

## Foundations and Ballot Measures

501(c)(3) public charities (including public foundations) may proactively initiate [ballot measures](#) or react to measures proposed by others. Ballot measures allow voters to propose and enact laws. They include ballot initiatives, constitutional amendments, bond measures, and referenda. Public and private foundations may support public charity grantees that engage in these activities. Efforts to influence ballot measures are considered lobbying, and public charities and public foundations may engage in a limited amount of lobbying.

### Influencing Ballot Measures is Lobbying

Even though public charities and public foundations cannot support or oppose candidates for public office, they can urge voters to support or oppose particular ballot measures. The IRS considers ballot measure work to be lobbying because members of the voting public act as legislators when they vote “yes” or “no” on the legislation proposed in ballot measures. Therefore, public charities and public foundations may propose ballot measures, collect signatures so a ballot measure can be certified, challenge the certification of a proposed ballot measure, and encourage voters to support or oppose a ballot measure, subject to their lobbying limits under federal tax law.<sup>1</sup>

### Foundations May Fund Public Charities That Lobby

*Private foundations* may support public charities and public foundations that lobby, but they must follow specific rules. Most importantly, the grant may not be “earmarked” for lobbying, as earmarked funds create a taxable expenditure to the foundation. A grant is considered earmarked for lobbying if it is conditioned upon an oral or written agreement that the grant be used for lobbying purposes. The prohibition on earmarking does not mean that private foundations must require grantees to refrain from using grant funds for lobbying; in fact, a grant agreement that forbids use of the funds for lobbying is unnecessarily restrictive.

Under federal tax law, private foundations may make two types of grants using safe harbors that avoid creating taxable expenditures – general support and specific project grants – while permitting grantees flexibility in the use of their funds. A general support grant is not earmarked for a particular purpose and specifically is not earmarked to be used in an attempt to influence legislation. The public charity or public foundation may use the grant funds for any purpose, including lobbying. If the grantee uses the money for lobbying, the private foundation will not incur a taxable expenditure.

Private foundations may also fund specific projects, even those that include lobbying. When making a specific project grant, the private foundation must review the grantee’s project budget and may give a grant in an amount up to the non-lobbying portion of the budget. The public charity or public foundation must use the grant funds only for the specific project. If these conditions are met, the private foundation will not incur a taxable expenditure, even if the grantee subsequently uses some of the grant money for lobbying.

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<sup>1</sup> Additionally, many [states](#) require the disclosure of money raised and spent to support or oppose the qualification or passage of a ballot measure.

*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>2</sup>

See [Ballot Measures and Public Charities: Yes, You Can Influence That Vote](#) for more information about how public charities and public foundations may influence ballot measures.

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<sup>2</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.