Advocacy and Lobbying for the Common Good

Pete Manzo, President & CEO
United Ways of California
United Ways of California

• Advance community impact goals through policy
• Help bring funding and resources to United Ways
• Help improve practices and organizational capacity for California United Ways
2009 Policy Goals

- Health insurance coverage for all California’s children
- Expand and improve 2-1-1 service statewide
- Financial stability – in development
Health Coverage for All Children

• Build support for expanding coverage to all CA children.
  ▪ Educate and activate business leaders and employers
  ▪ Recruit business champions throughout the state
Expand and improve 211

211 California Partnership goals;

• Position the 211 California Partnership, indisputably, as the lead entity for any future state and federal initiatives

• Detailed “shovel-ready” plan for building the 211 network infrastructure
  – Phase 1: Emergency Response (re-routing calls, back-up)
  – Phase 2: 24/7 full-service coverage to entire state

• Federal and state funding for build-out
Why United Way advocates

• Large challenges require involvement of all sectors – government, private sector, nonprofits

• Policy advocacy can boost our impact

• 4 levels of strategic philanthropy
  – Support best organizations
  – Attract others to support the best organizations
  – Improve the effectiveness of the best organizations
  – Change the environment!
“When I give food to the poor they call me a saint.

When I ask why the poor have no food, they call me a communist.”

- Helder Camara
Lobbying Is Permissible And Appropriate

- 501(c)(3) and 501(c)(4) Nonprofits May Lobby
- Lobbying by 501(c)(3) Nonprofits Limited to “Insubstantial” Amount
“Lobbying”

• Under IRS regulations, “lobbying” is defined as:
  ▪ A communication
  ▪ To legislators
  ▪ Intended to influence specific legislation (pending or proposed)
“Direct” & “Grassroots” Lobbying

• “Direct lobbying” is:
  ▪ A communication with a legislator or their staff
  ▪ That expresses a view about specific legislation.

• “Grassroots Lobbying” is:
  ▪ A communication to members of the public
  ▪ That refers to specific legislation, expresses a view about that legislation, and
  ▪ Urges the audience to contact legislators about the legislation.
“Legislation”

• “Legislation” is defined under the IRS regulations as:
  ▪ action by a **legislative body**, such as a city council, county board of supervisors, state or federal legislatures, or
  ▪ action by the **public** when voting on a **legislative initiative or referendum**.
Most Advocacy Is **Not** Lobbying

- Executive, judicial and administrative agencies (including school and zoning boards and other special purpose bodies) are not legislative bodies and do not create legislation when they act.

- Urging an agency such as the Department of Children and Family Services to change its policies, therefore, would not be considered lobbying.
Non-Lobbying Advocacy

• Making available the results of nonpartisan analysis, study, or research;

• Discussing broad social issues, without mentioning specific legislation; and

• Communicating with members.
Exception To Lobbying: Testimony & Self-Defense

• **Testimony:**
  - Technical advice or assistance to a government body, or to its committee or other subdivision, is exempt from the lobbying limits.
  - Must be in response to a written request from the chair of the legislative body or committee.

• **Self-defense communications**
  - Must affect your existence, your powers or duties, your tax-exempt status, or the deductibility of contributions to your group
    - E.g., community clinics could oppose a bill limiting deductibility of contributions to health organizations
Limits: Lobbying Must Be “Insubstantial”

- 501(c)(3) nonprofit organizations are prohibited from lobbying “except to an insubstantial degree.”

- Two sets of rules:
  - The “insubstantiality” test, and
  - Section 501(h) expenditures test.
“Insubstantiality” Test

• **“Eyeball” Test:** Looks at all the facts and circumstances of an organization’s lobbying activities to determine whether these are “insubstantial.”
  - Includes the work of volunteers and donated materials and resources.

• **No guidance:** “Insubstantiality” test does not give organizations guidance regarding:
  - What will be included in “lobbying” assessment; and
  - What amount of lobbying will be too much.
  - Courts have considered devotion of as little as 5% of an organization’s time and effort to be too “substantial.”
501(h) Expenditures Test

- Section 501(h) expenditures test, added in 1976:
  - sets **clear, specific dollar limits**, and
  - **only includes lobbying expenditures** (staff, materials and other costs)
- Expanded 4-year compliance period
  - Tax, not revocation, for excess lobbying
- Note: Lower cap on grassroots lobbying – ¼ of total permitted
501(h) Expenditure Limits

- 501(h) rules allow up to $1 million in lobbying expenditures!
  - 20% of first 500,000 of exempt purpose expenditures
  - +15% of next $500,000 exempt purpose expenditures
  - +10% of next $500,000 exempt purpose expenditures
  - +5% of remaining exempt purpose expenditures
Surprisingly High Limits

• An organization with a $2 million budget could spend $250,000 on lobbying under these limits.

• Organizations electing 501(h) rules could dedicate one or more staff to lobbying efforts, full-time, and still maintain their tax exemption.
501(h) Rules

- To be governed by the 501(h) expenditures test, an organization must elect to be evaluated under the rule (IRS Form 5768).
- Simple one-page form, no filing fee.
- Revocable.
- Will not trigger an audit.
- No increased reporting required.
Who Should Elect 501(h) Rules?

• Any organization that anticipates lobbying should make the 501(h) election.

• Large organizations with budgets over $17 million may not want to elect, because they may be able to do more lobbying under the “insubstantiality” test, avoiding the $1 million cap on lobbying under 501(h) rules.
Elections – Ballot Initiatives

- Ballot Initiatives and Referenda OK
  - Absolutely appropriate for nonprofits to support or oppose.
  - With initiatives and referenda, the voters act as legislators, so urging voters to approve or reject an initiative or referendum is “direct” lobbying.

- Remember election law
  - IRS rules govern your organization’s exempt status, but federal and state election laws may also come into play.
“Political” Activity Forbidden

• **No de minimis exception**
  - IRS regulations strictly forbid 501(c)(3) nonprofits from engaging in “political activity.”

• **“Political activity”** defined narrowly
  - Means participating in a campaign for elective office, such as by endorsing or opposing a candidate.
  - Does not include taking sides in a policy debate that is even highly partisan.
Alternatives

- **Consider Issue Advocacy**: If your goal is to influence voters, issue advocacy is safer and likely the most effective way.
  - Take advantage of opportunities to publicize your concerns during an election, so long as the advocacy does not steer audience toward or away from particular candidates.

- **Influencing Candidates**: Here private exchanges, forums, questionnaires or issue briefings with candidates may be an excellent way to raise their awareness of your organization.
Foundations and Lobbying

“It is justice, not charity, that is wanting in this world.”
– Mary Wollstonecraft
Grants and Lobbying

• Public foundations can expressly support lobbying
  ▪ Community foundations, United Way and other publicly supported grantors may make grants for lobbying, whether restricted or general support, so long as they abide by IRS lobbying limits on their expenditures, like any other 501(c)(3) nonprofit.

• Private foundations prohibited from funding lobbying knowingly
  ▪ Subject to strict tax on lobbying activities, which include making grants of funds “earmarked” to be used by grantees for lobbying.
Avoiding “Earmarking”

• **Unrestricted Grants**: A private foundation may make a general support grant to a public charity that is very active in advocacy, and the charity may in turn use those funds at its discretion.
  - Best way for foundations to support advocacy!

• **Restricted Grants**: Restricted grants to an organization for a project involving lobbying are permitted, so long as:
  - Grant agreement does not specify the funds will be used for lobbying, and
  - Amount of the grant is less than the amount the grantee has budgeted for non-lobbying expenditures.
Avoiding Needless Restrictions

- Avoid poorly drafted grant provisions
  - IRS rules require only that funds not be earmarked for lobbying.
  - Foundations should only require grantees to agree that no grant funds have been earmarked for lobbying. Refraining from the express prohibition leaves room for grantees to lobby without endangering the foundation.
5 Ways Foundations Can Support Advocacy

• Fund neutral communications urging voters, legislators to study an issue carefully

• Fund nonpartisan analysis, even though it may conclude in support or opposition of a measure

• Fund policy research and education

• Provide general support funds

• Provide restricted grant funds to non-lobbying portion of a project involving lobbying
Federal funds and lobbying

- Federal funds cannot be used for lobbying at the state and federal level
  - OMB Circular A-122
- Federal funds may be used for lobbying at local level, BUT only if the lobbying is consistent with the purposes of the grant
  - Costs must be ordinary, necessary and consistent with purposes of the grant
- Overhead costs that support lobbying cannot be included as administrative costs paid by federal funds
Web Resources

**Web**

- [www.clpi.org](http://www.clpi.org) – Center for Lobbying in the Public Interest
- [www.afj.org](http://www.afj.org) - Alliance for Justice
- [www.npaction.org](http://www.npaction.org) - OMB Watch (or [www.ombwatch.org](http://www.ombwatch.org))
- [www.communitychange.org](http://www.communitychange.org) - Center for Community Change
Publications

House of Representatives Passes Strong Children’s Health Reauthorization Bill.

Senate Needs to Do the Same to Protect the Health of 1 Million California Children

For Immediate Release: January 14, 2009

Los Angeles, CA – Peter Manzo, president & CEO of United Ways of California issued the following statement in response to the United States House of Representatives passage of a bill reauthorizing the State Children’s Health Insurance Program, or SCHIP.

“The U.S. House of Representatives should be commended for passing a strong SCHIP."
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