

LIGHTS, CAMERA, CHANGE:

A FILMMAKER'S GUIDE TO
PRIVATE FOUNDATION FUNDING
FOR SOCIAL IMPACT

TABLE OF CONTENTS:

THE PLOT INTRODUCTION	4
SNEAK PEEK HOW TO USE THIS GUIDE	8
ACT 1 LOBBYING & CAMPAIGN INTERVENTION 101	10
ACT 2 PAST FILMS THAT PROMOTE SYSTEMIC CHANGE	16
ACT 3 A CLOSER LOOK AT THE RULES	30
SEQUEL HOW TO MAXIMIZE YOUR IMPACT	46
REVIEW QUESTIONS	60
GLOSSARY OF TERMS	62
EPILOGUE DO'S & DON'TS GRANT PROPOSALS & REPORTS	64



Films tell the stories that can disrupt stereotypes, elevate marginalized voices, build empathy, inspire action, generate awareness, and create opportunities for lasting change.

This guide is designed for social justice filmmakers or other creatives seeking foundation funding for their projects. It is an exciting time as more and more foundations are looking for ways to support your creative projects.

Readers Of This Guide Will Learn:

- Tips to apply for grant funding
- How to navigate the rules around lobbying, voter registration, and campaign intervention to use foundation-funded films for maximum impact
- How partners can use your foundation-funded films
- How to report to funders on the activities supported by grant funding

Foundations can fund a variety of social justice and educational films. However, federal rules regulate lobbying and some political messaging done with foundation funds. Because the line between charitable missions and lobbying can be thin, it is critical that filmmakers understand how these rules apply at every step of their project — applying for funding; developing, producing, and distributing your film; collaborating with others; and reporting on how funds were spent. A mistake in the grant proposal or earliest stages of approaching a funder can eliminate you from consideration for funding. Follow the rules, and you improve your chances for additional funding and networking opportunities.

This guide will explore the wide range of acceptable activities filmmakers can engage in with private foundation grants. The benefits of partnering with a private foundation include:

- Valuable partner in the social justice world
- Access to technical assistance (impact advisors, NGO partners, etc.)
- Reliable funding partner
- Networking with other grantees doing similar work

Due to their unique legal structure, federal law requires that private foundations and recipients of their grant awards must use private foundation funds for “charitable purposes.”

Fortunately, this requirement allows private foundations to fund projects that combat discrimination, educate the public on broad social issues, encourage full participation in elections or government (i.e., democracy), advance civil and human rights protected by law, and a range of other activities that the IRS considers charitable, educational, religious, or scientific.

Filmmakers who hope to receive private foundation grants must also follow the rules that apply to foundation grants around lobbying, campaign intervention, and sometimes voter registration.

Private foundations are prohibited from lobbying (i.e., trying to influence legislation) and cannot support or oppose candidates running for public office. When funding non-501(c)(3) filmmakers, private foundations must also ensure that their funds are not used for voter registration purposes.

This guide is primarily aimed at filmmakers or creatives that are not 501(c)(3) tax-exempt entities but that have an educational or other charitable story to tell as this may provide an avenue for private foundations to support your film. 501(c)(3) filmmaking organizations or those that are housed within public charities may also benefit from this guide. However, some additional rules may permit your organizations to apply for different grant funds that could be used in additional ways in the social justice movement. See [Foundation Advocacy Grants: What Grantees Need to Know](#).

Organizations that produce other social justice art projects may also find this guide helpful. Other art projects may include audio recordings, theater performances, dance, spoken word, slam poetry, street art, graffiti and murals, reenactments, music, etc. The rules in this guide would apply to other for-profit organizations or non-charitable organizations that have a charitable art project component.

This guide may also be useful for impact advisors or other nonprofits (NGOs) partnering with filmmakers to conduct community engagement or outreach activities surrounding the private foundation-supported film project.

Alliance for Justice helps grantees and foundations navigate the tax and election rules to ensure foundation-supported film projects can have the biggest impact possible and ensure continued funding.

Filmmakers can access the attorneys through AFJ's Bolder Advocacy hotline by emailing advocacy@afj.org and referencing the "Lights, Camera, Change" guide. When contacting the hotline, please identify whether you are a 501(c)(3) filmmaker or a commercial filmmaker, as the rules may be slightly different.

We've designed this guide so people can turn to the respective sections as they go through the process.

We recognize that some filmmakers may be in the initial design phases of working with screenwriters to develop the concept for their film. Others may have already produced their film with non-foundation funds and need funding to support their post-production work partnering with other nonprofits to advance systems change. Depending upon your stage in a project, the application of the rules on how you can use private foundation funds can change.



THIS GUIDE WILL USE THE FOLLOWING LEGEND:

Private Foundation-Supported Film:

Refers to a film in which even a small amount of private foundation money has been used to pay for even a portion of the first four stages of production of a film (development, pre-production, production, and post-production).

Film Produced with Non-Private Foundation Funds:

Refers to a film in which all the first four stages of production of the film were paid for with money from individual donors, for-profit investors, community foundation donors, or public charity donors.

Community Engagement:

Refers generally to activities to engage the community in discussions or activities following the distribution of a film. Foundations may fund community engagement activities that further a charitable mission and maximize impact of the film.

Commercial Filmmaker or Filmmaker:

Refers to a filmmaking organization that exists to direct or produce films on a for-profit basis. Most of the guide will simply use the term filmmaker throughout to refer to a filmmaking organization that is not a 501(c)(3) public charity.

501(c)(3) Filmmaker:

Refers to a filmmaking organization that has applied for or received its 501(c)(3) determination letter from the IRS or is housed within a 501(c)(3) public charity.



ACT 1

LOBBYING & CAMPAIGN INTERVENTION 101



“What is lobbying and campaign intervention and why should I care?”

A little-known IRS rule, called the “expenditure responsibility rule,” allows private foundations to award grant funding to for-profit filmmakers to produce film projects that further a “charitable” mission. These projects can include development through post-production, distribution, and community engagement activities. Act 1 introduces the main rules and Acts 2 and 3 explore the exceptions and applies the rules for maximum impact.

Rule #1:

No Lobbying with Private Foundation Funds. Filmmakers cannot use private foundation grants to engage in direct or grassroots lobbying.

Direct lobbying is any communication that expresses a view on specific legislation to legislators or government officials that frame legislation.

Grassroots lobbying is any communication that expresses a view on specific legislation to the public that includes a call to action. A “call to action” would be any one of the following four items: 1) encouraging the recipient to contact a legislator; 2) providing information on how the recipient can contact their legislator, such as providing the phone number or address; 3) providing a tool for the recipient to contact their legislator, such as a postcard, petition, or email form; or 4) identifying a legislator who will vote on the legislation as being opposed to or undecided about the organization’s view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient’s legislator.

For IRS and grant purposes, the definition of lobbying is limited to just those activities and communications that meet the elements of direct or grassroots lobbying. It is possible for the film to contain messages that call out injustice, support broad social policies, advance civil rights, educate the public on racial justice, economic justice, historical inaccuracies, and more without engaging in lobbying. It is even possible for the film itself to support specific legislation or a legislative solution, such as a film that discusses why we need Congress to pass the John Lewis Voting Rights Act, as long it doesn’t have a call to action.

Scenario: A documentary highlights the disproportionate impact of modern voter suppression state laws on college campuses, nursing homes, and first-generation Americans. At the end of the movie, the film shares news of the John Lewis Voting Rights Advancement Act, legislation pending in Congress. The film describes the federal bill and how it would ensure state election legislation is reviewed by the US Attorney General to ensure new state laws would not unconstitutionally harm youth, elderly and new citizen voters.

Example 1: Screening the film to the public, even though it supports pending legislation is not direct or grassroots lobbying. Private foundation funds could be used to support this film and public engagement activities of this type.

Example 2: Screening the film to the public and including a message at the end for viewers to text their members of Congress to support the John Lewis Voting Rights Advancement Act would amount to grassroots lobbying. Private foundation funds cannot be used to support grassroots lobbying during the grant agreement period and for the period in which the charitable purpose is being undertaken. Act 2 explores ways to use films for non-lobbying impact. Act 4 explores exceptions to the rules on lobbying for ways to use films for maximum impact.

Likewise, it is possible for the film project’s outreach activities to engage in an abundance of consciousness-raising, leadership building, and community engagement activities that do not meet the elements of lobbying. As long as the messages and activities meet the purposes and goals of the grant agreement and adhere to the rules prohibiting lobbying, campaign intervention, or voter registration drives (which we’ll cover), the filmmaker can use the private foundation funds for those activities. This guide is designed to explore the lines between allowed and prohibited activities.

Rule #2:

No campaign intervention with private foundation funds. Filmmakers cannot use private foundation funds to support or oppose candidates for public office.

According to the IRS, campaign intervention refers to activities that support or oppose candidates running for public office. Usually, these offices appear on an election ballot, such as President, Senator, Governor, State Representative, County Commissioner, District Attorney, Sheriff, District Attorney, Circuit Court Judge, City Council, Town Council, School Board, etc. Sometimes people will use shorthand to refer to activities that support or oppose candidates in this context as “partisan” or other types of election activities that don’t indicate support or opposition for a candidate as “nonpartisan.” Sometimes people will also use the phrase “electioneering” to refer to activity that supports or opposes a candidate.

Basically, what this rule means is that neither the private foundation-supported film nor the project’s outreach activities can support or oppose a candidate running for election or an incumbent’s reelection efforts, or hint at who people should vote for in an election. This prohibition also extends to not supporting candidates that run for political party office, such as DNC or RNC chairperson, state political party chairperson, or precinct committee person. It also includes candidates for non-partisan elected offices, such as school board candidates. However, filmmakers may criticize or praise most appointed and elected officials, as long as it’s not done as a proxy or substitute to praise or criticize a candidate for public office.

Below is a list of examples of communications that might occur in the film itself or in the outreach activities. We've used a scale to indicate whether the activities may be legally supported by a private foundation grant:

	YES	MAYBE	NO
Ask President Biden to end family separation and detention	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allow your film to be used by community partners for a nonpartisan leadership training	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Offer your film to 501(c)(3) public charities to help mobilize voters	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Offer your film to all state representative candidates in a state selected for nonpartisan reasons to educate on the issues in your film	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
"Get in good trouble, necessary trouble"	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
"We're with Her"	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
"Sleepy Joe"	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
"Vote for Hillary"	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
"Support clean energy candidates" (when referring to candidates for public office)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Biden/Harris 2020	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Be sure to check all surrounding activities, facts, and circumstances, even those activities marked with yes on the preceding page, to ensure they are nonpartisan (or do not indicate support or opposition for a candidate).

For more resources on how to analyze whether your film and outreach activities remain nonpartisan, please see Bolder Advocacy's [Rules of the Game Podcast, "Can We Say That."](#) Although geared for 501(c)(3) entities, the resource outlines how the IRS examines the totalities of the circumstances to determine if a communication or activity steps across the line to "intervene in the outcome of the election."

Note about Voter Registration Drives:

Under the "expenditure responsibility rule," the IRS also prohibits grant recipients from using the funds to conduct a "voter registration drive," even if the drive is conducted in a nonpartisan manner. There are many other ways to support democracy, such as voter education, mobilization, and combatting suppression and disinformation. Legal counsel or Bolder Advocacy should be consulted if the filmmaker envisions election year activities as a part of the film or outreach activities to ensure those on the project understand the definition of how the IRS defines a "voter registration drive." Generally, a voter registration drive is where an entity engages in all the activities that help other people complete the steps needed to become registered voters in the applicants' state.

ACT 2

PAST FILMS THAT
PROMOTE SYSTEMIC
CHANGE

2

Let's explore a variety of bold and legal ways filmmakers have previously used their private foundation grants to create films and community engagement activities to lay the foundation for lasting systemic change.

Learning what is and isn't lobbying for the IRS is important to prove to funders you are deserving of grant funds AND so that your film can maximize its impact. Films backed by foundations pair perfectly with community outreach, organizing, and engagement.

As you're creating the grant **proposal** and developing your film, consider ways you or other community partners can legally engage the community on the issues addressed in your film. Community engagement can include policy makers — all types of leaders in the community that can set policy, determine funding, and make decisions. Policymakers can include voters; union and business leaders; judges; mayors; lawmakers; elected and appointed officials; school board members; university and college leaders; and community leaders.

Some filmmakers even work with an impact advisor or a community partner during the development stage to receive insight into how their film might be used in the community. Your foundation partners may be able to help connect you to impact advisors or community partners (other nonprofits or community organizers that work on the issue your film addresses) if that is something you would like to consider.

After a filmmaker has fulfilled their charitable mission with certain films, it may be possible that the filmmaker could allow their film to be used in a ballot measure campaign or legislative campaign to change hearts and minds on an issue of importance (see Act 4 for ways films might be used after the grant period has ended to influence legislation, including ballot measures).

On the other hand, sometimes it is important to lift up voices and stories of the underrepresented or tell a story from just one perspective. In our universe, where those with the most money or access to resources are able to control the narrative, we have seen where history books "whitewash" history, downplay the accomplishments of non-whites, and/or omit critical historical events altogether, such as the Tulsa Race Massacre. It is critical that those without access to resources also have the ability to record and share their story. Sometimes sharing a story from one person's or one community's perspective is even more impactful than influencing public policy.



AND THEN THEY CAME FOR US

A FILM BY ABBY GINZBERG AND KEN SCHNEIDER
FEATURING GEORGE TAKEI



Act 2 highlights private foundation supported films and their community engagement activities used to educate the public, fight discrimination, challenge stereotypes, and engage the public and policymakers in meaningful ways that comply with the rules around lobbying and election year activities.

FILM 1: AND THEN THEY CAME FOR US

An election year is a great time to elevate your film's issues as voters, candidates, and the media are covering issues in more detail. And films are a great way to educate voters on the issues.

Some ways you could use the film to spark discussion among voters are:

- Create a voter guide to encourage discussion among family members
- Create a voter guide to encourage voters to ask candidates questions on the issues addressed in the movie
- Encourage communities to screen the film one night and then invite candidate(s) to a town hall the next week to meet members of the community
- Hold a community screening and attend a Q & A panel

Films also provide a great opportunity to engage the public in discussions on the issues addressed in the film. Our first film we explore is *And Then They Came For Us*, which was released well before the 2020 Presidential Election.

Featuring rediscovered photographs by Dorothea Lange, *And Then They Came For Us* connects history with the present, by retelling the story of President Franklin Delano Roosevelt's Executive Order 9066, which led to the removal of 120,000 Japanese Americans from their homes, denied them of their property and livelihoods, and imprisoned them for four years. Yet, it does more than that. The film and **subsequent community engagement activities** show those detainees and Japanese American **activists speaking up then and now** against former President Trump's executive order to prohibit travel and immigration by Muslim immigrants and those from primarily Muslim countries, often referred to as the "Muslim ban." The filmmakers created a **resource page**, linked to nonprofits working on issues addressed in the film.

The filmmakers created a **study guide** for use in schools that could also be turned into a community discussion tool.

The IRS rules provide a way to use private foundation funds and even 501(c)(3) public charity funds to hold elected officials accountable in a nonpartisan way and draws distinctions between communications that praise or criticize incumbents for their official actions as opposed to praising and criticizing candidates as they run for election for public office.

For guidance on how to hold elected officials accountable while not intervening in the outcome of an election, please see [Praising and Criticizing Incumbents](#). While written for 501(c)(3) public charities, the rules would apply to filmmakers using private foundation funds.

The community engagement activities in *And Then They Came for Us*, are examples of critiquing past government actions and holding current elected officials accountable and not discussing candidates. In analyzing the activities that accompanied this film, you'll notice that the film was released in 2017, well before a presidential election. Many community activities are aimed at instructing students on the historical aspects of the executive action, Japanese imprisonment, activities by those detained or imprisoned, and discussions around the US Government decision to detain or imprison Americans of Japanese descent or immigrants of Japanese origin. The other community engagement activities connect the historical content of the film to the activities taken by those imprisoned, litigation efforts to overturn the government decision or repay detainees for constitutional violations to privacy and property, and modern-day efforts and comparisons to presidential executive orders to restrain travel of immigrants based on national origin.

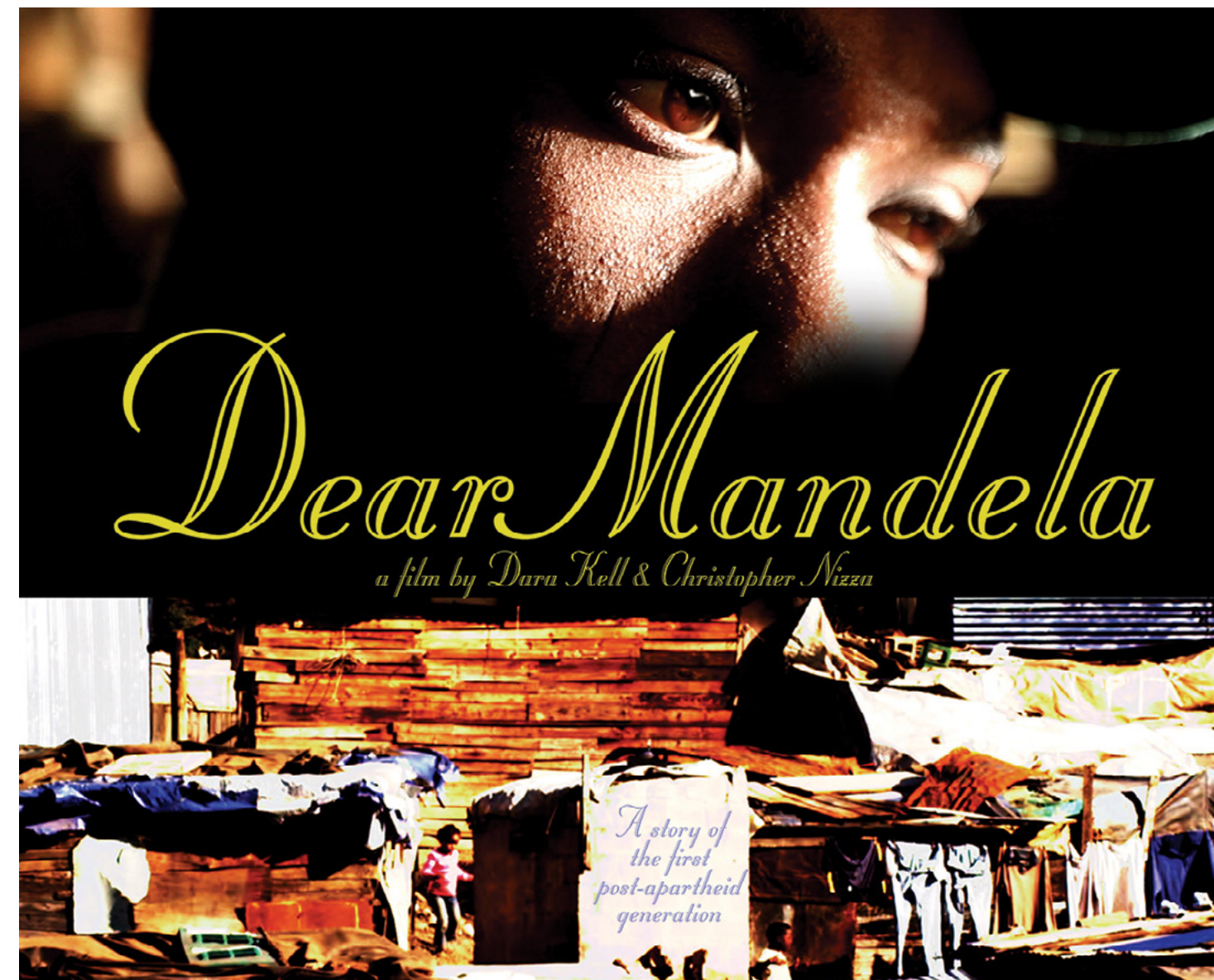
You'll notice that community engagement activities do not talk about current elected officials as candidates but only as elected officials and actions they took in their capacity as an elected official. The activities do not make reference to an upcoming election and do not instruct members of the public how to vote. The focus is on actions the public can take to affect public policy and not change the outcome of a candidate election.

If you are going to use private foundation funds to participate in a Q & A panel on the issues ahead of an election or to create voter guides, you'll need to take care that questions or guides do NOT compare candidates that are running for office to your preferred stance on the issues or are used to make a candidate look more favorable or unfavorable than others. The IRS says that comparing and contrasting candidates to issues starts to indicate who makes the better candidate, and that is impermissible partisan activity with private foundation funds.

However, there are ways to craft a Q & A panel so that you talk about issues without mentioning the election, when the election is far away or in the past, or perhaps how elected officials should deal with the issues AFTER an election. There are ways to make the discussion less risky. For more details and discussion, please see [Commenting on Candidates and Campaigns](#).

FILM 2: DEAR MANDELA

Dear Mandela is a private foundation supported film. Dara Kell, who grew up in South Africa, was inspired by the young leaders of the informal settlements, also known as or "shantytowns," who were being unlawfully evicted by the South African government. She picked up her camera and brought the world "Dear Mandela," where the young residents of post-apartheid South Africa challenged their government with the help of pro bono attorneys and won legal victory after legal victory. Continuing to engage with the community before, during, and after production on nonpartisan, non-lobbying community engagement is a safe, permissible use of private foundation funds. The filmmaker and her team created a toolkit to help residents of South Africa resist unlawful government evictions.





PHILLY D.A.

"The best TV show I've seen this year."

Los Angeles Times

"The legal thriller we need right now."

The New York Times

"The second coming of The Wire, in docuseries form... a model for an entire genre of documentary storytelling."

VULTURE

FILM 3: PHILLY DA

The restrictions on movement during the COVID-19 pandemic provided a virtual platform for many films and a new reach for community engagement activities.

The film, **Philly DA**, explores one city's efforts to reform the criminal legal system from the inside. The filmmakers partnered with **Clause Foundation 40**, a 501(c)(3) public charity, to host roundtable discussions with community leaders on prosecutorial and police reform following each of the PBS 8 episodes.

This film explores a past election, a current incumbent, and a series of timely public policy topics on the criminal legal system. The past candidate is even a current candidate during the roundtable discussions. But the film had at its core a charitable purpose, and has been used to educate the public and engage community members in searching for solutions. The fact that the main character is running for reelection, does not mean that the film must be shelved until after the election, provided it is used in a nonpartisan manner.

The film and all of the private foundation funded outreach activities and those conducted by 501(c)(3) organizations must refrain from commenting on the incumbent's reelection efforts or suggesting for whom people should vote.

Users of this guide and listeners of the Bolder Advocacy **Rules of the Game podcast** understand that developing a track record of advocacy or community engagement around one's mission can help protect a project that might be risky if it had been launched right before an election. Likewise, all the factors surrounding the development, production, distribution, the ensuing public demand for criminal legal reform, and unfolding community engagement in response to the public demand for policy solutions, must be taken into account when devising nonpartisan activities.

FILM 4: FREEDOM SUMMER

Freedom Summer directed by Stanley Nelson and Firelight Media brought us an historical documentary about the 1964 Civil Rights Movement that occurred that summer and the murders and violence that ensued when African Americans exercised their right to register to vote. Nelson worked with an impact advisor to arrange community screenings, spark constructive conversations, and develop a **nonpartisan GOTV toolkit** aimed at mobilizing young voters. Firelight Media harnesses the power of social issue documentaries to educate, motivate, and inspire diverse audiences through strategic partnerships, online engagement, and training for organizers.

Filmmakers and nonprofits could use the foundation supported film or clips from the film to support the following nonpartisan outreach activities: leadership development activities; voter mobilization campaigns; voter education campaigns; staff onboarding activities; and much more. When using private foundation funds, grantees must take care that their activities do not support or oppose a particular candidate, slate of candidates or political party.

In 1969, Congress limited the ability of private foundations to fund voter registration drives. Following successful voter registration drives led by 5 key civil rights groups during the 1960's, Southern Christian Leadership Conference (SCLC), the Student Nonviolent Coordinating Committee (SNCC), the National Association for the Advancement of Colored People (NAACP), the Congress of Racial Equality (CORE), and the National Urban League, funded in part by philanthropists and private foundations, Congress passed the Tax Reform Act of 1969. This Act, among other things, prohibited private foundations from funding voter registration drives in one state, making it nearly impossible for local or state nonprofits to receive critical funding to conduct voter registration drives. The one effort to remove the prohibition in 1984 failed to pass, and the prohibition remains to this day.

What this means is that filmmakers cannot use their private foundation grants to support a state or local voter registration drive directly or indirectly. Fortunately, what is a voter registration drive is narrow, and there are many activities that do not fall within the confines of a voter registration drive.

Generally speaking, "Voter registration drive" consists of concerted activities to register voters. That usually consists of helping residents complete a voter registration application, collecting, and turning in a voter registration application on behalf of an applicant.

FREEDOM SUMMER

MISSISSIPPI. 1964.



AMERICAN
EXPERIENCE®



Helping people understand what candidates are on the ballot, questions about the voting process, encouraging them to request an absentee ballot or to volunteer as a poll worker are all activities that are NOT part of a voter registration drive.

For questions around what is and isn't a voter registration drive or whether your community engagement activities are nonpartisan, filmmakers can call or email Bolder Advocacy at 1-866-NP-LOBBY or advocacy@afj.org or consult legal counsel.

When Congress prohibited private foundations from engaging in lobbying activities, they carved out several exceptions. This guide explores one of the exceptions to lobbying – the nonpartisan analysis, study and research exception. There is another exception to the prohibition that permits foundations to engage in lobbying activity in self-defense in order to protect the foundation's existence, powers, duties, tax-exempt status, or the deductibility of contributions to the foundation.

It is possible that filmmakers could obtain private foundation backing for the untold story of the successful voter registration drives that have made it nearly impossible to fund small voter registration drives in communities across the country. Using both the self-defense exception and the nonpartisan, analysis, study and research exception to the prohibition on lobbying, the film might then be shown to legislators and used to influence a repeal to 26 U.S.C. §4945(f).

In addition to using films to educate voters on the issues that matter, you could also use your film to educate candidates on the issues provided you do so in a way that does not provide a benefit to one candidate over the other, and that you do not strategize or coordinate with a candidate or political party with private foundation funds.

EXAMPLE:

Let's say you have a film on climate change that would make an excellent resource for federal candidates (i.e., candidates running for US House of Representatives, US Senate, and US President). If you wanted to offer your film to federal candidates as an educational resource, you would need to think through whether you offer the film to ALL federal candidates or just those running for President. If you decide to offer the film to ALL federal candidates, do you wait until after the primaries, conventions and caucuses, until the field of candidates is narrowed? Instead of sending all federal candidates a copy of the film, do you simply send each of them an offer or extend an offer to attend a screening? The key in this case is that you want to make your offer wide enough that it does not appear as though you are biasing one candidate over another or offering your resources to only one political party or one candidate and not another.

In this case, you may find it easier to wait until after the election, when the IRS analysis shifts. It is much easier to educate elected officials or incumbents on the issues as you don't run into the question of whether you are trying to communicate with voters about who to support in an election or supporting a candidate by providing a valuable resource—access to your film.

After an election, you can offer your film or offer to screen your film to a select group of elected officials as part of their official duties to educate them on the issues, taking care not to lobby.

If the Louisiana Democratic House Caucus asked if you could show your film to their members because it addressed an issue they were grappling with, the IRS permits you to show your private-foundation funded film to this select group of lawmakers, provided your film did not express a view on a specific legislation.

ACT 3

A CLOSER LOOK
AT THE RULES

3



Lobbying and electioneering are just two types of community engagement that can lead to systemic change. Chapter 1 provided the rules for private foundation funded film projects and therefore only applies to a limited amount of situations. In this section, we'll apply those rules by using the documentary **CARE** as our reference point.

This project is an intimate look at caregivers and their clients. *CARE* sheds light on the failed system of caregiving in the US and has been screened in partnership with advocacy organizations that are working to address worker rights and find solutions for long-term care. Filmmakers Deirdre Fishel and Tony Heriza received a private foundation grant to work with impact advisor Sahar Driver. What follows are some of the ways that Driver and the filmmakers used the film to engage with the community around the issues in the film.

In this guide, we'll look at the various ways the filmmakers, impact advisor, and community partners used the film and foundation support to do the following:

- Build bridges between impacted communities
- Raise awareness of the issues/educate the public/increase media coverage
- Improve attitudes of community and policymakers
- Build partnership with advocacy organizations & stakeholders
- Build support for advocacy organizations
- Strengthen a movement
- Identify emerging leaders on the issues
- Advance broad solutions/build support for broad solutions
- Develop messaging around an issue
- Educate lawmakers on the broad issues of caregiving
- Educate and encourage candidates to take a stand on the issues

With foundation funds, the crew of *CARE* created **social media graphics**, a **press kit**, and screening discussion toolkits that community partners and the public could use to engage publicly on the issues.

As we will explore with *CARE*, filmmakers can also use private foundation grants to organize communities in support or opposition to a broad social issue, train community leaders, speak out on discrimination and voter suppression, encourage voting by all or underrepresented communities, and even hold screenings or roundtable discussions for legislators following the film that covers broad social issues.

It may even be possible to use part of the grant award to pay for registration fees for you or your staff to attend the trainings that further your grant's mission or project. It's best practice if you include the possibility that you may use part of the grant for team "individual training" or educational purposes in the grant proposal. By including an educational component in your grant proposal, your grant report can then mirror your grant proposal in describing to the funder how you spend their funds to accomplish your purpose.

These grant proposals and grant reports may seem like a hassle, but they are required by federal law to obtain private foundation funding under the expenditure responsibility rules. If you have a multi-year grant, these reports are a necessity to obtain funding in each subsequent year of the grant project as well as lay the foundation for years to come. As a matter of fact, the IRS does allow the foundation to lessen some of the pre-grant inquiry documentation depending upon how familiar the foundation is with your recordkeeping procedures.

EXAMINING ELEMENTS OF DIRECT LOBBYING

Reminder:

The IRS defines direct lobbying as any communication that expresses a view on specific legislation to legislators or government officials that create legislation.

In this context, **communication** can be any activity that conveys a message by any means. This can include a film, a tweet, a press release, a video clip, an interview. The communication might take place in person or virtually, by mail, or in writing. It could be a paid advertisement for the film or community outreach activity or a “free” tweet or Instagram post or promoted social media content. Virtually any communication that is paid for or created using private foundation funds could count as a communication.

Specific legislation is usually defined as a bill, a bill draft, a detailed legislative solution or legislative initiative, a budget bill, a budget line item, a ballot measure, a bond measure, a constitutional amendment, a ballot initiative, a referendum, a resolution, or a treaty. Sometimes a detailed policy solution that identifies a problem and solution, for which only legislation can resolve the issue, will also be considered “specific legislation” even if a bill has not been introduced. Or said another way, if a conversation is specific enough that a legislator can leave the conversation and have a bill drafted based upon the conversation, then you have probably engaged in IRS-defined lobbying.

For example, talking about “expanding access to health care” is not specific legislation as that can be achieved several ways and not just legislatively. However, asking that the state legislature raise the income eligibility threshold for Medicaid for single adults over the age of 18 to \$19,500/annually may be specific legislation in your state. Specific legislation does not include administrative regulations, executive orders, litigation, or attempts to enforce existing laws.

Legislators include local, state, federal and international legislators, and their staff, as well as government officials that formulate legislation. The most common types of legislators are city council members, county commissioners or supervisors, state senators, state delegate or representatives, and Members of Congress. Sometimes mayors, governors, and presidents (the elected executive) might stand in the shoes of a legislator when reviewing bills and determining whether to pass or veto them. Also, governors and presidents serve as legislators when selecting nominees that must be confirmed by a legislative vote (I.e., cabinet members, federal judicial nominees, some state nominees but not all).



Let's analyze a fictional tweet designed to be produced using private foundation funds. Is this tweet an example of direct lobbying?



Does the tweet have all three elements of direct lobbying?

1. Is it a communication?

Yes. A tweet is a communication.

2. Does it express a view on a specific legislation?

Yes. The tweet expresses a view on specific legislation. Asking that Senator McConnell "send it to committee" for a hearing "before it's too late" and saying "Our caregivers deserve workplace protections" and even the hashtag all lend support to House of Representatives bill number 4.

Statements that lend support or opposition for legislation would amount to "expressing a view" as opposed to stating specific facts in a neutral way that do not tend to give an indication whether the speaker supports or opposes the bill.

3. Is this communication directed to or at a legislator?

Yes. When tagging Senator McConnell with his twitter handle, this fictional post is a communication directed at a legislator.

Practice Tip:

The IRS also says that communications to a legislator's aide, staff member or surrogate, would also meet the requirements of communicating with a legislator themselves for this analysis. This tweet amounts to direct lobbying and would NOT be permissible with private foundation funds.

Practice Tip:

If an individual attended a screening of this film and then posted this tweet, unprompted by the filmmaker, the filmmaker would not be held responsible for the tweet and neither would the private foundation. Likewise, if a nonprofit or community partner attended a screening of the film and then unprompted by the filmmaker, and with the community partner's own funds, posted this tweet, then neither the filmmaker nor the private foundation would have engaged in impermissible activity.

Let's analyze another fictional tweet:



Is this tweet an example of direct lobbying?

No. The tweet above is missing one of the elements of direct lobbying. Do you see which element is missing?

Reminder:

Direct lobbying is any communication that expresses a view on specific legislation to legislators or government officials that formulate legislation. The audience for most social media posts, as is this one, is the public. Because there is no communication to a legislator, this is not considered direct lobbying, and it might be safe to tweet with private foundation funds. Before a filmmaker can safely post the tweet above, they need to determine if the tweet is an example of grassroots lobbying.

EXAMINING ELEMENTS OF GRASSROOTS LOBBYING

Reminder:

Grassroots lobbying is any communication that expresses a view on specific legislation to the public that includes a call to action. Basically, grassroots lobbying is another way to influence legislation, but by speaking with the public and encouraging them to take action. And as we've seen before, only limited activities will actually be considered grassroots lobbying. The definition is narrowly defined and actually allows a great deal of community engagement or organizing with private foundation funds.

The other part of grassroots lobbying is whether the communication or activity includes a "call to action," a specific means of encouraging the communication's recipient to take lobbying action.

Private Communication

- Strategy session with staff, including volunteers
- Internal memos
- Emails shared with impact advisors, consultants, or volunteers helping to administer the grant agreement
- Private screening and strategy session to discuss community engagement activities with staff, impact advisors, consultants, or volunteers

Public Communication

- Social media post about the film or community engagement activity
- Interview with the media
- Press release once it's sent to media contacts
- Podcast interview or appearance once it's released publicly
- Paid advertisement for the film

The IRS says "call to action" must comprise one of the following actions:

1. Tell the recipient to contact a legislator
2. Provide information on how the recipient can contact his legislator, such as providing the phone number, address, email address
3. Provide a tool for enabling the recipient to contact his legislator, such as a postcard, online petition, or email form
4. Identify a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator

Numbers 1, 2, & 3 are what are called 'direct calls to action', and number 4 is an 'indirect call to action'. Indirect calls to action are permitted for certain films that fit the nonpartisan analysis study and research exception to the prohibition on lobbying discussed in The Sequel, Chapter 4.

In looking at the fictional tweet above, you'll notice that the tweet does not meet the IRS definition of either direct or grassroots lobbying. There is no "call to action" as the IRS defines that element. Asking someone to join you for a film screening and learn "ways to get involved" does not meet the definition.

Please Note:

The discussion after the film screening and any promotional materials/toolkits created, if paid for with private foundation funds, must also avoid direct or grassroots lobbying messages.



Look at the “Take Action” survey below that Caring Across Generations distributed following a screening of the film *CARE*. You would be allowed to use private foundation funds to hold a screening and a non-lobbying, non-campaign intervention discussion around the issues in the film, as well as distribute a survey such as the one below that asks attendees if they are willing to take action and support some of the issues that this community partner addresses. The filmmakers of *CARE* found a way to work with many national and local community partners who work on caregiving issues.

You’ll notice that each action item on the survey below is carefully crafted to exclude lobbying or electioneering activities:



Take Action!

We are thrilled you attended today’s screening of *CARE*. We look forward to taking action with you in Metro Atlanta to help build the care infrastructure we all need and deserve. Please complete this Action Card and leave it on your chair when you leave today. Thank you!

Mark all of the activities that interest you. Don’t limit yourself to just one!

- Add me to the email list with issue updates, online actions, and activities.
- I am open to sharing my care story
- Host a gathering in my home or community in September when the Care documentary airs
- Attend a community meeting to discuss how we can take action together
- I would like to participate in meetings with elected officials

Please check any of the following that apply to you:

- Person who receives services and supports
- Paid care worker
- Working Retired Unemployed
- Unpaid family caregiver
- Advocate or member of an organization that works on these issues
- Other, describe

Do you see the language that makes the following survey prohibited with private foundation funds?



Take Action!

We are thrilled you attended today’s screening of *CARE*. We look forward to supporting SB 3 with your help to build the care infrastructure we all need and deserve. Please complete this Action Card and leave it on your chair when you leave today. Thank you!

Mark all of the activities that interest you. Don’t limit yourself to just one!

- Add me to the email list with issue updates, online actions, and activities.
- I will call and ask my legislator to support SB 3
- Host a gathering in my home to raise money for CAG
- Attend a community meeting to discuss how we can take action together
- I would like to participate in meetings with elected officials

Please check any of the following that apply to you:

- Person who receives services and supports
- Paid care worker
- Working Retired Unemployed
- Unpaid family caregiver
- Advocate or member of an organization that works on these issues
- Other, describe

Note:

The box that reads “I will call and ask my legislator to support SB 3” is an example of a grassroots lobbying communication. This type of communication would not be allowed with private foundation funding if made by a for-profit organization that received funding under the expenditure responsibility rule described in this guide.¹

A community group that screened the movie *CARE*, also had this post on their website. Could the filmmakers of *CARE*, share a link to their community partner’s webpage that contains the message below as part of their film project supported by private foundation funds?

Tell Your Rep to Co-Sponsor the FAMILY Act!

Help Win Paid Family Leave!

1362

Goal: 1400

Help build support for a comprehensive paid family leave policy that includes strong support for family caregivers. Ask your Representative to co-sponsor the FAMILY Act now! The more co-sponsors, the more likely we can win in the House of Representatives.

X No. The message above that says “Tell Your Rep to Co-sponsor the FAMILY Act” is an example of grassroots lobbying.

Although it may be permissible for Care’s community partner to engage in this activity, it would not be permissible for Care’s filmmakers to use private foundation funds to share any message that contained a link to their community partner’s website with the above message. The IRS has held that URL links are part of the message and those who share links can be held responsible for the content within one click or webpage away from the landing page at the other end of the link! Those who receive private foundation funds for a film project and are still under their grant agreement should leave lobbying messages around their film to others.

1. A special federal rule, called the “mass media rule,” provides that certain paid advertisements on television, radio, billboards, and in general circulation newspapers and magazines, might constitute grassroots lobbying even if they don’t meet the above the definition of grassroots lobbying. Filmmakers should document the reasons behind the timing of their advertising plans in which either (1) any privately-funded film which reflects a view on an issue that is or may become the subject of a highly publicized piece of legislation or (2) any advertisement which encourages members of the public to contact their legislators about a highly publicized piece of legislation. This documentation will be necessary to rebut the presumption that their film or advertisement should be counted as a grassroots lobbying communication. 26 C.F.R. 56.4911-2(b)(5)(ii). The goal is to demonstrate that the timing of the advertising was done in the ordinary course of business and NOT to influence the outcome of the vote on any upcoming piece of legislation. Example – a film about legalizing marijuana might anticipate ensuing and highly publicized state and federal legislation to legalize or decriminalize cannabis. Therefore, the filmmaker should document the business reason behind the timing and any paid ad placement made for the private foundation-supported film. The documentation can be used to rebut or refute any presumption that the ads were placed to influence any legislative campaigns or upcoming votes on legislation.

EXAMINING THE RULES ON CAMPAIGN INTERVENTION AND CIVIC ENGAGEMENT ACTIVITIES

Private foundations can fund nonpartisan films and projects that further democracy and encourage civic engagement even during an election year. This next section looks at a variety of ways films and community engagement activities can engage on these topics:

The rules prohibit a limited type of activity referred to as partisan activity.

Reminder On The Rule:

Filmmakers cannot use private foundation funds to support or oppose candidates for public office. Commercial filmmakers also need to take care that neither their private foundation-supported film nor private foundation-supported activities are used to conduct voter registration drives.*



Support for candidates can take many forms. Some types of support are easier to detect than others. Sometimes support for a candidate can be as simple as an endorsement such as “Vote for X for Governor” or providing resources to a candidate, such as a check or other item of value, such as a venue for a fundraiser. Other times, support for a candidate can be more subtle, such as conducting a voter mobilization campaign that is targeted to turn out voters that are more likely to vote a certain way based on past election results, or using “code” words that signal support or opposition to a candidate.

Determining if your film and community engagement activities are nonpartisan involves looking at all of the relevant facts surrounding the film's message, timing and audience for your community engagement activities, and the content of the activities themselves.

It is not always obvious if the film and community engagement activities are supporting or opposing a candidate. It may be necessary to work with outside counsel or make the judgment based upon an assessment of risk factors or in consultation with your funders. Some of the factors the IRS considers to determine whether a statement or activity is partisan are in the chart below. The test the IRS uses is a balancing test of all the relevant factors.

“Facts and Circumstances”	
“Good” Facts	“Bad” Facts
<ul style="list-style-type: none"> ✓ No reference to a candidate or an election 	<ul style="list-style-type: none"> ✗ Refers to candidate as a candidate
<ul style="list-style-type: none"> ✓ Timing driven by factors other than an election 	<ul style="list-style-type: none"> ✗ Timing motivated by an election
<ul style="list-style-type: none"> ✓ Targets a specific sector of the community for reasons unrelated to a candidate election 	<ul style="list-style-type: none"> ✗ Targets a specific sector of the community to influence the outcome of a candidate election

APPLYING THE RULES ON LOBBYING AND CAMPAIGN INTERVENTION TO THE PREVIOUSLY EXPLORED FILMS

1. And Then They Came For Us

The film and ensuing community engagement activities held then President Trump accountable for official activity well before an election year and did not comment on President Trump's reelection efforts or campaign activities. Commenting on Executive Orders, such as the travel ban, is not lobbying and a permissible use of private foundation funds. Linking to nonprofits working on the issues addressed in the film is permissible. Care should be taken that links do not lead directly to lobbying communications or endorsements for candidates.

2. Dear Mandela

The documentary and toolkit for South African residents to resist unlawful government evictions, is neither lobbying nor used to intervene in a candidate election. Most litigation and "know your rights" activities do not meet the IRS definition of lobbying and would be permissible with private foundation funds. Likewise, telling the story of residents overcoming government illegal actions or discriminatory actions is also probably a permissible use of private foundation funds.

3. Philly DA

The film about the Philadelphia District Attorney and the county's efforts to reform the criminal legal system as well as the community engagement activities even in an election year illustrate how developing a track record of prior activities and having documented engagement plans can help protect both filmmaker and funders. Talking about past lobbying is not lobbying. Likewise, it is generally permissible to use private foundation funds to talk about current law and share stories of how community members are impacted by current law.

4. Freedom Summer

The film about the Mississippi voter registration drives in the summer of 1964 and ensuing community engagement activities to train and inspire community members to mobilize voters to turn out and vote. It is permissible to use private foundation funds to tell the story of voter registration drives and to use the funds for nonpartisan democracy building activities such as encouraging people to vote. Non 501(c)(3) grantees need to take care that they do not use private foundation funds to engage in actual voter registration drives, but many other activities are permissible.

SEQUEL

HOW TO MAXIMIZE
YOUR IMPACT

4



The IRS rules provide unique opportunities for some documentaries. Imagine your film helping communities find common ground to address gun violence, persuading lawmakers to address the drinking water crisis, or bridging the divide on a path to citizenship for immigrants with DACA status. All of that and more may be possible.

Federal law permits filmmakers, who are supported by private foundation funds, to take advantage of several rules that at first glance might appear to be lobbying. However, federal law provides for several exceptions to the definition of lobbying. If you understand these exceptions, you may be able to use your film to help shape public policy, including legislation.

What follows is a discussion of three exceptions to lobbying: (1) Nonpartisan analysis study and research; (2) Examination of broad social and economic problems; and (3) Technical assistance.

Nonpartisan Analysis, Study, and Research

Remember the IRS requires a private foundation-funded film’s primary purpose be charitable. That means, the film must either be educational,

religious, scientific, one that combats discrimination, advances civil or human rights protected by law, protects democracy, or any number of permissible, charitable purposes.

However, if your documentary provides the audience with an understanding of the facts on a particular issue, such that they can draw their own conclusions, you may just have a film that can be used to persuade members of the public AND legislators to change public policy, including legislation!

Certain films may be able to express a view on legislation, be screened to legislators, or even be used by others to encourage community action to enact legislative change, if the film and filmmaker meet this first exception.

In order to take advantage of this “nonpartisan analysis study and research exception,” a film must:

1. Provide a full and fair discussion of the underlying facts of the issues raised in the film
2. Be broadly disseminated to the public (which can be done through national distribution)
3. Not contain a direct ‘call to action’

As part of the filmmaker’s broad, public dissemination program, the film could be released through national distribution and then screened to various community groups through a series of local screenings and community Q & A panels. Some of the community groups could include groups of legislators who attend as part of the community and who share differing views on the issues in the movie, even if the film expressed a view on specific legislation or a view on a legislative solution that is being debated by legislators. The filmmaker may even be able to use private foundation funds to travel and hold the community screenings and Q & A panels. The key to this exception is whether you are distributing your film to the public, a segment of the public, governmental bodies or their employees (and not just people who share one view on the issue).

Congress determined that communications that meet this “nonpartisan analysis, study, and research” requirement and are broadly disseminated to the public will not count as lobbying for certain purposes.

However, there is also a little more to the rule that applies to how the film is subsequently used for grassroots purposes. Please, keep reading!

ADDITIONAL WAYS A COMMERCIAL FILMMAKER COULD USE THIS SAFE HARBOR

Example #1:

The film could express a view on specific legislation (Ex. “Support the America Recovery Plan” or “Support HR 1, For the People Act”) or on a specific issue (support government-provided home care-see below). The filmmaker could use private foundation funds to create a social media post to raise public awareness for the issue addressed in the movie and even take a position on a social issue or even legislative solution, as long as there is NO **call to action**.

Example #2:

The filmmaker may license or allow others to use their film to engage in direct lobbying with legislators. The key factors in this example are: whether the film has reached broad, public distribution (i.e. the non-lobbying component) and whether the real purpose in making the film was primarily educational or to be used for lobbying. Best practice suggests that six (6) months after the grant ends, and after the film has been released to national distribution, the filmmaker could license or even collaborate with others to use the film for direct lobbying to legislators.

Note:

Other films that do not meet this nonpartisan analysis, study, and research exception can still be screened to legislators for non-lobbying purposes provided the film does not express a view on specific legislation (Ex. Educate them on the issues in your film, raise awareness about the need or urgency to find solutions, build empathy, start discussions, etc.).

Example #3:

The filmmaker could use their film in a grassroots lobbying communication campaign after their grant ends AND at least six (6) months have passed. For instance, the campaign could consist of creating digital graphics and resources for public use and education with private foundation funds. After the private foundation grant(s) have ended by at least six (6) months and the film has been broadly and publicly distributed, the filmmaker could use separate funds to create a campaign encouraging people to call their members of congress or state lawmakers to introduce, amend, change, oppose, or repeal legislation.

Note:

Although the IRS rules may allow these activities to occur legally, you will want to check with funders to clarify if they have additional guidelines or want to be notified of certain activities.

Private foundations have strict reporting requirements to the IRS. We suggest that when you check in with a funder you use the following verbiage when asking for a phone call with them:

“I believe our film or community outreach activities may qualify for the nonpartisan analysis, study, and research exception to the prohibition on lobbying. I would like to schedule a call to discuss how you would like us to proceed.”



This shows the funder you have a level of expertise around the rules and that you are doing your due diligence to protect the funder from potential financial penalties.

One way for a filmmaker to meet the requirement for a “full and fair discussion of the underlying facts” covered in the film is to document the sources used, people interviewed, etc. and create a webpage that can be shared with the audience in the credits of the film or on the film’s webpage. The key for the IRS is whether the film has provided facts from a variety of perspectives to grow the public’s understanding of the topic and allow the public to draw their own conclusions even if the film itself expresses a policy recommendation or a view on specific legislation. By providing a link or access to the interviews, data, and research materials, it may be possible that some, but not all documentaries, fall within this exception to lobbying.

As a best practice, consider that the IRS may question whether lobbying was really your primary purpose of making the film and the education purpose or project was a pretext to allow you to lobby. If you work with community partners, nonprofits, or activists on the pre-planning or production of the film, the purpose should be to gather facts that further the film’s educational or charitable purpose, including the possibility of educating community members and other non-lobbying activities.

Note:

Be prepared to document your primary purpose and that the legislation or opportunity presented itself after you entered into the grant agreement and was not the primary reason for creating the film.

PERMISSIBLE ACTIVITY CHART

Activity	Can a Commercial Filmmaker use private foundation funds for this activity?	Can a Commercial Filmmaker of a Private Foundation-Supported Film do this with non-private foundation funds?
Produce a film that discusses social issues but does not express a view on specific legislation	✓	✓
Create a social media post to raise public awareness on issues addressed in movie, even expressing a view on legislative solutions, provided there is no "call to action"	✓	✓
Produce a film that expresses a view on specific legislation or legislative solutions without a "call to action"	✓	✓
Produce a film that expresses a view on specific legislation or legislative solutions with a direct "call to action"	✗ Unless the film qualifies as self-defense or technical assistance	✗ Unless the film qualifies as self-defense or technical assistance
Host a screening for members of the public if the film/community engagement expresses a view on legislation without a "call to action"	✓	✓
Host a screening for members of the public if the film expresses a view on legislation and there is a plan for commentary/community engagement at the screening to issue a "call to action"	✗ Unless the film fits the nonpartisan analysis, study, and research meaning that the "call to action" is an INDIRECT call to action, or another exception to the definition of lobbying	✓ As long as screening the film with the direct call to action is not the primary use of the film (more screenings/distribution without direct calls to action than with) or 6 months have passed since private foundation funds were spent on the film's production
Host a screening for legislators where film or commentary expresses a view on legislation	✗ Unless the film/testimony fits an exception to lobbying (nonpartisan analysis study and research, self defense, or technical assistance)	✓ As long as this wasn't the primary purpose of making the film.

FOR FILMS THAT DISCUSS HISTORICAL OR TOPICAL ISSUES WITHOUT MENTIONING LEGISLATION

Even if your film does not mention specific legislation by name, if your film explores social justice issues, even historical social justice issues, and expresses a view on those issues, you may want to follow these guidelines and keep a list of your sources handy just in case policy winds change. Films are made about important historical topics that become relevant again! We saw how Freedom Summer was both an historical recollection at a specific time during the Civil Rights Movement, but also was used to encourage audiences of today to vote. See Act 3 for a discussion on using films for election activities and keeping them nonpartisan.

Think about other historical topics such as the debate on immigration, racial justice, economic justice, global pandemics. Perhaps at the time you produce the film, there is no current legislation under discussion. However, the landscape can change. Your story can play a role in the national debate if you have documented your sources and have achieved broad distribution for your film.

See how filmmakers of *Philly DA* created a webpage for their original sources for the film to allow viewers a deeper dive. Click [here](#) and scroll down to "Learn More About the Documentary."

See also the [social media toolkit](#) for *Philly DA* to get an idea of how to boldly talk about films made with private foundation funds yet remain nonpartisan.

Note: talking about elections that occurred in the past or whether a candidate, turned elected official, made good on campaign promises is and can be legal and still be nonpartisan for IRS purposes.

Let's look at an example of how a private foundation-supported film could be used to engage the community in discussions that even include a discussion around legislative solutions.

COMMUNITY ENGAGEMENT ACTIVITY

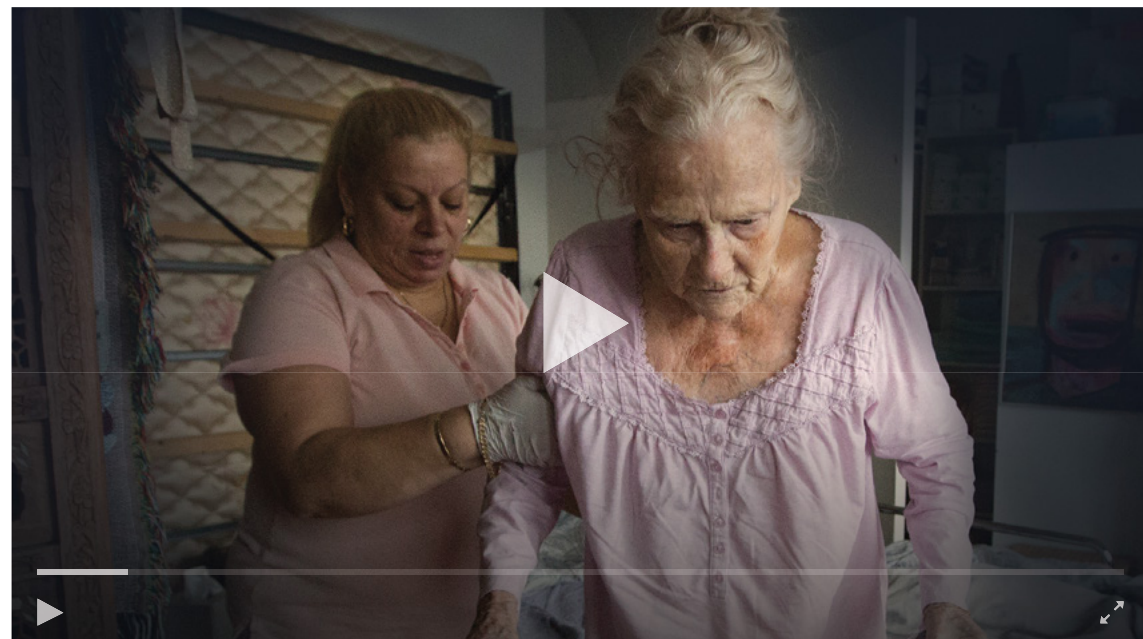
Once the filmmakers had produced the film *CARE*, and released it through national distribution, New Hampshire PBS provided a community screening of the film and held an in-person town hall to discuss potential solutions. One of those solutions involved expressing a view that the New Hampshire legislature study the true cost of providing in-home or facility health care, devise a public-private partnership to fund the true cost of providing home care for New Hampshire residents, and suggesting people contact their state legislators to share personal stories and express a need to find a solution.

**This example is used for illustrative purposes only and is not intended for lobbying under the definition provided in IRC 501(c)(3) and 4911. This is a great example of using the Film to engage the community with legislators.*

Call to Care NH

For thousands of elderly citizens throughout New England, paid caregivers are a lifeline. The problem is that the need for people who provide care is much greater than the supply. CALL to CARE NH, a companion program to the national documentary *AMERICA REFRAMED: CARE*, looks at some solutions to that problem. Call to Care NH is Produced in Partnership with the Endowment for Health.

Watch Online



The film raises awareness of the problem for both caregivers, resident family members, and those who need care. It helps everyone understand the urgency to find solutions by finding common ground for concerned community members. By bringing together lawmakers, subject matter experts, and voters (i.e., caregivers, family members, and clients) in one room, moderated by a trusted and independent person, they just might find solutions!

Examination of Broad Social and Economic Problems

Federal law also permits filmmakers to use private foundation funds to engage in discussions of broad social and economic problems either in their films or community engagement activities surrounding their films.

Just like the team from the film *Care* used its film to educate lawmakers on the issues surrounding the caregiving system in America, many documentaries can be used in a similar manner. You can use private foundation funds to conduct and hold watch parties and town hall events to raise awareness and build urgency to find solutions.

Many documentaries tell powerful stories about pressing issues. Grant recipients are allowed to use private foundation funds to produce a movie or host a watch party and invite lawmakers as long as the event is carefully crafted.

According to these IRS rules, the movie and activities could discuss broad social problems a community is facing, even with legislators, and even if legislators are considering, debating, or drafting legislation to address the issues. However, if the film and community activities are paid for with private foundation funds, you would need to be mindful that neither discussed the merits of the actual legislation (unless the film and activities met the exception above for the nonpartisan analysis study and research).

Best Practice:

Six months after the grant has ended and the film has been released to national distribution, if the filmmaker is still involved in community engagement with the film, the filmmaker could use unrestricted funds if the filmmaker wishes to be involved in conducting either direct or grass roots lobbying campaigns to influence legislation or ballot measures. The filmmaker might also wish to talk to their funders to gauge the funders' tolerance for risk and reputational concerns before partnering with NGOs on lobbying activities surrounding the film or engaging on their own with lawmakers, using private foundation-supported films. See the example on page 50.

Examination of Technical Assistance

Federal tax law provides an additional exception to the prohibition of lobbying by private foundations and by extension their for-profit film projects that they support, called technical assistance. It may be possible for some filmmakers to use their films and private foundation funds to provide “technical assistance” to legislative bodies and committees. If filmmakers meet the requirements of this exception, filmmakers could use private foundation funds to travel, prepare, provide testimony, and screen all or part of the film to legislative committees in response to a written request for assistance. Filmmakers could use private foundation funds to screen the movie to lawmakers who are actively debating legislation on the topic the film addresses.

In order for this exception to apply, federal law requires that a legislative body, legislative committee, legislative subcommittee, or chair of any of the above legislative body, committee, or subcommittee must request, in writing, that the filmmaker provide “technical assistance” or testimony, and the filmmaker must limit their testimony to the subject matter requested and provide each member of the committee or legislative body a copy of their testimony (or link to their online testimony).

Examination of Broad Social/Economic Problems:

JUN 27 **Caring Majority Town Hall in Downriver**
 Public • Hosted by Michigan United and Michigan Caring Majority

★ Interested ✓ Going ✕ Ignore ...

🕒 Thursday, June 27, 2022 at 7 PM - 9 PM

- ✓ **May Discuss:**
 - With public or lawmakers
 - Broad social or economic problems
 - Issues that legislation could address or is the subject of current legislation
- ✕ **May Not Discuss:**
 - Merits of specific legislation

Example:

If the Indiana House Public Policy Committee was taking testimony on a house bill to address long-term care solutions, the chair of the committee could extend a written invitation to the producers of the film Care to attend a Committee hearing, screen the film or parts of the film to the committee and provide testimony on what they learned during the making of the film and solutions discovered and the ways families and caregivers are impacted in other states during the creation of the film. The producers could use private foundation funds to create materials to display data to the Committee, make copies for each Committee member, travel to Indiana, and testify before the Indiana House Public Policy Committee. Provided the producers of the film Care limited their testimony to the subject matter in the written request, then their testimony would not amount to IRS-defined lobbying, and the use of private foundation funds may be permissible provided the testifying also furthered the mission of the grant agreement.



Test your knowledge of the rules with these questions about films and community engagement projects supported by private foundation funds:

1. Can you show your film to lawmakers to educate them about an issue on a bill?

Yes, as long as film does not express a view on legislation. If it expresses a position on legislation currently under discussion by legislators, then the film must meet the requirements for nonpartisan study and analysis (provide a full and fair analysis of the underlying facts, broad distribution to the public, often national distribution, 6 months after grant agreement has expired, and your primary purpose was not to lobby or other exception).

2. Can you tweet your support for a bill using private foundation funds?

Yes, as long as the tweet is NOT directed at lawmakers and does NOT contain a call to action to the public to contact their lawmakers. However, given the viral nature of social media, please reach out to your program officer before mentioning specific legislation in your tweet to ensure the funder is comfortable with grantees expressing support for specific legislation in a manner that does not meet the definition of lobbying!

3. Can your film be used by others to lobby?

Maybe – if your film meets the nonpartisan analysis, study, and research exception for lobbying (provides a full and fair analysis of the underlying facts, broad distribution to the public, often national distribution, 6 months after grant agreement has expired, and your primary purpose was not to lobby).

4. Can your film take a position on legislation or an issue that could become the subject of legislation? (ex. Medicaid expansion, water conservation, a path to citizenship).

Yes. The general rule is that films and their community engagement activities, supported by private foundation funds, can be shown to the public, and express an opinion on specific legislation if they remain nonpartisan and do not contain a call to action.

If the film and community activities are targeted to the public, and a member of the legislature happens to show up in their capacity as a member of the public, there should be no need for alarm. This is analogous to a nonprofit or foundation sending a newsletter to the public and a legislator signing up to receive the newsletter as a member of the public. In this case, your focus of your communication is to the public and not to sway legislators.

However, if your screening is aimed at legislators, and the film or activities takes a view on legislation currently under consideration, or offers recommendations detailed enough to be considered specific legislation, then your private foundation supported film should best meet the nonpartisan analysis study and research exception to lobbying described in answer #1.

Alliance for Justice wishes to thank and acknowledge the filmmakers and directors of the films highlighted in this guide for their permission to use their films to highlight ways future foundations, filmmakers, impact advisors, and community groups can collaborate.

Call To Action:

One element of grassroots lobbying and refers to any one of the following four items:

1. Encouraging the recipient to contact a legislator
2. Providing information on how the recipient can contact their legislator, such as providing the phone number or address
3. Providing a mechanism for enabling the recipient to contact their legislator, such as a postcard, petition, or email form
4. Identifying a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator

Direct Lobbying:

Refers to communication and activities that express a view on specific legislation to legislators.

Filmmakers:

Organizations that produce or direct films. For the purposes of this guide, filmmakers refers to for-profit filmmaking organization unless otherwise specified.

Fiscal Year:

Refers to an organization's tax year.

Grassroots Lobbying:

Refers to any communication and activities directed to the public that express a view on specific legislation and include a call to action.

Legislator:

Refers to those who formulate legislation, usually elected members of the legislature and their staff, but sometimes members of the public when they are voting on ballot measures, and also government officials, who are formulating legislation and their staff.

Lobbying:

Refers to communication and activities that influence legislation. It is narrowly defined for the purposes of this guide as either direct or grassroots lobbying and exceptions to the prohibition on lobbying exist.

Partisan/Campaign Intervention:

Sometimes also called "intervention in the outcome of an election" and refers to activity that supports or opposes candidates for public office.

Private Foundation-Supported Film:

Refers to a film in which any private foundation money has been used to pay for even a portion of the first four stages of production of a film (development, pre-production, production, and post-production).

Specific Legislation:

Refers to bills that are introduced by legislators, bill drafts, and sometimes even legislative proposals or initiatives where the solution is identified with some degree of specificity and can only be achieved through legislation, resolutions, and treaties. It does not include executive orders, regulations, or administrative policies.

501(c)(3) Filmmaker:

Refers to a filmmaking organization that has applied for or received its charitable, tax-exempt determination letter from the IRS.

EPILOGUE

DO'S AND DON'TS

5

How you craft your written proposals, budgets, and reports can have a large impact on your chances of successfully obtaining and maintaining foundation funding for your filmmaking projects.

This guide and this chapter are designed to be used primarily by for-profit filmmaking organizations* or organizations that are not public charities that are applying for private foundation grants. Tax rules generally make it easiest for private foundations to award grants to public charities. However, the “expenditure responsibility rule” allows private foundations to support entities other than public charities for some activities.

Under this rule, if a for-profit filmmaking organization has an educational project, or a project that fights discrimination or, or advances human rights, civil rights or democracy, private foundations are allowed to legally support these films projects and many of the community engagement activities that accompany them. Organizations that receive funds as a result of these rules, however, must follow certain rules when applying for the funds, spending the funds, and reporting on the use of those funds. This chapter helps filmmakers comply with those rules.

It is critical that you know and understand, not only the law, but also your individual funder’s preferences and culture. There may be differences between what the law allows you to report to a foundation and what your funder wants to see. When writing grant proposals and reports to private foundations to fund film projects and community engagement activities surrounding those films, there are two main rules to keep in mind:

Rule # 1:

Do not describe your project in terms of passing or stopping legislation or making changes to a law (ie, lobbying). Private foundations cannot award grants to support a project whose primary purpose is to influence legislation.

Rule # 2:

Do not describe your project in terms of changing the outcome of a candidate election or by praising or criticizing individuals running in an upcoming candidate election. Private foundations cannot award grants that will be used to intervene in the outcome of a candidate election for public office.

Within those rules, there are many permissible activities that private foundations CAN fund that challenge stereotypes, fight discrimination, advance democracy, bring communities together to find long-term solutions to inequitable systems, encourage civic engagement, and many other charitable projects. In fact, if you structure your project correctly, and document your sources for your film, it may be possible for other nonprofit partners to use your film or clips of your film to change laws (ie, lobby), in certain situations.

Many funders have their own grant proposal templates that will prompt you with the questions they need you to carefully answer so their staff and legal counsel can determine if your project meets the IRS rules that permit them to award grants to certain filmmaking projects. The tips contained in this chapter also follow the IRS rules and can help you understand what types of projects foundations can support and how best to message around those projects.

*If your filmmaking organization is a 501(c)(3) public charity applying for private foundation funding, you may be able to take advantage of a second rule that permits a private foundation to support your project in additional ways. In these instances, you might inquire if the private foundation is open to providing general operating grants. If this situation applies to you, see our other publication entitled “[Foundation Advocacy Grants: What Grantees Need to Know.](#)” But, know that the best practices in this guide also generally apply to your film and post-production, community engagement projects.

Do

- ✓ Read and follow the funder's guidelines

- ✓ Discuss your overarching goals for the project with some specificity that will allow the funder to determine that you understand the rules.

Talk in terms of broad social issues – combatting prejudice or discrimination, exploring an issue more deeply, bringing together diverse perspectives on a timely issue, or challenging stereotypes, etc.

Example: “As the US elder population doubles over the next two decades, our current system of paid caregiving is unprepared to handle the explosion of need. Families, stretched to capacity, are unable to afford the care their relatives need. Caregivers do not receive the resources needed to care for their clients. This movie allows viewers to put themselves in the shoes of both clients, families and caregivers and paints a path forward.”

- ✓ Discuss the stages of planning, pre-production, production, editing, licensing, and distribution that you will take to bring the project to life. Share which stages have been completed and where you have pivoted or adjusted, if at all.

Don't

- ✗ Don't submit a proposal without reading everything on the funder's website and talking to a program officer, if possible.

- ✗ Don't discuss specific legislation by name, number, or even specific attributes of legislative initiatives.

Don't write: “Our system is unprepared to handle the increasing elder population. This film makes the case for HR 43, government-provided long-term in-home or custodial care for seniors, while raising wages to a minimum of \$22/hour, and providing 14 days of guaranteed paid sick leave, 14 days of guaranteed paid family leave, and overtime pay for caregivers at the rate of double their hourly pay.”

- ✗ Don't assume the funder knows the work accomplished up to this point.

Do

- ✓ Document the need for your project. Illustrate the lack of projects or resources addressed in your film.

- ✓ Describe your post-production community engagement plans, if any. Include proposed partners or nonprofits that you plan to collaborate with on community screenings and roundtable discussions. Be specific and provide quantifiable estimates on as many of the following as possible:
 - Attend X community screenings with a Q&A / roundtable
 - Engage X community members
 - Partner with X community organizations / nonprofits
 - Attend X film festivals
 - Provide X licenses to schools, nonprofits, or nonpartisan associations that will make the film available to the public
 - Hire an impact advisor
 - Build staff capacity
 - Attend conferences
 - Create educational materials and toolkits
 - Create online resources
 - Engage X number of policymakers
 - Screen film to legislators
 - Distribute nationally

Don't

- ✗ Don't criticize other films on the topic, but do distinguish your project from similar ones if they exist. Explain how your project will address the topic from a new perspective, include additional information, or how times have changed since the first film covered the topic.

- ✗ Don't be vague or overpromise.

If you haven't worked with an impact advisor to discuss the cost, timeline, and feasibility of community engagement activities, don't include this piece in your initial proposal, but perhaps hint that this could be a second phase with additional funding.

Do

- ✓ Do talk about nonpartisan ways you could use your film to educate voters on the issues to heighten community interest in seeking solutions to a problem or mobilizing all eligible voters to participate in the election process.

Call or email Bolder Advocacy for more detail on nonpartisan targeting for candidate education:

1-866-NP-LOBBY or advocacy@afj.org

- ✓ Do share if your film lends itself well to educating electing officials (incumbents) on general topics of interest or even all candidates of a particular race. It may be possible to use your film in a nonpartisan way to educate candidates on important topics.

- ✓ Talk about the need to raise awareness of the issue(s) your project addresses and share how your film and community engagement activities (if any) will meet that need.

Don't

- ✗ Don't select the state(s) or election district(s) as a way to influence the outcome of the election. In other words, don't just show the film in swing states or states where you think voters will vote for a certain political party or candidate in larger number than their opponents.

Don't show the film to only Democratic or Republican voters or even a group of voters that you think or know are inclined to vote for a specific candidate or political party.

- ✗ Don't pick and choose the candidates to whom you show the film.

Don't authorize your film or any part of your film to be used to support or criticize a candidate running for public office.

Don't license your film or any part of your film to be used to support or criticize a candidate running for public office.

- ✗ Don't criticize specific elected officials who have not addressed your film's issue(s), or make reference to political parties or affiliations, without talking to legal counsel first.

Do

- ✓ Talk about how your project can humanize various perspectives on difficult social issues (if this is the case).

It's ok to use terms that refer to groups that are underrepresented in society, even at the voting booth. It's ok to talk about lifting up voices – LGBTQ voters, women voters, black voters, youth voters, new citizen voters, etc.

- ✓ Do talk about how your project can build bridges and bring communities together to discuss solutions to community problems.

You may also highlight how your project could help communities identify a need for long-term solutions to problems, if applicable.

- ✓ Do share if your project will build the capacity of community leaders to communicate about the issues effectively.

Do share if your film will be used as a tool for engaging new community members in dialogue and action. Keep the description general as to what type of action community members will take.

Don't

- ✗ Don't say that your film will be used by a political party or candidate to motivate their supporters to turn out to vote on Election Day.

Don't talk about winning elections, flipping states, "red states," "blue states," or use other terms that indicate you plan to use your film to influence the outcome of an upcoming candidate elections.

- ✗ Don't talk about upcoming elections.

Don't talk about how legislators should vote on specific legislation or legislative initiatives.

- ✗ Don't talk about supporting community leaders to run for office.

Don't talk about using your film to encourage community members to lobby for new legislation or changes to legislation.

Do

- ✓ Do list the geographic regions in which you will engage in community activities (if any) and audiences you will target.
-
- ✓ It is possible for some films to analyze past elections, look at voter behavior in a nonpartisan manner or talk about candidates and campaigns in past elections.

It is possible for some films to be used to boost voter participation in upcoming elections in a nonpartisan manner.

It is possible for some films to be used to support and expand democracy in a safe way using private foundation grants.

It may be possible to use your film or parts of your film to mobilize voters in a nonpartisan manner.

It may be possible to allow your film or parts of your film to be used by others or to license your film or parts of your film to be used by others to mobilize voters in a nonpartisan manner.

In reports to funders, it may be possible to talk about your film and project in terms of how many people were mobilized to vote or volunteered to work the polls, following the viewing of your film.

To ensure that your film project, any promotional materials and accompanying community engagement activities comply with the laws, you'll want to consult legal counsel.

Don't

- ✗ Don't target geography or audiences for partisan reasons.

See Election-year activities for ways to target for non-partisan reasons.
-
- ✗ Don't take credit for winning an election using funds from a private foundation.

Don't take credit for winning an election using a film created in part or entirely with funds from a private foundation.

Don't take credit for raising funds or volunteers for a political party, candidate or group of candidates using private foundation funds.

Don't take credit for raising funds or volunteers for a political party, candidate or group of candidates using a film created in part or entirely with funds from a private foundation.

Don't use your private foundation-supported film or project to register voters.

Do

- ✓ Do ask the funder what they'd like to see in the proposal.
-
- ✓ Do share how your project may help communities identify or connect to state-based initiatives or other long-term solutions in general.

It is ok to mention support for or opposition to general solutions (ie expanding Medicaid, decriminalizing marijuana, expanding access to affordable mental health care).

Be sure to note that your project will not support specific legislation and will not support or oppose candidates or political parties in an upcoming election or be used as part of a voter registration drive as that illustrates you understand the rules!
-
- ✓ Do share how you track your organization's ability to reach its goals set in the grant proposal. You might do this by creating and sharing benchmarks or indicators for success. Some examples include:
 - Numbers of new member sign-ups
 - Numbers of social media hits
 - Numbers of social media shares
 - Numbers of community screenings
 - Numbers of officials engaged
 - Numbers of legislators who watched the film
 - Numbers of community members engaged
 - Numbers of licenses shared with nonprofits, schools, and community organizations

Don't

- ✗ Don't submit a proposal without reviewing the funder's website and all materials from the funder.
-
- ✗ Don't speculate that others might use your film or content to lobby.

Don't speculate that others might use your film to support/oppose specific candidates in an upcoming election.
-
- ✗ Don't overpromise if you don't have a way of tracking progress.

Do

- ✓ Do note when your organization's fiscal year begins and ends.

Grant reports are due within a reasonable period of time following the end of the filmmaker's fiscal or tax year.

- ✓ Do explain how the rental of any capital equipment will further the project.

Capital equipment is generally equipment that costs more than \$5,000 and will last longer than a year and can be used over and over (ex. Video camera, editing equipment, computers).

- ✓ Do include the cost of staff compensation, staff education, overhead and supplies (that will be entirely consumed during the life of the project) in as few categories as possible.

- ✓ Do include the cost of working with an impact advisor if your organization will be supporting or conducting community engagement activities surrounding the use of the film.

Don't

- ✗ Don't create a special project year just for the grant. The IRS rules require that your reports follow your organization's fiscal year, even if that means turning in a report after just a month or two of receiving the funds.

- ✗ Don't propose purchasing capital equipment without first having a conversation with the funder about whether private foundation funds can be used to purchase equipment.

- ✗ Don't break out staff compensation, education, overhead, and supplies unless required. This gives you as much flexibility as possible.

- ✗ Don't guess at this cost. Instead, talk with other filmmakers or impact advisors to get a good estimate.

Do

- ✓ Do include a time and cost estimate for the following:
 - Capacity building
 - Staff training
 - Staff time and cost to attend conferences related to the project
 - Staff time and costs to attend webinars related to the project
 - Staff time to document your sources so the film can be accurate and possibly used by other for future activities

- ✓ Do include the cost of field-building, movement-building and networking with community partners if you plan to support or engage in these activities.

- ✓ Do include the cost of attending film festivals, supporting community screenings, creating educational materials and social media content.

- ✓ Do include the cost of legal and licensing fees as well as staff time to consult with attorneys and obtain licenses.

Don't

- ✗ Don't shortchange yourself when budgeting the time or cost needed to produce the best film possible.

Don't forget to include the staff time needed to document sources for statistics used in the film, individuals interviewed, or resources consulted for the film if needed so the film could serve as a nonpartisan analysis, study and research exception to the prohibition on lobbying.

- ✗ Don't include these costs if you're not already working with an impact advisor and have a good estimate of how to price this. Save this item for a future grant proposal.

- ✗ Don't guess at these costs, but work with an impact advisor, funder, or experienced filmmaker to estimate these costs.

- ✗ Don't shortchange yourself on this item. Funders can legally pay for all of this to support your project, as long as they have determined the project meets an IRS-defined "charitable purpose." You may still need to seek multiple funders for your project.

Do

- ✓ Do include the cost of post-production for your project.

- ✓ Do share whether you have individual supporters and if you have or are seeking other foundation funders for this specific project.

- ✓ Do include cost for planning a next phase of the project if there is one.

Consider whether you will conduct community engagement activities that accompany your film.

Don't

- ✗ Don't underestimate the time and cost to edit your film, incorporate music, special effects, sound effects, etc. to complete your project.

- ✗ Don't rely on one funder for your entire project.

- ✗ Don't guess at these costs, but do set aside some funds to work with an impact advisor or other community nonprofits to create some plans to engage with policymakers and community members if the film might lend itself to these activities.

Note:

Some of these budgeted activities are for when you are nearing post-production or are in post-production. They are good to keep in mind as you're planning the filming. However, policy winds can change quickly, so leave yourself room in both the proposal and budget for additional phases of the project. You could even discuss the next phase in your proposal or even budget for planning the next phase in this current budget proposal. You don't have to fund everything at once. Get to know the funder, prove yourself, and grow your next budget.

Each year of your project, you must provide your funder a report on how you spent the funds for your organization's preceding fiscal year. The report is typically due within a reasonable period of time following the end of your organization's fiscal or tax year. Be sure to check with your funder to see if they have a set period of time in which to submit your annual report. Your final report must contain a description of how you spent all the funds over the life of the grant.

Do

- ✓ Include a description of how you spent all the funds over the life of the grant.
- ✓ Restate your goals and then explain how you spent the funds, if and how you met the goals, where you fell short (if applicable), why you pivoted (if applicable), and whether you anticipate any next steps. Ultimately, your grant report should mirror your grant proposal. Always consider ways to maximize the life of your project, and to build on your relationship with this funder for a new project.
- ✓ Choose your words carefully.
- ✓ Use Bolder Advocacy as your resource and have a member of the team review your report for any "red flags," etc.
- ✓ Ask questions. Ask your funder what they would like to see in your grant report(s). These types of grants tend to have very specific requirements that foundations must share with the IRS. Be absolutely certain to complete any and all parts of the foundation's grant report template that are flagged as "required" or "mandatory." If you don't understand a category or question, consult your program officer or grants manager.
- ✓ Be transparent. Report how you spent the funder's money, including salaries, supplies, capacity building (training, webinars, conferences), travel, and any other expenses that were included in the budget or used to further the goals agreed upon in the grant agreement.
- ✓ Share quantifiable numbers that document how you met your goals in your proposal, including the following: community screening numbers, community roundtables, shares or likes on social media, community members in attendance, organizations partnered with, policymakers present, etc.
- ✓ Share "good words" from community members or policymakers IF (1) you receive permission to share them or (2) they were shared publicly on social media. Doing so gives you an opportunity to show the funder the real-life impact your film and/or activity had on the community.

Don't

- ✗ In general, don't say grant funds were used to achieve a legislative victory. Ask your program officer whether the foundation is comfortable reading about work you conducted on legislative campaigns using foundation funds. You are allowed to share how many elected officials viewed the film and/or attended community events. You can also share how your film, or community activities, raised awareness about the need to find long-term solutions for long-term caregiving or expanding Medicaid for uninsured persons. However, you, as the grantee, are not allowed to claim responsibility for getting a law passed, changed, or repealed in the scope of this project. This also means that you cannot claim victory for defeating or passing a ballot measure, bond measure, referendum or ballot initiative using private foundation funds. The same applies to refraining from talking about influencing a local, state, or federal government budget or line item in a budget with grant funds or private foundation supported film during the duration of the grant period.
- ✗ Do not claim responsibility or credit for election victories with grant funds. You are allowed to share how many community leaders volunteered as an election judge or poll worker as a result of your community engagement activities. You cannot, however, claim credit for mobilizing voters to support or oppose certain candidates or political parties. Additionally, non-501(c)(3) entities cannot use private foundation funds to register voters, even in a nonpartisan manner. If you conduct community screenings of a pro-democracy movie leading up to a candidate election, be mindful that your method of selecting where to conduct your community screening events is nonpartisan (not targeting to influence the outcome of the election). Call or email Bolder Advocacy for help with nonpartisan targeting criteria at 1-866-NP-LOBBY or advocacy@afj.org.
- ✗ Divert funds or spend funds in a way that is different than what was outlined in the grant agreement. However, just because you use the funds differently than anticipated in the budget, does not necessarily mean you have diverted the funds or engaged in impermissible activity. The IRS cares about whether you have used the funds in a way that is different than stated in the actual grant agreement. Sometimes the grant agreement will incorporate your grant proposal and budget. If possible, build-in the ability to pivot, as long as the funds will still be used to support the main goals of the project.

Note:

If you reach a point where you need permission to shift money between budgeted expense categories, you should talk with your program manager first and ask and obtain an amendment to the grant agreement if needed. If you obtained a grant agreement modification, be sure to mention this in your grant report.

YOUR FILM HAS A VITAL STORY TO TELL

With private foundation support, you should make the most of the funding to safely conduct community engagement activities within the bounds of the law: to raise awareness, challenge stereotypes, deepen understanding, build community leaders, and help community members and even policymakers identify the need for long-term solutions.

As a filmmaker, you have many great opportunities to seek funding for your project, including in the foundation world. Here are a few quick takeaways for private foundation funding to keep in mind:

1. Private foundations can support development, pre-production, production, and post-production creation of social justice films and the community engagement activities surrounding the films.

Private foundations often do this by using something called the expenditure responsibility rule to award grants to organizations that are not public charities (ie, for-profit filmmaking organizations) but have a project that meets the definition of "charitable purpose" and is able to comply with the grant reporting rules of the IRS and the foundation. The grants will require a pre-grant inquiry, periodic reports, financial accountability to the foundation, and an agreement not to use the funds to lobby or engage in campaign intervention.

2. Most community engagement activities surrounding a film are not lobbying.

For IRS and grant purposes, lobbying is an effort to influence specific legislation (including a ballot measure), either through communicating with legislators or with the general public that includes a call to action. In many instances, efforts to influence executive branch (presidential, gubernatorial, or government agency) decisions will not constitute lobbying. Generally, the following activities do not amount to lobbying: discussing broad social issues; educating the public, including legislators, about the broad social issues; deepening community and policymaker awareness of the need for long-term solutions to community problems; and even identifying broad possibilities for solutions.

3. Many nonpartisan community engagement activities are permissible.

While the law prohibits foundations from supporting or opposing candidates in a public election, you can use foundation funds to encourage full civic participation, challenge disinformation around voting and elections, confront and educate the public on voter suppression and historical efforts to disenfranchise, showcase efforts to support democracy, explain the voting process, highlight the importance of elections, educate the public on the roles of different elected officials or even past elections, and mobilize voters in upcoming elections in a nonpartisan manner.

4. There are two primary exceptions to the prohibition on lobbying.

Filmmakers may be able to use private foundation funds to provide technical assistance to legislative committees and allow their films to be used by others for lobbying in certain situations. The second exception permits certain films or clips of films that discuss various sides of a social issue and even have proposed solutions, to be used for direct or grassroots lobbying by others, provided the film provides a full and fair discussion of the underlying facts, the film has been released for national distribution, the grant has concluded for at least 6 months, and the primary purpose in the project was NOT lobbying.

5. If your film will mention specific legislation, elected officials, or specific candidates or political parties, speak with your program officer to see how the foundation would like you to report on your activities.

The foundation may have more limited policies around how you can use their funding in these instances or what they are comfortable having in writing in their grant systems.

NEED MORE GUIDANCE?

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

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