

MARCH/APRIL 2013**Response:
Policy Advocates***Paul Brest*

This article is part of [*What Are Foundations For?*](#), a forum on philanthropic institutions and their role in democracy.

The paradigmatic pluralism-enhancing activity, according to Rob Reich, is the provision of goods and services that are not (adequately) provided by the marketplace or the state. I would like to focus on another activity that fits within the pluralism rationale: advocacy for policy change. Such advocacy is a major way that citizens exercise their rights of free speech and assembly, and an essential activity of many civil society organizations.

First, a half-hearted disclaimer. Much policy advocacy involves legislative lobbying, an activity that, with narrow exceptions, foundations are forbidden to engage in. However, the lobbying prohibitions are not as strict for nonprofit organizations (“public charities,” under the Internal Revenue Code) that foundations fund. Moreover, there are no constraints on a foundation’s support for impact litigation—lawsuits that affect policy—or for influencing the regulatory actions of administrative agencies. In any event, if foundations follow the proper legal procedures, they can make grants that support a broad range of advocacy.



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In recent history, foundation-supported advocacy has played an important role in countering the immense power of corporations. Examples include advocacy for policies to reduce smoking and obesity and to mitigate greenhouse gas emissions in the face of pervasive advertising and forceful lobbying by the cigarette, fast food, soft drink, coal, oil, and utilities industries. This is advocacy in support of pluralism. So too is foundation-supported advocacy for and against school choice, the right to bear arms, legal abortion, and, the rights of various minorities. (Pluralism is not a synonym for liberalism.)

Policy advocacy is a double-edged sword. The modern era of advocacy was ushered in by a long and expensive campaign by conservative foundations, which supported think tanks such as the American Enterprise Institute, Heritage Foundation, and Manhattan Institute in order to promote deregulation and a free-market ideology. This campaign could be the poster child for Reich’s concern about foundations supporting the interests of the wealthy—interests that are often well funded by corporations. At the very least, such funding does not enhance pluralism and at the worst diminishes it. For better or worse, however, there are no politically or constitutionally plausible standards for differentiating advocacy that promotes pluralism from that which subverts it.

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One might deal with this dilemma by adopting a prophylactic rule that curtails all foundation advocacy. If foundation spending were limited to supporting cultural and educational institutions and traditional charities, they would be less likely to exert inappropriate plutocratic power—except, perhaps, by forestalling the revolution. But this would deprive civil society organizations of a strong defense against corporate advertising and lobbying. Indeed, an increasing number of organizations trying to address poverty and other

traditional charitable objectives have found advocacy to be an important means for achieving their goals.

If one looks at the ideologies of the large, long-standing foundations and those that are emerging in our time, a great majority of their advocacy enhances pluralism, notwithstanding their plutocratic origins. At the same time, as a result of innovative advocacy practices, protected by Citizens United, corporate lobbying is increasingly powerful and largely unconstrained. Thus, at least for the present, one might well conclude that allowing foundation support for advocacy in fact enhances pluralism. One may be uncomfortable basing a policy of this sort on a volatile prediction, but I don't see any deeper principle that can substitute for result-oriented empiricism in making the decision.

The question remains whether one need protect foundation funding rather than rely on direct individual gifts to nonprofit organizations to support advocacy. Reich raises this question and ducks it in a way that I interpret as an acknowledgment that foundations may play an important pluralism-enhancing role. I'll duck it too, save to note that foundations were major players in the histories of many of the campaigns and movements mentioned above—campaigns and movements that have had profound effects on our lives and politics.

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