

# *Substantial Activity:* Building Nonprofit Political Heft

by Tim Delaney

“**W**E THE PEOPLE.” THESE THREE SIMPLE words encapsulate the very essence of being an American. They proudly proclaim the source of power in our social contract: the U.S. Constitution. They also symbolize something deeply rooted in the American spirit. When our nation has faced grim challenges, we the people have gathered through countless nonprofits—abolitionist societies, women’s suffrage groups, churches and synagogues, civil-rights groups, health-care organizations, environmental groups, and more—to amplify our voices to influence public policy for the common good.

Today our nation suffers from years of abuse marked by excessive greed (e.g., Enron, World-Com, and now Wall Street) and shattered public trust (e.g., public officials convicted of corruption, shockingly disproportionate pay for executives, multibillion-dollar government contracts given away on a no-bid basis, and rigid partisanship). Those abuses flowed from broken systems that helped create the current economic collapse.

It’s time for us—we the people, gathering as individual citizens through nonprofits—to roll up our sleeves and take unified action to change unfair

systems that have enabled these abuses. We’ve overcome injustices before; advocacy is a core strand in nonprofits’ DNA. We can do it again by taking action at the national, state, and local levels.

## **At the National Level: Claim Our Constitutional Rights**

The freedom of association and the right to petition our government are firmly embedded in the First Amendment, thus securing our rights as citizens to assemble through nonprofits to lobby. Despite these constitutional protections, between 1919 and 1990, federal policy makers helped fuel a misguided myth about nonprofit lobbying.

In 1919, during the Red Scare, the Treasury Department ruled that any nonprofit engaging in propaganda or otherwise attempting to influence legislation would lose its tax-exempt status. In 1934, Congress declared that a charitable nonprofit could spend “no substantial part of [its] activities . . . attempting to influence legislation.” Yet Congress failed to draw a clear line between impermissible “substantial activity” and permissible “insubstantial activity,” thus seemingly putting all advocacy activities at risk. In 1976, Congress clarified beyond doubt that nonprofits may legally lobby, but it took the IRS until 1990 to issue the simple form that allows nonprofits to opt out of the vague “no substantial part” test and instead use a clear, bright-

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line test based on a nonprofit's expenditures, thus keeping nonprofit lobbying laws murky for another 14 years.

By chipping away at the ability of individual citizens to amplify their voices through nonprofits, these government actions marginalized citizen participation. With the system of checks and balances thrown off by muting nonprofits—and thus citizens—at all levels of government, various forces were free to manipulate the process and twist public policies to their private advantage. This situation must end. To assert the proper role of nonprofits in democracy, Americans must take the following steps.

**Allow foundations to support legislative lobbying.** Until 40 years ago, citizens regularly organized through nonprofits to influence public policy for the common good. Through the National American Woman Suffrage Association, we gathered to secure women's right to vote in 1920. In the 1930s, we gathered through Townsend Clubs to get Congress to pass the Social Security Act. And in the 1960s, we gathered through numerous nonprofits to secure passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

So what happened four decades ago? In 1969, Congress scared foundation managers by forbidding private foundations from issuing grants specifically earmarked for legislative lobbying. To avoid risk, too many foundations actively shun all advocacy-related activities, not just legislative lobbying. As recent research shows, "Many foundations take at best a 'hands-off' posture, and at times an actively negative one, toward policy involvement and civic engagement."<sup>1</sup> Consequently, "the resources organizations have available to devote to this increasingly important function remain highly limited. . . . Nonprofit organizations are entering the policy realm with one hand tied behind their backs."

*The recommendation.* In addition to working with foundations to help them understand their current abilities to fund a wide variety of public-policy work, we should lobby Congress for full

restoration of foundations' ability to promote democracy by making grants that promote civic engagement and help citizens come together through nonprofits for legislative lobbying.

**Increase the dollar limits and automatic opt-into-expenditures test.** In 1976, Congress finally provided some relief from the ambiguous "no substantial part of activities" standard in Section 501(c)(3) that scared many from legislative lobbying because of its vagueness (What is substantial? Two-thirds, one-half, or one-third? And what is counted? Dollars spent, time spent?) by offering nonprofits the option to use a clearer standard, one that is easily calculated based on a percentage of a nonprofit's expenditures. Congress, however, placed an additional burden on nonprofits: to opt out of the vague no-substantial-part test in favor of the clearer expenditures test for which nonprofits must file a separate document. Moreover, Congress failed to index the expenditure test's fixed dollar amounts, which now—more than 30 years later—are unreasonably low.

*The recommendation.* Citizens should lobby Congress to eliminate these infringements on our First Amendment rights to petition our government through nonprofit associations. At a minimum, Congress should increase and index for automatic adjustment the long-outdated dollar limitations and flip the option so nonprofits automatically opt into the expenditures test.

**Lift the discriminatory burden.** In 1976, Congress imposed another unfair burden on citizens by limiting their ability to communicate through nonprofits to the public about legislation. Nonprofits using the optional expenditures test may spend only 25 percent of their allowable lobbying expenditures to communicate with the general public, while corporate titans like Boeing and Exxon-Mobil face no similar limitations. This restriction on nonprofits is fundamentally unfair. What is so threatening to democracy that a local food bank, homeless shelter, or hospice must be limited when sharing its views with fellow citizens,

while powerful defense contractors and big oil companies enjoy an unlimited ability to espouse their views to the public?

*The recommendation.* Nonprofits should lobby Congress to eliminate this unfair burden that limits the public's right to receive information about legislative lobbying matters from other citizens who gather through nonprofits.

The infringements described above occurred before 85 percent of today's nonprofits were even created, so most nonprofit leaders grew up in a world where these unfair limitations were simply accepted as a given. But they can and should be rolled back.

### At the State Level: Unite Our Voices

Next, we need to remember basic lessons from the playground. When playing tug-of-war, we learned that having more teammates on one side created an advantage in strength. When on the seesaw, having more bodies on one side created more heft for grounding. And when the bully threatened, having friends closely provided safety in numbers.

Nonprofit leaders must apply these same basic lessons now. Unprecedented government budget deficits have led a growing number of state and local jurisdictions to seek new revenue streams, including by stripping nonprofits of property and sales tax exemptions. The threats are real and immediate.

**Sense the urgency.** We cannot wait until adverse legislation gets introduced. Knowing that state and local governments will strain to find ways to balance their budgets and that other forces will try to gain an advantage at our expense, we must galvanize now. When we unite and show strength in numbers, we can protect those we serve.

*The recommendation.* Nonprofits of every kind—especially those that own property, such as churches and synagogues, colleges and universities, and cultural and health-care facilities—should join their state association of nonprofits to form a united and strong force to fight off attempts to shift new tax burdens onto the backs of nonprofits.

**Learn from others.** The business and government sectors are subdivided into multiple silos, but they know that to effectively influence public policy, they must unify at the state level. So large utilities, manufacturers, mining companies, and other major industries created state chambers of commerce; previously fragmented small businesses created chapters of the National Federation of Independent Business; and multitudes of counties, municipalities, and school boards created separate state associations. Most of these entities still have their own lobbyists, but they recognize that their separate agendas must be set aside for unity on the truly crucial issues.

*The recommendation.* To be effective policy advocates, nonprofits must apply the insight gained by other sectors. An electricity company may fight a gas company over which one gets a bigger tax credit advantage, but they join forces to cut overall business taxes. City X may compete with town Y over the formula for distributing highway dollars, but they rally together to protect state-shared revenues. Similarly, instead of ignoring one another (or fighting one another for the scraps of legislative budgets), nonprofits should unite to expand the resources for the communities we all serve. Indeed, nonprofits need to join forces, creating broad coalitions so the collective voice of the people gets heard. We have the mightiest resource of all at our disposal—the power of the people—so we need to marshal grassroots efforts for the greater good.

**Educate ourselves.** A harmful myth has spread like a virus: that nonprofits cannot lobby. Major mental barriers still exist regarding the legality of nonprofit advocacy in general and lobbying in particular.

*The recommendation.* Just as in the past when Americans launched massive efforts to eradicate diseases, nonprofit leaders must engage in a similar campaign to educate not only existing nonprofit board and staff members but also academics, accountants, and attorneys who feed the false

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myth; we must rid our nation of this falsehood that silences the voice of the people and thereby harms the communities we serve.

### At the Local Level: Champion Democracy

Finally, nonprofit board and staff members need to review their mission statements. Invariably, nonprofit missions express versions of the ancient Athenian oath through which citizens in another democracy 2,500 years ago pledged to “transmit this [community to future generations] far greater and more beautiful than it was transmitted to us.”

With this in mind, consider how your nonprofit can advance its mission by organizing its own constituents to influence public policy and join coalitions to pursue ambitious social agendas to advance the common good. Some of our country’s most transformational advancements occurred only because of the organizing and advocacy by nonprofit organizations. Our political heft comes from our ability to channel citizens’ collective voices in ways that champion their desire to change public policy. The people have a constitutional right to come together to influence public policy, and the nonprofit sector has a moral duty to support their quest to advance the common good. Our sector should never allow itself to be turned away from this sacred role; if we do, then we will undermine Americans’ most powerful tool to come together—as “We the people”—to influence democracy.

#### ENDNOTES

1. Lester Salamon, “Nonprofit America: A Force for Democracy?” Communiqué no. 9, the Listening Post Project, 2008.

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