

# YOUR RIGHT AND YOUR OBLIGATION AS A NONPROFIT TO LOBBY

Pat Libby  
Clinical Professor  
University of San Diego

[www.sandiego.edu/nonprofit](http://www.sandiego.edu/nonprofit)

# JEFFREY BERRY'S LOBBYING QUIZ

1. Can a NP propose federal legislation?
2. Take a policy position on a specific bill?
3. Support or oppose federal regulations?
4. Lobby if part of your budget comes from federal funds?
5. Use government funds to lobby Congress?
6. Endorse a candidate for elected office?
7. Talk to elected officials about public policy matters?
8. Sponsor a candidate debate or forum?

It's 100% legal for  
501 (C) (3)'s to lobby!

# WHY SHOULD I DO IT?

To create laws that will benefit society and the people served by my organization

Civil Rights Act, Voting Rights Act, Clean Air Act, Americans with Disabilities, Living Wage Law ....

To participate in important policy debates that have an impact on the NP sector, e.g., health care reform, the tax deductibility of donations

# WHAT IS IT?

- ◉ **Direct lobbying** = stating a position on specific legislation to legislators (and/or their staff)
- ◉ **Grassroots lobbying** = communicating a position on specific legislation to the general public and issuing a “call to action” by asking the general public to contact their elected representatives to support that position

# WHAT ACTIVITIES ARE LOBBYING?

- ◉ Taking a position on specific legislation (or law at the local level such as a proposed city ordinance)
- ◉ Communicating with law-makers or their staff
- ◉ Telling the general public how to vote on a specific legislative proposal (such as a ballot initiative) - known as a "call to action".
- ◉ Urging your members to vote on a specific proposal - call to action

# WHAT ARE THE LEGAL LIMITS?

Nonprofits have two options:

1. Lobby as part of the “substantial part test” which means that you DON’T spend a substantial part of your NP’s resources lobbying. Everyone falls under this unless you choose to ...
2. Lobby by filing a 501 (h) election with the IRS a.k.a. the “expenditures test” and reporting annually on the form 990

# KEY ELEMENTS: EXPENDITURE TEST

NPs may spend 20% of the first \$500,000 of their annual expenditures on lobbying (\$100,000), 15% of the next \$500,000, and so on, up to \$1 million dollars a year!

# A NONPROFIT IS LOBBYING WHEN...

It engages in direct or grassroots lobbying.

- ◉ **Direct lobbying** = stating a position on specific legislation to legislators (and/or their staff)
- ◉ **Grassroots lobbying** = communicating a position on specific legislation to the general public and issuing a “call to action” by asking the general public to contact their elected representatives to support that position

## Lobbying Ceilings Under the 1976 Lobby Law

---



---

<i>Annual Exempt-Purpose Expenditures</i>	<i>Total Direct Lobbying Expenditures Allowable</i>	<i>Total Grassroots Lobbying Expenditures Allowable</i>
Up to \$500,000	20% of exempt-purpose expenditures up to \$100,000	One-quarter of the total direct lobbying expenditure ceiling
\$500,000–\$1 million	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1 million–\$1.5 million	\$175,000 + 10% of excess over \$1 million	\$43,750 + 2.5% of excess over \$1 million
\$1.5 million–\$17 million	\$225,000 + 5% of excess over \$1.5 million	\$56,250 + 1.25% of excess over \$1.5 million
Over \$17 million	\$1 million	\$250,000

# WITH THE H ELECTION, LOBBYING ISN'T...

- ◉ Influencing regulations
- ◉ Member communications (as long as no “call to action”)
- ◉ Testimony (including preparing testimony if there is a written request by a committee)
- ◉ Discussion of broad, social, economic issues
- ◉ Nonpartisan research
- ◉ Self-defense lobbying (this means issues facing the NP sector as a whole e.g., health care - not defending your own NP).

# WHAT YOU CAN'T DO!

Endorse candidates for office!

# WHERE DO YOU GET MONEY TO LOBBY?

- ◉ From membership dues
- ◉ Donations from individuals
- ◉ Special events
- ◉ Some foundations allow general operating grant funds to be used for lobbying
- ◉ Community Foundations can earmark money for lobbying

# CAN'T USE MONEY TO LOBBY FROM...

- ⦿ The government! (Duh)
- ⦿ Some foundations, as specified by them
  
- ⦿ **IMPORTANT:** some NPS mistakenly believe they can't lobby if they have government \$. That's not true! They just can't use those gov't funds to lobby.

# BEFORE YOU START...

- ⦿ Decide whether to make the 501 (h) election
- ⦿ Review the laws for your city, county, and state to see if you or your organization are required to be registered as a lobbyist.
- ⦿ Make sure you have systems in place to track your time carefully for IRS compliance.
- ⦿ AND...

# REVIEW MATERIALS FROM THE EXPERTS...

- ◉ Alliance for Justice [afj.org](http://afj.org)
- ◉ Center for Lobbying in the Public Interest ([CLPI.org](http://CLPI.org))

Where do I begin?

# THE 10 STEP LOBBYING STRATEGY FRAMEWORK

1. Identify an issue.
2. Research the issue
3. Create a fact sheet
4. Brand the issue.
5. Map out possible supporters and detractors.

## THE NEXT 5

6. Form a coalition.
7. Develop educational materials.
8. Launch a media campaign.
9. Approach elected officials
10. Monitor progress on the issue.

# THE CALIFORNIA - TIJUANA TIRE CYCLE



6.

1. In order to support waste tire diversion programs, the tire cycle begins with California consumers paying the \$1.75 California Tire Fee.



1.

2. More than two million waste tires are exported from California annually.

3. Waste tires are used as inexpensive building materials and for attempted erosion control in Mexican border cities.



5.

4. Storm water carries thousands of waste tires back across the border from Tijuana to California posing environmental, health and economic threats.

5. More than 80,000 pounds of waste tires are removed, by hand, from the sensitive habitats of the Tijuana Estuary annually.



2.

6. Costing the state between \$5 and \$13 per tire removed, the waste tires ultimately end up in California landfills.



California  
Mexico



California  
Mexico



4.



3.



Reducing the public health, environmental, and economic impacts of waste tires along the California-Tijuana border



SB 167 will reduce the public health, environmental, and economic impacts of waste tires along the California-Tijuana border

## THE CALIFORNIA - TIJUANA TIRE CYCLE



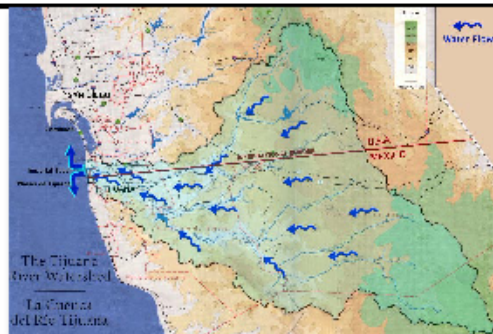
Border Field State Park, San Diego County on Thanksgiving Day, 2008. Pollution shown in picture is the result of less than one inch of rain which fell in the region the previous day.

The California Legislature can help break this tire cycle by **passing SB 167** (Ducheny) to give the CIWMB the authority to fund waste tire recycling and reuse projects in Baja California. As these funds are available in surplus, this legislation has a *neutral fiscal* impact.

The California Integrated Waste Management Board (CIWMB) exports more than two million waste tires annually in an effort to keep them out of California landfills. In Mexican border cities, waste tires are used in shantytowns, or colonias, as inexpensive building materials and for attempted erosion control. During our annual wet-weather months, storm water carries thousands of waste tires back across the border from Tijuana into California. This creates significant environmental, public health, and economic impacts. State, local, and federal agencies spend public funds to excavate the tires, which are ultimately disposed in California landfills. The most efficient and cost-effective way to deal with this waste tire issue is to work directly with Baja California agencies to support the development and markets for waste tires, and to invest in and develop cooperative reuse projects. Despite a surplus of means available in the established fund for these projects, the CIWMB does not currently have the authority to spend money across the border.

**80,000 pounds**  
Approximately 4,000 tires (80,000 pounds) are hand-plucked each year from the river, sediment basins, and the sensitive habitats of the Tijuana River Valley and the Tijuana River National Estuarine Research Reserve. Many thousands more are unable to be removed due to limited time and resources.

California Biodiversity Council. Biodiversity Along the Border Committee. Final Report. 2007.



Contact the Break the Tire Cycle Coalition at:

925 Seacoast Drive • Imperial Beach, California 91932 • p: 619.423.8665, ext. 208 • f: 619.423.8488  
breakthetirecycle@gmail.com

**Contact the Break the Tire Cycle Coalition at:**

925 Seacoast Drive • Imperial Beach, California 91932 • p: 619.423.8665, ext. 208 • f: 619.423.8488  
breakthetirecycle@gmail.com

## STATE TIRE FUND SURPLUS



Los Laureles, Tijuana - one mile upstream from the US/Mexico border

**T**he CIWMB's Tire Fund has carried a persistently large reserve balance of more than \$20 million for several years. As of May 20, 2008 this balance was \$42 million and was projected to increase to approximately \$58 million by Fiscal Year 2009/10.

In recent years, the Legislature has taken the lead by giving statutory direction on the use of the Tire Fund in an effort to address the flow of waste tires from Mexico. In 2005, SB 772 was enacted to require the CIWMB to include in the Five-Year Plan specified border region activities conducted in coordination with the California Environmental Protection Agency. These activities include training programs, environmental education, development of waste tire abatement plan, and a study tracking tire flow across the border.

The greatest obstacle to reducing the flow of tires across the border is that the CIWMB does not have the authority to fund projects in Baja California through the established grant program.

California Integrated Waste Management Board, May 20, 2008 Board Meeting.

"The amount and proportion of waste tires that are not diverted from landfills is still large... the large fund balance presents the board with the opportunity to increase the waste tire diversion rate."

-Legislative Analyst's Office, 2007 report on the California Integrated Waste Management Board.

### SPEAKING OUT TO BREAK THE TIRE CYCLE

"Preventing tires... from entering the Tijuana River and Estuary is a less expensive fix than funding on-going litter removal and recycling programs. California state agencies and local government departments assigned to eradicate tire piles... and/or fund projects to do so do not have the authority or the power to spend public funds in Mexico. Yet it is acknowledged that addressing the problem upstream is less expensive than cleaning up the aftermath downstream."

-California Biodiversity Council, Biodiversity Along the Border Committee, Final Report 2007.

### Take Action: What you can do

Contact your California State Senator and Assemblymember and tell them that they can help break this tire cycle by **VOTING YES ON SB 167** to give the CIWMB the authority to support waste tire recycling and reuse projects in Baja California.

Waste tires from Tijuana blanket the sensitive ecosystems of the Tijuana River Valley, Estuary, and Border Field State Park. They make the restoration of the Tijuana Estuary difficult, as each tire must be excavated by hand.

Clay Phillips, Tijuana River National Research Reserve Manager, 11/25/08



Public recreational trail, Tijuana River Valley County Regional Park - January 9, 2009

### SB 167 Bill Supporters:

United States Environmental Protection Agency (USEPA)  
American Federation of State, County & Municipal Employees  
AFL-CIO  
Rubber Manufacturer Association  
City of Imperial Beach  
Eighth District of San Diego (Benjamin Hueso, Council President)  
Heal the Bay  
Natural Resources Defense Council  
Planning and Conservation League  
San Diego Coastkeeper  
Southwest Wetlands Interpretive Association  
Surfrider San Diego  
Tijuana River Valley Equestrian Association  
Tijuana River Citizens' Council

### SB 167 Bill Sponsors:

WILD/COAST/COSTASALVAJE and Breaking the Tire Cycle Coalition

Photos courtesy of Ben McCue - WILD/COAST/COSTASALVAJE



Ben McCue

LD COAST/COSTA SALVAJ

Now Available from Sage Publications:

THE LOBBYING STRATEGY  
HANDBOOK: 10 STEPS TO  
ADVANCING ANY CAUSE  
EFFECTIVELY  
BY PAT LIBBY AND  
ASSOCIATES.

# LOBBYING IS NOT A 4 LETTER WORD

Lessons from The Lobbying Strategy Handbook:  
**10 steps for advancing any cause effectively**

*By Pat Libby*

What is lobbying?

*Attempting to influence  
legislation*

- Taking a position
- Communicating with law-makers
- Telling the public how to vote
- Urging your members to vote

**Election/Revocation of Election by an Eligible  
Section 501(c)(3) Organization To Make  
Expenditures To Influence Legislation**

(Under Section 501(h) of the Internal Revenue Code)

For IRS  
Use Only ►

Name of organization

Employer identification number

⋮

Number and street (or P.O. box no., if mail is not delivered to street address)

Room/suite

City, town or post office, and state

ZIP + 4

- 1 Election**—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending.....and all subsequent tax years until revoked. (Month, day, and year)

**Note:** *This election must be signed and postmarked within the first taxable year to which it applies.*

- 2 Revocation**—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending..... (Month, day, and year)

**Note:** *This revocation must be signed and postmarked before the first day of the tax year to which it applies.*

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ►  election  revocation on behalf of the above named organization.

.....  
(Signature of officer or trustee).....  
(Type or print name and title).....  
(Date)

NPs may spend **20% of the first \$500,000** of their annual expenditures on lobbying (\$100,000), 15% of the next \$500,000, and so on, up to \$1 million dollars a year!

## Lobbying Ceilings Under the 1976 Lobby Law

---

---

<i>Annual Exempt-Purpose Expenditures</i>	<i>Total Direct Lobbying Expenditures Allowable</i>	<i>Total Grassroots Lobbying Expenditures Allowable</i>
Up to \$500,000	20% of exempt-purpose expenditures up to \$100,000	One-quarter of the total direct lobbying expenditure ceiling
\$500,000–\$1 million	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1 million–\$1.5 million	\$175,000 + 10% of excess over \$1 million	\$43,750 + 2.5% of excess over \$1 million
\$1.5 million–\$17 million	\$225,000 + 5% of excess over \$1.5 million	\$56,250 + 1.25% of excess over \$1.5 million
Over \$17 million	\$1 million	\$250,000

Under 501 (h)  
You're not lobbying  
when...

- Influencing regulations
- Communicating with members
- Testifying
- Discussing broad, social, economic issues
- Doing nonpartisan research
- Self-defense lobbying

Decide whether to make the 501 (h) election.

Review the laws for your city, county, and state to see if you or your organization are required to be registered as a lobbyist.

Make sure you have systems in place to track your time carefully for IRS compliance.

AND...

Alliance for Justice

[www.afj.org](http://www.afj.org)

Center for Lobbying in the  
Public Interest

[www.clpi.org](http://www.clpi.org)