It is a popular misconception that nonprofits (specifically, 501(c)(3) organizations) must carefully avoid taking positions on politically controversial issues. In fact, subject to the limited exceptions described in this article, nonprofits can and should speak up when it comes to issues and policies that affect their constituents and their communities. The IRS is on board with this view, having officially stated that "Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office." ([https://www.irs.gov/irb/2007-25_IRB/ar09.html](https://www.irs.gov/irb/2007-25_IRB/ar09.html))

There are, however, two important limitations on a 501(c)(3) organization when it comes to speaking up. First, a 501(c)(3) may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." This is a "facts and circumstances" prohibition on electioneering, which looks to whether the effect of an organization’s actions or statements is the endorsement (or denouncement) of a particular candidate for public office in a particular election.

It is important to note that simply speaking out on policies enacted or proposed by an elected official (as opposed to a candidate), or advocating for a particular policy opposed by that elected official, will not by itself constitute a violation of the rule against electioneering just because that elected official plans to run for
reelection in the future. This is especially true when the organization has a clear interest in, and a history of taking positions on, the issue in question.

The second limitation is that a "substantial part" of a 501(c)(3)’s activities cannot consist of "carrying on propaganda, or otherwise attempting, to influence legislation." This is a limitation on lobbying, which means that a 501(c)(3) cannot spend a *substantial* amount of its time or money attempting to influence specific proposed or current legislation, either by directly contacting legislators about that legislation or urging the public to support or oppose that legislation by contacting their legislators, or otherwise advocating the adoption or rejection of legislation.

The "substantial" caveat is key - it means that some lobbying by a 501(c)(3) is perfectly appropriate. Exactly how much lobbying is permissible depends on whether the organization is being tested under the default "substantial part" test or the more specific 501(h) expenditure test. Under the substantial part test, some tax practitioners believe a 501(c)(3) can safely spend up to 5% of its overall activity on lobbying. However, because there is no absolute bright line rule for the substantial part test, and the exact meaning of lobbying under that test is open to interpretation, nonprofits that regularly lobby tend to affirmatively elect the 501(h) expenditure test. Under this test, a 501(c)(3) may be able to spend up to 20 percent of its annual expenditures on lobbying activity, subject to certain caps.

More importantly, most general issue advocacy does not even constitute lobbying. The IRS notes that "organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying." ([https://www.irs.gov/charities-non-profits/lobbying](https://www.irs.gov/charities-non-profits/lobbying)) In other words, nothing in the lobbying rules limits a 501(c)(3) organization’s right to educate the public or legislators about policy issues, including sharing the organization’s own perspective on those issues.
The rules regarding lobbying and electioneering activity are complex. This alert is intended to provide informational highlights, and does not constitute legal advice regarding any specific situation. If you have further questions regarding limitations on lobbying and political activity for nonprofits exempt from taxation under section 501(c)(3) of the Internal Revenue Code, please contact Public Counsel at (213) 385-2977, x 200.