

MEMORANDUM

To: Sean Delany

From: Laura Abel

Re: Private Foundations and Ballot Initiatives

Date: September 26, 2013

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This memo describes the federal tax limits on private foundation involvement in ballot initiatives, and describes several ways that private foundations may fund ballot initiative work, or communicate regarding a ballot initiative, and still comply with federal tax law.

I. The prohibition on attempting to influence ballot initiatives

Under federal tax law governing activities by private foundations, ballot initiatives are treated like legislative activity.<sup>i</sup> A private foundation is prohibited from attempting to influence legislation.<sup>ii</sup> Accordingly, it may not advocate for or against a ballot measure. If it does advocate for a ballot measure it will be taxed in an amount equal to 10% of the expenditure paid or incurred as a result of their ballot measure advocacy.<sup>iii</sup>

II. Permissible funding for grantees' work on ballot initiatives

A private foundation is allowed to fund nonprofit organizations that engage in ballot advocacy or lobbying, under certain circumstances:

- General support grants are a good idea: Making a general support grant that is not earmarked to a public charity that engages in lobbying will not create a presumption that the grant will be used for lobbying, and the private foundation does not have a duty to make prior inquiry as to its use.<sup>iv</sup>
- Grants to special projects with a lobbying component may be permissible: A private foundation grant to a public charity for a special project that has a lobbying component will not be deemed a lobbying expenditure by the private foundation so long as the amount of the grants from any one foundation for that project do not exceed the nonlobbying portion of the budget prepared for the project by the grantee public charity.<sup>v</sup>
- Do not earmark the grant for lobbying purposes: If a private foundation designates a grant to a public charity as being for lobbying purposes, it will also be treated as a lobbying expenditure by the private foundation; "earmarking" is taxable.<sup>vi</sup>

### III. Permissible communication by a foundation

A private foundation is allowed to communicate regarding a ballot initiative in the following ways:

- Examinations and discussions of broad social, economic and similar issues, so long as the discussions do not take a view of particular ballot initiative and do not directly encourage the recipients to advocate for or against the initiative.<sup>vii</sup>
- Nonpartisan analysis, study or research that is made generally available to the public or to government officials.<sup>viii</sup>
- Communications with government officials regarding a program jointly funded by the government and the private foundation.<sup>ix</sup>
- Technical assistance or advice provided to a governmental body or committee, in response to a written request from a representative of that body or committee.<sup>x</sup>
- Communications with legislative bodies with regard to issues that may affect the private foundation's existence, its powers and duties, its tax exempt status, or the deductibility of donations to the private foundation.<sup>xi</sup>

### IV. Additional resources

- Alliance for Justice, Foundations and Ballot Measures,  
<http://bolderadvocacy.org/tools-for-effective-advocacy/toolkits/ballot-measures/foundations-and-ballot-measures>
- California Endowment,  
[http://www.calendow.org/uploadedFiles/private\\_foundations\\_guide.pdf#page=19](http://www.calendow.org/uploadedFiles/private_foundations_guide.pdf#page=19)

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<sup>i</sup> IRS, Exempt Organizations Tax Manual, § 7.27.19.3.3, [http://www.irs.gov/irm/part7/irm\\_07-027-019.html](http://www.irs.gov/irm/part7/irm_07-027-019.html).

<sup>ii</sup> IRC §4945(d)(1).

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.*

<sup>v</sup> Treas. Reg. §53.4945-2(a)(6)(ii).

<sup>vi</sup> Treas. Reg. §53.4945-2(a)(6)(i).

<sup>vii</sup> Treas. Reg. §53.4945-2(d)(4).

<sup>viii</sup> IRC §4945(e).

<sup>ix</sup> Treas. Reg. §53.4945-2(a)(3).

<sup>x</sup> IRC §4945(e)(2).

<sup>xi</sup> IRC §4945(e). Private foundations are also authorized to propose legislation, without taxation, concerning such "self-defense" issues. Treas. Reg. 53.4945-2(d)(3)(i).