

Mapping the Future

The Redistricting Process and Private Foundations

One of the most powerful tools for engaging in and strengthening our democracy is the redistricting process, which begins once the U.S. Census results are delivered to states. Redistricting is essential to making sure that every community – and the people in those communities – are fairly represented. Private foundations can be instrumental to this process, whether through their own broad civic engagement initiatives or by supporting those of their grantees. For example, many private foundations support community organizations that strive to ensure every individual is counted during the Census, and then continue to provide assistance to make sure communities are fairly represented as new lines are drawn for democratically elected positions at all levels of government. Although private foundations can both fund grantees and engage in the redistricting process, they must still be mindful of the general prohibition regarding election-related activity or partisan efforts.

This fact sheet provides best practices and reminders for private foundations to consider when funding or advocating directly for issues related to redistricting. For information on what your grantees can do, see [Influencing the Redistricting Process by Standing Up for Your Community](#). While this fact sheet discusses general rules, many states have unique commissions or procedures set up to handle this process.¹ If you have trouble getting information on how the process works in your state, give us a call so we can help you boldly advocate.

What is Redistricting?

Redistricting is how the U.S. divides up communities for the purposes of establishing government representation. The next phase of redistricting begins in 2021, once the 2020 Census results are delivered to the states.² Every 10 years, there is a reapportionment of most elected bodies, such as the state legislature or the federal House of Representatives, based on the loss or gain of population in a state reported by the Census. Redistricting is not an automatic process, but one in which an entity, usually a state legislature or commission, draws the lines. It is important that community activists and leaders, including foundations and nonprofits, participate to ensure that all the voices of communities (whether they are predominantly Black, refugee, religious affiliation, ethnicity, or any group) are not diluted or intentionally split apart. Nonprofits serve an important role in engaging with elected officials or independent redistricting commissions when lines on a map are drawn or the process for determining how to draw districts is adopted.

¹ For additional information about the state-by-state process, see [Redistricting Systems: A 50-State Overview \(ncsl.org\)](#).

² Census data is usually delivered by April 1. However, the timing may vary in 2021. See [State Redistricting Deadlines \(ncsl.org\)](#) by National Conference of State Legislatures for more information about the deadlines.

It's Usually All About Community

The redistricting process varies from state to state, but private foundations can have a role to play in every state. Remember: As a general rule, private foundations are effectively prohibited from lobbying directly because such activities would be heavily taxed, but private foundations can always engage in administrative advocacy and fund education and other forms of campaigns around redistricting. Some redistricting-related activity will constitute lobbying if the state or local process requires a vote by elected officials, while other states provide independent commissions and activity will fall in the category of administrative advocacy. Again, private foundations can engage in and directly support non-lobbying activities. Understanding the process in your state is essential so you understand how your foundation can get involved.

Reminder About Lobbying

Not all activities related to the redistricting process will count as lobbying under Internal Revenue Service (IRS) rules.³ Lobbying requires a legislative process. If you are not familiar with basic lobbying definitions applicable to private foundations, [click here](#) to access our fact sheet about lobbying rules for private foundations. Understanding the lobbying definitions is key to recognizing what does not constitute lobbying.

Attempts to influence a redistricting process will count as lobbying if the approval process requires a legislative body, such as a City Council, Board of Supervisors, or the State Legislature, to vote to approve the redistricting plan. Every state is permitted to adopt its own process for drawing legislative and congressional districts, and to influence the legislative boundaries of cities, counties, or other localities. Not all states or localities require approval of redistricting plans by a legislative body. Instead, some delegate this authority to an administrative body. Before your private foundation tries to influence a redistricting process, you should research the process to determine whether a legislative body must vote to approve the redistricting plan.

For example, in Arizona an independent redistricting commission is charged with drawing legislative and congressional districts based on set criteria established in the state constitution. Since the new plan is adopted by the redistricting commission, instead of a legislative body, attempts to influence the redistricting process in Arizona is permissible advocacy.

By comparison, in Iowa the legislature is responsible for voting to approve a new redistricting plan using nonpartisan criteria. Because the Iowa redistricting plan must be approved by a legislative body, attempts to influence the drawing of districts in Iowa would count as a lobbying expenditure for a private foundation.

A number of organizations provide information on the redistricting process in the 50 states, including the [National Conference of State Legislatures](#), the [Brennan Center for Justice](#), and the [Public Mapping Project](#).

³ This factsheet discusses what constitutes lobbying for purposes of section 501(c)(3) of the federal tax code. Organizations, including private foundations, also must comply with state and local lobbying laws. For more information, see our [state law resources](#).

If your state's procedures require the state legislature or a local legislative body to approve a new map, then attempting to influence the redistricting process through communications with legislators or the general public will likely count as lobbying and be a taxable expenditure for a private foundation. All communications with legislators that express a view on redistricting maps will constitute lobbying in states where the legislative body must vote to accept the maps. In addition, communications with the general public that express a view on redistricting maps and includes a call to action encouraging people to contact legislators will constitute lobbying. Time spent on preparation and research for these communications also counts as lobbying. For more information on when preparation activity constitutes lobbying, please review our fact sheet: [When Does Your Activity Become Lobbying?](#) As a private foundation, all of those types of activities then would incur a significant tax.

WHAT ABOUT GENERAL ADVOCACY?

Not all activities related to the redistricting process will count as lobbying. For example, as your private foundation considers creating a campaign around this “once-in-a-decade” opportunity, be sure to consider some of these activities that would not be lobbying but are generally great advocacy tools for you and your grantees:

- ***Fund Grantees.*** Private foundations can support public charities that engage in lobbying and other forms of general advocacy (except, as described below, for campaign intervention) as long as you follow specific rules. Most importantly, the funds may not be “earmarked” for lobbying. The prohibition on earmarking, however, does not mean that private foundations must require grantees to refrain from using grant funds for lobbying. In fact, a grant agreement that forbids the use of funds for lobbying is unnecessarily restrictive. For more information on how private foundations can fund grantees that lobby, see [Private and Public Foundations May Fund Public Charities that Lobby.](#)
- ***Educate Elected Officials About the Community You Serve.*** It is not lobbying to meet with legislators to educate them about a broad social problem, as long as you do not express a preference for a specific legislative proposal to address that problem. For example, you could educate legislators about how current legislative districts unfairly divide your community, or how the current district lines force certain members of your community to take long bus routes or drive long distances to public meetings.
- ***Create a Strong Communication Plan Without a Call to Action.*** Sometimes, simply drawing attention to the fact that your community is being impacted by “lines on a map” is important to ensure broad civic engagement for robust representation of all communities at all levels of government. For private foundations, any grassroots communication without a call to action is simply good old-fashioned advocacy and education. You can communicate with the general public – using communications including letters to the editor, op-eds, news releases, email blasts, etc. – with a view about redistricting plans without counting it as lobbying as long as you do not include a call to action that encourages the public to contact a legislator. For more information on what is considered a call to action, please review our [What is Lobbying?](#) fact sheet.

- ***Be the Expert: Nonpartisan Analysis, Study, or Research.*** Your private foundation can present a comprehensive, accurate study or analysis of this or any other policy issue without counting the staff time and expenses of preparing the report as lobbying. To meet this criteria, the document must provide enough factual information to let readers draw their own conclusions about the issue, even if the report itself contains a specific conclusion. It must also be widely distributed to the public, such as being posted on the organization’s website, and not shared exclusively with audiences that agree with the authors. In addition, the report may not direct readers to contact legislators about the issue. This is another example of how a private foundation can educate and encourage greater community participation. For more information on the rules applying to nonpartisan analysis, study, and research, please see our publication [Foundation Advocacy Playbook](#).
- ***Participate in Administrative Advocacy.*** Attempting to influence a rule, regulation, or administrative decision made by a state or federal agency charged with organizing the redistricting commission, or perhaps hearing public testimony from the community, will not count as lobbying. For example, your private foundation could attempt to influence the Section 5 preclearance of the redistricting plan by the Civil Rights Division of the U.S. Department of Justice, or fund or file a lawsuit or Friend of the Court brief challenging or affirming Section 5 preclearance, without treating the expenses as lobbying.⁴
- ***Requests for Technical Assistance.*** Submitting a response to written requests for assistance from a government body is not lobbying. For example, if the chair of the legislative committee on redistricting and reapportionment wrote to your private foundation and requested that you testify in support of a particular redistricting plan, that testimony would not count as lobbying if the testimony is made available to all members of the committee.

As Always, Avoid Partisanship But Be Bold With Policies

Given that the redistricting process could impact which candidates for office are ultimately elected, private foundations participating in the redistricting process must ensure that they are not intervening in the electoral process. For any 501(c)(3) organization, staff must be clear when taking positions on public policy issues and advocating for policy change, while avoiding partisan engagement in an election or future election.

Whether an organization is intervening in a political campaign on behalf of, or in opposition to, a candidate for public office depends on all the facts and circumstances of each case. The IRS has not specifically addressed which facts and circumstances are relevant in the context of the redistricting process. However, we believe the IRS would conclude that a 501(c)(3)’s activity constitutes impermissible intervention in a campaign if that nonprofit takes positions in coordination with a political party, attempts to preserve “safe” seats, or ensures that incumbents can continue to hold a particular elected position.⁵ By comparison, it would likely be a permissible if a private foundation conducts

⁴ Locally, in a state where an administrative entity is charged with drawing the map, remember to check whether your local or state laws require you to disclose your activities — a different requirement than the one focused on here regarding reporting lobbying to the IRS. Sometimes, in local or state jurisdictions, a private foundation may need to register or report both legislative and administrative advocacy.

⁵ For an interesting analysis of the impact of redistricting on communities of color, we recommend [Redistricting in YOUR Community: A Guide to Redistricting](#), by NAACP Legal Defense and Educational Fund, Inc., Asian American Justice Center, Mexican American Legal Defense and Educational Fund.

nonpartisan public education about the importance of the redistricting process. Another likely permissible activity would be urging the body developing the redistricting plans to consider nonpartisan criteria such as population equality, contiguity of districts, or respect for communities of interest during the redistricting process. This is why it is important for private foundations to know the [rules of the game](#).

Engage Boldly

Foundations can participate in the redistricting process in so many ways. You can support civic engagement, grantees, and advocacy related to the redistricting process. No matter what you choose to do, get involved!



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