



LEGISLATIVE ADVOCACY AND POLITICAL ACTIVITY:

How surgeons and chapters can get involved

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Over the course of the past few years, the American College of Surgeons (ACS) has significantly increased its legislative advocacy activities at the federal and state levels. Surgeons and ACS chapters have been playing a more active role in encouraging Congress to address important legislative issues, such as medical liability reform, physician reimbursement, trauma system funding and development, patient safety, and so on. Similar issues have come before state legislatures as well, with many surgeons contacting their state legislators through the Surgery State Legislative Action Center, personal telephone calls, and participation in events at the state capital.

A bedrock of American democracy is the right of individual citizens to interact with their elected officials and to come together and form organizations, such as the College, to represent their collective concerns. An example of how this system works can be found in efforts to achieve medical liability reform, through which the views of various medical specialists are represented by their respective associations in addition to individual letters and telephone calls to legislators.

To avert potential abuses, Congress and state legislatures have enacted restrictions on lobbying activity by organizations and individuals. The federal tax code and election laws affect the types of political advocacy in which not-for-profit organizations may engage. Sometimes determining what is and is not permissible under these regulations can be a confusing task, and chapters and surgeons have periodically asked for guidance on these matters. This article is intended to clarify the lobbying activities that can be carried out by both chapters and individual surgeons. A considerable amount of the material is contained in the American College of Surgeons' *Chapter Guidebook*.

Lobbying and political action

The Internal Revenue Service (IRS) does not clearly define the term, but generally, the agency considers lobbying to be any contact with legislators and their staff members (either by phone, in writing, or in person) to talk about pending or proposed legislation and regulations. The IRS's broad definition of lobbying also has been extended to newsletters and other types of membership communications that contain information about current or pending legislation or regulations, especially if members are encouraged to contact their elected officials.

Permissible chapter activities

ACS chapters generally are categorized as either 501(c)(3) or 501(c)(6) organizations under the tax code. Both are tax-exempt, not-for-profit entities, but 501(c)(3) groups are more restricted because their primary focus is supposed to be education. Nonetheless, these organizations lobby in support of or in opposition to federal and state legislation. The dollar amount of lobbying expenditures that 501(c)(3) organizations

may spend varies and is limited to a percentage of their total budgets. Most tax advisors agree that lobbying expenditures are insubstantial if they are less than 5 percent of the 501(c)(3) organization's budget. Alternatively, the chapter may make a special election under 501(h) of the U.S. Tax Code to spend an amount based on a sliding scale up to 20 percent of its total budget on lobbying. The maximum percentage, regardless of the size of a 501(c)(3) organization's budget, is \$1 million.

Most of the College's U.S. chapters are 501(c)(6) organizations, and the rules and regulations governing their lobbying activities are more lenient than those for 501(c)(3) organizations. For example, 501(c)(6) tax-exempt organizations may spend an unlimited amount of their money on lobbying. In other words, a chapter with this tax-exempt status could spend as much as 100 percent of its total budget on lobbying activities, although it is highly unlikely that a chapter would devote its entire budget to political action.

Chapter involvement

Chapters that are 501(c)(3) organizations are prohibited from undertaking activities on behalf of or in opposition to any candidate for public office, whether federal, state, or local. This prohibition includes amounts paid to candidates for speeches, travel, polls, publicity, or any other activity that serves to promote the individual's candidacy. Violations may result in loss of tax-exempt status and tax penalties.

In contrast, a 501(c)(6) organization may engage in some legal political activity, although lobbying cannot be its primary function. Any direct political expenditures such an organization makes are subject to a special tax. More importantly, federal election law prohibits all corporations, including incorporated associations, from making campaign contributions to candidates for federal office. According to the Federal Election Commission (FEC), contributions include direct and indirect payments or gifts of money, services, or anything of value.

501(c)(6) organizations can sidestep many of these prohibitions by forming a separate political action committee (PAC) to finance advocacy activities, including contributions to candidates.

Segregated funds must file periodic reports, maintain books and records, and ensure that the fund receives and makes only legal contributions.

Even if no separate PAC fund is created, certain political activities are permitted. More specifically, a 501(c)(6) organization may communicate with its members about any matter, including a partisan one. Additionally, 501(c)(6) organizations may encourage their members to register, vote, or otherwise participate in the political process by making personal campaign contributions to the candidates of their choice or volunteering for campaign work. These organizations may also solicit their members on behalf of an individual candidate. For example, the executive director or officer could ask an individual member of the 501(c)(6) organization to make a personal contribution to a candidate, attend a political fund-raising event hosted by others, or individually host such an event. However, a 501(c)(6) organization cannot buy a table with its own treasury funds at a federal fund-raising event, although its members could individually purchase tickets.

Furthermore, 501(c)(6) organizations are prohibited from facilitating political contributions by their members (for example, they may provide the address of a candidate's campaign office, but they cannot provide an envelope addressed to the campaign). In addition, if the costs of partisan communications on behalf of an individual candidate reach \$2,000 for any single election, the association must file a report with the FEC.

Although 501(c)(6) organizations may encourage political involvement by the general public, any information they disseminate must be nonpartisan in nature. In other words, such information may not indicate any political affiliation or favor any specific candidates. The FEC provides relatively detailed guidance about the characteristics of nonpartisan communications, including voter guides and congressional voting records. 501(c)(6) organizations may invite a candidate, a candidate's representative, or party representative to address its members about a campaign. During such an event, the candidate or representative may even solicit contributions to a campaign, and the organization's leaders

may encourage such contributions. Such an event could be viewed as a political fund-raiser, but attendance must be carefully restricted to the organization's members and executives (in FEC parlance, it's a restricted class and, as such, cannot be open to the general public). A 501(c)(6) organization may also issue a press release to its usual media contacts endorsing particular candidates.

ACS chapters with 501(c)(6) status may use congressional elections as an opportunity for meeting candidates and their campaign staff and educating them about issues of concern to their members.

Contributions from individuals

Under federal election law, an individual may contribute up to \$2,100 to any one candidate per election (primary, general, or special). In the aggregate, an individual's political contributions, including those made to PACs, are limited to \$101,400 biannually. An individual may offer the use of his or her home for candidate and political party-related activities. The cost of related invitations, food, and beverages voluntarily provided by the individual host are considered in-kind political contributions and are included in their annual giving limits.

State lobbying activities

State election laws also restrict the amount of money an individual surgeon state-level PAC may contribute to a state or local campaign. Because of the variation from state to state, it is important to know a specific state's spending limit before making a contribution. The best way to acquire this information would be to call a candidate's office and ask the campaign manager about the legal limits. This individual, no doubt, would be more than happy to provide this information and help to coordinate any fund-raising activity.

Collective action for liability reform

Over the past few years, surgeons have become very involved in lobbying and political action activities relating to medical liability reform. Whether it be for federal or state legislation, surgeons have risen to the occasion and have provided their patients with informational issue

brochures, hung posters in their waiting rooms, and contacted their elected officials multiple times in person, by letter, or by telephone.

Some surgeons have raised questions about the types of activities that are allowable under federal and state laws. Following are some examples of appropriate activities for surgeons and state chapters. However, before a chapter engages in any of these activities it's best to check with the state's ethics office about any limitations.

- *Advocacy events at the capital.* ACS chapters and state medical societies often organize annual advocacy days at their state capitals, which provide their members with opportunities to meet with state legislators to discuss issues of concern and help to build relationships with those officials. Some chapters have arranged these advocacy days to coincide with their annual meetings. Typically, Fellows who have participated in these events say they had very positive experiences and often look forward to the following year's meeting.

- *Regular visits with legislators.* During the state legislative session, progress on a "hot" issue like medical liability reform may require more than one visit to the capital. It is appropriate for individual surgeons to regularly meet with their elected officials, attend committee hearings on proposed legislation, and gather for visible rallies in the capital rotunda or other generally accepted meeting points for public events. In these instances, it is likely that physician offices will be closed for the day, so it is important that arrangements for emergency care be made in the same way a surgeon would if they were leaving town to attend an educational conference or specialty society meeting.

- *Patient education.* This has been a very effective tool in advocating for medical liability reform, as patient brochures can be given to each patient and posters hung on waiting room walls. Take a minute or two during patient visits, if appropriate, to talk about the issue and encourage the patient to contact their state legislators. Some physicians wear liability reform buttons on their coats to initiate a dialogue with their patients.

- *Take advantage of ACS advocacy resources.* The College's Division of Advocacy and Health Policy is responsible for federal and state legis-

lative affairs. The staff in the Washington Office is available to help schedule chapter visits to Capitol Hill and can brief surgeons planning to meet with their federal legislators in DC or their home districts. In the Chicago office, the state affairs staff is available to assist chapters in developing and implementing state advocacy efforts, including contacting state legislators or other officials through the Surgery State Legislative Action Center. In addition, the division's Web site (<http://www.facs.org/ahp/index.html>) contains useful information on medical liability reform (the Medical Liability Reform Action Guide), Medicare and physician reimbursement, and other issues.

Important reminders

One very important point to remember when chapters or surgeons are considering advocacy activities is that if there is any doubt about whether an activity is legal, consult an attorney.

Finally, as mentioned previously, a good resource on chapter activities is the *Chapter Guidebook*. Published by the Division of Member Services, this publication contains very useful information on a host of organizational, administrative, and legal issues facing chapters. A complete copy is available online at www.facs.org/about/chapters/guidebook.html. 