

# Nonprofits, Lobbying, and Grassroots Advocacy



## Organizing Academy

- **What is it?**
  - new training program designed to build key skills and knowledge to engage in HSC's advocacy efforts
- **Why now?**
  - shifting political landscape at City and State
  - new pro-active, more intentional approach to advocacy
- **What is the goal?**
  - build capacity of staff to engage in advocacy efforts
  - build collective power and influence of the human service sector
  - maximize impact of HSC's advocacy campaigns

## Workforce Campaign

- **What is it?**
  - HSC's primary campaign to achieve pay equity for human services sector at the City AND State
- **Why now?**
  - Sector is now armed with key data from HSC Taskforce Report published in June 2021
  - Report offers key recommendations for government to enact to invest in the sector and workforce
- **What is the goal?**
  - establish wage floor
  - establish wage schedule
  - establish annual COLA

# Taskforce Recommendations

1. Emergency response & recovery
2. Pay fully and on time
3. Procurement commission
4. Workforce investments
5. Recognize union peace agreement/prevaling wage bills are an added “wrinkle” in this conversation

# Agenda

1. What constitutes lobbying?
2. Grassroots organizing
3. Lobbying Reporting
4. 501c3 and campaign activity

You should be  
advocating!

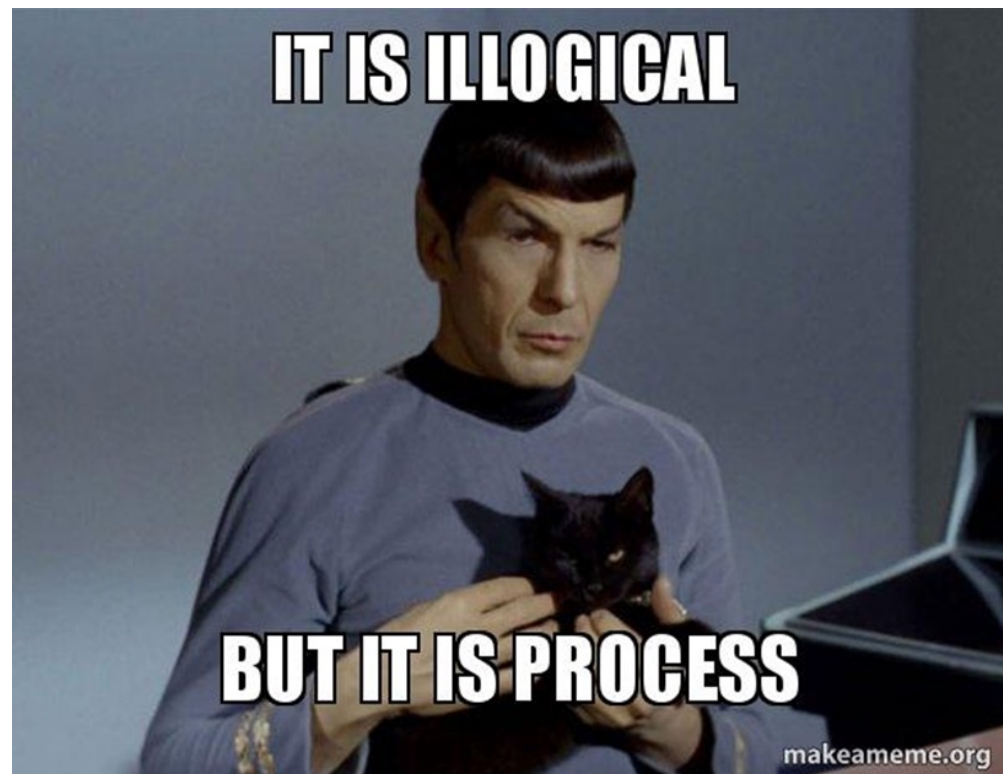
# Power of Advocacy

- Your organization knows the needs of the community and can communicate those needs to elected officials.
- Nonprofits often serve disenfranchised communities, who rely on you not only to give them information, but also to represent them before government.
- Bars to campaign activity hinder the sector's ability to engage in the political process, so issue advocacy is crucial.
- The nonprofit sector represents a vast constituency, including staff, clients, volunteers, and Boards, and can leverage collective power for real change.

# Lobbying is not a dirty word!

The sector tends to default to "educating" or "advocating" when we really mean "lobbying."

# Lobby Laws





# The Basics

- These rules are NOT specific to nonprofits (unlike the federal rules).
- Reporting trigger: Measure how much money you spend on lobbying each year to determine whether to register as a lobbyist:
  - State threshold = \$5,000
  - City threshold = \$5,000
- Neither law limits how much you can lobby.

# What Constitutes Lobbying?

- Contact with government officials that includes an “ask”
  - Not limited to just elected officials
- Work done in support of lobbying, e.g., reports prepared for legislators, event planning for rallies
- Expenses incidental to lobbying, e.g., bus to get people to rally, mailing costs, copying costs
- A mass email call to action urging the public to contact an elected with an ask

# Types of Lobbying

- Under state law, there are two kinds of lobbying:
  - Direct lobbying
  - Grassroots lobbying



# Direct Lobbying

Direct lobbying has three elements:

- A communication directly with a legislator or other public official or his or her staff
- On specific legislation, determinations, or actions
- That reflects your organization's view on the legislation

*Note: Consultants might be lobbying.*

# Grassroots Lobbying

Grassroots lobbying has four elements:

- A public communication
- On specific legislation, decisions, or actions
- That reflects your organization's view on the legislation or decision, and
- Includes a call to action

*Note: Consultants might be lobbying.*

# "Legislation" has now expanded to mean more

Any time you are "asking" government representatives for something, you should think about if it is lobbying. Normal course of business (asking for contract documents, asking for a policy to be enforced) is not lobbying.

# Subject of Lobbying, NYC

- Local laws and resolutions (including budgets)
- Procurements
- Certain determinations concerning real property
- Agency rules
- Agency ratemaking proceedings
- Any determination of a board or commission

*For the complete definition of lobbying, see Section 3-211 of the New York City Administrative Code.*

# Subject of Lobbying, NYS

- State and City legislation, rules, regulations, and ordinances (including budgets)
- Gubernatorial and municipal executive orders
- State and City agency ratemaking proceedings
- State and City procurements
- Tribal gaming



# State vs City

State	City
<ul style="list-style-type: none"><li>• Register with the Joint Commission on Public Ethics (JCOPE) every 2 years <a href="http://www.jcope.ny.gov/">http://www.jcope.ny.gov/</a></li><li>• \$5,000 lobbying threshold</li><li>• File bi-monthly lobbying reports</li><li>• File semi-annual client reports</li><li>• Procurement lobbying is reported, but as a separate form of lobbying</li><li>• Must report local as well as State lobbying</li></ul>	<ul style="list-style-type: none"><li>• Register with City Clerk's Office every year <a href="https://www.nyc.gov/portal/site/eLobbyist">https://www.nyc.gov/portal/site/eLobbyist</a></li><li>• \$5,000 lobbying threshold</li><li>• File bi-monthly lobbying reports</li><li>• File semi-annual client reports</li><li>• Procurement lobbying not reported separately</li><li>• Report just City Lobbying</li></ul>

# Tracking Example

City/State Lobbying Report Period								
Employee:								
Hourly Salary: \$25.00								
					Activity (must contain type of lobbying, subject, and target)			
Date	Time	Per hour salary*	salary cost	City or State	Lobbying Type*	Subject	Target (office and person)	Additional Info
1/1/09			\$0.00	City	other			
1/1/09			\$0.00	City	other			
1/1/09			\$0.00	City	budget			
			<b>\$0.00</b>					
1/1/09			\$0.00	State	budget			
1/1/09			\$0.00	State	budget			
1/1/09			\$0.00	State	budget			
1/1/09			\$0.00	State	budget			
	<b>State Total</b>		<b>\$0.00</b>					

\*Lobbying types include: budget, procurement, legislation, rule making, and other (for things such as contract reform).

# Who to Register & Report

- Staff responsible for lobbying are registered lobbyists (policy director, CEO, etc.)
- Support staff (assistant that schedules) should capture time spent, but are not registered lobbyists
- Clients do not need to be registered as lobbyists, but money spent on food/transportation should be captured
- Workers at grassroots events (so not doing direct lobbying) do not need to be captured, but time spent by the staff should be captured
- A worker who comes to a rally wouldn't need to be listed unless the worker is engaged in direct lobbying at the event
- A worker who attends a lobby day but doesn't speak or just provides "technical information" doesn't need to be a registered lobbyist

# Reporting Tips

- “Educating” can easily turn into lobbying.
- Actions taken as part of a coalition, including paying dues, may be considered lobbying.
- Create a system to track lobbying—even if you do not meet the threshold.
- Ensure that all staff are clear on what your organization is including as lobbying activities.
- Capture “prep work” in lobbying reports.
- Be clear about who is authorized to lobby on behalf of your organization—especially on social media.
- Speak with a lawyer, for example Lawyers Alliance for New York, for registration assistance.
- It’s better to over-report than to under-report (see federal section for limitations)

# Changes to State Law



Social media as lobbying



[JCOPE advisory opinion](#): Consultants that work in connection with advocacy campaigns must register and report.



"Preliminary contact" is lobbying – scheduling a meeting with electeds



Check the [JCOPE](#) and City [Lobbying Bureau](#) websites and [Lawyers Alliance for New York](#) website for updates.

# Federal Lobbying

Public charities may engage in a limited amount of **legislative** lobbying either

- Under the "substantial part" test or
- By electing to engage in such activities under Section 501 (h) of the tax code.
- These limits are generous, and there is no limit on executive or administrative lobbying (as long as it is not intended to influence legislation).

# Substantial Part Test

- If lobbying is a “substantial part” of a public charity’s overall activities, the organization may lose its tax-exempt status.
- In addition, charities that lose their tax-exempt status due to excessive lobbying are subject to an excise tax of 5% of their lobbying expenditures for the year. Organizational managers may also be taxed.
- Whether an organization’s lobbying activity is a substantial part of its overall activities is determined on a case-by-case basis. The IRS considers a variety of factors, including the time and expenditures devoted by the organization to the activity.

# "H" Election

Under the 501 (h) expenditure test, a public charity may spend:

- On direct lobbying:
  - 20% of the first \$500,000 of its exempt purpose expenditures;
  - 15% of the next \$500,000, and so on, up to one million dollars a year.
- On grassroots lobbying:
  - 5% of the first \$500,000 of its exempt purpose expenditures;
  - 3.75% of the next \$500,000, and so on, up to \$250,000 a year.



# Electoral Activity



**ORGANIZING**  **ACADEMY**

# What is "campaign related activity"

- In general, it is activity that favors or opposes one or more candidates for public office, regardless of party affiliation.
- Some activities that could potentially have an impact on elections (GOTV campaigns) may still be permissible. More to come...
- IRS uses facts-and-circumstances tests rather than hard line rules. History of organization's campaigns, timing, coordination with other groups, target audience—all of these and more may be factors.

# Prohibited Activity for Nonprofits

- Endorsing a specific candidate
- Recruiting people to run for office
- Making monetary or in-kind campaign contributions or expenditures for or against a candidate
- Rating or ranking candidates based on who is most supportive of your agenda
- Sending partisan political communications to their members or employees telling them how to vote.
- Sponsoring joint fundraising events or solicitations with candidates or political groups
- Directly approaching candidates and asking them to endorse your organization's agenda

# Permitted Activities

- Hosting candidate forums and candidate appearances
- Voter registration
- Voter education on the process of voting
- Creating voter guides on candidates and ballot measures
- Educating the candidates, including through site visits
- Encouraging voter participation (e.g., “Get Out the Vote”)
- Voting rights and election reform
- Issue advocacy during an election
- Supporting and opposing ballot questions (subject to normal lobbying limits)

# Issue Advocacy

- Your advocacy work doesn't have to stop just because election season has arrived.
- 501 (c) (3) organizations can wisely use elections to obtain greater exposure for their issues.
- Risk arises when your issue has become a hot topic for the election and a way to distinguish the candidates.

# Factors to Consider for Issue Advocacy

- Whether the statement identifies one or more candidates for public office
- Whether the statement expresses approval or disapproval of a candidate's positions or actions
- Timing of the statement (*i.e.*, legislative vote on the issue vs. centered around an election)
- Whether the issue is a distinguishing one
- Whether reference is made to election or voting
- Whether the issue is part of an ongoing series of communications

# Voter Guides & Questionnaires

- Voter guides provide information about candidates, usually from information solicited from the candidates themselves.
- Voter guides should not be tied to your advocacy work. The focus should be on civic engagement.
- Send questionnaires to ALL candidates.
- Use open-ended rather than support/oppose questions.
- On guides, include a reminder that your org is non-partisan and guide is for informational purposes only.
- Make guides generally available.

# Candidate Appearances

Depends on whether the candidate currently holds a public office

- Never allow solicitations or distribution of campaign materials
- If inviting in a candidate capacity, invite all candidates to same or similar event and see guidelines for forums
- If inviting sitting official:
  - make clear the reason for invitation
  - don't work with his/her campaign office
  - give written notice of nonpartisan requirements



# Personal Activity of Staff & Board

No one loses his/her free speech rights, even if affiliated with a nonprofit organization.

- The challenge is when organizational resources are involved:
  - time (even unpaid leave)
  - computers/copiers
  - mailing lists
  - letterhead
  - email
- Adopt a policy for board and staff participation in campaigns.
- Note: NYC registered lobbyists must report paid political consulting/fundraising.
- Title okay for identification purposes only

# Campaign Activity: Federal Law

## Do!

- Participate in nonpartisan **voter registration**
- Host candidate **forums** and create candidate **questionnaires**
- **Meet** w/ public officials already in office
- Continue to support or oppose an **issue** publicly

## Don't!

- Make campaign **contributions**
- **Endorse** or show **favoritism** to a candidate

# Resources

- Lawyer's Alliance has a great set of recorded webinars: <https://lawyersalliance.org/recorded-webinars>
- JCOPE: <http://www.jcope.ny.gov/>
- City Clerk's Lobbying Bureau: [http://www.cityclerk.nyc.gov/html/lobbying/lobbying\\_bureau.shtml](http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml)
- IRS: <https://www.irs.gov/uac/election-year-activities-and-the-prohibition-on-political-campaign-intervention-for-section-501-c-3-organizations>