

# Investing in Change

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Tim Mooney  
Senior Counsel, Alliance for Justice

# Agenda

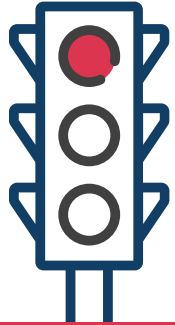
1. Why advocacy?
2. Characteristics of Public Charities, Community Foundations, and Private Foundations
3. Lobbying Rules
4. How Can Foundations Legally Fund Advocacy?

# Why advocacy?

- Advocacy can be the most effective strategy in your toolbox to fulfill your mission
- There is no one way to advocate, and it's not all lobbying
- Advocacy is an investment for future policy success



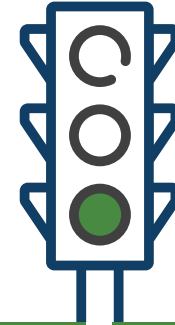
# Advocacy for 501(c)(3)s



Partisan  
Political



Lobbying



Organizing

Public  
Education

Nonpartisan  
Voter Ed.

Influencing  
Corporations

Educating  
Legislators

Educational  
Conferences

Lobbying  
Exceptions

Regulatory  
Efforts

Get to Know  
Legislators







Research

Training

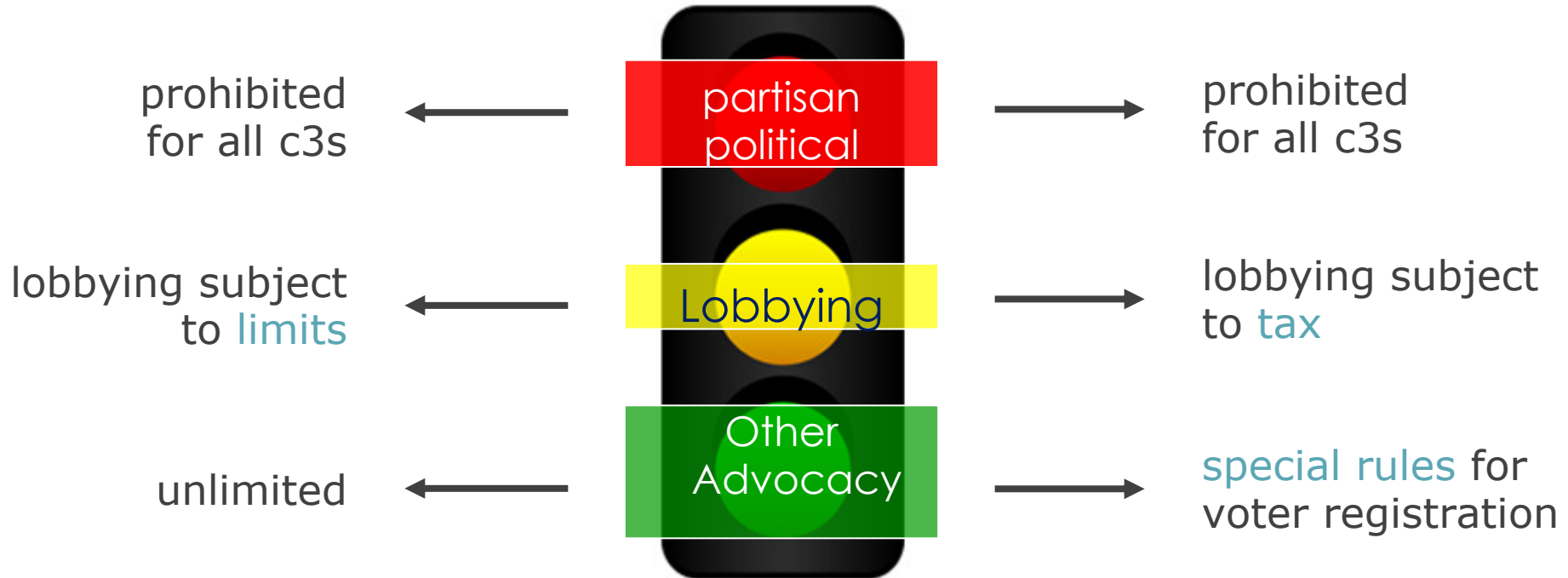
Litigation



# Characteristics of Public and Private Foundations

	501(c)(3) <i>Private Foundations</i>	501(c)(3) <i>Community Foundations &amp; Public Charities</i>	501(c)(4) <i>Social Welfare Organizations</i>
Examples	  Robert Wood Johnson Foundation	  	 <b>SIERRA CLUB</b>
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt Tax-deductible contributions	Tax-exempt
Lobbying Activities	Extremely Limited	Limited	Unlimited
Electoral Activities	Cannot support or oppose candidates	Cannot support or oppose candidates	Secondary Activity

# Advocacy Stoplight



Public Charities &  
Community Foundations

Private Foundations



This is where you can operate without being taxed as a private foundation, or limited as a public foundation

# Foundation Role as Advocate

- Identifying a need
- Filling multiple roles
  - Funder of specific projects
  - Advocate for the arts
  - Responder to specific threat from COVID
  - Convener of other foundations to participate
  - Effective advocacy, no lobbying!

We need to ensure the survival of arts and culture in N.J. despite this pandemic



# What is Lobbying under the IRS rules?



# What is lobbying under 501(h)?

(definitions for private foundations and public charities / community foundations making the 501(h) election)

## DIRECT

Communication

Legislator

Expresses a view about specific legislation

## GRASSROOTS

Communication

General public

Expresses a view about specific legislation

Call to action



## DIRECT

### communication

legislator

expresses a view  
about specific  
legislation

## GRASSROOTS

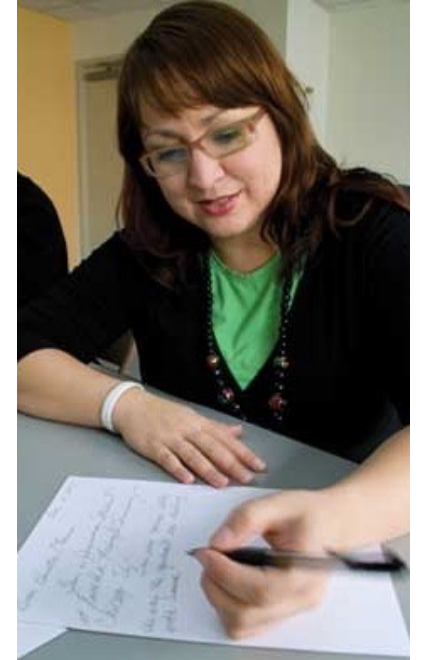
### communication

general public

expresses a view  
about specific  
legislation

call to action

# Communication





# Legislators



Federal legislators and staff



State Legislators and staff

## DIRECT LOBBYING

Communication

### Legislator

Expresses a view about specific legislation

Regional Governments, Tribal Governments, County Commissions, Town Board of Supervisors, City Council and staff



For ballot measure advocacy, the general public

# Also Legislators

President, governor, mayor, or other executive official who participates in the formulation of legislation.

## DIRECT

Communication

## Legislator

Expresses a view about specific legislation



GOV. WES MOORE



VICE-PRESIDENT KAMALA HARRIS  
PRESIDENT JOE BIDEN



DC MAYOR  
MURIEL BOWSER

# NOT Legislators

- School board
- Zoning boards
- Housing authorities
- Sewer and water districts
- Other “special purpose bodies” with limited authority





# Specific Legislation

## DIRECT

Communication

Legislator

**Expresses a view  
about specific  
legislation**

## GRASSROOTS

Communication

General public

**Expresses a view  
about specific  
legislation**

Call to action

H. R. 3244

One Hundred Sixth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,  
the twenty-fourth day of January, two thousand*

An Act

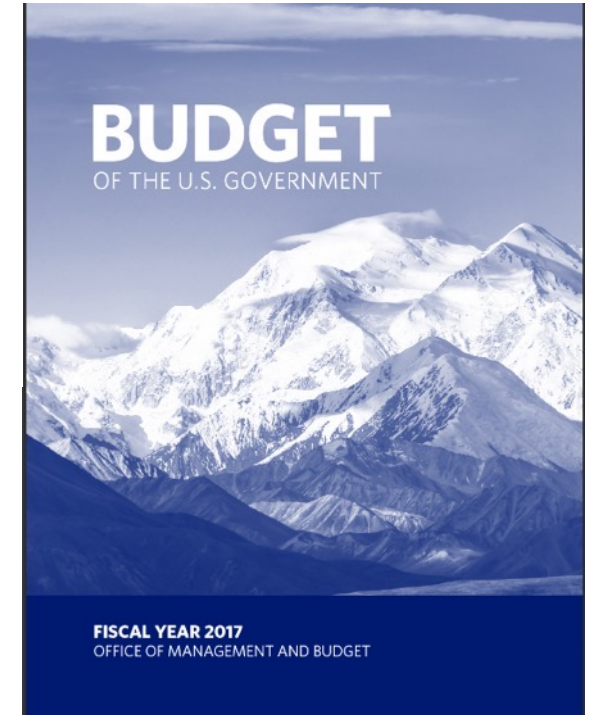
To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*  
SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims of Trafficking and  
Violence Protection Act of 2000".



SUPPORTING THE NOMINATION OF ADRIENNE NELSON  
AS FEDERAL JUDGE FOR THE DISTRICT OF OREGON



# Specific Policy Proposal

- Something counts as specific legislation if it is a “specific policy proposal”
- Not well defined, but essentially identifying a problem and a solution that can only be accomplished with new legislation
- May not be introduced, written or even fully fleshed out



# NOT Specific Legislation

- Regulations
- Executive orders
- Enforcement of existing laws
- Litigation



# Calls to Action

## DIRECT

Communication

Legislator

Expresses a view  
about specific  
legislation

## GRASSROOTS

Communication

General public

Expresses a view  
about specific  
legislation

**Call to action**

**ASKING TO CONTACT**  
legislators

**PROVIDING ADDRESS,**  
telephone number, and/or other  
contact information of legislators

**PROVIDING MECHANISM**  
to enable communication  
with legislators

**IDENTIFYING**  
legislators



# Is this lobbying?

- Communication
- General public
- Expresses a view about specific legislation
- Call to action – asking to join the sign on letter is a mechanism to contact legislators
- GRASSROOTS LOBBYING



**NSAC** @sustainableag · May 3

📢 Join this organizational sign-on letter asking legislators to incorporate the tenets of the Agriculture Resilience Act (ARA) into the next [#farmbill!](#)

🚜 Farmer-led solutions are fundamental to addressing [#climatechange](#).

🌍 The deadline to sign is June 9! ⬇️

[docs.google.com](#)  
Sign on in support of the Agriculture Resilience Act  
Join us in showing your organization's support for the Agriculture Resilience Act (ARA)! The ARA is ...

Thumbnail text: Sign on in support of the Agriculture Resilience Act  
Join us in showing your organization's support for the Agriculture Resilience Act (ARA)! The ARA is a comprehensive bill to support climate solutions through agriculture. This letter asks that farmer-led solutions are fundamental to addressing climate change in agriculture, and that climate-friendly agriculture must prioritize the health of people, soil, air, and animals to build resilient systems. It asks legislators to incorporate the tenets of the ARA into the next farm bill.

Thumbnail footer: Honorable Debbie Stabenow, Agriculture, Nutrition, and Forestry Committee U.S. Senate; The Honorable John Boozman, Ranking Member, Agriculture, Nutrition, and Forestry Committee U.S. Senate

Engagement: 2 replies, 1 like, 192 views



# NOT Calls to Action

## DIRECT

## GRASSROOTS

Communication

Communication

Legislator

General public

Expresses a view  
about specific  
legislation

Expresses a view  
about specific  
legislation

~~Call to action~~



“Learn more”

“Take action”

“Support our efforts”

“Get involved”

“Join us”

**NOT** Lobbying

# Is this lobbying?

- Communication
- General public
- Expresses a view about specific legislation (Farm Bill is enough)
- No call to action
- NOT LOBBYING

↻ Farm Aid Retweeted



**NSAC** @sustainableag · May 3

Yes! We're so pleased to see @POTUS defend the historic investments made in the IRA to address #climatechange through climate-friendly ag & conservation practices. Hoping the next #FarmBill delivers on these commitments for farmers!

📌 via @leahjdouglas



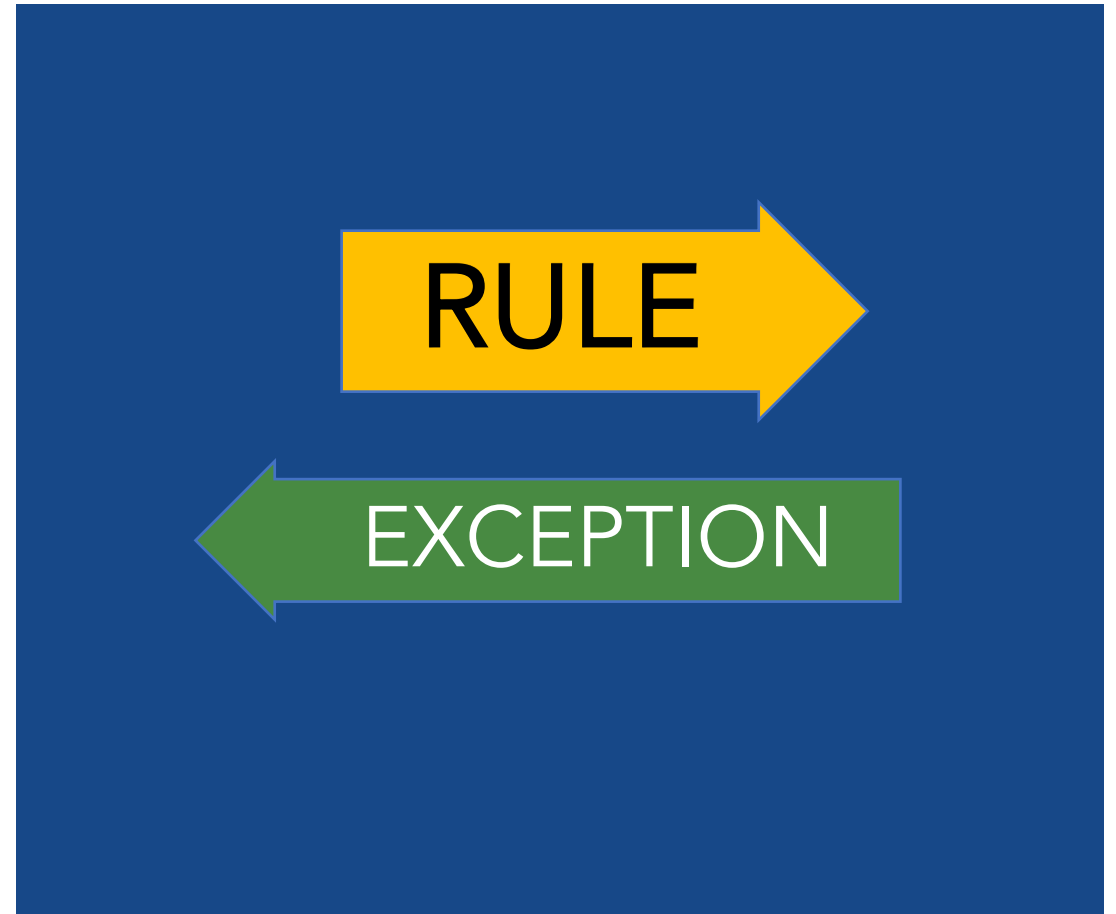
reuters.com

Biden administration pledges fight to keep climate-friendly farming f...

The Biden administration will defend funding for climate-smart farming in the \$430 billion U.S. Inflation Reduction Act (IRA) if ...

# Lobbying Exceptions

- Nonpartisan analysis, study, or research
- Request for technical assistance
- Self-defense
- Examinations and discussions of broad social, economic, and similar problems



# Nonpartisan analysis, study, or research

- Full and fair discussion
- Broadly disseminated
- May express a view
- May contain an indirect call to action





# Technical assistance

- Invited in writing
- By a chair of a committee or subcommittee
- Info available to the committee or subcommittee as a whole (i.e. not just majority/minority party)



# Self Defense

MUST RELATE TO

powers and duties

tax-exempt status

deductibility of  
contributions

BEST PRACTICES

consult with  
attorney



An aerial view from an airplane window showing a large, dark, charred area of land, likely a forest fire, with a white contrail from the wing visible on the left side of the frame.

# Examinations and discussions of broad social, economic, and similar problems

No support/opposition to legislation

No public calls to action

# How Can Foundations Fund Advocacy?



# The best way: general support grants

General Support Grants  
funding grantees that advocate  
through general support

# Another path: project grants

“A grant... is **earmarked** if the grant is given pursuant to an agreement, **oral or written**, that the grant will be used for specific purposes.”

# Public charities: Earmarking is ok

A public charity (including community foundations) may **earmark** a grant for lobbying, but it must count the grant against its own **lobbying limit**.

Private foundations should not **earmark** grants for lobbying, but private foundations may fund grantees that **lobby**.

\$\$\$

General  
Support  
Grants

Specific  
Project  
Grants

If a grant is not earmarked for lobbying or any other specific project, the foundation is not responsible for grantee lobbying.

If a foundation grant is less than or equal to a project's non-lobbying component, the grant is not a lobbying expenditure.

# SPECIFIC PROJECT Grant Safe Harbor

## Project Budget

Lobbying =  
\$40,000

Non-Lobbying =  
\$60,000

\$50,000 grant  
from  
Foundation 1

\$50,000 grant  
from  
Foundation 2

\$50,000 < \$60,000



expenditure

# GRANTS TO NON-PUBLIC CHARITIES

Pre-grant inquiry + written grant agreement must:

- State in specific terms how the grant will be used
- Explain that the grantee must repay any funds not used for the grant purpose
- State that the grantee is required to provide annual reports showing how the funds were spent
- Specify that the funds cannot be used to lobby

Expenditure  
Responsibility Grants

# The Foundation as an Advocate

# Private Foundation Advocacy

- Lobbying triggers an excise tax on the organization and the leadership that authorizes it
- But that leaves a lot that is untaxed
  - Lobbying exceptions
  - Advocacy outside of the definitions of lobbying





# Lane #1: Social Media and Public Comms

- A private foundation can be a bold and public leader on any element of policy change including legislative action
- Key point – take a firm stance, but do not include a call to action



# Lane #1: Social Media and Public Comms

- Two things to avoid
  - Remember private foundations cannot take a stance on candidates
  - Advocacy on ballot measures count as direct lobbying, so private foundations shouldn't advocate for/against them

**We are proud  
to support  
Ballot Measure  
26-228** ✓

**PORTLAND CHARTER REFORM**

See the growing list of endorsers at  
[portlandunitedforchange.com](http://portlandunitedforchange.com)

OUR JUST FUTURE

# Lane #1: Hypothetical Example

“[Private Foundation] supports the nomination of Oregon Supreme Court Justice Adrienne Nelson to be the first Black woman as federal judge for the District of Oregon.”

(no call to action – not lobbying)



# Lane #2: Use Those Exceptions

- Nonpartisan Analyses
  - Earmark funding to grantees
  - Produce them as the foundation
- Consider alternatives to print reports
  - Podcasts
  - Video (YouTube, etc.)



# Lane #2: Use Those Exceptions

- Technical Advice/Assistance
  - Testimony and Other Info
  - Serve on special boards and commissions
  - Cultivate relationships with chairs of committees for the invitations





# Lane #2: Use Those Exceptions

- Examinations & discussions...
  - Broad based discussions with legislators
  - Introducing your grantees and their work
  - What happens if a legislator asks your position on a bill?



# Lane #3: Non-Legislative Advocacy

- A lot of policy work happens at the executive branch level
- Virtually all of it makes a huge difference on key issues, but although some lobbying disclosure rules may apply it is not taxable lobbying under the IRS rules



# Personal Advocacy



## Personal partisan activity

The rules we've covered apply to 501(c)(3) staff and volunteers who act on behalf of 501(c)(3).

They do *not* apply to people acting as individuals on their own time.





# Personal partisan activity

1. Remember which hat you have on and when.
2. Don't use your organization resources (staff time, email, copier, etc.).
3. Distinguish yourself as an organization representative and you as an individual.
4. Use disclaimers as appropriate:  
"Organization name for identification purposes only."  
"I'm not representing my 501(c)(3) right now. I'm at this event as a private citizen."



**Philanthropy  
Advocacy  
PLAYBOOK**  
Leveraging Your Dollars



**ALLIANCE FOR JUSTICE**

**Investing in Change:  
A Funder's Guide to Supporting Advocacy**



**RULES  
OF THE  
GAME**  
THE BOLDER ADVOCACY PODCAST



 Free PDF guides on these rules

 [bolderadvocacy.org/podcast](https://bolderadvocacy.org/podcast)



## EAST COAST

Washington, DC

## TEXAS

Dallas  
Houston

## WEST COAST

San Francisco  
Los Angeles

866-675-6229

[tim.mooney@afj.org](mailto:tim.mooney@afj.org)

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



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