

NONPROFIT FAQ

Engaging in Advocacy with Undocumented Activists





02 Encouraging Issue Advocacy & Lobbying

03 Undocumented Activists & Ballot Measure Campaigns

06 Undocumented Activists & Public Protests

08 Non-Citizen Voting

09 Activism Undocumented Activists May NOT Engage In

Many nonprofit organizations have leaders and activists who are undocumented immigrants. In general, undocumented immigrants in the United States have a constitutional right to free speech and assembly, and nonprofit organizations have a right to integrate immigrant leaders into their organization's advocacy. Undocumented immigrants can legally assist nonprofit organizations to advocate for public policy change, with some restrictions.

ENCOURAGING ISSUE ADVOCACY & LOBBYING

1. **May my organization suggest that our undocumented activists engage in issue advocacy?**

Yes! Your nonprofit organization legally may ask undocumented activists to:

- Educate legislators about your organization's key issues;
- Encourage voter registration and voting by U.S. Citizens already registered to vote;
- Lead or participate in community organizing and organizer skills trainings;
- Change corporate behavior (through boycotts, publicity campaigns, etc.)
- Advocate for change in government rules and regulations;
- Advocate for or against equitable executive orders and executive actions (like Deferred Action for Childhood Arrivals (DACA), separating immigration from the criminal legal system, and other executive actions as outlined in AFJ member, Immigrant Legal Resource Center's (ILRC) [Executive Action The Biden Administration Must Enact](#);
- Advocate for or against decisions made by state and local boards/agencies (school boards, zoning boards, state environmental protection agencies, etc.); and
- Be plaintiffs in a court case (with very few exceptions).

PLEASE NOTE

Undocumented activists may persuade citizens of the importance of voting/registering. However, in most states, undocumented activists may not assist citizens in completing voter registration applications.

2. May my organization suggest that our undocumented activists lobby?

Yes! In general, your organization legally may ask undocumented activists to communicate with legislators in support or opposition to legislation. For example:

- Undocumented activists may talk to legislators about a proposed law to raise the minimum wage.
- Undocumented activists may urge the public to contact their legislators about supporting or opposing pending legislation that creates a path to citizenship.

PLEASE NOTE

Nonprofits **must** follow [federal](#) and [state rules](#) about [lobbying limits](#) and lobbying disclosures. That means that **all** staff and volunteers affiliated with and representing your organization must follow these rules when lobbying, regardless of immigration status.

UNDOCUMENTED ACTIVISTS & BALLOT MEASURE CAMPAIGNS

3. Can my nonprofit encourage undocumented activists to volunteer for our campaign supporting or opposing a ballot measure?

Yes, provided state law does not prohibit foreign nationals, noncitizens, or undocumented individuals from supporting ballot measure campaigns.

According to a recent memo from the federal government, federal law allows foreign nationals, including undocumented activists, to volunteer for and contribute money to ballot measure campaigns. However, activists and nonprofits should also consult state law before engaging in ballot measure advocacy.

4. What are ballot measure campaigns?

Ballot measures are a form of direct democracy and go by a variety of names: constitutional amendments, bond measures, initiatives, referenda, controlled projects, or other questions that are placed on state or local ballots, whereby voters respond “yes” or “no.”

5. May our nonprofit, a 501(c)(3) public charity, participate in a ballot measure campaign by expressing a view on a measure and/or encouraging the public to vote “yes” or “no” on a ballot question?

Yes! Communicating with the public to support or oppose a ballot measure is considered lobbying under federal tax law. Depending on how the organization [measures its lobbying](#), the efforts of volunteers who campaign for or against a ballot measure may need to count against your public charity's lobbying limits.

6. Under federal law, can nonprofits working on state or local ballot measure campaigns accept undocumented activists' volunteer services or contributions?

Yes! In 2021, the Federal Election Commission decided that federal law allows nonprofits working on state or local ballot measure campaigns to accept undocumented activists' volunteer services or contributions. Federal law also allows undocumented activists to legally contribute to ballot measure campaigns or offer their volunteer services.

7. Where can I find this Federal Election commission memo?

[FEC MUR 7523](#) was a case that dealt with federal election law which prohibits “foreign nationals” from making contributions or expenditures (giving anything of value) “in connection with a federal, state or local election.” The parties asked if making contributions to a ballot measure campaign counts as making contributions “in connection with a state or local election?” After many years of deadlock, the FEC finally said “no.” The agency explained that Congress did not intend to restrict contributions to ballot measure campaigns by foreign nationals. Congress only intended to restrict foreign nationals' contributions to candidate campaigns. From this decision, experts have determined that federal law permits foreign nationals to contribute money or their time to support or oppose ballot measure campaigns.

8. What is a "foreign national?"

"Foreign national" or **"non-national"** refers to anyone who is not a US citizen and who does not hold permanent resident status. "Foreign national" also includes undocumented activists.

9. Should nonprofits and undocumented activists also consider state law before undocumented activists work on or contribute to a ballot measure campaign?

Yes! Nonprofits and undocumented activists should check state and local campaign finance laws before engaging in ballot measure activity. The FEC decision discussed above permits non-citizens, including undocumented activists, to spend money or volunteer time on ballot measure campaigns in states that don't otherwise prohibit undocumented activists' engagement in ballot measure activities. Following the FEC decision, some states have considered passing legislation that would limit non-citizens' ability to either contribute money to ballot measure campaigns or volunteer their time, or both, which is why it is important to also consult state and local law before embarking on a ballot measure campaign with undocumented activists.

10. Do nonprofits have to report contributions to their ballot measure efforts under state law regardless of who they are from?

Yes! Nonprofits may have to report contributions to their ballot measure efforts under state campaign finance law regardless of who they are from.

11. Can nonprofits pay undocumented activists to work on a ballot measure campaign?

The issue of whether one can pay an undocumented activist to work on a ballot measure campaign is a little trickier as it involves employment and immigration law issues and is beyond the scope of this factsheet.

12. Are there any state laws that allow undocumented activists to gather signatures to qualify measures for the ballot?

Yes! Certain state laws allow undocumented activists to gather signatures to qualify measures for the ballot, while others do not. Nonprofits should check state laws before engaging the services of undocumented activists for this purpose.

13. Can my organization ask undocumented activists to participate in peaceful, lawful public protests?

Yes! In general, nonprofit organizations may encourage all activists to

UNDOCUMENTED ACTIVISTS AND PUBLIC PROTESTS

participate in peaceful, lawful protests. Most protests do not involve arrests. However, there are potential risks and unintended complications that undocumented activists may face, especially with local law enforcement and ICE, which can result in improper arrest even when activists are not breaking any laws.

14. What are some risks that undocumented activists may face if they participate in public protests?

If an activist is arrested, even if it's done improperly, this could place them at an increased risk of detention and deportation. In many jurisdictions, local law enforcement helps ICE engage in ICE arrests, meaning that an arrest by law local enforcement could trigger an arrest by ICE. Undocumented activists may face an even greater risk of detention and deportation if they already have:

- A criminal history,
- Previously come into contact with ICE,
- A prior deportation order, or
- Have a pending removal case.

15. What should undocumented activists do to prepare before participating in public protests?

If an undocumented activist chooses to participate in a protest, they should take certain precautions, such as:

- Having the name and number of an immigration attorney on hand, and
- Telling a trusted friend or family member about their plans.
- It is also recommended that they consult with an immigration legal services organization to assess their individualized risk.

Sources

52 U.S.C. § 30121(b)(2)
11 C.F.R. § 110.20(a)(3)(ii)
FEC MUR 7523

16. Do undocumented activists have guaranteed rights under the US Constitution?

Yes! It is important to remember that all activists, including undocumented activists, have guaranteed rights under the US Constitution - including the right to remain silent and the right to legal counsel.

17. What are some resources for undocumented activists to know their rights?

AFJ member, Immigrant Legal Resource Center, has a "[Know Your Rights Toolkit](#)" that provides information and additional resources regarding the rights of undocumented activists.

NON-CITIZEN VOTING

18. Should nonprofits and their volunteers encourage non-citizens to vote?

Nonprofits and their volunteers should avoid encouraging non-citizens to vote, including undocumented people (See question 22 for exceptions). Undocumented activists who register to vote and/or actually vote can face grave immigration and criminal consequences.

19. Can non-citizens vote in federal elections?

No! Voting by non-citizens is prohibited in federal elections.

20. Can non-citizens vote in local elections?

In some US cities, non-citizens, and in some cases even undocumented residents, are allowed to vote in local elections.

Types of Activism Undocumented Activists May NOT Engage In

Type of Activism	Restrictions for Undocumented Activists
Employment	Undocumented activists cannot work as employees for nonprofit organizations if they don't have employment authorization.
Political Contributions	Undocumented activists may not donate funds to candidate election campaigns.
Voting	<p>Undocumented activists may not vote in federal, state, or most local elections. In fact, registering to vote could be extremely detrimental to an undocumented activist's immigration case and have criminal consequences.</p> <ul style="list-style-type: none"> • However, as of 2022, there are a few specific local jurisdictions in the United States that permit undocumented immigrants to vote in local elections, such as Takoma Park, MD and Washington, D.C.
Voter Registration and Petition Gathering	<p>In most states, undocumented activists cannot register voters or gather signatures for ballot measure petitions since it requires eligibility to register to vote. However, in a few states, this restriction does not apply, and undocumented activists may participate in these activities.</p> <ul style="list-style-type: none"> • For example, as of 2022, undocumented activists may gather signatures in Maryland and California.

PLEASE NOTE

Before encouraging undocumented activists to engage in any political activities, it's recommended to consult an immigration attorney regarding the specific laws and regulations in their state or jurisdiction.

ENGAGING IN ADVOCACY WITH UNDOCUMENTED ACTIVISTS

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