

Electioneering

U.S. law prohibits U.S. public charities, including the Hewlett Foundation, from using their funds to intervene in an election campaign, or on behalf of, or in opposition to, any candidate for public office—often called electioneering. For the Hewlett Foundation, the prohibition extends to all domestic and foreign grantees regardless of tax status or organization type, and means that Foundation grants may not be used to support engagement in electioneering activities. As indicated below, in many cases the prohibition extends to *any* of the organization’s activities, whether or not they are funded by the Foundation.

Any electioneering analysis is always based on relevant facts and circumstances, so please review the information below as you consider the activities supported by a Foundation grant. Seek the assistance of counsel with any questions.

- **What does this prohibition apply to?** It applies to any money spent by an organization that is charged to a Hewlett Foundation grant.
- **What elections does this apply to?** This prohibition applies to any and all local, state, and national elections in the United States, and foreign elections involving candidates for public office.
- **When does an individual become a “candidate”?** A “candidate” for purposes of this prohibition can include any individual who offers himself or herself, or is proposed by others, as a contestant for an elective public office. So, the prohibition certainly applies to officially declared candidates and may also apply to efforts to encourage or discourage someone from running for office. An individual will certainly be considered a candidate when campaign fundraising begins.
- **What types of activities are prohibited?** The ban on electioneering includes any activity that advantages or disadvantages a particular candidate, slate of candidates, or a political party. Even activities that are intended to be nonpartisan and educational, or that fall well short of an express endorsement, may violate the prohibition.

For example, the restriction prohibits using grant funds to prepare and distribute an objective and scholarly report that analyzes candidates’ positions on transparency and concludes that one candidate’s position is sounder than another’s, regardless of the report’s academic merit. Similarly prohibited are rankings, ratings, evaluations of candidates, or public statements endorsing candidate positions, even if done on an objective basis.

- **What about candidate pledges?** Soliciting a candidate’s endorsement of a specific policy goal, buy-in for a particular legislative agenda or agreement to policy priorities, or requesting candidates to sign or pledge to act in a certain way is prohibited. This applies to activities that on their face may appear to be beneficial (e.g., asking candidates to endorse a code of ethical campaign practices). Note that “candidate pledge” activities (e.g., “I promise if elected to . . .”) are prohibited, regardless of whether they involve specific legislation.
- **What about voter guides, voter education, voter registration, and candidate debates?** Please speak with your program officer in advance if you would like to use our funds for this kind of activity. The Foundation will need to work with you to ensure they comply with U.S. laws and

may ask that you work with U.S. legal counsel to understand these rules. At a minimum, any such permitted activities must be done in a nonpartisan way, with equal treatment of all candidates.

- **Can my organization engage in electioneering using non-Hewlett funds?** All U.S. public charity grantees, and foreign organizations with a grant under equivalency determination, are prohibited from engaging in electioneering activity using any funds at all. Other foreign organizations, including those operating under an expenditure responsibility arrangement, may engage in any activities permitted under their local laws. However, activities supported by a Foundation grant, must abide by the restrictions and prohibitions placed on the use of those funds.
- **Can certain proposal or report language clarify activities are not electioneering?** There is no predetermined language that can always ensure activities do not violate the electioneering prohibition. However, an explanation of the specific facts and circumstances can be helpful. For example, if a foreign grantee not under an equivalency determination wants to produce a ranking of candidates based on their level of support for a particular policy, it would be helpful to include in the proposal that production of the ranking will not be funded by the Hewlett Foundation and electioneering activity is otherwise permitted under local law.
- **Can the Foundation provide legal advice to help understand the electioneering rules?** Hewlett Foundation employees cannot provide legal advice to grantees, and guidance from Hewlett Foundation employees regarding, for example, proposal or report preparation should not be interpreted as legal advice. However, grantees may be eligible for up to five hours of technical legal assistance with U.S. legal counsel. These requests are evaluated individually by the Foundation's legal team. Please contact your program officer if you are interested in obtaining access to this resource.
- **How do I learn more?** For more information, please review the [Electioneering Rules for Private Foundations and Public Charities course](#), and other resources that may be relevant and helpful, at www.learnfoundationlaw.org.

The Hewlett Foundation is a “private foundation” and under US tax laws may not pay or incur any amount to “carry on propaganda or otherwise attempt to influence legislation”. This is often referred to as the IRS prohibition on lobbying. This prohibition extends to the grants the Foundation makes and activities conducted by grantees with funds from the Hewlett Foundation.

<p>What is the definition of lobbying for purposes of the IRS private foundation rules?</p>	<p>For purposes of the private foundation rules, lobbying can take two forms:</p> <ol style="list-style-type: none"> 1. <u>Direct Lobbying</u> is any attempt to influence any legislation through communication with: <ul style="list-style-type: none"> ○ any member or employee of a legislative body or any government official or employee who may participate in the formulation of the legislation; ○ about specific legislation; AND ○ reflects a view on such legislation. <p>All elements must be present for there to be direct lobbying.</p> <ol style="list-style-type: none"> 2. <u>Grassroots Lobbying</u> is any attempt to influence any legislation: <ul style="list-style-type: none"> ○ a communication that attempts to affect the opinions of the general public; ○ refers to specific legislation; ○ reflects a view on such legislation; AND ○ encourages the recipient of the communication to <i>take action</i> with respect to such legislation (e.g. providing contact information for a legislator). <p>All elements must be present for there to be grassroots lobbying (a more inclusive definition applies to some paid mass media communications.)</p>
<p>What is specific legislation?</p>	<p>Legislation is “action by the Congress, any state legislature, any local council, or similar legislative body, or the public in a referendum, ballot initiative, constitutional amendment or similar procedure.” It includes:</p> <ul style="list-style-type: none"> ○ specific legislative proposals (including those not yet introduced) ○ foreign and domestic legislation, including local legislation ○ authorizing and appropriations legislation ○ tax bills ○ Senate confirmation of administration appointees ○ legislative resolutions, even if they have no binding effect ○ treaties subject to legislative approval ○ a ballot initiative or referendum <p>Please note that this definition includes legislation introduced in <u>foreign</u> countries and legislation discussed at the <u>local</u> level with a city council or similar body.</p>
<p>What is not specific legislation?</p>	<p>Legislation does not include:</p> <ul style="list-style-type: none"> ○ administrative rules or regulations enacted by a government agency or department ○ actions solely within executive power

	<ul style="list-style-type: none"> ○ judicial decisions or ○ other government activities not subject to legislative vote or approval.
<p>Are there any other exceptions to the lobbying prohibition?</p>	<p>Yes, there are exceptions to the general prohibition on lobbying that apply to both a foundation and its grantees. Specifically, two of the most commonly used exceptions are:</p> <ul style="list-style-type: none"> ○ technical advice or assistance provided to a legislative body in response to a <u>written</u> request for advice or assistance; the request for assistance must be made in the name of the requesting legislative body rather than an individual member thereof; and the response must be available to every member of the legislative body. ○ nonpartisan analysis, study, or research that includes a full and fair exposition of the facts to enable the public or an individual to form an independent opinion or conclusion and such communication may not be limited to, or be directed toward persons who are interested solely in one side of a particular issue.
<p>Can a foundation make grants to public charities that lobby?</p>	<p>Only in two specific cases:</p> <ol style="list-style-type: none"> 1. A foundation may make general operating support grants to public charities, as long as <ul style="list-style-type: none"> (i) the grant funds are not earmarked in whole or in part for lobbying AND (ii) the public charity grantee has complete discretion to determine how the grant funds will be used. 2. A foundation may make project grants to public charities that lobby, as long as <ul style="list-style-type: none"> (i) the grant funds are not earmarked in whole or in part for lobbying AND (ii) the amount to be provided by the foundation does not exceed the amount budgeted by the grantee for activities of the project that are not attempts to influence legislation (i.e., the foundation cannot be the sole funder of the project and the foundation funds the non-lobbying components of the project). (iii) The grantee’s budget must be certified by an officer, and the Foundation must not have reason to doubt its accuracy. <p>Please note that neither of these cases apply to grants to non-public charities (e.g., expenditure responsibility grantees.)</p>
<p>Can this document be relied on for legal guidance?</p>	<p>No, this overview is general in nature and the information contained in this document should not be construed as legal advice. Grantees should contact their own legal counsel for further advice.</p> <p>Further educational materials may be found at the websites of the IRS (Charities and Non-Profits section) (http://www.irs.gov/charities/index.html), the Alliance for Justice (www.afj.org), and/or the Center for Lobbying in the Public Interest (http://www.clpi.org/).</p> <p>This document is provided for your information only and is not to be shared or distributed to third parties without our written consent.</p>

For Expenditure Responsibility Grantees

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