BEYOND THE CAUSE

THE *Art* AND SCIENCE OF ADVOCACY

About Independent Sector

Independent Sector is the leadership network for nonprofits, foundations, and corporate giving programs committed to advancing the common good in America and around the world. Our nonpartisan coalition of approximately 600 organizations leads, strengthens, and mobilizes the nonprofit and philanthropic community in order to fulfill our vision of a just and inclusive society and a healthy democracy of active citizens, effective institutions, and vibrant communities.

EXECUTIVE SUMMARY

With the goal of identifying how the nonprofit and phil-anthropic sector can increase its influence on public policy, Independent Sector set out to answer two questions:

1. What approaches and strategies shape consistently successful advocacy efforts?

2. How well does the community of organizations cur-rently engaged in sector-wide advocacy perform?

This summary highlights the findings from a study con-ducted in 2011–12, which included three surveys, over 100 interviews, a review of existing literature on advoca-cy and lobbying by charitable organizations, and research on publicly available information about 528 organiza-tions' engagement in sector-wide public policy issues.[1] It draws on lessons from three detailed case studies of highly effective organizations, four coalition profiles, and six issue analyses of federal, sector-wide public policy issues that were undertaken as part of this study. Insights from expert political strategists, seasoned advocates, and academic researchers informed the findings.

The detailed analysis of individual case studies of or-ganizations and coalitions that consistently achieved their goals over time yielded a number of activities and characteristics common to these entities. The report also examines how charitable organizations deal with broad policy issues common to the sector and reports on perceptions of their effectiveness in achieving their goals. This study concludes with recommendations for how the sector can increase its effectiveness in the public policy arena, particularly at the federal level. A brief sum-mary of the findings follows.

ESSENTIALS OF SUCCESSFUL ADVOCACY

Five strategic approaches emerged as the common ingredients in successful advocacy both for the corporate and nonprofit lobbying groups.[2] While many factors can account for an isolated policy win, these components consistently were present in successful advocacy out-comes over time. How and when they were employed, as well as in what combination or under what specific circumstances, often determined the outcome of an advocacy campaign.

1. **Sustain a laserlike focus on long-term goals.** Time frames of 10, 20, or 25 years are common among the most successful groups engaged in advo-cacy in Washington, D.C. Little can be accomplished in a year unless there are either extenuating circum-stances (such as a pressing national crisis) or if years of advanced planning have already taken place and a serendipitous opportunity is seized. The keys to achieving long-term goals are to work backward from the goal, be proactive, and alter tactics over time as necessary.

2. **Prioritize building the elements for successful campaigns.** Successful advocates constantly invest in relationships with public officials, deepening their understanding of the issues and of the legislative pro-cess. These so-called "building phases" undergird their work and prepare them well for the time they need to mobilize on a particular issue. They include: con-ducting research, developing policy solutions, building

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relationships with potential allies, testing key messages with target audiences, building out their grassroots and grass-tops contacts, and deeply understanding the priorities of public officials. They are time consuming, expensive, ongoing, and must be conducted by an organization with the ability to maintain the knowledge and relationships garnered throughout the process. Campaign activities are efforts related to promoting or blocking a specific policy proposal or law. The need to prepare for a campaign before its launch is not new. The findings revealed, however, that the most successful advocates were as active during the building phase as they were during the campaign phase.

3. **Consider the motivations of public officials.** It takes time and resources to build relationships with public officials, but few investments are more valuable to achieving success in the public policy arena. Successful advocates invested considerable time in understanding the policy environment and the players, including a thorough knowledge of public officials' backgrounds, family histories, connections, and the priorities of their constituents. Decisions regarding the allocation of resources toward research, polling, media, grassroots, grass-tops, and other tools in the advocate's arsenal were based on the answer to the following question: *What activity is most likely to motivate this particular public official?*

4. **Galvanize coalitions to achieve short-term goals.** Coalitions can be very useful in aggregating the diverse voices, skills sets, and other assets necessary for an effective advocacy campaign. This is especially true when one organization does not have all the requisite components necessary to execute a campaign. However, this study revealed that successful organizations did not always use coalitions as the only vehicle for advancement. Over the course of a long-term advocacy effort, some organizations executed parts of their strategies alone or in collaboration with limited partners depending on the circumstances. In each case, the goal and environmental analysis always shaped the strategy. When coalitions were successful, they tended to form around a specific issue at a given moment in time and disband once their goal had been achieved or retool for the next issue. Strong

leadership, a shared vision, clear decision-making structures, and members who brought complementary assets to the table and who put some "skin in the game" were the cornerstones of effective coalitions.

5. **Ensure strong, high-integrity leadership.** Individuals at the helm of successful advocacy organizations often display the following common characteristics:

   • High integrity and transparency

   • A reputation for being an honest broker of information

   • Relationships that reflect a level of trust between the leader and his/her colleagues and target audiences

   • The ability to articulate a compelling vision and mobilize people around it

Developing an effective advocacy strategy requires creative judgment, experience, thoroughness, and significant skill to determine which approach is likely to succeed at a given time. Even with all these elements and resources in place, the overall political climate can make a particular victory out of reach or just the opposite. The most important role of leadership is to master the art of this process–to understand all of these elements and deploy them in a way that will advance the goal.

SECTOR-WIDE ADVOCACY AND POLICY ISSUES

While a number of organizations have met with some success achieving their policy goals, findings showed that many of their advocacy efforts were duplicative, uncoordinated, and did not maximize their combined assets.

This community of organizations has strengths, including favorable public opinion; a network of hundreds of organizations already engaged in this work, many of whom know and communicate with each other regularly; some relationships with key public officials responsible for oversight and governance of the sector; and a slowly growing field of credible research directly related to key policy issues. Public policy successes prove that it is pos-

sible for this network to pool assets and achieve important outcomes.

At the same time, the collaborative model was not the most common practice, and most participants in the study believed that more can be done to increase the effectiveness of sector-wide advocacy around important national public policy issues affecting the charitable sector as a whole. Developing shared, long-term goals; increasing the number and depth of relationships with a broader range of key public officials; improving coordination among organizations; and increasing the visibility and clout of the sector particularly with government officials will likely increase the sector's influence. Advocates engaged in this work called for strong leadership to organize the sector around a common agenda in order to create a more favorable regulatory and legislative environment that will facilitate the work of the charitable sector.

Among the challenges of improving sector-wide advocacy efforts are the limited resources available to develop a shared, long-term vision and to sustain the level of ongoing building activities found among the most effective advocates. This work would require a significant shift in the status quo—a reimagined structure for convening and harnessing the assets of sector organizations with stronger incentives for collaboration and an operational model that could sustain the level of activity required to achieve consistent success over time.

With Congress poised to take a closer look at the charitable sector through tax reform in 2013 and beyond, it is propitious for the nonprofit and philanthropic sector to align its efforts by creating a joint strategy that will enable organizations to better serve the growing needs of American communities.

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PREFACE

Today's economic and policy climate pose deep challenges for the nonprofit and philanthropic community and the people we serve. In recent years, a national dialogue has surfaced on fundamental questions regarding the role of government in the lives of the people it represents. A deep recession and sluggish recovery have underscored questions about the adequacy of our country's social safety net and the evolving nature of the social compact between government, business, and the charitable sector. The king-sized economic challenges now facing federal, state, and local governments will not abate anytime soon. On the contrary, they will in all likelihood place immense pressure on the nonprofit and philanthropic community to "do more with less"—even as demand for services continues to rise. They also will increase pressure on public officials to look for additional sources of revenue to pay down the growing national debt. Charitable organizations will in all likelihood be facing battles on two fronts: Those that are the recipients of government dollars will be competing with others for funding as lawmakers consider how best to balance priorities and needs with deficit reduction. Charitable organizations also can expect lawmakers to take a hard look at the tax structure that governs the charitable sector with a view to making changes in definitions of what constitutes charitable activity and our system of tax incentives for charitable giving.

Getting the attention of public officials may become even more challenging than it previously has been. The massive influx of dollars, particularly by business interests as a result of the U.S. Supreme Court decision in 2010, *Citizens United v. Federal Election Commission,* has increased their access and influence. The charitable sector, even prior to the decision, was a modest player, and today it increasingly finds itself crowded out by other better-resourced interest groups.

With so much at stake, Independent Sector determined this a propitious time to examine how the sector's com-

paratively limited resources might be managed differently to have a greater impact on public policy. Through this study we hoped to understand better how effective our advocacy efforts have been on issues that affect substantial parts of the charitable sector. To do that we deemed it necessary to study organizations that have achieved successes over time, regardless of which party was ensconced in the White House or had the majority in Congress. Our hope was to learn from these organizations and share their successful strategies with others working in Washington, D.C.

Beyond the Cause: The Art and Science of Successful Advocacy is based on two years of research and analysis that involved over 1,400 people. I would like to extend a personal thank you to everyone that participated in this study. It was a privilege for the research team and for me to learn from those of you with deep experience in this field, as well as from newcomers who offered the insights born of fresh eyes.

At the start of the study we were concerned that interviewees and survey respondents might not be forthcoming with unvarnished assessments of the community of organizations engaged in sector-wide issues because of Independent Sector's dual role as a member of this community and the author of this study. For that reason we employed an independent firm to conduct most of the interviews. We learned quickly that this was not an issue. We received a wide range of substantive and constructive criticism of IS and other organizations' advocacy efforts. The richness of this feedback is reflected throughout the study; consistent with our promise of confidentiality, we have not named individuals or attributed remarks in a way that might expose a particular organization.

I'm delighted to share our findings with you. In fact, we were quite surprised by some of them. First, despite the obvious difference among the organizations studied–size, ideology, mission, and resource levels–five components

repeatedly emerged that defined their successes. These elements were not consistent with what the literature asserted were necessary for successful advocacy on policy matters. Nor were they in alignment with the large pool of advocates' prescription for successful advocacy. As you read the case studies, the literature review, and the summary of findings from the field, the differences will become obvious. Second, we learned how important it was to each of the successful organizations to develop a long-term view of their goals and work backward from those to shape their strategy. In that process, they did not filter their actions by limiting collaboration to like-minded groups or work only through coalitions. These groups were focused, with laserlike precision, on their goals and developed whatever strategies they deemed likely to increase their chances of prevailing.

In the pages that follow, we explore the approaches to successful advocacy used by organizations that consistently achieved their policy objectives and offer recommendations for how the sector might improve its chances of success.

HOW TO USE THIS STUDY

The first part of this study—Essentials of Successful Advocacy—is intended to help nonprofit and philanthropic leaders formulate tailored advocacy strategies to achieve their long-term public policy objectives. It is not an advocacy "tool kit" that offers sample letters to public officials or tips for mobilizing supporters. There are plenty such tool kits available. Instead, this material will be most useful to organizations interested in fine-tuning their strategic approach in order to improve their impact. Organizations that are considering entering the public policy arena may use this study to gain a better understanding of the basic elements of advocacy required to achieve desired policy outcomes. It should position them well to use their creative skills and wisdom to manage the process. We hope the data-driven recommendations in this study will help sector leaders, advocates, funders, and stakeholders better understand that advocacy is an ongoing process and also is *an art and a science*.

Among the biggest takeaways for me was the commitment by successful advocates to building toward their long-term goals so that they would be positioned both to create their own openings and to respond swiftly when opportunities arose.

The second part—Sector-Wide Advocacy and Policy Issues—is intended for organizations that are engaged in advocacy related to sector-wide issues and those that would like to join these efforts. We gathered and aggregated perceptions of current advocacy activity and its effectiveness so that we, individually and together, could reflect on the best path forward, one that would increase our impact and—ultimately—accelerate the ability of the nonprofit and philanthropic community to pursue our policy agendas. Many findings likely will be familiar to colleagues well versed in the advocacy arena.

Organizations and coalitions cannot rely alone on serendipity for promising opportunities in the policy arena. The formula for success lies in investing in the work, regardless of whether a campaign is under way, and applying the various elements of advocacy in the proper dose and at the right time amid an ever-changing environment. The purpose of this process—and one of the primary aims of our study—is to increase our understanding of the best ways to use our limited resources in the service of our policy objectives.

One final personal note: this almost two-year labor of learning and love has been possible because of the outstanding contributions of many people. We wanted you to know who they are and have included them in a special acknowledgement section. There is one colleague I want to single out and recognize as "my partner-in-chief" and whose extensive involvement leading this work made it all possible. Thank you Erica Greeley, and thanks to your very kind family for supporting you through the grueling last months.

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INDEPENDENT SECTOR
A vital voice for us all

SECTION I:

ESSENTIALS OF SUCCESSFUL ADVOCACY

BEYOND THE CAUSE
THE *Art* AND SCIENCE OF ADVOCACY

SUMMARY

ESSENTIALS OF SUCCESSFUL ADVOCACY

Public policy advocacy is a critical function of the non-profit community. Elevating the voices and needs of the communities we serve, creating policy solutions for society's pressing social and economic problems, and championing these solutions with public officials are some of the vital aspects of our advocacy role. In today's complex environment, it takes great skill combined with a compelling cause to advance a public policy objective. The pressure on the federal budget, the polarization of the political parties, the ever-widening influence of money in the political process, and the crowded field of interest groups are but a few of the hurdles facing even the most capable, seasoned, and well-funded advocates. Yet despite these challenges, or in some cases because of them, many organizations and coalitions successfully achieve their public policy goals. This study identifies and shares the art and science behind various highly effective advocacy efforts.

This research included dozens of interviews and a series of case studies of nonprofit, corporate, and coalition advocacy efforts.[1] The findings revealed five strategic approaches to be the key ingredients for successful advocacy:

While many factors can account for an isolated policy win, these approaches contributed to advocacy efforts of organizations that consistently achieved their goals. How and when the approaches were employed – as well as in what combination or under what specific circumstances – often determined the outcome of an advocacy campaign. Based on these five approaches, this study sets forth a new strategic framework for successful advocacy. When properly developed and implemented, the framework can help advocates widen their influence and advance their legislative agenda on behalf of their organizations and the people they serve.

The following pages outline these approaches, offer a menu of elements to implement them, and provide concrete examples. Furthermore, they describe the importance of tailoring strategies to particular circumstances. The conclusions reflect the best thinking and most salient experiences of colleagues within the nonprofit community and others who practice the art and science of advocacy.

1. Sustain a laserlike focus on long-term goals;
2. Prioritize "building" the elements for an effective advocacy campaign;
3. Consider the motivations of public officials;
4. Galvanize coalitions to achieve short-term goals; and
5. Ensure strong, high-integrity leadership.

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1. See the Methodology, Appendix D, for more information abotu the study.

APPROACHES TO SUCCESSFUL ADVOCACY

1 Sustain a laserlike focus on long-term goals. Timeframes of 10, 20, or 25 years are common among the most successful groups engaged in federal advocacy in Washington, D.C. Little can be accomplished in a year unless there are extenuating circumstances (such as a pressing national crisis) or years of advanced planning that have already taken place. Indeed, as one effective advocate said, "almost nothing can be accomplished in 25 weeks and almost nothing can't be accomplished in 25 years."

The most successful advocates identified a specific, ambitious long-term outcome and then worked backward to devise a plan to accomplish it. Their plans included a balance of premeditated activities, such as amassing a body of research and building lasting relationships, and took advantage of opportunities to move the cause forward. Success required reading the environment accurately and altering the plan as appropriate. Organizations that were nimble, opportunistic, and fluid – while remaining steadfast in their commitment to their long-term goal – proved more effective over time than those that were less flexible in their approach when circumstances shifted, waivered in their commitment to their long-term objectives, focused only on short-term goals, or engaged in advocacy work sporadically over time.

Organizations that have successfully implemented a long-term approach have mastered four key skills:

- Working backward from the goal. Developed strategies, tactics, activities, and resources based on what it would take to achieve the goal.

- Being proactive. Successful advocates were disciplined about achieving their goal, generated the necessary resources, developed ideas, and proposed policy solutions.

- Partnering with those most likely to propel the movement toward the goal. This might include working with coalitions, organizations, or individuals with a shared interest in achieving a particular goal, even if their ideologies or priorities on other matters are in conflict. (Organizations with funding constraints or other limitations might benefit the most from this element because of the synergies generated by effective partnerships.)

- Planning carefully and managing thoughtfully all advocacy elements, including relationships, resources, and timing. This approach is not haphazard or hurried; it is methodical, deliberate, and gains steady momentum over time.

...as one effective advocate said, "almost nothing can be accomplished in 25 weeks and almost nothing can't be accomplished in 25 years."

Americans for Tax Reform (ATR), an organization featured in a case study, provides a useful example of how to maintain a laserlike focus on long-term objectives. ATR's long-range goal was to reduce the size of government by curtailing federal revenue. ATR's executive director, Grover Norquist, has been working to implement this goal since ATR's founding in 1985.

Norquist devised the Taxpayer Protection Pledge, a promise signed by legislators and candidates for office that commits them to oppose "any and all" efforts to increase income taxes on individuals and businesses. Since ATR first sponsored the pledge in 1986, hundreds of U.S. Representatives and Senators and every successful Republican presidential candidate have signed it. In the 112th Congress, 238 U.S. Representatives and 41 U.S. Senators have signed the pledge (all but 13 Republicans currently serving in Congress), and more than 1,200 state officials, including 13 governors, have done so.[2]

Over time, the pledge has reshaped what it means to be a member of the Republican Party. The intended outcome, Norquist explains, is that a voter can enter the voting booth "with little knowledge of the candi-

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2. Americans for Tax Reform, www.atr.org

LITERATURE REVIEW FINDINGS

The comprehensive literature review identified five internal factors and five external factors that can influence advocacy outcomes. The internal factors include five elements related to any organization's approach to advocacy. Successful advocates demonstrate *staying power* by maintaining a stable, focused presence in the policy arena over the long haul. They have issue area *expertise* and use a *proactive approach* to develop and pursue policy goals. They develop *partnerships* with other organizations for the purpose of achieving a shared goal. Finally, they *organize for action* through investing in staff and other resources to support advocacy efforts.

In general, context is critical in advocacy. More specifically, five external factors can greatly influence policy outcomes.

First, lawmakers are less likely to act on policy proposals that are surrounded by a *high level of conflict*. Second, "*institutional influences*" do matter. For example, presidential support is a significant indicator of whether or not a proposal will be adopted, and congressional polarization decreases the chances that a bill will pass. Resources and volume of support also matters. The policy issue with the most *resources* behind it is more likely to succeed. Likewise, the *majority preference* theory holds that a proposal supported by the greatest number of voices will succeed over policies with fewer active advocates. Finally, research shows initiating a new public policy is much more difficult than maintaining the *status quo*.

dates, and know with 98 percent certainty that if he votes for the Republican, that candidate will not raise his taxes."[3] In effect, Republicans are now branded as the party that will not raise taxes, making the pledge a public, self-enforcing mechanism that discourages lawmakers from increasing taxes.

Norquist's long-term approach has paid off for ATR on several fronts. First, its clarity of purpose provides the organization a steady compass heading to navigate the ever-changing players and legislative environment in Washington, D.C. When there are competing priorities or distracting issues, ATR remains committed to ensuring public officials do not raise taxes and will partner with any organization that can help it achieve its long-term goal. Second, adhering to a singular vision has helped strengthen ATR and has reinforced its credibility over time. Finally, a long-term goal affords ATR a time horizon commensurate with the kind of profound impact the organization seeks to accomplish.

❷ **Prioritize "building" the elements for a successful advocacy campaign.** Advocates who are effective over time distinguish "campaign" activities from "building" activities — and prioritize the latter. Doing so ensures that an organization's relationships, reputation, and expertise accumulate over time and, moreover, are at the ready whenever an opportunity arises.

Campaign activities are efforts related to promoting or blocking a specific policy proposal, executive order, or regulation. They include:

- exercise thoughtful leadership; continuously evaluating and redirecting activities in response to the environment;

- monitor the political and economic climate carefully to ascertain the best time to proceed and the optimal approach, being mindful of public officials' circumstances and imperatives;

- work closely with lawmakers and their staff to, among other things, ensure that the public officials coordinate their efforts in support of the goal;

- align efforts of engaged organizations to maximize the impact of related advocacy activities;

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3. Grover Norquist, "Pledge Allegiance," *The American Spectator* (October 2011), http://spectator.org/archives/2011/10/04/pledge-allegiance/print

THINK TANKS

Even though many think tanks are known for their research and analysis, many have 501(c)(4) arms designed to promote their policy ideas. Over the course of this study, experts singled out think tanks for their ability to shape public policy in three distinct ways. First, successful think tanks can convene word-class experts at the center of public policy developments who are capable of generating actionable, data-driven policy recommendations. Second, they are capable of attracting accomplished scholars and thought leaders at the forefront of their respective fields who often are well connected in the public policy arena. Finally, think tanks can be effective vehicles for creating long-term change by leveraging their constant presence in the transitory environment of Washington, D.C.

- engage targeted grassroots and grass-tops validators to coordinate outreach to key public officials in a deliberate and timely way;
- propose well-researched policy solutions;
- ensure the communications plan is closely synchronized with the advocacy work, including, as necessary, a disciplined approach to enable "radio silence" about some activities under way; and
- understand deeply the legislative and regulatory process and policy environment.

These activities are most successful when a strong foundation has been laid in advance of the campaign. Building the assets that need to be in place for an effective advocacy campaign is time consuming, expensive, and ongoing, and it must be conducted by an organization with the ability to maintain the knowledge and relationships garnered throughout the process. Key building activities include:

- cultivating a reputation for integrity and effectiveness;
- securing adequate resources to develop and manage the elements necessary for successful advocacy;

- researching and developing policy solutions;
- building relationships with public officials;[4]
  - identify public officials to cultivate based on their interest in and/or ability to influence policy in a targeted area;
  - analyze key public officials' personal interests, relationships, and networks, the priorities of their constituents, as well as what it takes for them to win elections (if applicable);
  - develop relationships defined by trust and informed by a deep understanding of public officials' interests and needs;
- building relationships with potential allies and managing opposition;
  - deepen connections with allies and potential allies, especially organizations with access to key stakeholders or the capabilities needed to achieve the policy goal;
  - identify and develop relationships with community members, leaders, and organizations with strong ties to the targeted public official, including tailored education of targeted grass-tops and grassroots individuals who can act as validators;
  - examine the motivations and interests of how different stakeholders might be affected by a policy change and what influence they may wield in assisting or hindering an advocacy effort;
- identifying target audiences and testing messages, including through polling in key districts; and
- monitoring the public and political climate to identify windows of opportunity.

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4. Public officials refer to elected officials in Congress and their staff, appointed members of the Administration and their staff, and career civil servants.

RESEARCH, COMMUNICATION, AND MOBILIZATION

Understanding what motivates people is an essential part of an advocate's job. Organizations cannot influence communities or expect their support if they don't understand people's needs and interests. Credible research into a public concern can be used to show how one particular solution might best resolve a problem and demonstrate an issue's relevance to an elected official, who may not initially be invested in solving it. A deep understanding of a public concern also helps advocates play defense when necessary and enables an organization to move outside the political arena when needed.

Because lawmakers and their staff have packed agendas, policy positions are best addressed through clear, short documents that include references. Reports should be targeted and tailored to specific audiences; offering data on a particular district to a U.S. Representative is far more influential than providing only national research. When appropriate, communicate findings in ways that make a splash — a White House press call, a full-page ad in a national newspaper, or a viral online advocacy campaign — may also help an organization gain leverage and influence to advance its cause.

Polls help advocates identify supporters and detractors. Regarding the latter, polls are important tools for testing which messages might be more palatable to target audiences and enable advocates to create strategies that steer clear of adversaries or may even allay their concerns. Polling also helps advocates test and develop messages that can offer an elected official political cover so that he or she can champion a position without drawing undue attention or causing others to withdraw support. If the goal of the poll is to influence a particular legislator and advocates are fairly confident in what the results will show, using that legislator's own pollster is one way to bolster the credibility of the findings. Advocates caution against using pollsters who "ask the questions to get an answer they want."

Messaging — identifying language that resonates with different audiences — has an enormous impact in any advocacy effort. It is most effective when messages are tailored not only to one individual (e.g., a public official) but also the individual's audience (e.g., his/her constituents). Tailored communications offer political cover to elected officials with the people they represent; how the message is framed and what words are used prove to be critical. (Organizations that lack the wherewithal to test messages may consider asking their elected representative for his/her insight on framing the issue.) This study found that multipronged messages — designed for separate campaigns and targeted to different audiences — were more likely to advance legislation than less customized communications. Social media also can be an effective tool for advocacy, if used for the right audience, with a tested message, and when coordinated carefully with other aspects of the advocacy effort.

Advocates who are effective over time distinguish "campaign" activities from "building" activities — and prioritize the latter.

This study reinforces a time-tested notion that mobilizing communities and grassroots supporters can carry tremendous weight in the legislative arena. Organizations have many ways to develop, maintain, and use their grassroots bases. Some have employees in congressional districts that can be brought to Washington to personalize statistics. Others run meetings or task forces in every state to recruit participants willing to petition their elected officials when needed. Still others host galas, annual conferences, or other high-visibility events with ample media coverage. In each case, the structure or means of mobilizing people must align with the long-term goals.

The Human Rights Campaign (HRC) illustrates the value of maintaining building activities in a difficult legislative environment. The organization was founded in 1980 to achieve equality for homosexuals. During its early years, HRC faced daunting struggles such as overcoming homophobia and cultural mores hostile to lesbians and gays. In addition, HRC had to try to represent a largely closeted constituency and work with legislators who, in

Decisions regarding the allocation of resources toward research, polling, media, grassroots, grass-tops, and other tools in the advocate's arsenal are based on the answer to the following question: What activity is most likely to motivate this particular public official?

some cases, believed there were no lesbian, gay, bisexual, and transgender(LGBT) people in their districts. [5]

HRC encountered another hurdle in 2001 with the election of President George W. Bush, known for his unfavorable record on LGBT issues. A Republican-controlled House of Representatives added to its concerns.[6] HRC sought to find other ways to advance its public policy agenda. In an effort to continue to promote the welfare of LGBT individuals, HRC designed a Corporate Equality Index (CEI) in 2002, a tool that enabled it to continue to move its agenda forward in a way that did not require action by either the Administration or Congress.

CEI ranks Fortune 1000 companies on whether they have LGBT-friendly policies, environments, and practices. It includes a range of issues, from nondiscriminatory hiring and partner benefits to inclusive advertising. Its impact has been considerable. More businesses participate every year in the hopes of achieving top ratings. In 2002, for instance, 89 companies participated in the voluntary survey. Thirteen companies achieved the top score of 100 percent. In 2012, 636 companies voluntarily participated in the survey, and 190 workplaces achieved a perfect score, including 10 of the top 20 Fortune-ranked companies. HRC announces the findings annually with considerable media attention and makes them readily available on its website.

5. See HRC's case study for details.

6. Democrats held a one-seat majority in the Senate early in President Bush's term; Republicans swept both chambers in 2003, just one year after HRC created the Corporate Equality Index.

CEI served as an effective building activity during a time when HRC likely would have faced difficulties on Capitol Hill. The initiative strengthened HRC's connections with corporate leaders and media, broadened the reach of pro-LGBT awareness and messaging, and helped brand HRC as an effective leader.

❸ Consider the motivations of public officials.
It takes time and resources to build relationships with public officials, but few investments are more valuable to achieving success in the public policy arena. Successful advocates invested considerable time in understanding the federal policy environment and the players, both elected and appointed, in the Administration and Congress. This theme surfaced repeatedly during the study.

Effective advocates conduct a "power analysis," or an exercise that identifies which public officials to target, as well as comprehensive research into select officials that includes thorough knowledge of their backgrounds, family histories, connections, and the priorities of their constituents. The results drive the timing and development of tactics. Decisions regarding the allocation of resources toward research, polling, media, grassroots, grass-tops, and other tools in the advocate's arsenal are based on the answer to the following question: What activity is most likely to motivate this particular public official? Even organizations that lack the resources to conduct a thorough assessment of an official's motivations would benefit from using this question as a starting point for advocacy planning.

Developing an enduring relationship with public officials in Congress and the Administration, as well as officials with regulatory and policy making bodies, is a key element of long-term advocacy success. A trusted advisor who can provide relevant, timely, reliable information and talking points on demand becomes a go-to resource, not only for the elected official but also for his or her staff and gatekeepers. Once advocates know what it takes to gain the support of public officials or their staff, they can work efficiently to meet the needs of these key targets. The more responsive an organization is to an of-

ficial's agenda, the more likely it is to be supported and its advocacy effort embraced.

Each of the coalitions profiled in this assessment conducted some degree of power analysis of decision makers and public officials to advance their cause. The Panel on the Nonprofit Sector formed in 2004 in response to congressional pressure to strengthen the accountability, transparency, and ethical conduct of the charitable sector. Panel members met regularly with the key Senate staff to understand their perspectives, intentions, and objectives as well as to keep them well informed of their actions. They also did the spadework to gather deep knowledge about key decision maker's backgrounds and motivations.

Another coalition, Patriots Defending the Bill of Rights (a bipartisan coalition formed after the passage of the PATRIOT Act in October 2001) used in-depth messaging and focus-group work commissioned by the ACLU to develop messages for specific constituencies. This allowed it to better understand lawmakers' perspectives and provide them tailored, nuanced messaging that ranged from eliciting overt support from voters to a more subtle approach that might afford political cover. Patriots Defending the Bill of Rights developed state-level support for congressional offices that was instrumental in moving the legislation. Health Care for American Now (a group of leading progressive organizations seeking to enact comprehensive health care reform) pursued this approach as well.

POLITICAL ACTIVITY

Offering election-related support can also serve as a means to deepen relationships with lawmakers. While public charities and private foundations (both 501(c)(3) organizations) are prohibited from engaging in election activity, 501(c)(4) social purpose organizations can engage in independent, political campaign activity that includes making financial contributions, developing policy backgrounders, and lending staff

KNOWN WINNERS, UNKNOWN LOSERS

In our research, experts cited the notion of "known winners and unknown losers." This means policy changes have a greater chance of success if winners are clear and concentrated and the losers are vague and diffuse. For example, reform of energy policies often involves changing tax subsidies in ways that make the winners clear (i.e., well-organized interest group benefiting from the tax break) and losers less so (i.e., tax payers who may not know they are subsidizing this effort). Because of such issues of visibility—or the invisibility of who bears the burden or cost—one of the most important activities advocates can do is to meet with their Member of Congress to underscore in concrete, measurable ways how the otherwise "unknown losers" may be impacted by policy proposals.

to political campaigns.[7] Political action committees (PACs) are popular vehicles for providing resources to a candidate.

Strategic political expenditures help strengthen relationships with public officials, who appreciate the financial support in an era when running for election can cost hundreds of thousands or even millions

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7. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited advocacy and lobbying to advance their social purposes, and they may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. Political action committees, known as PACs, are permitted to campaign for or against specific candidates, ballot initiatives, and legislation. For more information , see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

of dollars. In addition, donations increase the likelihood of access to members of Congress — and thus opportunities to build deeper relationships — during fundraising and other events.

In this assessment, experts generally felt that the combination of a 501(c)(3) and 501(c)(4) provided important advantages for advancing advocacy efforts, including the ability to accept donations that are eligible for charitable deductions by donors for nonpolitical activities such as research and education, as well as increased flexibility in lobbying and political activity. They did not feel that PAC contributions themselves influenced a legislator's vote (they are capped at $5,000 per candidate per cycle). But several experts noted that members of Congress took note of, and afforded greater access to, those who spent generously on their political campaign fieldwork or assisted with bundling operations, which involve gathering contributions from multiple individuals or organizations for a candidate. PACs that helped officials get re-elected were able to attract more and more money on their own behalf in subsequent elections by virtue of their success. They could thus offer an increasing amount of financial support to lawmakers over time and, in turn, earn even greater leverage. Experts universally cautioned that 501(c)(4) organizations and PACs are expensive and time consuming to manage effectively.

4 Galvanize coalitions to achieve short-term goals. Coalitions can be useful vehicles to aggregate the diverse elements necessary for an effective advocacy campaign. This is especially true when one organization does not have the requisite components necessary to execute an advocacy campaign alone. These components include a strong research capability, stakeholders in key states, access to targeted administration officials, a politically connected community with national leaders, a respected voice and clout, media access, staff expertise, and the means to support or oppose candidates for office.

Successful coalitions tend to form around a specific issue at a given moment and then disband or retool for the next issue. Retooling increases the likelihood that an advocacy campaign will succeed when there are intentional actions in response to new information,

a changing environment, or other circumstances that call for a prudent response. To some extent, coalition membership can evolve organically over time. New members may join. Others may depart due to limited resources, changing priorities, the chance of success, or for other reasons. However, successful advocates are more deliberate about coalition membership, opting for a more strategic and a less organic approach.

Many groups reach for natural allies within a field of practice or look to those who share similar ideological perspectives. Inviting "unlikely bedfellows" can help a coalition in several ways. It may help validate a policy position and attract greater interest from lawmakers and the media. Working with unlikely alliances may also allow an organization to advance its mission in a politically difficult climate. When the Republican Party controls Congress, for example, a progressive organization may encourage its more moderate and conservative partners to represent the coalition.

The Patriots Defending the Bill of Rights coalition offers an example. The bipartisan coalition was founded by the ACLU, which is known as a progressive organization, and included organizations on the political right such as the American Conservative Union. Conservative coalition members took the lead on reaching out to Republican offices and helped to provide political cover for public officials when needed.

CHARACTERISTICS OF EFFECTIVE COALITIONS

While much has been written about what it takes for coalitions to thrive, this study revealed four cornerstones regarding coalition work that have the potential to enhance significantly the ways in which sector organizations advocate. They include:

>> A strong leading or convening organization responsible for managing the structure, flow of information, resources, and strategy and that also provides stability for the larger group. The coalition is best positioned when the leading organization and other groups have engaged in significant building activities referenced earlier, either individually or

CORPORATE-ORGANIZED COALITIONS

Being perceived as a broad lobby for the public good is always preferable to being perceived as motivated by self-interest. This lesson, gleaned from corporate policy experts, can lead private-sector coalitions to recruit nonprofit allies and can be applied to nonprofit coalitions. A recent effort related to Internet access provides a case in point. In October 2009, the Federal Communications Commission adopted net neutrality rules that would limit the ability of Internet service providers to slow or block access to sites.

Instead of creating their own advocacy campaigns, AT&T and other telecoms launched "Hands Off the Internet," a coalition to oppose the new rules. It included civil rights organizations determined to ensure low-income populations and communities of color retained access to broadband. The convergence of these groups around a shared interest gave "Hands Off" a high degree of credibility that otherwise it might not have enjoyed.

collectively.[8] Leading organizations, however, must have the ability and willingness to discern what roles can be played most productively by others. Such decisions, for example, might include when to involve a neutral third party to facilitate a coalition meeting or when to recruit a credible community leader to serve as the spokesperson.

- The coalition should be united by a clear vision and a shared understanding of the compromises that the group agrees not to make; this may involve adhering to a strategy of "no compromise" in the beginning of building activities, but may take on quite a different approach in the endgame strategy. These explicit guideposts help individual organizations identify the overlap between the interests of the coalition and their self-interests. Clarity strengthens coalitions, as positions will likely be tested over the course of the advocacy campaign.

- Clear and predictable information and decision-making structures must balance strong, nimble leadership with coalition members having ownership over the group's efforts and autonomy over their own actions. Allowing coalition members some flexibility regarding what actions they are willing to take helps to cultivate buy-in and engagement. When

used conscientiously, transparent decision making can help mitigate disagreements within the coalition.

- The muscle of any coalition lies in the complementary assets each organization brings to the table. Coalitions need members with a variety of different assets (e.g., funding, communications skills, relationships with key lawmakers, etc.), and those organizations must make a commitment to use them for the collective goal. The coalition's strength also depends on engaging individuals who have the skills, authority, and time to participate in the strategy sessions and who are willing to spend the time executing the strategy. This approach ensures that the coalition has the resources and expertise it needs to be powerful.

These cornerstones provide stability, structure, predictability, flexibility, collective knowledge, tools, and the trust necessary for productive, coordinated action.

Research further revealed that successful organizations did not always use coalitions as the key vehicle for policy advancement. Over the course of a long-term advocacy effort and depending on the circumstances, nimble organizations executed their strategies alone, in collaboration with limited partners, or as part of large coalitions. In each case, a thoughtful strategy always determined the methodology – not vice versa. Coalitions were seen to be one of many means to the end goal.

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8. This is a role often played by associations and membership organizations.

⑤ Ensure strong, high-integrity leadership.
Strong leadership is critical to effective advocacy. Individuals at the helm of successful advocacy organizations often display several common characteristics. They demonstrate integrity and transparency, build relationships that reflect a level of trust with colleagues and target audiences, and articulate a compelling vision and mobilize people around it.

INTEGRITY

In this study, two qualities surfaced as key elements of leaders known for their integrity: honesty and sincerity.[9] Being an honest broker of information means sharing reliable, credible information in a transparent manner. This does not preclude being able to keep some information confidential, on occasion, at the request of a public official. But it does mean that all parties believe that they are working to achieve the agreed upon goals and will whenever possible share all relevant information. Because of their integrity, honest brokers are more likely to be able to partner with unlikely allies or manage long-standing antagonisms.

RELATIONSHIPS

Given the primacy of relationships in successful advocacy efforts, it is beneficial for the leader to have access to — and preferably deep relationships with — key public officials, allies, and grass-tops leaders. Active outreach and networking with individuals on different sides of the ideological spectrum, when done openly and transparently, enables leaders to build trust, establish credibility, and take advantage of opportunities to move an advocacy issue forward. By its nature, relationship building often leads to increased visibility of a leader or organization, which may result in the growth of new partnerships or resources.

9. In the context of this report, sincerity refers to an individual's genuine belief in a cause. It involves remaining true to agreed upon principles even when politically expedient to do otherwise. Such leaders pursue an advocacy issue doggedly, in part, because they believe in its merits. Their actions and beliefs are congruous and both reflect the value placed on advancing their cause.

Individuals with a long history of advocacy in a given (or closely related) field are highly valued because of the time it takes to develop enduring connections and the advantages those connections provide. Like compounding interest in a bank, such connections grow increasingly valuable as longer-serving members of Congress not only earn seats on key tax and appropriations committees but also widen their influence with each year of successive seniority. At the same time, the relatively frequent turnover in Congress and successive Administrations means that leaders with shorter tenure can achieve significant goals if they assiduously develop the requisite relationships.

VISION

Successful leaders excelled at motivating staff, volunteers, colleagues, and others to perform at their very best. They did not micromanage their staff (or their partners), but ceded day-to-day management to others. Their role was to convey a steady vision over the long haul, chart a path for accomplishing it, and offer course corrections as needed.

For decades, General Electric (GE) has built a corporate culture based on integrity. The company runs an expansive training program to inculcate its workers with its corporate values and emphasize their employees' role in maintaining GE's reputation as one of the world's most respected companies. GE also holds employees accountable to high standards of integrity. CEO Jeffrey Immelt called it a "one strike and you're out" approach. Even the appearance of dishonesty or duplicity tarnishes GE's reputation. Such behavior is not tolerated.

GE's approach to public policy is driven by Immelt's vision to integrate government relations into all levels of its business. This includes engaging senior and middle managers in developing government relations goals and strategies in an ongoing basis. Another important aspect of GE's advocacy work is building trustworthy relationships with policy makers. GE demands that staff exhibit credibility, reliability, and honesty in all dealings with government officials. Consistent with the corporate culture, GE representatives are counseled not to sacrifice the company's reputa-

tion for a short-term policy gain. Furthermore, GE has become a trusted resource for policy makers because they back their policy work with technical and business expertise. Their positions are well researched, clearly documented, and useful to decision makers. All told, GE has been able to position itself as an honest broker and trusted agent on legislative issues.

A NEW STRATEGIC FRAMEWORK

The five approaches affirm the importance of several elements of advocacy and are well known to effective advocates: clear goals, strong relationships with public officials, productive coalitions, and skilled leaders. However, this study shows that it is not the presence of these elements that matters but rather the consistency with which they are applied, the sophistication of combining them properly, and judgment in knowing when, where, and how to so that will make or break an advocacy campaign.

For example, a common approach to advocacy involves setting goals and planning strategy based on available resources. The long-term approach described here recommends a different model: determining what assets are necessary to achieve a goal and then amassing and mobilizing them over the long term. Another example is the value of "building" activities over time, which may represent a shift for organizations that tend to reallocate resources away from advocacy efforts[10] when they are not actively engaged in a campaign. Similarly, organizations may customize tactics for targeted public officials and re-tool coalitions for each advocacy campaign. However, the extent to which these efforts are informed by deep research into the needs of public officials and the requirements for a successful coalition increases the likelihood of achieving the policy goal.

This strategic framework can help organizations in general — and the nonprofit and philanthropic community in particular — advocate more effectively by executing the

five approaches in concert, when and where appropriate, to help unlock consistent policy success over time. The study underscores the fact that no single model for successful advocacy exists. Each effort must be customized based on the issue and the particular moment in time. Developing an advocacy strategy that is effective requires creative judgment and significant skill to determine which approach is most effective. Effective advocates are opportunistic and nimble, as this assessment repeatedly showed, in adapting to changing circumstances that could further their organization's agendas.

The nonprofit community can advocate more effectively by executing the five approaches in concert.

Even with all these elements and resources in place, the overall political climate can make a particular victory out of reach or just the opposite. The "art" of this process — and one of the primary purposes of this study — is to help advocates understand all of these elements and how to leverage them over time to advance their policy goals. Based on a comprehensive literature review, numerous case studies, and dozens of interviews, this report offers readers insight into those who have perfected the "art and science of advocacy."

The ultimate goal is to help our individual organizations and the greater charitable community become more influential on the issues that affect the quality of life for the millions of people they serve daily.

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10. It is not uncommon for organizations to shift resources because their funders are not willing to invest in the building phases of advocacy.

BEYOND THE CAUSE

THE *Art* AND **science** OF ADVOCACY

ELEMENTS OF ADVOCACY:

ESTABLISH LONG-TERM GOALS

- Building Relationships & Working Closely with Public Officials
- Testing, Targeting, & Communicating Messages
- Responding to the Policy Environment
- Aligning Organizations & Educating Stakeholders
- Securing Resources
- Researching Issues & Developing Policy Solutions
- Exercising Effective Leadership

ACHIEVE GOALS

CAMPAIGN   CAMPAIGN   CAMPAIGN

ONGOING BUILDING

CONTEXT

CONTEXT influences every aspect of advocacy; this includes public opinion, political climate, major events and crises

ONGOING BUILDING is a process where advocates gather resources to marshal the elements of advocacy necessary for successful long-term goals

PRECIPITATING FACTORS emerge from the context and catalyze campaigns

CAMPAIGNS are concentrated periods when advocates are mobilized in pursuit of the goal and leverage elements developed during ongoing building

To achieve long term goals, these elements of advocacy must be developed and sustained through ongoing building. The timing, scope, order, and intensity of campaigns vary depending on the issue and context.

INDEPENDENT SECTOR
A vital voice for us all

LITERATURE REVIEW: ELEMENTS OF SUCCESSFUL NONPROFIT ADVOCACY

One of the most vital roles that the charitable community plays is advocating on behalf of the people and causes it represents in the arena of public policy. Advocacy efforts may take many forms, such as educating elected and appointed officials, testifying before Congress or an official body, participating in a governmental commission or forum, inviting public officials to attend programs or activities convened by an organization or coalition, lobbying lawmakers and administration officials to take a desired action, or mobilizing community members to support a particular policy goal. Such activities may be directed toward government agencies at the federal, state, or local level as well as international bodies such as the United Nations or World Bank. Involvement of charitable organizations in the public square can represent and also engage individuals in public policy decisions that affect their lives and invigorate the democratic process.

The most common type of nonprofit is the public charity or 501(c)(3)[1] organization, a designation that includes hospitals, universities, museums, churches, and human services organizations.[2] These organizations are often identified as service providers and many further their missions by influencing policy, and empowering the consumers of their services and their stakeholders to voice their concerns more effectively.[3] Other nonprofit organizations, such as public interest groups and business leagues, may pursue public policy goals as their primary

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1. The legal designation of this category of nonprofit organizations is 501(c)(3) public charity or private foundation. Public charities are commonly referred to as nonprofits and private foundations as philanthropies or simply foundations. This paper uses these terms interchangeably.

2. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities like get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. For more information on nonprofit advocacy (including the rules governing 501(c)(4) social welfare organizations as well as political action committees) , see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

3. Chao Guo "When Government Becomes the Principal Philanthropist: The Effect of Public Funding on Patterns of Nonprofit Governance," *Public Administration Review* 67, no.3 (2007); Brian O'Connell, *People Power: Service, Advocacy, Empowerment* (New York: Foundation Center, 1994); Kelly LeRoux, "The Effects of Descriptive Representation on Nonprofits' Civic Intermediary Roles: A Test of the 'Racial Mismatch' Hypothesis in the Social Services Sector," *Nonprofit & Voluntary Sector Quarterly* 38, no. 5 (2009).

purpose. [4] As with the corporate sector, the charitable community advocates for or against public policies that govern its work, including particular policies that affect its ability to meet its responsibilities and general policies that affect all employers.

This paper reviews the accumulating body of literature on nonprofit advocacy and provides a summary of scholarly research regarding its antecedents, processes, and consequences. It also examines the various factors that contribute to successful advocacy efforts. With a focus on advocacy by charitable organizations, it addresses the following questions:

- What are the organizational and environmental factors that influence a nonprofit organizations' engagement in advocacy?

- What elements outside of the control of an organization can affect whether or not a policy proposal is adopted?

- What strategies and tactics do organizations use in their advocacy efforts? Which activities are correlated with achieving intended advocacy outcomes?

A major challenge in reviewing this body of literature is the wide range of methodologies and sampling frames, which makes comparing research difficult and generalizing to the entire sector challenging. [5] For example, some studies include only one type of organization such as human services or a limited geography; [6] others include

a range of nonprofits or are national in scope. [7] While this paper attempts to synthesize the literature, it also points out areas where more comprehensive research or analysis is necessary.

Definition and Prevalence

There is no commonly agreed upon definition of nonprofit advocacy. [8] Some authors define it specifically as action by nonprofit organizations to "[plead] for or against a cause or a position" and "address … legislators with a view to influencing their votes." [9] Others define advocacy more broadly to include "grassroots lobbying (encouraging others to contact legislators to support or oppose specific legislation), attempts to influence public opinion, and educational efforts designed to encourage community and political participation." [10] Both definitions describe the ultimate goal as influencing government policy. For the purpose of this study, we define nonprofit advocacy as attempts by nonprofits to influence government decisions through direct and indirect means, including communication with policy makers, grassroots mobilization, and education. [11]

Research varies widely on nonprofits' participation in advocacy activities depending in large measure on how advocacy is defined. [12] For example, charities are required

4. A public interest group is a group that "seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization." Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups* (Princeton: Princeton University Press, 1977).

5. Curtis D. Child and Kirsten A. Gronbjerg, "Nonprofit Advocacy Organizations: Their Characteristics and Activities," *Social Science Quarterly* 88 (2007).

6. Linda P. Donaldson, "Advocacy by Nonprofit Human Service Agencies: Organizational Factors as Correlates to Advocacy Behavior," *Journal of Community Practice* 15 (2007); Jennifer E. Mosley, "Institutionalization, Privatization, and Political Opportunity: What Tactical Choices Reveal About the Policy Advocacy of Human Service Nonprofits," *Nonprofit & Voluntary Sector Quarterly* 40, no. 3 (2011); Jill Nicholson-Crotty, "Politics, Policy, and the Motivation for Advocacy in Nonprofit Reproductive Health and Family Planning Providers," *Nonprofit & Voluntary Sector Quarterly* 36 (2007).

7. Gary D. Bass, David F. Arons, Kay Guinane, and Matthew F. Carter, *Seen but not Heard: Strengthening Nonprofit Advocacy* (Washington, DC: The Aspen Institute, 2007); Child and Gronbjerg, "Nonprofit Advocacy Organizations."

8. Bass, Arons, Guinane, and Carter, *Seen but not Heard*.

9. Bruce Hopkins, *Charity, Advocacy and the Law* (New York: Wiley, 1992).

10. J. Craig Jenkins, "Nonprofit Organizations and Political Advocacy," In *The Nonprofit Sector: A Research Handbook*, ed. by W.W. Powell and R. Steinberg, 2nd ed. (New Haven and London: Yale University Press, 2006): 308; Elizabeth Boris and Rachel Mosher-Williams, "Nonprofit Advocacy Organizations: Assessing the Definitions, Classifications, and Data," *Nonprofit & Voluntary Sector Quarterly* 27 (1998).

11. Elizabeth Reid, "Nonprofit Advocacy and Political Participation," in *Nonprofits and Government: Conflict or Collaboration?*, ed. E.T. Boris and C.E. Steuerle (Washington, DC: Urban Institute Press, 1999), 291.

12. Kenneth T. Andrews and Bob Edwards, "Advocacy Organizations in the U.S. Political System," *Annual Review of Sociology* 30 (2004); J.M. Berry and D.F. Arons, *A Voice for Nonprofits*, (Washington, DC: Brookings Institution, 2003); Mosley, "Institutionalization."

to report to the IRS direct lobbying activities, defined as communication with a legislative body that refers to and reflects an opinion on specific legislation and grassroots lobbying, which involves encouraging members of the public to take action on specific legislation. Only 0.5 – 1.5 percent of charities report this type of activity, according to the Urban Institute.[13] As these numbers suggest, most public charities do not engage in direct lobbying; other studies report significantly higher engagement in advocacy when it is defined more broadly to include not only lobbying but also other types of public policy engagement.

"Strengthening Nonprofit Advocacy Project" (SNAP), a landmark study by OMB Watch, Tufts University, and Center for Lobbying in the Public Interest, explored different advocacy tactics among nonprofit organizations. These activities ranged in scope to include, among other things, testifying at a government hearing, engaging in grassroots lobbying, or educating an elected official. If an organization participated once in such an activity, SNAP counted these organizations among 78 percent (of the 1,7038 participants) engaged in advocacy activities.[14]

In contrast to SNAP, a survey of Indiana nonprofit organizations in 2007 used a narrower definition of advocacy. It found that slightly over one-quarter of nonprofits participated in some form of advocacy. Of this group, one-fifth did not devote any staff or financial resources to advocacy and one-quarter devoted most of at least one type of organizational resource (financial, staff, or volunteer) to advocacy efforts.[15]

Different definitions of advocacy and related terms used in studies appear to have a significant effect on findings. This reflects not only variances in methodology, but also a lack of common understanding among charities about the range of activities that can be considered advocacy-related. In fact, one of the key findings of the SNAP

report was that participants responded very differently to words like lobbying, advocacy, and educating.

Factors Contributing to Nonprofit Engagement in Advocacy

Various factors increase the likelihood that nonprofit organizations will engage in public policy activities. Six factors emerge from the literature:

1. Mission—Most involvement in advocacy is mission-driven. That is, organizations engage in advocacy to further their missions, and leaders are more likely to engage in advocacy if they see it as part of their mission.[16] In these studies, mission does not refer merely to a mission statement but rather more generally to an organization's understanding of its own purpose and function.

   The interaction between mission and leadership is an important factor in advocacy engagement because determining whether advocacy is a part of an organization's purpose is a leadership decision. Advocacy activities are not always empirically embedded in the mission. Examples abound where one nonprofit executive director does not see advocacy as central to mission, while subsequent leaders of the same organization view it as paramount.

2. Organizational Capacity—Organizational involvement in advocacy is highly correlated with its capacity, particularly with regard to financial and human resources.[17] The presence of financial and human resources make possible collective action, while their absence

13. Elizabeth Boris and Jeff Krehely, "Civic Participation and Advocacy," In *The state of Nonprofit America*, ed. Lester Salamon (Washington, DC: Brookings Institution Press, 2002); The Urban Institute, National Center for Charitable Statistics, Core File (2008).

14. Bass, Arons, Guinane, and Carter, *Seen but not Heard*.

15. Child and Gronbjerg, "Nonprofit Advocacy Organizations."

16. Bass, Arons, Guinane, and Carter, *Seen but not Heard*; Berry and Arons, *A Voice for Nonprofits*; Donaldson, "Advocacy by Nonprofit Human Service Agencies."

17. Bass, Arons, Guinane, and Carter, *Seen but not Heard*; Lester M. Salamon and Stephanie Lessans-Geller, *Nonprofit America: A Force for Democracy?* (Baltimore: John Hopkins University Press, 2008); Hillel Schmid, Michal Bar, and Ronit Nirel, "Advocacy Activities in Nonprofit Human Service Organizations: Implications for Policy," *Nonprofit & Voluntary Sector Quarterly* 37, no. 4 (2008).

is among the top barriers to advocacy involvement.[18] Human resources can take the form of staff support,[19] hiring professional lobbyists,[20] or using volunteers. Evidence consistently shows a larger staff and budget is correlated with increased engagement and frequency of advocacy activity.[21] These findings also suggest that larger organizations are able to raise more funds and allocate more resources to advocacy activity.[22]

3. Executive Leadership—Theory and practice have shown that executive leaders play an important role in determining the extent to which an organization may engage public policy activity. Specifically, research has found that organizations with executives that have influence over their boards are more likely to engage in advocacy at both the staff and board levels.[23]

4. Demographic Correlation—The likelihood that a nonprofit organization will engage in advocacy increases with the overlap between the demographic composition of an organization's leadership and those who either use the organization's services or are represented by it. A study of nonprofit service organizations shows that when organizational leadership is more racially reflective of the clientele it serves or represents, nonprofits display increased efforts to engage in four civic intermediary activities: political

representation,[24] education, mobilization, and assimilation.[25] Similarly, the scope and intensity of nonprofit advocacy is correlated with the degree to which service recipients also are on the organization's board; there is active communication with those who use its services and the level of clientele involvement in strategic decision making.[26] While these studies show correlation between these factors, they do not prove the causal direction of whether service user's involvement at the board level leads to increased advocacy or vice versa.

5. Area of Focus—As might be expected, an organization's subject area affects its engagement in advocacy. Nonprofits in fields that are subject to greater influence by government and regulatory institutions exhibit high levels of advocacy involvement. Several state studies have found increased advocacy among certain focus areas. Studies in Indiana, California, and Arizona found that organizations representing the environment and animals, health, and mutual benefit or rights groups are associated with the increased scope and intensity of advocacy activities.[27]

6. Technology and Social Media —An organization's access to key information technology tools is strongly correlated with advocacy engagement.[28] Such tools enhance a nonprofit's ability to perform advocacy more effectively. In recent years, social media such as blogs, Twitter, and Facebook have introduced new convening platforms for organizations to facilitate relationship building and stakeholder engagement. The benefits of using social media for advocacy include strengthening an organization's outreach ef-

18. Andrews and Edwards, "Advocacy Organizations."

19. Donaldson, "Advocacy by Nonprofit Human Service Agencies"; L.P. Donaldson, "Developing a Progressive Avocacy Program with a Human Services Agency," *Administration in Social Work* 32, no. 2 (2008).

20. Margaret Gibelman and Steven Kraft, "Advocacy as a Core Agency Program: Planning Considerations for Voluntary Human Service Agencies," *Administration in Social Work* 20 (1996).

21. Bass, Arons, Guinane, and Carter, *Seen but not Heard*; Child & Gronbjerg "Nonprofit Advocacy Organizations;" Jennifer E. Mosley, "Organizational Resources and Environmental Incentives: Understanding the Policy Advocacy Involvement of Human Service Nonprofits," *Social Service Review* 84, no.1 (2010); Nicholson-Crotty, "Politics, Policy;" David F. Suárez and Hokyu Hwang; "Civic Engagement and Nonprofit Lobbying in California, 1998-2003," *Nonprofit & Voluntary Sector Quarterly* 37, no. 1 (2008).

22. William T. Gormley and Helen Cymrot, "The Strategic Choices of Child Advocacy Groups," *Nonprofit & Voluntary Sector Quarterly* 35 (2006).

23. Judith R. Saidel and Sharon L. Harlan, "Contracting and Patterns of Nonprofit Governance," *Nonprofit Management & Leadership* 8, no.3 (1998).

24. According to the study, "political representation" refers to the ways that nonprofits communicate the needs of their clients to public officials.

25. LeRoux, "The Effects of Descriptive."

26. Chao Guo and Gregory D. Saxton, "Voice-in, Voice-out: Constituent Participation and Nonprofit Advocacy," *Nonprofit Policy Forum* 1, no. 1, Article 5 (2010), doi: 10.2202/2154-3348.100.

27. Child & Gronbjerg "Nonprofit Advocacy Organizations;" Suárez and Hwang; "Civic Engagement;" Guo and Saxton, "Voice-in, Voice-out."

28. Gibelman & Kraft, "Advocacy as a Core;" John G. McNutt and Katherine M. Boland, "Electronic Advocacy by Nonprofit Organizations in Social Welfare Policy," *Nonprofit & Voluntary Sector Quarterly*, 28, no. 4 (1999); Child & Gronbjerg "Nonprofit Advocacy Organizations."

forts, contributing to community building by engaging feedback loops, and facilitating collective action efforts by increasing the speed of communications. However, studies indicate that nonprofit advocacy organizations have yet to realize the full potential of social media.[29] For example, one study found that social work organizations rarely use social media for public policy advocacy,[30] while research on environmental organizations in Canada showed these groups were not taking full advantage of social media's ability to contribute to constituency engagement and relationship building.[31] Notably, these studies focused on the uses of social media (or lack thereof), not the correlation between the social media and public policy outcomes.

Contextual Factors

Contextual factors refer to aspects of the external environment in which an organization operates and the particular circumstances surrounding a public policy issue. The literature explores a range of factors that can affect organizational engagement in advocacy as well as the policy outcomes.

1. Policy Windows—An influential study from 1984 identified "policy windows" as agenda-setting opportunities that play a crucial role in moving policy issues onto formal government agendas.[32] A policy window might open unexpectedly in conjunction with a crisis or from cyclical events such as elections or budgetary cycles. These windows can have a significant impact on policy activity—both the heightened engagement surrounding an issue and the ultimate outcome. Even though this research is nearly 30 years old, its findings endure: Advocates can use policy windows to their

advantage by leveraging existing government processes or public reaction to support a cause.

2. Opportunities and Threats—Political scientists use a framework based on opportunities and threats to identify the following contextual factors that influence an organization's advocacy activity:[33]

   • Nonprofits are motivated to engage in advocacy when there is a threat from the government to limit their ability to deliver on their mission and/or when they perceive their advocacy efforts likely to succeed.[34]

   • Organizations are more likely to lobby when lawmakers signal support and offer opportunities; they are less likely to lobby when such signals and opportunities are absent.[35]

   • The amount of conflict surrounding the particular issue is an important factor in determining the level of advocacy activity organizations conduct. When controversy or a partisan divide characterizes a policy issue, nonprofit advocates are more likely to lobby more aggressively and/or mobilize grassroots followers in pursuit of their policy goals.[36]

   • The presence of allies or opponents within the community of advocates and interest groups working on a particular issue affects decisions regarding whether and how intensively to lobby. Indeed, if advocates expect a vocal opposition to their issue, they are more likely to engage in direct lobbying.[37]

3. Government Funding—Studies report conflicting findings on the overall impact of government funding on a nonprofit organization's advocacy efforts. Several studies have shown that government funding has

29. Heather R. Edwards and Richard Hoefer, "Are Social Work Advocacy Groups Using Web 2.0 Effectively?" *Journal of Policy Practice* 9 (2010); Josh Greenberg and Maggie MacAulay, "NPO 2.0? Exploring the Web Presence of Environmental Nonprofit Organizations in Canada," *Global Media Journal, Canadian Edition* 2, no. 1 (2009).

30. McNutt and Boland, 1999.

31. Greenberg and M. MacAulay, 2009.

32. John W. Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown, & Company, 1984).

33. Gormley & Cymrot, "The Strategic Choices."

34. Nicholson-Crotty, "Politics, Policy."

35. Sydney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (New York: Cambridge University Press, 1998).

36. Thomas Gais and Jack Walker Jr., "Pathways to Influence in American Politics," In *Mobilizing interest groups in America,* edited by J. Walker, Jr., 103-121 (Ann Arbor: University of Michigan Press, 1991).

37. Thomas Holyoke, "Choosing Battlegrounds: Interest Group Lobbying Across Multiple Venues," *Political Research Quarterly* 56 (2003).

little to no effect on nonprofit advocacy. [38] A study conducted in 2004 found the impact of government funding on nonprofit advocacy is "either positive or null." [39] It described several reasons why government-funded organizations engage in public policy activities, including the need to protect the public funding streams that support its work and because public officials and public sector agencies may be dependent on information from the organization.

In contrast to these findings, studies from 2007, 2008, and 2010 suggest that significant funding from government sources decreases advocacy activity for a number of reasons. [40] First, resource dependence theory assumes that organizations become dependent on their environments for critical support and respond to the demands of those who control these resources. More specifically, if a nonprofit is dependent on government financial support, it may be less likely to participate in advocacy for fear of jeopardizing funding streams. Second, reliance on government funding might also "[redirect] organizational attention, energy, and resources away from political activity and toward administrative activities made necessary by government funding." [41] Finally, organizations are not permitted to engage in select advocacy activities with government funds and may lack the supplemental resources to fund such efforts.

Worth noting is a 2009 study that explored the way nonprofit service providers may shift their advocacy efforts. [42] It found that a nonprofit organization that receives government funds may bolster its efforts to secure government contracts in order to safeguard its funding stream. Doing so, the study showed, took place at the expense of other forms of advocacy, including issue advocacy tied to an organization's mission. Said differently, nonprofit recipients of government support may advocate to solidify federal budgetary appropriations more readily than pursuing public policy change that might benefit the programs it delivers or the people it serves. [43]

Predictors of Policy Outcomes

Research has identified several factors within the public policy landscape that are correlated with the likely success of achieving desired policy outcomes. A study on the effect of the lobbying environment on policy outcomes summarizes the predictors of policy outcomes in this way: [44]

1. Level of Conflict—Members of Congress and executive branch officials are less likely to act on a policy proposal if it is surrounded by conflict. [45] In such cases, the increased likelihood of scrutiny and criticism from disgruntled constituents and interest groups provide a disincentive for policy makers to act on controversial issues. Conversely, policy makers are more likely to act on an issue that is not mired in conflict. [46] (These findings seem to contradict studies cited under "Contex-

38. Child and Gronbjerg, "Nonprofit Advocacy Organizations."

39. Mark Chaves, Laura Stephens, and Joseph Galaskiewicz, "Does Government Funding Suppress Nonprofits' Political Activity?" *American Sociological Review* 69 (2004).

40. Child and Gronbjerg, "Nonprofit Advocacy Organizations;" Guo and Saxton, "Voice-in, Voice-out;" Schmid, Bar and Nirel, "Advocacy Activities."

41. Chaves, Stephens, and Galaskiewicz, "Does Government Funding," 296.

42. Colleen M. Grogan and Michael K. Gusmano, "Political Strategies of Safety-net Providers in Response to Medicaid Managed Care Reforms," *Journal of Health Politics, Policy & Law* 34 (2009).

43. Ibid.

44. Amy M. McKay, "Negative Lobbying and Political Outcomes," *American Politics Research* 40, no 116 (2012).

45. Frank R. Baumgartner and Beth L. Leech, "Issue Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics," *Journal of Politics* 63, 4 (November 2001); Frank R. Baumgartner and Beth L. Leech, "The Multiple Ambiguities of "Counteractive Lobbying," *American Journal of Political Science* 40, 2 (May 1996); James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989).

46. Baumgartner and Leech, "Issue Niches."

tual Factors: Opportunities and Threats," earlier. See footnote for a possible explanation.[47])

2. Majority Preferences—The pluralist-majoritarian theory of policy adoption argues that the policy position expressed by the largest number of lobbyists, public comments, and advocates will ultimately win over those with fewer or less active supporters. Studies cite multiple examples of this factor: that is, a direct correlation between the relative number of advocates and success in achieving a policy goal. [48]

3. Resources—The level of resources behind a particular issue can also affect the likelihood of achieving a policy goal. Studies suggest two explanations: public officials—especially elected officials—may feel especially beholden to wealthier interests and additional resources can support more effective advocacy strategies.[49] Some researchers argue that the resource imbalance between corporate and nonprofit interests can lead to situations where well-resourced business interests are more likely to achieve their policy goals compared to public interest groups with fewer resources.[50]

4. Institutional Influences—The support or opposition of a presidential administration plays a significant role in a policy's ultimate outcome. According to McKay's 2010 study (based on a data set of 776 lobbyists working on 77 policy proposals), a proposal with presidential support was 33 to 38 percent more likely to pass than other proposals. McKay notes that other institutional factors such as congressional polarization or whether a proposal was initiated by a federal

agency also affect policy outcomes. For example, proposals initiated within federal agencies are more likely to become law, while congressional polarization decreases the chances that a proposal be adopted. [51]

Another predictor of policy outcome is a built-in disincentive for change. Policy windows, threats, and opportunities all occur within our national system of policy making that is biased toward the status quo.[52] A recent study found, in general, that it takes 3.5 lobbyists working for a new proposal to counteract one lobbyist working against it.[53]

Advocacy Tactics

Advocacy tactics are the specific actions designed to advance certain policy positions. Below are eleven such activities noted in the literature describing the scope of nonprofit advocacy.[54]

1. Research—analysis or research on specific legislation or broad social or political problems

2. Media advocacy—working for policy change through communications messages in existing media outlets such as press releases, media events, letters to the editor, opinion editorials, and relationship-building with editors and journalists

3. Direct lobbying—efforts to influence legislation by persuading policy makers (normally through direct communication with them or their staff) to support a particular position

4. Grassroots lobbying—mobilizing the public and/or local constituencies/stakeholders to support or op-

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47. Gais and Walker's 1991 study found the increased conflict around some policy issues caused nonprofits to lobby more aggressively. As stated here, public officials may be less likely to act on an issue when it is mired in conflict. This raises the possibility that nonprofits choose to lobby more aggressively because they perceive a reluctance on the part of a public official to act. However the authors also suggest that nonprofits may benefit from assessing whether a public official is willing to take action on an issue despite the controversy surrounding it; if not, increasing lobbying efforts may be futile. Gais and Walker, "Pathways."

48. G. David Garson, *Group Theories of Politics* (Beverly Hills: SAGE, 1978); McKay, "Negative Lobbying."

49. Thomas L. Gais, Mark A. Peterson, and Jack L. Walker, "Interest Groups, Iron Triangles and Representative Institutions in American National Government," *British Journal of Political Science* 14, no. 2 (April 1984).

50. McKay, "Negative Lobbying."

51. Ibid, 135.

52. Frank R. Baumgartner, Jeffrey M. Berry, Marie Hojnacki, David C. Kimball, and Beth L. Leech, *Lobbying and Policy Change: Who Wins, Who Loses, and Why* (Chicago: University of Chicago Press, 2009).

53. McKay, "Negative Lobbying."

54. These 11 items were drawn from studies conducted by Reid, "Nonprofit Advocacy;" Marcia Avner, *The Lobbying and Advocacy Handbook for Nonprofit Organizations: Shaping Public Policy at the State and Local Level* (St. Paul: Amherst H. Wilder Foundation, 2002); Guo and Saxton, "Voice-in, Voice-out."

pose specific legislation (this can be referred to as "indirect lobbying")

5. Public events and direct action—strikes, protests, demonstrations, sit-ins, and other public actions

6. Judicial advocacy—working for change through the legal system, such as through class-action or amicus curiae litigation

7. Public education—efforts to inform and educate the public and/or local constituencies/stakeholders about public policy issues

8. Coalition building—working for policy change through formal, ongoing coordination with other organizations

9. Administrative lobbying—influencing the administration through meetings with government officials, commenting on administrative rulemaking, and other efforts related to regulatory activity (this can be referred to "regulatory advocacy")

10. Voter registration and education—efforts to register voters or encourage citizens to vote

11. Expert testimony—providing testimony at committee hearings or similar events, often at the request of a legislative body

Many scholars distinguish between inside and outside strategies. Inside strategies include working within the government system to influence decision makers. These strategies include legislative and administrative lobbying, providing testimony, and participating in policy development. Outside strategies involve sponsoring educational events, working with the media, protesting, demonstrating, and boycotts.[55]

One important strategy that does not receive explicit mention in the list above is the use of grass-tops contacts. This includes identification of individuals (the grass-tops) that have a meaningful connection to a particular public official or a significant public role that is known to the political leader and his/her staff, and mobilizing them to represent a public policy position to that official.

Elements of Success

Existing research has emphasized difficulties evaluating the effectiveness of an organization's advocacy efforts. Although sophisticated tools are available for evaluating the effectiveness of service delivery programs, these tools are often not helpful in evaluating advocacy efforts.[56] In part, this is due to the political context and many other factors beyond the control of any organization and the difficulty establishing a relationship between specific advocacy efforts and intended policy outcomes. Multiple objectives, the intangible long-term impact of advocacy efforts, and the length of time it may take to achieve a policy change all complicate efforts to evaluation advocacy activities. As a result, advocacy evaluation tends to focus more frequently on inputs, outputs,[57] and interim progress rather than ultimate policy outcomes.

Despite these difficulties, researchers and practitioners alike have made efforts to understand and evaluate the factors that contribute to advocacy success. They have identified the following attributes as central to effective advocacy:

1. Staying power—an organization's willingness to maintain a stable, focused presence over long periods of time. The incremental nature of policy making requires that an organization "stay with an issue not just when it's hot, not just for a session or two of Congress, but on an ongoing basis."[58]

2. Expertise—an organization's technical knowledge of the relevant policy issues is critical to maintaining its credibility with both the public and policy makers. Developing such expertise entails building a staff and volunteers (or consultants available to both) who are specialists on the same issues for an extended period and produce analysis based on high-quality, valid research.[59]

55. Gais and Walker, "Pathways;" Gormley & Cymrot, "The Strategic Choices;" Mosley, "Institutionalization."

56. Steven Teles and Mark Schmitt, "The Elusive Craft of Evaluating Advocacy," *Stanford Social Innovation Review* (Summer 2011).

57. Alan Hudson, "Advocacy by UK-based Development NGOs," *Nonprofit & Voluntary Sector Quarterly* 31, no. 3 (2002).

58. Jeffrey M. Berry, "Effective Advocacy for Nonprofits," in *Exploring organizations and advocacy,* ed. Elizabeth Reid and Maria Montilla (Washington, DC: The Urban Institute, 2001), 5.

59. Ibid.

3. Organizing for action–an organization's allocation of scarce resources to staff development and other means to enhance its potential for advocacy. This can include investing in expertise, research, and communications functions.[60]

4. Proactive approaches with diverse partners–an organization's ability to open "lines of communication with many different actors in the policy process" and to try "the full gamut of options open to them."[61] Being proactive is especially crucial among organizations that advocate for changes to the status quo, because of its heavy bias in policy making.[62] Proactive approaches to advocacy that include diverse partners are correlated with effectiveness.

5. Coalitions–an organization's ability to facilitate "explicit working relationships among groups for the purpose of achieving a public policy goal."[63] Coalitions are widely valued as viable venues to advocate.[64] Through coalitions, an organization can obtain valuable resources from strong networks with other organizations or groups in the community and capitalize on resources provided by umbrella associations.[65]

In a 2010 study, Guo and Saxton assessed constituent engagement and emphasized the need to establish governance mechanisms that allow stakeholders to participate in shaping the organization's mission, vision, and strategies.[66] Doing so enables the organization to reflect more accurately constituent interests.[67] However, increased engagement is not without challenges. The speed and agility of an organization's decision making can be affected when more actors are involved, especially when there is a lack of consensus among parties.

Conclusion

Existing research on nonprofit advocacy engagement and outcomes suggest that organizational characteristics and strategy, as well as political context and other external forces, drive success. Internal factors related to advocacy engagement and success include organization characteristics such as mission, capacity, and governance, as well as elements of advocacy strategy such as staying power, level of resources devoted to an advocacy effort, proactive approaches, and the ability to work in partnership with others. External factors shaping successful outcomes include the presence of policy windows, the level of conflict within government, the popularity of the issue, and the support or opposition of the President.

The challenge for advocates is to develop strategy that not only responds to these factors, but also helps shape future conditions that can lead to policy success. In some cases, there may be little an organization can do to affect a particular factor (i.e., the level of conflict in Congress). However, organizations have the ability to influence many of the internal and external factors listed in this paper, especially in the long term. Over time, organizations can alter their governance structures to ensure greater inclusivity or adopt a more proactive approach to policy activities. Successful advocates have also shown that many external factors can be influenced over a long-term horizon. In numerous cases, nonprofits and their allies have created policy windows and opportunities, garnered support from lawmakers and the Administration, and attracted significant resources to a formerly underfunded cause. While this literature review identifies the individual factors correlated with achieving public policy goals, experience shows that the art of advocacy involves managing how to best fit many different pieces together.

60. Ibid.

61. Richard Hoefer, "Highly Effective Human Services Interest Groups: Seven Key Practices," *Journal of Community Practice* 9, no. 3 (2001): 10; R. Hoefer, "Altering State Policy: Interest Group Effectiveness Among State-level Advocacy Groups," *Social Work* 50, no. 3 (2005).

62. Baumgartner, Berry, Johnacki, Kimball, and Leech, *Lobbying and Policy Change*; McKay, "Negative Lobbying."

63. Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups* (Princeton: Princeton University Press, 1977), 254.

64. Bass, Arons, Guinane, and Carter, *Seen but not Heard*; Donaldson, "Advocacy by Nonprofit Human Service Agencies;" Donaldson, "Developing a Progressive Advocacy Program;" Hoefer, "Alternating State Policy."

65. Gibelman and Kraft, "Advocacy as a Core."

66. Guo and Saxton, "Voice-in, Voice-out."

67. Donaldson, "Developing a Progressive Advocacy Program."

BEYOND THE CAUSE
THE *Art* AND SCIENCE OF ADVOCACY

CASE STUDY

HUMAN RIGHTS CAMPAIGN

Executive Summary

The Human Rights Campaign (HRC) was founded three decades ago to promote equal rights for gay and lesbian Americans. Today it is the largest civil rights organization in America working on behalf of lesbian, gay, bisexual, and transgender (LGBT) people. This case study tracks HRC's efforts to improve the lives of LGBT people both inside and outside the nation's capital.

HRC has played a significant role in **legislative successes** that have affected a range of LGBT issues at the federal level, including:

- securing funding for HIV/AIDS research and treatment;

- passage of hate crimes legislation;

- defeat of the Federal Marriage Amendment (an amendment to the Constitution that would have defined marriage as between a man and a woman), and;

- repeal of Don't Ask, Don't Tell (a policy that required service members to hide their sexual orientation if they wished to remain in the military).

Ongoing efforts include working toward the passage the Employment Non-Discrimination Act, which would prohibit employment discrimination on the basis of sexual orientation or gender identity, and the repeal of the Defense of Marriage Act, a federal law that defines marriage as between a man and a woman.

Two **signature strategies** underpin HRC's advocacy efforts:

- normalizing LGBT people in the eyes of the public and;

- focusing advocacy efforts on achievable legislative goals through building relationships with pro-LGBT (or potentially pro-LGBT) federal incumbents and candidates.

The first strategy addresses building public awareness and favorable opinions of the LGBT community. For example, to promote gay-friendly practices in the workplace, HRC launched the Corporate Equality Index, which ranks companies on whether they have LGBT-friendly policies and practices. HRC has leveraged these corporate relationships to build support for legislative action. HRC has also cultivated relationships with the entertainment industry and organizations within the civil rights and progressive community. This cultural advocacy and outreach has allowed HRC to continue to advance its long-term goals even when the political climate in Washington, D.C., has been hostile to gay issues. HRC's second strategy – building relationships and working with federal policy makers – builds on the public awareness efforts described above. For HRC, developing productive relationships with policy makers begins with a deep understanding of their interests and those of their constituents, often including conducting research, polling, and building trust with policy makers and their staffs. From there, HRC works to provide legislators with the political cover necessary to facilitate a pro-LGBT vote, as well the

campaign donations and grassroots campaign support that help to strengthen relationships over time.

HRC's successful government-relations strategy is directly related to what some consider its greatest visible weakness: it views public officials as its primary audience. This ensures that HRC's approach to advocacy prioritizes the needs of the officials and is therefore more likely to lead to the desired policy outcome. However, this approach is not without cost; it has been known to alienate coalition members who may disagree with particular strategies or compromises. Playing the role of arbiter of the "sensible center" has won friends on the Hill, but has at times angered more activist LGBT organizations that oppose what they view as HRC's political compromises.

Criticism from displeased coalition members and other external pressures have not threatened the effectiveness or viability of HRC in part because of the institution's strong foundation. HRC benefits from a diverse and sustainable revenue model, an engaged and committed board of directors, a skilled workforce that includes many long-time staff members, and a history of strong executives.

The organization is positioned for additional success as it continues to work toward increased public acceptance of LGBT people in the public and legislative domains.

HUMAN RIGHTS CAMPAIGN

The Human Rights Campaign (HRC) was founded in 1980 to encourage elected officials to support equal rights for gay and lesbian Americans. Today it is the largest civil rights organization in America working on behalf of lesbian, gay, bisexual, and transgender (LGBT) people and has become a powerful catalyst for social change.[1]

HRC has structured its efforts around two signature and largely sequential strategies: first, normalizing LGBT people in the eyes of the public; and second, focusing advocacy efforts on achievable legislative goals through heeding the needs of pro-LGBT (or potentially pro-LGBT) federal incumbents and candidates. The latter strategy is a natural extension of the organization's origins as a political action committee (PAC); the former strategy developed, somewhat organically, in support of this federal policy goal.[2]

This case study charts HRC's trajectory over the past three decades.[3] It begins with a broad overview of the organization then details HRC's role in helping to shift cultural norms toward a much wider acceptance of homosexuality among the American public, in the workplace, by civil rights organizations, and on Capitol Hill. The study examines HRC's public policy efforts and customized approach to working with targeted lawmak-

ers. HRC's sources of success are detailed throughout the study, including leveraging the resources of its PAC, diversifying funding streams, cultivating deep relationships with federal lawmakers, and maintaining commitment to its advocacy strategy in spite of criticism from would-be supporters.

The study also addresses critiques and issues with which HRC is grappling: coalition tensions, the need for leadership development training for young LGBT activists, more independent research on the harm caused by discrimination, and the benefits of policies counteracting discrimination. Effectively managing these issues will further enable HRC to continue its role as an effective advocate for the LGBT community.

OVERVIEW

History and Major Accomplishments

The Human Rights Campaign started as a PAC in late 1980, shortly after the election of President Ronald Reagan. Then, as now, public policy in Washington, D.C., was shaped primarily by organizing constituent voices to speak out in support for or in opposition to an issue. In this regard, HRC faced a unique challenge because many people did not reveal their sexual orientation due to negative stereotypes, fears about losing their jobs, and other weighty concerns. A gay lobbyist explained that HRC "had a challenge that I'm not aware of any other constituency or issue having … in the last 40 years," because it "represented a community of people and public policy around those people who were untouchable." In part because its constituency was largely closeted, early activists found that many lawmakers viewed gay rights as a fringe issue that was not germane to the core interests of the general public. Indeed, when HRC first formed, and even into the 1990s, many Members of Congress did not believe that gay or lesbian people lived in their districts.

The gay rights movement began to take shape for the most part after the Stonewall riots of 1969. The riots

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1. A transgender person is one who "identifies with or expresses a gender identity that differs from the one which corresponds to the person's sex at birth," Merriam-Webster Dictionary. HRC began considering the interests of transgender people in the mid-to-late 1990s and formally included "T" in its constituency in 2004. Shannon Minter, "How Transgender Issues Have Become Part of H.R.C.s Work," Polare 48, no. 7 (October 2002), http://www.gendercentre.org.au/48article7.htm

2. Political action committees (PACs) are organizations that raise and spend money to elect or defeat candidates for political office. They differ from public charities (formally designated by the IRS as 501(c)(3) organizations), which are prohibited from engaging in partisan and electoral activities. For more information on the difference between these and related types of organizations, see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

3. In preparation for this case study we spoke with HRC's current and former leadership (including almost every executive director in its history), outside observers of the organization, a significant funder, former staff members, board members, and other LGBT activists and leaders. See the Methodology, Appendix D for additional detail.

erupted spontaneously in response to a violent police raid of the Stonewall Inn, a popular gay bar in New York City. LGBT people fought back and launched citywide protest rallies, actions that sparked gay activism and a number of advocacy organizations to promote equal rights. Over the subsequent decade, many of these groups formed the basis of a large and vocal grassroots movement dedicated to gay rights. This movement organized large protests in many cities and helped establish LGBT support systems within communities.

HRC looked to model the successful Washington, D.C.-based advocacy of major civil rights organizations and labor unions by engaging directly with elected officials in Congress and the federal government.

While local activist groups pursued various strategies for social change, HRC looked to model the successful Washington, D.C.-based advocacy of major civil rights organizations and labor unions by engaging directly with elected officials in Congress and the federal government. Its first board members, Democrat and Republican, were almost all affluent white males well-established in their careers. The organization they started reflected their wealth and background as members of a cultural elite who moved, in many cases, in the same circles as some federal elected officials. As one of the organization's early leaders explained, the founders believed that even as people were marching on the streets and practicing civil disobedience, there "needed to be an organization that could be on the inside dealing with Members of Congress."

HRC's founders believed that two activities could help lessen the stigma around gays and lesbians and elevate their influence on Capitol Hill: first, marshaling substantial campaign contributions, and second, changing the public's perception of gay men. In the words of a longtime, gay D.C. resident and political strategist, too often gay men were portrayed in the media as people who "wore leather bikinis and danced on floats in San Francisco,"

rather than accurately reflecting the diversity of LGBT people in all walks of life. As a result, the organization made strategic donations, invested in relationships with federal policy makers, and embraced opportunities in and out of Washington to improve the depiction of LGB—and, later, LGBT—people.

Over the years, HRC was able both to shape and take advantage of the cultural shift that was occurring in American society around LGBT issues. The organization's influence is reflected in snapshots of the speakers at its formal dinners. In 1982, a thousand gays and lesbians listened to Democratic presidential candidate and former Vice President Walter Mondale deliver the keynote address at a black-tie dinner in New York. This marked the first time a national-level politician had openly associated with homosexuals. In 1997, Bill Clinton was the first president of the United States to speak at the organization's annual dinner; President Barack Obama delivered the keynote to more than 3,000 attendees Washington, D.C., in 2009 and 2011.[4]

HRC has experienced its share of setbacks, including the enactment of the Defense of Marriage Act and the repeated failures to pass a comprehensive Employment Non-Discrimination Act. (The former is a federal law defining marriage between a man and a woman only; the latter is a bill that has been proposed in numerous sessions of Congress that prohibits discrimination in hiring or employment based on sexual orientation or gender identity.) On par, however, HRC has a remarkably successful record of achievement.

In its first decades, HRC successfully lobbied (along with other groups, including ACT UP) for funding for AIDS research and treatment and against statutes that would have permitted discrimination on the basis of HIV status. More recently, other significant federal policy achievements include taking the lead on initiatives such as the passage of hate crimes legislation, the defeat of a Federal Marriage Amendment, and the repeal of the military's Don't Ask Don't Tell (DADT) policy.

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4. In 2012, President Obama and Vice President Biden became the first in those positions to publicly announce their support for gay marriage.

Concurrent with its policy efforts, HRC has worked with entertainment and business leaders to change the depiction of LGBT people in the media and improve corporate policies towards LGBT employees. Its rebranding effort, which took place in the mid-1990s, illustrates its success promoting fairness and equality. HRC adopted a new logo—a yellow equal sign on a deep blue background. The mathematical symbol represents the organization's quest for fairness. LGBT people were not to be treated less than other human beings, but equally before the law and among their fellow citizens. The new logo tapped into American ideals rooted in the Constitution and Bill of Rights mandating that all citizens were to be treated equally. Since HRC's rebranding campaign, its logo has become one of the premier symbols of the LGBT community.[5]

Today HRC tops the list of organizations lobbying for civil rights and civil liberties.

Today HRC tops the list of organizations lobbying for civil rights and civil liberties. According to The Center for Responsive Politics, a nonprofit research organization that tracks the influence of money in U.S. politics, HRC has spent more money on lobbying to date in the 2011-2012 election cycle than any other human rights organization.[6] HRC's annual report further notes that it has grown in funding and members nearly every year since it began.

Structure and Governance

As articulated in HRC's mission statement, the organization works to "end discrimination against LGBT

citizens and realize a nation that achieves fundamental fairness and equality for all." It works toward this mission through two structures: (1) the Human Rights Campaign, which includes two arms, a PAC and a 501(c)(4);[7] and (2) the Human Rights Campaign Foundation, a 501(c)(3), which offers public education and coordinates outreach efforts.[8]

In 1985, HRC merged with the Gay Rights National Lobby and formed the largest national gay and lesbian political organization in the country. That entity expanded to include a 501(c)(4) arm in 1989 (although HRC did not receive its first letter from the IRS confirming its 501(c)(4) status until 1991). Today a 36-member board of directors governs HRC's 501(c)(4) operations. The board of directors has ultimate authority over HRC's actions, fiscal management, and official policies.

The HRC Foundation maintains a board with 32 members, some of who belong to the board of directors, and is charged with educational outreach. The foundation funds, in part, seven major programs:

- The Family Project

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5. The rainbow flag is the dominant symbol of the LGBT movement. It originated in the late 1970s as a way to reflect and celebrate diversity within the homosexual community. Hilary Greenbaum, "Who Made That Rainbow Flag," New York Times, March 29, 2012, http://6thfloor.blogs.nytimes.com/2011/06/29/who-made-that-rainbow-flag/

6. HRC has reported spending over $400,000 as of July 31, 2012 in the 2011-2012 election cycle. "Top Contributors, Human Rights," Center for Responsive Politics, http://www.opensecrets.org/industries/indus.php?ind=Q09

7. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited advocacy and lobbying to advance their social purposes, and may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. For more information, see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

8. Unless otherwise specified, "HRC" in this chapter refers to both HRC, the entity that houses the PAC and the (c)(4) and was previously known as the Human Rights Campaign Fund, and HRCF, the organization's affiliated (c)(3) foundation.

- The Historically Black Colleges and Universities Outreach Program

- The Religion & Faith Program

- The Workplace Project

- The Youth & Campus Outreach Program

- The Diversity Program

- The Coming Out Project

HRC's 501(c)(3) work is further informed by six advisory councils: the All Children–All Families National Advisory Council, the Business Council, the Diversity & Inclusion Council, the Healthcare Equality Index Advisory Council, the Religion Council, and the Welcoming Schools National Advisory Council. Advisory council members are leaders in their respective fields who supply unique knowledge and expertise to HRC as it advances LGBT rights.

HRC uses its 501(c)(4)'s board of governors and its 501(c)(3)'s advisory councils to leverage volunteer power in various ways, such as raising funds, mobilizing grassroots movements, and recruiting new members. The 150-member board of governors, which also serves as a pipeline to positions of leadership in the HRC Foundation, is responsible for local outreach. It oversees some 30 volunteer-led steering committees in communities nationwide. These committees organize local membership activities, fundraising events, and political and social outreach efforts year-round. Perhaps most well known are the local chapters' annual gala dinners.

HRC's governance structure, particularly its active and engaged board of directors, has helped the organization weather difficult transitions, create a lasting sense of community, and build a consistent sense of brand. A former leader told us that he appreciated the role the board played during his tenure. "Supporting your leaders in all ways is the responsibility of the board, and I think the HRC board does that better than any. Support meaning raise money, defend when people attack, provide an infrastructure around the country." As a major donor put it, "Board members have three responsibilities … support the mission and the vision, give, and then

replace yourself with someone smarter. Three jobs. And HRC does that terrifically well."

HRC carefully grooms board members for increasing responsibilities. It takes a "carrot and stick" approach to grow board members internally, which helps prevent them from moving to another organization once they are in the door. For example, it may ask a potential board member to run a house party with the promise of next year chairing a dinner and the year after that gaining a seat on the "baby board," or board of governors. Once someone is on the ladder, HRC is savvy and prolific in giving out awards to its developing leaders. In the words of one HRC staff member, "what gets rewarded gets done."

Some have criticized HRC's board as too homogeneous. A long-time observer of the organization described the board as follows: "[T]hey are fantastically rich, privileged business people in the large urban centers of this nation. And their point of view about life is homogeneous. They are deeply mainstream." Further, this homogeneity offers tremendous stability because discussions are not "fractious" (to quote the same source). Currently, HRC has a Diversity and Inclusion Council working to change this perception.

Also noteworthy is the continuity of staff. About 150 individuals are employed by HRC. A number of them have worked at HRC for 10 years or more. Several interviewees commented that staff is a key element of the organization's success. Not only are they very good at what they do, but they also preserve institutional memory through leadership transitions. "You have people who want to be there," a former employee explained. "If you're going to do this kind of work, it's the place to be." Among other benefits, staff stability ensures strong, consistent relationships within their extensive volunteer structure.

Through educational outreach, leveraging volunteers, and successful advocacy work, HRC has grown membership year after year. Over the last decade, the combined number of members (individuals who have donated $5 or more in the last 24 months) and supporters (individuals who have signed up to receive updates and calls to

action) has doubled to approximately 1.2 million. HRC's Facebook page has more than a million online supporters (fans who have clicked on a button stating they "like" the organization).

HRC has also diligently cultivated partnerships with corporate entities. HRC's National Corporate Partners program fosters a mutually beneficial partnership in which HRC encourages the LGBT community and allies to support corporations with high ratings on HRC's Corporate Equality Index (an initiative it launched in 2002 that ranks workplace equality for LGBT people). Some of these relationships are quite formal; for example, American Airlines is the official airline of HRC, and Nationwide is its exclusive insurance provider. Other corporate partners include Citibank, Bank of America, Ernst & Young LLP, Lexus, Mitchell Gold + Bob Williams, Prudential, Deloitte, BP, Caesars Entertainment, Chevron, Google, MGM Resorts International, Nike, Chase, Dell, Goldman Sachs, IBM, MetLife, and Morgan Stanley.

Leadership

HRC has benefited from several strong presidents/CEOs who have increased membership, expanded funding, and built an impressive record of steady accomplishments over the years. These leaders, for the most part, have been dynamic, respected, and successful in moving the organization forward. Among others, they include Tim McFeeley, who organized grassroots telegram campaigns back in the pre-Internet era, and Joe Solmonese, who strengthened HRC's role in and impact on electoral politics.

Solmonese, the immediate past president, took office in 2005 and presided over the largest electoral advocacy effort in the history of HRC when in 2008 HRC helped elect more than 200 pro-equality congressmen and women. He oversaw HRC's efforts that led to the repeal of DADT as well as the passage of the Matthew Shepherd and James Byrd, Jr., Hate Crimes Prevention Act. A global trade association that ranks marketing and communication efforts, the Direct Marketing Association, rated HRC nonprofit of the year in 2011.

The same instincts and acumen that make advocates successful in politics—in particular, vision and diplomacy—serve them well as not just leaders, but also as communicators. HRC's executive leadership has sought to provide a media-friendly face on behalf of the organization. A former employee emphasized the role that HRC's leaders have had in changing the American public's impression of gays and lesbians. "You had leaders who seemed corporate. … You go on TV, you always wear a tie. You smile. … [You] always speak in a very connective way." These qualities have helped HRC's leaders gain acceptance for the organization and advance the interests of the larger LGBT community.

Solmonese stepped down from the presidency in June 2012, and Chad Griffin became the new face of the organization. A seasoned political consultant, Griffin is a veteran of the Clinton White House. He is the founder of American Foundation for Equal Rights, the organization leading the legal fight to overturn Proposition 8 in California. The 2008 ballot measure banned gay marriage in the state by restricting marriage to a man and a woman, overturning a state supreme court decision recognizing marriage equality.

Funding

HRC's success in diversifying and generating revenue provides the organization financial stability and strength to support its long-term goals. Its budget has increased nearly every year since HRC was founded. Combined funding for HRC and HRC Foundation grew from $6.3 million in 1994 to $41 million in 2011 (see Figure 4.1).

HRC attracts revenue by deliberately cultivating diverse funding streams (see Figure 4.2). In 2011, membership contributions made up approximately 40 percent of the combined (HRC and HRC Foundation) funding, major donors 22 percent, special events 13 percent, corporate and foundation support 9 percent, and merchandise sales 4 percent, with other items such as investment interest, bequests, and in-kind donations making up the rest.

HRC pays careful attention to its treatment of donors and members, with a focus on professionalism, informa-

FIGURE 4.1

COMBINED HRCF/HRC FUNDING: 1994–2011

Source: Human Rights Campaign, available at http://www.hrc.org/the-hrc-story/annual-reports
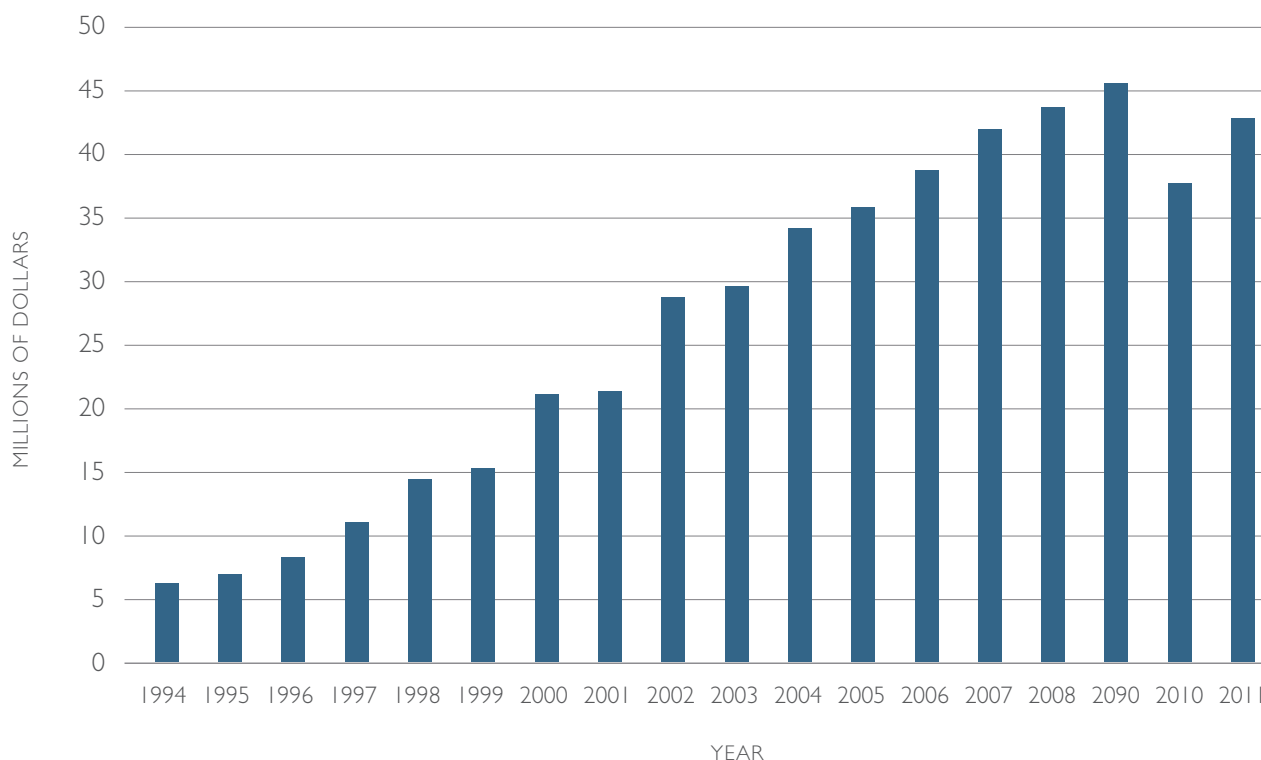
tion-sharing and relationship building. A grantor told us that, "Their materials to a funder are always very well-prepared. They know who you are. They've done their homework. … They ask nicely. … There's no defensive-ness. …. When they have successes in a program during the year, they let you know about it, but they don't hit you over the head with it." A former employee noted that HRC's donors are not significantly affected by critiques from other organizations or individuals because of HRC's diligence in communicating with donors and meeting their needs through professionalism, formal events, and organizational effectiveness. In addition, HRC's revenue model provides the organization both freedom and flexibility. The diversification of revenue means the organization is not beholden to any individual funder. Furthermore, associations and advocacy groups often depend on coalition participants for membership

revenue. HRC is not burdened by that dynamic and is able to diverge from coalition partners without risking its financial health.

Location

HRC is headquartered in Washington, D.C., where it owns a building in central downtown that bears the HRC logo and mission statement on its face. Its proximity to the White House, a half dozen blocks away, suggests a measure of gravitas and reinforces its identity as an organization with Washington-insider status. It also maintains a presence outside of the capital through 30 steering committees and its retail stores in San Francisco, California, and Provincetown, Massachusetts.

HRCF/HRC COMBINED SOURCES OF INCOME, 2011
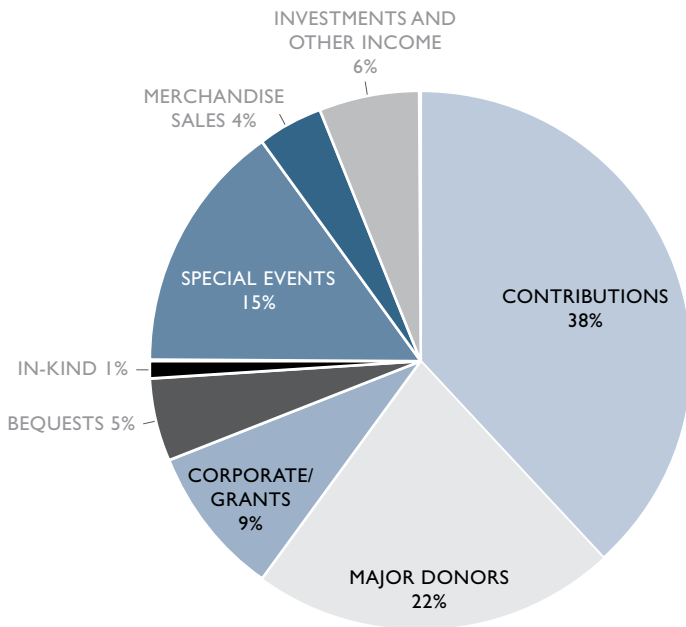
Source: Human Rights Campaign, available at http://www.hrc.org/the-hrc-story/annual-reports
Note: "Contributions" refers to individual contributions. This is how HRC lists this revenue source in their annual report.

THE CULTURAL STRATEGY: A PUSH FOR ACCEPTANCE

HRC has established itself as the preeminent LGBT organization in the country, even beyond Washington, D.C. HRC has successfully driven the cultural shift on homosexuality and used that same shift to increase awareness of LGBT issues. HRC has made inroads for itself and LGBT people in key communities using two complementary strategies: a push for normalization and a focus on advocacy efforts with achievable legislative goals through building relationships with federal elected officials. This section describes the first strategy.

It should be noted that the cultural component of HRC's work developed over time in support of the organization's federal policy agenda. As a former leader of the or-

ganization explained, "We always knew [that] the more visibility we [LGBT people] had, the easier it was going to be." Thus, whereas HRC's efforts with Hollywood and Fortune 500 companies have focused on acceptance of all LGBT people, its outreach to the Hill and the larger civil rights community has also advanced the organization's credibility. Consistent with its legislative approach, HRC's efforts to reach these groups, and to change the views of the American public, have demonstrated a deep awareness of the audience to which it is speaking and what it takes to move that audience.

HRC's cultural advocacy work allowed it to advance its long-term goal even when the political climate in Washington, D.C., was hostile to gay issues by using grassroots inroads as a foundation for future policy victories. HRC was not responsible for Ellen DeGeneres's public "coming out" in 1997 or for "green lighting" Will & Grace, a sitcom about the friendship between a gay man and a straight woman that began in 1998. However, HRC capitalized on these story lines to build grassroots support for future years with friendlier Congresses (the next section outlines its legislative strategy).

Acceptance by the American Public

HRC's work to normalize LGBT people in the view of the American public has been a process of recognizing and developing opportunities. It learned early on to work in tandem with current events, most notably through its experiences in the 1980s with the AIDS crisis. Because the PAC had launched with a civil rights mission, a few of its founders initially did not see HIV/AIDS as an issue of LGBT equality and feared the disease would further stigmatize gay men and the entire community. It was quickly clear that the disease was a community-wide crisis and that HRC had to respond. AIDS was devastating for the gay community, but many believe that the disease also ultimately helped curb anti-gay sentiment. The illness elicited a sympathetic response from many. Caring about the welfare of people stricken by AIDS was, in the words of a former HRC leader, "a basic act of human decency" that helped lessen, even eliminate, some people's prejudices. The AIDS crisis also brought people out of the closet, both victims of the disease—causing many to

reassess assumptions and stereotypes about homosexuality—and funders for the PAC. An early leader of the organization recalled that HRC began to hear from "a lot of wealthy, well-to-do gay men and even lesbians … whose money protected them from discrimination, [but it] couldn't protect them from the virus."

HRC learned early on to work in tandem with current events.

The work of HRC and other organizations to raise public awareness of AIDS helped them successfully lobby for significant federal funding for HIV/AIDS research in the Ryan White CARE Act of 1990. This work spurred cultural change as well. On the first anniversary of the 1987 National March on Washington for Gay and Lesbian Rights, a California organization began National Coming Out Day. This initiative (which HRC took over in 1990) eventually led to the formation of HRC's Coming Out Project, which provides support and counsel for LGBT people who want to "come out of the closet" and make their families, friends, and colleagues aware of their sexual orientation or identity. An early leader of HRC opined that these efforts might be the organization's greatest legacy in shifting public attitude toward homosexuality, because "there's nothing more powerful in changing people's hearts and minds about gay people than the simple act of coming out." The leader's point was that knowing someone who is lesbian, gay, bisexual, or transgender demystifies the status and allows one to see an individual's sexual orientation or gender identity in the context of the whole person.

HRC also sought to harness the power of the entertainment industry to promote awareness and understanding of LGBT people. It reached out to gay producers, writers, and actors; it cultivated relationships with them, honored them at dinners, and sought their input on LGBT issues. Through its contacts, HRC was able to influence the national conversation about LGBT people. It pitched stories on issues such as nondiscrimination, hate crimes, and HIV/AIDS to shows such as West Wing. It used its access to promote the organization. HRC ran a prominent ad during the episode of Ellen where Ellen

DeGeneres's character comes out. Its logo appeared on the bookshelf in Will's living room on the main set in Will & Grace, a fortuitous result of the friendship between executives on the show and HRC board members.

The goal, a former HRC communications staffer told us, was to create a positive impression of the LGBT community. Having gays and lesbians in the living rooms of everyday Americans who thought that they didn't personally know anyone LGBT, shattered stereotypes and undermined the false claims of anti-gay activists and political leaders. Demonstrating its skill at seizing an opportunity to change perceptions about LGBT people, HRC appointed Ellen's mother, Betty DeGeneres, as the first heterosexual national spokesperson for its Coming Out Project.

Acceptance in the Workplace

Homophobia, transphobia, and prejudice can significantly impact LGBT people in the workplace. In more than half of states, employees can be fired on the basis of their sexual orientation or gender identity. Policies ranging from health insurance coverage to domestic partner benefits affect LGBT employees' productivity and pocketbooks.

To promote gay-friendly practices in the workplace, HRC launched the Corporate Equality Index (CEI) in 2002. It ranks Fortune 500 (and, more recently, Fortune 1000) companies on whether they have LGBT-friendly policies, environments, and practices—from nondiscriminatory hiring and partner benefits to inclusive advertising. The results are announced annually with considerable media attention. Anyone visiting the HRC website can search the CEI or quickly download a user-friendly version of the CEI, the HRC Buyer's Guide.

The CEI's impact has been significant: more businesses participate every year and aim to achieve top ratings. In 2002, for instance, 89 companies participated in the voluntary survey, which then had only seven questions. Thirteen companies achieved the top score of 100 percent. In 2012, 636 companies voluntarily participated in the survey, and 190 workplaces achieved a perfect score, including 10 of the top 20 Fortune-ranked companies.

The 2012 CEI report also shows that 50 percent of Fortune 500 companies have, for the first time, included gender identity in their nondiscrimination policies.

The criteria have become increasingly stringent over the years, including the most recent revisions, which require companies to improve transgender health benefits. Fewer employers have achieved perfect or near-perfect scores. According to HRC, the number of employers surveyed who offer domestic partner benefits has increased 76 percent since the survey was launched. Most observers attributed these changes at least in part to the CEI, which reminds competitive employers of the LGBT community's market power. Some with whom we spoke suggested that HRC has had the greatest affect on the lives of LGBT constituents not through its work on Capitol Hill but through its work with corporations to change corporate culture.

Through the development of the CEI, HRC has developed strong relationships with major corporations. The CEI has opened doors by providing the means for HRC staff to start substantive conversations with corporations. As a result of the survey, HRC has consulted with a number of companies about their workplace policies and provided diversity training to staff members. HRC has successfully leveraged these corporate relationships to garner support for its policy priorities at both the state and federal level. Indeed, the CEI's public engagement criterion can be met through such actions. HRC has formed business coalitions in support of the Employment Non-Discrimination Act and for equal tax treatment of domestic partnership benefits. In states that have adopted marriage for same-sex couples, the support of local companies for those efforts, and their willingness to contribute to ballot measure campaigns, has been an important component for success.

At the same time, the CEI provides an objective measure that can be applied to poor performing companies. This has strengthened HRC's hand when they challenged companies that do not address LGBT issues or do so in a negative way. One example is ExxonMobil. Prior to their merger, Mobil provided domestic partnership benefits for its employees and had a nondiscrimination

policy. The combined company adopted Exxon's policies, which are less supportive of LGBT employees. HRC has called out ExxonMobil through shareholder resolutions and public criticism, criticism made stronger since the CEI allows for a fair, objective comparison to other major U.S. corporations.

As a result of the CEI and HRC's work around it, corporate America is in the vanguard of sectors that provide LGBT-friendly benefits. "That's a terrific message to send, and really nobody could have done it other than HRC," a longtime observer of the organization and follower of the movement told us.

Acceptance by the Civil Rights and Progressive Community

Within Washington, D.C., HRC has worked to develop not only its relationships with federal policy makers, but also its relationships with other influential participants in public policy discussions around civil and human rights. Interviewees noted that the organization works, for the most part, extremely well with other national organizations that focus on civil rights issues. (In contrast, some people inside and outside HRC were more critical of its coalition work with the LGBT community, as described in the section below.) HRC sits on the executive committee of the Leadership Conference on Civil and Human Rights (LCCHR), a national nonprofit organization that like HRC has both a 501(c)(3) and 501(c)(4) arm that engages in federal advocacy on behalf of its more than 200 members.

HRC developed relationships with prominent civil rights groups at the same time—and often at the same gatherings—where it was also courting federal elected officials. For example, HRC staff met many leaders in the Washington civil rights community and national policy makers at PAC events they were all attending. Former HRC lobbyists told us that access to the civil rights leaders at a PAC event was almost as valuable as the access to elected officials. Two elements have helped HRC make inroads among progressive national organizations. First, HRC makes a point of being a good coalition partner to national-level peer organizations. It provides funding

and logistical assistance when needed, it is deferential to other coalition partners, and it attends meetings. Its relationships and experience provide coalition members with insights and connections that they may otherwise lack. Furthermore, it does not publicly insist that national human rights organizations take controversial positions on its behalf.

Second, external events have helped draw out natural sympathies that left-of-center organizations may have already had for HRC's mission. The AIDS crisis sparked calls to action and public campaigns by both gay and straight activists. Likewise, in the mid-1990s the issuance of the military's Don't Ask Don't Tell policy and the passage of the Defense of Marriage Act created both a need and an opportunity. These events drew attention to LGBT issues and inspired other progressive groups to support HRC by sharing contact and email lists of potential supporters and organizing local initiatives to raise awareness.

Because there is no other LGBT national organization the size and scope of HRC, it is often viewed by smaller, single-issue LGBT groups as the 1,000-pound gorilla. Coalition partners sometimes feel that HRC's voice and resources give its views too much weight and that coalition agreement is not a priority for HRC. While no one at HRC doubts the importance of working in coalition, different views exist within HRC about the amount of resources that should be devoted to coalition work and when consensus should be a priority. Consequently, even while it participates in many LGBT coalitions, HRC will sometimes work on a parallel, independent track when advancing key legislation or policy changes.

Acceptance on Capitol Hill

HRC's strategy of positioning LGBT people—and itself—as convivial, supportive partners merges with its strategy of affecting federal policy in its work on Capitol Hill. One of HRC's early leaders explained that from the start HRC sought to position itself as "an organization that members of Congress could feel confident that they could work with and that they could rely on." In practical terms, this meant providing "friendly" politicians with

steady support and counsel that balanced the goals of achieving LGBT equality with political realities.

As described in detail in the following section, HRC gained acceptance in Washington through careful cultivation of relationships and a deep understanding of the political process, including compromises that the process may require. The organization has so successfully branded itself with federal policy makers that one of its former lobbyists told us that it is "the default gay organization" for Members of Congress; it is the primary organization that political leaders consult on issues affecting the LGBT sector; and its endorsement is the one LGBT-friendly politicians actively seek out. As a longtime supporter and observer of the organization explained, "To Harry Reid, HRC is the LGBT world."

THE LEGISLATIVE STRATEGY: MOVING FROM ACCEPTANCE TO ACTION

HRC has played a significant role in every federal public policy debate affecting the LGBT community since its inception. While some struggles are ongoing, many of its efforts have been successful.[9] The path to victory was often fraught with difficulties, however. As with its strategy around acceptance, HRC's approach to federal advocacy was inchoate in the early days and developed organically as the organization engaged with policy makers at the federal level. Even as its approach evolved, HRC focused its advocacy efforts on achievable legislative goals through building relationships and cooperation with pro-LGBT (or potentially pro-LGBT) federal incumbents and candidates —not constituents or other LGBT organizations—as its key audience in order to achieve its policy goals.

The following section describes HRC's pursuit to build relationships with federal policy makers and achieve favorable federal policy outcomes for LGBT people.

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9. Ongoing struggles include passage of a comprehensive Employment Non-Discrimination Act (ENDA) and repeal of the Defense of Marriage Act (DOMA).

Political Activity

HRC initially found many doors on Capitol Hill closed because of perceived homophobia and anti-LGBT public opinion. Two developments helped open those doors. The first, as discussed earlier, was the AIDS epidemic, which aligned the interests of the LGB community with larger public health goals and demonstrated the size of the constituency. Second, even before the AIDS crisis unfolded, HRC was gaining acceptance thanks to its PAC. Indeed, interviewees both inside and outside HRC traced its influential status on Capitol Hill to its origins as a PAC.

The PAC brought HRC many benefits. In the early days, it served as a way for HRC to demonstrate the size and strength of its constituency and its political ambitions; by the 1982 elections it was the 17th largest PAC in the country. (It donated $140,000 to 118 political candidates, 81 percent of whom won.) HRC's PAC also provided an early vehicle to identify LGB voters around the country. HRC's ability to raise and spend political money meant that it could attend fundraising events, where its lobbyists could meet elected officials and their staffs. A former lobbyist noted that PAC events for a single politician often attracted other elected officials, policy makers, and nonprofit leaders that were sympathetic to HRC's mission; thus, PAC events were crucial to providing HRC introductions across the federal policy world.

Last, and perhaps most salient, the PAC opened doors to federal elected officials running increasingly expensive campaigns and appreciative of the tangible support that PAC donations provided. Former HRC staff explained that the availability of these funds made politicians more open to learning about HRC's issues. Once members of Congress got to know HRC staff, they found that they were sophisticated advocates with a long-term agenda. A current senior HRC staffer cautioned, "nobody's ever going to say that because we gave a lot of money to members of Congress, we're somebody who has to be listened to." Nevertheless, he said, "money does talk in politics and money does have an impact."

Not everyone agreed on the PAC's benefits; specifically, HRC staff differed on the value of its PAC and 501(c)(4) status. A former HRC leader said the PAC is less

STAYING NIMBLE

A hallmark of effective organizations is their ability to adapt to change. Former and current HRC staff discussed what helped them recognize and seize opportunities. This is what they said:

Know your opportunities. In advance of the 2008 election, HRC worked with pro bono lawyers at a number of law firms to identify policies and regulations (roughly 70) that could be changed without congressional action, broke them up by department, and identified who could help them with each. In this way, they accomplished not just public legislative victories with the Obama administration but also many less-publicized fixes that have had real impact.

Watch the tea leaves. HRC doesn't make limiting assumptions about what is or is not achievable in Congress in a given year. The legislative agenda remains malleable in light of shifting political realities, which allows it to leverage opportunities as they arise.

Build relationships. At the core of what HRC has done well is the ability to understand the needs of the elected officials it is working to influence. HRC's investment in grassroots and grass-tops relationship building and mobilization during the years when it couldn't get anything done in Congress meant that it was in a better position to move legislation when the political winds became more favorable.

Maintain institutional memory. At times of weak leadership or leadership transition, the longtime staff at HRC was able to keep the organization operating smoothly.

important today because "communications is much easier and more effective [than it was in pre-Internet days] and 10,000 votes mean more [to an elected official] than 10,000 dollars." Current staff, however, felt that the PAC was essential to helping HRC realize its long-term goals, both because of the access the PAC facilitates and its potential to help catapult more favorable candidates into office.

The PAC brought HRC many benefits. In the early days, it served as a way for HRC to demonstrate the size and strength of its constituency and its political ambitions.

Beyond the PAC, HRC's financial stability allows it to make investments in advocacy tactics such as grassroots organizing and coalition building. A former executive at HRC noted that although some may prefer it otherwise, making financial commitments is "how the world of grown-up politics and activism and getting things done works." HRC has cultivated and diversified its revenue streams precisely because of the recognition of the influence that comes from deep pockets. A former HRC executive who has worked with a number of nonprofits noted that too often these groups fail to focus on money. In his experience, organizations such as HRC whose goals include fundraising "end up much better situated to survive and prosper and grow." HRC was able to tap into the deep pockets of wealthy donors who identified strongly with these issues and who would benefit from HRC's successes.

Seizing Opportunities

HRC was recognized by many for its skill at creating and recognizing opportunities to advance both the movement for LGBT equality and its own status. Two common catalysts typically spark HRC's decision to become involved with an issue.

The first is feedback from its members. Some at HRC initially understood AIDS to be a public health matter, not a civil rights issue. When it became clear that HRC's membership cared deeply about this cause—and that the disease had captured the public attention—HRC threw itself into initiatives to block discrimination against people with AIDS and HIV and promote funding and research for the disease. Its efforts, along with those of many other groups, paid off. Federal funding for HIV/AIDS grew exponentially from $8 million in 1982 to $4.3 billion in 1992. In 2011, it hit $27 billion. In 1990, Congress passed The Ryan White CARE Act, the largest

federal discretionary program funding HIV/AIDS issues, and it reauthorized it in 1996, 2000, and 2006.

There are also cases where HRC is in front of its members in relation to a particular issue. For example, interviewees opined that HRC needed to coax its membership along with the decision to include transgender people as part of the organization's formal constituency.

The second catalyst for activity is HRC's internal analysis of gaps and needs in the LGBT movement. For example, several years ago it determined that not enough was being done to address the needs of LGBT individuals from minority or disadvantaged backgrounds. In response, it raised money through its foundation to work with these populations. An outside funder praised HRC for being "terrifically skilled at seeing where there are gaps in the movement and trying to fill those gaps if they think that they have something to add there." Current and former senior staffers at HRC felt the organization could do even more "gap filling" if it devoted more resources to research (see below).

An example of how the first and second catalysts can both propel HRC's involvement in an issue can be found in the fight for marriage equality. In 1996 a trial court in Hawaii found that its state constitution would allow same-sex marriage. The case produced a huge backlash in Hawaii as legislators put a state constitutional amendment on the ballot to allow the legislature to define marriage as between one man and one woman. Focused primarily on federal advocacy, HRC had not been engaged in a state-level court case. Many involved with the organization accurately predicted a backlash. The LGBT community was deeply divided on whether marriage equality should be a goal or not. Faced with a state constitutional ban on the ballot, HRC deployed staff and resources to Hawaii in an unsuccessful effort to stop the ban.

The same year, Congress passed, and President Clinton signed, the Defense of Marriage Act (DOMA). Advocates for marriage equality were only briefly deterred by the loss in Hawaii and DOMA and moved forward with a litigation strategy in other states. That strategy achieved a

breakthrough victory in Massachusetts in 2004. This time the backlash was not just in one state and Congress, it was nationwide. President Bush urged Congress to pass a Federal Marriage Amendment (FMA), which would change the U.S. Constitution to outlaw same-sex marriage. In addition, a wave of state laws and state constitutional bans spread across the country—all successful in outlawing same-sex marriage in their states. At the time it was proposed, there was fear in the LGBT community and beyond that it would pass Congress and be sent to the states for ratification. HRC identified this gap, and its members also understood the urgency.

HRC has learned that while opportunity can bring victories, it can also bring political backlash. Over the years HRC has learned to read the political winds and anticipate difficult moments. For example, some view the setbacks that the movement experienced in the early days of the Clinton presidency (such as the passage of DOMA and issuance of DADT) as a reaction against the advances HRC and other organizations had made in the previous decade normalizing LGBT people. People who were familiar with HRC's history told us that the organization was "completely caught flat-footed" by Clinton's aggressive push to remove restrictions on gays serving in the military in 1992 and the subsequent backlash by members of Congress and military officials, which resulted in the DADT law that required gay service members to hide their sexual orientation. Mindful of this history, HRC made a proactive effort to work closely with the Obama Administration around the 2008 presidential transition to promote policies important to its constituency.

Some in the LGBT community have noted a perception that HRC only gets involved in an issue when it is winnable or when other organizations have demonstrated success. HRC will only "go all hands on deck when [they] think there's a win or a desperate need in the offing," a leader in the LGBT movement told us. In addition, due to its size and scope (although some argue it is also the organization's style), HRC is often seen as taking over issues once it decides to get involved and has been criticized for this by others in the LGBT movement. In the words of an outside observer, HRC is "very skilled at

looking when someone else succeeds somewhere to say, 'I don't know why we don't own that thing.'" In doing so, some believe that HRC diverts funding and takes credit that may otherwise have gone to smaller organizations or those that first elevated the issue. HRC leadership is sensitive to these perceptions, but does not believe them to be an accurate assessment of HRC's decision making. They argue that HRC engages in low-profile issues continually, however, when a major fight is occurring, HRC brings its resources to the fight and uses its clout to push for the strategies it believes will be successful. Aware of these perceptions, they have also sought to ameliorate resentment by better managing external relations and being more strategic in their coalition work. Notably, HRC's membership numbers have remained, after all, robust.

Know Your Audience

HRC has spent years investing in relationships with LGBT-friendly and potentially LGBT-friendly politicians to build trust and understand motivations. Senior staff members at HRC try to put aside their assumptions and biases when analyzing what will influence a lawmaker. In building support for legislation, policy makers may make their decision based on numerous factors, including policy concerns, precedents, timing, politics, or personal views. Determining which of these factors is at play drives the strategies employed to win their support.

HRC insiders know that on LGBT issues, like many controversial social issues, often Members of Congress have a personal view that is at odds with the views of their constituents, donors, party, or their perceived electoral interests. In these cases, the challenge is less about policy advocacy as providing political cover that will help them frame their vote in a way that will mitigate any political risk. For example, when opposing the Federal Marriage Amendment, HRC worked hard to find conservative voices that opposed amending the Constitution. One prominent voice—the author of DOMA, former Rep. Bob Barr (R-GA)—was particularly effective in providing moderate Republicans, and Democrats, with cover for voting against the FMA.

HRC's focus on listening to the concerns of Members of Congress and then working in multiple ways to ensure those concerns are addressed or mitigated is the key to its effectiveness. Over time, congressional leadership has not only come to appreciate this attention to detail, they also expect it. For example, during a decade of debate over the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, opposition focused on federalism and religious liberty. To address the concerns about federal government overreach, HRC worked to build a broad-based coalition that included key law enforcement groups like the National Sheriff's Association and the National District Attorney's Association—the local law enforcement officials wanted the help and didn't fear expanded federal power in this area. To address fears about the law being used to stifle religious speech, HRC elevated religious voices, again with a broad coalition, eliciting numerous op-eds by clergy, and bringing more than 200 religious leaders to Washington to lobby for the bill.

In these cases, the challenge is less about policy advocacy as providing political cover that will help them frame their vote in a way that will mitigate any political risk.

When the House was poised to vote for the bill in 2007, opposition was at a fever pitch. House Democratic leaders asked HRC to bring in Judy Shepard, the mother of Matthew, and Dave O'Malley, the conservative Laramie, Wyo., police investigator who through the Matthew Shepard case had transformed into a supporter of the proposed law. Their presentation to the Democratic Caucus the morning of the vote elicited tears and clearly moved a number of votes from no to yes.

HRC works hard to determine what messages and tactics will best influence a policy maker. This careful research does not always result in messages and tactics that some of the most fervent activists favor. As a senior executive explained, HRC focuses on what is "needed to do to move the member," not "the thing that [is] going to make gay people feel good." Those whose motivations around gay rights are emotional (i.e., as issues of social justice and human rights) sometimes view HRC's approach as clinical or detached, and its policy victories as unsatisfying emotionally. While criticism from the LGBT community can rankle, HRC (whose staff members are also passionate about these issues) judges its progress by the impact it has on federal decision makers.

For example, HRC was told that a certain Republican Senator A was Senator B's "back-pocket vote" for repeal of DADT, but Senator A's support was secure only so long as he remained out of the limelight.[10] Senator B waved HRC off from focusing a media spotlight on Senator A, warning that if he drew attention on the issue, he would be targeted by anti-repeal forces and might not be able to resist pressure to vote against repeal. HRC responded by targeting other lawmakers in a very public campaign for DADT repeal but avoided lobbying or discussing Senator A in the media. In the end Senator A voted for the repeal, but some in the LGBT community, particularly those in his state, were upset with HRC for not targeting him.

HRC tightly focused on its audience of federal elected officials again to defeat the Federal Marriage Amendment (FMA), which would have amended the Constitution to define marriage as between one man and one woman. After extensive polling, HRC determined that the message that most resonated with voters and legislators was "don't write discrimination into the Constitution." This message was not a clarion call for marriage equality but instead a focused message that was designed to maximize opposition among Members of Congress and the public against the proposed amendment. In addition, this messaging was used to unite a diverse coalition of groups that included the NAACP, the Leadership Conference on Civil and Human Rights, labor unions, and even the Cato Institute—most of whom did not, at the time, support same-sex marriage. HRC advised moderate Members of Congress to use this particular language to defeat the FMA, especially within more conservative communities. Sectors of the

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10. Interviewees requested anonymity for particular lawmakers.

LGBT community were disappointed with this messaging, feeling that it was a lost opportunity to advance the marriage equality message.

This example demonstrates that HRC's work to maintain a laserlike focus on moving policy makers in order to achieve its advocacy objective, even when doing so may be costly. This tension was evident in the recent struggles to pass a federal Employment Non-Discrimination Act (ENDA), which would prohibit employment discrimination on the basis of sexual orientation or gender identity. In 2007 HRC accepted a legislative compromise to pass an ENDA bill out of committee that included protections for gays, lesbians, and bisexuals, but not for transgender persons. House Democratic leaders and Congressman Barney Frank (D-MA) were convinced that they did not have the votes for a "fully inclusive" ENDA and that it was better to demonstrate a majority of the House supported nondiscrimination for gays and lesbians. Under tremendous pressure from all sides and after working in concert with other LGBT groups to urge a three-week delay during which an all-out effort was made to determine if support for transgender protection could be found, HRC urged House members to vote for the bill that only covered sexual orientation. Other LGBT groups did not support passage of a sexual-orientation-only ENDA and some urged House members to vote no.

Some in the wider LGBT community were outraged by HRC's willingness to accept a compromise on this issue, but HRC was able to navigate the controversy and mitigate the potential harm. First, by supporting the compromise that excluded the controversial category of transgender people when it came to a House floor vote, it helped reinforce HRC's reputation with federal elected officials as the "reasonable" LGBT organization with which members could work. Second, HRC absorbed much of the emotional energy and criticism that otherwise would have been directed at federal elected officials, which could easily have undermined future progress on LGBT issues, like DADT repeal.

HRC has been responsive to the heated criticism that it received from the LGBT community on its 2007 ENDA position and has since announced that it will only support a fully-inclusive ENDA. It is also worth noting that throughout the controversy HRC's membership continued to support the organization; financial support for both HRC and the HRC Foundation increased in both 2007 and 2008 (the years in which criticism of HRC within the LGBT community was significant).

Master the Issues and the Process

In addition to developing a deep understanding of how to influence Members of Congress, HRC has a keen grasp and knowledge of federal policies that impact LGBT people and the political process through which legislation and regulations move. The investments that HRC has made in relationships and in understanding how to advance federal public policy, sometimes below the radar, has meant that its efforts sometimes go unnoticed or unappreciated by the larger LGBT community. An outside observer suggested that often when HRC's detractors accuse the organization of being too passive, HRC is actually operating outside the spotlight. For example, in advance of the 2008 election HRC staff worked with pro bono lawyers at a number of law firms to identify roughly 70 policies and regulations that could be changed without congressional action. They sorted them by department and identified who in the Obama Administration could help them with each one. In this way, HRC helped effect policy changes with real impact for LGBT people—from regulations affecting hospital visitations to domestic violence to adoption—without seeking legislative action.

HRC's in-depth understanding of the political process and how government works enables it to continuously reevaluate its advocacy approach. Repeal of DADT following President Obama's election is an apt example. HRC faced a number of obstacles, including two Senate filibusters. It had to reassess repeatedly what tools it might try to use to repeal the policy (e.g., executive action to stop or slow discharges; commissioning a report on the impact of lifting the ban; or creating a certification trigger to allow Congress to vote for repeal before the Pentagon study was complete). Senior advocacy staff at HRC emphasized that parliamentary details mattered as much as larger strategy decisions in the eventual outcome. By staying

focused on the goal, rather than being proscriptive about the path to get there, HRC allowed the issue to move past seemingly insurmountable obstacles. In the end, even as commentators in the blogosphere were announcing the effort had failed, HRC worked with Hill staff during a lame duck session to extract the relevant provisions repealing DADT from the National Defense Authorization Act and to pass them separately as a stand-alone bill in the final hours of the 111th Congress.

Special Needs of Federal Elected Officials

Federal candidates raise a set of special considerations as a target audience. While HRC will invest time and resources to understand an individual lawmaker's position on an issue, it also has learned certain universal tactics to deepen its relationship with federal elected officials – many of which are rooted in the belief that lawmakers are motivated to win elections and stay in office. "There is no time when a politician is more receptive than when they're trying to get elected," a former HRC lobbyist told us. HRC wins loyalty from lawmakers by actively helping them achieve that goal, both by mobilizing constituents and providing financial contributions.

During the election cycle, HRC engages in electoral field-work for candidates in two ways. First, it trains volunteers to staff campaigns in the form of a direct, in-kind contribution. HRC coordinates these volunteers, assigns them to campaigns, organizes their housing, and provides a stipend for transportation and meals, but otherwise it does not influence their behavior. Volunteers work as members of the campaign staff as directed by the campaign's field leaders, not HRC. Although everyone at the campaign understands that they are from HRC, the volunteers work on a variety of issues, not just LGBT issues.

Second, in the last few weeks of a campaign, HRC activates its base of members and supporters under its own auspices. It organizes volunteers across targeted districts and states to get out the vote among its constituents. In these instances, volunteers work directly for HRC on behalf of the federal candidate.

HRC's campaign work is "enormously effective at building real relationships with Members of Congress," a former staffer told us. This is particularly true in House campaigns, which can be small, intimate races without large staffs. One public policy expert in D.C. told us that in mobilizing its base and getting out the vote, HRC has "at this point, beaten SEIU [the Service Employees International Union] in terms of consistency cycle after cycle." Federal elected officials have taken notice.

HRC employs another tactic to deepen its relationship with federal lawmakers: recognizing and rewarding political risk. Outside of the election cycle, HRC calibrates both its expectations and expressions of gratitude according to the political risk the lawmaker has assumed in supporting HRC's agenda. For example, in the aftermath of the DADT vote, HRC honored a recently reelected Republican Senator even though that required organizing a fundraiser out-of-state so as not to interfere with the current "in-cycle" fundraising of the state's other senator.

HRC also manages the political calculus of investing in the campaigns of lawmakers who do not fully support HRC's agenda or who are otherwise unfriendly to civil rights or pro-gay causes. In such cases, the organization must weigh the trade-offs between supporting such a candidate—earning the ire of its supporters—or withholding its support and risking a potential policy gain. In some cases, HRC strategically invests in recalcitrant members of Congress rather than longtime allies, even when the two are competing for votes. HRC's support of then-Senator Al D'Amato's (R-NY) bid for reelection in 1998—picking a conservative lawmaker with a mediocre record on civil rights (but who had supported ENDA) over progressive politician Chuck Schumer (D-NY)—is perhaps the most vivid example of how complicated—and contentious—the political calculus behind this tactic can be.[11]

Work in Coalition

HRC's staff members believe that coalition work can be an essential element of a successful policy campaign,

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11. Charles Kaiser, "The D'Amato Factor," The Advocate, July 18, 2000, 72.

particularly around legislative initiatives. HRC is a member of multiple coalitions, many explicitly pro-LGBT. At the same time, often its most vociferous critics are inside the LGBT movement. This tension can be traced to two primary sources of discontent: the amount of influence HRC wields and the way it positions itself as a moderate interest group.

First, some leaders in the LGBT movement believe that HRC wields a disproportionate amount of influence over other organizations due to its money, contacts, and grassroots network. As noted above, HRC enjoys a broad base of financial support so that no one funder is in a position to direct the activities of the organization. This combination of fundraising success and financial independence can breed resentment in coalition partners and can impede coalition work.

As a case in point, some in HRC believe that efforts to promote same-sex marriage in New York would have faltered if HRC had directly invited fellow gay rights organizations to join forces, as Governor Andrew Cuomo (D-NY) did. In advance of the final series of legislative debates about the same-sex marriage bill, the governor gathered leading gay rights groups together. He told them that he expected them to act as a unified coalition and encouraged them to contribute to the pro-marriage campaign. Based on previous experiences, HRC executives opined that if HRC had made a similar request, some of the other groups would likely have balked. In this case, however, each organization participated fully. The governor's engagement was instrumental in helping the coalition remain focused on its goal and avoid personality-driven pitfalls.[12]

Second, HRC's decision to position itself as a moderate, rational interest group with lawmakers (an HRC staff member described the approach as pragmatic) risks alienating the more passionate or ideologically driven in the LGBT movement. An example of this can be seen in HRC's support for a sexual-orientation-only ENDA

COALITION INSIGHTS

Employ a strong (outside) leader. Many interviewees agreed that, due to competing interests by different organizations, a coalition can benefit from a strong outside leader. They cited Governor Cuomo's role advancing gay marriage in New York. Capable leaders have convening power, know the issues, and are able to manage relationships and external communications. In the process, mentoring individual (often less sophisticate or more recalcitrant) coalition members can become an integrated part of their role. External spokespeople can also serve important roles. Judy Shepard's participation in promoting anti-hate crime legislation helped to unify the coalition and increase external support.

Ask for—and put—some skin in the game. The most effective coalitions involve similarly invested members. Each member understands that they must contribute to the coalition by providing funding, in-kind resources, access, or other resources if they are to have a role in decision making.

Manage conflict. In dealing with criticism, HRC has been commended for its ability to use critiques from the LGBT community to demonstrate its position as a moderate voice and safe partner for elected officials. In doing so, HRC has been able to provide federal elected officials much-needed political support.

Always go through the motions. Notwithstanding its reputation in the LGBT community as a leader and lone wolf, HRC always works in coalition. The risk to appearance and process is too great to do otherwise, and in the long run, it strengthens their leadership role. Lawmakers make their own decisions as to which organizations within a coalition they deem effective and develop those particular relationships above others.

12. For more details on Governor Cuomo's role in efforts related to New York's same-sex marriage laws, see Michael Barbaro, "Behind N.Y. Gay Marriage, an Unlikely Mix of Forces," The New York Times, June 25, 2011, http://www.nytimes.com/2011/06/26/nyregion/the-road-to-gay-marriage-in-new-york.html?_r=1&pagewanted=all

in 2007.[13] The decision to accept a compromise that excluded transgender persons from the committee bill put HRC at odds with virtually every other LGBT organization. At the time, however, HRC leaders opted to try to take what they could get, looking to the legislative history of civil rights laws as a step-by-step methodical process to secure legal protections. HRC believed that defeat of ENDA would hurt future progress on LGBT issues generally, as well as resulting in a longer period of time for securing a law that protects transgender workers. Others saw this as a fundamental betrayal of principle. A senior HRC staff member explained, "A lot of people are idealistic and politically pure and think that we represent everything that's bad about Washington because we're willing to compromise to move things forward." In the aftermath of HRC's decision on ENDA in 2007, a few organizations refused to work with it. Nonetheless, HRC continued to coordinate with these groups through intermediary civil rights coalitions such as LCCHR.

HRC has publicly recommitted to a fully inclusive ENDA, but it has not yet been able to pass the legislation. However, the organization has helped advance the civil rights of transgender people through its nonlegislative work. As described in HRC's press release about the 10th anniversary CEI in 2012, "In 2009, HRC informed companies that it would begin rating them in 2012 on equal health coverage for transgender individuals without exclusion for medically necessary care, to include sexual reassignment surgery. The fact that companies would be rated on this new criterion dramatically increased performance from 85 companies offering all of the benefits last year to 207 this year, a 144 percent increase."

Coalition work is always part of HRC's advocacy arsenal, but it is not necessarily the only tactic the organization

employs. A senior HRC official told us they "would never claim that we're going it alone…. Even in the worst circumstances, we would still say that we were working in coalition." The risk to appearance and process is too great to do otherwise and often lawmakers are not interested in moving forward until there is an agreement within a given community. HRC lobbyists also noted that even though coalition work can be cumbersome, it does not prevent side negotiations with lawmakers behind closed doors. Lawmakers will "decide who is effective to work with and … call the smaller meetings." Indeed, a longtime lobbyist on LGBT issues and observer of the organization told us that most elected officials will meet with other LGBT groups and then "turn around and say to HRC, 'What do we do?'"

Current and former HRC staffers are largely philosophical about tensions with other organizations. "I think that for a successful social movement, you need the people on the left asking for the impossible and pushing for the impossible and the people who are willing to do the negotiating and take the deals and get what we can get on the inside pushing," a senior staffer told us. A longtime observer of HRC agreed. "Getting slammed by the blogosphere or folks way to the left on these issues is an occupational hazard. It just comes with the territory." At its best, HRC is able to use disagreement among coalition partners to strengthen its position as arbiter of the sensible center. Nevertheless, the organization is making a conscious effort to be a better coalition partner and seeking to employ structural workarounds (such as an external coalition director) to ensure its partnerships are effective.

HRC IN ACTION: REPEAL OF DON'T ASK, DON'T TELL

In 2011 Don't Ask, Don't Tell (DADT), the 1994 law that had led to the dismissal of more than 14,500 LGBT men and woman in the U.S. armed forces, was repealed. Announcement of the decision, which was not implemented until a subsequent Pentagon review, came in late 2010 after nearly a year of emotional confrontations, procedural maneuvering, and full-bore lobbying. HRC's experience in working toward the repeal is illustrative of the strategies and tactics described above. The outcome, in terms of

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13. The backstory to the ENDA debate—specifically the role of those lobbying on behalf of transgender persons—offers an interesting perspective on coalition strategies. The inclusion of transgender persons as part of HRC's constituency was not an obvious fit for many gays and lesbians, who understood gender identity to be a very different issue than sexual orientation. The addition of "T" issues to HRC's LGB agenda was the result of many years of strategic lobbying by members of the transgender community. They recognized that HRC was an easier target than the U.S. Congress, and that they could benefit from being associated with other "wins" made on behalf of LGB issues.

public policy and organizational standing, is emblematic of the organization's strengths and vulnerabilities.

To a large extent, this policy change began with President Obama's 2010 State of the Union address. He promised over the coming year to work with the military and Congress to repeal DADT, a policy long on the target list of the LGBT community. HRC staff members had suggested to the White House that President Obama include DADT in his speech on the basis of their review of the likely votes for repeal in the 111th Congress. Several promising developments followed. President Obama sent senior military officials to the Hill to testify on behalf of the repeal; Defense Secretary Gates issued an interim rule making it more difficult to trigger a dismissal under DADT; the House passed an amendment to the annual defense authorization bill containing the repeal language in May 2010; and on the same day, the Senate Armed Services Committee passed the same amendment to its defense bill.

As the months went on, efforts to repeal the measure hit a series of roadblocks, including two Senate filibusters led by Senator John McCain (R-AZ). There were increasingly strident responses from the LGBT community. Activist LGBT groups such as Get Equal excoriated Congress and grabbed the media spotlight. Members of Congress were targeted with public Twitter attacks, rallies took place in Washington, D.C., and several former service members chained themselves to the White House fence. Some of these attacks targeted HRC. Activists criticized HRC for not doing enough to advance the issue; they did not see their outrage and sense of urgency mirrored in HRC's approach.

In fact, HRC was using the insider status that it had spent decades cultivating to move the repeal forward with decision makers on the Hill. The campaign was carefully organized and focused. HRC identified 20 targets in the House and six in the Senate whose votes and support would be key to repealing the law. With most of these targets, HRC struck hard: it hired campaign organizers to be on the ground in six states and a handful of House districts to build and coordinate grassroots support for the repeal. The organizers ensured that lawmakers heard

personally from their constituents, an HRC lobbyist told us. "Not form letters, not postcards, but handwritten letters" and phone calls reached the lawmakers' offices. HRC also motivated its grassroots base through stories on the evening news, town halls, movie nights, and opportunities to meet with their members of Congress. In Washington, HRC calibrated feedback on its field efforts by consulting with lawmakers and their staff to gauge the impact.

Two elements of the state campaigns are particularly notable. First, HRC sought to run campaigns specific to each targeted member and that member's political realities. For example, an HRC executive explained that the organization quickly determined that it would be counterproductive to "stand outside of [Senator X's] office and say 'You're a horrible bigot and let's get a bunch of soldiers to chain ourselves to your fence.'" Instead, the campaign in Senator X's Midwestern state was "measured and thoughtful and respectful." By contrast, in the Northeast, "we just beat [Senator Y] over the head with a stick every single day, because it was about shaming him into doing the right thing."

> *Message testing enabled the organization to provide strategic intelligence to the lawmakers; it could tell them, "Not only should you do this, but if you do a press release, this is the paragraph you should use."*

Second, HRC invested in polling their targets' constituents, and they used each legislator's own pollster to do so. "It was a bit of a risk," an HRC staffer acknowledged, but there was enough positive general polling around the repeal of DADT that HRC believed that the results would be largely consistent across the country. Most critical to this strategy was identifying a messenger the lawmaker trusted. The goal, an HRC executive explained, was for the pollster to assure the lawmaker, "This is not going to hurt you." In addition, the pollsters tested several messages in each state and district. Doing so, an HRC lobbyist explained, helped HRC demonstrate to federal elected officials that it understood their need to frame their DADT vote in a way that would not harm their

political prospects. Message testing enabled the organization to provide strategic intelligence to the lawmakers; it could tell them, "Not only should you do this, but if you do a press release, this is the paragraph you should use."

In addition to these grassroots efforts, HRC embarked on a "whole grass-tops program where we looked to find all the big political donors, [those who] were going to be in an inner circle with the president. We asked them to mention Don't Ask, Don't Tell repeal and how it had to get done before the midterm elections," a HRC lobbyist told us.[14]

As the 2010 midterms approached, HRC staff and others in Washington, D.C., recognized that the upcoming elections were likely to have a significant impact on the vote count in the House. HRC increased pressure on legislators to vote on the repeal by the end of the year. Even though the repeal effort received unexpected assistance from a federal judge who found the policy unconstitutional in September 2010, raising the specter of competing judicial rulings and increasing pressure for legislative action, as of November 2010 Senator McCain was continuing to filibuster the National Defense Authorization Act, the legislation that contained the language repealing DADT.

In the end, the repeal may not have happened if it were not for HRC's deep knowledge of parliamentary procedure.

In the end, the repeal may not have happened if it were not for HRC's deep knowledge of parliamentary procedure. As a senior HRC lobbyist related the story, "The White House had 50 million things it was juggling." House Speaker Pelosi (D-CA) and Senate Leader Reid (D-NV), while sympathetic, felt they had done what they could; they needed the issue "teed up" and ready for passage before they would act. HRC worked closely with

Senator Reid's staff to analyze "procedural hurdles about cloture and hours and floor time and amendments," and HRC worked with House Majority Leader Hoyer (D-MD), Senator Lieberman (I-CT) and Senator Collins (R-ME) to find a bicameral path forward. The filibuster was finally defeated during the 2010 lame duck session by extracting the relevant language from the National Defense Authorization Act and passing it through both the House and Senate as a stand-alone measure. The Senate authorized the repeal of DADT on December 18, 2010, by a vote of 65 to 31. All of the senators that HRC had targeted voted for repeal.

It was a bittersweet victory for HRC, which came out of the fracas with frayed relationships with some in the LGBT community. A key player in the campaign told us that "Don't Ask, Don't Tell was just about one of the worst things I've ever been through."

HRC worked in coalition throughout the DADT repeal process, and it implemented many of the lessons that it had learned from prior experiences with coalitions. It aligned itself with organizations of similar size and influence—the Center for American Progress (CAP) and the Servicemembers Legal Defense Network (SLDN)—but also included many other LGBT interest groups. It hired an outside coordinator to manage the core group at the center of the coalition to mitigate the accusation that HRC was trying to control the process. This did not prevent many groups from channeling their anger and frustration at the delays in the process to HRC. One of these involved a Facebook campaign calling for the resignation of Executive Director Joe Solmonese.[15] Others in the LGBT community subjected HRC to what its staff referred to as "guerilla tactics," such as leaking of conversations in coalition meetings to bloggers and the media.

Insiders attributed the fact that the coalition became a "three-ring circus" to two factors. One was that there were a number of unseasoned advocates involved.

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14. Grass-tops refers to the most influential of the grassroots political base. Sometimes these people have leadership positions within their communities (e.g., church leaders, community leaders, or local journalists); sometimes they have shown a penchant for engagement with political leaders and the means to provide valued assistance.

15. Will Kohler, "Andrew Sullivan Calls For HRC President Joe Solmonese To Resign. We Finally Agree On Something – JOE MUST GO!," Back 2 Stonewall, September 23, 2010, available at http://www.back2stonewall.com/2010/09/andrew-sullivan-calls-for-hrc-president.html

Many were former military personnel who had never been involved in a social movement. Some viewed HRC as, in the words of an HRC lobbyist, a "sellout" because of its attempt to be a reasonable partner to lawmakers (and because, as another HRC executive noted, it had made little impact on DADT policy to date). The second was that there was no leader positioned to unite the movement, like New York Governor Cuomo with same-sex marriage.

At the end of the day, HRC staff members felt justified in their approach. "We took heat for it, but I also think it wouldn't have happened if we weren't in there pushing them and coming up with our ideas for how to move this forward," a senior staffer told us.

CHALLENGES AND OPPORTUNITIES

Even HRC's detractors cannot gainsay the organization's success in recent years; likewise, even its most ardent supporters are not without their wish lists for how HRC could improve. HRC's two signature strategies have yielded great results. We heard, however, critique (as noted above) of its execution of its LGBT coalition work and suggestions for two areas in which observers both inside and outside the organization would like to see HRC focus more efforts: leadership development and substantive issue research.

Coalition Tensions

Much has been noted already on relations with other LGBT organizations. HRC staff members state that they are addressing some of the real and perceived causes for the rift through conscientious outreach and state-level activity on the gay marriage issue. At a certain level, however, HRC staffers also understand that the rift is an expected, if unfortunate, price for the inside-player course the organization has set for itself, and that these external groups are at some level a secondary audience, compared to policy makers.

Leadership Development

A few people lamented that HRC has bypassed opportunities to engage in leadership development for the broader movement when opportunities to do so have emerged. While HRC was praised for its long-term and committed staff, observers did not feel that its standard internship program offered the next generation of LGBT leaders the training that is needed. Several interviewees identified the need for "serious leadership training that really demands discipline and people really understanding what it takes to be an effective political organizer." One of them described a "very rigorous, nonpartisan NGO leadership academy to train in the basics of how federal action occurs," such as using a case method approach to learn how, for example, the Americans with Disabilities Act and other groundbreaking efforts became law.

Research

Much of the research that HRC conducts is based around political messaging and has a communications slant. It does less research into substantive policy issues that might inform its agenda or policy recommendations. Some with whom we spoke wished that HRC produced more independent research to bolster its arguments, in the manner of a think tank. "I think they are missing something because they don't have a stronger research component," a former employee said. "Before you get to solutions, you have to get to an understanding of the problem." The research that was envisioned by our interviewees would be undertaken by the HRC Foundation and would shed more light on the experiences of LGBT citizens across the country and, in turn, suggest practical policy solutions.

CONCLUSION

Over the past three decades, HRC has become a driver of social change in its pursuit of equality for LGBT people in the workplace, on Capitol Hill, and among the American public. The organization has focused on two strategies in its effort to advance gay rights: normalizing LGBT people in the eye of the public and closely heeding the needs of federal elected officials in order to advance

their advocacy agenda. Advocacy work, along with HRC's efforts to repeal DADT, benefited from several sources of success. These included leveraging the resources of its PAC, diversifying funding streams, cultivating deep relationships with federal lawmakers, and maintaining commitment to its advocacy strategy in spite of criticism from would-be supporters. At the same time, the case study revealed challenges and opportunities, including the need for HRC to implement leadership development training, pay greater attention to mitigating coalition tensions, and conduct more independent research.

BEYOND THE CAUSE

THE *Art* AND **SCIENCE** OF ADVOCACY

CASE STUDY

AMERICANS FOR TAX REFORM

Executive Summary

First conceived in the Reagan White House in 1985, today Americans for Tax Reform (ATR) wields significant influence with elected officials and conservative thought leaders, as does its longtime leader, Grover Norquist. The mission of ATR has remained constant over the last quarter century: to reduce the size of government by curtailing federal revenue. This case study describes the impact and approach of ATR.

> *ATR is widely credited with helping to shape the debate about taxes and the size of government in America today.*

ATR is widely credited with helping to shape the debate about taxes and the size of government in America today. Legislative history over the last 20 years shows its impact: most Republicans in Congress have not voted for an income tax increase since 1990, Congress did not raise taxes between 1993 and 2009 (when a Democratic majority enacted a cigarette excise tax), and contentious debates on debt reduction in 2011 were fueled by Republicans' refusal to include revenue increases in a fiscal reform package. ATR has been recognized by advocates, political observers, and many Members of Congress as playing a significant role in each case. While it is difficult to attribute individual credit for a public policy outcome, the significance and scale of events that ATR is said to have influenced is notable.

This level of impact was achieved through two **signature strategies**:

- ❥ creating a mechanism of political accountability for elected leaders around tax increases; and

- ❥ creating and coordinating a "big tent" for conservative elected officials and thought leaders.

The primary strategy, political accountability on tax issues, is achieved through a Taxpayer Protection Pledge, which asks politicians to promise publicly not to raise taxes. Ninety-eight Republicans elected to the 2010 Congress signed it, along with more than 1,200 state officials, including 13 governors. ATR monitors elected officials' voting records and calls out pledge breakers in the media and to their respective constituents. Over time, the pledge has become self-enforcing as Republican candidates who do not sign and adhere to it are not likely to be elected. Moreover, the pledge has helped to define the Republican brand as anti-tax increase, which helps to unify many of the messages and individuals in the party.

The strategy of creating a "big tent" is most on view at a weekly meeting of conservatives convened by ATR in Washington D.C. and, now, replicated across the country. Norquist refers to this group as the "Leave Us Alone Coalition" in his writings, though attendees are more likely to identify as participants in the "Wednesday meetings" than ATR coalition members. The meetings are consistent, structured, substantive, and they serve as an

important vehicle for those right of the political center to share ideas and build relationships.

These strategies and ATR's impact are fueled by several sources of success, including: a clear and unwavering long-term vision; an effective leader oriented toward network building; and the ability to translate public policy issues into compelling messages.

ATR's impact is fueled by several sources of success, including: a clear and unwavering long-term vision; an effective leader oriented toward network building; and the ability to translate public policy issues into compelling messages.

It is the artful combination of all of these factors that has led to consistent success over time.

ATR's most evident challenge is the rigidity of the pledge. Public policy formulation often includes a nuanced approach, a deep understanding of complex issues, and some degree of compromise as conditions and opportunities change. The un-nuanced formulation of the pledge does not allow for compromise, a tension that will continue to be felt as policymakers struggle to manage growing deficits and requests for public spending. Additional difficulties for the organization include a lack of respect accorded it by many accomplished tax policy experts and economists of all ideological persuasions, Republican Party in-fighting, image problems arising from past scandals involving allegations of inappropriate use of funds, and the perceived power of Norquist and his organization (which can be viewed both as a strength and a weakness).

To date, ATR has managed to draw on its strengths and minimize its weaknesses in ways that have made it one of the most influential political organizations in Washington, D.C.

AMERICANS FOR TAX REFORM

Americans for Tax Reform and its leader Grover Norquist have worked toward the goal of reducing the size of government by limiting revenue increases for more than a quarter century. ATR was first conceived inside the Reagan White House as a vehicle to build support for what became the Tax Reform Act of 1986, landmark legislation that closed tax loopholes while slashing the top income tax return rate to 28 percent. Over time, ATR has garnered significant influence with elected officials and conservatives as a result of its unwavering vision, strategic messaging, and broad network. The organization is best known by the public for its Taxpayer Protection Pledge, a written promise by lawmakers to their electorates stating they will not vote to raise revenue, and it maintains status in political circles for its Wednesday meetings, invitation-only gatherings of like-minded thought leaders nationwide.[1]

This case study explores ATR's signature strategies for advocacy: creating a mechanism of political accountability for elected leaders, and developing and managing a "big tent" network of thought leaders that frame and disseminate right-of-center ideology. It starts with a brief overview of the history of ATR, describes the organization's structure, and assesses its signature tactics—the written pledge and weekly meeting—in detail. It describes an attempt by Republican lawmakers in the summer of 2011 to work around the pledge and ATR's reaction, a pragmatic yet strict response that drew on Norquist's skills at messaging and networking. The report concludes by citing challenges that involve questions about ATR's substantive contributions to tax policy, the rigidity of the pledge as an obstacle in achieving political compromise, party in-fighting, and the impact of concerns about integrity.

1. This case study reflects material drawn from a number of books and articles about ATR as well as interviews with people working for ATR and outsiders. Interviewees included those on the political Right and the political Left, detractors and supporters of the organization, tax policy experts, lobbying experts, former Hill staff, and former elected leaders. For additional detail, see the Methodology, Appendix D.

OVERVIEW

History and Major Accomplishments

Through the pledge and the Wednesday meetings, ATR has leveraged a relatively small staff and budget to create a significant impact on tax policy and advance toward its goal. As described on its website: "Americans for Tax Reform opposes all tax increases as a matter of principle. We believe in a system in which taxes are simpler, flatter, more visible, and lower than they are today. The government's power to control one's life derives from its power to tax. We believe that power should be minimized."

Disputes about tax policy are hardly new in American politics; indeed, they contributed to the founding of the country. While ATR's logo, depicting the Boston Tea Party, seeks to invoke these historical and patriotic antecedents, its own history began in the mid-1980s during the presidency of Ronald Reagan.

As the Reagan Administration began to plan its campaign to try to pass the Tax Reform Act of 1986, it selected Norquist, former head of the College Republicans, to organize support for the law. Ironically (given its grassroots base today), Norquist arrived at the pledge as a way to be effective in the face of grassroots apathy. Because the Tax Reform Act would be revenue neutral, "there was no grassroots interest in tax reform," an interviewee who worked on the bill recalled. Tactics that were then commonly employed to build public interest—taking out advertisements, encouraging constituents to call Congress, providing information about where to send telegrams—met with "zero interest." Norquist conceived of the pledge as a way to keep fiscal conservatives—many of whom worried that the act would be undermined by subsequent tax increases masquerading as reforms—"happy and on board" as the legislation moved through Congress. Another interpretation of the genesis suggests that it was rooted in conservatives' desire not to limit taxes so much as to shrink the federal government. As one writer put it, it was part of a "conscious strategy by

conservatives to force cuts in federal spending by bankrupting the country."[2]

President Reagan, conservative organizations, and business interests joined Norquist in encouraging candidates in the 1986 elections to take the pledge. That year ATR "had 100 members of the House and 20 members of the Senate" sign it, according to Norquist. In an on-air interview, he described one of the early media moments when the pledge received national attention:

> [I]n 1988, the pledge became more famous because George Herbert Walker Bush was running for election to follow Reagan. And he signed the Taxpayer Protection Pledge. And in the New Hampshire primary, Dole had just won in Iowa, was expected to win in New Hampshire. Pete du Pont, who was governor of Delaware, running for president also, at the New Hampshire debate, just two days before the primary, handed Dole the pledge on television, said, the rest of us have signed this pledge not to raise taxes, will you? And Dole recoiled as if somebody had tossed a cross into a vampire's lap. I mean, it wasn't just, thank you, no. It was visceral on TV. And a number of commentators in New Hampshire and elsewhere said…that's when he lost the New Hampshire primary … .[3]

The pledge became more well known in 1990 when President George H. W. Bush raised taxes in an effort to balance the federal budget. Norquist believes that Bush's breaking of the pledge (after famously stating, "Read my lips: No new taxes!") had dire consequences for him. In his 2008 book *Leave Us Alone*, Norquist noted that, "It was otherwise a successful presidential term: Inflation was kept down, the collapse of the Soviet Union was managed with very little blood on the floor, and Bush built an international coalition of the willing that included

France and much of the Arab world to drive Iraq out of Kuwait. He did not get talked into occupying Iraq. There was no scandal."[4]

Norquist arrived at the pledge as a way to be effective in the face of grassroots apathy.

Nonetheless, President Bush garnered only 37 percent of the national vote and was defeated in his bid for a second term in office. His defeat helped cement the pledge into Republican electoral strategy for the next two decades, with many attributing his failure to gain a second term to his decision to raise taxes. In the words of one conservative political consultant, "Every presidential candidate I've ever worked for since then believes that that's why Bush lost."

Shortly after President Bush's defeat, ATR began convening a small group of conservative thought leaders to coordinate opposition to the Clinton Administration, particularly the proposed health care reform legislation, which did not pass under President Clinton.[5] These gatherings, which eventually became known as the Wednesday meetings, allowed conservatives and libertarians to share strategies and tactics for advancing their individual and shared interests, including but not limited to tax policy.

At the federal level, Norquist frequently tells people that "[w]e haven't had a Republican vote for an income tax increase since 1990."[6] Indeed, Congress did not raise taxes between 1993 and 2009, when Democrats voted to raise the excise tax on cigarettes. The 16-year span, we

2. "As conceived by the right-wing intellectual Irving Kristol in 1980, the plan called for Republicans to create a 'fiscal problem' by slashing taxes – and then foist the pain of re-imposing fiscal discipline onto future Democratic administrations who, in Kristol's words, would be forced to 'tidy up afterward.'" Tim Dickinson, "How the GOP Became the Party of the Rich," *Rolling Stone,* November 9, 2011.

3. "A Conversation with Grover Norquist," narrated by Diane Rehm, *The Diane Rehm Show*, NPR, July 14, 2011, http://thedianerehmshow. org/shows/2011-07-14/conversation-grover-norquist

4. Grover Norquist, *Leave Us Alone: Getting the Government's Hands off Our Money, Our Guns, Our Lives* (New York: Harper Collins, 2008).

5. A number of observers believe First Lady Hillary Clinton was referring to ATR when she announced that her husband's Administration was beset by a "vast right-wing conspiracy." Alex Leary, "Grover Norquist Built the GOP's No-tax Brand," *Tampa Bay Times*, September 18, 2011, http://www.tampabay.com/news/politics/national/article1191897.ece

6. "The Pledge: Grover Norquist's Hold on the GOP," *60 Minutes*, CBS News, November 20, 2011, http://www.cbsnews.com/8301-18560_162-57327816/the-pledge-grover-norquists-hold-on-the-gop/?tag=contentMain

were told by an ATR insider, marks the longest period in American history without a tax increase.[7] ATR has been credited for its successful efforts throughout 2011 to block tax increases from becoming part of a federal deficit reduction package.

Structure

ATR is a 501(c)(4) organization.[8] Although it is based in Washington, D.C., ATR's presence is felt nationally through its recruitment of signatories to the pledge and through its assistance in convening regular local versions of its Wednesday meetings, which brings conservative and libertarian thought leaders together to share updates, strategies, and tactics.

While ATR is primarily known for its eponymous issue, it also works in a number of other areas: spending and transparency, regulatory burdens, tech and telecom, health care, trade and international taxes, energy, property rights, and labor issues. ATR's website lists six "affiliates"

that appear to operate as semi-independent projects coordinated by ATR. These include the Center for Fiscal Accountability, the Property Rights Alliance, Digital Liberty, American Shareholders, the Alliance for Worker Freedom, and Stop eTaxes. ATR shares its approximately 52 employees among its affiliated organizations. For example, ATR's tax policy director also serves as executive director of American Shareholders and ATR's government affairs manager and communications director are listed as employees of Center for Fiscal Responsibility. Roughly half of ATR's employees work on government affairs at the state and federal levels where they are in touch with both Republican lawmakers and political candidates (many of whom have signed the pledge) and with local conservative organizations and thought leaders.

The ATR Foundation (ATRF), ATR's 501(c)(3) arm, was founded in 1985 as Fairness for Families with the purpose of promoting public awareness about federal income tax rates and the tax system. The name was changed to Americans for Tax Reform Foundation in 1991.

Leadership

ATR has had the same iconoclastic leader since its founding. Many of those interviewed see the organization as an extension of Grover Norquist, who is an important figure in conservative American politics and has wielded significant influence throughout various administrations. While a 2001 *USA Today* article noted, "Norquist just may be the most influential Washingtonian most people have never heard of," in recent years focus on the federal deficit and the future of the Bush-era tax cuts have brought Norquist and ATR into the spotlight.[9] ATR and Norquist have embraced his rising profile.

Described as "brash," "funny," and "laser-focused," Norquist is remarkable for his staying power—he began his D.C. career more than 30 years ago—and his ability to wear different hats while promoting the causes

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7.   We were unable to verify this claim. Tax policy experts believe that verifying such a statement would require exhaustive research—and agreement on what counts as a "tax increase." However, a history of federal income tax rates from their introduction in 1913 to 2011 shows that the top and bottom marginal income tax rates held steady or declined from 1952 to 1986, a period of more than 30 years. "Federal Individual Income Tax Rates History: Income Years 1913-2011," Tax Foundation, September 9, 2011, http://taxfoundation. org/article/us-federal-individual-income-tax-rates-history-1913-2011-nominal-and-inflation-adjusted-brackets.

8.   Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activities. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited advocacy and lobbying to advance their social purposes, and they may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. For more information , see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

9.   Susan Page, "Norquist's Power High, Profile Low," *USA Today*, June 1, 2001, http://www.usatoday.com/news/washington/2001-06-01-grover.htm

of small government and lower taxes.[10] From media provocateur to meeting facilitator to backroom advisor, Norquist provides guidance for his organization and to the broader conservative movement. ATR's effectiveness appears to hinge on Norquist's leadership; many attribute the organization's success to his quick mind, sharp tongue, and sincere beliefs.

Norquist was recognized by many for his ability to build relationships and weave networks. His personal affiliations include formal connections to large and influential groups, as well as lesser-known organizations that promote conservative causes. Prior to founding ATR, Norquist served as a speechwriter at the U.S. Chamber of Commerce and executive director of the College Republicans. According to the ATR website, Norquist sits on the boards of the National Rifle Association of America, the American Conservative Union, and The Nixon Center. He is also the president of the American Society of Competitiveness. Although it is not listed in his ATR profile, Norquist is member of the Advisory Committee for the pro-LGBT, conservative nonprofit GOProud. Known for his ability to craft potent arguments, Norquist is a contributing editor to the *American Spectator Magazine*. In addition, Norquist has authored two books, *Rock the House*[11] and *Leave Us Alone – Getting the Government's Hands off Our Money, Our Guns, Our Lives,*[12] and recently co-authored *Debacle: Obama's War on Jobs and Growth and What We Can Do Now to Regain Our Future.*[13] In addition to his formal roles, Norquist has substantive impact off the record. He is a constant presence in Washington D.C. — on the Hill, in the media (often without being directly quoted), and at his regular breakfast table at a downtown hotel.

Norquist is viewed as a leader who genuinely embraces an agenda of small government and low taxes. His convictions lend a depth of credibility to ATR that has helped sustain its influence. "That's one criticism that you never hear, at least I haven't over the years, of … Grover, and that is that [he is] insincere," noted a conservative thought leader. Another agreed: "Grover has … brilliantly … raised money without having to sell out to his donors. So when people come to Grover and say, 'I'll give you $200,000, but you need to say this tax increase isn't really a tax increase,' he says no. And that discipline has maintained him as a credible force for a long period of time."

Norquist's long-term vision and commitment to tax reform have enhanced ATR's effectiveness in a number of ways. First, the vision offers clarity of purpose that serves as a compass when there are competing priorities or distracting issues. Second, adhering to this vision has helped legitimize the organization. "The fact that they never waiver from that core goal as their key mission gives them a great deal of credibility," an observer told us. Third, it gives it a time horizon that is commensurate with the kind of profound impact (such as creating a no-tax-increase "brand" for the Republican party, a subject discussed later in this report) the organization seeks to accomplish.

> *The vision offers clarity of purpose that serves as a compass when there are competing priorities or distracting issues.*

Discipline and long-term vision have likely helped ATR weather a number of scandals, including at least two Senate reports finding that ATR acted as an illegal conduit for funding. The Senate collected evidence showing that in one instance ATR enabled the Republican National Committee "to evade campaign finance laws;"[14] and in another allowed disgraced lobbyist Jack Abramoff's clients "to surreptitiously finance grassroots lobbying

10. "Who Runs GOV Profile: Grover Norquist," *The Washington Post,* http://www.washingtonpost.com/politics/grover-norquist/gIQAr6BAAP_topic.html

11. Grover Norquist, *Rock the House* (Ft. Lauderdale: VYTIS Press, 1995).

12. Norquist, *Leave Us Alone*.

13. Grover Glenn Norquist and John R. Lott, *Debacle: Obama's War on Jobs and Growth and What We Can Do Now to Regain Our Future* (Hoboken: John Wiley & Sons, 2012).

14. U.S. Senate Governmental Affairs Committee, 105th Congress, *Minority Report: Executive Summary, Investigation on Illegal or Improper Activities in Connection with the 1996 Federal Election Campaigns* (March 1998), http://www.washingtonpost.com/wp-srv/politics/special/campfin/stories/demsummary.htm#rnc

campaigns."[15] (For more on this, see the concluding section on integrity.)

Membership and Funding

ATR has more than 60,000 members in all 50 states.[16] For 2010, ATR's 501(c)(4) arm reported revenue totaling $12,393,076 and expenses of $11,379,668, with net assets of $7.6 million.[17] For 2010, the Americans for Tax Reform Foundation reported revenues of $898,810, expenses of $1,694,000, and net assets of $795,190.[18] According to its website, the foundation is funded solely on "contributions from taxpayers who believe in our mission."[19]

ATR engages in direct lobbying; over the last several years its annual lobbying expenses have ranged between $680,000 and $1.5 million. ATR spends its own money to defeat candidates from both parties. In the 2010 election cycle, ATR spent $4,140,044 on reported independent expenditures, communication costs, and coordinated expenditures; all of it spent against candidates (specifically, $332,170 against Republicans and $3,475,704 against Democrats).[20]

Location

ATR is headquartered in downtown Washington, D.C., and primary operations are based out of this office. The organization also partners with other conservative

groups around the country to host local offshoots of its Wednesday meetings.

THE TAX PLEDGE: USING POLITICAL ACCOUNTABILITY TO BUILD A POLITICAL BRAND

The flagship project of ATR is the Taxpayer Protection Pledge, which seeks to hold politicians accountable for what formerly passed as campaign rhetoric. The actual language of the pledge differs slightly depending on the federal or state office. For the U.S. House of Representatives, it reads as follows:

> I, _____, pledge to the taxpayers of the _____ district of the state of_____, and to the American people that I will: ONE, oppose any and all efforts to increase the marginal income tax rates for individuals and/or businesses; and TWO, oppose any net reduction or elimination of deductions and credits, unless matched dollar for dollar by further reducing tax rates.

The pledge is a signed promise by legislators and candidates for office that commits them to oppose "any and all" effort to increase income taxes on individuals and businesses. In the words of an ATR insider, the pledge is "simple, clear and [does] not have any weasel words."

Since ATR first sponsored the pledge in 1986, hundreds of U.S. Representatives and U.S. Senators, and every successful Republican presidential candidate have signed it. In the current 112th Congress, 238 U.S. Representatives and 41 U.S. Senators have signed the pledge (including all but 13 Republicans currently serving in Congress), and more than 1,200 state officials, including 13 governors, have done so.[21] Its simplicity and its breadth of coverage led Jonathan Alter, long-time

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15. Senate Committee on Indian Affairs, 109th Congress, *Gimme Five: Investigation of Tribal Lobbying Matters* (June 22, 2006), http://www.indian.senate.gov/public/_files/Report.pdf

16. Grover G. Norquist, "The New Majority: The 'Leave Us Alone' Coalition," *Imprimis*, Hillsdale College (May 1996), http://www.hillsdale.edu/news/imprimis/archive/issue.asp?year=1996&month=05

17. Americans for Tax Reform, IRS Form 990, 2010.

18. Americans for Tax Reform Foundation, IRS Form 990, 2010.

19. On its 2010 IRS Form 990, ATR reported 99 percent of its revenue was from gifts, grants, and other contributions. Requests for additional details on revenue sources were unanswered.

20. Of the federal candidates that ATR campaigned against, eight won and nine lost. Results of the state races were not available. "Americans for Tax Reform Independent Expenditures," Center for Responsive Politics, http://www.opensecrets.org/pacs/indexpend.php?cmte=C90011289&cycle=2010

21. Americans for Tax Reform, www.atr.org

columnist for *Newsweek*, to state that the pledge "has transformed American politics."[22]

Simple, Public, Self-enforcing

The pledge is a promise that leaves candidates no room for interpretation. It is, in the words of an ATR insider, a "commitment from a candidate to voters that I won't raise your taxes." ATR considers the pledge permanent—candidates need sign only once—and it does not allow for any exceptions or caveats. ATR and Norquist widely publicize the commitment of each individual. ATR lists all signatories on its website and has provided large, blow-up versions of the pledge for media-friendly signing ceremonies. ATR also keeps in touch with signatories, thanking them for taking the pledge and alerting them when bills that would violate the pledge are coming up for a vote.

Norquist's frequent presence on Capitol Hill serves as a tacit reminder to lawmakers of their pledge. Some interviewees stated that lawmakers call on Norquist and ATR to review and comment on proposed tax legislation. ATR informs elected officials "in a very low key way" when a tax vote is coming up, but will not "bug" them when it does not need to, in the words of a former lawmaker. When appropriate, however, ATR will press the issue of tax cuts and is more than willing to play hardball by reminding officials—as well as their key audiences— of their written promise to constituents not to raise taxes. Specifically, ATR and Norquist ensure that a candidate's opponents, the media, and the voting public are aware of the commitment. As such, the Pledge functions as a double-edged sword. In Norquist's words:

> [W]e keep copies of the pledge. We make multiple copies. We share them with the person who takes the pledge. We share them with the media in that state. We certainly would share them with anybody who is running in a primary or general, against someone who broke the pledge. And there have

been times where we've called in to all of the voters in a district or a state and said, to remind you that when Fred ran for Congress, Senate state legislator, he promised, on this pledge, on the website—you can see his signature, her signature—they promised not to raise taxes, and they did … .[23]

Republican candidates who do not sign the pledge are not likely to be elected. "The easiest way to invite a primary, if you're a Republican, is to violate the pledge," a seasoned conservative lobbyist told us, adding that "the way we gerrymander districts today, the real competition in both parties is as much on the primary side as it is on the general side." Indeed, 98 percent of the new Republicans elected to Congress in 2010 had signed the pledge.

When a legislator does violate the pledge, ATR works doggedly to ensure he or she is not re-elected by publishing a "least wanted" list and activating its networks. A broken pledge is automatic (and largely, from ATR's perspective, free) negative publicity: fodder for political opponents, a news story for the local press, and rich subject matter for the op-ed pages.

Notably, a small number of office holders have rescinded or violated their pledge. Six new members of Congress rescinded (or attempted to rescind; ATR considers the pledge permanent) their signatures from the pledge between 2010 and 2012.[24] At the state level there has been a small but regular stream of violators, about 9 percent a year according to a 2005 article, which is one of the few that discussed the topic.[25] It is not clear whether these state legislators suffer at the ballot box after they violate the pledge.[26] Norquist argues, however,

22. The quote also appears with a number of others on ATR's website, an example of its savvy use of validators. Jonathan Alter, "Political Pledges," *The Huffington Post*, July 28, 2006, http://www.huffingtonpost.com/jon-alter/political-Pledges_b_26031.html

23. "A Conversation with Grover Norquist," narrated by Diane Rehm.

24. "The Pledge: Grover Norquist's Hold on the GOP," *60 Minutes* (November 2011).

25. Zach Patton, "Taxophobe Targets," *Governing The States and Localities* (May 2005), http://www.governing.com/topics/economic-dev/Taxophobe-Targets.html

26. Ibid. "A broken tax pledge rarely penalizes lawmakers politically," says David Brunori, a tax analyst for State Tax Notes who opposes such pledges. "Very few politicians have ever lost their seat because they broke their pledge never to raise taxes," he says. "There are hardly any examples."

that few lawmakers want to face the reelection risk and that pledge breakers who are reelected will find that their careers do not advance, with respect to committee assignments and more senior offices, even if they do keep their seats.

Defining What it Means to be a Republican

The enduring strength of the pledge comes from its role in branding the Republican Party over the last several decades as the party that will not raise your taxes. Lawmakers may fear the personal fallout that comes from breaking the pledge but, in a broader sense, they also recognize that doing so violates a much larger identity framework that Norquist has helped to create: the idea that Republicans do not raise taxes. Norquist frequently uses a colorful metaphor to explain the basic marketing insight behind his strategy:

> Just as Coca-Cola protects its brand with advertising and quality control, so too Republicans have had to maintain quality. If you bring a bottle of Coke home and, halfway through your drink, find a rat head in the bottom of the bottle you do not say to yourself, "I just may not finish this particular bottle of Coke this evening." It makes you wonder about buying Coke in the future. It damages the brand. Elected Republicans who vote for tax increases are rat heads in a Coke bottle. They damage the Republican brand for all other Republicans. Theirs is not a victimless crime. [27]

When every Republican makes the same promise, that promise comes to define the party; it is the brand. For Norquist, this binding commitment is an improvement:

> The no-tax-increase brand has strengthened the Republican Party. A voter can walk into the voting booth, three sheets to the wind, with little knowledge of the candidates, and know with 98 percent certainty that if he votes for the Republican, that candidate will not raise his taxes. [28]

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27. Grover Norquist, Pledge Allegiance, *The American Spectator* (October 2011), http://spectator.org/archives/2011/10/04/pledge-allegiance/print

28. Ibid.

The pledge has been an important vehicle for ATR to implement its long-range vision for small government and lower taxes. Successful rebranding—in this case, taking Republicans from identifying themselves as the party of fiscal responsibility to the party of no new taxes—takes considerable time and discipline. An interviewee argued that many organizations in Washington fail because they only address immediate crises, rather than taking steps to make systemic changes to impact the future. By contrast, ATR embraced a long-range vision and then methodically executing a plan to reach its goals. (This is much of the subject of *Leave Us Alone*, which describes how Republicans will win over various categories of voters in the coming decades.) In Washington, D.C., an ATR employee argued, "there's nothing you can't do in 25 years."

> *The enduring strength of the pledge comes from its role in branding the Republican Party over the last several decades as the party that will not raise your taxes.*

With Power Comes Responsibility: The Pledge's Role in Tax Debates

If lawmakers, particularly at the federal level, believe that violating the pledge is political suicide, then how a tax increase is defined is critical. This task has fallen to Norquist's organization. If a bill is deemed to violate the pledge—even if it does not look like a tax increase—it has slim chance of passing Congress.

For ATR, any piece of legislation containing a revenue increase—even an omnibus bill with hundreds of provisions—is a "poison bill." Voting for it is seen as violating the pledge (unless, as sometimes happens at the state level, ATR does not catch the "poison" provision in time to warn pledge signers to vote against it). The person who decides whether a measure constitutes a tax increase is the person who enforces the pledge. "If Grover Norquist says it is, then it's a tax increase. And people treat it as such," a policy expert told us. The pledge is designed to function as a guardrail to keep Republicans from raising taxes; when Republicans are not in the

majority, it functions as a wall to ensure that even tax reforms such as eliminating arguably wasteful tax credits are not passed unless coupled with commensurate tax cuts to match projected revenue increases.

Tax reform has come under scrutiny in recent years: first in late 2010, when President Obama and Congress negotiated a two-year extension of the George W. Bush tax cuts for all income levels, and then in 2011, when House Republicans balked at a vote to raise the federal debt ceiling—a routine procedure that traditionally had been nonpartisan and uncontroversial—and only agreed to do so after the creation of a bipartisan "Super Committee" to develop a plan to reduce the deficit. The Committee failed to come to an agreement, reportedly because Republicans on the committee rejected any plan that included revenue increases.

Members of Congress and the media have given ATR significant credit for many Republicans' refusals to raise taxes. (Observers have also noted that the fiscal package proposed by House Budget Chairman, Congressman and Vice Presidential candidate for Mitt Romney, Paul Ryan (R-WI) in 2011 bears many elements outlined by Norquist in *Leave Us Alone*.) Norquist has done nothing to disabuse people of this impression. In an October 2011 column in *American Spectator* he wrote, "On August 2, 2011, the Pledge stopped President Obama in his tracks."[29] Reports of the Super Committee proceedings suggested that Republican members were mindful of the pledge throughout the negotiations and sought ways to increase revenue without technically breaking their promises, for example, by allowing the Bush-era tax cuts to expire without legislative action.[30] Senator Harry Reid (D-NV) blamed Norquist for the Super Committee impasse, and former Senator Alan Simpson (R-WY), co-chair of President Obama's debt commission, publicly

chided the committee for its deference to the pledge, saying Norquist "has people in thrall."[31]

When ATR's role as the arbiter of what constitutes a tax increase subjects ATR or its leader to criticism, Norquist's response is to deflect – he reminds detractors that the pledge was made neither to him nor to ATR, but to the American people.

THE WEDNESDAY GROUP: CONVENING THE CONSERVATIVE COMMUNITY

If the pledge has placed ATR and Norquist at the core of modern Republican politics, the Wednesday meetings provide a key vehicle through which the conservative network operates. A conservative lobbyist noted that one "thing that Grover does better than anyone on the conservative side, and I mean anyone, is alliance building."

For nearly 20 years, ATR has been convening conservatives in Washington, D.C., at invitation-only Wednesday meetings. The initial group included approximately 20 participants; today the D.C. meetings alone have grown to nearly ten times their original size. They have also crossed the Beltway: as of October 2011, ATR's Wednesday meeting had counterparts in 61 state capitals and "second cities" in every state but South Dakota.

Meetings of the loose group of like-minded individuals that Norquist has dubbed the "Leave Us Alone Coalition" (it opposes, in his vernacular, the liberal "Takings Coalition") are not restricted to those who share ATR's view on taxes but widely attended by conservatives and

29. Norquist, "Pledge Allegiance."

30. Steven T. Dennis, "GOP Finds Leeway in Grover Norquist's Tax Pledge," *Roll Call,* November 15, 2011, http://www.rollcall.com/issues/57_59/GOP-Finds-Leeway-in-Norquist-Tax-Pledge-210296-1.html

31. Indeed, in the fall of 2010, even as polls showed that voters overwhelmingly favored the White House's plan to let the Bush tax cuts expire for the wealthiest Americans, voters swept dozens of anti-tax Republicans into office, returning control of the House to the Republicans. Brian Beutler, "Super Committee Republicans Get Earful over Loyalty to Grover Norquist" *Talking Points Memo (TPM),* November 2, 2011, http://tpmdc.talkingpointsmemo.com/2011/11/super-committee-republicans-get-earful-over-fealty-to-grover-norquist.php

libertarians.[32] The meetings are confidential; an October 2011 *60 Minutes* report featured the first-ever media footage from inside the room.[33] Reports indicate that attendees have included representatives of the National Rifle Association, the Christian Coalition, the Heritage Foundation; members of the Republican National Committee; House and Senate leadership and their staff; corporate lobbyists; think tanks; business groups; activists; and members of the media.[34] We were told that George W. Bush started sending a representative to the meetings even before he became president, and Vice President Cheney followed suit.

The meetings are occasions for networking, identifying areas of mutual interest, discussing tax issues and other public policy matters, outlining tactics, and sharing success stories. More than a decade ago, a Norquist ally described the meetings as the "Right's Grand Central Station."[35]

Freedom within Form

The Wednesday meetings follow a fairly rigid format within which all manner of information may be shared. The format is built around a number of discrete, identifiable, and largely replicable elements. While many of the individual elements are not unique, observers believe that together they have helped the Wednesday meetings thrive even as other efforts on both the Left and the Right have stumbled. A substantial network has been created through the meetings, which are composed of the following key elements:

Consistency. "To have a coalition meeting, you meet the same place, the same time, you never not have a

meeting," explained an ATR insider. The Wednesday meetings convene at ATR's office in downtown D.C., across from a central metro stop and not far from Capitol Hill. With the exception of the week between Christmas and New Year, the meeting happens without fail every Wednesday morning at 10:00. Bagels and beverage are always provided for attendees.

Brevity. Most speakers are given only three minutes to address the group (a few significant guests may receive the last half hour for their presentations). Over the course of each 90-minute meeting, 20 to 30 people have an opportunity to present.

Handouts. Speakers and other participants are encouraged to present in broad-brush strokes and put the details of their remarks into writing. Large packets of handouts are available to everyone at the meeting. Some attendees do not even place themselves on the speaking roster, preferring instead to communicate on paper.

Future-focused. Speakers are instructed to address the present and the future at the meeting. It is not an occasion to dwell upon complaints with past administrations or replay legislative victories or defeats.

Action-oriented. "People are only allowed to talk about what they're doing," a Wednesday meeting regular told us. "Not what they're thinking, not what they're hoping."

Off the Record. While members of the media frequently attend the Wednesday meetings, media reports about the meeting are strictly prohibited. Attendees who have spoken to the media about the content of the group's meetings have not been invited back.

Invitation-only. Only those invited are allowed to attend the meetings. The invite list has been built over the years through both personal recommendations and direct outreach to ATR. On occasion, a speaker may be asked to present but not to attend the rest of the meeting. For example, ATR invited former Democratic Vice

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32. Norquist's description notwithstanding, the individuals and organizations represented at the Wednesday meetings do not function as a formal coalition as described elsewhere in these case studies; rather, the appellation provides an "us v. them" frame for like-minded participants. As described further in the text, the Wednesday meetings serve as a central clearinghouse from which information can be shared and more formal alliances formed.

33. "The Pledge: Grover Norquist's Hold on the GOP," 60 Minutes.

34. Robert Dreyfuss, "Grover Norquist: 'Field Marshal' of the Bush Plan," *The Nation*, April 26, 2001, http://www.thenation.com/article/grover-norquist-field-marshal-bush-plan?page=0,0

35. Dreyfuss, "Grover Norquist."

President Al Gore and consumer advocate Ralph Nader to speak (on separate occasions) in the final 30 minutes of a meeting to discuss global warming and government oversight, respectively.[36]

Ownership. Although ATR formally convenes the meetings, it is the attendees who drive the process and set the agenda for each meeting. Speakers typically request time to speak in the program by contacting an ATR employee during the preceding week, and there are many weeks in which Norquist's role at the meetings is merely to pass the microphone and make introductions. Norquist's allies noted that this approach helps maintain "the perception that Grover remains at the center of this very, very broad-based public policy movement," while still allowing attendees to have a sense of ownership in the proceedings. A substantial network has been created through the meetings, which are composed of the following key elements.

Information. The forum is designed for an efficient exchange of information, not mobilization. Even when speakers ask the group for assistance, there is no coordination by ATR or expectation that attendance mandates participation. Individuals who wish to collaborate directly with other groups can reach out to potential partners either at or around the meetings; one attendee reported that smaller groups regularly lunch together following the meetings.

Anticipation. Although many prominent speakers have addressed the Wednesday gatherings—a frequent attendee noted that almost every Republican candidate for federal office will put in an appearance during election season—ATR does not announce the speaking roster in advance. An ATR employee explained that this is done deliberately to keep the emphasis on the exchange of interesting information and discourage "celebrity stalking." It also encourages regular attendance, as one never knows when one might miss a high-profile speaker.

Flow. The Wednesday meetings are meant to encourage attendees to make useful connections and share information; therefore, an ATR employee told us, it is important to "make it easy for people to get up and move around. You make it easy for people to come late. You make it easy for people to come to the meeting and leave early." The room is set up with easy access to bagels and beverages and a raised seating structure that enables everyone to see each other. Aware of the networking benefits the meetings offer to attendees, ATR has arranged the meeting space so that those interested in sidebar conversations may sit in a different room and listen in to the presentations while talking separately.

Civility. Members of the Leave Us Alone coalition do not always agree with each other. "We have Republicans for Choice in that room as well as right-to-lifers," an ATR employee noted. Yet despite occasionally fundamental disagreements of principle, the tone is almost always civil. Attendees credit Norquist for this: "I think he's always been very, very firm that this is an exchange of ideas. We're not getting into arguments here. There's not to be antagonism." A basic rule of coalition building, an ATR insider explained, is, "You don't step on the toes of any part of the coalition," adding that one of the purposes of the meetings "is teaching everybody that if you have a big coalition, not everybody agrees on everything."

Information, Access, and Coalition Fundamentals

The Wednesday meetings have elevated Norquist's profile and improved coordination among conservative and libertarian groups. While the meetings have grown and achieved impact through the aforementioned approach, their success also lies in the composition of attendees. Interviewees did not agree which characteristics were most vital to the success of the Wednesday meetings, but several themes surfaced: creating a "big tent" for like-minded individuals, adhering to conservative principles, and providing potential access to money and influence.

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36. Michael Scherer, "Grover Norquist: The Soul of the New Machine," *Mother Jones* (January/February 2004), http://motherjones.com/politics/2004/01/grover-norquist-soul-new-machine.

Rather than focusing on ATR's primary goal—lower taxes—Norquist has used the Wednesday meetings to create a "big tent" for like-minded conservatives.

Rather than focusing on ATR's primary goal—lower taxes—Norquist has used the Wednesday meetings to create a "big tent" for like-minded conservatives. He encourages them to focus less on internal disagreements and more on shared interests: having the government "leave them alone" in whatever sphere—guns, money, education—is most important to them. An ATR employee quoted conservative activist Phyllis Schlafly's line, "Everyone is allowed to vote for my candidate for his own reason," to explain how the Leave Us Alone Coalition members come together. The staff member further emphasized, "This is not a collection of libertarians who want to be left alone in all zones. The guy who wants to be left alone in his guns may think it's okay to tax other people. But he votes guns."[37] In *Leave Us Alone*, Norquist explained that his goal was to have the coalition represent 60 percent of the electorate; this margin allows room for error if, for example, one candidate is felled by a last-minute scandal.[38]

An interviewee suggested that the Leave Us Alone Coalition works because its members are united by principle, not funding. In contrast, the liberal community, he believed, is united only by a quest for government action—typically, financial support. As a result, he said, cooperation among them is hampered because individuals and organizations are fighting for pieces of a limited pie.

The weekly meetings provide a forum to expose people to a policy issue, which they can then support as they see fit. "I actually think part of his genius is that he tries

to get them behind him on an issue and then asks them to go use their resources. He doesn't ask for them to be put under his control," a conservative lobbyist noted.

Thanks to the Wednesday meetings and their other activities, Norquist and ATR have access to organizations that have the institutional capacity to move major public policy issues beyond the scope of ATR, including the business lobbying community, grassroots organizations, and like-minded think tanks. The Wednesday meetings thus serve as a vehicle for Norquist to build alliances. One interviewee said Norquist is "second to none" on the conservative side in "helping people raise money, introducing them to other powerful and important people who are working on an issue that's unrelated to [his] focus …. And he nurtures his alliances, maintains relationships with them. He doesn't just have an ally for one fight."

ATR will occasionally welcome to its Wednesday meetings organizations and individuals associated with the "Takings Coalition" (Norquist's term for the political Left) with which ATR shares a common point of view on a particular issue, such as the ACLU when both groups opposed the reauthorization of the Patriot Act. This is because ATR views associating with such groups (that in another context might be considered an adversary) as proof of its commitment to its underlying principles.[39]

Finally, some interviewees claimed the Wednesday meetings were successful because of the potential access to funding and influence. One individual said, "In the early years [there was] money at the table. People showed because they knew they could get supported to continue doing the work from a conservative point of view. … [I]t brought people to the table. It brought people in line. And it was very effective." Others suggested that just as important to the meetings' early success was access to influence. For example, Norquist and ATR had close ties with Newt Gingrich (R-GA) and other members of the 1994 Republican Revolution in which Republicans won control of the House of Representatives for the first time since 1954. (As a result of the elections, Newt Gingrich became Speaker of the House.)

37. Norquist acknowledged divisions within the coalition but dismissed the implication that this was problematic: "Conversations, loud and boisterous, over secondary issues do not threaten the coalition. It is simply a reminder that if you intend to be the majority party in a nation of three hundred million souls there is not going to be unanimity. Political leaders manage such conflict, they do not eliminate it." Norquist, *Leave Us Alone*, 24.

38. Ibid, 24-25.

39. Norquist, *Leave Us Alone*.

Franchising the Wednesday Meetings

Wednesday meetings similar to the one in D.C. take place every week across the country, forming a network that, according to ATR, took 10 years to build. The local meetings are structured like the D.C. meeting except they meet only when the state legislature is in session. Norquist and several other ATR employees occasionally attend the meetings. Until recently, Norquist was present for the inaugural meeting of each local chapter.

ATR employees indicated that they monitor carefully the local affiliates. They review local meetings regularly with a focus on three foundational metrics: "How many people? How many handouts? How many people spoke?" When local affiliate members travel to D.C., they are often invited to attend the national meeting at ATR's offices.

Norquist actively selects the chairperson for each local affiliate's meetings, often drawing on talent from local or state conservative think tanks. He tries to find an individual to facilitate the meetings—not run or dominate them. This approach mirrors Norquist's role at the Wednesday meetings in D.C. Although present at the vast majority of them, he does not necessarily have a speaking role.

Interviewees raised Norquist's savvy use of the Wednesday meetings to grow a solid base of supporters and to springboard into a position of leadership in conservative circles. Observers said the weekly meetings first allowed Norquist to "grab some of that leadership mantle," in part by identifying a broad scope of items for discussion rather than insisting that ATR's tax agenda dominate. Because the meeting agenda was transparent and in keeping with broad conservative values, he gained legitimacy that gave him further leadership opportunities. Today, his role in convening and running the meetings puts him in a position to raise or lower the profile of other conservative leaders; while he may take a hands-off approach, they are still ATR's meetings.

THE POWER OF COMPELLING MESSAGES

ATR's sources of success include the ability to translate public policy into compelling ideas and messaging. Some see ATR as largely responsible for the Right's ability to out-message the Left in policy debates over the past few decades. A progressive activist explained:

> The first thing … Grover did brilliantly was capture two competing themes that reinforced one another and figured out how to distill them in a way that a broad coalition of groups and legislators and public officials and pundits could grasp. And it is, we don't want to be taxed and we don't want government on our backs. … [H]e married those two concepts brilliantly into some easily sellable points and sound bites that people could embrace.

A conservative lobbyist offered a slightly different explanation for Norquist's success by highlighting his selection of an issue—taxes—that not only affects almost all Americans individually but also the institution of government itself:

> Grover, very, very wisely, identified that at the beginning of his involvement with ATR as the common element to public policy debates at the federal level. It comes down to money. Where does money come from? It comes from taxes. And where does the money from taxes come from? It comes from people. And do people have control over that? To some extent, yes. Where do they control that? Through their elected representatives. How do their elected representatives control that? Through either voting to decrease or increase tax revenues. …[R]eally, the essence of both Grover's and ATR's success is he identified the one common element that reaches across all these different policy issues. And he's never wavered from that. And the organization doesn't highlight a particular public policy issue other than taxes. But it involves and touches virtually everything else that Washington does. And that's why his Wednesday groups are so well-attended and so important, because there are

POTENT MESSAGING

ATR has benefited from the fact that Norquist is a talented messenger. In part this is due to his personal style: He is smart (including two Harvard degrees), colorful (Republicans who vote for tax increases are "rat heads in a Coke bottle"), and funny (he has competed several times—and in 2010 placed third—in the annual Funniest Celebrity in D.C. fundraiser). Above all, he is a willing and enthusiastic messenger on behalf of conservative issues.

Reviewing Norquist's writing and interviews reveals a number of elements that contribute to his ability to shape a message in a compelling manner:

Metaphor, History, and Analogy. A 2009 profile in Slate admired Norquist's ability to create compelling metaphor and "vivid imagery." From prom night to Archimedes, Norquist presents arguments through references to "known truths" and historical facts. The result? He validates his underlying message without necessarily dwelling on its substance.

Straw Men. By setting up questions and posing problems himself, Norquist ensures that he knows the answer. This approach can also encompass attacks in which an opposing position is associated with extraneous negative connotations to taint an otherwise reasonable position. For example, Norquist has compared attacks on the estate tax, which targets a small group of wealthy people, to other attacks on a small group of people as in the Holocaust.

Underdog Complex. From fundraising to electoral activities to influencing the media, Norquist suggests that the world is a cold hard place for conservatives, creating a "siege mentality." Such framing not only triggers sympathy and indignation among his followers, but moves them to action. The very name of Norquist's coalition—Leave Us Alone—suggests a unified group under attack.

Yes. Yes. What? Because he is smart, funny, and observant, Norquist has a knack for expressing political and social insights in a way that is both accurate and memorable. He does so by linking events in a sequence. A casual listener may easily be caught nodding along to an insightful descriptive statement that leads to a more provocative statement that leads to a controversial (even false) statement.

Respect. It is easy—and, for some, tempting—to mock those with different political views. Norquist understands that this does not play well in public and moderates his tone accordingly. "I chose not to write another book entitled, 'The Other Team Sucks,'" the preface to Leave Us Alone tells the reader (even though this is, in fact, a dominant theme of the book).

Social scientists have found that we tend to look for rational arguments to support conclusions that we have already reached emotionally—and that we are less likely to critically evaluate data that supports a position we have already staked out. Many of the techniques described have helped Norquist reach his audience at an instinctive, emotional level, priming them for his message.

any number of issues involved, public policy issues involved, on any given Wednesday.

ATR's approach involves identifying issues that deeply resonate with the public and building greater awareness of them through a powerful messaging framework. Norquist's messages often register on an emotional level (consider his book title, "Leave Us Alone") or startle people into paying attention (such describing a rat head in a Coke bottle). Such messaging may be called populist by some and simplistic by others, but supporters argue it hearkens to core—even innate—values and as such reinforces Norquist's attempt to frame his arguments as right versus wrong. In his vernacular, there is a dramatic conflict between those on the side of liberty and those seeking to take it away. A tax policy expert acknowledged that, "Norquist is operating at a level of the emotion, the rhetoric, the outrage—feeding into people's preconceived notions about how the economy works." In doing so, he added, ATR's leader is quite effective.

Several interviewees emphasized Norquist's masterful use of the media. Part of this success is due to his use of provocative language and a willingness to be a lightning rod during controversy. He is also quite prolific in his own writing, uses many vehicles to communicate, and defends his position well, employing history, humor, and metaphor to his advantage. (See sidebar on Potent Messaging.) Norquist appears to subscribe to the school of thought that any publicity for his ideas is good publicity, even if he is being excoriated or (less frequently of late) ignored. For example, several years ago the Chamber of Commerce cited the pledge as an example of its effective advocacy as part of its fundraising pitch (in fact, the Chamber endorses but does not administer the pledge). Rather than insist that ATR be credited for its work, Norquist welcomed the free publicity for the pledge.

The combination of compelling messages, savvy media strategy, and a broad network fuel ATR's national impact on its own goals as well as its influence on the broader conservative movement. ATR or other coalition members circulate talking points at the Wednesday meetings that are then distributed far and wide among conservatives, and in some cases they create an echo chamber of reenforcing sound bites. Norquist did not invent the terms "Contract with America," "death tax," and "Obamacare," but the continued potency of these expressions among even neutral reporters is due in part to deliberate message reinforcement and dissemination vehicles afforded by the Wednesday meetings.

ATR IN ACTION: THE DEBATE OVER THE ETHANOL TAX CREDIT

In the summer of 2011, ATR and Norquist engaged in a very public spat with Senator Tom Coburn (R-OK) over the elimination of the tax credit for ethanol.[40] This incident provides a vivid example of how ATR maintains the credibility of the pledge with legislators and the public, even in the face of substantial pressure to increase federal revenue.

In late 2010, Senator Coburn and Senator Mike Crapo (R-ID), both signers of the pledge and members of the bipartisan National Commission on Fiscal Responsibility and Reform (known informally as the Bowles-Simpson Commission or the debt commission), attracted the ire of ATR when they announced their support for the recommendations made by the commission on balancing the federal budget. In a joint statement of support, the senators pointedly wrote, "Our oath to the Constitution must trump our oaths to parties, interest groups and ideology."[41] Norquist blasted the panel's recommendations as a $2 trillion tax increase over the coming decade and criticized the Republicans who broke rank with their party to support it.

A few months later, Senator Coburn prepared an amendment to the Economic Development Revitalization Act of 2011. On its face, it eliminated the ethanol tax credit for businesses six months before the credit was set to expire, resulting in an estimated savings of $3-6 billion. Political insiders, however, understood that this was far from a routine piece of legislation, as noted by author Jonathan Chait of *The New Republic*:

> Coburn and a handful of Republicans are trying to get around [the Taxpayer Protection] Pledge. Their tactic is to negotiate revenue increases that take the form of closing loopholes and exemptions rather than raising rates. This would clearly violate the Pledge. But Coburn is trying to expose the silliness of the Pledge. He's holding a vote on eliminating the ethanol subsidy. Now, conservatives oppose the ethanol subsidy. But since the subsidy is a tax credit, then eliminating it is a tax increase, and forbidden by the Pledge.
>
> So Coburn's goal here is to drive a wedge between conservative doctrine and Norquist's anti-tax dogma. If Norquist opposes a vote against ethanol, he reveals how absurd his Pledge actually is. If he supports it, then he proves that it shouldn't be taken literally. Either way, it creates a talking point that Republicans

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40. Elyse Foley and Ryan Grim, "Grover Norquist Rebuked by GOP," *Huffington Post*, June 14, 2011, http://www.huffingtonpost.com/2011/06/14/grover-norquist-ethanol_n_876887.html.

41. "Senators Coburn, Crapo Announce Support for Debt Commission," Senator Tom Coburn Press Release, December 2, 2010, http://www.coburn.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=94a738d2-5fff-4bf7-8b66-c675a91ca031

could use to support revenue increases. And since the GOP's theological opposition to revenue increases has been driving budget policy for more than two decades, this is a pretty important development.[42]

A number of pundits reported that Senator Coburn's amendment was the first time in more than two decades that ATR had faced a threatened mutiny in its ranks. ATR believed that if Republicans voted for one revenue increase, even in the guise of a "reform," others would follow. For a few weeks in June 2011, the Senate vote and the sideline sniping between Coburn and Norquist commanded national media attention.

ATR insiders explained that they saw Senator Coburn's attempt to undermine the pledge "coming five months away" and prepared a coordinated defensive strategy to respond. The strategy sought to maintain ATR's strict interpretation of the pledge while still allowing Republican Senators to support the Coburn amendment, which had the backing of traditional ATR allies such as Koch Industries and the Club for Growth. The strategy unfolded in three broad phases.

First, Norquist denounced the amendment as a political gambit rather than sound policy. He argued that to embody conservative philosophy, the amendment should have struck not just the ethanol tax credit but also the underlying ethanol mandate.

Second, Norquist used the occasion to clarify ATR's position both on ethanol subsidies, which it opposes, and on the elimination of credits and deductions without corresponding tax cuts as a method of raising revenue, which it also opposes and which, he explained, violates the pledge.[43]

Third, ATR recognized that it had the losing hand and moved to mitigate the damage. It coordinated with Senator (and pledge signer) Jim DeMint (R-SC) on a separate amendment that eliminated both the ethanol mandate and the estate tax. It told Republican lawmakers that as long as they supported both amendments, their vote would be scored as tax neutral and not violate the pledge.

In the end, ATR cast the episode as a minor challenge that it won. On the day that the Coburn amendment (co-sponsored by Senator Diane Feinstein (D-CA)) passed, the organization issued a press release entitled, "ATR applauds Passage of Sens. Feinstein/Coburn Ethanol Amendment,"[44] and sent a letter to state and local affiliates explaining that so long as lawmakers supported both the Coburn and the DeMint amendments they had not violated the pledge.[45] An ATR insider told us that ATR "just put the whole thing together to blunt [the Coburn amendment] from trying to undo" the pledge. "And the leadership … stapled them together, said if they don't both pass, we're not moving the underlying bill."

A different version of events was offered by Clinton Labor Secretary Robert Reich: "In order to save face on today's vote, Norquist says renegade Republicans will still be considered to have adhered to the pledge if they vote in favor of an amendment offered by Senator Jim DeMint to eliminate the estate tax. Talk about grasping at straws. DeMint's amendment isn't even up for a vote."[46] In fact, the DeMint amendment was never voted on. In the end, these details did not matter: the entire underly-

42. Jonathan Chait, "The Grover Norquist Ethanol Trap," *The New Republic*, June 10, 2011, http://www.tnr.com/blog/jonathan-chait/89770/the-grover-norquist-ethanol-trap

43. "ATR continues to oppose the current federally mandated use of expensive, inefficient domestic corn ethanol while taxing more efficient, imported ethanol made from sugar cane. … *However, any attempt to remove this income tax credit must be addressed while remaining tax revenue neutral.*" (emphasis in original). Brian M. Johnson, "ATR Explains Ethanol Credits & Their Tax Effects," *Americans for Tax Reform Weblog*, January 27, 2009, http://www.atr.org/atr-explains-ethanol-credits-their-tax-a2903

44. Christopher Prandoni, "ATR Applauds Passage of Sens. Feinstein/Coburn Ethanol Amendment," *Americans for Tax Reform Weblog*, June 16, 2011, http://www.atr.org/atr-applauds-passage-sens-feinstein-coburn-a6252#ixzz1ovVPOs00

45. "A Senator might choose to vote for the Coburn amendment to send a largely symbolic message of disapproval of government picking winners and losers in the energy industry. As long as that vote was followed by a vote for DeMint (or a vote to deny cloture if the offsetting tax cut and real energy reform in DeMint is denied a vote by Reid) a Senator will have voted consistent with his or her pledge to voters." Grover Norquist, "What are the Taxpayer Implications of today's amendments in the Senate?" June 16, 2011, http://s3.amazonaws.com/atrfiles/files/files/061611lt-CoburnDeMintPledge.pdf

46. Robert Reich, "The Growing Desperation for the Don't Raise-Taxes-on-the-Rich Crowd," *Weblog*, June 16, 2011, http://robertreich.org/post/6601537237

ing bill containing the repeal of tax credit failed to get enough votes to pass cloture (a legislative procedure for ending debate in the Senate and calling for a vote), so this ultimately amounted to a win by ATR because federal revenue was not raised.

In a final accounting, Senator Coburn's strategy to up-end the pledge failed; ATR and Norquist could explain Republicans' vote on the merits through pointing to procedural technicalities. The following month the crisis over raising the debt ceiling—a traditionally pro forma vote at which many Republicans balked until an agreement to reduce federal spending was reached—underscored the continued vitality of the pledge as Republican Party dogma. The debt crisis overshadowed any progress Senator Coburn may have made in loosening the hold the pledge has on his fellow Republicans.

WEAKNESSES AND CHALLENGES

Norquist has created a powerful mechanism for influencing conservative politics through ATR. However, observers note potential fissures in this edifice that could impact both ATR's policy agenda and Norquist's power and reach.

Perceived Lack of Substance

Although ATR does have a research arm in its foundation, we could not find any tax policy expert from any ideological perspective who viewed the organization as a serious, credible contributor on substantive tax issues. One longtime economist told us, "I've never seen any economist—conservative, liberal, in-between—ever steer people toward Norquist." Likewise, a former senior Hill staffer who was "inside" many earlier tax reform discussions told us quite adamantly that ATR has "never had any input on the [tax cut] discussion." He explained, "Americans for Tax Reform is more of a political messenger."

These views do not undermine ATR's apparent success, nor the reputation that ATR enjoys on Capitol Hill. A pledge signer told us that both Norquist and "the other folks at ATR that work the tax issue, they know what they're talking about, they have their facts." He added that ATR's skill in "having the facts and being able to get

that information out" is "absolutely essential to their credibility because many times candidates themselves either won't have or don't want to have the real substantive background that comes from real research into these issues in order to be able to back up the public policy stands they take."

The resolution to this paradox may lie in the space between politics and policy: tax policy experts work in the details, while ATR focuses on the frame of the debate, and as such these actors move in different spheres. ATR insiders agreed that the organization's approach is not nuanced, but that is because it does not need to be. The pledge creates a bright line that politicians are reluctant to cross. Another possible explanation for ATR's perceived lack of influence on the substantive tax agenda points to the fact that most of the discussion around taxes over the last two decades has concerned the best way to lower taxes (resulting in the two Bush-era tax cuts). Given that the overarching trend was toward revenue reduction, it is possible that ATR decided to leave the details to the policy experts.

Rigid Positioning

The pledge's strength lies in its black-and-white simplicity; this is also its weakness. Some have suggested that ATR's uncompromising approach on tax policy has resulted in unprecedented polarization and gridlock on Capitol Hill. This in turn has resulted in growing public dismay and negative attitudes toward Congress, and may even cause voters to blame Republicans.[47]

A binding pledge may have natural limits in a political system where formulating public policy requires a nuanced approach, deep understanding of complex issues, and some degree of compromise. One expert told us that during the Reagan Administration, Republicans were more interested in "getting the right level of revenue and thinking about how to structure the tax code in a way that made the most sense." (Indeed, as a number

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47. CNN Political Unit, "CNN Poll: Americans Doubt Super Committee Will Meet Deadline," *CNN Politics Online*, November 16, 2011, http://politicalticker.blogs.cnn.com/2011/11/16/cnn-poll-americans-doubt-super-committee-will-meet-deadline/

of commentators have noted, after his initial tax cuts Reagan raised taxes several times and was willing to compromise with Democrats to get things done.[48]) Fiscal conservatism meant balancing the budget and reining in spending excesses. Now, the same expert opined, "the debate has been dumbed down quite a bit."

One tax policy expert worried about the impact of the pledge's rigidity on the current federal budget crisis, explaining that, "The general notion that you should never have a dollar of tax increase at any time for any reason is not a thoughtful position. … It's a very simplistic view, which has led a lot of people to feel like they have the intellectual cover to take that no-negotiation position. … You have the situation where you just can't break ranks and it's a very simple litmus test. So it doesn't lead to nuanced policy-making."

The lack of flexibility in the pledge is likely to be subject to renewed focus in the upcoming months and years: first, when the Bush tax cuts are set to expire at the end of 2012 (and, relatedly, Congress considers initiatives to raise taxes on wealthier Americans and limit business deductions and credits), and second, when Congress is again called upon to vote to raise the debt ceiling to prevent the U.S. from defaulting on its debt. "Some of the people who are open-minded to compromise understand that Grover is lurking over them as a political threat," a conservative lobbyist told us. "I suspect if you get a secret ballot of all House Republicans and all Senate Republicans and said, do you wish Grover Norquist would just go away, probably half of them would say yes, even though they agree with his position."

Norquist himself has anticipated the current tensions. In *Leave Us Alone*, he wrote, "the government spending issue comes prepackaged in the minds of voters: Republicans, good; Democrats, bad. … But if a Republican is stupid enough to switch the public focus from spending to the deficit, why then the Democrats are back on the

playing field."[49] If the pledge is imperiled by defecting congressional lawmakers without adverse consequences for their tenure, it remains to be seen how ATR will maintain its relevance or define its mission.

Party In-fighting

In the past, ATR has been adept at spanning the various conservative strains within the Republican Party, including fiscal and social conservatives and defense hawks. As public disagreements in the House following the 2010 elections have demonstrated, however, these different factions have created fissures in the Republican Party. The "big tent" may collapse in the face of a dissatisfied public, a very vocal Tea Party, and lawmakers' concerns about a mercurial electorate.

Norquist, an outspoken libertarian, is not on the sidelines. He has made choices that some on the Right may find controversial. He has repeatedly defended the rights of Muslims, including disagreeing with the GOP's efforts in 2010 to politicize an attempt to build a mosque in lower Manhattan.[50] His recent involvement with GOProud suggests his "willingness to go to war with [the homophobic] part of the right wing," said a longtime liberal activist. Norquist has also proposed cuts to federal defense spending. Given that the failure of the Super Committee triggered a sequestration process that includes significant cuts to be equally borne by domestic and defense programs—an outcome that many Republicans are trying to avoid—it is possible that this viewpoint will bring more pressure and controversy to ATR over the coming months.

The integrity question

ATR has been stained by its role in a number of scandals, including those surrounding lobbyist and convicted felon Jack Abramoff. Allegations that surfaced in the media mostly involved ATR's role in channeling funds to be used in violation of various election laws, lobbying restrictions,

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48. Some Republicans have questioned the current all-or-nothing approach. For example, former Governor Jeb Bush (R-FL) recently stated that his party's leaders will not succeed if they are not willing to compromise on occasion with the Democrats. Political Notebook, "Jeb Bush Criticizes GOP Partisanship," *Boston Globe Online*, June 12, 2012.

49. Norquist, *Leave Us Alone*, 300.

50. In 2004 Norquist married a Palestinian Muslim woman.

and tax codes.[51] In addition, some observers noted that Norquist has not always remained vigilant about sticking to his core issues; as an outside consultant he has advanced the causes for a number of organizations that arguably do not advance ATR's goals of lower taxes and smaller government (though in recent years he has only reported lobbying activities on behalf of ATR).

Questions about ATR's integrity pose a risk to its larger mission, especially as the pressure increases to raise taxes and some pledge signers might be looking for a way out of their commitment. While ATR still has many friends and Norquist continues to have ready answers to allegations of corruption, in the current fiscal environment a scandal involving Norquist can weaken, even if rhetorically, the pledge he supports.

Indeed, in October 2011 Republican Congressman Frank Wolf (R-VA) (one of the six Republicans in the House who have not signed the pledge) denounced Norquist on the floor of the House and used past associations to raise questions about the pledge. "I believe Mr. Norquist is connected with or has profited from a number of unsavory people and groups out of the mainstream," he said. "I also believe Mr. Norquist has used the ATR pledge as leverage to advance other issues many Americans would find inappropriate, and when taken as a whole, should give people pause."[52]

"Have we really reached a point where one person's demand for ideological purity is paralyzing Congress to the point that even a discussion of tax reform is viewed as breaking a no-tax pledge?" Wolf asked.

CONCLUSION

Over nearly three decades, ATR and its leaders have built a vast network of supporters that has given the organization an influence disproportionate to its size. The written pledge and weekly meetings have served as exceptional tactics to pursue the organization's advocacy goals of small government and low taxes. This assessment of ATR's history and its more recent role in the ethanol tax credit debate illustrate the importance of its signature strategies for advocacy:

- creating a mechanism for public accountability for elected leaders; and

- building a "big tent" network of conservative thought leaders.

ATR's long-term vision, effective leadership, and compelling messaging have served it well and will likely continue to do so as the organization wrestles with a number of future challenges. These include questions about ATR's substantive contributions to tax policy; the rigidity of pledge as an obstacle in achieving political compromise; party in-fighting; and the long-term impact of past concerns about integrity.

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51. None of these investigations resulted in criminal charges against Norquist or ATR. U.S. Senate Governmental Affairs Committee, 105th Congress *Minority Report: Executive Summary, Investigation on Illegal or Improper Activities in Connection with the 1996 Federal Election Campaigns* (March 1998), http://www.washingtonpost.com/wp-srv/politics/special/campfin/stories/demsummary.htm#rnc; Senate Committee on Indian Affairs, 109th Congress, *Gimme Five: Investigation of Tribal Lobbying Matters* (June 22, 2006), http://www.indian.senate.gov/public/_files/Report.pdf. None of these investigations resulted in criminal charges against Norquist or ATR.

52. Congressman Frank Wolf, 147th Congressional Record H6509-10, October 4, 2011, http://www.gpo.gov/fdsys/pkg/CREC-2011-10-04/pdf/CREC-2011-10-04-house.pdf; video of debate *available at* http://wolf.house.gov/index.cfm?sectionid=34&itemid=1805.

CASE STUDY

GENERAL ELECTRIC

Executive Summary

General Electric is one of the largest companies in America. In 2010, GE profits reached $14.2 billion worldwide, more than one-third of which came from U.S. operations ($5.1 billion). Over the past decade, GE has built support for its vast global market presence through an increasingly robust advocacy practice. Its close attention to government relations has secured its role in a variety of public policy issues, including energy, trade, intellectual property rights, and its own corporate taxes. GE's government relations practice is structured around what may be described as twin signature strategies:

⮞ internal emphasis on integrating government relations into the operations and analysis of individual business units; and

⮞ external emphasis on preserving GE's reputation in the federal arena as well as with the state and local governments for expertise and integrity.

The following case study provides a brief overview of the history of GE and the organization's structure. It describes how GE has married government relations work with individual business units and cultivated strong relationships with the White House, congressional leaders, and regulatory agencies. The case study assesses GE's advocacy role as a leading member of the 21st Century Coalition on Patent Reform, a multiyear initiative that resulted in 2011's historic America Invents Act.

Sources of success that have helped GE maintain its effective government relations strategy: a sustained investment in and by leadership, a willingness to commit significant resources to government relations, an effort to connect lawmakers with subject matter experts, a savvy deployment of coalition activities, and an emphasis on corporate integrity.

The case study also highlights sources of success that have helped GE maintain its effective government relations strategy: a sustained investment in and by leadership, a willingness to commit significant resources to government relations, an effort to connect lawmakers with subject matter experts, a savvy deployment of coalition activities, and an emphasis on corporate integrity. The case study concludes with an overview of some of the challenges the company is facing, including a need to improve grassroots outreach and to streamline internal processes.

GENERAL ELECTRIC

Reflecting the breadth of its products and services, GE engages in advocacy on more than a dozen policy issue areas, ranging from taxes to nuclear energy to health care. GE's public policy goals include increasing trade liberalization, protecting intellectual property rights, and advancing clean energy. Maintaining a low tax burden is also a priority for the company's shareholders and the company.

In recent years, GE has grown beyond its role as an industrial giant to become a powerful advocate in Washington, D.C. It has done this through two deliberate efforts: internally, it has integrated government relations into the business plans of each business unit, and externally, it has developed and maintained a reputation as a trusted and expert advisor. The company's emphasis on integrity and its willingness to invest resources in coalitions, lobbyists, and congressional campaigns have also helped its advocacy efforts.

The following section provides a brief overview of the history of GE and shows how the company today is deeply impacted by government policies, both because it is involved in many regulated industries and because it employs more than 100,000 workers across the United States. It describes how a change in leadership and a growing recognition of the impact of law and policy on GE's businesses have led to an increased emphasis on lobbying and political activity in recent years. The subsequent sections analyze the strategies that have supported the expansion of GE's presence on Capitol Hill.[1]

OVERVIEW

History

GE's history is deeply entwined with the rise of American industry and with legendary innovators such as

Thomas Edison, the inventor of the incandescent light bulb, who first established the Edison General Electric Company in 1890. Edison merged his company with a competitor in 1892, forming the General Electric Company.[2] GE quickly became one of the most significant companies in the country; it is the only company listed in the Dow Jones Industrial Index today that was also included in the index when it was launched in the *Wall Street Journal* in 1896.[3]

With research as the company's backbone, GE created a name for itself as the developer of technologies that changed everyday lives in ways both big and small. In the decade between 1935 and 1945, GE's inventions included the household garbage disposal, stadium lights for night games, small kitchen appliances, the fluorescent lamp, silicones (synthetic compounds typically used as sealants or adhesives), the first television network, the first jet engine, autopilot, and commercial radar. During the same time period, Howard Hughes set the transnational air record flying a plane with a GE supercharger jet engine.[4]

Today, GE Global Research labs have produced two Nobel Prize winners and hold thousands of patents.[5] The company's products and services span more than 20 industries, ranging from aircraft engines, power generation, water processing, and household appliances to medical imaging, business and consumer financing, and industrial products. A company with locations in 160 countries, GE employs about 300,000 people worldwide, approximately 133,000 of whom are in the United States.[6]

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1. This case study includes material from a number of articles about GE and interviews conducted with GE employees, including their government relations staff members. People unaffiliated with the company, such as lobbying experts, former congressional staff, and coalition partners were also interviewed. See Methodology, Appendix D, for additional information.

2. "Edison & GE," General Electric, http://www.ge.com/company/history/edison.html

3. "Fact Sheet," General Electric, http://www.ge.com/company/factsheets/corporate.html. It has been on the Dow continuously for more than 100 years, http://www.quasimodos.com/info/dowhistory.html

4. "A Decade of Firsts," General Electric, http://www.ge.com/innovation/timeline/eras/decade_of_firsts.html

5. "Heritage of Research," General Electric, http://www.ge.com/company/history/research.html

6. "Fact Sheet," General Electric; Steve Lohr, "As Recovery Moves Ahead, G.E. Tops Expectations," New York Times, July 22, 2011, http://www.nytimes.com/2011/07/23/business/ge-profit-exceeds-forecast.html

The company's logo—internally called the GE meat-ball—enjoys strong brand recognition at home and abroad.[7] The company was recently ranked one of the world's most reputable companies by *Forbes* magazine.[8]

Structure and Scope

GE has undergone several reorganizations in recent years. Currently, there are four major segments of the corpo-ration, called businesses, including Energy Infrastructure, Technology Infrastructure, GE Capital and Home, and Business Solutions.[9] Under these businesses fall seven di-visions, also known as business units, which are subsets of the businesses. Those business units are: Global Growth & Operations, Energy, Capital, Home & Business, Health-care, Aviation, and Transportation. Each business unit has its own president and CEO, who reports to GE's chair-man and CEO, Jeff Immelt.[10] GE also maintains corporate departments that include commercial and public rela-tions, business development, legal, global research, human resources, and finance.[11] GE holds a 49 percent interest in NBC Universal, LLC, an entity that includes all NBC Universal businesses, including news and entertainment television networks, a motion picture company, television production operations, a television stations group, digital media companies, and theme parks.[12]

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7. "2011 Top 100 Best Global Brands," Interbrand, http://rankingthebrands. com/PDF/Best%20Global%20Brands%202011,%20Interbrand.pdf

8. U.S. "Most Reputable Companies: Part of the World's Largest Study on Corporate Reputation," Forbes (Spring 2012), http:// rankingthebrands.com/PDF/Global%20Reputation%20Pulse%20-%20 U.S.%20Top%20100%202012,%20Reputation%20Institute.pdf

9. Lohr, "As Recovery Moves Ahead."

10. GE Company Organization Chart, last modified February 2011, http:// www.ge.com/pdf/company/ge_organization_chart.pdf. Note: The chief executive of GE Capital is alternatively titled chairman and CEO, rather than president and CEO.

11. GE employees are spread out across the nation and globe. GE Capital employs more than 50,000 people; GE Appliances & Lighting has 27,000 employees in more than 100 locations; GE Healthcare is headquartered in the United Kingdom and employs more than 46,000; GE Energy is headquartered in Atlanta, Georgia, operates in 145 countries and maintains more than 90,000 employees; GE Aviation is headquartered in Cincinnati, Ohio, and has 39,000 employees; and GE Transportation is headquartered in Erie, Pennsylvania, and employs approximately 8,000 people worldwide.

12. "About Us," NBCUniversal, http://www.nbcuni.com/corporate/about-us/

In addition to GE's corporate executive office, the com-pany is governed by a board of directors comprised of 16 members. The board is divided into five committees, one of which is the public responsibilities committee.[13] This committee oversees risks relating to public policy initiatives, the environment, and similar matters.

GE engages with regulatory agencies and congressional committees of relevant jurisdiction for each of its many industries. This engagement has given GE ample opportunities— and incentives—to build strong relationships with the government.

GE engages with regulatory agencies and congressional committees of relevant jurisdiction for each of its many industries. This engagement has given GE ample op-portunities—and incentives— to build strong relation-ships with the government. In addition to the corporate government relations office, the company maintains government relations staff for each business unit. It also hires outside consultants with substantive expertise and strategic relationships who supplement the work of GE's government relations team; in 2011 GE engaged well over 100 outside lobbyists.[14]

Employees and Training – The GE Corporate Culture

GE has a presence in all 50 states, and it has promoted its role as a job creator during the recession, recently announcing that since 2009 it has created 14,500 jobs in

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13. "Board Committees," General Electric, http://www.ge.com/company/ governance/board/committees.html

14. "Lobbyists Representing General Electric – 2011," Center for Responsive Politics, http://www.opensecrets.org/lobby/clientlbs. php?id=D000000125&year=2011

the United States.[15] Members of Congress and the Administration recognize that GE has employees, suppliers, and customers not only in every state but also in almost every congressional district. As an industry lobbyist explained, GE's "constituent relations … are tangible."

GE has made a concerted effort to ingrain the values of individual and corporate integrity in its workforce, focusing on the significance of reputation.

GE's U.S. employees provide the company gravitas both as a matter of quantity, and of quality. The company was recently recognized by *Fortune* as one of the world's most admired companies[16] and has been ranked among the most ethical companies in the world for six consecutive years (2007-2012).[17]

As described further in the study, GE has made a concerted effort to ingrain the values of individual and corporate integrity in its workforce, focusing on the significance of reputation.[18] *The Spirit & The Letter*, GE's code of conduct, overtly stresses these values. The first principle in the code is to "Be honest, fair and trustwor-

thy in all your GE activities and relationships." As the publication explains:

> In several surveys of CEOs, GE has been named the world's most respected and admired company. We have been ranked first for integrity and governance.

> But none of that matters if each of us does not make the right decisions and take the right actions. At a time when many people are more cynical than ever about business, GE must seek to earn this high level of trust every day, employee by employee.[19]

GE grows talent from within through robust leadership training and mentorship programs. In a 2008 interview, current chairman and CEO Jeff Immelt reported that GE's "top 175 people have been here, on average, 21 years."[20] As a result, "People here know that it's their job to leave something better for whoever comes next." A recent survey that gave GE top honors for leadership found that the company let all employees "behave like leaders" and actively "managed a pipeline of qualified leadership candidates" for key roles within the company.[21]

That pipeline passes through the John F. Welch Leadership Center, GE's corporate learning campus located in Crotonville, New York. Crotonville (as employees call it) was established in 1956 to train GE employees in leadership and business skills. GE invests roughly $1 billion in its corporate education and training efforts each year and sends thousands of employees, ranging from entry-level to executives, to study subjects ranging from government relations and innovation to strategy and management. GE calls Crotonville the company's "epicenter," both because so many employees pass through

15. "GE's Advanced Manufacturing Operations in the U.S. By the Numbers," General Electric, http://www.gereports.com/ges-advanced-manufacturing-operations-in-the-u-s-by-the-numbers; "GE's American Jobs Map: 15,500 New Jobs Announced Since 2009," General Electric, July 25, 2012, http://www.gereports.com/ges-american-jobs-map-over-10000-new-jobs-announced-since-2009. The *New York Times* recently noted, however, that the company has shed nearly 20 percent of its U.S. workforce since 2002. David Kocieniewski, "G.E.'s Strategies Let It Avoid Taxes Altogether," *New York Times*, March 24, 2011, http://www.nytimes.com/2011/03/25/business/economy/25tax.html?pagewanted=all

16. "World's Most Admired Companies 2011," CNNMoney/Fortune, 2011, http://money.cnn.com/magazines/fortune/mostadmired/2011/snapshots/170.html

17. David Mielach, "World's Most Ethical Companies' Revealed," *Yahoo! News*, March 17, 2012, http://news.yahoo.com/worlds-most-ethical-companies-revealed-154602593.html; "Ethisphere Institute Unveils 2012 World's Most Ethical Companies," Ethisphere Institute, March 15, 2012, http://ethisphere.com/ethisphere-institute-unveils-2012-worlds-most-ethical-companies/

18. Susan Adams, "The World's Best Companies for Leadership," *Forbes*, May 2, 2012, http://www.forbes.com/sites/susanadams/2012/05/02/the-worlds-best-companies-for-leadership/

19. "The Spirit & The Letter," General Electric, http://files.gecompany.com/gecom/citizenship/pdfs/TheSpirit&TheLetter.pdf

20. Steven Prokesch, "HBR at Large: How GE Teaches Teams to Lead Change," *Harvard Business Review* (January 2009):105, http://www.cwu.edu/~leeyj/how%20GE%20teaches%20teams%20to%20lead%20chage.pdf

21. "Key global findings from the Hay Group 2011 Best Companies for Leadership study," Hay Group, http://www.haygroup.com/BestCompaniesForLeadership/research-and-findings/key-findings.aspx

the campus and because it reinforces the primacy the company places on learning. [22]

Leadership

For a company as large as GE to maintain shared values across industries and continents, those values must permeate and be reinforced by corporate culture. For decades GE's corporate culture has prioritized integrity and growth—both for individual employees and for the company itself. In recent years, it has also emphasized the importance of law and policy to GE's many industries.

Corporate culture starts at the top. GE has strong leaders that share a vision for the company. In a 2012 poll of 7,000 people and 2,300 companies, GE ranked first in the best companies for leadership.[23] Jack Welch led GE from 1981 to 2001. Under Welch's leadership, GE stock went up 4,000 percent, making GE at one point the most valuable corporation in the world.[24] Well-known for his leadership style, Welch valued efficiency and excellence and invested in leadership training. Welch also espoused a hatred of bureaucracy. In an interview with CNBC, he opined, "Bureaucrats don't get anywhere."[25] GE's lobbying expenditures were significantly lower during his leadership than they have been under his successor, Jeff Immelt.[26]

Immelt, the current chairman and CEO of GE, joined the company in 1982 and succeeded Welch as its ninth chairman in 2001. Like Welch, Immelt is also known for his distinctive leadership style. As he has explained in interviews, he believes his responsibility is to drive growth and "change and develop people."[27]

Immelt also believes in the importance of government relations, and he has shifted the company's focus accordingly. GE works in heavily regulated industries, such as aviation, nuclear power, and finance; government or regulatory actions can seriously impact both GE's bottom line and its corporate practices. This fact is acknowledged explicitly in the version of GE's code of conduct published under Immelt, *The Spirit & The Letter*, which spells out for employees in large print:

> Virtually all of our Spirit & Letter policies are based on government laws and regulations. These regulations impact every GE business and every GE employee. Regulators establish and define the rules that we must comply with to conduct business. Effectively engaging with regulators as they establish regulations and assuring compliance with these regulations are critical to maintaining GE's reputation for integrity.

> Today's regulatory environment is becoming more and more challenging. GE is subject to a growing number of regulations and enforcement activities around the world. This environment demands that every employee and leader be aware, knowledgeable and committed to regulatory excellence. [28]

GE's shift in emphasis on government relations can be seen in the company's lobbying disclosures. In 1998, GE reported spending $7.28 million on lobbying. This number rose to $15.4 million by 2001, when GE's leadership transitioned from Jack Welch to Jeff Immelt. Other than a small dip in lobbying expenditures in 2002, GE's spending in this area has steadily increased, reaching a high of

22. "GE Leadership and Learning," General Electric, http://www.ge.com/company/culture/leadership_learning.html. Additional classes are offered at GE's global research centers in Shanghai, China, Munich, Germany, and Bangalore, India.

23. "Key global findings from the Hay Group 2011 Best Companies for Leadership study," Hay Group.

24. Rebecca Leung, "Jack Welch: 'I Fell In Love,'" CBS News, February 11, 2009, http://www.cbsnews.com/2100-500164_162-682830.html

25. CNBC Interview with Jack Welch, Boston, Massachusetts, September 7, 200, http://www.cnbc.com/id/24990613/

26. Publicly available records on lobbyist registrations are not available for years prior to 1998. Sarah McKinnon Bryner, "From Hired Guns to Hired Hands: 'Reverse Revolvers' in the 111th and 112th Congresses," *Center for Responsive Politics Report,* 2011, http://www.opensecrets.org/news/Hired%20Guns%20to%20Hired%20Hands.pdf; "Summary of Annual Lobbying by General Electric," Center for Responsive Politics, last updated April 30, 2012, http://www.opensecrets.org/lobby/clientsum.php?id=D000000125&year=2010

27. Steve Lohr, "G.E. Goes With What It Knows: Making Stuff," New York Times, December 4, 2010, http://www.nytimes.com/2010/12/05/business/05ge.html?pagewanted=all

28. "The Spirit & The Letter at 14," General Electric, http://files.gecompany.com/gecom/citizenship/pdfs/TheSpirit&TheLetter.pdf

$39.3 million in 2010 before dropping back to $26.3 million in 2011.[29]

Although a lifelong Republican, Immelt has made an effort to cultivate relationships with the Obama Administration. One lobbyist noted, "He can get the president to answer his phone calls." As a result of his focus on GE's relationship with the government and his high standing in the business community, Immelt was asked to chair the President's Council on Jobs and Competitiveness in January 2011.[30]

The Rise of Government Relations at GE

As described above, GE's products and services have a global reach and touch various sectors of the U.S. economy; the same can be said for its employees, affiliates, and contractors. This breadth is a source of strength for GE, but it also subjects the company to myriad government actions that affect its "ability to operate effectively and create value."[31]

Given this, it is somewhat surprising that GE's emphasis on government relations is relatively new. Under prior leadership, GE business units were encouraged to steer clear of Washington. One longtime GE insider stated that GE had been "deliberately avoiding engaging in Washington, thinking that that would help" the company avoid bureaucracy. An industry lobbyist reminisced that "GE was the sleepiest goddamn office in all of Washington

for the first 30 years."[32] During that time, the government relations team functionally operated as a subset of the legal team. Policy and political decisions were decentralized in senior ranks of each business unit, often the general counsel's office.

The company recognizes that legislatures and regulatory agencies play an important role in each industry in which its businesses compete, in both the United States and abroad.

Immelt changed this approach, starting with a revitalized and stronger government relations office. Given his emphasis on employee longevity, it is all the more noteworthy—and a testament to his decision to elevate the role of government relations—that Immelt selected someone from outside the company to head this effort. Nancy Dorn, the former deputy director of the Office of Management and Budget under Mitch Daniels, serving in the George W. Bush Administration, joined the company as vice president for government relations at GE in 2003.[33] Dorn had also served previously as senior advisor to President George W. Bush, Vice President Cheney, and House Speaker Dennis Hastert, as well as in the Reagan and George H.W. Bush Administrations.[34]

29. "Summary of Annual Lobbying by General Electric," Center for Responsive Politics.

30. Shahien Nasiripour, "Obama Picks Jeffrey Immelt, GE CEO, To Run New Jobs-Focused Panel As GE Sends Jobs Overseas, Pays Little In Taxes," *Huffington Post*, January 21, 2011, http://www.huffingtonpost.com/2011/01/21/obama-picks-jeffrey-immel-ge-jobs-overseas_n_812502.html

31. "Domestic Public Policy," General Electric, http://www.gecitizenship.com/our-commitment-areas/public-policy/domestic-public-policy/

32. The number of D.C.-based corporate government relations offices grew from just one in 1920 to 175 in 1968, and to more than 600 by 2005. In 2004, according to one study, 68 percent of publicly traded companies were registered to lobby. This increase grew from the recognition that government actions affect a company's bottom line. For more information on the rise of corporate lobbying in Washington, see: James E. Post, et. al., "Managing Public Affairs: The Public Affairs Function," *California Management Review* 26, no. 1 (1983):135; Robert Repetto, "The Need for Better Internal Oversight of Corporate Lobbying," *Challenge* 50, no. 1(2007): 76-96.

33. "Nancy P. Dorn Named Head of GE Government Relations," *Business Wire*, April 28, 2003, http://www.businesswire.com/news/home/20030428005471/en/Nancy-P.-Dorn-Named-Head-GE-Government.

34. Ibid.

Dorn's senior role in the company underscores the importance of government relations at GE, as does the breadth of the issues that her office tracks.[35] "It is clear from the leadership level of the company that [government relations] is an important capacity," noted an industry lobbyist. While Dorn technically reports to GE's general counsel, "she certainly has Jeff Immelt's ear whenever she needs it," a former GE insider told us, underscoring the company's commitment at the highest levels to building a robust government relations practice.

The importance of government relations within GE is also horizontal. Decisions about policy and politics still involve regulatory compliance concerns by the various general counsels. But today these decisions take broader considerations into account, including perspectives from GE's marketing staff and business unit leaders. For GE, good government relations necessitate involvement and buy-in from various levels and sectors of the company.

Whereas Welch sought to avoid government relations, under Immelt GE has become one of the largest spenders in Washington.[36] According to ABC, GE spent more than $238 million on lobbyists over the past 12 years; the next closest competitor, AT&T, spent $162 million.[37] The company's 2010 lobbying expenses were more than double what it spent ten years earlier.[38]

INTERNAL STRATEGY: INTEGRATING GR AT ALL LEVELS OF BUSINESS

Under Immelt, GE has focused on integrating government relations into all levels of its business. GE's government relations staff works with senior management to evaluate the legislative and regulatory landscape and to select advocacy tactics based on the policy priorities identified. Depending on the risk or opportunity presented by a given government action, GE may opt to do nothing, work in coalition with other groups, enlist subject matter experts, engage in a targeted advocacy campaign, and/or make political contributions to a candidate or organization. This integration of policy and business priorities can also be seen in the deployment of GE's PAC resources, the 12th largest political action committee in the country.

"Growth and Government"

In the last decade, GE has changed in the way it approaches advocacy, with an increased focus throughout the company on government relations and the potential impact of laws and regulations on GE's various businesses. The company recognizes—and under Immelt has internalized the fact—that legislatures and regulatory agencies play an important role in each industry in which its businesses compete, in both the United States and abroad. (While GE now monitors government policies in 23 different countries, this section focuses on GE's activities in Washington, D.C.)[39]

Around the time that Immelt succeeded Welch, GE developed a program called "Growth and Government." In the words of former General Counsel Ben Heineman, this program "moved government policy experts into its largest business units to school GE executives on how to align GE goals with national goals."[40] The purpose, Heineman said, is to engage GE's lobbyists with the business so GE could make "smart, strong arguments" to policy

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35. GE's lobby activities touched 23 categories of issues in 2011, according to the Center for Responsive Politics: defense; taxes; federal budget and appropriations; energy and nuclear power; trade; transportation; finance; health issues; railroads; aviation, airlines and airports; banking; clean air and water; Medicare and Medicaid; environment and Superfund; aerospace; copyright, patent, and trademark; science and technology; radio and TV broadcasting; labor, antitrust, and workplace; manufacturing; foreign relations; arts and entertainment; and telecommunications. "General Electric - Issues," Center for Responsive Politics, http://www.opensecrets.org/lobby/clientissues.php?id=D000000125&year=2011

36. Matthew Mosk, "General Electric Wages Never-Say-.De Campaign for Jet Engine Contract," ABC News, March 9, 2011, http://abcnews.go.com/Blotter/ge-top-corporate-spender-lobbying/story?id=13087750; "Lobbying – Top Spenders 1998-2012," Center for Responsive Politics," http://www.opensecrets.org/lobby/top.php?showYear=a&indexType=s

37. Mosk, "General Electric Wages Never-Say-Die Campaign."

38. "General Electric," Center for Responsive Politics.

39. Paul Glader, "How General Electric Engineered Its Presence on Capitol Hill," *Wall Street Journal,* November 16, 2009, http://online.wsj.com/article/SB10001424052748704431804574539621964755020.html

40. Ibid.

WHY IT WORKS: A MODIFIED CROWDSOURCING OF GOVERNMENT RELATIONS ACTIVITIES

The essence of crowdsourcing is collective intelligence, where work is dispersed among a broader group to capture a diversity of insights that, in the end, contribute to a better idea. Wise crowds, as explained by journalist James Surowiecki, are characterized by four conditions: diversity of opinion, independence, decentralization, and aggregation.[1]

This model is at work in GE. When people from various levels of leadership are involved in developing and executing the corporation's public policy goals, the policy goals are more robust, have more of an impact, and are more relevant than if the policy and business processes were separated.

The government relations department's partnership with the business units is critical to this process. Business units learn how government policies affect their bottom line; public policy experts benefit from seeing how GE products and services could be affected by government action. This integrated approach creates a sense of ownership in the policy process by employees in the business units, and vice versa. Thinking about government relations permeates the organization. As a result, many GE employees have come to see government relations not as a tangential duty but as an effort central to their success that should be nourished and sustained.

1. James Surowiecki, *The Wisdom of Crowds* (New York: First Anchor Books, 2005), 10.

makers.[41] Because GE occupies so many sectors of the market, a GE insider explained, "There's no business that isn't heavily regulated in GE. … There's a government subtext to almost any major initiative." The company recognizes that the interests of individual units must be "blended into the whole because for good or for ill, it comes back to the parent company." It is important to anticipate changes in laws or regulations and then form a plan to address them.

The focus of Growth and Government is to push government relations "deeper into the business" so that those both in and outside of Washington, D.C. are more agile at recognizing and responding to risks and opportunities that affect the company's bottom line. This means, on the one hand (in the words of Heineman), "getting 'policy' talent in headquarters to work on strategy with business people,"[42] while, on the other hand (in the words of a GE insider), "getting middle managers, senior managers to think, 'well, it's worth my while to engage on

this.'" It does *not* mean, Heineman emphasized, getting yet "more government relations people in capitals to work with public officials."[43]

According to a GE lobbyist, the whole package is about "policy, process, and politics." Like most lobbyists, government relations staff members are expected to be the domain experts of process and politics. The leadership in the various business units, meanwhile, informs the policy. A GE lobbyist told us, "our advocacy organization is really shaped around business units and major functions like tax or research—having people that work on those accounts primarily." While GE's lobbyists maintain expertise in the areas of politics and process, GE's advocacy is successful because of its connection to the business units' substantive expertise.

This coordination on the inside is mirrored by better-coordinated advocacy on the outside, and one that draws from a deeper bench than the traditional GR policy "wonks " or Beltway insiders. GE creates virtual

41. Ibid.

42. Ibid.

43. Ibid.

teams for advocacy campaigns that bring together experts from the business units and government relations departments. Former policy director and chief economist to the House Ways and Means Committee Alex Brill praised GE as being "masterful at trotting out its top executives, engineers, and scientists to meet legislators in their offices and to give testimony in Congress."[44]

When choosing whom to send to a key meeting, the company will often opt for subject matter experts over "door openers" that may have the relationships with policy makers but not the area expertise. The company has learned that its size and reputation alone are usually enough to open doors. As one GE lobbyist noted, "by virtue of our constituent bases or being big and involved in global markets … we can almost always get the first appointment." In this way, GE connects expertise from inside the Beltway with substantive insight from outside of Washington.

This cultural shift has been driven by the senior management team, which has worked to instill a heightened awareness of law and policy in the corporate culture. Because Immelt values government relations, "most senior management of the whole company knows the government relations folks intimately and works with them on a routine basis," a lobbyist said. "This is not only true for senior-level corporate management; it is true throughout all of GE's business units," he added. Thoughtfulness about the interplay between business and government is meant to trickle down. "It's come from the top and it really has seeped through the businesses to the point where, as an emerging leader in the company, you better know something about this," noted a former GE insider. During their annual reviews, when business leaders are required to explain their strategy and set goals for the coming year, they are expected to include government relations and regulations into their plans—and they are held accountable for meeting those goals during periodic reviews.

When choosing whom to send to a key meeting, the company will often opt for subject matter experts over "door openers" that may have the relationships with policy makers but not the area expertise. The company has learned that its size and reputation alone are usually enough to open doors.

An example of successful advocacy on an issue endorsed and championed by GE's corporate leadership is taxes. The company has seen its tax burden shrink over the past decade, to the point where the *New York Times* reported that it paid no taxes in 2010 despite earning $14.2 billion in profits. In fact, the company had a tax benefit of $3.2 billion.[45] According to the *New York Times*, "GE has spent tens of millions of dollars to push for changes in tax law, from more generous depreciation schedules on jet engines to 'green energy' credits for its wind turbines."[46] Echoing the *New York Times* article, a December 2011 study found that GE topped the list of companies with the lowest tax burden in 2008, 2009, and 2010; during that time its total U.S. profits were $10.46 billion, its U.S. taxes a negative $4.74 billion, and its lobbying expenditures close to $85 million.[47] The study noted that GE (along with 30 other companies) paid more in lobbying expenses than taxes in those years. The company disputes these claims.[48]

44. Ibid.

45. Jake Tapper, "General Electric Paid No Federal Taxes in 2010," *ABC News*, March 25, 2011, http://abcnews.go.com/Politics/general-electric-paid-federal-taxes-2010/story?id=13224558

46. David Kocieniewski, "G.E.'s Strategies Let It Avoid Taxes Altogether," *New York Times*, March 24, 2011, http://www.nytimes.com/2011/03/25/business/economy/25tax.html?pagewanted=all

47. "For Hire: Lobbyists or the 99%? How Corporations Pay More for Lobbyists Than in Taxes," Public Campaign, December 2011, http://publicampaign.org/sites/default/files/ReportTaxDodgerLobbyingDec6.pdf

48. GE argues that the study oversimplified the facts and made incorrect assumptions, and that GE has paid what it owed in federal taxes every year. "GE Reports," General Electric, www.gereports.com/setting-the-record-straight-ge-and-taxes/

Prioritizing Among Competing Concerns

At its best, an insider told us, GE's advocacy structure "works as a cohesive whole. No one part of GE can or should be developing their own advocacy strategy without it being folded into the overall business priorities." The government relations office helps coordinate and align the many moving parts with priority issues that are identified in the ongoing dialogue between business units and Washington, a process that one interviewee described as fluid. A GE lobbyist explained, "It's more of a roundtable that shifts as issues shift."

The issues shift regularly. GE's business units are diverse in their products, services, and priorities. At the same time, there are major policy priorities, such as taxes or research that affects the entire company, that are constant themes in the halls of Congress and the agencies. Because the company cannot fight all policy battles that touch on its interests, GE must make strategic decisions about the importance and necessity of entering a given policy debate.

GE evaluates and prioritizes its advocacy goals by bringing together business units several times a year to discuss current and potential laws and regulations that affect their operations. This includes assessments of upcoming policy issues, the costs associated with legislative or regulatory change, available staff and contractors for an advocacy push, what other groups or coalitions are working on, what outside resources are available, and the likelihood of a bill moving forward in Congress.

Under GE's current model, these discussions occur at least twice a year, though this has shifted over time. A GE insider told us, "[I]f you do it quarterly, you actually can see things move up on the list as circumstances change or fall off the list if the door's shut and it's not going to happen. So it takes metrics and some rigor to keep it going. But I think it's a much more worthwhile exercise than if you just do it once a year." These metrics can be helpful in two ways: first, they inform the decision about whether or not GE will engage on a policy issue; and second, they help GE measure progress and evaluate results once policy priorities are set.

While decisions about policy priorities are often based on an economic calculus that is informed by political realities, the final call is not simply a matter of looking down a balance sheet. One GE lobbyist explained that in some instances a business unit might identify an issue that they believe is of strategic value: "If we want to be in this market, we have to do this." At other times, the GE lobbyist added, "It may not seem to be as big a dollar issue and the challenge … is the meatball or the company's goodwill—there's a certain amount of it that you can use at any one point in time. You can't be working on everything all the time." All the same, the insider lobbyist acknowledged that, "most of the time, it's the biggest dollar amounts. That's a good place to start the discussion."

For the most contentious debates, Immelt will step in and decide whether GE will get involved in a particular advocacy issue.

The prioritization of public policy issues includes calculated decisions on when to work in coalition and when to go it alone. Such decisions are based on a number of factors including: the impact of proposed reforms, whether allies have common policy goals, whether the issue uniquely affects GE, whether GE is a good messenger for a particular ask, whether working in coalition might achieve better results than working alone, whether coalition work might help preserve GE's brand and goodwill, and what other initiatives GE is working on.

Spreading the Wealth and Influence: Corporate and PAC Political Expenditures

GE participates in the political process through company contributions and with contributions from its employees' PAC. While corporation contributions are not permitted in federal elections, many states permit such contributions.[49]

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49. Under the Supreme Court's landmark 2010 decision, *Citizen United v. Federal Election Commission*, 558 U.S. 50, corporations are permitted to make "independent expenditures" with general treasury funds. These indirect contributions, which may be made via a "pass-through" organization such as the Chamber of Commerce, cannot be fully tracked. For more information on the effect of Citizens United decision, see: "What Does Citizens United mean for Tax-Exempt Organizations?" Alliance for Justice, http://www.pdfdownload.org/pdf2html/view_online. php?url=http%3A%2F%2Fwww.afj.org%2Fconnect-with-the-issues%2Fcitizens-united%2Fcitizens-united-chart.pdf

According to GE, it contributed $1,380,845 to state and local political candidates, political organizations such as governors' associations and state political parties, and ballot initiatives in 2010.[50] For the 2010 cycle (the years 2009 and 2010), the Center for Responsive Politics reports that GE contributed a total of $1,082,840 to individuals and $1,706,950 to PACs.[51]

Our advocacy organization is really shaped around business units and major functions like tax or research.

When GE contributes to state-level races, the GE vice president for government relations must approve all company contributions of company funds or other assets. A Corporate Oversight Board, comprised of very senior GE leaders, reviews these contributions two to three times a year. GE also belongs to several trade associations at the national, state, and local levels, which may also make lobbying and political expenditures.[52]

In contrast, GE Political Action Committee (GEPAC), a voluntary fund supported by GE employees, can contribute directly to candidates' races. For GEPAC, decisions about contributions are made by a committee of employees nominated from GE businesses and corporate components.

GEPAC's size, which is due in no small part to GE's size, lends additional muscle to the company's priorities; it is the twelfth largest corporate PAC.[53] According to GE, GEPAC raised just over $1.4 million in 2010 with more

than 4,000 employees contributing.[54] The Center for Responsive Politics noted that GEPAC spent a total of $2.5 million during the 2010 election cycle in federal races. (Some states also allow PAC contributions.).[55] Contributions to federal candidates made up $1,544,450 of that sum—60 percent went to Democrats and 40 percent went to Republicans.[56] The ratio was reversed during the 2006 midterm election, when President George W. Bush was in office.[57]

GE's integrated government relations structure combined with company-wide policy priorities help to make the GEPAC useful. In determining which candidates to support, the GEPAC board considers the best interests of the company, industries in which GE operates, and the country.[58] Specific factors include the candidate's integrity and effectiveness, his or her membership on legislative committees with jurisdiction over issues affecting GE businesses, and whether a GE business operates or is located in the candidate's district.[59]

Deep PAC pockets can be a carrot, rewarding public officials who support the company's policy priorities. They can also be a stick, withholding contributions or contributing to the opponent of elected officials that work against the company's interests. Nevertheless, those interviewed disputed the notion that corporations can purchase congressional support in exchange for campaign contributions through their PACs. A PAC can contribute only $5,000 to a candidate in each election cycle, which is not a significant enough percentage of a candidate's war chest to raise expectations of vote buying.

PACs do serve a purpose, however, even if their true benefits are indirect. As an industry lobbyist explained,

50. "GE Citizenship, U.S. Political Contributions, Disclosure & Trade Associations," General Electric, http://www.gecitizenship.com/our-commitment-areas/public-policy/domestic-public-policy/political-contributions/

51. "Heavy Hitters: General Electric," Center for Responsive Politics, http://www.opensecrets.org/orgs/totals.php?id=D000000125&cycle=2012

52. Ibid.

53. This is the ranking for the 2010 election cycle, from January 1, 2009, through December 31, 2010. "Top 50 Corporate PACs," Federal Election Committee, http://www.fec.gov/press/bkgnd/cf_summary_info/2010pac_fullsum/12top50corpreceipts2010.pdf

54. Ibid.

55. "General Electric Summary: 2010," Center for Responsive Politics, http://www.opensecrets.org/pacs/lookup2.php?strID=C00024869&cycle=2010.

56. Ibid.

57. "General Electric Summary: 2004," Center for Responsive Politics, http://www.opensecrets.org/pacs/lookup2.php?strID=C00024869&cycle=2004

58. "GE Citizenship, U.S. Political Contributions, Disclosure & Trade Associations."

59. Ibid.

the primary advantage of having a PAC is "not to buy votes. It's not to get people to do something for you. It's simply to get them to [say], 'Okay, I know that person and I know him in a context where I know he's helped my boss politically.' " PACs create the opportunity for lobbyists, staffers, policy influencers, and members to form personal relationships. "[I]t was very important to mostly [sic] meet people well outside the world of people I knew … . [PACs were] the way I got in front of and became recognizable to staff and members … I had never had interaction with before," a former GE insider stated. Because GE recognizes the importance of this access, as one lobbyist said, "It's hard to go to a fundraiser event where you don't see a GE person or a GE consultant or someone who speaks up and says, well, 'I'm here representing GE and Congressman, thank you for your support.' "

The PAC also helps the company channel its sizeable grassroots—its employees— into political capital.

The PAC also helps the company channel its sizeable grassroots—its employees—into political capital, using the access that PAC donations garner to mingle with elected officials and build familiarity with policy makers. (Some observers thought the company could do more with this opportunity.) A former Capitol Hill staffer noted that "the members don't vote because they're getting the money, they vote because they have constituents [in] that particular company … If GE [is promoting a particular legislative agenda,] they're going to seriously consider that if GE has 20,000 employees in their district and GE's telling them it's a good thing to do."

EXTERNAL STRATEGY: BUILDING AND MAINTAINING TRUSTED RELATIONSHIPS WITH POLICYMAKERS

In Congress and government agencies, GE has developed a reputation as the go-to organization for government staff by using a number of tactics. It hires lobbyists with deep substantive knowledge of issue areas, follows

a "high road" approach that prioritizes its long-term reputation over a quick win, makes itself and its employees a resource for policy makers, and supplies resources to candidates when needed. Together, these tactics have built a reservoir of goodwill toward the company that contributes to its government relations success.

A Deep and Nimble Bench

GE maintains a fluid staffing structure in the government relations department, expanding and contracting based on the economic and political environment. Staff is bolstered by outside lobbyists— who are also hired according to budget and advocacy needs—at times in significant numbers. Over the past few years, well over 100 individuals have reported lobbying for GE or its affiliated companies on an annual basis.[60]

GE's emphasis on substance over relationships does not mean that it ignores political realities or opportunities; as with its political contributions, it ensures that it has its bases covered by maintaining a bipartisan government relations staff. Likewise, when hiring outside experts, GE may prioritize expertise, but it also prefers consultants who have "really good … contacts or relationships…on both sides of the aisle," an industry lobbyist told us.

GE's company-wide focus on hiring quality staff strengthens its brand. As with its own staff, the external lobbyists and consultants hired by the government relations department are often subject-matter experts who can bolster GE's policy arguments rather than "door-openers." Because GE enjoys broad commercial brand recognition, "You don't have to really tell people who you are when you go to talk with them," a former GE lobbyist said. As *The Spirit & The Letter* emphasizes, GE wants its employees, affiliates, and third party contractors to understand that they are ambassadors of the company and, as such, that there is a public expectation that they will act not only within the letter, but also within the spirit, of the law. This commitment follows from the longstanding premium that GE has placed on integrity.

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60 "General Electric – Client Profile, Summary 2011," Center for Responsive Politics, http://www.opensecrets.org/lobby/clientlbs.php?id=D000000125&year=2011

Integrity

The concept of integrity is so ingrained at GE that its former general counsel, Ben Heineman, wrote a book shortly after leaving the company titled, *High Performance with High Integrity*. The theme reflects the emphasis that both Welch and Immelt have placed on integrity as a key corporate value at GE. Indeed, the books *Jack Welch and the GE Way* and *Jeff Immelt* and *the New GE Way* both contain strikingly similar quotes from the two CEOs on the subject. As Immelt put it, "You may miss a business operation, you may miss a number and still be around. You will never violate integrity and still be around. It's one strike and you're out."

They mean it. According to Heineman, "Every year or so, a senior manager who had knowingly or recklessly violated company rules for commercial or personal reasons was terminated … even when the business consequences were painful."[61]

In the realm of government relations, integrity means not just honesty and reliability but also credibility. It means aligning oneself with policy makers and taking positions (and making arguments) for policies that extend beyond the company's self-interest. One GE lobbyist explained, "We never do advocacy, ever, without having a good policy rationale. The quick way out the door here … [i]s if you're ever seen leveraging the company's goodwill for a short-term gain that isn't very defensible. The reputation thing is huge." This is because reputation and relationships, while painstaking to build, are easy to damage. Once a company or individual burns a bridge, it is difficult to rebuild. For this reason, the corporation puts significant energy into creating and maintaining its reputation as a credible and trustworthy ally.

A number of people viewed this as the most important and effective part of GE's advocacy strategy. As one GE lobbyist explained, "The reason why year after year … a company like GE … succeeds is every time they've been in that office over the last 10 or 15 years, 20 years, 30

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61. Ben W. Heineman Jr., "Avoiding Integrity Land Mines," Harvard Business Review (April 2007) http://www.law.harvard.edu/programs/corp_gov/articles/Heineman-HBR-Avoiding-Integrity-Landmines-April07.pdf

INVESTMENT

Relationship building takes time, and in Washington, D.C., as in much of the world, time is money. While GE employees indicated that the company selected lobbyists based on their subject-matter knowledge rather than their relationships or party affiliations, it is also the case that GE has the resources to hire a lot of lobbyists. According to the Center for Responsive Politics, GE spent $39.3 million on lobbying in 2010 alone, with 192 lobbyists from 25 firms and GE's own government relations department working for the diversified conglomerate.[1] While GE invested only $26.3 million on lobbying in 2011, they were still a top spender. [2]

While GE emphasizes that it invests in expertise, some of that expertise involves the political process itself. The Center for Responsive Politics profiled 37 current or former GE employees who have also worked on Capitol Hill, some before their GE employment and a few after. GE is toward the top of the list of non-lobbying firms hiring former congressional staff. This revolving door swings both ways; some GE employees have left the company to take senior positions in government. Regardless of direction, this two-way street continues to deepen GE's connections with Capitol Hill.

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1. "General Electric – Lobbying," Center for Responsive Politics, http://www.opensecrets.org/lobby/clientsum.php?id=D000000125&year=2010.

2. "Top Spenders – Lobbying," Center for Responsive Politics, http://www.opensecrets.org/lobby/top.php?showYear=2011&indexType=s.

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years and through cycles of staff and members, their reputation remains one of being credible, responsive, honest."

This reputation as an honest broker has made GE a trusted resource among many in Congress and their staff. One GE lobbyist explained that if a company comes into an office and the "ask" is "reasonable and they haven't lied to you before and they've given you the support you needed before … to actually move [an] initiative forward, and they don't leave you out on a limb, it builds trust and credibility the next time they come in the door, that they're going to do the same thing."

Information

As noted above, GE's corporate government relations office is closely tied to the business units so that the company can contribute in a substantive way to policy discussions. This enhances the corporation's credibility on Capitol Hill and within agencies. Business leaders are experts in their given fields and offer a bona fide "outside the Beltway" perspective. Lawmakers value this perspective for two reasons: first, it helps ensure that policy interventions are informed by real world experience; and second, it connects them to their constituencies.

Gaining access to lawmakers is not a problem for GE because of its size and influence. The company tries to capitalize on this opportunity by showing up with well-prepared, knowledgeable experts on the topic under consideration. When GE attends a Hill meeting, a GE employee noted, it must "always be prepared because GE is almost always the first company to get called on."

The partnership with the business units is important to this process and helps GE identify and deploy subject matter experts. A GE government relations employee explained, "There's a real lane here between the government on one side and the aviation business or the finance business on the other. ...This lane in the middle does matter, and you've got to be able to play across the boundaries here. That's what our team really does."

GE IN ACTION: THE 21ST CENTURY COALITION FOR PATENT REFORM

Examining GE's involvement on patent reform illustrates its signature strategies of an integrated internal approach that marries business and policy as well as a carefully cultivated external approach that builds and leverages relationships with stakeholders.

Congress initially considered patent reform during the first term of President George W. Bush. Its purpose was to fix an overburdened and ineffectual enforcement system.[62] As explained by one reporter, "A series of federal court decisions had authorized the U.S. Patent and Trademark Office [to issue] … new patents that were notoriously broad in scope and vague in definition, allowing their owners to launch lucrative lawsuits against companies making generally unrelated products."[63] To counter this problem, segments of the business community organized to bring about a legislative remedy.

> *GE's involvement on patent reform illustrates its signature strategies of an integrated internal approach that marries business and policy as well as a carefully cultivated external approach that builds and leverages relationships with stakeholders.*

The 21st Century Coalition for Patent Reform spearheaded a successful campaign to pass patent reform.[64] GE was one of the founding members of the coalition, a group that also included 3M, Caterpillar, Johnson & Johnson, Eli Lilly, and Procter & Gamble. These groups contributed significant capital to the coalition effort. One lobbyist viewed the 21st Century Coalition as "the most centrist coalition" focused on modernizing the patent procedure and maintaining strong patent rights in order to protect some manufacturing in the United States.

GE's involvement in patent reform reached to the top levels of the company. Carl Horton, chief intellectual property counsel, served as chairman of the coalition and testified before the House Judiciary Committee in

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62. Zach Carter, "Patent Reform Bill Signed Into Law After Years Of Debate," *Huffington Post*, September 16, 2011, http://www.huffingtonpost.com/2011/09/16/patent-reform-obama_n_966136.html

63. Ibid.

64. Amanda Becker, "Patent reform measure ignited fierce lobbying effort," *The Washington Post*, March 27, 2011, http://www.washingtonpost.com/capital_business/patent-reform-measure-ignited-fierce-lobbying-effort/2011/03/25/AFzD9VkB_story.html

February 2011 on its behalf.[65] GE's presence was well known on the issue because of its "comprehensive reach around town" among various NGOs, industry trade groups, the Administration, the agencies, and Capitol Hill, one industry lobbyist said.

Even though GE's position on patent reform was clearly defined (due to input from its employees and business units), and it invested heavily in the coalition's efforts, the company itself maintained a light touch with lawmakers. Several members of the steering committee also employed their own lobbyists and involved their corporate counsel in the push for patent reform, but GE took a different tack. It didn't do much day-to-day lobbying, according to a coalition member. Instead, GE hired professional lobbyists to do this work. As one industry lobbyist put it, "GE was more distant and actually more savvy about it." Strategically, GE "worked with the steering committee to shape policy, but they didn't put their people in the field where there were already good lobbyists representing the coalition," a coalition partner explained. They also did not include their chief counsel in the day-to-day lobbying minutiae. Instead, GE tried to strike a balance between playing a leadership role and carefully managing resources and political capital.

The coalition's efforts eventually paid off, and Congress enacted the America Invents Act in 2011. During the nearly four years that the 21st Century Coalition worked to move this bill, large sums of money were spent on lobbying. In 2007, the coalition spent $1.335 million on lobbying for patent reform.[66] In the following years, the coalition spent $1,025,000, $1,120,000, and $1,417,500.[67] In 2011, the year the bill was finally enacted, the coalition spent $1,635,000 on lobbying activities.[68]

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65. Carl Horton, Statement to the House Judiciary Committee, *Crossing the Finish Line on Patent Reform: What Can and Should be Done,* February 11, 2011, http://judiciary.house.gov/hearings/pdf/Horton02112011.pdf

66. "Coalition for 21st Century Patent Reform: Summary," Center for Responsive Politics, http://www.opensecrets.org/lobby/clientsum.php?id=D000049343&year=2007

67. Ibid.

68. Ibid.

WEAKNESSES AND BARRIERS

GE spends significant resources building and maintaining relationships with policy makers, which require a high level of training, deliberate processes, and coordination for GE management company-wide. Its willingness to remain flexible with process and priorities was recognized as a major strength that served the corporation well. Nonetheless, there are areas for improvement in GE's work on grassroots outreach and internal process.

Grassroots

Some interviewees noted that GE has been effective at reaching out to management-level employees to engage on policy and political issues, but the corporation did not make this same effort to cultivate involvement by employees on the ground. Given GE's extensive presence in the United States, both geographically and across industries, its employees and members of surrounding communities could be powerful validators for the company.

The corporation's grassroots efforts have focused on "trying to get managers to write [to members of Congress], to come to D.C. And also, although this wasn't always directly attached to [a] bill, but trying to have Members of Congress come to the studio, come to a local facility that may be in their district," a former GE lobbyist said. As noted above, managers are engaged in the company's government relations. However, GE has not optimized its "ability to deliver those employees to meetings in a district, which is particularly impactful," a former GE insider opined.

Interviewees also said that the corporation does not "talk" with its employees. One former employee explained that it was part of GE's culture not to impose the company's views on its employees. However, as a result of not communicating to employees its policy priorities, GE might be missing opportunities to use its employees as an effective advocacy tool.

As the largest industrial corporation in the United States, GE has access to a large potential constituency. GE has been successful in its advocacy efforts, despite not focusing on employee engagement. However, investing time

and resources into cultivating grassroots engagement among all levels of employees would be beneficial. These constituent-employees could act as an echo chamber for GE's policy priorities and ground those positions in the voices and lives of America's workers. This is distinct from Washington-based advocacy by management-level personnel at the company.

GE recognizes this opportunity. A GE insider told us: "We're developing it, and I think we've made a lot of progress in the last couple years, but we still have a ways to go."

Internal Process

GE might improve government relations operations by reducing the amount of internal interactions. One former GE-insider said, "There's too much internal processes. There's going to be that weekly conference call … whether [or not] there's anything productive to be discussed on that call." While this is not specific to the government relations function, it does raise the question of frequency and substance of meetings, and their effect on morale and productivity.

Part of the problem, one person explained, is that these calls create an expectation that "you can meet your objectives and expectations in your job by just checking the box in being on all the right calls and everyone knowing that you were on those calls … when that involves a lot of sitting downtown behind a desk." This approach is not useful for those involved in lobbying. The more time spent on internal processes means less time available for the kind of external relationship building that is essential to effective advocacy work.

CONCLUSION

GE's services, products, and patents touch the lives of thousands of people around the world and underscore its position as a global corporate leader. Over the last decade the company has recognized the benefits of integrating business with public policy efforts and has made the structural changes within its business units to do so. This case study assessed GE's advocacy role while leading the 21st Century Coalition on Patent Reform and uncovered two signature strategies: integrating government relations into all aspects of the business and positioning GE as a trusted advisor with public officials by methodically building a reputation as a credible, reliable, trustworthy advocate. GE also reinforced the value of having adequate resources for all parts of the building and campaign phases. Despite GE's vast fiscal resources and leadership training, the company could improve its government relations work in several areas, specifically improving grassroots outreach and internal processes.

BEYOND THE CAUSE

THE *Art* AND SCIENCE OF ADVOCACY

COALITION PROFILES

Executive Summary

Coalitions provide opportunities to build support, pool resources, and maximize impact on public policy. As unique and diverse as the entities that form them, coalitions present advocates with both challenges and potential. This paper considers the work of four coalitions:[1]

- **Health Care for America Now** (HCAN), which coordinated a significant grassroots advocacy and communications effort to promote passage of health care reform legislation, resulting in the 2010 passage of the Affordable Care Act;

- **Patriots Defending the Bill of Rights**, which brought together libertarian and progressive groups to reframe the 2001 PATRIOT Act as an assault on civil rights;

- the **Panel on the Nonprofit Sector** (the Panel), which deflected threatened overreaching congressional legislation on the charitable sector by advancing sector-generated recommendations, many of which were included in the 2006 Pension Protection Act; and

- the **Reentry Working Group**, which advocated for legislation to assist recently released incarcerated persons, resulting in the 2008 passage of the Second Chance Act.

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1. These coalition profiles were informed by dozens of interviews of coalition members, observers, and public officials, as well as a review of background materials and media coverage. See Methodology, Appendix D, for additional information.

In each case, the political context provided the timing and served as the catalyst for launching a campaign. Two of the coalitions profiled here—the Panel and Patriots Defending the Bill of Rights—can be described as defensive coalitions, working to reverse or forestall government action. The other two coalitions—the Reentry Working Group and HCAN—operated on the offensive, working to advance and pass legislation.

The political context also dictated each coalition's fundamental approach. While the Reentry Working Group focused its advocacy inside the Beltway, Patriots Defending the Bill of Rights and Health Care for America Now took their message to the people and sought to influence Capitol Hill by reaching lawmakers' grassroots constituents. The Panel opted for a hybrid approach.

The following chapter details four distinct signature strategies, each tailored to the issue at hand:

- HCAN created a formal structure to coordinate existing organizations to build local grassroots support for health care reform;

- Patriots Defending the Bill of Rights built its advocacy around crisp, well-researched, unbiased messaging tailored for specific audiences;

- the Panel developed a collaborative process that empowered the sector to address calls for reform, rather than having Congress dictate top-down troublesome reforms; and

→ the Reentry Working Group used impending state fiscal crises and new scientific evidence about the costs of reentry to drive a bipartisan advocacy campaign.

As detailed in the following case studies, all of these coalitions also benefited from strong leadership, and most also had adequate resources and a full-time staff. They all had weaknesses as well; ranging from a failure to fully appreciate the efficacy of opposition forces to interpersonal strains.

Most coalitions disband or their energy and activity dissipate after their public policy push. Of the profiled coalitions, only HCAN is still active. Nevertheless, relationships developed in the course of each coalition's campaign continue, and in many cases inform advocates' future endeavors. In some instances, new combinations of partners form.

Health Care for America Now

Health Care for America Now (HCAN) is a national coalition with over 1,000 organizational members representing all 50 states. In the midst of polarizing partisan politics and in the face of rising antigovernment sentiment, HCAN succeeded in creating a powerful grassroots movement to advance health care reform, coordinate agreement around legislative language, and build support both on and off Capitol Hill for what ultimately became the landmark Patient Protection and Affordable Care Act (the ACA).[2]

HCAN benefited from several sources of success: solid financial footing, committed and active leadership, an extensive grassroots network, and a set of basic core principles.

HCAN accomplished this goal through its signature strategy of creating a formal structure to coordinate existing organizations to build local grassroots support for health care reform. Through its creation and dissemination of powerful messages about the need for health care reform and its outside-the-Beltway focus, HCAN was able to influence sufficient lawmakers and their staffs in Washington, D.C., to move the legislation to successful passage. It benefited from several sources of success:

- solid financial footing;

- committed and active leadership;

- an extensive grassroots network that helped it build support for the ACA from the ground up;

- open promotion of a set of basic core principles for health care reform; and

- structure as an independent 501(c)(4) organization.[3]

OVERVIEW

In early 2008, with the presidential election fast approaching, a group of leading progressive advocacy organizations, including the AFL-CIO, AFSCME, SEIU, Americans United, Campaign for American's Future, Campaign for Community Change,[4] Move On, and US Action, came together with some core supporters to form HCAN. The coalition's objective was to build national support for sweeping federal health care reform legislation. The group believed achieving this goal only would be possible during a brief political window of opportunity. According to a coalition leader, the founding coalition members shared a collective understanding that "there was a real possibility that if a Democrat were elected in 2008, there would be an opening for passing comprehensive health care reform." With the 2008 elections giving Democrats control of the White House and both houses of Congress, HCAN—as a large-scale partnership between major nonprofit and advocacy organizations—was primed to lead an effort in pursuit of national health-care-reform legislation.

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2. The passage of this legislation was partisan and contentious. It has since served as a rallying vehicle for Republicans running for office as they campaign and fundraise on the premise of dismantling the law.

3. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited advocacy and lobbying to advance their social purposes, and may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. For more information , see "Rules Governing Nonprofit Lobbying and Political Activity," Appendix A.

4. Campaign for Community Change is the 501(c)(4) action arm of the Center for Community Change.

The struggle to reach agreement on what eventually became the ACA and to pass the bill in both the House of Representatives and the Senate has been well documented.[5] The debate was deeply contentious and complicated not only by disputed data and many players with vested interests, but also by the small window of opportunity. Although the 2008 elections gave Democrats control of both houses, a protracted dispute over the Minnesota election and the death of Senator Ted Kennedy (D-MA) and his subsequent replacement by a Republican meant that health-care-reform supporters believed that they might only have a few months of a filibuster-proof majority in the Senate.

HCAN's work both before and after the election has been credited as being key to the March 2010 passage of the ACA, which the coalition views as its major achievement. According to an evaluation commissioned by the foundation Atlantic Philanthropies, HCAN's primary funder, HCAN had a significant role in moving the legislation forward:

> [O]ur major conclusion in this evaluation is that HCAN played an important and valuable role in passing health care reform. It was crucial in mobilizing the progressive base, assembling a progressive coalition, and keeping it united and engaged through a long and arduous campaign.[6]

The following study outlines the strategy that HCAN pursued in the years leading up to passage of the ACA and describes the sources of strength from which the coalition benefited.

APPROACH

HCAN's advocacy structure and its strategy went hand-in-hand, and both were a product of its size and scope as a national coalition. In 2007, in preparation for its advocacy campaign, HCAN's core members came together to develop a strategic plan for the coalition. This work culminated in a comprehensive plan that ran to 895 pages, which was funded by a $250,000 planning grant from the Atlantic Philanthropies (Atlantic). In it, members developed a strategy to harness existing networks at the state and local level to create a groundswell of support for health care reform, building constituent pressure from home on lawmakers in Washington, D.C.

In preparing the plan, the group worked to identify unique state and local characteristics, target constituencies, possible partner organizations, and potential funders, along with the tactics the coalition would use to reach them.[7] The result was a wide-reaching grassroots and communications network through which the member organizations led and participated in fieldwork in 46 states, supporting the larger goal of health care reform by putting a human face on the national campaign.

HCAN's strategy was distinctive: in lieu of focusing its resources inside the Beltway on lobbying, it chose to focus on local activities within the states and on targeted messaging to specific constituencies.[8] In Kirsch's words, "we flipped the script."[9] As the evaluators wrote:

> HCAN's decision to invest heavily in field operations should not be glossed over. Field campaigns are labor intensive, challenging to build and manage, and usually require patience before seeing a return on investment.

5. Advocacy efforts related to the bill made national news for several months in 2009, Atlantic Philanthropies, a major funder of HCAN, commissioned an evaluation of the coalition: Grassroots Solutions & M+R Strategic Services, "Evaluation: Executive Summary of Findings and Lessons from the HCAN Campaign," The Atlantic Philanthropies, September 21, 2010. HCAN's first executive director released a book on the subject in 2012: Richard Kirsch, *Fighting for Our Health: The Epic Battle to Make Health Care a Right in the United States* (New York: Rockefeller Institute Press, 2012).

6. Grassroots Solutions & M+R Strategic Services, *Evaluation.*

7. Kirsch notes in his book, "The data included everything we would need to start working on the campaign, including: profiles of potential state field partners in all fifty states; information on hundreds of potential organizational members from fifteen different constituencies; congressional targeting analysis; and information on foundations and individual donors. It included detailed plans on communication, creating a new small business coalition, building support among academics and elite option makers, and policy research." Kirsch, *Fighting for Our Health*, 61.

8. While HCAN did maintain a presence on Capitol Hill via a handful of lobbyists, a HCAN insider explained that the organization did not believe it could compete against more than 2,000 insurance company lobbyists.

9. Kirsch, *Fighting for Our Health*, 358.

It is far easier to raise money and put it directly into television or other paid media, or hire subcontractors to run state-by-state grass-tops campaigns to generate letters and calls from influential constituents, than it is to design and implement a field program that mobilizes the grassroots. For these reasons and others, large-scale national advocacy campaigns do not often invest in building strong and broad field operations.[10]

In lieu of focusing its resources inside the Beltway on lobbying, HCAN chose to focus on local activities within the states and on targeted messaging to specific constituencies.

Other observers have noted that none of the previous, unsuccessful efforts to pass comprehensive health care reform were supported by a broad-based national grassroots advocacy campaign such as the one HCAN organized. HCAN's leaders focused their efforts on encouraging Members of Congress to enact reform, in part, through protesting the health insurance industry's practices. While much of the coalition's messaging focused on failures of the insurance industry, the goal of these messages was to inspire action by Members of Congress.

SOURCES OF SUCCESS

Generous Funding

HCAN benefited from deep pockets, which allowed it to hire staff and to create and disseminate targeted grassroots messaging. After the initial planning stage, the next round of funding for the coalition came as a relatively modest $100,000 grant from the Arca Foundation that allowed the group to build initial organizational capacity, including hiring core staff to manage the coalition's day-to-day operations. A subsequent $10

million[11] general operating grant from Atlantic Philanthropies launched the coalition's advocacy work and allowed it to begin performing the extensive preliminary research needed to build an effective grassroots campaign, including polling, message testing, and field and capacity assessments. The 2010 evaluation of HCAN noted that its message testing, and the resulting capability to appropriately and strategically frame advocacy communications, was particularly helpful in allowing HCAN to seize the moment and jump into the political debates of 2008-09.[12]

As the campaign's largest donor, Atlantic Philanthropies funded HCAN in the additional amounts of $16.5 million in 2009 and $500,000 in 2010, for an overall total of $27 million. Several other foundations provided grants as well, including significant contributions from the Tides Foundation, although many of these supported the work of HCAN's related 501(c)(3) organization, which was strictly limited in the nature and amount of legislative advocacy in which it could engage. In addition, HCAN received funding from its member organizations and individual donors. Figure 7.1 below shows the composition of HCAN's funding, by percentage.

HCAN's significant funding from few sources allowed the coalition to employ a team of dedicated staff, a relatively unusual structure for a nonprofit coalition. At the height of the legislative campaign the coalition employed approximately 20 staff members, including field staff, all headed by executive director, Richard Kirsch.[13]

Organized Leadership

HCAN needed widespread active participation in the coalition by a number of groups, as well as transparent, responsive leadership to keep everyone together

10. Grassroots Solutions & M+R Strategic Services, *Evaluation,* 50.

11. The grant was made to a founding organization, US Action, specifically for the launch HCAN. (The Atlantic Philanthropies, March 2012). Since the headquarters for Atlantic Philanthropies is in Bermuda, the foundation is not constrained by the lobbying funding rules that apply to U.S.-based foundations.

12. Grassroots Solutions & M+R Strategic Services, *Evaluation.*

13. On average, HCAN's staff included 13 to 15 people working in the following areas: campaign management, operations, field outreach, communications, research, development, and federal advocacy.

FIGURE 7.1
HCAN FUNDING SOURCES

INDIVIDUAL CONTRIBUTIONS 13%

ORGANIZATIONS 18%

FOUNDATIONS 69%
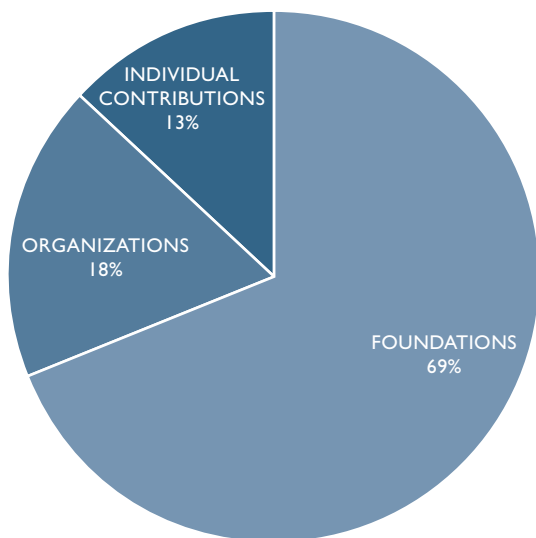
Source: Based on information provided by HCAN (http://healthcareforamericanow.org/).

through difficult policy battles. Kirsch recalled in his book, "In most campaigns, governance is obscure. Many organizations are encouraged to sign on to the campaign, while decision-making is left to a steering committee that includes relatively few groups. ... If that had become [HCAN's] structure, it would have doomed the health care campaign."

The founding organizations formed a steering committee and recruited additional groups that would add to the coalition's organizational capacity, collective strength, and advocacy reach. According to an interviewee, "We needed to bring in multi-issue organizations—not healthcare organizations … that had a strong record and deep commitment to working for economic justice and had the ability to move people, as well as ideas around the country."

As a general rule, to be part of HCAN's steering committee, organizations were required to contribute significant capital—$100,000 from most steering committee members. In addition, Steering Committee members were expected to make passage of this legislation a major priority, and dedicate senior staff and other resources

that added up to $500,000.[14] The hope was that such investment would engender a strong sense of ownership and commitment to the enterprise. A few exceptions were made for in-kind contributions or for groups that the founding organizations believed needed to be at the table but did not have the financial wherewithal to contribute cash. For example, faith-based groups and groups that represent communities of color were exempted from the cash contribution requirement.

HCAN's steering committee functioned like a board of directors, wherein member organizations participated in regular meetings (which took place every two weeks at the height of the campaign), strategic planning, and coalition governance. Decisions were almost always made by consensus, and the committee benefited from coalition leadership that understood the different strengths and interests of the participating organizations. Many of the same organizational representatives (usually senior legislative or policy staff) were involved with HCAN from its inception, and provided stability and continuity for the coalition. HCAN's executive directors were also key players at these meetings.

At the height of the campaign, HCAN's steering committee consisted of approximately 20 nonprofit organizations, including the labor unions AFL-CIO, AFSCME, SEIU and the National Education Association, and nonprofits like the NAACP, the National Women's Law Center and MoveOn, which brought with them resources, credibility, political influence and the ability to mobilize grassroots. While there were no foundations on HCAN's steering committee, by virtue of their considerable financial commitment, expertise and skills, their views were taken seriously during the strategic planning process.

Grassroots Network

While the steering committee was in charge of setting direction for the coalition, Kirsch and his staff served as conduits, keeping local and national leaders informed and in sync. HCAN's fieldwork program was a decentralized network, which relied on member organizations in

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14. Kirsch, *Fighting for Our Health*, 54-5.

states to lead and execute the strategies determined by the coalition as a whole by drawing on the strengths and existing networks that these organizations had developed. This system was made possible by the preliminary state-assessment process, through which HCAN identified key partner organizations and worked with them to develop a strategy for their grassroots advocacy. It also identified and placed staff in states where local organizations did not have the capacity to operate a campaign on their own.

HCAN created a relationship based on mutual information sharing from state partners to national partners. The coalition emphasized results over particular tactics. Kirsch wrote, "We would give the state partners leeway to modify the campaign plan as long as they came up with a better approach for their state."[15] Through two-way information sharing and clear directives, HCAN's fieldwork program encouraged meaningful investment from its members, resulting in continued dedication to the coalition's goal and strategy, even when funding ran low and local organizations were asked to expend more of their own resources.

In contrast to a more typical coalition-funding structure, wherein some coalitions provide assistance to individual state and local organizations to secure their participation, HCAN contracted with established multistate networks as partner organizations. This approach maintained clear lines of accountability, ownership, and responsibility across the network and allowed the national organization to direct the strategy and determine what was expected of state partners.

In Atlantic Philanthropies' 2010 post-legislative campaign assessment of the coalition, the evaluators described how "with strong support from the field, HCAN built a bank of compelling stories from Americans injured by the broken health care system, identified spokespeople, and took personal messages to targeted offices and Washington, D.C."[16] With this personal and personalized strategy, HCAN tried to take health care reform out of the hostile, partisan debate that would paint it as a leftist or "big-d" Democratic and recontextualize it as an issue of relevance to all Americans. In addition, this strategy put targeted pressure on Members of Congress from constituents inside their states and districts, especially those where the steering committee predicted that it would matter most. The extent to which this strategy was ultimately successful remains to be seen as the law has been strongly attacked by its opponents and does not enjoy widespread support by the majority of Americans.

Agreement around Common Principles

HCAN was structured around a "Statement of Common Purpose," which remains actively used to inform the coalition's strategy, advocacy, and operations.[17] This statement comprises a set of 10 specific principles for health care reform, and it was drafted early in the coalition development process. In the early days, some argued that agreeing up-front on principles could jeopardize cohesion in a national health-care-reform movement, but HCAN's founders believed that a strong public statement would shape the group's goal and help it maintain its focus as policy issues were debated and compromises offered.

The principles were developed to be specific enough to provide a framework for legislation while avoiding areas or issues on which the coalition would not be able to build consensus. The statement "was very important to provide the common glue to keep out groups that didn't share the vision, to be sure that when groups signed on, they know [sic] what they are supporting" said one coalition participant. It is important to note that these 10 principles did not originate with the coalition, but were developed over the years by progressive organizations working around health care reform.

Member organizations chose to join HCAN based on their alignment with the "Statement of Common Purpose." This value-based self-selection served to prevent tension among coalition members by increasing the odds

15. Kirsch, *Fighting for Our Health*, 52.

16. Grassroots Solutions & M+R Strategic Services. *Evaluation*.

17. "Statement of Common Purpose," Health Care for American Now! http://healthcareforamericanow.org/2008/07/04/statement-of-common-purpose/

STATEMENT OF COMMON PURPOSE

We believe that all of us benefit from healthy communities, where we all have access to affordable, quality health care from a provider of our choice, at the time we need it, at a cost we can afford. Our mutual goal is affordable, quality health care for everyone in America and for our nation.

Our current health care system in America is not affordable for families, businesses, or government. We need an American solution to secure our families' health and a healthy economy. All of us, individuals, employers, and government have a shared responsibility to realize comprehensive reforms in our health care system.

Our government's responsibility is to guarantee quality affordable health care for everyone in America and it must play a central role in regulating, financing, and providing health coverage by establishing:

• A truly inclusive and accessible health care system in which no one is left out.

• A choice of a private insurance plan, including keeping the insurance you have if you like it, or a public insurance plan without a private insurer middleman that guarantees affordable coverage.

• A standard for health benefits that covers what people need to keep healthy and to be treated when they are ill. Health care benefits should cover all necessary care including preventative services and treatment needed by those with serious and chronic diseases and conditions.

• Health care coverage with out-of-pocket costs including premiums, co-pays and deductibles that are based on a family's ability to pay for health care and without limits on payments for covered services.

• Equity in health care access, treatment, research and resources to people and communities of color, resulting in the elimination of racial disparities in health outcomes and real improvement in health and life expectancy for all.

• Health coverage through the largest possible pools in order to achieve affordable, quality coverage for the entire population and to share risk fairly.

• A watchdog role on all plans, to assure that risk is fairly spread among all health care payers and that insurers do not turn people away, raise rates, or drop coverage based on a person's health history or wrongly delay or deny care.

• A choice of doctors, health providers, and public and private plans, without gaps in coverage or access and a delivery system that meets the needs of at-risk populations.

• Affordable and predictable health costs to businesses and employers. To the extent that employers contribute to the cost of health coverage, those payments should be related to employee wages rather than on a per-employee basis.

• Effective cost controls that promote quality, lower administrative costs, and long term financial sustainability, including: standard claims forms, secure electronic medical records, using the public's purchasing power to instill greater reliance on evidence-based protocols and lower drug and device prices, better management and treatment of chronic diseases, and a public role in deciding where money is invested in health care.

that only like-minded organizations would join. Additionally, in making the group's purpose and goals explicit, the statement held all members accountable to one set of principles, minimizing the potential for internal rifts; participants knew what they were signing up for.

According to a coalition participant, "We went through a very extensive process of using those principles to have detailed conversations about policies that would reach those principles and help people understand their similarities and differences, which was important when we actually got to the legislative phase and had to make some distinction."

HCAN continues to measure its success in reference to the coalition's statement, specifically, in how close public policy has moved to achieving the goals articulated in it.

Independent Structure

In lieu of a more conventional coalition structure, where different organizations worked together to achieve a common goal, the initial coalition members formed HCAN as a stand-alone organization that legally functioned as an issue advocacy organization. With its 501(c)(4) status, HCAN was able to engage in the full spectrum of advocacy work needed to support health-care-reform legislation, both at the grassroots level and in Washington, D.C. According to a reform leader, "It's almost impossible for an organization to move public policy effectively on an issue of controversy without having some (c)(4) work, and frankly, having most of the (c)(3) work being at service to the (c)(4) work."

HCAN also worked in partnership with the Health Care for America Education Fund (HCAEF), a 501(c)(3) organization formed to develop and execute a national, state-based public education campaign around the implementation of the ACA.

WEAKNESSES

Despite its success in mobilizing organizations and constituencies, HCAN believed it suffered a major disappointment in the failure to secure a public option as

part of the legislation. The public option was part of the statement and a core principle in the campaign's health-care-reform philosophy. Although it became a focal point in the debate, advocates never required or expected the public option to be the most essential element of health care reform. As one coalition leader put it, "It wasn't like [a public option] was all we ever cared about in getting health care. It wasn't a public option coalition; it was a coalition committed to a comprehensive set of health care reforms." Even with the demise of the public option, HCAN was able to maintain its sense of purpose and group integrity by remaining committed to the other, more attainable principles of the reform. The federal legislation prevailed despite serious opposition.

Indeed, HCAN did not soften the bitter partisan debate surrounding health care reform. Some insiders argued that HCAN was a centrist coalition and hoped their methods of exposing exploitive insurance industry practices presented an opportunity to find common ground across the aisle. They further asserted that the die was cast with no single Republican being willing to support the legislation notwithstanding the numerous compromises made by Senate Democrats. However, others in Washington viewed the coalition as representing the Left, noting that its popularity among progressive advocates reinforced support for health care reform along party lines. In the end the coalition, which considered itself highly pragmatic, was unable to enlist support from conservative lawmakers or organizations, and the issue remained untouchable for Republicans.

Since 2010, conservative groups and many Republicans running for public office have attacked the legislation with a goal of gutting the legislation in its entirety. Their core argument has centered on the mandate that everyone have health care coverage, and they believe they successfully have made the case to a narrow majority of Americans. In the face of this onslaught, HCAN has maintained its status as the leading organization working to "defend, implement and improve the Patient Protection and Affordable Care Act,"[18] approaching this mission with a grassroots strategy focused on pres-

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18. "*Mission & History*," Health Care for America Now! http://healthcareforamericanow.org/about-us/mission-history/

suring policy makers through the continued building of public support for the ACA. In response to the House Republican's 2011 vote to repeal the law and the release of their fiscal year 2013 budget that would defund it, HCAN has been outspoken in defending the law through coalition actions, letters, and op-eds. Additionally, HCAN joined two amicus briefs to the Supreme Court in the historic litigation over the ACA (in which the Court largely upheld the law in its June 2012 ruling) and it has been keeping their grassroots informed of its activities with a blog.[19]

Patriots Defending the Bill of Rights

The goal of Patriots Defending the Bill of Rights was to use 2001 passage of the PATRIOT Act as a catalyst to push back on what the coalition perceived to be assaults on civil liberties undertaken by President George W. Bush's Administration.[20] It achieved modest reforms of the PATRIOT Act—and, importantly, a change in public opinion about the act that made further expansion of the act difficult—through the signature strategies of using common ground among conservatives and progressives to form a bipartisan coalition and building its advocacy around smart, sound, and carefully managed messaging. Ultimately the coalition's vision of success was largely realized, as the PATRIOT Act did, in the words of one coalition member, "become a metaphor for assaults on liberty."

OVERVIEW

Patriots Defending the Bill of Rights was a bipartisan coalition of nonprofits formed after the passage of the PATRIOT Act in October 2001. The roots of the coalition date back to the early-to-mid 1990s, when the federal law enforcement raids resulting in deadly confrontations at Waco, Texas, and Ruby Ridge, Idaho, attracted widespread attention. Conservative organizations decried what they viewed as the overreaching actions by the agencies and criticized President Bill Clinton's Administration and Attorney General Janet Reno. The ACLU, similarly concerned about the nature of the raids, recognized that these unfortunate events also provided an opportunity for them to approach conservative organizations with a view of working together toward a common purpose: curbing excessive use of law enforcement powers. Once the ACLU began talking to conservative organizations such as the National Rifle Association and the American Conservative Union, and with conserva-

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19. For the Supreme Court's decision, see Supreme Court of the United States: *National Federation of Independent Businesses et al. v. Sebelius, Secretary of Health and Human Services et al.* Decision, June 28, 2012, http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf. For analysis see: Amy Howe, "Today's Health-Care Decision: In Plain English," Supreme Court of the United States Blog, June 28, 2012, http://www.scotusblog.com/2012/06/todays-health-care-decision-in-plain-english/#more-147992

20. These included expanded surveillance powers within and outside of the PATRIOT Act, authorization for roving wiretaps (instead of wiretapping a fixed address), the use of military detentions for terrorism suspects, and the increased use of government classification of documents.

tive members of Congress, including Bob Barr (R-GA), each side's preconceptions of the other began to change. Stereotypes were replaced with a developing mutual respect and trust. As someone involved in these discussions said: "It was really one person saying, you know, those ACLU people aren't so kooky after all. And then saying that to another person, and another person. And so it was really—we really followed the relationship of a few people who had—first it was Bob Barr, then it was David Keene,[21] then it was Grover Norquist."[22]

After the terrorist attacks of September 11, 2001, Congress rapidly passed, and President Bush signed into law, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or USA PATRIOT Act, commonly known as the PATRIOT Act. Originally, the House Judiciary Committee passed a bipartisan bill that included input from civil liberties and conservative groups such as the ACLU and the American Conservative Union. During the process, the Judiciary Committee-passed bill was substituted for a bill that included a large expansion of government surveillance powers.[23] It was this bill that was taken to the House floor for a vote, and it passed. The civil liberties community and many conservative leaders were stunned. The PATRIOT Act included a five-year authorization. Shortly after the PATRIOT Act passed, the ACLU began work on its strategy for amending the bill to ameliorate some of the surveillance expansions when it was considered for reauthorization at the end of the initial five-year period. Their goal was to slow down its reauthorization significantly and reform the legislation.

The ACLU approached the conservatives with whom they previously worked and successfully made the case that the PATRIOT Act was an assault on civil liberties. They formed a coalition—Patriots Defending the Bill of Rights — and called a press conference in an effort to raise awareness of the bipartisan concerns with the PATRIOT Act and to showcase their unusual alliance. The coalition moved quickly through press statements, sign-on letters, grassroots organization, and the recruitment of unusual allies from the Right and Left. Their strategy included recruiting Senators and Members of Congress that the coalition needed to influence. The ACLU relied heavily on results of polling and messaging research they had commissioned that showed which messages worked best with particular constituencies. The core coalition grew to include members from across the political spectrum: the ACLU, the American Conservative Union, Bob Barr (who lost his congressional seat to redistricting and became the first Republican ACLU consultant), Americans for Tax Reform, the Center for Democracy and Technology, the American Library Association, the Association of American Publishers, the Electronic Frontier Foundation, Free Congress Foundation, the Eagle Forum, and the Bill of Rights Defense Committee (BORDC).

> *Once the ACLU began talking to conservative organizations such as the National Rifle Association and the American Conservative Union, and with conservative members of Congress, including Bob Barr (R-GA), each side's preconceptions of the other began to change. Stereotypes were replaced with a developing mutual respect and trust.*

BORDC began, and the ACLU enhanced, a grassroots campaign to pass local, county, and state resolutions against the PATRIOT Act. This effort focused on key states such as New York where a resolution could easily pass, or states where the congressional delegation included a critical libertarian-leaning Republican vote that might be attained if their constituents supported curtail-

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21. Former President of the American Conservative Union.

22. President of Americans for Tax Reform, a conservative nonprofit.

23. Robin Toner and Neil A. Lewis, "A Nation Challenged: Congress; House Passes Terrorism Bill Much Like Senate's, but With 5-Year Limit," The New York Times, October 13, 2001, http://www.nytimes.com/2001/10/13/us/nation-challenged-congress-house-passes-terrorism-bill-much-like-senate-s-but.html?pagewanted=all; "Surveillance Under the USA PATRIOT Act," American Civil Liberties Union, December 10, 2010, http://www.aclu.org/national-security/surveillance-under-usa-patriot-act; John E. Sununu "Sununu: Sacrificing freedom for security," statesman.com, May 2, 2011, http://www.statesman.com/opinion/sununu-sacrificing-freedom-for-security-1449868.html?printArticle=y

ing powers like those in the PATRIOT Act. These states included Idaho, Montana, and Alaska. The conservative coalition members focused on outreach to gun owners, libertarians, and others who would respond to messaging commissioned by the ACLU designed to reach conservatives. ACLU affiliates and BORDC worked to form local, bipartisan anti-PATRIOT Act coalitions that pushed for passage of local resolutions. Those coalitions began calling on their congressional representatives to oppose reauthorization of the PATRIOT Act.

In Washington, D.C., a team of advocates from the coalition met regularly to develop the exact changes the coalition would propose to reform the PATRIOT Act. This group of advocates also began meeting with key Members of Congress, armed with the messaging prepared by the ACLU and copies of the resolutions passed at the state, county, and local level. The coalition slowly built bipartisan support in Congress for reform of the PATRIOT Act, which began to grow as the grassroots activities increased. In Congress, Senators Feingold (D-WI), Durbin (D-IL), Salazar (D-CO), Craig (R-ID), Murkowski (R-AK) and Sununu (R-NH) led the charge. Some of them faced rebuke within their own party because the Bush Administration strongly supported — and wanted to expand — the PATRIOT Act. Involvement of the conservative groups was important to this effort. According to one former congressional staff member, "I think they [the conservative groups] did a good job of doing the outreach to the Republican offices. They would set up those meetings. They would place some strategic phone calls when needed, et cetera, and provide the cover for the Republican support that we really needed."

Coalition members on the Left acknowledged that in addition to Democrats on board, support by Republican members of Congress was critical to this effort. One coalition member noted, "It was easy to get those Republicans sort of outside the mainstream, but not so much Senators who were across the political spectrum—there was a moderate, there was a super conservative, there were the in-betweens. And I think they were really… there's no way …the Senate Democrats would have… gone along with this if they didn't have the cover of those three Republicans."

The coalition was successful in slowing down and reforming the legislation. But, perhaps more importantly, the coalition was very successful in changing many in the public's view of the PATRIOT Act from legislation meant to protect Americans from terrorism to legislation that they were either unsure about or that was viewed as an assault on civil liberties. One coalition member described how the coalition had successfully helped to move public opinions to see the PATRIOT Act as a metaphor for law enforcement overreach even if they did not know its contents.

> *Goodwill developed as a result of Patriots Defending the Bill of Rights has allowed many of the coalition members to continue to work together on national security issues, but in a less formal manner.*

The coalition disbanded in early 2006, even though press reports indicated that President G. W. Bush's Administration was conducting a secret warrantless wiretapping program. At that time, the election was approaching, and it appeared Democrats might take control of the Senate (they ultimately did). The political pressure on the conservative groups by their peers to support the Bush Administration was intense and ultimately caused the formal coalition to unravel. According to one coalition member, it fell apart because of "timing and just decisions that they were only going to take on so many civil liberties fights with the Bush Administration." Nevertheless the goodwill developed as a result of Patriots Defending the Bill of Rights has allowed many of the coalition members to continue to work together on national security issues, but in a less formal manner.

APPROACH

The coalition's overall strategy focused on turning the public against the PATRIOT Act through targeted communications, as well as grassroots mobilization and legislative advocacy efforts. The coalition then leveraged public support to convince Congress to repeal portions of the act

and not expand it in the 2005 reauthorization. According to one coalition member, speaking of the strategy directed to the Republican majority at the time, "We knew we weren't going to get a majority [vote], so we wanted to make the PATRIOT Act radioactive so that people wouldn't think it's [reauthorizing the act] easy to do."

This initiative slowed the momentum toward even more restrictive legislation. One coalition member said, "It was a success. … [W]e stopped a PATRIOT 2 from becoming law. We made military commissions controversial. We stopped TIPP, the Terrorism Information Protection Program."

SOURCES OF SUCCESS

Smart Messaging

Around the same time that the coalition formed, the ACLU conducted intensive polling and focus groups to determine the best messaging in an environment where fear of another terrorist attack ran high. Key to the ACLU's strategy was the decision to ask questions in a way that would reveal the real opinions of those polled, rather than trying to draw out answers most favorable to its position. Pollsters asked unbiased questions with the goal of developing a deep understanding of public perception in order to determine messages that would change people's minds. The coalition then used research results to decide which provisions of the act to attack, and how to talk about those provisions. The coalition also used the messages that resonated with conservatives as a basis for advocacy with conservative Members of Congress and different messages for more progressive members.

In addition, the coalition used the messages in its outreach at the grassroots level and in crafting the language of the state, county, and local resolutions passed across the nation. Coalition members traveled across the country to meet with grassroots organizations in key states and localities armed with messages that worked well with specific groups, such as gun owners, libertarians, librarians, conservatives, and progressives. They tailored their pitch to each group based on which messages resonated best.

Leadership and Staffing

Patriots Defending the Bill of Rights was created by the ACLU, and the ACLU provided the coalition with significant resources in the form of staff, including involvement from several senior leaders, paid consultants (for assistance with polling and lobbying), and affiliate leadership of local coalitions. They played a key role in advocacy, polling, research, messaging, ad campaigns, and Web resources. Other organizations such as the American Library Association and the American Conservative Union provided staffing to the coalition and, most importantly, the political weight of their respective organizations, including outreach to grassroots and local affiliates. This was especially important because the librarians and conservative groups had credibility with key constituencies. Other organizations, such as the Center for Democracy and Technology and the Electronic Frontier Foundation, provided staff with substantive knowledge of the issues.

They tailored their pitch to each group based on which messages resonated best.

In addition to staffing and resources, the leadership of Laura Murphy, director of ACLU's Washington Legislative Office, was critical to gaining the support of conservatives. One conservative coalition member said, "She approached me, and as the face of the ACLU in Washington, she presented something very different from the traditional, conservative view of the ACLU. It [in the minds of some conservatives] was a bunch of long-haired lawyers running around advocating against Christmas and for defendants." Interviewees commented that Murphy had proved over the years that she was sincere and could be trusted. This gave her—and by association the ACLU—credibility with the groups that made up the coalition.

The ACLU organized its work on PATRIOT Act issues into a campaign called "Safe and Free," suggesting the nation could be protected from attacks or threats while simultaneously maintaining individual rights. Consolidating these issues under one campaign with a separate brand allowed ACLU to raise money and increase its field and communications staff to support the campaign.

Funding

Patriots Defending the Bill of Rights did not have separate coalition funding. Each organization gave resources to the coalition, including staff and funding for ads, messaging, and research. ACLU contributed the most funds compared to all the other coalition partners and raised additional money as the coalition became more successful. This included both 501(c)(3) and 501(c)(4) funds to ensure that the ACLU was able to retain the lobbying power needed, as well as run ads when necessary.

WEAKNESSES AND CHALLENGES

Patriots Defending the Bill of Rights succeeded in achieving its advocacy goals. Even so, the coalition's influence was weakened by two factors.

The ACLU and other progressive groups received sustained criticism for working with conservative organizations. One coalition member, commenting on the unwillingness of progressive groups to work with conservatives, said, "I think the biggest hurdle is getting people to get past their comfort zone. I mean, you'd be surprised how many nonprofit organizations don't even lobby Republicans. They don't even go in those offices."

Furthermore, some worried that the ACLU was misleading people about the dangers of the PATRIOT Act in an effort to raise money. As one coalition staff member said, "There was, at times, criticism of the ACLU for … overblowing things to raise money. And so maybe some distrust there a little bit, from time to time."

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Panel on the Nonprofit Sector

The Panel on the Nonprofit Sector was an effort by charities and foundations to ensure that the nonprofit community was not adversely affected by lawmakers' responses to press stories of abuses and excesses in the charitable sector. Its goals were to shape new oversight legislation that would govern how the sector operated and demonstrate that the sector was capable of creating a set of high standards for good governance and ethical practice thereby obviating the need for excessive oversight.

> *Breakthrough moments or opportune events helped ensure that the Panel's recommendations for reform were well received by both Members of Congress and the charities and foundations that make up the nonprofit sector.*

The Panel on the Nonprofit Sector (the Panel) structured its efforts around one signature strategy: creating a process to allow the sector to address calls for reform internally, rather than having Congress dictate reform. This strategy allowed the nonprofit and philanthropic community to take control of the narrative; it was described by one person involved in the Panel's reform process as "co-opting" the reform process from Congress. The Panel's principal source of success was its ability to mobilize the nonprofit and philanthropic community around the deep concerns that had erupted as a result of numerous negative press stories and threats by lawmakers to take remedial action. Add to that its intentional relationship building with key lawmakers, engagement of a diverse cross-section of the sector, strong leadership, and timely funding. Additionally, breakthrough moments or opportune events helped ensure that the Panel's recommendations for reform were well received by both Members of Congress and the charities and foundations that make up the nonprofit sector. The following discussion details the chain of events that led to the Panel's creation and

provides an analysis of the myriad factors that led to the Panel's successful effort to reform the nonprofit sector's governance and ethical standards.

OVERVIEW

The Panel was convened in October 2004 by Independent Sector (IS), a nonprofit leadership coalition whose mission is to "advance the common good by leading, strengthening, and mobilizing the nonprofit and philanthropic community."[24] The Panel was first co-convened by Paul Brest, president of the William and Flora Hewlett Foundation, and then by Lorie Slutsky, president of the New York Community Trust of New York City, with Cass Wheeler, chief executive officer of the American Heart Association of Dallas, Texas. It was comprised of 24 leaders from charities and foundations across the country representing a cross-section of the sector.[25]

In 2003, troubling media reports about alleged misconduct among foundations and charities were beginning to draw the ire of some key Members of Congress. The reports alleged that the nonprofit and foundation communities were inappropriately using their tax-exempt status to benefit board members and organizational leaders personally and/or to acquire income for the organization through illegal or unethical means. The Chairman of the Senate Finance Committee at the time, Senator Grassley (R-IA), and his tax counsel, Dean Zerbe, began to call for a congressional effort to reform the laws that governed the nonprofit sector. The Ranking Member of the Finance Committee, Senator Baucus (D-MT), supported their efforts. IS CEO, Diana Aviv, reached out to Zerbe and Democratic staff and offered to help address the troubling issues that had emerged. IS leaders also met with key Administration officials to gauge their impressions of the sector in light of the media reports. As a result of these meetings, Senators Grassley and Baucus asked Aviv to come back to them with recommendations to address the concerns.

IS convened the Panel to create these recommendations. Ultimately, the Panel issued three seminal reports over its three-year existence. The first, *Strengthening Transparency, Governance, and Accountability of Charitable Organizations*, was issued to Congress in June 2005. In April 2006 the Panel published a supplemental report with the same name. These two reports contained:

> Over 150 recommendations for actions that Congress and the Internal Revenue Service (IRS) should take to improve the laws, as well as education and enforcement efforts to prevent unscrupulous individuals from abusing charitable resources for personal gain. It also outlined actions that the charitable community needed to take to improve on [its] own practices.[26]

Many of the Panel's recommendations were enacted into law through the Pension Protection Act of 2006. Indeed, some language in the act was drawn directly from these reports. Moreover, the legislation mostly excluded provisions lawmakers had been considering that were not supported by the Panel's recommendations.

In October 2007 the Panel issued its third report: *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*.[27] It included 33 principles to "advance the state of governance and self-regulation throughout [the nonprofit and philanthropic] community."[28] The *Principles* outlined best practices the sector should employ in future operations and also laid out how government regulation could hinder the sector's success. The *Principles* were regarded as a major breakthrough for the sector and have been in

24. Independent Sector, http://independentsector.org/mission_and_values

25. For a full roster of Panel members see http://www.nonprofitpanel.org/about/participants/panel/Index.html

26. Lorie Slutsky and M. Cass Wheeler, "Opening Statement," *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*, October 2007, 3, https://www.independentsector.org/uploads/Accountability_Documents/Principles_for_Good_Governance_and_Ethical_Practice.pdf

27. The *Principles* were developed by an Advisory Committee on Self-Regulation of the Charitable Sector comprised of 35 leaders from across the nonprofit and philanthropic community and co-chaired by Joel L. Fleishman, director of the Samuel & Ronnie Heyman Center for Ethics, Public Policy, and the Professions at Duke University's Terry Sanford Institute of Public Policy and Rebecca W. Rimel, president and CEO of The Pew Charitable Trusts. For a full list of members see http://www.nonprofitpanel.org/about/participants/selfregulation/

28. Slutsky and Wheeler, "Opening Statement."

high demand since publication of the report. To date, over 185,000 copies of the *Principles* have been ordered, distributed, or downloaded.

APPROACH

The Panel designed its efforts to protect the nonprofit community from unwanted legislation by engaging sector organizations in defining what reforms were called for—rather than allowing Congress to dictate reform. The Panel's process included developing a diverse, highly structured coalition that weighed detailed research and input from the field to produce recommendations for legislation, regulations, and best practices. It sought to raise the bar for the sector's accountability and ethical practices "voluntarily versus by government regulation," in the words of one Panel member.

The focus on intentional relationship building with key public officials and broad outreach to the nonprofit and philanthropic community allowed the Panel to successfully advance its recommendations. The Panel can gauge its public policy success by observing the resulting legislation. A Panel leader told us that "96 percent of what's in the [Pension Protection Act of 2006] came directly from [the Panel's] report." The legislation passed just two years after the Panel was created.

While it is difficult to measure whether the Panel's recommendations improved governance and ethical standards across the sector, the recommendations received widespread support within the nonprofit and philanthropic community. A Panel staffer said, "We got, I think, something like 165,000 downloads … . I don't know any document in the sector that's this kind of thing, that's got that kind of pick-up." That support suggested to Panel members that their colleagues across the nation were paying attention to their work and to issues of ethics and accountability.

SOURCES OF SUCCESS

Strong Relationships

The Panel intentionally cultivated relationships with Zerbe and Senator Grassley, Democratic staff, and key staff at the IRS, including the commissioner. This careful relationship building undoubtedly contributed to the successful integration of the Panel's recommendations into federal law. Aviv and her staff frequently met with Zerbe to engage him in the process of developing the recommendations, when appropriate. She also reached out to IRS commissioner Mark Everson and his staff to keep them appraised of progress.

In addition to formal meetings, the Panel invited Zerbe to dinner to foster a deeper connection. These gatherings provided a chance to interact with him on a personal level and discuss any hot button issues. The Panel acknowledged that some "bad apple" organizations had created legitimate concerns and effectively communicated to Zerbe that his input was valued. "It was never an us versus them, we/they, good/bad, right/wrong, kind of thing," said a Panel staffer. The Panel and Zerbe worked well because of each other, not in spite of one another.

Stable Structure and Broad Participation

IS was both the convener and the backbone of the Panel. Diana Aviv served as its executive director and IS's communications, programs, and policy staff supported its work. Although IS was the organization most involved with the Panel's daily operations, the Panel functioned as an independent entity with its own website and budget. Panel members were committed to ensuring that the process was transparent and to securing the broadest participation that the process, time, and resources allowed. Toward this end, the Panel solicited input through work groups, field hearings, conference calls, and online public comments. Enough people were involved in developing the recommendations that the Panel became, as one organizational leader stated, "a metalevel organization" that "originated with [IS] but was not completely of [IS]."

Five work groups, an expert advisory group, and a citizen's advisory group were involved in the development of the recommendations. To make a forceful impact on Capitol

Hill, the Panel carefully selected each member of these groups based on their expertise and to ensure geographic, political, and organizational diversity. Individuals were drawn from national and local nonprofits and foundations, legal and accounting experts, academia, former state oversight officials, and state associations and networks.

Geographic representation was especially important as a way to ensure key lawmakers heard from their constituents. One Panel leader stated, "What's important to know is that the people who are put on all these expert advisory groups are very carefully selected. We made sure we had experts from Iowa and from Montana" (Senators Grassley and Baucus represented Iowa and Montana respectively). They also invited congressional staff leaders to review the list and offer additional names.

The five work groups were: Governance and Fiduciary Responsibility, Legal Framework, Government Oversight and Self-Regulation, Small Organizations, and Transparency and Financial Accountability. Each was charged with generating a set of consensus recommendations for its area of focus.[29] Those recommendations were then vetted by an expert advisory group, mostly of academics, and then sent to the Panel for deliberations. After all of the recommendations were submitted to the Panel, a citizens' advisory group of prominent bipartisan leaders met to give the report a "view from a distance to ensure that nothing stood out that might provoke major problems with lawmakers," explained a Panel staffer.

The Panel also provided opportunities for organizations and individuals that were not represented in the work groups to engage in the process. It conducted 15 well-attended field hearings across the country and two conference calls with hundreds of participants to explain the process and solicit feedback. In addition, once it had preliminary recommendations, the Panel posted them on a website and invited public comment to gauge the level of consensus and disagreement across the sector. These efforts to maximize engagement were cited as a source of the Panel's strength and critical to getting the necessary input and buy-in from the charitable community.

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29. Panel on the Nonprofit Sector, www.nonprofitpanel.org

Strong Leadership

Though newly appointed as president and CEO of IS in 2003, Diana Aviv was widely regarded by interviewees as a strong leader. One interviewee closely involved with the Panel proceedings remarked:

> Diana's [involvement] was extremely critical on several levels. Her intellect and political savvy was a key part of it. A second part of it was her dogged ability to connect both with high and midlevel leaders of nonprofits and foundations. She exercised a lot of control in this process. She was the front person on high-level strategy.

Beyond these capabilities, a nonprofit leader further commented on Aviv's ability to act as chief liaison with Congress, interpreting both the desires of the nonprofit and philanthropic communities for Capitol Hill and the desires of lawmakers for her nonprofit constituents. Additionally, she was able to gather the right combination of stakeholders to make the Panel a success. Indeed, one interviewee said that any coalition effort needs "a Diana, plus a team," to ensure each meeting has the right mix of participants to accomplish its particular task. "In lots of coalitions each meeting has a slightly different set of people, or you don't get the right level of people, or you wish you had more influentials [at the table]." The Panel avoided these potential pitfalls.

Timely Funding

According to those involved, securing funding for the Panel was not a difficult undertaking. The Panel raised over three million dollars in approximately six months, $600,000 of which was contributed immediately upon the Panel's formation. A variety of charitable and philanthropic organizations contributed the remaining funds, with the understanding that each would contribute a fair share based on the size of their organization. More than 100 contributed money in increments as low as $10 and as high as $200,000.

The voluntary contribution structure worked out well for the Panel, but as Aviv told the *Nonprofit Times* in 2005, "the whole purpose with regards to the Panel is to

BREAKTHROUGH MOMENTS

Two notable breakthrough moments occurred that helped solidify IS's legitimacy as a sector leader and garner widespread sector support for the Panel's recommendations. The first occurred when IS received the letter from Senators Grassley and Baucus in late September 2004 inviting recommendations for sector reform. The letter gave IS the legitimacy it needed to form the Panel. As one interviewee said, the letter lent credibility because "nobody was saying, 'who are you to do this?'"

Another moment came when the Panel completed its recommendations. It held a press conference with Senator Grassley, Senator Baucus's chief of staff, and IRS commissioner Mark Everson. The acceptance of the report in this public forum—including positive statements made by policy makers—ensured that the recommendations would make an impact and not be confined to the pages of the report.

get as broad support as possible, so as not to have the perception that a few funders owned the process."[30] It was intentional to have broad participation—in terms of financial support as well as content development—with the hope that there would be broad buy-in on the Panel's recommendations as a result.

WEAKNESSES AND CHALLENGES

Although the Panel achieved its goals, its success did not come without challenges and criticisms. These included the perceptions that the Panel's membership and recommendations were weighted toward specific types of organizations, that feedback from the field wasn't included in the recommendations, and that the final recommendations were too constricting for some groups. In addition to these criticisms, insufficient staffing weakened the Panel's overall effort.

Some organizations and individuals critiqued the Panel's membership as skewed toward foundations. While foundations make up less than 10 percent of the charitable community, Panel membership had equal representation from foundations and nonprofits.

A second criticism involved the perception that large foundations (the "big boys" according to one Panel

member) significantly influenced the final recommendations. For example, the Panel considered recommending that board members of nonprofits and foundations not be compensated. This recommendation was not included in the report issued to Congress because, as one Panel member believed, "some private foundations compensate their board members quite well, and they made sure it was not included in the recommendations." Other members disputed this claim, noting that the Panel deliberately created a process to try to avoid such perceptions.

One working group was devoted specifically to the "Special Considerations of Small Organizations,"[31] and all working groups were encouraged to reach consensus on their proposed recommendations. As a result, the Panel only received recommendations for its deliberations borne of consensus from diverse perspectives.

There were also mixed views about how much of the feedback from the field was incorporated into the Panel's final recommendations. Specifically, some in the field doubted their input was given full consideration. One panel member said the field hearings did not ultimately have an impact on the final recommendations: "I would say that probably—had we not done those face-to-face meetings, my guess is that the recommendations would

30. Jeff Jones, "Discussing Accountability," *The NonProfit Times*, March 1, 2005, http://www.thenonprofittimes.com/article/detail/discussing-accountability-103

31. "Strengthening Transparency Governance and Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector," Panel on the Nonprofit Sector, June 2005, https://www.independentsector.org/uploads/Accountability_Documents/Panel_Final_Report.pdf

have been 90 to 95 percent the same as they were." Panel staff who processed the recommendations, however, asserted that a number of recommendations were changed as a result of input from the field. They cited as an example the fact that recommendations related to audit requirements for organizations with smaller budgets were changed after hearing from the field.

A final criticism involved the scope of the final recommendations, which some criticized as not going far enough in terms of pushing organizations to improve governance and ethical practice. Others believed the recommendations went too far by restricting how they operate. One nonprofit leader dismissed such criticisms by explaining that "essentially, you would want to have about half of the people thinking it didn't go far enough, and the other half thinking that it went too far. And therefore, you would have the sweet spot." Even so, controversy emerged when university groups objected to the *Principles*. One Panel staffer said, "The university groups thought the principles were constraining them. They didn't want to be members of IS anymore, even though they were very active members of the advisory group."

Insufficient staffing presented a significant challenge for the Panel. Although IS hired the law firm Caplin & Drysdale to draft the legal framework, the majority of the administrative support was handled by IS staff, bolstered by a few full-time temporary staff. One person interviewed said a "ridiculously low amount of people" provided administrative support to the Panel. Another echoed this sentiment: "Staffing was probably the most challenging [aspect of the effort]." The short timeline provided by lawmakers contributed to the staffing challenge because there was limited time to identify and hire competent new staff. One interviewee explained, "You had to be able to work with Diana [Aviv] and understand her approach. This wasn't like you could have five renegades and each one doing their own thing. It really had to be very tight." The team needed to work seamlessly to manage the many moving parts, which created an incentive to use existing personnel.

Reentry Working Group

The Reentry Working Group formed in late 2003 as a subgroup of the Justice Roundtable coordinated by the Open Society Policy Center (OSPC). The working group was formed with the goal of passing legislation to assist previously incarcerated persons with their reentry upon their release from prison. The Reentry Working Group believed the way to achieve success was to push, as a bipartisan coalition, for a bill designed to assist former convicted offenders. The coalition succeeded in the enactment of The Second Chance Act, which authorizes programs to assist people reentering society from prison. It did this though a **signature strategy** of using impending state fiscal crises and new scientific evidence about the costs of reentry as the basis for a bipartisan advocacy campaign. The timing of this issue also worked in the coalition's favor considering the high cost of imprisonment and massive overpopulation of prisons as a result of decades of harsh sentencing.

OVERVIEW

The Reentry Working Group is an informal coalition that works on issues around the reentry of convicted offenders into society. The Reentry Working Group's key victory was the passage of the Second Chance Act in 2008.[32] The group was created when the newly formed OSPC, searching for signature issues on which to lead, decided to focus on prisoner reentry. OSPC was soon joined in coalition by the Legal Action Center; the National Alliance to End Homelessness; Prison Fellowship; National Council of La Raza; and a number of other organizations.

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32. According to the Council of State Governments, "the Second Chance Act…was designed to improve outcomes for people returning to communities from prisons and jails. This first-of-its-kind legislation authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce recidivism." "Second Chance Act," Justice Center: The Council of State Governments, http://reentrypolicy.org/government_affairs/second_chance_act

At the same time, Representative Danny Davis (D-IL) was working on a bill to assist former prisoners with housing upon their reentry into society. This initiative appealed to OSPC, and a partnership soon flourished between Representative Davis and the Reentry Working Group. The group began working in support of the Davis bill and at the same time began drafting a legislative outline for a comprehensive prisoner reentry bill. The coalition's first breakthrough moment came in the 2004 when, to the surprise of the coalition members, President George W. Bush mentioned reentry in his State of the Union address.

Shortly thereafter, the coalition met with Representative Rob Portman (R-OH)[33] and learned that the President has asked Portman to lead a presidential reentry initiative. According to one coalition member, "We had, literally, almost literally, in our back pocket, an outline of a bill. And so we were off and running on what became Second Chance Act."

The bill took four years to pass—not an unusually long period for legislation that is not helped by an emergency—and the coalition held together and kept pushing through obstacles throughout this time.

APPROACH

Once agreement was reached among coalition members on the language for the Second Chance Act, which was based on considerable compromise,[34] the coalition focused on getting the bill enacted into law. Coalition members created data-heavy lists and fact sheets targeted to specific members or constituencies and set out to convince House and Senate offices to pass the Second Chance Act. Representatives Davis (D-IL) and Portman (R-OH) did the same from inside the House, as did Senator Brownback (R-KS) and Senator Biden (D-DE) in the Senate. Several interviewees said the coalition's targeted fact sheets and others produced by Representative Davis's office were critical in the effort's success. When either the coalition or Representative Davis's office heard of a new argument against the Second Chance Act, they swiftly created a fact sheet using available statistics and tailored it to respond.

Two of their members had scheduled a meeting with the Shelby office. During the meeting Senator Shelby came in for a moment to meet his constituents. They were able to convince Shelby to lift his hold and within a couple of hours the Second Chance Act passed the Senate and Congress.

The Second Chance Act had its detractors in Congress, mainly Republicans such as Representatives Louie Gohmert (R-TX) and John Boehner (R-IN), and Senators Jeff Sessions (R-AL) and Richard Shelby (R-AL). These lawmakers did not support the creation of new federal programs that they believed would require federal dollars to be appropriated and hence they questioned the success of reentry programs.

The coalition navigated around each of the obstacles it faced. For example, when the coalition ran into trouble with House Democratic leadership, they enlisted a pro bono consultant who was close to House leaders and, with the help of OSPC, they hired Republican consultants for specific outreach to key Republicans. Mostly, however, coalition members met frequently with House and Senate offices and engaged state networks and prosecutors where it had connections. According to one coalition member, "Everybody put their home state networks to work and just a lot of calls and letters to people and working with law enforcement."

At the same time, staff of Representatives Davis and Portman and Senators Biden and Brownback continued to tweak the messaging on the bill to combat the messages being produced by opposition groups.

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33. Portman in now serving as a senator representing Ohio and was the U.S. trade representative under President George W. Bush.

34. For example, some of the progressive organizations within the coalition wanted to eliminate the ability of religious groups to discriminate in hiring based on religion. The religious groups, on the other hand, wanted to retain the ability to hire based on religion and to expand the role of religious groups in other ways. The coalition agreed to support the status quo and not try to change this provision of law.

After four years of persistent advocacy, the Second Chance Act passed the House and was on the verge of passing the Senate when a series of "holds" were put on the bill by a small group of senators. Senator Shelby (R-AL) placed the last hold on the bill.[35] Coincidentally, the Correctional Education Association, one group in the coalition, was holding its annual lobby day around that time. Two of their members had scheduled a meeting with the Shelby office. During the meeting Senator Shelby came in for a moment to meet his constituents. They were able to convince Shelby to lift his hold and within a couple of hours the Second Chance Act passed the Senate and Congress.

SOURCES OF SUCCESS

Reliance on Data and Economic Realities

The Second Chance Act had neither much money nor direct access to a large grassroots movement that could bring in the votes. Instead, the coalition used an emerging body of scientific studies that had begun to show the costs—economic and societal—of the increase in prisons and prison population in the 1980s and 1990s. These studies described two important findings: first, the more support a former prisoner receives during their reentry to society, the more successful his or her reentry is likely to be; and second, without reentry services, offenders are more likely to commit a crime. These studies, combined with state budget pressures and growing prison populations with attendant costs, created an opening for consideration of investments in newly released offenders who had served their time. Much of the policy leadership came from the Urban Institute, which conducted some of the research and also convened a series of roundtable meetings that included local, state, and federal policy makers to review the research and consider needed policy changes. All that led to the broad support for the Second Chance Act.

35. A "hold" is an informal procedure in the Senate where one senator can object to consideration of a bill. A "hold" in essence puts the Senate Majority Leader on notice that the senator with the hold may attempt to filibuster the bill.

Committed Leadership and Informal Structure

The OSPC's Gene Guererro coordinated the Reentry Working Group. It was a loose coalition with no major effort devoted to convincing coalition partners to act as a single unit. Each member had a great degree of individual responsibility, and the latitude to use the arguments for the Second Chance Act that worked best for their particular group. According to one coalition member, "We would draft and circulate [fact sheets, letters, and documents] and people would have input into that. But that was never an issue, and people would approach it from their own point of view." Many attributed the Reentry Working Group's efficacy in part to the autonomy of its members. We were told by one group member, "Nothing was ever done in the name of what we call the 'reentry working group.' " And so if we did a sign-on letter, people could sign on if they wanted to, or not sign on if they didn't want to, or go to a Hill meeting or not." Group members were aligned around shared goals, but did not have to reach agreement on approach in order to take action.

> *Group members were aligned around shared goals, but did not have to reach agreement on approach in order to take action.*

All of those interviewed credited Guererro's tenacity as key to the coalition's success. The coalition held regular meetings (OSPC provided lunch—an important incentive to increase and keep attendance) and worked on a consensus basis to drive strategy and decisions. Another interviewee said of Guererro, "He was just so persistent, and he wouldn't allow himself or others to get too discouraged… . It [the bill] kept being derailed for no good reason. … But Gene kept right at it, would always say 'what more can we do? Who else do we need on this?' He was very persistent with us."

Many of the other organizations involved provided staff support for the coalition and, importantly, activated their state networks at crucial periods.

Funding

While the lack of designated funding may have been an obstacle for some coalitions, the Reentry Working Group managed their resources carefully. Each organization committed staff time to the effort, and OSPC hired outside lobbyists when necessary. In addition, the coalition advanced its work using existing resources, such as research conducted by other organizations.

WEAKNESSES

Interviewees were unable to name a significant weakness with the Reentry Working Group. Everyone saw the Reentry Working Group as a successful coalition both in terms of process and outcomes. The coalition has, however, found securing continued appropriations for all of the priorities within the Second Chance Act to be as difficult as passing the underlying legislation that authorized the appropriations. Guerrero has transitioned away from reentry issues and now directs the Open Society's Initiative on Confronting Violent Crime. Since 2011, the Reentry Working Group has been led by a steering committee comprised of relevant stakeholders, still being convened by OSPC and the Justice Roundtable. Due to the current federal fiscal crisis, it has become harder for the coalition to coordinate strategy around Second Chance Act appropriations in Congress. The coalition recently addressed an issue of transparency within the leadership structure with the creation of an open listserv. Currently, the Reentry Working Group continues its coordinated and focused dialogue with both the Obama Administration and Congress to push for changes in federal reentry policy.

CONCLUSION

These four coalitions—Health Care for Americans Now, Patriots Defending the Bill of Rights, the Panel on the Nonprofit Sector, and the Reentry Working Group—largely achieved their goals. Each was born of a strong organization able to serve as a backbone for their advocacy efforts and unite coalition members around a shared vision. Coalitions customized important assets and strategies that helped them win their particular issue.

Build the Coalition You Need: The ACLU built a bipartisan coalition of unusual allies to change the nature of the debate on the PATRIOT Act, whereas HCAN built an ideologically homogeneous coalition to push through health care reform once the Democrats controlled the White House and Congress. In each case, coalition leaders handpicked members based on their relationship to the issue, relevant lawmakers, and the larger community.

Maximize Strengths: Coalitions function at their peak when each organization draws on its unique strengths—a finding that emerged repeatedly in this study. For example, the Panel called on coalition members to represent their own experiences and perspectives in the process of crafting recommendations, such as through the Small Organizations Work Group. In the case of Patriots Defending the Bill of Rights, the ACLU managed the polling, while conservative groups handled outreach to Republicans.

Exercise Strong, Steady Leadership: The importance of leadership in coalitions is paramount to success. Leaders are essential in a myriad of ways, such as keeping participants advancing steadily toward a collective goal; providing guidance and feedback to individual members; communicating and enforcing agreed-upon procedures; and minimizing conflict within the coalition. In the four cases studied, leadership varied significantly. The members of the Reentry Working Group praised Gene Guererro's style, which paired dogged pursuit of a singular vision with a much more relaxed, informal approach. In contrast, the other coalitions required a more centralized leadership, as evidenced by the Panel; in this

case, Diana Aviv had to orchestrate broad participation in developing and advancing policy recommendations for Congress on a very tight timeline.

Establish a Predictable and Productive Structure:
Effective coalitions are deliberate about tailoring the group structure to best achieve the desired public policy outcome. The structure of the Reentry Working Group mirrored Guererro's leadership – organizations were loosely aligned with maximum autonomy for individual action. In contrast, the Panel and HCAN would not have prevailed without a much more elaborate structure. The latter's steering committee, centralized staff, and formal relationships with coalition leaders in the field helped mobilize constituents and thus fueled it success.

Notably, these coalitions did not start their work from scratch. The ACLU had established relationships with conservative organizations prior to the September 11 tragedies, and was therefore able to build on existing relationships and trust to pull together its bipartisan coalition quickly. Likewise the Reentry Working Group had research and draft legislation "in our back pocket," which allowed them to act swiftly when the opportunity arose to move their issue forward.

The challenge of a coalition is to harness the existing assets—relationships, research, and resources—of a group of organizations that may not only be working together for the first time, but may be doing so on a compressed timeline. Many hurdles can arise, such as the need to accommodate individual goals, reconcile different styles, and perhaps overcome limited resources. Despite such difficulties, what can be accomplished by working together in many cases outweighs what can be achieved by a single organization. Coalition work also pays immense dividends: policy results are more likely to have buy-in from stakeholders who were involved in the process, and relationships formed during these campaigns (even among unlikely partners) can create opportunities for future advocacy and collaboration. As these case studies show, organization leaders should carefully consider the advantages and disadvantages of working through a coalition to determine if doing so will advance their particular advocacy strategy.

SECTION II:

SECTOR-WIDE ADVOCACY AND POLICY ISSUES

BEYOND THE CAUSE
THE *Art* AND **science** OF ADVOCACY

PERCEPTIONS OF ADVOCACY EFFECTIVENESS REGARDING SECTOR-WIDE ISSUES

Introduction

Charitable and philanthropic organizations are created to serve the common good. Having long recognized the value that charitable organizations add to our communities and our world, for almost a century public officials have exempted these organizations from paying many taxes and have incentivized donations from the public that support their work. In return these organizations are bound by federal and state regulations and rules that govern their activities. These special protections and rules apply not only to funding flowing to charitable organizations, but also to a broad range of practices and permitted activities. These include, for example, rules regarding executive and board compensation, board governance obligations, income generating endeavors, government grants, distribution of philanthropic dollars, employee practices, IRS annual returns, and lobbying and political activity. Over the years as charitable organizations have proliferated and invented new structures and systems to achieve their missions, laws and rules have been added to ensure that the resources and activities of these groups continue to serve the public interest. While there are some rules that apply to specific types of organizations, such as nonprofit hospitals, private foundations, and credit counseling services, there are a number of policies and regulations that apply to a broad swath of organizations

serving quite different missions.[1] For the purposes of this study we have named these "sector-wide" policy issues.[2]

This paper analyzes the practices and effectiveness of nonprofit and philanthropic organizations in ensuring that sector-wide policies facilitate their work.[3] To facilitate this work, Independent Sector commissioned three surveys, over 100 interviews, and seven group conversations.[4] It also draws from a review of the literature pertaining to this subject and an analysis of six sector-wide policy issues that are currently relevant to many charitable organizations. Those issues are: IRS Forms 990 and 990 PF, advocacy and lobbying regulations,[5] charitable tax deduction, government contracting with nonprofits,

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1. See "Sector-Wide Public Policy Issues," Appendix B for a full list.

2. In this study, sector-wide public policy issues refer to those rules and benefits afforded to nonprofits and foundations across subsectors, such as the nonprofit tax exemption, the charitable tax deduction, and regulations that govern the advocacy activity of sector organizations.

3. This paper uses the terms charitable and nonprofit interchangeably.

4. See Methodology, Appendix D for more details.

5. In this study, "advocacy" as a sector-wide policy issue refers to the public policy implications of definitions of permissible advocacy, lobbying regulations, and political activity for tax-exempt organizations.

government-funded research on the charitable community, and nonprofit tax exemptions.[6]

This paper is structured in three parts:

1. *External perceptions of the nonprofit and philanthropic community* provides a brief overview of public opinion of the nonprofit sector in comparison with business and government. In addition, it includes opinions of government officials and D.C. thought leaders on nonprofits' contributions to society and advocacy efforts.

2. *Nonprofit and philanthropic community's relationship to sector-wide issues* describes the general level of awareness and engagement of all sector organizations in relation to these issues.

3. *Advocacy capabilities on sector-wide issues* looks closely at the networks and practices of engaged organizations. Observations and conclusions by the authors of this study are based on data from multiple sources.

The findings paint a mixed picture. While the public and Washington, D.C., insiders view the sector in generally positive terms, this study identified several weaknesses in the sector's ability to achieve its public policy goals consistently over time.

External Perceptions of the Nonprofit and Philanthropic Community

The nonprofit and philanthropic community currently enjoys favorable public opinion. Surveys have shown the public has greater trust in the nonprofit community than in business and government. For example, the Edelman Trust Barometer found that informed publics consistently give the NGO (nongovernmental organization) community higher ratings than the other sectors (see Figure 8.1).

FIGURE 8.1
TRUST IN INSTITUTIONS, 2008–2012
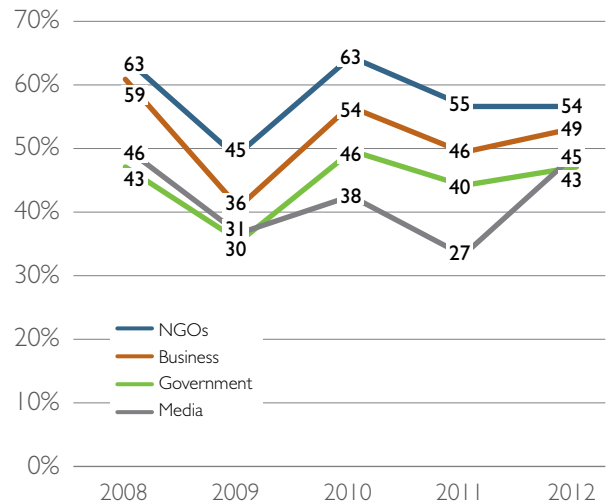
Source: Edelman Trust Barometer, 2011 and 2012 Survey of U.S. informed publics.

Note: "Edelman Trust Barometer, 2012 Annual Global Study," http://trust.edelman.com/; "Edelman Trust Barometer, 2011 Annual Global Study," http://trust.edelman.com/

Independent Sector commissioned a survey for this study to determine what public officials and thought leaders (such as the media, association and interest group executives, and professionals that are highly engaged in political activities) in Washington, D.C., thought of the nonprofit and philanthropic communities and their advocacy activities.[7] The survey revealed generally positive results, with some cautionary findings.

Thought leaders see charities and foundations as organizations that provide services to help others, provide an alternative to government, are motivated by the common good, and provide a vehicle for engaging communities, fostering altruism, and allowing the public to donate resources to benefit others. Their greatest concerns about the nonprofit community related to questions about wasteful spending and high administrative costs,

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6. Full definitions of the six issues addressed appear in the Methodology, Appendix D.

7. The survey was conducted as part of Harris Interactive's Spring 2011 Beltway Omnibus. Survey results appear in Appendix C, Methodology appears in Appendix D.

fraud within the sector, and political activity that was perceived as inappropriate for this class of organizations.[8]

When asked about factors that influence nonprofit success in public policy, Washington influentials listed a wide range of assets. In order of frequency, these included nonprofits':

- broad reach and many engaged stakeholders

- strong reputation and communications abilities

- engagement in lobbying and political activity

- focus on the common good rather than self-interest

- strong organizational management and governance practices

- access to resources from individual donors and other sources

There was overwhelming agreement among respondents that corporations have a greater influence on public policy decisions in Washington, D.C., than do nonprofit organizations. An average of 86 percent believed that corporations have significant influence on policy decisions, while only 38 percent believed the same of the nonprofit community.

The survey also asked specifically about the impact of sector-wide issues on organizations' abilities to achieve their goals. More than three-quarters of respondents said that tax exemptions and the charitable tax deduction significantly help nonprofits to achieve their missions. This finding was welcomed by organizations making the case for maintaining current benefits in these areas. Two other issues received less attention: less than half of the respondents thought that the federal budget cuts and advocacy regulations have a significant impact on nonprofit mis-

sions. This perception is inconsistent with the experience of organizations that are largely funded by government and by organizations that pursue public policy advocacy as a vehicle toward securing systemic change.

Nonprofit and Philanthropic Community's Relationship to Sector-Wide Issues

A national random sample survey[9] of charity and foundation leaders explored the relationship of sector organizations to the sector-wide issues listed above.[10] Specifically, the survey explored the leaders' awareness, engagement, and perceived importance of each of the issues, and whether mission area or budget size affected organizations' relationship with the issues.

The survey revealed that awareness and engagement varied by issue. Sector leaders were most likely to be aware of tax-related issues—the charitable tax deduction and nonprofit tax exemptions.[11] Engagement was low across all issues, with less than 5 percent engagement on any one issue (see Figure 8.2).

Organizations with revenues of over $1 million were more likely to be aware of the charitable tax deduction than other issues, and nonprofits with annual revenues of over $5 million were more likely to engage in policy issues related to government contracting with nonprofits.

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8. During interviews, nonprofit leaders expressed appreciation for the positive public opinion but worried that the public and "key influentials" in Washington, D.C., do not understand the depth and breadth of the sector's role in society. Several cited, for example, a lack of awareness related to the sector's role as employer of 10 percent of the workforce; educator of the public about issues related to the common good; advocator, especially for underserved or marginalized populations; and mobilizer of volunteer power for the sake of local communities, to name a few.

9. The survey was conducted by phone between December 21, 2011, and January 26, 2012. Respondents were a random sample of 500 public charities and private foundations. The sample was weighted for NTEE (mission area) groups, annual revenue (for charities), fair market value of assets (for foundations), and region. For details, see the Methodology, Appendix D.

10. Issues included in the random sample survey included: IRS Forms 990 and 990-PF, advocacy and lobbying regulations, charitable tax deduction, government contracting with nonprofits, and nonprofit tax exemptions. This survey did not include questions related to government-funded research on the nonprofit community.

11. It is no surprise that organizations are aware of those issues considering that Congress and the Administration have indicated that as part of their tax policy review they also will be looking at the tax-exempt sector.

FIGURE 8.2
AWARENESS OF AND ENGAGEMENT IN SECTOR-WIDE ISSUES

	Aware of issue, and my organization has taken some sort of action on it	Aware of issue, but my organization has not taken action on it	Not aware of the issue
Government Contracting	4	33	63
Charitable Tax Deduction	3	59	38
Nonprofit Tax Exemption	3	54	43
Advocacy Rules	3	40	57
IRS Form 990 and 990 PF	2	42	56
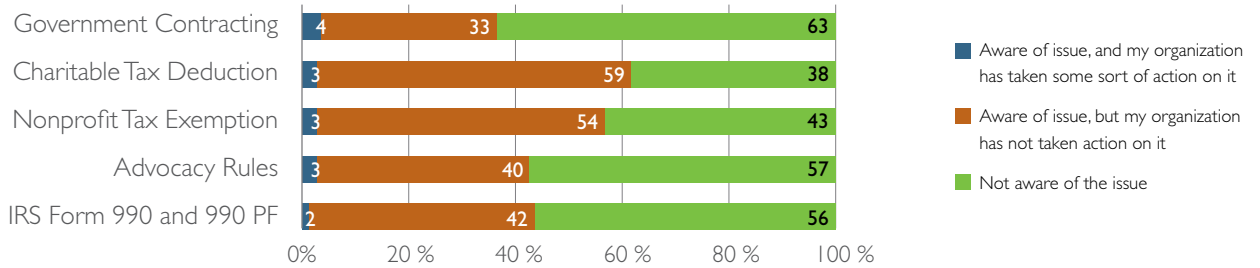
A random sample of nonprofits and foundation leaders were asked, "Which of the following best describes your organization's involvement with the [issue] over the last five years?"

FIGURE 8.3
PERCEIVED IMPORTANCE OF SECTOR-WIDE ISSUES

	Extremely important	Somewhat important	Neutral	Not very and not important at all, combined
Nonprofit Tax Exemption	59	14	12	15
Charitable Tax Deduction	52	15	16	17
IRS Form 990 and 990 PF	29	14	28	28
Government Contracting	15	11	23	52
Advocacy and Lobbying Rules	12	9	25	54
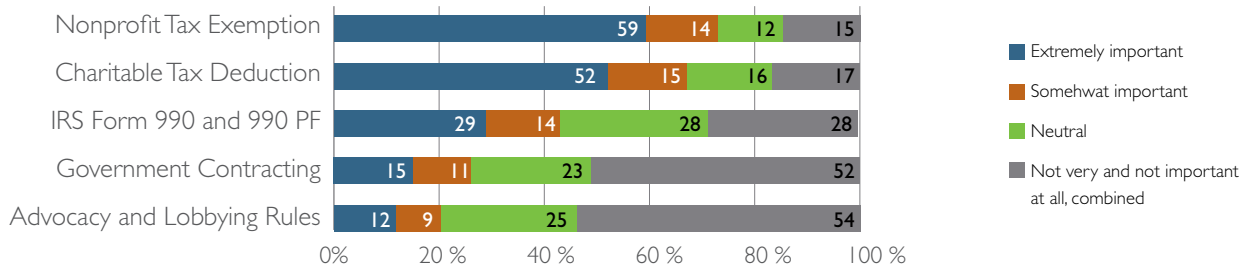
A random sample of nonprofit and foundation leaders were asked, "How important are each of the following issues to your organization?"

Perceived importance varied greatly across the issues studied. Once again, the two tax issues received the highest ratings (see Figure 8.3).

The survey also found that human service and health organizations were more likely than other groups to identify each of the sector-wide issues as important. There was no correlation between annual revenue and perceived importance.[12]

In general, nonprofit tax exemptions and the charitable deduction were identified as mainstream issues, con-

sidered very important and yet revealed relatively low engagement. Government contracting and advocacy regulations emerged as niche issues, as they garnered overall low importance but high relative engagement from specific clusters of organizations.

Perceptions of Advocacy Effectiveness Regarding Sector-Wide Issues

The "Summary: Essentials of Successful Advocacy," which appears earlier in this volume, outlines five approaches used by advocates that have helped to achieve their policy goals over time, including identifying and maintain-

12. There appears to be a lack of consistency in types of organizations that indicated increased awareness, engagement, and perceived importance of sector-wide issues, respectively. These findings may warrant further research.

ing focus on specific long-term policy goals, developing deep relationships with public officials, and investing in the essential building blocks that will support specific advocacy campaigns such as research, communications, and the connections to grassroots constituents—in an ongoing way. These time-tested approaches were used as the starting point for the categories of analysis of advocacy capabilities of sector-wide issues that appear below:

- long-term goals and approach

- collaboration and network structure

- relationships with public officials

- research

- communications

- grassroots

- leadership

The information used for this analysis was gathered from the 528 organizations that had taken action in the last five years on at least one of the six issues studied.[13] The analysis was based on responses provided in an email survey, 32 in-depth interviews, and seven group discussions. While perceptions that were widely held were given greater weight in the analysis, authors of this study did not verify independently the opinions expressed by study participants.

LONG-TERM GOALS AND APPROACH

Perception #1: Organizations engaged in sector-wide advocacy would benefit from clearly articulated, long-term public policy goals for themselves and for the sector.

General agreement exists that the goal of sector-wide issues is to strengthen the nonprofit and philanthropic

community so that organizations might better serve their missions; however, organizations disagree about what public policy outcomes to prioritize, especially over the long term. Interviewees offered several explanations for a lack of consensus on a shared vision. Some opined that it was due to the absence of leadership and focus: that no leader has stepped forward to unify sector organizations around a shared long-term vision. Others argued that it would be very difficult to develop a broadly shared agenda because of the diversity of sector organizations and their interests. As one CEO said, "There are times when there are parts of our sector that are at war with each other" about sector-wide issues.

Several of the leaders interviewed expressed a sense of urgency and a willingness to move toward a shared vision and priorities, as difficult as that may be. "What is it that the sector could agree upon? ... That's the debate we need to have," said one leader.

Perception #2: The majority of advocacy on sector-wide issues was reactive, conducted in response to proposals from government, and did not reflect a proactive policy agenda.

A vice president of government relations said her sector-wide priorities were established based on, "what the biggest threat to the sector is" and an analysis of "what's Congress going to be doing?" A CEO echoed this approach, stating that her organization's sector-wide policy priorities "change all the time." Most interviewees agreed on two points that described the reactive nature of sector-wide policy priorities. First, the starting point for policy engagement was often protecting benefits that organizations currently enjoy and, second, it was much easier to mobilize their organization (and sometimes their members or affiliates) around a threat. While it was relatively easy to mobilize organizations around a threat, a lack of urgency and sometimes also clarity has been an obstacle when organizations pursued proactive policy solutions. A senior leader remarked that even if "everyone agrees with the problem, not everyone agrees with the solution." In addition, lack of resources was consistently mentioned as an obstacle in developing and pursuing proactive policy solutions.

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13. The 528 organizations were identified through their participation in public advocacy activities, such as joining a coalition or a sign-on letter. This group does not represent all organizations engaged in sector-wide issues; it is limited to groups that took public action on the issue or self-reported engagement on a survey. Organizations from the random sample survey that indicated engagement in these issues were not included in data gathering for this section of the report. Please see the Methodology in Appendix D for additional information.

DIFFERING PERSPECTIVES ON IMPLICATIONS OF FEDERAL BUDGET ISSUES

Interview subjects were asked to identify the most significant public policy threat or opportunity facing the nonprofit and philanthropic sector. The answers confirmed a lack of consensus about public policy priorities—not surprising given the lack of agreement over long-term policy goals. While almost all interviewees named issues related to the federal budget and national deficit, perceived implications of these challenges for their own organizations and the sector at large varied widely. Responses generally fell into one of four categories:

• an expressed need to revisit the social compact and better define the responsibilities the U.S. government has to its people

• the far-reaching impact of significant, across-the-board spending cuts that are expected in the future

• threats to nonprofit tax exemptions and/or the charitable deduction

• the imperative to secure government funding for specific types of nonprofit organizations serving vulnerable populations

Over half of those interviewed referenced a distinction between prioritizing policy issues that supported society-wide issues often referred to as "the common good" (as evidenced by the first two categories above) and issues that supported nonprofit organizations specifically. Leaders concerned about promoting the common good implored the organizations engaged in sector-wide issues to be visionary not protectionist. They argued that the sector should engage in a values-based public discussion on likely budget cuts, which would likely have a far greater impact on the sector's bottom line than the tax-exemption issues. In contrast, others asserted that protecting the self-interest of the nonprofit sector is an important way to promote the common good; they did not distinguish between these two categories.

Perception #3: There was a lack of consensus on public policy goals of specific sector-wide issues.

Survey results revealed the absence of a consensus regarding policy goals on several sector-wide issues (see Figure 8.4). Reponses varied significantly across issues. For example, 32 percent strongly agreed that there was a broad consensus around charitable tax deductions—namely to protect the existing deduction—but only 3 percent strongly agreed that there was consensus around the policy goals related to government-funded research on the nonprofit community. On average, 15 percent of respondents indicated that they strongly agreed there was a consensus on policy goals related to a particular issue, with an average of 33 percent additional respondents somewhat agreeing.

The highest level of agreement on policy goals appeared in relation to the charitable tax deduction and the nonprofit tax exemption. These issues also are current threats to the sector, and reinforce the earlier suggestion that the sector is able to come together around threats and during crises.

COLLABORATION AND NETWORK STRUCTURE

Perception #1: There is a modest level of coordination across organizations engaged in sector-wide advocacy.

Survey results found that coordination across organizations varied by issue but on average, 35 percent of respondents believed that organizations were very effective at coordinating with others. Another 24 percent of respondents (on average) thought coordination across organizations was somewhat effective (see Figure 8.5). The policy issue with the greatest amount of perceived coordination—the charitable tax deduction—was the most active issue at the time of the interview, as many sector organizations were involved in mostly opposing President Obama's proposal to limit the deduction for high income earners.[14] This finding is consistent with the

14. See "Issue Paper: Charitable Tax Deduction" in this study for more information.

earlier conclusion that sector organizations will work collaboratively in response to a commonly perceived threat.

Some interviewees provided examples of effective coordination across organizations. They reported communicating and lobbying regularly with other advocates; attending monthly breakfasts convened by Independent Sector to discuss sector-wide issues; joining coalitions; and signing joint letters to public officials when applicable.

However, a majority of interviewees suggested that the level of current coordination is limited in scope and there was significant room for improvement.

Perception #2: Coordination among organizations was limited for a variety of reasons and, ultimately, restricted the network's effectiveness in achieving their sector-wide goals.

The general consensus among interviewees was that many advocates knew and communicated with each other but did not coordinate well, and they cited numerous examples to illustrate the point. These included advocates running into colleagues while lobbying the same Member of Congress or staff on the identical issue; multiple organizations issuing their own letters rather than agreeing on one unified message to share with the field, the Administration and Congress; and a lack of meaningful and timely information sharing across organizations about policy developments and strategy.

Lack of trust among organizations emerged as one of the most important reasons for inadequate coordination. Other reasons included the apparent absence of shared goals and willingness of organizations to "step back or step up" depending in the situation. Some sector leaders suggested that the obstacles to productive collaboration were structural. Namely, that each organization is beholden to its own board of directors and for some, its membership, which can inhibit the flexibility of a particular organization from joining a coalition or signing a letter circulated by another organization. In addition, foundations, members, and other stakeholders often press organizations to differentiate themselves, rather than join a collective effort and share credit. Another structural

FIGURE 8.4

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE A BROAD CONSENSUS ABOUT PUBLIC POLICY GOALS RELATED TO EACH ISSUE
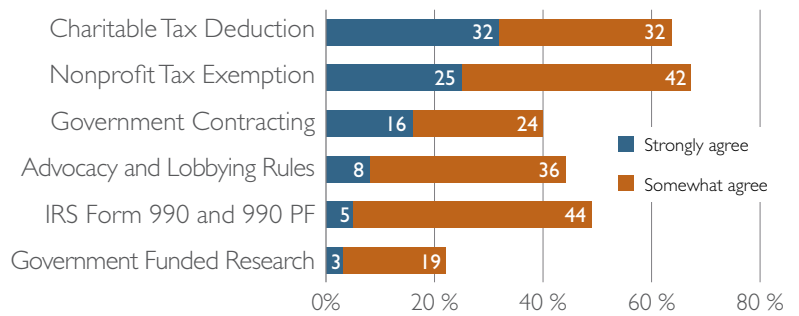
Results from survey to public policy professionals aware of sector-wide issues. Respondents were asked to address the following regarding issues of which they were aware: How much to do you agree or disagree that there is a broad consensus within the nonprofit and philanthropic community about the public policy goals in each of these areas?

FIGURE 8.5

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY REGULARLY COORDINATE WITH OTHERS
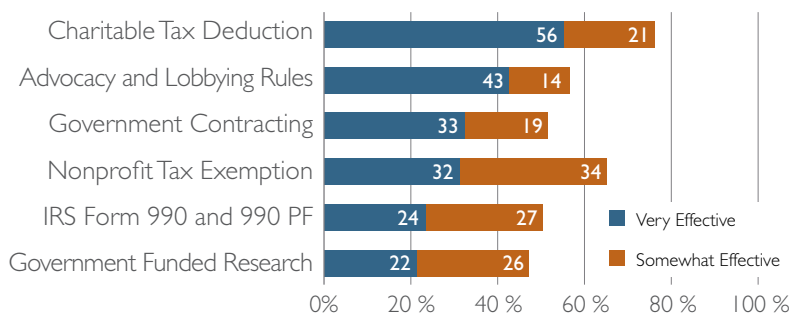
Results from survey of public policy professionals engaged in sector-wide issues. Respondents were asked to address the following regarding issues in which they were engaged: In general, does the group of organizations engaged in this issue regularly coordinate with other organizations working toward the same or similar policy goal? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

problem noted was the capacity of various organizations to invest in collaborative work. Some organizations leading advocacy efforts found it difficult to continue to engage advocates with limited resources or assets to contribute to joint efforts.

One foundation leader summarized the status quo in this way, "There is a lack of coordination and I get it. I know why, but we need to work against it." Another foundation leader echoed the point and noted that "putting together limited firepower" would increase the network's collective impact.

Sector leaders underscored that additional time and resources were necessary to build effective collaborations.

Perception #3: Many leaders were hesitant to leverage their organization's relationships or assets toward collective sector-wide goals.

Most organizations develop advocacy assets—grassroots, grass-tops, relationships with key public officials, etc.—in order to support their public policy priorities. The same is true with the network of groups engaged in sector-wide advocacy. While a number of interviewees reported that some colleagues would contact a key public official on behalf of sector-wide issues, they also acknowledged that many organizations were reluctant to expend advocacy assets on these issues. For example, advocacy organizations dedicated to issues such as human rights, the environment, or health issues may be able to mobilize hundreds or thousands of grassroots supporters for their cause, but many were unwilling or unable to marshal those resources towards sector-wide issues. One nonprofit leader defined her organization's limited engagement in sector-wide issues in this way, "we have to stay very focused on either what impacts us directly or what we care most about."

As a result, advocacy assets throughout the network were viewed as belonging to the organization and not to the collaborative effort. Sector leaders, on one hand, understood the need for organizations to focus on their own priorities but, on the other hand, were concerned that organizations are not deploying their collective mus-

cle in the most effective and efficient way. One senior policy leader with several years of experience working in sector-wide coalitions remarked: "I don't think people in this community have ever really put their assets on the table … I've never been at a meeting on nonprofit issues and talked about, really, what assets they have."

Perception #4: The way in which sector-wide advocacy activity was conducted was not optimal, but disagreement existed about the best path forward.

Interviewees identified several shortcomings in the way in which the sector-wide network conducts its business. First, many of the existing broad-based coalitions and work groups lack representation from several arms of the nonprofit community, such as hospitals, universities, and religious institutions. Second, the lack of an inclusive agenda setting processes contributed to the reasons why some organizations stated that they were reluctant to allocate resources to sector-wide issues. Several feedback groups had robust conversations about this topic, recognizing both the difficulty and importance of developing a shared agenda that inspires organizations to buy-in to collective goals and act on them.[15] Finally, several interviewees believed that the current network lacks the resources it needs to achieve its goals consistently and to pursue a long-term agenda. Even if organizations agreed to deploy their assets toward sector-wide issues, interviewees argued, activities such as developing shared goals and ensuring ongoing coordination requires a level of resources that the nonprofits in the network do not currently have.

Several interviewees echoed the need to have a national coordinating body to bring together "networks of networks" engaged in and affected by these issues. However, there were competing recommendations for how it should be structured. Some sector leaders argued that, in order to be sustainable financially, the organizing body needed to recruit large, well-resourced organizations prepared to contribute significantly to the maintenance of a strong sector-wide advocacy network. Others suggested that a "pay-to-play" model—even with flexibility

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15. Feedback groups were groups of sector leaders convened to identify and discuss key issues emerging from the findings of this study. For more information see the Methodology in Appendix D.

to include in-kind resources —was not appropriate for the charitable community because most organizations have budgets of under $1 million and the values of fairness and inclusion that characterized the sector militated against such a structure. Still others suggested that foundations are in a position to support and sustain a robust sector-wide network even though few do at present.

RELATIONSHIPS WITH PUBLIC OFFICIALS

Perception #1: Close relationships with key public officials have driven successful sector-wide advocacy campaigns; however, many organizations' relationships with public officials are limited both in terms of number and depth of connections.

Organizations working on sector-wide issues have achieved significant successes in the last several years. Among them was the Pension Protection Act of 2006, legislation that promoted transparency, accountability, and good governance in the nonprofit community. The coalition profile on the Panel on the Nonprofit Sector in this study describes how close relationships with lawmakers and their staffs were critical to the sector's success.[16] More recently, many count the sector's ability to preserve the charitable deduction in spite of proposals by President Obama on seven separate occasions to reduce it as another public policy success story.[17] Advocates involved in this issue attribute the success, at least in part, to consistent communication with leaders on the tax-writing committees in the House of Representatives and Senate. Such ongoing communication is evidence of relationships between sector organizations and key public officials that likely have been cultivated over time.

Survey respondents and interviewees called for more robust relationships with public officials on other issues that had not enjoyed similar success. Interviewees noted the lack of champions for the nonprofit community in Congress, and survey results showed that the strength of relationships with government officials varied by is-

16. For more information, see "Case Study Coalition Profiles."

17. For more information, see "Issue Paper: Charitable Tax Deduction."

FIGURE 8.6

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE RELATIONSHIPS WITH RELEVANT POLICYMAKERS
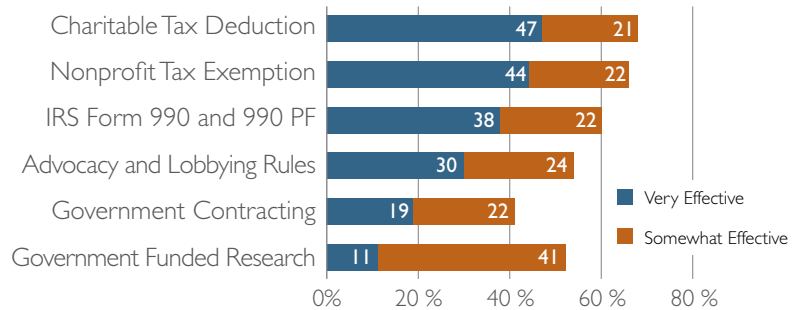
Results from survey of public policy professionals engaged in sector-wide issues. Respondents were asked to address the following regarding issues in which they were engaged: In general, does the group of organizations engaged in this issue have relationships with relevant policy makers to advance this issue? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

sue (see Figure 8.6). Over 40 percent of respondents thought engaged organizations were very effective at leveraging relationships with public officials around the two tax issues (47 percent for the charitable tax deduction and 44 percent for the nonprofit tax exemption). In contrast, less than 20 percent of survey respondents thought engaged organizations had built or leveraged their relationships with public officials who might be helpful with policy pertaining to government-nonprofit contracting (19 percent) and government-funded research on the sector (11 percent).

Generally, respondents believed that relationships with members of congressional tax-writing committees and IRS officials responsible for oversight of the nonprofit and philanthropic community (including the Forms 990 and 990-PF) were seen as relatively strong, but many of the organizations engaged in sector-wide advocacy lack deep knowledge of, or have built relationships with, officials from other committees or agencies. A former government official familiar with sector-wide issues suggested that sector organizations should develop stronger relationships with key officials in agencies such as the Office of Management and Budget, the Congressional

THE POLITICAL ACTIVITY QUESTION

Sector leaders and former government officials had strong but varying opinions about whether organizations should engage in political activity around sector-wide issues.[1] Most groups engaged in these issues are 501(c)(3) organizations and therefore subject to restrictions on lobbying and political activity. The question for sector advocates was whether to establish 501(c)(4) organizations or political action committees (PACs), which they believed would allow a greater range of advocacy strategies and increased access to elected leaders.

One common argument for engaging in political activity was that it enabled organizations to work more effectively toward long-term goals. One leader articulated the benefits of political activity as, "The 501(c)(3) has a large portfolio of legislative positions … they are dealing with legislative issues for that particular fiscal year … essentially playing the hand you're dealt." In contrast, the 501(c)(4) entity "is looking 12, 15 years ahead saying, this is where we want to go. And we're trying to influence candidates now to get us close to that bigger vision." Other benefits of 501(c)(4)s cited included more opportunities to develop relationships and trust with elected officials; fully engage grass-tops contacts; and build relationships and partnerships with other advocates through attendance at fundraisers and events.

A number of sector leaders were opposed to engaging in political activity because they felt it would taint the non-partisan image of charities and because advocates supporting sector-wide policy issues were likely to be outspent by corporations and other well-resourced groups.

There was widespread consensus that any political activity would require significant resources both to manage the (c)(4) and to enable support of candidates.

1. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited lobbying to advance their social purposes, and may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. For more information on nonprofit advocacy, lobbying and political campaign activity regulations, see Appendix A. http://www.independentsector.org/uploads/advocacystudy/IS-BeyondtheCause-RulesandRegs.pdf

Budget Office, and the Treasury Department's Office of Tax Analysis in order to share information and be in a position to identify and work on mutual goals.

Perception #2: Sector-wide advocacy efforts would benefit from specific strategies to increase the sector's visibility and influence among public officials.

Many of the interviewees noted that leaders representing the nonprofit and philanthropic community were absent from important public policy discussions in Washington, D.C., such as the economy, employment, and other broad issues that affect sector organizations and the communities they serve. Several respondents specifically noted that government representatives viewed the business sector as a vital partner in these discussions. They suggested the sector should develop clout and power, so that public officials would seek sector input. To do so, they argued for ensuring access to credible research to be used in developing policy solutions, pursuing communications strategies promoting the sector in every congressional district, and building grassroots power and grass-tops connections.

A former public official noted that the sector should develop its reputation as a standard bearer for the common good and partner with government, claiming that it is often perceived as just "another interest group" that might be more part of the problem than part of the solution.

RESEARCH

Perception #1: Several recent studies have contributed significantly to the understanding of and advocacy for two sector-wide issues.

Advocates welcomed recent research on the charitable tax deduction and government-nonprofit contracting. In 2011, the Urban Institute launched a project dedicated to studying the impact of tax issues on the nonprofit community.[18] Several papers released in its first 18 months have been used by advocates to help frame their communications and advocacy strategies.[19] In addition, a paper by the Urban Institute and a companion paper by the National Council of Nonprofits, both released in October 2010, have helped to galvanize state-level advocacy efforts related to government-nonprofit contracting.[20] Survey results reflected these developments: 49 percent and 44 percent of respondents reported that research in these areas was "very effective." These were among the highest "very effective" rankings across the survey (see Figure 8.7).

Research on other issues received lower marks. Interviews suggested this was because studies were dated, the scope of research was not directly relevant to public policy proposals, or of a lack of research in a particular area.

Perception #2: There remain significant gaps in available research and well-developed policy proposals that could support sector-wide advocacy efforts.

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18. See Urban Institute's Tax Policy and Charities project for more details. "Tax Policy and Charities," Urban Institute, http://www.urban.org/taxandcharities/index.cfm

19. For example, see Roger Colinvaux, Brian Galle, and C. Eugene Steuerle, "Evaluating the Charitable Deduction and Proposed Reforms" Urban Institute, June 13, 2012, http://www.urban.org/publications/412586.html; Jon Bakija and Bradley T. Heim, "How Does Charitable Giving Respond to Incentives and Income? New Estimates from Panel Data" *National Tax Journal* 2, pt. 2 (June 2011): 615-650, http://web.williams.edu/Economics/wp/BakijaHeimCharity.pdf

20. Elizabeth T. Boris, Erwin de Leon, Katie L. Roeger, Milena Nikolova, "Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants," Urban Institute, October 7, 2010; "Costs, Complexification, and Crisis: Government's Human Services Contracting 'System' Hurts Everyone," National Council of Nonprofits, October 7, 2010; http://www.govtcontracting.org/sites/default/files/Costs%20Complexification%20and%20Crisis.pdf

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FIGURE 8.7

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE CREDIBLE RESEARCH ON THIS ISSUE
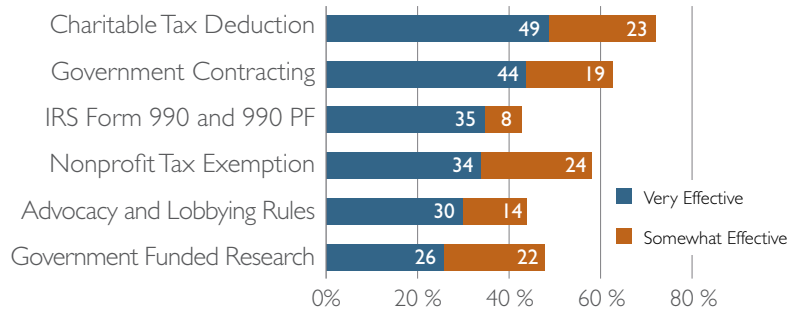
Results from survey to public policy professionals engaged in sector-wide issues. Respondents were asked to address the following regarding issues in which they were engaged: In general, does the group of organizations engaged in this issue have credible research on this issue? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

Several leaders interviewed lamented the lack of ideas, research, and well-developed policy proposals on issues that would support the nonprofit community. This gap took two forms. First, the substantial absence of policy proposals designed to strengthen nonprofits and foundations. One researcher described his search for such information and remarked, "One of the major takeaways from that exercise for me was how little there was to choose from." Another researcher described several challenges when trying to pursue a research agenda that addressed proactive policy issues. Observers pointed to the limited funding and investment in this area.

A second gap pertained to the availability of timely information that described the scope, impact, and value of the sector. For example, data on nonprofit sector organizations employing some 12 million workers or a state-by-state analysis of the value of charitable organizations to local economies had been hard to find on a regular basis. There were some studies that reported on these issues, but no comprehensive, consistent, timely system for collecting and sharing such information.[21]

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21. For more information, see "Issue Paper: Government-Funded Research on the Nonprofit Sector" in this study.

TRENDS IN TYPES OF ADVOCACY

Given the severe budget constraints and recent gridlock in Congress, advocates reported increased focus on areas other than lobbying with the Congress. Several sector leaders expressed a growing interest in building relationships with public officials in the Administration and relevant agencies; advocacy in the regulatory arena; and researching policy change opportunities that did not require legislative fixes. Four national associations indicated a shift in attention and resources toward state-level advocacy. The motivation was two-fold: the significant obstacles to federal advocacy and the fact that sector-wide issues—including those related to nonprofit tax exemptions—are playing out at the state level.

Of note, participants reported a declining interest in judicial advocacy on behalf of progressive causes citing the current composition of the Supreme Court, which added a level of risk to the types of legal challenges that organizations may have brought forward in a different era.

A number of interviewees called for increased coordination among researchers and advocates to help to develop a meaningful research agenda that can support the nonprofit and philanthropic sector generally and sector-wide advocacy efforts specifically. The Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) has begun to develop such an agenda though several nonprofit respondents and researchers were unclear on its status.

Perception #3: There was deep support for and interest in research that would demonstrate the value of the sector to society.

Participants expressed significant interest in research that measures the range of impact nonprofits have on their communities. Hospitals and other types of organizations have developed systems to quantify public outreach and education, free services, research, and other contributions nonprofits make to their communities. Several types of organizations—especially those that are facing

questions about their tax-exempt status—indicated an interest in learning how to measure the value of their contributions to the common good. One advocate reported that she was a member of a coalition struggling to defend nonprofit tax exemptions at the local level. When the coalition hired experts in these areas to help define their value, the research "was extremely detailed … layering of information we would never have thought to ask." Once the coalition began to use the community value data, she said "it changed everything," and they were able to prevail in their advocacy efforts. A number of advocates agreed that it will become more important for more types of organizations to quantify their value-added benefits to society as tax exemptions continue to be questioned, especially at the state and local level.

COMMUNICATIONS

Perception #1: Communicating with audiences outside of the charitable sector was considered important, though current efforts were viewed as relatively weak.

Survey results revealed that communications and media strategies related to sector-wide issues were among the areas where the organizations were seen to be the least effective (the only area where the sector was seen as even less effective was in mobilizing grassroots constituents). In four of the six issues discussed, respondents that believed communications strategies were "very effective" ranged from 16 to 22 percent (see Figure 8.8). Interviewees suggested that many sector-wide issues were not appropriate for broad-based communications strategies but that two types of communications would be relevant to these issues. These included carefully targeted communications about specific issues to key audiences and a robust strategy to educate public officials and key stakeholders about the value of the sector at large.

Interviewees described several examples of how limited communications about the sector and its impact on communities and society at large became missed opportunities. As an example they noted that the nonprofit and philanthropic sector created jobs during the recent recession, but that many public officials and the general public did not know that information. In addition, lob-

byists continually are "startled" (to quote one typical interview respondent) at how little public officials know about the sector. Even staff members of many nonprofit organizations, they observed, do not see themselves as part of a larger sector working toward the public good.

Perception #2: The effectiveness of current messaging strategies varied by issue and by organizational expertise.

Survey responses indicated that the quality of messaging related to specific sector-wide issues varied widely. Nineteen to 56 percent of respondents believed that messages were "very effective." As with every other strategy, the highest mark was given to messaging concerning the charitable tax deduction (see Figure 8.9).

Interviewees largely agreed that "we [sector organizations] haven't quite hit the right marketing note yet" regarding communications describing the impact of nonprofit and philanthropic community.

Generally, leaders who had not formally tested their messages were much more optimistic about the effectiveness of their language than those who had tested specific language with target audiences. The latter described being surprised at the feedback they received. One nonprofit leader observed, "We're so immersed in these issues and … we think we know how to talk about them." After seeing the results of message testing, she learned the value of "not presuming you know what the message is and being sure you're really testing it with your target audience." Reasons respondents gave to explain the general lack of message testing included lack of time and resources.

Perception #3: Weaknesses in communications on sector-wide issues were due in part to limited reach.

Most often, respondents claimed that organizations engaged in sector-wide public policy issues do not disseminate their messages broadly. The majority of communication takes place on websites, in newsletters, and—to a limited extent —through social media, and as a result has limited visibility. One senior policy leader remarked that most of his organization's key messages were disseminat-

FIGURE 8.8

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE COMMUNICATIONS AND MEDIA STRATEGIES
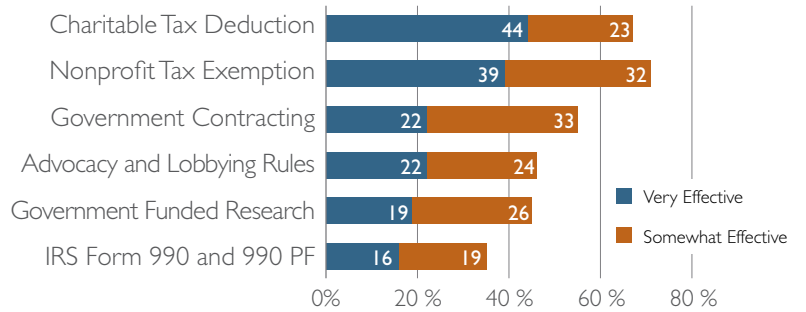
Results from survey of public policy professionals engaged in sector-wide issues. Respondents were asked the following for issues in which they were engaged: In general, does the group of organizations engaged in this issue have communications and media strategies to advance this issue, including traditional and social media? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

FIGURE 8.9

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE LANGUAGE THAT SUCCESSFULLY FRAMES THIS ISSUE TO TARGET AUDIENCES
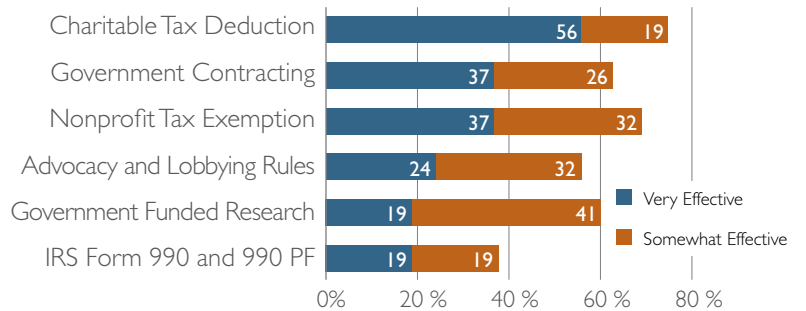
Results from survey of public policy professionals engaged in sector-wide issues. Respondents were asked to address the following for issues in which they were engaged: In general, does the group of organizations engaged in this issue have language that successfully frames this issue in a way that resonates with target audiences, such as lawmakers, media, and constituents? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

ed via email to their various stakeholders and expressed dismay at the lack of effectiveness of this vehicle, "Three-quarters of the people don't even open [the email] and [the communications team is] delighted?" Communications professionals interviewed noted that these types of marketing challenges are not unique to the charitable sector nor is a broad communications strategy necessary in all advocacy initiatives.

Interviewees offered notable cases where sector leaders have created broad-based campaigns. For example, Americans for the Arts created a multipronged public-education campaign to promote arts education.[22] The Minnesota Council of Nonprofits launched statewide campaigns in in 2002 and 2006 promoting the value of nonprofits in conjunction with an effort to restore funding for the sector.[23] The Entertainment Industry Foundation planted positive stories about volunteerism in television shows in 2009.[24] But these activities have been episodic. Sector leaders were unable to identify sustained initiatives designed to educate the general public or targeted audiences about the role and value of the sector.

Observers point out that news coverage of activities by nonprofits and foundations is assigned to reporters who lack expertise on the sector, including knowledge of its scope and how it functions. The last full-time correspondent of a major newspaper covering the sector was reassigned in 2012.

Perception #4: Organizations must do a better job communicating their value to the public if they are to influence policy makers and affect legislation.

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22. For more information, see the summary of "The Arts, Ask for More," American's for the Arts, National Arts Education Public Awareness Campaign, http://www.artsusa.org/public_awareness/default.asp

23. For details, see Minnesota Council of Nonprofits overview of its ad campaigns: "Deleted for Budgetary Reasons Campaign," Minnesota Council of Nonprofits, http://www.minnesotanonprofits.org/mcn-at-the-capitol/past-successes/deleted-for-budgetary-reasons-campaign

24. See the Entertainment Industry Foundation's press release about the kick-off event for more information: "Entertainment Industry Foundation, mayors from all over the U.S. kick off two major initiatives encouraging volunteerism," Entertainment Industry Foundation press release, September 10, 2009, http://www.eifoundation.org/press-room/entertainment-industry-foundation-mayors-all-over-us-kick-two-major-initiatives-encouragi

The study revealed widespread agreement regarding this opinion. When asked what activities would be most useful to "increase the sector's effectiveness on sector-wide issues, increase public awareness of the importance of the sector" topped the list. Twenty-eight percent of respondents listed it as the single most important investment the sector can make, and an additional 42 percent ranked it among their top four. A feedback group participant remarked that this was a familiar topic among sector leaders: "This is the third convening I've been in, in the last six months, where the need for [better messaging about the sector] has been brought up as a central challenge for our sector."

Many interviewees echoed the belief that the sector would be unable consistently to achieve its sector-wide goals unless the public had a better understanding of its value to society. A CEO with expertise in public policy said, "You want the general public influencing policy makers …. The intentionality would be to build a really broad, strong base of support that becomes so common in its language that policy makers have to bend to it."

Several participants believed that educating the public was not possible because the resources required to do so were not available to organizations.

GRASSROOTS

Perception #1: Access to grassroots constituencies was a key asset for the sector and should be developed further.

Many interviewees underscored that the sector's greatest potential source of power relative to political leaders was its access to grassroots, but added that the sector must be able to show its ability to mobilize people in order to leverage that strength. Policy and lobbying experts interviewed for the case studies shared this view.

Three nonprofit CEOs reflected on the common call for greater public awareness of the sector and suggested that positive public sentiment was not enough—it must be translated into political power. One CEO argued that educating the public about "all the good things we [the

sector] do … doesn't get to the crux … it doesn't make us powerful enough to influence the debate." Another asked: "I know that our sector is loved. But is it feared?"

Perception #2: Grassroots work was universally seen as challenging and expensive.[25]

Senior policy professionals described the heavy investment of time and resources required to mobilize their constituents. First, providing education about the issue and creating compelling messages and stories that captured the minds and hearts of the target audience. Second, providing information about the kinds of advocacy activities nonprofits can undertake, explicitly describing safe and legal ground for organizations that may be hesitant to engage. And, further, this information must be shared with staff, board members, and other stakeholders who influence the stances and strategies of the organization. Finally, coordinators need to equip would-be advocates with tools and options for taking action.

Several leaders explained that their organizations pursued grass-tops strategies—leveraging existing connections between particular local leaders and lawmakers or public officials—because it was less expensive than a broad, grassroots approach. One leader of a large network remarked that it was very difficult to track grassroots activity and that her team did not have dependable measures for the extent of the activity they hoped was happening in the field.

Connections between national and local nonprofit organizations emerged as a critical factor in grassroots activity. A regional leader described these connections as "fragmented and episodic" and noted that they must be strengthened in order to facilitate strong grassroots campaigns. Another regional leader referenced a complicated dynamic between some national and local groups, where local leaders want to be connected to national organizations but not co-opted by them. He suggested that the latter often happens when national

25. In the survey, an average of 37 percent of respondents marked "don't know" when asked about the presence and effectiveness of grassroots mobilization strategies among the organizations engaged in sector-wide issues.

FIGURE 8.10

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY HAVE STRONG LEADERSHIP THAT ALIGNS GOALS AND ACTIONS
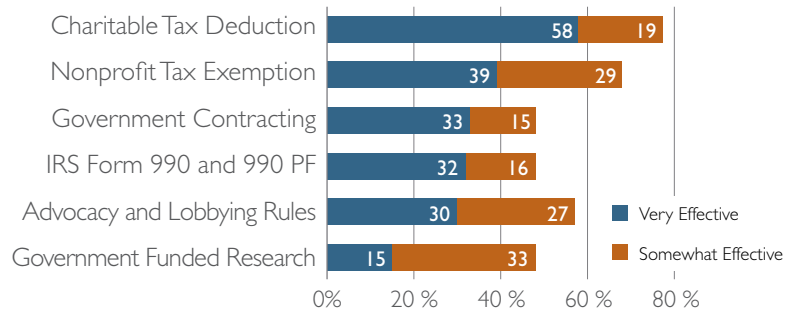
Results from survey of public policy professionals engaged in sector-wide issues. Respondents were asked to address the following regarding issues in which they were engaged: In general, does the group of organizations engaged in this issue have strong leadership that helps to align goals and actions across organizations? [Yes/No] If yes, in general, how effective are these organizations with this element of advocacy?

organizations try to engage local groups in advocacy actions without consulting them in advance about priorities, positions, and strategies.

LEADERSHIP

Perception #1: There was no single individual or organizational leader recognized as providing a unifying force on all sector-wide issues.

Survey results showed that leadership varied widely across issues. Fifty-eight percent of respondents said that leadership related to the charitable tax deduction was "very effective," which was the single highest score received in relation to elements of advocacy. By contrast, only 15 percent of respondents said leadership related to government-funded research on the sector was "very effective." This represented the largest variance across issues of all nine elements of advocacy studied (see Figure 8.10). The high marks for charitable deduction reflect current coordinated activity in response to a threat. Issues with the lowest marks for leadership include advocacy and lobbying rules, and government-funded

PERCEPTIONS OF ASSOCIATIONS DEDICATED TO SECTOR-WIDE ISSUES

Interviewees were forthcoming about their opinions of the organizations dedicated to sector-wide issues. Opinions varied considerably depending on the organizations being described. Some organizations were viewed as being very effective on particular issues; while others were considered ineffective at mobilizing their members around major issues and threats. Some organizations were described as responsive primarily to the largest organizations in the sector; others effective with their particular constituencies on focused issues. Overall the picture was mixed depending on the organization or the issue being described. Many interviewees saw room for improvement.

FIGURE 8.11

ORGANIZATIONS IDENTIFIED AS LEADING EFFORTS ON SECTOR-WIDE ISSUES

Organization	Number of Times Identified as "Leading Efforts"
Independent Sector	104
National Council of Nonprofits	63
Council on Foundations	13
Urban Institute	9
ASAE	8
Philanthropy Roundtable	7
Alliance for Justice	7
American Council on Education	6
Association of American Universities	4
United Way Worldwide	4
Center for Lobbying in the Public Interest*	3

* Center for Lobbying in the Public Interest is no longer a stand-alone organization; it became part of the National Council of Nonprofits in 2012.

research on the sector. Advocacy related to these issues is not defined by a coordinated response to a particular threat, but rather myriad organizations addressing particular issues alone or in small groups. For these issues, no acknowledged leader is working to align diverse organizations around shared goals.[26]

Survey respondents were asked to identify organizations that play leading roles in the specific sector-wide issues. Figure 8.11 shows a consolidated list of the groups that were identified.[27]

Independent Sector and the National Council of Nonprofits were most often seen as leaders in the six issues studied.

Perception #2: There are significant challenges to succeeding in a leadership role on sector-wide issues.

Interviewees noted a number of obstacles that leaders must overcome in order to be effective on sector-wide issues. These include significant differences in the interests and ideological perspectives of sector organizations, lack of trust, and incentives to differentiate—rather than join with—other organizations.

Several CEOs of membership organizations noted the challenge of creating a fine balance between developing a broad consensus and moving forward with fewer supporters but a more potent message. One senior leader suggested that "exaggerated fears of negative consequences" can hold membership associations back from bold leadership. He gave an example of an associa-

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26. For more information on these issues, please see corresponding issue papers in this study, "Issue Paper: Advocacy and Lobbying Rules for Public Charities and Private Foundations" at, and "Issue Paper: Government-Funded Research on the Nonprofit Community."

27. The survey was confidential, and this question was open-ended in order to avoid influencing the answers. Independent Sector was identified to respondents as the author of the survey. The table that appears here includes organizations mentioned a total of three or more times in relation to any of the six issues studied.

tion that carefully avoided but then finally took a new position on a controversial issue. While they expected significant backlash from members, they only received one negative email. Another leader gave an example of taking a position on a particular issue and, as a result, losing a number of members that represented an important constituency within the larger community.

Despite—and in some cases because of—these difficulties, many sector leaders underscored the need for strong leadership to help galvanize and push forward a shared sector-wide agenda.

Conclusion

Organizations currently engaged in sector-wide issues have significant assets at their disposal. These include: favorable public opinions; a network of hundreds of organizations already engaged in this work, many of whom know and communicate with each other regularly; existing relationships with key public officials responsible for oversight and governance of the sector; and a slowly growing field of credible research directly related to key policy issues. They also have some important successes they can point to, such as the sector-specific provisions in the Pension Protection Act of 2006 and the prevention of limitations of the charitable tax deduction.

At the same time, a majority of the leaders engaged in this work feel more can be done, especially if the sector's ambitions include pursuing a proactive agenda to develop a more favorable regulatory and legislative environment for its work. Developing shared, long-term goals; increasing the number and depth of relationships with a broader range of key public officials; improving coordination among organizations; and increasing the visibility and clout of the sector among the public and among government officials surfaced as ways to increase the sector's influence. Interviewees believed that it is time for strong leadership to step up, notwithstanding the challenges, and organize the sector around a common agenda.

ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY

These network maps visually depict the patterns of engagement among organizations that have taken action at the federal level on six sector-wide advocacy issues in the last five years.[1] The maps represent the following:

- Network Map 1. Organizations that have acted on one or more sector-wide issues (519 organizations)[2]

- Network Map 2. Organizations that have acted on three or more sector-wide issues (101 organizations)

- Network Map 3. Engagement in Nonprofit Tax Exemptions (146 organizations)

- Network Map 4. Engagement in Charitable Tax Deduction (238 organizations)

- Network Map 5. Engagement in Advocacy and Lobbying Rules (231 organizations)

- Network Map 6. Engagement in IRS Forms 990 and 990-PF (92 organizations)

- Network Map 7. Engagement in Government-Nonprofit Contracting (69 organizations)

- Network Map 8. Engagement in Government-Funded Research on the Nonprofit Community (120 organizations)

How to Read the Maps[3]

Organizations are represented as circles and are connected with grey lines to sector-wide issues (maps 1 and 2) or specific activities (maps 3 through 8) in which they took part. Squares represent the sector-wide issues on maps 1 and 2, while diamonds represent specific activities on maps 3 through 8. The size of each circle or square corresponds to the number of connections it has on the map. A pink line connecting an organization to an issue or an activity indicates that the organization played a leadership role by organizing a sign-on letter or convening a coalition, task force, or advisory committee.[4]

For maps 1 and 2, color-coding of organizations represents the number of sector-wide issues in which the organization engaged. Map 2 is a close-up of map 1; both reveal that 10 organizations have engaged in all six sector-wide issues studied. For maps 3 through 8, color-coding is a general indicator of organizational engagement on the particular issue.[5]

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1. Organizations were included on the maps if the research team was able to find evidence of the organization taking action on one or more of the issues studied or if the organization indicated engagement in a survey. See the Methodology, Appendix D for details.

2. A total of 528 organizations were identified and studied as part of the network of organizations engaged in sector-wide issues. The network maps include only 519 organizations because 9 opted out of being publicly named.

3. Maps with more than 100 entities are difficult to read when printed on 8.5 x 11 paper. These are designed to be viewed electronically, which allows the reader to enlarge the map and zoom in to particular names or connections.

4. Maps include self-reported activity; not all leadership roles have been verified by study authors.

5. An organization's presence and color-coding on the maps are intended to be rough indicators of engagement. These maps do not represent a comprehensive analysis of engagement or reflect an organization's effectiveness or impact.

Analysis

These maps offer insight into how the community of organizations relates to these sector-wide issues. Maps 1 and 2 show that there is a relatively small core of organizations (only 11 percent of the total studied) engaged in more than three sector-wide issues. Eighty percent of organizations that have taken action addressed only one or two of the six issues.

Maps 3 through 8 offer a window into the network dynamics of individual issues. These maps show significant variation by issue. For example, Network Map 4 represents the community of organizations engaged in the charitable deduction. The map shows a set of organizations in the center of the network—core organizations—that are engaged in multiple combinations of activities. For example, the American Association of Museums, Jewish Federation of North America, and United Way Worldwide each participated in both coalitions and all three sign-on letters shown. This level of overlap among core organizations is considered an indicator of potential health within a network, as these organizations are positioned to share information and coordinate actions across subgroups. The outer circle of the map shows 131 "low-acting" groups, which represent the periphery of the network. A periphery with a large number of groups is also an indicator of potentially a healthy network as it often suggests active outreach and communication, which can help to grow the size and power of a network over time.

In contrast, Network Map 3 shows that organizations engaged in nonprofit tax exemptions operate in a more fragmented network. The map shows several clusters of activity: the hospital community appears in the bottom left corner; the higher education community appears in the top left; and other types of organizations appear across the center and right side of the map. It is not unusual for clusters of organizations with similar missions to coordinate their activities. However, the lack of connection among clusters is noteworthy. In a healthy network, subgroups such as these are connected to each other through organizations that are engaged across clusters. These connecting organizations become vehicles for the coordination of actions and ideas that can increase the effectiveness of the larger network.

The maps depicting the four additional sector-wide issues show that these network structures appear to operate in silos. Interviews confirm the dynamics implied by the structure of these networks. The community of organizations engaged in the charitable deduction has worked actively to coordinate messages and activities, while those engaged in nonprofit tax exemptions, advocacy and lobbying rules, government-funded research on the nonprofit community, and IRS Forms 990 and 990-PF have not aligned their goals and activities across the network. It should be noted that the map representing government-funded contracting activity is limited in that the majority of activity in this area has occurred at the state and local levels of government, which were not a component of this study and are not represented on the map.

While the limitations of these maps are significant—for example, they do not portray the full extent of advocacy activity, direct connections between organizations, or effectiveness of advocacy activities—they do provide an additional lens with which to better understand the advocacy community engaged in sector-wide issues.

ORGANIZATIONS THAT ACTED ON ONE OR MORE SECTOR-WIDE ISSUE (519 ORGANIZATIONS)

Legend:

- ● Org that acted on 6 Issues (10)
- ● Org that acted on 5 Issues (20)
- ● Org that acted on 4 Issues (30)
- ● Org that acted on 3 Issues (41)
- ○ Org that acted on 2 Issues (76)
- ○ Org that acted on 1 Issue (342)

- ■ Sector-wide Issue

- — Activities Leader
  Activities Leader line indicates coalition convener or letter organizer

- Node Size
  Node size reflects number of connections to other entities on this map

Map is based on publically available and self-reported activity from survey respondents. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.
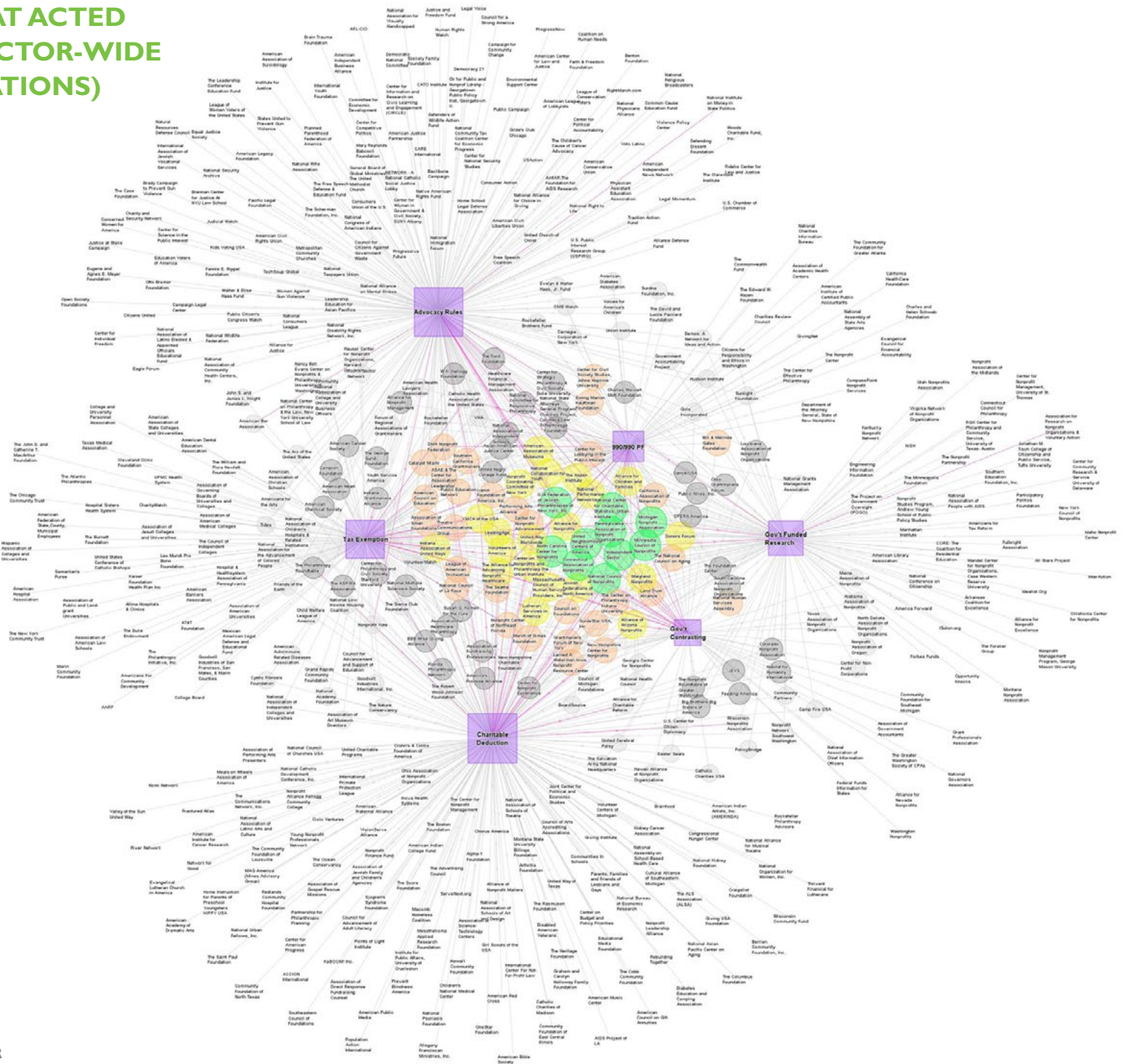
ORGANIZATIONS THAT ACTED ON THREE OR MORE SECTOR-WIDE ISSUES (101 ORGANIZATIONS)

Org that acted on 6 Issues (10)
Org that acted on 5 Issues (20)
Org that acted on 4 Issues (30)
Org that acted on 3 Issues (41)

Sector-wide Issue

Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Map is based on publically available and self-reported activity from survey respondents. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

ENGAGEMENT IN NONPROFIT TAX EXEMPTIONS (146 ORGANIZATIONS, 20 ACTIVITIES)

Letter to Senate Finance on University Data 2008

American Association of State Colleges and Universities

Association of American Universities

Association of Public and Land-grant Universities

College Board

College and University Personnel Association

Association of Governing Boards of Universities and Colleges

Association of American Law Schools

Hispanic Association of Colleges and Universities

American Dental Education Association

National Association of Independent Colleges and Universities

Senate Finance Hearing on Off-Shore Income/Tax Issues 2007

Senate Roundtable on University Endowments 2008

American Council on Education Letter to IRS 1999

Association of Jesuit Colleges and Universities

Council for Advancement and Support of Education

The Council of Independent Colleges

National Association of College and University Business Officers

American Council on Education

Alliance for Nonprofit Management

League of American Orchestras

Alliance for Children and Families

Community Action Partnership

House Ways and Means Hearing on AARP 2011

AARP

Listening Post on Taxing the Sector 2011

LeadingAge

Maryland Nonprofits

The Philanthropy Roundtable

BBB Wise Giving Alliance

Forum of Regional Associations of Grantmakers

Association of American Medical Colleges

Cleveland Clinic Foundation

Asian American Justice Center

Goodwill Industries of San Francisco, San Mateo, & Marin Counties

America's Promise Alliance

Rockefeller Foundation

Center for Civil Society Studies, Johns Hopkins University

Council on Foundations

Goodwill Industries International, Inc.

American Bar Association

W.K. Kellogg Foundation

John S. and James L. Knight Foundation

The Chicago Community Trust

American Association of Museums

Senate Finance Hearing on Charity Oversight 2004

National Committee for Responsive Philanthropy

Samaritan's Purse

Hospital & Healthsystem Association of Pennsylvania

IRS Request for Comments on Tax-Exempt Hospitals as ACOs 2011

Kaiser Foundation Health Plan Inc

New Hampshire Charitable Foundation

The Robert Wood Johnson Foundation

The Atlantic Philanthropies

GuideStar USA, Inc.

ASAE & The Center for Association Leadership

Ohio Grantmakers Forum

National Multiple Sclerosis Society

Texas Medical Association

Comments to IRS on Section 501(r) 2010

The Duke Endowment

IS Defining Charity Advisory Committee 2008

Jewish Federations of North America

Larned A. Waterman Iowa Nonprofit Resource Center

House Ways & Means Hearing on Tax-Exempt Orgs 2007

Charles Stewart Mott Foundation

CharityWatch

UPMC Health System

Comments to IRS on Schedule H 2011

American Hospital Association

United Way Worldwide

United Neighborhood Centers of America

Lutheran Services in America

Land Trust Alliance

National Council of La Raza

Independent Sector

Marin Community Foundation

Association of Art Museum Directors

The Nature Conservancy

Hospital Sisters Health System

VHA

Healthcare Financial Management Association

Public Education Network

The Ford Foundation

National Council of Nonprofits

Nonprofit Coordinating Committee of New York

The New York Community Trust

Association of Fundraising Professionals

Center for Nonprofit Advancement

Allina Hospitals & Clinics

Catholic Health Association of the United States

DMA Nonprofit Federation

The Alliance for Advancing Nonprofit Healthcare

Volunteers of America

Association of Healthcare Philanthropy

Ewing Marion Kauffman Foundation

Senate Finance Hearing on Charities 2005

Senate Finance Hearing on Community Benefit 2006

March of Dimes Foundation

Grantmakers Forum of New York

New Hampshire Center for Nonprofits

The George Gund Foundation

YMCA of the USA

National Center on Philanthropy & the Law, New York University School of Law

The Kresge Foundation

AT&T Foundation

990-H Coalition 2008-2011

Alliance for Nonprofits

Alliance of Arizona Nonprofits

Southern California Grantmakers

American Health Association

Indiana Association of United Ways

IS Task Force on Tax Policy 2001

United States Conference of Catholic Bishops

American Bankers Association

National Collaboration for Youth

Tax Exemption Various 2007-2011 (1)

Susan G. Komen for the Cure

Center for Strategic Philanthropy & Civil Society, Duke University

Minnesota Council of Nonprofits

The Center on Philanthropy, Indiana University

The Aspen Institute

Senate Finance Hearing on Community Benefit 2006

Lupus Foundation of America, Inc.

National Performance Network

UJA Federation of Jewish Philanthropies of New York, Inc.

American Autoimmune Related Diseases Association

Catalyst Miami

Indiana Grantmakers Alliance

Michigan Nonprofit Association

IS Tax Policy Symposium 2011

Center on Nonprofits and Philanthropy The Urban Institute

Mexican American Legal Defense and Educational Fund

The Philanthropic Initiative, Inc.

The William and Flora Hewlett Foundation

The John D. and Catherine T. MacArthur Foundation

Fourth Sector Network

American Federation of State, County, Municipal Employees

Florida Philanthropic Network

The ASPIRA Association

National Academy Foundation

Theatre Communications Group

American Chemical Society

Performing Arts Alliance

Campion Foundation

The Seattle Foundation

Hauser Center for Nonprofit Organizations, Harvard University

Nancy Bell Evans Center on Nonprofits & Philanthropy, University of Washington

American Cancer Society

National State Attorneys General Program, Charities Project, Columbia Law

The Burnett Foundation

The Emerging Fourth Sector Report 2009

Pennsylvania Association of Nonprofit Organizations

Center for Nonprofits

North Carolina Center for Nonprofits

Cystic Fibrosis Foundation

Grand Rapids Community Foundation

Center for Nonprofit Excellence

Association of Small Foundations

Hybrid Work 2010-2011

American Health Lawyers Association

Nonprofit Center of Northeast Florida

Massachusetts Council of Human Service Providers, Inc.

National Center for Charitable Statistics, Urban Institute

Center for Philanthropy and Civil Society, Stanford University

Lex Mundi Pro Bono Foundation

Americans For Community Development

Legend

- ● Very High Acting Organization (9)
- ● High Acting Organization (12)
- ● Medium-High Acting Organization (17)
- ● Medium-Low Acting Organization (25)
- ○ Low Acting Organization (65)
- ○ Very Low Acting Organization (18)

- ◆ Nonprofit Activities
- ◆ Government Activities

— Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

Engagement level is based on rough estimates for organizational activity. It does not reflect effectiveness or impact. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

ENGAGEMENT IN CHARITABLE TAX DEDUCTION (238 ORGANIZATIONS, 8 ACTIVITIES)
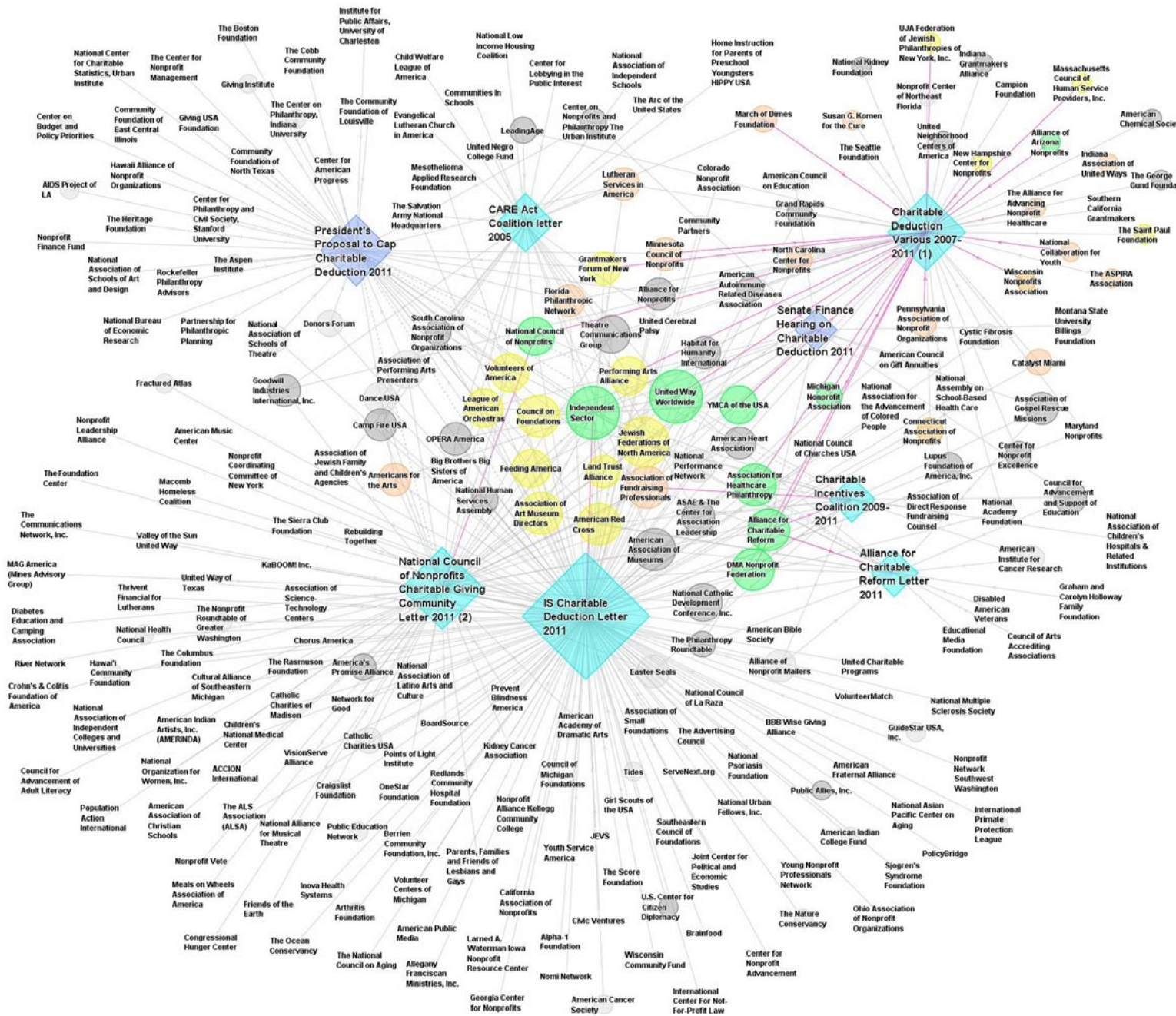
Very High Acting Organization (9)
High Acting Organization (14)
Medium-High Acting Organization (16)
Medium-Low Acting Organization (29)
Low Acting Organization (54)
Very Low Acting Organization (116)

Nonprofit Activities
Government Activities

Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

(2) National Council of Nonprofits letter was signed by over 4,000 organizations, most of which were local organizations and not included on this map.

Engagement level is based on rough estimates for organizational activity. It does not reflect effectiveness or impact. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

ENGAGEMENT IN ADVOCACY AND LOBBYING RULES (231 ORGANIZATIONS, 19 ACTIVITIES)

Legend:
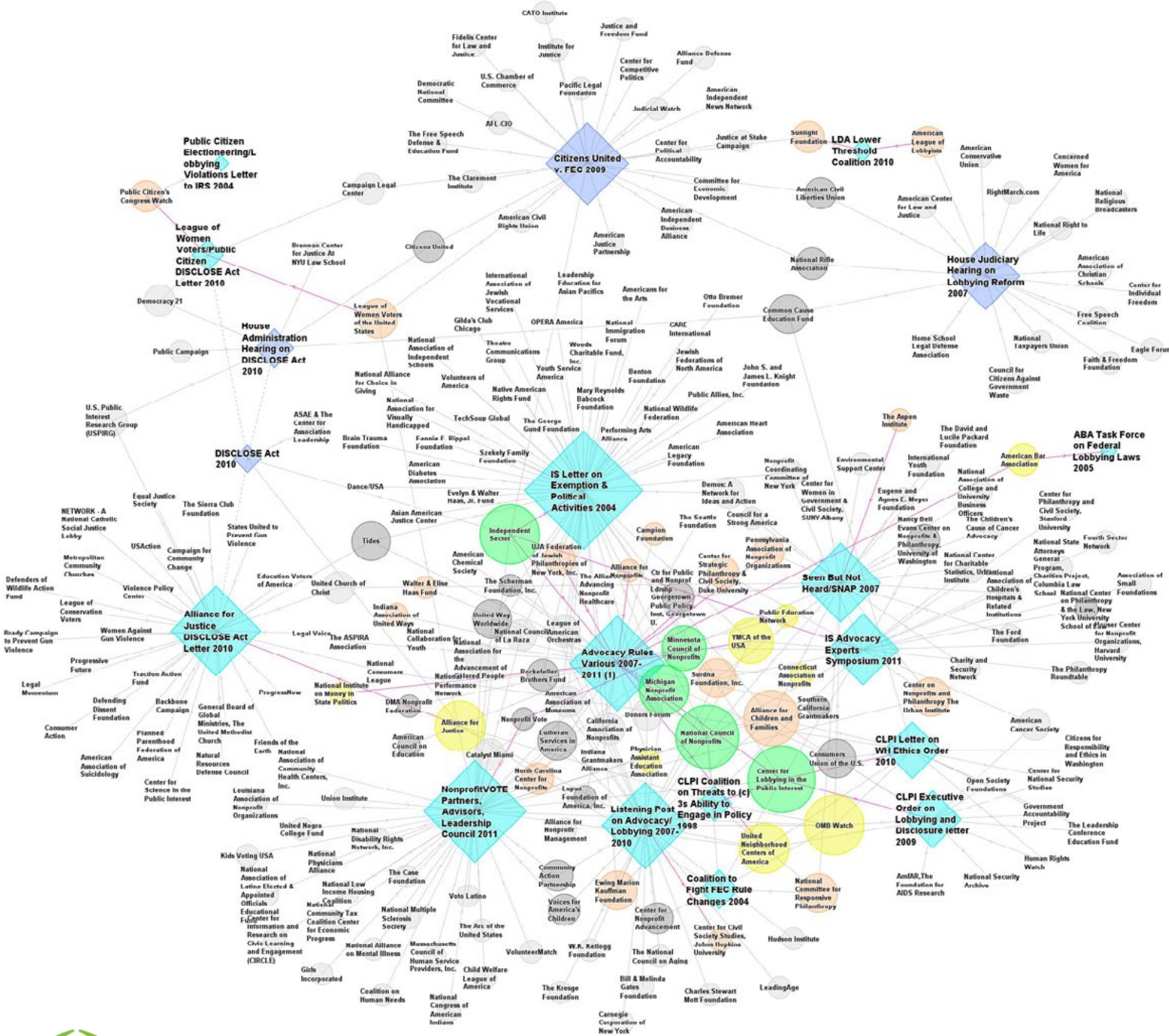
- ○ Very High Acting Organization (5)
- ○ High Acting Organization (9)
- ○ Medium-High Acting Organization (19)
- ○ Medium-Low Acting Organization (21)
- ○ Low Acting Organization (100)
- ○ Very Low Acting Organization (77)

- ◇ Nonprofit Activities
- ◇ Government Activities

— Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

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Maps can be enlarged when viewed electronically.

ENGAGEMENT IN IRS FORMS 990 AND 990-PF (92 ORGANIZATIONS, 10 ACTIVITIES)

Healthcare Financial Management Association

VHA

United Negro College Fund

National Association of Independent Schools

Georgia Center for Nonprofits

GivingNet

Voices for America's Children

The Nonprofit Center

UJA Federation of Jewish Philanthropies of New York, Inc.

Maryland Nonprofits

Alliance for Children and Families

Ohio Grantmakers Forum

Charities Review Council

The Community Foundation for Greater Atlanta

990-H Coalition 2008-2011

American Health Lawyers Association

South Carolina Association of Nonprofit Organizations

Panel on the Nonprofit Sector Ad Hoc 990 Group 2005

Donors Forum

Nonprofit Coordinating Committee of New York

The Ford Foundation

California Association of Nonprofits

Catholic Health Association of the United States

Pennsylvania Association of Nonprofit Organizations

Center for Lobbying in the Public Interest

Public Education Network

Electronic Data Initiative for Nonprofits (EDIN) 2003-2005

W.K. Kellogg Foundation

Carnegie Corporation of New York

LeadingAge

Michigan Nonprofit Association

Minnesota Council of Nonprofits

BBB Wise Giving Alliance

Surdna Foundation, Inc.

Nonprofit Center of Northeast Florida

March of Dimes Foundation

Connecticut Association of Nonprofits

The David and Lucile Packard Foundation

Rockefeller Brothers Fund

North Carolina Center for Nonprofits

United Way Worldwide

Alliance of Arizona Nonprofits

Catalyst Miami

ASAE & The Center for Association Leadership

Indiana Association of United Ways

990/990-PF Various 2007-2011 (1)

National Council of Nonprofits

GuideStar USA, Inc.

Independent Sector

National Human Services Assembly

Southern California Grantmakers

Susan G. Komen for the Cure

OMB Watch

Evangelical Council for Financial Accountability

United Neighborhood Centers of America

The Alliance for Advancing Nonprofit Healthcare

BoardSource

CompassPoint Nonprofit Services

National Assembly of State Arts Agencies

National Collaboration for Youth

Alliance for Nonprofits

National Performance Network

Land Trust Alliance

Alliance for Nonprofit Management

Form 990 Nonprofit Accountability Collaborative (NAC) 1998

National Charities Information Bureau

Union Institute

Volunteers of America

The Edward W. Hazen Foundation

YMCA of the USA

Association for Healthcare Philanthropy

The Aspen Institute

American Institute of Certified Public Accountants

American Diabetes Association

National Grants Management Association

Ewing Marion Kauffman Foundation

American Council on Education

DMA Nonprofit Federation

The Center on Philanthropy, Indiana University

Aspen Institute Nonprofit Data Project 2007-2011

National Center for Charitable Statistics, Urban Institute

Council on Foundations

Panel on the Nonprofit Sector 990-PF Reform Advisory Committee 2005

Council of Michigan Foundations

Modernizing the 990-PF: A Commonwealth Fund Report 2011

JCT/SCT Proposals to Increase Nonprofit Regulation 2005

Alliance for Charitable Reform

Center for Civil Society Studies, Johns Hopkins University

Association of Academic Health Centers

National Health Council

Association of Small Foundations

American Association of Museums

The Foundation Center

The Center for Effective Philanthropy

The Commonwealth Fund

Foundation Financial Officers Group (FFOG) 990-PF Group 2006

Bill & Melinda Gates Foundation

Charles and Helen Schwab Foundation

Rockefeller Foundation

Evelyn & Walter Haas, Jr. Fund

California HealthCare Foundation

Forum of Regional Associations of Grantmakers

Legend:

- Very High Acting Organization (3)
- High Acting Organization (7)
- Medium-High Acting Organization (9)
- Medium-Low Acting Organization (15)
- Low Acting Organization (53)
- Very Low Acting Organization (5)

- Nonprofit Activities
- Government Activities

— Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

Engagement level is based on rough estimates for organizational activity. It does not reflect effectiveness or impact. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

ENGAGEMENT IN GOVERNMENT-NONPROFIT CONTRACTING (69 ORGANIZATIONS, 5 ACTIVITIES)
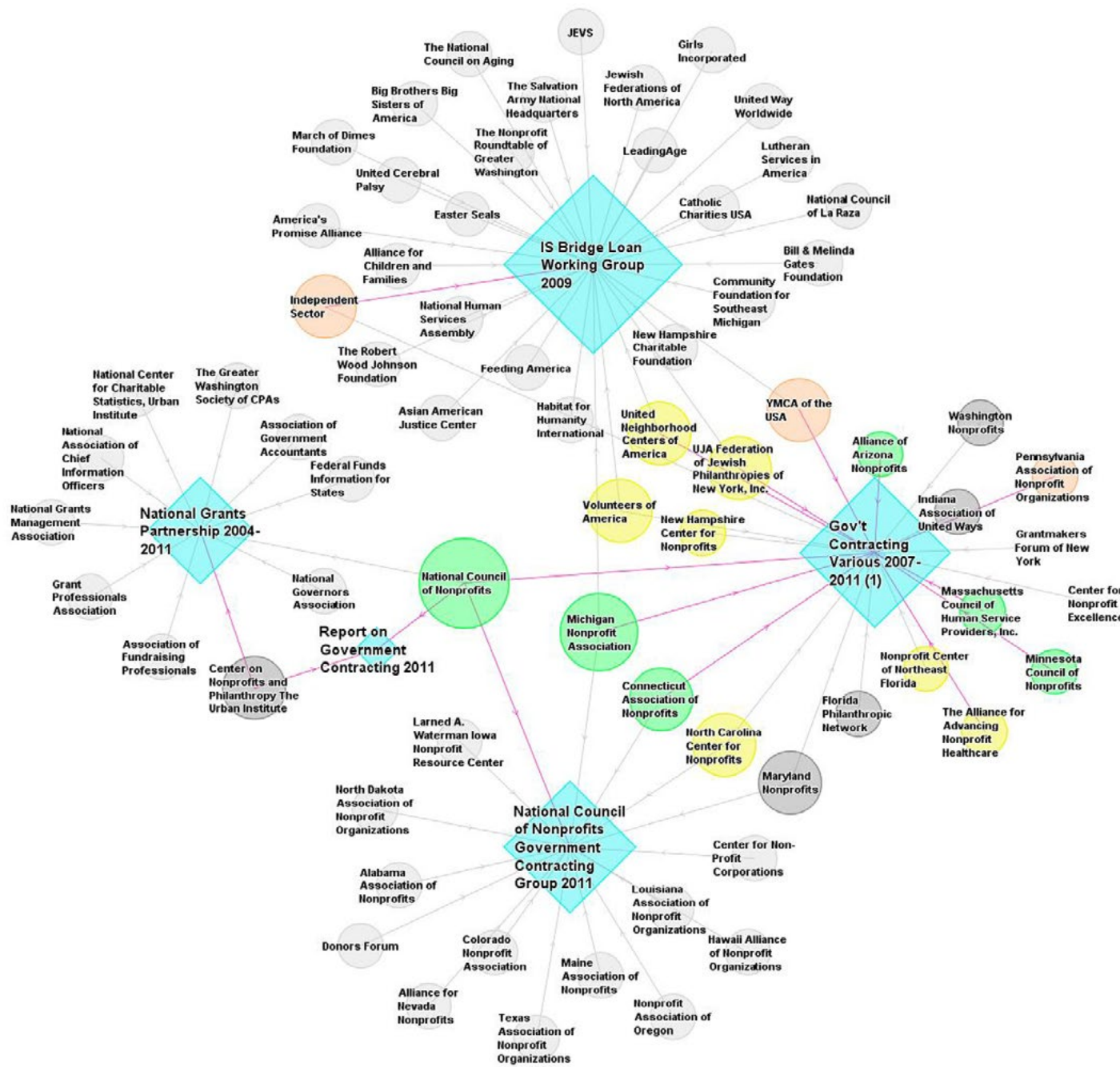
Very High Acting Organization (6)
High Acting Organization (7)
Medium-High Acting Organization (3)
Medium-Low Acting Organization (5)
Low Acting Organization (46)
Very Low Acting Organization (2)

Nonprofit Activities

Activities Leader
Activities Leader line indicates coalition convener or letter organizer

Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

Engagement level is based on rough estimates for organizational activity. It does not reflect effectiveness or impact. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

ENGAGEMENT IN GOVERNMENT-FUNDED RESEARCH ON THE NONPROFIT COMMUNITY (120 ORGANIZATIONS, 7 ACTIVITIES)

Legend:
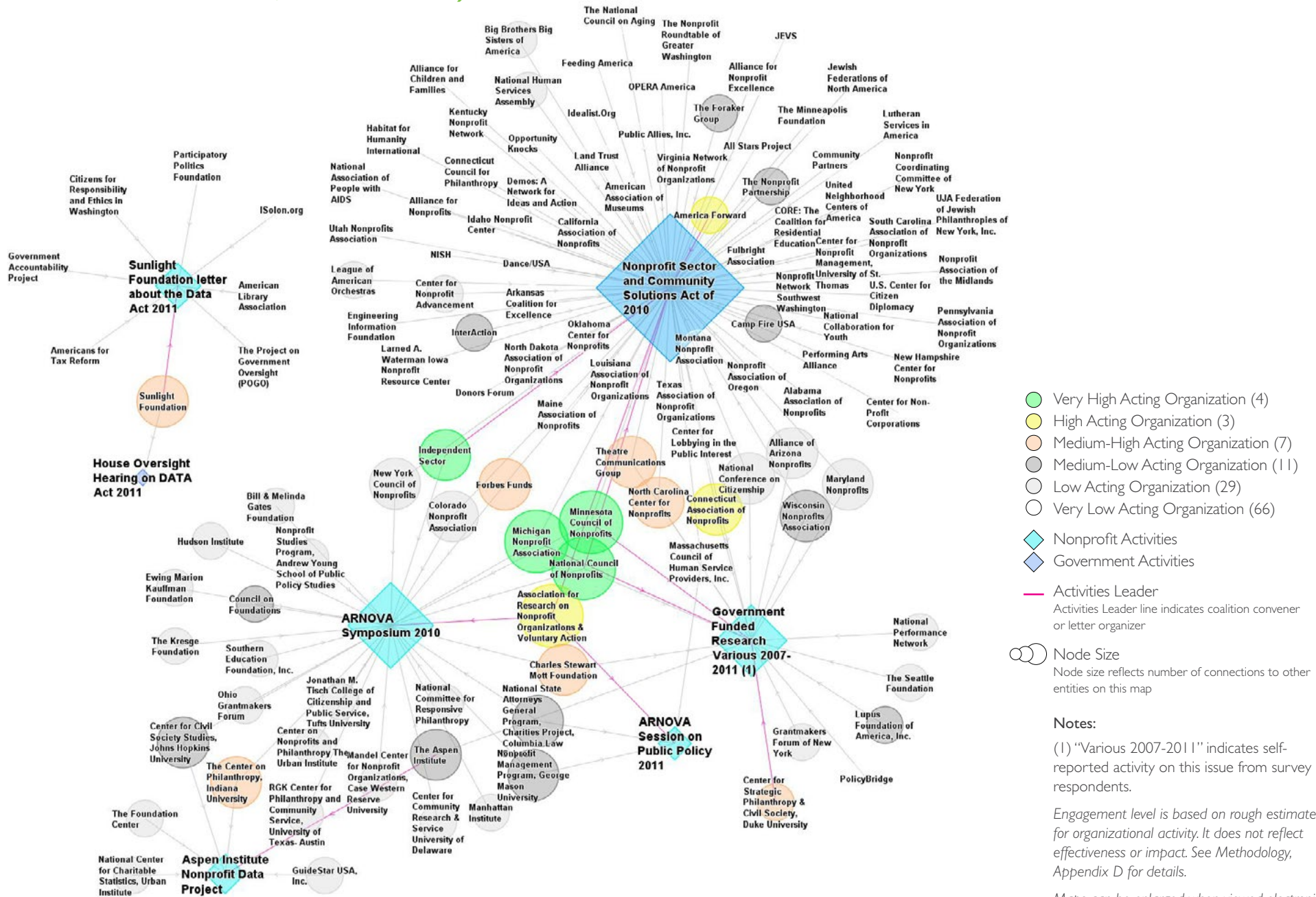
- ○ Very High Acting Organization (4)
- ○ High Acting Organization (3)
- ○ Medium-High Acting Organization (7)
- ○ Medium-Low Acting Organization (11)
- ○ Low Acting Organization (29)
- ○ Very Low Acting Organization (66)

- ◇ Nonprofit Activities
- ◇ Government Activities

— Activities Leader
Activities Leader line indicates coalition convener or letter organizer

⊂⊃ Node Size
Node size reflects number of connections to other entities on this map

Notes:

(1) "Various 2007-2011" indicates self-reported activity on this issue from survey respondents.

Engagement level is based on rough estimates for organizational activity. It does not reflect effectiveness or impact. See Methodology, Appendix D for details.

Maps can be enlarged when viewed electronically.

BEYOND THE CAUSE

THE *Art* AND **Science** OF ADVOCACY

NONPROFIT TAX EXEMPTIONS

Over the last decade, lawmakers, scholars, and the media have raised questions and challenged the boundaries defining what types of organizations and activities warrant favorable tax treatment. Some in Congress have repeatedly expressed frustration with the broad definition of the public purposes for which organizations may be granted tax-exemption under section 501(c)(3) of the tax code. New criteria for retaining tax-exempt status have been imposed on specific types of 501(c)(3) charities. For example, in 2006 Congress passed legislation with new requirements for credit counseling agencies and the IRS imposed additional rules on hospitals the following year. Concerns expressed by federal, state, and local lawmakers about the qualifications for tax-exempt status are not new. Indeed, this subject has been a part of the public dialogue for decades, notably in the 1960s, 1980s, and 2000s. Recently, concerns have focused generally on whether public charities or private foundations:

1. engage in excessive commercial activities that place for-profit competitors at an unfair disadvantage;

2. provide sufficient services or otherwise allocate funding to low-income populations, evidenced by the provision of free or low-cost services to those unable to pay;[1]

3. provide sufficient community benefits to a particular segment of the population, sometimes focusing on the residents of a designated geographic area and/or population in need;

4. provide improper or excessive benefits to board members, donors, or staff who control the organization;

5. pay their fair share of the costs of local services, police, fire protection, trash collection, transportation systems, etc.; and

6. provide sufficient, transparent, and timely information to the IRS and the public regarding financial, governance, and other matters.

Investors, entrepreneurs, some public officials, and others have shown interest in social enterprises that combine elements of for-profit and nonprofit corporate models. The goals of such models can include incentivizing activities that support the common good, generating earned revenue to sustain operations, and providing vehicles for nonprofits to access capital. Several states have recently enacted or are considering legislation that changes the treatment of so-called "hybrid" organizations, including legislation that permits the incorporation of Low-profit Limited Liability Corporations (L3Cs) and benefit corporations. L3Cs, which are now recognized in nine states, are for-profit corporations whose primary goal is to achieve a social purpose with profit as a secondary goal. They are intended to facilitate both for-profit and philanthropic program-related investments (PRIs) in

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1. Services is used in this context to refer both to health and welfare assistance to people, but also includes access to a wide range of programs provided by 501(c)(3) organizations such as participation in educational, camping and sporting activities, cultural events, etc.

socially beneficial projects. Benefit corporation statutes permit a new corporate form, under which directors of for-profit businesses committed to specific social purposes are protected from shareholder lawsuits for failure to maximize profits. These developments have attracted the interest of some congressional tax staff.[2]

This paper reviews federal and state developments with regard to potential changes to the definitions and requirements for charitable tax exemption as well as the regulation and taxation of commercial activities of charitable organizations. It also describes the nonprofit and philanthropic community's responses to proposed changes to tax exemption and identifies potential challenges in the future.

Background and Context

FEDERAL TAX EXEMPTION DEFINITIONS AND NEW DEVELOPMENTS

The definitions and requirements for organizations granted tax-exemption under section 501(c)(3) of the federal tax code have changed and expanded since the concept of an exemption was introduced in the Wilson-Gorman Tariff Act of 1894.[3] The Tariff Act established a 2 percent tax on corporate income but exempted from tax any "corporations, companies or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary associations." Although the Tariff Act was later declared unconstitutional, the Revenue Act of 1909 used similar language to grant tax exemption to "any corporation or association organized and operated exclusively for religious, charitable, or educational purposes." The Revenue Act of 1913, which established the modern federal income tax system, used the same language to define

charitable purpose. This definition was expanded in 1954 to include organizations devoted to the prevention of cruelty to children or animals, literary purposes, testing for public safety, and fostering national or international sports competition. The tax code designates nonprofits that are exempt under section 501(c)(3) as qualified to receive tax-deductible contributions, whereas donations to other types of nonprofits are not tax-deductible.[4]

The rapid growth of the charitable nonprofit sector over the last fifteen years has led some scholars and lawmakers to question the criteria for granting tax exemption under section 501(c)(3). In part to clear the rolls of organizations that were no longer operating, the Pension Protection Act of 2006 required that every 501(c)(3) organization annually file a Form 990 (or, in the case of small organizations, an abbreviated "postcard" version, the Form 990-N), as well as the automatic revocation of tax-exempt status of any organization that failed to file the required form for three consecutive years. Notwithstanding the decertification of approximately 275,000 charitable organizations who had not filed the required form for three years, in 2011 the IRS reported 1.1 million public charities and foundations registered in the United States, nearly double the number from 15 years ago.[5]

The number of applications for tax-exemption under section 501(c)(3) dropped by 30 percent from 2007 to 2010,[6] which might have been caused in part by the slowdown in the economy. This more modest growth has not muted some critics who argue that the current criteria for 501(c)(3) exemption are too broad and that the IRS has been too lenient in approving applica-

2. Diana Aviv, "Tax Policy and Advocacy Expert Symposium," Independent Sector President's Blog, May 3, 2011, http://www.independentsector.org/blog/post.cfm/tax-policy-and-advocacy-expert-symposium

3. Paul Arnsberger, Melissa Ludlum, Margaret Riley, and Mark Stanton, "A History of the Tax Exempt Sector: An SOI Perspective," *Statistics Income Bulletin* (Winter 2008), http://www.irs.gov/pub/irs-soi/tehistory.pdf

4. IRS Publication 526, http://www.irs.gov/publications/p526/ar02.html#en_US_2010_publink1000229641

5. The IRS indicated that it believes the vast majority the organizations that did not file the required forms are defunct. However, organizations that were unaware that they were required to file may apply for re-instatement of their exempt status. See: "IRS Identifies Organizations that Have Lost Tax-Exempt Status; Announces Special Steps to Help Revoked Organizations," Internal Revenue Service press release (June 8, 2011), http://www.irs.gov/newsroom/article/0,,id=240239,00.html

6. Lisa Chiu, "IRS Figures Show Charity Creation May Be Slowing After Years of Fast Growth," *Chronicle of Philanthropy*, April 3, 2011. According to this article, "The tax agency said 59,945 groups applied for nonprofit status in 2010, down 30 percent since 2007."

tions for exemption. [7] Although IRS data indicates that their rejection rate has increased over the last 10 years, the rate is still low. [8] However, tax expert and former director of the Exempt Organizations Division of the IRS, Marcus Owens, points out that the rejection rate does not reflect the applications that are withdrawn as a result of IRS inquiries.[9]

With deep concerns about the federal deficit and keen to find additional streams of funding, some lawmakers raised questions about the benefits these organizations yield versus their cost to the federal treasury.

In the early 2000s, media reports alleging improprieties by nonprofits and their donors led Congress to undertake a major re-examination of the tax laws governing charitable organizations and donations—the first major effort to do so since the Tax Reform Act of 1969. The 1969 law included the first explicit definition of private foundations and imposed stringent requirements including prohibitions on self-dealing transactions, a requirement that foundations pay out a specific percentage of their investment assets for charitable purposes each year, limitations on the control and ownership of private businesses by foundations, and a lower limit on the percentage of a donor's income that can be claimed as a deduction. In the Pension Protection Act of 2006, Congress extended some of those constraints to public

charities classified as Type III Supporting Organizations[10] and donor-advised funds[11] held by public charities.

The Pension Protection Act also established a new section of the tax code with specific requirements that nonprofit credit-counseling agencies must meet to receive and maintain tax-exempt status. These restrictions include parameters for the composition of the governing board, fee policies, permissible practices for loans to organization insiders and solicitation of contributions from customers, as well as limits on ownership of related entities. The new requirements include a stipulation that the organization may not refuse to provide services to a consumer based on his/her inability to pay and the requirement that a majority of the board of directors must be independent persons who will not benefit financially, directly or indirectly, from the organization's activities.[12] These or similar provisions could be imposed on other section 501(c)(3) nonprofits, particularly in the context of major tax reform.

Since 2006 congressional leaders, with a few exceptions, have not focused on excesses or abuses but have turned their attention to the value of the services rendered by these tax-protected organizations. With deep concerns

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7. Robert Reich, Lacey Dorn, and Stefanie Sutton, *Anything Goes: Approval of Nonprofit Status by the IRS*, Center on Philanthropy and Civil Society, Stanford University (October 2009).

8. Ibid. According to this source, "The rate of rejection in 2008 is actually high, relative to the rejection rate in previous years. In an analysis of 501(c)(3) applications over the past ten years, the number of applications varied from 51,711 in 1998 to a high of 69,885 in 2007. Overall, the rate of disapproval for 501(c)(3) status has increased over the past decade from .74% in 1998 to 2.17% in 2008, with the disapproval rate peaking at 2.29% in 2007. The rather surprising result: even in the year with the most rejections, nearly 98% of applications were approved" (pg. 9).

9. Lisa Chiu, "IRS Figures Show Charity Creation May Be Slowing."

10. A supporting organization is a public charity that is organized and operated exclusively for the benefit of one or more other public charities. There are three types of supporting organizations: Type I is "operated, supervised, or controlled by the supported organization." Type II is "supervised or controlled in connection with the supported organization," and Type III must be "operated in connection with the supported organization" as demonstrated through a responsiveness test and an integral part test. See: "Section 509(a)(3) Supporting Organizations," Internal Revenue Service, http://www.irs.gov/charities/article/0,,id=137609,00.html

11. IRC 4966(d)(2) defines a "donor-advised fund" as (1) a fund or account owned and controlled by a sponsoring organization, (2) which is separately identified by reference to contributions of the donor or donors, and (3) where the donor (or a person appointed or designated by the donor) has or reasonably expects to have advisory privileges over the distribution or investments of the assets. All three prongs of the definition must be met in order for a fund or account to be treated as a donor-advised fund." See: "Donor Advised Funds Guide Sheet Explanation," Internal Revenue Service, July 31, 2008, http://www.irs.gov/pub/irs-tege/donor_advised_explanation_073108.pdf

12. Joint Committee on Taxation, *Technical Explanation of H.R. 4, the 'Pension Protection Act of 2006,' As Passed By the House on July 28, 2006, and as Considered By the Senate*, August 3, 2006, http://www.jct.gov/x-38-06.pdf

about the federal deficit and keen to find additional streams of funding, some lawmakers raised questions about the benefits these organizations yield versus their cost to the federal treasury.

An October 2011 hearing of the Senate Finance Committee, which focused on "Tax Reform Options: Incentives for Charitable Giving," gave some indication that examinations of tax deductions for charitable giving could lead into further review of the criteria for granting tax exemptions. As a member of that committee, Senator Charles Grassley (R-IA) asked Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) to call a hearing on "the standards for tax-exemption and the increasingly blurred line between public charities and private foundations."[13] A witness at that hearing, former Joint Committee on Taxation staff member Roger Colinvaux, argued that "if the reason for the deduction [for charitable contributions] is to support the public benefits provided by the section 501(c)(3) sector … it may be time for policy makers to reexamine the sector, and the rules that regulate it, to provide a clearer policy of public benefit."[14] He noted that, "typically, organizations apply for section 501(c)(3) status at the outset of existence, secure the status based on promises about the future, and are subsequently evaluated (if at all) for exemption purposes on a vague purpose-based inquiry and not on the effectiveness of the organization."[15]

The House Ways and Means Subcommittee on Oversight held a hearing in May 2012 to examine the operations and oversight of the tax-exempt sector. Colinvaux again testified and reiterated his support for an examination of the requirements and benefits afforded to nonprofit organizations. It should be noted that when Colinvaux was on its staff, the Joint Committee on Taxation recommended that the IRS be required to conduct a review of the exempt status of private foundations

and public charities every five years.[16] The Panel on the Nonprofit Sector and others in the charitable community opposed this proposal.[17]

Restrictions on and Challenges to Commercial Activity by Nonprofits

COMMERCIAL ACTIVITY

Congress initially imposed no restrictions on commercial activity by 501(c)(3) nonprofits, other than a requirement that "no part of the net income … inures to the benefit of any private shareholder." In the 1924 case of *Trinidad v. Sagrada Order de Predicatores*, the Supreme Court affirmed that nonprofits could engage in a range of commercial activities that were not subject to tax and could receive tax-free dollars from "feeder" businesses created to engage in commercial and investment activities–provided that all profits were dedicated to that nonprofit.[18] In the mid-1940s there was a firestorm of complaints from businesses about unfair competition from C.F. Mueller Company, which dedicated all of its profits to its parent nonprofit, the New York University School of Law. As a result, Congress nullified the Supreme Court ruling when it enacted the Revenue Act of 1950, which imposed a tax on income received by nonprofits from business activities that are unrelated to their exempt purposes.[19]

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13. Senator Charles Grassley, statement to the Senate Finance Committee, "Tax Reform Options: Incentives for Charitable Giving," October 18, 2011.

14. Roger Colinvaux, statement the Senate Finance Committee, "Tax Reform Options: Incentives for Charitable Giving," October 18, 2011.

15. Ibid.

16. Joint Committee on Taxation, *Options to Improve Tax Compliance and Reform Tax Expenditures*, January 27, 2005, 224, http://www.jct.gov/publications.html?func=startdown&id=1524

17. Panel on the Nonprofit Sector, *Strengthening Transparency, Governance, Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector*, Panel on the Nonprofit Sector, June 2005, 34. The Panel stated, "while a mandatory five-year review is not practical or cost-effective for government regulators, boards of directors should regularly review their governing instruments, financial policies and practices, and programmatic activities to ensure that the organization is devoting its resources appropriately to the fulfillment of its charitable purpose."

18. Michael Sanders, *Joint Ventures Involving Tax-Exempt Organizations* (Hoboken: John Wiley and Sons, 2007), 381-382.

19. Ibid, 382.

Although Congress indicated that the new unrelated business income tax (UBIT) would have no effect on the tax-exempt status of nonprofits, the IRS and the courts have since ruled that an organization can lose its tax-exempt status if it engages in "excessive" commercial activity. The primary tenets of what is now known as the commerciality doctrine have been established through a wide variety of court cases dealing with the IRS's refusal to grant, or its revocation of, the tax-exempt status of nonprofit publishers, restaurants, health food stores, conference centers, and other enterprises. Over time, a number of factors have been used by regulators to assess the commerciality of a nonprofit enterprise. These factors include the degree to which the nonprofit competes with for-profit businesses, the amount of low-cost services it provides, its pricing policies, its use of commercial advertising and other promotional methods, and its reliance on paid professional staff (rather than volunteers).[20] The extent to which nonprofits were competing unfairly with small businesses, a key determinant of commerciality, was the focus of extensive hearings held by the House Ways and Means Subcommittee on Oversight in 1987 and 1988. Nonprofits were successful in opposing legislative reforms of UBIT proposed as a result of those hearings, despite a major lobbying effort by the for-profit business community.[21]

Allegations of excessive commerciality by nonprofits and questions about the effectiveness of the current UBIT system have returned to the congressional spotlight. Senator Charles Grassley (R-IA), former chairman of the Senate Finance Committee, has frequently questioned the tax-exempt status of nonprofit hospitals, noting in March 2010 that the "Government Accountability Office and others, including the former IRS commissioner, have said for a long time that there is often no discernible difference between the operations of taxable and tax-exempt hospitals."[22] In May 2011, the Chairman of

The IRS and the courts have since ruled that an organization can lose its tax-exempt status if it engages in "excessive" commercial activity.

the House Ways and Means Oversight Subcommittee, Charles Boustany Jr. (R-LA), convened a joint hearing with House Ways and Means Health Subcommittee Chairman Wally Herger (R-CA) to examine the revenue-generating activities of AARP, particularly as they related to AARP's advocacy efforts in support of health care reforms.[23] Chairman Boustany followed that hearing with a letter to IRS Commissioner Douglas Shulman requesting detailed information about the size and scope of the nonprofit sector and the status of various IRS compliance and enforcement efforts, including the reporting and oversight of unrelated business income by all types of 501(c) nonprofits.[24] In that letter, Representative Boustany noted that, "AARP is not the only tax-exempt organization that more closely resembles a for-profit enterprise."[25] Further, after a major nonprofit in his district, OCLC (a worldwide online library cooperative), became the target of an anti-trust lawsuit from one of its for-profit competitors, Representative Pat Tiberi (R-OH), chairman of the House Ways and Means Select Revenue Measures Subcommittee, indicated that he supported examining whether nonprofits are acting properly within the tax law, but wanted to avoid a "witch hunt" and the idea that Congress should "punish all because of the actions of one."[26]

20. Bruce Hopkins, *The Law of Tax-Exempt Organizations* (Hoboken: John Wiley and Sons, 2007), 121-135.

21. The strategy used by nonprofits to advocate successfully on this topic could be the subject of a separate paper.

22. Senator Charles Grassley, "Grassley's Provisions for Tax-exempt Hospital Accountability Included in New Health Care Law," press release, March 24, 2010, http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=25912

23. Some Democrats objected to this line of argument believing that the attack on AARP was more about AARP policy stances than anything else. Details on the hearing can be found at http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=230729

24. Representative Charles Boustany, "Letter to Commissioner Douglas Shulman, Internal Revenue Service," October 6, 2011, http://waysandmeans.house.gov/UploadedFiles/Tax-exempt.Oct_6.11_Redacted.pdf

25. Boustany, Charles (Representative). "Letter to Commissioner Douglas Shulman, Internal Revenue Service." October 6, 2011. http://waysandmeans.house.gov/uploadedfiles/tax-exempt.oct_6.11_redacted.pdf

26. Heather M. Rothman and Diane Freda, "Grassley Seeks Estimate of Nonprofit Tax Exemption, Putting Organizations on Edge," *BNA Daily Tax Report*, March 14, 2011.

CURRENT UBIT SYSTEM AND OUTLOOK FOR REFORM

Over the decades, Congress and the courts have greatly expanded opportunities for charitable nonprofits to engage in commercial activities with minimal or no tax liability. The tax code currently excludes from unrelated business income taxes "dividends, interest, certain other investment income, royalties, certain rental income, certain income from research activities, and gains or losses from the disposition of property" as well as businesses that are carried on "for the convenience of [the nonprofit's] members, students, patients, officers, or employees."[27] Legal scholars have asserted that court decisions and regulatory language have produced a confusing landscape for compliance and enforcement and have lacked "clear rules regarding when commercial activity endangers exemption and when it is taxable even when it doesn't endanger exempt status."[28] The rules governing when revenues from joint ventures between nonprofits and for-profit entities are subject to UBIT are based on the degree of control exercised by the nonprofit and the nature of its investment.[29] In the Pension Protection Act of 2006, Congress modified the UBIT rules with respect to rent, royalty, annuity, and interest income a nonprofit receives from a subsidiary in which it holds 50 percent or more ownership, applying the tax only to the amounts that exceed fair market value, rather than the previous full amount of such income.[30] The enacted bill called on the Treasury Secretary to provide a report by January 1, 2009, on IRS administration of the provision, including the results of audits related to "the tax treatment of payments from controlled entities to controlling organizations."[31] That report has not yet been issued.

The tangled rules surrounding UBIT have made it difficult for charitable nonprofits to report taxable income accurately, and the IRS has been examining this issue for almost a decade. An IRS study of fiscal year 2002 Form 990 and 990-T returns identified a number of errors and inconsistencies in unrelated business income data recorded by nonprofits.[32] The study found that "UBI reported on nearly 4 out of every 10 Forms 990 could not be reconciled with UBI reported on Form 990-T."[33] It also found that nearly 20 percent of the high-income returns (those filed by organizations with gross UBI of $500,000 or more) required at least one allocation of allowable deductions to be corrected by Statistics of Income staff.[34] IRS data on unrelated business income tax returns for 1985-2007 show that while the total UBI reported grew by 54 percent (from $7.6 billion to $11.7 billion) over the last 10 years, the taxes paid by these organizations increased by less than 25 percent (from $464 million to $594 million).[35] This has led some observers to speculate that nonprofits may be misallocating costs to reduce their tax liability. The IRS 2012 workplan states that the Exempt Organizations Division plans to examine UBIT reporting practices and "develop risk models that will help … identify organizations that consistently report significant gross receipts from unrelated business activities but declare no tax due."[36]

Increased congressional scrutiny of activities by AARP and other nonprofits that generate unrelated business income or appear to compete with for-profit companies could lead to a reexamination of the UBIT laws and regulations. Some legal academics have suggested that Congress expand UBIT to cover all commercial

27. Internal Revenue Service, "Unrelated Business Income Tax Exemptions and Exclusions," http://www.irs.gov/charities/charitable/article/0,,id=123415,00.html

28. John D. Colombo, "Commercial Activity and Charitable Tax Exemption," *William and Mary Law Review* 44, no. 2 (2002): 493.

29. Independent Sector, "Tax Policy and Advocacy Experts Symposium," (meeting summary, Independent Sector, April 14-15, 2011).

30. Joint Committee on Taxation, *Technical Explanation*, 273-274.

31. Ibid, 274.

32. Paul Arnsberger, Melissa Ludlam and Margaret Riley, *Current Research in the Nonprofit Sector*, Internal Revenue Service, Statistics of Income Division, http://www.irs.gov/pub/irs-soi/05eonta.pdf

33. Ibid, 50.

34. Ibid, 51.

35. "Nonprofit Charitable Organization and Domestic Private Foundation Information Returns, and Exempt Organization Business Income Tax Returns: Selected Financial Data, 1985-2007," Internal Revenue Service, http://www.irs.gov/uac/SOI-Tax-Stats---Historical-Table-16

36. "Exempt Organizations 2011 Annual Report & 2012 Work Plan," IRS Tax Exempt and Government Entities, http://www.irs.gov/pub/irs-tege/fy2012_eo_work_plan_2011_annrpt.pdf

activities undertaken by a nonprofit, regardless of their relationship to the nonprofit's exempt purposes, or alternatively, to "radically alter the underlying tests for tax exemption."[37] A number have proposed ways to clarify and strengthen UBIT, particularly with regard to the control provisions related to joint ventures [with subsidiaries and for-profit entities] to focus on the goal of ensuring that charitable assets are not diverted to impermissible private benefit."[38]

Further congressional hearings on these issues could draw out a range of proponents for change. The International Health, Racquet, and Sportsclub Association (IHRSA), for example, has undertaken numerous legal and legislative challenges against the tax-exempt status of YMCAs, and Citizens Against Government Waste has supported IHRSA's positions.[39] The YMCA of the USA's proactive effort to redefine and rearticulate its charitable mission and to work with its member agencies to institute management and governance changes and gather data on community benefits provides an excellent model that other nonprofits might follow in preparing for such challenges.[40]

EMERGENCE OF HYBRID ORGANIZATIONS

The search for new sources of funds to address critical issues and the desire by a generation of entrepreneurs to both "do well" and "do good" has led to the emergence of new enterprises in which social entrepreneurs apply a for-profit business model to the pursuit of social purposes. Current law generally requires that these entrepreneurs choose between establishing a taxable corporation that can provide some return to investors or creating a tax-exempt nonprofit corporation that allows supporters to receive tax deductions for their contributions but no other private benefit. Some argue that the costs of foregoing tax-exemption and tax-deductible contributions are outweighed by the benefits of greater flexibility in pricing, executive compensation, participation in partisan political activities, and competition with other for-profit businesses.[41] Others argue that pursuing a social purpose through a standard for-profit corporation can place directors in jeopardy if they favor pursuing that social purpose over maximizing profits for shareholders.[42]

There has been increased interest over the last ten years in altering state laws that are the primary determinant of choices in organizational form (i.e., trust, corporation, unincorporated association, etc.) that affect an organization's "governance structure and conduct, ability to raise capital, and, possibly, available purposes and eligibility for tax exemption."[43] As of 2012, nine states have enacted laws recognizing Low-profit Limited Liability Corporations (L3Cs) to facilitate program-related investments (PRIs) in social enterprises. The criteria for an L3C are based on the IRS rules governing PRIs: the organization must be dedicated to advancing one or more charitable or educational purposes; no significant purpose can be the production of income or the appreciation of prop-

37. Colombo, "Commercial Activity," 565-567.

38. Independent Sector, "Tax Policy."

39. International Health, Racquet and Sportsclub Association (IHRSA), "The YMCA: More Like a Business than a Charity," Talking Points, Boston, MA, 2008, http://download.ihrsa.org/publicpolicy/YMCA-Talking_Points.pdf A report by the Citizens Against Government Wasted recommended that the IRS clarify its "community accessibility standard," form a taxpayer compliance review committee to monitor YMCAs and other nonprofits, and compel those that do not meet the appropriate standards to pay UBIT. See: John Middleton, "YMCAs: From Community Service to Community Disservice," *Through the Looking Glass: A CAGW Special Report*, September 13, 2003, http://membership.cagw.org/site/DocServer/YMCA_Total_Report__Final_Version_-_September_8_1.pdf?docID=421

40. Marc Stern's 2011 report provides an excellent review of IHRSA and other challenges to the YMCA and its response. See: Marc Stern, "Real or Rogue Charity? Private Health Clubs vs. The YMCA, 1970-2010," *Business and Economic History On-Line* 9 (2011).

41. Victoria B. Bjorkland and Elizabeth J Dodson, "The Price of Freedom: Benefits and Burdens of Foregoing Exemption," (presentation, National Center on Philanthropy and the Law Conference, New York City, October 24, 2008).

42. Derrick W. Britt, R. Todd Johnson, and Susan H. McCormack, "Frequently Asked Questions: Proposed Amendments to the California Corporations Code for a New Corporate Form: The Flexible Purpose Corporation and Senate Bill 201," February 23, 2011.

43. Evelyn Brody, "Public Policy and Nonprofits: The Legal Landscape," in *ARNOVA's Symposium on Public Policy for Nonprofits: A Report for the Field*, Association for Research on Nonprofit Organizations and Voluntary Action, 2011, 48-55, http://www.arnova.org/pdf/ARNOVA%20Symposium%20on%20Public%20Policy%20Final%20Rvsd.pdf

erty; and it cannot be organized to accomplish political or legislative purposes.[44]

L3C legislation has been the focus of considerable debate in the legal community, and the IRS has not yet ruled whether an L3C is automatically qualified to receive a PRI that will not subject the lending foundation to investment penalties. Critics argue that ill-advised foundations and nonprofits could therefore jeopardize their tax-exempt status or face possible fines by investing in an L3C. Americans for Community Development has been the primary proponent of L3C legislation at both the state and federal level. The Council on Foundations also supports federal legislation that would recognize L3Cs[45] and has co-hosted annual convenings in 2011 and 2012 with Americans for Community Development, which was founded to "promote the L3C movement."[46] According to the B Corporation 2012 Annual Report produced by B Lab, seven states have passed legislation recognizing benefit corporations; legislation has been introduced in three other states.[47] The legislation allows directors of benefit corporations to consider all stakeholders, not just investors and shareholders, in making decisions to advance their businesses and stipulates that shareholders and directors can only pursue litigation for failure to provide public benefit, violations of duty or standard of conduct, or failure to meet transparency requirements.[48] To be recognized as a benefit corporation, an entity must provide "a material positive impact on society and the environment, taken as a whole, as assessed against a third party standard," and it must

publish an "annual Benefit Report in accordance with a third party standard for defining, reporting, and assessing social and environmental performance, including assessment of successes and failures in achieving general and specific public benefit purpose."[49] Although the reputed purpose of the legislation is to protect directors from lawsuits for failure to maximize profits for shareholders, promoters of the legislation also suggest that certified B corporation status will enable consumers and investors to distinguish between "good" companies and those who are only good at marketing. The legislation is being promoted by a nonprofit organization called B Lab, which conducts third-party assessments and earns revenue by licensing the B Corp certification logo to companies for as much as $25,000 per year. B Lab clearly has a financial stake in the passage of such legislation. In addition to B Lab, the American Sustainable Business Council has been actively lobbying for the legislation. Skeptics also point out that neither the criteria used by third-party assessment companies like B Lab, nor the companies' assessment practices, are subject to oversight by local, state, or federal authorities.

In 2011, Independent Sector convened 30 legal scholars and nonprofit and foundation policy leaders to examine issues related to hybrid organizations, particularly in the context of the rules for granting tax-exemption and regulating profit-making activities by nonprofits.[50] The group noted the "inherent conflict in having fiduciary responsibilities both to investors and charitable purpose."[51] Almost all attendees were opposed to offering tax benefits to for-profit hybrid corporations, which by definition provide private benefit to shareholders and investors that are comparable to those provided to nonprofits. They also expressed concern that legal recognition of hybrid businesses could mislead consumers and investors about the inherent value and commitment to social good of one company over another. They further noted that if the goal is to increase capital available to achieve social purposes through nonprofits or for-profit corporations, other changes in IRS regulations and guidance on

44. Rosemary E. Fei, "A Guide to Social Enterprise Vehicles," *Taxation of Exempts* 22, no. 4 (January/February 2011).

45. "Program-Related Investments (PRIs) Promotion Act," Council on Foundations, 2011, http://www.cof.org/templates/311.cfm?ItemNumber=17371&navItemNumber=16117

46. Americans for Community Development, http://americansforcommunitydevelopment.org/. In 2012, the two-day event attracted about 100 speakers and participants and explored the application of the L3C model in a variety of fields, including international development, health care, and the arts. At present, no legislation has been introduced in the current Congress.

47. B Corporation, *2012 B Corporation Annual Report,* http://bcorporation.net/resources/bcorp/documents/BcorpAP2012_Web-Version.pdf

48. B Lab, "Benefit Corporation – Legal Provisions and FAQs," http://www.bcorporation.net/resources/bcorp/documents/Benefit%20Corporation%20-%20Legal%20Provisions%20and%20FAQ.pdf

49. Ibid.

50. Independent Sector, "Tax Policy."

51. Ibid.

joint ventures and PRIs could be improved to expand charitable organizations' access to capital. There was general consensus that to accomplish those changes the IRS should update its regulations for PRIs and specifically consider the recommendations made by the American Bar Association Tax Section.[52]

The group also considered questions raised by the Democratic Staff Director for the Senate Finance Committee, Russ Sullivan, regarding whether a new legal corporate structure was necessary to facilitate investments in the Consumer Operated and Oriented Plans (COOPs) created in 2010 health care reform legislation. They observed that the legislation requires that COOPs be formed as a nonprofit (most likely a mutual-benefit nonprofit corporation rather than a charitable nonprofit) that is subject to private inurement constraints.[53] The group generally agreed that COOPs should be treated separately, either in a new category or by adjusting existing categories of nonprofit organizations.[54]

Independent Sector took a position against recognizing benefit corporations in federal tax law and opposed extending tax benefits that are normally available to nonprofits to these for-profit companies.[55] While at least one state association of nonprofits (California) has opposed the benefit corporation legislation, nonprofits and foundations have been largely silent on this issue.

STATE AND LOCAL CHALLENGES TO TAX EXEMPTION

Most states follow the rules and definitions in federal tax law to grant exemptions to nonprofits from state income taxes, but the criteria and procedures for granting exemption from property taxes vary considerably among states and, in some states, among local jurisdictions.[56] There have been many challenges to the criteria for property tax exemption over the last 30 years, particularly in the 18 states where exemption is mandated in the state constitution. Such challenges appear to have been increasing rapidly during the 2007-2009 recession and the halting economic recovery that followed. Several local jurisdictions have tried to revoke exemptions based on their determination that the organization does not meet the five-prong test for determining a "pure charity" that was put forth by the Pennsylvania Supreme Court in the 1985 case *Hospital Utilization Project v. Commonwealth of Pennsylvania*.[57] That test includes the following considerations in determining whether an organization qualifies for tax exemption:

1. advances a charitable purpose,

2. donates or renders gratuitously a substantial portion of its services,

3. benefits a substantial and indefinite class of persons who are legitimate subjects of charity,

4. relieves the government of some of its burden, and

5. operates entirely free from private profit motive.

In revoking property tax exemptions, state and local authorities also have considered the extent to which an organization receives government funding, competes with for-profit businesses, or charges market-based fees.[58] Some state and local jurisdictions have also looked at the extent to which a nonprofit benefits residents of the

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52. Steward M. Lewis, "Letter to IRS Commissioner Douglas Shulman re Comments Concerning Proposed Additional Examples on Program-Related Investments," March 3, 2010.

53. Nationwide Incorporators defines a mutual-benefit nonprofit corporation as an organization "formed primarily for the benefit its members or persons engaging in a particular business or activity, rather than for broader public purposes." Because of its narrow focus, it tends to serve small groups of people with limited interests, such as automobile clubs or homeowners associations. In some respects, it is a catchall category for nonprofits that are not faith-based or formed for public benefit. See: http://www.nationwide-incorporators.com/educ-nonprofit-corp-overview, and also http://www.cafcc.org/cnonprofit.html

54. Independent Sector, "Tax Policy."

55. Independent Sector, Board of Directors, December Meeting, December 7, 2011; Board Meeting Minutes, Agenda Item 1b, 6-7, September 2011 Independent Sector adopted a position in September 2011 stating, "there is no apparent need to create a new hybrid corporate form to accommodate Consumer Operated and Oriented Plans in the federal tax code."

56. Steve Lerch, *Impacts of Tax Exemptions: An Overview* (Olympia, WA: Washington State Institute for Public Policy, 2004), 23.

57. Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," *New England Law Review* 44, no. 621 (2010): 622.

58. *Ibid*, 625.

state or local area. For example, in August 2011 California's Board of Equalization, which determines exemption eligibility, received considerable attention for revoking or denying exemptions based on the extent to which a nonprofit's services benefit California residents.[59]

Some local jurisdictions have avoided potential opposition from their state legislature or the courts to changes in property tax exemption rules by instead requesting "payments in lieu of taxes" (PILOTs) from nonprofits, primarily those that own property, including universities, hospitals, nursing homes, and residential facilities. These PILOTs are typically structured as voluntary, temporary arrangements, yet nonprofits frequently agree to make the payments to stave off threatened legislative or administrative implementation of mandatory fees.

Exemptions from property tax generally do not apply to user fees for water, sewage, trash collection, or other specific services that must be paid by nonprofits as well as business and residential property owners.[60] Minnesota nonprofits report that they are increasingly being hit with fees and assessments to pay for elevator inspections, wastewater treatment, fire inspections, and other local government functions.[61]

In general, nonprofits have been remarkably successful in defending property tax exemptions against legislative and court challenges.[62] Yet recent developments in the courts and the rising challenges to the exemptions of individual nonprofits by local governments indicate that this trend may be shifting.[63] Some state associations of nonprofits have been actively engaged in addressing threats to property tax exemption and the imposi-

tion of additional fees. In 2007 the Minnesota Supreme Court, in *Under the Rainbow Child Care Center v. County of Goodhue,* affirmed a local government decision to base property tax exemption on the extent to which a nonprofit provides free services. Following this ruling, the Minnesota Council of Nonprofits led a successful effort to work with the state Department of Revenue and the Association of County Assessors to clarify the law. The resulting bill clarified the definition of a charity for the purpose of property tax exemption and allowed all currently exempt nonprofits to retain their exemption from the tax.[64] The Hawaii Alliance of Nonprofit Organizations (HANO) was able to defeat a state legislative proposal that would have applied sales taxes to nonprofits, [65] but the Honolulu City Council tripled the nonprofit real property fee despite concerns expressed by HANO.[66]

The seriousness of the challenges to some aspects of nonprofit tax exemptions at the state level is perhaps best exemplified by comments from a recent report from the Bureau of Governmental Research to the Tax Fairness Commission established by New Orleans Mayor Mitch Landrieu (D-LA). It noted, "if the nonprofit exemption is not eliminated entirely, it becomes critical to target the exemption more precisely to nonprofit activities that the government considers deserving of an indirect subsidy."[67] The report also noted that each activity granted tax exemption "should either relieve the government of a burden or provide the public with services and amenities that are important to quality of life [and] should be carefully defined and limited to ensure that they serve the desired purpose."[68]

59. Stephanie Strom, "California Scrutinizes Nonprofits, Sometimes Ending a Tax Exemption," *New York Times*, August 14, 2011.

60. Brody, "All Charities," 658.

61. Joe Kimball, "Nonprofits Object to Minneapolis' Streetlight Fees, Feeling 'Death by a Thousand Cuts,'" *MinnPost.com*, October 29, 2009.

62. Brody, "All Charities," 623.

63. Kathy Bergen and Moritz Honert, "Illinois Nonprofit Hospitals Get Reprieve on Re-evaluation of Tax-Exempt Status," *Chicago Tribune*, September 23, 2011; Strom, "California Scrutinizes;" Stephanie Strom, "States Move to Revoke Charities' Tax Exemptions," *New York Times*, February 27, 2010, http://www.nytimes.com/2010/02/28/us/28charity.html

64. "Charitable Property Tax Exemption Redefined," Minnesota Council of Nonprofits, http://www.minnesotanonprofits.org/mcn-at-the-capitol/past-successes/charitable-property-tax-exemption-redefined

65. Bruce Trachtenberg, "Aloha to Current Nonprofit Property Tax Exemptions?" *Nonprofit Quarterly* (November 15, 2010).

66. "Hawai'i Alliance of Nonprofits. 2010 Legislature Bill Descriptions and HANO Positions," http://hano-hawaii.org/public-policy/hanos-2010-public-policy-agenda/

67. Bureau of Governmental Research, *The Nonprofit Margin: Addressing the Costs of the Nonprofit Exemption in New Orleans*, Bureau of Governmental Research (March 2011), http://www.bgr.org/files/reports/BGR--Nonprofit_Margin_FullReport.pdf

68. Bureau of Governmental Research, *The Nonprofit.*

Summary of Political Context

Policies governing the exempt status of charitable organizations must be considered within a much broader context of the issues driving lawmakers to look at the entire tax code, including the tax-exempt sector. It is no secret that lawmakers are deeply divided on the scope of responsibilities government has with regards to the social safety net. Concerned with a massive deficit combined with an increasing number of people eligible for entitlement programs (such as Social Security and Medicare) relative to the number of active workers that pay taxes intended to fund these programs and the exponentially rising costs of health care, elected officials are looking for ways to define and manage obligations and costs.

Elected officials wrestling with the best ways to tackle these issues have proposed spending cuts, tax increases, or a combination of both—solutions that would have far-reaching effects on the people served by the charitable community. The debate has also fed calls on both sides of the aisle for comprehensive reform of the federal tax code. Nevertheless, no consensus exists on the objectives for tax reform at this time. Simplicity, equity, closing "unfair loopholes," and economic growth are often cited, though there is fundamental disagreement about whether tax reform should produce increased federal revenue. In this context, the nonprofit tax exemption is expected to come under scrutiny. Indeed, congressional hearings have already begun.

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Increasing pressure for new revenue or decreased expenditures comes on the heels of a period of heightened interest in the accountability of the nonprofit sector. At the federal level over the past 10 years, Congress has instituted specific new criteria and requirements

for credit counseling agencies and hospitals to receive or maintain 501(c)(3) tax-exempt status. Some experts believe that Congress will continue to target the nonprofit charitable sector selectively and apply further process-oriented standards, governance, and disclosure requirements on particular types of nonprofits rather than undertaking broad reform of the 501(c)(3) definitions and rules.[69] In the past, the broad nonprofit and philanthropic community has remained largely silent when requirements on specific subsectors were being considered. Even the Panel on the Nonprofit Sector declined to comment on recommended reforms for credit counseling agencies, despite the fact that they were being debated at the same time as other proposals by the Joint Committee on Taxation and the Senate Finance Committee that were considered by the Panel. The Panel asserted at the time that their work was to create a broad set of principles and standards by which organizations might compare and assess their own practices and not to comment on particular initiatives being advanced by lawmakers. Nevertheless, the requirements imposed on those credit agencies could be applied to other types of nonprofits.

In addition, recent congressional investigations into the commercial activities of nonprofits indicate possible reexamination of the UBIT laws and regulations. Experts gathered by Independent Sector in early 2011 noted potential flaws in the current UBIT system; they also suggested modifications to the control provisions for joint ventures between nonprofit and for-profit entities that could increase nonprofits' access to capital. Without a strong push by the charitable nonprofit community to identify specifically and correct any flaws in the UBIT system, Congress could turn to across-the-board solutions to the perceived problems, such as applying UBIT to all commercial activities undertaken by nonprofits, regardless of their relationship to the nonprofit's exempt purposes.

69. Roger Colinvaux, "Charity in the 21st Century: Trending Towards Decay," *Florida Tax Review* 11, no. 1 (2011): 70-71.

Without a strong push by the charitable nonprofit community to identify specifically and correct any flaws in the UBIT system, Congress could turn to across-the-board solutions to the perceived problems.

As public officials consider reducing tax benefits or imposing constraints on nonprofits, they are also debating the tax treatment of hybrid organizations, as mentioned earlier in this paper. These include Low-profit Limited Liability Corporations, benefit corporations, and Consumer Operated and Oriented Plans that blend characteristics of for-profits and nonprofits. How the IRS will ultimately treat these entities in large measure remains to be seen.

In the broad context of the federal revenue, spending, and deficit issues, both the Senate Finance Committee and House Ways and Means Committee have been holding hearings in anticipation of taking action on tax reform during the next Congress. However, the political landscape could change radically depending on the outcome of the presidential, congressional, state, and local elections. As a consequence, the shape and extent of tax reform efforts could change substantially in 2013 and beyond.

Sector Engagement

Organizations facing specific proposals that would erode their nonprofit tax exemptions have been actively working to defeat such measures. Much of this activity has taken place at the state and local level, where state associations have mobilized sector organizations to defeat such threats. Minnesota and Hawaii, as noted in this paper, offer two such examples. In contrast, individual foundations and associations of grant makers generally appear to have been reluctant to engage in (or fund) battles regarding removing local or state tax exemptions for nonprofits or imposing PILOTs. This is despite the fact that a case could be made that lobbying efforts on

some of these issues would fall under the self-defense exception that permits foundations to lobby on legislative proposals that would affect their existence, power and duties, tax-exempt status, or the deductibility of contributions they receive.

At the federal level, specific types of organizations have responded when they have been the target of inquiries or proposals for change. In these cases, national associations have played leadership roles in advocacy and lobbying efforts, including the American Council on Education and the American Hospital Association. Several networks have conducted deep analyses of their value and contributions to society to defend against or prevent threats to their tax exemptions. For example, in response to inquiries from Sen. Grassley (R-IA) and others in Congress about the differences between for-profit and nonprofit hospitals, the Catholic Health Association developed a comprehensive community benefit program that details the extent to which its members provide free and improved access to health care, advance medical knowledge, or reduce the burden on government. Similarly, supporters of the health club industry have questioned whether the YMCA deserves its tax exemption, given that its operating model resembles for-profit health clubs.[70] The YMCA has established its own community benefit initiative, in which local Y's quantify their contributions to local communities, such as senior wellness programs, youth development, food and support services, and harnessing volunteer time. Independent Sector has also convened several groups and events to explore the implications of these issues relative to the sector at large.

Organizations engaged in this issue at the federal level broadly agree that the most effective way to defeat challenges to their tax-exempt status is by working together. A majority of the sector leaders interviewed believe many organizations standing together would have a greater chance of success–preventing revocation of their current tax treatment or imposition of new fees–than individual nonprofits or types of nonprofits advocating for their cause in isolation.

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70. William Atkinson, "Profit vs. Nonprofit: Unfair Competition?" *Club Industry.com*, February 1, 2003, http://clubindustry.com/mag/fitness_profit_vs_nonprofit/

Conclusion

In the past couple of years a great deal of the activity around nonprofit tax exemption has taken place at the state and local level as states and localities have searched for new sources of funding to close their budget gaps. Future threats at the state and federal level may manifest in several ways: challenges to the tax exemption of individual nonprofits, which may lead to court cases that change the rules for a much broader segment of the nonprofit community; additional pressures on federal, state, and local governments to obtain revenue from sector organizations; and/or proposals to expand tax exempt benefits to for-profit hybrid organizations.

The common sentiment from interviewees—that organizations would increase their effectiveness by combining efforts—suggests that the difficult task of coordination may be the most prudent path forward and require focused attention. It would also require that one organization, with the consent of the others, take responsibility for the coordination process. Priorities for a joint effort would include creating shared goals and policy positions, increasing the number and depth of relationships with relevant public officials, and developing communications strategies that include testing messages to educate key audiences about the importance of the sector and the tax exemption on which it depends.

BEYOND THE CAUSE

THE *Art* AND **Science** OF ADVOCACY

ISSUE PAPER

CHARITABLE TAX DEDUCTION

Even though charitable donations from individuals represent just 12 percent of nonprofit revenue, certain subsectors of the nonprofit community and individual charities depend heavily on such contributions. In 2009, reliance on charitable giving and other private contributions ranged from just 3 percent of total revenue among health care nonprofits to more than 70 percent among nonprofits engaged in international activities.[1] (See Figure 11.1.)

Even subsector data, however, conceals critical differences among individual organizations with regard to their reliance on charitable giving. For example, the American Cancer Society, March of Dimes, and Environmental Defense Fund – which collectively received over $600 million in charitable contributions in 2009 – each relied on donors for more than 90 percent of their funding. Such facts underscore the potentially devastating impact that reductions in charitable giving would have on the people served by these charitable organizations.

Fiscal constraints facing the federal government have brought greater attention to the value and costs of tax deductions and other tax incentives designed to encourage charitable contributions. Most major proposals for deficit reduction include changes to the way in which charitable gifts would be treated in calculating individual income taxes. These range from President

Obama's proposals attached to the budget and specific legislation to limit the value of all deductions (including the charitable deduction) for higher-income taxpayers to converting the charitable deduction to a tax credit available to all taxpayers.

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The rancorous congressional debates over how to address the nation's national debt have heightened the desire by public officials on both sides of the aisle for major tax reform. As part of a compromise reached to permit an increase to the debt limit in August 2011, the Budget Control Act of 2011 mandated the creation of the bipartisan Joint Select Committee on Deficit Reduction (known as the "Super Committee"). The Super Committee was charged with finding a way to reduce the national deficit by $1.5 trillion over 10 years, in order to avoid automatic cuts included in the Act. On the table were potential revenue increases that included itemized deductions and the estate tax, as well as substantial cuts to discretionary and entitlement programs that would impact significantly nonprofits and the people they serve.

1. Nonprofit Almanac, 2011, National Center for Charitable Statistics; additional information provided by Tom Pollak, National Center for Charitable Statistics.

FIGURE 11.1
NONPROFIT SUBSECTOR PERCENT OF REVENUE BY SOURCE, 2009

Subsector	Charitable Giving and Other Private Contributions	Fees for Service Paid by Individuals and Private Entities	Government Grants, Contracts and Fees for Service (including Medicare/Medicaid)	Other Income	Investment Income
Arts, Culture, Humanities	45.0%	35.0%	13.4%	6.1%	0.2%
Education	14.5%	73.0%	14.4%	1.9%	-3.5%
Environment and Animals	50.0%	30.0%	15.0%	5.3%	0.4%
Health Care	3.0%	60.0%	35.2%	1.6%	0.0%
Human Services	17.0%	28.0%	51.0%	1.0%	3.0%
International	70.4%	7.1%	21.0%	0.9%	0.5%

Source: Tom Pollak, National Center for Charitable Statistics, Urban Institute; Nonprofit Almanac, 2011

In November 2011, the Super Committee announced it was unable to reach an agreement on a path forward. As a result, budget cuts of $1.2 trillion are scheduled to take effect January 2013 if no further action is taken. The cuts (if no changes are made) will be split equally between defense and nondefense programs. Congress could enact legislation to change the automatic triggers, although President Obama has said he will veto any attempt to do so.[2] The additional federal revenue that would be realized by capping the charitable deduction is estimated at about $6 billion a year, about 4 percent of the $1.5 trillion over 10 years that the Super Committee was asked to identify.

This paper outlines the political landscape surrounding the charitable deduction, some of the attitudes and actions by key members of Congress, and the current state of consensus within the charitable community on the charitable deduction.

Background and Context

Soon after the establishment of the federal income tax and the modern estate tax nearly 100 years ago, tax de-ductions and other incentives for charitable contributions became an intrinsic part of the nation's tax system. A deduction for charitable giving first made its appearance in 1901 as an amendment to a short-lived estate tax that was created to fund the Spanish American War in 1898 and repealed in 1902.[3] In 1917, four years after the creation of the individual income tax, Congress added a deduction for charitable contributions up to 15 percent of the taxpayer's income. Concerned that increases in the income tax necessary to finance World War I would reduce an individual's ability to support charity, the deduction was added as a way to encourage giving and create a stream of funds for the charitable sector. A year later, the Revenue Act of 1918 created the modern estate tax and provided that charitable bequests were entitled to a similar deduction on estate tax returns.[4] Corporations became eligible to claim a charitable deduction with the passage of the Revenue Act of 1936 when it was added as a way to reduce the level of tax

2. "Statement by the President on the Super Committee," White House Press Release, November 21, 2011, http://www.whitehouse.gov/the-press-office/2011/11/21/statement-president-supercommittee

3. Darien B. Jacobson, Brian G. Raub, and Barry W. Johnson, *The Estate Tax: Ninety Years and Counting*, IRS Statistics of Income Division, http://www.irs.gov/pub/irs-soi/ninetyestate.pdf

4. Paul Arnsberger, Melissa Ludlum, Margaret Riley, and Mark Stanton, *A History of the Tax-Exempt Sector: An SOI Perspective*, IRS Statistics of Income Division, http://www.irs.gov/pub/irs-soi/tehistory.pdf

increases needed to provide services to those affected by the Great Depression.[5]

When Congress first introduced the War Revenue Act of 1917, legislators believed that the deduction was "an efficient way to distribute public money to charities, as it cut out the government middlemen" and that it was "appropriate for individuals rather than the government to decide which charities to support." Even then, according to the Joint Committee on Taxation, supporters of the deduction argued that "the incidence of any income tax without the deduction would fall at least partially on the charities themselves, as individuals would donate only the after-tax value of their before-tax intended gifts."[6] Some argued, as they do today, that "money donated to charity should not be considered income at all, and thus should not be taxed."[7]

When lawmakers expanded the income tax during World War II and introduced the standard deduction, a direct deduction for charitable contributions was made available only to taxpayers who itemized their deductions. From 1981 to 1986, taxpayers who claimed the standard deduction, often referred to as non-itemizers, were allowed to take a separate tax deduction for charitable contributions. As part of the Tax Reform Act of 1986—a major simplification of the tax code which reduced deductions and tax brackets—the non-itemizer deduction was eliminated because the standard deduction increased and the new amount was intended to cover charitable deductions, among other items. Since 1986, taxpayers taking the standard deduction have not been able to claim additional deductions for charitable donations.

In addition to the introduction of the standard deduction, the Joint Committee on Taxation notes the following significant changes to the charitable deduction over the years: allowing in 1924 an unlimited deduction to taxpayers who donated more than 90 percent of their taxable income in the current year and in each of the

When Congress first introduced the War Revenue Act of 1917, legislators believed that the deduction was "an efficient way to distribute public money to charities, as it cut out the government middlemen" and that it was "appropriate for individuals rather than the government to decide which charities to support."

previous 10 years; changing the measure of the deduction to adjusted gross income in 1944; and removing the unlimited deduction in 1976.[8] In addition, the Pease limitation (named for former Congressman Donald Pease, D-OH) was first passed as part of the Omnibus Budget Reconciliation Act of 1990. Its purpose was to raise revenue by limiting the total amount of otherwise allowable itemized deductions for upper-income taxpayers. In computing this reduction of total itemized deductions (including the charitable deduction), the otherwise allowable total amount of itemized deductions was reduced by 3 percent of the amount by which the taxpayer's adjusted gross income exceeded a threshold (originally $100,000; now approximately $170,000) to a maximum of 80 percent of the amount of the itemized deductions that would be otherwise allowable. This overall limitation on itemized deductions was repealed in 2001, with the repeal phased out over five years. The repeal of the Pease limitation was extended for an additional two years in 2010. The limitation is scheduled to take full effective again in 2013.[9]

Today, only the roughly one-third of taxpayers who itemize deductions may reduce their tax liability by claiming a separate deduction for the cash and noncash contributions they make to 501(c)(3) nonprofits. The amount they are entitled to deduct varies according to the type of item contributed and the organization receiving the gift. Contributions to a public charity are generally deductible up to 50 percent of a donor's adjusted gross

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5. Joint Committee on Taxation, statement to the Senate Committee on Finance, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, 5.

6. Ibid, 4.

7. Ibid.

8. Ibid.

9. Joint Committee on Taxation, *Present Law*, 18.

income (30 percent for appreciated property), while contributions to most private foundations are deductible up to 30 percent of a donor's contribution base (20 percent for appreciated property). In addition, gifts of appreciated property to a public charity generally are deductible at the property's fair market value, while gifts of appreciated property to private foundations are usually deductible at the taxpayer's basis (cost) in the property.[10] Unlike the charitable income tax deduction, there are no percentage limitation restrictions on the amount of the estate tax charitable deduction; it is limited only to the value of the assets that would otherwise be included in the gross estate.

CONTROVERSIES AND QUESTIONS ABOUT CHARITABLE TAX INCENTIVES

When President George W. Bush recommended reinstating the deduction for non-itemizers in his fiscal year (FY) 2001 budget proposal, Congress and tax experts began to raise questions about the effectiveness of tax deductions in increasing charitable giving in excess of their cost to federal revenues. In its analysis of the president's proposal, the Joint Committee on Taxation noted that "while the economic literature suggests that individuals alter their giving in response to changes in the price of giving, there is less consensus as to how large are the changes in donations induced by the tax deductibility of donations."[11] In their 2011 study, economists Jon Bakija and Bradley Heim provided new evidence indicating that charitable giving increases more than the foregone federal revenue resulting from a tax deduction. [12]

In their 2011 study, economists Jon Bakija and Bradley Heim provided new evidence indicating that charitable giving increases more than the foregone federal revenue resulting from a tax deduction.

The Congressional Research Service's analysis of President Bush's proposal, conducted in support of the Community Solutions Act of 2001 (HR 7), outlined three other concerns about charitable deductions:[13]

1. the value of direct government funding which "more generally reflect the collective preferences of society" versus the "added diversity" private contributions may provide;

2. the difficulty in distinguishing "pure charitable giving" from gifts that provide a direct benefit to the donor, such as sacramental services from religious organizations or preferred seating to cultural events; and

3. the costs of enforcing tax compliance without verifiable substantiation of contributions.

Congress shared this third concern as well. In 2004 and 2005, several high profile congressional hearings explored the costs of tax enforcement and excessive claims by some taxpayers for gifts of property. [14] These led to passage of new rules limiting deductions for gifts of motor vehicles (which took effect in 2004) and broader substantiation and other requirements for both cash and noncash contributions in the Pension Protection Act of 2006.

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10. Ibid, 13.

11. Joint Committee on Taxation, *Description of Revenue Provisions Contained in The President's Fiscal Year 2001 Budget Proposal*, March 6, 2000, 228.

12. Using a large panel of individual income tax returns spanning the years 1979-2006, their model takes into account persistent changes in both federal and state tax prices as well as the AMT and other deductibility limitations, thus addressing key methodological constraints of previous work in this area. Jon Bakija and Bradley T. Heim, "How Does Charitable Giving Respond to Incentives and Income? New Estimates from Panel Data," *National Tax Journal* 64, no. 2 pt. 2 (June 2011), 615-650.

13. Jane G. Gravelle, *Economic Analysis of the Charitable Contribution Deduction for Non-Itemizers*, Congressional Research Service, September 23, 2003.

14. Senate Finance Committee, *Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities*, June 22, 2004, http://www.finance.senate.gov/hearings/hearing/?id=48ca4cce-afe1-db95-0fcb-8ff9255e780a; Senate Finance Committee, *The Tax Code and Land Conservation: Report on Investigations and Proposals for Reform*, June 8, 2005, http://www.finance.senate.gov/hearings/hearing/?id=e821cece-d9eb-1c66-4b9e-b4a6602a54f4

FOCUS SHIFTS TO NEED FOR FEDERAL REVENUE

In his FY2009 budget proposal, President Obama suggested instituting a cap on the value of certain itemized deduction for taxpayers in the two highest tax brackets as a means to pay for health care reform, arguing that the proposal would provide new federal revenues and make the tax system fairer. In the context of this discussion, both the President and his Budget Director, Peter R. Orszag, focused on the donor and described as inequitable a system in which higher-income taxpayers receive a greater deduction for charitable gifts than taxpayers in lower-income categories. Orszag explained the rationale as follows: "This is a matter of fairness. If you're a teacher making $50,000 a year and decide to donate $1,000 to the Red Cross or United Way, you enjoy a tax break of $150. If you are Warren Buffett or Bill Gates and make that same donation, you currently get a $350 deduction—more than twice the break as the teacher. Limiting itemized deductions for high-income Americans would help restore balance to the tax code and any effect on charitable giving is likely to be swamped by other Administration policies."

Although President Obama initially presented this cap on the value of itemized deductions as a way partially to cover the costs of health care reforms, he subsequently proposed the cap as a way to reduce the deficit, pay for a one-year fix to the Alternative Minimum Tax, and pay for a federal jobs initiative. Capping the value of all deductions, including the charitable deduction, at 28 percent has now been formally offered by the President seven times, primarily as a way to offset the costs of other proposed spending.[15]

As concern about the federal deficit and national debt increased, in February 2010 President Obama created a National Commission on Fiscal Responsibility and Reform to identify ways to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run.[16] Chaired by former President

Clinton's Chief of Staff Erskine Bowles, and former Senator Alan Simpson (R-WY), the commission consisted of six members appointed by the President, and 12 members of Congress appointed by the Democratic and Republican leaders of the House and Senate. Under the agreed upon terms, if 14 of the 18 members of the commission endorsed a proposal, it would receive an up-or-down vote in both chambers. In late November 2010, the commission co-chairs released a proposal but were able to gain support for the report from only 11 of the 18 members. Among the recommendations in the chairmen's draft was replacing the current charitable deduction with a 12 percent nonrefundable tax credit for contributions that exceed 2 percent of the taxpayer's adjusted gross income.[17]

In 2010 and 2011, several other task forces formed to tackle the long-term federal deficit and released reports that included proposals to modify the charitable deduction. Among them were:

- Demos, the Economic Policy Institute and the Century Foundation released a joint "Budget Blueprint for Economic Recovery and Fiscal Responsibility" in November 2010, which called for replacing the charitable deduction with a 25 percent refundable tax credit for all charitable gifts, regardless of the donor's income, and available to itemizers and non-itemizers.

- The Rivlin-Domenici Debt Reduction Task Force issued recommendations[18] in November 2010 that included a proposal to eliminate the charitable deduction and instead give nonprofits a tax credit equal to 15 percent of any donation received.

- The "Senate Gang of Six," a bipartisan group of Senators, Mark Warner (D-VA), Saxby Chambliss (R-GA), Kent Conrad (D-SD), Richard Durbin (D-IL), Tom Coburn (R-OK), and Mike Crapo (R-ID), released a

15. "Deficit Reduction and Tax Reform," Independent Sector, http://www.independentsector.org/efforts_to_restore_fiscal_responsibility

16. "Charter for the National Commission on Fiscal Responsibility and Reform," FiscalCommission.gov, http://www.fiscalcommission.gov/charter

17. The National Committee on Fiscal Responsibility and Reform, *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, December 1, 2010, http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf

18. The Debt Reduction Task Force, Restoring America's Future, November 17, 2010, http://bipartisanpolicy.org/library/report/restoring-americas-future

deficit reduction proposal[19] in July 2011 that called for the "reform," but not elimination of, the charitable deduction.

CONGRESSIONAL VIEWPOINTS

Senate Finance Committee Chairman Max Baucus (D-MT) signaled his interest in changing the charitable deduction at a May 2011 hearing, "Is the Distribution of Tax Burdens and Tax Benefits Equitable?" In his opening statement, Senator Baucus specifically identified the charitable deduction as an example of the tax code's inequalities, noting disparities between itemizers and non-itemizers, as well as between itemizing taxpayers at different income levels.[20] At an October 2011 Senate Finance Committee hearing entitled "Tax Reform Options: Incentives for Charitable Giving," Senator Baucus reiterated his concerns, but turned his attention to the needs of nonprofits and the people they serve, as well, urging, "Let us invest in our communities. Let us encourage charitable giving in a way that is fair and efficient. Let us ensure benefits get to the folks in need. And let us continue to make sure nonprofits have the resources they need to continue their good work."[21] To date, Chairman Baucus has not expressed any preference for how the itemized deduction should be changed, nor did he vote in favor of the recommendations of the national commission on which he served.

Finance Committee Ranking Member Orrin Hatch's (R-UT) decidedly different view of the charitable deduction was made clear in the first of what he said would be a series of Senate floor speeches. Senator Hatch noted that

> *"Let us encourage charitable giving in a way that is fair and efficient. Let us ensure benefits get to the folks in need. And let us continue to make sure nonprofits have the resources they need to continue their good work."*

he "is open to eliminating or reducing some tax expenditures as part of comprehensive tax reform." He emphasized that the charitable deduction is a broad-based tax incentive that benefits many Americans; it is unlikely that he would support any reduction to that incentive.[22] At an October 2011 hearing of the Senate Finance Committee, Senator Hatch was more blunt, saying "from my perspective the tax reform options being discussed today are options that target charitable giving concocted by those who, hungry for more taxpayer dollars to finance reckless government spending, are now casting their sights on the already depleted resources of charities and churches."[23] In his statement, Hatch made clear that he would not support a cap on the charitable deduction, the imposition of a floor on giving before the deduction could be taken, or the conversion of the deduction to a credit.

House Ways and Means Committee Chairman Dave Camp (R-MI) has had a strong focus on tax reform, holding over a dozen hearings on the issue in 2011 and early 2012. In many of these hearings, Camp said the tax code is "too complex, too costly, and takes too much time to comply with,"[24] but over the course of this study he has not addressed the charitable deduction specifically. Although he did not vote for the recommendations of the national commission, Camp's final statement as a com-

19. "A Bipartisan Plan to Reduce Our Nation's Deficits: Problems, Questions and the Potential for Promising Reforms." Senators Dick Durbin, Kent Conrad, Mark Warner, Mike Crapo, Saxby Chambliss, and Tom Coburn. July 19, 2011, http://assets.nationaljournal.com/pdf/071911ConradBudgetExecutiveSummary.pdf

20. Senator Max Baucus, statement to the Senate Committee on Finance, "Regarding Fairness and the Tax Code," May 3, 2011, http://finance.senate.gov/imo/media/doc/05032011%20Baucus%20Hearing%20Statement%20Regarding%20Fairness%20and%20the%20Tax%20Code6.pdf

21. Senator Max Baucus, statement to the Senate Committee on Finance, "Regarding Nonprofits and Charitable Giving," October 18, 2011, http://www.finance.senate.gov/hearings/hearing/?id=915d5477-5056-a032-524b-feac6e9e3321

22. Senator Orrin Hatch, "The Dangers of Tax Hikes for Debt Reduction" (speech, July 6, 2011), http://www.youtube.com/watch?v=Mu-ZJGCqgvE

23. Senator Orrin Hatch, statement to the Senate Finance Committee, "Examining the Effectiveness of Tax Incentives for Charitable Giving," October 18, 2011, http://www.finance.senate.gov/hearings/hearing/?id=915d5477-5056-a032-524b-feac6e9e3321

24. Congressman Dave Camp, statement to the House Ways and Means Committee, "Opening Statement: Hearing on Fundamental Tax Reform," January 20, 2011, http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=220636

mission member promised, "I intend to use the work of this commission as the starting point for many hearings on how we tackle our debt and deficit problems while reestablishing a vibrant, job-creating economy."[25]

Ways and Means Committee Ranking Member Sander Levin (D-MI), on the other hand, has spoken publicly about the charitable deduction, breaking somewhat with the White House position. In a June 2011 speech to the Center for American Progress, he said that although the "benefit of the charitable deduction … [is] somewhat more concentrated in the upper-income ranges," nearly half of the benefit has gone to middle-income taxpayers. Levin went on to indicate that policy makers need to remember that the recipients of those contributions "provide critical services to working families."[26]

One test of congressional support for the charitable deduction came in early September 2011 when President Obama announced a $447 billion proposal to spur job creation and further economic recovery. He proposed funding this program in part by imposing a 28 percent cap on tax exclusions and deductions, including the charitable deduction. Bowing to pressure, Senator Reid replaced the cap with a 5.6 percent surtax on taxpayers earning over $1 million a year; the bill later died in the Senate on a procedural vote.

A related issue, the so-called "Buffett Rule," surfaced in the President's 2012 State of the Union address and was later incorporated into the President's budget proposal for FY 2013. In the speech, President Obama proposed that the tax code be revised to ensure that households making more than $1 million pay an effective tax rate of at least 30 percent. A blueprint subsequently released by the White House said that the proposal should be implemented without "disadvantaging individuals who make

large charitable contributions." The President's FY 2013 budget request included the Buffett Rule in the explanatory text, but no dollar savings or costs were presented for it in the budget detail. Legislation to implement the Buffet Rule was subsequently introduced by Democrats in the House and Senate with minimal Republican support. The bill was blocked from floor consideration on a procedural vote in the Senate in April 2012.

In over 150 meetings with congressional staff in 2011 and early 2012, Independent Sector found broad bipartisan support for the nonprofit sector and the charitable deduction generally. To the degree that there are party differences, Republican offices tend to oppose the President's proposal to cap the charitable deduction, arguing that it is simply another way to raise taxes. While Democrats do not expressly support the cap, they are more likely to show sympathy for the Administration's argument that wealthy taxpayers should pay more and capping deductions is one way to achieve that goal. Even among some of the more progressive members of the House and Senate who may be more sympathetic to the Administration's position on limiting deductions for wealthier taxpayers as a deficit reduction tool, there was support for the charitable tax deduction.

ANALYZING THE ALTERNATIVES TO ITEMIZED DEDUCTIONS

As far back as 1985, academic studies have found that charitable giving is responsive to tax incentives.[27] A groundbreaking study released in June 2011 by Jon Bakija and Bradley T. Heim used a large panel of individual income tax returns spanning the years 1979–2006 and provided new evidence that the additional amount of charitable giving produced by the charitable tax deduction exceeds the amount of federal revenue that is foregone.[28]

Despite longstanding evidence of a relationship between giving and tax incentives, at least in terms of amount and

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25. It should be noted that Charles Boustany (R-LA), Chairman of the Ways and Means Subcommittee on Oversight, convened a hearing on Tax Exempt Organizations on May 16, 2012. The purpose of the hearing was to examine the operations and oversight of the sector. Incentives for charitable giving were not a focus of the discussion.

26. Representative Sander Levin, "Ranking Member Levin Speech on Tax Reform" (speech, the Center for American Progress, June 3, 2011), http://democrats.waysandmeans.house.gov/press/PRArticle.aspx?NewsID=11654

27. Charles T. Clotfelter, *Federal Tax Policy and Charitable Giving* (Chicago: University of Chicago Press, 1985).

28. Bakija and Heim, "How Does Charitable Giving."

timing of giving, virtually all of the commissions, task forces, and White House proposals to modify the charitable deduction have focused exclusively on the impact of the proposed change on federal revenue, with no estimates provided of the impact on charitable giving.

Several reports have examined the likely impact of various proposals on both giving and federal revenue. The first was a May 2011 report from the Congressional Budget Office (CBO) that used the 2006 IRS public-use database to analyze how tax revenue and charitable giving might have changed under alternative tax treatments of charitable donations. The key features, which were combined in different ways to produce the 11 options examined by the study, included whether the tax benefit was applied as a deduction or a credit; whether it was subject to a minimum level of giving (a specific dollar floor or one expressed as a percentage of adjusted gross income); and if the benefit was restricted to itemizers or available to all taxpayers.[29] Of the 11 options considered, only two would have both increased giving and increased tax revenues: (1) extending the current tax deduction to all taxpayers, with a $500 ($1,000 for joint filers) dollar floor on giving to qualify for the deduction; and (2) replacing the current deduction with a nonrefundable 25 percent tax credit for all taxpayers, with the dollar floor on giving to qualify for the credit.[30]

Similarly, a June 2012 report from the Urban Institute Center on Nonprofits and Philanthropy and the Urban-Brookings Tax Policy Center examined the impact of four specific options[31] on federal revenue and charitable giv-

ing.[32] While every option examined produced increased federal revenue, only one of the options considered—extending the deduction to non-itemizers and putting a 1.7 percent adjusted gross income (AGI) floor—would *not* also result in decreased charitable giving. In that case, the authors chose a specific floor (1.7 percent AGI) to produce a net effect of no change in charitable giving; had they set a lower floor in the model, charitable giving would have increased.

The Urban Institute report and Bakija and Heim study are both products of the Urban Institute's Tax Policy and Charities project, a three-year initiative that "analyzes the many interactions between the tax system and the charitable sector."[33]

Summary of Current Political Context

In recent years, severe federal deficits and calls to lower the national debt have heightened pressure to reduce federal spending, increase revenue, and undertake major tax reform. This, in turn, has brought greater attention to the costs of tax deductions designed to encourage charitable giving.

As noted, officials in the Obama Administration and some lawmakers contend that the current system of tax incentives disproportionately favors wealthy taxpayers and are skeptical about assertions that tax incentives stimulate more donations. At the same time, the charitable deduction appears to enjoy support from key audiences. A 2011 survey of 105 government officials, media, and thought leaders in Washington, D.C., showed that 78 percent believed that charitable deduction was "a great deal" or "very important" to the ability of charities to

29. Congressional Budget Office, *Options for Changing the Tax Treatment of Charitable Giving*, May 2011, http://www.cbo.gov/ftpdocs/121xx/doc12167/CharitableContributions.pdf

30. The CBO found that the 25 percent nonrefundable credit with a floor would have the most positive impact on giving by lower-income taxpayers and the least negative impact on giving by the wealthiest donors. If no floor were imposed, these two options would increase giving but decrease tax revenues.

31. The four options were a 15.25 percent refundable credit, a 22 percent cap on deductions, current law with a 1 percent adjusted gross income floor; and a deduction available to non-itemizers combined with a 1.7 percent adjusted gross income floor.

32. Roger Colinvaux, Brian Galle, and Eugene Steuerle, *Evaluating the Charitable Deduction and Proposed Reforms*, The Urban Institute, June 2012, http://www.urban.org/UploadedPDF/412586-Evaluating-the-Charitable-Deduction-and-Proposed-Reforms.pdf.

33. The project is funded by the Bill and Melinda Gates Foundation and the Charles Stewart Mott Foundation.

achieve their missions.[34] And, as described earlier, over 150 meetings with Members of Congress and their staffs found general support for the charitable deduction.

A recent survey suggests that sector leaders have public sentiment on their side. Dunham+Company, a global consulting firm that helps Christian nonprofits generate revenue, commissioned a study on giving. The study took place in January 2012 and involved approximately 1,000 participants.[35] It found that three-fourths of those surveyed support tax deductions for charitable giving.[36]

As outlined in this paper, most major proposals for tackling the nation's fiscal issues include changes to the way in which charitable gifts would be treated in calculating individual and corporate income taxes. These proposals have ranged from President Obama's proposals to limit the value of deductions higher-income taxpayers may claim to replacing the deduction with a tax credit, and, more recently to putting a cap of 2 percent of AGI on total deductions—an amount that, for most taxpayers who itemize, would be consumed entirely by the deductions for mortgage interest and state and local taxes.

In addition, the political landscape is complicated by the Super Committee's failure to reach consensus in November 2011, which will trigger $1.2 trillion in cuts to defense and domestic discretionary spending over 10 years, beginning in January 2013. Congressional efforts to avoid these cuts in either defense spending or nondefense spending could result in a definitive timetable for major tax reform or agreements on particular measures to increase revenue, such as the treatment of itemized deductions or changes in the estate tax.

The sector must be prepared to respond quickly, if necessary, to any number of proposals that might have deleterious effects on the charitable community and the people it serves.

Election year politics and timing further complicate the tax and budget picture. Candidates from all parties are offering solutions to the nation's fiscal problems in an effort to distinguish themselves and attract voters. As lawmakers continue their work on comprehensive tax reform in the run-up to and the aftermath of the November 2012 elections, they continue to hold hearings and discuss changes to the charitable deduction and other key tax provisions that affect the charitable sector. For these reasons, the sector must be prepared to respond quickly, if necessary, to any number of proposals that might have deleterious effects on the charitable community and the people it serves.

Sector Engagement

When President Obama first proposed limiting the value of itemized deductions for the wealthiest taxpayers as part of his effort to pay for health care reform, there were debates within the charitable community. Many nonprofits argued that the projected declines in giving (experts projected drops in giving of roughly 2 percent[37] or $3.87 billion in total individual itemized giving[38]) was a neces-

34. "Spring 2011 Beltway Influencer Omnibus," survey by Harris Interactive, questions commissioned by Independent Sector. June 2011. See Appendix C for additional survey results, including comparison with other issues.

35. "Three-fourths of Americans favor charitable tax deduction," Dunham+Company, http://dunhamandcompany.com/2012/02/three-fourths-of-americans-favor-charitable-tax-deduction/

36. Specifically, the survey asked them to agree or disagree with the statement: "Tax deductions to charities should not be cut, capped, or limited because charitable tax deductions encourage people to give their money to help others without getting anything tangible in return." In response, 78 percent said they agreed.

37. Deb Partha and Mark O. Wilhelm from The Center on Philanthropy at Indiana University project a reduction of 2.1 percent. Deb Partha and Mark O. Wilhelm, *How Changes in Tax Rates Might Affect Itemized Charitable Giving*, The Center on Philanthropy at Indiana University, March 2009, http://www.uifoundation.org/btdc/resources/changes-in-tax-rates.pdf; Paul N. Van de Water, *Proposal to Cap Deductions for High Income Households Would Reduce Charitable Deductions by Only 1.9%*, Center on Budget Policy and Priorities, March 31, 2009, http://www.cbpp.org/cms/index.cfm?fa=view&id=2700

38. Ibid. This figure, $3.87 billion (a decrease of 2.1 percent), is a total of $1.63 billion (a decrease of less than 1 percent) in itemized charitable deductions, when looking only at the change in the deductibility rate for gifts (28 percent instead of 35 percent) and $2.24 billion (a decrease of 1.2 percent) in itemized charitable deductions, when looking only at the change in the amount of disposable income because of higher taxes (39.6 percent instead of the current 35 percent). All data is for 2006, the most recent year available.

sary price to pay for the health care reforms needed by nonprofits, their employees, and those they serve. Indeed, some groups contended that lower health care costs for nonprofits would make up for lost charitable contributions revenue. Others, including most federated giving programs, fundraising organizations, associations of arts and cultural organizations, and higher education institutions, strongly objected to the proposal, contending that nonprofits should fight for the principle that charitable gifts should be excluded from taxable income because those gifts benefit the public good. They argued the proposal represented a slippery slope that would ultimately result in "de-linking" the charitable deduction from tax rates and subject the charitable deduction to annual reconsideration and the whims of any particular Congress.

Once the President proposed a cap on deductions as an offset to a variety of spending proposals, it became apparent that neither health care nor any other specific spending plan was intrinsically linked to having a cap on deductions. Sector opposition to changes to the proposals hardened, and organizations turned their attention to countering assertions that the charitable deduction was unfair and that the proposal would have little effect on giving. Independent Sector summarized the key arguments as follows:[39]

⏵ The charitable deduction is fair. Unlike other tax incentives, the charitable deduction encourages behavior for which taxpayers receive no personal tangible benefit. This deduction is a means of enriching communities, rather than individual taxpayers. Limiting the deduction would not make the tax code more equitable.

⏵ The charitable deduction is cost-effective. When an individual in the highest tax bracket donates $1,000 to charity, the government foregoes $350 in tax revenue, but communities benefit from the entire $1,000 gift. The government is unlikely to find another vehicle that can leverage private spending for community services on a nearly 3-to-1 ratio.

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39. "Preserve the Deduction for Charitable Giving," Independent Sector, http://www.independentsector.org/uploads/Policy_PDFs/Charitablededuction4272011_1.pdf

⏵ The charitable deduction enjoys broad support. An April 2011 Gallup poll found that 7 out of 10 Americans oppose eliminating the charitable deduction, regardless of whether the savings would be used to lower their taxes or reduce the deficit. Even among those Americans who do not claim the deduction, 62 percent are opposed to its elimination.

The charitable deduction is a powerful incentive to give. While Americans give to charitable organizations for many reasons, studies have shown that tax policy greatly shapes the size and number of charitable donations made by taxpayers. It has been estimated that, with no deduction for charitable gifts, annual giving would drop by 25 to 36 percent, and the proposed cap could cost charities as much as $7 billion a year in contributions.

The statements issued by most major nonprofits and philanthropic organizations about proposals to cap or change the charitable deduction reflect their belief that the charitable deduction incentivizes giving and that communities served are the primary beneficiaries of the deduction—not wealthy taxpayers.

Nonetheless, some believe that the charitable sector must begin to prepare for potential negotiations, particularly in light of concerns that other aspects of tax policy changes could have dramatic effects on the value of the charitable deduction. For example, if the top rate is capped at 25 percent, charitable giving might be higher with a refundable 25 percent tax credit than if the deduction remains tied to the tax rate. A refundable credit would create an incentive for giving not only among people who itemize and owe taxes, but also among those who do not itemize and who have no tax liability. And, despite the lack of evidence that Congress links such spending and tax decisions, some in the sector believe that negotiating a reduction to the charitable

deduction could stave off budget cuts or the elimination of tax provisions (such as the low income housing tax credit or the earned income tax credit) that are particularly critical to people living in poverty.

The statements issued by most major nonprofits and philanthropic organizations about proposals to cap or change the charitable deduction reflect their belief that the charitable deduction incentivizes giving and that communities served are the primary beneficiaries of the deduction—not wealthy taxpayers. Typical of the arguments advanced by proponents of the charitable tax deduction as it currently is structured was the article by William Daroff, vice president for public policy and director of the Washington office of the Jewish Federations of North America. In the *Stanford Social Innovation Review*, he noted, "Any limitation on the value of itemized tax deductions, including charitable contributions, will result in fewer dollars flowing to our nation's charities during a time when they most need financial support."[40]

Maintaining the charitable tax deduction is also a priority for many other national organizations such as the Council on Foundations,[41] the Performing Arts Alliance, and United Way Worldwide.

Historically, the sector's awareness of and engagement in public policy issues has often increased markedly in response to a perceived threat. Current activity related to the charitable deduction is a case in point. The Al-

liance for Charitable Reform,[42] Independent Sector,[43] and the National Council of Nonprofits[44] all penned sign-on letters in support of the charitable deduction in 2011. Notable, the National Council's letter has received almost 4,500 signatures to date.[45]

Conclusion

To date, seven proposals to limit the charitable deduction have been defeated thanks to a confluence of factors. These include the charitable deduction being coupled with the mortgage deduction, which has broad support and strong advocates; the partisan political atmosphere in Washington, which has slowed or prevented the passage of many significant bills; and the sector's work in advocating on its own behalf.

Moving forward, the sector may still face significant threats to the charitable deduction if lawmakers follow through on their promise to reform the tax code.

40. William Daroff, "Not All Tax deductions Are Equal: Preserve Charitable Contributions," *Stanford Social Innovation Review,* July 12, 2011.

41. A recent Council on Foundations issue paper states that it "strongly supports maintaining current law permitting full deductibility of itemized charitable deductions," adding that "the fact that some taxpayers pay taxes at a higher rate is a burden, not a benefit, even if there is a corresponding effect on their tax liabilities if taxable income is reduced." Council on Foundations, "Issue Paper: Maintain Current Law on Charitable Deduction Rates, Council on Foundations," May 2011.

42. Alliance for Charitable Reform represents individual, foundation, and corporate donors. Their 2011 letter to Senator Baucus that stated, "Experts testifying before the Senate Finance Committee this spring shared that higher income earners are more sensitive to changes in tax incentives. Given this sensitivity, reducing the charitable deduction for higher income earners will negatively impact the amount these donors give to charitable organizations. And higher income taxpayers account for the majority of individual giving." Letter to Finance Committee Chairman Max Baucus, July 14, 2011. The letter was signed by 20 other organizations including Independent Sector, American Association of Museums, American Red Cross, and ECFA, among others.

43. Independent Sector sent letters on July 15, 2011, to President Obama and Congress that were signed by 126 other organizations and individuals and were subsequently published in a full-page ad in *POLITICO.* "Charitable Deduction Sign-On Letter," Independent Sector, July 15, 2011, http://www.independentsector.org/uploads/Policy_PDFs/CharitableDeduction_SignOnLetter.pdf

44. The National Council of Nonprofits letter urges "congressional leaders to expressly preserve the charitable giving incentive for individuals so that charitable contributions can continue to support the vital programs and services on which communities and policymakers rely." Letter to Policy Makers from the Nonprofit Community, National Council of Nonprofits, http://www.councilofnonprofits.org/public-policy/federal/preserve-charitable-giving-letter

45. "Take Action: Protect the Charitable Giving Incentive," http://www.givevoice.org/

BEYOND THE CAUSE

THE *Art* AND SCIENCE OF ADVOCACY

ADVOCACY AND LOBBYING RULES FOR PUBLIC CHARITIES AND PRIVATE FOUNDATIONS

Public charities (including community foundations) and private foundations (on a more limited basis) have a legal right to advocate for changes in public policies and to engage public officials on a nonpartisan basis. But their voices have been diminished by a lack of clear rules as well as by common misunderstandings that inhibit them from engaging in permissible issue advocacy and lobbying. Laws that strictly limit private foundations' ability to lobby and ability to provide direct support for lobbying by their grantees have also caused many foundations to shy away from funding organizations that engage in policy advocacy and lobbying.

The voices of public charities and private foundations are further diminished in public policy debates by the fact that they are not permitted to engage in any electoral campaign activity. This disadvantage was magnified by the Supreme Court decision in Citizens United v. Federal Election Commission, which gave corporations (for-profit and nonprofit) and unions the ability to make unlimited independent expenditures for political campaign activity. This ruling further has complicated public perceptions about political activity by nonprofits, with many erroneously believing that they do participate in electoral politics and, as a result, have put charitable nonprofits at

a greater disadvantage in lobbying for their causes.[1] It has also created a potential opportunity to change outdated rules that constrain public charities and foundations from engaging in lobbying, restrict foundation support for lobbying, and govern electoral campaign activity by nonprofits.

This paper provides background information about these issues, reviews potential changes to the laws and regulations governing foundation and public charity engagement in lobbying, and discusses the current political and regulatory environment affecting the potential for change.

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1. Rules regarding advocacy, lobbying, and political campaign activity vary for different types of nonprofit organizations. Public charities formed as 501(c)(3) organizations have the right to advocate for policies they believe in, and they may also engage in a limited amount of lobbying (i.e., advocate for or against specific legislation with legislators, legislative staff, executive branch officials, or the public). They may also engage in nonpartisan election-related activities such as get-out-the-vote drives or candidate forums. Private foundations, another type of 501(c)(3) organization, are generally not permitted to lobby (with some exceptions, which include self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems), but they can inform public policy in other ways, including by providing general operating support to nonprofits that lobby on issues. Public charities and private foundations are both prohibited from engaging in partisan political campaign activity. Another type of nonprofit organization, 501(c)(4) social welfare organizations, may engage in unlimited advocacy and lobbying to advance their social purposes, and may engage in limited political campaign activity as long as it does not constitute the primary activity of the organization. For more information , see "Rules Governing Nonprofit Lobbying and Political Activity" in Appendix A.

BACKGROUND AND CONTEXT FOR LOBBYING RULES AND REGULATIONS

Congress first addressed the issue of lobbying by public charities and private foundations–organizations recognized under Section 501(c)(3) of the tax code–in the 1934 Revenue Act. The act defined lobbying as "carrying on propaganda or otherwise attempt(ing) to influence legislation," and limited lobbying by public charities and community foundations to "no substantial part" of their activities.[2]

When Congress defined new rules for private foundations in the Tax Reform Act of 1969, it imposed stricter limits on lobbying by private foundations than public charities and community foundations.[3] It prohibited private foundations from lobbying or providing direct support for the lobbying activities of their grantees, required private foundations (and potentially their managers) to pay excise tax penalties on all lobbying expenditures, and imposed tough penalties for failing to report qualifying activities in an accurate and timely manner. Congress provided several exceptions to the lobbying ban. These included self-defense lobbying, permitting private foundations to lobby on legislative proposals that would affect the existence, power and duties, tax-exempt status, or the deductibility of contributions to a private foundation; technical assistance, allowing foundation representatives to testify in response to a request from a legislative body; nonpartisan research and analysis; and discussions of broad social concerns.[4] Some experts contend that these restrictions were a response by some in Congress to the support provided by the Ford Foundation and other private foundations to civil rights organizations and voter registration programs in the South.[5] Such restrictions, they contend, reflect "the unusually fierce hostility Congress felt toward foundations at the end of the

1960s."[6] Other experts argue that there is little or no evidence in the legislative record of the rationale behind these changes.

Following investigations into the Watergate scandal and allegations of bribery by Korean businessman Tongsun Park in the early 1970s, Congress considered, but did not pass, measures to increase requirements for registration and reporting by lobbyists.[7] In that atmosphere of increased attention to lobbying reforms, nonprofit advocates sought legislation that would bring greater clarity to the types of lobbying and advocacy permissible for public charities than the somewhat vague, subjective language of the "substantial part" test included in the 1934 Revenue Act.

This effort led to the passage of the Lobbying by Public Charities Act, included as Section 1307 of the Tax Reform Act of 1976, which established an alternative lobbying expenditure test for public charities and community foundations. They could elect to use the expenditure test—commonly referred to as the 501(h) election—or otherwise automatically operate under the "no substantial part" test. Those choosing the expenditure test could spend up to 20 percent of exempt purpose expenditures on lobbying, not to exceed $1 million per year (or a lesser amount, based on a sliding scale tied to the size of their budgets). In drafting the 1976 legislation, Congress was especially concerned about grassroots lobbying that urged constituents to call lawmakers to take particular positions with regard to legislation. Unlike the 1934 law, the 1976 statute differentiated between direct lobbying of public officials by an organizations' staff or outside lobbyists, and indirect or grassroots lobbying intended to encourage public action. Grassroots expenditures were capped at $250,000, or 25 percent

2. *Revenue Act of 1934,* Public Law 73-216, *U.S. Statutes at Large* 48 (1934): 680.

3. *Tax Reform Act of 1969,* Public Law 91-172, *U.S. Statutes at Large* 83 (1969): 487.

4. *Code of Federal Regulations,* Propaganda influencing legislation, title 26, sec. 53.495-2(d).

5. Joel L. Fleishman, "Foundations and Government: Social Innovation, Policy Advocacy and Collaboration to Improve Government Effectiveness," (presentation, Annual Research Conference, Association for Public Policy Analysis and Management, November, 2009): 11.

6. Thomas A. Troyer and Douglas Varley, "Private Foundations and Policy Making: Latitude Under Federal Tax Law," Forum: Leveraging Philanthropic Assets for Public Problem Solving, The Center on Philanthropy and Public Policy, University of Southern California (May 2002): 2.

7. Senator Robert Byrd delivered the essay, "Lobbyists," on September 28, 1987, and updated it in 1989 for inclusion in *The Senate, 1789-1989.* Senator Robert Byrd, "Lobbyists," *The Senate, 1789-1989* (Washington, DC: U.S. Government Printing Office, 1989), http://www.senate.gov/legislative/common/briefing/Byrd_History_Lobbying.htm

of the total expenditure limit for a particular organization.[8] Similar to the Tax Reform Act of 1969, Congress provided for a self-defense exception for those that take the 501(h) election, however, the self-defense exception does not apply to grassroots lobbying.[9]

Nearly twenty years later, in 1993, Congress acted again to regulate lobbying, this time focusing on lobbying by businesses and noncharitable exempt organizations. The tax code was amended to reinstate provisions that denied businesses a tax deduction for either direct or grassroots lobbying at the federal level, but permitted them to deduct expenses for lobbying local government officials. Congress also broadened the definition of lobbying to include the executive branch of government, as well as legislators, and established new rules for certain noncharitable tax exempt organizations, including 501(c)(4) social welfare organizations to require notification to members if a portion of their dues are spent on lobbying activities and are therefore not deductible as a business expense. Failure to do so would result in the organization paying a proxy tax.[10]

In 1995, Representative Ernest Istook (R-OK) offered an amendment to several pieces of legislation that would have significantly restricted the ability of nonprofits receiving federal grants from engaging in advocacy and lobbying with their *private* funds. The amendment was considered a serious threat to the sector's ability to have a voice in public policy debates, and the government watchdog group OMB Watch was joined by the Alliance for Justice, Independent Sector, and others to lead an effort to mobilize nonprofit organizations across the country to successfully defeat it.

Later that year, Congress passed The Lobbying Disclosure Act (LDA) of 1995, which created a new definition of lobbying that focused on the government actor that an organization attempts to influence.[11] The Act also specified the individuals and organizations required to register and file regular reports with Congress on their financial activities and lobbying contacts,[12] clarified key concepts such as "lobbyist" and "lobbying activities," and identified quantifiable thresholds for lobbying registration and reporting.[13] Public charities that opted to take the 501(h) election were permitted to report under LDA using the 501(h) definition of lobbying; but those operating under the "insubstantial part" test would now have to collect and report lobbying activities and expenditures using two different definitions—one for their annual report to the IRS, and another for their LDA reports to Congress.

Following further scandals related to lobbyists, Congress passed the Honest Leadership and Open Government Act of 2007, which amended the LDA to further expand reporting requirements, particularly for lobbying coalitions, increased the frequency of reports and the types of activities to be disclosed, strengthened "revolving door" rules under which members of Congress and their staff are restricted from lobbying for a period of time after they leave office, and imposed other rules governing interactions between lobbyists and Congress. All of these provisions apply equally to lobbyists representing taxable and tax-exempt entities.

President Obama embraced the trend of strengthening restrictions on lobbyists regardless of whether they represent taxable or tax-exempt organizations. He issued an executive order on his first day in office in January 2009 banning anyone who had been a registered lobbyist in the

8. Independent Sector, "Tax Policy and Advocacy Experts Symposium" (meeting summary, Independent Sector, April 14-15, 2011).

9. *Code of Federal Regulations,* Lobbying expenditures, direct lobbying communications, and grassroots lobbying communications, title 26, sec. 56.4911-2(c)(4).

10. Aprill and Hansen note that subsequent administrative rulings exempted labor unions and some other organizations from this requirement. Ellen P. Aprill and Richard L. Hansen, "Lobbypalooza," *The American Interest* (January/February 2011), http://www.the-american-interest.com/article.cfm?piece=911

11. *Lobbying Disclosure Act of 1995,* Public Law, 104-65, *U.S. Statutes at Large* 109 (1995): 691.

12. Public Citizen, "History of the Lobbying Disclosure Act," July 23, 2005, http://www.cleanupwashington.org/lobbying/page.cfm?pageid=38

13. Ibid. The Lobbying Disclosure Act (LDA) also modified reporting requirements for lobbyists representing foreign interests. Under the LDA, lobbyists representing foreign governments or foreign political parties must continue registering under the Foreign Agents Registration Act (FARA) and need not register under LDA. Lobbyists representing private foreign interests may register under LDA and then need not register under the more stringent FARA.

preceding two years from being appointed to a position[14] in any executive agency that [he/she] lobbied within the two years before the date of [his/her] appointment.[15] Although the president soon waived this rule for some of his appointees, this "revolving door ban" was strengthened the following year and codified in a memorandum to heads of executive departments and agencies asking them "not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions." [16] The Obama Administration also placed significant restrictions on the ability of lobbyists to communicate with executive branch officials regarding implementation of the economic stimulus bill passed by Congress in early 2009.[17]

On another front, in 2011 concerns surfaced that funds distributed to states for obesity prevention grants under the Communities Putting Prevention to Work Initiative (CPPW), a program established in the American Recovery and Reinvestment Act of 2009, were being used to lobby local governments to increase sugar and soda taxes.[18] While Section 503 of the annual Labor-HHS appropriations bill has for several years included a provision that prohibits lobbying with federal funds by federal agencies, grantees, and contractors, Congress expanded the provision included in the Consolidated Appropriations Act of 2012 to include, among other things, an explicit prohibi-

tion on using government funds to lobby local governments.[19] Members of the House Energy and Commerce Committee questioned Secretary of Health and Human Services Kathleen Sebelius at a March 2012 hearing about the use of federal grant money to lobby and called for an investigation into whether grantees had committed any violations.[20] To date the investigation has resulted in the Inspector General at the Health and Human Services Department issuing an "early alert" letter to the Director of the Centers of Disease Control, who administered the CPPW grant program, that grant money may have been improperly used for lobbying efforts and that the CDC may have led recipients to believe it was appropriate.[21] In addition, a right-leaning watchdog group, Cause of Action, has sent letters to CPPW grant recipients[22] threatening legal action, which may be having a further chilling effect on the participation of 501(c)(3) organizations in public policy debates. There is also a danger that this expanded prohibition language will be purposefully or unintentionally included in other appropriations bills in the future.

Issues with Current Lobbying Restrictions

There is widespread agreement that the laws and regulations governing lobbying by public charities and private foundations deter many organizations from engaging in advocacy that would advance their charitable purpose and contribute to erroneous perceptions that such organizations should not engage in any lobbying.

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14. These restrictions applied to appointees who were "full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency."

15. Executive Order no. 13490, *United States Code*, title 3, sec. 301 and title 5 sec. 3301 and 7301 (2009), http://www.whitehouse.gov/the-press-office/ethics-commitments-executive-branch-personnel

16. White House Office of the Press Secretary, "Presidential Memorandum–Lobbyists on Agency Boards and Commissions," press release, June 18, 2010, http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions

17. Jesse Lee, "Update on Lobbyist Contacts Regarding the Recovery Act," *The White House Blog*, April 27, 2009, http://www.whitehouse.gov/blog/2009/04/27/update-lobbyist-contacts-regarding-recovery-act

18. Caroline May, "Congressmen Demand Answers on lobbying Conducted with Stimulus, Anti-obesity Grants," *The Daily Caller*, March 11, 2012, http://dailycaller.com/2012/03/11/congressmen-demand-answers-on-lobbying-conducted-with-stimulus-anti-obesity-grants/

19. See amended language of the Consolidated Appropriations Act of 2012: http://www.independentsector.org/uploads/Policy_PDFs/ConsolidatedAppropriationsAct2012.pdf

20. Representative Ed Whitfield and Representative Brett Guthrie, Letter to Secretary Kathleen Sebelius, March 5, 2012, http://www.independentsector.org/uploads/Policy_PDFs/WhitfieldGuthrietoHHS3-5-2012.pdf

21. Sam Baker, "HHS Inspector General: Health Grants Could Have Illegally Funded Lobbying" *The Hill*, July 10, 2012, http://thehill.com/blogs/healthwatch/lobbying/237015-hhs-inspector-general-says-grants-may-have-illegally-funded-lobbying

22. Cause of Action, "RE: Liability Alert," Letter to David Fleming, Director of Public Health – Seattle & King County," February 15, 2012, http://www.independentsector.org/uploads/Policy_PDFs/CauseofActionletter.pdf

NUMEROUS CONFLICTING DEFINITIONS OF LOBBYING

As outlined above, there are two types of federal law (lobby disclosure law and the U.S. tax code) that govern charitable and philanthropic sector lobbying. These laws include at least five different definitions of what constitutes lobbying, which creates legal ambiguity and confusion among public charities, community foundations, and private foundations.

In defining lobbying, some laws focus on the actor whom an organization is trying to influence, and include different combinations of legislators, federal executive branch officials, and the public. Other laws focus not on the people being lobbied, but on the laws and regulations that an organization is trying to influence. One tax law provision further differentiates between direct lobbying efforts to influence a public official and indirect (grassroots) lobbying, which encourages the public to take action to influence legislation.[23] The Internet has significantly lowered the costs of grassroots lobbying, and many have suggested that the distinction between direct and grassroots lobbying is no longer relevant and should be eliminated.[24]

Given that inconsistencies are rooted in a wide variety of laws, some experts have argued that Congress should adopt a uniform definition of lobbying. Notably, a group of experts convened by Independent Sector in April 2011 agreed that significant progress could be made administratively to harmonize the definitions,[25] although the IRS is generally reluctant to revisit regulations absent a court decision or new legislation.

DUAL REPORTING REQUIREMENTS

In addition to multiple definitions of lobbying, the two legal regimes have two separate sets of reporting requirements, which increase the cost and difficulty of compli-

ance and enforcement. For example, expenditures for grassroots lobbying are exempted from federal lobbying reports required under the LDA, but such expenditures must be included on the annual information returns exempt organizations must file with the IRS. Further, the LDA does not apply to lobbying on state or local issues, whereas reports for the IRS must include expenditures related to influencing actions by Congress, state legislatures, local governing bodies, or public referenda and ballot initiatives.

> *These laws include at least five different definitions of what constitutes lobbying, which creates legal ambiguity and confusion among public charities, community foundations, and private foundations.*

Charities that have opted to take the 501(h) election are permitted to use the IRS rules when filing their LDA reports, which provide consistency between their federal lobbying reports and their Form 990 reports, but makes the LDA reports of public charities that use the 501(h) election inconsistent with those of public charities that do not. Problems also arise when comparing a charity's LDA report with reports filed by lobbying firms with whom they contract, as the latter must report the full amount paid by the charity even if that includes services that do not meet the IRS definitions of lobbying. As noted earlier, businesses are permitted to deduct expenses for local lobbying (but not state or federal lobbying) on their income taxes, further confusing understanding of what constitutes lobbying and related reporting requirements for charities.

UNCLEAR LIMITS

Various tax provisions also apply different types of limits on nonprofit and philanthropic sector lobbying. The "no substantial part" test requires that the amount of lobbying activities be compared to the amount of other activities of the public charity or community foundation, but does not

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23. P.L. *Tax Reform Act of 1976,* Public Law 94-455, *U.S. Statutes at Large* 90 (1976): 1520.

24. Independent Sector, "Tax Policy."

25. Ibid.

include a specific measure of activities,[26] and the federal courts are divided on the question of what constitutes "no substantial part." In addition, there is no self-defense exception for public charities and community foundations that operate under the "no substantial part" test.[27]

The lack of clarity on limits and potentially drastic penalties for noncompliance often lead public charities and community foundations to eschew lobbying entirely.

As a result, some public charities operating under the "no substantial part" test deliberately limit lobbying expenditures to no more than 5 percent of their budgets, believing that the IRS will judge any amount below that level to be insubstantial. However there is no indication that the IRS uses or has used a 5 percent threshold in its determinations, and, in fact, says that it makes a determination based on "all the pertinent facts and circumstances in each case."[28] Organizations operating under this provision that are found to be conducting excess lobbying are subject to loss of tax-exempt status, which also results in making all of their income subject to tax. In addition, a 501(c)(3) organization (other than a church or private foundation) that loses its tax-exempt status due to excessive lobbying is subject to an excise tax equal to 5 percent of their lobbying expenditures for that year.[29] In most instances involving violations, the IRS has issued a warning or required that steps be taken to prevent future violations. Nevertheless, the lack of clarity on limits and potentially drastic penalties for noncompliance often lead public charities and community foundations to eschew lobbying entirely.

Compared to the "no substantial part" test, the 501(h) expenditure test offers relative safety and clarity for public charities and community foundations. Further, if a public charity makes the 501(h) election and then exceeds its annual lobbying limit for either total or grassroots lobbying, it is not subject to immediate revocation of its tax-exempt status. It must pay an excise tax on the excess lobbying expenditures that year, but will only be subject to loss of exempt status if over a four-year averaging period the organization's average annual total or grassroots lobbying expenditures exceed 150 percent of the limit.

Despite the relative clarity and safety offered by the 501(h) expenditure test, in the over 35 years that the election has been available, less than an estimated 3 percent[30] of charities have made the election, and numerous studies document the reluctance of nonprofits and foundations to engage in permissible lobbying and advocacy. Some organizations may not fully understand or appreciate the advantages the 501(h) election provides. In other cases, organizations and their boards erroneously fear that taking the 501(h) election will draw unwanted attention from the IRS or lawmakers. Still others say that it may be too restrictive for small public charities that rely heavily on volunteers and have small budgets relative to their total activities, as well as for very large organizations that are constrained by the $1 million cap on expenditures. The $1 million cap (of which a maximum of $250,000 can be spent on grassroots lobbying) was established in 1976 and was not indexed for inflation, which has significantly eroded the value. The National Center on Philanthropy and the Law estimates that, had the cap been indexed, it would be approximately $6 million in 2011.[31] As a result, some larger nonprofits have chosen to drop the 501(h) election because it unduly limits their lobbying efforts,[32] while others have moved their lobbying efforts to a

26. Applying an expenditure test to activities is particularly problematic when an organization utilizes volunteers to conduct activities, regardless of whether those activities are lobbying or service delivery.

27. *Exemption from tax on corporations, certain trusts, etc., U.S. Code* 26 (2000), § 501(h)(7)(B).

28. "Measuring Lobbying: Substantial Part Test," Internal Revenue Service, http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying—Substantial-Part-Test

29. Ibid.

30. Gary D. Bass, David F. Arons, Kay Guinane, and Matthew F. Carter, *Seen But Not Heard: Strengthening Nonprofit Advocacy* (Washington DC: The Aspen Institute, 2007).

31. Independent Sector, "Tax Policy."

32. For example, The American Heart Association has chosen not to adopt the section 501(h) election rules and reported $2.3 million in lobbying expenditures on its Form 990 for fiscal year 2009, a fraction of a percentage of its nearly $600 million budget but more than twice the limits.

separate 501(c)(4) nonprofit. A final problem with the 501(h) election is that it is not available to either religious bodies or private foundations.

RESTRICTIONS ON PRIVATE FOUNDATION FUNDING OF LOBBYING

Tax law prohibitions on lobbying by private foundations also serve to inhibit nonprofit engagement in lobbying. Responding to a request from Charity Lobbying in the Public Interest, the IRS provided a letter of clarification in 2004 which delineates how foundations may fund nonprofits that lobby and "provides suggested language, which foundations may safely use in their grant letters to nonprofits to facilitate that funding."[33] Nonetheless, many foundations and their legal advisors continue to have deep concerns that such funding will lead to legal challenges, and some include prohibitions in grant agreements that go far beyond legal requirements.

Some foundations require grantees to stipulate that none of the funds received will be used for lobbying, even though they are providing general operating support and such a stipulation is not required. In addition, even foundations that do not place such restrictions on grantees often ask whether the applicant engages in lobbying, which leads some nonprofits to believe that they will be ineligible for a grant if they do lobby, creating a chilling effect on legitimate lobbying by nonprofit organizations. Program staffs of foundations are not always aware of the rules and hence discourage organizations from using any part of a potential general support grant for advocacy related activities. Some experts have suggested that the foundation prohibitions on lobbying are "inappropriate extensions of federal law to legitimate activities of charities and should be repealed."[34]

ADMINISTRATION RESTRICTIONS ON EMPLOYMENT OF FORMER LOBBYISTS

Many charities have also reported that recent "revolving door" restrictions imposed by the Obama Administration (prohibiting registered lobbyists from serving in the Administration or on commissions and advisory boards within the executive branch) have further served to impede nonprofit lobbying. Even though these restrictions are not codified in law, many qualified individuals are not willing to accept or remain in positions that require registration as a federal lobbyist because it might limit the possibility of future service in this or future administrations. Others are electing not to register as lobbyists. Further, many advocacy-focused organizations believe that this policy was intended to target corporations with special interests and unfairly has been applied to them given that their missions are to serve the public good.

Issues with Regulations Governing Political Campaign Activity

In the wake of the conviction of former lobbyist Jack Abramoff as well as the Supreme Court ruling on *Citizens United*, both the media and Members of Congress have raised questions about the increased use of 501(c)(4) social welfare organizations as vehicles for partisan political activities, as well as issue advocacy and permissible election-related activities (such as nonpartisan get-out-the-vote drives) by 501(c)(3) organizations. A number of issues have been identified, and are described below.

LACK OF CLEAR SPENDING LIMITS

While 501(c)(3) public charities and private foundations are prohibited from engaging in partisan political campaign activity, 501(c)(4) social welfare organizations are permitted to do so as long as this activity is not the "primary purpose of the organization".[35] This has generally been interpreted by the courts and the IRS to mean that

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33. Charity Lobbying in the Public Interest has since changed its name to Center for Lobbying in the Public Interest and become a part of the National Council of Nonprofits. "IRS Letter Clarifying Foundation Funding of Nonprofits that Lobby Provides New Flexibility for Grantmakers," press release, Charity Lobbying in the Public Interest, January 26, 2005.

34. Marion R. Fremont-Smith, "Is It Time to Treat Private Foundations and Public Charities Alike?" *Exempt Organization Tax Review* (2006): 11.

35. See Appendix A for additional detail on the differences among the various organizational forms.

political campaign spending cannot exceed 49 percent of the organization's total spending,[36] but the current regulations do not establish a clear limit.

DONOR DISCLOSURE REQUIREMENTS

Like 501(c)(3) public charities and private foundations, 501(c)(4) social welfare organizations are not required to publically disclose the identity of their donors, although the names of donors who give more than $5,000 annually must be reported to the IRS. However, 501(c)(4) social welfare organizations are permitted to make contributions to Super PACs, which may engage in unlimited electoral campaign activity, provided that the Super PAC does not coordinate with or make contributions to candidates or political committees.[37] While Super PACs may accept unlimited contributions from corporations, unions, and individuals, they must disclose the identity of those donors. Since 501(c)(4) social welfare organizations do not have to disclose donor names, giving to 501(c)(4) organizations may be more attractive than giving to Super PACs for some donors, especially since the 501(c)(4) can also give to Super PACs.

A June 2012 report by the Center for Responsive Politics and the Center for Public Integrity found that 501(c)(4) organizations outspent Super PACs by a 3-2 margin in the 2010 election, and nearly 90 percent of the spending by 501(c)(4) organizations was done by organizations that never publicly disclosed their donors.[38] In the 2012 election cycle, news outlets, including the *Los Angeles Times*,[39] the *Washington Post*,[40] and *Newsweek*[41] have highlighted electoral campaign spending by 501(c)(4) organizations. Many of the press reports make no distinction between 501(c)(4) social welfare organizations that have long engaged in issue advocacy and those apparently being created specifically to circumvent campaign disclosure rules and/or engage in partisan political activity. In addition, press reports that use the term nonprofits often do not distinguish between 501(c)(4) organizations and 501(c)(3) charitable organizations, creating a reputational risk for charitable organizations.

APPLICATION OF GIFT TAX TO 501(C)(4) CONTRIBUTIONS

In May 2011, the IRS confirmed that it was examining donations to one or more 501(c)(4) organizations to determine whether the donors should have paid federal gift tax on the donations. This examination was based on the 1982 IRS Revenue Ruling 820-216. That ruling indicated that gift tax liability would not be asserted for donations to groups formed under Section 527(e) of the Internal Revenue Code. It did not specifically exempt donations to 501(c)(4)s from gift tax rules, and, in fact, said that "gratuitous transfers" to persons other than charitable or political organizations "are subject to the gift tax absent any specific statute to the contrary." Since 1982, the IRS had not issued further guidance for 501(c)(4)s, despite requests from tax experts and advisors. In 2004, the American Bar Association's Committee on Exempt Organizations of the Section of Taxation convened a task force which concluded that, "In view of the apparent lack of enforcement, we recommend that IRS take this matter under advisement and announce that the Service will

36. Richard Briffault, "Updating Disclosure for the New Era of Independent Spending," Columbia Law School Public Law & Legal Theory Working Paper Group, April 16, 2012, http://ssrn.com/abstract=2040934

37. Super PACs differ from other 527 political organizations, such as traditional PACs or political parties, which are permitted to donate directly to candidates and coordinate with candidates, but are subject to annual contribution limits of $5,000 per donor.

38. Center for Responsive Politics and Center for Public Integrity, June 2012, http://www.iwatchnews.org/2012/06/18/9147/nonprofits-outspent-super-pacs-2010-trend-may-continue

39. "Democratic Nonprofits Send Funds to 'Super PACs' " *Los Angeles Times*, February 3, 2012, http://articles.latimes.com/2012/feb/03/nation/la-na-superpac-disclose-20120204

40. "Secret Money is Funding More Election ads," *The Washington Post*, February 6, 2012, http://www.washingtonpost.com/politics/secret-money-is-funding-more-election-ads/2012/02/03/gIQAfTxEuQ_story.html?wpisrc=nl_pmpolitics

41. "Super PACs and the Nonprofits That Fund Them" *Newsweek*, March 12, 2012, http://www.thedailybeast.com/newsweek/2012/03/11/super-pacs-and-the-nonprofits-that-fund-them.html

not assert that such gifts are taxable while the review of the issue is pending."[42]

Many tax advisors were caught off guard by the IRS's 2011 investigation. Members of Congress and attorneys for the anonymous donors subsequently wrote letters to the Treasury Department, demanding that the audits be terminated and that the IRS immediately issue clarifying guidance on the application of federal gift tax rules to 501(c)(4) donations. On July 7, 2011, the IRS Deputy Commissioner for Services and Enforcement announced that the audits had been halted and that the IRS would determine whether there is a need for further guidance. In a public statement on its website, the IRS announced that it would not use resources to pursue examinations on this issue "while we review the need for additional guidance or legislation" and that "any future action we take will be prospective and after notice to the public."[43]

Some now speculate that Congress may act to address explicitly the applicability of the gift tax to contributions to 501(c)(4) organizations. This could open the door to consideration of additional donor disclosure requirements, as well.

IRS REGISTRATION REQUIREMENTS

There is no requirement that Section 501(c)(4) organizations register and receive a determination letter from the IRS before they commence operations. It is possible for such organizations to operate without meeting the qualification criteria for that organizational form, and as long as 17 months before they file their first Form 990 with the IRS. The IRS recently began sending detailed questionnaires to a number of Section 501(c)(4) organizations that have self-declared, including extensive questions about their electoral campaign activities, which has

prompted a flurry of inquiries from Capitol Hill about the intentions of the IRS.

RESTRICTIONS ON POLITICAL CAMPAIGN AND ELECTION-RELATED ACTIVITIES

Unclear distinctions between prohibited political activities, permissible issue advocacy, and permissible election-related activity have also generated confusion and concern with respect to both compliance and enforcement. A staff memorandum in January 2011 to Senator Grassley (R-IA), former chairman of the Senate Finance Committee, noted that because of the electioneering prohibition, "the IRS is required to draw on its limited resources to police a provision that has no express purpose that can be deduced from its legislative history, is harsher than what is necessary to address legitimate policy concerns, is vague (and therefore difficult to comply with and for the IRS to enforce), and rarely results in any punishment being imposed on non-complying organizations or excise tax revenues being collected for the U.S. Treasury."[44]

After receiving numerous complaints about improper political activities by nonprofits in the 2004 federal elections, the IRS launched its Political Activity Compliance Initiative (PACI) and found some level of prohibited activity in over half of the 110 tax-exempt organizations examined. The IRS subsequently released new examination procedures with lengthy new guidelines, replete with examples, to help charities better understand what they can—and cannot—do during election periods.[45] The IRS considers all the "facts and circumstances" in determining whether an action or communication is partisan or nonpartisan. Taken together, these actions have left many nonprofits uncertain and fearful about engaging in any election-related activity. The IRS has not yet released

42. "Comments of the Individual Members of the Exempt Organizations Committee's Task Force on Section 501(c)(4) and Politics," American Bar Association, May 25, 2004, http://www.americanbar.org/content/dam/aba/migrated/tax/pubpolicy/2004/040525exo.authcheckdam.pdf

43. "IRS Statement on the Applicability of Gift Tax on 501(c)(4) Organization Contributions," Internal Revenue Service, July 7, 2011, http://www.irs.gov/uac/IRS-statement-on-applicability-of-gift-tax-on-501%28c%29%284%29-organization-contributions

44. Theresa Pattara and Sean Barnett, "Memorandum to Senator Grassley on Review of Media-Based Ministries," January 2011, 54-55, http://finance.senate.gov/newsroom/ranking/release/?id=5fa343ed-87eb-49b0-82b9-28a9502910f7

45. "Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations," Internal Revenue Service, February 2006, http://www.irs.gov/pub/irs-news/fs-06-17.pdf

the results of its PACI investigation of possible election-eering activities by exempt organizations in the 2008 elections. The delayed issuance of this report has cre-ated concern that nonprofits will be reluctant to engage in legally permitted activities during the 2012 campaign cycle because of lingering uncertainty about how the IRS will interpret their activities.

Some experts argue that this problem could be cor-rected if the IRS developed clearer rules to define pro-hibited or limited "electioneering activities" by 501(c)(3) organizations. To do so, they suggested that charitable organizations and advisory committees of the American Bar Association and the American Institute of Certified Public Accountants engage in a joint effort with the IRS.

Other experts and advocates have challenged the con-stitutionality of the electioneering prohibition and have called on the courts and Congress to remove that pro-hibition. Representative Walter Jones (R-NC) sponsored the legislation in the 108th, 109th, and 110th Congresses that would repeal the political campaign prohibition first for houses of worship and, in the last version of the proposal, for all public charities. Most experts and leading coalitions believe that such a change would raise questions about the continued deductibility of contribu-tions and could "create significant reputational risk for the nonprofit sector."[46] The Pew Forum on Religion and Public Life found that over two-thirds of Americans sur-veyed in 2008 were opposed to "churches coming out in favor of particular political candidates," regardless of the respondents' religious affiliation.[47]

Some Republican senators have shown interest in pick-ing up earlier efforts by Representative Walter Jones to remove prohibitions on partisan political activity by 501(c)(3) nonprofits. In January 2011, just prior to relinquishing his seat as Finance Committee Ranking Member to Senator Hatch (R-UT), Senator Grassley released his "Review of Tax Issues Raised by Media-based

Ministries."[48] He called upon the Evangelical Council for Financial Accountability (an accreditation agency) to establish a commission to address "some of the most challenging tax and policy issues involving religious or-ganizations," including "whether the current prohibition against political campaign intervention by churches and other nonprofits should be repealed or modified."

Current Political Climate

Commentators and some public officials and their staffs have continued to express general concerns about the excessive influence of lobbyists in the nation's policy decisions and elections. However, many have expressed support for lobbying by the nonprofit sector.

In July 2011, Independent Sector commissioned a survey of key Washington, D.C., government decision mak-ers (staff in congressional offices and executive branch officials), members of the media, and thought leaders at associations, foundations, universities, and advocacy orga-nizations to determine their perceptions of nonprofit ad-vocacy and lobbying. That survey found highly favorable views of the nonprofit sector among the respondents, and fully half believed that the ability of charitable non-profits to engage in nonpartisan advocacy and lobbying has had a significant impact on achieving their missions. Among this group, 20 percent said that changes should be made to ease restrictions on nonpartisan lobbying by charitable nonprofits and philanthropic organizations. About 8 percent said the rules should be made more restrictive, and over half (54 percent) thought that no change was needed.[49]

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46. Independent Sector, "Tax Policy."

47. "Americans Wary of Church Involvement in Partisan Politics," The Pew Forum on Religion and Public Life, October 1, 2008, http://pewforum.org/Church-State-Law/Americans-Wary-of-Church-Involvement-in-Partisan-Politics.aspx

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48. Senator Grassley served as either the Ranking Member or Chairman of the Committee on Finance from 2001-2010. As of the writing of this report, he serves as a senior member of the committee. Expenditures authorized by this committee constitute some two-thirds of the entire federal budget. For a list of current members and an overview of the committee's jurisdiction, see http://finance.senate.gov/about/jurisdiction/

49. Spring 2011 Beltway Influencer Omnibus, Harris Interactive, questions commissioned by Independent Sector. See Appendix C for more information.

During 2011, Independent Sector government relations staff spoke with approximately 50 congressional staff members (primarily staff of members of House and Senate tax-writing committees, leadership, and freshmen representatives) about their views on lobbying by nonprofit organizations, whether they would like to hear more from nonprofit organizations in the communities they represent, and whether they thought the rules that restrict nonprofit lobbying were appropriate. Most congressional staff members had little specific knowledge about non-profit lobbying rules, and, in general, appeared to have a negative reaction to the notion of lobbying by nonprofits. Yet almost every office visited expressed favorable perceptions of charities and said that they want to hear more from nonprofits in their own district or state.

Inappropriate use of tax-exempt organizations has been a key focus of both Democratic and Republican Senate Finance Committee leaders for the last five years. In February 2007, Senator Charles Grassley, then ranking member of the committee, issued a statement in response to an announcement by Fannie Mae that it was closing its charitable foundation. He wrote: "I'm not done looking into non-profits and political activity. There are still very serious questions to be answered about organizations using their non-profit status to launder inappropriate activity. I'll continue to urge the IRS to enforce existing laws that crack down on abuse and will propose legislation, as needed, to fill in enforcement gaps. Jack Abramoff was gifted at using charities for political ends, but plenty of others have his talent. They need reckoning, too."[50]

Increased electoral campaign activity by 501(c)(4) organizations in the 2012 election cycle has drawn the attention of the IRS and lawmakers. Lawmakers from both political parties have recently written letters to the IRS questioning what is perceived to be selective enforcement of regulations governing 501(c)(4) social welfare organizations or, conversely, urging the IRS to investigate potentially improper political activity. Federal and state legislation has been introduced that would increase do-

nor disclosure requirements for nonprofit organizations that engage in political activity, and a number of outside groups and legal experts have offered proposals to address the perceived problems.

A March 2012 letter[51] signed by 32 House Democrats encouraged the IRS to investigate possible improper political campaign activity, subsequently followed up by at least four letters from Republican leaders questioning the IRS about selective enforcement of conservative groups. Subsequently, Senator Hatch led a letter[52] signed by 10 Republican Senators questioning the IRS's request for confidential donor information, and seven Democratic Senators, led by Senator Whitehouse (D-RI), announced[53] they were convening a task force to pursue legislative and administrative means to increase donor disclosure for political activity.

The DISCLOSE Act, which would increase donor disclosure requirements has been reintroduced in the 112th Congress by Representative Chris Van Hollen (D-MD) in the House of Representatives (HR 4010) and by Senator Whitehouse in the Senate (S 2219), after failing to gain Senate approval by one vote in the previous Congress.[54] The bills would require any organization that spends more than $10,000 on political campaign activity, includ-

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50. "Grassley: Review of Non-profits' Political Activity Continues, Despite Fannie Mae Foundation Move," press release, U.S. Senate Committee on Finance, February 23, 2007, http://finance.senate.gov/newsroom/ranking/release/?id=de211ba0-66a3-4691-bed1-94b454b8fc36

51. "Welch leads 32 Democrats in Effort to Crack Down on Wild West Campaign Atmosphere in Post-Citizens United World," press release, United States Congressman Peter Welch, March 28, 2012 http://www.welch.house.gov/index.php?option=com_content&view=article&id=1951%3Awelch-leads-32-democrats-in-effort-to-crack-down-on-wild-west-campaign-atmosphere-in-post-citizens-united-world&catid=41%3A2012-press-releases&Itemid=17

52. Senators Orrin G. Hatch, Charles Grassley, Pat Roberts, Michael B. Enzi, John Cornyn, John Thune, Mitch McConnell, Lamar Alexander, Kay Bailey Hutchison, John Kyl, "Letter to Commissioner Douglas H. Shulman, Internal Revenue Service," August 6, 2012, http://www.independentsector.org/uploads/Policy_PDFs/HatchlettertoIRS.pdf

53. "Senate Democrats Form Working Group to Craft New Response to Rise of Super PACs and Unlimited Spending by Outside Groups," press release, United States Senator Sheldon Whitehouse, March 13, 2012, http://www.whitehouse.senate.gov/news/release/senate-democrats-form-working-group-to-craft-new-response-to-rise-of-super-pacs-and-unlimited-spending-by-outside-groups

54. In the 111th Congress, the House of Representatives passed the DISCLOSE Act (HR 5175) on June 24, 2010, by a 219-206 vote, however the Senate was unable to pass the Senate version of the DISCLOSE Act (S 3628), which lost by a vote of 59-39 on September 23, 2010.

ing 501(c)(4) social welfare organizations, 501(c)(5) unions, 501(c)(6) trade associations, corporations, PACs and Super PACs, to, among other things, identify donors who contribute $10,000 or more to the organization. Both bills enjoy substantial support (161 and 44 cosponsors, respectively). Following a March 2012 hearing on S 2219 in the Senate Rules and Administration Committee, a second version of the bill (S 3369) was introduced in July 2012. The Senate failed to end a filibuster a few days later; a second attempt to bring the bill to the floor was also unsuccessful.[55]

Current Judicial Climate

Legal scholars have suggested that a direct challenge to lobbying restrictions on 501(c)(3) organizations is not likely to succeed in the courts because the prohibition is linked to tax-favored dollars. They note that it may be difficult to prove an argument that the prohibition is substantially overbroad and has caused harm to any exempt organizations. It may also be difficult find an acceptable plaintiff to argue that the law provides insufficient clarity both for charities that wish to engage in lobbying and government officials charged with enforcement the rules. In addition, there could be substantial danger in advancing such a suit because it might undermine public trust in charitable organizations due to negative media coverage. Further, the cost of bringing such a suit would be substantial, and it is unlikely that a nonprofit governing board would be willing to support it financially. Experts also note that under Chief Justice Roberts, the Supreme Court has demonstrated that it is friendly to broadening free speech and allowing greater participation in lobbying and electioneering, but the Court has also been in favor of disclosure requirements associated with such participation.

If either Congress or the IRS act to make it more difficult to attain or maintain tax exempt status as a 501(c)(4) organization, the Roberts' Court might be receptive to a case based on the new restrictions impeding free speech through public charities, since

Legal scholars have suggested that a direct challenge to lobbying restrictions on 501(c)(3) organizations is not likely to succeed in the courts because the prohibition is linked to tax-favored dollars.

establishing a separate 501(c)(4) subsidiary is currently the only alternative for public charities that would like to carry on more substantial lobbying efforts than are permitted under Section 501(c)(3). Here, too, some are concerned that the Roberts' Court might impose new donor disclosure requirements.

Sector Engagement

Efforts related to the rules and regulations of advocacy and lobbying are somewhat decentralized. There are myriad of organizations whose missions include championing causes such as nonprofit advocacy rights, voting rights, voter participation, and government transparency and accountability, including Alliance for Justice, NonprofitVOTE, League of Women Voters, OMB Watch, Public Citizen, the Sunlight Foundation, and others. They are joined by organizations that view advocacy and lobbying as central to their ability to achieve their missions. These groups include United Neighborhood Centers of America, YMCA of the USA, and the Public Education Network, among many others.[56] While sector organizations have proven their ability to mobilize around serious threats, as exemplified by their defeat of the Istook Amendment in 1995, engaged organizations today do not appear to be unified by a central leader or shared goal. Rather, they are engaged in a number of nuanced issues, from lobbying restrictions on public charities to voter registration requirements to "revolving door" restrictions for former lobbyists.

In the wake of *Citizens United* there has been increased interest in the political campaign activity of 501(c)(4)

55. U.S. Senate Roll Call Votes, 112th Congress, 2nd Session, vote 180, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=2&vote=00180

56. This research identified over 230 organizations that engaged in public policy activity related to advocacy and lobbying regulation in the last five years. See the Network Maps in this volume for details.

organizations, including efforts in support of increased donor disclosure requirements and convenings aimed at better understanding the impact of the ruling on the nonprofit sector's voice in public policy debates.

Conclusion

Much of the sector's engagement in this area has been in response to policy developments, such as the introduction of the DISCLOSE Act and the Administration's ban on hiring former lobbyists. Some organizations, including Independent Sector and Alliance for Justice have called attention to the confusing and ambiguous rules and limits on lobbying by public charities. While most public charities generally agree that changes to lobbying rules would be desirable, many believe that changes in the lobbying rules for private foundations are necessary, as well, because without greater financial support from foundations, the amount of lobbying by public charities will not increase. Many private foundations have expressed interest in changing the rules but are also hesitant to initiate such changes in case they set in motion other less desirable changes that lawmakers may consider in the process. To date, no coordinated effort to seek changes in lobbying rules has been effectively launched.

BEYOND THE CAUSE

THE *Art* AND **SCIENCE** OF ADVOCACY

IRS FORMS 990 AND 990-PF

When the IRS released its massive overhaul of the Form 990 in 2007, it raised a storm of controversy among many exempt organizations required to file the annual information returns. The new Form increased compliance costs for many organizations that now needed to revamp accounting systems, institute new governance procedures, and in some cases pay higher fees to auditors and tax preparers. Some charitable organizations were concerned about the more detailed compensation information required due to privacy concerns, as well as the potential for audits or new rules based on the information collected. State officials were concerned that the higher thresholds for organizations required to file the full version of the Form meant state regulators would no longer have access to information they consider essential to effective oversight.

Many of the changes followed recommendations made by the Panel on the Nonprofit Sector and key advisors to the nonprofit community. Some researchers, policy advocates, and advisory groups have called for additional changes to the Form and its instructions to improve information on government funding of nonprofits and clarify reporting of compensation and other matters. Researchers, regulators, and the media have also raised questions about the timeliness of information drawn from the Form and the extent to which the information provided by exempt organizations is incomplete or inaccurate. Increased use of electronic filing (e-filing) systems has helped to alleviate some of these problems because the programs can detect incomplete or inconsistent

information and alert the filer to the problem or prevent submission of problem Forms to IRS.

The IRS has not yet made substantial changes to the annual information return filed by private foundations, the Form 990-PF, as recommended by the Panel on the Nonprofit Sector and the Foundation Financial Officers Group (FFOG).[1] The IRS has indicated to some foundations that it is more likely to add a new schedule to the Form 990 that would apply only to private foundations, rather than undertake a costly, time-intensive revision of the separate form.

This paper outlines recent IRS changes to the Form 990 and responses from the charitable community, particularly regarding the IRS policies on electronic filing. It addresses the Form 990-PF as well as the foundation community's response and proposals to revise it. Finally, the paper highlights some of the advocacy strategies employed in efforts related to the Forms 990 and 990-PF and indications from the IRS about possible future developments.

Background and Context

In response to a period of intense media coverage of actual and purported wrongdoing by some foundations and nonprofits and their donors in the early 2000s,

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congressional leaders began to inquire about how laws should be changed to address the types of abuses uncovered by the media and federal and state regulators. The charitable community responded to these concerns through the Panel on the Nonprofit Sector, organized by Independent Sector with participation by a wide range of foundations and nonprofits. Among its many proposals, the Panel called for major changes to the Forms 990 and 990-PF to strengthen the transparency, governance, and accountability of charitable organizations. In addition, the Panel recommended that public charities with gross annual receipts under $25,000, which are exempt from filing the Form 990 or the simplified version (Form 990-EZ), be required to file an annual notice with the IRS.

Most of the Panel's legislative recommendations were incorporated in the Pension Protection Act of 2006, including the requirement that all public charities—including those with gross annual receipts under $25,000—be required to submit an annual filing to the IRS. The filing requirement for small charities was to be highly streamlined and filed electronically (ultimately called the Form 990-N or "postcard"); failure to file for three consecutive years would result in the automatic revocation of the organization's exempt status.

In May 2007, Senate Finance Committee Chairman Max Baucus (D-MT) and ranking member Chuck Grassley (R-IA) sent a letter to Treasury Secretary Henry Paulson that included many of the Panel's proposals to revise the Form 990.[2] The senators recommended specific changes with regard to reporting on executive compensation, endowments, related organizations, joint ventures, governance, fundraising costs, and hospitals. The following month, the IRS issued a revised Form 990 for 2008 that closely mirrored the senators' recommendations; for many, it became clear that the lawmakers had been in close communication with the IRS.

The revised Form 990 includes a core form to be completed by exempt organizations required to file the Form, with 16 separate schedules to be completed only by organizations that engage in particular activities or meet other criteria. It includes a new summary page that provides brief information about the exempt organization's mission, governing board, number of employees, and volunteers, and key financial information for the current and past reporting years. Among the areas of greatest controversy in the revised Form when it was released were new sections asking for information on the organization's governance and management practices and policies; more extensive reporting of board and executive compensation; transactions and relationships with insiders and other organizations; new reporting on endowments, noncash contributions, foreign activities, and tax-exempt bonds; and a new schedule focused on community benefits provided by nonprofit hospitals.

To facilitate the transition to the new Forms and related accounting changes for smaller organizations, the IRS significantly increased the threshold for filing the full Form 990 from $100,000 in gross annual receipts or $250,000 in total assets for tax year 2007, to $1 million in gross receipts or $2.5 million in total assets for tax year 2008.[3] It gradually reduced the threshold over the next two years, as reflected in Figure 13.1.

Many state regulators believe that the shorter Form 990-EZ provides insufficient information for effective oversight at the state and local level, and some continue to require organizations meeting the 2007 criteria (gross receipts of $100,000 or more or assets of $250,000 or more) to file the longer Form 990 if they are based in, or raise funds in, their state. Notably, the Pension Protection Act of 2006 included a provision that for the first time permitted the IRS to share the Form 990 of an exempt organization with appropriate state officials for the purpose of administering state laws and regulations.

2. A copy of the letter, and a discussion of possible influence by the IRS on the letter, is provided on a blog on charity governance by Jack Siegal, currently a member of the IRS Advisory Committee on Tax-Exempt Organizations. See: Jack Siegal "Is the Baucus/Grassley Fix In? We Certainly Hope So," Charity Governance Consulting LLC Blog, May 30, 2007, http://www.charitygovernance.com/charity_governance/2007/05/is_the_grassley.html

3. The IRS Exempt Organization Division's 2010 report indicates that roughly 40 percent of organizations that filed Form 990 for the 2007 tax year filed a Form 990-EZ for the 2008 tax year. Internal Revenue Service, Research, Analysis, and Statistics, Office of Research, "Calendar Year Return Projections for the United States and IRS Campuses" (October 2010).

FIGURE 13.1
REQUIREMENTS FOR COMPLETING NEW VERSIONS OF FORMS

Form*	Tax Year			
	2007	2008	2009	2010
990-N	Gross receipts </= $25,000	Gross receipts </= $25,000	Gross receipts </= $25,000	Gross receipts </= $25,000
990-EZ	Gross receipts < $100,000 AND Total assets < $250,000	Gross receipts < $1 million AND Total assets < $2.5 million	Gross receipts < $500,000 AND Total assets < $1.25 million	Gross receipts < $200,000 AND Total assets < $500,000
990	Gross receipts >/= 100,000 OR Total assets >/= $250,000	Gross receipts >/= $1 million OR Total assets >/= $2.5 million	Gross receipts >/= $500,000 OR Total assets >/= $1.25 million	Gross receipts >/= $200,000 OR Total assets >/= $500,000
990-PF	Private Foundation	Private Foundation	Private Foundation	Private Foundation

* Organizations eligible to file the 990-N or 990-EZ may choose to file a full return.

In its June 2011 request for public comments, the IRS stated that "the major reconstruction of the Form is complete," but said that it would continue to explore changes "to make the Form easier to understand and complete."[4] In that request for public comments, the IRS asked for input on several issues where concerns had been raised, including:

1. thresholds for reporting compensation to employees, directors, and contractors (which some believe is now too high) and prevent reporting of unreasonable compensation that falls below those levels;

2. reporting revenue from government, which some have said is not sufficiently transparent on the current Form since many payments from government are grouped with "program service revenue" rather than being delineated separately;

3. the scope of related organization reporting, particularly with regard to affiliations of board members and donors, which some believe is now "overly burdensome" and compromises "the confidentiality of the related organizations and/or their employees";

4. the exclusion of identifying information on grantees outside the United States, in response to concerns about the confidentiality and safety of those grantees; and

5. expanding required reporting on audited financial statements to indicate whether the audit opinion was "qualified, adverse or a disclaimer."

Organizations from across the country responded to the IRS's request for comments. For example, Independent Sector hosted an online forum in July 2011 that attracted 220 participants who offered and voted on over 50 comments that were subsequently shared with the IRS. These comments included support for expanded electronic filing, a higher revenue threshold for filing Form 990 to enable smaller organizations to file the Form 990-EZ, and modifications to reporting of senior compensation.

In January 2012, an IRS official confirmed that the agency is considering feedback from this comment period, which may be reflected in forthcoming versions of the Form.[5] A new version of the 990 is released for each tax year, and the IRS plans to will continue to solicit comment from the sector on areas of interest to inform minor, ongoing changes to the Form.

4. "IRS Request for Public Comment June, 2011," http://www.irs.gov/pub/irs-drop/a-11-36.pdf

5. "A Conversation with Lois Lerner, Director of the Exempt Organizations Division of the Internal Revenue Service" (webinar, Independent Sector, January 26, 2012),

In May 2012, the Oversight Subcommittee of the House Ways and Means Committee held a hearing focused on "the current IRS compliance initiative related to Universities, recently enacted reporting requirements for tax-exempt hospitals, recent efforts by tax-exempt organizations to design and implement good governance standards, and taxpayer involvement in redesigning the Form 990."[6] Witnesses included Independent Sector President and CEO Diana Aviv, nonprofit legal experts Roger Colinvaux and Bruce Hopkins, as well as representatives of the National Association of College and University Business Officers and VHA, Inc. (formerly Voluntary Hospitals of America), both of whom emphasized the significant time and financial burden of filing the revised Form 990.[7] A second hearing included IRS Deputy Commissioner for Service and Enforcement Steve Miller on July 25, 2012.

Proposed Revisions to Form 990-PF

Increased negative media coverage and congressional scrutiny in the early 2000s led many in the foundation community to conclude that the outdated design of Form 990-PF, which private foundations are required to file annually with the IRS, was contributing to misunderstandings and misinformation about the work of foundations. In 2004 FFOG, an association of financial and investment officers from about 200 major private foundations, undertook a major project to analyze the problems that foundations and others experienced with the Form 990-PF and to recommend revisions to the Form and its instructions.

FFOG worked closely with the Panel on the Nonprofit Sector in the Panel's effort to determine how information returns filed by both foundations and public charities might be improved to increase tax compliance and enforcement, as well as transparency and accountability

to the public. Many of FFOG's recommendations were incorporated into the Panel's recommendations to the IRS for revisions to both the Form 990 and 990-PF. These included the presentation of financial and program information, compensation of board and executives, and governance policies and practices.

FFOG also consulted with the Council on Foundations, the Forum of Regional Associations, and the Association of Small Foundations to develop and test a prototype of a revised Form 990-PF. The redesigned form would have made important information more easily identifiable and accessible; eliminated excessive details on unnecessary information (such as long details on investment transactions); and added separate schedules for information applicable only to certain foundations. It separated expenditures for grant-making, other direct charitable benefits, administration, and investment management in order to provide a clearer and more relevant picture of foundation activities. Considerable attention was also given to updating definitions and terms, as well as improving instructions to allow preparers to define, classify, and report grant and nongrant expenses more clearly and consistently.

FFOG leaders subsequently met with key IRS officials responsible for oversight of exempt organizations to propose a public-private venture that would raise private funding to support revision of the Form 990-PF. Reportedly, IRS officials said that because of the considerable time and resources invested in revising the Form 990, there were insufficient resources to revise the Form 990-PF at that time. They indicated that it was more likely that a separate schedule would be added to the revised Form 990, which private foundations would be required to complete in addition to the core form required of other exempt organizations. There has been no further indication in IRS annual work plans or other announcements that such a schedule is under development.

Legislation that would change tax laws affecting private foundations could be a vehicle for changing the e-filing requirements and other aspects of the Form 990-PF. In March 2011, Senator Charles Schumer

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6. "Boustany Announces Hearing on Tax Exempt Organizations May 16, 2012," Committee on Ways and Means Hearing Advisory, http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=294777

7. Testimony of witnesses is available at http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=294783

(D-NY) introduced legislation (S 593) to replace the current two-tiered foundation excise tax with a single, revenue-neutral rate. Three months later, Representative Erik Paulsen (R-MN) and Representative Danny Davis (D-IL) introduced companion legislation in the House (HR 2311). Senator Schumer has been joined by 12 co-sponsors, equally divided between Democrats and Republicans and including three Republican members of the Senate Finance Committee. Such bipartisan support caused some of the bill's supporters to believe there was a possibility that the legislation could be attached to other tax bills moving through the Senate in 2012, though that seems less likely as the legislative year has progressed.

DEGREE OF CONSENSUS IN THE FOUNDATION COMMUNITY

The financial and investment officers from the largest foundations who make up the FFOG membership generally agree that the Form 990-PF should be revised using the terms, definitions, and general parameters of the FFOG prototype. However, interest in pursuing changes declined sharply after IRS officials indicated that any revisions would likely be made by adding new schedules to the revised Form 990. Some members of the FFOG community believe that simply adding a new schedule to the revised 990 would not address their concerns about reducing costs associated with compliance and improving public understanding of their work.

John Craig, executive vice president and COO of The Commonwealth Fund and a member of FFOG, addressed potential changes to the 990-PF in a March 2011 report, *Modernizing the 990-PF to Advance Accountability and Performance of Foundations: A Modest Proposal*. He writes, "how well implementation of the Revised Form 990 for other nonprofits works out has little or no bearing on what should be done about the 990-PF [as] Congress and the IRS have recognized that the foundation sector is quite distinct from the general nonprofit sector and requires more regulation and specialized tax-

form reporting."[8] Craig estimated that foundations spent $675 million to file the forms in 2008. He urged speedy revisions of the Form, both to reduce the costs of compliance with reporting requirements and to improve the Form's utility for all relevant audiences, including foundation managers. He further suggested that revising the Form should not be a laborious process for the IRS since "a workable prototype already exists."

None of the groups that FFOG consulted in designing the prototype—the Council on Foundations, the Forum of Regional Associations, and the Association of Small Foundations—are currently focused on calling for changes to the Form. Nor have they taken any official positions endorsing the FFOG prototype. In March 2005, the Alliance for Charitable Reform (ACR) responded to proposals from the Joint Committee on Taxation by urging that the Forms 990 and 990-PF be "made more comprehensive and more informative."[9] ACR has not provided any further statements on the 990 or 990-PF, and its staff indicated in 2011 that revising the 990-PF is not a priority.

Form 990 Electronic Filing

Following the mid-1990s passage of laws requiring exempt organizations and the IRS to make copies of the Forms 990 and 990-PF available for public inspection, and the accompanying widespread posting of the forms on Internet portals like GuideStar, there was heightened awareness of the extent to which many organizations filed incomplete, inaccurate, or late reports. Believing that electronic filing of the returns would greatly increase the timeliness and accuracy of filings by nonprofits, a small group of foundations and leading nonprofit and foundation associations launched the Electronic Data Initiative for Nonprofits. Its purpose was to educate the field about the benefits of

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8. John Craig, *Modernizing the 990-PF to Advance the Accountability and Performance of Foundations: A Modest Proposal,* The Commonwealth Fund 2010 Annual Report, March 7, 2011, http://www.commonwealthfund.org/~/media/Files/Annual%20 Report/2011/1483_Craig_modernizing_990PF_2010_EVP_report_ FINAL_v3.pdf

9. Alliance for Charitable Reform, "Response to Joint Committee's Tax Gap Study," March 2005.

e-filing and advance legislative proposals to require more organizations to file electronically.[10]

With passage of the Pension Protection Act of 2006, the smallest exempt organizations (from 2007 to 2010, those whose annual gross receipts are generally $25,000 or less; now, those whose annual gross receipts are generally $50,000 or less) have been required to e-file a brief electronic postcard (Form 990-N) each year.

Although e-filing of Forms 990 and 990-PF is now available to all exempt organizations, current law only permits the IRS to require e-filing of these forms by the largest organizations (those with total assets of $10 million or more who also file at least 250 returns, including Forms W-2 and 1099, annually). Organizations that "cannot meet electronic filing requirements due to technology constraints" or find that e-filing would result in "undue financial burdens" may request a waiver from the requirements. Although these larger organizations constitute less than 2 percent of all registered public charities, the IRS reports that nearly 41 percent of the Form 990 and 990-EZ returns filed by exempt organizations[11] for tax year 2008 were filed electronically.[12] Roughly 5 percent of private foundations are required to e-file their returns, Form 990-PF, but the IRS reports that nearly 8 percent of foundations chose to e-file their returns.

In September 2008 the House of Representatives passed the Charity Enhancement Act of 2008 (HR 7083) as introduced by Representative John Lewis (D-GA), then chairman of the House Ways and Means Subcommittee on Oversight. Section nine of the act would have authorized the IRS to expand the scope of returns to be filed electronically by reducing the threshold require-

ment: specifically, lowering the minimum number of total returns filed per organization from 250 to 5. The Senate did not take up the legislation and no companion bill was introduced in the Senate, despite earlier concerns expressed by Senators Baucus and Grassley regarding late and incomplete filings of the returns.

Current IRS policy prohibits treating information from e-filed forms in a different manner than those filed on paper. As a result, the IRS does not release e-filed data as soon as it is filed and provides only images of the Forms to the public and researchers, rather than digitized data. The result is that private organizations that make the data available for research and public information must re-digitize it at great expense, thus "delaying public access and increasing the potential for errors and omissions."[13] The Aspen Institute's Nonprofit Data Project has submitted comments to the IRS urging the IRS to amend this policy. The project includes representatives from GuideStar, the National Center for Charitable Statistics at the Urban Institute, the Foundation Center, the Center on Philanthropy at Indiana University, and the Center for Civil Society Studies at Johns Hopkins University.[14] The project is currently working to enlist other nonprofits and foundations to support its efforts.

The Obama Administration has supported e-filing of annual information returns and included a provision to expand IRS authority in this area in the president's fiscal year 2010 budget proposal. It otherwise has made little or no mention of revisions to the Forms.

Summary of Political Context

Until the May 2012 hearings held by the Oversight Subcommittee of the House Ways and Means Committee, Members of Congress have generally refrained from commenting on the Forms 990 and 990-PF in recent years, other than questions raised by Senator Grassley, former Ranking Member of the Senate Finance Com-

10. The Electronic Data Initiative for Nonprofits (EDIN) was co-chaired by Independent Sector and the Council on Foundations and included representatives from the National Council of Nonprofit Associations (now the National Council of Nonprofits), OMB Watch, and GuideStar. Representatives of the Urban Institute's Center on Nonprofits and Philanthropy (CNP) served as advisors.

11. Internal Revenue Service, Research, Analysis, and Statistics, Office of Research, "Calendar Year."

12. If Form 990-N were included, the percentage would rise to 48 percent. Private foundations were not included in the numbers provided in this report. Lois G. Lerner, *Exempt Organizations FY 2010 Annual Report and FY 2011 Work Plan*, Internal Revenue Service, 2011.

13. Aspen Institute Nonprofit Data Project Fact Sheet, Aspen Institute, August 11, 2011.

14. Ibid.

mittee, regarding whether religious organizations should continue to be exempted from filing the annual information returns required of other exempt organizations.[15]

Because revising the Form 990 took substantial time and effort, the IRS has indicated that barring legislation, it is unlikely to make significant changes to the 990-PF in the near future; it has not mentioned any revisions in its current work plan or issued significant requests for public comments. However, the need to revise the 990-PF could come up in hearings in the larger context of tax reform. Both the Senate Finance Committee and the House Ways and Means Committee have held hearings and signaled their intention to look at tax-exempt organizations as they pursue comprehensive tax reform (as discussed in this report's issue paper on tax reform). This effort is expected to extend through 2013, with legislators possibly acting on proposals in 2013 or 2014.

Sector Engagement

Several advisory groups and many sector organizations have been engaged with the IRS on the design and requirements of the Form 990 and Form 990-PF, particularly in advance of the major overhaul of the Form 990 in 2007. Since that time, the IRS has asked for and received additional comments on both the Form 990 and 990-PF.

In the spring of 2012, a coalition of nonprofit organizations led by the Urban Institute Center on Nonprofits and Philanthropy and including Independent Sector, the Aspen Institute, GuideStar, the United Way, the Greater Washington Association of CPAs, and the National Council of Nonprofits, began a new push to increase e-filing. Their goal—to increase e-filing of Form 990s from 30 percent to 70 percent over five years—is intended to:

- promote accountability and transparency in the non-profit sector;

- improve the quality of information available to the public;

- provide accurate data for IRS and state regulatory purposes;

- reduce errors on the Form 990 (error rates for paper returns is 30 percent; electronic filing is less than 1 percent); and

- save the IRS, nonprofit researchers, and the sector time and money.

The initial effort of the coalition is focused on identifying barriers to e-filing Form 990, including why nonprofits are not e-filing, why some auditors do not encourage nonprofits to e-file, as well as aspects of the Form 990 processing system that may discourage e-filing.[16]

Conclusion

The redesign of the Form 990 in 2007 followed a period of intense scrutiny of the nonprofit sector, which prompted leaders from Congress and the IRS to prioritize changes to the Form and allocate the necessary resources to do so. The IRS has confirmed that there is no major redesign of the Form 990-PF planned for the near future, and, given federal government resource constraints, it appears unlikely that pressure from the philanthropic community will inspire a change in direction.

The IRS will continue to address specific issues with both Forms. Coalitions and sector organizations interested in influencing these ongoing changes are advised to build consensus among engaged organizations about desired changes and communicate those requests directly to the IRS.

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15. Senator Grassley's letter urging the Evangelical Council for Financial Accountability (ECFA) to create the Commission on Accountability and Policy for Religious Organizations, January 2011, and the ECFA's response are detailed at http://www.ecfa.org/Content/Commission.

16. "Form 990 e-filing Fact Sheet," Urban Institute National Center on Nonprofits and Philanthropy, May 17, 2012.

BEYOND THE CAUSE
THE *Art* AND SCIENCE OF ADVOCACY

GOVERNMENT-NONPROFIT CONTRACTING

Federal, state, and local government agencies rely on nonprofit organizations to provide a variety of services both domestically and abroad. Such government outsourcing has a long history in the United States, documented by scholarship that emerged in the 1980s and continues today.[1] Despite these studies, the public has little understanding of the role nonprofits play providing basic human services with government contracts and grants. In addition, there is a lack of public awareness about the deep difficulties experienced by nonprofits that deliver such services as a result of complex processes and government belt-tightening in a trying economic environment. In 2009, at the peak of the recession with major budget cuts already in place, government funding was $100 billion for contracts and grants with human services organizations. Since a large proportion of these organizations depend heavily on government contracts—and may be running deficits and experiencing delayed government reimbursements—the impact on communities that rely on those services may be significant.

This paper will explore the problems associated with government contracts and grants to nonprofit organizations providing human services, offer examples of initiatives designed to mitigate those problems, and call for more strategic advocacy efforts for human service providers.

> *The public has little understanding of the role nonprofits play providing basic human services with government contracts and grants.*

Background and Context

The recent recession and the subsequent slow and uneven recovery have depleted the resources of many nonprofits as well as state and local governments.[2] Increased demand for services and decreased revenues have strained state budgets, weakened nonprofits, and exacerbated ongoing challenges related to government-nonprofit contracting. Over the past few years, media reports have depicted nonprofits as unable to meet

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1. Lester Salamon, *The State of Nonprofit America* (Washington, DC. Brookings Institution Press, 2002); Lester Salamon, *The Tools of Government: A Guide to the New Governance* (New York: Oxford University Press, 2002); Lester Salamon, *The Resilient Sector: The State of Nonprofit America* (Washington, DC: Brookings Institution Press, 2003); Steven R. Smith and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting* (Cambridge: Harvard University Press, 1993); Kenneth T. Wing, Thomas H. Pollak, and Amy Blackwood, *The Nonprofit Almanac 2008* (Washington, DC: Urban Institute Press, 2008).

2. According to the National Bureau of Economic Research, a private nonpartisan group, the recession began in December 2007 and ended June 2009. "Recession," *The New York Times*, September 20, 2010, http://topics.nytimes.com/top/reference/timestopics/subjects/r/recession_and_depression/index.html

their payrolls because government agencies were not paying their bills and banks were not providing lines of credit. Nonprofits have reported cutting benefits and staff, closing programs, operating in the red, and going bankrupt. While reports indicated that these issues were nationwide, some states were hit harder than others. In several states, nonprofits and government agencies came together to improve contract and grant processes, identify pressing problems, and initiate changes to ameliorate their negative impacts on nonprofits.

In 2010, Urban Institute's Center on Nonprofits and Philanthropy conducted a national survey of over 3,500 human service nonprofits to ascertain the dimensions of their reliance on government funding, how those funding relationships affected their operations, and how the recession interacted with government contracting problems to affect their revenues and programs.[3] A major goal of the study was to identify the problems and inform collaborative problem solving as government agencies and nonprofits seek to do more with less to meet the needs of their communities.

Results of the study were reported in *Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants*.[4] The researchers found reliance on government funding and systemic problems with government contracts and grants that exacerbated the deleterious effects of the recession on nonprofits. For the 33,000 nonprofit human services organizations that reported receiving government funding, there were a total of 200,000 contracts or grants with government agencies, an average of six per organization.[5] Govern-

ment contracting accounted for about two-thirds of the $171 billion in revenues for those nonprofits in 2009. In comparison, foundation grants accounted for about 2 percent of revenues and individual giving 3 percent, with the remaining 30 percent from fees for services, investment income, sales, and other miscellaneous sources.

The study documented many serious problems in the relationship between government and nonprofits in the contracting and grants process. Key problems identified by nonprofits involved government payments that did not cover the costs of the services rendered (66 percent of survey respondents); complexity and time required to apply for and report on contracts and grants (76 percent); government changes in contracts and grants (57 percent); and late payments (53 percent).[6] For almost a third of the organizations, experiences with government contracting and grants were worse than in prior years; almost two-thirds of nonprofits said their contracting challenges reflected business as usual, suggesting that problems were not exclusively related to the recession but reflected systemic issues that need to be addressed.

The experiences reported by nonprofits varied significantly by state. For example, Illinois ranked as the number one state with late payment problems. Eighty-three percent of Illinois human services nonprofits with government contracts and grants said that late government payments were a problem, compared to Arkansas where only 21 percent reported that problem. The national average was 68 percent.

Government contracts and grants were also problematic because of the additional requirements they often impose on nonprofits. Mandating matching funds from other sources is one example. Half the nonprofits in the study reported having at least one government contract or grant that required a match, a difficult challenge, especially during this recession when the majority of human services organizations polled reported reduced contributions and other income.

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3. The project was a collaboration between the Center on Nonprofits and Philanthropy and the National Council of Nonprofits, funded by the Bill and Melinda Gates Foundation. Elizabeth T. Boris, Erwin de Leon, Katie Roeger, and Milena Nikolva, *Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants*, Center on Nonprofits and Philanthropy, Urban Institute, October 2010, http://www.urban.org/UploadedPDF/412228-Nonprofit-Government-Contracting.pdf

4. Ibid.

5. Survey weights were used to make statistics computed from the survey representative to the entire human- service nonprofit sector. Nine thousand organizations were surveyed and 3,500 responded, of which 2,153 had government contracts or grants.

6. Boris, de Leon, Roeger, and Nikolva, "Human Service."

Almost two-thirds of nonprofits said their contracting challenges reflected business as usual, suggesting that problems were not exclusively related to the recession but reflected systemic issues.

Other requirements to obtain government funding revolved around accountability, transparency, and performance measurement in an effort to safeguard tax dollars. However well intentioned, that stewardship results in comprehensive applications, extensive financial and program reports, and multiple audits. The challenge for nonprofits is that each government agency is likely to have different reporting processes and templates, as well as different audit requirements. To ensure compliance, nonprofits often must compile financial information and draft narrative reports differently for each contract or grant, a time-consuming and costly process. Over 80 percent of human service nonprofits with government grants and contracts reported that navigating the different government reporting formats was a problem.[7]

A Government Accountability Office report documented another problem at the state level.[8] It revealed that states have inconsistent policies for the recovery of indirect costs relating to federal grant money that states re-grant to nonprofits. Some states pass through all the money. Others retain varying amounts for their own purposes, thereby reducing indirect expense reimbursement rates available to nonprofits.

Resolving these problems is further complicated by the sheer number of government entities involved in the contracting process at the federal, state, and local levels of government—each with differing rules and procedures across issues and jurisdictions.

National Initiatives to Improve Government Contracting and Grants

Federal-level efforts to address government contracting are important because state and local government funds often originate at the federal level and usually have embedded federal requirements. In addition, state and local conditions may be piled on top of the federal ones, making the processes even more laden with complex reporting mandates.

Several collaborative efforts have been established to improve the federal government contracting and grants processes that include specific attention to the nonprofit community. The Federal Demonstration Partnership (FDP) brings together research universities and federal agencies to identify, test, and implement new and more effective ways to reduce the administrative burden of the more than $15 billion in federal research grants. Since 1986, FDP successfully has implemented standard definitions for research grants, increased budget flexibility of grants, conducted faculty-burden surveys, and led the effort for electronic reporting. The FDP's current agenda focuses on findings from the faculty-burden survey and the need to improve streamlining activities without reducing accountability.[9]

A related effort is the intergovernmental collaborative effort to improve government grants processes. Founded in 2004, the National Grants Partnership (NGP) is a cooperative initiative among leaders of federal, state, local, and tribal governments and nonprofit organizations to facilitate a partnership to improve the effectiveness of grant dollars while streamlining administrative requirements. The NGP was created to conduct research and submit reports to the federal government on issues involving the grant community. NGP research has examined the process for determining financial credibility of

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7. A report by the National Council of Nonprofit Associations, "Costs, Complexification, and Crisis: Government's Human Services Contracting 'System' Hurts Everyone," provides additional information and examples of the types of administrative challenges that nonprofit contractors face. http://www.govtcontracting.org/sites/default/files/Costs%20Complexification%20and%20Crisis.pdf

8. Government Accountability Office, *Nonprofit Sector: Treatment and Reimbursement of Indirect Costs Vary among Grants, and Depend Significantly on Federal, State, and Local Government Practices*," report to the House Committee on Budget, May 2010, http://www.gao.gov/new.items/d10477.pdf

9. Federal Demonstration Partnership, http://sites.nationalacademies.org/PGA/fdp/index.htm

nonprofits, the Federal Financial Assistance Management Improvement Act, and the need for federal grants management standardization.

Currently, the NGP is working with the Federal Demonstration Partnership to reduce the burden of performance and financial reporting experienced by research universities and the larger nonprofit sector. In addition, the NGP provides a virtual forum to inform key stakeholders about upcoming changes in government grants as a way to expedite the process for implementing changes. Participants involved in NGP webinars have an opportunity to ask questions of top government officials leading the streamlining efforts, which helps to reduce confusion.

A new project will track ongoing and new approaches to improving the contracts and grants process and learn what works. The Urban Institute's Center on Nonprofits and Philanthropy is leading this effort in partnership with the National Council of Nonprofits. The project will include the perspectives of government representatives, develop case studies of collaborations that are under way, and field a national survey of nonprofits in 2013. The research seeks to identify models that can be emulated.

Early research reveals some promising efforts at the federal level to improve processes that are duplicative and costly, even though some efforts by federal agencies and their partners remain fragmented. While it appears that nonprofit involvement has been limited to date, the various opportunities cited below would enable government entities to gain insight into how nonprofits might be affected and for nonprofits to help shape requirements.

- Advancing Government Accountability established the Partnership for Intergovernmental Management and Accountability to foster communication about improving performance and accountability among governments. The partnership includes officials from the federal, state, and local levels of government as well as higher education. Since its launch in 2008, the partnership has developed products and processes to prevent and detect fraud, resolve audit findings,

and ensure funds are provided to organizations with strong administrative and financial controls.[10]

- The General Services Administration is in the process of rolling out a system to streamline the reporting process for all federal contracts and grants. The System for Award Management is designed to combine 11 websites to create a more efficient process to manage and report on federal grants and contracts.[11]

- The Office of Management and Budget is working on a data standardization process to help improve the data collected on USASpending.gov. The process seeks to standardize the way data are collected and presented. Depending on the changes, reporting by nonprofits may be affected. A collaboration of major sector data and research providers convened by the Aspen Institute is meeting with officials to explore the information needs of the nonprofit sector, including separating data of for-profit entities from nonprofits in the census and major reports. [12]

- The Government Accountability and Transparency Board (GATB), defined by Executive Order and signed by President Obama in June 2011, will allow for the duties assigned to the Recovery Act Transparency Board to continue permanently under GATB. [13] The GATB is required to "submit a report to the President that identifies implementation guidelines for integrating systems that support the collection and display of Government spending data, ensuring reliability of the data, and broadening the deployment of fraud detection technologies, including those proven successful during the implementation of the Recovery Act."[14]

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10. "Intergovernmental Partnership," Association of Government Accountants, http://www.agacgfm.org/Advocacy---Accountability/Intergovernmental-Partnership.aspx

11. System for Award Management, https://www.sam.gov/portal/public/SAM/

12. Aspen Institute, Foundation Center, George Mason University, GuideStar, Center on Philanthropy at Indiana University, Johns Hopkins University, Urban Institute's National Center for Charitable Statistics.

13. Office of the White House, "Executive Order 13576-- Delivering an Efficient, Effective, and Accountable Government," June 13, 2011, http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-delivering-efficient-effective-and-accountable-governmen

14. Office of the White House, "Executive Order."

❯ The Samuel J. Heyman Service to America Management Excellence Medal highlights federal employees who demonstrate superior leadership and management to promote efficient, effective, and results-oriented government. Partnership for Public Service, a nonprofit dedicated to revitalizing the federal government, makes the awards. Ann Marie Oliva, a finalist for the medal in 2011, implemented an electronic system that cut the time it takes for the Department of Housing and Urban Development (HUD) to process grant applications. She streamlined the process for HUD's awards, which amount to more than $1.6 billion to local organizations annually, and increased its ability to track results. HUD is now able to get money to its grantees three times faster.[15] Oliva is now drafting new regulations to streamline the nation's homeless programs as part of the Homeless Emergency Assistance and Rapid Transition to Housing Act. Other agencies can look to Oliva's work to find innovative ideas to improve the government contract and grant process within their agencies. [16]

In 2009, members of the nonprofit community came together to advance a proposal to mitigate some of the negative impact of the recession. Independent Sector led the effort to pass legislation that would provide bridge loans for nonprofits experiencing delays in reimbursements from state or local governments. The goal was to establish a revolving fund in the American Recovery and Reinvestment Bill that was moving quickly through Congress early that year. While the proposal was supported by many human service organizations, including Big Brothers Big Sisters of America, Catholic Charities USA, National Council on Aging, and United Way of America, it was not included in the final bill.

State-Level Efforts to Address Government-Nonprofit Contracting

There also are significant efforts at the state level to simplify and improve government contracting and grants processes. Many states realize that their processes can be complex and confusing. Not only do the requirements to request reimbursement or complete performance reports vary greatly from the federal government, there is a good deal of variance in how different agencies within the same state operate. However, budget constraints and an inability of different state agencies to work together often prevent states from streamlining successfully their contract and grant processes. A growing number of states are actively working with nonprofits to develop and implement more efficient, effective, and streamlined contract and grant processes. A few examples are below.

❯ The New York Council of Nonprofits worked with the state Comptroller's Office to develop an online ombudsman to help nonprofits "navigate the complexities of New York State's contracting and payment process."[17] The program is intended to provide information to nonprofits to ensure they are submitting all required forms and that the forms are completed accurately. Additionally, the ombudsman provides "assistance in steering and facilitating your contract or voucher so that you can receive it in a timely manner."[18]

❯ In 2011, Connecticut Governor Malloy established a Cabinet on Nonprofit Health and Human Services to examine the relationships between the government and nonprofits with respect to the state's health and human services delivery system.[19] The cabinet is charged with making initial recommendations to improve the system by September 2012 and to provide budgetary and policy recommendations each subse-

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15. Continued work by the Urban Institute will explore whether nonprofits felt the increased speed with which grant funds were released and what, if any, impact it had on nonprofits.

16. June Q. Wu, "Government-Service Finalist Streamlined Paper Grant Applications for Homeless Advocacy," *The Washington Post*, August 3, 2011, http://www.washingtonpost.com/local/government-service-finalist-streamlined-paper-grant-applications-for-homeless-advocacy/2011/07/19/gIQAwnPrsI_story.html?wpisrc=emailtoafriend.

17. "New Program Helps Navigate State Payments," New York Council of Nonprofits press release, October 4, 2010, http://nycon.org/news/newsDetails.asp?newsid=304

18. Ibid.

19. "Governor's Cabinet on Nonprofit Health and Human Services," State of Connecticut Office of Policy and Management, http://www.ct.gov/opm/cwp/view.asp?a=2998&Q=490946

quent year. The governor's cabinet was created five months after the Commission on Nonprofit Health and Human Services issued 49 recommendations related to the contracting process. They included developing a Web-based electronic file to house all relevant documents, developing a common reporting system for all state agencies, and adopting best practices such as encouraging electronic payments.[20] Some of the commission's recommendations have already been implemented. For example, Connecticut has improved contracting regulations, and it has established enforceable deadlines for government officials to sign contracts.

• The Governor's Grants Office in Maryland provides resources and technical assistance to state and local governments, nonprofits, businesses, and universities to help them find, write, and manage grants at all levels of government. In addition to webinars and on-site training, the office hosts an annual conference to share information about grants in Maryland and provides an opportunity for key stakeholders to discuss issues. Each state agency sends a representative to the conference so grantees have an opportunity to build relationships and discuss issues face-to-face with agency-specific grantors. In addition, a government task force has issued 36 recommendations on improving timeliness of payments to contractors, standardizing contracting processes, and using technology to streamline procedures.[21]

• Arizona's Department of Economic Security developed a dictionary and taxonomy of Human Services in an effort to create a common language for use by major funders and planners throughout the state. The taxonomy describes services uniformly and identifies consistent terminology for planning, budgeting, contracting, reporting, and evaluating services. The

Arizona Taxonomy Committee oversees this effort and includes representatives from state, county, and city governments; the Arizona Councils of Government; nonprofits; and businesses.[22]

• Iowa's Grants Enterprise Management System was established by the 2003 Iowa General Assembly to provide a mechanism to attract nonstate funding; facilitate cooperation and coordination between state agencies; reduce duplication of competitive grant applications; allow for the timely exchange of information; and inform policy makers, legislators, and the citizens of Iowa about the grant funds received and state agency competitive grant applications. Currently, the Iowa Grants Network and Iowa Interactive are working to develop a Web-based grant application/review process for state agencies and local governments to use when awarding grants.[23]

In several states, nonprofits are pushing to reform government contracting. In Delaware[24] and New Jersey,[25] leading nonprofits have come together to conduct research and make recommendations. Nonprofit associations in Illinois and North Carolina have conducted evaluations of their reform efforts, finding mixed results to date.

In Illinois, Donors Forum (a membership organization of foundations and nonprofits) initiated a project to identify problems in government funding of nonprofits and come

20. Robert Dakers and Peter DeBiasi, *Final Report of the Commission on Nonprofit Health and Human Services*, State of Connecticut Commission on Nonprofit Health and Human Services, 2011, March 31, 2011, 7, http://www.ct.gov/opm/lib/opm/finance/hhs_commission/final_report_commission_on_nonprofit_health_and_human_services.pdf

21. "Task Force Report to the Governor and the General Assembly on Procurement of Health, Education, and Social Services by State Agencies," State of Maryland, November 30, 2011, http://www.bpw.state.md.us/Reports/2011%20Task%20Force%20on%20Proc%20of%20Health%20Educ%20Soc%20Svs.pdf

22. Arizona has six Councils of Government; these are voluntary, public organizations that serve the local government and its citizens by addressing issues in a particular region that cut across multiple jurisdictions (such as county and city boundaries). "Taxonomy Introduction," Arizona Department of Economic Security, https://www.azdes.gov/taxonomy/

23. "Iowa Grants Enterprise Management System (GEM$)," Iowa Department of Management, http://www.iagrants.com/

24. Kathryn G. Denhardt, Maria P. Aristigueta, Lynne Foote, Deborah Auger, Lauren Miltenberger, Catherine Dodds, Carey Addison, *Forward Together: Achieving Better Performance in Nonprofit-State Government Contracting for Human Services,* University of Delaware Center for Community Research and Service and Institute for Public Administration, http://soc.kuleuven.be/io/performance/paper/WS3/WS3_Denhardt_Aristigueta_Foote.pdf

25. Linda M. Czipo, "Strengthening Program Delivery by Improving the Contracting System for Non-Profits and Provider Agencies," statement to the Red Tape Review Commission, July 17, 2012, http://njnonprofits.org/RedTape_Statement_FINAL_07172012.pdf

Over 60 percent of nonprofit respondents stated that government contracts did not cover the full cost of providing services.

to consensus around best practices. The Donors Forum project interviewed state and local government officials, human service providers, and community leaders. It hosted focus groups and convened key stakeholders who ultimately developed six partnership principles to improve contracting practices in Illinois. The principles focus on comprehensive planning, transparent solutions, performance-based renewals, fair and timely payment, streamlined reporting, and better communication.[26] An evaluation of the project in March 2012 found that the evaluation itself was the first exposure to the principles for many government officials. Government respondents rated the extent of recent improvements to the contracting system higher than the nonprofits observed, and they noted numerous internal challenges in achieving substantive progress, such as poor coordination across state departments and divisions.[27]

The North Carolina Center for Nonprofits published a report detailing the status of reform efforts, Government Contracts with Nonprofits: Solutions Emerging for a Broken System.[28] It revealed significant improvement between 2010 and 2011 in several areas, including a decrease in "excessive red tape," fewer midstream changes to contract terms, and a decrease in late payments. However, over 60 percent of nonprofit respondents

stated that government contracts did not cover the full cost of providing services. The report outlines 34 recommendations for further improvement in government-nonprofit contracting processes for the governor, legislature, and state agencies and departments.[29]

Summary of Political Context

The recession and slow economic recovery brought into bold relief an already strained funding relationship between government and nonprofit human service providers. As nonprofits struggled to provide services to a growing number of people hit by the downturn, critical problems in the government contract and grants process intensified. In some cases, the recession raised awareness and catalyzed efforts to improve efficiency within federal, state, and local government agencies. This has resulted in some promising projects but, to date, such efforts do not address fully the myriad problems associated with the government-nonprofit contracting and grants process.

Sector Engagement

Problems with state contracts are an example of how the nonprofit community can leverage research to inspire public policy advocacy. The Urban Institute's 2010 report provided critical information about the scope of the problems related to government-nonprofit contracting. Urban partnered with the National Council of Nonprofits to expand the reach and impact of the report. In so doing, they catalyzed new advocacy activity. The National Council supplemented the original study with examples and produced, Costs, Complexification and Crisis: Government's Human Services Contracting 'System' Hurts Everyone.[30] It also disseminated this material through state associations of nonprofits and included

26. Laurel O'Sullivan, "Fair and Accountable: Partnership Principles for a Sustainable Human Services System" (presentation, May 11, 2010), http://www.donorsforum.org/s_donorsforum/bin.asp?CID=15453&DID=39414&DOC=FILE.PDF

27. Susan Wolf and Associates, LLC, and Race & Associates, Ltd., *Major Findings: Signs of Progress, More Work Ahead: An Assessment of the Implementation of Donors Forum's Partnership Principles for a Sustainable Human Services System*, March 2012, http://www.donorsforum.org/s_donorsforum/bin.asp?CID=19739&DID=54928&DOC=FILE.PDF

28. North Carolina Center for Nonprofits, *Government Contracts with Nonprofits: Solutions Emerging for a Broken System New Results and Recommendations*, 2010, https://www.ncnonprofits.org/sites/default/files/public_resources/Nonprofits%20and%20government%20contracting%20report%202011%20final.pdf

29. For more information on state efforts to reform government-nonprofit contracting processes, see the National Council of Nonprofits webpage, "State by State," www.govtcontracting.org/state-state

30. National Council of Nonprofits, *Costs, Complexification and Crisis: Government's Human Services Contracting 'System' Hurts Everyone*, National Council of Nonprofits, 2010.

training sessions to help nonprofits present the research findings and potential solutions to public officials.

Advocacy by state associations and their members drew attention to the problems in their states and the fact that some states were doing much better than others in some areas.[31] The state-by-state findings—especially rankings of problems by state—resulted in earned media at the state and local levels. In some instances, officials vowed to improve their state's standing. At a meeting at the Urban Institute, for example, an official from the District of Columbia stated that the city government would work to raise its low rankings. Testimony by the Hawaii Alliance of Nonprofit Organizations in March 2011 resulted in whole sections of the report's findings being inserted into legislation designed to improve contracting with nonprofits in Hawaii.[32]

With few exceptions, there does not appear to be much nonprofit involvement in the federal government's efforts to streamline operations, yet those changes could have significant implications.

31. See state-by-state rankings of problems in: Elizabeth T. Boris, Erwin de Leon, Katie Roeger, and Milena Nikolova, *National Study of Nonprofit-Government Contracting: State Profiles*, The Urban Institute, 2010, http://www.urban.org/UploadedPDF/412227-National-Study-of-Nonprofit-Government.pdf

32. Hawaii Alliance of Nonprofit Organizations, "Re: SB 777, SD 1, Relating to Payments for Goods and Services," letter to Representative Angus McKelvey, March 21, 2011, http://www.capitol.hawaii.gov/session2012/testimony/SB777_SD1_TESTIMONY_ERB_03-22-11_LATE_.PDF

Conclusion

The nation's economic difficulties in recent years heightened existing challenges related to government-nonprofit grants and contracts. Nonprofits receiving these contracts have sounded the alarm for reform. At the same time, the recession and widespread government budget deficits have fostered a willingness by some public officials to streamline government processes. The convergence of mobilized nonprofits and willing public officials represents a window of opportunity for change. Advocates hope this moment reflects a turning point in increasing awareness and promotion of reform in government-nonprofit contracting.

The convergence of mobilized nonprofits and willing public officials represents a window of opportunity for change.

For the long term, nonprofits may want to seek out greater influence in government administrative processes responsible for nonprofit contracts and grants. In addition to process-oriented advocacy, nonprofits can engage in a broader conversation about government funding priorities and the nation's social safety net. Organizations, especially health and human service providers, are well positioned to educate public officials and the public about their roles in providing a social safety net.

BEYOND THE CAUSE

THE *Art* AND **SCIENCE** OF ADVOCACY

GOVERNMENT-FUNDED RESEARCH ON THE NONPROFIT COMMUNITY

The nonprofit and philanthropic community represents more than 5 percent of the U.S. economy[1] and accounts for roughly 10 percent of the U.S. workforce.[2] This community is also a key partner in delivering services and conducting other work on behalf of government. In 2008 it received more than $450 billion in government grants and contracts to carry out that work.[3] Despite its size, scope, and importance, there is a lack of accurate, up-to-date information about the sector, including:

⦿ its employment, contributions, and value to the economy;

⦿ the extent to which federal and state governments rely on nonprofit partners to provide services;

⦿ the full range of ways in which nonprofits support and enhance communities; and

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1. "Quick Facts About Nonprofits," National Center for Charitable Statistics, Urban Institute, http://nccs.urban.org/statistics/quickfacts.cfm

2. Department of Labor Bureau of Labor Statistics, "Employment, Hours, and Earnings from the Current Employment Statistics survey (National): Financial Activities," 2010, http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?&series_id=CEU5500000001

3. Independent Sector statistics drawn from corrected table on 2008 sources of revenues for reporting charities issued by Thomas Pollak, National Center on Charitable Statistics. Total revenues are estimated at $1.4 trillion and government was the source of 32.3 percent (452.3 billion) of those revenues

⦿ the potential impact of public policy decisions on the revenue streams and operations of this segment of the economy.

These deficiencies in data and research make it very difficult for public officials to make well-informed policy decisions on issues affecting nonprofits and philanthropy and the causes they serve.

During the course of the nation's prolonged economic recovery, public officials have taken a keen interest not only in deficit reduction measures but also in shaping public policy in ways that are intended to create jobs, stimulate economic growth, and improve quality of life. The role and value of the nonprofit and philanthropic community in supporting efforts to improve life for others is not known much outside of those doing the work, in part because of a lack of data and research about the sector. Further, charitable organizations are not typically viewed by policy makers as vehicles for job growth and retention but rather for the services they deliver to populations in need. The dearth of data has in part hindered the sector's efforts to persuade the Obama Administration and Congress about the need to include nonprofit employers in public policies intended to stimulate economic development. The the lack of understanding about the size and scope of the sector also leads policy makers

to estimate erroneously the capacity of private philanthropy to offset significant government budget cuts. In addition, the absence of readily available information hinders the ability of sector leaders to plan and manage around broad trends that affect their organizations.

The the lack of understanding about the size and scope of the sector also leads policy makers to estimate erroneously the capacity of private philanthropy to offset significant government budget cuts.

This paper reviews the ways in which the government collects nonprofit data and cites various shortfalls in the nonprofit data that is compiled. It then describes recent congressional efforts designed to improve data collection. Finally, the paper discusses efforts within the nonprofit research community to improve the quality, timeliness, and accessibility of government and private data on the operations, finances, and programs of charitable organizations.

Background and Context

Government agencies such as the Bureau of Labor Statistics (BLS), the Census Bureau, and the Agency for Healthcare Research and Quality collect substantial amounts of data on employment and wages from all employers.[4] Yet these agencies fail to present employment data specifically for nonprofit organizations, or they present data on nonprofits that is confusing and inaccurate. For example, while the BLS collects employment data from nonprofits, it does not report separately on nonprofit employment, even though nonprofit employers are, for the most part, separately identified in its data system. The Congressional Research Service has reported on the difficulty of obtaining data on nonprofit employment and noted, "there is no government agency

that regularly collects systematic employment data on the nonprofit sector."[5]

Federal and state governments collect substantial information on recipients of government funds, but a 2009 GAO report notes that, "due to limitations and reliability concerns with tracking systems' data, the data presently collected provide an incomplete, unreliable picture of the federal government's funds reaching the nonprofit sector through various mechanisms."[6] A 2010 study by the Urban Institute in partnership with the National Council of Nonprofits documented significant difficulties human service nonprofits experience with their government contracts.[7] There is no good system for tracking data on government contracting with nonprofits on an ongoing basis at either the state or national level.[8]

The Obama Administration created a Government Accountability and Transparency Board in June 2011 to integrate systems and improve the reliability of data on government spending. The Administration is also undertaking a number of efforts to improve government data and information technology. Steven VanRoekel, Chief Information Officer of the United States, has championed several initiatives, such as the Digital Government Strategy[9] and BusinessUSA[10] aimed at providing better services and information through technology. While these are promising new initiatives, it not yet clear whether they will include improved data on nonprofits.

5. Molly F. Sherlock and Jane G. Gravelle, *An Overview of the Nonprofit and Charitable Sector*, Congressional Research Service, November 17, 2009.

6. Government Accountability Office, *Nonprofit Sector: Significant Federal Funds Reach the Sector through Various Mechanisms, but More Complete and Reliable Funding Data Are Needed*, Government Accountability Office, February 2009, http://www.gao.gov/new.items/d09193.pdf

7. Elizabeth Boris, Erwin de Leon, Katie L. Roeger, and Milena Nikolova, *National Study of Nonprofit-Government Contracting: State Profiles*, Urban Institute Center on Nonprofits and Philanthropy, September 2010.

8. For additional details, see: "Issue Paper: Government-Nonprofit Contracting" in this study.

9. Steven VanRoekel, "Hitting the Ground Running With the Digital Strategy," The White House Office of Management and Budget, June 21, 2012, http://www.whitehouse.gov/blog/2012/06/21/hitting-ground-running-digital-strategy

10. Steven VanRoekel, "Introducing BusinessUSA," The White House Office of Management and Budget, February 17, 2012, http://www.whitehouse.gov/blog/2012/02/17/introducing-businessusa

4. Rick Cohen, "HHS Data: Nonprofit Jobs Picture Mixed, Faster Job Growth than in For-Profit Sector, Small Nonprofits Hits Hard by Recession," *Nonprofit Quarterly*, October 2011.

GAPS IN TIMELINESS AND RELIABILITY OF NONPROFIT DATA FROM ANNUAL FORM 990 RETURNS[11]

The primary source of information about the revenues, spending, and services of tax-exempt organizations remains their annual IRS returns. Yet there are substantial concerns about the timeliness, quality, and comprehensiveness of this data.[12] Given the nature of reporting cycles and IRS processing requirements, this data is generally well over two years old before it is available to researchers, advocates, or the public. Increased use of electronic filing of these forms by exempt organizations has helped alleviate

The absence of readily available information hinders the ability of sector leaders to plan and manage around broad trends that affect their organizations.

problems with inaccurate and incomplete information, but the IRS does not currently have the authority to require e-filing by the nearly 60 percent of exempt organizations that do not voluntarily choose to do so. Furthermore, e-filing has not alleviated problems with the timeliness of information, even with regard to those who use it to file, since current IRS policy prohibits releasing information from e-filed forms earlier or in a different manner than paper forms. This policy delays and substantially increases the cost of providing information from e-filed forms for both government and private organizations.

The Aspen Institute's Nonprofit Data Project is leading an effort to urge the IRS to change this policy, and has begun to work with other major nonprofit and philanthropic coalitions, including Independent Sector and the National Council of Nonprofits.

Although the IRS made meaningful improvements to the Form 990 in 2007, there are still gaps in the information gathered, particularly with regard to data on government funding received by charitable organizations. The IRS has neither made nor announced plans for the revision of Form 990-PF filed by private foundations, despite calls for substantial changes from some foundation financial executives.[13]

Legislative Efforts to Improve Data

The Federal Funding Accountability and Transparency Act of 2006 (FFATA) directed the Office of Management and Budget (OMB) to create a single, searchable website (free and open to the public) on all federal awards and expenditures above $25,000. The database (www.USASpending.gov) provides information on primary recipients of federal funds with summary data by type of recipient, including nonprofits and higher education institutions. A second reporting tool, the FFATA Subaward Reporting System (FSRS), was designed to add to that database information on recipients of subcontracts and secondary awards, which includes additional data on federal funds channeled to nonprofits through state governments and other primary recipients.

In July 2012 the Senate Homeland Security and Government Affairs Committee held a hearing, *Show Me the Money: Improving the Transparency of Federal Spending,* that summarized the status and suggested next steps for these systems. Committee members, including Committee Chair Joseph Lieberman (I-CT), praised the goals of the FFATA but said that USAspending.gov "has not

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11. Further information on changes to Form 990 and 990-PF with recommendations for improvements are provided in "Issue Paper – IRS Form and 990-PF"

12. Please see "Issue Paper: IRS Form 990 and 990-PF" in this study for more information.

13. John Craig argues that the Form 990-PF has failed "to keep up with the evolution of the foundation sector over the last 40 years" and "is seriously flawed" as an instrument for regulation and "a tool for promoting stronger performance among private foundations." He offers a number of specific suggestions for revising the form in his report. See: John Craig, *Modernizing the 990-PF to Advance the Accountability and Performance of Foundations: A Modest Proposal,* The Commonwealth Fund 2010 Annual Report, March 7, 2011, http://www.commonwealthfund.org/~/media/Files/Annual%20Report/2011/1483_Craig_modernizing_990PF_2010_EVP_report_FINAL_v3.pdf

achieved Congress' goals."[14] Problems cited included a cumbersome interface, lack of links to other federal datasets, and individual contractors appearing under different names. Witness Daniel I. Werfel, Controller, Office of Federal Financial Management, OMB, noted a lack of resources as a major obstacle. Incomplete information about subawards to nonprofits and other entities continues to be a problem.

During the hearing, some referenced the Digital Accountability and Transparency Act (DATA Act) as a legislative solution to current shortcomings. The DATA Act, first introduced in June 2011 in the Senate and the House and passed in the House in April 2012, drew from the lessons learned from past efforts[15] to create common data elements and standards to apply to all federal government spending information systems and bring new databases online.

The Sunlight Foundation, along with the American Library Association, the Center for Fiscal Accountability, Citizens for Responsibility and Ethics in Washington, the Project on Government Oversight (POGO), and other nonprofits, strongly support the DATA Act's call for government-wide standards to address "incomplete, incompatible, and incomprehensible government data sets."[16] Supporters believe the proposal enables increased public participation in and oversight of government and that the required transparency would decrease waste, fraud, and abuse within government.

Whether all these advances in federal data systems improve reporting on nonprofits remains to be seen.

Some in the nonprofit community are concerned that new reporting requirements under the DATA Act could be overly burdensome and costly, particularly for nonprofit social service providers. Several associations representing government officials, including the Government Finance Officers Association and the National Association of State Auditors, Comptrollers, and Treasurers, have voiced similar concerns, citing the lack of funding to support implementation, the magnitude of required reporting, and aggressive timelines.[17]

During the hearing, Treasury Department Fiscal Assistant Secretary Richard L. Gregg announced plans for a new system in 2013 that would make public Treasury Department data on agency expenses and payments to recipients of federal contracts, grants, and loans. The system is designed to track the entire cycle of government payments, from appropriations to disbursements, with links to other government data sources such as USASpending.gov. This would be a significant step forward, as USASpending.gov shows funds committed, while Treasury Department data shows funds paid. However, whether all these advances in federal data systems improve reporting on nonprofits remains to be seen.

THE NONPROFIT AND COMMUNITY SOLUTIONS ACT

In June 2010, Representative Betty McCollum (D-MN) took a different approach to improving government data on nonprofits when she introduced the Nonprofit and Community Solutions Act (HR 5533). The bill was in-

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14. Senator Joseph Lieberman, "Show Me the Money: Improving the Transparency of Federal Spending," statement to the Senate Committee on Homeland Security and Governmental Affairs, July 18, 2012, http://www.hsgac.senate.gov/hearings/show-me-the-money-improving-the-transparency-of-federal-spending

15. The American Recovery and Reinvestment Act of 2009 (ARRA) created the Recovery Accountability and Transparency Board (RATB) to provide information on how ARRA funds were distributed and used through three online databases: www.recovery.gov, www.federaltransparency.gov, and www.educationjobsfund.gov. While individual nonprofits that receive ARRA funds directly can be identified through the websites, there is neither consolidated information on nonprofits nor information on subgrantees and subcontractors.

16. Daniel Schuman, "The DATA Act of 2011: Representative Issa Introduces Major Federal Spending Transparency Legislation," Sunlight Foundation, June 13, 2011; Project on On Government Oversight (POGO), "POGO Joins Groups in Supporting the DATA Act," June 21, 2011.

17. Letter to Honorable Darrell Issa, Chairman of the House Oversight and Government Reform Committee, Government Finance Officers Association; International City/County Management Association; National Association of Counties; National Association of State Auditors, Comptrollers and Treasurers; National Association of State Budget Officers; National Association of State Chief Information Officers and National League of Cities, April 24, 2012, http://www.gfoa.org/downloads/GFOA2012DATAAct.pdf

tended to strengthen the partnership between nonprofit organizations and the federal government by creating a bipartisan national council to make recommendations to Congress and the administration on matters affecting nonprofit organizations. The bill also created an Inter-agency Working Group to coordinate policy among federal agencies dealing with nonprofits. The bill would have given responsibility to the Department of Commerce for compiling data on nonprofits and required OMB, the Bureau of Labor Statistics, and the Census Bureau to compile specific data on nonprofits. Finally, the bill would have established a $5 million grant program within the National Science Foundation to research issues of importance to nonprofits, provide doctoral training, and disseminate research results to government officials, nonprofit and philanthropic leaders, and the media.

ARNOVA, the National Council of Nonprofits, Independent Sector, and a broad range of national, state, and local nonprofits initially supported this legislation. However, many nonprofits (including religious organizations) and foundations ultimately expressed concerns about the cost, timing, and feasibility of some of the bill's provisions. A number of them also worried that the bill could result in increased oversight and reporting requirements.[18] The measure received no committee consideration and had no companion legislation in the Senate. There does not appear to be sufficient interest in revising the legislation and moving it forward at this time.

Nonprofit Initiatives to Increase Research on the Sector

Given the limited data on the nonprofit and philanthropic sector provided by government, nonprofit organizations have come together to address outstand-

ing research needs related to government-nonprofit contracting, the impact of tax policy, and other concerns.

THE NONPROFIT DATA PROJECT

In 2007, the Aspen Institute launched a new Nonprofit Data Project bringing together representatives from GuideStar, the National Center for Charitable Statistics at the Urban Institute, the Foundation Center, the Center on Philanthropy at Indiana University, and the Center for Civil Society Studies at Johns Hopkins University to "discuss and assess our nation's nonprofit data collection system."[19] The group plans to conduct research and explore new approaches for collaborative efforts between the federal government and the charitable community to improve public and private data on nonprofit and philanthropic organizations.

The Data Project supported the collaborative efforts of the Bureau of Labor Statistics and the Center for Civil Society Studies at Johns Hopkins University to test ways to improve the BLS Quarterly Census of Employment and Wages to provide clearer, more accurate data on nonprofit employment. Data Project members have met with OMB officials to share concerns about the USASpending.gov database and are monitoring the work of the new Government Accountability and Transparency Board in order to be able to respond and influence its recommendations for "new and better ways of tracking government spending data," especially as it relates to nonprofit organizations.[20]

The Data Project is also focused on ways to improve the quality and timeliness of information on nonprofits drawn from Form 990. They note that advances in e-filing of the forms has already helped to alleviate inaccurate and incomplete information on the returns by the limited number of nonprofits that are either required to e-file or otherwise take advantage of this filing option.[21] Because

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18. The Evangelical Council for Financial Accountability's announcement of the legislation noted that the bill did not provide any exceptions for churches and religious organizations. Other comments were reviewed from blogs posted at http://www.opencongress.org/bill/111-h5533/blogs/2?sort=newest. "Rep. Betty McCollum Introduces the Nonprofit Sector and Community Solutions Act of 2010," Evangelical Council for Financial Accountability, July 6, 2010, http://www.ecfa.org/Content/Nonprofit-Sector-and-Community-Solutions-Act-Introduced

19. "Aspen Institute Nonprofit Data Project Fact Sheet," Aspen Institute, August 11, 2011.

20. Ibid.

21. More information on problems with Form 990 and e-filing options is provided in "Issue Paper: IRS Forms 990 and 990-PF."

IRS policy currently prohibits treating information from e-filed forms in a different manner than those filed on paper; the IRS does not release e-filed data as soon as it is filed and provides only images of the forms rather than the full, digitized data. This requires private organizations that make the data available for research and public information to re-digitize this data at great expense, thus "delaying public access and increasing the potential for errors and omissions."[22] The Data Project has submitted comments urging the IRS to amend this policy and to make other corrections to the form, and the project is working to enlist other nonprofit and philanthropic organizations in this effort. In 2011, Independent Sector (IS) also raised this issue during its online forum on Form 990 and discussed the issue in the letter submitted by IS in response to the IRS call for public comments.

SYMPOSIUM IDENTIFIES AREAS FOR RESEARCH

In October 2010, the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) convened 30 nonprofit scholars and leaders to examine the impact of public policies on nonprofit and philanthropic organizations and to develop a research agenda to gather data needed to inform the development of public policy.[23] Following their symposium, they produced a report in which participants identified the following five areas where research is "most needed to address concerns about public policies' impact on nonprofits now":[24]

1. the different forms of nonprofit financing and how their impact on nonprofits and the end beneficiaries of each form of financing varies;

2. the effects of regulatory and tax policies on nonprofits and how they impact their ability to provide value in relation to the justifications for providing tax-exemptions and deductions;

3. the potential benefit or harm of new and different models for forming and operating organizations that claim to … 'provide public benefit' … and what changes and challenges they may cause for nonprofit organizations;

4. the roles of nonprofits in strengthening communities by evoking civic engagement and building social capital, and limitations to this function; and

5. the value and benefits the public expects nonprofits to provide.

Participants at a follow-up 2011 ARNOVA symposium endorsed many of the same agenda items and also suggested more research on efforts by state and local governments to institute payments in lieu of taxes (PILOTs) and other tax-like revenue from nonprofits.[25]

ADDITIONAL EFFORTS

The Johns Hopkins Listening Post Project has conducted periodic "soundings" of two national panels of nonprofit organizations "to provide more reliable and timely information on the major challenges facing U.S. nonprofit organizations and the promising approaches nonprofit managers are applying to cope with them."[26] The survey instrument is distributed to a "directed sample" of members of eight nonprofit intermediaries in four key fields of nonprofit activity,[27] as well as a random sample of other nonprofits operating in those fields "as a check on any distortion that this sampling strategy may have introduced." The project acknowledges that the data focuses "on only a portion of the entire universe of nonprofit organizations" and is weighted toward larger organizations.

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22. "Aspen Institute Nonprofit Data Project Fact Sheet," Aspen Institute, August 11, 2011.

23. Association for Research on Nonprofit Organizations and Voluntary Action, *ARNOVA's Symposium on Public Policy for Nonprofits: A Report for the Field*, ARNOVA 2011, http://www.arnova.org/pdf/ARNOVA%20 Symposium%20on%20Public%20Policy%20Final%20Rvsd.pdf

24. Ibid, 2.

25. ARNOVA, "Finances of Nonprofits and Public Policy," from *ARNOVA's Symposium on Public Policy for Nonprofits: A Report for the Field*.

26. Lester M. Salamon, Stephanie L. Geller, and S. Wojciech Sokolowski, "Taxing the Tax-Exempt Sector—A Growing Danger for Nonprofit Organizations," Johns Hopkins University Listening Post Project Communique 21, Appendix A (2011), http://ccss.jhu.edu/publications-findings?did=244

27. The four areas include children and family services, elderly housing and services, community and economic development, and arts and culture.

A second project from Johns Hopkins, the Nonprofit Economic Data Project, charts economic trends in the nonprofit sector, including how employment, wages, and finances have changed over time and in relation to other industries. The project is a collaboration of the Hopkins Center for Civil Society Studies, state employment security agencies, the U.S. Bureau of Labor Statistics, and state nonprofit associations.[28]

The Urban Institute has launched the Nonprofit Research Collaborative with the Association of Fundraising Professionals, Blackbaud, Convio, Campbell Rinker, the Foundation Center, Giving USA Foundation, Guide-Star, and Indiana University's Center on Philanthropy to eliminate redundancy in data surveys and provide more current, complete information on current financial and programmatic trends at nonprofits.[29] Partner organizations distribute the survey to their "house list" and others by sharing it through social media messaging. The authors note that "because the sample is not random, results are not generalizable to all nonprofit organizations in the United States" and "no measures of error can be calculated."[30] This methodology provides general information on trends in fundraising and grant-making practices, but has limited reliability for policy formulation.

The Urban Institute is undertaking a project to examine the effects of potential tax policy changes on giving to nonprofit and philanthropic organizations. The Tax Policy and Charities project has produced several papers, including analyses of proposed reforms to the charitable deduction and the implications of nonprofit property tax exemptions.[31] In addition to research, project lead-

ers have been meeting to facilitate sharing of information between government and private economists and researchers to improve their data gathering and research methodologies.

There is some interest from Members of Congress and considerable momentum on the part of federal agencies to gather, manage, and share government data more effectively.

Summary of Political Context

There appears to be limited interest on the part of public officials in improving the current state of research on the nonprofit community. The 2007 redesign of IRS Form 990 and the 2010 Nonprofit and Community Solutions Act (which faltered in 2011) represent the highpoints of activity to bolster sector data. However, there is some interest from Members of Congress and considerable momentum on the part of federal agencies to gather, manage, and share government data more effectively. This attention has been motivated by calls for transparency in government spending and contracting reform and for greater efficiency within government. Until such efforts take hold—and unless they are designed to track nonprofit data—information collected by government entities on nonprofits and foundations will continue to yield a fragmented, incomplete portrait of the sector.

Sector Engagement

Sector organizations do not appear to have put their full attention and energy on a consistent basis behind improving government engagement in data collection for the charitable sector. Research institutions, government watchdog groups, and nonprofit associations have actively come together at different times to address particular issues related to data collection and research. Indeed, efforts are largely driven by a relatively small

28. For a description, see: "The Johns Hopkins Nonprofit Economic Data Project," Center for Civil Society Studies at the Johns Hopkins Institute for Policy Studies, http://ccss.jhu.edu/research-projects/nonprofit-economic-data/about-ned

29. The Nonprofit Research Collaborative, *Nonprofit Fundraising Study: Covering Charitable Receipts at U.S. Nonprofit Organizations in 2011*, April 2012, http://www.urban.org/UploadedPDF/1001601-Nonprofit-Fundraising-Study.pdf

30. Urban Institute and The Nonprofit Research Collaborative, *The 2010 Nonprofit Fundraising Survey: Funds Raised in 2010 Compared with 2009*, March, 2011, 35, http://www.urban.org/UploadedPDF/1001529-2010-Nonprofit-Fundraising-Survey.pdf

31. "Tax Policy and Charities Reports," Urban Institute, http://www.urban.org/taxandcharities/reports.cfm

number of organizations that have engaged in legislative and regulatory advocacy, built partnerships, and conducted research to fill gaps.

Many organizations recognize the advantages of collecting and making available sector-wide information but have not taken up this issue. Budget constraints combined with the massive effort they believe would be required to make the necessary changes has resulted in organizations prioritizing other issues where the danger to the sector is more palpable. Some groups are also concerned about burdensome administrative requirements of data collection, particularly for organizations already saddled with substantial bureaucratic requirements. Others have expressed concern that government might use additional data against the sector or levy unwarranted oversight.

Conclusion

Sector leaders and policy makers are often handicapped by the lack of good data and research on the nonprofit charitable sector. While research from some institutions has made great strides in improving nonprofit data and research in recent years, much work remains to be done. Just as government collects and analyzes significant data on the public and for-profit sectors, government could also support the collection and analysis of nonprofit data.

At this time few nonprofit organizations and foundations consider actions to get the federal government to collect additional data concerning the sector a priority. As a result, much movement in this area is unlikely. While important and exciting new efforts are now under way to improve government data generally, nonprofit sector interests may be ignored in these initiatives unless sector advocates mobilize to insure that government officials are made aware of these interests.

SECTION III:

RECOMMENDATIONS
FOR ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY

BEYOND THE CAUSE
THE *Art* AND **SCIENCE** OF ADVOCACY

RECOMMENDATIONS FOR ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY

Organizations and companies demonstrating the most effective advocacy and lobbying capabilities are those with a clear long-term vision.

The current fiscal climate demands a strong nonprofit voice on public policy matters now more than ever. The decisions lawmakers and the administration will be making in the next few years could have a profound effect on the ability of large segments of the charitable sector to fulfill their missions. The sector must be well positioned to respond to public policy initiatives concerning tax laws that affect charitable and philanthropic organizations, which are expected to be considered in the near term. Further, the sector must be prepared to shape future policies to ensure that they enable organizations to do their work. For these reasons it is important to strengthen and support the charitable sector's advocacy skills and capacities.

A detailed analysis of the sector's track record and approach to public policy advocacy on sector-wide issues found notable gaps between their strategies and those of the organizations that achieved their public policy goals on a consistent basis. There also were differences between the perceptions of many of those working on sector-wide issues and the successful advocates regarding

the actions necessary for a successful campaign. Some of the reasons for these differences are: limited resources; boards who don't understand all of the elements necessary for an effective campaign; the reluctance by some to work with organizations with conflicting positions on other issues; and a belief that the only authentic approach is one that engages grassroots right from the beginning and throughout the campaign.

It is our view that organizations focusing on sector-wide issues would benefit from looking closely at the case studies included in this report.[1] Based on the results of this study, we have concluded that the way in which organizations engage in sector-wide issues will not yield consistently positive results except in isolated instances, because these organizations lack the incentives to work together and a structure that enables the pooling of resources, among other considerations.

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1. Recommendations in this paper are based on findings from Section I of this report, including "Summary: Essentials of Successful Advocacy," the literature review, and case studies.

The recommendations that follow offer one way to improve the status quo in order to maximize our potential impact in Washington, D.C. Achieving this goal will require a single organization to serve as a convener, coordinator, and driver of the entire process. To be successful the organization must have the credibility, expertise, and capacity to convene others, manage the ongoing building process, and work with various organizations on agreed upon campaigns. It is the convening organization that develops the long-term vision, strategy, and core advocacy capabilities but is influenced by and responsive to network participants.

It is the convening organization that develops the long-term vision, strategy, and core advocacy capabilities but is influenced by and responsive to network participants.

With the help of the convening organization, individual organizations within the network may decide to participate in a particular campaign on an issue that is important to them. Each coalition will draw on the various organizations' assets and together will develop the strategy for that campaign. The convening organization will be responsible for seeing that there is an ongoing building phase, and will work closely with others in the network to build out the grassroots and grass-tops connections to public officials; conduct deep research of the issues; develop a detailed analysis of public official's priorities and motivations; and ensure a keen understanding of options and opportunities for proactive action. It is also possible that, depending on the particular policy initiative, different organizations might play the convening role.

Necessary Capabilities for an Effective Advocacy Network

The network of organizations engaged in sector-wide policy issues collectively must have a significant number of the following capabilities. Specific, issue-based campaigns will not utilize every capability listed below, but the ability to build and draw on this combination of assets and strategies is likely to increase public policy impact.

1. Vision, Leadership, Planning

- *Create a Shared Vision*—Develop and publicly articulate a big picture vision around which to mobilize sector organizations and educate policy makers that is shared, proactive, and long-term.

- *Ensure Effective Leadership*—Ensure the sector has strong leaders who are committed to and able to generate momentum for the vision. These leaders must have access to relevant policy makers, the support and trust of key nonprofit allies, and a reputation for accuracy, reliability, and integrity.

- *Build and Sustain the Elements of Advocacy*—Commit to the ongoing building of key elements of advocacy, including developing close relationships with public officials, understanding the political context and processes relevant to key policy issues, testing and refining messages with target audiences, and strengthening grassroots and grass-tops support.

- *Develop Artful Strategy*—Prepare comprehensive short and long-term plans that leverage assets developed during the ongoing building phase and during targeted campaigns. Plans must be customized and adjusted as necessary to respond to the shifting policy environment and changing players in the political arena. The most successful strategies work backward from the policy goal; proactive goals often require long-term time horizons to achieve desired change.

2. Network and Coalition Building

- *Support a Convening Organization*—Invest in an organization capable of serving as the coordinator and leader for the network that develops and sustains advocacy capabilities that can be deployed as needed to address shared policy goals.

- *Build the Network*—Develop a broad, diverse network of organizations (including global, national, regional, and local) that reflect the interests relative to the particular issue or set of issues. Members of this network will inform particular policy goals and priorities, and participate in the issue-based coalitions and campaigns most relevant to them. The convening organization and engaged leaders within the network together must build trust, value, and incentives for engagement and collaboration within the network. Enabling participants to become active leaders in the network will be central to success. This work is part of the building phase of any successful campaign.

Develop a long-term sustainable model that ensures adequate resources to support ongoing advocacy capacity building as well as increased activity related to issue-based coalitions and campaigns as necessary.

- *Ensure Ongoing, Open Communications within the Network*—The network must include robust opportunities for communicating with all participants in order to share perspectives and feedback. The communications infrastructure must be consistent, transparent, timely, and structured to ensure the participating organizations are able to be part of the deliberations on the particular issue at the appropriate time. There are periods in the campaign when public officials may share vital information on condition of confidentiality. This is a normal part of the process but does not preclude clear and transparent communication about the progress in general.

3. Agenda Setting

- *Identify Proactive and Emerging Issues*—Develop relationships, communications vehicles, and research that capture a broad range of issues. Potential policy issues emerge from multiple sources, including actions of and ongoing communications with public officials, concerns from the grassroots or other groups of organizations and their stakeholders, policy developments in state capitals, and information from policy analysts or think tanks.

- *Develop a Balanced Decision-Making Process*—Create a process for agenda setting and decision making that balances the desire for inclusive input from diverse sector stakeholders with the imperative to avoid gridlock and ensure timely decision making and useful outcomes. These processes are necessary at the network level and at the level of individual issue-based coalitions and will vary according to the issues.

  Some issues will be shepherded by a particular organization with the gravitas to move the agenda. Whatever process is used for issue identification, there must be a common understanding of and support for the goal and the strategies to be deployed. Part of the consideration of the issue will be an analysis of the scope of opposition and what it would take to diminish or neutralize that opposition, and the respective positions and passions of coalition members so as to move toward alignment of goals and priorities. Members of the network should be clear on their respective roles and agree to a timetable and feedback loops as the campaign unfolds.

4. Resources and Sustainability

Develop a long-term sustainable model that ensures adequate resources to support ongoing *advocacy capacity building* as well as increased activity related to issue-based *coalitions and campaigns* as necessary. Different campaigns will generate interest from different funders. But all campaigns must include support for the building phase as well. Sources might include contributions from the network of engaged organizations, foundations, individuals, and interested corporations.

5. Research and Public Policy Development

- *Research and Analysis*—Collect the data required to understand the scope, urgency, and potentially interested stakeholders of relevant public policy issues. Research and analysis must be rigorous and relevant to the concerns of advocates and stakeholders so that it can inform policy development and communications. The basic research and policy analysis are best done during the building phase so that clear, concise information is available for use during advocacy campaigns.

- *Develop Policy Solutions*—Generate ideas and potential solutions for policy problems and conduct rigorous analysis of policy alternatives and tradeoffs. Ensure there is a clear understanding of the legislative history, relevant stakeholders, and the political context with regard to each issue.

  Research related to communications and developing relationships with public officials is noted in sections below.

6. Federal Government Relations

- *Develop Champions and Ongoing Support*—Build ongoing relationships with public officials relevant to the given issue. The starting point is a deep analysis into the public official's interests and motivations, the needs and priorities of their constituents, and the ways in which the political context of a given issue might influence the public official's perspective. This analysis will inform a customized approach for each official.

- *Secure Support and Votes during Campaigns*—Work with targeted public officials directly or with allies and partners to ensure that champions and supporters coordinate their efforts in pursuit of the goal. Where possible, draw on analysis of targeted policy makers described above.

- *Serve as a Reliable Source of Information*—Establish a reputation as a high-integrity, accurate, reliable, engaged, and respectful partner. Provide information in a timely way that is responsive to the perspectives and needs of the public officials. Recognize the larger context in which issues are being debated and participate as needed in larger policy and budget discussions.

7. Communications

- *Increase Awareness of the Sector as Part of Ongoing Building Efforts*—Promote an understanding of the sector among policy makers, the media, key influentials, and other stakeholders. Messages should be based on a comprehensive, data-based analysis of the impact of the sector, including its economic value, community benefit, and other contributions to society. These communications should be an integral part of an overarching strategy and be incorporated into specific issue-based campaigns as appropriate.

- *Develop Campaign-Related Communications*—Campaign communications will include the development of a specific set of strategies and timetable; customization of up-to-date materials; identification of opportunities to make the case for the issue; and coordination with partner organizations to implement a national strategy. Messages and dissemination will be based on audience segmentation, message testing, and utilization of effective messengers. As with all communications, the fundamental question is not *what is our best argument?* Rather, it is, *what does this audience need to hear right now?* Communications must be tailored for different audiences and leverage a broad range of outlets to advance a message consistent with the particular strategy.

8. Mobilization and Education

- *Build and Engage Grass-tops*—Identify and engage targeted grass-tops individuals as necessary to gain deep access to key policy makers in Congress and the administration. The system must include an analysis of policy makers' networks; programs to build relationships with local, regional, and national sector organizations and other allies that have access to relevant grass-tops leaders; and a well-crafted process for engaging grass-tops as appropriate.

- *Build and Engage Grassroots*—Ensure access to and engagement with grassroots organizations that can support issue-specific coalitions as needed. This includes developing a sustainable, knowledgeable grassroots base of nonprofit organizations as part of a long-term strategy. In conjunction with national, regional, and local intermediaries, coordinating organizations should strengthen grassroots advocacy capacity and understanding of key issues. The grassroots groups will be cultivated as part of the broad network of engaged organizations and therefore will have access to and participate in ongoing communication regarding issue identification and other activities.

  Grassroots groups will be targeted and prioritized based on their access to and influence with targeted public officials in Congress and the administration, and their ability to identify effective messengers and to mobilize at the local level.

9. State Activity

Work with partners to track and engage in state activity that is directly related to active federal policies. Ensure a timely communications loop between state and federal actors addressing similar policy issues. Information exchanged should include policy proposals, trends, and lessons learned in relation to messaging or strategy. Where relevant, share with federal public officials actions taking place in states, if it advances the policy issue.

10. Political Activity

If resources permit, consider creating a 501(c)(4) organization focused on sector-wide issues in order to increase the network's access to elected officials and provide flexibility related to lobbying and other key strategies. Put in place a funding plan that is viable and sustainable. Develop a structure that allows maximum information sharing and communication with the 501(c)(3) organization, including a clear reporting mechanism.

Conclusion

This study provides insights into the best ways to channel resources to achieve successful public policy outcomes. Among its key findings—shared by the authors and leaders engaged in sector-wide issues—are that the network of organizations engaged in these issues must organize its advocacy efforts more effectively if they are to achieve consistently their public policy goals. The sector needs a structure that better connects the many groups currently engaged in this work; this includes developing incentives that encourage alignment and coordination among diverse organizations and mini-coalitions. It also must establish a convening organization and ensure there are adequate resources to support investments in the type of functions and relationships noted in this study. To make this work would require an investment of approximately $5 million a year for four years. This would enable the coordinating organization to give financial support to partners working on shared goals and activities. By comparison, the U.S. Chamber of Commerce spent more than $20 million on lobbying in the first quarter of 2012,[2] $81 million in 2010, and $71 million in 2009.

As the coalition of organizations begins to gain traction and each success builds on the last, the sector will increase its clout and be seen as an important player to consult prior to policy actions being considered both by the White House and by Members of Congress. This in turn will give the sector an opportunity, not only to be reactive, but also proactive in advancing a policy agenda it deems important.

People coming together to solve problems is central to the American experience and a vital part of our economy. Through America's strong tradition of giving and volunteering generously, the charitable community has worked to solve problems, address needs, and improve lives here and around the world. The collective role and missions of these nonprofit and philanthropic organizations will be furthered by a regulatory and legislative environment that supports and incentivizes its work. These recommendations provide a blueprint to do just that—enable the sector to better serve the common good.

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2. Kate Ackley, "U.S. Chamber of Commerce Continues to Spend Heavily on Lobbying, Filings Show," *Roll Call*, April 20, 2012., http://www.rollcall.com/news/chamber_of_commerce_continues_to_spend_heavily_on_lobbying_filings_show-213978-1.html

APPENDICES

RULES GOVERNING NONPROFIT LOBBYING AND POLITICAL ACTIVITY

Organization (IRC section)	Tax Treatment	Limits on Contributions to the Organization	Application of Gift tax?
501(c)(3) Public charities and private foundations	• Tax-exempt • Contributions are tax-deductible, but subject to certain limits.	Unlimited from corporations, unions, and individuals.	Statutory exemption from gift tax on contributions.
501(c)(4) Social welfare organizations (e.g., NRA, Sierra Club, Crossroads GPS) **501(c)(5) Unions** **501(c)(6) Trade associations (e.g., U.S. Chamber of Commerce)**	• Tax-exempt • Contributions are not tax-deductible and certain contributions may be subject to gift tax. • If the group makes expenditures for an exempt function under Section 527 (i.e., political campaign activity) it is subject to tax on the lesser amount of net investment income for the taxable year or the amount expended on exempt function activities during the year.[4]	Unlimited from corporations, unions, and individuals.	• No statutory exemption from gift tax on contributions. • IRS has suspended its investigation of donors whose gifts may have been subject to gift tax (July 7, 2011).
527 Political organization registered as a federal political committee[5] (e.g., federal candidate committees, PACs, parties)	• Tax-exempt • Contributions are not tax-deductible.	Subject to FECA limits: Individuals can give $5,000/year. PACs: $5,000/year. Parties: $5,000/year. Corporations/Unions: Prohibited	Statutory exemption from gift tax on contributions.
527 Political organization registered as a federal political committee for independent expenditures only (i.e. Super PACs)	Same as above	Unlimited from corporations, unions, and individuals.	Same as above

	Political Activity		
Lobbying Permitted under Internal Revenue Code (IRC)?	**Express Advocacy[1]**	**Electioneering Communications[2]**	**Electioneering Activity[3]**
Public charities permitted to lobby, but limited; can operate under "no substantial part" or the 501(h) expenditure test. **Private foundations** generally not permitted to lobby, with exceptions for self-defense, nonpartisan research and analysis, technical assistance to legislative bodies, and discussions of broad social problems	Prohibited	Prohibited except under limited circumstances that do not involve political campaign intervention as defined under Section 501(c)(3); permitted communications are subject to the reporting and disclosure requirements and limits of FECA.	Prohibited. Certain activities, such as nonpartisan voter education and voter registration, may be permitted depending on facts and circumstances; however, private foundations prohibited from funding voter registration activities unless through one or more grants to Section 4945(f) organizations.
Permitted to lobby without limitation provided that all lobbying is consistent with the group's tax-exempt purpose.	Permitted, but cannot be the organization's primary purpose and subject to the reporting and disclosure requirements and limits of FECA.	Permitted, but subject to the reporting and disclosure requirements and limits of FECA.	• Permitted, but not as the "primary purpose." • Permissible electioneering activity must be relevant to the organization's "primary purpose" stated in its exemption application and articles of incorporation. • Electioneering activity that addresses matters beyond the organization's policy objectives is not permitted, such as advertisements that discuss the full range of a candidate's viewpoints and bear no relation to the organization's principal objectives.
Allowed, but must be de minimis	Unlimited, including donations directly to candidates, but subject to FECA's candidate contribution limits and reporting requirements.	Unlimited, but subject to FECA's candidate contribution limits and reporting requirements.	Unlimited, but subject to FECA's reporting requirements.
Same as above	Unlimited independent expenditures, but no contributions to or coordination with candidates or committees; subject to FECA's reporting requirements.	Unlimited, but subject to FECA's reporting requirements.	Same as above

Notes
1. Defined by FECA as political communications using words such as "vote for" or vote against."
2. Defined as broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office within 60 days of a general election or 30 days of a primary election.
3. Defined, for purposes of 501(c)(3) through 501(c)(6) as participation or intervention in any political campaign for or against a candidate for elective public office. Defined, for purposes of 527, as influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not selected, nominated, elected, or appointed.
4. Internal Revenue Service, "Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations," http://www.irs.gov/pub/irs-tege/eotopicl03.pdf.
5. While 527 organizations registered with the IRS, but not as federal political committees, continue to exist and operate on a federal level, Super PACs have eclipsed this organizational form.

Sources: Campaign Legal Center, "501(c) disclosure chart," www.campaignlegalcenter.org/attachments/CLC_501c_disclosure_chart.pdf; Public Citizen, "Permissible Political Activities of PACs and Non-Profit Organizations Under Federal Campaign Finance and Tax Laws," www.citizen.org/documents/PermissibleActivitiesofPACsChart.pdf; Federal Election Commission, "Electioneering Communications Brochure," http://www.fec.gov/pages/brochures/electioneering.shtml and
Internal Revenue Service, "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations.

BEYOND THE CAUSE

THE *Art* AND **SCIENCE** OF ADVOCACY

APPENDIX B

SECTOR-WIDE PUBLIC POLICY ISSUES

For the purpose of this study, sector-wide public policy issues are defined as those that affect the entire or significant parts of the nonprofit and/or philanthropic community. Below is a partial list of such issues, including those that currently appear in legislation or regulation as well as those that have been the subject of debate but have not been regulated by government.

Topics marked with an asterisk (*) were the subject of analysis for this study.

ACCOUNTABILITY AND GOVERNANCE:

- Redesign of the IRS Form 990 and 990-PF*

- Executive compensation of public charities and private foundations

- Compensation of public charities and private foundation board members

- Conflict of interest policy and requirements

- Other governance issues, including but not limited to transparency, whistle blowing, document retention, expense reimbursement

- Government officials serving on nonprofit and foundation boards

ADVOCACY AND LOBBYING REGULATIONS:*

- Lobbying rules for 501(c)3 organizations

- Inconsistent legal definitions of lobbying

- Expenditure limits: 501(h)election; grassroots lobbying; indexing of spending caps

- Foundation lobbying rules and limitations

- Lobbying and campaign disclosure requirements; White House ethics rules

- Electioneering; impact of Citizens United v. Federal Election Commission

- Prohibition of lobbyists transitioning to government positions

- State ballot initiatives that affect the charitable sector

- Differences in state and local lobbying rules

- Prohibition of advocacy and lobbying for charitable organizations that accept federal funds

- Politically and/or ideologically motivated restrictions on lobbying based on program area

FUNDRAISING:

- Donor intent
- Donor privacy
- State registration: uniform laws, one-stop registration
- Internet donations
- Costs of accepting credit card donations
- Rules on fundraising as percent of total costs
- Calculating organizational fundraising costs
- Basis of compensation for fundraisers

GOVERNMENT BUDGETS AND GOVERNMENT CONTRACTING WITH NONPROFITS:

- Funding for Corporation for National and Community Service (CNCS)
- Funding for IRS as it relates to oversight of the charitable sector
- Government contracts and grants to nonprofits, including restrictions on use of funding, application and reporting procedures, amount of payment as it relates to the cost of providing services, and late payments
- Federal, state, and local budgets and spending as they relate to funding of nonprofit organizations

INCENTIVES FOR CHARITABLE GIVING:

- Criteria for and limitations of the charitable tax deduction*
- IRA rollover allowances for charitable giving
- Expired tax incentives including deductions for food, computers, books, and land
- Estate tax and its effect on charitable giving
- Volunteer mileage reimbursement

ORGANIZATIONAL CAPACITY:

- Program related investments (PRIs)
- Nonprofit access to capital
- Access to mentoring and other capacity-building resources (for example, an SBA-type entity for nonprofits)
- Treatment of nonprofits as employers (such as benefits related to health care, pensions, and E-verification of immigration status)
- Federal funding of research on the nonprofit and philanthropic community*
- Foundation payout rates
- Rules governing the use of donor advised funds and charitable giving
- Volunteerism and service programs
- Nonprofit postage discount rate

TAX EXEMPT STATUS:

- Criteria, definitions, and requirements for tax exemption*
- For-profits in the nonprofit space; new organizational forms (for example hybrid organizations)
- Commercial activity of exempt organizations
- University endowment payout
- Community benefit definitions for hospitals and other types of nonprofits
- State efforts to raise funds through fees, taxes, and payments in lieu of taxes (PILOTs)
- Foundation excise tax

BEYOND THE CAUSE
THE *Art* AND **SCIENCE** OF ADVOCACY

HIGHLIGHTS OF SURVEY RESULTS

1. **Beltway Omnibus Survey—Government Officials, Media, and Washington, D.C., Thought Leaders:** Perceptions of Nonprofit Organizations (in the field May – June 2011)

2. **Survey to Organizations Likely to Be Engaged in Sector-Wide Issues:** Perceptions of Sector-Wide Issues and Advocacy Efforts (in the field October – November 2011)

See Methodology in Appendix D for sampling information and other details.

FIGURE 18.1 | BELTWAY OMNIBUS SURVEY: **POSITIVE CONTRIBUTIONS OF CHARITIES AND PHILANTHROPIES**

The majority of thought leaders and D.C. opinion elites felt the sector's most positive contributions to society included the provision of direct services, serving the common good, and providing an alternative to government.

Mentions 4% or greater are shown

	Gov't/Media/Thought Leaders	D.C. Opinion Elites
PROVIDE DIRECT SERVICES (NET)	54%	51%
Provide direct services, general	38%	39%
Act as a safety net/fill the gap	18%	11%
Help in times of disaster	4%	1%
DO GOOD (NET)	25%	11%
Motivated by the common good	19%	8%
Mission oriented	5%	3%
SERVE AS AN ALTERNATIVE TO GOVT (NET)	23%	19%
Serve as alternative to govt, general	17%	16%
Reduces the burden on gov't	6%	3%
TAKE ON NEW/IMPORTANT ISSUES (NET)	10%	5%
ENGAGE COMMUNITIES (NET)	8%	11%
Provide vehicle for charitable giving	7%	7%
Engage communities in solving problems	1%	4%
RESOURCEFUL/PROVIDES ECONOMIC VALUE (NET)	8%	9%
ADVOCACY ROLE (NET)	8%	1%
OTHER (NET)	8%	2%
NONE/DON'T KNOW (NET)	8%	4%

BASE: D.C. Opinion Elites (N=152), Gov't/Media/Thought Leaders (N=155)

Q: What do you see as the most positive things about charities and philanthropies in America today?

FIGURE 18.2 | BELTWAY OMNIBUS SURVEY: **GREATEST CONCERNS ABOUT CHARITABLE ORGANIZATIONS**

Thought leaders and D.C. opinion elites greatest concern was the lack of funding and capacity to achieve their missions. The next greatest concerns were the lack of financial management, high overhead costs, and corruption and abuse of tax exempt status.

Mentions 4% or greater are shown

	Gov't/Media/Thought Leaders	D.C. Opinion Elites
LACK OF CAPACITY AND FUNDING (NET)	36%	32%
Lack of funding	26%	21%
Lack of capacity	7%	4%
Dependence of government funding	1%	7%
LACK OF FINANCIAL MANAGEMENT AND TRANSPARENCY (NET)	26%	35%
HIGH OVERHEAD (NET)	16%	13%
CORRUPTION AND FRAUD (NET)	16%	11%
Fraud/abuse of exempt status	8%	9%
Corruption	8%	2%
POLITICIAL/PARTISAN ACTIVITY (NET)	8%	11%
COMPETITION/LACK OF COLLABORATIVE CULTURE (NET)	6%	5%
RELATIONSHIP WITH GOVERNMENT (NET)	6%	6%
Relationship with government, general	5%	1%
Unfavorable regulation or threats thereof	1%	5%
LOSE SIGHT OF MISSION (NET)	5%	3%
HIDDEN AGENDAS/INFLUENCE OF IDEOLOGY (NET)	1%	5%
OTHER (NET)	5%	1%
NONE/DON'T KNOW (NET)	12%	3%

BASE: D.C. Opinion Elites (N=152), Gov't/Media/Thought Leaders (N=155)

Q: What are your greatest concerns about charitable organizations in America today?

FIGURE 18.3 | BELTWAY OMNIBUS SURVEY: **SPECIFIC NONPROFITS CONSIDERED MOST SUCCESSFUL AT INFLUENCING POLICY**

D.C. opinion elites and thought leaders mentioned AARP, NRA, and the American Red Cross, among many others, as successful at influencing policy. Large minorities were unsure which group is most influential.

Mentions 4% or greater are shown

	Gov't/Media/Thought Leaders	D.C. Opinion Elites
MISCELLANEOUS (NET)	30%	39%
AARP	12%	14%
NRA	6%	11%
Other Research/Advocacy Organizations	3%	5%
Catholic Organizations	1%	4%
Chamber of Commerce	3%	4%
Religious Organizations	4%	0%
SERVICE ORGANIZATIONS (NET)	17%	17%
American Red Cross	12%	8%
USO/Veterans Service Organizations	1%	5%
United Way	3%	4%
MEDICAL/HEALTH ORGANIZATIONS (NET)	8%	13%
FOUNDATIONS/THINK TANKS (NET)	7%	10%
Pew Charitable Trusts	0%	4%
The Brookings Institute	1%	4%
ENVIRONMENTAL ORGANIZATIONS (NET)	5%	7%
Greenpeace	1%	6%
NONE/NOTHING (NET)	1%	4%
DON'T KNOW (NET)	44%	33%

BASE: D.C. Opinion Elites (N=152), Gov't/Media/Thought Leaders (N=155)

Q: In your experience, which national charitable nonprofit organizations do you consider to be the most successful at influencing policy and regulatory decisions of Congress and the Administration?

FIGURE 18.4 | BELTWAY OMNIBUS SURVEY: **FACTORS THAT LEAD TO NONPROFITS' SUCCESS IN INFLUENCING POLICY**

D.C. opinion elites and thought leaders believed nonprofit advocacy success is derived from the reach of organizational networks, strong communications and reputation, and engagement in advocacy and political activity.

Mentions 4% or greater are shown

	Gov't/Media/Thought Leaders	D.C. Opinion Elites
NETWORK (NET)	34%	23%
Reach of grassroots or constituents	18%	6%
Membership	11%	12%
Outreach/Mobilization/General	5%	4%
COMMUNICATIONS (NET)	29%	18%
Public awareness/visibility/reputation	14%	9%
Successful and consistent messaging	14%	8%
ADVOCACY/POLITICAL ACTIVITY (NET)	28%	25%
Advocacy/Lobbying/Nonpartisan Activity	24%	6%
Political activity/Spending	4%	7%
Political connections	0%	11%
MISSION FOCUS (NET)	18%	12%
"Do good" factor/not self-interested	14%	5%
Moral imperative/appeal of the cause	4%	7%
ORGANIZATIONAL MANAGEMENT (NET)	17%	24%
General management/effectiveness	8%	14%
Leadership	5%	6%
Governance/Transparency/Accountability	4%	3%
RESOURCES/FUNDING (NET)	12%	21%
OTHER (NET)	13%	25%
Fear	0%	6%
Disasters	5%	0%
Research	4%	0%
NONE/DON'T KNOW (NET)	7%	19%

BASE: Choose most successful organization at influencing; D.C. Opinion Elites (N=103), Gov't/Media/Thought Leaders (N=93)

Q: What do you think made those organizations successful? [Refers to prior question, see chart above for details.]

FIGURE 18.5 | BELTWAY OMNIBUS SURVEY: **IMPACT OF CHARITABLE NONPROFITS VERSUS FOR-PROFIT CORPORATIONS**

D.C. opinion elites and thought leaders believed that for-profit corporations carry much greater weight in Washington's policy making than do charitable nonprofits.

Charitable nonprofits, foundations and their advocates (i.e., nonprofit associations and lobbying firms)

For-profit corporations and their advocates (i.e., industry associations and lobbying firms)

	Gov't/Media/Thought Leaders	D.C. Opinion Elites	Gov't/Media/Thought Leaders	D.C. Opinion Elites
Total	38%	37%	82%	89%
A great deal	12%	10%	56%	72%
Very much	26%	27%	26%	17%

BASE: D.C. Opinion Elites (N=152), Gov't/Media/Thought Leaders (N=155)

Q: How much influence do you think the following kinds of organizations have on public policy decisions in Washington, D.C.?

Legend: A great deal / Very much

FIGURE 18.6 | BELTWAY OMNIBUS SURVEY: **IMPACT OF BUDGET CUTS, TAX EXEMPTIONS/DEDUCTIONS AND LOBBYING ON NONPROFIT SUCCESS**

D.C. opinion elites and thought leaders said that tax-deductible contributions and tax exemptions have the greatest impact on the ability of charitable nonprofits to achieve their missions.

Federal government budget cuts / **Tax exemptions for charitable organizations** / **The ability of charitable nonprofits to accept tax-deductible contributions** / **The ability of charitable nonprofits to engage in nonpartisan advocacy and lobbying**

	Gov't/Media/Thought Leaders	D.C. Opinion Elites	Gov't/Media/Thought Leaders	D.C. Opinion Elites	Gov't/Media/Thought Leaders	D.C. Opinion Elites	Gov't/Media/Thought Leaders	D.C. Opinion Elites
Total	41%	49%	72%	81%	78%	85%	50%	45%
A great deal	26%	25%	43%	62%	54%	64%	25%	31%
Very much	15%	24%	28%	19%	24%	21%	25%	14%

BASE: D.C. Opinion Elites (N=152), Gov't/Media/Thought Leaders (N=155)

Q: How much of an impact do you think each of the following issues has on the ability of charitable nonprofits to achieve their missions?

Legend: A great deal / Very much

FIGURE 18.7 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
PERCEPTIONS OF ADVOCACY EFFECTIVENESS BY ISSUE

Respondents felt advocacy efforts had been only somewhat effective at influencing policy. The greatest effectiveness was seen with charitable tax deductions, the weakest with government contracts and government-funded research.

Legend:
- Very Effective
- Somewhat Effective
- Not Effective
- Don't Know

Issue	Very Effective	Somewhat Effective	Not Effective	Don't Know
Charitable Tax Deduction	32%	45%	6%	17%
IRS Form 990 and 990-PF	17%	50%	5%	28%
Nonprofit Tax Exemptions	12%	57%	8%	23%
Advocacy and Lobbying Rules	4%	51%	16%	29%
Government Contracting with Nonprofits	3%	31%	24%	42%
Government-Funded Research on the Nonprofit Community	1%	23%	29%	47%

BASE: Aware of Each Issue (n=varies)

Q: Please rate how effective the nonprofit and philanthropic community has been at influencing each of these public policy issues.

FIGURE 18.8 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
SUGGESTED STRATEGIES TO INCREASE POLICY INFLUENCE

Respondents felt that the most effective actions to increase impact would be to increase public awareness of the sector and increase relationships with policy makers.

Strategy	Ranked as Top Strategy	Ranked among Top 2-4 Strategies
Increase public awareness of the importance of the sector	28%	38%
Increase number and/or depth of relationships with policymakers	13%	47%
Develop a long-term vision to guide and motivate action	13%	22%
Build stronger leadership to bring together and motivate engaged organizations	10%	29%
Increase coordination among engaged organizations	9%	34%
Increase research and analysis relevant to public policy issues	8%	29%
Mobilize state and local constituents more effectively	7%	38%
Conduct research to develop key messages that resonate with target audiences	5%	32%
Engage additional organizations in this work	3%	17%
Other	3%	4%
501(c)(4) organizations/PACs to allow for increased lobbying/partisan activity	2%	10%

BASE: Engaged in Public Policy (n=122)

Q: Please rank this list in order of which are the top four actions you think will be most effective in increasing nonprofit and foundation influence on the public policies that govern the sector.

Legend:
- Ranked as Top Strategy
- Ranked among Top 2-4 Strategies
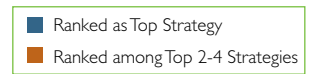
FIGURE 18.9 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
ENGAGEMENT IN THE CHARITABLE TAX DEDUCTION

Activity	%
Communicated with constituents/affiliates	73%
Signed a sign-on letter	73%
Shared information with allies or partners	62%
Sought information-related to developments/advocacy efforts	60%
Met face-to-face with a Member of Congress or staff	59%
Joined a coalition, task force, or advisory committee	52%
Mobilized constituents/affiliates to take action	49%
Created materials for constituents/affiliates to use	46%
Issued press release or spoke to the media	40%
Contributed to planning, agenda setting, or strategy development	38%
Submitted comments/sent a formal letter to executive branch	35%
Provided testimony, comments, or sent a formal letter to Congress	35%
Conducted or contributed to research	25%
Created and distributed a sign-on letter	25%
Convened/helped lead a coalition, task force, or advisory committee	24%
Met face-to-face with an executive branch or agency official	22%
Provided resources such as funding or staff for another organization	11%

BASE: Engaged in this Issue (n=63)

Q: For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the past five years.

FIGURE 18.10 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO CHARITABLE DEDUCTION

Strategy	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Have strong leadership that helps align goals/actions	58%	19%		5%	18%
Have language that successfully frames this issue to target audiences	56%	19%	2%	5%	18%
Regularly coordinate actions with other organizations	56%	21%	2%	5%	16%
Communicate with other organizations	53%	23%	2%	5%	17%
Have credible research on this issue	49%	23%	2%	5%	21%
Have relationships with relevant policy makers	47%	21%		5%	27%
Have communications and media strategies	44%	23%	2%	2%	29%
Mobilize state and local constituents	40%	23%	5%	7%	25%
Regularly share resources with other organizations	40%	14%	2%	9%	35%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=43)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.

Legend:
- Yes, Very Effective
- Yes, Somewhat Effective
- Yes, Not at All Effective
- No
- Don't Know

FIGURE 18.11 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
ENGAGEMENT IN THE IRS FORMS 990 AND 990-PF

Shared information with allies or partners	67%
Sought information related to developments/advocacy efforts	65%
Communicated with constituents/affiliates	60%
Submitted comments/sent a formal letter to executive branch	40%
Joined a coalition, task force, or advisory committee	37%
Signed a sign-on letter	30%
Contributed to planning, agenda setting, or strategy development	28%
Met face-to-face with an executive branch or agency official	28%
Conducted or contributed to research	26%
Convened/helped lead a coalition, task force, or advisory committee	26%
Met face-to-face with a Member of Congress or staff	26%
Mobilized constituents/affiliates to take action	19%
Created materials for constituents/affiliates to use	19%
Issued press release or spoke to the media	16%
Provided resources such as funding or staff for another organization	16%
Provided testimony, comments, or sent a formal letter to Congress	14%
Created and distributed a sign-on letter	9%

BASE: Engaged in this Issue (n=43)

Q: For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the last five years.

FIGURE 18.12 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO IRS FORMS 990 AND 990-PF

	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Have relationships with relevant policy makers	38%	22%		3%	37%
Have credible research on this issue	35%	8%	2%	5%	49%
Have strong leadership that helps align goals/actions	32%	16%	5%	5%	42%
Communicate with other organizations	32%	14%	5%	8%	41%
Regularly coordinate actions with other organizations	24%	27%		8%	41%
Regularly share resources with other organizations	22%	8%	5%	8%	57%
Have language that successfully frames this issue to target audiences	19%	19%		19%	43%
Have communications and media strategies	16%	19%	14%	11%	40%
Mobilize state and local constituents	14%	22%	14%	5%	45%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=37)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.

FIGURE 18.13 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
ENGAGEMENT IN ADVOCACY AND LOBBYING RULES

Shared information with allies or partners	73%
Sought information related to developments/advocacy efforts	66%
Communicated with constituents/affiliates	64%
Signed a sign-on letter	45%
Contributed to planning, agenda setting, or strategy development	43%
Conducted or contributed to research	39%
Submitted comments/sent a formal letter to executive branch	39%
Joined a coalition, task force, or advisory committee	36%
Met face-to-face with a Member of Congress or staff	36%
Mobilized constituents/affiliates to take action	32%
Created materials for constituents/affiliates to use	30%
Met face-to-face with an executive branch or agency official	30%
Convened/helped lead a coalition, task force, or advisory committee	27%
Issued press release or spoke to the media	20%
Provided testimony, comments, or sent a formal letter to Congress	18%
Provided resources such as funding or staff for another organization	18%
Created and distributed a sign-on letter	14%

BASE: Engaged in this Issue (n=44)

Q: For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the last five years.

FIGURE 18.14 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO ADVOCACY AND LOBBYING RULES

	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Regularly coordinate actions with other organizations	43%	14%	16%	5%	22%
Communicate with other organizations	35%	22%	14%	8%	21%
Have strong leadership that helps align goals/actions	30%	27%	11%	11%	21%
Have relationships with relevant policy makers	30%	24%	8%	5%	33%
Have credible research on this issue	30%	14%	14%	5%	37%
Have language that successfully frames this issue to target audiences	24%	32%	11%	11%	22%
Have communications and media strategies	22%	24%	14%	5%	35%
Regularly share resources with other organizations	22%	11%	3%	16%	48%
Mobilize state and local constituents	11%	35%	8%	11%	35%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=37)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.

FIGURE 18.15 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
ENGAGEMENT IN GOVERNMENT-NONPROFIT CONTRACTING

Communicated with constituents/affiliates	70%
Shared information with allies or partners	67%
Sought information related to developments/advocacy efforts	63%
Met face-to-face with a Member of Congress or staff	57%
Conducted or contributed to research	50%
Created materials for constituents/affiliates to use	50%
Joined a coalition, task force, or advisory committee	50%
Signed a sign-on letter	47%
Contributed to planning, agenda setting, or strategy development	43%
Mobilized constituents/affiliates to take action	40%
Issued press release or spoke to the media	40%
Submitted comments/sent a formal letter to executive branch	37%
Convened/helped lead a coalition, task force, or advisory committee	33%
Met face-to-face with an executive branch or agency official	33%
Provided testimony, comments, or sent a formal letter to Congress	20%
Created and distributed a sign-on letter	20%
Provided resources such as funding or staff for another organization	7%

BASE: Engaged in this Issue (n=30)

Q: For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the last five years.
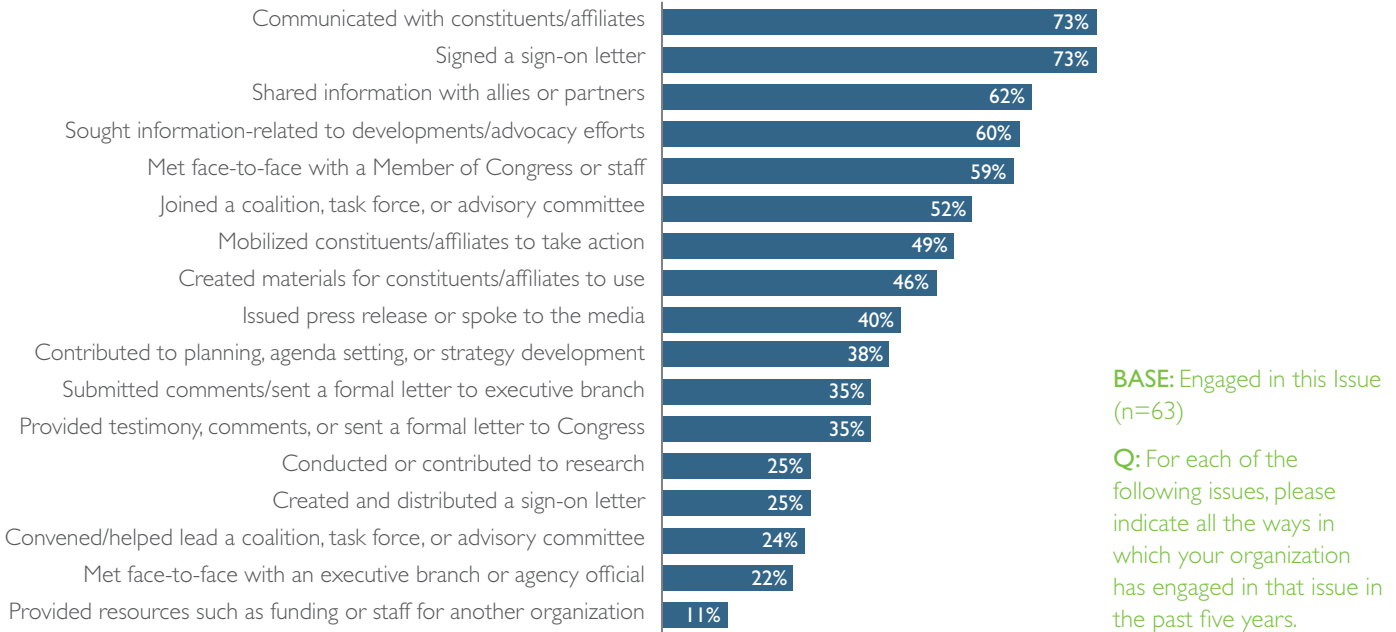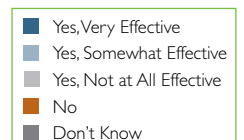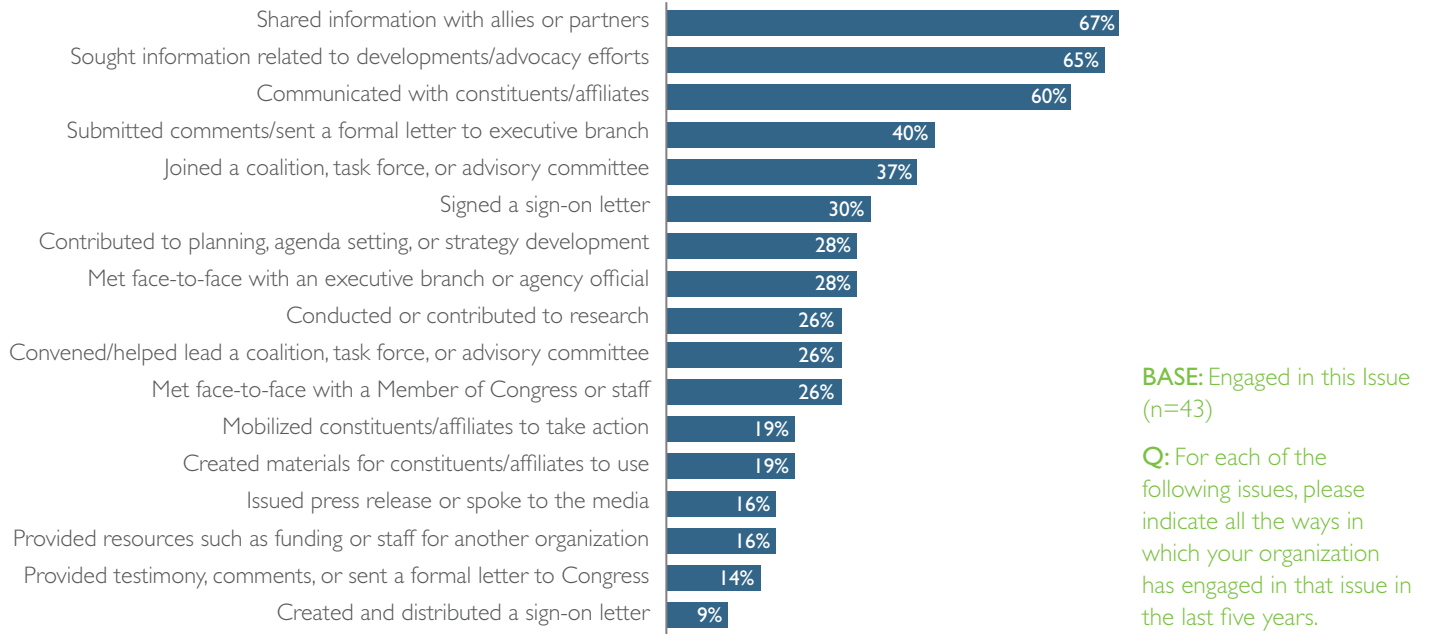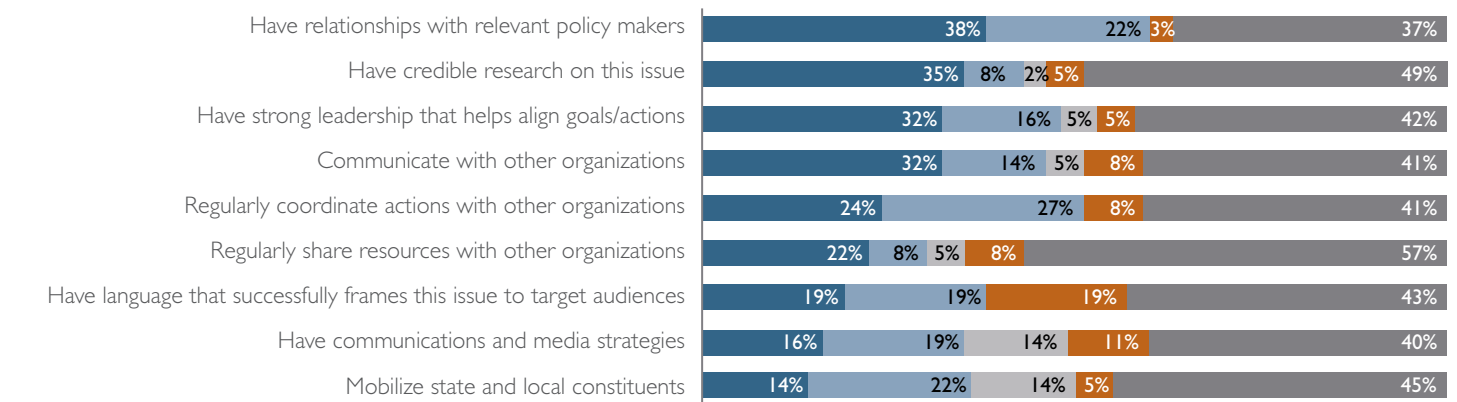
FIGURE 18.16 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO GOVERNMENT-NONPROFIT CONTRACTING

	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Have credible research on this issue	44%	19%	7%		30%
Have language that successfully frames this issue to target audiences	37%	26%	4%	4%	29%
Regularly share resources with other organizations	37%	7%	7%	11%	38%
Communicate with other organizations	33%	22%	7%	4%	34%
Regularly coordinate actions with other organizations	33%	19%	7%	11%	30%
Have strong leadership that helps align goals/actions	33%	15%	11%	7%	34%
Have communications and media strategies	22%	33%	7%	4%	34%
Mobilize state and local constituents	22%	33%	11%	4%	30%
Have relationships with relevant policy makers	19%	22%	19%		40%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=27)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.
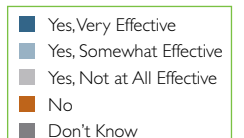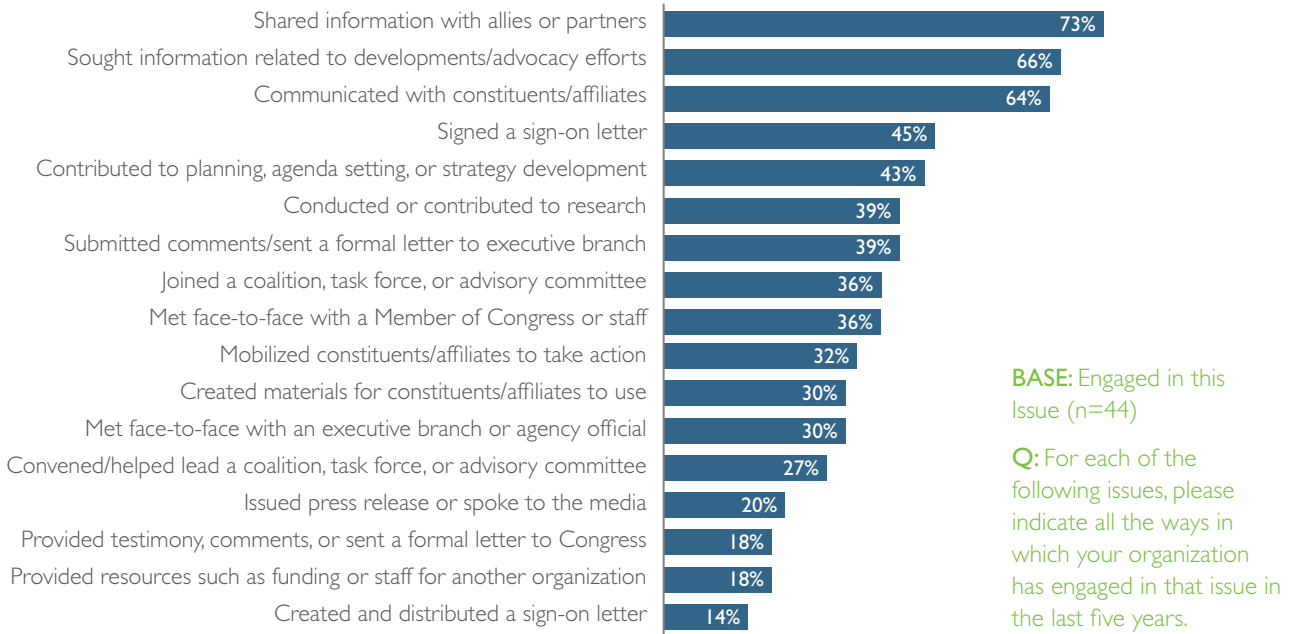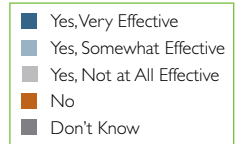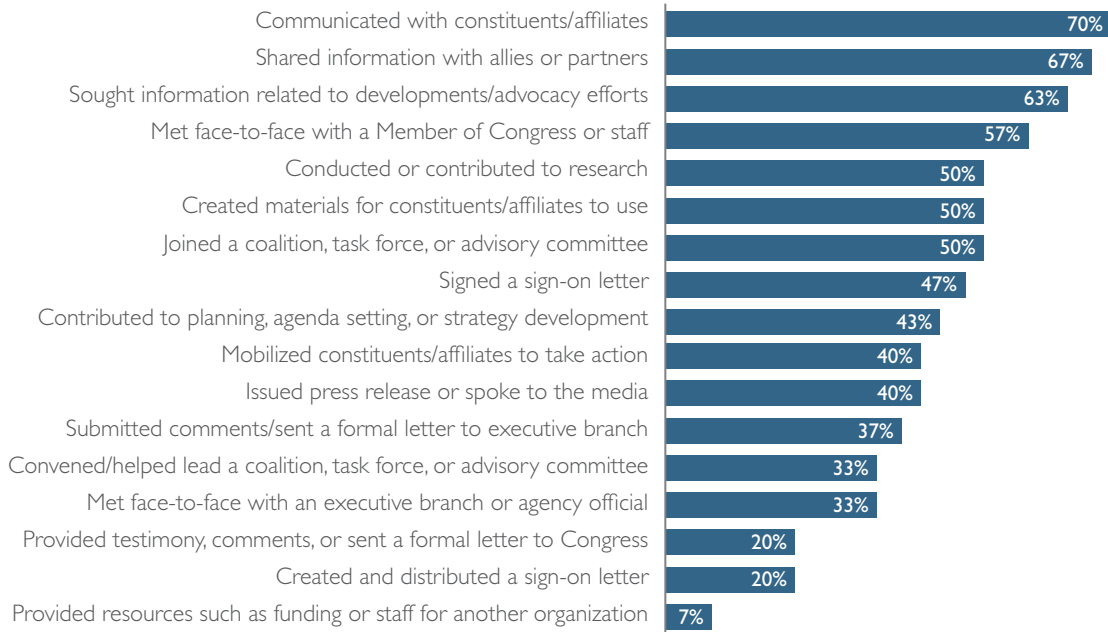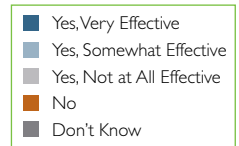
FIGURE 18.17 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:

ENGAGEMENT IN GOVERNMENT-FUNDED RESEARCH ON THE NONPROFIT COMMUNITY

Sought information related to developments/advocacy efforts	52%
Communicated with constituents/affiliates	48%
Shared information with allies or partners	44%
Mobilized constituents/affiliates to take action	37%
Created materials for constituents/affiliates to use	33%
Signed a sign-on letter	30%
Contributed to planning, agenda setting, or strategy development	26%
Submitted comments/sent a formal letter to executive branch	22%
Met face-to-face with a Member of Congress or staff	22%
Issued press release or spoke to the media	19%
Joined a coalition, task force, or advisory committee	15%
Met face-to-face with an executive branch or agency official	15%
Conducted or contributed to research	11%
Convened/helped lead a coalition, task force, or advisory committee	11%
Created and distributed a sign-on letter	11%
Provided resources such as funding or staff for another organization	11%
Provided testimony, comments, or sent a formal letter to Congress	7%

BASE: Engaged in this Issue (n=27)

Q: Q. For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the last five years.

FIGURE 18.18 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:

EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO GOVERNMENT-FUNDED RESEARCH ON THE NONPROFIT COMMUNITY

	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Communicate with other organizations	30%	30%		4% 7%	30%
Have credible research on this issue	26%	22%		4% 11%	37%
Regularly coordinate actions with other organizations	22%	26%		15%	37%
Have language that successfully frames this issue to target audiences	19%	41%		7%	33%
Have communications and media strategies	19%	26%		4% 19%	32%
Have strong leadership that helps align goals/actions	15%	33%		11%	41%
Regularly share resources with other organizations	11%	15%	7%	22%	44%
Have relationships with relevant policy makers	11%	41%		4% 7%	37%
Mobilize state and local constituents	11%	22%	11%	11%	45%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=43)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.
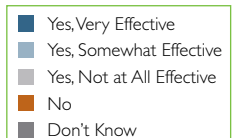
Legend:
- Yes, Very Effective
- Yes, Somewhat Effective
- Yes, Not at All Effective
- No
- Don't Know

FIGURE 18.19 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
ENGAGEMENT IN NONPROFIT TAX EXEMPTIONS

|	
Communicated with constituents/affiliates	63%
Sought information related to developments/advocacy efforts	61%
Shared information with allies or partners	56%
Met face-to-face with a Member of Congress or staff	41%
Created materials for constituents/affiliates to use	39%
Mobilized constituents/affiliates to take action	37%
Joined a coalition, task force, or advisory committee	37%
Signed a sign-on letter	37%
Contributed to planning, agenda setting, or strategy development	32%
Issued press release or spoke to the media	31%
Conducted or contributed to research	27%
Met face-to-face with an executive branch or agency official	25%
Submitted comments/sent a formal letter to executive branch	22%
Convened/helped lead a coalition, task force, or advisory committee	20%
Provided testimony, comments, or sent a formal letter to Congress	17%
Created and distributed a sign-on letter	12%
Provided resources such as funding or staff for another organization	8%

BASE: Engaged in this Issue (n=59)

Q: For each of the following issues, please indicate all the ways in which your organization has engaged in that issue in the last five years.

FIGURE 18.20 | SURVEY TO ORGANIZATIONS LIKELY TO BE ENGAGED IN SECTOR-WIDE ISSUES:
EFFECTIVENESS OF ADVOCACY STRATEGIES RELATED TO NONPROFIT TAX EXEMPTIONS

	Yes, Very Effective	Yes, Somewhat Effective	Yes, Not at All Effective	No	Don't Know
Communicate with other organizations	46%	34%	5%		15%
Have relationships with relevant policy makers	44%	22%	5%	2%	27%
Have communications and media strategies	39%	32%	7%		22%
Have strong leadership that helps align goals/actions	39%	29%	5%		27%
Have language that successfully frames this issue to target audiences	37%	32%	5%	5%	21%
Have credible research on this issue	34%	24%	10%	5%	27%
Regularly coordinate actions with other organizations	32%	34%	7%		27%
Regularly share resources with other organizations	27%	27%	7%	5%	34%
Mobilize state and local constituents	20%	29%	17%	2%	32%

BASE: Engaged in this Issue; respondents were asked to answer this question for a maximum of three Issues (n=41)

Q: Please consider the group of organizations engaged in the public policy issue of (ISSUE) and answer yes or no for each of the following questions. If "yes", also let us know in general how effective these organizations are with this aspect.
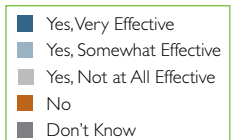
BEYOND THE CAUSE

THE *Art* AND **Science** OF ADVOCACY

METHODOLOGY

Overview

The extensive data, research, and analysis gathered for this study are organized in two sections, each with distinct research components:

Section I: Essentials of Successful Advocacy is an examination of the strategies and tactics that have led to public policy gains. It includes research and analysis based on a comprehensive literature review; six interviews from expert lobbyists; and seven case studies on nonprofits, corporations, and coalitions, which were informed by over 50 interviews and a review of several types of written materials.

Section II: Sector-Wide Advocacy and Policy Issues includes a review of policy history, political context, and sector engagement of nonprofits and foundations in sector-wide issues.[1] It includes an analysis of the network of organizations engaged in these issues as well as six issue papers designed to provide examples of sector-wide advocacy topics. These were informed by 32 additional interviews with sector leaders, seven group discussions, three surveys, and series of network maps that visually depict 528 organizations involved in these issues. In addition, sixteen interviews were conducted with research-

ers, nonprofit and philanthropic sector leaders, and other advisors to help shape the scope and methodology of this paper.

Independent Sector (IS) staff in conjunction with external consultants conducted analysis for each individual paper, as noted on the Acknowledgements page.

Methodologies

The methodology used for each research component of this study is detailed below. Each describes the purpose of the research, and the methods for sampling, collecting data, and generating analysis where applicable. Specific challenges or potential limitations of the study are noted. All of the data were collected in 2011 and 2012.

Section I: Essentials of Successful Advocacy

I.A. **Literature Review**—The review summarized scholarly research on the scope and state of nonprofit advocacy and highlighted factors that contribute to successful advocacy efforts. It included a review of literature from multiple fields of study (including nonprofit management and political science) focusing on the state of nonprofit advocacy and effective advocacy strategies. With a focus on advocacy by charitable organizations, the review considered the following questions:

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1. For the purposes of this study, sector-wide issues are defined as those that affect the entire or significant parts of the nonprofit and/or philanthropic community such as tax issues related to nonprofit tax exemptions or charitable tax deductions. For a full list of these issues, see Appendix C.

- What are the organizational and environmental factors that influence a charitable nonprofit organization's engagement in advocacy?

- What elements outside of the control of organizations can affect whether or not a public policy proposal is moved forward or blocked?

- What kinds of tactics do organizations use in their advocacy efforts? Which activities are successfully correlated with achieving intended advocacy outcomes?

Two challenges arose in reviewing this body of literature. First, a wide range of methodologies and sampling frames made comparing research and generalizing to the entire sector challenging. To overcome this problem, the literature review synthesized the material where feasible and indicated areas where more comprehensive research would be necessary.

The second challenge included the lack of a common definition of nonprofit advocacy. For the purpose of this study, nonprofit advocacy was defined as attempts by nonprofits to influence government decisions through direct and indirect means, including communication with policy makers, grassroots and grass-tops mobilization, and education.

I.B. **Six Interviews with Expert Lobbyists**—Senior members of the research team conducted six interviews with top public policy and lobbying strategists experienced with the corporate community, election campaigns, or nonprofits. They included individuals holding views from across the political spectrum, as well as organizations and consulting groups of different sizes, scopes, and missions.

I.C. **Seven Case Studies**—The case studies identified approaches and activities of successful advocacy efforts. Success in achieving the goal of the advocacy initiative can de described in a variety of ways, including public education and movement building. *This study defined successful advocacy as achieving a public policy goal, including passing, blocking, or significantly influencing the content of legislation, regulation, or formal action by a relevant government body.* This might include filing an amicus brief, working with a federal department on guidelines, encouraging a government entity to change the rules concerning a particular policy or stance, or getting a ruling by the IRS.

Each of the case studies sought to answer three questions:

- How did these organizations/coalitions operate?

- What specific approaches, strategies, and tactics contributed to achieving public policy goals and what accounted for their success?

- What weaknesses or trade-offs were evident their advocacy efforts?

Several criteria were used to determine which organizations to study:

- Track records of success achieving policy goals over time and with successive administrations and Congresses.

- Diverse range of organizations, including ideology, organizational size and structure (i.e., nonprofit, corporate, and coalition).

- Assortment of strengths (for example, one might excel at messaging; another at lobbying) so that the lessons learned would be informed by a broad array of activities.

The first criterion proved especially challenging with regard to nonprofit coalitions. The research team had a difficult time identifying nonprofit coalitions with a track record of sustained advocacy success.[2] Interviewees suggested that once a coalition met its objectives, it generally lost its potency or disbanded, and had to be retooled significantly for the next challenge or opportunity. As a result, it was decided that four mini-case studies on coalitions would be more useful

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2. Coalitions were defined as groups of organizations that came together around a particular public policy issue. This definition did not include associations or membership organizations, per se, for two reasons. First, such organizations were included in the case studies of individual nonprofits and corporations. Second, in many cases, associations and membership organizations develop new or retool old coalitions for each new advocacy issue or campaign. As a result, different coalitions affiliated with the same organization may have very different characteristics and outcomes. Ultimately, two of the coalitions chosen were led by membership organizations, namely the ACLU and Independent Sector.

than one detailed study because they would provide a broader range of insights.

Case study subjects:

- Human Rights Campaign (HRC),

- Americans for Tax Reform (ATR),

- General Electric (GE),

Nonprofit coalitions:

- Health Care for America Now,

- Panel on the Nonprofit Sector,

- Patriots Defending the Bill of Rights,

- Reentry Working Group.

Extensive preliminary background research was conducted on each case study subject, with specific attention on public policy activities and advocacy structure. In addition, an interview list was developed targeting individuals with experience and knowledge of the subject's advocacy efforts. Interviewees were chosen based on their knowledge of the particular organizations, either by virtue of working (or having worked) for the organization, being a target audience for their advocacy efforts, opposing the organization's efforts, or otherwise being affected by the organization's policy work. Over 50 confidential interviews with 42 individuals were conducted to gather information on how the organizations and coalitions have achieved sustained federal advocacy success. Most interviews were conducted between July and November 2011. With the interviewee's permission, most interviews were recorded and then transcribed for accuracy. The organizations also were given a copy of the completed draft report prior to publication so that they might identify factual inaccuracies. Where there was a substantive difference of opinion we added their opinion to the text or to a footnote.

The research team interviewed both conservative and progressive advocacy experts in preparation for the interviews. An interview protocol was informed by a review of academic and trade publications as well as conservative and progressive advocacy experts. The protocol was designed to capture both the tangible

keys to success (e.g., organizational structure, leadership, funding) and the more fluid qualities that led to effective advocacy strategies and breakthrough moments.

Once the background research and the interviews were complete, data were analyzed to identify patterns of practice and lessons that might be useful to others hoping to influence public policy. These findings became the core of the case studies.

Several differences among the case studies are worth noting. First, not all case studies required the same number of interviews. In some instances, high quality supporting documentation or access to key interviewees meant that fewer interviews were required. Second, some organizations handle information (such as sources of funding) in a highly confidential manner and were not always willing to share it with the interviewers. As a result, information that appears in the case studies was not uniform.

Section II: Analysis of Sector-Wide Policy Issues and Advocacy Network

II.A.   **Analysis of Six Sector-Wide Issues**–Issue papers on six sector-wide issues were developed to provide an overview of the public policy history, political climate, and sector engagement of the types of issues addressed by the network of organizations studied in this section. The issues were intentionally selected to include a variety of types of public policy and advocacy, including regulatory and legislative matters. We selected issues that enjoy both broad and limited interest by some organizations, and those that were the subject of intense as well as limited advocacy efforts. These papers were informed by existing research, public record of legislative and regulatory developments, advocacy and coalition materials, media coverage, and interviews. Subject matter experts reviewed all papers.

II.B. **Interviews**—Senior members of the research team conducted 32 confidential[3] interviews with individuals that had knowledge of the organizations engaged in sector-wide issues. Interviews included core questions as well as questions tailored to each interviewee's experience and perspective. The interviews averaged approximately 75 minutes in length and yielded hundreds of pages of recorded transcripts. Nearly 500 quotes were coded, tagged, and entered into a database for analysis. Most interviews were conducted between September and November 2011.

Interviewees were deliberately chosen to represent a variety of perspectives, as shown in adjacent table.

II.C. **Feedback Groups**—Seven structured group conversations provided insights on sector strategies, challenges, and feedback on findings at several intervals during the research process. The groups varied in size and format; participants were guaranteed confidentiality. In each case, participants were primed about the study and presented with questions or findings and asked to provide feedback. Below is a description of the groups.

- Two group discussions were convened at the IS offices in Washington, D.C., in April 2011. Each group comprised three participants with specific expertise related to the subject matter of the study. Group members were asked to identify policy issues and advocacy capabilities the study should address, relevant literature, and methodological concerns.

- Three sessions were conducted in conjunction with the IS annual pre-conference and conference in Chicago, October/November 2011. The first was an extended session at the Public Policy Action Institute, which brings together nonprofit leaders, policy advocates, communications specialists, and others to deepen expertise and to discuss policy challenges and

PROFILE OF INTERVIEW SUBJECTS

Total number of interviews	32
Total number of individuals	33
Total number of organizations	29

Roles of Individuals*

CEOs	12
Senior professionals	21
Former government officials	6

Organizational Characteristics

Organization Type	
Public charities	20
Foundations	4
501(c)(4)	3
501(c)(6)	1
Media: 1	1
Structure and Scope of Operations	
Membership or affiliate structure	16
National scope	25
Regional scope	4

Mission Area: at least one representative from each of the following:

Arts, culture, and humanities
Education
Environment and animals
Health
Human services
International, foreign affairs
Public, societal benefit
Religion

Note: One interview included two representatives from the same organization, two former public officials are currently CEOs, and four former public officials are senior policy officers.

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3. Interviewees were promised that anything they said in the interview would not be directly attributed to them but generally ascribed to a person of their rank or relationship.

opportunities facing the sector. Approximately 75 individuals participated in the two-hour session. The group collectively identified and provided commentary on strategies used by advocates engaged in sector-wide issues. IS held two additional group discussions during the main conference: the first was an invitation-only session of approximately 18 CEOs and senior-level advocates within the nonprofit and philanthropic community; the second session was open to all conference attendees and attracted approximately 16 participants. Both discussions lasted 45 minutes and were used to solicit feedback on preliminary findings.

- The IS public policy committee discussed the study on two occasions.[4] It reacted to preliminary findings for Section 2 in September 2011 and findings for Section 1 in June 2012. On each occasion, members of the research team presented findings and solicited feedback from the group.

The research team initially had concerns that these groups might be reluctant to offer unvarnished feedback especially because of the dual roles IS plays as member of this advocacy community and author of the study. However, this did not appear to be an issue. In each case, participants offered substantive critiques of the sector's advocacy practices and on the advocacy study itself.

4. The rosters of IS Public Policy Committee members are available online. For the 2011 Committee, see http://www.independentsector.org/uploads/Public_Policy_Resources/ppc/2011PublicPolicyCommittee.pdf; for the 2012 Committee, see http://www.independentsector.org/uploads/Public_Policy_Resources/ppc/2012PublicPolicyCommittee.pdf

II.D. **Universe of Organizations Known to be or Likely to be Engaged in Sector-Wide Issues**–The IS data team identified a master list of 704 organizations known to be or likely be engaged in sector-wide issues. The list was generated based on a number of different factors:

1: Nonprofits and foundations connected to relevant public policy issues

Charitable organizations and foundations were included in the universe if they publically acted to show connection to or interest in one of six sector-wide policy issues.

The issues:

1. IRS Form 990 and 990-PF–Public policy engagement includes activities aimed at changing aspects of IRS Form 990, 990-PF, and related forms and schedules, including but not limited to the content and design of the forms, rules about the types of organizations required to file various forms, and the extent to which the forms are digitized.

2. Advocacy and Lobbying Rules of Public Charities and Private Foundations– Public policy engagement includes activities related to changing, preventing change, or clarifying the current laws or regulations governing nonprofit or foundation advocacy, lobbying, electioneering, or related activities. This includes rules related to registered lobbyists.

3. Charitable Tax Deduction–Public policy engagement includes activities aimed at changing or preventing changes to the current laws governing the itemized deduction for charitable donations.

4. Nonprofit Tax Exemptions–Public policy engagement includes efforts to change or prevent changes to the current system of federal tax exemptions for nonprofit organizations, including changes to the types of organizations eligible for tax-exempt status, the degree to which tax-exempt organizations can engage in commercial activities, and/or the degree to which they must prove specific levels of community benefit.

5. Government-Funded Research on the Nonprofit Community—Public policy engagement includes activities to encourage the federal government to collect and make available data, conduct and publish research, or fund research specific to the nonprofit and philanthropic sector.

6. Government-Nonprofit Contracting—Public policy engagement includes efforts at the federal level to change or prevent change to the current grant application and contracting procedures, raise awareness of or rectify tardy payments on the part of government, or address other grievances or issues on the part of the nonprofit community related to government contracting.

Actions to show connection to or interest in issues were defined as any one of the following:

- Signed or organized an organization sign-on letter

- Shared information; communicated about the issue

- Convened or joined a coalition, task force, or advisory committee

- Spoke to the media; issued a press release

- Submitted comments to a governmental agency

- Provided testimony; submitted comments to a congressional committee

- Lobbied on the issue; contacted policy makers/staff

- Conducted and/or contributed research to the issue

- Provided resources (funding or staff)

2: National charities and foundations that met some or all the following criteria for "likely to be engaged" in sector-wide issues

These organizations included the following:

- Charities and foundations active with the Independent Sector Policy Action Network

- Charities in the top 100 of the Philanthropy 400 list (list generated by *The Chronicle of Philanthropy* based on amount of private donations)

- Nonprofits, including (c)3s, (c)4s, and (c)6s with more than $500,000 in lobbying expenditures in 2010 (from Open Secrets based on Lobby Disclosure Reports)

- Charities and foundations led by individuals featured in the 2011 *Nonprofit Times* Top 50 Leaders list or in two or more of the last five years' lists

- Foundations that have given grants in the past three years to organizations for work on public policy/advocacy in the philanthropic sector (from Foundation Centers based on 990-PF data, 2007-2009)

Exceptions and Exclusions

The unit of analysis was 501(c)(3) organizations working on federal public policy issues. If an individual acted on his or her own, the organization was not included. If the public charity did not have a national scope of work, it was not included, other than statewide associations of nonprofit organizations. (Note: Foundations were not excluded based on limited geographic scope.) If the actor was a governmental agency, it was excluded.

Data Collection

Information was collected on these organizations from the publicly available IRS Form 990 (or 990-PF or 990-EZ) via GuideStar and Foundation Center and the Lobby Disclosure Forms filed with the House of Representatives and Senate through OpenSecrets.org and Office of the Clerk website. Initially, additional information was also collected from each organization's website, such as the scope

2. Staff size and number of volunteers

3. Total revenue

4. Total expenses

5. Revenue from government sources

6. Existence and budget of affiliated (c)(4), 527, or political action committees

7. Organizational type

8. Number of revenue sources

9. Additional information on private foundations: To reflect more accurately a foundation's size and scope, the following fields were added to private foundation records, with data coming from Foundation Center summaries of information on the 990-PF.

   • Foundation assets

   • Total grant giving

   • Number of grants given

Data Calculated from 2008-2010 Lobby Disclosure Forms:[5]

1. Number of lobbyists reporting

2. Whether an outside lobbyist worked on behalf of the entity

3. Amount of money spent on lobbying

4. Whether lobbying services were secured for no fee[6]

II.E. **Survey of Targeted Policy Professionals**– Representatives from the 704 organizations noted above were surveyed about their relationship to and perceptions of advocacy activities related to sector-wide issues. The survey was sent to the CEO or, if applicable, the senior policy officer at

each organization and was fielded from October 25 through November 23, 2011. Of the organizations invited to participate in the 20-minute email survey, 157 (22 percent) responded.[7] Of the respondents,

• 91 were engaged in at least one of six sector-wide public policy issues;

• 8 were engaged in some other sector-wide public policy issue;

• 22 were not engaged in any sector-wide public policy issue; and

• 36 did not have a budget for public policy and did not respond to majority questions in the study.

II.F. **Network Maps**–The research team created a series of network maps-one of the all 528 organizations engaged in sector-wide issues and one for each policy issue of interest-in order to reflect visually the relationships and patterns of engagement among organizations. The total numboner of organizations on the maps is fewer than 528 because several groups opted out of being listed publicly.

Organizations were included on the maps if the research team was able to find evidence of the organization engaging in on one or more of the issues (as defined above) or if they completed the survey and reported that they took action on the issue. (See the sidebar "Characteristics of 528 Organizations Engaged in Sector-Wide Advocacy" for a profile of these organizations.)

Indicators of Advocacy Engagement

For issue-specific maps, the research team developed a system for identifying each organization's level of public engagement. *Please note that this is intended to be rough or simple indicator of engagement. It is by no means a comprehensive analysis of engagement, nor is it a reflection of an organization's effectiveness or impact.*

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5. Lobbying data was captured from the Lobby Disclosure Forms because it was filled out more consistently than Form 990 Schedule C.

6. Organizations receiving pro bono lobbying assistance are represented in the data as spending $1 on lobbying. This is because lobbying expenditure was used in the analysis as a proxy for lobbying activity and the $1 allocation allowed these organizations to be counted as engaged in lobbying activities.

7. According to the Harris Group, which conducted the survey, 22 percent response rate is higher than average for surveys of this type that include identified authors, samples with a combination of established relationships and new individuals, and do not provide incentives to the respondents.

CHARACTERISTICS OF 528 ORGANIZATIONS ENGAGED IN SECTOR-WIDE ADVOCACY

FIGURE 19.1

ENGAGED ORGANIZATIONS BY ORGANIZATION TYPE
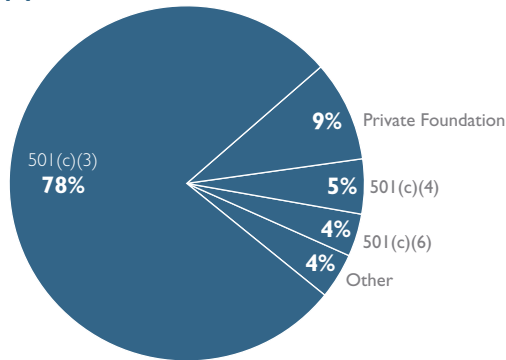
Source: IRS Form 990 and 990-PF; n=528

- 501(c)(3) **78%**
- **9%** Private Foundation
- **5%** 501(c)(4)
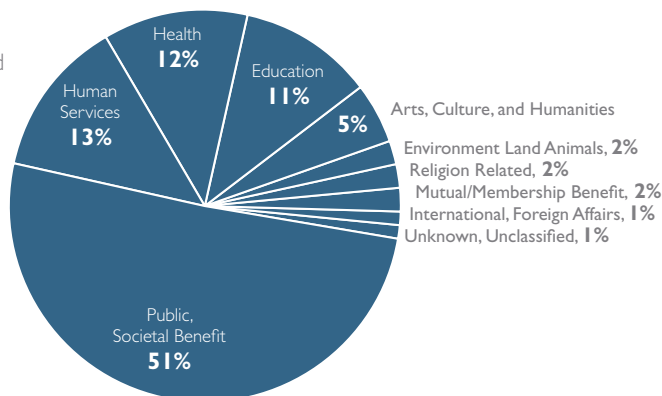- **4%** 501(c)(6)
- **4%** Other

FIGURE 19.4

ENGAGED NONPROFITS BY ANNUAL REVENUE

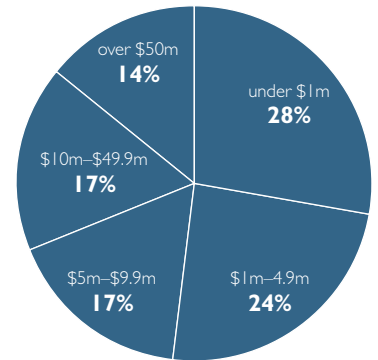**Source:** IRS Form 990, based on the most recent data available at the time of collection (2009-2011); n=430

- over $50m **14%**
- under $1m **28%**
- $10m–$49.9m **17%**
- $5m–$9.9m **17%**
- $1m–4.9m **24%**

FIGURE 19.2

ENGAGED ORGANIZATIONS BY GEOGRAPHIC REGION

Source: Address of national headquarters of engaged organizaions categorized by Census Regions and Divisions of the United States; n=528

- West North Central **4%**
- West South Central **4%**
- East North Central **11%**
- **2%** East South Central
- Mid Atlantic **15%**
- South Atlantic **47%**
- **3%** Mountain
- **4%** New England
- Pacific **10%**

FIGURE 19.5

ENGAGED NONPROFITS BY NUMBER OF REVENUE SOURCES

Source: IRS Form 990, based on the most recent data available at the time of collection (2009-2011); n=387

Note: Seven categories of funding noted on IRS Form 990 include: government; contributions, gifts, grants, and other similar amounts; program service revenue; investment; fundraising; sales of inventory; and other.
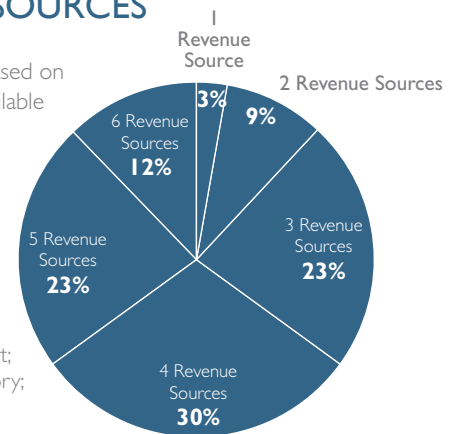
- 1 Revenue Source **3%**
- 2 Revenue Sources **9%**
- 6 Revenue Sources **12%**
- 3 Revenue Sources **23%**
- 5 Revenue Sources **23%**
- 4 Revenue Sources **30%**

FIGURE 19.3

ENGAGED ORGANIZATIONS BY PRIMARY NTEE CODE

Source: Classification as determined by the National Taxonomy of Exempt Entities Core Codes (NTEE) and reported on IRS Forms 990 and 990-PF; n=444

- Health **12%**
- Education **11%**
- Human Services **13%**
- **5%** Arts, Culture, and Humanities
- Environment Land Animals, **2%**
- Religion Related, **2%**
- Mutual/Membership Benefit, **2%**
- International, Foreign Affairs, **1%**
- Unknown, Unclassified, **1%**
- Public, Societal Benefit **51%**

FIGURE 19.6

ENGAGED ORGANIZATIONS BY AVERAGE ANNUAL LOBBYING EXPENDITURE, 2008–2010

Source: Lobbying Disclosure Forms submitted to the U.S. House of Representatives and Senate and reported by the Center for Reponsive Politics; n=528
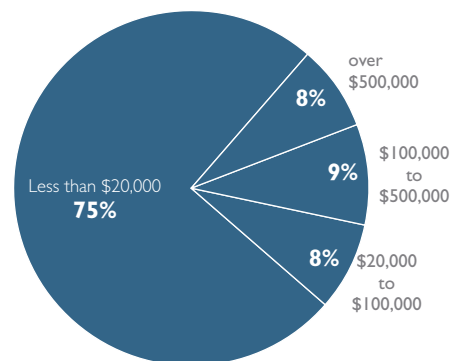
- over $500,000 **8%**
- $100,000 to $500,000 **9%**
- Less than $20,000 **75%**
- $20,000 to $100,000 **8%**

issues (as defined above) or if they completed the survey and reported that they took action on the issue. (See the sidebar "Characteristics of 528 Organizations Engaged in Sector-Wide Advocacy" for a profile of these organizations.)

Indicators of Advocacy Engagement

For issue-specific maps, the research team developed a system for identifying each organization's level of public engagement. *Please note that this is intended to be rough or simple indicator of engagement. It is by no means a comprehensive analysis of engagement, nor is it a reflection of an organization's effectiveness or impact.*

Starting from the limited amount of public information available and survey responses, the research team developed a scoring system that weighted actions based on the time and effort expended by organizations. Such a scale has significant limitations, as each of these activities is part of a broad array of potential strategies with varied impact depending on the organization, timing, and circumstances. Neither the list of activities nor the points scale begin to describe the scope of relationships and tactics that contributes to successful advocacy. Missing from the list of actions below are the depth of relationships between advocates and public officials, the strategic use of grass-tops contacts, and any measure of effectiveness of each activity, among other factors. For example, an organization may write letters and visit staff on Capitol Hill and send updates and calls for action to their affiliates without necessarily having much impact. Testifying in and of itself may not be significant. Its importance depends on the creditability of the organization, the timing and relevance of the hearing against a backdrop of other developments in Congress at that time, attendance by public officials, and so on.

Recognizing that the scale of activity does not reflect the intricacies or effectiveness of actions, it does however reveal some degree of organizational engagement with a particular issue. The chart below shows how a limited number

Rough Indicators of Public Engagement for Network Maps

Actions	Points
convened or helped lead (coalition, task force, or advisory committee)	5
led face-to-face lobbying	5
organized a sign-on letter	5
contacted (email/phone) policy makers/staff	4
participated in but did not lead face-to-face lobbying	4
provided resources (funding or staff)	4
conducted or contributed to research	3
issued press release or spoke to the media	3
participated in (coalition, task force, or advisory committee)	3
testified, submitted comments, or sent a formal letter	3
communicated with constituents/affiliates	2
created materials for constituents/affiliates to use	2
shared information with allies or partners	2
signed another organization's sign-on letter	1

of activities were weighted on the basis of time and effort to discharge such actions both with the Congress and with the administration.

II.G. **Survey of Random Sample of Public Charities and Private Foundations**–In order to understand the perspective of the broader charitable community–beyond organizations already connected to these issues–IS commissioned the Harrison Group to conduct a survey of a random sample of the sector. The sample consisted of 400 public charities and 100 private foundations, each weighted to the GuideStar database proportions for NTEE groups, annual revenue (fair market value assets for foundations), and region. The 15-minute phone survey was in the field from December 21, 2011, to January 26, 2011.

Questions explored organizations' awareness, engagement, and perceived importance of five sector-wide issues: advocacy and lobbying regulations, charitable tax deduction, nonprofit tax exemption, IRS Form 990 and 990-PF, and government-nonprofit contracting.

II.H. **Survey of Washington, D.C., Thought-Leaders and Decision Makers**—IS participated in Harris Interactive's spring 2011 Beltway Influencer Omnibus by purchasing a number of questions in this edition of the periodic survey. The IS questions related to opinions of the charitable community and nonprofit advocacy.

The survey was conducted between May 23 and June 30, 2011, and consisted of interviews of 307 individuals that belong to four primary groups:

- 50 government decision makers in D.C. and regional offices, made up of congressional staffers and members of the executive branch;

- 45 members of the media, including D.C.-based decision makers at newspapers, periodicals, television stations, major publishers, and news service agencies;

- 60 thought leaders, decision makers at:
  - NGO's such as associations, foundations, colleges, and universities
  - Interest groups such as public interest, consumer advocacy, and political action committees
  - Foundations and associations such as executives, staff, and board members at major trade and professional associations;

- 152 D.C.-area opinion elite that included D.C.-area residents who follow current issues and are highly engaged in political activities.

Respondents for this survey were interviewed in two ways. The interviews of the D.C. opinion elite were conducted online via Harris Interactive's propriety, Web-assisted interviewing software using the high-quality Harris Poll Online[SM] panel. These results were weighted based upon age, sex, education, race, household income, and education, as necessary to bring them into line with their actual proportions in the D.C. opinion elite population. Weighting was also used to adjust for the D.C. opinion elite respondents' propensity to be online. The government, media, and thought leaders were interviewed by telephone by Harris Interactive's executive interviewing staff. These results were not weighted. For the sake of brevity, all of these respondents are referred to as thought leaders throughout this report.

BEYOND THE CAUSE
THE *Art* AND SᴄIENᴄE OF ADVOCACY

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