

# ATLANTIC REPORTS

INVESTING IN CHANGE

## Why Supporting Advocacy Makes Sense for Foundations



## TABLE OF CONTENTS

- 02** Introduction
- 03** What Is Public Policy Advocacy?
- 06** Advocacy in Action: Death Penalty Reform
- 08** Questions Funders Should Ask
- 10** Tips on Funding Advocacy
- 12** Achieving Results
- 13** The Legal Environment in Atlantic's Areas of Grantmaking
- 15** Challenges and Risks in Funding Advocacy
- 16** Funding Short- and Long-Term Initiatives
- 16** Conclusion
- IBC** Funders Cited in This Report

### Case Studies from The Atlantic Philanthropies

- 07** The Older & Bolder Campaign in the Republic of Ireland
- 09** Advocating for Comprehensive U.S. Immigration Reform
- 14** Legalising Same-Sex Marriage in South Africa

*The Atlantic Philanthropies is an international foundation dedicated to making lasting changes in the lives of disadvantaged and vulnerable people. In keeping with the "giving while living" philosophy of our Founding Chairman Chuck Feeney, Atlantic is spending all of our remaining \$4 billion in assets within the next decade, and will close our doors shortly thereafter. Atlantic is fully committed to sharing learnings from our work and that of our grantees with others around the world. As part of this commitment, we are launching Atlantic Reports, a series of publications that will share lessons from all of the programmes and regions in which Atlantic invests in change, as well as from the experiences of other foundations.*

*As the first entry in the Atlantic Reports series, this publication addresses the topic of grantmaking in support of advocacy. Atlantic, based in Bermuda, can and does support vigorous advocacy for policy changes in the United States, Northern Ireland, the Republic of Ireland and South Africa. Atlantic is particularly supportive of advocacy by the people most affected by the policies that need to be changed. This Report explains why Atlantic and many other funders commit to advocacy as a strategy to advance social change, highlighting our experiences and those of other foundations in the U.S. and around the world.*

**Cover: Activists from the Treatment Action Campaign and the AIDS & Rights Alliance of Southern Africa demand better tuberculosis/HIV education and treatments during the 38th Annual Union World Conference on Lung Health in Cape Town. Photographer: Grant Shapiro.**



Children, with red wagons full of signed petitions, protest President Bush's refusal to renew a public health insurance programme for low-income children and youth. Photographer: Jim Young.

## Why Supporting Advocacy Makes Sense for Foundations

**“Funding advocacy and advocates is the most direct route to supporting enduring social change for the poor, the disenfranchised and the most vulnerable among us, including the youngest and oldest in our communities.”**

— Gara LaMarche, The Atlantic Philanthropies

**“If one of philanthropy’s objectives is to create social change, then isn’t it time for us to start investing serious resources in advocacy institutions that encourage our government to change social conditions...?”**

**—David Winters, Human Rights Unit, Ford Foundation**

One in four Americans smokes tobacco. Each year, smoking causes more than 440,000 deaths and costs the United States more than \$150 billion in medical expenditures and lost productivity. The number of Americans who smoke has dropped in recent decades, but public health advocates – and the foundations that support their work – understand that there is still much to do to reduce the harmful impact of tobacco and that advocacy is central to achieving this goal.

Research has demonstrated that harm from tobacco can be reduced by preventing children from taking up smoking, making tobacco too expensive to purchase and limiting exposure to tobacco in public spaces. Armed with that information, the Robert Wood Johnson Foundation (RWJF), a major grantmaker in public health, invested nearly half a billion dollars in an aggressive, 20-year effort to combat tobacco use.

RWJF committed nearly \$90 million to establish and support the Campaign for Tobacco-Free Kids, which worked to counteract the tobacco industry’s influence on children, and more than \$125 million for the RWJF SmokeLess States and Tobacco Policy Change Programs, which supported increased taxes on cigarettes and the passage of state-level smoke-free air statutes. As a result of these organisations’ efforts, more than half of all Americans

will live in states with smoke-free air laws by 2009.

“The difference we have made in driving down tobacco use and saving lives,” says Joe Marx, Senior Communications Officer at RWJF, “has been a tremendous area of impact for the foundation and one of our greatest public health achievements. Over the past decade, we’ve seen a 37 per cent drop in youth smoking and a nearly 16 per cent decline among adults. Without a doubt, our decision to engage in advocacy has been a critical part of that success.”

RWJF’s anti-tobacco work is a compelling example of the growing interest by foundations in supporting advocacy. Making a difference for people in need and achieving social justice has long motivated the work of foundations and individual philanthropists. Historically, such philanthropic efforts have taken the form of charitable giving but have rarely involved funding legislative lobbying and litigation – two powerful tools for change. Yet a growing number of foundations now embrace advocacy as a means for changing government policy and business practices. Foundations are funding a wide spectrum of advocacy activities, including generating research; mounting major efforts to raise awareness about particular issues, such as the genocide in Darfur; and changing government policy through litigation and legislation.



**Young activists from the Campaign for Tobacco-Free Kids support legislation giving the U.S. Food and Drug Administration the power to regulate tobacco products. Courtesy of the Campaign for Tobacco-Free Kids.**

Given the growing interest in funding advocacy, this brief report<sup>1</sup>, which focuses in large part but not exclusively on U.S. grantmaking, provides:

- An overview of why funders should consider investing in advocacy
- Examples of successful, foundation-funded advocacy efforts
- Key questions for individual philanthropists and foundation staff to consider before committing to funding advocacy.

## What Is Public Policy Advocacy?

“There is absolutely a role that philanthropy can play in giving voice to evidence-based arguments and policy positions that don’t otherwise get heard,” explains Greg Shaw, Director of Advocacy and Policy for the Bill & Melinda Gates Foundation. “In fact, there is not always a bright line where the programme ends and advocacy begins.”

As a general definition, “public policy advocacy” aims to bring about a change in public policy or the law, its interpretation or its application, typically with the objective of correcting a perceived injustice or achieving specific legislative, legal or other change.

Funders or individuals who are thinking about supporting advocacy can consider a spectrum of activities, many of which are natural extensions of their existing programmes. While some activities are insufficient for achieving specific goals, each has a role in a larger effort involving multiple players that are employing an array of tactics. The options, which can be deployed in different proportion in each case and by each funder, include:

- **Research and Dissemination:** Credible research is an excellent tool for raising the profile of a problem that deserves attention, as well as for explaining the ongoing impact of a policy or condition on individuals, communities and nations. Making sure that the research can hold up to



**Eamon Timmons of Age Action Ireland encourages Dubliners to join the Older & Bolder campaign to mobilise grassroots support and strengthen the voice of older adults prior to the 2007 national election. Photographer: Conor Healy.**

reasonable scrutiny and that it reaches important audiences (e.g., the media, elected officials and business leaders) is essential.

- **Raising Awareness:** Increasing public consciousness is important when action on an issue is required, but important constituencies are often not fully aware of the problem or its dimensions. Raising awareness can take many forms, including communications campaigns, media placement and advertising, speeches to influential audiences and other public events, as well as public testimony before legislative bodies, regulatory boards and commissions.
- **Community Organising:** Helping those at the local level to organise on their own behalf is a critical

component of funding advocacy. When the people most affected by a particular inequity have the least access to power, support for community organising enables affected communities to voice their concerns and promote their own interests.

- **Grassroots Mobilisation:** Demonstrating broad-based public support for specific policy change is crucial to success. Mobilising membership organisations, coalitions and others to contact and visit elected officials and their staffs – or to generate greater public awareness of an issue – can be a highly powerful component of the effort to bring about policy change.
- **Building Capacity:** Supporting the development of the staff, infrastructure and, where relevant, membership of advocacy organisations is one way to enable long-term change. Advocacy groups often secure funds for specific campaigns during limited periods of time and rarely receive funds targeted at long-term development. Providing core support over an extended period of time enables advocacy groups to build toward more effective efforts in the future or to seed new, like-minded groups.
- **Policy Development:** Developing policy options can aid change by providing advocates, legislators and others with credible suggestions for solving problems. A specific policy suggestion can provide focus for a campaign for change and provide supporters with a goal to rally around. Moreover, the staff of some grantee organisations can work with their counterparts in government to draft legislative or regulatory language and to implement specific proposals. (See Lobbying, below.) In some cases, legislators may require a thorough cost analysis as a key corollary to justify funding objectives. Such analysis should include credible data on what a policy proposal would cost the government or others, and how it would be funded.
- **Lobbying:** Some funders may be interested in efforts to develop, refine or amend legislative language or to support proposed legislation or ballot initiatives on the local, state or federal level. This activity is regulated differently under law in different countries, so both foundation staff and grantees should confer with legal counsel about the best approach for each organisation. For those who do not wish to – or cannot – lobby directly, offering expert input to legislative staff in a nonpartisan and open manner (e.g., providing testimony) may be a good alternative.



**The Treatment Action Campaign organises community training programmes in South Africa on the treatment and prevention of HIV/AIDS, focusing on the benefits and side effects of antiretroviral treatment. Photographer: Audra Melton.**

- **Litigation:** Taking legal action to achieve desired changes or fight undesired policies and practices is a tool that advocates have long used effectively. Litigation strategies may be tied to other kinds of advocacy to ensure that court decisions are implemented vigorously.
- **Electoral Activity:** In the United States, 501(c)(3) organisations (as designated under U.S. tax law) can carry out a range of activities related to elections, including encouraging more involvement in electoral activity by specific groups (e.g., women) and general voter mobilisation, educating the public about the issues and candidates, and educating the candidates on public interest issues. 501(c)(3) organisations are strictly prohibited from supporting or opposing candidates for public office. 501(c)(4) organisations can carry out all the activities which 501(c)(3) organisations are allowed to pursue, but donations to 501(c)(4) organisations are not tax-deductible under the U.S. tax code. Moreover,

provided election activity is not their primary function, 501(c)(4) organisations can also support or oppose candidates for public office. When doing so, 501(c)(4) organisations must comply with federal and/or state election law. (See sidebar on The Legal Environment on page 13.)

A number of grantmakers have had tangible successes in bringing about change through these various advocacy strategies. Unlike private foundations active in the U.S., The Atlantic Philanthropies, based in Bermuda, can easily offer support for 501(c)(4) organisations, which can engage in an unlimited amount of lobbying. However, foundations that can or wish to fund only 501(c)(3)-type work can also explore co-operative efforts with other funders interested in providing complementary 501(c)(4)-type work.

**“Organisations serious about achieving change absolutely need the resources to be directly involved (in the political process).”**

—John Terzano, The Justice Project

## **Advocacy in Action: Death Penalty Reform**

Whether promoting immigration reform, access to health care, better treatment of older adults or equal treatment under the law for gay men and lesbians, funders can creatively support efforts to create change consistent with their missions and legal restrictions.

One compelling example is the 2004 passage by the U.S. Congress of The Innocence Protection Act (IPA), the first piece of federal death penalty reform in American history. The IPA directed the President to provide funding to states to test the DNA of convicted criminals, strengthening the ability of death row prisoners to challenge their convictions.

The IPA's enactment represented a historic milestone, especially as the law was passed by a conservative Congress and signed into law by a President who supports the death penalty and had no previous record of interest in strengthening the rights of defendants in capital cases. But the law is also noteworthy because its enactment can be attributed to a well co-ordinated advocacy effort, including a five-year education and lobbying campaign by The Justice Project, a U.S. grantee of Atlantic and other foundations.

“Education is absolutely important to create the right climate,” says John Terzano, President of The Justice Project. “But if you want to bring about social justice change, you must engage the legislative and judicial processes as well.”

The Justice Project combined efforts to educate the public with direct advocacy activities, providing opportunities for different kinds of funders to support different, yet related, activities. To enable it to conduct more lobbying than is permissible for a 501(c)(3), The Justice Project has two separate corporate entities: The Justice Project, Inc. and The Justice Project Education Fund. The Justice Project, Inc. may engage in an unlimited amount of lobbying under U.S. law because it is a 501(c)(4) organisation. The Education

Fund (formerly The Criminal Justice Reform Education Fund) is a 501(c)(3) organisation that, while legally allowed to engage in an insubstantial amount of lobbying, in practice focuses on nonlobbying activities.

With these two separate entities, The Justice Project employs a broad range of tools – including public education, coalition-building, organising and direct engagement with state and national lawmakers – to build bipartisan support to address unfairness and inaccuracies in the criminal justice system.

According to Mr. Terzano, the co-ordination of both lobbying and educational activities is indispensable in achieving successes like the landmark IPA legislation. Foundations including the Pew Charitable Trusts, the JEHT Foundation and the Open Society Institute supported the organisation's 501(c)(3) work, while Atlantic's funding went to the 501(c)(4) effort. This kind of co-ordination among funders allowed many foundations to support a significant change in the law.

“Organisations serious about achieving change,” Mr. Terzano emphasises, “absolutely need the resources to be directly involved.”

The return on this kind of investment can be far-reaching. “This is the most significant step we have taken in many years to improve the quality of justice in this country,” commented U.S. Senator Patrick Leahy (D-Vt.) at the time of the IPA's passage.

It might not have happened if grantmakers had not been willing to fund effective advocates engaged directly in the legislative process.





**Grace O'Shaughnessy** – an Irish model, broadcaster and supporter of the **Older & Bolder** campaign – encourages older people and their families to demand a **National Strategy for Older People**. The campaign collected more than **30,000** signed postcards of support during the **2007** election period. **Photographer: Conor Healy.**

## The Older & Bolder Campaign in the Republic of Ireland

In the Republic of Ireland, Atlantic is deeply involved in efforts to bring about lasting change in the lives of older adults. In a contentious political environment, Atlantic chose to fund the Older & Bolder campaign. The initial goal was simple: to ensure that every Irish political party in 2007 had a policy platform position on issues related to Ireland's older population as part of the year's national election campaign.

The newly founded Older & Bolder campaign was a collaborative initiative of five organisations that previously had not worked together – Age Action Ireland, the Irish Senior Citizens Parliament, the Irish Hospice Foundation, the Senior Helpline, and Age and Opportunity. The

campaign funded evidence-based research, mounted an advertising campaign to counter stereotypes about older adults, and ran a systematic awareness-raising and education effort across the spectrum of politicians, public officials and the general public.

“Irish Prime Minister Bertie Ahern acknowledged that the co-ordinated and strengthened voice of older people in Ireland contributed to the decisions by government to make a number of improvements,” says Atlantic President and CEO Gara LaMarche. “This was an amazing testament to the power of philanthropy to centralise leadership around an important position and enhance the likelihood of change.”

Not only did the campaign successfully help to put the ageing issue into the platform of all the major parties, but the elected government created a new position – Minister of State with responsibility for Older People – focused on health matters and issues of social inclusion.

Atlantic continues to work with and fund the original five organisations in this collaborative initiative, and the coalition now has plans to extend membership to three other national organisations.

# Foundations interested in supporting advocacy must ensure their grantees and own staff are fully prepared for the unique issues such philanthropy entails.

## Questions Funders Should Ask

As big as the pay-off can be from funding a successful strategy in the public policy arena, foundations interested in supporting advocacy must ensure that their grantees and own staff are fully prepared for the unique issues such philanthropy entails. There are a number of questions to consider:

### Organisational Capacity

- Do foundation and grantee staffs have the experience and judgement required to understand when an advocacy effort is likely to succeed and be an effective investment of time and funds?
- Do the collective skills of staff reflect the range of knowledge needed, including involvement in politics, policy, lobbying, regulatory advocacy, organising on the community, state and national levels, and providing highly effective communications support?
- Does the foundation educate its staff and grantees about advocacy and develop their skills?
- Is there, or can there be, a clear point-person or group in the foundation or grantee organisation for making decisions regarding advocacy?
- Do the foundation's internal and external legal counsels understand the relevant law and feel comfortable that the foundation is able to support specific efforts? In the U.S., is counsel prepared to help grantees establish 501(c)(4) entities?
- Do members of the foundation's staff understand how to provide advocates with quick feedback and data that will advance advocacy efforts, rather than wait until a campaign is complete to assess its effectiveness and share results?

### Senior-Level Support

- Do the trustees understand the potential of advocacy and support involvement in it? If not, does the foundation's management have a plan for familiarising trustees with this area of investment?

- Are the foundation's communications office, management and trustees prepared to defend the foundation's reputation, should it be criticised publicly for its support of advocacy?
- Does the foundation have active relationships with social change foundations and organisations, and are its leaders prepared to reach out to funding partners who can add strength and resources?

### Strategic and Tactical Considerations

- Do foundation staff and grantees have the ability and institutional support to act quickly and nimbly? Can they take up immediate opportunities that support long-term goals? Do the relevant organisations have simple processes in place that allow for quick action?
- Do foundation staff and grantees have the strategic and tactical knowledge needed to move forward? For instance, can they suggest when a coalition would make sense on a particular issue, and can they define the role of foundation staff in relation to such an effort? Is staff ready to play a role in building coalitions but empower the grantees most in tune with the campaign's goals to plan strategy? Does staff have the judgement to know when a grantee may be proceeding in error or haste?
- Does the foundation or grantee organisation challenge grantees and reward those who take risks, or does it emphasise caution? Conversely, is foundation staff prepared to learn from its more experienced grantees?
- How does the foundation balance investing in the long-term needs of advocacy organisations with meeting the same organisations' needs for short-term support for unexpected opportunities?
- How should foundation staff structure support for advocacy efforts? What portion of the support should go to grassroots organisations, a national intermediary organisation or a consortium of funders?



Pro-immigrant demonstrations across the U.S. grew in size and frequency in the spring of 2006 as Congress considered comprehensive immigration reform legislation. Photographer: Shannon Stapleton.

## Advocating for Comprehensive U.S. Immigration Reform

U.S. funders like the Ford Foundation, Carnegie Corporation of New York and Open Society Institute have long provided 501(c)(3) support for education, capacity building and infrastructure development in support of U.S. immigration reform. With President Bush's election in 2000 and his long-stated interest in reforming the country's immigration system, immigration reform groups sensed an opportunity and sought more dollars for direct advocacy.

"In our field, 501(c)(4) money has the Midas touch," says Frank Sharry, Executive Director of the National Immigration Forum and board member of the Coalition for Comprehensive Immigration Reform (CCIR). "You can't win a legislative battle without straight-up advocacy dollars."

Atlantic and other funders made sure the dollars were there to advocate for reform, but the effort for comprehensive policy change failed. In the end, an array of powerful interests resisted reform for different reasons and a vociferous minority opposed it in stark emotional appeals. Importantly, the President's political capital was depleted, and he was unable to deliver votes on Capitol Hill in favor of the proposed legislation. Despite failing to achieve reform, the willingness of funders to help grow and strengthen a national coalition to tackle a comprehensive reform campaign elevated the debate and raised the issue's profile in 2006.

Mr. Sharry says the funders' agreement to let the CCIR decide how to spend the dollars was

instrumental in its ability to move the debate as quickly and as far as it did. With financial decisions expedited by a six-member board, the CCIR was able to deploy dollars to strengthen grassroots coalitions and litigation centers that were key to an effective, nationally co-ordinated campaign.

"If funders trust and support grantee organisations and do not impose preconceived notions about what they believe to be the right on-the-ground strategy and tactics, we can dramatically increase the potential of advocates to make a difference on issues that are most vital to our mission," says Rebecca Rittgers of Atlantic's Reconciliation & Human Rights Programme.

# Tips on Funding Advocacy

- **Get informed from a variety of perspectives.**

To define clear long-term goals for change and take advantage of short-term opportunities, seek perspective from current or former political players and advocates who can help you understand the dynamics of the issue and potential strategies. Ask grantees for their opinions, but don't rely solely on the analysis of current or prospective grantees.

- **Think broadly about how to support effective coalitions.**

Support building the right kind of capacity, including powerful and effective advocacy organisations and coalitions. Some coalitions reflect and grow from the grassroots level, while others might consist of established groups. Some might be homogeneous, and others might feature unusual partners or "strange bedfellows" (e.g., business and labour, conservative and liberal think tanks).

- **Consider all of the options in the advocacy tool kit.**

A variety of tools can be wielded to bring about change, including direct legislative lobbying, litigation, and pressuring public and private-sector organisations to change policies and practices.

- **Consider the various models available to manage campaigns.**

Once a grantmaker decides to support an advocacy campaign, there are several options for how to manage advocacy-oriented funding. Determine early on whether there is 1) a grantee, or coalition of grantees, that is already actively involved in a campaign or can easily take leadership; 2) a third-party group that should be contracted to act as the manager for a new campaign initiated by the funder(s); or 3) the campaign would best be managed directly by foundation staff. Each approach has its own benefits and risks depending upon the issue and the funder(s).

- **Establish clearly identified, central co-ordination of campaigns.**

Clear co-ordination is essential to the success of campaigns. Local, grassroots, state and national efforts must be united toward a common goal, while respecting the autonomy of local, state, provincial and regional groups.

- **Be prepared to empower nonprofit leaders.**

Facilitate, guide and collaborate, but do not dictate to the leaders who are championing the cause.

- **Whenever possible, provide general operating support.**

Though it is tempting to focus exclusively on specific initiatives or campaigns, it is just as important to help grantees build their organisations' strength, and specifically, build their advocacy strength.

- **Incorporate long-term funding into advocacy grantmaking.**

Advocacy campaigns rarely fit into the one- or two-year funding periods of most foundations. Long-term funding gives organisations the ability to plan more realistic strategies that do not require yearly fundraising breaks.

- **Communicate effectively.**

When explaining the cause to elected officials, the media, and other influential individuals and organisations, deploy tested messages and well-prepared and carefully selected spokespersons. Funders of advocacy must be transparent about their objectives and stand behind them, so long as these objectives are relevant to the policy debate.

**To define clear long-term goals for change and take advantage of short-term opportunities, seek perspective from current or former political players and advocates who can help you understand the dynamics of the issue and potential strategies.**

- **Where applicable, share information across local, state, provincial, regional and national boundaries.**

Though campaigns may be subject to separate jurisdictions, tactics from one country or region may be instructive for campaigns in another.

- **Identify and utilise credible research.**

Arm yourself with solid research that validates, supports and advances campaign positions. If such research does not already exist, find the resources to develop it. Also, using research data to re-assess advocacy efforts along the way will ensure the greatest chance of success.

- **Identify your adversaries and plan for their response.**

By choosing to advocate one position, you inevitably are arguing against other, sometimes powerful, interests.

- **Co-ordinate funding partnerships to strengthen a campaign.**

Multiple funders advancing the same position will maximise effectiveness when working as part of an effectively co-ordinated effort. Grantmakers who do not co-ordinate their funding for a common effort risk working at cross purposes.

- **Incorporate pragmatic and helpful evaluation requirements that do not unnecessarily overburden organisations.**

Evaluation of advocacy work need not be overly complex or unnecessarily distract busy organisations from their day-to-day efforts to bring about change. A significant amount of work has been done in recent years on how to evaluate advocacy, incorporating varying degrees of complexity. Foundations should take advantage of what already exists.



**Advocates celebrate the U.S. Supreme Court's decision finding the juvenile death penalty unconstitutional in 2004. Atlantic and funding partners supported co-ordinated litigation, organising and communications efforts by many organisations. Photographer: Megan Friesmuth.**

## Achieving Results

Investing in advocacy can result in clear social changes. The following are a few prominent examples:

- More than three-quarters of AIDS-related deaths occur in sub-Saharan Africa, and South Africa is the country with the highest prevalence of HIV in the world, according to a United Nations report released in November 2007. The South African Government estimates that about 12 per cent of South Africans are infected with HIV, and the economic and developmental impact of the epidemic threatens to undo many achievements of South Africa's new democracy. Atlantic has funded the Treatment Action Campaign (TAC), which has mobilised a grassroots movement of people with HIV, mostly in poor communities, to advocate for

better care. TAC has pressured the government to deliver antiretroviral (ARV) medications to people with HIV/AIDS, specifically working through the courts to force the government to meet its constitutional obligations to provide ARVs through the public health service. Through grantmaking to TAC, Atlantic hopes to ensure that all who need treatment get it, and thus prolong the productive lives of those with HIV/AIDS.

- In the United States, a group of funders supported a coalition that organised mass demonstrations of immigrants and their supporters across the country in 2006. These marches drew attention to the desire of millions of immigrants to gain legal status for themselves or their loved ones. This intensive, co-ordinated national campaign used tested messages to raise awareness about the aspirations of immigrants and the challenges they face. The demonstrations dominated the news and created pressure for a federal debate on the topic in 2007. (See sidebar on Advocating for Comprehensive U.S. Immigration Reform on page 9.)
- In the United States, the Bill & Melinda Gates Foundation announced a partnership with The Eli and Edythe Broad Foundation in early 2007 to fund an up to \$60 million Strong American Schools campaign. The goal of the effort is to ensure that public education reform issues are high on the agenda during the 2008 U.S. presidential election cycle. The initiative seeks to mobilise the public and focus the presidential candidates' attention on solutions for the country's education crisis. Using the "Ed in '08" theme, the campaign has worked to generate more discussion of educational issues by co-sponsoring debates and generating media coverage. One interesting aspect is the campaign's management model, which differs sharply from that of most other campaigns funded by foundations. While most foundation-supported advocacy groups manage their own campaigns, the Strong American Schools initiative is managed by the Rockefeller Philanthropy Advisors, a service that offers programme, administrative and management services for foundations and trusts inside and outside the United States. According to Mr. Shaw of the Gates Foundation, "It is important to analyse in each individual case whether a 'buy or build approach' better serves the policy objective." One of the Gates Foundation's Guiding Principles is, in fact, "We advocate – vigorously but responsibly – in our areas of focus."

- For over a decade, the George Gund Foundation, a family foundation in the Greater Cleveland, Ohio community, has worked in partnership with the Coalition on Homelessness and Housing in Ohio (COHHIO), a statewide network of low-income housing providers. In 1996, Gund began funding COHHIO's efforts encouraging the state legislature to identify a permanent source of funding for the Ohio Housing Trust Fund, the state's primary vehicle for improving low-income housing conditions. COHHIO tried unsuccessfully for three two-year budget cycles to reach the ultimate goal, but each time came away with increased annual appropriations for the Fund. The fourth time was the charm: COHHIO secured a dedicated revenue

source now totaling more than \$100 million for each two-year funding cycle. "Without the amazing advocacy 'stick-to-it-iveness' of COHHIO, this goal would never have been reached," says Marcia Egbert, Gund's Senior Programme Officer. "With each so-called failed attempt, COHHIO grew in its advocacy sophistication. We learned a lot of lessons about hanging in with a policy effort for the long haul." Gund's total contribution to the effort was a little less than \$150,000 for education, communications and other advocacy efforts. In 2008, Gund and COHHIO continue to work together to increase resources for the Trust Fund, which now serves more than 87,000 low-income Ohio families annually.

## The Legal Environment in Atlantic's Areas of Grantmaking

### UNITED STATES

In the United States, "charitable organisations" – also known as 501(c)(3) tax-exempt organisations, in reference to the U.S. tax code section governing them – are classified as either "public charities" or "private foundations." All 501(c)(3) organisations are prohibited from supporting or opposing candidates for public office, and are subject to limitations on their lobbying activity. In particular, a public charity must limit its lobbying to an insubstantial part of its activity; if the organisation measures its lobbying under the 501(h) expenditure test, it can spend no more than 20 per cent of its first \$500,000 in exempt expenditures on lobbying, with declining percentages thereafter – up to a maximum of \$1 million each year. Private foundations are taxed on any lobbying expenditures, including grants earmarked for lobbying. The tax code offers a separate designation for "social welfare" or "action" organisations known as 501(c)(4) nonprofit organisations. These groups can freely advocate for or against specific legislation on behalf of their constituencies because they face no limits on lobbying and have considerable freedom to engage in partisan political activity.

From a financial perspective, both 501(c)(3) and 501(c)(4) organisations are not-for-profits and are exempt from paying federal income tax. However, there are key differences. First, donations to 501(c)(3) organisations are tax-deductible to the full extent of the U.S. tax code, whereas donations to 501(c)(4) organisations are not. Second, U.S. private foundations may not fund lobbying or partisan political activity by 501(c)(4) organisations. U.S. private foundations have greater freedom to fund 501(c)(3) public charities that engage in lobbying, but even here they must comply with restrictions that prevent them from targeting money at their grantees' lobbying work specifically.

U.S. private foundations and public charities still have considerable freedom to fund and engage in advocacy. A lot of advocacy, such as educational campaigns, is not considered "lobbying," according to U.S. tax code definitions. As a result, many private foundations fund advocacy work, and many public charities engage in lobbying and other advocacy without ever approaching the ceiling on their lobbying expenditures. But, when all is said and done, 501(c)(4)s enjoy greater regulatory freedom. The

price of that freedom, though, is less access to funding. With a legal base in Bermuda, The Atlantic Philanthropies, unlike its peers organised under U.S. law, can meet this need by funding 501(c)(4) organisations.

### NORTHERN IRELAND

Charitable organisations cannot be set up specifically to advocate, but can engage in advocacy to the extent that it is to further their overall charitable mission.

### REPUBLIC OF IRELAND

Irish rules on advocacy and activities qualifying as charitable are evolving as the Republic's nonprofit sector grows. Strong campaign finance laws reach broadly, requiring philanthropic funders to take care that their grantees keep issue advocacy firmly nonpartisan.

### SOUTH AFRICA

Remembering the apartheid era and its large-scale suppression of the nonprofit community has encouraged South Africa to foster the nongovernmental and nonprofit sectors, giving charities great freedom to engage in issue advocacy.



**Zackie Achmat (right), Treatment Action Campaign chairperson, exchanges rings with Dalli Weyers during their wedding ceremony in Cape Town in January 2008. Same-sex marriage is legal in South Africa, thanks to advocacy work by the Lesbian & Gay Equality Project. Photograph courtesy of The South African Sunday Times.**

## **Legalising Same-Sex Marriage in South Africa**

In South Africa, Atlantic's 2004 funding made it possible for the Lesbian & Gay Equality Project to take a case to the nation's Constitutional Court, where justices reversed the ban on same-sex marriages. But even with that positive decision, there remain other goals for the human rights of the lesbian, gay, bisexual and transgender (LGBT) community in South Africa that demand long-term funding strategies, including ensuring that advocates press for the most thorough enforcement of the High Court's decision. That effort included Atlantic funding a coalition of groups that pressured the African National Congress, the country's major

political party, to ensure good faith enforcement of the ruling.

"When we started funding around gay and lesbian rights," reports Gerald Kraak, head of Atlantic's South Africa office, "there were only a few organisations in South Africa working in this area, which were loosely connected to one another without significant co-ordination."

Atlantic's support has helped build a stronger and more tightly knit group of organisations around the country that can more effectively lobby for change to benefit South Africa's LGBT community. For example, Atlantic supports a Joint Working Group that represents a collaboration of national and local LGBT groups

advocating on behalf of member rights. At the same time, a number of funders have formed a Small Grants Fund to seed new LGBT grassroots organisations.

"Larger grantees often identify and then mentor these Small Grants recipients," says Mr. Kraak. "As a result, we have seen a flowering of small organisations over the last few years." With the help of such targeted grantmaking for advocacy to raise the voice of the LGBT community, same-sex marriage in South Africa is now legal – a tangible return on the foundation's investment in advocacy.



- In the U.S., an estimated 5.3 million Americans are denied the right to vote because of laws that prohibit voting by people with felony convictions. This barrier to participation in elections disproportionately affects African-American men, resulting in an estimated 13 per cent of black men being barred from voting in U.S. elections. To rectify the situation, the JEHT Foundation conceived the Right to Vote Campaign as a national effort to restore the voting rights of ex-felons. JEHT subsequently brought in Atlantic and a number of other national funders to support the campaign. Though it was conceived as a national project, Atlantic came to understand that direct funding to state coalitions was a highly effective strategy for advancing the work. Each state coalition co-ordinated campaign activities, including research, policy development, advocacy, coalition-building, communications, litigation and legal counseling. The efforts at the state level, such as a successful ballot measure in Rhode Island, resulted in the restoration of all or some rights in five states.
- Between 1994 and 2004, juvenile executions represented four per cent of all U.S. executions, compared to .04 per cent in the rest of the world – and 73 juveniles sat on death row. Most child advocates and many in the scientific community argued that the execution of juvenile offenders is cruel and unusual punishment under the U.S. Constitution and should not be tolerated in a civilised society. Understanding that the fastest path to reform was through the courts, Atlantic and other funders supported a coalition of groups that co-ordinated their legal efforts in a key case. Grantees included The Justice Project, Amnesty International USA and the National Coalition to Abolish the Death Penalty. The effort resulted in a complete judicial victory in 2004, first through a State of Missouri Supreme Court decision in *Roper v. Simmons*, and then on the federal level when the U.S. Supreme Court upheld the Missouri court's ruling in *Roper* and declared that the juvenile death penalty is unconstitutional in the United States.

## Challenges and Risks in Funding Advocacy

Funding advocacy creates the opportunity to bring about major changes in public policy, but it also brings new challenges to foundations. Some efforts may antagonise powerful individuals in government and the private sector. Also, funding and working with

advocates may lead to conflicts between foundation staff and advocates. Even supporting activities that fall short of legislative activity can agitate elected leaders and motivate them to threaten foundations.

For example, in 1993, former U.S. Senator Robert Dole (R-Kan.) and former U.S. Representative Robert Michel (R-Ill.) formally expressed concern over the Robert Wood Johnson Foundation's role in supporting a series of health policy forums at which then First Lady Hillary Rodham Clinton discussed health care reform.

Indeed, even under less-heated political circumstances, grants must be consistent with government regulations and not jeopardise the tax status of either the grantmaker or grantee. (See sidebar on The Legal Environment on page 13.)

"Foundations and their grantees are actually able to do a tremendous amount of advocacy within the letter of the law," says Bill Roberts, President and Executive Director of the Beldon Fund, which focuses its grantmaking on environmental issues. "However, it is obviously important for grantmakers to team up with lawyers to protect themselves and their grantees."

Another challenge to funding advocacy arises from the slow and deliberate pace at which foundations often move. By contrast, advocates frequently must move quickly to keep up with politics, legislative schedules and news coverage. To succeed, advocates must be ready to seize these unexpected opportunities. Sometimes, a foundation's staff or its approval processes may not be able to move forward as quickly as advocacy work requires.

For example, in Fall 2006, Atlantic initiated support for a number of U.S. advocates working to re-authorise the State Children's Health Insurance Program (SCHIP)<sup>2</sup>. At the time, a September 2007 re-authorisation was expected and hopes were high. In September and October 2007, when legislative activity peaked and prospects for immediate re-authorisation grew slim, Atlantic staff was challenged to meet multiple requests for additional support within a period of three weeks. The pace of requests made it clear that the foundation needed a simple process for making timely decisions to build on its prior investments and advance advocacy work.

"In the past we had a more cautious approach," said Marisha Wignaraja, a Programme Executive for the Disadvantaged Children & Youth Programme at Atlantic. "But recent experience shows us that an advocacy strategy that seeks to leverage public funds must be more flexible."

**“As funders, we have a special opportunity to empower the leaders in the field who are strong advocates for change.”**

—Rebecca Rittgers, Atlantic’s Reconciliation & Human Rights Programme

## Funding Short- and Long-Term Initiatives

Although successful campaigns require bold and rapid action, the importance of building a sustainable support system for change is just as critical. What is often termed “capacity building” is an integral element of a long-term advocacy strategy. Capacity building entails providing support to strengthen the skills of a grantee organisation over time, as well as to build up its physical and digital infrastructures, its ability to raise funds and more.

“Advocacy organisations are often focused on the specific opportunity of today,” says Jackie Williams Kaye, Strategic Learning & Evaluation Executive at Atlantic. “This is reasonable and wholly appropriate. But, as funders, our role is also to help ensure that these organisations have the long-term capacity to respond to emerging opportunities and priorities.”

Indeed, bringing about change requires both a willingness to fund finite campaigns at opportune times, as well as a long-term commitment to build the capacity and leadership of key advocates. From the strategy development stage to the implementation and follow-up, grantmaking around policy change often can take years to bear full fruit.

“You do need to be prepared to stick with advocacy over time,” adds RWJF’s Mr. Marx. “It can take years to build the infrastructure that you then need to activate at the key time to bring about change. Our experience with tobacco certainly bears testament to the benefit of a long-term strategy.”

“It is very important that funders do their due diligence to determine the proper timing to support a campaign,” observes Mr. Sharry of the National Immigration Forum. “But if there isn’t the long-term work, for example, of patiently building litigation centers, state and local coalitions, and field infrastructure, even a seemingly well-timed push will be challenged to get traction.”

## Conclusion

“Public policy work can have outsized impact,” argues Mr. Roberts of the Beldon Fund. Working on environmental protection, arguably one of today’s most urgent issues, Beldon is aggressively spending down its endowment to create change as quickly as possible. The foundation sees the potential of bringing about change through public policy as too compelling to ignore.

“The Nature Conservancy is rightfully lauded for protecting 15 million acres over the past 50 years,” Mr. Roberts adds for emphasis, “but with a few strokes of his pen during his presidency, Bill Clinton protected more than 60 million acres.<sup>3</sup> Now that is outsized impact!”

Given the policy goals of numerous foundations, it is hardly surprising that more funders are expressing interest in advocacy as part of their programme and communications work, and many are identifying compelling opportunities. Each effort is different, and there isn’t a set formula that will identify the right answer for each situation. Instead, members of foundation staff and potential donors must ask themselves tough questions as they assess their willingness and readiness to support advocacy efforts.

“As funders, we have a special opportunity to empower the leaders in the field who are strong advocates for change,” says Ms. Rittgers, a Programme Executive for the U.S. Reconciliation & Human Rights Programme of Atlantic. “That opportunity implies an important obligation to ask the right questions and be open-minded about the best path to change. If we are willing to support both the long- and short-term needs of those championing a cause in line with our mission, we as grantmakers can see tremendous returns on our philanthropic investments.”

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<sup>1</sup> Visit [www.atlanticphilanthropies.org](http://www.atlanticphilanthropies.org) for other useful sources related to this topic.

<sup>2</sup> The State Children’s Health Insurance Program (SCHIP), created by the U.S. Balanced Budget Act of 1997, allocated about \$20 billion over ten years to help states insure more children. The law authorises states to provide health care coverage to “targeted low-income children” who are not eligible for Medicaid and who are uninsured. (Source: National Conference of State Legislatures: <http://www.ncsl.org/programs/health/chiphome.htm>)

<sup>3</sup> “Transition in Washington: The Environment; How an Interior Secretary Helped to Encourage a Presidential ‘Legacy,’” *New York Times*, January 19, 2001.

## **Funders Cited in This Report**

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[www.atlanticphilanthropies.org](http://www.atlanticphilanthropies.org)

**The Beldon Fund**  
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**Eli and Edythe Broad Foundation**  
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**The Pew Charitable Trusts**  
[www.pewtrusts.org](http://www.pewtrusts.org)

**Robert Wood Johnson Foundation**  
[www.rwjf.org](http://www.rwjf.org)

*For more information on additional grantmakers  
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