

501(c)(4) Strategy and Discussion Guide



THE ATLAS LEARNING PROJECT is a three-year effort coordinated by the Center for Evaluation Innovation to synthesize and strategically communicate lessons from the advocacy and policy change efforts that The Atlantic Philanthropies and other funders have supported in the U.S. The project's goal is to help push philanthropy and advocacy in bolder and more effective directions. To learn more, go to atlaslearning.org.

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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.

THE ALLIANCE FOR JUSTICE ACTION CAMPAIGN (AFJAC) serves as the nation's leading resource on the legal framework for 501(c)(4) nonprofit advocacy efforts. AFJAC provides invaluable resources, training, and technical assistance to help nonprofit organizations and their donors advocate more efficiently and effectively.

Through the expertise of its knowledgeable team of attorneys, AFJAC contributes respected insight to policy debates on campaign finance, advocacy, and nonprofit tax law issues. AFJAC also promotes a national conversation about the importance of the courts with a goal of advancing core constitutional values, preserving human rights, securing unfettered access to the judicial system, and guaranteeing the even-handed administration of justice for all Americans.

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Introduction

This Strategy and Discussion Guide has been developed for individuals, organizations, and funders interested in starting 501(c)(4) organizations. It discusses the strategic questions that must be considered in determining whether, when, and for what purpose(s) to create a (c)(4). 501(c)(4) social welfare organizations are a vital tool for nonprofits and funders seeking to shape policy outcomes that benefit their members, constituencies, grantees, and society at large.

Establishing, managing, and maximizing the advocacy capacity of a 501(c)(4) entails a number of different considerations. Here, we lay out those considerations in detail and outline examples of successful management strategies.

A quick overview: What is a 501(c)(4) social welfare organization?

A 501(c)(4) organization is a social welfare organization that may

pursue educational, lobbying, and some limited political activities. No limit exists on the amount of lobbying a (c)(4) may conduct, including working for the passage or defeat of ballot measures. In addition, a (c)(4) may engage in partisan political campaign work, but only as a secondary activity. For a more detailed summary of the legal framework for (c)(4)s, see the [Primer on Social Welfare Organizations: Using 501\(c\)\(4\) Organizations for Good](#).

Partisan political activity includes:

- Endorsing candidates or opposing candidates
- Partisan voter outreach
- Developing a pipeline of “good” candidates
- Polling based on swing states/districts/counties or voters
- Independent expenditures
- Establishing and/or managing connected political action committees

- Contributing directly or indirectly to state or local candidates that allow corporate contributions
- Conducting voter registration or get-out-the-vote (GOTV) drives aimed at supporting a candidate or party

It's important to remember that a 501(c)(4) cannot be created *for the purpose* of electing or defeating a particular candidate or candidates. In addition, 501(c)(4) organizations must comply with federal and state election law when engaging in certain partisan political activities. For example, federal *and* state election rules govern whether a 501(c)(4) can make a contribution to a candidate or coordinate activities with a candidate. It's possible that your state may prohibit activities that other states allow (c)(4)s to conduct, so be sure to check.

Unlike contributions to 501(c)(3) organizations, contributions to (c)(4)s are not tax-deductible. In fact, a (c)(4) must notify prospective donors that contributions are not deductible as charitable contributions. In addition, (c)(4)s are not required to disclose their donors publicly except under very limited circumstances. For more on the differences between (c)(3)s and (c)(4)s, see below.

What is the difference between a (c)(3) and a (c)(4)?

The most common type of tax-exempt nonprofit organization is the 501(c)(3) group that engages in charitable, religious, scientific, literary, or educational work. It pays no federal taxes on its income, and contributions it receives may be tax-deductible by the donor. The two basic types of (c)(3) groups are public charities and private foundations, each subject to somewhat different rules. Importantly, these groups are allowed to engage in a broad range of advocacy activities, although they are subject to [limits on lobbying](#). In the case of public charities, these limits are quite generous. At the same time, though, these organizations are prohibited from engaging in any political activity on behalf of or in opposition to a candidate for public office.

Before moving too far down the road toward establishing a (c)(4), advocates should be clear about the kinds of activities they want to pursue—and whether those activities can be carried out by an existing (c)(3). Advocates with an existing (c)(3) should check to make sure they are maximizing their (c)(3)'s advocacy capacity, for instance, by lobbying up to its allowable legal limit.

Establishing a (c)(4) may be a good idea if:

You believe a robust donor base is available

While (c)(4)s present an excellent opportunity to engage in unlimited lobbying and limited political activity, raising money for a (c)(4) can be challenging—especially since donors won't receive a tax advantage as a result of their contributions. Organizations should be prepared to construct a robust fundraising program that combines individual and institutional donors.

Individuals who care about your cause are often the best people to approach first. It's also helpful to target donors who have already received their maximum charitable deduction under tax law, do not itemize at all, and/or care more about the issue and the work than any potential tax benefits—since they will not get a deduction for giving to your (c)(4). In addition, unions and membership dues may serve as key sources of funding for the (c)(4)'s activities.

Advocates often ask if 501(c)(3)s can make grants to (c)(4)s; they can, but only for educational, nonpolitical work. Such grants will often be treated as lobbying expenditures by the (c)(3) making the grant. Public charities, including community foundations, can fund a (c)(4)'s lobbying. In fact, many public charities that have not exceeded their lobbying limits under the 501(h) election choose to grant “excess” lobbying funds to a (c)(4). By contrast, due to expenditure responsibility rules, private foundation grants to (c)(4)s *cannot* be used for lobbying, and therefore most private foundations prefer to make grants to charitable 501(c)(3)s only.

A diversification of funds is important, especially since 501(c)(4) fundraising may suffer in an election year when likely donors are committed to political campaigns or PACs. Most (c)(4)s have a small donor pool and must dedicate significant resources to raising money in order to execute robust campaigns.

A good example of a (c)(4) organization that has diversified its revenue stream is **Equal Voice Action (EVA)**, founded by the Marguerite Casey Foundation as “an independent, family-led organization committed to ensuring that poor and low-income families have a voice in shaping public policy that directly impacts their daily lives.”¹ The organization is nonpartisan and funds its activities through low-dollar individual and organizational membership dues, grants and some advertising revenue.

If a (c)(4) wants to operate at “full strength,” it needs to make sure it has funding from sources other than (c)(3)s. For example, during the 2014 congressional elections, a (c)(4) wanted to send postcards to voters in a legislative district criticizing the incumbent’s views on the budget and encouraging voters to remove him from office. While it was a permissible activity for a (c)(4), all of the (c)(4)’s funding had come from (c)(3)s, and thus could not support such political activity. As a result of its funding streams, the (c)(4) was limited in the activities it could do.

You need all the tools in the advocacy toolbox

There are times when simply engaging in public education is insufficient to advance policy imperatives or fulfill an organization’s mission. Sometimes, advocates need to engage policymakers in a more aggressive fashion, through extensive lobbying or partisan electoral work. When a (c)(3) group assesses its advocacy goals and capacities and contemplates adding (c)(4) capacity it often asks if there is a need to hold policymakers accountable, or if it needs unlimited lobbying capacity or the ability to address legislative positions in the context of an election. If the answer to these questions is “yes,” then a charitable organization should strongly consider forming a 501(c)(4).

While (c)(3)s can lobby, they must stay within lobbying limits. The limits are usually quite generous, but at times they’re not enough. This is a common reason why—and when—a (c)(3) establishes an affiliated (c)(4). For instance, the National Women’s Law Center established the **NWLC Action Fund** to ensure that grassroots lobbying costs wouldn’t swamp the (c)(3)’s

1. Action Now October 2015 Newsletter. (2015, October). *Where Change Begins*.

limits.² A (c)(4) provides a safety valve for when there will be a lot of grassroots lobbying.

It's often necessary to employ a mix of heightened lobbying and aggressive political activity to achieve policy wins. For instance, the Affordable Care Act would not have passed without both approaches, which were part of an extensive campaign led by **Health Care for America Now (HCAN)**, a (c)(4), heavily funded by The Atlantic Philanthropies. "HCAN developed and executed a comprehensive strategy during the 2008 elections, which helped establish health care as a priority, frame the debate and build momentum for reform efforts early in the next Congressional session. . . . HCAN's dynamic connection between legislative advocacy and electoral strategies exemplifies two of the key attributes of effective advocacy campaigns: developing integrated strategies and coordinating among different parts of the campaign."³ As part of its campaign, "HCAN targeted several competitive House

and Senate races in districts where the coalition had a base of support and knew the candidates' position on reform. The goal of the ads and field work was to show that health care reform was a pivotal issue in the decision of the election."⁴ Due to this multifaceted advocacy work, which blended lobbying and political engagement, voters felt more favorable towards candidates who supported affordable health care.

While it may not always be enough on its own, advocacy other than lobbying is often essential to lay the groundwork for later lobbying and political activity. For instance, the marriage equality ballot measures passed only after advocates realized that "the only way to move forward was to implement a much more effective and truly multi-dimensional public education, non-political strategy well before a measure appeared on the ballot."⁵ Funders realized that they needed to provide significant funds so advocates could focus on a key public education strategy of "changing hearts and minds. . . ." (C)(3)

2. AFJ Interview with Emily Martin

3. HCAN Evaluation: A comprehensive qualitative evaluation of the Health Care for America Now campaign, Grassroots Solutions and M + R Strategic Services, 17-18.

4. Id.

5. Hearts & Minds: The untold story of how philanthropy and the Civil Marriage Collaborative helped America embrace marriage equality, Proteus Fund (2015), 9.

6. Id.,11.

funds—and (c)(3) funders—could support the public education strategy, but funds available for lobbying were critical once the ballot measure campaigns were underway.

Similarly, efforts to establish federal death penalty reforms required more than public education efforts. For example, The Atlantic Philanthropies funded **The Justice Project**, a (c)(4), for a five-year education and lobbying campaign to pass The Innocence Protection Act as part of the Justice for All Act in 2004. As The Justice Project reported, “Education is absolutely important to create the right climate . . . But if you want to bring about social justice change, you must engage the legislative and judicial processes as well.”⁷

As described by Kevin Werner of **Ohioans to Stop Executions Action Fund**, a (c)(4) “helps ensure that the (c)(3) investment in education isn’t just left to chance.”⁸ Essentially, a (c)(4) can help close the deal. In fact, many advocates and funders remarked that a (c)(4), with its increased lobbying capacity and ability to support (or criticize) candidates, is often needed to move an issue across the finish line.

In recent years, the death penalty reform and abolition movement continues to focus on lobbying, for now eschewing efforts to support candidates in favor of focusing on legislation. Advocates have decided to focus their limited resources on lobbying in state legislatures, where they see a window of opportunity to act before the Supreme Court gets involved. Although the (c)(4) death penalty groups have focused on lobbying, one funder suggested a possible reason to expand their scope into partisan political activities: most death sentences in this country are carried out in only 25 counties. If the groups had added resources, it may be effective to weigh in on state and local judicial and prosecutor elections.

You want a change in elected leadership

Some organizations decide they *do* want to help elect (or defeat) candidates, because their mission depends on the right kind of leadership in the legislative or executive branch. In these cases, campaign intervention becomes a critical strategy to advance the organization’s *cause*. As described by **NARAL Pro-Choice Virginia**, it

7. *Atlantic Reports: Why Supporting Advocacy Makes Sense for Foundations*, 6.

8. AFJ Interview with Kevin Werner

is important for the organization to be able to talk about electing a pro-choice majority. NARAL points out that it does not work for the Democratic Party, or individual candidates. Rather, the group says, “we work for the women of Virginia... But to even have this conversation, we need the (c)(4).”⁹

Likewise, various immigration reform groups have recognized that to promote favorable policies, they need to encourage activists to run for office. **The Latino Victory Fund**, for example, has prioritized developing a pipeline of Latino leaders that can serve in municipal, state, and national legislative bodies and make better policy decisions.

Your advocacy goals require a public referendum or ballot measure

For a charitable organization, leading a costly ballot measure campaign while staying within lobbying limits is extremely difficult. Consequently, most ballot measure committees are (c)(4)s. For instance, in 2014, the **New Jersey Working Families Alliance**, a (c)(4), led a coalition of groups (including (c)(3)s and (c)(4)s) in a campaign to place paid sick days

on the ballot in Trenton and Montclair, New Jersey. Likewise, the recent success of a criminal justice reform ballot measure, Prop 47, in California was led by **Vote Safe**, a (c)(4).

Some (c)(4)s intentionally keep their work on a ballot measure separate from their work on candidate elections. They see an issue, such as paid sick days, raising taxes, or legalizing same-sex marriage, as nonpartisan (or bipartisan) and/or want (c)(3)s to participate in the campaign. On the other hand, the New Jersey Working Families Alliance not only promoted the ballot measures calling for paid sick days, but also endorsed candidates who supported pro-working family positions and paid for ads in support of such candidates. So too did **Equality Maryland** (along with other equality groups), when it defended a ballot measure permitting same-sex Marylanders to marry, while simultaneously endorsing candidates who shared these views and helping voters make informed decisions about which candidates to support.

Your policy issue has become politicized

We live in a hyper-partisan environment. Politicians and parties

9. AFJ Interview with Tarina Keene

are taking more extreme stances on issues like gun control, climate change and immigration reform, and in their competition for control, are politicizing many issues that previously were nonpartisan. Reproductive rights, health, and justice issues have been considered partisan for decades now; the IRS has actually identified words like “pro-choice” and “pro-life” (and “liberal” and “conservative,” among others) as “code words” deemed to improve or diminish the prospects of certain candidates based on their views, even when the candidates’ names are not used. Consequently, discussing these issues in connection with voting or candidates can be quite risky for a 501(c)(3). 501(c)(4)s, on the other hand, can address these issues with more freedom and in connection with political parties or campaigns.

A (c)(4) can be more direct when talking about its issues, particularly when the issues divide candidates or parties. As described by Tisha Reed, former deputy director of **WV FREE** and **WV FREE Action Fund**, a “(c)(4) can much more

strongly endorse policies instead of providing a balanced picture . . . For things like social media and for [talking with] reporters, it’s easier to have a side when you are working from the (c)(4) on [reproductive] issues.”¹⁰

501(c)(4) status allows a group to discuss its issues more aggressively and challenge the positions of politicians. For instance, **America’s Voice**, the 501(c)(4) companion to America’s Voice Education Fund, seeks to “harness the power of American voices and American values to enact policy change that guarantees full labor, civil and political rights for immigrants and their families.”¹¹ In the 2016 Republican primary, candidate Donald Trump made offensive statements about immigrants and Muslims.¹² America’s Voice responded to the controversial candidate statements by issuing press statements and reports that cover the rise in anti-immigrant rhetoric within the GOP and the corresponding negative opinion of the GOP among Latino voters.

10. AFJ Interview with Tisha Reed.

11. *About*, America’s Voice. www.americasvoice.org

12. When Donald Trump announced his intention to run for President of the United States, he made many controversial remarks including calling Mexican and Latino immigrants “rapists” and “drug dealers.” In December 2015, Trump suggested that the United States should ban all Muslims from traveling to the country.

For a (c)(3), weighing the risks and rewards of a response to a candidate's comment(s) can be a difficult decision. In the 24-hour, social media-driven media cycle, taking time to weigh the relevant factors and craft a judicious statement means loss of valuable time and impact. A 501(c)(4) does not have the same constraints. Also, staff and volunteers of 501(c)(4)s can discuss issues within the context of voting and the attitudes of voters.

You need to protect the reputation of the 501(c)(3)

An organization seeking to start a 501(c)(4) that is connected to an existing (c)(3) will need to consider what a (c)(4) may mean for the nonpartisan reputation of its 501(c)(3). The goal of a charitable organization is to serve its community and to advocate on the community's behalf, no matter the politics of the moment. For this reason, a connected (c)(4) that aggressively addresses political matters or constantly lobbies, even if nonpartisan, could potentially sully the nonpartisan reputation of its connected parent (c)(3) organization.

After conducting several focus groups and meeting with a variety of grantees and other stakeholders, the **Healthcare Foundation of Greater Kansas City (HCFGKC)** ultimately decided not to establish an affiliated (c)(4). While there was general agreement that a (c)(4) would create opportunities—the ability to spend more money on lobbying, hold legislators accountable, build a pipeline of candidates **to run for** office, and encourage other funders to support (c)(4) work—there was concern that the foundation and its grantees would lose their credibility and reputations would be damaged if the (c)(4) was seen as partisan.

From a strategy standpoint, groups should consider their issues and missions in the context of the political environment. For some, using the power of a (c)(4) to leverage advocacy is unnecessary. But for some organizations, a 501(c)(4) provides maximum protection of tax-exempt status, coupled with the flexibility to utilize several advocacy tools to accomplish their mission and serve their constituents.

Best Practices for Setting up a Related (c)(3) and (c)(4)

Given the ability of (c)(4)s to engage in extensive lobbying and some political activities, a (c)(3) active on public policy issues might consider establishing an affiliated (c)(4). Here are some tips for how to do it smartly.

Sufficiently separate the entities

The (c)(3) and (c)(4) must be legally separate and distinct corporations. Despite having similar missions and goals, an affiliated social welfare organization is a separate organization in the eyes of the IRS. The affiliated organization should have a separate EIN (tax ID number), separate bank accounts, a different name, and different logo. Often, the name and logos are similar to that of the (c)(3) for uniformity and recognition's sake.

The (c)(4) should have a board of directors separate from that of the (c)(3). The organizations may have board overlap, but if the (c)(4) engages in partisan political

activity, complete board overlap is ill-advised.

When Save the Children recognized the need for a (c)(4) to carry out work not allowed by the (c)(3), it had a debate about whether the (c)(4) should be affiliated with the (c)(3) or a completely free-standing entity. Initially, there was concern about confusion and damage to the reputation of the (c)(3) with an affiliated (c)(4). Ultimately, Save the Children decided to establish an affiliated entity, **Save the Children Action Network (SCAN)**, but hired mostly separate staff that work out of separate office space. However, to maintain some alignment between the organizations, they share a few overlapping board members, the CEO of the (c)(3) chairs the (c)(4) board, and the organizations meet quarterly to stay in touch about activities.

The National Employment Law Project established a (c)(4) largely to allow it to discuss candidates

and hold leaders accountable while minimizing legal or reputational risk. Only a few NELP staff work on behalf of the (c)(4), the **National Employment Law Project Action Fund**. To make it easier to manage and to reduce compliance burdens, it uses a fiscal sponsor, **The Advocacy Fund**.

Healthier Colorado, a nonpartisan 501(c)(4) organization, was created and initially funded by the Colorado Health Foundation, which at the time was a public foundation (although it has since transitioned to a private foundation). Due to the Foundation's transition to a private foundation, it chose to create strong firewalls between the (c)(3) and the (c)(4). The names, logos, website staffs, and even office spaces are different.

A 501(c)(3) organization and its related 501(c)(4) organization may avoid some problems by having separate websites. However, under certain circumstances, it is possible to maintain a joint 501(c)(3)/501(c)(4) website. First, if the website is owned by the 501(c)(3) organization, and the 501(c)(4) does not engage in any political activity, the 501(c)(4) may pay to post material on the 501(c)(3)'s website. Second, if the website is owned by the 501(c)(4), and the

501(c)(3) organization pays to post material on the site, that activity may be permissible. However, if the website is owned by the 501(c)(3), and the 501(c)(4) conducts political activity, the political material on the joint website may be attributed to the 501(c)(3), resulting in a violation of the 501(c)(3)'s tax status.

Websites of many (c)(3) organizations, such as the ACLU of Maryland Foundation and Planned Parenthood Federation of America, are very transparent when a site visitor is navigating away from the (c)(3) site to the (c)(4) site. These sites present a pop-up box that informs visitors they are jumping to another site. For example, the ACLU's pop-up message reads, "You are leaving the ACLU of Maryland Foundation (c)(3) website and going to the **ACLU of Maryland (c)(4) website**." The site visitor must then click "OK" to continue. This leaves the visitor with no confusion about which organization's website they are visiting.

While there are best practices for how to operate, it is up to each "family" of organizations to determine how closely—or how far apart—the organizations operate. "My main piece of advice," says Christopher Hansen, president of the **American Cancer Society**

Cancer Action Network, “is you want to be very, very careful about making sure that you’re making the separation as distinct as possible. It needs to be able to withstand a rigorous audit trail.”¹³

Set up good compliance systems from the start

Regardless of how groups decide to handle recordkeeping, accounting, and other administrative tasks, several former Atlantic Philanthropies program officers encourage groups to set up good legal compliance systems from the start. Although the affiliated organizations may have similar names and share staff and office space, they are legally separate entities. The (c)(3) cannot subsidize the activities of the (c)(4), so it is critical that the (c)(4) pays at least its “fair share” of all expenses. Organizations that share office space, equipment, and staff, for instance, should execute a cost-sharing agreement that specifies the payment terms, and have time-sheets to allocate staff time between organizations. Likewise, affiliated organizations need to consider how to manage lists, websites, social media, and even programmatic activities. One

program officer even recommends that funders provide support to hire a lawyer or other compliance specialist to devise recordkeeping and financial protocols, hoping that “seal of approval” may encourage other foundations to fund the work.

Train staff for compliance

Maintaining and operating an affiliated (c)(4) requires knowledgeable staff. This doesn’t mean that everyone on staff understands the ins and outs of (c)(3)/(c)(4) interactions, but there must be a basic understanding of when to allocate one’s time to the (c)(3) and when to allocate time or activities to the (c)(4). Organizations should have a dedicated staffer to manage the compliance issues and boundaries between the (c)(3) and (c)(4), and to develop policies and procedures to ensure consistency.

Additionally, administrative staff must understand the reimbursement procedures when moving money from a (c)(3) to a (c)(4) and vice versa. Groups that decide to form a (c)(4) must understand the importance of maintaining accurate paperwork, and not allowing money to slush between the organizations without accountabil-

13. Advocacy for a Smoke-Free Nation, Bolder Advocacy Interview with Christopher Hansen.

ity. While there are administrative costs associated with this vigilance, advocates insist they should not be seen as a barrier but as a cost of doing business—or advocacy—better.

For More Information

Visit these user-friendly online resources:

- [Primer on Social Welfare Organizations: Using 501\(c\)\(4\) Organizations for Good](#)
- [The Connection: Strategies for Creating and Operating 501\(c\)\(3\)s, 501\(c\)\(4\)s and Political Organizations](#)
- [Influencing Public Policy in the Digital Age](#)
- [Alliance for Justice Action Campaign Resources and Sample Documents](#)



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