Beyond the Cause: The Art and Science of Advocacy
An Assessment by Alliance for Justice

Independent Sector has issued an extensive new report, *Beyond the Cause: The Art and Science of Advocacy*, with the goal of “…identifying how the nonprofit and philanthropic sector can increase its influence on public policy” and answering two questions:

1. What approaches and strategies shape consistently successful advocacy efforts?

2. How well does the community of organizations currently engaged in sector-wide advocacy perform?

The study, conducted in 2011-12, included three surveys, more than 100 interviews, a literature review, seven case studies and six issue analyses. An extensive description of the methodology for each component of the study is included in the appendices. The methodology indicates that “senior members of the research team” were responsible for gathering information, conducting interviews, and preparing the case studies. Though the “senior members of the research team” are not identified, contributors and consultants are acknowledged in the executive summary and include several Independent Sector staff.

The result is a report that identifies five strategic approaches to successful advocacy campaigns, as supported by the seven case studies; extensively explores six sector-wide issues identified by Independent Sector as most critical; and provides a recommendation that the sector “must establish a convening organization and ensure there are adequate resources to support investments in the type of functions and relationships noted in this study.” As noted in the *Huffington Post* by NCRP President Aaron Dorfman “The unstated implication is that Independent Sector should be that organization.” There are some important weaknesses in the report that undercut its effectiveness, particularly when conclusions and recommendations don’t match the evidence the report itself presents.

The study comes at an important time in the history of the nonprofit sector and the nation. Nonprofits play an essential role in American democracy, and often represent people who have a limited voice in the policy process. The sector generates innovation -- both through its programs and research -- that moves us closer to solving pressing problems. Nonprofits play an invaluable role in bringing a diverse set of perspectives to the policy-making table. Many nonprofits play a singular role in influencing public policy because they represent communities, both in terms of geography and issue focus, and are an essential counterweight to other forces in the democratic process, such as well-funded special interests.

Regrettably, the important contribution this study could play in enhancing the role and effectiveness of nonprofit groups is undercut, in part, by its flawed and ambiguous methodology and the nature of its conclusions, which are divorced from the evidence its own research presents.

Our analysis follows.
Analysis 1: AFJ believes that the central factor in the success of nonprofit advocacy is the presence of sustained, long-term funding for groups and movements, a principle reinforced, in fact, by many of the findings of the report. Regrettably, the report misses an opportunity to call for increased support for on-the-ground advocacy efforts, and instead focuses on raising large amounts to fund sector-wide policy work at the national level.

The first portion of the report, which details the “essentials of successful advocacy,” implicitly reinforces the case long made by AFJ and many other groups that advocacy in all its forms must be significantly accelerated at the national, state, and local levels by nonprofits of all sizes in whatever issue areas are important to them. It then details some effective, and familiar, strategies for conducting lobbying and other policy-related activities. While it presents one view of successful advocacy, the strategies identified cannot be seen as comprehensive. Although the case studies used by the study’s authors to inform their conclusions are not representative of most 501(c)(3) advocacy efforts, this portion of the report serves as a valuable recapitulation of some well-established principles and serves as a call to action by nonprofits and a call for support from funding partners.

However, we believe that the conclusion of the second part of the report, which recommends $20 million dollars be directed to certain administrative, sector-wide problems, is misguided. There is a desperate need for philanthropic investment in nonprofits that advocate for social justice issues. To suggest, in this environment, that allocating $20 million over four years so nonprofits can advocate for their own needs instead of the needs of those they serve is unconstructive. Moreover, this recommendation doesn’t seem to be distilled from the findings in the report.

The study suggests that organizations should commit to long-term goals and planning out 10-25 years. This type of commitment is impossible without adequate and sustained funding. The study fails to address the challenges of securing the type of funding that makes this possible and does not call upon the philanthropic sector to change its funding model. As an example, the study points to Americans for Tax Reform as a model of a “laser-like focus” — a focus one could argue they were able to maintain from years of general support.

The report also suggests that organizations should prioritize laying a foundation, investing in research and building relationships but does not indicate that this takes time and money, and again, fails to address the challenges of securing the type of funding that makes this possible.

In times of state budget-cutting and vastly increased need by the most vulnerable in our society, nonprofits are doing more with less. As other research has shown, particularly the highly regarded Strengthening Nonprofit Advocacy Project (SNAP), and AFJ’s experience and research, the correct conclusion would be a call for grant makers to make multi-year general-support grants to nonprofits, to recognize that success is incremental not instantaneous, and to stick with that investment for the long-term. Further, helping small and mid-sized nonprofits better understand the best practices outlined in the report, and build capacity to implement them, would also be a productive use of funding of the magnitude suggested by the report’s authors.
As we have learned, and as the case studies demonstrate, another key ingredient for successful advocacy is the need to be able to participate in all types of advocacy in all arenas of our democratic system. All but one of the case studies highlight advocacy by non-501(c)(3) organizations. 501(c)(4)s and for-profit corporations (and their affiliated PACs) can engage in certain types of political activity off-limits to 501(c)(3)s. Just as many organizations working together are needed to make change, often the different types of players can employ effective strategies when working together.

Analysis 2: AFJ fully supports the report’s findings that the sector is stronger when it works together, but the issues identified by the report as requiring sector-wide action were not based on widespread consensus nor are they the most likely to be those tackled by either the IRS or Congress in the foreseeable future.

The study identifies six “pressing” issues affecting the sector: changes to IRS Form 990 and 990-PF; Advocacy and Lobbying rules of Public Charities and Private Foundations; the Charitable Tax Deduction; Nonprofit Tax Exemption; Government-Funded Research on the Nonprofit Community; and Government-Nonprofit Contracting. This issue set is an odd mix at best. The larger issue set presented in Appendix B only confounds the reader further. One can only imply that this cluster of issues is the one that Independent Sector itself sees as most relevant to the sector. We would welcome clarification of the rationale for these choices. Further, the issues selected are at odds with common wisdom about the prospects for action on tax or nonprofit reform in the next Congress, and ignores several issues that are likely to emerge.

The report indicates that the six sector-wide issues were chosen by a very small group of respondents, and shows no evidence of having emerged from a broad-based survey of nonprofits or policy experts. It is particularly unfortunate that the issue set being promoted does not reflect the reality of the significant pressures and controversies being faced by the nonprofit sector during this election cycle, many of which have a far greater chance of becoming policy issues requiring sector response than many of the matters currently highlighted.

The study’s own conclusions indicate there is little chance for success on most of them. The probable futility of the recommended approach is not surprising since the sector is not monolithic, particularly if the diversity of the sector is analyzed.

For example:

- If you ask 501(c)(6)s – professional and trade associations – what they see as the most pressing issue facing the sector, they might say restrictions on federal employees attending meetings and conferences.

- If you ask 501(c)(4)s – social welfare organizations – what they see as the most pressing issue facing the sector, they might say defining the scope of primary purpose.
If you ask public charities – one type of 501(c)(3) – what they see as the most pressing issue facing the sector, you might get a very different answer depending on the size of the organization, its mission and geographic location. Larger charities, like hospitals and universities, may, in fact be very concerned about threats to the charitable deduction, whereas, smaller charities like local food banks and homeless shelters may be more concerned about restrictions on use of government-granted funds.

If you ask private foundations – another type of 501(c)(3) – what they see as the most pressing issue facing their sector, they might say expanding the IRA charitable rollover.

The reality of the wide variety of nonprofit organizations working at national, regional, and local levels, and their equally varied interests and priorities, is masked in the report by an inappropriate reliance on a narrow slice of the sector for the interviews and surveys. A fuller examination of the sector would almost certainly lead to a conclusion about sector leadership and funding significantly different from the one drawn by the report’s authors.

Analysis 3: AFJ, which serves as a major national resource on nonprofit advocacy law and regulation, is very pleased by the report’s focus on the need for increased activity throughout the sector. Unfortunately, the text includes some significant misstatements of fact which may only serve to reinforce the widespread confusion which plagues the nonprofit community about what kinds of lobbying and political work are permitted.

In its discussion of advocacy, the report highlights the importance of the legal rules and how they are perceived and understood by organizations. Some aspects of the law are subject to legal interpretation and experienced tax and election lawyers may disagree on the interpretation. While we may not agree with how all the statements of law and policy in the report are characterized, there are some significant legal inaccuracies that require correction.

Appendix A, a chart describing *Rules Governing Nonprofit Lobbying and Political Activity*, contains some factual errors. In particular,

- The chart says mistakenly says that Electioneering Communications are prohibited for 501(c)(3) organizations. In fact, 501(c)(3) organizations can engage in electioneering communications. The prohibition on corporations—including 501(c)(3)s, 501(c)(4)s, 501(c)(5)s, and 501(c)(6)s—engaging in electioneering communications was struck down by *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007). An electioneering communication is defined as: “any broadcast, cable, or satellite communication that refers to a clearly identified candidate for Federal office and is made within 30 days of a primary or 60 days of a general election.” Electioneering communications could include grassroots lobbying ads or even public service announcements that refer to a policymaker who happens to be up for re-election.
The definition of “Electioneering Activity,” gives the confusing impression that 501(c)(3) organizations may not participate in a number of activities that are actually allowable. For example, footnote 3 states that electioneering activity is “[d]efined broadly by the IRS as political activity designed to influence the selection of any individual to federal, state, or local office, including issue advocacy, ads, polling, get-out-the-vote activities, etc.” This definition is simply inaccurate. While 501(c)(3) organizations cannot support or oppose candidates for public office, they may indeed weigh in on executive branch nominations, as well as nonpartisan polling, get-out-the-vote activities, and issue advocacy, all subject to certain rules.

The chart states that, regarding 501(c)(4)s, 501(c)(5)s, and 501(c)(6)s, “Expenditures for electioneering activities are tax-exempt.” However, Section 527(f) of the Internal Revenue Code specifically imposes a tax on expenditures by exempt organizations for an “exempt function,” which is defined as “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.” 527(e)(2). The definition of “exempt function” is more narrow than how the report defines “electioneering activities.”

As to express advocacy for 501(c)(4)s, 501(c)(5)s, and 501(c)(6)s, the chart says it is “Permitted, but must be registered as limited ‘independent expenditures….’” Under federal tax law, express advocacy cannot be the organization’s primary purpose and under federal election law, express advocacy must be conducted independently of a candidate or campaign (with some exceptions). There is no registration requirement, although organizations engaging in express advocacy must comply with reporting and disclaimer rules.

As to electioneering communications for 501(c)(4)s, 501(c)(5)s, and 501(c)(6)s, the chart says they are “Permitted, but must be registered as limited ‘electioneering communications….’” There is no registration requirement, although organizations engaging in express advocacy must comply with reporting and disclaimer rules.

In addition to the errors in Appendix A, there are several other misleading comments:

The report omits that private foundations may attempt to influence legislation through technical advice or assistance to a governmental body or nonpartisan analysis, study, or research. 4945(e). These exceptions to the definition of lobbying apply along with the self-defense exception mentioned in the report.

The report (on page 165) perpetuates the misconception about the holding of Citizens United. The report states that “the Supreme Court decision in Citizens United v. Federal Election Commission, which gave for-profit corporations, individuals, and unions the ability to make unlimited contributions to Super PACs and 501(c)(4) social welfare organizations for partisan political activity.” At the time of the decisions, Super PACs hadn’t yet been created and more importantly, the decision also gave all corporations—for-profit and nonprofit—the ability to make unlimited independent expenditures. In fact, Citizens United, the plaintiff in the case, is a 501(c)(4). And, the decision itself had no impact on the rules for individuals.
Analysis 4: The report serves the laudable purpose of reinvigorating the national conversation about the vital role nonprofits play in our democratic process, but describes the sector in inconsistent, confusing ways.

The purpose of this project is commendable, but any study of this nature should embody the fundamental values of the sector as defined in the broadest sense. This incredibly diverse sector includes groups that, among other characteristics, are national, regional, and local; large and small; progressive, conservative, and non-ideological; staff-run and volunteer-driven; and 501(c)(3)s and 501(c)(4)s.

In an effort to simplify the “sector,” the report—and the online video that accompanies it—too often conflate the nonprofit community beyond recognition. The “nonprofit sector” is not synonymous with the “charitable sector,” as the report infers. Additionally, while Part II of the report purports to be about the charitable sector, most of the case examples in Part I are not in fact of charities, but instead social welfare groups which are tax exempt under section 501(c)(4) of the tax code or are for-profit corporations.

The disconnect between the case studies of successful advocacy –most of which are (c)(4)s—and the discussion of the key sector-wide issues, is made even more confusing by Footnote 3 on page 111, which says “This paper uses the term charitable and nonprofit interchangeably.” If that’s the case, the authors are saying the issue set they are touting is only applicable to 501(c)(3)s, which are those defined in the law as “charitable.” Assuming this is the meaning of the footnote, one might question why Section I of the report setting up the value of advocacy disproportionately focuses on an entirely different kind of nonprofit than that used to justify the $20 million recommendation.

In order to properly analyze the sector and draw meaningful conclusions, it is important to be clear about which groups are included and to provide straightforward and accurate descriptions of the rules that govern them. For example, the report’s and video’s discussions of the effects on Citizens United misrepresent the effect on the 501(c)(4) world (page 165) and the Issue Paper on “Advocacy and Lobbying Rules for Charities and Private Foundations” addresses many issues related to social welfare organizations, which are neither charities nor private foundations.

To support its thesis of what makes for successful advocacy, the study includes seven case studies of organizations: Two large, well-funded national 501(c)(4) organizations (Human Rights Campaign and Americans for Tax Reform); one multinational corporation (General Electric); and four coalition efforts (including one that was led by Independent Sector, that serves as the only example involving (c)(3) leadership).

Regrettably, the report relies too heavily on the experience of large 501(c)(4) organizations, which ignores the bulk of the sector’s 501(c)(3) advocacy work, and confuses the already often-misunderstood difference between (c)(3) and (c)(4) entities. The selection of General Electric among the case studies also strikes us as puzzling since the experience of a multinational corporation would seem to have very little in common with most nonprofit organizations.
While the case studies are interesting, the strategies and tactics employed by the profiled organizations and coalitions may not be viable for most nonprofits. All of the case studies focused on successful, well-funded advocacy programs at the federal level. Most nonprofits do not have the benefit of the kinds of financial, legal, structural, staff, and board resources that the profiled organizations enjoy. This focus throughout the report on large, national organizations is an inherent flaw in the study, and creates a bias that, not surprisingly, translates into conclusions favoring national solutions undertaken by large institutions.

In addition, we believe that there is limited value in profiling individual groups, since rarely is success in an issue attributable to one single organization. A better model would be to profile a successful issue outcome and then detail the broad-based movement that made it possible.

Analysis 5: We agree that establishing and mobilizing a broad-based coalition can be a valuable advocacy strategy, but the report’s puzzling conclusion that a single group should take primary responsibility for managing sector policy and advocacy is not supported by the evidence presented.

The report presents clear evidence about the lack of desire—even among those entities interviewed for the report—for a central coordinating body to lead all national advocacy efforts related to sector-wide issues, and then, incongruously, urges support for a $20 million, four-year project that it infers should be led by the report’s sponsor itself.

Virtually every finding in the text belies the startling conclusion that it is necessary to spend $20 million to support a single organization’s efforts to protect the interests of the nonprofit sector. The report ignores its own evidence which says that there is virtually no appetite for unified action and certainly no willingness to anoint one organization as the recipient of such a large amount of funding.

As the report itself states, “Interviewees noted a number of obstacles that leaders must overcome in order to be effective on sector-wide issues. These include significant differences in the interests and ideological perspectives of sector organizations, lack of trust, and incentives to differentiate—rather than join with—other organizations.” If this finding is correct, it would seem counterproductive to set up a scenario where a “leader” would be anointed with no prospect of followers.

If there is to be a central focus for the sector, and if there is agreement about what comprises the sector, a process would have to be established of convening sector groups to discuss issues, set priorities and then engage in a collaborative strategy to proceed. The question is whether now is a propitious time for that work to happen given the enormous budgetary and policy stresses currently facing many communities.
Conclusion

The title of the report, *Beyond the Cause*, embodies its fundamental flaws. The “cause” can never be separated from the work of nonprofit groups, either individually or collectively. By definition, there is nothing “beyond the cause” for the groups serving the public good. This study seems to ignore its own evidence that nonprofits are important actors in our democratic system, desperately in need of long-term, sustained support for their advocacy efforts by making recommendations that could potentially divert significant resources to a single organization that would be charged with managing the unmanageable.

Although it is certainly true that there are many sector-wide issues that require attention in order to protect the legal and administrative infrastructure on which the sector rests, the set described in this report seems deficient. Nor do the report’s conclusions about funding a single group to pursue them match its own findings, let alone any common-sense analysis of the nonprofit community. We believe leadership will come, as it has come, from many sources, and the interests of the sector will certainly be defended through coalitions that reflect the fundamental nature of the extraordinarily diverse nonprofit world.

We are extremely happy that attention is being paid to nonprofit advocacy at this crucial time in our nation’s life. A report of this nature couldn’t come at a better time, and there is much of value in its research. But the erroneous conclusions it reaches are inimical to enhancing the power of nonprofit organizations to shape public policy and advance the causes to which those groups are devoted.