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Senate Confirmation Votes Are “Specific Legislation,” so Know Your Lobbying Rules!

President Obama’s nomination of Dr. Vivek Murthy, a highly regarded physician and serial entrepreneur, to be Surgeon General of the United States has become a hot topic in political circles. Dr. Murthy has been endorsed by prestigious voices in the medical establishment, such as the [New England Journal of Medicine](#), and mainstream media such as the [Boston Globe](#) and the [New York Times](#). His nomination is opposed, however, by the National Rifle Association, which is concerned because Dr. Murthy supports a ban on assault weapons. As a result of this opposition, the Senate’s confirmation vote may be delayed, and the nomination may be withdrawn.

Charities that wish to participate in this discussion should be aware that a vote in the Senate on the confirmation of a nominee constitutes “specific legislation” for purposes of federal tax rules governing lobbying by charities. As a result, a charity’s communication with senators expressing support for or opposition to the confirmation will constitute direct lobbying, unless the communication fits within one of the exceptions to the lobbying definition (such as nonpartisan analysis, study, or research, or a response to a written request from a government body for technical assistance). Similarly, a communication by a charity asking members of the general public to contact their senators about the vote will constitute grassroots lobbying. The charity’s expenditures in connection with such communications will count against the charity’s lobbying limits, and may be made only with funds that the charity is permitted to use for lobbying.

Of course, charities are allowed to lobby within limits, and the limits are pretty generous for charities that have elected to measure their lobbying under the powerful Section 501(h) “expenditure test.”

So if the selection of the Surgeon General is relevant to your charity’s mission, and you have an interest in this nomination, know that federal tax law provides opportunities to participate in the debate.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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