

BE BOLD & ADVOCATE!

Rules for Foundations Engaging
in Advocacy in Texas





TEXAS ADVOCACY FACTSHEET

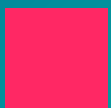
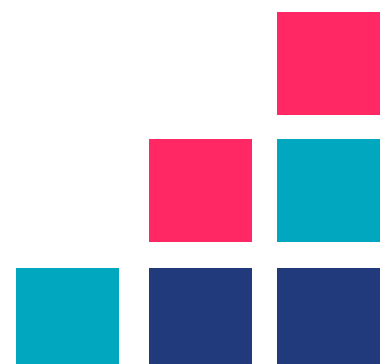


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INTRODUCTION

Good news! Both public and private foundations in Texas can boldly advocate on behalf of their missions and the communities they serve.

The federal tax code dictates what types of advocacy foundations can engage in (and how much). State law, on the other hand, requires registration and reporting of some administrative and legislative advocacy when certain thresholds are met.

This factsheet provides a brief overview of **both** bodies of law so that your foundation can **maximize its impact** by engaging in **effective** and **meaningful** advocacy.





PRIVATE FOUNDATIONS MAY ADVOCATE



Although the tax code imposes a prohibitive tax on private foundation lobbying expenditures, lobbying is only one type of advocacy, and there are many permissible advocacy avenues for private foundations.

For example, a private foundation could:

- Influence the adoption of agency regulations that interpret existing laws
- Build relationships with legislators or help grantees build and sustain these relationships
- Convene nonprofits and decision-makers to discuss a broad topic (e.g. the need for mental health services for students, teachers, and staff)
- Educate legislators about a broad range of issues, without referencing specific legislation. Specific legislation does not include rulemakings/promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws. So, private foundations could chime in on the implementation of new laws (i.e. the implementation of broadband expansion resulting from HB 5's passage).
- Meet with legislators to discuss the scope and impact of the foundation's work
- Sign on to an amicus brief, file a lawsuit to challenge a law or enforce a law, or fund litigation to challenge the constitutionality of a particular law
- Influence school board policies or the policies of any other "special purpose body" that has limited jurisdiction (e.g., housing authorities, sewer and water districts, zoning boards, and other similar federal, state, or local bodies)
- Conduct public education campaigns that do **not** include [calls to action](#) or mention specific legislation. A "call to action" is a specific means of encouraging the communication's recipient to take lobbying action. In order to qualify as a call to action, a communication must 1) tell the recipient to contact a legislator; 2) provide information on how the recipient can contact their legislator, such as providing the phone number or address; 3) provide a mechanism for enabling the recipient to contact their legislator, or 4) identify a legislator who will vote on the legislation.
- Offer technical assistance to legislators in response to a written request for oral or written testimony from a legislative body. Responding to requests for technical assistance is a specific exception to the Internal Revenue Code's definition of lobbying for private foundations. In order to qualify for this exception, the foundation's communication must be in response to a written request by a legislative body, committee, or subcommittee (not an individual legislator), and its testimony must be made available to all members of the requesting body. As an example, the executive

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director of a private foundation, in response to a written request from the chair of a legislative committee, could testify in support of a bill that would expand broadband access in rural communities, without having the expenses considered to be lobbying.

- Produce a comprehensive, accurate study or analysis of an issue (often referred to as a **“nonpartisan analysis study or research report”**) that is widely distributed and provides enough information about the issue to allow the reader to draw their own conclusions, even if the report contains specific legislative conclusions. For example, much of the research conducted by **Philanthropy Advocates** could qualify for this exception to the definition of lobbying.
- Attempt to influence any legislation that impacts the private foundation’s existence, its powers and duties, its tax-exempt status, or the deductibility of contributions (often referred to as **“self-defense”** lobbying). For instance, proposed legislation to raise the payout requirement for private foundations would fall within the so-called “self-defense” exception.

FEDERAL TAX LAW PROHIBITS PRIVATE FOUNDATION LOBBYING



Federal tax law defines two types of lobbying for private foundations: direct and grassroots.

Private foundations **cannot**, themselves, **conduct** activities that qualify as **direct or grassroots lobbying** using the Internal Revenue Code definitions.

Direct lobbying is a communication with a legislator (federal, state, local, or similar international body) or their staff, that expresses a view about specific legislation.

Grassroots lobbying is a communication with the public that expresses a view about specific legislation and includes one of four **calls to action**.

FEDERAL TAX LAW PERMITS COMMUNITY FOUNDATION LOBBYING



Community foundations can conduct all of the non-lobbying advocacy activities private foundations can do, and more!

Because community foundations are a type of public charity, they may lobby within generous limits allowed by federal tax law. How much lobbying a community foundation can do will depend on which of two options the foundation uses to measure its lobbying – the 501(h) expenditure test or the [insubstantial part test](#).

Under the insubstantial part test, community foundations can devote 3-5% of their overall activities towards lobbying (as it is defined by the Internal Revenue Code). According to the Code, lobbying under this test includes any attempts to advocate for the adoption or rejection of legislation (including the budget) at any level of government. Because the insubstantial part test is activity based, unpaid volunteer lobbying will count against the foundation's lobbying limit.

Community foundations that make the 501(h) election, on the other hand, can easily [calculate](#) their annual lobbying limit using a mathematical formula that permits some organizations to spend up to 20% of their annual exempt purpose expenditures on lobbying. The 501(h) expenditure test also more [narrowly defines](#) what communications qualify as lobbying. Under 501(h), lobbying is defined using the same direct and grassroots lobbying definitions that apply to private foundations. Direct lobbying is a communication with a legislator or their staff, that expresses a view about specific legislation (including the budget). Grassroots lobbying is a communication with the public that expresses a view about specific legislation and includes one of four [calls to action](#).

WHAT ABOUT TEXAS STATE LAW?



Unlike the Internal Revenue Code, Texas state law does not limit how much lobbying a foundation can do, but it instead requires lobbyist registration and reporting if certain thresholds are met.

Importantly, Texas defines lobbying differently than the federal tax code. Lobbying in Texas consists of **direct communication** with members of the **legislative** or **executive** branches of state government to influence **legislation** or **administrative action**. This means that even private foundation advocates who engage in permissible administrative advocacy (i.e. advocacy around regulations or rule-making) could trigger lobbyist registration in Texas.

Lobbyist registration is triggered when a person spends \$820 or more in a calendar quarter on qualifying lobbying expenditures or when a person is paid or reimbursed \$1,640 or more in a calendar quarter to lobby.¹ However, compensation received to do any of the following activities does not count against the \$1,640 compensation threshold:

1. Requesting a written opinion that interprets a law or regulation
2. Preparation or submission of an application or providing information which responds to a request by a state agency
3. Communicating to demonstrate compliance with an audit, inspection or investigation
4. Communicating to demonstrate compliance with existing laws, rules, policies or procedures
5. Providing facts or data per written request by a legislator or executive branch members
6. Communicating to an agency's legal counsel or administrative law judge concerning litigation or adjudicative proceeding.
7. Providing public testimony or written testimony at a hearing
8. Providing clerical assistance to a lobbyist

TEX. GOV. CODE §305.004, 1 TEX. ADMIN. CODE § 34.5

In addition, the following activities and persons do not, on their own, trigger lobbyist registration and reporting requirements:

1. Media support or opposition to legislation or administrative action;

¹Lobbyist registration thresholds are periodically adjusted. For information on current lobbyist registration thresholds in Texas, visit Bolder Advocacy's [Texas lobbying disclosure guide](#).

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2. Testimony at a legislative or administrative hearing if no special or extra compensation is received by person testifying;
3. Persons who encourage members, employees, or stockholders of their business entity or association to communicate with officials to influence legislation or administrative action;
4. Persons who pay lobbyists, but do not lobby themselves;
5. Persons who attend meetings with public officials if the meeting is paid for by business, union or association, including persons who are paid for time off to attend such meetings; and
6. Any person who communicates to legislators or the executive branch on behalf of a political party whose total expenditures and compensation combined do not exceed \$9,320 per year. ([TEX. GOVT. CODE § 305.004](#), [1 TEX. ADMIN. CODE § 34.5](#)).
7. **Incidental lobbyist** – an individual whose lobbying activities constitute no more than 40 hours of his/her compensated time during a calendar quarter. Incidental lobbyists must register, however, if their expenditures for lobbying meet the statutory threshold (currently \$820 per calendar quarter). ([TEX. GOVT. CODE § 305.003\(b-3\)](#), [1 TEX. ADMIN. CODE § 34.43](#)).

This means that if a Philanthropy Advocates community foundation member chooses to testify in favor of a proposed bill, it will likely need to count its testimony against the organization's lobbying limits as defined by the Internal Revenue Code. However, that activity, on its own, will not trigger Texas lobbyist registration and reporting requirements absent the payment of extra compensation.

In addition, if a foundation hires a lobbyist to advocate on its behalf, the lobbyist will be personally responsible for registration and reporting. The foundation itself would not have to register and report its activities unless it engages in lobbying separate and apart from the hired lobbyist's activities.

Need More Guidance?

Bolder Advocacy is here to help! Just call our Technical Assistance hotline at 1-866-NP-LOBBY or complete [this form](#), email us at advocacy@afj.org, or visit our website at bolderadvocacy.org. Please share this with your funders, and encourage them to reach out to us with their questions.



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