

## Public Foundations and Advocacy

### Public Foundations Can Support Lobbying

As public charities, public foundations can participate in and support lobbying. Unlike [private foundations](#) that are generally restricted from lobbying, public foundations can themselves participate in and fund a limited [amount of lobbying](#).

### Public Foundations Can Advocate

Public foundations can conduct all of the non-lobbying [advocacy activities](#) private foundations can do and can fund these activities. For example, a public foundation could build relationships with legislators or help grantees build and sustain these relationships, the foundation could convene nonprofits and decision-makers to discuss a broad topic (e.g., how to balance the economy, development and the preservation of endangered species), or fund litigation to challenge the constitutionality of a particular law.

### Public Foundations May Lobby, Within Limits

In addition, all 501(c)(3) public charities, including public foundations, can lobby within generous limits allowed by federal tax law. How much lobbying the foundation can do will depend upon which of two tests the foundation uses to measure its lobbying – the “501(h) expenditure” test or the “insubstantial part” test. Most foundations will benefit from electing to measure their lobbying using the [501\(h\) expenditure test](#) because the rules governing lobbying under Section 501(h) are clearer than those that apply under the [insubstantial part](#) test.

### Public Foundations May Support Charities That Lobby

Public foundations may earmark funds for lobbying; however, earmarked grants will count against the public foundation’s lobbying limit. Such earmarked grants will be double counted—against the lobbying limits of both the public foundation giving the grant and the public charity spending the grant funds on lobbying. In addition, public foundations that have made the [501\(h\) election](#) may follow the same general support and specific project grant rules that apply to private foundations, and these grants should not be considered a lobbying expenditure by the foundation, even if the recipient public charity spends the grant funds on lobbying.<sup>1</sup>

### Public Foundations May Support Election-Related Activities

Public foundations, like all public charities, are absolutely prohibited from engaging in activity that supports or opposes a candidate for public office. Public foundations may, however, support

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<sup>1</sup> Alliance for Justice received a [Private Letter Ruling](#) from the IRS confirming that AFJ, a 501(h) elector, may rely on the two grantmaking safe harbors. Although organizations other than AFJ may not rely on the ruling or cite it as precedent, it does reflect the approach the IRS likely will take in evaluating grants from one charity to another.



nonpartisan [voter education activity](#) (i.e., candidate education, get-out-the-vote, and voter registration activities). Private foundations have special restrictions for funding [voter registration activities](#), but these restrictions are **not** applicable to public foundations.

## **Public Foundations Can Support Nonpublic Charities**

Public foundations are permitted to fund the work of nonpublic charities, including 501(c)(4) social welfare organizations and unions, if it is an activity that the foundation could participate in itself. For example, a public foundation could provide a [grant](#) to a 501(c)(4) organization to engage in nonpartisan voter registration activity but could not provide a grant to the same organization to produce a partisan voter guide because the public foundation is not allowed to support or oppose candidates for office.<sup>2</sup>

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<sup>2</sup> Donor Advised Funds must adhere to different rules in regard to making grants to nonpublic charities.