

*Children's Funding Institute 2023*

# Ballot Measure Advocacy and Non-Profits

October 4, 2:00-3:00PM ET



- Slides will be available at [childrensfundingproject.org/cfi2023](https://childrensfundingproject.org/cfi2023)
- For this session, please do not take pictures, tag participants, or share presenter quotes without asking permission from the session speakers.
- For this session, please use the hashtag #ChildrensFundingInstitute when posting about it on social media.



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Photo by Allison Shelley/The Verbatim Agency for  
EDUimages

# Ballot Measure Advocacy

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The fundamentals of nonprofit advocacy

Víctor Rivera Labiosa

Counsel



- National association of 150+ organizations.
- Committed to creating a vibrant and ambitious democracy, where historically marginalized voices are amplified, to center justice in our institutions of power
- Justice Program - Building a state and federal judiciary that upholds the people's Constitution through collective advocacy
- Bolder Advocacy - Building power among communities through nonprofit advocacy.

# Contact Us

For **free hotline** about rules impacting your nonprofit advocacy

866-675-6229 (866-NP-LOBBY)

[advocacy@afj.org](mailto:advocacy@afj.org)

Para **apoyo técnico** sobre los derechos y deberes de las organizaciones comunitarias de cambiar la comunidad

866-675-6229 (866-NP-LOBBY)

[advocacy@afj.org](mailto:advocacy@afj.org)

For free tools, resources, and podcast

[bolderadvocacy.org](http://bolderadvocacy.org)

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[facebook.com/BolderAdvocacy](https://facebook.com/BolderAdvocacy)


# Agenda

- ❑ Big-Picture Concepts
- ❑ IRS Ballot Measure Rules
- ❑ Understanding Lobbying Limits & Nonpartisan Activity
- ❑ Permissible Activities Related to Ballot Measures
- ❑ Texas-specific Ballot Measure Rules





# Nonprofit Organizations

# Types of Nonprofits

	501(c)(3) <i>(Public Charities)</i>
<b>Examples</b>	 <b>ALLIANCE FOR JUSTICE</b>
<b>Tax Treatment</b>	Tax-exempt Tax-deductible contributions
<b>Lobbying Activities</b>	Limited
<b>Electoral Activities</b>	Cannot support or oppose candidates for public office

# Types of Nonprofits

	501(c)(3) <i>(Public Charities)</i>	501(c)(4), 501(c)(5), 501(c)(6)
Examples		
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt
Lobbying Activities	Limited	Unlimited
Electoral Activities	Cannot support or oppose candidates for public office	Secondary activity Follow federal & state election law



# Big Picture Concepts



## 501(c)(3) public charities

- Limits on 501(c)(3) lobbying
- Preparing to lobby = lobbying
- 501(c)(3)s must remain nonpartisan
- Ballot measure work counts as nonpartisan and lobbying

## Texas-specific rules

- No limits on lobbying
- May need to register with TEC if you meet lobbying thresholds
- Can engage in ballot measure work
- Need to comply with campaign finance rules at state and local level

# Support/Opposition for Ballot Measures = Lobbying for IRS Purposes



On November 8, cast your ballot for a cleaner coast.  
Vote YES ON PROP 67 to uphold our historic plastic bag ban.



# Lobbying? Where are the legislators?

- The voters in the district are the legislators for the ballot measure – they will decide the law.



# Understanding Lobbying Limits & Nonpartisan Activity

# Two Options to Measure Lobbying

## Insubstantial Part

- Default test for all 501(c)(3)s
- No clear definition of lobbying
- “Insubstantial” is about 3-5% of an organization’s activities
- Based on paid and unpaid activities

## 501(h) Expenditure

- One time election (file w/IRS Form 5768)
- Clear definitions of lobbying
- Dollar-based formula to calculate lobbying limits
- Only spending counts, not volunteer time



# What is Lobbying?

## Insubstantial Part Test (non-electing)

- Communication to lawmakers to influence legislation
- Encouraging public to contact lawmakers to influence legislation
- Anything that advocates for or against legislation

## Expenditure Test (H election)

- **DIRECT LOBBYING:** Communication to a legislator / legislators that expresses a view about specific legislation
- **GRASSROOTS LOBBYING:** Communication to the public that expresses a view about specific legislation and includes a “call to action”

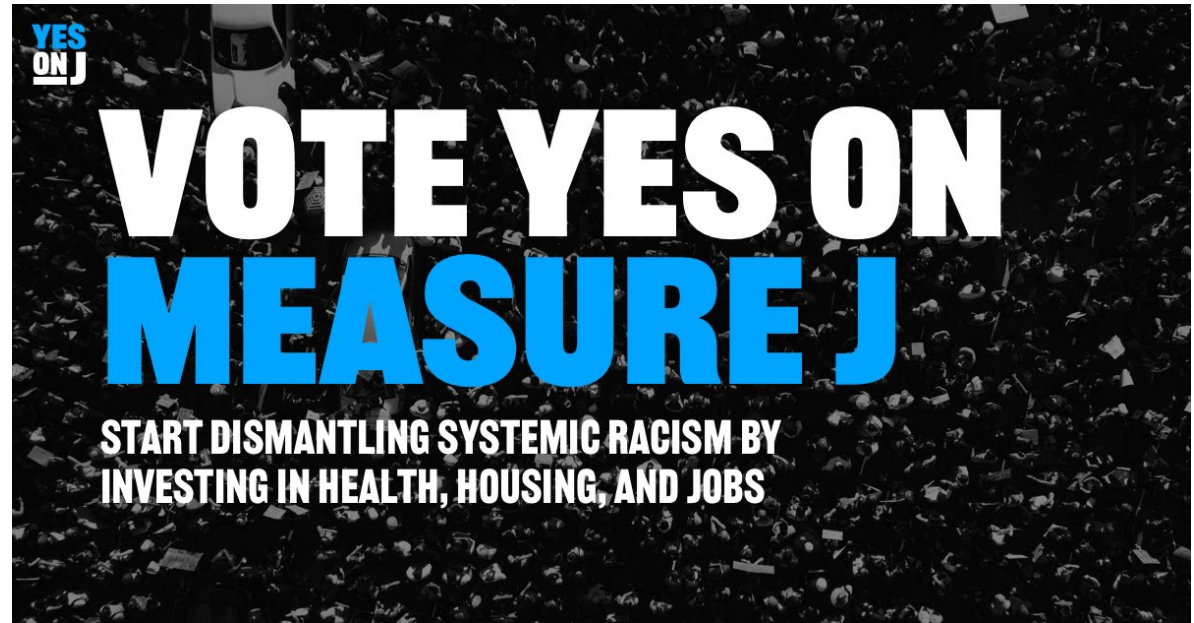
# Definition of IRS Lobbying under 501(h)

## Direct

- communication
- legislator
- expresses a view about specific legislation

## Grassroots

- communication
- general public
- expresses a view about specific legislation
- Call to action



In ballot measure campaigns, the **general public** are **“legislators”** thus...any (c)(3) work on ballot measures is **direct lobbying**

# Examples

## Not Lobbying

- Encouraging people to vote w/o mentioning issues
- Some public education on the issues without mentioning the measure
- Nonpartisan analysis
- Drafting of ballot measure title pre-petition or submitting it for review
- Some pre-petition litigation

## Lobbying

- Asking voters to vote No or Yes
- Tweeting support/opposition for the measure
- Raising money earmarked to defeat the measure
- Preparing materials discussing pros/cons of ballot measure
- Targeting outreach to voters to likely to oppose the measure



# Examples



 PeaceJusticeAction  
@pjals

\*REGISTER NOW\* BOLD Cycle 3 is open for registration! Join us in education and action as we reject racism and learn how to show up in solidarity. This year, we will be focused on the No New Jail campaign to defeat an attempt by our Spokane County Commission to expand our

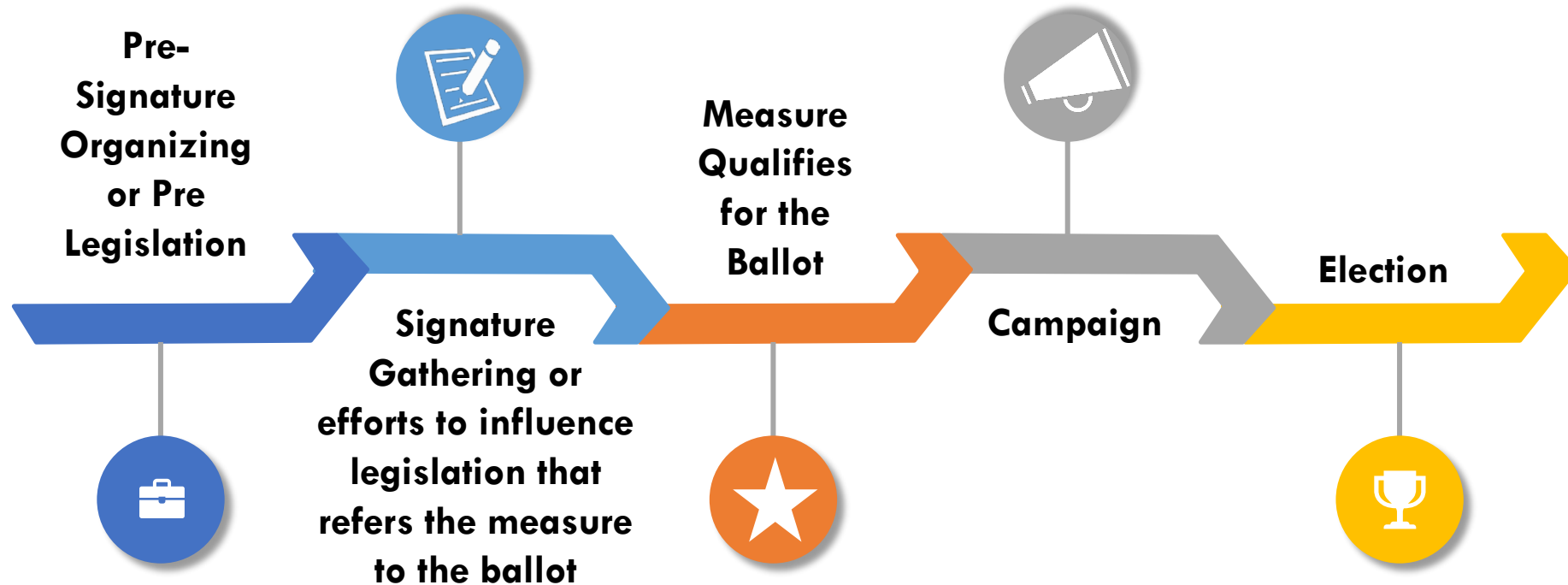
<b>SPokane COUNTY</b> <b>WHEN</b> 6:00 - 8:00 PM Mondays March 6 March 13 March 20 March 27 April 3	<b>WHERE</b> Exact location TBD	<b>New Venues!</b> This year BOLD will be hybrid. Limited Zoom participation options will remain, but we ask all who are able to join us <b>in-person</b> at locations to be announced.
<b>New Focus!</b> This year, we will be focused on the <b>No New Jail</b> campaign, to defeat an attempt by our Spokane County Commission to expand our racially biased carceral system this year.	<b>New</b> We're refining the BOLD Academy, and connecting it Go to <a href="https://bit.ly/BOLDpreurvey2023">bit.ly/BOLDpreurvey2023</a>	<b>Register for BOLD Cycle 3:</b> Go to <a href="https://bit.ly/BOLDspring2023">bit.ly/BOLDspring2023</a>
<b>New</b> We've limited registration for both the white and BIPOC caucuses to build a tighter cohort. We've also added a BOLD Readiness Survey to	<b>Find answers to more BOLD questions:</b> Visit <a href="https://pjals.org/boldfaq">pjals.org/boldfaq</a>	<b>Additional questions or concerns:</b>

5:11 PM · Feb 15, 2023 · 45 Views

# When Ballot Measure Work = Lobbying

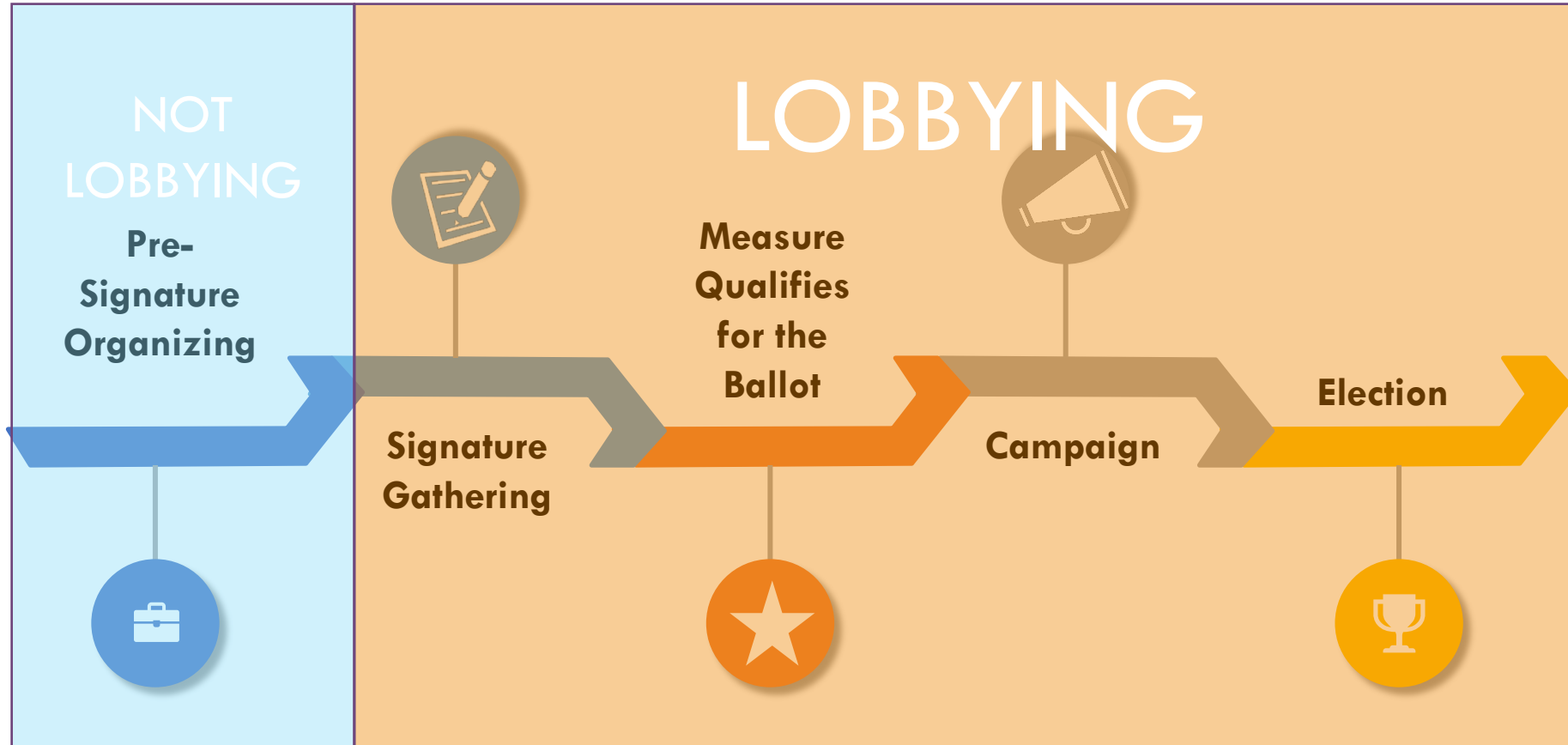
- When petition goes to public
- When advocating to legislators for referred propositions
- When expressing a view on the ballot measure to the electorate after it has entered the signature gathering stage or been referred by the legislature
- Circulating petitions, encouraging people to sign petitions/counter petitions
- Preparing or strategizing to get a ballot measure passed or defeated = lobbying

# Ballot Measure Timeline

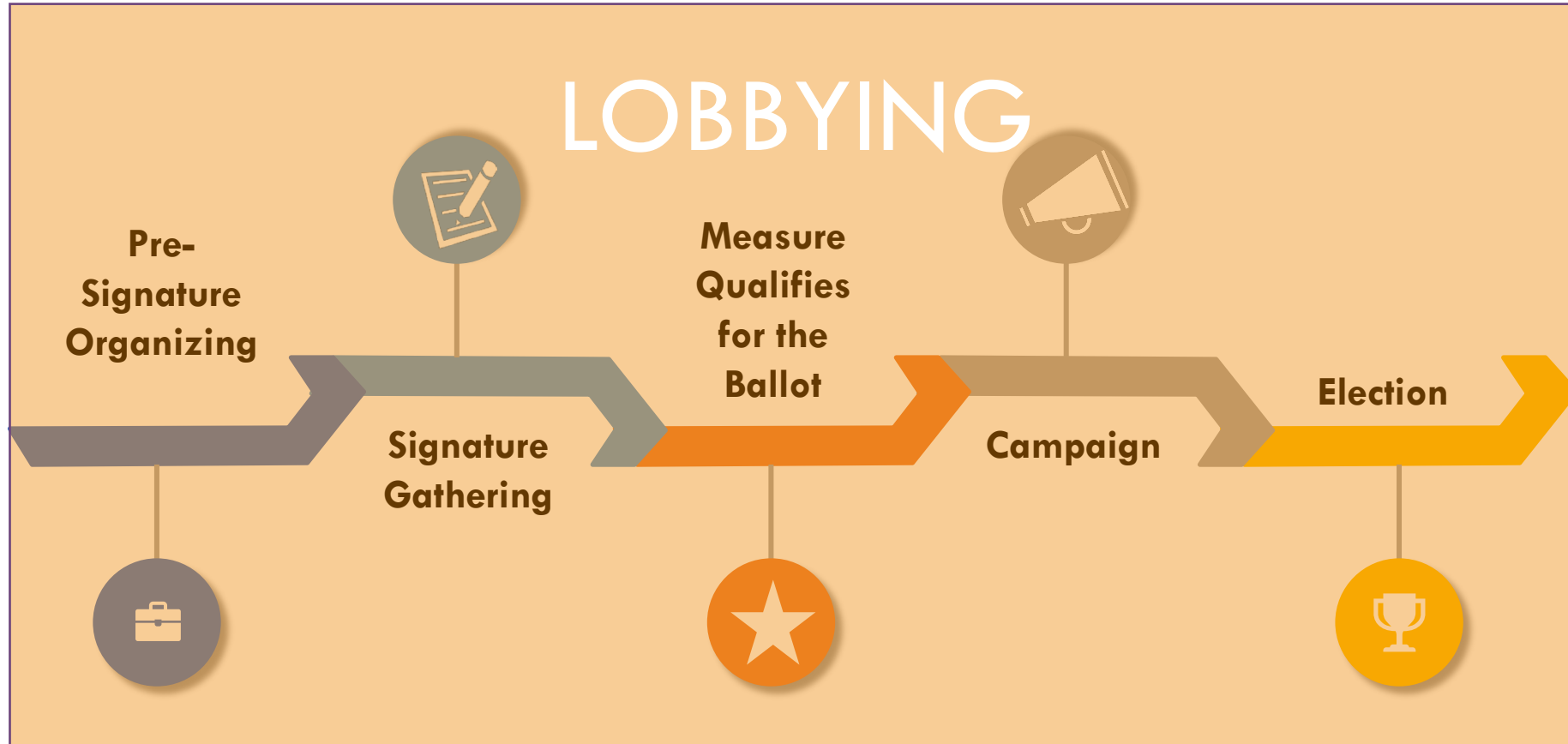


# Ballot Measure Timeline

Pre-  
Legislation



# Prep Work once signature gathering begins or legislative body begins discussions



# 501(c)(3)s Must Remain Nonpartisan

MEMBER OF THE CITY COUNCIL, DISTRICT 4	Vote for One
DAVID RYU Community Health Director	33 <input checked="" type="radio"/>
CAROLYN RAMSAY Councilmember's Staff Chief	34 <input checked="" type="radio"/>
JOAN PELICO Councilmember's Staff Chief	35 <input checked="" type="radio"/>
TEDDY DAVIS Attorney/Educator	36 <input checked="" type="radio"/>
STEP JONES Vapor Advocate	37 <input checked="" type="radio"/>
ROSTOM "ROSS" SARKISSIAN Small Business Owner	38 <input checked="" type="radio"/>
MIKE SCHAEFER Public Interest Advocate	39 <input checked="" type="radio"/>
WALLY KNOX Attorney	40 <input checked="" type="radio"/>
TOMÁS O'GRADY Nonprofit Director/Entrepreneur	41 <input checked="" type="radio"/>
JAY BEEBER Community Advocate/Businessman	42 <input checked="" type="radio"/>
TARA BANNISTER Association Director/Educator	43 <input checked="" type="radio"/>
SHEILA IRANI Businesswoman/Community Leader	44 <input checked="" type="radio"/>

Nonpartisan = **NO** support or opposition of **CANDIDATES** for PUBLIC OFFICE, including those who are not affiliated with a political party. **BUT**, public charities can support or oppose ballot measures!

# Joint Activities: Ballot Measure Work

## Nonpartisan

- Circulating petitions
- Endorsing measures
- Registering voters
- Telling voters how to vote on the ballot measure



## Partisan

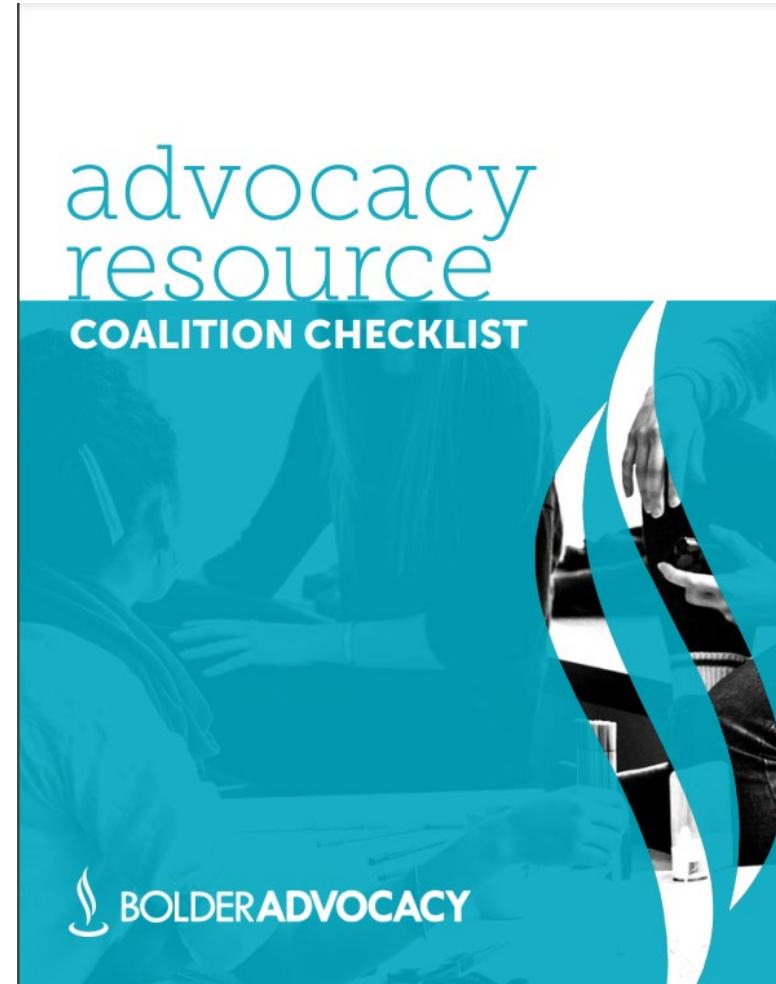
- Align organization's position with a candidate or political party
- Targeting outreach due to how voters will vote on candidates

# Permissible Activities Related to Ballot Measures



# Working in Coalition

- Public charities can work in coalition with other nonprofit organizations
- Can pool resources or spend resources individually
- Best practices –
  1. Operating agreement
  2. Keep it 501(c)(3)-safe
- Resources created by the [Ballot Initiative Strategy Center \(BISC\)](#)



# Keeping it Nonpartisan

- Do not align with candidate colors or slogans
- Do not coordinate with candidates or political parties
- Do not permit non c3 entities to use your resources for partisan purposes
- You can still hold elected officials accountable for official actions!
- Share govt communications about the election



# Direct Voter Contact

- Some voter contact is safe for 501(c)(3)s or joint activity with other 501(c)(3)s as a partner.
- Registering voters without expressing a view on ballot measure → nonlobbying and nonpartisan.
- Phone banking to share pros and cons of the ballot measure → lobbying but could be done in a nonpartisan way as long as your targeting is not based on how you think people will vote.



## NONPARTISAN VOTERS GUIDE

CONSTITUTIONAL AMENDMENT ELECTION »  
NOVEMBER 7, 2023

Local Control of Farms » Child Care Center Tax Exemption » Wealth Tax »  
Property Taxes » University Research Grants » Water Fund » Energy Fund »  
Internet Access » Teacher Pensions » Medical Equipment Tax Exemption »  
El Paso Parks » Galveston County Treasurer » Judges' Retirement Age » State Parks

EARLY VOTING: October 23–November 3, 2023 »  
ELECTION DAY: November 7, 2023. Polls open 7 a.m. to 7 p.m.

# Funding Ballot Measure Campaigns

- Private foundation general operating grants
- Private foundation specific project grants
- Community foundation grants
- Individual donors to a public charity (501(c)(3))
- Public charity raises revenue through fee for services
- Membership fees
- Annual galas, events, fundraisers



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# Foundation support for 501(c)(3) Lobbying

## Make Lobbying Grants

public or community foundations  
can fund lobbying directly

## General Support Grants

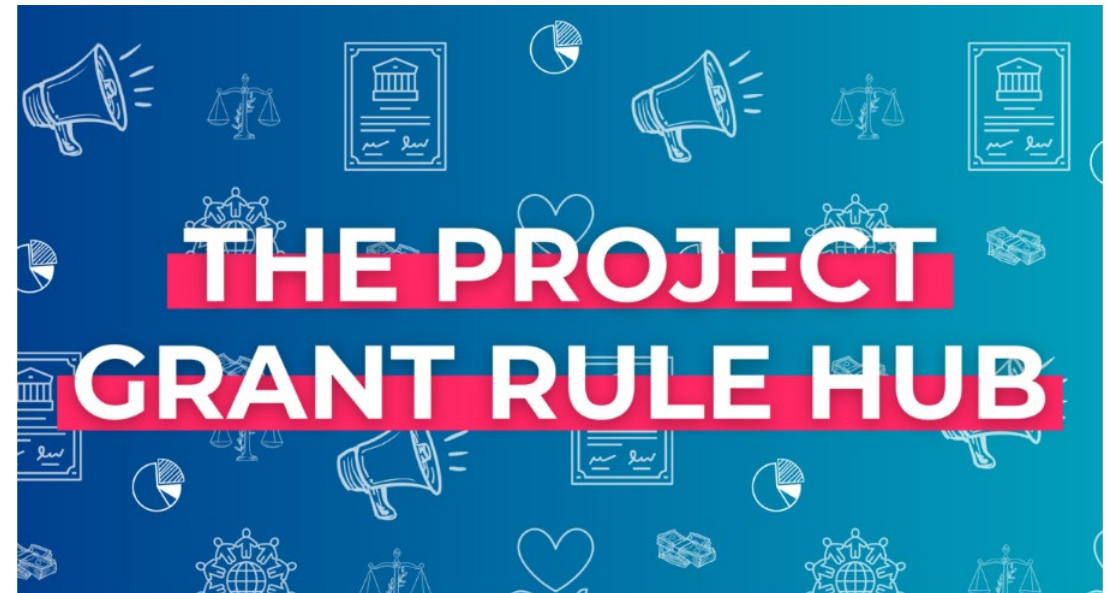
funding grantees that advocate  
through general support

## Specific Project Grants

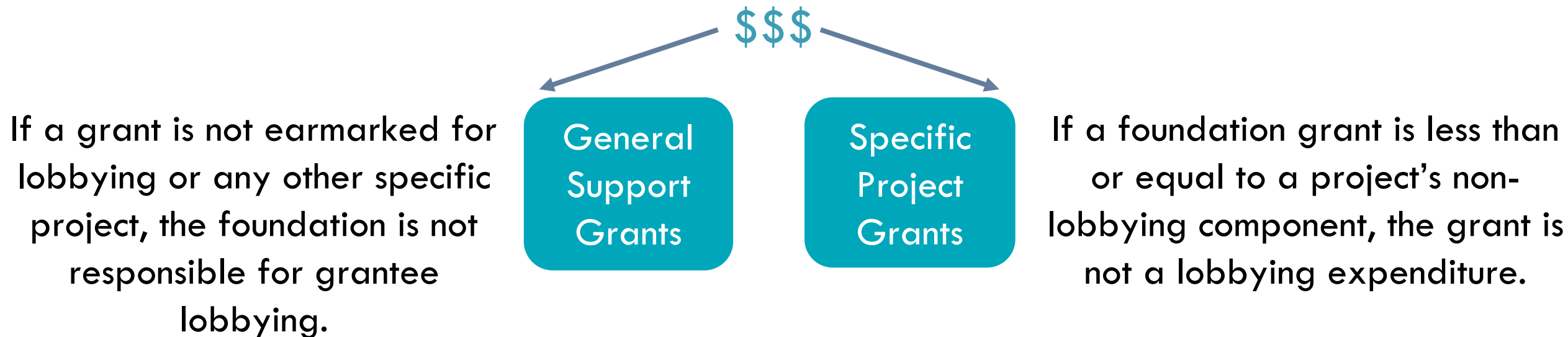
funding non-lobbying portions of  
advocacy projects

# “Earmarked”

- A grant is **earmarked** if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.
- A public charity or a community foundation may **earmark** a grant for lobbying, but it must count the grant against its own **lobbying limit**.



Private foundations should not  **earmark**  grants for lobbying, but private foundations may fund grantees that  **lobby** .



# SPECIFIC PROJECT Grant Safe Harbor

## Project Budget

Lobbying = \$40,000  
Non-Lobbying =  
\$60,000

\$50,000 grant from  
Foundation 1

\$50,000 grant from  
Foundation 2

\$50,000 < \$60,000  
No taxable/lobbying  
expenditure

\$50,000 < \$60,000  
No taxable/lobbying  
expenditure



# Texas-Specific Rules

# Practical Considerations

## IRS Rules

- Place limits on how much ballot measure advocacy a public charity can do
- Require public charities to report their ballot measure advocacy on the 990
- Require public charities to spend unrestricted funds on ballot measure advocacy

## State Campaign Finance Laws

- All about public disclosure
- Usually thresholds below which you may not have to register and report
- You may be able to spend \$ directly from nonprofit or may have to create a committee
- **You WILL have to comply with the state's campaign finance and disclaimer requirements**

# Practical Concepts about Campaign Disclosures

If your group or coalition **raises or spends funds for OR endorses** a ballot measure, you should check the state's **campaign finance** laws to determine if your nonprofits needs to open a committee and/or file a report.



# General Rules

- A corporation (including a nonprofit corporation) may make unlimited contributions to a ballot measure SPAC without triggering registration or reporting requirements.
  - SPAC → PAC that focuses exclusively on one or more identified ballot measures
- A corporation (including a nonprofit corporation) may make unlimited Direct Campaign Expenditures (IEs) for or against measures, but must report all activity that exceeds \$100.



University students sign a petition to put cannabis decriminalization on the November ballot for San Marcos residents on the Quad on Tuesday afternoon, Feb. 1, 2022. Mano Amiga, an organization that fights for criminal justice and immigration reform, will be required to collect at least 4,400 signatures from San Marcos residents.

Photographer / San Antonio Express-News

# General Rules

- **Coalitions:** A group of persons with a “principal purpose” of accepting political contributions or making political expenditures is considered a political committee and must comply with political committee restrictions and reporting requirements.
- **Unidentified Measures:** Political committee that supports or opposes one or more unidentified measures is called a “General-Purpose Political Committee” (GPAC).

## TEXAS ETHICS COMMISSION

### CAMPAIGN FINANCE GUIDE FOR POLITICAL COMMITTEES



# Political Advertising in Texas

- Political advertising that contains express advocacy in support or opposition of a measure in Texas must carry a disclaimer:  
“Political advertising paid for by X”

**Forney ISD will grow by 70% before she starts the 6<sup>th</sup> grade.**

**His dream of becoming an entrepreneur depends on your Yes vote for the Forney ISD bond referendum.**

**Vote Yes for the Forney ISD bond referendum. It's a smart plan to help every student & teacher with no increase in our property tax rate.**

**What your Yes vote means for students, teachers & taxpayers:**

- Wisely manage the fast growth of our student population.
- No increase in the Forney ISD property tax rate.
- Maintain academic excellence for every child in every school.
- Better protect the safety of our students and teachers.
- Provide additional space for our popular College & Career Center.
- Bond referendum was developed by citizens from across the district.

**VOTE YES! FORNEY ISD**  
A Smart Plan With No New Taxes

Vote early through Friday, November 1.  
Election Day is Tuesday, November 5.  
[www.VoteYesForneyISD.com](http://www.VoteYesForneyISD.com)

**Forney ISD bond referendum! growth with no tax rate increase.**

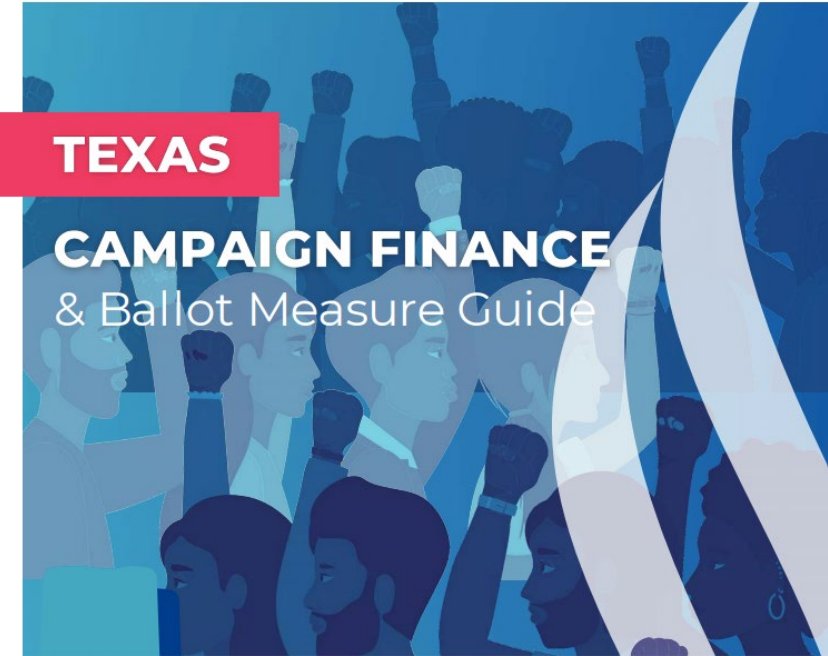
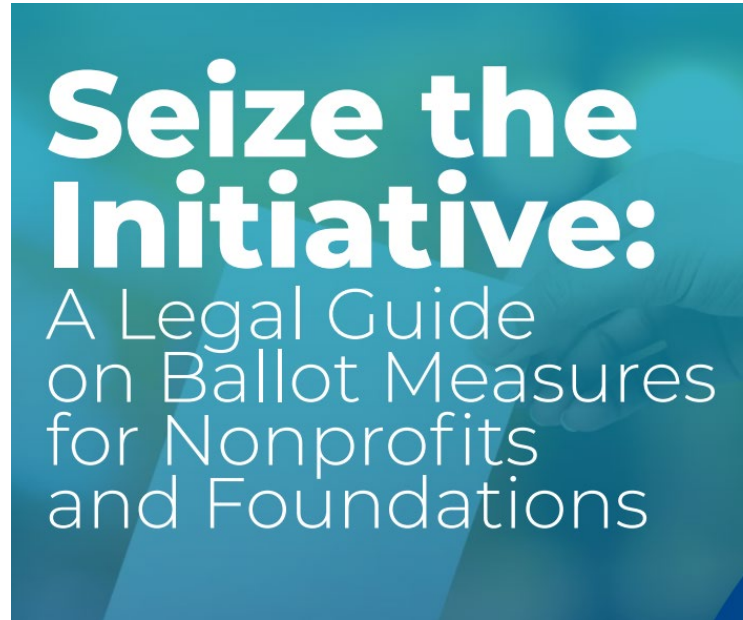
**Means for students, teachers & taxpayers:**

- Better protect the safety of our students and teachers.
- Provide additional space for our popular College & Career Center.
- Bond referendum was developed by citizens from across the district.

Early Voting: October 21 – November 1  
Election Day: Tuesday, November 5  
[www.VoteYesForneyISD.com](http://www.VoteYesForneyISD.com)

Political ad paid for by Vote Yes Forney ISD, P.O. Box 1402, Forney, Texas 75126

# Resources

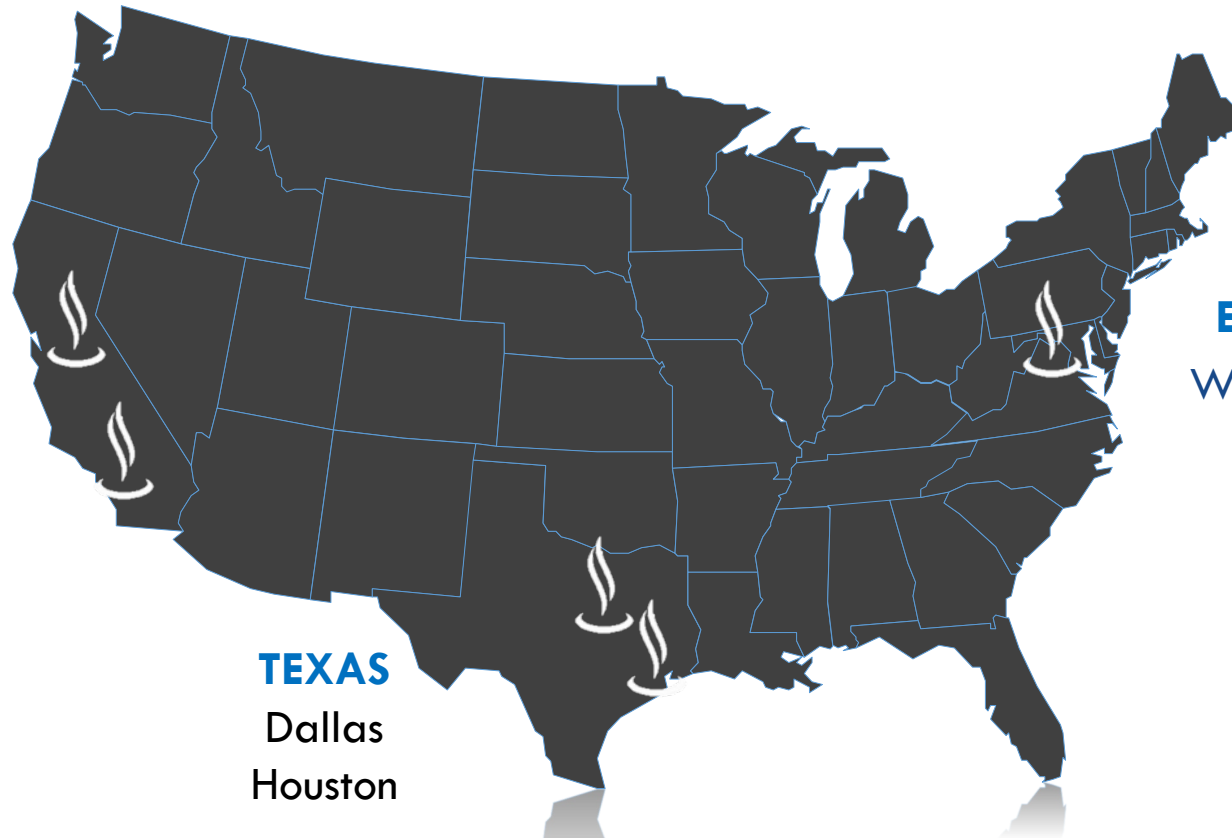


 [bolderadvocacy.org/podcast](https://bolderadvocacy.org/podcast)

 [bolderadvocacy.org/resource-library](https://bolderadvocacy.org/resource-library)

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# Questions?

# Thanks

## Next Session: Breakout Session #2 - 3:30-4:20pm

- **Last Vote to First Dollar**
  - La Villita Room
- **Campaign Fundraising**
  - Gregory Luna Room
- **Managing Opposition**
  - Riverwalk Room
- **Political Alignment and Voter Contact/Messaging**
  - Aula Room

**CHILDREN'**   
FUNDING PROJECT

 **FUNDING THE  
NEXT GENERATION**

