



Grassroots Mobilization


What Your Organization Needs to Know

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1



Grassroots Mobilization

Agenda

- Identify types of grassroots activities that might raise legal considerations
- Provide overview of relevant laws
- Analyze sample communications

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Issue Spotting:


Grassroots Activities That May Raise Legal Considerations



3

What Types of Interactions with Supporters May Raise Legal Concerns?

-  List building
-  Fundraising
-  Education and Issue Advocacy
-  Lobbying
-  Political Campaigns



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4

Cultivating Your Grassroots: List Building

Consider:

- Are you collecting the correct information to ensure you have the right to contact individuals in the future?
- Is your organization's privacy policy up to date?
- Sources of data

Join Us

EMAIL ADDRESS*
Email

FIRST NAME*
First Name

LAST NAME*
Last Name

PHONE NUMBER
Phone Number

ZIP CODE*
Zip Code

Send me text message alerts **

I'd like someone to contact me about volunteer opportunities in my community.

JOIN

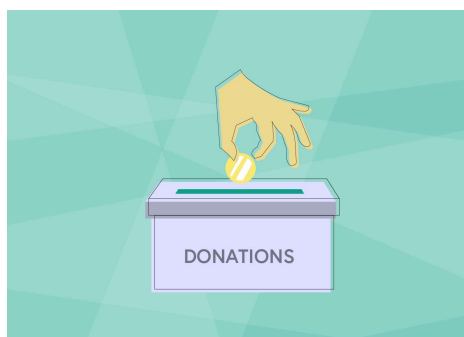
By providing my email and phone number, I agree to receive emails, as well as calls and texts that may be automatically dialed or prerecorded, from [redacted] organizations. I understand I may unsubscribe at any time. ** Message frequency varies. Reply STOP to opt out. Message & data rates may apply.

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Fundraising



Consider:

- Charitable solicitation laws: not just for charities!
- CAN-SPAM
- Donor disclosure: could your solicitation for particular lobbying or political activities expose donors or members who prefer to remain anonymous?

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Building a Movement: Educational Outreach and Issue Advocacy

Consider:

- Lines between:
 - Issue advocacy
 - Lobbying
 - Political activity
- Disclaimers
 - Vary by media and platform

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Take Action: Direct and Grassroots Lobbying

Consider:

- Know whether your grassroots activities are “lobbying”: multiple reasons nonprofits track lobbying
 - Tax Code Compliance: Limits on lobbying (501(c)(3)), reporting, nondeductibility of lobbying expenditures
 - Lobbying Disclosure Registration and Reporting: federal, state, local
 - Gift and Ethics Laws
- Legislative accountability campaigns and election years
- Ballot measure campaigns are lobbying for tax code purposes, but may also trigger campaign finance disclosures

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Take Action: Political Activity

Consider:

- Tax code limits on political activity
- Campaign finance registration and reporting: federal, state, and local
- Donor disclosure
- Disclaimers
- Rules surrounding events with officeholders

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Issue Spotting:

Laws That May Apply to Grassroots Interactions

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Laws That May Apply to Grassroots Activity

Internal Revenue Code

- Regulates extent to which 501(c) organizations may engage in lobbying and political activities
- Restricts for-profit entities' ability to deduct payments to membership organizations as business expenses
 - Dues payments for lobbying, political activities nondeductible
 - Orgs must provide members notice of nondeductible amounts or pay "proxy tax" under I.R.C. 6033(e)
- Requires annual disclosure of lobbying and political activities (Form 990, Schedule C)

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Laws That May Apply to Grassroots Activity

Internal Revenue Code (con't.)

Direct Lobbying

- **General concept:** Attempts to influence legislation through communications with covered officials

Grassroots Lobbying

- **General concept:** Attempts to influence legislation through communications with the general public

Campaign Activity

- **General concept:** Attempts to support or oppose the election of a candidate for public office

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Laws That May Apply to Grassroots Activity

Internal Revenue Code (con't.)

501(c)(3)	501(c)(4), 501(c)(6)
<ul style="list-style-type: none"> Limited lobbying (direct or grassroots) 	<ul style="list-style-type: none"> Unlimited lobbying (direct and grassroots), provided it pertains to purpose for which organization was formed
<ul style="list-style-type: none"> No campaign activity 	<ul style="list-style-type: none"> Limited campaign activity (may be subject to tax if organization has investment income)
<ul style="list-style-type: none"> Files annual informational return (Form 990) disclosing lobbying activities 	<ul style="list-style-type: none"> Files annual informational return (Form 990) disclosing lobbying and campaign activities
<ul style="list-style-type: none"> Charitable tax deduction available to donors 	<ul style="list-style-type: none"> No charitable tax deduction available to donors; payments made by members for lobbying and political activities also not deductible as business expense

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Laws That May Apply to Grassroots Activity

Lobbying Disclosure

- Lobbying Disclosure Act (federal)
 - Quarterly reporting of lobbying activities
 - Does **not** include disclosure of grassroots lobbying activities
- State and local lobbying disclosure laws
 - No uniformity, laws vary widely
 - Many **do** include disclosures related to grassroots lobbying activities
 - Compliance may be triggered by money or time spent, regardless of level of activity
 - May require registration and reporting; disclaimers on grassroots communications
 - May require disclosure of amounts spent, persons retained, issues lobbied, sources of funding, coalition members, more...

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14

Laws That May Apply to Grassroots Activity

Campaign Finance Laws

- Federal Election Campaign Act (federal)
 - Requires disclosure of attempts to influence federal elections:
 - “Express advocacy”
 - “Electioneering communications”
- State and local campaign finance laws vary in the types of speech that are regulated
 - Candidate advocacy
 - Ballot measure advocacy
 - (But note this is lobbying for tax purposes!)

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Laws That May Apply to Grassroots Activity

Campaign Finance Laws

- Federal law and some states prohibit direct corporate contributions to candidates and political committees, including public communications that have been coordinated with a candidate.
 - Many jurisdictions also prohibit corporations from using corporate resources (branding, lists, staff time) to raise funds for candidates.
- Even if not coordinated with a candidate, the sponsor of the communication may still be required to file time-sensitive disclosure reports of amounts spent on independent communications.

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16

Laws That May Apply to Grassroots Activity

Campaign Finance Laws

Other campaign finance considerations:

- PAC registration and reporting
- “Paid for by...” disclaimers
 - “Top Donor” disclosure at state and local level
- Events with officeholders
- FEC’s public contributor data may not be used for fundraising

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17

Laws That May Apply to Grassroots Activity

Communications Laws and Industry Requirements

- CAN-SPAM
 - Requirements for “commercial” email, including no false or misleading routing or subject information, sender contact information, ability to opt out
- Telephone Consumer Protection Act (TCPA)
 - Imposes consent requirements for calls, texts placed by autodialer
 - Do not call registry, restricted call hours, disclaimer requirements
- Federal Communications Act
 - Disclaimer requirements for television and radio ads
- Carrier-imposed A2P 10DLC requirements and Wireless Industry Best Practices
 - Registration, consent, and other requirements for using application-to-person texting with 10-digit codes (local numbers)

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Laws That May Apply to Grassroots Activity

Other Legal Considerations

- Intellectual property rights management
- Substantiation of factual statements (no false or deceptive practices)
- Defamation
- Postal rates and regulations

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19



Grassroots in Action

Common scenarios and the legal issues that arise

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List Building

- **Applicable to:** Organization website, digital acquisition campaigns, or other types of campaigns seeking names and contact information
- **Keep in mind:**
 - How you will use info going forward; obtain broad consents for email, calls, text
 - If your organization has affiliates with which it shares its list, make sure consent is worded broadly enough to encompass all affiliated entities
 - Best practice for text messaging: double-opt-in upon enrollment
 - Privacy policy and terms of use up to date?
 - Short code vs. long code messaging options

Join Us

EMAIL ADDRESS*

FIRST NAME* **LAST NAME***

PHONE NUMBER

ZIP CODE*

Send me text message alerts**
 I'd like someone to contact me about volunteer opportunities in my community.

JOIN

By providing my email and phone number, I agree to receive emails, as well as calls and texts that may be automatically dialed or pre-recorded, from [Organization]. I understand I may unsubscribe at any time. **Message frequency varies. Reply STOP to opt out. Message & data rates may apply.

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21

Grassroots Education and Issue Advocacy

Sample Campaign:
"Starfish are essential to the marine ecosystem. The U.S. must take steps to protect vital habitats. Learn more by clicking here."

- Public communication provides a summary of an issue important to supporters.
- Takes a position on the issue but does not reference pending legislation or public officials.
- The only call to action is for supporters to "learn more" by clicking on a link that leads to a landing page with additional background on the issue.

Considerations:

- Likely pure issue advocacy; not lobbying or political activity, but context matters!
- What if it does not reference pending legislation by name, but clearly describes a proposal pending in Congress?
 - *"The U.S. must fund federal programs that would educate communities about the value of marine ecosystems and impose fines against violators."*
- What if landing page is explicitly lobbying? Does whole ad campaign become lobbying too?
- "Paid for by..." disclaimer may still be necessary, even if issue advocacy

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22

Issue Advocacy vs. Grassroots Lobbying

Considerations:

- Does the state have a grassroots lobbying law, and how does it define grassroots lobbying? How clear must the reference to pending legislation be? What call to action is required?
- Lobbying under the tax code?
- Different result if call to action is more pointed (e.g., call your senator...)?
- Consider communications rules if collecting contact information
- Can make adjustments to a communication to satisfy organizational priorities

Sample Campaign:

“Starfish are essential to the marine ecosystem. The legislature must fund state programs that would enforce habitat protections and impose taxes on polluters. Get involved by clicking here.”

- Public communication provides a summary of an issue currently the subject of pending legislation in the state where the ad will be distributed, but it does not reference the bill by name or number.
- The communication takes a clear position favoring the content of the bill.
- Call to action: is link signup for volunteer opportunities, sign-on letter, etc.?

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Lobbying vs. Political Activity

Sample Campaign:

“Starfish are essential to the marine ecosystem. The legislature must fund programs that would enforce habitat protections and impose taxes on polluters. Tell Senator Smith to save the starfish.”

- The communication takes a position on the issue, which is pending in the legislature.
- The call to action references a lawmaker.

Considerations:

- May be grassroots lobbying under tax code, state disclosure laws
- May be considered political activity under tax code, depending on context:
 - Timing: Close in time to the senator’s election? Upcoming legislative action on the issue?
 - Part of organization’s long-standing practice on this issue?
 - Mentions “voters,” elections, or other electoral references (e.g., “this November...”)?
- May implicate campaign finance laws, depending on timing, additional context

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Accountability Campaigns: Issue Advocacy vs. Political Activity

Consider:

- Similar to last slide, but bill has already passed, and criticisms are more personal than legislative
- Context will be key in determining whether this campaign is issue advocacy or political activity
 - Close in time to election?
 - Track record of communicating about the issue?
 - Any other references to the election or the senator's candidacy?

Sample Campaign:
“Starfish are essential to the marine ecosystem. But Senator Smith doesn’t care about our planet. All he cares about is collecting campaign donations from the wealthy corporations that pollute our oceans. Tell Senator Smith to put constituents first.”

Paid for by Save the Starfish Action Fund.”

- Takes a position on an issue of importance to supporters, which was the subject of a controversial bill enacted into law earlier this year.

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25

Voting Records: Issue Advocacy vs. Political Activity

Sample Campaign:

“Election Day Is Coming. Know Your Candidates!”

	Smith	Jones
Voted to fund programs to save starfish	Yes <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/>
Voted to increase taxes on polluters	No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/>
Accepts contributions from polluters	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>

Save the Starfish Action Fund does not support or oppose candidates.”

Consider:

- Context is key to how tax code governs and whether campaign finance laws apply.
 - How many candidates align with the organization? Any standouts?
 - Implicit cues
- Can you disclaim political activity?

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26

Ballot Measure Activity

Sample Campaign:

*"It's been a long few years,
Americans need a vacation. And
with inflation on the rise, we can't
afford increased costs on our
summer break plans.*

*Tell the legislature to stop taxing
your vacation.
VOTE NO ON PROP A*

*Paid for by the American Association of
Ecotourism. Not authorized by any candidate
or candidate's committee."*

Consider:

- Ballot measure advocacy is lobbying for tax code purposes
 - What if ad is by c3?
- May also trigger campaign finance laws
 - Must ad sponsor register with state or locality?
 - If trigger disclosure, must members be disclosed? What if association solicits member support specifically for the campaign?
 - Beneficial to set up a separate PAC to pay for activities?
 - What if ad was coordinated with a candidate or a committee set up to oppose the ballot measure?

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Endorsements

Consider:

- Are campaign finance laws triggered?
 - Reporting required?
 - Disclaimer required?
- May make a difference how the endorsements are communicated and to whom:
 - Organic (unpaid) social media
 - Standard press channels
 - Membership communications
 - Paid general public advertising
- Advantages to PAC paying for communications?

Sample Campaign:

*"The Association of Marine Scientists is
proud to endorse the following
candidates for Congress in 2022:*

- *Sen. Smith (FL)*
- *Sen. Jones (CA)*
- *Rep. Williams (ME)*

Remember to vote on November 8"

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28

Questions?



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