

# Make Your Nonprofit's Voice Heard (Legally)

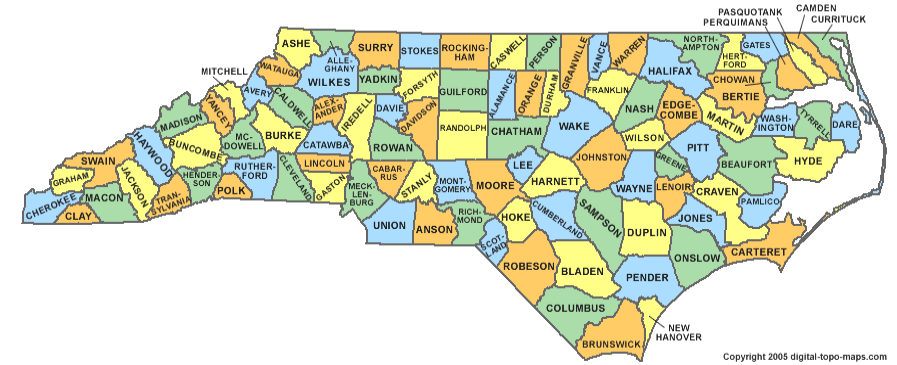
## *Lobbying Laws for 501(c)(3)s*

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North Carolina Center *for* Nonprofits



# Connect Learn Advocate



# Important Disclaimers

*If you can read this fine print, you are sitting too close to your screen!*



# Section 501(c)(3) of the Internal Revenue Code

# Electioneering by 501(c)(3)s

- Excerpt from Internal Revenue Code § 501(c)(3)
  - “. . . which does 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.”

# Translation



# What your nonprofit *can* do





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## Three Questions for Candidates for Office in 2022

*With responses published for community leaders throughout your district*



# What your nonprofit *can* do



North Carolina



Center for Nonprofits

Many missions | 100 counties | One voice

# Lobbying by 501(c)(3)s

- Excerpt from Internal Revenue Code § 501(c)(3)
  - “. . . no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))”

# Translation



# *What is lobbying?\**

Influencing *legislation* at the federal, state, or local level

**\* For purposes of federal tax law**



# Lobbying

*How much lobbying can you do?*

*(as a 501(c)(3) nonprofit)*

*Two answers:*

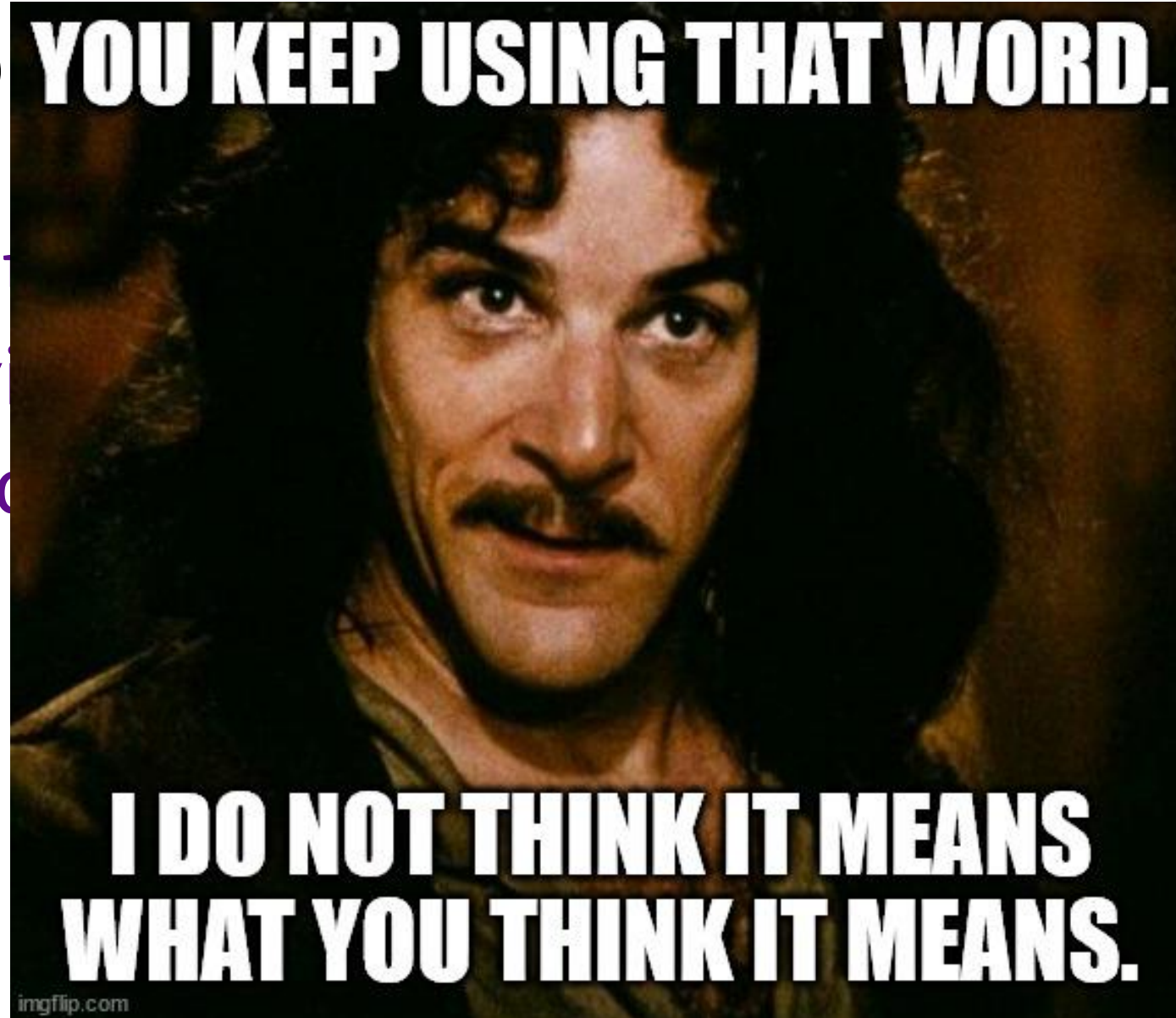
1. An “insubstantial” amount
2. 501(h) election – expenditure test



# Lobbying: YOU KEEP USING THAT WORD. est

- Definition
- Lobbying
- Records

ficant



# Lobbying – 501(h) expenditure test

- Direct Lobbying
  - Communication
  - Specific legislation
  - Expresses a viewpoint
- Includes action at federal, state, or local level

# Lobbying – 501(h) expenditure test

## *Limits on lobbying expenditures*

- 20% of the first \$500,000 of an organization's exempt purpose expenditures, plus
- 15% of the second \$500,000, plus
- 10% of the third \$500,000, plus
- 5% of the remainder of such expenditures,
- with a cap of \$1 million in annual lobbying expenses

# Lobbying – 501(h) expenditure test

- Grassroots Lobbying
  - Specific legislation
  - Expresses a viewpoint
  - Call to action
  - Goes out to general public
- Limit is 25% of limit for direct lobbying (under the 501(h) expenditure test)

# Lobbying – 501(h) expenditure test

Form <b>5768</b> (Rev. September 2016) Department of the Treasury Internal Revenue Service	<b>Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation</b> (Under Section 501(h) of the Internal Revenue Code) ► Information about Form 5768 and its instructions is at <a href="http://www.irs.gov/form5768">www.irs.gov/form5768</a> .		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
<p><b>1 Election—</b> 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)</p> <p><b>Note:</b> This election must be signed and postmarked within the first taxable year to which it applies.</p>			
<p><b>2 Revocation—</b> 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 _____ and all subsequent tax years <i>(until a new election is made)</i>.          (Month, day, and year)</p> <p><b>Note:</b> This revocation must be signed and postmarked before the first day of the tax year to which it applies.</p>			
Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ► <input type="checkbox"/> election <input type="checkbox"/> revocation on behalf of the above named organization.			
_____ (Signature of officer or trustee)	_____ (Type or print name and title)	_____ (Date)	

North Carolina



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# Form 990, Schedule C

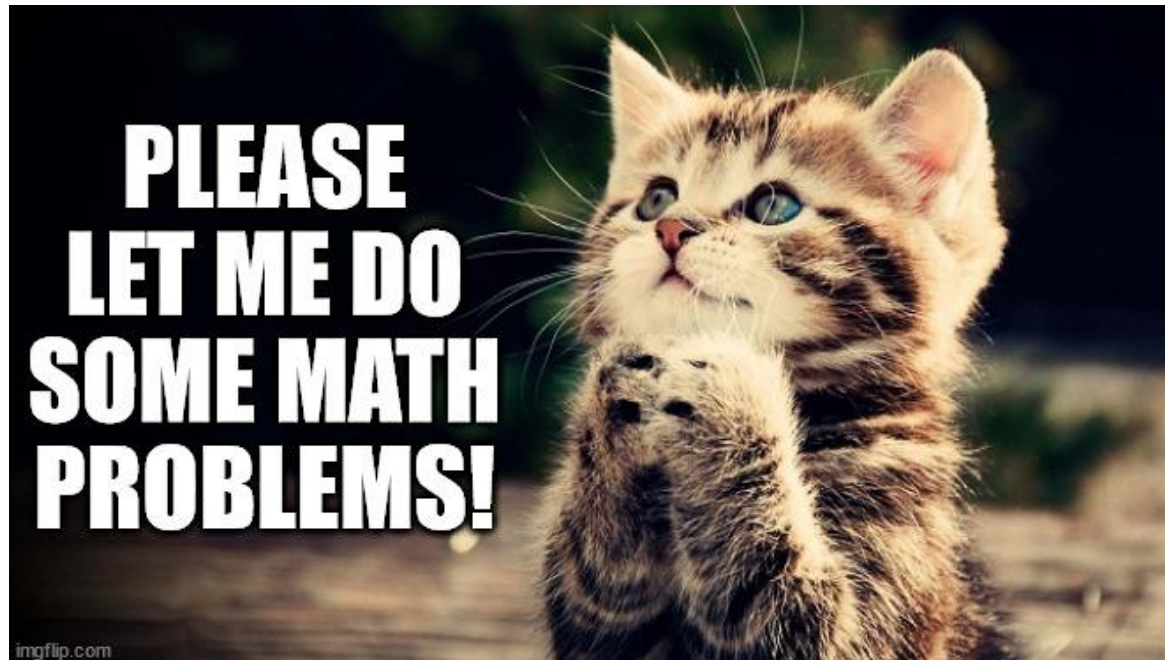
## *Part I*





# Form 990, Schedule C

## *Part II-A: 501(h)*



# Form 990, Schedule C

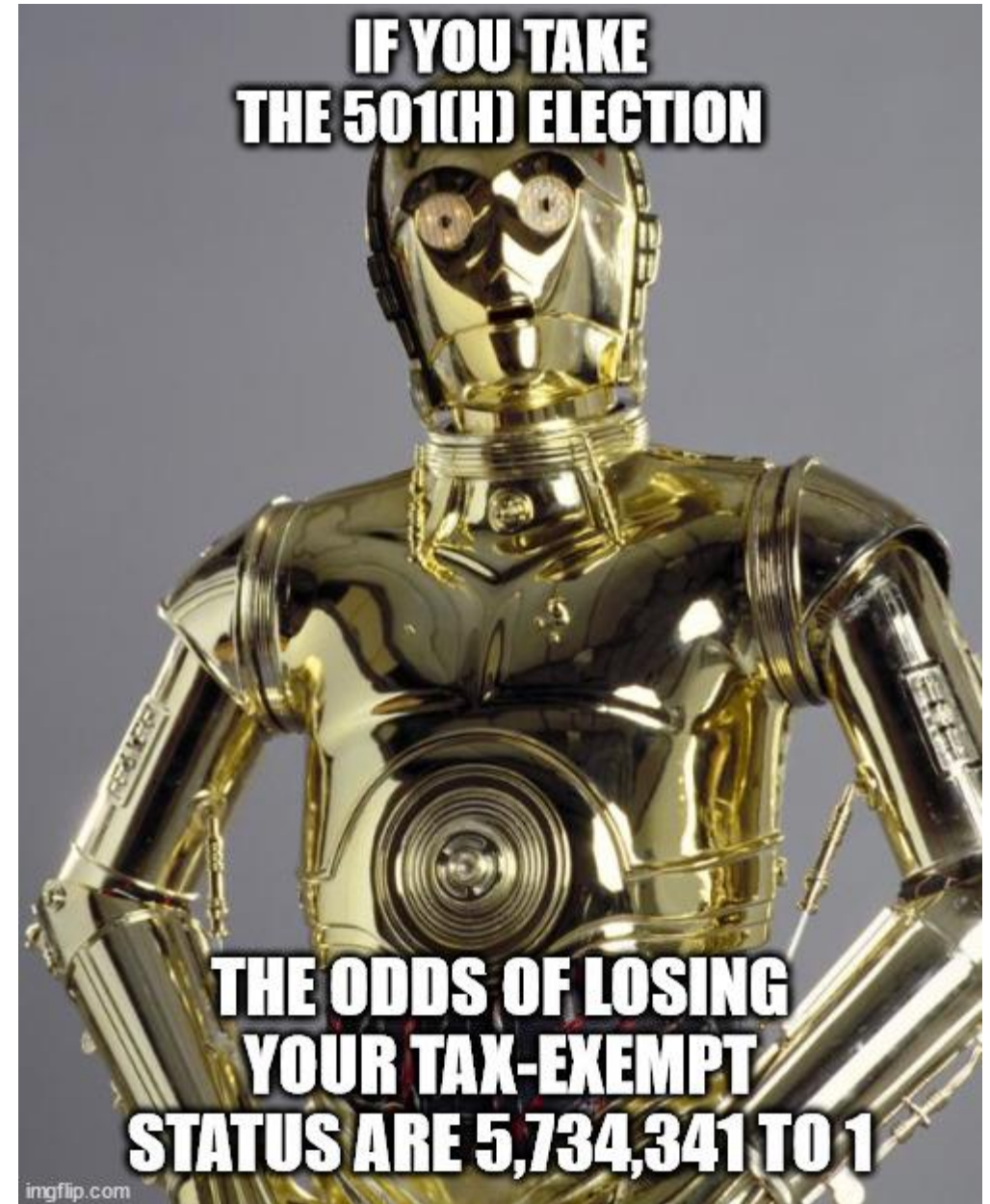
## *Part II-B: Non-501(h)*





# Tips on lobbying

- The 501(h) election focuses on lobbying expenses
- So there is virtually no limit on lobbying by volunteers, board members, and clients



# Common question

- Will n  
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- *Proba*
- *But yo*  
*becau*

status if

*ay,*  
*stake!*



# State lobbying registration and reporting

# *What is lobbying?\**

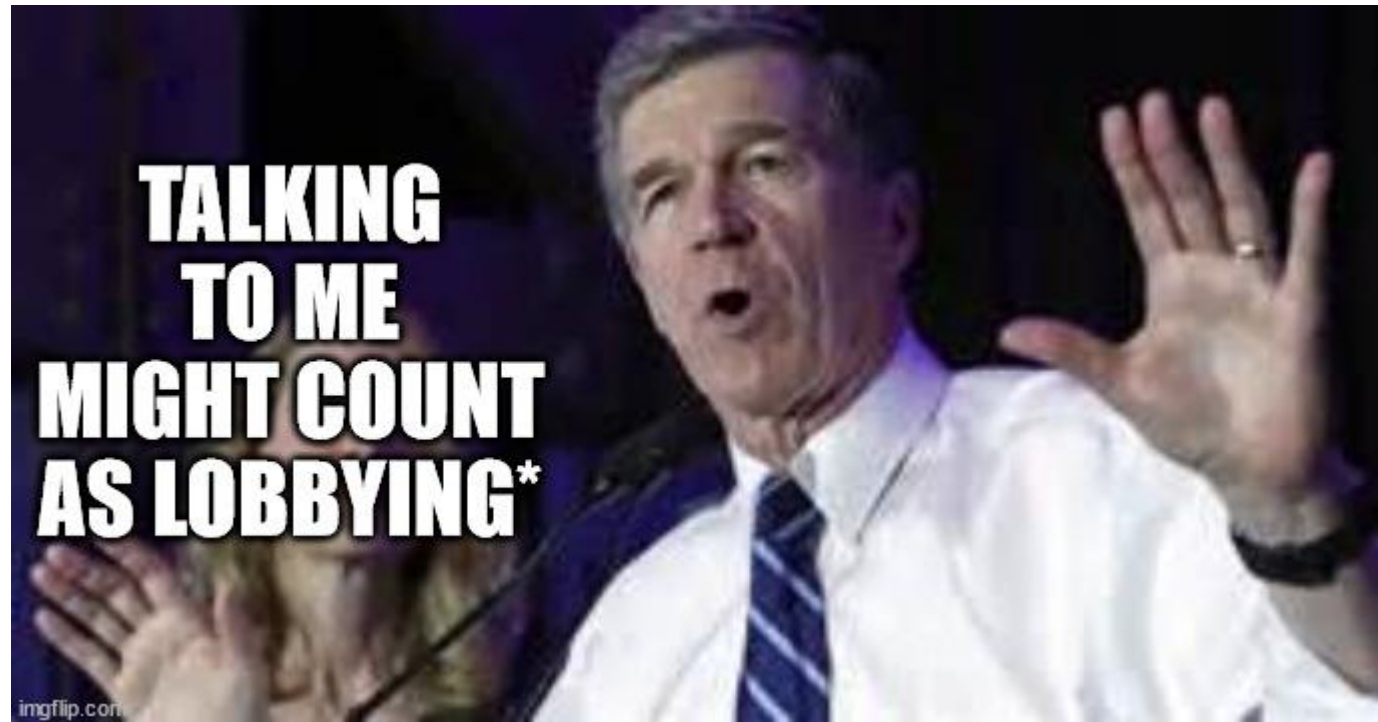
Influencing *legislation* at the federal, state, or local level

**\* For purposes of federal tax law**

# *What is lobbying?\**

Influencing *legislation or executive action* at the state level and developing goodwill with state officials

**\* For purposes of NC lobbying statute**



**\* For purposes of NC lobbying statute**

# State lobbying reporting

- Lobbyist principals – nonprofit organizations
- Lobbyists – individuals who lobby on behalf of nonprofits



# Who is a lobbyist for a nonprofit?

1. A contractor who engages in any lobbying; OR
2. A nonprofit employee who spends at least 5% of their time lobbying state officials



# *Does your nonprofit have a lobbyist?*

Yes



The state lobbying  
registration and reporting  
laws apply to your  
organization

No



You can leave for the next 8  
minutes . . . unless you are  
here for CLE credit

# State lobbying registration

- Lobbyist principal and each lobbyist must file annually with the NC Secretary of State
- Must file within one day after beginning lobbying

# State lobbying reporting

- Quarterly reports for principal and each lobbyist
  - Must be notarized and filed electronically
  - Short form for nonprofits without payments to state officials, contracts with state officials, or event expenses for state officials

# State lobbying reporting

- Monthly reports during legislative session if there are reportable expenditures
  - Expenditures that benefit state officials or their family members
  - Contracts with state officials or their family members
  - Includes reimbursed expenditures made by lobbyists

# State lobbying reporting

- State law no longer requires registration or reporting for nonprofits for “solicitation of others”

# Lobbyist gift ban



# Exceptions to lobbyist gift ban

- Food and beverage at *free public events* if an entire legislative group or at least 10 public servants are invited
- Expense reimbursement for educational meetings
- Expense reimbursement for nonprofit staff, board, and contractors
- Plaques and other non-monetary mementos

# Restrictions on registered lobbyists

- No campaign contributions to state legislators or public servants or candidates for state offices
- No bundling of campaign contributions
- No registration for six months after being a public servant
- Ineligibility for certain state boards and commissions



# Statements of Economic Interest

- Filed with NC State Ethics Commission
- Easy way to search for state officials covered by lobbying laws
- State legislators and state officials must list nonprofits for which they or immediate family members serve as employees, board members, or contractors

# Ballot measure advocacy



# Common election-year question

- Can a 501(c)(3) nonprofit take positions on ballot measures?
- *Yes.*
- *This is considered lobbying, not partisan political engagement.*
- *And it is direct lobbying, not grassroots lobbying.*

# Referendum committees

- Required to register in North Carolina
- Register with NC State Board of Elections for statewide referenda
- Register with county board of elections for local referenda

# 501(c)(4) organizations



# 501(c)(3)s vs. 501(c)(4)s

- 501(c)(3) charitable nonprofits
  - Limited lobbying is allowed
  - No partisan political intervention
- 501(c)(4) social welfare organizations
  - Unlimited lobbying is allowed
  - Some partisan political intervention – but no clear limits



# Legal basics for 501(c)(4)s

- No limits on lobbying
- Political activities are permitted but can't be primary purpose of organization
  - Endorsement of candidates
  - Independent expenditures on elections
  - Limited IRS guidance and enforcement of “primary purpose” limitation

# Legal basics for 501(c)(4)s



# Legal basics for 501(c)(4)s

- Generally incorporated as nonprofits
- Generally have different language from 501(c)(3)s in articles of incorporation

# Typical structure of 501(c)(3)/501(c)(4)

- Two separate organizations
  - Separate legal entities and bylaws
  - Separate boards (although some members may overlap)
  - Shared staff (with time tracking)
  - Separate finances
  - MOU between organization
  - Websites and publications – caution needed for 501(c)(3)

# Grants from 501(c)(3) to 501(c)(4)

- 501(c)(3) *can* make a grant to a 501(c)(4)
- Grant agreement is particularly important
  - Grant can be used for lobbying, but counts towards lobbying expenditures of 501(c)(3)
  - Grant can be used for lobbying in future years
  - Important to prohibit grant from being used for partisan political intervention

# Pros and cons of a 501(c)(4)

- Pros
  - More flexibility with types of advocacy activities
  - No limits on lobbying
- Cons
  - Fundraising can be more difficult
  - Staff timekeeping (and other operational challenges)
  - Potential harm to brand as a “dark money” organization

# Practical considerations

- Who is the audience for the 501(c)(3)'s advocacy work?
- How would a related 501(c)(4) organization affect their perception of the 501(c)(3)?
- How would this affect their expectations of 501(c)(3)?
- How would this affect the 501(c)(3)'s legislative advocacy?



Dad's  
boring  
presentation

Dad's  
boring presentation  
+ memes

