

MAKING THE CASE

The power of collaboration: 501(c)(3)s and 501(c)(4)s working together

Election years, when elected officials tend to be most responsive and engaged, are a very effective time for nonprofits to bolster their advocacy efforts. Often, 501(c)(3)s and 501(c)(4)s—affiliated or otherwise—work together to coordinate their advocacy activities to further their respective goals. While 501(c)(3)s may work together with 501(c)(4)s, they must structure their activities to ensure they do not jeopardize their tax exempt status.

As funders and advocates grapple with how (c)(3)s and (c)(4)s can work strategically and legally together, they first need to understand what each type of organization—(c)(3) public charity, (c)(3) private foundation, and (c)(4) (and (c)(5) labor unions/(c)(6) trade associations)—can do alone.

501(c)(3)s and (c)(4)s can advocate for policies and issues, including engaging in election-related activities that do not support or oppose candidates for public office or political parties. For example, they can encourage common sense gun safety policies, urge a governor to issue an Executive Order, file a lawsuit challenging a voter ID law, or register people upon turning 18. In addition, (c)(3) public charities can lobby (including supporting/opposing ballot measures), up to generous limits; (c)(3) private foundations cannot spend money on lobbying, but can fund organizations that lobbying; and (c)(4)s can lobby without limitations and can support or oppose candidates as long as doing so is not the primary purpose.

501(c)(3) public charities can engage in a broad range of advocacy activities, such as research, public education, commenting on regulations, litigation, limited lobbying and ballot measure work, nonpartisan voter registration and get out the vote (GOTV), candidate education, and election administration. 501(c)(4)s can do all that, but they can also do an unlimited amount of lobbying and influence the outcome of elections. 501(c)(4)s can produce candidate scorecards, comparing candidates' views on key issues, criticize (or praise!) a candidate's policy platform, target voters in swing states, and even encourage people to vote for the pro-choice or female candidate.

Coordinated efforts of (c)(3)s and (c)(4)s bring a variety of strategies and tactics to any given effort. While (c)(3)s can engage in a wide range of advocacy activities—in fact more than most people think—they do face limits on what they can do. On the other hand, while (c)(4)s can do much more, raising (c)(4) dollars can be a challenge, as contributions are not tax deductible and private foundations are subject to expenditure responsibility rules. Together, however, they can employ a broad range of strategies making best use of available resources.

There are times when engaging in public education or other 501(c)(3)-permissible tactics is not enough to achieve policy wins. Sometimes, advocates need to engage policymakers in a more aggressive fashion, either through extensive lobbying or partisan electoral work. For instance, as described by the Civil Marriage Collaborative, “moving forward on [marriage equality] would require multiple strategies, including litigation, public education, research and grassroots organizing, lobbying and electoral work.”¹ No one strategy is enough. A 501(c)(3) cannot do it all (limits on lobbying and prohibition on electoral work) and it is not strategic for a (c)(4) to do it all, as many tactics (such as litigation and public education) do not require precious (c)(4) money. Or, as described by one advocate, a (c)(4) can “ensure that the 501(c)(3) investment in [public] education isn't just left to chance.”² The greater advocacy capability of a (c)(4) may be needed to “move an issue across the finish line.”

In today's political climate, so many issues—whether access to health care, climate change, immigration, minimum wage, let alone reproductive rights and gun control—have become hyper-partisan and political. It can be risky for (c)(3)s to discuss these issues in connection with voting or candidates, including when responding to comments being made by candidates. On the other hand, (c)(4)s can respond more directly and aggressively, without the need to water down or vet every response by legal counsel. In fact, a (c)(4) can much more strongly endorse policies instead of providing a balanced picture....it's easier to have a side when you are working from the (c)(4) on....issues.”³

Now is the time to invest in the collaboration of 501(c)(3) and 501(c)(4) organizations to build an effective long-lasting infrastructure for defending progressive issues and values.

¹ Hearts & Minds: The Untold Story of How Philanthropy and the Civil Marriage Collaborative Helped America Embrace Marriage Equality. Proteus Fund, 2015. <https://philanthropynewyork.org/sites/default/files/resources/heartsandminds-proteus-fund.pdf>.

² 501(c)(4) Strategy and Discussion Guide, quoting Kevin Werner, Ohioans to Stop Executions Action Fund. The Atlas Learning Project, Alliance for Justice, and Alliance for Justice Action Campaign, 2016.

³ *Id.*

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