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Funding Source Impact on Nonprofit Advocacy Activity

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Funding Source Impact on Nonprofit Advocacy Activity

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March 10, 2011

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I. Executive Summary

Nonprofit organizations are often a tool by which citizens can engage in the policy process. Many nonprofit organizations engage in issue advocacy. For some nonprofit organizations issue advocacy is the purpose for their existence. For others, issue advocacy is a means of meeting organizational goals. Many nonprofits avoid issue advocacy altogether. The IRS places a financial limit on how much issue advocacy a nonprofit organization may engage in. However, most nonprofits won't ever come close to this limit. Most simply don't have as great a need for advocacy, while some will self regulate to avoid losing funding sources. Some literature suggests that there is a negative relationship between some funding sources and the level of advocacy a nonprofit is willing to engage in.

Literature from the field is researched to present a study of nonprofit advocacy, their structures and methods, and the political and financial environment within which they operate. Using data from IRS Form 990 this study then analyzes the relationship between lobbying expenses and funding sources. The funding sources studied are direct public support, indirect public support, government grants, program service revenue, and membership fees and assessments. The study finds a statistically significant positive relationship between several sources of funding (direct public support, indirect public support, and program service revenue) and the level of lobbying expenses reported. The study does not find any statistically significant negative impact of funding source on advocacy activity. Further conclusions are problematic, however, due to limitations in the research design. To truly focus on how nonprofits engage citizens in the policy process through advocacy activities and how they self regulate to protect funding sources will require further research with more and richer data. A recommendation for further studies is made in the conclusion of this paper.

II. Problem Statement

Nonprofit organizations participate in the policy process in a variety of ways. Some organizations exist solely for the purpose of advocacy, while others participate in advocacy only to the extent necessary to support organizational goals. The methods and goals of nonprofit organizations vary greatly. To gain an understanding of nonprofit advocacy, I researched a series of seminar papers published by The Urban Institute and edited by Elizabeth J. Reid and Maria D. Montilla and a collection of essays published in the textbook Nonprofits and Government: Collaboration and Conflict edited by Elizabeth T. Boris and Eugene Steuerle. One of the essays included in the seminar series raised the issue of funding source impact on an organization's willingness to engage in advocacy activities. In Philanthropic Funding of Social Change and the Diminution of Progressive Policymaking, Robert O. Bothwell finds that most foundation funding goes to nonprofit organizations that focus on social service provision. Little funding was provided to organizations focusing on citizen empowerment projects or social action. While Bothwell's research focused on foundation funding, I became curious about the impact on advocacy activity from all funding sources. One nonprofit organization to which I belong, Kentuckians for the Commonwealth, receives eighty percent of their funds from foundations. Kentuckians for the Commonwealth is a citizen advocacy group and expends a significant portion of its funds on advocacy activity. Is Kentuckians for the Commonwealth proof that Bothwell's research is flawed, or is this organization an exception to the rule?

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The purpose of this research paper is to demonstrate an understanding of nonprofit advocacy activity and to determine a relationship between funding sources and a nonprofit's willingness to engage in advocacy activity.

III. Background

A. Nonprofits

Definition of Nonprofits

Nonprofit organizations differ greatly in their purpose and structure. The nonprofit umbrella includes interest groups, political organizations, mobilizing groups, public interest groups, citizen organizations, multi-issue organizations, social movement organizations, and many other organizations (Reid, 2000). For the purpose of this study, I emphasize nonprofit advocacy organizations not tied to political parties that engage in issue advocacy. Many other types of nonprofit organizations are included in the literature researched for this study, to include Political Action Committees (PACs), also known as 527 groups, but are not of major interest to this study. The knowledge gained by this study, however, does have much broader application than my limited focus, to include grassroots political campaigns and PAC activities.

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501(c)(3) Charitable Organizations.

501(c)(3) charitable organizations (identified in this study as traditional nonprofits) are primarily service providers but may engage in advocacy to support organizational goals. These organizations are tax exempt and charitable contributions to the organizations are also tax deductible for the contributor. To protect tax exempt status, 501(c)(3) charitable organizations cannot dedicate more than 20% of tax exempt contributions to advocacy activity (Reid, 1999). Advocacy activity engaged by 501(c)(3) charitable organizations must be nonpartisan and must not express support or opposition to any candidate. These organizations may engage in nonpartisan voter registration and Get-Out-The-Vote campaigns. They may engage in member and voter education activities. Most 501(c)(3) charitable organizations are issue or community oriented, and nonpartisan activity will normally be engaged in support of particular issues. 501(c)(3) charitable organizations may educate political candidates on the organizations issues of interest and create voter guides with candidates' positions on certain issues. 501(c)(3) charitable organizations may also engage in limited issue based lobbying activities. (Wellstone Action Fund, 2006).

Despite a broad array of advocacy activities permissible by 501(c)(3) charitable organizations, evidence provided by Jeff Krehely suggests that very limited advocacy activity is actually engaged by these organizations. In his essay Assessing the Current Data on 501(c)(3) Advocacy: What IRS Form 990 Can Tell Us (2001), Krehely finds that very little lobbying activity is claimed by 501(c)(3) charitable organizations. One

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possible explanation for this is that 501(c)(3) charitable organizations seeking to protect tax status may engage in far less advocacy activity than organizational goals would suggest. A second possible explanation for this lack of advocacy evidence on IRS Form 990 is that some activity is ambiguous and can be define as operations or program costs, thereby minimizing the costs claimed as those for advocacy activities. Krehely identifies this as a weakness in his study. 501(c)(3) charitable organizations are required to claim costs of “lobbying” activities, and nonprofits engage in advocacy activities not defined as “lobbying”. Many costs associated with advocacy may not be reported under this category. Finally, 501(c)(3) charitable organizations that engage in advocacy may establish a sister 501(c)(4) social welfare organization to perform advocacy activities.

501(c)(4) Social Welfare Organizations.

501(c)(4) social welfare organizations (identified in this study as citizen advocacy groups) are issue based advocacy organizations. These organizations are tax exempt but contributions to the organization are not. 501(c)(4) social welfare organizations are established for nonpartisan political lobbying and issue advocacy. 501(c)(4) social welfare organizations may engage in the same nonpartisan voter engagement and educational activities of 501(c)(3) charitable organizations, plus unlimited lobbying activities on issues of interest. 501(c)(4) social welfare organizations may also endorse candidates to the membership and make such endorsements available to the organization’s press list. (Wellstone Action Fund, 2006).

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501(c)(4) social welfare organizations are political in nature and actively employ advocacy activities discussed earlier in this paper for the purpose of issue advocacy.

501(c)(4) social welfare organizations exist for the purpose of active involvement in the policy process. The requirement for 501(c)(4) social welfare organizations is to remain nonpartisan. For the purpose of express political advocacy, a 501(c)(4) social welfare organization may create and cover administrative costs of a 527 Political Action Committee (PAC).

527 Political Action Committees (PACs).

527 Political Action Committees (PACs) engage in express political activity as their primary activity (Wellstone Action Fund, 2006). PACs may endorse candidates, make cash contributions to candidates, conduct targeted voter education, and conduct voter registration campaigns. PACs may not, however, engage in lobbying activities without incurring tax on lobbying costs. While 527 Political Action Committees (PACs) are not an interest of this study, their relationship to 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations is interesting. Possible association with 527 Political Action Committees (PACs) through 501(c)(4) social welfare organizations also compels inclusion of this limited but interesting information.

The political environment of nonprofit advocacy has changed in recent years. As a result of several ambitious media blitzes by 527 Political Action Committees (PACs), calls for more regulation of nonprofit advocacy have been made. Some critics even

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claimed that advocacy by 501(c)(3) charitable organizations amounts to taxpayer subsidized advocacy. Reform of the current tax code is often proposed. Stricter regulation of advocacy activities is also sometimes suggested. With a change in the political make-up of both houses of congress in the recent mid-term elections, it is uncertain what the future political climate for nonprofit advocacy will be. 527 Political Action Committees (PACs) are a relatively new tax exempt category, and PACs seem to have been testing their limits in recent elections. If PACs evolve into responsible and productive nonprofits, the political climate for nonprofit advocacy will certainly become more favorable (Fei, 2000). One final note in regards to an organization's tax status; Any question regarding an organization's permissible activities should be directed to a lawyer or an organization established to assist nonprofit organizations.

B. Advocacy

Definition of Advocacy

Nonprofit advocacy is defined as any activity engaged by a nonprofit organization to influence policy (direct advocacy) or public opinion (education). This definition is presented in somewhat different language by different sources, but the meaning is basically the same. I choose to use this definition because it broadly includes all possible activities and all possible nonprofit organizations. Elizabeth J. Reid attempts to define advocacy in her essay Understanding the Word Advocacy: Context and Use (Reid, 2000). She finds, however, that it is difficult to comprehensively list all activities that may be

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defined as advocacy. Some activities may be important to organizational operations as well as advocacy and thus cannot be defined as one or the other. This distinction is important in consideration of regulation of nonprofits. She concludes that, in practice, a broad use of the term “advocacy” is helpful; however regulatory and academic use will require a clear and precise meaning of the term “advocacy” and the activities included therein. For the purpose of my study, the above definition is comprehensive and appropriate.

Advocacy activities vary among organizations. Some common forms of advocacy activities include public and policy maker education; research; agenda setting and policy design; lobbying; policy implementation, monitoring, and feedback; and election related activity (Reid, 2000). Election related activity can include voter registration; voter education; and Get-Out-The-Vote campaigns (Wellstone Action Fund, 2006). Other activities engaged by nonprofit advocacy organizations may not be distinguishable as direct advocacy activities but are also vital to the advocacy process include membership building and regular meetings where the membership develops strategy and unifies its position.

It is important to note the advocacy discussed in this study is issue advocacy. Nonprofits are forbidden by the IRS to engage in express advocacy, defined as the advocacy for the purpose of a political candidate’s election or defeat. Express advocacy is also potentially damaging to an organization’s long term credibility. Express advocacy can have the unintended consequence of causing the nonprofit to be perceived as a

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partisan political organization. Nonprofit organizations must maintain long term credibility to be effective in meeting organizational goals.

Nonprofit Structure for Advocacy

The nonprofit organizations emphasized in this study can be defined as belonging to one of the two following types; traditional nonprofit organizations and citizen advocacy groups (Berry, 2001). Traditional nonprofit organizations mostly serve a social welfare function to a particular constituency. Citizen advocacy groups are organized for the sole purpose of issue advocacy. Although traditional nonprofit organizations do not exist for the purpose of advocacy, they often find themselves interacting with government representatives and engaging in advocacy activities to support their organizational goals. For most traditional nonprofits a conflict will exist between the welfare and advocacy functions for the limited resources of the organization. The organization may improve their service to their constituents through organizing for action in the manner of citizen groups. Traditional nonprofits must make a value judgment to determine the level of advocacy they must engage in to support their constituency, if at all, and build the advocacy infrastructure to meet their organizational goals.

Nonprofit organizations vary in style of advocacy. They can be organized for representation or participation. Nonprofit organizations that engage in representation are paternalistic in their approach to advocating “on behalf of” (Reid, 2000). Membership in such organizations is limited to fitting the constituency profile or the paying of dues. This

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style of advocacy is the historically traditional approach and may still be relevant to select organizations. Representation has legitimacy concerns, however, and may not be as effective as an advocate. Nonprofit organizations that engage in the participation model of advocacy act as a communication tool between citizens and their political representatives. As such, nonprofits improve citizen participation in the democratic process. They create government accountability to citizens. The participation model of nonprofit advocacy places agenda setting power in the hands of citizens.

Another variation in advocacy style is government-centered or society-centered (Reid, 2000). Government-centered advocacy seeks to influence the policy makers through direct advocacy, or lobbying. Government-centered advocacy can be accomplished through use of professional lobbyists or member mobilization. Kentuckians for the Commonwealth, for example, mobilizes its membership to lobby the Kentucky State legislature on certain days in support of specific bills. The membership uses mass mailings, phone banks and congressional office visits for this purpose. In support of a water quality bill in the 2006 session, Kentuckians for the Commonwealth mobilized more than one hundred fifty members to visit the Kentucky State legislative offices in one day. This is a good example of citizen advocacy that is government-centered. Society-centered advocacy seeks to shape public opinion, set the public agenda, and mobilize public action through public education. Considering policy change is a long term evolution, society-centered advocacy is a powerful tool to set future legislative agenda. Nonprofit organizations may use both government-centered and society-centered advocacy. To continue the example of Kentuckians for the Commonwealth, monthly

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chapter meetings are held where issues are discussed and information is provided to the membership. Also, an annual meeting is held when the membership is educated on the major issues and on effective advocacy skills. Kentuckians for the Commonwealth utilizes both government-centered and society-centered advocacy styles to meet organizational goals. The allocation of limited organizational resources between the two styles of advocacy will be determined by organizational goals.

Nonprofit Advocacy and the Policy Process

“Nonprofits strengthen democracy by giving citizens a variety of opportunities to meet and talk, build civic skills, and assemble their resources for actions”(Reid, 1999). Nonprofit organizations provide a means for citizens to be involved in the policy process. Citizen advocacy groups are particularly political in their activities and they provide three functions to their members in the political arena. First, they provide representation of common interests and values. Most nonprofit organizations exist around a single issue or specific group of issues, such as environmental justice. Like minded individuals are able to associate within the nonprofit and use the nonprofit to represent their issues. Second, nonprofit organizations provide a means for civic participation. Nonprofit organizations provide an opportunity for citizens to play an active role in the policy process. Members organize to reinforce values and develop ideas. Personal leadership skills are developed. Financial resources are combined and group actions are organized. Third, nonprofit organizations provide political accountability through providing a voice to citizens. Face to face communication is influential in holding politicians responsible for their actions,

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and nonprofits are often the only means many in society have of getting that communication. (Reid, 1999)

The political engagement framework defined by Judith R. Sidel in her essay Nonprofit Organizations, Political Engagement, and Public Policy (2002) provides a model of the advocacy process. The three phases of her framework are activation, mobilization, and participation. The activation phase of the advocacy process is when resources are organized. Resources in this sense are, of course, financial, but are also time, place, and information. An investment of discretionary income and time is important to the start up of any advocacy effort. Motivation is also prepared in the activation phase. Individuals must be provided with the motivation for participation. This can be in the form of improved information or an increased sense of responsibility. Finally, recruitment networks must be established in the activation phase.

The mobilization phase of the advocacy process involves two collective processes, aggregation and framing. Resources must be aggregated into an effective and efficient structure. In the framing process, common values are shared and ideas developed. Judith R. Sidel defines the framing process as the “interpretation, attribution, and social construction” that occurs in nonprofit organizations.

Political participation is the conversion of resources and common values into action. In this participation phase of the advocacy process, the activation and mobilization efforts are translated into advocacy. Advocacy efforts taken by nonprofit

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organizations will vary according to organizational goals. Some advocacy efforts as identified by Elizabeth J. Reid (1999) are listed below.

- Legislative Advocacy
- Grassroots Advocacy
- Public Education and Public Opinion Shaping
- Electoral Advocacy
- Legal Advocacy
- Administrative or Agency Advocacy
- Workplace Advocacy
- Corporate Advocacy
- Media Advocacy
- International Advocacy

Membership

The role of membership in nonprofit advocacy varies between organizations. In the above discussion of advocacy styles of representation and participation, representative organizations are identified as having a limited membership. Such organizations are criticized as having a “checkbox” membership. Foley and Edwards (2002) argue that very few organizations actually have a strictly “checkbox” membership. Questions are raised, however, of the importance of membership to organizational start-up and survival, financial stability, tactics, credibility, decision-making, and governance (Foley and Edwards, 2002). The essay by Foley and Edwards (2002) is, unfortunately, inconclusive as to the direct value of an active membership on effective advocacy. This is due to a lack of comprehensive research. No empirical evidence exists to support or reject any conclusions.

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Foley and Edwards (2002) do conclude, however, that large national nonprofits with a centralized bureaucracy tend to employ more centralized tactics and provide fewer opportunities for civic participation by its members. Large, national nonprofits do use some engagement tactics, however, particularly those organizations that have small, local chapters as part of its structure. Smaller, more local advocacy groups are far more likely to provide opportunities for civic participation for its members and to use grassroots activities. These smaller advocacy groups are also more likely than larger groups to focus its resources on the goals of the membership. Another factor that may affect a nonprofit organizations level of civic participation by its members is the management structure employed by the organization. Hierarchical organizations are less likely to provide opportunities for its members, where organic decentralized organizations are more likely to be governed and controlled by its membership.

Despite the lack of research available on this topic, nonprofit organizations must consider the importance of membership when developing structure and strategy. An organization's credibility is at risk if it does not represent a united membership. Politicians will be more responsive if they see an organization as representing a large number of constituents that may place re-election at risk. Membership impact on financial stability, tactics, credibility, decision-making, and governance are to be considered.

One problem identified is "participatory inequalities" (Saidel, 2002). "People with more education and income are more likely to participate" states Elizabeth J. Reid

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(1999). The idea that nonprofit organizations provide political participation for all citizens is problematic if some large segments of society are not involved. This presents a challenge to participatory citizen advocacy groups to make an active effort to recruit citizens who may not have the resources in time, money or skills.

Democratic Theory

The role of democratic theory is to continue to build the foundation of the role nonprofits play in the democratic process. As is mentioned several times throughout this study, nonprofit advocacy organizations provide a means for citizen participation in the policy process. Frances R. Hill (2003) argues that democratic theory includes the theory of continuing consent. For a democratically elected government to possess authority to govern, it must gain initial and continued consent of the governed. Nonprofit advocacy organizations can act as the mechanism of continued mediated consent through citizen participation. For legitimacy, however, nonprofit advocacy organizations must also have direct consent of its membership. The theory of continuing consent, then, insists that effective nonprofit advocacy organizations must have active membership to mimic the democratic institutions they hope to influence. In his essay Nonprofit Organizations and Democratic Theory: Toward a Theory of Continuing Mediated Consent (2003), Hill identifies six relationships important to government and citizenry and organizations and membership: authorization; representation; participation; accountability; obligation; and legitimacy.

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Authorization is the process of creating and defining authority. Representation is the result of authorization. Participation is a set of processes and structures for active continued consent. Accountability is the relationship between the authorized and those that authorized. Obligation is the term of consent. And legitimacy is created through continued consent. (Hill, 2003)

Hill states in his essay that “Consent and its relationship to the legitimacy of political systems has largely disappeared from political theory in our own time”. Since consent and legitimacy are assumed, it is not directly expressed. Not enough value is given to the role of consent in political theory. It is important to understand the role of continuing mediated consent and the legitimacy of nonprofit advocacy organizations in the policy process.

Three Attributes for Effective Advocacy

In his essay Effective Advocacy for Nonprofits, Jeffrey M. Berry identifies three attributes of value to effective advocacy; staying power; expertise; and organizing for action (Berry, 2001). These three attributes are vital to securing a role in the policymaking process. Although traditional nonprofits may not wish to structure solely for the purpose of advocacy, consideration of the three attributes will help to allocate an organization’s limited resources for effective advocacy within the scope of the organization’s mission.

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Staying power refers to an organizations willingness to maintain a stable and focused presence despite an effort's early success or failure. Policy change is incremental, and requires a long term, evolutionary effort. Effective advocacy can take many years. This attribute is clearly observed in an organization's educational efforts. Continued education of policymakers and the public on the values of an organization's position build the foundation upon which policy change can occur.

The expertise of an organization is critical to maintaining credibility. For effective advocacy, the nonprofit organization must be willing to develop a staff of experts and emphasize research. Berry states that "the organization will find it valuable to invest resources in the development of original reports based on high-quality, sound research" (Berry, 2001). It is important to note that in defining expertise, this study is emphasizing technical knowledge. This is in contrast to the prior government experience that private lobby firms emphasize in their staff. The credibility gained through expertise reaches beyond the relationship with policymakers and the public. The media will chose descriptions of research and quotes from studies to include in their reports based upon their perception of who is and is not credible. Exposure through print and broadcast media is valuable to effective advocacy through a broadening of support and interest and building of public credibility.

Nonprofit organizations, like all other organizations, structure themselves to achieve a set of goals. All organizations must meet organizational goals with limited resources. To organize for action, the nonprofit must dedicate resources to advocacy and

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allocate those resources among various advocacy activities. The nonprofit must continuously evaluate the effectiveness of its various advocacy activities and be prepared to reallocate resources to those activities which prove most effective. Which activities are effective will differ with the purpose and structure of each nonprofit, therefore no one model of resource allocation can serve all. Clearly stating the goals of the organization will assist in determining what advocacy activities will best serve the organization.

Effective Advocacy with Limited Resources

A nonprofit organization's limited resources often provide the greatest barrier to effective advocacy. The nonprofit organization must consider the organization's limited resources when developing an advocacy strategy. Three helpful strategies for effective advocacy with limited resources are to build and maintain relationships, develop staff expertise, and focus the organization's efforts (Rees, 2001).

Relationships are critical to effective advocacy. Nonprofit organizations must build and maintain relationships with policymakers and their staff. Citizen advocacy nonprofits also work to build and maintain relationships between members and their representatives. Such relationships often take the form of one-on-one relationships and are symbiotic in nature. One-on-one relationships allow the nonprofit to promote its goals to legislators and in return legislators have the opportunity to keep touch with their constituents' concerns. Personal visits are an important method of relationship building and maintaining, but phone calls and letters (and increasingly e-mail) are also valuable

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methods of communication. Citizen advocacy nonprofits will also encourage member participation at hearings and other events attended by legislators. This sort of grassroots organizing is effective and efficient.

Expertise is also vital to effective advocacy. The study conducted by Susan Rees (1998) identified one of the most effective advocacy strategies as providing analysis of policy effect. Simple explanation of what is contained within proposed legislation and how it would affect the status quo was cited as a valuable service provided by effective nonprofit advocacy groups. Rees (1998) found five major categories of arguments used by effective nonprofit organizations.

1. Cite economic costs and benefits.
2. Appeal to horizontal or vertical equity.
3. Appeal to political concerns (public opinion, constitutional principle, legal and congressional precedent, and concepts in the American Tradition).
4. Identify who supports and opposes the proposed legislation.
5. Identify program quality and effectiveness.

Rees notes that effective policy analysis contains “few loaded words and little rhetoric”. Policy analysis that is clear and concise, and provides credible evidence supporting the organization’s position, is an effective use of the organization’s limited resources to promote policy change.

The third strategy for effective advocacy with limited resources provided by Rees is focus. Too broad of an agenda thins out an organization’s resources. Even organizations with a broader social agenda will focus on one or a few priorities at a time.

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With this focus, the organization can build and maintain the relationships and develop the expertise needed to effectively advocate the important issues.

Rees states that these three strategies are equally as important for smaller nonprofits as for large, well-known organizations. Effective policy advocacy is built on information and relationships. Small, locally based nonprofits can advocate effectively if they “define a niche for themselves, pay close attention to relationship building, and use their resources strategically”.

In Choosing Your Battles: The Pragmatics of Grassroots Activism, the Naturist Society, a nonprofit member organization formed to promote nude recreation and body acceptance (www.naturistsociety.com), provides ten criteria for focusing activist efforts. The following list is intended for small, local grassroots activists, but the criteria are well presented and informative.

1. Take on projects that result in real improvements.
2. Projects should be worth the effort.
3. Projects should be achievable.
4. Take on projects that give people a sense of their own power.
5. Projects should be easy to understand.
6. Select issues that are widely and deeply felt among the group.
7. Select projects that are non-decisive.
8. The best projects build leadership in the group.
9. Money matters! (Limited resources).
10. Projects should be consistent with the group’s values and mission.

The list as presented above appeared in N Magazine’s Autumn 2006 issue. This list could be reworded and reorganized to be relevant to various types of nonprofit

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organizations and their advocacy efforts. This article truly highlights, however, that organizations can and do attempt to focus the organizations limited resources for effective advocacy.

Advocacy Leadership

David Cohen of the Advocacy Institute has identified several distinctive qualities of effective advocacy leadership in his essay What Practitioners Can Tell Us: Critical Lessons from the Advocacy Institute (2003). First leaders must “check their egos at the door”. Leaders must understand that leadership and responsibility is shared and they must draw on the different talent of many people. Leaders must also understand an issue’s lifecycle and adjust leadership style to match the lifecycle stage of the issue. Some advocacy leadership qualities listed by Cohen are:

- Remain people- and community-centered as they relate to different audiences and to communities of interest.
- Build public and formal relationships with officials and different parts of civil society.
- Know the difference between organizing and mobilizing, and know why organizing is essential and strategic and mobilizing is mostly tactical.
- Turn protest into policy demands for specific institutional changes.

**C.
Political and Financial Environment**

Right of Association

The right of association, while not expressly protected by the Constitution, has been declared as constitutionally protected by the Supreme Court on several occasions. Opinions presented by the Supreme Court recognize the importance of association to individual involvement in the democratic process. Evelyn Brody, in her essay Defining the Constitutional Bounds of the Right of Association (2003), quotes the Supreme Court opinion in the 1957 case *NAACP v. Alabama ex rel. Patterson* as stating “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as the Court has more than once recognized be remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured by the Due Process Clause of the Fourth Amendment, which embraces freedom of speech”.

Evelyn Brody (2003) identifies several key principles the Supreme Court applies to the right of association. First, a constitutional right to associate exists if it is linked to another constitutional right: intimacy or expression. Second, the state must have a legitimate purpose to require an organization that is not “intimate” or “expressive” to admit a member. Third, the internal governance structure and the strength of the member’s internal voice are irrelevant if membership is voluntary. Fourth, if association

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is compelled by the state, the member cannot be compelled to pay for speech unrelated to the reason the member is compelled to join. Finally, constitutional rights do not adhere in amorphous groups, such as identity groups. (Brody, 2003)

The key principle that provides the right of association is the rights of individuals, namely intimacy and expression. The Court also recognizes the value of association to the democratic principles of the nation. This is important to understanding the legal and social environment of nonprofit organizations. The Court does not necessarily view nonprofit organizations as entities themselves, but rather as a collection of individuals.

Mark Tushnet explores the role the Constitution plays in permitting nonprofit organizations to participate in the policy process. In his essay How the Constitution Shapes Civil Society's Contribution to Policymaking (2003), Tushnet argues that the government can and does place limits on the policymaking activities of nonprofit organizations. In theory, conflict may exist when government institutions are constitutionally bound to protect the rights of expression that challenge the policies of those very government institutions.

The first limits on nonprofit advocacy are rules that are neutral and generally applicable. As examples, Tushnet uses nuisance laws and zoning regulations. These can have an impact on an organization's ability to associate and express ideas. But these laws, rules, and regulations are acceptable by the Constitution because they are not directed at

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curbing an individual's rights. These laws, rules, and regulations are applicable to all organizations, including commercial interests, and are therefore constitutional.

The second limit on nonprofit advocacy is the Supreme Court's view of protecting *traditional* methods of *expressing* political opinion. The Court is more likely to allow regulation of nontraditional, innovative methods of expression. The Court is also likely to allow regulation of activity that it does not view as *expressive*. (Tushnet, 2003) As nonprofit organizations compete for the attention of policymakers and the public they could utilize a mixture of advocacy activities that may not all be viewed as traditional or even expressive. Such activities may be regulated, thereby restricting the nonprofit organization's ability to fully express its members' goals and values.

Further limits on nonprofit advocacy are in the form of self regulation. Self regulation can occur for several different reasons. The first reason, identified by Tushnet in his essay, is selective subsidies. The concept of selective subsidies is when a nonprofit organization accepts financial benefit from the government that is then tied to limitations of the organization's activities. Activity the government could not directly restrict through regulation is then limited through a financial relationship. Nonprofit organizations may attempt to circumvent such restrictions by placing the government and private funds in segregated accounts. The segregated private funds can then be used for the purpose of activity the government does not want to subsidize (Tushnet, 2003). The government may still refuse future funding in this case, simply stating the funds are needed elsewhere. Creating segregated accounts also limits an organization's advocacy

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activities by tying up resources in administration costs. Selective subsidies may have a great impact on a nonprofit organization's advocacy activities.

A second reason for self regulation is preservation of funding sources. In Philanthropic Funding of Social Change and the Diminution of Progressive Policymaking, Robert O. Bothwell finds that most foundation funding goes to nonprofit organizations that focus on social service provision (2001). Little funding was provided to organizations focusing on citizen empowerment projects or social action. Sally Covington, quoted by Bothwell in his essay, states "The low level of support awarded to community organizing, public policy initiatives, issue advocacy or institutional reform activities suggests that community foundations do not consider social action to be a social good..." (1994). Financial dependence upon future foundation funding is reason for service oriented nonprofit organizations to self regulate advocacy activities.

A third reason for self regulation of advocacy activities is protection of tax status. The two primary tax categories that cover the nonprofit advocacy organizations researched for this study are 501(c)(3) and 501(c)(4) organizations. 501(c)(3) organizations are identified as charitable organizations while 501(c)(4) organizations are identified as social welfare organizations. 501(c)(3) and 501(c)(4) organizations are very similar in structure but are different in several important factors. A discussion of these differences is discussed in section III. A. of this paper.

Pay to Play

The pay to play theory of politics states that an individual or organization must pay for political favor. This theory assumes political favor as an unrealistic, strictly economic transaction, but has value and merit nonetheless. Pay to play assumes that an individual or organization must first pay, in campaign contributions or other favors, before receiving access to the political process. In the traditional version of pay to play, it is assumed that the contributor seeks to create rent (access) through paying to enter the political process. But Fred S. McChesney challenges that assumption in his essay The Practical Economics of “Pay to Play” Politics (2000). McChesney argues that some politicians seek to extract rent (money) from individuals and organizations in return for not promoting unfavorable legislation. Some legislation may even be solely for the purpose of extracting rents. McChesney states that Newsweek magazine calls such legislation “fetcher bills”, introduced solely to “fetch” rents from lobbyists (McChesney, 2000).

The extraction (extortion) version of pay to play has important implications for nonprofit advocacy organizations. While pay to play does not explain all actions taken by legislators, it certainly stands that it plays a role with some politicians more than others. In the wake of the 527 scandals of the last few election cycles, it may be that some politicians use the threat of tighter regulations of nonprofit advocacy activities as a method of rent extraction.

**IV.
Research Design**

Objective

To analyze the impact of funding source on nonprofit advocacy activities.

Unit of Analysis

The target population for this study is 501(C)(3) Charitable Organizations and 501(C)(4) Social Welfare Organizations nonprofit organizations. The study population is a sample retrieved from IRS microdata files for the year 2007 (the latest available). The data set is pulled directly from the IRS website and the sample is provided by the IRS. The data set is assumed to be random. Having more control over the sample selection would have been ideal; however I worked with the constraints of limited data access. The sample includes 501(c)(3) organizations and section 501(c)(4)–(9) organizations. According to the IRS website, the sampling rate of the data set is “1 percent for small-asset classes to 100 percent for large-asset classes”. The file is filtered for organizations claiming lobbying expenses. The unit of analysis is one nonprofit organization.

Research Structure

The research design proposed is a regression analysis to determine the relationship between levels of funding from different sources and levels of lobbying expenses. The five major sources of funding are direct public support (direct), indirect public support (indirect), government contributions (govt), program service revenue

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(programrev), and membership dues and assessments (membership). The regression will be in the following formula;

$$\text{Lobbying Expenses} = B_0 + B_1\text{direct} + B_2\text{indirect} + B_3\text{govt} + B_4\text{programrev} + B_5\text{membership}.$$

The null hypothesis is that the dependent variable Lobbying Expenses is independent from the independent variables of funding sources.

Dependent Variable

Lobbying expenses as reported on the IRS Form 990 is the dependant variable to proxy for advocacy activity. Lobbying expenses are found in two different locations on IRS Form 990. Line 1 in Part III of the Schedule A Supplement to IRS Form 990 asks for total expenses paid or incurred in connection with lobbying activities. This is the source chosen for my regression. Lobbying expenses are also listed on Line 40 in Part VI-A of the Schedule A Supplement. This section, however, is for organizations only that have chosen to file Form 5768. Not all organizations in this sample chose this option.

Independent Variables

The independent variables for the regression analysis will be revenue received from the five major sources of funding.

Direct Public Support are funds received directly from the public. These funds include amounts received from individuals, trusts, corporations, estates and foundations,

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and funds raised by outside professional fundraisers. These funds also include contributions and grants from public charities and other exempt charitable organizations that are not fundraising or affiliated organizations. Since direct public support includes so many sources of funds, it is difficult to determine from the literature what expectations I have of the impact of this variable. Foundation funds were identified in the literature as having a negative impact on issue advocacy, but support from private individuals, trusts and estates could possibly have a positive impact on such activity. Therefore, I expect the regression to show this variable as having a small but statistically significant impact on lobbying activities.

Indirect Public Support are funds received indirectly from the public through federated or other fundraising organizations (i.e. United Way). These funds also include contributions received from affiliated organizations (parent, sibling, or subordinate organizations). The literature does not discuss this form of funding, nor does it seem to be a major source of funding for most nonprofit organizations. I do not expect this variable to have a statistically significant impact on lobbying activities.

Government Contributions are grants provided by the government for the purpose of allowing the organization to provide a service, or build and maintain a facility for providing that service, for the direct benefit of the public. Due to the self regulating characteristic of nonprofit organizations, I expect this variable to have a statistically significant negative impact on lobbying expenses reported. The literature suggests that nonprofits receiving a significant amount of their funds from government agencies would

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not risk the loss of funds by offending the granting agencies through active advocacy work.

Program Service Revenue is income earned by the organization for providing the funding government agency with a service, facility, or product that benefits the government agency. An example of such service revenue would be Medicare or Medicaid payments paid to a nonprofit hospital. For the same reason as stated above under Government Grants, I expect this variable to have a statistically significant negative impact on lobbying expenses reported.

Membership Dues and Assessments are fees received by the organization by members with the expectation or availability of benefits received by the members. Members' dues received without any such expectation or availability of benefit is to be recorded as Direct Public Support. Due to the nature of advocacy work being done for the benefit of an organizations members and/or constituents, I expect the membership variable to have the most statistically significant impact on lobbying expenses reported by a nonprofit organization.

Variables Excluded

Several other sources of revenue are identified in Part I of IRS Form 990. These include interest from savings and other investments, rents, sales of assets, and special events. These sources do not seem relevant to the research question, and many of the sample organizations did not report revenues in these categories. A test regression

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performed with these variables showed no statistical significance. Therefore, they have been excluded from the regression analysis. Another variable excluded is line 1A, Contributions to Donor Advised Funds. This item is for sponsoring organizations that manage donor advised funds and very few of the sample organizations reported on this line. Including these variables would cause a significant drop in observations due to missing data.

V. Analysis

Analysis of Regression

The initial regression analysis showed skewed variances, and a heteroskedasticity test confirmed the skewed variances. The results of the Heteroskedasticity test are identified in Table 1.

Table 1.

Heteroskedasticity Test	
Ho:	Constant variance
Variables:	fitted values of s070
chi2(1) =	5914.68
Prob > chi2 =	0.0000

A second, robust regression was then performed. Coefficient estimates were multiplied by 1000 to compare revenues in thousands and for improved readability of the results of the analysis. The following tables are the results of the regression performed on STATA software.

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Table 2.

Regression Statistics	
Number of obs =	707
F(5, 701) =	5.76
Prob > F =	0.0000
R-squared =	0.4117
Root MSE =	2.2e+05

This regression had a sample n of 707 nonprofit organizations. The F-Statistic shows that the regression is statistically significant. The R-Squared value of .4117 shows that this regression explains 41% of the variability in lobbying expenses.

Table 3.

Regression Analysis, Robust Std. Err.				
	Coef.	Std. Err.	t	P> t
Direct Public Support	2.911360	1.086695	2.68	0.008
Indirect Public Support	5.096752	2.418410	2.11	0.035
Government Grants	-0.963106	0.606833	-1.59	0.113
Program Revenue	0.057138	0.033558	1.70	0.089
Membership Fees	1.840896	1.421149	1.30	0.196
Constant	88329.19	16148.11	5.47	0.000

The null hypothesis is that the dependant variable of lobbying expenses is independent of the variables of funding sources. According to our regression analysis, we reject the null hypothesis. Lobbying Expenses are not independent of Funding Sources. For Direct Public Support, the t value of 2.68 is significant at the 1% level. Therefore, we are 99% confident that it affects lobbying expenses. For Indirect Public Support, the t value of 2.11 is significant at the 5% level. Therefore, we are 95% confident that it affects lobbying expenses. For Program Revenues, the t value of 1.70 is significant at the 10% level. Therefore, we are 90% confident that it affects lobbying expenses.

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Government Grants and Membership Fees were not statistically significant to Lobbying Expenses. Therefore, according to the regression analysis, the estimated equation coefficients are:

$$\text{Lobbying Expenses} = \$88,329.19 + \$2.91 (\text{Direct}) + \$5.10 (\text{Indirect}) - \$0.96 (\text{Govt}) + \$0.06 (\text{Programrev}) + \$1.84 (\text{Membership}).$$

The value for each variable is how much would be spent on Lobbying Expenses for each \$1,000 received by the organization from each of these funding sources. Holding everything else constant, an increase of \$1000 of funds from direct public support will increase lobbying expenditures by \$2.91. An increase of \$1000 of funds from indirect public support will increase lobbying expenditures by \$5.10. An increase of \$1000 of funds from program service revenue will increase lobbying expenditures by \$.06. How many actual dollars this means, however, differs based upon how much funding an organization receives from each funding source. The following table shows the summation of the sample organizations. Values are in thousands.

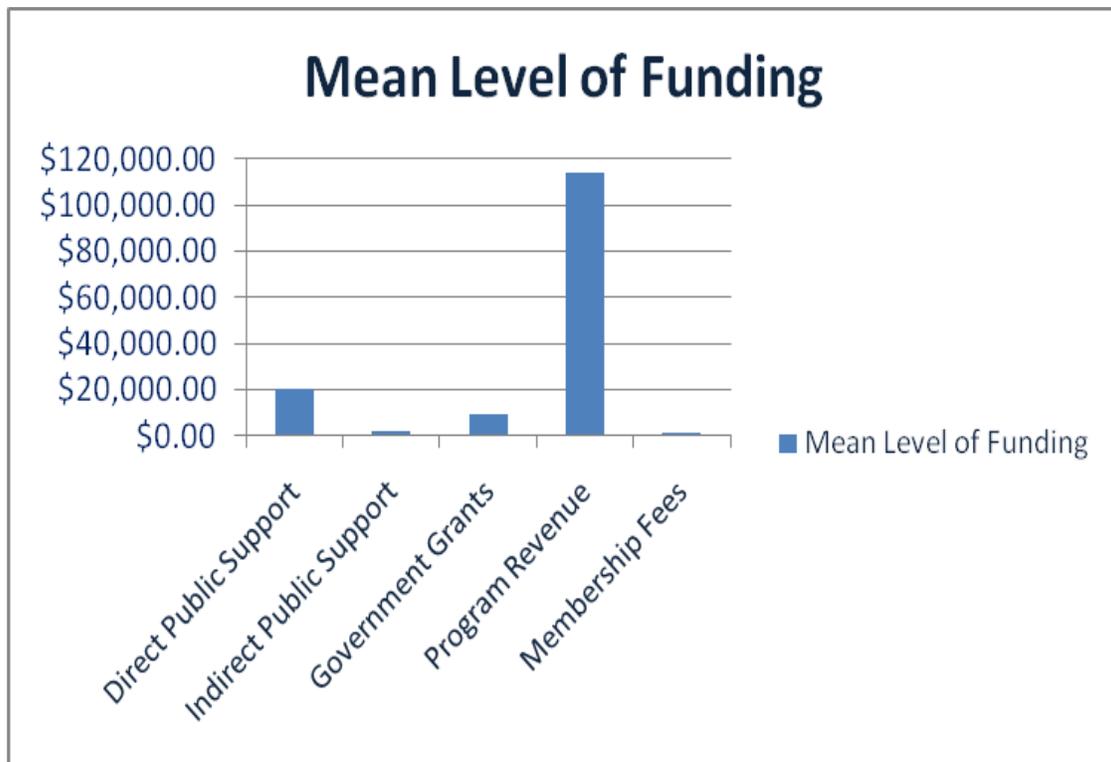
Table 4.

Summation				
Variable	Mean	Std. Dev.	Min	Max
Direct Public Support	\$20,837.48	\$59,805.64	\$0.00	\$934,000.00
Indirect Public Support	\$1,968.12	\$9,494.92	\$0.00	\$132,000.00
Government Grants	\$9,461.36	\$37,984.52	\$0.00	\$421,000.00
Program Revenue	\$114,049.40	\$335,284.00	\$0.00	\$3,580,000.00
Membership Fees	\$1,415.97	\$8,554.62	\$0.00	\$187,000.00

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As evidenced by the above table, funding sources are not equally generous. While indirect public support was statistically significant in this regression analysis, the level of funding received from this source is minor compared to direct public support and program revenue. Program revenue is by far the greatest source of funding in this analysis. This is most likely due to the high number of medical, research and educational organizations in the sample. The following graph gives a strong visual representation of the differing levels of funds received from the funding sources.

Graph 1.



Findings versus Expectations

The findings of this regression are interesting. They did not meet my expectations. Direct Public Support did have a statistically significant impact on lobbying expenses.

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The strength of the statistical significance was a bit greater than expected, but otherwise no surprise here. Indirect Public Support was a bit of a surprise as it does have an unexpected statistically significant positive impact on lobbying expenses. The biggest unexpected outcome of this regression was the discovery that Program Service Revenue had a statistically significant positive impact on lobbying expenses. I was also surprised by the fact that Government Grants and Membership Fees and Assessments did not have statistically significant impacts on the lobbying expenses.

Analysis Limitations

The original intention of this research was to determine the impact of funding source on a 501(C)(3) and 501(C)(4) nonprofit organization's willingness to engage in legislative lobbying. While the information provided by this research is interesting, its usefulness is impacted by several weaknesses.

First, the sample provided by the IRS contains information from nonprofit organizations in sections 501(C)(3) through (9). The format in which the data was provided does not allow for distinction between the sections, so I was not able to isolate 501(C)(3) and 501(C)(4) organizations.

Second, while the dollar value claimed by the nonprofit organizations is the best indicator for the IRS to determine tax status of the organizations, this may not necessarily be the best means of determining the level of lobbying activity an organization engages in. Many organizations may engage volunteers much more heavily than others, and could

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use less costly but more time intensive lobbying activities such as phone banks and visits to legislative offices. These types of activities can achieve a significant amount of “face time” with the target legislators at lower organizational cost. Other organizations may engage solely in expensive advertisement campaigns. And others may hire professional lobbyists to perform the lobbying activities for them.

Third, this data does not differentiate the purpose of the lobbying. Some organizations may engage in lobbying for the purpose of social change. Others may lobby for the purpose of legislative support of their organizational goals. And some organizations may lobby solely for the purpose of securing future funding. Lobbying for social change would certainly be more controversial than lobbying for future funding, and therefore may be more sensitive to funding source influence.

Finally, using expenses reported as lobbying expenses may skew the results in favor of larger organizations. An alternate method of performing this regression analysis may have been to calculate lobbying expenses as a percentage of total revenue in an attempt to control for organizational size. It would also be interesting to determine an effective method of differentiating organizations by size.

VI. Recommendations

This research has shown that there is a funding source impact on lobbying expenses. The literature provides good foundation on understanding nonprofit advocacy

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work and the nature of nonprofit involvement in the policy process. However, there is still much more study to be done. Most authors had identified a lack of empirical data as problematic. This could be for several reasons. The study of nonprofit advocacy work is still relatively new, and the political and financial environment within which this advocacy occurs is still changing. The data on nonprofit advocacy can be difficult to quantify. Also, ambiguous definitions of advocacy can make it difficult to differentiate some activities. This is a very interesting area of research and there is still much to be done.

The information determined by this regression analysis is interesting but incomplete. The broadness of several of the variables begs for further research with greater specificity. I recommend research be done with a much larger sample size. The organizations should be isolated by organization type (501(C)(3), 501(C)(4), etc.). During the literature review it became evident that all sections of nonprofit organizations could potentially play a role in citizen involvement in the policy process and are therefore interesting to study. However it would be difficult to lump them into one category and study them as like items. Lobbying could be separated by the purpose of the lobbying activities. It would be useful to determine which organizations are participating in the policy process and what portion of their activities are dedicated to issue advocacy. And lobbying activities could be defined not only by lobbying expenses incurred but also by volunteer hours dedicated to lobbying, number of legislative letters mailed and phones calls made, etc. This research would be far more labor intensive as it would require direct

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contact with each organization included in the study, but the data collected would be rich and the results of the study more interesting.

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