Empowering Communities

Advocacy and Lobbying Rules in a Fair Redistricting Context



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BOLDERADVOCACY
A program of Alliance for Justice

ALLIANCE FOR JUSTICE

- National association of 130 organizations.
- Committed to progressive values and the creation of an equitable, just, and free society.
- Advocates for a federal judiciary that advances core constitutional values and even-handed administration of justice for all Americans.
- The leading authority on the laws governing nonprofit advocacy.

Bolder Advocacy - Your Source for Answers



Is this sign-on letter "safe"?



Does this grant allow Lobbying?



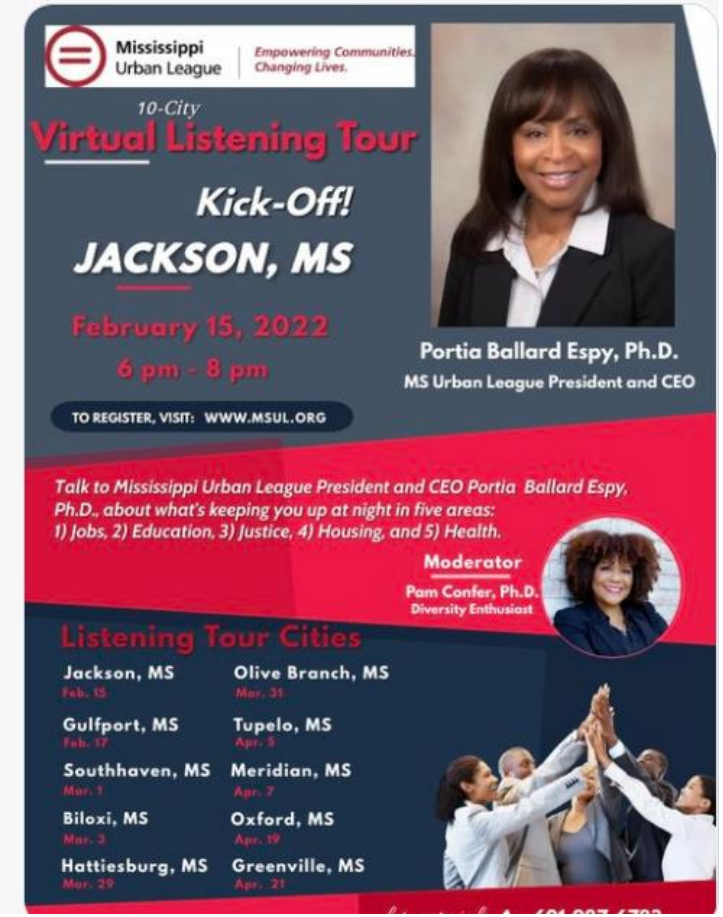
Can I share this with our Network?

AGENDA

1. Nonprofits CAN lobby
2. Identify when redistricting activities = lobbying
3. Tips to maximize your nonprofit's advocacy
4. Identify political compliance issues
5. Know how to get more help

How many of you have…

- Surveyed community members
- Conducted a “know your rights” event
- Help elevate family stories to policymakers
- Share partners’ messages on social media
- Organized a lobby day/Capitol visit
- Participated in a town hall (virtual or in-person)
- Shared reports or whitepapers with policymake
- Held a candidate forum or meet-n-greet



What is advocacy?



Sharing support for an issue in order to create lasting systematic change.

Unofficial Definition of Lobbying for IRS purposes

Trying to influence legislation, including the budget and ballot measures.

HOUSE ENROLLED ACT No. 1581

AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 1-1-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021 (RETROACTIVE)]: Sec. 3. (a) For purposes of the statutes described in section 5(c) of this chapter, a reference to population is a reference to population as determined by the most recent of the following:

(1) Federal decennial census.
(2) Federal special census.
(3) Special tabulation.
(4) Corrected population count.

(b) For purposes of statutes relating to drawing boundaries of county executive districts, county fiscal body districts, municipal legislative body districts, or the districts of any other political subdivision, ~~a reference to population is a reference to population as determined by~~ the **political subdivision shall use population as reported by the** most recent of the following, **even if those population data are not yet effective under subsection (f):**

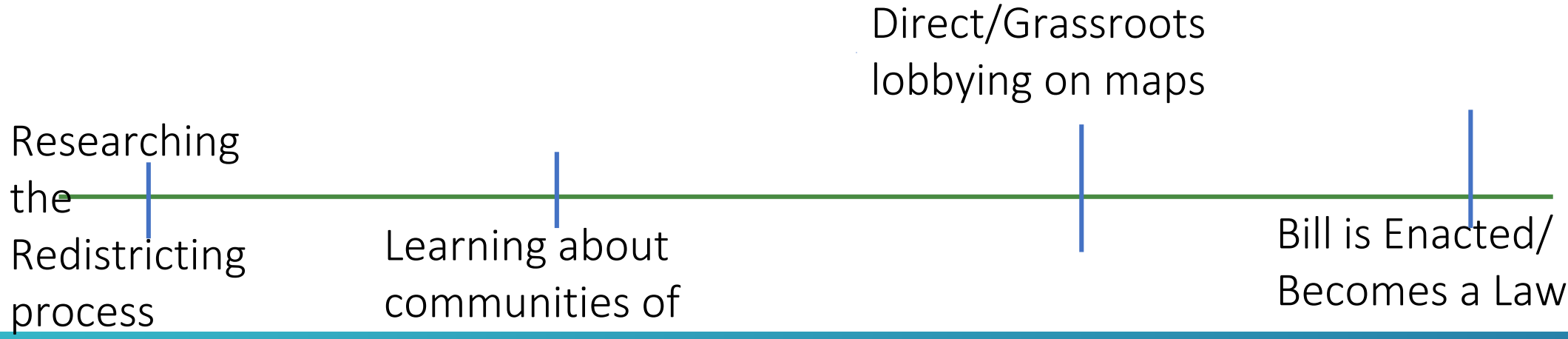
(1) Federal decennial census.





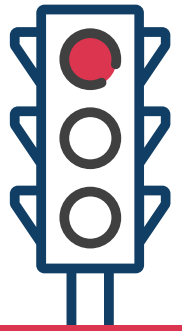
Rule on Advocacy for Redistricting

- Redistricting process in each state is different
- Efforts to influence legislation = lobbying
- Lobbying requires unrestricted funds
- Lobbying must be reported to the IRS, funders, and often the state
- Advocacy to independent commissions may NOT be lobbying
- Don't forget municipal redistricting

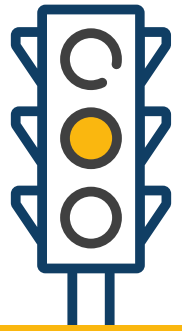


NOTE: Private Foundations CANNOT Lobby	501(c)(3) *(Public Charities)*	501(c)(4), 501(c)(5), 501(c)(6)	527 *(Political Orgs)*
Examples	Helping People. Changing Lives. MeCAP Maine Community Action Partnership	NAACP	THE COLLECTIVE ★★★★★ POLITICAL ACTION COMMITTEE
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt	Tax-exempt
Lobbying Activities	Limited	Unlimited	Limited, taxable
Electoral Activities	Cannot support or oppose candidates	Secondary activity	Usually, sole activity

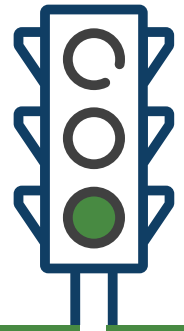
Advocacy for 501(c)(3)s



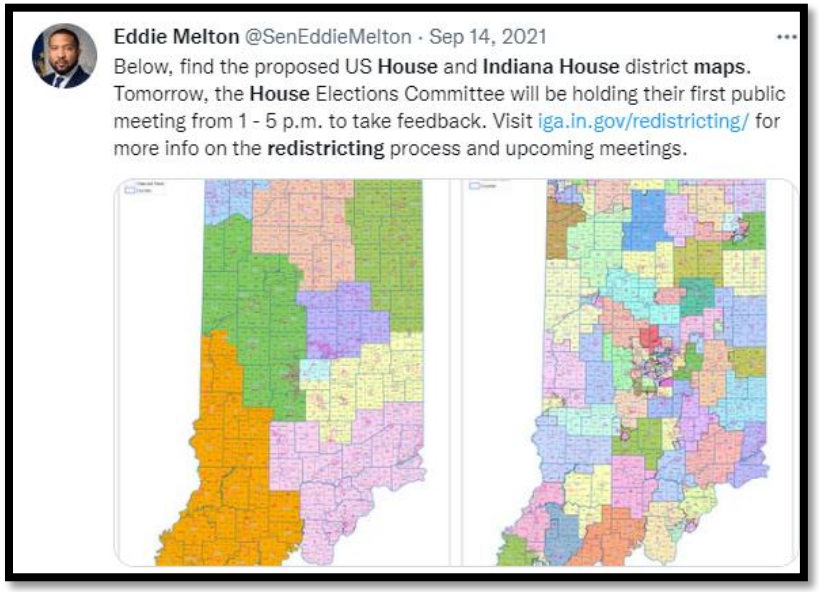
Partisan Political



Lobbying



Organizing	Public Education	Nonpartisan Voter Ed.	Influencing Corporations
Educating Legislators	Educational Conferences	Lobbying Exceptions	Regulatory Efforts
Get to Know Legislators	Research	Training	Litigation







[Indigenous Populations of Michigan]

[Caribbean Community of Interest - Detroit]

[LGBT Detroit – Community of Interest]

"Lobbying" definition depends upon context

Lobbying

- For IRS and Grant purposes
- For state disclosure purposes
- For federal disclosure purposes
- For federal grant/contract
- Layperson's understanding

Minor/Adult

- School attendance
- Driving
- Purchasing cigarettes
- Voting
- Purchasing alcohol

Lobbying:
Legal, but Limited

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Examples for IRS/Grant purposes

Not Lobbying

- Sharing story w legislator how current law impacts your family or their community
- Sharing w public why fair maps are important
- Nonpartisan analysis of maps
- Providing feedback on maps in states where maps are not legislatively approved

Lobbying

- Preparing to testify about legislatively drawn maps
- Expressing support or opposition to legislators about maps
- Encouraging public support or opposition for legislatively drawn maps

How much lobbying?

Two options

1. Insubstantial Part Test
   - Default test- 3-5%
   - Vague definitions & limits
2. 501(h) Expenditure Test
   - Need to "elect" (form 5768)
   - Clear definitions & limits up to 20%
   - Only expenditures count



The 2 Definitions of IRS Lobbying

Insubstantial Part (non-electing)

- Communication to lawmakers to influence legislation
- Encouraging public to contact lawmakers to influence legislation
- Public advocacy for legislation



Expenditure Test (h election)

- Communication to lawmakers that expresses a view about legislation
- Communication to public, expressing a view about legislation & including a “call to action”

The 2 Definitions of IRS Lobbying

Insubstantial Part (non-electing)

- Public advocacy for legislation
- Lobbying for "nonelecting public charities"
- Must use unrestricted funds for this communication



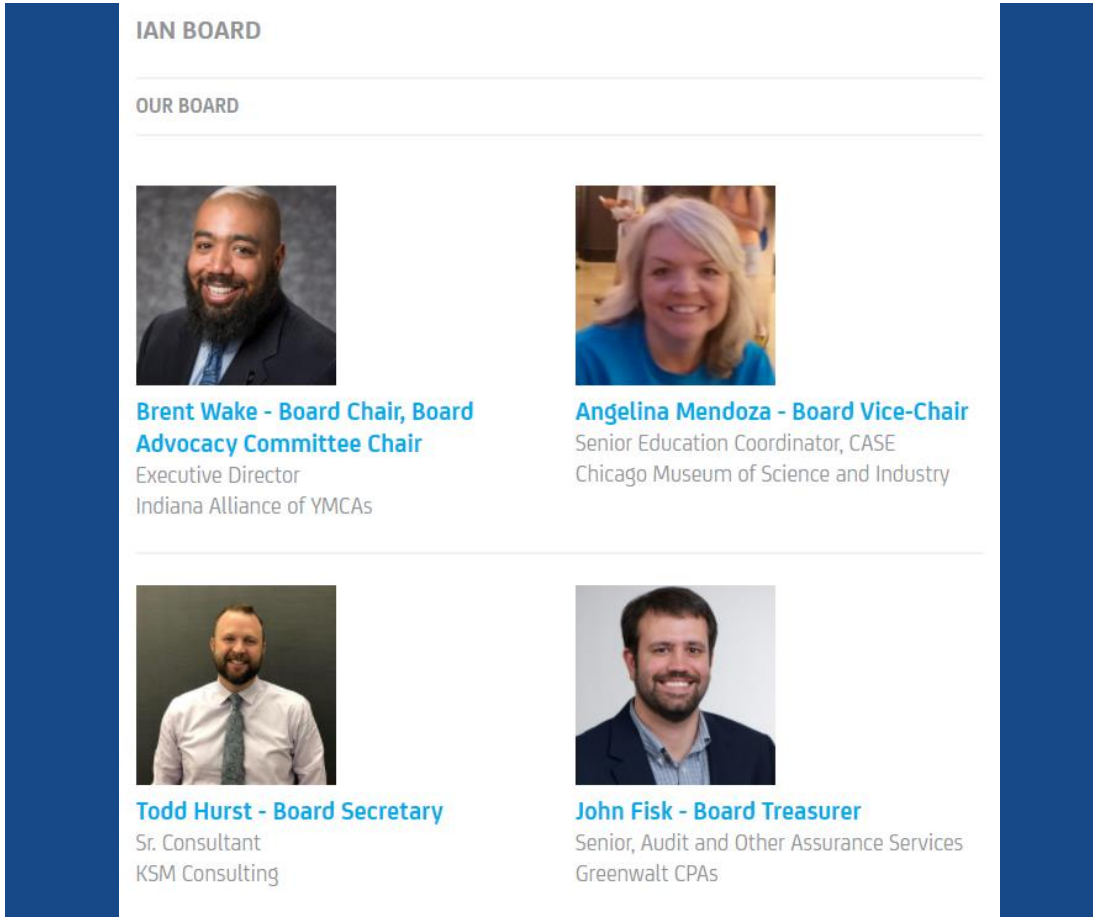
Expenditure Test (h election)

- Ex. Is NOT Lobbying for "electing public charities"

Can use grants that prohibit lobbying for this communication

Benefits of Taking the (h) Election

- Volunteer time lobbying doesn't count against organization
- You can generally lobby more
- Signal sophistication to funders, definitions align
- Easier to report to IRS
- You can do more with restricted grants



Practice Tip – Consider taking the 501(h) election to maximize your advocacy

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What is lobbying under 501(h)?

DIRECT	GRASSROOTS
Communication	Communication
Legislator	General public
Expresses a view about specific legislation	Expresses a view about specific legislation
	Call to action









Communication

DIRECT LOBBYING

communication

legislator

expresses a view about specific legislation

GRASSROOTS LOBBYING

communication

general public

expresses a view about specific legislation

call to action





DIRECT LOBBYING

Communication

Legislator

Expresses a view about specific legislation

Legislators



Federal legislators and staff



State Legislators and staff



County Commission,
Town Board of Supervisors,
City Council and staff



For ballot measure advocacy,
the general public

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. KATE BROWN (OR)



PRESIDENT



KANSAS CITY MAYOR QUINTON LUCAS

Not legislators

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



Specific legislation

DIRECT	GRASSROOTS
Communication	Communication
Legislator	General public
Expresses a view about specific legislation	**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

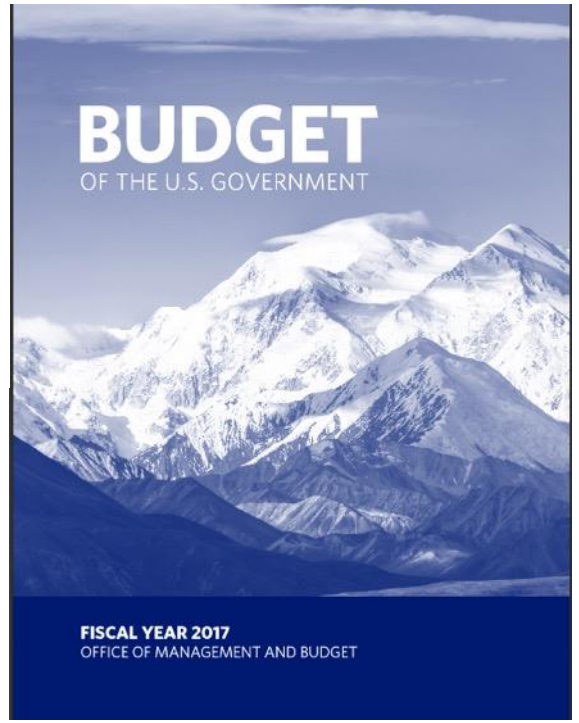
An Act

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 Judge Jackson

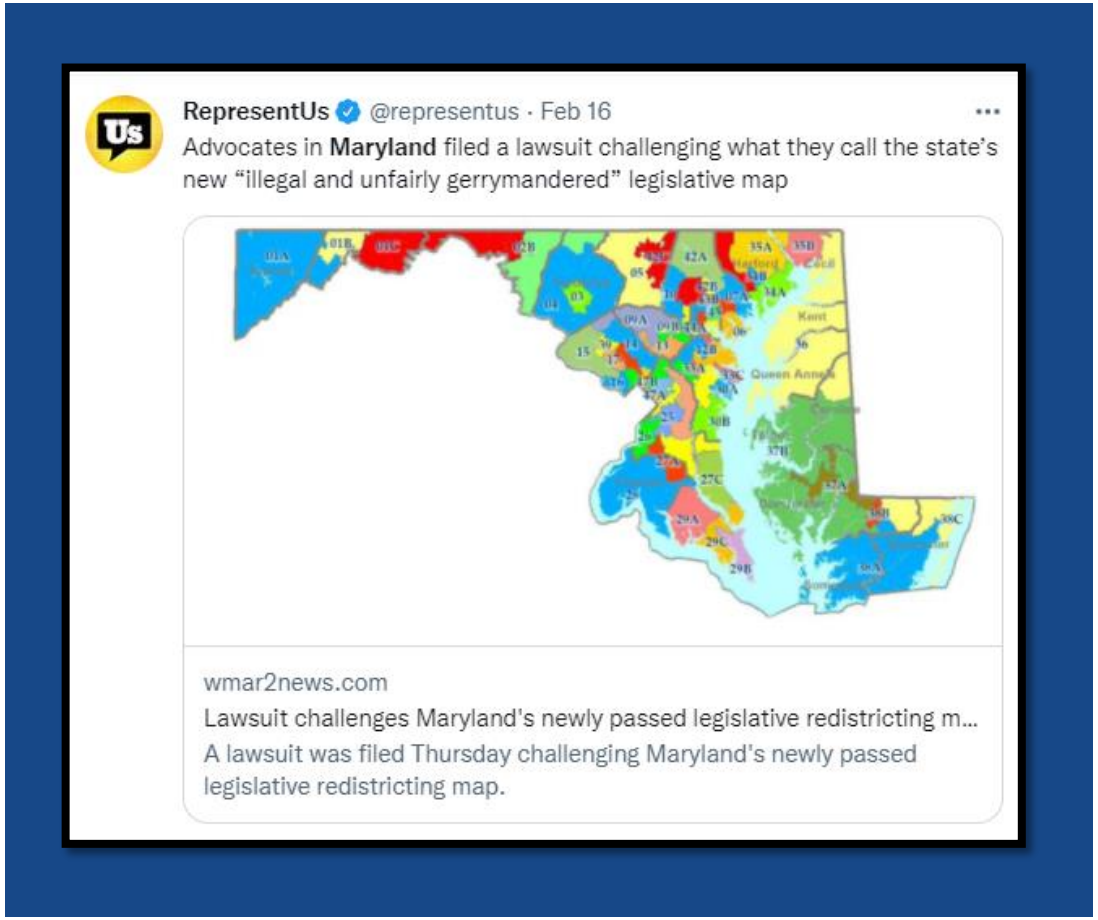
Specific policy proposal

- Something counts as specific legislation if it is a "specific policy proposal"
- 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



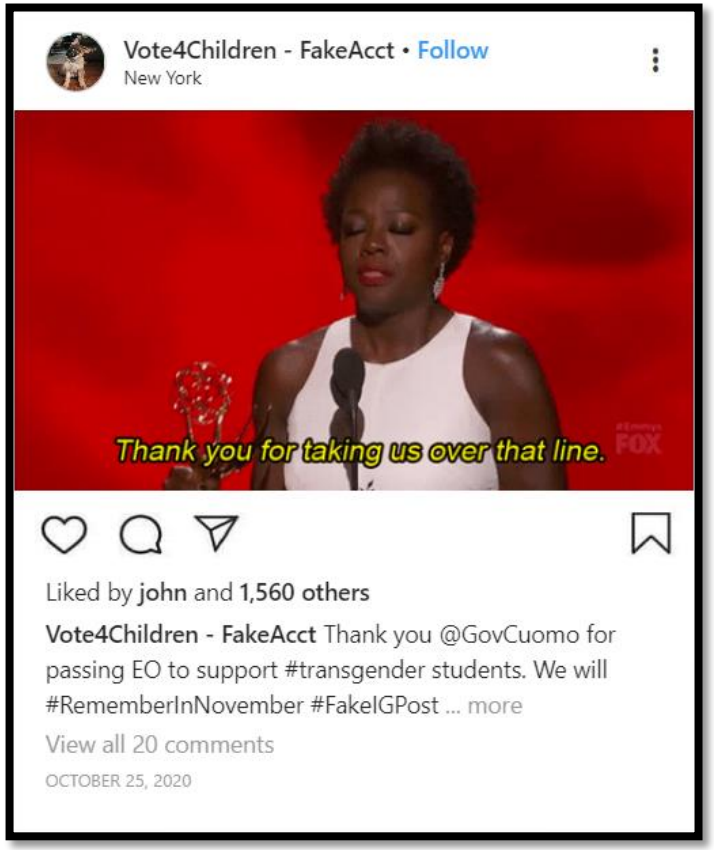
Thanking elected officials



During session = lobbying



After session = not lobbying



Thanking elected to influence outcome of election = partisan

Is this direct lobbying?

- At whom is the communication directed?
- Does it mention specific legislation?
- Does is express a view on specific legislation?
- Public charities can support/oppose legislatively drawn congressional, house and senate maps.

Letter to Missouri Legislators:

We need a map that reflects that MO voters are pro life, pro 2nd Amendment, and pro-God. The US Supreme Court allow maximum political gerrymandering, and we ask that you use it.

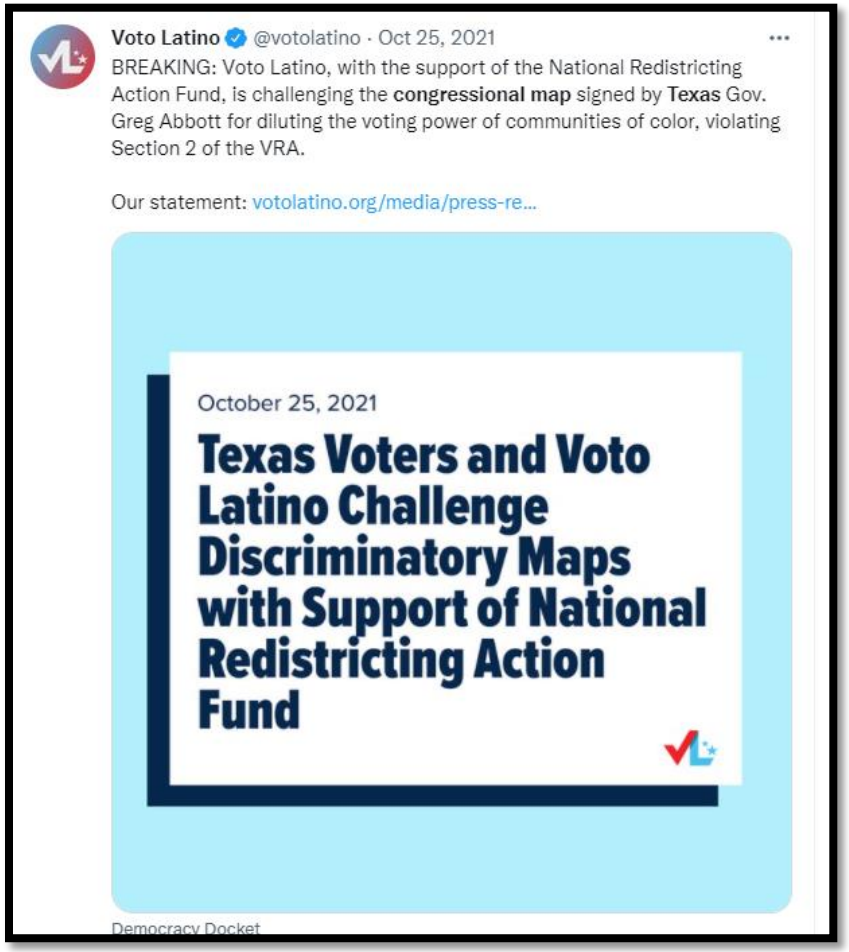
Signed

501(c)(3)s

Supporting the Repeal of a Law = Lobbying



Commenting on or challenging current law – NOT lobbying





Ballot Measure Support = Direct Lobbying

- Circulate/endorse petitions
- Supporting referring legislation
- Expressing a view on ballot measure = lobbying
- 501(c)(3) public charities can form or contribute to PACs designed solely to support to ballot measures
- Can also register & mobilize voters*



Any Questions on Direct Lobbying?



Grassroots lobbying & "Call to action"

DIRECT	GRASSROOTS
Communication	Communication
Legislator	General public
Expresses a view about specific legislation	Expresses a view about specific legislation

Call to action =

ASKING TO CONTACT;
legislators

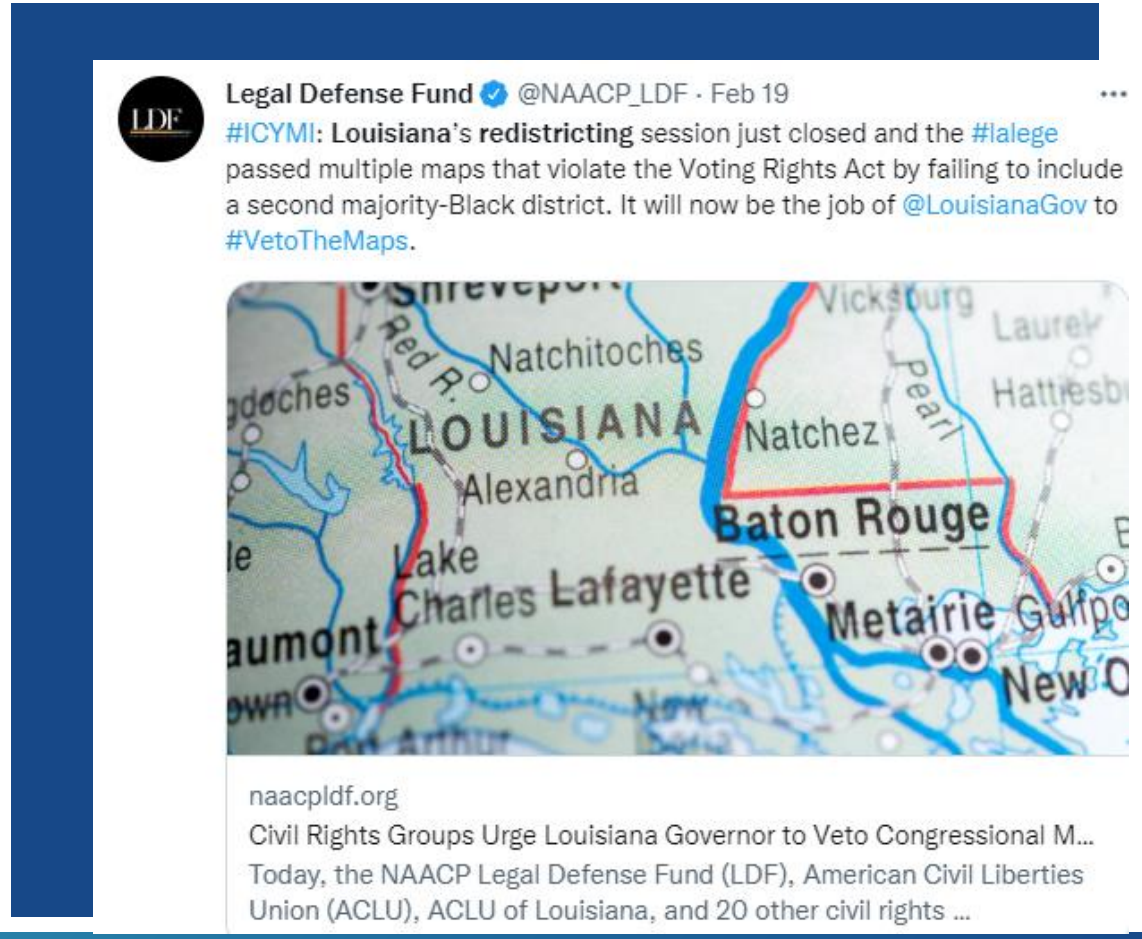
PROVIDING ADDRESS;
telephone number, and/or other contact information of legislators

PROVIDING MECHANISM; OR
to enable communication with legislators

IDENTIFYING
legislators

Is this grassroots lobbying?

- Tweet
- Communication
- Expressing a view
- Is it a view on specific legis?
- Can it only be achieved thru legislation?
- Is there a call to action?



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~~ → **NOT** Lobbying

"Learn more"

"Take action"

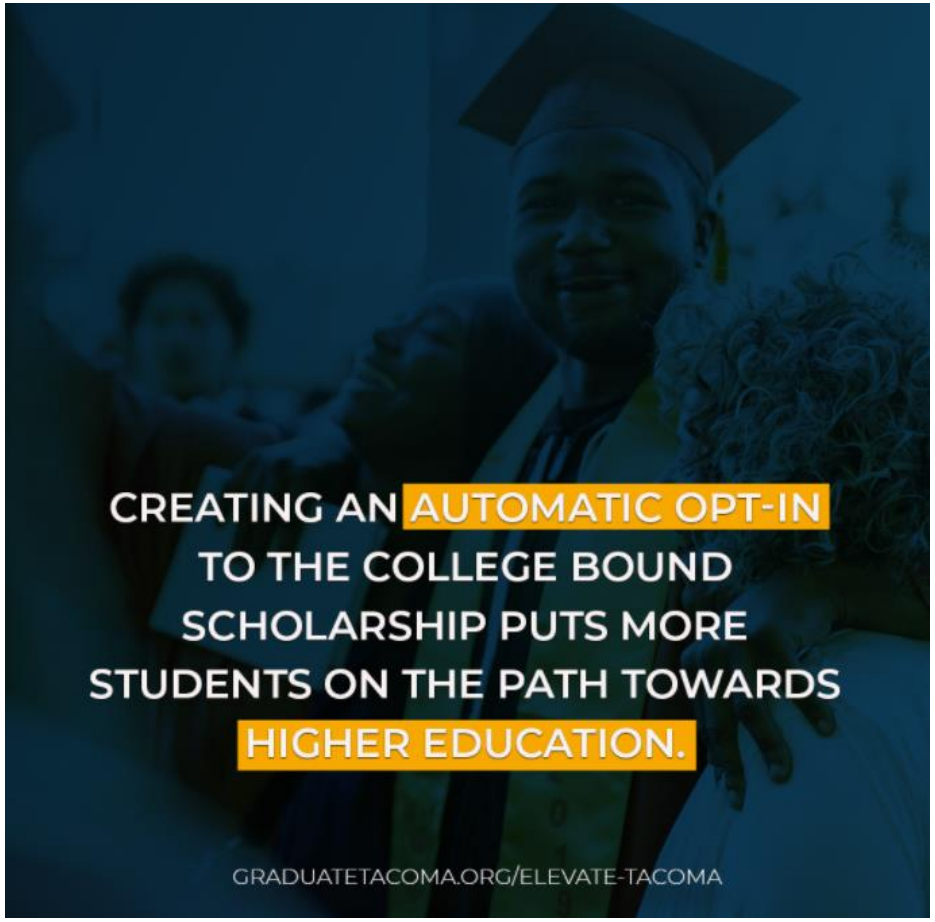
"Support our efforts"

"Get involved"

"Join us"

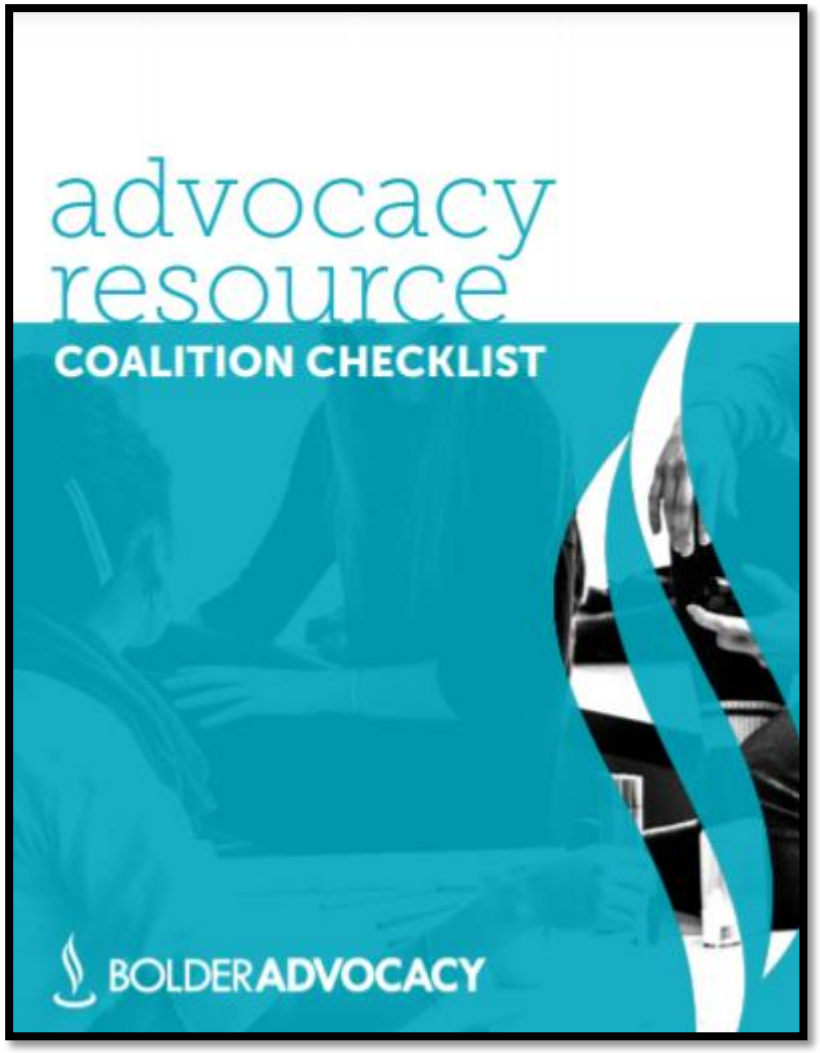
Working in Coalition

- Maximize resources
- Different networks
- Different strengths
- Different tax-exempt statuses
- Different funding sources
- Different sets of volunteers
- Shared goal(s)



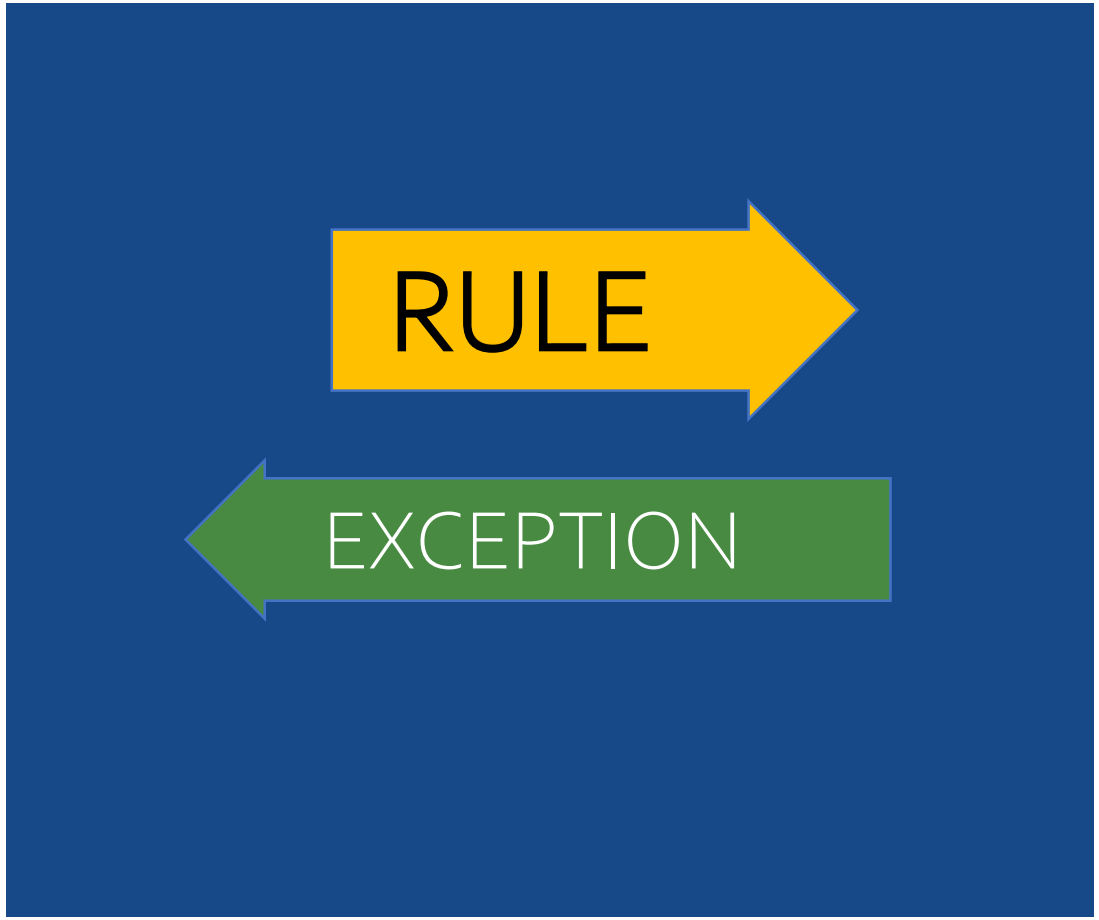
Working in Coalition

- Maximizes resources
- Can work with organizations of varying tax statuses
- 501(c)(3)s cannot permit their resources to be used for non c3 purposes – must play to lowest common denominator
- Coalition members can also continue to work independently
- Coalitions can take many forms



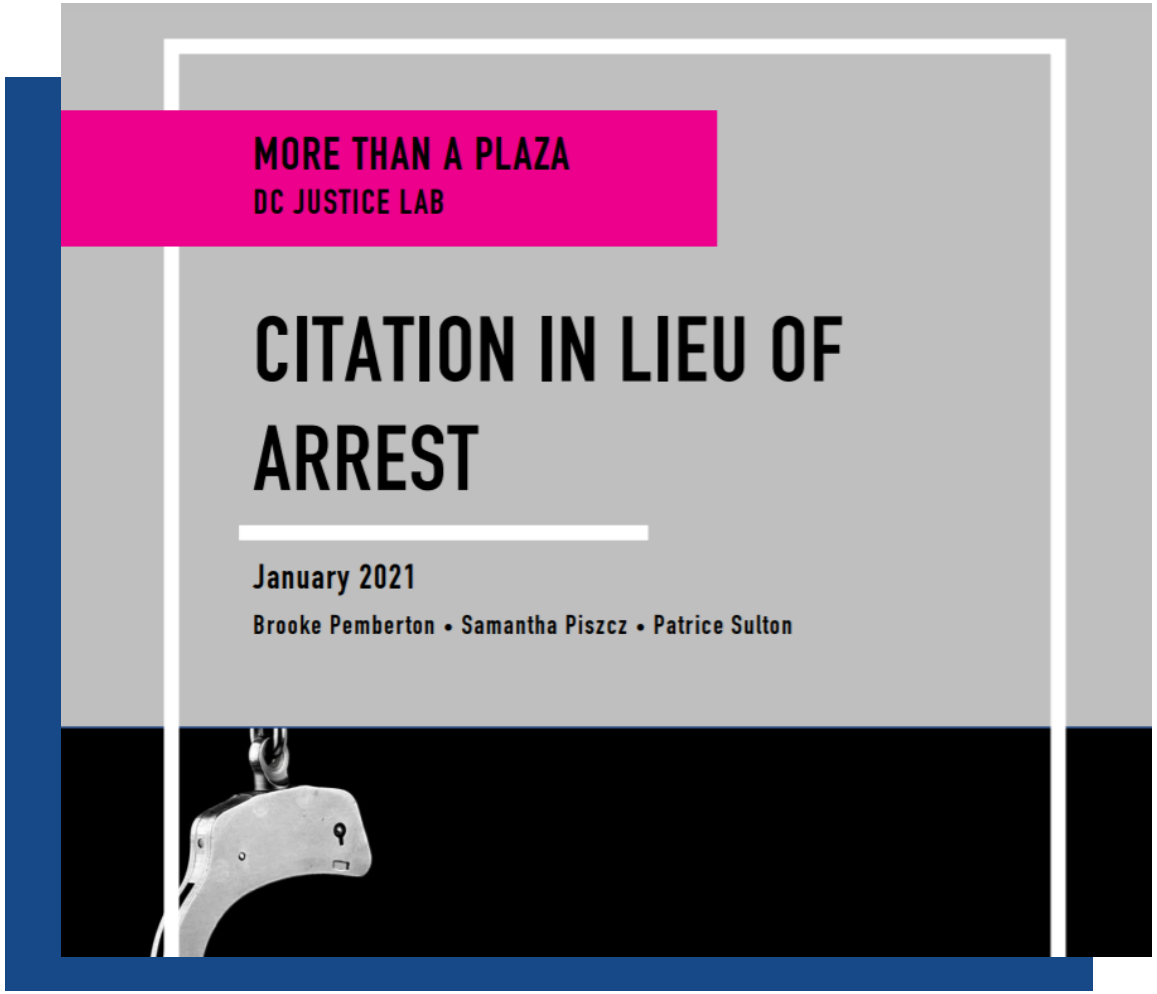
Lobbying exceptions

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



Nonpartisan analysis, study, or research

- Full and fair discussion, and
- Broadly disseminated to public
- May express a view on legislative solution (for electing public charities)
- May contain an indirect call to action (for electing PCs)



Nonpartisan Analysis Study and Research

Examples of Where These Shifts Are Happening Already:

On May 31, 2020, San Marcos became the first city in Texas to implement a cite-and-release ordinance, requiring officers to issue citations for crimes such as possession of less than four ounces



Requiring a presumption of citation in lieu of arrest is one way in which the District can begin to restore and uplift the legitimacy of our criminal legal systems.[21] We urge the Council to do so swiftly.

References

[1] *See* Jessica Wang & Lindsay Huth, *Maps: How Protests Evolved in the Wake of George Floyd's Killing*, THE WALL STREET JOURNAL (Jun. 12, 2020), https://www.wsj.com/articles/maps-how-protests-evolved-in-the-wake-of-george-floyds-killing-11591984846

[2] *Criminal Justice Expenditures: Police, Corrections, and Courts*, URBAN INSTITUTE, https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-

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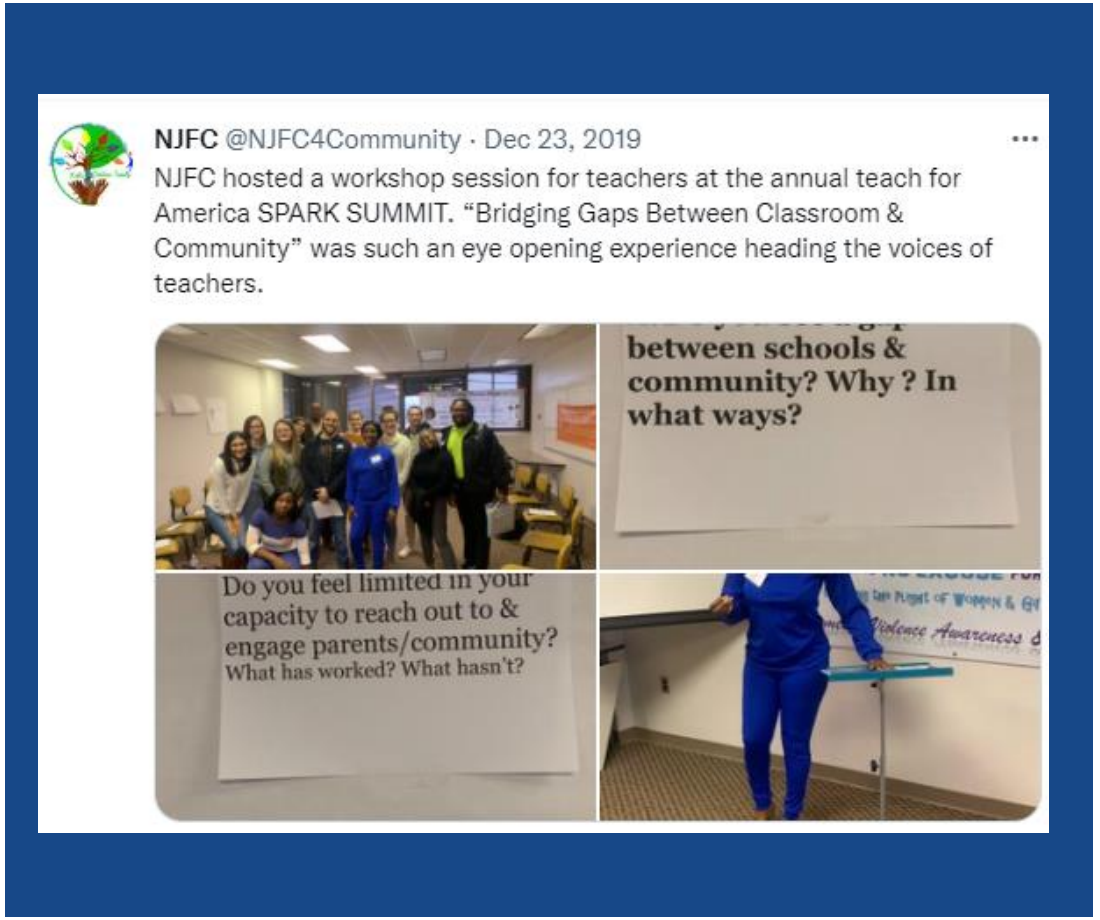
Technical assistance

- Invited in writing;
- By a chair of a committee or subcommittee; AND
- Info available to the group as a whole



Examinations & Discussions of Broad Social, Economic & Similar Problems

- Communications on general topics which are also the subject of specific legislation
- Must not refer to specific legislation or encourage recipients to take action
- e.g. Roundtable discussion, symposium, blue ribbon panels



Any Questions?



Funding Advocacy

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Funding Advocacy

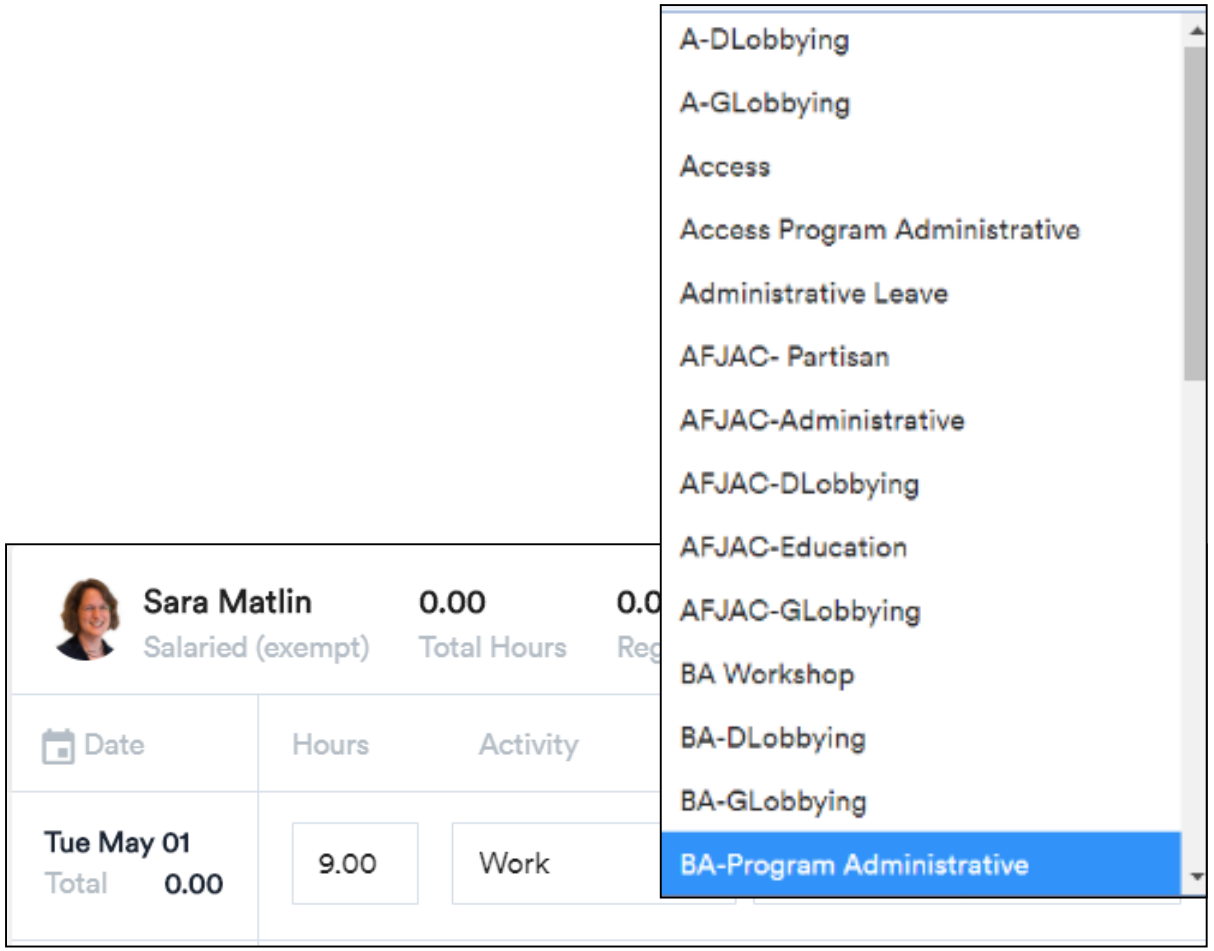
- Grant awards
- Individual donations
- Corporate donations
- Membership dues
- Revenue (ads, fee for services, fundraisers, etc)
- Government grants (*no lobbying w govt grants/contracts*)

Funding lobbying



- Funds must not prohibit lobbying
- General operating and specific project grants may both be used for lobbying under certain circumstances
- Key "these funds are not earmarked for lobbying"
- Build your budget to include funds to lobby
- Email Bolder Advocacy at advocacy@afj.org for help

Sample Timesheets



	Total Hrs	General	Direct lobbying	GR lobbying
Monday	0			
Tuesday	0			
Wednesday	0			
Thursday	0			
Friday	0			

https://bolderadvocacy.org/?s=sample+timesheets

Another Definition of Lobbying

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limit lobbying at <u>all</u> levels of government

disclose <u>state / local</u> lobbying

disclose <u>federal</u> lobbying

LOBBYING **LIMITS** V. **DISCLOSURE**

State Lobbying Registration and Reporting

- States regulate who must register/report as a lobbyist (some localities too)
- The two definitions are not exactly the same
- Mostly focused on direct lobbying on "government officials" (some regulate grassroots)
- Some regulate legislative PLUS executive and other govt. action

Practice Tip

Sign on Letter to Governor and State DOE urging them to set aside some APR $ for cradle to career	State Lobbying	Not IRS Lobbying
Offer testimony at legislative committee hearing supporting SB 1001	Not state lobbying* (*This is just an example and is lobbying in many states*)	IRS lobbying
Ask members of the public to sign online petition to legislators urging support for SB 1001	Not state lobbying	IRS lobbying

Using an outside lobbyist??

- Your organization may also be required to register with the state
- Even if the outside lobbyist if pro bono/volunteer/free
- Don't assume your lobbyist knows the rules that apply to nonprofits
- Ask lobbyist to itemize the IRS/grant lobbying work they do for you so you can report it to the IRS and funders.

Resources

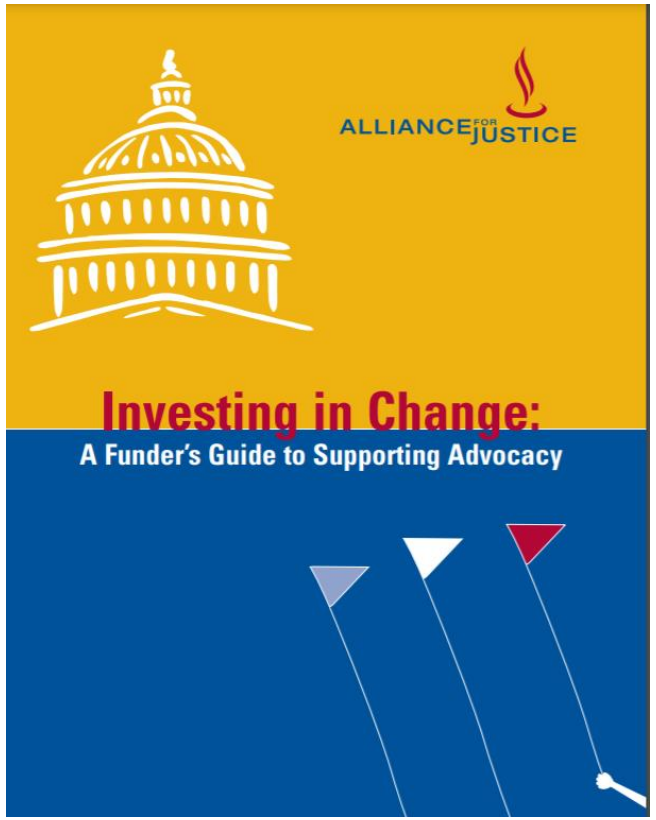


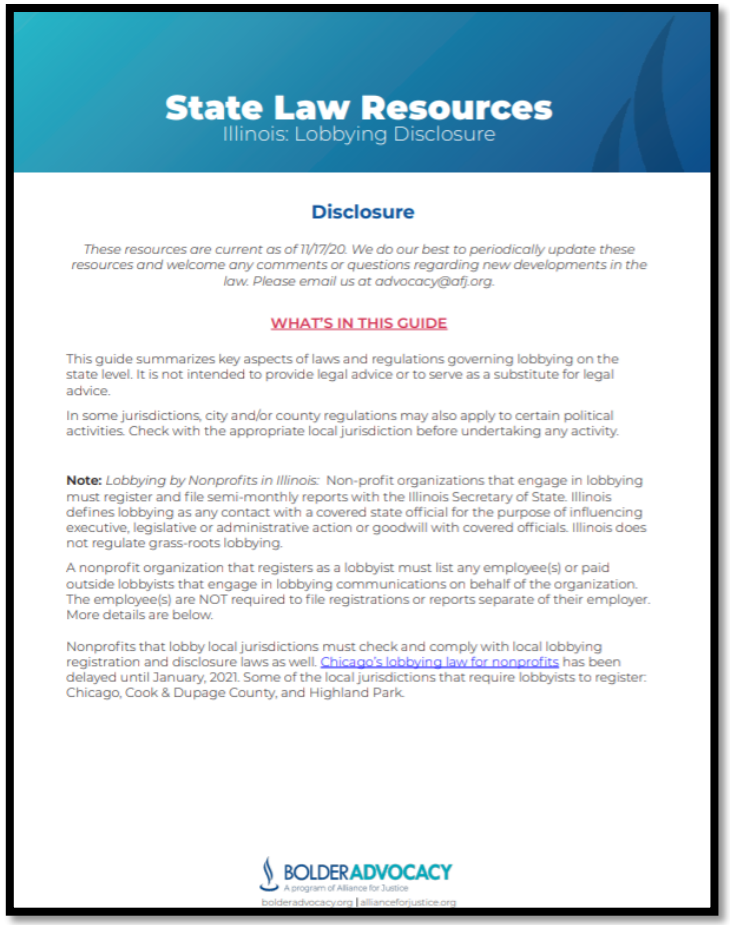


Free PDF guides on these rules

bolderadvocacy.org/podcast

Resources





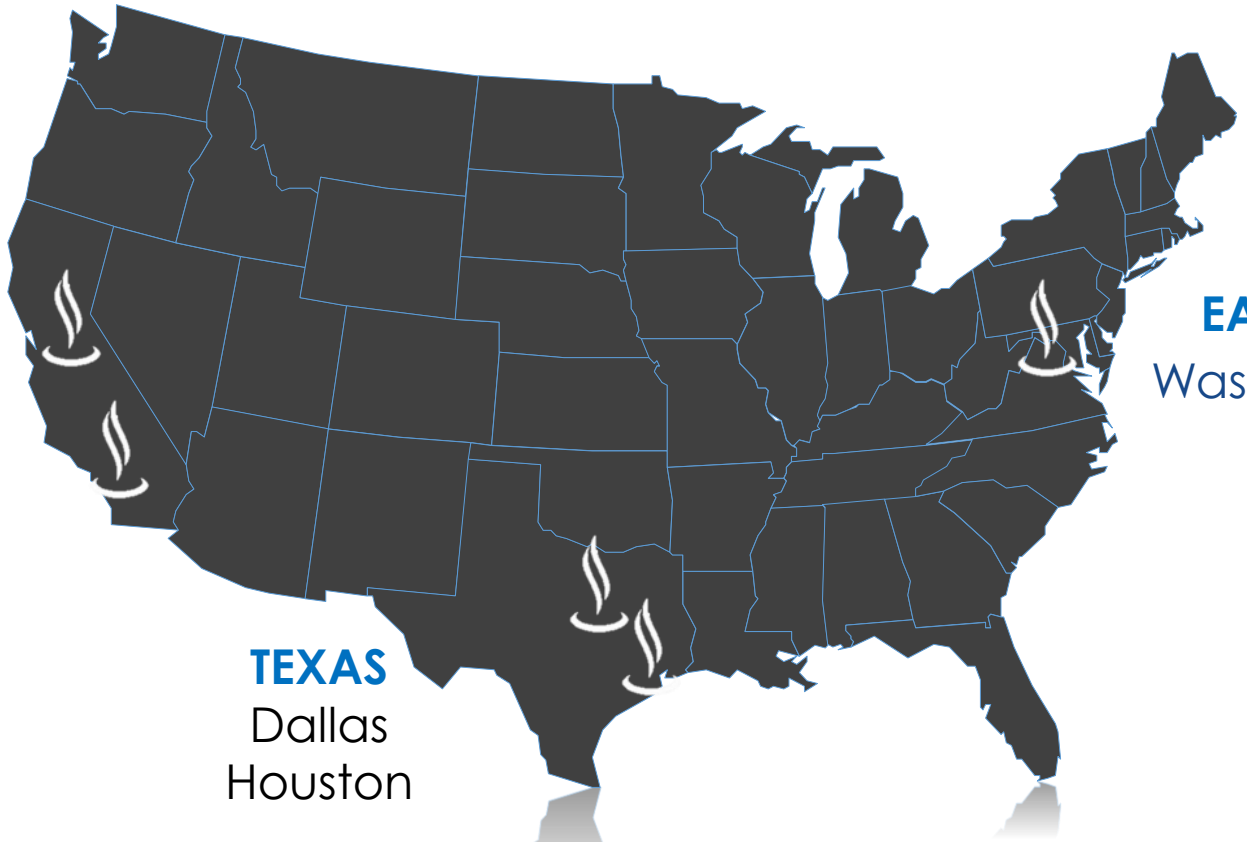


Free PDF guides on these rules

Contact Us

For **free technical assistance** about rules impacting your nonprofit advocacy	866-675-6229 (866-NP-LOBBY) advocacy@afj.org
Para **apoyo técnico** sobre los derechos y deberes de las organizaciones comunitarias de cambiar la comunidad	415-528-3540 sara@afj.org
For free tools, resources, and podcast	bolderadvocacy.org
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