

Mapping the Future *The Redistricting Process and Private Foundations*

Many *private foundations* realize that the redistricting process presents a key opportunity to participate in the democratic process – to help ensure, among other things, that the minority vote is not diluted and that communities of interest are not unnecessarily split apart. While private foundations can safely and legally participate in the redistricting process and fund grantees that engage in this work, there is a fine line between what a private foundation can safely do and what the foundation would be prohibited from doing or would result in a taxable expenditure.

Attempts to influence the redistricting process will count as a taxable lobbying expenditure by a private foundation if the state legislature must vote to approve the redistricting plan. Every state is permitted to adopt its own process for drawing legislative and congressional districts. Not all states require approval of redistricting maps by a legislative body – instead some states delegate this authority to an administrative body. Before a private foundation either attempts to influence the redistricting process itself or earmarks a grant for a particular redistricting activity, it should research the state's redistricting process in order to determine whether the legislative body must vote to approve the redistricting plan.

For example, in Arizona, an independent redistricting commission is charged with drawing legislative and congressional districts based upon set criteria established in the state's constitution. Since the plan is adopted by the redistricting commission, not a legislative body, attempts to influence the redistricting process in Arizona would not count as lobbying. By comparison, in Iowa (which has a unique redistricting process), the legislature is responsible for voting to approve the redistricting plan using nonpartisan criteria. Because the Iowa redistricting map must be approved by the legislative body, attempts to influence the drawing of districts in Iowa would count as a taxable lobbying expenditure by a private foundation. A number of organizations provide information on the redistricting process in the 50 states, including the United States Elections Project at George Mason University (http://elections.gmu.edu/Redistricting_websites_2000.html) and Fair Vote (<http://www.fairvote.org/?page=289>).

Even if a particular state's redistricting procedure requires the state legislature to approve the plan, there are still many ways for private foundation board and staff members to share information about the redistricting process with policymakers.

Not all activities related to the redistricting process will count as lobbying. Lobbying is an attempt to influence public officials in support of, or in opposition to, legislative proposals. Lobbying includes communicating with legislators and their staff directly and encouraging others to contact their legislators. However, not all communications with legislators around the issue of redistricting will necessarily constitute lobbying.

- **No reference to specific legislation.** It is not lobbying to meet with legislators in order to educate them about a broad social problem, as long as you do not express a preference for a specific legislative proposal to address the problem. For example, you could educate legislators about how the current legislative districts unfairly divide communities of interest, as long as you do not express a preference for a specific legislative proposal to address the problem.
- **No call to action.** Your foundation can communicate with the general public through communications (e.g., letters to the editor, OpEds, news releases, e-mail blasts, etc.) that express a view about the redistricting plans but do not include a "call to action" encouraging the public to contact their legislators on the plans.

- **Nonpartisan analysis, study, research.** Your foundation could present a comprehensive, accurate study or analysis of a policy issue without incurring a taxable expenditure so long as: (1) the document provides enough factual information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion; and (2) the report is widely distributed to the public (e.g., having it available on the organization’s website);
- **Participation in administrative advocacy.** Attempting to influence a rule, regulation, or administrative decision made by a state or federal agency will not count as lobbying. For example, the organization could attempt to influence the Section 5 preclearance of the redistricting plan by the Civil Rights Division of the US Department of Justice or could file a lawsuit or friend of the court brief challenging or affirming Section 5 preclearance, without treating the expenses as lobbying.
- **Requests for technical assistance.** Any response to written requests for assistance from a government body is not lobbying. For example, if the chair of the legislative committee on redistricting or reapportionment commission wrote to your foundation and requested that your foundation to testify in support of a particular redistricting plan, this would not count as lobbying if the testimony was made available to all members of the committee.

Private Foundation advocacy must remain nonpartisan. In addition to considering the lobbying rules, the Foundation’s advocacy must not constitute intervention in a candidate election. (IRS Rev. Ruling 2007-41.) Given that the redistricting process could impact which candidates for office are ultimately elected, foundations participating in the redistricting process must ensure they are not intervening in the electoral process.

Whether a foundation is intervening, directly or indirectly, in any political campaign on behalf of or in opposition to a candidate for public office depends upon all of the facts and circumstances of each case. The IRS has not specifically addressed which facts and circumstances are relevant in the context of the redistricting process. We believe that the IRS would conclude political activity constitutes intervention in a campaign if the foundation takes positions in conjunction with a political party, attempts to preserve “safe” seats, or ensures incumbents can continue to hold a particular seat. By comparison, it would not constitute impermissible intervention in a campaign for foundation to conduct nonpartisan public education about the importance of the redistricting process or urge the body developing the redistricting plans to consider nonpartisan criteria (e.g., population equality; contiguity of districts; or respect for communities of interest) during the redistricting process.

For more information on how to safely fund grantees that lobby or on how the facts and circumstances test might apply to your particular activity, please feel free to call Alliance for Justice’s toll free technical assistance line at: 866-NPLOBBY or email us at advocacy@afj.org.

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