

PRESENTED AT

34th Annual Nonprofit Organizations Institute

January 12, 2017
Austin, Texas

After the Election Advocacy and Exploring the Boundaries

John Pomeranz

John Pomeranz
Harmon, Curran, Spielberg & Eisenberg, LLP
Washington, D.C.

jpomeranz@harmoncurran.com
202-328-3500

After the Election Advocacy and Exploring the Boundaries

University of Texas Law CLE
34th Annual Nonprofit Organizations Institute
Austin, Texas • January 12, 2017

John Pomeranz



Harmon, Curran, Spielberg + Eisenberg, LLP
1725 DeSales Street, NW, Suite 500 • Washington, DC • 20036
202-328-3500 • jpomeranz@harmoncurran.com

Agenda

- Lobbying rules for 501(c)(3) public charities
 - 501(h) expenditure test
 - “No substantial part” test
 - Note on “direct action” advocacy efforts
- Foundation restrictions on lobbying
- Tax rules for non-501(c)(3) lobbying



Harmon, Curran, Spielberg + Eisenberg, LLP

Public Charity Lobbying Limits: Two Alternative Tests

- “No Substantial Part” Test: No substantial part of a charity’s activities may be lobbying
 - This is the default test
- 501(h) Expenditure Test...



Harmon, Curran, Spielberg + Eisenberg, LLP

501(h) Expenditure Test

- Clear dollar-based limits
 - Overall limit: 20% of first \$500K expenditures, then lesser percentages
 - Grassroots limit: 25% of overall limit
 - Maximum lobbying: \$1 million (\$250,000 grassroots)
- Clear definitions of lobbying...



Harmon, Curran, Spielberg + Eisenberg, LLP

What is Lobbying?

Direct Lobbying	Grassroots Lobbying
Communication	Communication
Expressing a View	Expressing a View
Specific Legislation	Specific Legislation
Legislator (or other official or staffer involved in legislation)	General Public (Not "members")
	Call to Action

Although not allowed to lobby themselves, private foundations may also use these rules to determine whether an activity falls outside of the definition of "lobbying," making it a permissible foundation activity

Key Point: Specific Legislation

More than just legislation that has been introduced...

- A bill
- Proposed legislation (e.g. model bills)
- Draft amendments
- Specific legislative policy proposals
- Congressional resolutions
- Treaties requiring Senate ratification
- Ballot measures



Harmon, Curran, Spielberg + Eisenberg, LLP

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: After the Election Advocacy and Exploring the Boundaries

Also available as part of the eCourse

[2017 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
34th Annual Nonprofit Organizations Institute session
"After the Election Advocacy and Exploring the Boundaries"