

# Philanthropy Advocacy PLAYBOOK

Leveraging Your Dollars



## ABOUT ALLIANCE FOR JUSTICE AND BOLDER ADVOCACY

Alliance for Justice (AFJ) is a national association of more than 100 organizations united by a commitment to a fair, just, and free America, where everyone has equal access to justice and can fully participate in our democracy. Learn more at [www.AFJ.org](http://www.AFJ.org).

For over 25 years, AFJ has promoted active engagement in the democratic process, by giving nonprofits and foundations the confidence to advocate effectively. Within AFJ, Bolder Advocacy helps foundations and their nonprofit grantees understand the complex rules governing advocacy and advance their mission. Bolder Advocacy offers resources, best practices, tools, coaching, and the Technical Assistance Hotline (866-NP-LOBBY). Bolder Advocacy also works to protect and expand the right of nonprofits and foundations to advocate. Learn more at [www.bolderadvocacy.org](http://www.bolderadvocacy.org).

## About This Publication

*Philanthropy Advocacy Playbook: Leveraging Your Dollars* is designed to provide foundations with the information they need to both fund and conduct advocacy. *The Playbook* provides examples of how foundation investments have generated meaningful policy change, as well as links to other publications and fact sheets that will allow foundation leaders to quickly answer their questions and access additional information.

### TO DOWNLOAD THE PLAYBOOK

in its entirety or by chapter, visit us online at

[www.bolderadvocacy.org/PLAYBOOK](http://www.bolderadvocacy.org/PLAYBOOK)

### Go to [www.bolderadvocacy.org/PLAYBOOK](http://www.bolderadvocacy.org/PLAYBOOK) to:

- Access dozens of plain-language legal and strategy resources on national and state advocacy laws.
- Talk to a legal expert to receive one-on-one help.
- Sign up for workshops or web-based trainings.
- Learn about advocacy success stories and best practices from nonprofits and foundations.
- Find tools to measure an organization's capacity for advocacy and community organizing and evaluate its efforts.
- Request workshops tailored to you or your grantees' unique needs.
- Download sample grant agreements.
- Read interviews with other foundations.

### Special Notes

- Throughout the Playbook, we use the “nonprofit” or “organization.” Unless otherwise specified, we are using this broad term to refer to 501(c)(3) public charities, since foundations usually make grants to public charities. In a few places, however, we do discuss foundation grants to 501(c)(4)s or other non-public charities, and clearly indicate so.
- The Playbook is not intended as a detailed legal guide. It provides an overview of the legal rules regarding lobbying, election-related activities, and grantmaking, but does not cover all the nuances and details. For more specifics, see *Investing in Change: A Funder's Guide to Supporting Advocacy* and other resources on the Bolder Advocacy website, [www.bolderadvocacy.org](http://www.bolderadvocacy.org).

# Preface

Faced with the challenges and complexities of our modern society, it's easy to lose sight of the enormous gains that have been achieved in our country and around the world. We have witnessed progress made in areas as vital as human and civil rights, environmental and consumer protection, global security, accessibility of health care, and education. Although the path to progress has been trod by a remarkable assortment of courageous individuals, institutions, and public officials, it's an undeniable fact that organizations of all types have played a vital—sometimes central—role in accelerating and inspiring change.

Nonprofits have played this historic role because of a high level of philanthropic support, enabling them to bring the concerns of their communities and constituencies to the attention of decision-makers and opinion-shapers. The record is clear: for foundations seeking to leverage the impact of their limited grant monies, the highest payoff comes from investing in advocacy strategies.

Many nonprofit leaders view advocacy as a tool that advances their mission, empowers their supporters and members, triggers public debate and discussion, and leads to solutions for pressing problems. Active, successful nonprofits with policy goals understand that employing advocacy strategies is perfectly legal including, within limits, tactics such as lobbying.

Most importantly, advocacy is often the most effective strategy in the philanthropy toolbox for effecting long-lasting, broad-based change. By changing the underlying policies and laws, countless lives can be affected for decades to come. Without question, when a foundation provides support to a program that provides a direct community service, the impact is seen immediately. But there is also great value in simultaneously supporting advocacy work that produces changes to laws, regulations, and policies that have long-term impacts and address the broader context in which problems exist.

*The Playbook* is a practical guide that is filled with best practices. It sets the record straight by demystifying myths about philanthropy's role in funding advocacy. It also describes the legal environment that governs the activities of both nonprofits and funders. Whether a foundation has yet to embark on an advocacy journey or fully embraces it as integral to its culture, *The Playbook* is an indispensable source of information and guidance, and it been created in the hope that the foundation community will continue to play a central role in meeting the profound challenges of this pivotal moment in our history.



Nan Aron  
ALLIANCE FOR JUSTICE, PRESIDENT

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# 1. Introduction: Bolstering a Foundation's Mission



ALLIANCE FOR JUSTICE MEMBER: **CENTER FOR CONSTITUTIONAL RIGHTS**

It is common knowledge that supporting direct services alone can't possibly fill the gap between society's needs and government's willingness or ability to address them. That's why grantmaking to influence public policy is growing, particularly in an era of stringent cutbacks in state and federal assistance.

## **Foundations Are Scoring Major Successes by Helping Their Grantees:**

- Influence the actions of federal, state, and local agencies.
- Secure policy victories in state legislative bodies.
- Win ballot measures.
- Educate the public and the media about the need for better policies.
- Encourage more voter participation and candidate debate during election season.

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## What is Advocacy?

Public policy advocacy aims to address an injustice or create systemic social change through changes in the law or how the law is interpreted or applied.

Advocacy activities can include conducting policy research, meeting with reporters, educating the public, lobbying a legislator, meeting with a government regulator, filing a lawsuit, or mobilizing voters.

Most foundations and their grantees are already engaged at some level in a number of these activities—each of which is fully legal (see p. 11).

## Common Advocacy Misconceptions

Although supporting advocacy efforts have led to numerous successes, some foundations avoid this path because of several misconceptions:

### MISCONCEPTION

### REALITY

Advocacy doesn't deliver tangible benefits.

In many cases, advocacy can leverage limited funding more effectively than almost any other strategy (see p. 7).

Advocacy is legally risky.

Properly understood, the rules allow foundations—both private and public—to legally support almost every type of advocacy (see p. 14).

Advocacy can't be properly measured and evaluated.

By looking at the right metrics, advocacy work can be rigorously measured and evaluated (see p. 27).

Advocacy is too controversial.

The overwhelming majority of foundations supporting advocacy have never been embroiled in a public controversy.

To advance their philanthropic goals, many large foundations are finding that public policy advocacy plays a critical role in achieving their bold missions.



### The Hewlett Foundation Embraces Advocacy to Make a Difference on Climate Change

For years, the William and Flora Hewlett Foundation invested in technical research on climate change. Over time, the foundation recognized that to have a meaningful impact on the issue it had to go further, supporting public policy education and even lobbying campaigns. "It's not enough to develop technical solutions," according to Hewlett president Larry Kramer. "You have to engage in some kind of advocacy work if you want to see anything actually happen."

### The Rhode Island Foundation's Ballot Initiative Work on Housing

Twice in the last several years, the Rhode Island Foundation directly participated in statewide ballot referendum campaigns—defined as lobbying by the IRS—resulting in \$75 million in affordable housing bonds. Advocacy was a new role for the foundation when it started this work. Housing was critical to the success of several of the foundation's key priorities, including health care and education, so the community foundation directly managed a statewide advocacy campaign. This campaign included running ads in support of the ballot measure, canvassing voters at community events, and organizing volunteers to "get out the vote" on election day. The first bond measure financed more than 1,200 affordable homes. The foundation's work on a second successful measure has created hundreds of additional affordable homes.

Community foundations enjoy greater legal latitude than private foundations in supporting advocacy and lobbying, and community foundations exert civic leadership as advocates for the communities they serve.

All foundations, and more especially smaller ones, are finding they can have an outsized impact by supporting smart, strategic policy campaigns that lead to big changes.

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### The Tow Foundation's Path to Advocacy Grantmaking

The Tow Foundation, a private family foundation with assets of approximately \$200 million, actively works to influence public policy. President Emily Tow Jackson explains in a recent foundation publication that this wasn't always the case:

*"There is a new push in philanthropy to 'do' advocacy as a high impact strategy. It sounds lofty and many foundations and donors see it as...unattainable with a small staff...I understand because our foundation was there not so long ago...But looking back over a decade on how we could improve the lives of young people in the juvenile justice system...we have played a significant role in successful policy change, legislation, and litigation, which in turn has enabled us to affect thousands of young people."*

Regardless of the societal problems foundations address or communities they serve, advocacy can bolster the work they are already funding.

## 2. Dispelling Myths about Foundation Support for Advocacy



ALLIANCE FOR JUSTICE MEMBER: NATIONAL LGBTQ TASK FORCE ACTION FUND

**MYTH:** In challenging economic times, foundations should focus their resources on supporting the delivery of needed services.

**FACT:** When resources are limited and need is heightened, it is even more important to influence policy decisions related to the allocation of public resources.

**MYTH:** The benefits from advocacy are abstract and often undefined compared to the tangible results from funding direct services.

**FACT:** Although funding advocacy may carry some risk, the rewards can be great. A series of reports has shown returns on investments for advocacy grants greater than 100-to-1 return (see p. 7).

**MYTH:** A foundation must prohibit grantees from using its grants to lobby.

**FACT:** Public and private foundations do not need to prohibit grantees from using grant funds for lobbying. In fact, private

foundations may support public charities that lobby through general support grants and specific project grants (see Ch. III). An absolute lobbying prohibition places an unnecessary burden on both the grantee and foundation. Such a restriction is required only when private foundations make “expenditure responsibility” grants to 501(c)(4) organizations (see p. 37).

**MYTH:** General support grants to public charities that lobby pose risks for foundations.

**FACT:** General support grants—as opposed to specific project grants—provide more legal protection but less programmatic control for foundations. A foundation making a general support grant need not examine the extent of its grantee’s lobbying activities or intentions.

**MYTH:** A foundation cannot mention an interest in funding advocacy in its application guidelines or requests for proposals.

**FACT:** Foundations can publicly express their desire to fund advocacy in their applications, grant agreements, and reports. If the foundation prefers different language, there are several alternate phrases such as “policy reform,” “policy analysis,” or “public education” that can be used in the foundation’s guidelines or RFP.

**MYTH:** Community or other public foundations may not make grants specifically for lobbying purposes.

**FACT:** Unlike private foundations, community or other public foundations may earmark grants specifically for lobbying. Such grants are legal, and they will count against the public foundation’s lobbying limit (see p. 16).

**MYTH:** It is too difficult to evaluate the impact of grantees’ advocacy work.

**FACT:** Advocacy work can be rigorously measured with the right metrics. Foundations can use evaluation guidelines that allow for realistic, incremental, and long-term measures of advocacy progress (see p. 23).

### ADDITIONAL RESOURCES

*Investing in Change: The Importance of Supporting Advocacy*

### 3. Producing Solutions, Not Just Stopgaps



ALLIANCE FOR JUSTICE MEMBER: **CENTER FOR INQUIRY**

Supporting advocacy is an attractive grantmaking strategy for many foundations because it has so many multiplier and spillover effects.

#### **Advocacy Is High-Leverage Grantmaking**

Foundation giving alone cannot meet the growing needs in our world. Advocacy stretches the impact of grants and can help far more people than any single organization providing direct services. One report, documenting a \$115-to-\$1 return on investment from public policy grantmaking, found that more than a hundred organizations in 13 states leveraged \$231 million from foundations to create \$26 billion in benefits for communities and marginalized groups (National Committee for Responsive Philanthropy, *Leveraging Limited Dollars: How Grantmakers Achieve Tangible Results by Funding Policy and Community Engagement*, 2012).

#### **California Community Foundation: Low-Income Housing**

At the California Community Foundation, a \$50,000 grant to a housing consortium helped prevent the federal government from cutting \$100 million for low-income housing in Los Angeles.

## Advocacy Can Address Systemic Causes Rather than Just Symptoms

By supporting grantees that actively engage in advocacy, foundations can both advance their mission and promote changes that address the underlying causes of problems in our society.

### The Ford Foundation, Public Welfare Foundation, General Service Foundation, Moriah Fund, and the Surdna Foundation: Fair Wages for Home Care Workers

Sometimes the direct service needs of entire communities can be reduced by advocating for fairer policies. A variety of groups helped usher in new U.S. Department of Labor rules requiring employers to pay minimum wage and overtime pay to in-home support workers for the aging and people with disabilities. Grantees like the National Employment Law Project and PHI PolicyWorks produced compelling research. Other grantees—the National Domestic Workers Alliance and the Direct Care Alliance—organized petition drives and encouraged workers to weigh in during the rule’s public comment period.

## Advocacy Supports Democratic Processes

Policy debates are too often dominated by those with the resources to buy access and advertising. Grants to support advocacy ensure that interests with less power can participate in the decision-making process and that their voices are heard.

### Rockefeller Family Fund (RFF): Advancing Workers’ Rights

RFF, which supports a growing national movement for paid sick days, played an essential role in New York City’s adoption of paid sick leave. RFF funded a campaign to help organize low-wage workers and provide them with hands-on advocacy skills training. Training covered topics such as bargaining, opposition research, and organizing. These investments made low-wage workers a political force for present and future policy battles.

## Advocacy Provides Policymakers with Missing Information and Perspectives

Even well-intentioned public officials may not have the full picture of how communities are affected by policy choices and may not know about successful innovations implemented by others.

### The Marguerite Casey Foundation: Making Invisible Communities Visible

In the 2009 aftermath of Hurricane Dolly, many elected officials didn't know the extent of the hurricane's damage in small, unincorporated communities with primarily immigrant residents. The Marguerite Casey Foundation funded the Rio Grande Equal Voice Network, a coalition of 10 community-based organizations, which insisted that officials meet in the communities to see conditions firsthand. These activities ultimately helped to secure \$20 million for these forgotten flooded communities.

## Advocacy Brings Together Diverse Members of a Community to Solve Problems

Community organizations, public officials, small businesses, corporations, unions, religious leaders, and others may not have natural forums for finding common ground. Foundations can fund advocacy projects that create vehicles for dialogue and coordinated action.

### The Boston Foundation (TBF): The Civic Fund

TBF produces in-depth reports from area colleges and think tanks, highlights local community trends, and promotes public debate through a series of forums that attract widely diverse interests. TBF then takes action on these issues by convening task forces of private and public sector leaders to identify solutions and influence public policy. These efforts helped to pass education reform legislation leading to \$250 million in federal funds and a tripling of state funding for arts and culture.

## ADDITIONAL RESOURCES

*Investing in Change: The Importance of Supporting Advocacy*

*Speaking Out for Advocacy*

*Words to Give By*

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## 4. Understanding Legal Rules & Tools for Funding Advocacy & Lobbying



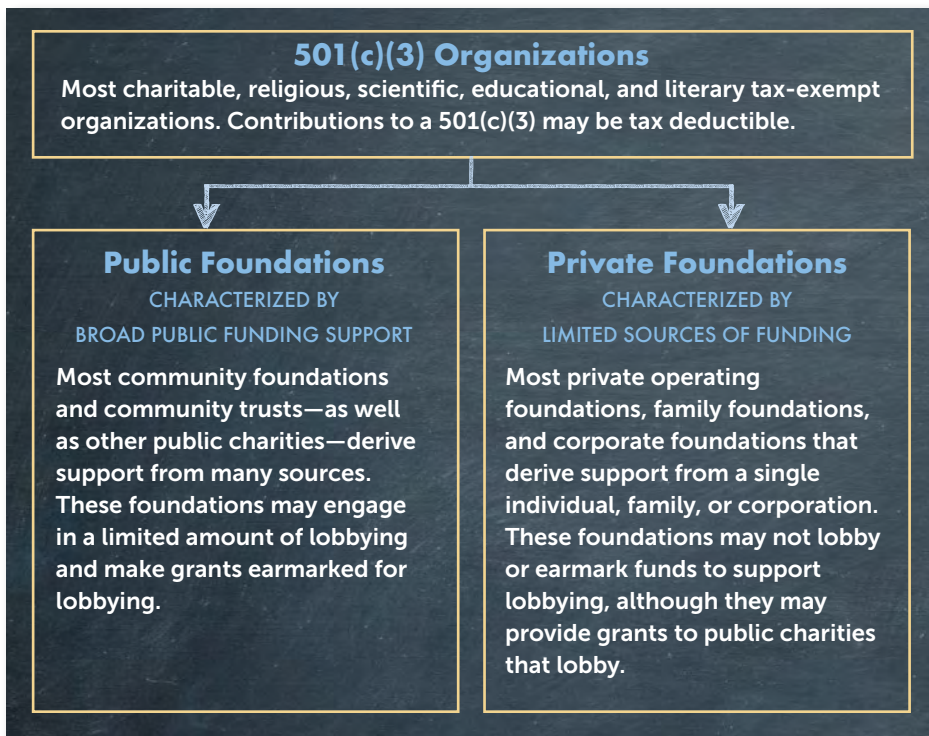
ALLIANCE FOR JUSTICE MEMBER: **EARTHJUSTICE**

### The Different Types of Foundations

There are two types of foundations: private and public. Each type operates using a different set of rules that provide different funding opportunities. To understand the kinds of advocacy work a foundation can fund and conduct, it's important to first understand which type of foundation it is.

#### The Bottom Line

The law gives foundations substantial room for supporting or conducting almost every type of advocacy with the exception of campaign intervention (supporting or opposing candidates for public office). Any foundation can support organizations that advocate and even lobby. Any foundation can also engage in most types of advocacy, including grassroots organizing, policy research, or nonpartisan voter education. A foundation's tax status—whether it's a private or public foundation—determines whether it can lobby or earmark grants for lobbying (see p. 16).



Knowing the rules will enable a foundation and its grantees to use all available strategies to achieve its goals. Here are the most important rules:

- **MOST EFFORTS TO CHANGE PUBLIC POLICY ARE NOT LOBBYING:** Lobbying is an effort to influence specific legislation (including a ballot measure), either through communicating with legislators or the general public. In most instances, efforts to influence executive branch decisions will not constitute lobbying. Generally, analyzing broad issues and educating the public about them are not lobbying.
- **THERE ARE NO LIMITS ON MOST ADVOCACY ACTIVITIES:** The law gives foundations substantial room for supporting or conducting almost every type of advocacy. Lobbying and election-related activity, however, are subject to legal restrictions. 501(c)(3) organizations are also prohibited from supporting or opposing candidates for public office (often referred to as campaign intervention).
- **PRIVATE AND PUBLIC FOUNDATIONS MAY SUPPORT PUBLIC CHARITIES THAT LOBBY:** They can do this without incurring a taxable expenditure.
- **PUBLIC FOUNDATIONS CAN LOBBY:** They are subject to generous lobbying limits.
- **IN MOST CASES, FOUNDATIONS ARE NOT REQUIRED TO PROHIBIT THE USE OF GRANT FUNDS FOR LOBBYING.**

## Lobbying Limits for Public Charities and Public Foundations

Public foundations can calculate lobbying limits in one of two ways:

- 1. "501(h) EXPENDITURE" TEST:** Generally allows an organization to spend up to 20 percent of its annual expenditures on lobbying (although the exact dollar limit is calculated as a percentage of an organization's annual expenditures: 20 percent of the first \$500,000 + 15 percent of the next \$500,000 + 10 percent of the next \$500,000 + 5 percent of the remaining)—up to a cap of \$1 million/year. The entire lobbying limit may be spent on direct lobbying, but no more than 25 percent of that amount may be spent on grassroots lobbying. A public foundation or charity can take advantage of the 501(h) expenditure test by making a one-time "election" using the simple IRS Form 5768.
- 2. "INSUBSTANTIAL PART" TEST:** Lobbying must be an insubstantial part (most tax practitioners advise less than 5 percent) of overall activities. For large organizations, that can still translate into a significant amount of permissible lobbying.

- **FOUNDATIONS SHOULD ENCOURAGE THEIR NONPROFIT GRANTEES TO EXPLORE MAKING THE 501(h) ELECTION:** There are numerous advantages to making the 501(h) election, including easy-to-calculate lobbying limits, clear and limited definitions of what counts as lobbying, and—typically—more generous lobbying limits than under the Insubstantial Part Test (far more generous, in many cases).

The box above summarizes the rules for private and public foundations in supporting or conducting various kinds of advocacy. The overwhelming majority of advocacy activities, including lobbying and nonpartisan electoral activity, are permissible (see chart on p. 14).

# Permissible Foundation Advocacy and Foundation Support of Advocacy

ISSUE EDUCATION, OUTREACH, POLICY DEVELOPMENT & CAPACITY BUILDING	Permissible for Public and Private Foundations?
<b>PUBLIC EDUCATION:</b> Printed materials, neighborhood canvassing, petition drives, social media outreach (without providing views on specific legislation)	UNLIMITED
<b>POLICYMAKER EDUCATION:</b> Providing responses to written requests from a legislative body, holding meetings on an issue without providing views on specific legislation	UNLIMITED
<b>ORGANIZING:</b> Mobilizing individuals and groups to speak out about issues (without discussing specific legislation)	UNLIMITED
<b>CONVENING KEY CONSTITUENCIES:</b> Gathering nonprofits, community leaders, unions, businesses, or others to build support for acting on an issue (not specific legislation)	UNLIMITED
<b>NEWS MEDIA OUTREACH:</b> Educating journalists, editors, and bloggers; writing letters to the editor, op-eds, and advertising	UNLIMITED
<b>POLICY DEVELOPMENT:</b> Researching and developing policy options	UNLIMITED
<b>CAPACITY BUILDING:</b> Supporting the development of staff, infrastructure, or advocacy capabilities of an organization	UNLIMITED
<b>NON-GOVERNMENT TARGETS:</b> Advocacy directed at businesses, trade associations, private organizations	UNLIMITED
<b>GOVERNMENT AGENCIES</b>	
<b>INFLUENCING AGENCIES:</b> Meeting with government agencies about regulations, commenting on rulemakings	UNLIMITED
<b>ENFORCEMENT OF ENACTED LAWS:</b> Meeting with government agencies about regulatory guidance and enforcement priorities	UNLIMITED
<b>EXECUTIVE ORDERS:</b> Lobbying the White House, governors, and agencies on pending orders	UNLIMITED
<b>COURTS</b>	
<b>LITIGATION:</b> Lawsuits, friend-of-the-court briefs	UNLIMITED
<b>LOBBYING EXCEPTIONS</b>	
<b>NONPARTISAN ANALYSIS:</b> Widely distributed research providing a full and fair exposition of an issue (can provide views on specific legislation)	LEGAL
<b>REQUESTS FOR TECHNICAL ADVICE:</b> Responses to written requests from a legislative body, including providing testimony (can provide views on specific legislation)	LEGAL
<b>SELF-DEFENSE:</b> Communications on legislation that could affect a foundation's existence, powers, duties, tax status, etc.	LEGAL
<b>EXAMINATIONS &amp; DISCUSSIONS OF BROAD ISSUES:</b> Reports and meetings on general topics that may be the subject of legislation (without referring to specific legislation)	LEGAL
<b>LOBBYING</b>	
<b>LOBBYING:</b> Efforts to influence specific legislation or support or oppose a ballot initiative (see rules below)	LEGAL WITH SOME RESTRICTIONS
<b>ELECTIONS</b>	
<b>NONPARTISAN:</b> Candidate issue education, candidate debates and forums, nonpartisan voter registration and get-out-the-vote drives, distribution of voting records of incumbents	LEGAL WITH SOME RESTRICTIONS
<b>PARTISAN:</b> Supporting or opposing candidates for public office	IMPERMISSABLE

## Key Lobbying Guidelines for Private Foundations

- **ENGAGING IN LOBBYING:** Private foundations can engage in any kind of advocacy activity except for campaign intervention and lobbying. May use the lobbying exceptions defined in the chart (see p. 14).
- **SUPPORTING LOBBYING:** Private foundations can support public charities that engage in lobbying (and other kinds of advocacy except for campaign intervention).
- **GIVING GENERAL SUPPORT GRANTS:** While private foundations themselves cannot lobby, public charities can use general support grants from these foundations for any purpose, including lobbying. Even if the grantee uses the money for lobbying, the private foundation will not incur a taxable expenditure as long as the grant is not specifically earmarked for lobbying through an oral or written agreement. A grant agreement that forbids the use of funds for lobbying is unnecessarily restrictive and not legally required.
- **GIVING SPECIAL PROJECT GRANTS:** Private foundations can make specific grants for projects that include lobbying. A grantee must submit a detailed project budget that includes lobbying and non-lobbying expenses, and the grant amount cannot exceed the non-lobbying portion of the budget.

Scenarios A–C provide examples of how the specific project grant rule works (see p. 16). An organization applies for a specific project grant from Private Foundation A. The project seeks to educate the public on the importance of preserving wildlife habitats. In addition, the project intends to influence legislation by seeking to urge legislators to introduce a bill to preserve certain habitat lands. The organization is seeking a \$100,000 grant for the project, of which it has budgeted \$80,000 for non-lobbying activity and \$20,000 for lobbying.

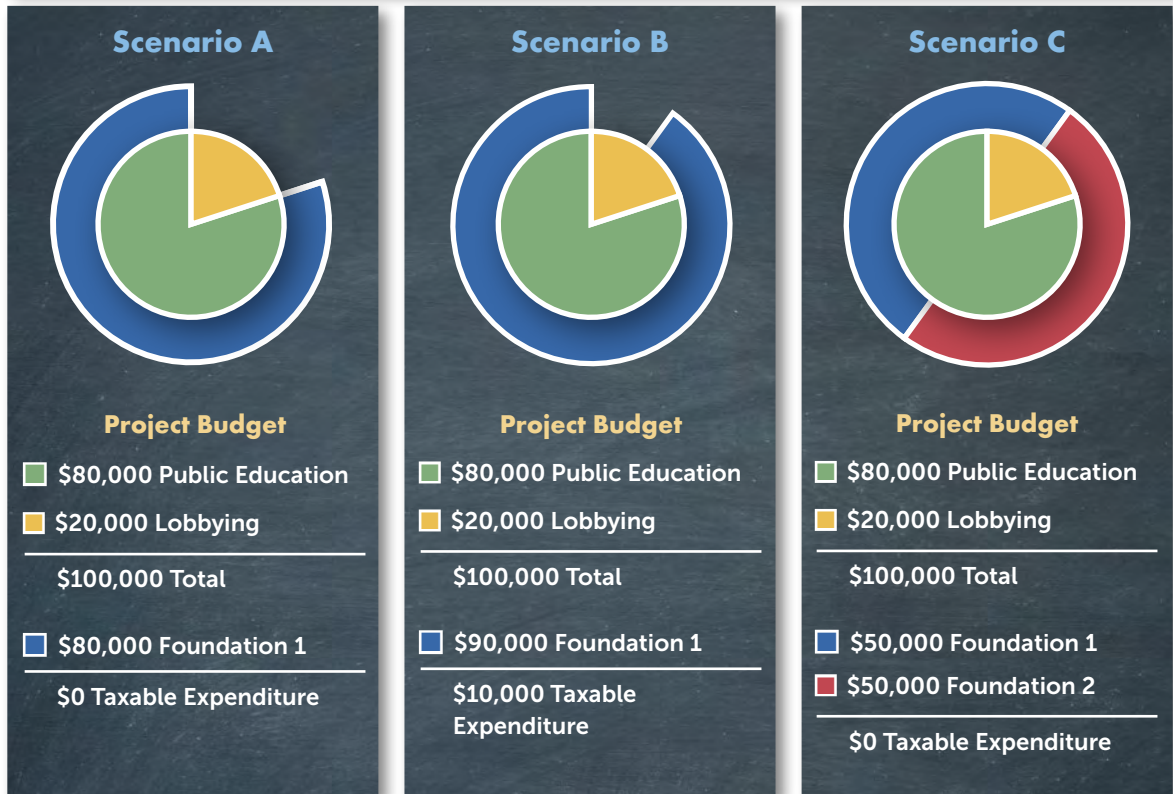
In Scenario A, Private Foundation 1 reviews the project budget and gives the organization an \$80,000 specific project grant. The grant agreement expressly states that the funds are not earmarked for lobbying. The grant does not create a taxable expenditure for the foundation, even if the organization uses some of the \$80,000 grant money for lobbying.

In Scenario B, Private Foundation 1 provides a grant in the amount of \$90,000. The grant exceeds the non-lobbying portion of the specific project, and a portion of the grant—\$10,000 (the amount of the grant minus the non-lobbying activity) would be considered a taxable expenditure.

In Scenario C, the organization applies for a specific project grant from Private Foundation 1 and Private Foundation 2. The organization is seeking a \$50,000 grant from each of the two foundations for its project to educate the public on the importance of preserving wildlife habitats.



## How the Specific Project Grant Rule Works



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The organization has budgeted \$80,000 for non-lobbying activity and \$20,000 for lobbying legislators to introduce a bill to preserve habitat lands. Private Foundation 1 gives the organization a \$50,000 specific project grant based on the organization's project budget, ensuring that the grant is not earmarked for lobbying. Private Foundation 2 also gives the organization a \$50,000 specific project grant based on the organization's budget, ensuring that the grant is not earmarked for lobbying. Since neither grant individually exceeded the total non-lobbying portion of the project, neither grant creates a taxable expenditure for either foundation. This is the case even though, added together, the total amount of the grants—\$100,000—exceeds the total non-lobbying portion of the budget.

### Key Lobbying Guidelines for Public Foundations

- **ENGAGING IN LOBBYING:** Public foundations can themselves engage in most nonpartisan advocacy activities, including lobbying up to the generous limits we described.
- **SUPPORTING LOBBYING:** Like private foundations, public foundations can make general support grants and project grants with which the grantee can lobby. If public foundations do not earmark grants



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## 5. Understanding Rules & Tools for Foundations Engaging in Advocacy, Themselves



ALLIANCE FOR JUSTICE MEMBER: AIDS UNITED

In the previous section, we shared important rules and tools for both private and public foundations supporting their nonprofit grantees' advocacy and lobbying work. In this section, we will take the discussion a step further by describing what kinds of advocacy foundations can do on their own, independent of or in addition to the support they give to their nonprofit grantees.

### Private Foundations: Engaging in Advocacy, Themselves

Private foundations have numerous opportunities to engage in advocacy. Although private foundations will incur a prohibitive tax on any lobbying expenditure, lobbying is only one form of advocacy. There are many other permissible avenues for private foundations to shape public policy. For example, a private foundation could:

- **INFLUENCE AGENCIES:** Influence the adoption of agency regulations that interpret and implement existing laws.
- **BUILD RELATIONSHIPS WITH LEGISLATORS:** Build and sustain relationships with legislators, or help grantees build and sustain these relationships.

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- **CONVENE LEADERS:** Convene nonprofits and decision-makers to discuss a broad topic.
- **EDUCATE LEGISLATORS:** Educate legislators about a broad range of issues, without referencing a specific legislative proposal.
- **MEET LEGISLATORS:** Meet with legislators to discuss the scope and impact of the foundation’s work.
- **PURSUE LEGAL OPTIONS:** Sign an amicus brief, file a lawsuit, or fund litigation.
- **FACILITATE OR HOST TRAININGS:** Help grantees build capacity by providing trainings on topics such as advocacy, fundraising, and crisis management, among others.
- **INFLUENCE POLICIES:** Influence school board policies or those of any other “special purpose body” that has limited jurisdiction (e.g., housing authorities, sewer and water districts, zoning boards, and other similar federal, state, or local bodies).
- **LEAD PUBLIC EDUCATION CAMPAIGNS:** Share information with the community, so long as it does not include calls to action or mention specific legislation.
- **PROVIDE LEGISLATORS WITH TECHNICAL ASSISTANCE:** Offer information and advice to legislators in response to a written request for oral or written testimony from a legislative body.
- **PROVIDE OBJECTIVE FACTS:** Produce a comprehensive, accurate study or analysis of an issue (often referred to as a “nonpartisan analysis study” or “nonpartisan research report”) that is widely distributed and provides enough information about the issue to allow the reader to draw their own conclusions, even if the report contains specific legislative conclusions.
- **PROTECT ITSELF:** Attempt to influence any legislation that affects a private foundation’s existence, its powers and duties, its tax-exempt status, or the deductibility of contributions (often referred to as “self-defense” lobbying).

**Public Foundations: Engaging in Advocacy and Lobbying, Themselves**

Public foundations can do everything private foundations can do, and in addition, can lobby subject to generous lobbying limits.

**ADDITIONAL RESOURCES**

**• NOTES •**

*Community Foundations and Advocacy Factsheet*

*Community Foundations and Ballot Measures*

*Foundation Support for Election-Related Activities Factsheet*

*Investing in Change: The Importance of Supporting Advocacy*

*Private Foundations May Advocate*

*Public Foundations and Advocacy*

*Public Foundations Can Lobby*

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## 6. Choosing the Right Advocacy Approach



ALLIANCE FOR JUSTICE MEMBERS (CLOCKWISE FROM TOP RIGHT): NATIONAL CENTER FOR YOUTH LAW, MENTAL HEALTH AMERICA, THE ARC

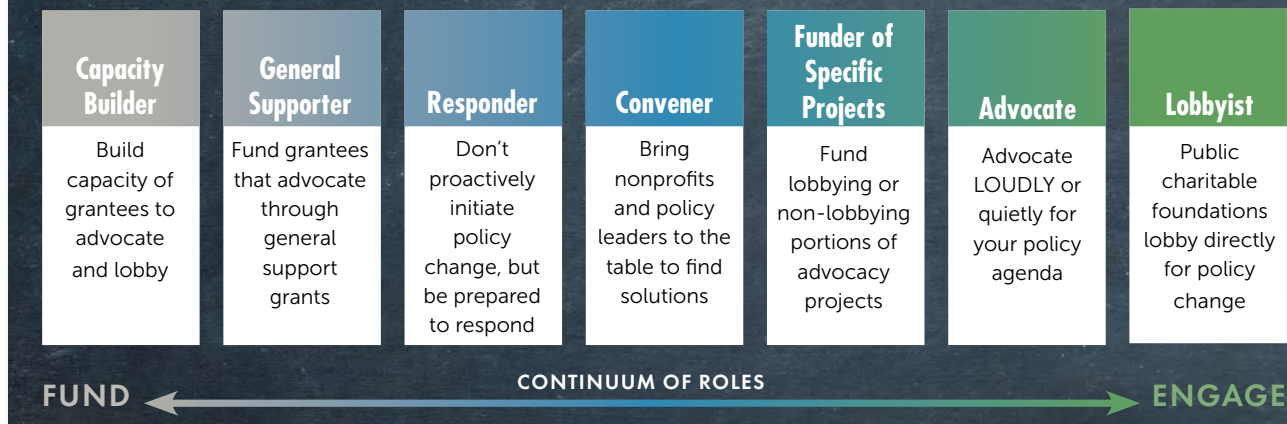
### Working Along the Advocacy Continuum

Foundations have many options for supporting or conducting advocacy to achieve their goals. They range from supporting issue education or nonprofit capacity building to providing general support grants to organizations that do on-the-ground advocacy and lobbying.

### Moving Along the Advocacy Continuum

To be more effective in achieving their missions or to adapt to changing circumstances, many foundations find that they need to incorporate new strategies. This could mean supporting advocacy for the first time or branching into new types of advocacy funding. When making strategic changes, foundations often take into account the following considerations:

## Foundation Involvement in Advocacy: Circle All That Apply



### Initial Considerations

- How well the proposed activities fit with the foundation's mission and values.
- Whether current grantees are able to carry out the initiative or if other groups are needed.
- The time expected to achieve results and whether the foundation is prepared for that commitment.
- Lessons that can be learned from other advocacy efforts.

### Avenues for Change

- The locus of decision-making to achieve the goal—international, national, regional, state, or local.
- The best avenues for change—legislation, executive action, litigation, or elections.
- The stage(s) of policymaking that can be successfully influenced—problem definition, agenda setting, policy adoption, policy implementation, or policy evaluation.
- The most effective way to engage—providing data and analysis, building coalitions, increasing public awareness, advertising, media outreach, supporting lobbying, or conducting lobbying (for public foundations).

## Institutional Considerations

- How explicitly a foundation should support a particular advocacy effort—giving general support to an organization that lobbies carries a lower profile for a foundation than earmarking a grant for a particular advocacy campaign.
- The benefits and opportunity costs—what the foundation stands to accomplish and what it will not be able to do because of its investment in this strategy.
- Whether other foundations can help support the foundation's advocacy goals.
- The potential risks and benefits—identifying those who will support or oppose the effort; discussing the foundation's tolerance for opposition.
- Defining success.
- Discussing these considerations with board members, staff, and other stakeholders can help a foundation decide where along the advocacy continuum it should be.

### Advocacy as a Natural Evolution for Many Foundations

Some foundations have found that their experience in the community, past research on the issue, and connections with key players have placed them in a unique position to help generate change. For them, supporting advocacy efforts is a natural next step in achieving progress toward their goals. Advocacy is typically a strategy to accomplish the foundation's goals, not an end in itself.

## ADDITIONAL RESOURCES

*Investing in Change: The Importance of Supporting Advocacy*

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## 7. Planning & Evaluating Advocacy



ALLIANCE FOR JUSTICE MEMBER: **CENTER FOR LAW AND SOCIAL POLICY**

When a foundation awards a grant to the local food bank to distribute food, grant reports from the food bank focus on how many meals were provided. However, when the state association of food banks gets a grant to secure more public funding for food assistance to serve many more people, its grant reports focus on very different metrics.

Changing public policy takes time, organizational capacity, and flexibility. Foundations should take some of the following factors into account when funding and evaluating this work:

- **POLICY CHANGE IS A LONG-TERM PROSPECT:** Achieving legislative or regulatory changes can sometimes take years. Foundations should plan for and reward incremental progress along the way.
- **FLEXIBILITY IS KEY:** Because the policy environment frequently changes, advocacy efforts must be nimble enough to adjust. Strategic planning and evaluation must recognize the need to respond to changing circumstances.

• NOTES •

- **ORGANIZATIONAL CAPACITY HELPS DETERMINE CURRENT AND FUTURE WINS:** A group may not have succeeded in getting a new law passed during the grant period, but its staff may have mobilized key segments of the public, educated policymakers and reporters about the issue, and forged a new coalition of allied groups. These accomplishments may set the grantee up for eventual success in getting the law passed, not to mention other advocacy wins.
- **DEFENSE CAN OFTEN BE THE BEST OFFENSE:** Sometimes it's just as important to ensure that something bad does not happen, such as preventing proposed cuts to a food assistance program. Advocacy strategies should recognize the value of defending existing rights and benefits.
- **SUCCESS HAS MANY PARENTS:** Policy change usually results from the actions of multiple groups and individuals. Working collaboratively is almost always beneficial. The final evaluation should recognize the group's legitimate contribution to the overall effort even if other groups also played a role.
- **RELATIONSHIP BUILDING IS CRITICAL:** Organizations should recognize that individual "champions" in key positions are typically central to any advocacy win. A grantee's relationship with a legislative committee chair or a key statehouse reporter, for example, may mean the difference between an issue campaign's success and failure.

**ADDITIONAL RESOURCES**

*Advocacy Capacity Tool (ACT):* Foundations use ACT to measure the ability of a grantee to implement a successful advocacy campaign, work directly with grantees to develop a plan for building capacity, incorporate capacity goals into the evaluation process, and frame the foundation's advocacy goals ([www.bolderadvocacy.org/act](http://www.bolderadvocacy.org/act)).

*Advocacy Evaluation Library:* Innovation Network ([www.innonet.org/pointk](http://www.innonet.org/pointk)) provides a resource database of more than 160 tools, reports, and articles for advocacy evaluation searchable by topic area, keyword, geographic area, and more. The Alliance for Justice, the Aspen Institute's Planning and Evaluation Program, the Center for Evaluation Innovation, and the TCC Group are among the prominent advocacy evaluation groups with resources listed.

*Benchmarks for Advocacy Evaluation:* This guide includes 100 results and activities to help plan and measure progress of advocacy work ([www.bolderadvocacy.org/resource/benchmarks-for-advocacy-evaluation](http://www.bolderadvocacy.org/resource/benchmarks-for-advocacy-evaluation)).

*Community Organizing Capacity Assessment (PowerCheck):* Community organizing shares some goals with advocacy work but has more of an emphasis on constituent empowerment and leadership. *PowerCheck* helps

groups that engage in community organizing determine their strengths and weaknesses ([www.bolderadvocacy.org/PowerCheck](http://www.bolderadvocacy.org/PowerCheck)).

*Resources for Evaluating Community Organizing (RECO):* This tool summarizes resources for evaluating community organizing and connects organizers, foundations, and evaluators to case studies and evaluation methodologies ([www.bolderadvocacy.org/RECO](http://www.bolderadvocacy.org/RECO)).

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## 8. Advocating Effectively



ALLIANCE FOR JUSTICE MEMBER: **ADVOCATES FOR YOUTH**/LLOYD WOLF

Advocacy is a skill that can be learned, developed, and cultivated. No organization has completely mastered all of the elements of good advocacy. If a foundation believes that advocacy can advance its mission, not only should it support groups that advocate, but it should look for ways to help those groups improve their capacity to advocate.

Good advocacy outcomes require the following skills:

### **Advocacy Goals, Plans, and Strategies**

- 1. PREPARATION:** Identifying clear goals, learning the issue(s), and understanding the policy environment.
- 2. AGENDA SETTING:** Prioritizing activities, gathering input from constituencies, and communicating the agenda.
- 3. PLANNING:** Determining needed resources and setting strategy.

## Conducting Advocacy

4. **RESEARCH AND ANALYSIS:** Assessing the impact of policies on the issue area.
5. **FIELD OPERATIONS:** Educating and mobilizing constituencies to help influence policy.
6. **PARTNERS AND COALITIONS:** Identifying and partnering with other stakeholders that have similar goals.
7. **MESSAGING:** Developing and delivering targeted, clear, compelling, and concise messages from effective messengers.
8. **MEDIA RELATIONS:** Developing a media plan, identifying media contacts, and reaching out to traditional and social media outlets.
9. **INFLUENCING DECISION-MAKERS:** Building relationships with key decision-makers and reaching out to them with the right messages at the right time.

## Avenues for Advocacy

10. **ADMINISTRATIVE:** Understanding agency rulemaking and enforcement processes and influencing regulators.
11. **LEGISLATIVE:** Understanding the legislative process and influencing key legislators.
12. **BALLOT MEASURES:** Educating key constituencies and the public, as well as getting out the vote for or against a ballot measure (the IRS considers this activity lobbying, not partisan electoral activity).
13. **ELECTORAL:** Understanding and engaging in the electoral process in nonpartisan ways such as registering voters, encouraging voting, and educating voters and candidates on issues.
14. **LITIGATION:** Understanding how litigation can complement other strategies.

## Sustaining Advocacy

15. **INSTITUTIONAL COMMITMENT:** Making a choice that an organization's staff and board will support advocacy, as well as learn federal and state rules for lobbying and election work.
16. **FUNDING:** Understanding how various foundations can support advocacy, developing relationships with foundations, and building a grant request and reporting process.

**17. INTERNAL DECISION-MAKING:** Assessing the institutional risks and opportunities of advocacy and developing the ability to make quick institutional decisions in the midst of conducting advocacy.

**18. FISCAL MANAGEMENT:** Budgeting for advocacy, understanding lobbying reporting rules, and tracking lobbying expenses according to federal and state laws.

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**ADDITIONAL RESOURCES**

*Investing in Change: The Importance of Supporting Advocacy*



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## 9. Getting the Foundation's Board "On Board"



ALLIANCE FOR JUSTICE MEMBER: NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES

Advancing a foundation's mission through policy change requires committed executive leadership, knowledgeable program staff, and board buy-in. Generating that buy-in often requires nonprofits to educate and engage board members.

These suggestions for foundation leaders can help foster board support for advocacy work:

- **COMMUNICATE, COMMUNICATE, COMMUNICATE:** Use every opportunity to talk to the board about the benefits of advocacy and the foundation's rationale for engaging in it, but don't ignore the potential risks. Identify and discuss obstacles and opportunities for the foundation to begin an advocacy journey.
- **RESTRUCTURE BOARD MEETING AGENDAS TO ALLOW FOR MORE POLICY DISCUSSIONS:** Make it a standing agenda item to brief the board about local, state, and federal public policies that hinder or help the foundation's goals. Bring in outside experts if needed.

• NOTES •

- **RECRUIT NEW BOARD MEMBERS WITH RELEVANT EXPERTISE:** Routinely assess the board's make-up to ensure diversity of interests and skill sets. Consider including members with government, advocacy, or community organizing experience.
- **FIND OPPORTUNITIES FOR OTHER ADVOCACY FOUNDATIONS TO DESCRIBE THEIR EXPERIENCES:** Bring in executives or board members of foundations with experience in advocacy to share their lessons and successes. Understanding how others have approached this work may help a board move forward.
- **CONDUCT PROACTIVE CONTINGENCY PLANNING:** Discuss and decide in advance how the foundation should respond if its activities are scrutinized in the media or upset a stakeholder. Examine real-world examples of how other foundations have handled such issues. Scrutiny of a foundation's advocacy support is rarely as contentious as many foundation leaders imagine, making this exercise an effective way to avoid unfounded fears.
- **SCHEDULE BOARD INFORMATION SESSIONS:** AFJ can tailor trainings for a board's specific needs, whether on the legalities of permissible advocacy or on the best practices and tools for evaluating and supporting advocacy activities.
- **START ON AN ISSUE THAT'S CENTRAL TO THE FOUNDATION'S MISSION AND POTENTIALLY LESS CONTROVERSIAL:** Some foundations find it easier to move into advocacy funding if it is focused on protecting or expanding the foundation's ongoing work.
- **FACED WITH RELUCTANT BOARD MEMBERS, KEEP RECOMMENDING SMALL GRANTS TO NONPROFITS THAT ENGAGE IN ADVOCACY:** The board and executive leadership may get more comfortable over time, paving the way for deeper engagement.

**ADDITIONAL RESOURCES**

*AFJ's Advocacy Capacity Tool (ACT)*

*Stand for Your Mission Campaign*

## 10. Supporting 501(c)(4) Organizations



©KEVIN WOLF/AP IMAGES FOR ALLIANCE FOR JUSTICE MEMBER: **HUMAN RIGHTS CAMPAIGN**

Donors who want their contributions to be used to change laws, support or oppose ballot measures, or advocate for candidates who champion certain beliefs should consider donating to a 501(c)(4) organization. Unlike 501(c)(3) public charities, 501(c)(4) social welfare organizations can engage in an unlimited amount of lobbying and a limited amount of work supporting or opposing candidates for public office. Both private and public foundations can support (c)(4) organizations when their activities advance the foundation's mission. Examples of 501(c)(4) organizations include the AARP, Sierra Club, National Rifle Association, Human Rights Campaign, Planned Parenthood Action Fund, American Cancer Society Cancer Action Network, and the League of Conservation Voters.

There are a few considerations foundations should take into account when contributing to a (c)(4) organization:

- **PUBLIC FOUNDATIONS:** Public foundations can make grants to 501(c)(4)s for any activity in which the foundation itself can engage, including lobbying. Unless a grant agreement specifies that the funds are not to be used for lobbying, the grant counts against the foundation's lobbying limit (described on p. 15). Grant funds can't be

• **NOTES** •

used to support or oppose candidates and should explicitly prohibit that activity in grant agreements.

- **PRIVATE FOUNDATIONS:** Private foundations can make grants to 501(c)(4)s for any activity that a 501(c)(3) organization can undertake, except lobbying and voter registration. The foundation must follow some specific oversight and reporting requirements (called “expenditure responsibility” as described below) when making grants to a (c)(4).
- **EXPENDITURE RESPONSIBILITY:** The IRS requires a private foundation that provides a grant to a (c)(4) to:
  1. Make inquiries to the (c)(4) organization regarding the (c)(4) organization’s prior grant histories and whether the (c)(4) organization properly followed the terms of other grants.
  2. Obtain a signed grant agreement clarifying that no grant funds can be spent on lobbying, voter registration activities, grants to individuals, or non-charitable purposes.
  3. Obtain from the (c)(4) grantee a written report on how the grant funds were used and whether it complied with the grant requirements.
  4. Include a full report of the grant in the foundation’s returns to the IRS.

**ADDITIONAL RESOURCES**

*Can a Private Foundation Make a Grant to a Non-Public Charity?*

*Comparison of 501(c)(3), 501(c)(4), and 527s*

*Supporting the Social Welfare: Giving to 501(c)(4) Organizations*

## 11. Supporting Election-Related Activity



ALLIANCE FOR JUSTICE MEMBER: LEAGUE OF CONSERVATION VOTERS

### It's Legal. It's Effective. It's Doable!

Election years provide an important window of opportunity for advocates. When campaigning, officeholders are more likely to listen to organizations advocating for their causes and constituents. Organizations can use this opportunity to focus attention on the issues, programs, and policies that affect people's lives. **In general, foundations have a great deal of flexibility in election-year grantmaking.** The key is not to fund or engage in projects or activities that appear to support or oppose candidates for public office.

A 501(c)(3) organization's role during an election must be educational, encourage civic participation, and remain nonpartisan at all times. For more detailed and nuanced information on what types of election-related activities foundations and 501(c)(3) organizations can engage in, please see *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*.

Below, we have described the most common types of election-related activities that both public and private foundations can carry out and fund.

• NOTES •

**EDUCATE ALL CANDIDATES ON INTEREST ISSUES:** By educating candidates on issues, organizations have the power to potentially influence the future public policy environment. These efforts may occur through phone calls, mailing materials, or issue briefings with candidates or their staff.

**HOST A CANDIDATE DEBATE OR FORUM:** Debates or forums are organized to educate voters and encourage voter participation by giving communities the opportunity to hear candidates discuss their views and answer questions on a broad range of issues.

**PREPARE AND DISTRIBUTE CANDIDATE QUESTIONNAIRES OR VOTER GUIDES:** Printed or electronic questionnaires and voter guides, distributed for purely informational purposes, can effectively illustrate candidate positions on a broad range of issues. 501(c)(3) organizations may not design a questionnaire to place one candidate in a better light than another.

**CANVASS THE PUBLIC ON ISSUES:** 501(c)(3) organizations use a variety of strategies to gauge public views, interest, awareness, and level of concern about issues, including conducting or funding telephone polls, focus groups, and other public opinion survey devices.

**VOTER REGISTRATION AND GET-OUT-THE-VOTE ACTIVITIES:** It is vital for the democratic process that organizations encourage and assist those eligible to register, as well as encourage them to actually vote when Election Day arrives. Federal tax law imposes added restrictions on private foundation grants earmarked for voter registration activities. These restrictions do not apply to public foundations. For more information, please see *Voter Registration Rules for Private Foundations*.

**INFLUENCING BALLOT MEASURES:** Ballot measure advocacy can be an important tool for nonprofit organizations. Major policy issues are increasingly playing out in the ballot measure arena.

Working on ballot measures may also help organizations connect with individuals or communities they might not otherwise have an opportunity to know. Even though 501(c)(3)s cannot support or oppose candidates for public office, 501(c)(3) *public charities* can urge voters to support or oppose particular ballot measures and proactively initiate ballot measures. Under federal tax law, ballot measure work is considered lobbying because members of the voting public act as legislators when they vote “yes” or “no” on the legislation proposed in ballot measures.

As stated above, we know that public and private foundations are prohibited from engaging in or funding any partisan political activity. This prohibition, however, **does not apply to the activities of officers, directors, or employees of foundations who are acting in their individual capacity**. Foundation staff may work on political campaigns outside of work hours or while using their available leave time. It is



## BONUS. Ten Best Practices for Foundations Supporting Advocacy: Advice from Nonprofit Advocates

Effective grantmaking to support advocacy often involves two interrelated goals: (1) achieving a particular public policy outcome and (2) bolstering nonprofit organizations engaged in advocacy.

In its work with foundations and nonprofit advocates, AFJ has identified 10 best practices that can help foundations reach these goals. They are grouped into three overarching categories: building trust with grantee partners, gaining wisdom with grantees and within foundations, and improving communication with grantees and within foundations.

### Build Trust

- 1. PROVIDE MULTI-YEAR FUNDING** as accomplishing advocacy goals may require several years of work.
- 2. PROVIDE GENERAL OPERATING SUPPORT** to give grantees the ability to adjust their advocacy work in changing circumstances, provide them with more flexibility for lobbying, and allow them to build their advocacy capacity.
- 3. PROVIDE MAXIMUM FLEXIBILITY** by making sure that grant agreements do not unnecessarily restrict lobbying or nonpartisan election-related activity beyond what the law requires.

### Gain Wisdom

- 4. HIRE STAFF AND RECRUIT BOARD MEMBERS WITH POLICY OR ADVOCACY EXPERIENCE** because staff and trustees who are familiar with policy work can help a foundation shape an advocacy strategy to meet the foundation's goals.
- 5. BUILD GRANTEE PARTNERS' ADVOCACY CAPACITY** by supporting advocacy skills training, coalition development, communications capacities, and planning. Equally important, foundations shouldn't just celebrate grantees' advocacy "wins;" they should also celebrate grantees' successes at building advocacy knowledge, skills, and practices.
- 6. HELP GRANTEE PARTNERS UNDERSTAND THE LEGAL RULES OF ADVOCACY** by supporting training workshops and the development of educational resources for advocacy organizations.

- 7. EVALUATE ADVOCACY WORK WITH GRANTEE PARTNERS** by valuing quantitative and qualitative feedback, as well as ensuring that grantees are true partners in the evaluation process. After all, where would foundations be if they could not provide grants to grantee partners?

### Improve Communication

- 8. COLLABORATE WITH OTHER FOUNDATIONS** to increase and coordinate available resources and ideas.
- 9. LISTEN TO THE NEEDS OF GRANTEE PARTNERS AND COMMUNICATE THE FOUNDATION'S SUPPORT FOR ADVOCACY** so grantee partners will be comfortable including advocacy in their proposals.
- 10. SHARE ADVOCACY SUCCESSES WITH OTHER FOUNDATIONS** because no foundation has enough resources to solve all the problems that need solving. Foundations can lead by inspiring and encouraging their peers to support for policy and advocacy work.
- 11. WHAT "BEST PRACTICE" MIGHT YOU ADD?** How might your grantee partners answer?

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ALLIANCE FOR JUSTICE MEMBERS (CLOCKWISE FROM TOP RIGHT): **PUBLIC ADVOCATES, GREEN FOR ALL, CENTER FOR REPRODUCTIVE RIGHTS**

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This and other AFJ publications are provided for educational purposes only and not as part of an attorney-client relationship. This guide is not a substitute for legal advice specific to particular situations in which foundations and nonprofits are engaging in advocacy but is intended to provide an overview and framework for understanding some of the most important rules and opportunities for foundations and their grantees.

Alliance for Justice's Bolder Advocacy Initiative publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, contact Bolder Advocacy at 866-NP-LOBBY or [www.BolderAdvocacy.org](http://www.BolderAdvocacy.org).

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