

PLAYING YOUR PART:

AN ORCHESTRA'S GUIDE TO PUBLIC POLICY ADVOCACY



The League of American Orchestras leads, supports, and champions America's orchestras and the vitality of the music they perform. Its diverse membership of more than 2,000 organizations and individuals across North America runs the gamut from world-renowned symphonies to community groups, from summer festivals to student and youth ensembles, from conservatories to libraries, from businesses serving orchestras to individuals who love symphonic music. The only national organization dedicated solely to the orchestral experience, the League is a nexus of knowledge and innovation, advocacy, and leadership advancement. Its conferences and events, award-winning *Symphony* magazine, website, and other publications inform people around the world about orchestral activity and developments. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners. Visit americanorchestras.org.

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INTRODUCTION

If you are involved in an orchestra in any capacity, and you care about the future of your orchestra and the community it serves, being an effective public policy advocate is essential.

The League of American Orchestras originally took shape as an association representing the full array of orchestras when it became necessary for large and small orchestras to join together to convince Congress to repeal a “temporary” World War II excise tax on ticket sales, which had lingered on after the war. That effort could only succeed when orchestras across the country collaborated to show that there was a sizable constituency for the issue at hand.

“E Pluribus Unum” is emblazoned on the great seal of the United States, and was our country’s official motto until 1956. Translated, it means, “Out of Many, One.” It communicates both what is possible through our collective action to influence civic policy and describes what can happen through the unique power of the music-making that orchestras do in communities every day. It also speaks to the promise of partnering with others beyond orchestras to renew a common purpose at a time of deep divides in our country.

For 75 years, the League has been and continues to be a leader in federal advocacy, mobilizing our members for action when pivotal policy moments are upon us. But especially now, from my perspective, the most effective advocate for the arts these days is you—the orchestra volunteer, the trustee, the musician, the staff member, the audience, the community member.

Through this guide, the League offers simple, easy-to-read advice on how to build successful relationships with policymakers. Our goal is to support and empower you to play your part in influencing public policy in order to advance the orchestral experience for all. Acting together, we can make a difference.



Jesse Rosen
President and CEO
League of American Orchestras
June 2017

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THE TRUTH ABOUT ADVOCACY AND LOBBYING

People often use the two words “advocacy” and “lobbying” interchangeably, and while there is overlap between the two, they are not exactly the same. Let’s clear up what each means:

Advocacy is the broader of the two terms and can refer to general efforts to advance a point of view or make your case. Advocacy takes place, for example, through traditional and social media, in panel discussions and conferences, and in communications with any individuals or group. When you’re telling a prospective donor, reporter, or civic leader what your orchestra does and why it matters, you’re engaging in advocacy. You can be an advocate for your organization or cause before just about any audience; advocacy, in the context of nonprofit organizations today, includes, but is not limited to, lobbying.

Lobbying is [defined by the IRS](#) in a very specific way and refers to specific efforts to persuade people about specific government legislation. The targets of lobbying are mainly your elected public officials, but can include the news media, your audiences, and the public in general. As a private citizen, you have the right to freely express yourself on government policy. For a nonprofit tax-exempt organization, such as an orchestra, there are some specific rules to follow, but compliance is very easy.

This guide is mainly focused on lobbying—also called government affairs, government relations, or government advocacy. We also describe action you might take beyond the IRS definition of lobbying to influence public policy. For this guide, we use the term “public policy advocacy” for that broader array of activities. Let’s clear up false assumptions that many in the orchestra world have about public policy advocacy and whether they can—or should—lobby at all.

Fiction: There are laws that prevent orchestras (and other nonprofit organizations) from lobbying, or the laws are so restrictive that it wouldn’t pay to try.

Fact: The law *encourages* nonprofit organizations to lobby, and sets broad, generous limits that impose no significant paperwork or legal burden on any individual or organization.

Fiction: There are very few times when public policy really affects my orchestra, and I have more pressing priorities to deal with every day.

Fact: The outcomes of public policy will greatly affect your orchestra's everyday ability to raise charitable contributions, program and present international artists, and partner with schools. Time spent on lobbying is time well spent.

Fiction: I'm not a policy expert; I wouldn't know what to say. Also, policymakers won't care about what I have to say anyway.

Fact: You don't have to be an expert on the big picture of tax reform, public education, or immigration. You just have to explain how these issues affect your orchestra's ability to serve your community—something you're uniquely qualified to do. Also, the League's policy team is here to help: we maintain easy-to-use [online issue centers](#) that provide concise talking points, background information, and messages set up for you to personalize and communicate to your members of Congress about various legislative and regulatory issues. As for policymakers not caring, remember that elected officials work for you, and it's their job to be receptive to your concerns.

Fiction: My policymakers always oppose [or] always support the arts, so lobbying them would be a waste of time.

Fact: Given the wide array of issues that affect orchestras, there is a strong chance your elected officials will support at least one of them. And supportive policymakers can be thanked and encouraged to cultivate support from their peers. Don't write off your elected officials—you never know when they might actually come around to your point of view the more they understand what you do and how the community perceives your work. And don't take them for granted, either!

Fiction: My orchestra shouldn't have to lobby—that's one of the reasons we pay dues to the League of American Orchestras and to our state arts advocacy group.

Fact: The League and other national and state arts organizations do lobby directly. However, your voice is worth more than ten office visits by a hired lobbyist. The League can monitor, inform, and persuade as much as possible, but constituent input (yours) is the key. Do not underestimate your own influence.

Fiction: Lobbying is already being done by others more influential and experienced than my organization or I can ever be.

Fact: Given the many musicians, volunteers, trustees, and audience members involved in your orchestra, you represent a substantial constituency. Furthermore, no matter your orchestra's size or age, you are part of the nonprofit community, and that in itself is a highly regarded trait in policy circles, which was confirmed by [polling](#) among swing voters during the 2016 presidential election.

IDENTIFYING YOUR ISSUES AND MESSAGES

Choosing Your Battles

Which policy issues are most important to your orchestra? In most cases, determining your priorities does not require becoming an expert in technical matters, but for each issue, you want to be able to answer these questions:

- Why do you care about this issue?
- Are your orchestra's stakeholders aligned on the issue? (It's ok if they aren't, but you should be aware of this.)
- Are there clear facts or statistics to show how the orchestra is helped/harmed by the issue?
- What is the orchestra's recent history on the topic at hand?
- What outcome do you prefer? What outcome can you accept?
- What is your legislator's record on this issue?
- What are the likely reasons he/she will use to oppose, avoid, or support your position?
- What do you need him/her to do?

Staying Informed

The League's [advocacy emails](#), [website](#), and [social media channels](#) are the best source of information for orchestras on public policy issues at the federal level, including detailed information on each policy area. Of course, you can also make direct inquiries to the League's [public policy office](#) in Washington for more information. (We quite like hearing from you!)

Other information avenues:

- Your state arts advocacy organization.
- Personal contacts with other arts institutions in your area.

- Your state or local associations of [nonprofit organizations](#). Charities in most states have a statewide organization that monitors issues of interest to 501(c)(3) groups.
- Your legislators themselves. Sign up for their email lists, and follow their social media channels to learn more about the issues they are working on and to keep up with opportunities to raise your concerns in town halls, community meetings, and hearings.

Effective Messaging

- State your issue at the top. Present your position in a sentence, and then take one or two paragraphs to explain why you support or oppose the policy.
- If you personally know the legislator, by all means make a reference to your connection.
- Be clear about what you hope the legislator will do. Indicate what course of action you want. Examples:
 - “I urge you to speak with your fellow Republicans on the committee to...”
 - “I hope you will speak strongly in floor debate for passage of...”
 - “I hope you will vote in subcommittee to oppose...”
 - “Please speak with your colleagues from ... about...”
- If you are writing about legislation, refer to the bill number and specific language, if possible.
- Be concise and polite, always. No threats, no rude language, no digressions to side issues—no exceptions.
- Most basic of all: simply describe how the issue affects your orchestra’s work. The intensity of your concern, your overall position, and the fact that you are watching what the legislator does—those are the things elected officials glean from constituent messages.

BUILDING YOUR BASE: PEOPLE AND PARTNERS IN PUBLIC POLICY ADVOCACY

Map Your Relationships

A 2017 survey by the League of American Orchestras showed that 83% of responding orchestras are already talking about public policy inside their organizations. Many arts organizations don't have a lot of resources—money, time, or staff—to devote to lobbying. That makes working smarter more important than working harder, and it's smart to learn just what your assets are, early on.

- Keep policy activity on your board and staff meeting agendas for frank discussion.
- Determine what relationships trustees, volunteers, staff, and musicians have with public officials to identify your best “connected” people to contact your Representatives or Senators on a pending vote.
- Keep an active list of the people who know people who can get the attention of policy leaders, and put that list to use.

Create Your Orchestra's Public Policy Advocacy Network

The ultimate objective of this activity is to identify lead contacts who can engage as many other supporters as possible in the advocacy effort at pivotal moments. Make a clear designation of the following:

- A public policy designee for your trustees, often the chairperson of the board's government affairs committee if you have one, or someone designated by the committee or board chairperson.
- Public policy designees for the orchestra staff and the volunteer association.
- Public policy designees for your musicians. This might be the ICSOM (International Conference of Symphony and Opera Musicians) or ROPA (Regional Orchestra Players' Association) delegate in an orchestra. Participation, of course, is entirely voluntary; while the League, ICSOM, and ROPA are separate organizations, musicians often hear about policy developments from each of these groups.

Invest in Coalition Building

Don't go it alone. Public policy advocacy is most effective when done in coalition; by presenting a broad and unified front, you strengthen your impact. The objective of a coalition is to achieve a specific goal—not to resolve everything under the sun. However, a frequent byproduct of working in coalition for one policy goal is greater understanding of other issues, and identifying new areas of partnership as dialogue occurs. This byproduct of coalition building sometimes exceeds the value of the original policy goal itself.

- Welcome a diverse and inclusive array of partners. An effective coalition often has partners from different disciplines, with different budget sizes and stakeholders that share common concerns.
- Think beyond the arts to include groups that work in the human services, religious, educational, environmental, and other fields that have a common stake in an issue. For example, you may find common interests with the local transportation authority and/or chamber of commerce if a local economic development project affects all of you.
- Don't forget that other elected officials—mayors, city council members, governors—can and should be asked to support your efforts. National associations for public officials, such as the [U.S. Conference of Mayors](#), have been recruited for such purposes by national arts organizations.
- [Contact the League](#) for specific advice about coalition partners. We're closely networked at the national level with organizations that likely have affiliates in your state and community, including the full range of arts disciplines, education associations, major nonprofit organizations like the American Red Cross and United Way Worldwide, and even groups in the conservation community like the Humane Society and World Wildlife Fund.
- Understand that the partners in a coalition don't have to agree on all issues at all times (and probably won't).
- Coalitions can be formalized or as *ad hoc* as you choose. The point is to establish contact and reach an agreement that the institutions should work together in support of policy that benefits your community.
- Divvy up the work of initiating contacts with policymakers. Just as you've taken stock of your organization's connections to elected officials, take this opportunity to map out whom the other groups in the coalition know to create that personal connection.

- Review the issues and discuss your positions as a group prior to any meeting with a policy leader. Make sure you are all in basic agreement about what you want to achieve in the meeting—be clear about the purpose. A meeting with a policymaker is neither the time nor place to bring up extraneous issues or disagreements among you.

GETTING TO KNOW YOUR POLICYMAKERS

Who Are Your Elected Representatives?

Your policymakers in government can span all of those who represent your orchestra's board, musicians, and staff and the audiences for your concerts and education/community engagement programs, and may even cross state lines. You can enter zip codes on the League's [Legislator Look-Up page](#) to help you find your members of Congress.

Your contributors and volunteers may have special relationships that transcend your orchestra's service area. As politically engaged community leaders or public figures in their own right, some are close to politicians in special leadership positions—the Speaker of the House, Senate leaders, Cabinet officers, and presidential candidates, for example.

What Do You Know About Them?

Learn the basics such as:

- Key committee assignments
- Arts voting records
- Staff e-mail and contact information, including the key Washington staff aides who handle arts issues, local district directors, and schedulers
- Social media channels
- Biographical information

The League of American Orchestras can provide much of this information about members of Congress. And your state arts advocacy and nonprofit advocacy alliances should be able to provide background on state legislators.

You also need to determine:

- Have they been donors or subscribers to your orchestra or other local arts organizations?
- Are they known to your trustees and volunteers? Do you have advocates who personally know these legislators?
- What issues do they care most about? The answer to this question is essential to know before you meet.

Starting and Keeping a Relationship

After every election, make a point of introducing the orchestra to each newly elected or re-elected legislator by:

- Sending a letter expressing interest in working together in the years ahead.
- Providing brief background information, including, for example, the season brochure and a promotional poster, along with a standing invitation to see the orchestra's work in action.
- Putting the legislator on your press list and getting on his/her press list.
- When you are ready, request a meeting at the legislator's office to discuss your orchestra and its current situation, future plans, and issues of concern. A member of Congress should meet with representatives of your orchestra about once a year, and additionally attend a concert where he/she can socialize with trustees, musicians, etc., at least as often.

The Concert

What better way to cultivate a relationship with a policymaker than inviting him or her to see the orchestra in action? There are rules for gifts to federal policymakers and staff, including concert tickets. It is their responsibility and yours to ensure compliance.

Current rules allow members of the [U.S. Senate](#), [U.S. House of Representatives](#), and their staffs to accept gifts of no more than \$99.99 from a single source in a calendar year, with each gift limited to \$49.99. Individual gifts valued at less than \$10 dollars do not count toward the limit. These gifts must be reported by the member or a staffer, but need not be reported in any special way by the donating organization, other than as a lobbying expense on the Form 990 if the activity fits the definition of lobbying by nonprofits described earlier. If you provided tickets to a concert or gala to a member of Congress and his/her guests, but in the course of that event, no lobbying on legislation was conducted, it need not be reported by you as a lobbying expense. There are a list of [exceptions](#) to the House gift rules, including exceptions for [widely attended events](#), [charity events](#), and educational [events](#). Senate [rules](#) also include exceptions for widely attended events, charity events, receptions, and constituent events.

Senate and House ethics staff say that if you waive the admission fee for a member of Congress to your fundraising gala (effectively letting him/her in for free), you need not count the full face value of the ticket as a gift, if part of that price is designed to be a donation. For example, if a \$500 ticket is given to a member of Congress, but \$451 of that face value is for fundraising and only \$49 represents the value of what he/she received in return (food, concert, etc.), the legislator has effectively received a gift of only \$49.

[A Guide to Gift Rules](#) is available on the League of American Orchestras' site, created in partnership with the Performing Arts Alliance. For your state legislators and other officials, check with your state arts advocacy organization.

Also, if the event is in close proximity to a time when a member of Congress is running for re-election, remember that your orchestra can in no way explicitly or implicitly endorse that candidate for office. It must be clear that the member of Congress is being invited because of the elected office he/she holds, not because he/she is seeking election or re-election to office. The Alliance for Justice has a helpful overview, [Inviting a Candidate to Speak in Official Capacity](#).

Here's how to host your members of Congress at a concert, regardless of whether they bought their tickets or are coming as your guests:

- Make an event out of it. Host a reception beforehand, acknowledge the legislator's presence in the audience, or take him/her backstage to meet the artists after the concert.
- Feature the legislator as a special guest, publishing his/her picture in the program book, with a brief bio.
- Send a photo or short news item to your local newspaper after the concert, in addition to sharing the photo on social media and linking to the legislator's social media accounts.
- Seat the legislator with a key representative from your orchestra.
- Find a way for the legislator to meet with the people in your orchestra who are engaged in public policy advocacy.
- Make sure the legislator is aware of any public funding used by the orchestra, especially in connection with that specific concert or event.
- Don't be reluctant to discuss issues with the legislator. If orchestra employees do lobby the legislator in the course of the event, their time doing so should be considered a lobbying expense.

CONTACTING AND MEETING WITH POLICYMAKERS

Don't be discouraged by the fact that members of Congress and state legislators are inundated by messages and requests for meetings. The staff members in legislators' offices are set up to handle massive quantities of email, calls, social media messages, and letters. Each communication is reviewed by staff to determine how to respond and how to count it in terms of their office tally on the issue.

And while the messages get counted, a qualitative difference in messages is also taken into account. The more a communication seems to be the product of an individual, and less that of a mass campaign, the more likely the member of Congress is to see it and make special note of it. While it's important to do whatever you can, given the time you have available, keep in mind that Congressional staff rank effectiveness as follows, from most effective to least:

1. **Personal call or meeting with the legislator:** If someone in your network/coalition knows the legislator, you can ask the scheduler to add this person to the legislator's list of supporters whose calls he/she will return during a set "call time" each day. You don't need to know the legislator personally to request a meeting.
2. **Coalition letter signed by a few prominent local organizations:** Once you've sent the letter by email to the office, be sure to send it directly to the staff contact responsible for the issue you are addressing. You can also link to the letter on your social media channel and link to the policymaker's account.
3. **Social media messages from local people on the same day in response to a legislator's post:** A [survey](#) of Congressional staff found that as few as 30 social media comments were effective to get a lawmaker's attention on a given topic.
4. **Personal e-mails to staff with whom you have built relationships or met recently in D.C. or the district office, with an eye-catching, or at least clear, subject line:** Each day, Congressional staff receive several hundred e-mails. If there is a vote coming up and it will harm the orchestra, your subject line could read: "Board member from ABC Philharmonic Orchestra urges Rep. XYZ to vote no on today's vote to cut NEA funding."
5. **Letters on business letterhead:** Letters from local businesses and organizations e-mailed to the right staff member also get noticed. If members of your board or coalition partners are also business owners, encourage them to speak up in that capacity. The letter could be attached to an e-mail with this subject line, "ABC Corporation (employing more than 1,000 residents of Anytown, USA) urges Rep. XYZ to vote no on today's vote to cut NEA funding."

6. **General e-mails sent through the office's main website account** are fine but may go to spam. Send to individuals as much as possible.
7. **Scripted calls to the main office line and form letters/postcards** to offices are among the least effective communications, unless they are received by the office at an extraordinarily high volume. Physical mail goes through security and is often delayed. Some offices just count the number of calls they receive but don't take your information.
8. **Petitions. Please, please know the limits of petitions.** Elected officials dismiss messages that aren't confirmed to come from their own constituents. With rare exceptions, the primary purpose of petitions is for the organization to collect your contact information for future use. Sign them if you will, but know that your job as an advocate is not done by doing so!

Public Town Halls

Town halls or similar public forums should not be overlooked by orchestra advocates. You can attend these public meetings and ask questions about the role of the arts in public policy. Doing so can also remind the general public of your orchestra's engagement in the issues that matter to your community. As long as you do not endorse a candidate or party on behalf of the orchestra, this activity is perfectly allowable for orchestra advocates.

The Meeting

Meeting with constituents is as much a part of a legislator's job as voting in committee or on the floor.

Securing and preparing for the meeting:

- Call the member's office to speak with the legislative assistant who handles the issue(s) you want to discuss, and he/she will refer you to the scheduler.
- Be ready with the number of people joining you in the meeting, the dates and times you can meet, and the topics you wish to discuss.
- The best days to meet in your home district or state are [during recesses](#), when members of Congress return home from D.C. These "home" meetings can be most effective because you get more time with fewer interruptions and distractions, and it involves less expense for you.
- When you have an appointment, be sure to set a quick pre-meeting with others attending from your orchestra or coalition to discuss what you want to achieve and to plan your roles.

- Be sure to take some materials to the legislator to illustrate or amplify your points, but do not overwhelm him/her with paper. Similarly, avoid using too many statistics. An overreliance on numbers can kill a meeting.
- If you wind up meeting with staff even though you had an appointment with the legislator, don't worry. Staff members are very important decision makers, and you can also get another shot at a future meeting with the legislator.

Key points for the meeting itself:

- Be on time, if not a few minutes early.
- State your issue(s) succinctly, outlining your concerns, and spending a very few minutes on the basic facts of your orchestra's work in the community.
- Don't do all the talking—listen, and take notes, too. Try to explore what the legislator's views and priorities are, and make note of interesting personal details that may come up, like a fondness for a particular type of music, any musical family members, or friends you have in common.
- When the legislator asks questions, provide direct answers whenever possible. If you don't know the answer, admit it and say you'll find out and get back to him/her.
- Ask the legislator how, and with whom, you should follow up in the future. Sometimes, the commitments made or views expressed by the legislator don't get back to the staffer who handles the issue.
- Have a specific requested action (even if it's just for continued dialogue), but don't be discouraged if legislators decline to take a solid position or make commitments.

After the Meeting:

- Send a thank-you e-mail to the legislator and/or their staffer, restating the main points of the meeting. Send any information requested in the meeting. Make note of any commitments that were made to you.
- Send a brief note to the [League's public policy office](#). This feedback is absolutely essential to the League's efforts to represent you in D.C.! In the case of state legislators, send a report to any state arts advocacy group with which you are working.

- As a vote approaches on the issues you discussed, be sure to send your legislator a reminder of the meeting you had, expressing your interest in his/her support. It helps remind them of the personal connection.
- Report the results of your meeting to your board, staff, Orchestra Advocacy Network, coalition partners, and others as appropriate.

ENGAGING THE PUBLIC: GRASSROOTS LOBBYING

The Traditional Media

Elected officials very closely monitor how they are covered in local media. Using the news media and paid advertising to urge public action on legislative issues is grassroots lobbying, as defined by the IRS. The basic approaches are:

- Meeting with radio, television, print, and digital editorial boards to encourage them to take a specific position on an issue, and to encourage a specific editorial or column about the issue.
- Guest columns, blogs, or op-eds written by your board president, conductor, manager, or other appropriate spokesperson.
- News releases or media advisories sent to media outlets.
- Press conferences and photo opportunities at events.
- Appearing on a radio or television talk show; calling in to such programs when your issue is up for discussion.
- Paid advertising to deliver your message or pooling coalition resources to buy local ads on an issue.

The Audience

This is grassroots lobbying in its purest form. Over many years, orchestras have from time to time gone to their audiences to seek support on important issues: a local tax earmarked for arts support, calls or letters to members of Congress to support the National Endowment for the Arts, and other issues.

Patrons may be asked to:

- Respond to action alerts to be sent by the orchestra calling on them to write their own letters and social media messages, or to make calls to legislators.
- Attend a special public event on the issue, or be asked to attend the legislator's next "town meeting" and raise the issue in person.
- Participate in a Twitter town hall urging action.

Flyers on the seats, messages in the program books, brief remarks from the podium by the board president or conductor, signs in the lobby, and letters to your subscribers constitute the main ways you might involve your audiences.

Remember to check your facts and test your pitch before you publish anything or speak to the audience. Try it out on your peers to see if it's clear and would be well received by your audience. Always remember to keep your messages completely non-partisan in both content and tone.

Social Media

Using social media channels to urge legislative action is also considered grassroots lobbying. More and more, legislators at the federal, state, and local levels are receiving their news and constituent feedback through social media.

This opportunity to directly engage is constantly changing through new tools, so basic tenets are to use your best judgement and be open to innovation.

- Start following the social media feeds of your legislators. Twitter and Facebook remain the most commonly used, but some staff use Instagram and some legislators who want to be a thought leader on a certain topic are using LinkedIn.
- Legislators are increasingly using Twitter and Facebook for virtual town halls, live video feeds, and to post events or accomplishments.
- With the advent of [Facebook Live](#), you can be notified when the legislator is using this function. The legislator can see your comments and questions in real time.
- In a study by the [Congressional Management Foundation](#), 71 percent of Hill staff said that the more people affiliated with a specific group or cause respond to a legislator's social media post, the more likely they will have "some" or "a lot" of influence on the lawmaker's decisions.

FOLLOW UP: HERE'S WHAT TO DO IF...

...If Your Legislator is Solidly Opposed

If, prior to a vote, the legislator remains clearly opposed, it may be worth it to remind the legislator of the strength of your position and the fact that his/her vote on the issue matters to you. While you may not change the vote, you may influence the legislator to opt to do the following:

- Decline invitations to sign a “Dear Colleague” letter circulating in opposition to your position.
- Refrain from making floor speeches against your position—the fewer speeches in the record of a legislative body that go against the issue you care about, the better.
- Hang back from organizing their colleagues in the state delegation to oppose your position.

If, by your lobbying, you convince your legislator to be a less vocal opponent, you *have* helped your cause. Advocacy is often as much about tempering or modifying opposition behavior as it is about obtaining favorable votes.

...If Your Legislator Leans Negative or is Undecided

This usually happens when:

- The legislator is under intense pressure from other interests or colleagues.
- The legislator genuinely thinks some opposing arguments are good, or at least worth considering.
- The legislator has spent little or no time thinking about it.
- Your message has not been adequately presented (sometimes by the legislator’s staff or other advocates).

How to deal with this? Try to get at the source of the hesitation, and address it as squarely as time permits by asserting your best arguments and finding new voices to bring them forward. Often, the legislative process is more complicated than a simple review of an issue’s pros and cons.

...If Your Legislator is Supportive

Supportive legislators can be made stronger allies when you ask them to do more—just make sure they know you appreciate it. Supportive legislators can do more than just vote—they can cultivate support from others. And their support shouldn't be taken for granted.

- Thank them for their support directly, and mention their support in any messages you send to your stakeholders about the outcome of a vote.
- Ask them to do more:
 - Speak favorably in floor debate or in committee.
 - Initiate or send a supportive “Dear Colleague” letter to fellow legislators.
 - Speak to a key undecided or opposing legislator, or a committee chairman or floor leader.
 - Speak to colleagues in the state’s delegation.

...If Your Legislator Votes Against You

Today’s adversary may be tomorrow’s ally, so don’t burn your bridges, but don’t let the action go unnoticed, either.

- Send a polite letter voicing disappointment in the vote, but express the hope that you can continue to discuss the issue.
- Make sure your fellow advocates know how your legislator voted.
- The next time a similar issue comes before the legislature, remind the legislator that there are constituents who disagreed with the prior vote.

Q & A: THE RULES THAT ALLOW LOBBYING BY NONPROFITS

In general, what is considered lobbying?

Lobbying is the attempt to influence the passage or defeat of legislation through the presentation of views to any person in a position to affect that process: a member of Congress, a Congressional staff member, a state legislator, or a city council member.

Individuals as private citizens may lobby as much as they want, on whatever they want—there are no forms to file or expenses to report for individual citizens. Lobbying by individuals is not controlled or limited by the laws on nonprofit lobbying, as long as they are not being paid or reimbursed by the nonprofit for their lobbying.

By law, the IRS considers a 501(c)(3) *nonprofit* to be [lobbying](#) when it expends funds to urge, or to ask others to urge, a legislative official (officeholders, staff) to act one way or another on legislation. For the nonprofit organization, federal law makes two basic, modest requirements: 1) report on the annual tax return the total amount of funds expended for lobbying; and 2) do not exceed the limit on the percentage of your budget that can be devoted to lobbying.

What is the difference between permissible lobbying activity and prohibited electioneering activity?

[Electioneering is strictly prohibited](#) for 501(c)(3) organizations. The relationship between nonprofits and political parties and candidates for public office is governed by a specific provision of the tax code, which prohibits the participation of nonprofits in partisan political activities. A 501(c)(3) may *not* support or oppose parties or candidates for office. It may *not* provide materials, money, or other organization resources for that purpose. An orchestra may *not* endorse or oppose a candidate for office, and may not suggest that others support or oppose candidates.

Nonprofits are allowed, however, to contact candidates and parties in an election, both to seek their views on issues and to communicate the nonprofit's views. But again, you may not represent the orchestra as supporting or opposing the candidate.

As an individual, of course, you may be involved in a campaign as much as you want, including donating your own money. But you may not use the orchestra's property, name, or time to do so. For this reason, it is important to be absolutely

clear when you are acting in your individual capacity, and when you are speaking on behalf of your organization.

Can orchestras participate in campaigns on referenda or issues on the ballot in an election?

Yes! This is different from elections for candidates for office, and [the IRS specifies](#) that this is allowable lobbying activity. Nonprofits are allowed to expend funds and take public positions on referenda, ballot initiatives, propositions, tax levies, etc., as long as they do not cross the line into party or candidate endorsement. Why this exception? Technically, the law considers the public to be “the legislators” in the case of ballot issues. Therefore, if a nonprofit wants to lobby on the issue as it would a legislator, it has to be able to lobby the public. A nonprofit may endorse ballot issues, advertise, pass out leaflets, participate in debates, write letters to the editor, and engage in similar activities designed to communicate its point of view to the general public. The legal limits that apply are the same as for [direct lobbying](#).

What is considered lobbying by a nonprofit organization?

The law provides very generous opportunities for lobbying by a 501(c)(3) nonprofit, since the clear intent of the law and regulations on this subject were to encourage nonprofits to communicate their views on public policy.

[Federal definitions and limits](#) on nonprofit lobbying are contained in the U.S. tax code. In its simplest form: it is considered to be lobbying when a nonprofit urges a legislative official to take a position or action on specific legislation or regulations *and* when funds have been expended by the nonprofit for that purpose. Keep in mind that using staff time is an expenditure of funds. Otherwise, when no funds are expended, no reportable lobbying has occurred, under the current federal statute.

- It *is* lobbying if you try to influence the development of law: to repeal an old law, to modify legislation, or to approve new legislation or appropriations, but it only applies if you communicate directly to a legislative official to promote a specific point of view and if you expend funds to do so.
- It is *not* lobbying if you discuss the needs or interests of your organization in a general way, with no urging for changes in law or legislation, or if no organization funds have been expended.
- Sending your season brochure or a newsletter about the orchestra’s activities to a member of Congress is *not* lobbying. Sending a message urging support for an amendment to a bill before Congress *is* lobbying.

- It is *not* lobbying when you respond to inquiries from Congress or other government officials; it is *not* lobbying when you present testimony that was requested by a Congressional committee, *nor* is it lobbying if you inquire to a government agency about a grant or specific program already in effect.

Note this important exemption! The [Schedule C of the Form 990](#) spells out an important exemption from the definition of direct lobbying activities, as follows:

“A communication is not a direct lobbying communication if the communication is an appearance before, or communication with, any legislative body concerning action by that body that might affect the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization, as opposed to affecting merely the scope of the organization's future activities.”

What is “grassroots” lobbying?

[Grassroots lobbying](#) is using the nonprofit’s resources to call for public action in support of a legislative goal. Galvanizing public support for the arts by using various forms of the media is extremely important, and is a method that is often underutilized. The trigger for this activity to be considered grassroots lobbying is: 1) urging people to action to influence specific legislation; and 2) the expenditure of orchestra funds. Again, the limits on these allowable expenses are so high, you would have to do an extraordinary number of op-ed articles or time writing social media messages to get anywhere near it. One positive aspect of social media is how little time and money it takes to draft and send out a message.

Examples:

- It *is* grassroots lobbying if a paid staff member writes, on behalf of the orchestra, an article for the local newspaper or a blog on your community listserv in which citizens are urged to write to members of Congress about government funding for the arts.
- It *is* grassroots lobbying if your orchestra sends a mass advocacy message to your donors by email or social media urging them to contact their member of Congress about legislation.
- It is *not* grassroots lobbying if staff members, trustees, or patrons write something on their personal social media accounts, in their private capacity, for which no staff time or orchestra funds were used.

- It is *not* grassroots lobbying if you are just disseminating an educational article or blog post about a policy development that does not include a call to action.
- An article explaining what good the National Endowment for the Arts has done for the country is *not* lobbying. A Facebook post on the orchestra's account saying Congress wants to cut NEA funding and directing readers to call their member of Congress to express opposition *is* grassroots lobbying.

How much lobbying can my orchestra do? Why should I file the 501(h) election?

Glad you asked! Electing to come under the IRS 501(h) definition of lobbying will take the mystery out of determining how much you may lobby. The League of American Orchestras strongly recommends that each orchestra file the 501(h) election. It's not essential, and the orchestra can lobby without it, but it is a good idea—free, simple, and permanent. (In fact, your orchestra might have done this already, as the League made a big effort to encourage orchestras to take the election in the late 1990s!)

The original law, part of the IRS code since 1934, does not define specific spending limits on lobbying, aside from requiring that, "[no substantial part of the activities](#)" may be for "carrying on propaganda, or otherwise attempting, to influence legislation." In 1976, Congress enacted [Sections 501\(h\)](#) and [4911](#) [together, referred to as 501(h)] to the U.S. tax code, which gave nonprofits the option of selecting to come under a new, more specific nonprofit lobbying law. You are not required to make an election, but unless you file IRS Form 5768 and mark "Election," you are assumed to be working under the vague terms of the original law.

Filing the 501(h) election costs nothing and couldn't be simpler: the one-page [Form 5768](#) can be obtained from the IRS. It simply requires that you provide a signature from a member of the orchestra's governing body and send it back to the IRS. There is no expiration, and no further filings or reporting are required.

I've taken the 501(h) election! Now, what are the limits on how much lobbying my orchestra can do?

The legal limits on nonprofit lobbying take effect only when funds are expended by the organization for lobbying. The law's generous limits on such lobbying, for nonprofits making the 501(h) election, are set forth below.

Direct lobbying is defined as 1) contacts by an organization with legislators or government officials regarding specific legislation and 2) contacts with the general public regarding a referendum, initiative, constitutional amendment, or similar procedure.

Grassroots lobbying refers to attempts to influence legislators by shaping the opinions of the general public, including your audiences. If your orchestra expends funds to use the media or by making other appeals to the public to get elected officials to act on specific legislation, that is considered grassroots lobbying. An organization's communications to its members regarding legislation may be considered direct lobbying. The Alliance for Justice has a helpful guide to help sort out when [communicating with members](#) is a direct or grassroots lobbying expenditure. *Note that an organization's grassroots lobbying expenditures may not exceed 25% of its total lobbying expenditure limit.*

[According to the IRS](#), the expenditure limits for nonprofits are determined by the organization's budget size:

If the amount of exempt purpose expenditures is:	Total lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000

What records does an orchestra have to keep for legal purposes?

Lobbying expenditures must be reported on Schedule C of the annual [Form 990 tax return](#). There is no other filing required. For lobbying that is carried out with

the use of orchestra funds, you need only keep a simple record of how much was spent, for what legislative purpose, which officials were lobbied, and when. Nonprofit organizations should remember to keep a simple tally throughout the year of any expenses incurred in your lobbying efforts like printed materials or direct costs associated with meeting with a legislator. Remember that staff time used for lobbying is an expense that must be tracked and included in your report of total expenditures. Since different expenditure limits apply to each, your direct lobbying and grassroots lobbying expenses should be tracked separately.

Do the federal limits apply to state and local legislative lobbying?

Yes, your expenses for lobbying at the state and local level also count toward the limits and are reportable. For state reporting rules, check with your state nonprofit association or state arts advocacy group.

Can donors earmark their contribution to be used for lobbying?

Yes, if they wish, but they cannot take a tax deduction for it when donating to a 501(c)(3) organization. Organizations that do lobbying may invite donors to make specific donations because such work is of special interest to those donors, and should remind inform donors that the donation is not tax deductible.

The law provides a different category for nonprofits that are designed to make lobbying their primary function. These are known as 501(c)(4) organizations. Unlike a 501(c)(3), tax-exempt 501(c)(4) organizations have little limitation on lobbying on behalf of their exempt purpose, but contributions to them are not tax-deductible charitable contributions.

Can public officials tell me how to lobby?

Federal agency administrators—employees of the U.S. Department of Education or the NEA, for example—are prohibited from specifically urging organizations or citizens to engage in organized lobbying of legislators to affect specific legislation. Department officials can explain their position, and advocate its adoption, but they cannot urge organizations to target Congress with a lobbying campaign. In a public meeting with a federal official, when someone in the audience asks, “What do you think our organization should do about this issue?” the official must decline to recommend specific lobbying action. This rule is designed to keep government employees from using their position to pressure citizens to lobby on behalf of their programs.

Can the orchestra ask audience members to contact legislators?

Yes. You may place signs in the lobby, distribute an advocacy newsletter, urge support for legislation through your program book, send letters to your subscribers, have places for audience members to opt-in for electronic advocacy messages, speak from the stage—all of these are permitted just as long as you track the related expenses for material and staff time and your total expenses for the year remain under the lobbying expenditure limits. These activities would be considered grassroots lobbying.

Can my orchestra lobby even if it gets government grants?

Yes. It just can't use government funds to lobby. The resources (including staff time) used in lobbying have to be derived from nongovernmental sources.

If I get a for-profit corporation to speak on behalf of positions we support, is that lobbying by my orchestra?

If this is an organized effort using orchestra resources to get these organizations or corporations to advocate on a legislative issue, your use of orchestra resources would count as grassroots lobbying. The expenses of the corporation are its own, and it can lobby on whatever it wants, including issues affecting the arts. You are only responsible for what you spend, if anything, in such an effort.

Do our orchestra dues or payments to organizations that lobby count as lobbying by the orchestra?

As a 501(c)(3) nonprofit, your dues to an organization specifically set up to lobby, such as a 501(c)(4), can count as lobbying, but not your general membership dues to a 501(c)(3) professional association such as the League of American Orchestras, for which lobbying is not the primary purpose. *No lobbying reporting requirement applies to your annual dues to the League.*

Is inviting a member of Congress to concerts considered lobbying, and is it allowable?

Current rules allow members of the [U.S. Senate](#), [U.S. House of Representatives](#), and their staffs to accept gifts of no more than \$99.99 from a single source in a calendar year, with each gift limited to \$49.99. Individual gifts valued at less than \$10 dollars do not count toward the limit. These gifts must be reported by the member or a staffer, but need not be reported in any special way by the donating organization, other than as a lobbying expense on the Form 990 if the activity fits the definition of lobbying. If you provided tickets to a concert or gala to a member of Congress and his/her guests, but in the course of that event, no lobbying on legislation was conducted, it need not be reported by you as a lobbying expense. There are a list of [exceptions](#) to the House gift rules, including exceptions for [widely attended events](#), [charity events](#), and educational [events](#). Senate [rules](#)

also include exceptions for widely attended events, charity events, and constituent events.

Senate and House ethics staff say that if you waive the admission fee for a member of Congress to your fundraising gala (effectively letting him/her in for free), you need not count the full face value of the ticket as a gift, if part of that price is designed to be a donation. For example, if a \$500 ticket is given to a member of Congress, but \$451 of that face value is for fundraising and only \$49 represents the value of what he/she received in return (food, concert, etc.), the legislator has effectively received a gift of only \$49.

[A Guide to Gift Rules](#) is available on the League's site, created in partnership with the Performing Arts Alliance.

MORE RESOURCES

League of American Orchestras Advocacy Resources

www.americanorchestras.org/advocacy-government.html

The League's Washington, D.C. office represents orchestras before Congress, the White House, and federal agencies; provides technical assistance to orchestras on a range of statutory and regulatory issues; and guides and supports the highly effective grassroots advocacy undertaken by orchestras nationwide.

Independent Sector

<http://independentsector.org/>

The League is a member of Independent Sector, a nonpartisan coalition of nonprofits, foundations, and corporate giving programs committed to advancing the common good in America and around the world. Find helpful background and analysis on tax policies, and a [general resource page](#) for nonprofit lobbying.

Everyday Advocacy

www.councilofnonprofits.org/everyday-advocacy

By law, 501(c)(3) organizations are permitted to participate in the development of legislation and regulations—in fact, most nonprofits consider it their duty to speak out on important issues affecting their communities. We highly recommend this comprehensive guide, presented by the National Council of Nonprofits.

Bolder Advocacy

www.bolderadvocacy.org

An initiative of the Alliance for Justice, this website includes comprehensive information about the advocacy rights of nonprofit organizations, including detailed information about the rules that apply to activity during election cycles.

Congress.gov

<https://www.Congress.gov>

Biographical information about your members of Congress is available online. Enter your zip code, and click on the “info” tab beneath the picture of your Senators and Representative. Presented in partnership with the Library of Congress, this website is the central hub of information for all things related to Capitol Hill, as well as information on all active pieces of federal legislation.

Performing Arts Alliance

www.theperformingartsalliance.org

The League is a founding member of the Performing Arts Alliance, comprising more than 33,000 organizational and individual members from the professional,

nonprofit performing arts and presenting fields. The Alliance advocates for national policies that recognize, enhance, and foster the contributions the performing arts make to America.

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