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ACTION CAMPAIGN

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.

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.

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 post-election period brings a whirlwind of activity as new administrations and legislatures get ready to take office. It also brings a wealth of opportunities for donor organizations that care deeply about policy issues and want their contributions to make a real difference in legislation and policymaking. For these donors, there are two main avenues for maximizing their support of advocacy during this critical window: supporting 501(c)(4) nonprofits and making sure 501(c)(3) grantees take full advantage of their advocacy capacity.

It's true that nonprofits organized as 501(c)(4) social welfare organizations took a beating in media a few years back. But their value in promoting social good is real. Organizations set up as 501(c)(4)s

can engage in all the activities the more common 501(c)(3) public charities can, and more. And because they can do as much lobbying as they want (*and* can even support or oppose candidates), they can be critical to policy success. 501(c)(4)s provide the lasting organizational infrastructure for a social-good agenda, both within the election cycle and outside of it. By donating to c4s, you can build an enduring framework for long-term policy and electoral success.

Meanwhile, as a general rule funders should always seek to maximize the power of their funding, including empowering (c)(3)s as much as possible. And what better time than right now—when your grantees are doing their best to promote their priorities to incoming officials?

The (c)(4) Secret

PUBLIC POLICY CHANGE IS RARELY ACHIEVED WITH (c)(3) FUNDING ALONE

As one advocate said, (c)(4)s are “where the rubber hits the road.” 501(c)(4)s may lobby to an unlimited extent, and during the election cycle itself can encourage the election or defeat of candidates based on their policy positions and ideology. Unlike their charitable counterparts, 501(c)(4)s also provide “maximum cover” to the organization and staff: groups may speak forcefully about controversial issues without fear of losing their tax-exempt status.

As the director of West Virginia Free Action, Margaret Pomponio, explained, a (c)(4) “can much more strongly endorse policies instead of providing a balanced picture . . . For things like social media and for reporters, it’s easier to have a side when you are working from the c4 on these issues.” Even those c4s that don’t expressly endorse candidates can find it easier to talk about contentious issues, such as immigration reform, gun control, and abortion, close to an election. The flexibility of a 501(c)(4) gives

organizations and constituents the freedom necessary to build power in their communities.

This freedom stands in contrast to the limits imposed on 501(c)(3)s, and makes a strong 501(c)(4) infrastructure a key complement to the work of 501(c)(3)s. 501(c)(3) public charities—and the (c)(3) dollars they raise—are critically important to the building of an equitable, just, and free society. But (c)(3)s face legal limits on how much lobbying (including supporting or opposing ballot measures) they can do, and cannot support or oppose candidates for public office. These rules impose barriers that make it risky, if not impossible, for (c)(3)s alone to push for policy outcomes and policymakers.

In short, even if a funder doesn’t want to—or cannot—fund electoral activities, the unlimited lobbying ability of (c)(4)s cannot be minimized. According to Kevin Werner, the Executive Director of Ohioans to Stop Executions and

OTSE Action Fund, “When we need to lobby, we really need to do it. If we don’t have (c)(4) available resources [funds that can be used for lobbying], then (c)(3) work doesn’t go anywhere. The (c)(4) work helps ensure that the (c)(3) investment in education isn’t just left to chance.

This sentiment is echoed by many others, including one funder who stated decisively that a group “could take it home to the finish line with (c)(4) dollars.”

(C)(4)s Provide a Platform for Constituencies that Are Otherwise Disenfranchised Politically

5 01(c)(4) social welfare organizations like the American Cancer Society Cancer Action Fund, Save the Children Action Fund, and OTSE Action Fund don't speak on behalf of candidates, but on behalf of issues and communities. They provide a vital platform for communities that might otherwise lack political clout. And right now, thousands of 501(c)(4) groups of all sizes around the country are busy speaking out for their members and causes. They may be gathering signatures to support or oppose a ballot measure to raise the minimum wage, or knocking on doors and making phone calls to influence a bill in the state legislature.

This kind of work can make a real difference: think of recent key social-justice victories such as marriage equality, passage of the Affordable Care Act, raises

in the minimum wage, pushback against anti-immigrant rhetoric, and even the election of the first African-American president. None of these would have happened without aggressive advocacy by (c)(4) organizations.

That's because increasingly, (c)(3)s are struggling with whether and how to speak out on issues and candidates during election season. Even seemingly innocuous activities such as correcting an inaccurate comment made during a campaign debate, or tweeting about a candidate, may get a (c)(3) into trouble. A (c)(4) avoids this risk, and allows groups to speak more directly and aggressively about the issues that matter to them. Donors who feel strongly about giving voice to communities who might not otherwise be heard can make major strides toward this goal by giving to 501(c)(4)s.

Not Ready to Dive into (c)(4) Funding?

THERE'S STILL A LOT YOU CAN DO

Not ready to take the plunge with an investment in 501(c)(4)s? Even some funders that are c4s themselves choose not to support other c4s for a variety of reasons. But there are still steps you can take to ensure your (c)(3) grantees make the most of this post-election moment. In fact, to maximize the value of their giving, funders should work to strengthen the advocacy capacity of *all* their grantees—whether (c)(3) or (c)(4). Too often, (c)(3)s fail to realize how *much* advocacy they can do.

Funders, including private foundations, can take some easy—and low-cost (or even cost-free)—steps to enhance the advocacy capacity of their grantees or prospective grantees:

- Do not prohibit public charities from using grant funds for lobbying. Private foundations only need to specify that grant funds are not *earmarked* for lobbying.
- Make general support grants whenever possible. Investing in organizations rather than specific projects allows an organization to hire good staff, develop and implement compliance systems, lobby and conduct voter registration, and be flexible and opportunistic.
- Provide long-term grants.
- Encourage reporting on the grantee's work in general, rather than on how your grant funds were spent.
- Offer training on the legal rules that apply to lobbying.
- Ask whether grantees have made the 501(h) election.
- If you require grantees to conduct evaluations of their work, give additional funding to cover the costs of doing so.

Another key role that funders—even private foundations—can

play is to provide tools, templates, and guidance to (c)(3)s as they establish affiliated (c)(4)s. Even if funders cannot or choose not to fund (c)(4)s directly, they can and should provide resources to protect the legal status of an affiliated (c)(3).

One experienced funder we interviewed suggested that there is tremendous value in providing funds to hire a lawyer or other experienced compliance professionals to set up systems, including cost sharing agreements, time sheets, and social media channels, so compliance is “done right” from the beginning. Having secure compliance systems in place allows the (c)(4) to be more aggressive

and bold, since it knows the (c)(3)'s tax status is not at risk. And this “done right” assurance may make other funders more willing to fund both groups.

A final note to funders: you can go a long way toward helping your grantees comply with grants when you're clear about what you mean by providing “(c)(4) funding.” To some funders, “(c)(4) funds” mean funds for lobbying, even if they're being given to a (c)(3)! To others, it means providing funds to (c)(4)s that can be used for lobbying, organizing, or research; and to others, it means allowing the (c)(4) grantee to use the funds for any permissible purpose, including hard-hitting political advocacy.

For More Information

Visit these user-friendly online resources:

- *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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