



Lobbying and Politics for Nonprofits

The Rules Aren't Red and Blue

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 - Outsourcing
 - Audit, Tax, and Consulting
- More than 4,500 employees
- Nearly 100 locations coast to coast
- With more than 60 years of experience in the nonprofit sector, we have one of the largest nonprofit practices in the country



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Speaker Introductions

- **David Trimner**

David has provided specialized tax consulting and compliance services to several hundred tax-exempt clients over his 18 year career. He provides federal and state tax services, focused primarily on public charities, private foundations, trade associations, healthcare organizations and higher education institutions.

- **Ann Swindell**

Ann serves nonprofit clients in all areas of tax compliance, business consulting, and accounting. Ann has expertise working with nonprofit clients in the areas of building and maintaining proper governance, reporting unrelated business income, preservation of exempt and public charity status, and proper disclosure of sensitive transactions on Form 990.



Learning Objectives

At the end of this session, you will be able to:

- Identify what activities constitute lobbying
- Identify what constitutes political activity
- Discuss how the lobbying and political activity rules apply to churches and similar 501(c)(3) nonprofit organizations



Nonprofits and Politics

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 16

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Should WE be Lobbying?

- Sparks public debate
- Connects policymakers to ideas
- Enfranchises and empowers individuals
- Brings about change
- Advocates client's mission/issues



Lobbying– What is it?

Legislation

- The introduction, amendment, enactment, defeat or repeal of
 - Acts, bills, resolutions, referendums, ballot initiatives, petitions, or Constitutional Amendments by
 - Federal, state, or local legislatures
- Also includes Senate confirmation of treaties and of nominees to the executive or judicial branches



Lobbying– What is it?

The Foundational Association for MiracleCorn Education (FAME) is a 501(c)(3) organization

- It's mission is to alleviate hunger and illness by promoting MiracleCorn as a nutrition source
- It conducts research, educational symposiums, and various other activities to educate the public about the benefits of MiracleCorn
- It desires to influence the use of MiracleCorn by engaging in lobbying and political activity to the extent permissible



Lobbying– What is it?

- FAME contacts members of the state legislature to support a budget resolution that provides funding for MiracleCorn research
- FAME contacts the President encouraging him to issue an executive order mandating that all federal agencies will serve MiracleCorn in the office cafeteria
- FAME urges the local zoning board to deny a zoning request that would allow a coal mine to open near where MiracleCorn's secret water source is located
- Maryland passes the MiracleCorn Omnibus Act. FAME contacts members of the Virginia legislature to encourage them to draft a similar bill.



Lobbying– What is it?

Direct Lobbying:

- Contacting the federal, state, or local legislative branch in an attempt to affect the passage or defeat of legislation
- Encouraging the organization's members to contact legislators to support or oppose legislation
- Attempting to influence the public's support or opposition to a referendum or ballot initiative

Grassroots Lobbying:

- A call to action that attempts to motivate the public to contact legislators to support or oppose legislation



Lobbying– What is it?

Direct or Grassroots?

FAME wants Congress to pass the MiracleCorn Omnibus Act

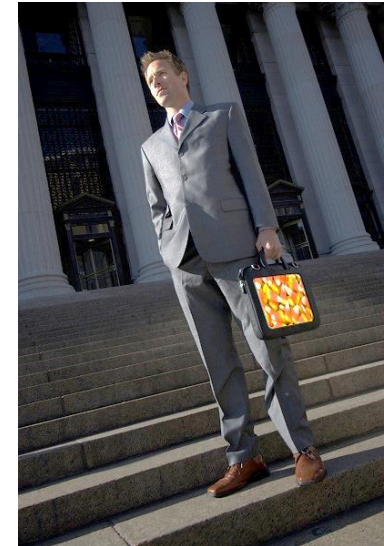
- FAME's CEO meets with Senator Goodpill and tells him that it is a great bill
- FAME emails all of its members asking them to write to Senator Goodpill
- FAME takes out a newspaper ad encouraging the public to write to Senator Goodpill
- FAME's volunteers go door-to-door handing out educational flyers explaining the Act and asking for donations to help get it passed
- FAME's volunteers go door-to-door handing out educational flyers and asking people to sign a petition in support of the Act
- FAME's volunteers go door-to-door explaining the importance of the Act and mentioning that Senator Goodpill hasn't made up his mind yet



Lobbying– What it is not

Communications Regarding

- Executive orders
- Administrative rules
- Court opinions
- Agency decisions
- Actions by nongovernmental organizations
- EXCEPTION: 501(c)(4), (5), and (6) organizations that attempt to influence a covered executive branch official (CEBO)



Lobbying– What is it?

Who is a CEBO?

- The President of the United States
- The Vice President of the United States
- Cabinet Secretaries and immediate deputies
- Any officer or employee of the White House Executive Office
- The 2 most senior officials at all Executive agencies
- Level I individuals of the Executive Schedule and immediate deputies



Lobbying– What it is not

Communications With Members

- If the majority of the recipients are members of the organization, the communication can support or oppose legislation as long as it does not contain a call to action (encouraging members to engage in direct or grassroots lobbying)



Lobbying– What it is not

Member Communications: Direct or Grassroots?

FAME wants Congress to pass the MiracleCorn Omnibus Act

- FAME's newsletter explains the organization's support for the MiracleCorn Omnibus Act and describes the efforts to get the bill passed
- FAME's newsletter urges all of its members to write to Senator Goodpill
- FAME's newsletter urges members to get their friends and family to write to Senator Goodpill
- 75% of the recipients of the newsletter are nonmembers



Lobbying– What it is not

Member Communications: Direct or Grassroots?

FAME wants the public to pass Prop 42

- FAME distributes a flyer door-to-door that says “Proposition 42 asks voters whether MiracleCorn should be mandated for school lunch programs. FAME believes this will curb childhood obesity.”
- FAME distributes the same flyer only to members
- The flyer is distributed only to members, and encourages members to vote for Prop 42
- The flyer is distributed only to members, and encourages members to get their friends and families to vote for Prop 42



Lobbying– What it is not

Nonpartisan Analysis, Study, or Research

- Content Test: Provide a full and fair explanation of the issues so the reader can form an independent conclusion
- Distribution Test: Widely disseminate the communication to interested persons, not just to those who agree with the organization's viewpoint
- Must not include a Call to Action in support or opposition to the legislation
- May later be treated as lobbying if it is subsequently used for grassroots lobbying purposes



Lobbying– What it is not

Nonpartisan Analysis, Study, or Research

- FAME publishes a research pamphlet revealing that a daily diet of Lavender MiracleCorn can improve life-expectancy by 3.5 days.

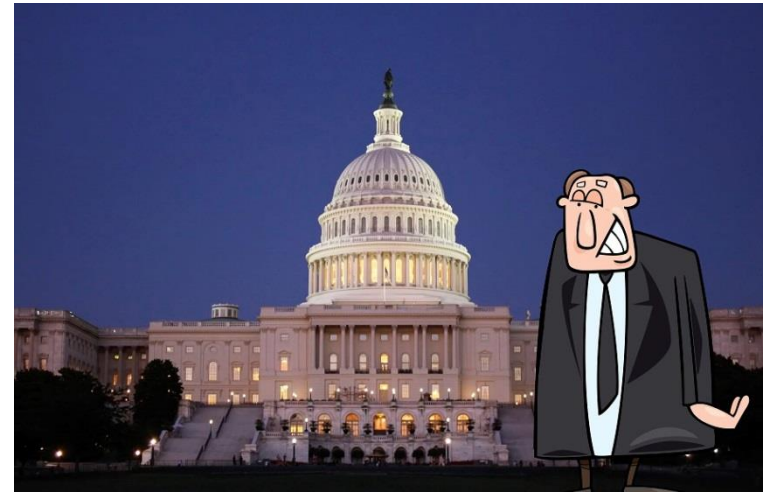
The pamphlet also describes conflicting research that says that MiracleCorn causes blindness in lab animals. FAME sells the pamphlet to the general public.



Lobbying– What it is not

Nonpartisan Analysis, Study, or Research

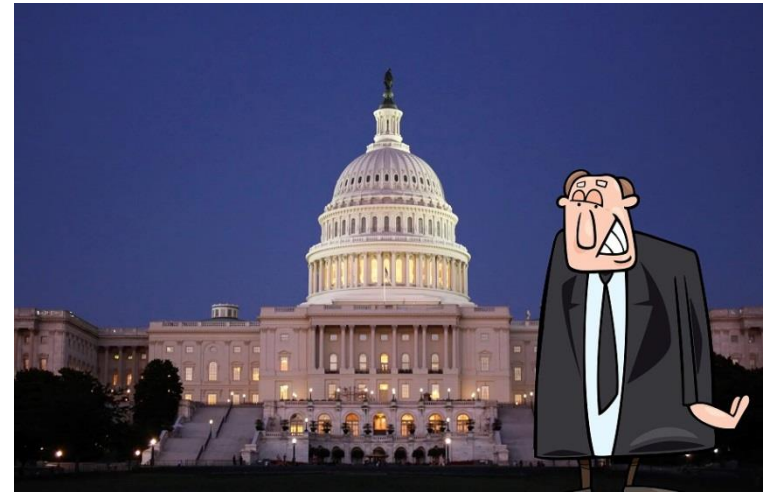
- The pamphlet discusses the MiracleCorn Omnibus Act, and mentions that Senator Goodpill is undecided, but that Congressman Naysayer opposes it.



Lobbying– What it is not

Nonpartisan Analysis, Study, or Research

- The pamphlet asks readers to contact Senator Goodpill and Congressman Naysayer and express support for the bill.



Lobbying– What it is not

Nonpartisan Analysis, Study, or Research

- The pamphlet is subsequently used to encourage grassroots lobbying
- The pamphlet is subsequently used to encourage grassroots lobbying, but more than six months have passed since the expenses were incurred for the initial use
- The original pamphlet omitted any reference to the MiracleCorn Omnibus Act.
- The pamphlet is subsequently used to encourage grassroots lobbying



Lobbying– What it is not

Examination of Broad Social or Economic Problems

- Discussions with legislators, the public and other interested parties on topics which are the subject of legislation
- Must not refer to the legislation
- Must not include a call to action



Lobbying– What it is not

Examination of Broad Social or Economic Problems

- FAME's CEO participates in a panel discussion at a nearby Think Tank. Members of the panel include Senator Goodpill, pharmaceutical representatives, and healthcare professionals, who have gathered to discuss the nutritional qualities of MiracleCorn. The CEO does not refer to the MiracleCorn Omnibus Act nor does she directly encourage the audience to do anything.



Lobbying– What it is not

Requested Technical Advice

- In response to a written request by the legislative body or legislative committee
- Communication is provided to all members of the requesting body
- The request can not be from a particular legislator acting alone



Lobbying– What it is not

Requested Technical Advice

- Senator Goodpill invites FAME's CEO to meet with a group of undecided Senators to discuss the MiracleCorn Omnibus Act
- The Senate Subcommittee on Miracle Drugs, Pills, Analgesics, and Restoratives invites FAME's CEO to testify before the group



Lobbying– What it is not

Self-Defense

- Communication with a legislative body with regard to actions that would threaten the organization's existence, tax-exempt status, or deductibility of contributions
- Must not include a grassroots call to action



Lobbying– What it is not

Self-Defense

- Congressman Naysayer introduces a bill that would revoke the public charity status of any organization designed to promote the use of a particular pharmaceutical
- Congressman Naysayer introduces a bill that would raise the postage rates for all nonprofit organizations



The Lobbying Disclosure Act (LDA)

Important differences

- Includes federal lobbying only, not state and local
- Includes Direct lobbying only, not grassroots
- Includes communications with CEBOs
- Registration requirements based on time (20%) and expenses (\$12,500 in-house, \$3,000 for an outside professional) for lobbying in a 3-month period
- Quarterly and Semi-Annual reporting requirements



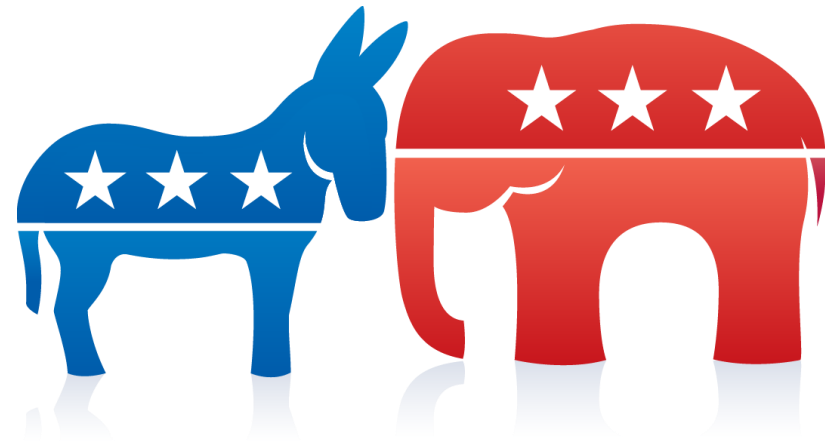
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What is Political Activity?

Candidate Appearances and Debates

- Incumbent officials may appear in their official capacity
- All candidates must be invited to the event and given an equal opportunity to speak
- Questions must be balanced and nonpartisan
- Organization may not make comments regarding the questions and answers provided by the candidates
- Candidates should not ask for contributions

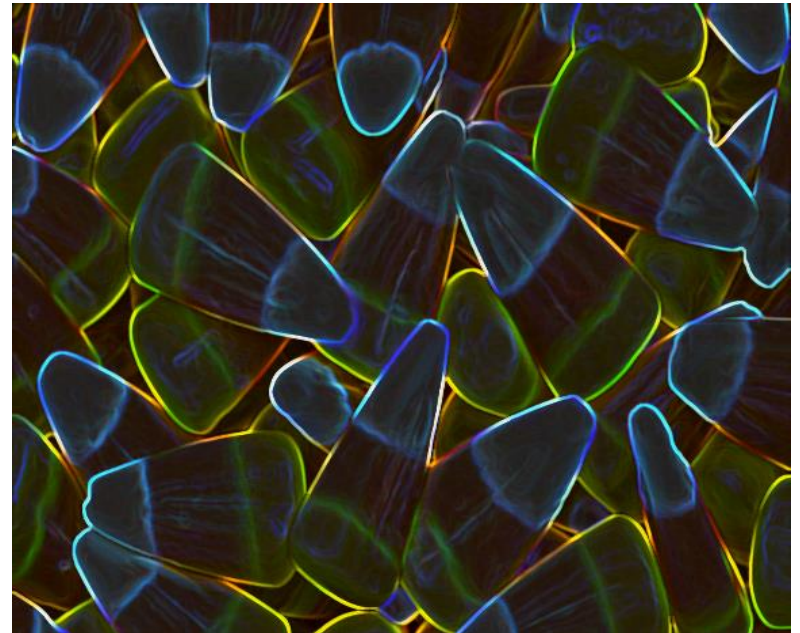


What is Political Activity?

Candidate Appearances and Debates

Congressman Naysayer decides to run against Senator Goodpill for the Senate seat this November.

- FAME rents its ballroom to Senator Goodpill to conduct a fundraising event.
- If FAME invites Senator Goodpill to speak at its annual meeting, must Congressman Naysayer also be invited?
- Does it matter whether or not Senator Goodpill has a B.S. in Nutrition?



What is Political Activity?

Candidate Appearances and Debates

When the CEO addresses the annual meeting, can she say:

- “We thank Senator Goodpill for his tireless efforts in behalf of improved nutrition.”
- “We wish him luck in his re-election campaign.”
- “I encourage all of you to vote to re-elect Senator Goodpill.”
- What if the CEO made those same comments at another event unconnected to FAME, and not speaking in any official capacity?
- What if the same comments were included in FAME’s newsletter, but the CEO paid all the newsletter expenses for that month?



What is Political Activity?

Candidate Appearances and Debates

FAME invites the candidates to a public debate moderated by the CEO.

- During the debate, the moderator asks Congressman Naysayer, “Congressman, does your opposition to MiracleCorn come from your hatred of America or from your own sense of self-loathing?”
- Senator Goodpill is allowed to exceed his time limit, but Congressman Naysayer is constantly interrupted.
- The moderator smiles during Senator Goodpill’s comments, but sneers during Congressman Naysayer’s.
- A third party candidate is running for Senator Goodpill’s Senate seat, but she is not invited to the debate.



What is Political Activity?

Voter Education and Registration

FAME sets up a voter registration booth that promotes the election but does not mention either candidate or party.

- FAME sets up a telephone bank to call contact registered voters regarding MiracleCorn. Those in favor are reminded about the upcoming election and offered free rides to the polls. Those opposed are thanked for their time. No mention is made of either candidate.
- A voter guide is prepared that outlines both candidates' views on MiracleCorn, but does not refer to any other issue in the race.
- The voter guide refers to other issues, but shows a preference for Goodpill's positions.
- The voter guide is online, and contains hotlinks to each candidates' website.



Political Activity by Charities

Prohibited

- May result in revocation of tax-exempt status
- Report on Form 990 Schedule C Part I-B
- Excise tax is 10% on the organization and 2.5% on the manager if corrected
- Additional excise tax of 100% on the organization and 50% on the manager if not corrected
- Correction means recovery and prevention



Lobbying by Charities

The “No Substantial Part” Test

- Measured by time, attention and energy, cost, volunteer efforts, etc.
- Large organizations or affiliated groups may benefit from higher limits under this test
- Exceeding this vague standard for even 1 year can mean loss of exempt status
- Penalty taxes on the organization and individual managers if will or not due to reasonable cause
- Higher risk of IRS examination?



Accounting for Lobbying Activities

Adequate Records

- Documentation of all lobbying activities
- Retention of all lobbying communications
- Use of timesheets in support of compensation and overhead allocations
- Maintenance of cost logs (postage, copying, delivery services)



Accounting for Lobbying Activities

Tracking Expenditures

- Cost of research, drafting, reviewing, copying, printing, publishing, mailing, etc.
- Identify the audience (members, nonmembers)
- Identify mixed-purpose communications (e.g., a fundraising appeal that also includes grassroots lobbying)
- Track direct vs. grassroots activities



Lobbying by Charities

Who cannot make 501(h) Election

- Churches and integrated auxiliaries
- Private foundations (prohibited from lobbying)
- Supporting organizations of business leagues, unions, and civic associations



Lobbying by Charities

The 501(h) Election

- Unlimited volunteer activities
- Most charities (those with \$17 million or less in exempt purpose expenditures) will benefit from higher limits by making the election
- Loss of exemption based on exceeding limits by 50% over a 4-year period
- Penalty taxes on the organization only, not individual managers
- Lower risk of IRS examination?



Lobbying by Charities

The 501(h) Election

- Form 5768, “Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation”
- Election may be made and revoked at any time
- Election applies retroactively to beginning of tax year
- Revocation applies prospectively



Lobbying by Charities

The 501(h) Election - Expenditure Limits

- Total lobbying (direct and grassroots)
 - 20% of the first \$500,000 +
 - 15% of the next \$500,000 +
 - 10% of the third \$500,000 +
 - 5% of the remaining exempt purpose expenditures
 - Not to exceed \$1 million
- Grassroots lobbying only
 - Can not exceed 25% of the limit on total lobbying, regardless of the actual amount of total lobbying



Lobbying by Charities

The 501(h) Election – Exempt Purpose Expenditures

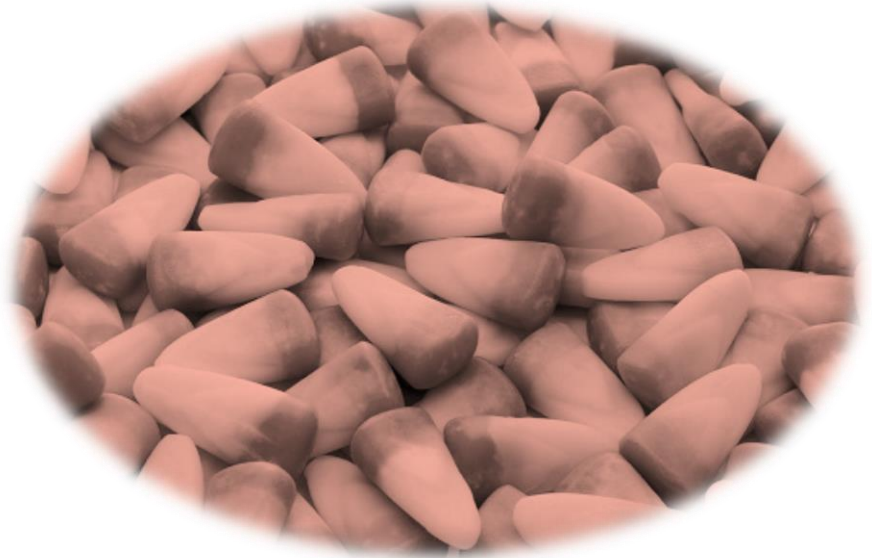
- Includes all expenditures (program, G&A, and fundraising) EXCEPT for:
 - Expenses deducted on Form 990-T
 - Taxes paid on Form 990-T
 - Capitalized expenditures
 - Professional fundraisers



Lobbying by Charities

The 501(h) Election

- FAME has a lobbying budget of \$2 million for 2016. The organization spends over \$100 million each year on its programs and mission. Should it make the 501(h) election?



Lobbying by Charities

The 501(h) Election – Excise Tax

- If organization exceeds its lobbying expenditure limit in a particular year, a 25% excise tax paid on the excess
- Excise tax is reported on Form 4720
- If an organization exceeds its lobbying limit of 150% of the nontaxable amount over a four-year period, tax-exempt status may be revoked
 - PLANNING OPPORTUNITY: Lobbying limits may be exceeded in a particular year with the excise tax being paid as long as the four-year period does not exceed the 150% threshold



Lobbying by Charities

- FAME's CEO tells its Controller that he wants to spend \$2 million lobbying next year and the year after.



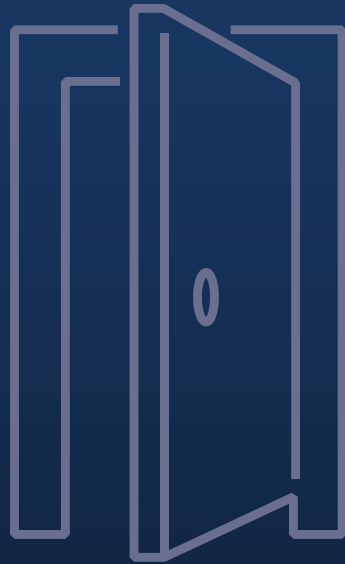
	Exempt Purpose Expenditures	Lobbying Nontaxable Amount	Actual Lobbying Expenses	Excise Tax Due
2013	14,000,000	850,000	802,546	-
2014	16,000,000	950,000	962,548	3,137
2015 (Projected)	18,000,000	1,000,000	2,000,000	250,000
2016 (Projected)	20,000,000	1,000,000	2,000,000	250,000
4-yr limit		3,800,000		
150% of 4-yr limit		5,700,000		
Actual 4-yr			5,765,094	
4-yr Excess			152%	

Lobbying by Charities

Affiliated Organizations

- If one charity controls other charities, the affiliates are treated as a single organization when calculating the expenditure limits.
- All members are proportionately liable for any tax liability.
- Charities that make transfers to noncharitable organizations who engage in lobbying will be treated as having made a lobbying expenditure.





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