

Lobbying Basics

Presentation by Allen Mattison
Trister, Ross, Schadler & Gold, PLLC
amattison@tristerross.com • 202-328-1666

I. Direct Lobbying

A. Three elements of “direct lobbying”:

1. A communication directly to a legislator (or to legislative branch staff or to executive branch officials or staff involved in formulating this legislation)
2. That reflects a view
3. On specific legislation.
 - i. Specific legislation includes:
 - a. Bills that have been introduced;
 - b. Specific legislative proposals not yet introduced (e.g., “New Jersey should adopt Pennsylvania’s Healthy Food Financing Initiative”);
 - c. Budget bills;
 - d. Certain U.S. Senate treaties and confirmations of appointees.

B. This includes legislatures from Congress to city council, but not special bodies such as school boards and zoning boards.

C. Ballot measures are treated as legislation; the voters are the legislative body. So a communication to the general public that reflects a view on a ballot measure is direct lobbying, not grassroots lobbying.

D. Organizations with members are given special treatment for communications to their members. Asking an organization’s own members to contact legislators to support or oppose specific legislation is treated as direct lobbying.

II. Grassroots Lobbying

A. Four elements of “grassroots lobbying”:

1. A communication to the public
 - i. e.g., speeches, advertisements, op-eds
2. That reflects a view
3. On specific legislation *and*
4. Includes a call to action.
 - i. Asks audience to contact a legislator;
 - ii. Identifies the audience’s legislative representative;
 - iii. Provides contact information for legislator;
 - iv. Provides a vehicle for contacting the legislator (e.g., form email, petition); *or*
 - v. Identifies legislator’s position on the legislation or identifies the legislator as sitting on the voting committee

- B. Exception: A mass media advertisement that runs two weeks before a committee or floor vote on “highly publicized” legislation may be grassroots lobbying even without a call to action. It is presumed to be grassroots lobbying if it is:
 - 1. A paid advertisement that appears in the mass media
 - 2. Within two weeks of legislation that is very prominent in the public conversation,
 - 3. Refers to the legislation, and
 - 4. Reflects the organization’s view on the legislation.
- C. Calling an organization’s own members to ask *others* to engage in direct lobbying is treated as grassroots lobbying.

III. Excluded From Definitions of Lobbying

- A. The following categories of activity are excluded from being treated as lobbying. But note that costs for educational materials are presumed to count as grassroots lobbying if the materials are used for grassroots lobbying within six months of being produced.
- B. **Activities without the elements identified in section I(A) and II(A)**
 - 1. Contacts with executive branch officials or staff who do not participate in formulating legislation.
 - 2. Contacts with executive or legislative branch officials on non-legislative action.
 - 3. Contacts with the general public that do not include a call to action (and are not advertisements on highly publicized legislation)
- C. **Nonpartisan Analysis, Study or Research.** A “sufficiently full and fair exposition” of a matter so as to enable the recipient to form an independent opinion. The report may state a viewpoint on the matter but not a direct call to action. (Identifying a legislator’s position on the legislation or identifying the legislator as sitting on the voting committee is permissible; urging the public to call the legislator will disqualify the report from this exception). The report must be broadly disseminated.
- D. **Examination/Discussions of Broad Social, Economic and Similar Problems.** Materials that neither refer to specific legislation nor include a direct call to action.
- E. **Response to Request from Legislative Body for Technical Advice or Assistance.** Request must be written, from a committee or legislative body (not a single legislator) and the response must be available to all members of requesting body. May advocate a viewpoint, if the request specifically asks for opinions or recommendations.
- F. **Self-Defense.** Direct (not grassroots) contacts with legislative branch about possible legislative actions that could affect group’s existence, powers, duties, tax-exempt status or deductibility of contributions to group.

NOTE: This document does not contain legal advice. It is recommended that legal counsel be consulted before undertaking any particular activity described in this document.