us!
 Follow us!

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**MO Medicaid Coalition**  
 Like

6,552 people like MO Medicaid Coalition.

Facebook social plugin

Sarah Felts of the Missouri Nurses Association asked if a website includes a page that enables users to contact their legislator about legislation, does that turn the entire website into a lobbying expense?

How should we allocate the lobbying costs?

**Mattison's** response:

Simply having a take-action page in a website does not turn the entire website into a lobbying expense.

The IRS has not addressed this issue directly, but I would recommend treating as a lobbying expense only the costs directly related to lobbying. So, for example, if the take-action page urges users to contact legislators about legislation, then the costs related to that take-action page are **grassroots lobbying** expenses.

These costs might include designing that page, and any additional back-end infrastructure that you need to install to help users identify their legislator and to send their message to the legislator.

Some online engagement systems (such as Salsa) may include this functionality as part of their basic package. If so, you don't necessarily need to include that cost as a lobbying expense. But if you're paying a separate and distinct cost to enable the webpage to connect people with their legislators, then you should include that discrete expense as a **grassroots lobbying** expense.

Merely having a (reasonably sized) link from your homepage to that take-action page does not turn the homepage into a lobbying communication. Of course, if the homepage had a giant splash that said "Call Senator Smith about the Medicaid expansion bill today!" that would be a different story.

### [Mattison continues:](#)

Clients often will want to include a URL on an advertisement, saying something like: "To get involved, go to ...". If the URL links to an informational page that does not include a "call to action," then the advertisement is not a lobbying expense – even if that informational landing page does have a "Take action" button in the corner, linking to a lobbying take-action page.

(Note that a non-lobbying take-action page could encourage people to sign up for the organization's email list, ask them to share messages on social media, etc., as long as those activities do not involve a "call to action" under the IRS definition of "call to action.") In contrast, if the advertisement links directly to a take-action page that asks users to contact their legislators about a bill, then the advertisement itself is a lobbying expense.

### Additional Resources

- *Being a Player*, Alliance for Justice, 2011
  - Provides detailed information regarding lobbying
  - [www.tinyurl.com/AFJplayer](http://www.tinyurl.com/AFJplayer)
  - *Influencing Public Policy in the Digital Age: The Law of Online Lobbying and Election-related Activities*, Alliance for Justice, 2011

- Explains how 501(c)(3)s may engage online
- [www.afj.org/digitalage](http://www.afj.org/digitalage)

The IOM's recommendations include: the need for more advanced education of registered nurses; nurses leading innovations in health care and being appointed to decision making bodies; all nurses practicing to the full extent of their education and training; a more diverse nursing workforce and faculty; and more interprofessional collaboration among nurses, physicians, and other members of the health care team in the educational and clinical environments.

For more information from the Center to Champion Nursing in America about this webinar, technical assistance or other questions related to the *Future of Nursing, Campaign for Action* contact Michael Pheulpin at [MPheulpin@aarp.org](mailto:MPheulpin@aarp.org) or 202-434-3882.

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