Yes, You Can—and Should! Nonprofit Advocacy as a Core Competency

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In a popular online nonprofit forum, a nonprofit leader recently asked about whether or not it was appropriate or possible for their organization to directly speak out about important issues of the day. Stating apprehension that the organization would be considered “too political,” this leader struggled with balancing a call to action with concern for possible negative consequences to their organization. They were a 501c3 organization, after all!

You may be feeling the same way—that it’s important to respond to local, state, and federal events and policy debates, but concerned about what might be appropriate for your organization. Fear of running afoul of your organization’s tax-exempt status, or losing the support of important donors by being seen as “too partisan or political,” may be preventing nonprofit organizations from speaking out or encouraging their members or clients to do so. While, yes, decisions to take action should be given careful consideration, fear alone is not a good enough reason to fail to act.

Many nonprofit organizations have, at their core, a mission to enact social change—whether that’s ending homelessness, supporting access to healthcare or other services, or serving vulnerable populations. Yet, it’s obvious to many of us in the nonprofit sector that the communities we serve are feeling the direct impact of the current political climate.

The debates on hot-button topics like race, religion, immigration, healthcare, and the environment, to name a few, are leaving nonprofit clients and other stakeholder groups feeling scared, persecuted, further marginalized or afraid to seek out the very services nonprofits are offering.

In addition, funding for important programs hang in the balance, grant programs are being eliminated or redefined, and much needed legislation and appropriations are being held hostage by both state legislatures and the US Congress. The President and Congress have also suggested policies that may directly impact the ability of the nonprofit sector to fundraise, including proposed changes in the tax code that would eliminate the charitable deduction for more donors.

If any single sector is going to help respond to these critical debates and bring people together, it will be the nonprofit sector.

Long recognized as “mediating structures” that help to connect the public with institutions, nonprofit organizations represent the perspectives of people in front of decision-makers. Nonprofits have a fundamentally American role in helping to organize and educate the population for civic action and engagement, and indeed, to teach individuals the very basic skills of democracy itself.

In the Spring 2015 edition of the Nonprofit Quarterly, Pratt and McCambridge also made the case that nonprofits not just treat social problems, but be part of the solution through action and advocacy. They write:

> Foundation grants and grassroots fundraising cannot in themselves reduce inequality without using their influence to leverage government and business policies. Given the links between income and health outcomes and between educational attainment and cultural participation, the success of every nonprofit mission is affected in some way by the economic success of the people the organization serves (or could serve, if it could afford it).

Nonprofit organizations may also wonder, “What can we do? We are just one organization.” They should remember that, taken together, the nonprofit sector represents over five percent of the national GDP and 10 percent of the employment in the United States, accounting for over 14 million jobs in 2013. The potential political influence flowing from the economic impact of the nonprofit sector should not be underestimated.

If there ever was a time for the nonprofit sector to work together with a shared voice of inclusion, common sense and conciliation, now is it.

But what can nonprofit organizations do? In my classes on managing nonprofit organizations, I make the point that all nonprofit organizations are able to use their voice for the public good. What matters is understanding the rules about what you are allowed to do, based on your 501 tax-exempt determination. The government allows all organizations to engage in advocacy and/or lobbying at some level. Here is a quick primer on deciding what’s right for your organization:
1. First, talk among yourselves. Deciding the advocacy strategy of your group is a core feature of your organization’s mission statement and stated organizational values. An organization’s Board of Directors and staff should discuss the what (to advocate for), the why (does it meet your mission and vision?) the who (who will be responsible for overseeing this part of your work?) and the how (which tactics might you engage in to make your point?). You may want to also consider how stakeholders (staff, clients, members, or funders) might consider your choices, or if they may have opinions on the types of action that are consistent with your organization’s mission.

2. Advocacy and lobbying are two different things, with two sets of rules. “Advocacy” includes a large number of activities, from grassroots organizing, public education, policy research, lobbying, position papers or statements on issues, voter registration, coalition participation or building, and election activities. It also includes litigation and boycotts, along with direct action (disruptive behavior). Think about advocacy as any activity that helps elevate the voice of the organization or individuals and groups with policymakers or the public.

“Lobbying,” on the other hand, is defined quite narrowly by the IRS:

"Lobbying," for the purposes of the IRS, is defined quite narrowly as attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation. "Grass roots" lobbying is defined as attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation. In either case, the communications must refer to and reflect a view on the legislation.

That is, lobbying is speaking with elected officials about the formation or passage of specific legislation only (such as “SB 2135”). That leaves a lot on the table for nonprofit organizations. Releasing a statement surrounding the recent violence in Charlottesville, for example, is not considered lobbying. It is advocacy.

3. All nonprofits can get involved in advocacy. The level of lobbying your organization can engage in depends on what type of organization you are. Most private foundations are not allowed to lobby, but they can engage in other forms of advocacy. On the other hand, 501c3 organizations can lobby as long as it’s not a “substantial” part of the organization’s activities (“substantial” is not defined by the IRS). 501c3 organizations that would like more guidance and structure can fill out IRS Form 5768 (https://www.irs.gov/pub/irs-pdf/f5768.pdf) for an (h) election, allowing them to engage in direct lobbying up to $1 million, and grassroots lobbying up to $250,000 annually, based on the organization’s expenditures. Smaller organizations with expenditures under $500,000 can spend up to 20 percent of their exempt purpose expenditures. More on taking the “(h)-election” can be found at the National Council of Nonprofits (https://www.councilofnonprofits.org/taking-the-501h-election), or talk to your accountant or attorney.

501c4, 501c5, and 501c6 associations can engage in unlimited lobbying and long as it’s related to the organization’s underlying exempt purpose. The IRS has a long guidance document (https://www.irs.gov/pub/irs-tege/eotopic03.pdf) on this point.

4. All nonprofits can also get engaged in elections, but again, what an organization can do is defined by IRS determination. 501c3 organizations, public and private foundations can support nonpartisan election activities—such as voter registration, get-out-the-vote efforts, or issue education—as long as it is not tied to the support or endorsement of any specific candidate running for office. For example, these groups can host a candidate forum, or send out policy briefings on current events of interest to their stakeholders.

501c4 organizations can endorse candidates for office as long as this partisan political activity is not the “primary purpose” of the organization (again, the IRS does not define what “primary purpose” is). 501c4 organizations are also permitted to make direct or in-kind contributions to a candidate, party, or political action committee (PAC), which supports candidates or may run their own activities for or against a candidate. Nonprofit organizations which are interested in getting more directly involved in partisan politics may also choose to set up their own political action committee—a different form of nonprofit organization. While instructions setting up a federal PAC can be seen here (https://www.fec.gov/help-candidates-and-committees/registering-pac/) (to support candidates to the US Congress or the President of the United States), each state has their own PAC rules and requirements to engage in this activity for state legislatures, state-wide office like governor, or even ballot measures.

In turbulent times such as these, the nonprofit sector can help support and empower the communities they serve, provide backing for commonsense and evidence-based policy solutions, and remind policymakers of the issues facing our communities and country. If you still are unsure that what you’d like to do is permissible, reach out to your state’s nonprofit association, or speak with groups like the National Council of Nonprofits (https://www.councilofnonprofits.org/) and Bolder Advocacy (https://bolderadvocacy.org/), who provide frequent guidance on advocacy and electoral activities to organizations. Your organization’s attorney or accountant may also be able to provide guidance.

What is most important is that if you or your organization feels impelled to action, don’t hesitate. Nonprofit organizations have been at the forefront of much of this nation’s social and political change for the last two centuries, and you are in good company when you take action.