

# Investing in Change

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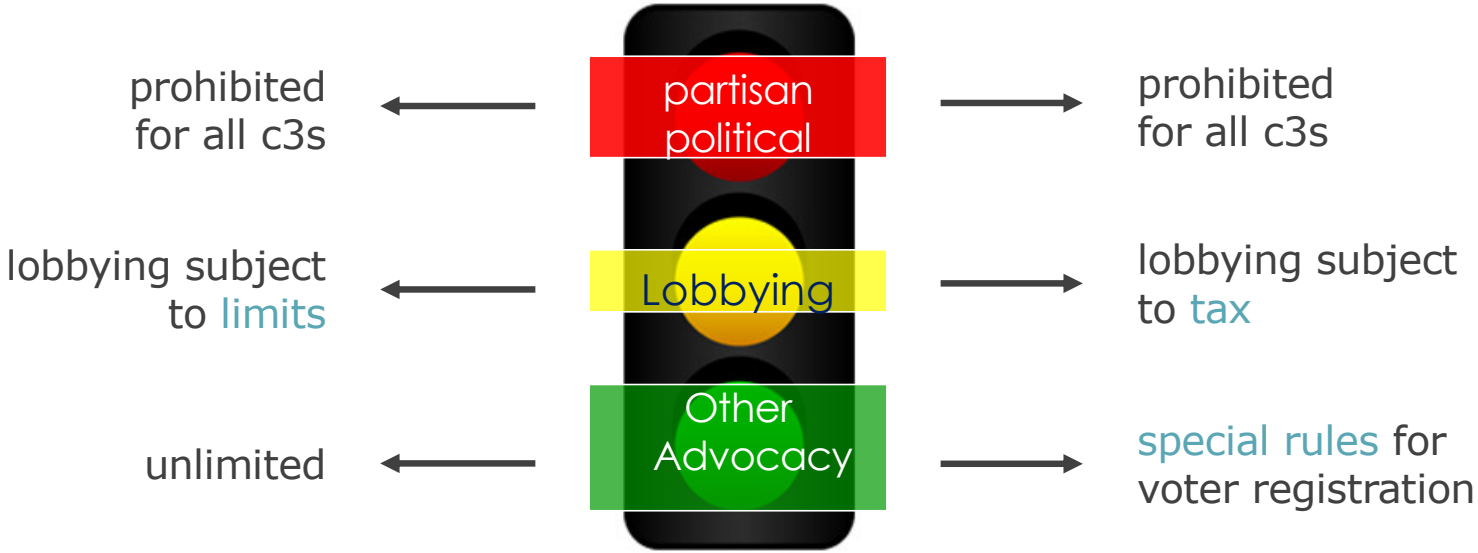
# Today's Agenda

1. Comparing Tax-Exempt Organizations
2. Lobbying Refresher (Tax Code Limits and Definitions)
3. Avenues of Advocacy for Private and Public Foundations
4. Funding Advocacy
5. Tips for Grant Agreements

# Comparing Tax-Exempt Organizations

	501(c)(3) <i>Private Foundations</i>	501(c)(3) <i>Community Foundations &amp; Public Charities</i>	501(c)(4) <i>Social Welfare Organizations</i>
Examples			
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt Tax-deductible contributions	Tax-exempt
Lobbying Activities	Extremely Limited	Limited	Unlimited
Electoral Activities	Cannot support or oppose candidates	Cannot support or oppose candidates	Secondary Activity

# Advocacy Stoplight



Public Charities /  
Community Foundations

Private Foundations

# Public Charities: Two Options to Measure Lobbying

## Insubstantial Part

- Default test for all 501(c)(3)s
- No clear definition of lobbying
- “Insubstantial” is about 3-5% of an organization’s activities
- Based on paid and unpaid activities

## 501(h) Expenditure

- One time election (file w/IRS Form 5768)
- Clear definitions of lobbying
- Dollar-based formula to calculate lobbying limits
- Only spending counts, not volunteer time



# What is Lobbying? Tax Code Definitions



# What is lobbying under the Insubstantial Part Test?

(default definition for community foundations and other public charities)

Contacting legislators to propose, support, or oppose legislation or the government's budget process.

Urging the public to contact legislators to propose, support, or oppose legislation or the government's budget process.

Advocating for the adoption or rejection of legislation.

# What is Lobbying?

(definitions for private foundations & public charities making the 501 (h) election)

## DIRECT

Communication

Legislator

Expresses a view  
about specific  
legislation

## GRASSROOTS

Communication

General public

Expresses a view  
about specific  
legislation

Call to action



# Communication

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# Legislators (and staff)...

## DIRECT LOBBYING

Communication

### Legislator

Expresses a view  
about specific  
legislation



Any level of government (city council, state legislators, members of Congress, public when voting on ballot measure)



**DIRECT**

Communication

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# Also Legislators

President, governor, mayor, or other executive official when they participate in the formulation of legislation.



GOVERNOR (Maryland)



PRESIDENT



MAYOR (Baltimore)

# NOT Legislators

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



# Specific Legislation

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## EXAMPLES

- Budget
- Bills / Acts
- Nominations Requiring Legislative Confirmation
- Ballot Measures
- Asking Someone to Sponsor a Bill
- Proposed Ordinance

# Specific Policy Proposal

- Something counts as specific legislation if it is a “specific policy proposal”
- Not well defined, but essentially 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



President Joe Biden signs his first executive orders Wednesday in the Oval Office of the White House. "I think some of the things we're going to be doing are going to be bold and vital," he said in brief remarks during the appearance. "And there's no time to start like today." (AP/Evan Vucci)

# Calls to Action

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**Call to action**

**ASKING TO CONTACT**  
legislators

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

**PROVIDING MECHANISM**  
to enable communication  
with legislators

**IDENTIFYING**  
legislators

# NOT Calls to Action

## DIRECT

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Legislator

Expresses a view  
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## GRASSROOTS

Communication

General public

Expresses a view  
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~~Call to action~~



“Learn more”

“Take action”

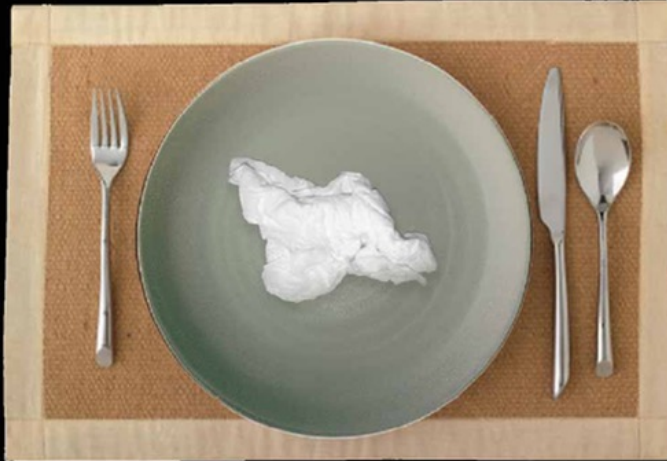
“Support our efforts”

“Get involved”

“Join us”

**NOT** Lobbying

**NO PAID SICK DAYS FOR  
RESTAURANT EMPLOYEES.**



**AN “ENHANCED” DINING  
EXPERIENCE FOR  
RESTAURANT CUSTOMERS.**

Nearly half of all workers in Maine lack paid sick days.  
Support your fellow Maine workers and their right to recover from  
illness without endangering public health or losing a day's pay.

Contact your legislator and share your support of  
LD 1454, the Paid Sick Days Bill.

[www.MaineSneezes.org](http://www.MaineSneezes.org)



**SHE'LL BE YOUR SERVER  
TONIGHT... AND SHE'S PRETTY  
SURE IT'S CONTAGIOUS.**

Nearly half of all workers in Maine lack paid sick days and are forced to work through their illnesses in order to pay the bills.

*Support LD 1454, the Paid Sick Days Bill.*

[www.MaineSneezes.org](http://www.MaineSneezes.org)

# Lobbying Exceptions

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

# Jointly-funded Projects

- Special exception for private foundations
- It is not lobbying when a private foundation:
  - Makes a grant to an organization conditioned on the receipt of matching support from a governmental body; or
  - Discusses with government officials a jointly funded program or potential program (so long as discussion does not include an attempt to persuade officials on other legislative issues).

# Avenues of Advocacy for Foundations



Community Foundations  
*may lobby*, but they are  
subject to lobbying limits.

Private foundations **should not lobby**, but they can engage in other types of advocacy and take advantage of lobbying exceptions.

# Private & Public Foundations May....

- Influence adoption of agency regulations
- Convene nonprofits & decision-makers to discuss broad topics
- Educate legislators about a broad range of issues, without expressing a view on specific legislation
- Meet with legislators to discuss the scope of foundation's work



## FOUNDATIONS ON THE HILL 2022

UNITED PHILANTHROPY FORUM

Council on Foundations ♦ Independent Sector

**A LETTER FROM U.S. PHILANTHROPIC LEADERS**

**OVER 300 GRANTMAKING EXECUTIVES FROM ACROSS THE COUNTRY – AN  
UNPRECEDENTED NUMBER – JOIN TOGETHER TO CALL FOR REMOVAL OF THE  
CITIZENSHIP QUESTION ON THE 2020 CENSUS SURVEY**

August 2, 2018

Ms. Jennifer Jessup  
Departmental Paperwork Clearance Officer  
Department of Commerce  
Room 6616  
14<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20230

Submitted via [regulations.gov](https://www.regulations.gov)

RE: Comments on Proposed Information Collection on 2020 Census

Dear Ms. Jessup,

We write in response to the June 8 notice in the *Federal Register* requesting comments on the 2020 Census proposed information collection. We urge the Department of Commerce to withdraw the citizenship question from the 2020 Census questionnaire because we believe it will significantly undermine efforts to achieve a fair and accurate census in 2020.

We are leaders of nonpartisan philanthropic institutions from across the country, large and small, giving hundreds of millions of dollars each year to advance the common good and improve the quality of life in the United States. We have different funding priorities, are ideologically diverse, and do not always agree with each other. But we wholeheartedly agree that the citizenship question should not be part of the 2020 Census.

Across our varied institutions, we share a commitment to reliable and accurate data as a necessary foundation for a well-functioning government, robust civil society, and thriving business sector in the United States. We rely on accurate census data to help identify community needs and prioritize grantmaking, and our grantees rely on accurate census data to serve communities, especially those that are hard-to-count, through their work on various issues including poverty, health care, criminal justice reform, racial equity, education equity, and infrastructure improvement.

# Private & Public Foundations May Also....

- Take a stand on an executive order
- Train grantees on advocacy rules & how to lobby
- Influence school boards or policies of other, non-legislative, special purpose bodies
- Sign on to an amicus brief or fund litigation to challenge a law



A total of 28 people signed up to address the Springfield school board during the Aug. 17 meeting but some left before it was their turn. *Nathan Papes/Springfield News-Leader*

# Funding Advocacy

When discussing how foundations can  
FUND grantee advocacy, pay  
attention to the **Tax Code's** definitions  
of lobbying.

Make Lobbying Grants  
public or community  
foundations can fund  
lobbying directly

General Support Grants  
funding grantees that  
advocate  
through general support

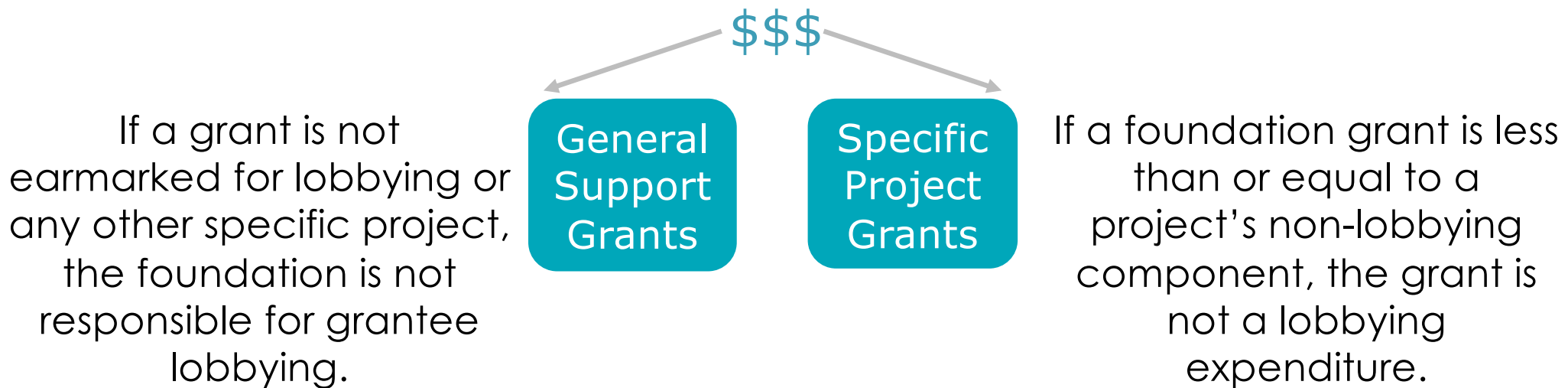
Specific Project Grants  
funding non-lobbying  
portions of advocacy  
projects



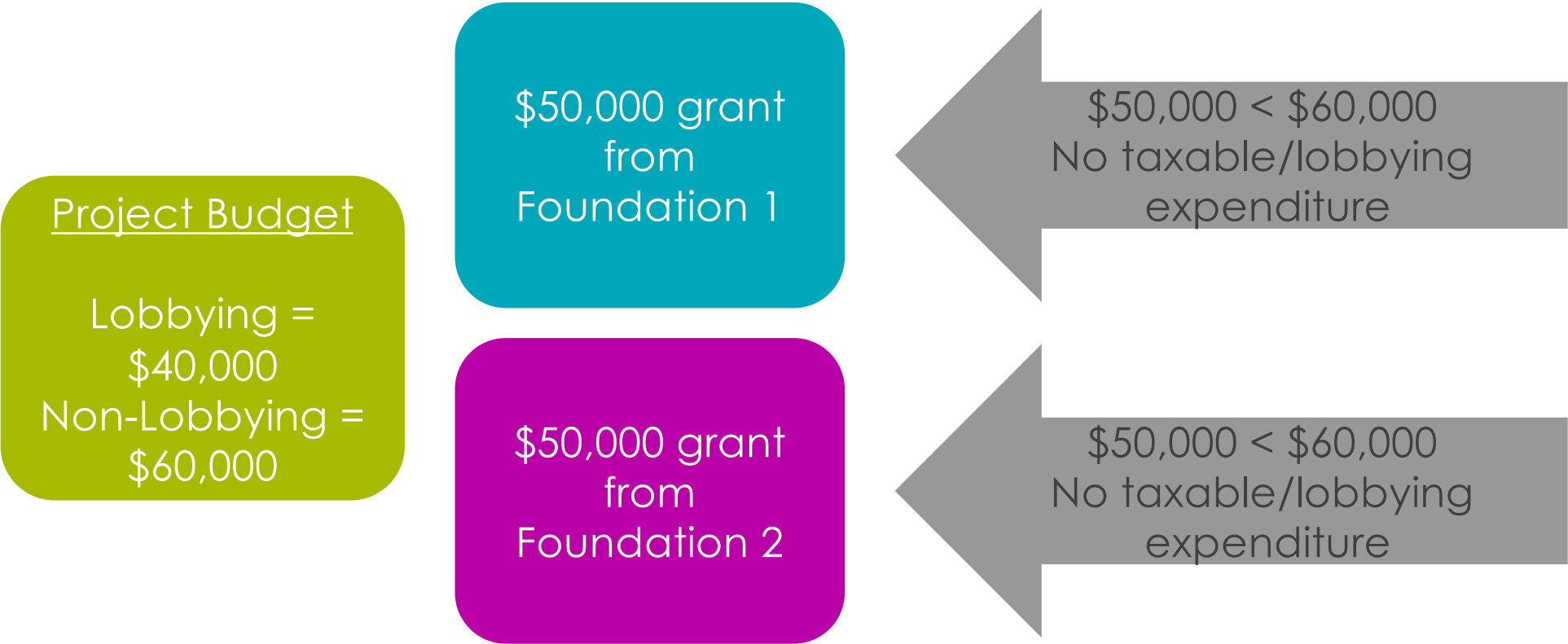
“A grant... is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.”

A public charity or a community foundation may  **earmark**  a grant for lobbying, but it must count the grant against its own  **lobbying limit** .

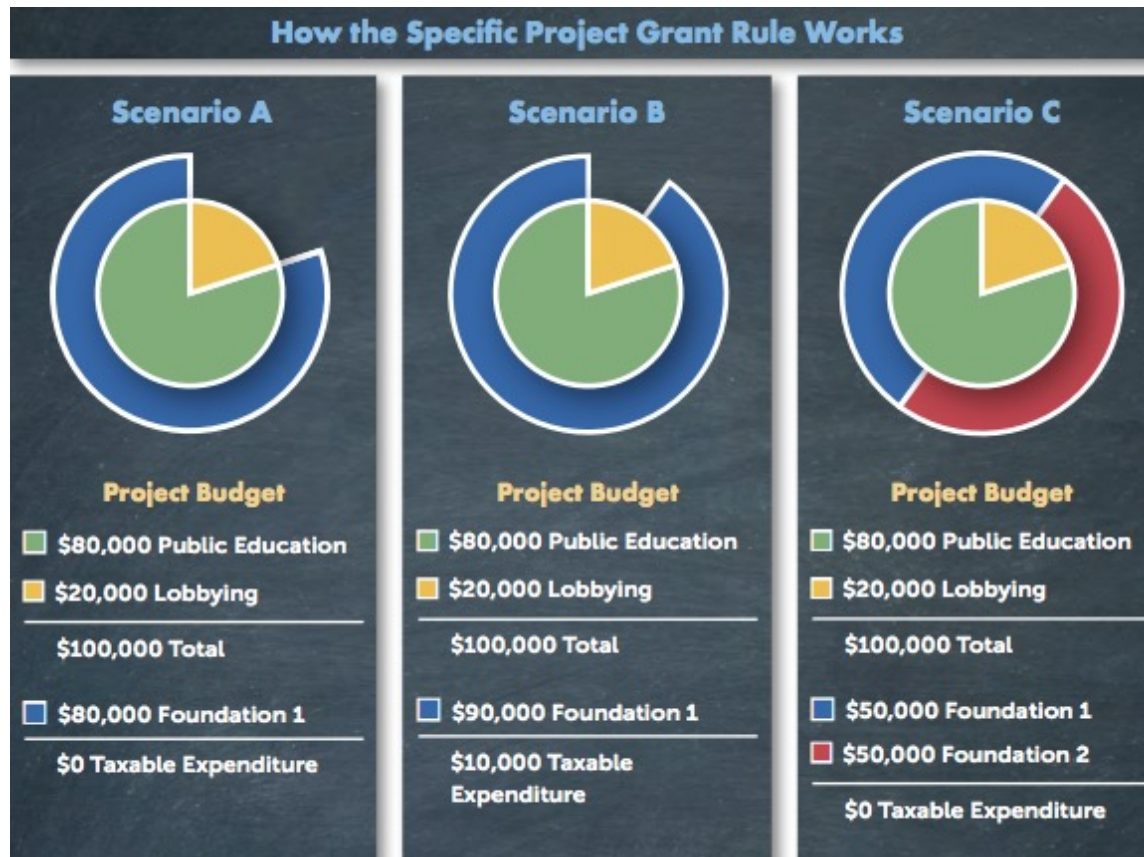
Private foundations should not  **earmark**  grants for lobbying, but private foundations may fund grantees that  **lobby** .



# SPECIFIC PROJECT Grant Safe Harbor



# SPECIFIC PROJECT Grant Safe Harbor



## **PUBLIC FOUNDATIONS**

may fund nonpartisan  
voter registration  
drives.

## **PRIVATE FOUNDATIONS**

may not fund voter  
registration drives  
unless they do so on a  
nonpartisan basis, in  
five or more states,  
and in multiple election  
cycles.

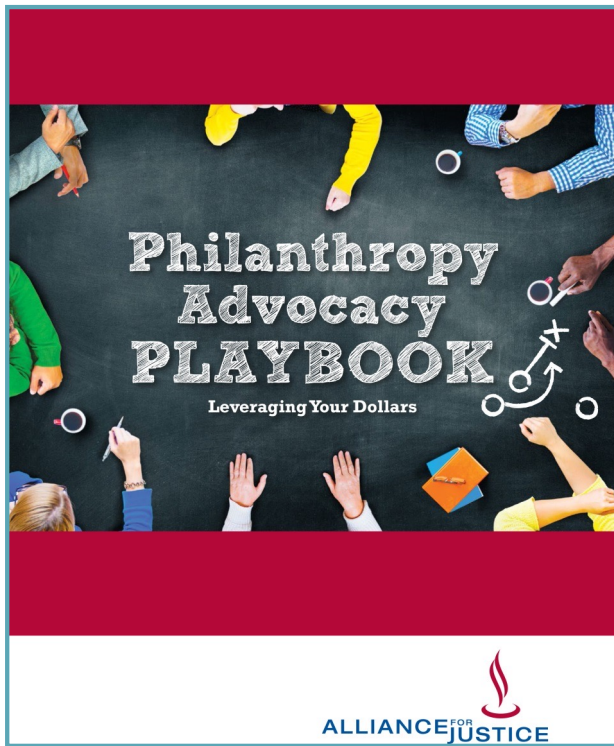


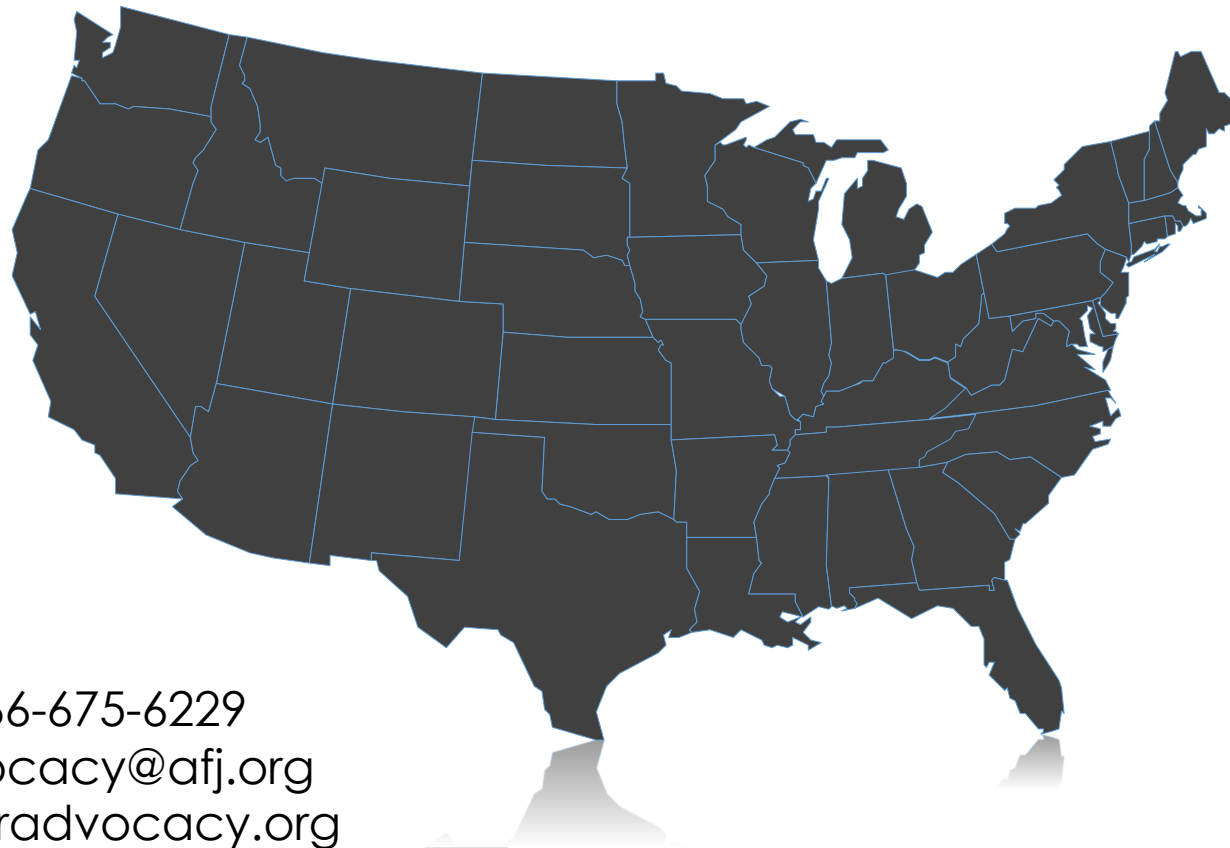
# VOTER REGISTRATION

# Tips for Grant Agreements

- Restricting public charity grantees from lobbying is **not necessary**.
- Grant terms that say a grant is “**not earmarked for lobbying**” are not the same as terms that say lobbying is prohibited.
- Lobbying restrictions are only necessary when private foundations make grants to non-501(c)(3)s (i.e. 501(c)(4)s)







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