

Nonprofit Groups Shouldn't Be Afraid to Lobby

By Jeffrey M. Berry

In the course of doing research for a book on nonprofit organizations, I asked the director of a statewide hospice organization if he ever tried to mobilize his group's donors and supporters in behalf of bills before the legislature. The conversation went like this:

Hospice leader: We publish a newsletter, but we never tell our people to urge a vote.

Me: You don't tell them to contact their legislators on issues of importance to you?

Hospice leader: We tell them to contact their legislators, but we *don't* tell them to urge them to vote a certain way.

As a longtime student of the policy-making process, I was rather surprised by this lobbying strategy. For an organization actively lobbying a state legislature, alerting its constituents about an important vote but not giving them instructions on what to urge their legislators to do just doesn't make sense.

Unfortunately, that wasn't the only inept lobbying strategy I heard about in my interviews. An executive at an AIDS organization told us firmly that her organization couldn't "be involved in lobbying as a nonprofit because we receive government grants." She was so careful that when she faxed a message to a legislator, she always did it "as a voter, not as a staff person of the organization." Contrary to the first law of politics that there's power in numbers, this executive went out of her way to make sure she was nothing more than a lone voice when trying to get the legislature to do more for people with AIDS.

Executive directors of nonprofit organizations typically have more on their plate than they can handle. They not only are the chief administrator, but they also play the roles of fund raiser, problem solver, visionary, program officer, management specialist, and psychologist to an underpaid and overworked staff. As if that was not enough, they are usually responsible for government relations as well. That is not an area where they tend to excel. As the two stories above suggest, many nonprofit

directors are confused about just what they can and cannot do when interacting with government officials. The confusion comes at a cost. The cost is not to the executive directors, but to their clients -- clients who need effective representation before government.

To gain a more systematic understanding of how nonprofit directors approach their government-relations tasks, my colleagues and I conducted a survey of nonprofit organizations that were randomly selected from around the country.

In one part of the questionnaire we tested respondents on their knowledge of Section 501(c)(3) of the Internal Revenue Code, the section that governs organizations with charity status. That is the key part of the tax code that spells out what organizations must do to maintain the ability to offer tax deductions to their donors. Since offering the tax deduction is absolutely vital to those organizations, one might suspect that executive directors would be knowledgeable about the law. When it came to the part of the law involving relations with government, however, the executive directors flunked the test. Over all, they revealed an alarming ignorance of how charity law works.

Respondents were given a list of eight statements and were asked to mark whether each was true or false. Since for each statement they checked a box either yes or no, respondents would have scored around 50 percent correct on each statement by randomly guessing or simply flipping a coin. Yet on a majority of the questions respondents did not do a whole lot better than the 50-percent coin-flip threshold. Indeed, on one question, only 32 percent got the answer right -- substantially worse than wild guessing. (To test your own knowledge of the law, see box below.)

In fairness to nonprofit executives, the law is confusing. The IRS says charities may not do a "substantial" amount of lobbying but has consistently refused to define what "substantial" means. Nevertheless, the law is not quantum mechanics either, and our survey showed that the simple act of consulting a lawyer, accountant, or other nonprofit leader led to a better understanding.

Sadly, this general ignorance of the law has profound consequences for the behavior of nonprofit groups. In a series of statistical tests using the survey data, this misunderstanding was linked to lower levels of advocacy before government. To take one simple example, we asked nonprofit groups how frequently

they used specific types of advocacy tactics, such as testifying before legislative bodies and lobbying agency administrators. Charities said they were far more likely to lobby administrators than legislators -- presumably because advocacy before legislatures is regulated by the IRS, while charities are free to lobby in whatever way they like before government agencies.

None of our data showed that charities have little interest in talking to their legislators or don't have the need to lobby. The underlying problem is that nonprofit organizations are excessively worried about losing their charity status. And that reflects a misunderstanding of how the law is enforced. The truth is that the IRS rarely revokes an organization's charity status. The IRS's tax-exempt division is a small backwater in a chronically understaffed bureaucracy. This is an office that took 14 years to prepare the last major change in regulations governing the political activity of nonprofit organizations. Still, its audits do have a chilling effect on charities.

Less advocacy means less representation. Approximately half of the 211,000 charities large enough to file an informational tax return are either in the fields of health or human services. Their clients are the most disadvantaged people in American society. The only organizations with an interest in representing the frail elderly, the mentally retarded, immigrants, the unemployed, people without health insurance, battered women, the disabled, and many other marginalized constituencies are charities. Yet nonprofit groups are a muffled voice on their behalf, if they're a voice at all.

Since the tax deductibility of donations is, in effect, a taxpayer-financed subsidy to charities, the government has every right to regulate what charities can and cannot do in the political system. We certainly would not want charities to be donating campaign funds to candidates for office. Yet the restriction on legislative lobbying is excessive and pernicious.

Of all the segments of American society that lobby the government, nonprofit groups are the most tightly regulated. Stated more bluntly, Enron and the Teamsters Union have more rights in our political system than the Susan G. Komen Breast Cancer Foundation or the Children's Defense Fund.

Even though the political playing field is unjustly and inexplicably tilted against nonprofit groups, the government is not going to make it easier for charities to lobby. Indeed, the most

recent efforts to "reform" nonprofit advocacy have come from Republican members of Congress like Rep. Ernest J. Istook Jr. of Oklahoma, who want to further restrict legislative advocacy by charities.

Nonprofit groups must change their behavior rather than wait for the law to change. A simple and effective way to escape the confines of the "substantial" standard is for nonprofit groups to take the so-called 501(h) election. It was enacted as part of a comprehensive 1976 tax overhaul, a small section of which included a new approach for regulating lobbying by nonprofit groups. This little-known option is simply an alternative accounting mechanism, not a different tax status. That is, a charity that uses the accounting approach does not lose the ability to offer tax deductibility to its donors.

The alternative method is as specific as the substantial standard is ambiguous. On a sliding scale according to an organization's annual income, the 501(h) election specifies the maximum percentage of the organization's budget that can be spent on lobbying and grass-roots mobilization. It also specifies what qualifies as "lobbying" and must be counted toward that maximum sum. The 501(h) election does so in such a liberal fashion that very little counts as lobbying, and it would be very difficult for the typical nonprofit group to go over the ceiling. In short, charities that follow the alternative approach can lobby virtually all they want and not have to worry about the IRS.

The IRS has done little to publicize this option. Today only about 2 percent of all charities use the alternative standard. The good news is that it is simple for a charity to switch to the 501(h) approach. A one-page form, called Form 5768, can be downloaded from the IRS at <http://www.irs.gov>. It takes approximately 60 seconds to fill out.

Nonprofit groups should no longer use federal law as an excuse for inaction. It's legal to lobby and it's legal to lobby extensively. And lobbying is necessary because nonprofit groups must give voice to those who can't speak for themselves.

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