

Base Power

Learning Community

Base Power Learning Series:
Building Multi-Entity
Membership Programs:
Navigate the Law

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Before joining AFJ, Ronnie was General Counsel at Family Planning Advocates of New York State where she focused on reproductive health care policy and worked with New York's Planned Parenthood affiliates to ensure their advocacy and political activities were conducted in compliance with applicable laws and regulations. She also served as Treasurer for the Planned Parenthood Advocates of New York PAC and the Planned Parenthood Advocates of New York Political Committee. Previously, Ronnie served as Health and Human Services Team Counsel for the New York State Senate and as staff attorney for the MergerWatch Project.



About the Learning Community

The **Base Power Learning Community** brings together progressive intermediaries and leaders to learn, document innovation, and create resources for multi-entity organizations building membership across their legal entities.





**NEW LEFT
ACCELERATOR**

NLA collaborates with those building durable progressive power for the progressive movement.

NLA runs capacity-building programs focused exclusively on supporting progressive organizations and ecosystems to use **multiple legal entities** to build power, increase impact, and win.

The Base Power Learning Community is
Hosted and Sponsored by:

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**NEW LEFT
ACCELERATOR**

ABOUT THIS WEBINAR SERIES

Register for all webinars here:
<https://rebrand.ly/basepower>



1. COMPLETE (Base-Building & Multi-Entity Membership Models)
2. 501(c)3 and (c)4 Membership Programs: Navigate the Law
3. Using Your 501(c)4 to Engage Your Membership
4. Power of the Membership: How to Engage Your Members For Endorsements
5. Resourcing The Base: c(3)/c(4) Fundraising and Communications
6. Membership and Data: Do You Have Consent For That?

CORE BELIEFS

Core Beliefs That Guide Webinar Series

1. We believe in collaboration

Given the complexity of our work, we believe collaboration is a powerful tool required for our shared learning journey. We recognize that addressing the challenges of base-building strategy will take all of us - intermediaries, leaders, and funders. We acknowledge that effective base-building strategy requires a holistic approach that integrates the advice and learning from different perspectives within our ecosystem and across different departments within organizations.

2. We take a learning stance to disrupt the traditional expert-learning model

As progressive intermediaries, we are also here to learn. We acknowledge the deep wisdom, lived experiences, and knowledge of the leaders we work with who execute base building in the field. And while we all have expertise, we reject a narrow definition of “expert” and strive for transformative learning that disrupts the typical “expert-learning” dynamic in all our work.

3. We recognize & name the complexity of base building work

We know that base building work within the constraints of existing funding practices, operating within multi-entity nonprofits and other structural and ecosystem limitations is hard. We seek to recognize, name and discuss that complexity in all its messiness.

4. We aspire to change structural limitations

We believe that building power for our communities requires a shift in how our entire ecosystem supports, invests in, and understands multi-entity organizations. We are committed to shifting beliefs and practices about how funders and intermediaries engage with multi-entity work. To that end, we seek to deepen our entire ecosystems' understanding of the critical role of multi-entity base-building and use that knowledge to enact structural change.

NORMS

- Privacy and data collection
 - What is said or learned here will not be attributed to you or your organization in any way.
 - We won't sell your info - we promise!
 - We are recording to share the presentation with others - but all questions or speaking from the audience will be edited out
 - Data helps us learn - PLEASE SHARE & ANSWER

NORMS

- Take care of you: Break in less than an hour
- This is a learning space: What we learn here will also help us build better content for the movement in the future. You are contributing to movement learning—so please respond/share



- National association of 120 organizations.
- Committed to progressive values and the creation of an equitable, just, and free society.
- Advocates for a federal judiciary that advances core constitutional values and even-handed administration of justice for all Americans.
- The leading authority on the laws governing nonprofit advocacy.

Member Organizations



ABOUT

Member Organizations

About Our Courts

Our Team

Our Board

Careers

Contact Us

At Alliance for Justice's founding, twenty organizations came together to protect core constitutional rights. Forty years later, our strength remains rooted in our membership of more than 120 organizations. Diverse in their missions, members are united in their commitment to progressive values and the creation of an equitable, just, and free society. AFJ's partnerships with our suite of members help us better advocate in Congress, fight for fair courts that protect the rights of all of us, defend our rights in statehouses and at ballot boxes across the country, and organize to build progressive power that creates lasting and critical change. AFJ strengthens our members' advocacy with unique members-only programming, tailored communications, access to cutting-edge resources and research, and opportunities to highlight your organizations' work across our membership and the public.

Together, we are stronger in our work to advance justice, democracy, and protecting nonprofits' ability to advocate boldly. [Click here for an overview of membership benefits and join us today.](#)

The information contained in this presentation and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code or state law.

Every good lawyer needs a disclaimer.....

Learning Agenda

1. Understanding types of nonprofits
2. Pros and cons – what questions drive structure decisions?
3. Sharing resources and working together in an affiliated structure
4. Advantages found in law for some membership structures: an overview and pros and cons

Types of Membership Structure

- Informal
 - Members are not provided for in bylaws. These members do not have power to select board members or control direction of the organization.
- Formal
 - Members are provided for in bylaws which list out members' powers and rights. Members generally have the ability to select board members and may have control over direction of the organization. Bylaws may establish different categories of membership with differing rights and powers.

Understand Your State Law Requirements

- State laws that govern nonprofits will vary in how they address members. State laws will typically address:
 - Rights and powers of members
 - Whether/when annual membership meetings must be held
 - Number of members needed to constitute a quorum







Affiliated Structures

To engage in a full spectrum of advocacy, and to maximize fundraising ability, some organizations decide to create affiliated entities. The most common type of affiliated structure are composed of a 501(c)(3) and a 501(c)(4). Many affiliated structures also include a 527 (PAC).

The logo for Planned Parenthood, featuring a stylized 'P' icon followed by the text 'Planned Parenthood'.The logo for Planned Parenthood Action Fund, featuring the 'P' icon, 'Planned Parenthood' text, and 'Planned Parenthood Action Fund' text below it.The logo for Planned Parenthood Votes, featuring the 'P' icon, 'Planned Parenthood' text, and 'Planned Parenthood Votes' text below it.The logo for Alliance for Justice, featuring a stylized red flame icon to the left of the text 'ALLIANCE FOR JUSTICE'.The logo for Alliance for Justice Action Campaign, featuring the text 'ALLIANCE FOR JUSTICE' with 'FOR' in smaller letters above 'JUSTICE', and 'ACTION CAMPAIGN' in red text below it.

Types of Nonprofits

	501(c)(3) <i>(Private Foundations/ Public Charities)</i>	501(c)(4), 501(c)(5), 501(c)(6)	527 <i>(Political Orgs)</i>
Examples	 		
Tax Treatment	Tax-exempt Tax-deductible contributions	Tax-exempt	Tax-exempt
Lobbying Activities	Prohibited Limited	Unlimited	Rare & usually taxed
Electoral Activities	Cannot support or oppose candidates for public office	Secondary activity Follow federal & state election law	Usually sole activity

Initial Questions

What Do You Want From a Membership Structure?

- Committed activists who pay dues and take action?
- Creation of a democratic structure that allows members to drive decisions and direction of the organization?
- An organization where members feel a strong connection to the organization's mission but have limited control of the organization's decisions and direction?



SFASU LGBTQ+ Equality Caucus @sfa_lgbtqcaucus · Aug 26

We love meeting with our members ✨



What Do You Want From a Membership Structure?

- Are you a 501(c)(3) that wants to take advantage of laws that offer an enhanced ability to engage in lobbying communications with members?
- A 501(c)(4) that wants to take advantage of FECA rules on fundraising and coordinated communications? If yes, you need to have a FECA-compliant membership structure



Dues-Paying Members Offer Some Advantages to a Nonprofit

- Dues are usually unrestricted—so there is more flexibility in how these funds can be used.
- A (c)(3) can use unrestricted funds for lobbying.
 - Hint: Don't fundraise specifically for lobbying because funds earmarked for lobbying are not tax deductible.
- A (c)(4) can use unrestricted funds for partisan work.
 - Hint: Know the donor disclosure rules for partisan work. Under federal and many state laws, funds that are earmarked for partisan communications trigger donor disclosure rules

Power/Control Considerations: How Much?



- In most organizations, bylaws give members limited power, such as ability to elect one or a few board members.
- Bylaws can establish categories of members, with varying powers, including giving one category control.
- Bylaws can also allow members full control of board makeup, which effectively allows members to control direction of organization.

How Can Affiliated Organizations Share Members?

- It is easier to share informal members but is not impossible to share formal members
 - Bylaws would have to provide for shared membership
- General principle: It is easier for a (c)(4) to share resources with a (c)(3)
- (c)(3) may sell or rent lists for fair market value—or trade for equal value



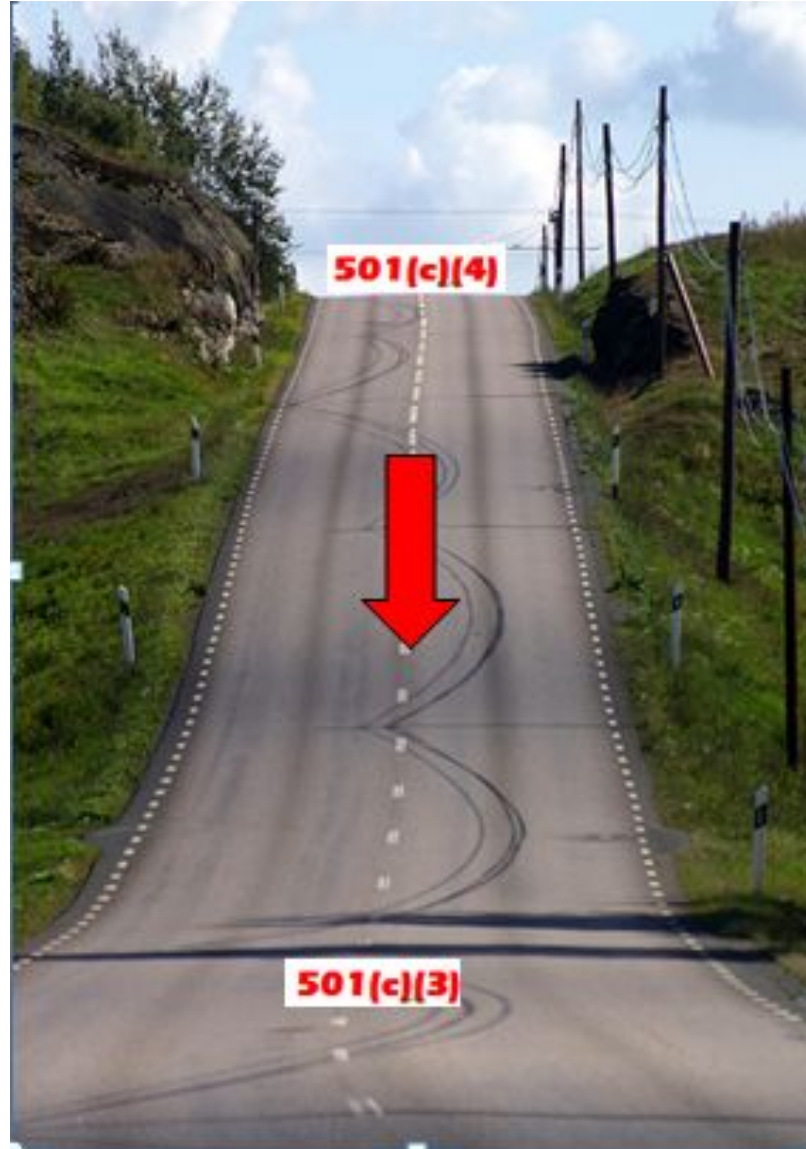
USE YOUR VOICE AND JOIN THE FIGHT »

How Can Affiliated Organizations Share Members?

- (c)(4) can 'give' its members to a (c)(3)
 - This is why it is advantageous for members to 'come in' through the (c)(4)
- Make sure permissions allow for sharing of names
 - Make sure opt in language allows for cell phone use
 - Check your permissions, including on commercial platforms. Don't use language that says you will not share individuals' information if you plan on sharing it with an affiliate
 - (c)(4) should not share partisan information with (c)(3)

General principles governing (c)(3) relationships with (c)(4) (social welfare organizations) and other organizations

1



Uphill-Downhill

It is easier to move resources from a (c)(4) to a (c)(3)

Shadows

Your tax-exempt status follows you everywhere



3



**Document,
document,
document!**

**What hat
are you
wearing?**



4

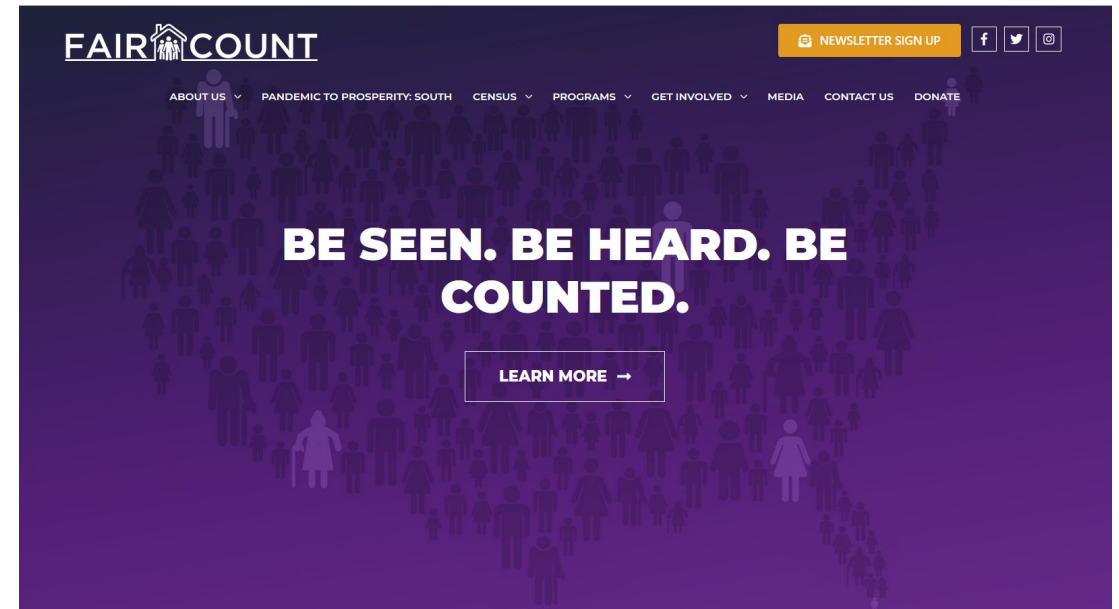
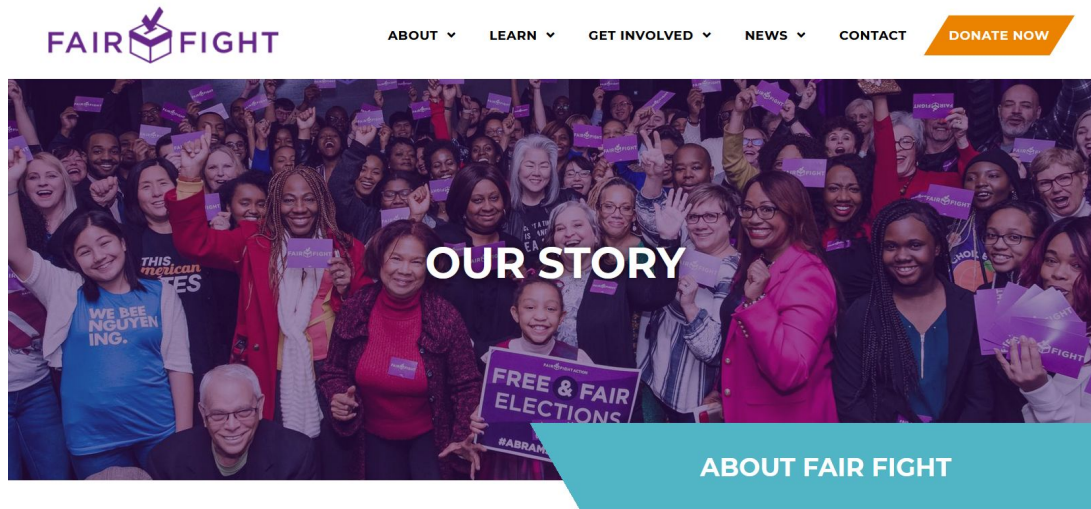
Working Together: Behind the Scenes

Affiliated Organizations



- Unique names for each organization
- Different websites
- Bylaws and/or articles of incorporation
- Separate EINs, bank accounts, postal permits, etc.
- Separate boards of directors/separate meetings

Affiliated Organizations



- Cost-sharing agreement
- Programmatic independence
- Separate funding for formation and infrastructure
- Separate gear (t-shirts, hats, etc.)

Lists: Sharing and Creating

Sharing

- (c)(3) can't give a list to a (c)(4) because it is an item of value
- (c)(3) can sell or rent list to (c)(4) at fair market value



Creating

- Have each organization pay fair share of costs of gathering names (or trade for equivalent number of names)
- Make sure opt-in language allows for sharing

Sharing Resources: A focus on sharing members

- In many structures, building a membership is the same as building a list
- Make sure (c)(3) does not subsidize a (c)(4)'s costs of databases and other systems (such as EveryAction)
- Method of allocating costs should be fair and reasonable (unless (c)(4) is paying all costs)



APPENDIX B

Sample Agreement Allocation of Costs and Reimbursement of Expenses Between 501(c)(3) and 501(c)(4)

THIS AGREEMENT is made this 1st day of July 2018, by and between the Protect the Environment Now Education Fund ("FUND"), and Protect the Environment Now ("PEN").

WHEREAS, FUND is organized and operated for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code ("Code") including, but not limited to, conducting and distributing research, studies, an analysis related to environmental and economic issues; and

WHEREAS, PEN is organized and operated for social welfare purposes within the meaning section 501(c)(4) of the Code, including, but not limited to, developing and advocating legislation, regulations, and government programs to improve the environment, protect natural resources, and stimulate the economy; and

WHEREAS, FUND and PEN have agreed that it is in their mutual best interests to minimize duplicative expenses and to carry out their complimentary purposes in an economical and efficient manner, including the sharing of employees whose skills and knowledge will assist both organizations and the sharing of office space and equipment;

NOW, THEREFORE, in consideration of these mutual promises and mutual benefits, FUND and PEN agree to share a variety of personnel, facilities, goods and

services in accordance with the terms set forth below.

SECTION 1: SHARING OF PERSONNEL AND FACILITIES.

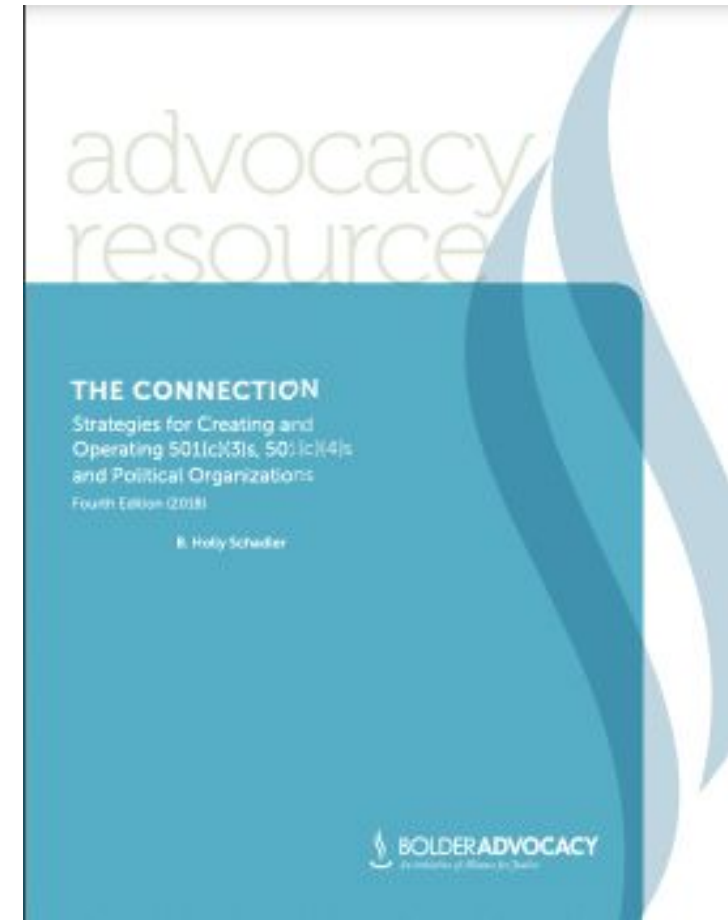
1.1 Personnel. FUND shall make available to PEN the services of its employees, to the extent they are not otherwise occupied in providing services for FUND, to perform a variety of administrative, program, financial, fundraising, and other similar functions for PEN on an as needed basis.

1.2 Equipment and Facilities. To the extent that the activities of PEN are and remain consistent with the overall purposes and goals of FUND, employees of FUND who are made available to PEN and employees and contractors hired directly by PEN, if any, may use office space, office supplies, office equipment and furniture, and similar items of FUND.

SECTION 2: METHOD OF PAYMENT.

2.1 Payment of Direct Costs. PEN shall pay FUND for all expenses incurred by FUND on PEN's behalf. Such expenses shall include, but are not limited to, salaries and fringe benefits of FUND personnel who perform services for or otherwise assist PEN in carrying out its purposes, fees to independent contractors,

Resource Sharing Agreement



Advantages to Certain Structures

Advocacy Advantages for Some Membership Models

Some membership models offer advocacy advantages if members meet specified qualifications.

- IRS law offers 501(c)(3)s with members some lobbying advantages that allows more advocacy when speaking to members
 - Can achieve with formal or informal structure
- Federal election laws offer advantages to 501(c)(4) organizations
 - Structure requirements are clearly defined in federal law

Lobbying Advantages for 501(c)(3)s

- If organization tracks lobbying under insubstantial part test, and its communication is made to a list that is primarily composed of members, and the communication expresses a view on specific legislation, it will not count as a lobbying communication.
- If an organization tracks lobbying under the 501(h) election, and its communication is made to a list that is primarily composed of members, and the communication encourages members to contact a legislator, the communication is treated as direct lobbying (instead of grassroots lobbying)
- *Who counts as a member for these advantages?*

Who Counts as a (c)(3) Member?

For the purpose of the (c)(3) lobbying advantages, a member is:

- Someone who has paid dues, or
- Someone who has made a contribution of time, such as volunteering at an event or taken action on an action alert, or
- Is someone from a limited group of people who qualify as a lifetime member because they have made a significant contribution to the organization (former board member, high dollar donor)
- Members of state organization with a national affiliate can be considered members of national group

Pros and Cons of this Model

Pros

- Organizations that would exceed lobbying limits can still speak to members
- For 501(h) electors, this allows for more grassroots lobbying
- Members may be more invested if they receive member-only communications

Cons

- Must keep track of member qualifications, including which meet lifetime qualifications
- Can only include limited number of non-members in communications
- Not a great model for social media and internet

Federal Election Laws Offer Advantages to (c)(4)s with Members

- Federal election laws allow corporations to do coordinated endorsements and appearances with candidates for federal offices with their members.
- Members are also considered a restricted class which connected PACs are able to solicit funds from for the purposes of making contributions to federal candidates.
- To take advantage of these rules an organization must meet the criteria of a membership organization, and its members must meet the criteria for being considered a member.

What Is a FECA-Qualified Membership Organization?

Under the federal rules, a membership organization is one that:

- Is composed of members, some or all of which have the power and authority to operate the organization;
- Makes formal organizational documents available to members;
- Expressly provides for members in its organizational documents; and
- Expressly solicits members and acknowledges the acceptance of membership.

What is a FECA-Qualified Member?

A member is a person who:

- Meets the qualifications of membership;
- Has some significant financial attachment or pays dues to the organization;
- Has accepted membership (on a yearly basis in most cases); and
- Has some participatory rights in the organization—such as the right to vote for a board member.

Pros and Cons of this Model

Pros

- Can coordinate with federal candidates and expose members to supporters
- Can show candidates/electeds power of your organization
- Connected PACs need this structure; donors/members are committed to organization

Cons

- Must keep track of member qualifications,
- Obligations of having members is time consuming; need staff to handle administrative work
- May be best suited for large state-based or national groups

Key Questions

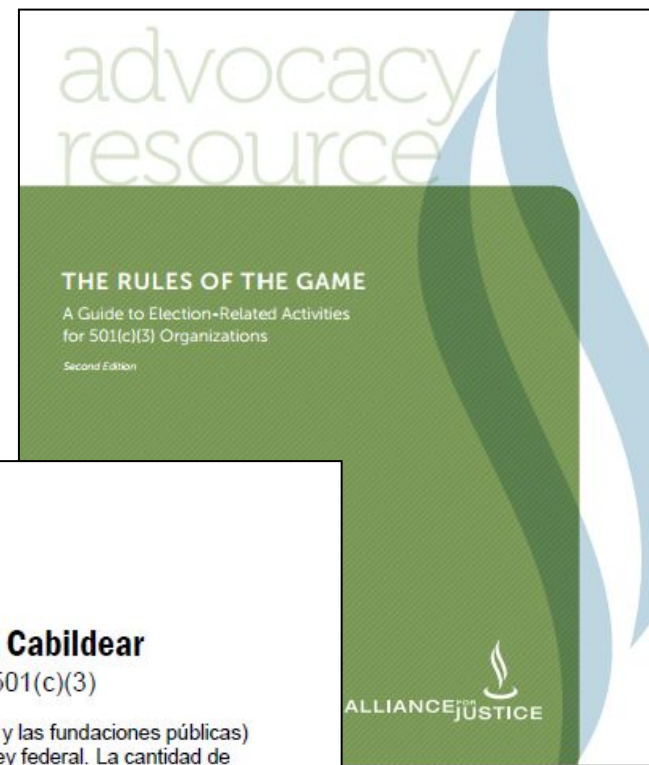
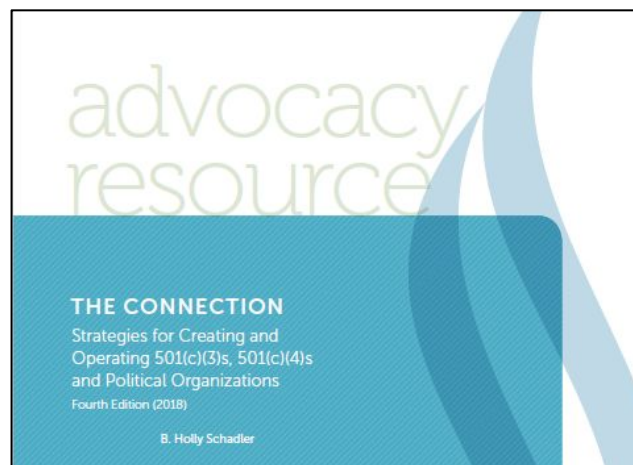
- What type of membership structure does your organization have?
- How do members join? Do they come in through the (c)(3) or (c)(4)?
- Do you have a resource sharing agreement (for affiliated structures)?
- Who in your organization is responsible for ensuring (c)(3)/(c)(4) rules are followed



Resources


 bolderadvocacy.org/podcast

 bolderadvocacy.org/resource-library



ACT! **ACT!**
Advocacy Capacity Tool Quick

POWER CHECK ✓
COMMUNITY ORGANIZING CAPACITY TOOL

 **BOLDERADVOCACY**

Las Caridades Públicas Sí Pueden Cabildear
Pautas para las Caridades Públicas 501(c)(3)

Las caridades públicas 501(c)(3) (incluyendo las entidades religiosas y las fundaciones públicas) pueden cabildear dentro de los límites generosos permitidos bajo la ley federal. La cantidad de cabildeo que pueda hacer una organización depende de cuál de las dos pruebas utiliza para calcular su cabildeo – “la prueba de gastos 501(h)” o “la prueba de la parte insustancial.” En promulgar las reglas sobre cabildeo, el Servicio de Impuestos Internos (IRS) declaró que bajo cualquier de las dos pruebas, las caridades públicas “pueden hacer cabildeo libremente,” con tal que su cabildeo cabe dentro de los límites especificados.¹

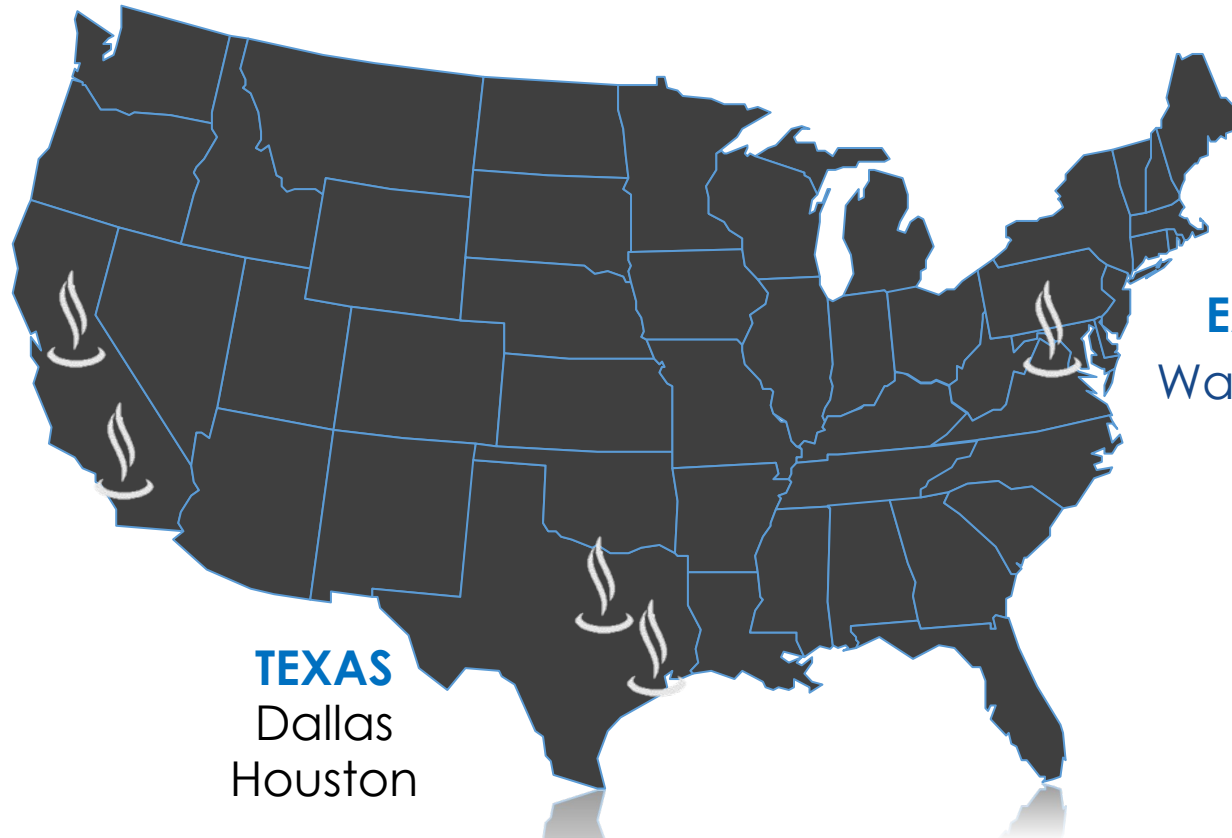
Al elegir 501(h), una Organización Puede Aprovechar al Máximo su Límite de

Questions?



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Check out the whole Base Power Webinar Series (How to Build Base Power at Multi-Entity Organizations):

<https://rebrand.ly/basepower>
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Please fill out the evaluation:**

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