

UNDERSTANDING ADVOCACY: A PRIMER ON THE POLICY MAKING ROLE OF NONPROFIT ORGANIZATIONS

John Casey
Baruch College, City University of New York
john.casey@baruch.cuny.edu

July 2011

Funding for this project was provided by the Robert Sterling Clark Foundation and the PSC-CUNY Research Award program.

EXECUTIVE SUMMARY

Advocacy is any attempt to influence public policy and practice or any other decisions of institutional elite. It involves the active espousal of a point of view or a course of action and can include high profile legal challenges and other openly political actions, as well as less visible, more subtle processes of influence. Advocacy activities may be aimed directly at the decision makers or they may be seek to influence indirectly through shaping public opinion and voter intentions or by disseminating alternative models of policy and practices.

Encouraging citizen involvement in policy decisions and holding government accountable are considered to be among the fundamental roles of nonprofit organizations. At the same time, this work is controversial as it embroils nonprofits in activities that are inherently political and regulated by numerous legislative and administrative restrictions. Advocacy is a constitutionally protected activity, but there are restrictions on the activities that certain classes of nonprofits can engage in and on the use of public funds and tax-deductible private donations for some types of advocacy.

The restrictions are imposed through the conditions for registration as nonprofits, eligibility for tax exempt status (particularly regarding the tax-deductibility of donations), the conditions set by some funders, and by other legislation related to electoral activity and the work of professional lobbyists.

There is an extensive repertoire of possible advocacy strategies and activities that can be used to attempt to influence government policy and practice and so drive social change. However, the definition of what constitutes advocacy, the preferred strategies and methods used, and the desired outcomes, vary greatly issue to issue, and even within a single issue will evolve considerably over time in response to the changing power dynamics between actors. Advocacy has evolved over the last decades, as the relationship between the government and nonprofit sectors has become increasingly intertwined and the resources available to nonprofits through contracting and fundraising have increased considerably. Government contracting, the increasing use of formal processes of policy inputs such as advisory panels, and the rise of lobbyists, think tanks and policy advisors have all conspired to professionalize policy

discussions. The tendency has been to move away from confrontational approaches and to focus more on negotiating changes to policy.

Advocacy is expensive. While organizing ad hoc protests, information sessions, or letter writing campaigns can be done with relatively little money, prolonged advocacy requires considerable resources, particularly if it involves litigation or media campaigns. However, measuring the outcomes of any investment in advocacy can be problematic. The goal of advocacy is to effect change, but are we measuring profound changes or simply evidence of having left a "residue of reform"? How do we distinguish between short-term success (e.g. having forced a commitment to change) and possible long-term failure (e.g. that commitment is later reneged, or not implemented due to lack of funding)? It is always possible to win many battles, but still lose the war.

If nonprofits want to effectively participate in policymaking processes they must develop a solid understanding of the strategic options open to them and to the challenges they face. The purpose

of the paper is to provide a deeper understanding of the parameters of the current debates about the advocacy work of nonprofits.

This Working Paper is based on a background paper prepared for the *New York City Nonprofit Advocacy Case Studies* series (Casey and Mehrotra 2011). The series consists of three multimedia case studies on landmark attempts by nonprofit organizations to drive policy changes on key issues in New York City. The three case studies are:

- **Case 1: Solid Waste Management and Environmental Justice.** This case examines the continuing work of community-based organizations and public interest lawyers to promote equitable and environmentally sound solutions to waste handling in New York City.
- **Case 2: Child Welfare and Foster Care.** This case study focuses on the campaign to eliminate racial and religious bias from the New York City foster care system, to protect children in foster care from abuse and neglect, and to improve child welfare services.

- **Case 3: Education Finance Equity.** This case study examines the advocacy work in support of the *Campaign for Fiscal Equity v State of New York (1993)* that brought together a coalition of education advocacy groups, parent organizations, and community school boards to push for more equitable funding of New York City schools.

The case study narratives, accompanying videos and teaching guide are available at:

<http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/CaseStudies.php>

INTRODUCTION

Encouraging citizen involvement in policy decisions and holding government accountable are considered to be among the fundamental roles of nonprofit organizations. But they are also controversial as they embroil nonprofits in activities that are inherently political and regulated by numerous legislative and administrative restrictions.

These political activities of nonprofit organizations are analyzed in this paper under the rubric of “advocacy,” the term most widely used in the vernacular of the sector. The purpose of the paper is to serve as a “primer” that explores the parameters of the current debates about the advocacy work of nonprofits. The paper defines advocacy, explores the range of possible advocacy activities available to nonprofits, and examines the legal restrictions that nonprofits face. It also documents recent trends in advocacy work and analyzes the difficulties in securing funding for advocacy activities and in evaluating outcomes.

DEFINING ADVOCACY

Advocacy is any attempt to influence public policy and practice or any other decisions of institutional elite (GrantCraft 2005, Jenkins 2006, Casey and Dalton 2006). It involves the active espousal of a point of view or a course of action (Salamon 2002) and can include high profile legal challenges and other openly political actions, as well as less visible, more subtle processes of influence. Advocacy activities may be aimed directly at the decision makers or they may seek to influence indirectly through shaping public opinion and voter intentions or by disseminating alternative models of policy and practices. While advocacy is primarily seen as seeking to influence government and the public sector, it can also focus on promoting changes in the private sector.

The term advocacy is defined in this paper in the broadest possible sense as the catch-all term for the work of nonprofit organizations that seeks to change minds, mobilize public will, and influence government. Advocacy is any deliberate act to enhance the power of an organization to influence other actors in the policy making process. Other related terms are also used within the nonprofit sector to describe aspects of this work, including *activism*, *advising*, *campaigning*, *commenting*, *consulting*, *engagement*, *giving voice*, *providing input*, *lobbying*, *negotiating*, *organizing*, *policy work*, *political action*, and *social action*, which are all used to describe attempts to directly influence, while terms such as *educating*, *disseminating information*, *innovating* and *modeling* are used to describe indirect activities. There are evident differences in meanings between these terms, and in some circumstances there are specific legal definitions that distinguish between

advocacy, campaigning and lobbying (see the section below on legal restrictions on advocacy), but nonetheless they are often used interchangeably

and there are considerable variations in their use. The term chosen to describe the advocacy work of a nonprofit organization is more likely to be the result of which label sits comfortably with the participants involved than of any strict academic or legal definition.

Two important definitional distinctions often emerge in discussions of nonprofit advocacy:

- Individual and systemic. Individual advocacy seeks a remedy for a single person or for a situation involving a small group of people, while systemic advocacy seeks changes at an institutional or policy level. The relationship between individual and systemic advocacy is a subject of some controversy -- some commentators maintain that the aggregation of individual concerns or grievances must be the basis for systemic change (and class-action law suits work on this presumption), while others maintain that a focus on individual advocacy is the equivalent of putting “band aids” on social problems and tends to ignore broader structural issues.
- On behalf of the constituency of an organization and on behalf of the organization itself. There is a “business imperative” that compels organizations to work with legislators and administrators to ensure continued funding and political support for the work of the organization, which does not always coincide with the wider needs and interests of the clients or other constituencies.

The analysis in this paper focuses on systemic advocacy by nonprofit organizations that seek to influence government policy and practice on behalf of their constituents or to promote other policy interests of the organizations.

The paper focuses primarily on the work on 501(c)3 and 501(c)4 charities, foundations, and public interest advocacy organizations. It does not address partisan advocacy and political lobbying by organizations set up with the specific purpose of influencing the outcome of political campaigns. While such work is generally considered to be outside the scope of activities of 501(c)3 and 501(c)4 organizations - see the section in this paper on Legal Restrictions on Campaigning and Lobbying - there appears to be increasing concerns about the “abuse” of such organizations. There, are for example, foundations and charities created by members of Congress that organize “charity events”, generally funded by corporate donations, which appear to have as their main purpose promoting the image of the lawmaker (New York Times 2010). Also, the January 2010 Supreme Court decision in *Citizens United v. Federal Election Commission*, which ruled that corporate funding (by both for-profit and nonprofit corporations) of independent political broadcasts in candidate elections cannot be limited under the First Amendment, has further drawn a wider range of nonprofits into partisan political activities.

ADVOCACY ACTIVITIES AND STRATEGIES

There is an extensive repertoire of possible advocacy strategies and activities that can be used to attempt to influence government policy and practice and so drive social change. In the U.S. there is a tradition of pursuing change through legal remedies, so public interest litigation has long been at the forefront of advocacy efforts. But other tactics that seek to influence political and administrative decision-making are also deployed. Table 1 outlines the range of possible advocacy activities. It should be noted that some of these activities, such as public education and media outreach, only become advocacy when the specific intention is to directly or indirectly influence government decisions.

Table 1: Advocacy Activities

| CATEGORY | EXAMPLES OF ADVOCACY ACTIVITIES |
|--|--|
| Legal | <ul style="list-style-type: none"> • Initiate or support public interest litigation • Provide expert evidence for litigation |
| Legislative and Administrative | <ul style="list-style-type: none"> • Encourage legislators to vote for or against specific legislation/proposition (direct lobbying) • Encourage members of the public to express support for, or opposition to, specific legislation/proposition/regulations through phone calls, letters, e-mails etc. (indirect or grassroots lobbying) • Encourage people to vote for or against specific candidates/parties (campaigning) • Inform public about candidates' platforms/policies • Organize electoral or legislative forum/discussion • Contact elected or appointed officials, staffers and advisors to promote changes in regulations, guidelines, and other administrative practices |
| Research and Policy Analysis | <ul style="list-style-type: none"> • Prepare and disseminate research reports, policy briefs, etc. • Evaluate effectiveness and outcomes of existing programs • Provide data/access to external researchers |
| Coalition Building and Capacity Development | <ul style="list-style-type: none"> • Create and sustain new organizations • Create and sustain coalitions of organizations |
| Education and Mobilization | <ul style="list-style-type: none"> • Prepare and distribute print or online materials to educate community about an issue • Organize or promote educational, art, cultural and community activities |

| | |
|---|--|
| | <ul style="list-style-type: none"> • Organize or promote campaign to contact legislators or administration to express concerns • Organize or promote petitions • Organize or promote boycott • Organize or promote demonstration, rally, street action, or civil disobedience |
| Communication and Media Outreach | <ul style="list-style-type: none"> • Send letters to editors • Post blog entries, tweets, and comments on online forums • Prepare press releases or opinion articles • Express opinion during media interviews |
| Government Relations and Oversight | <ul style="list-style-type: none"> • Participate in on-going formal government consultation or advisory processes • Participate in ad-hoc consultation or advisory processes such as “town halls” and legislative hearings, or respond to requests for advice • Prepare submission to government enquiry • Engage in independent “watchdog” activities to monitor and evaluate government activities |
| Service Delivery | <ul style="list-style-type: none"> • Implement and disseminate new model of service delivery |

Many of these activities can be mapped along a continuum from confrontation to cooperation. Demonstrations, boycotts, or critical media coverage put nonprofits in direct conflict with government decision makers, while participation in an advisory committee, responding to requests for information, or participating in the development of new service delivery models involve partnership and coproduction with government. Strategic decisions about which advocacy strategies to pursue are based both on the political and administrative context of the issue being addressed and the organization’s own “theory of change” and its beliefs on the best strategies for influencing decisions. Some nonprofits choose to be “outsiders” employing more militant and confrontational activities, while others are “insiders” that choose to cooperate with government and work within the system.

Advocacy is constitutionally protected in the U.S. by the right to freedom of speech and is seen as one of the fundamental roles of nonprofit organizations. The 1973 federal Commission on Private Philanthropy and Public Needs, more commonly known as the Filer Commission (Filer Commission 1975), identified the following advocacy-related activities as core functions of the nonprofit sector: ‘initiating new ideas and processes’ ‘developing public policy’, ‘supporting minority or local interests’, ‘overseeing government’, ‘overseeing the market place’, ‘bringing sectors together’, and ‘furthering active citizenship and altruism’.

However, in the decades since the Filer Commission, it is the direct service functions of the nonprofit sector that have gained more prominence, and attitudes to advocacy work vary greatly. For example:

- It is generally promoted if it seen as strengthening democratic society, giving voice to marginalized communities, providing oversight of public institutions, and promoting innovation in public policy.
- It is generally rejected if it considered too openly partisan, or as promoting private or narrow interests, particularly if they are seen as impinging on the rights of others.
- Some advocacy activities, particularly lobbying on specific legislation or campaigning for candidates for office, are restricted if using public funds or tax-deductible private donations. Registration regulations for nonprofits, tax codes, and caveats on public funding all impose limitations on the use of some funds for advocacy activities.

Nonprofits will embrace advocacy if it considered to be core to their mission and as helping to gain legitimacy with their constituency, but they will avoid it if it is seen as compromising funding (public or private) by being too controversial, “biting the hand that feeds”, or violating the conditions of funding or registration.

There are a minority of nonprofits such as public interest law and issue-based organizations, as well as associations and umbrella groups that represent the sector, which focus the bulk of their work on advocacy. However, the vast majority of nonprofits studiously maintain an appearance of being “non-political” and prefer not to identify advocacy as a core activity of the organization. The National Taxonomy of Exempt Entities (NTEE), the classification system used by the IRS and many foundations, identifies nonprofits by their primary purpose and by their activities within that purpose, based on self-reporting by the organizations. If the NTEE can be considered an indicator of advocacy work, the results suggest that it is only a marginal activity of the nonprofit sector, as less than 1% of all registered organizations identify advocacy as a primary purpose -- of the 1.5 million registered nonprofits in the US, only 11,463 declare that their primary purpose is NTEE Category R (Civil Rights, Social Action, Advocacy) and only an additional 159 are Category I-83 (Public Interest Law), the two categories most directly linked with advocacy. Similarly in all other NTEE categories, less than 1% declare that their activities include Advocacy (Activity Code 01). Of the 211,246 Category B (Education) nonprofits, only 1,109 list 01 as an activity code; of the 98,225 Category P (Human Services) nonprofits, only 160 list 01 as an activity code (National Center for Charitable Statistics 2010).

However, in other types of research and reporting considerably more nonprofits identify advocacy as a purpose or activity of the organization. In a nationwide survey by the Johns Hopkins Listening Post Project of 872 organizations that work in children and family services, elderly housing and services, community

and economic development, and the arts, 73% reported conducting some type of policy and advocacy or lobbying activity (Salamon and Lessans Geller 2008), although an earlier Johns Hopkins research report found that only 16% of nonprofits indicated expenditures on advocacy (Salamon 2002). The wide discrepancy between the NTEE self-reports and the survey results is partly due to the different sampling frames (differences in size and types of the organizations surveyed), but also due to the differences in responses elicited by macro-level questions (e.g. Is advocacy a purpose or activity of the organizations?) and micro-level questions (e.g. Have you contacted a legislator or public official in the past year?), and to differences between reporting about advocacy on behalf of constituents and advocacy on behalf of the organization itself (NTEE self-reporting most likely includes very little of the latter), as well as a certain reluctance by organizations to label their activities advocacy when reporting to the IRS or other funding sources.

The Johns Hopkins Listening Post report concluded that among the surveyed organizations “advocacy is very much alive”, but also that the vast majority of the organizations in the study spent only scant resources on advocacy activities. Other survey and ethnographic research also confirms that while only a very small minority of nonprofits are openly political advocacy organizations, a significant majority of nonprofits engage in some form of advocacy either directly or through intermediary organizations, although it tends to be a minor part of their activities (see the research cited in Casey 2004).

Should nonprofits focus more of their time and energy on advocacy? Has the service role become too prominent in the decades since the Filer Commission to the detriment of the policy development and oversight roles of nonprofits? Are the service and advocacy roles incompatible? These questions continue to be debated in the nonprofit sector -- some commentators claim that too many nonprofits have reneged on representing the interests of their constituencies by focusing only on “non-political” service delivery, while others argue that the advocacy continues to be a major focus and that nonprofit service delivery and partnerships with government are innovative and drive social change, even if they are not labeled advocacy (National Council for Nonprofits 2011a).

Currently, nonprofits appear to be giving somewhat more emphasis their advocacy role, parlaying their greater proximity to government through their service delivery role and increased public profile into a more active participation in the policy process. As the Aspen Institute notes, “nonprofit organizations operating in partnership with government must be permitted to pursue their privately supported advocacy activities.... [as] active participation in the policy process is a fundamental function of the nonprofit sector in a democratic society and one that must be encouraged” (Aspen Institute 2002: 8). There appears to be a renewed interest in promoting advocacy, as attested by increasing number of “how to” guides and calls for the lifting of the existing

restrictions (GrantCraft 2005, Sherlock and Gravelle 2009, Foundation Center 2010).

At the same time, there continues to be pushback from those seeking to restrict the advocacy work of nonprofits, by invoking the argument that organizations that receive favorable tax status or government grants and contracts should not be involved in any work that could be construed as political.. In the mid 1990s, Representative Ernest Istook and Senator Alan Simpson made various legislative proposals (often collectively referred to as the controversy around the “Istook Amendment”) that sought to ban any advocacy by nonprofits that received federal grants, even if they were using other, non-grant, income to fund the advocacy work. While those proposals were defeated, similar initiatives at federal, state and local levels continue to be enough of a concern that the National Council of Nonprofits in its 2011 *Public Policy Agenda* highlights the Council’s ongoing work in opposing restrictions on the advocacy rights of nonprofits (National Council for Nonprofits 2011b).

LEGAL RESTRICTIONS ON CAMPAIGNING AND LOBBYING

As noted earlier, advocacy is a constitutionally protected activity. However, there are restrictions on the activities that certain classes of nonprofits can engage in and on the use of public funds and tax-deductible private donations for some types of advocacy. The restrictions are imposed through the conditions for registration as nonprofits, eligibility for tax exempt status (particularly regarding the tax-deductibility of donations), the conditions set by some funders, and by other legislation related to electoral activity and the work of professional lobbyists.

The Internal Revenue Code restrictions refer to “political work” (or “campaigning”) and “legislative activities” (or “lobbying”), which consequently have specific legal definitions -- campaigning means working on behalf of or in opposition to a specific candidate for elective office, while lobbying is an attempt to influence the passage of specific legislation, referendums or ballots (IRS 2010). It is important to note that although these are the definitions used by the IRS, in the vernacular of the nonprofit sector the terms continue to be used more loosely. For example, many nonprofits organize “lobby days” in Washington DC or the state capital, when they take constituents to meet legislators to talk about the work of the organization and other issues of concern. If the discussions do not press for action on specific legislation or if they focus on the work of executive, judicial, or administrative bodies, they do not in fact constitute lobbying according to the IRS definition. Similarly, nonprofits may conduct a “campaign” on an issue of concern, but if the work does not involve directly supporting or opposing a candidate then it is not campaigning according to the IRS definition.

Moreover, the IRS restrictions on these activities apply only to organizations that have 501(c)3 status under the Internal Revenue Code and not to other nonprofit classifications. In general terms the restrictions on organizations that have 501(c)3 tax-deductible status are:

- 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office (i.e. they cannot engage in campaigning). However, non-partisan voter education activities, such as policy forums which provide a range of perspectives on issues, are permitted, and nonprofits can encourage people to participate in the electoral process through registration and get-out-to-vote activities,
- 501(c)(3) public charities (but not private foundations) are permitted to conduct lobbying to influence legislation, only as long as it is “no substantial part” of the organization’s activities and expenditures. 501(c)3 organizations classified as private foundations are not permitted to lobby and cannot make grants that directly support legislative lobbying by others, but they can make general support grants to organizations that lobby.
- To help allay concerns over what constitutes “no substantial part” and the application of expenditure tests, Subsection 501(h) of the tax code allows 501(c)3 organizations to elect to have the question of whether they are engaging in too much lobbying decided on application to the IRS. This is known as the “501(h) election” and it provides organizations with very clear guidance to permitted activities and expenses. Under 501(h), organizations submit a description of their activities and a budget to the IRS and are subsequently given a formal ruling on whether they fall within “no substantial part” guidelines. In general, organizations that take the 501(h) election are permitted to expend up to 20% of the first \$500,000 of their budget on lobbying and reduced percentages of budget amounts above \$500,000, with an overall cap of \$1 million. Activities that do not violate restrictions on lobbying can include contacts with the executive and judicial branches, activities related to regulations (as opposed to legislation) and “self defense” activities related to legislative proposals that would affect the organization’s own existence or powers (Alliance for Justice 2003).

These restrictions apply only to the Section 501(c)3 registration status under the federal tax code, and ultimately to the question of whether contributions to these organizations are deductible for Federal income tax purposes. There are other forms of nonprofit registration that do not restrict campaigning or lobbying using private contributions, including other categories of Section 501(c), such as 501(c)4 for social welfare and civic organizations and 501(c)6 for business leagues and professional associations, as well as Section 527 for political organizations. Contributions to these organizations are not tax

deductible as charitable contributions, but may be deductible for some individuals and corporations as business expenses.

Other restrictions on advocacy may be imposed by funding sources (e.g. federal grants and contracts generally cannot be used for lobbying), by registration requirements for professional lobbyists (e.g. federal, state, and most large local governments require organizations that spend a threshold amount of time and funds on seeking to influence legislators to register as lobbyists), by laws and regulations related to the electoral process (e.g. the Federal Election Commission and state Election Boards set the conditions for financing elections), or by other specific legislation (e.g. the Lobbying Disclosure Act prohibits 501(c)4 organizations from receiving federal grants, loans, or awards if they engage in lobbying).

This short outline does not do full justice to the complexities of restrictions, and any nonprofit that is concerned about the impact on its legal status of any of its advocacy activities should consult an attorney (see for example Mehta 2009). But it is important to emphasize that nonprofit organizations have multiple legal avenues open to them to engage in all the advocacy activities listed in Table 1. The IRS 501(c)3 regulations provide substantial leeway - charities cannot campaign on behalf of candidates, but they can lobby legislators as long as long as it is not a substantial part of their work, and all activities focusing on executive and judicial branches, regulations or self-defense fall outside the restrictions.

Any 501(c)3 organization that has doubts about whether its advocacy activities will be viewed as substantial enough to violate restrictions can always make the 501(h) election. If that is not sufficient, the organization can choose to operate with multiple legal identities and operate different units or entities as 501(c)3, 501(c)4 and 527 organizations. Many advocacy organizations are in fact multiple legal entities –The Natural Resources Defense Council (NRDC), one of the most prominent environmental organizations, operates as a 501(c)3, which is “parent” to a the NRDC Action Fund that is registered as a 501(c)4, which in turn sponsors specific campaigns, some of which have their own brand and legal identity; JStreet, a lobby group seeking a two-state solution in the Middle East, describes itself as a “family of three legally independent organizations”: a 501(c)(4) registered lobbying organization, a political action committee (PAC), and a 501(c)(3) charitable organization.

Confusion over the meaning of lobbying, campaigning, and advocacy, and the complicated regulations governing these activities is reflected in the tentativeness of some nonprofits to participate in advocacy, or to identify advocacy as part of the work of the organization. They may avoid advocacy because they are unsure of the type of actions permitted under their legal or tax status, or because they fear their actions would be perceived as controversial and alienating to funders or leading to government reprisal. However, most of the fears are unfounded and ultimately the decision to

embrace or avoid advocacy should not be based on misperceptions about legal restrictions but on an organization's own strategic decisions about its operational priorities and its public image.

TRENDS IN ADVOCACY

“Protesters have become politicians; activists have become administrators.” This aphorism captures much of the current thinking about how advocacy has evolved over the last decades, as the relationship between the government and nonprofit sectors has become increasingly intertwined and the resources available to nonprofits through contracting and fundraising have increased considerably. Government contracting, the increasing use of formal processes of policy inputs such as advisory panels, and the rise of lobbyists, think tanks and policy advisors have all conspired to professionalize policy discussions. The tendency has been to move away from confrontational approaches and to focus more on negotiating changes to policy.

Advocacy “with gloves on” (Onyx et al. 2010) has become a cultural norm and this generally means less belligerent outsider activism and more collaborative insider policy work, although in some areas such as the anti-globalization movement and in desperate moments such as funding cutbacks, street mobilizations continue to be common. Placard-waving citizens demonstrating in front of city hall may still occasionally be part of the street theater of advocacy, but most policy negotiations now take place inside, in meeting rooms or courtrooms.

Technology has also had a significant impact on advocacy. Electronic activism and viral advocacy through online petitions, blogs, social media sites and other means of mass communication, have further reduced the need for activists to hit the streets, or to engage in expensive mail and media campaigns, to spread their message. Anyone with Internet access and an email account is a mouse-click away from showing their support for a cause and recruiting others. Skeptics of online advocacy campaigns have charged that this is not real grassroots organizing, but instead “astroturf” advocacy (the artificial manufacturing of grassroots support) and some deride it as a lazy form of commitment or “slacktivism”. At the same time, many online campaigns have proved highly successful, both in directly influencing policy outcomes and raising funds for activist nonprofits, and online communications is now the primary means of building constituencies and keeping them informed. The mastery of electronic communication and new social media is now an essential part of the toolkit of advocates.

Other significant changes in advocacy include:

- There has been a considerable rise in the number of nonprofit organizations, which some see as increasing fragmentation and

- weakening the capacity to act with a unified voice. However, others argue that this has been mitigated by an increasing tendency to work in coalitions that bring together diverse stakeholders.
- The increased use of formal consultative processes in almost all areas of public policy has led to increasing dialog and partnerships between stakeholders who in the past may have seen themselves as having opposing interests. It is no longer unusual, for example, to see police departments working with social service providers, or the business sector working with nonprofit advocacy groups, to cooperatively negotiate policy and operational matters.
 - There has been an increase in the number of policy professionals, both in government (legislative staff, public sector policy analysts and advisors) and in nongovernment and private organizations (professional lobbyists, intermediary organizations, think tanks, advocacy organizations). Policy-making in some areas has become the domain of a reduced cadre of policy elites, and individual front-line organizations increasingly expect that intermediary organizations will advocate on their behalf.
 - The professionalization of policy work and the increasing focus on data collection and evaluation in almost all areas of nonprofit work has led to a greater reliance on research and evidence in advocacy. Policy-oriented research and the subsequent reports and briefing documents have taken on a greater salience.
 - The media, in both traditional and new forms, are seen as an even greater arbiter of public opinion, so advocacy now requires considerable media relations skills.
 - Policy discussions are becoming nationalized and even globalized. Comparative analysis has become more important as local polices are increasingly benchmarked against far-flung jurisdictions, and advocates work closely with partners in other states and countries to pressure not only local authorities but also national, international and supranational entities.

Amid these changes is the continuing debate regarding whether the closer connections between government and nonprofits are likely to help or hinder advocacy. Does participation in formal advisory and collaborative processes translate into greater influence in shaping future policy, or is it falling into the trap of participating in and legitimizing trivial rituals concocted by governments seeking to sell their pre-determined policies? Does accepting government contracts stifle dissent and compromise the ability of an organization to be a strong advocate?

As noted earlier, the fear of “biting the hand that feeds” continues to be pervasive, and there are documented instances of vindictive legislators and government officials punishing dissent by withholding funds and restricting access. A significant number of nonprofits steadfastly maintain that to be truly

effective advocates they must preserve their independence by eschewing government grants or contracts. However, research also shows that the “chilling effect” of government funding may be more myth than reality. Various studies have shown a positive correlation between the level of government funding nonprofits receive and the level of their advocacy activities, because larger nonprofits, which tend to be the ones that win government contracts, also have the resources to support advocacy and because they have a stake in dialoguing with government to promote the interests of their constituencies as well as their own organizational interests (Salamon 2002, Chaves, Stephens, and Galaskiewicz 2004, Hwang and Suárez 2008). These studies also show a negative correlation between the level of private donations and advocacy, because direct service provision “sells” better than advocacy to private funders. It appears that the best resource base for advocacy is a mix of government and private philanthropic funds, combined with an organization’s earned income.

FUNDING ADVOCACY

Advocacy is expensive. While organizing ad hoc protests, information sessions, or letter writing campaigns can be done with relatively little money, prolonged advocacy requires considerable resources, particularly if it involves litigation or media campaigns. Legal advocacy depends in large part on the *pro bono* participation of sympathetic law firms willing to do the legal footwork and courtroom representation free or below cost, and it usually also involves significant social research, community organizing and administrative support.

Nonprofit organizations report difficulties in funding advocacy work. Most government grants and contracts exclude advocacy, funding from public and private sources is generally program-based, and advocacy can be hard to sell to private funders. A recent survey by the Foundation Center found that, although there is a trend in recent years towards increases in support for research, public education, and resources to policymakers, only 24% of foundations currently either fund or engage in activities that could be considered public policy-related, and even among those foundations only 19% provide more than 25% of their charitable expenditures for such activities (Foundation Center 2010).

Even though advocacy by nonprofits is clearly “legitimate, encouraged and protected” (Alliance for Justice 2003) donors generally focus more on the more immediate outcomes of services delivery. Moreover, many donors are reluctant to donate to activities that do not provide tax benefits, or they may not want to deal with the controversy and scrutiny that often results from efforts to influence public policy (GrantCraft 2005). Advocacy requires a political and strategic commitment from donors, so fundraising for advocacy must target individuals and foundations with a social change agenda and a long-term

perspective in supporting activities that may not result in significant outcomes for many years.

EVALUATING ADVOCACY

Defining the desired outcomes and measuring the effectiveness of advocacy can be problematic. The goal of advocacy is to effect change, but are we measuring profound changes or simply evidence of having left a "residue of reform"? How do we distinguish between short-term success (e.g. having forced a commitment to change) and possible long-term failure (e.g. that commitment is later reneged, or not implemented due to lack of funding)? Even when a court ruling is favorable to the nonprofit advocates, there are no guarantees that the judgment will be properly implemented or that the remedies will have the desired impacts. It is always possible to win many battles, but still lose the war. Table 2 identifies six possible levels of outcomes of advocacy work.

Table 2: Levels of Advocacy Outcomes

| Levels of Outcome | Impact on policy |
|-------------------|--|
| Access | The voices of previously excluded stakeholders are now heard |
| Agenda | Desired policy change is supported by powerful decision makers |
| Policy | Desired change is translated into new legislation or regulations |
| Output | New policy is implemented as proposed |
| Impact | New policy has intended consequence |
| Structural | New policy is now widely accepted as the new norm |

Source: Based on Burnstein et al. 1995

Ultimately, long-term success should be measured in terms of achieving the intended impact and structural change, but any movement to the next level of outcome from the current circumstances can also be an important affirmation of advocacy work. The desired end result of advocacy may take years to achieve, but significant contributions to the goal of effecting change can be achieved along the way.

But even when we can identify *what* has been achieved, it can still be difficult to evaluate *how* it was achieved. To establish the causality between advocacy by nonprofits and policy outcomes, we have to attempt to peer inside a "black box" of power relationships and legislative and administrative decision-making processes. The difficulty of understanding the motivations of those involved in

decision-making, combined with a tendency of all those involved to overstate their role, makes it almost impossible to unequivocally evaluate the outcomes and impacts of nonprofit advocacy.

Despite these challenges, a range of monitoring and evaluation techniques have been developed for measuring the outcomes of nonprofit advocacy, based on “logic models” and “theory of change” frameworks (See for example California Endowment 2005, Alliance for Justice 2007, Harvard Family Research Project 2007, The Evaluation Exchange 2007, Organizational Research Services 2007, Starling 2010, Urban Institute 2010, Innovation Network Inc. n.d.) These techniques adapt those used in other areas of policy and social change research to evaluate key indicators of success in terms of the processes, outputs and outcomes of advocacy.

CONCLUSION

With the increase in contracting to nonprofits since the 1980s and the expansion of fundraising and entrepreneurial activities, the research and commentary about nonprofits in the last decades has focused primarily on management and governance issues related to the service delivery role. However, over the last few years there appears to be a renewed emphasis on the need to understand the dynamics of advocacy; a trend that has been accelerated by the financial crisis.

The three multi-media cases in the *New York City Nonprofit Advocacy Case Studies* series (Casey and Mehrotra 2011), which were developed in conjunction with this paper, clearly demonstrate the complexities of the advocacy dynamics. The definition of what constitutes advocacy, the preferred strategies and methods used, and the desired outcomes, vary greatly from case to case, issue to issue, and even within a single issue will evolve considerably over time in response to the changing power dynamics between actors. The essential role of advocacy in a democracy is to give voice to those who might otherwise have none, and if nonprofits want to effectively participate in policymaking processes they must develop a solid understanding of the strategic options open to them and to the challenges they face.

REFERENCES

Alliance for Justice (2003). *Worry-Free Lobbying For Nonprofits: How to Use the 501(h) Election to Maximize Effectiveness*. Washington DC: Alliance for Justice. www.afj.org/assets/resources/resources2/Worry-Free-Lobbying-for-Nonprofits.pdf

Alliance for Justice (2007). *Build Your Advocacy Grantmaking: Advocacy Evaluation Tool & Advocacy Capacity Assessment Tool*. Washington DC: Alliance for Justice. www.afj.org/for-nonprofits-foundations/resources-and-publications/pay-for-publications/build-your-advocacy-1.html

Alliance for Justice (2010). *Funding Nonprofits That Lobby*. Washington DC: Alliance for Justice. www.afj.org/assets/resources/nap/funding_nonprofits_that_lobby.pdf

Aspen Institute. (2002). *The Nonprofit Sector and Government: Clarifying the Relationship*. Washington DC: Aspen Institute. www.aspeninstitute.org/publications/nonprofit-sector-and-government-clarifying-relationship

Burnstein, Paul, Einwohner, Rachel. and Hollander, Jocelyn A. (1995). *The Success of Political Movements: A Bargaining Perspective*. In Craig Jenkins and Bert Klandermans *The Politics of Social Protest*. Minneapolis and St. Paul: Minnesota University Press.

Casey John and Mehrotra, Apurva (2011). *New York City Nonprofit Advocacy Case Studies* (series of three case studies and background paper). Center for Nonprofit Strategy and Management. New York: Baruch College. www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/CaseStudies.php

Casey, John and Dalton, Bronwen (2006). The Best of Times, the Worst of Times: Community Sector Advocacy in the Age of Compacts. *Australian Journal of Political Science*. Vol. 41, No. 1, 23-38.

Casey, John (2004), "Third Sector Participation in the Policy Process: A Framework for Comparative Analysis". *Policy and Politics*. Vol. 32, No. 2, pp. 239-256.

Chaves, Mark, Stephens, Laura and Galaskiewicz, Joseph (2004). Does Government Funding Suppress Nonprofits' Political Activity? *American Sociological Review*. Vol. 69, No. 2, pp. 292-316.

Filer Commission (1975). *Giving in America: Toward a Stronger Voluntary Sector: Report of the Commission on Private Philanthropy and Public Needs*. Washington DC: US Department of the Treasury.

Foundation Center (2010). *Key Facts on Foundations' Public Policy-Related Activities*. New York: Foundation Center.
foundationcenter.org/gainknowledge/research/pdf/keyfacts_publicpolicy_2010.pdf

GrantCraft (2005). *Advocacy Funding: The Philanthropy of Changing Minds*. GrantCraft, New York: The Ford Foundation.
www.grantcraft.org/index.cfm?fuseaction=Page.ViewPage&pageId=1309

Harvard Family Research Project (2007). A Guide to Measuring Advocacy and Policy, *The Evaluation Exchange*, 8, 1-2 Spring. www.hfrp.org/evaluation/the-evaluation-exchange/issue-archive/advocacy-and-policy-change/a-guide-to-measuring-advocacy-and-policy

Hwang, H Hokyu and Suárez, David (2008). *Institutional and Environmental Influences on Advocacy among Service-providing Nonprofits*. Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Boston, MA. www.allacademic.com/meta/p241867_index.html

Innovation Network Inc. (nd.). *Speaking for Themselves: Advocates' Perspectives on Evaluation*.
www.innonet.org/client_docs/File/advocacy/speaking_for_themselves_web_basics.pdf

IRS (Internal Revenue Service) (2010). *Political and Lobbying Activities*. Washington DC: Internal Revenue Service.
www.irs.gov/charities/charitable/article/0,,id=120703,00.html

Jenkins, J. Craig (2006). Nonprofit Organizations and Policy Advocacy. In Powell, Walter W., and Steinberg, Richard (eds.) (2006). *The Nonprofit Sector: A Research Handbook*, 2nd edition. New Haven, CT: Yale University Press.

Mehta, Nayantara (2009). Nonprofits and Lobbying: Yes they Can! *Business Law Today*, Vol. 18, No. 4 (March/April 2009). www.abanet.org/buslaw/blt/2009-03-04/mehta.shtml

National Center for Charitable Statistics (2010). *US Nonprofit Sector*. Statistics for October 2009. <http://nccs.urban.org/statistics/index.cfm>

National Council for Nonprofits (2011a). *Nonprofit Advocacy is Needed*. Washington DC: National Council for Nonprofits.
<http://www.councilofnonprofits.org/nonprofit-advocacy/power-knowledge/nonprofit-advocacy-needed>

National Council of Nonprofits. (2011b). *2011 Public Policy Agenda*. Washington DC: National Council for Nonprofits.

<http://www.councilofnonprofits.org/public-policy/2011-public-policy-agenda>

New York Times (2010). Congressional Charities Pulling in Corporate Cash. *New York Times*. www.nytimes.com/2010/09/06/us/politics/06charity.html

Onyx, Jenny, Armitage, Lisa, Dalton, Bronwen, Melville, Rose, Casey, John and Banks, Robin (2010). Advocacy with Gloves On: The 'Manners' of Strategy Used by Advocacy Organisations in NSW and Queensland. *Voluntas*. Vol. 21, No. 1, pp. 41-61.

Organizational Research Services (2007). *A Guide to Measuring Advocacy and Policy*. Baltimore: Annie E. Casey Foundation.

www.aecf.org/upload/PublicationFiles/DA3622H5000.pdf

Salamon, Lester (2002). *Explaining Nonprofit Advocacy: An Exploratory Analysis*. Johns Hopkins University, Baltimore: Center for Civil Society Studies, Working Paper Series No. 21.

www.jhu.edu/~ccss/publications/ccsswork/workingpaper21.pdf

Salamon, Lester and Lessans Geller, Stephanie (2008). *Nonprofit America: A Force for Democracy?* Johns Hopkins University, Center for Civil Society Studies, Listening Post Project, Communiqué No. 9, Baltimore.

www.clpi.org/images/pdf/advocacy%20communiqué%20final%207-30-08.pdf

Sherlock, Molly F., and Gravelle, Jane G. (2009). *An Overview of the Nonprofit and Charitable Sector* (CRS Report for Congress 7-5700 ed.). Washington DC: Congressional Research Office. www.fas.org/sgp/crs/misc/R40919.pdf

Starling, Simon (2010). Monitoring and Evaluating Advocacy: Lessons from Oxfam GB's Climate Change Campaign. *Development in Practice*. Vol. 20, No. 2, pp. 277 - 286.

The Evaluation Exchange (2007). Issue Topic: Advocacy and Policy Change, *The Evaluation Exchange*, Vol. XIII, No. 1.

The California Endowment (2005). *The Challenge of Assessing Policy and Advocacy Activities: Strategies for a Prospective Evaluation Approach*.

www.calendow.org/uploadedFiles/Publications/Evaluation/challenge_assessing_policy_advocacy.pdf

Urban Institute (2010). *Outcomes and Performance Indicators for 14 Specific Program Areas: Advocacy*. Washington, DC: The Urban Institute.

www.urban.org/center/met/projects/upload/Advocacy.pdf

APPENDIX I: ADDITIONAL READINGS

Aspen Institute (2000). *The Nonprofit Contribution to Civic Participation and Advocacy*. Washington DC: Aspen Institute.

www.aspeninstitute.org/publications/nonprofit-contribution-civic-participation-and-advocacy

Avner, Marcia (2010). Advocacy, Lobbying and Social Change. In Renzi, David O (Ed.). *The Jossey-Bass Handbook of Nonprofit Leadership and Management*, 3rd edition. San Francisco: Jossey-Bass.

Berry, J. M. (1999). *The New Liberalism: The Rising Power of Citizen Groups*. Washington, DC: The Brookings Institution.

Boris, E. and R. Mosher-Williams. (1998). Nonprofit Advocacy Organizations: Assessing the Definitions, Classifications, and Data. *Nonprofit and Voluntary Sector Quarterly*. Vol. 27 No. 4, pp. 488-506.

Lessans Geller, Stephanie and Salamon, Lester (2009). *Listening Post Project Roundtable on Nonprofit Advocacy and Lobbying*. Johns Hopkins University, Center for Civil Society Studies, Listening Post Project, Communiqué No. 13, Baltimore. www.ccss.jhu.edu/pdfs/LP_Communique/LP_Communique13.pdf

National Committee on Responsive Philanthropy (2008-2010). *Strengthening Democracy, Increasing Opportunities: Impacts of Advocacy, Organizing, and Civic Engagement*. Series of reports covering the following localities:

Los Angeles

www.ncrp.org/files/publications/gcip-la_report_low_res.pdf

Minnesota

www.ncrp.org/files/publications/gcip-mn-fulldoc-lowres.pdf

North Carolina

www.ncrp.org/files/gcip-nc-fulldoc_lowres.pdf

New Mexico

www.ncrp.org/files/Strengthening_Democracy_GCIP-NM-FINAL.pdf

Reid, Elizabeth J. (2006). Advocacy and the Challenges it Present for Nonprofits. In Boris, Elizabeth. T. and Steuerle C. Eugene (eds.), *Nonprofits and government* (2nd Ed.). Washington: Urban Institute Press.

Reid, Elizabeth J., and Montilla, Maria (eds.) (2002). *Exploring Organizations and Advocacy (Vols 1-4)*. Washington, DC: The Urban Institute Press.

Shaw, Randy (2001). *The Activist's Handbook: A Primer, Updated Edition*. Berkeley: University of California Press.

APPENDIX II: ONLINE RESOURCES FOR NONPROFIT ADVOCACY

Alliance for Justice publishes a range of materials that explain advocacy rules for nonprofits (including those listed above under references) and operates a free Technical Assistance Hotline 1-866-NP-LOBBY. The home page for their publications is:

www.afj.org/for-nonprofits-foundations/resources-and-publications/

Alliance for Justice also operates the Nonprofit Advocacy Project (NAP) and the Foundation Advocacy Initiative (FAI), which provide information and training to serve the advocacy needs of 501(c)(3), 501(c)(4) and other 501(c)s, and 527 organizations. More details about the services are at:

www.afj.org/for-nonprofits-foundations/about-advocacy/

Center for Lobbying in the Public Interest

www.clpi.org/

Continuous Progress

Better Advocacy through Evaluation Project (focused on foreign policy)

<http://fp.continuousprogress.org/>

Duke University

Center for Strategic Philanthropy and Civil Society

Case Studies on Advocacy by Nonprofits

<http://cspcs.sanford.duke.edu/casenotes/all/all/all/all/Advocacy>

The Independent Sector: The Basics of Nonprofit Advocacy

http://test.independentsector.org/the_basics_of_nonprofit_lobbying

National Committee for Responsive Philanthropy: Nonprofit Advocacy and Organizing

http://www.ncrp.org/index.php?option=com_ixxocart&Itemid=41&p=catalog&parent=18&pg=1

National Council of Nonprofits: Nonprofit Advocacy

www.councilofnonprofits.org/nonprofit-advocacy

www.councilofnonprofits.org/capacity-building-for-advocacy

National Council of Nonprofits: Nonprofit Advocacy is Legal

<http://www.councilofnonprofits.org/nonprofit-advocacy/power-knowledge/nonprofit-advocacy-legal>

Nonprofit Action: Strengthening Nonprofit Advocacy Project (SNAP)

www.npaction.org/article/archive/225

Nonprofit Advocacy: Michigan Primer
www.mnaonline.org/lobbyinfo.asp

Speak Up: Tips on Advocacy for Publicly Funded Nonprofits Center for an Urban Future; Annie E. Casey Foundation (Author: Suri Dutch and Carl Vogel)
<http://69.18.145.86/KnowledgeCenter/Publications.aspx?pubguid=%7B6698A49A-80DF-4107-83BE-568DAEE0181A%7D>

United Neighborhood Houses of New York. Advocacy Toolkit
www.unhny.org/advocacy/pdf/CB/UNH%20Advocacy%20Toolkit.pdf

The California Endowment. Public Policy and Advocacy
<http://www.calendow.org/Category.aspx?id=342>

Urban Institute: Research Initiative on Nonprofit Advocacy
<http://www2.urban.org/advocacyresearch/index.html>