



Stepping into the Fight:

A Guide for Nonprofits to Understand
and Engage in Legal Advocacy

Deepti Sood and Jared Raynor



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I. Introduction

On June 26, 2015, after a collective breath-holding on the part of many segments of American society, the Supreme Court issued its ruling in the same-sex marriage case of *Obergefell v. Hodges*. For many in the country (and perhaps the world), it was a time to celebrate the victory of a long-sought fundamental right under the United States Constitution. For some, it represented a long-term achievement of advocates and their supporters (financial and otherwise) working in the trenches for decades. For James Obergefell and his now-deceased partner, John Arthur, it was a moving personal vindication that “our love is equal...and that equal justice under law applied to us, too.”¹

It is no secret that the court system has been used to defend people’s fundamental rights and provide relief on all sorts of issues that have affected all sorts of people. Indeed, it is not a stretch to say that we are all the beneficiaries of resolute and courageous plaintiffs and defendants who paved the way for the rights, privileges, and liberties that we now enjoy. Thurgood Marshall, one of the most recognized figures of U.S. legal consequence, once said, “Mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process.” Behind the great cases that define our society exists a field of dedicated legal professionals, frequently working hand-in-hand with legislative advocates and grassroots organizers, to advance a vision of a more just world.

Through the Atlas Learning Project², an effort of The Atlantic Philanthropies, the Center for Evaluation Innovation commissioned various researchers to probe into questions about advocacy work and how funders support these efforts. The Atlantic Philanthropies have been long-time supporters of legal advocacy and wanted to draw out lessons related to the way legal advocacy works and how funders can best support these efforts.

This paper examines the role of legal advocacy as a tool in the social sector for advancing issues of justice and equality in the United States. The primary audience for this paper is advocacy organizations — mainly those which are not yet involved in legal advocacy but which are open to considering using legal strategies or want to better understand how to work with legal advocates. Advocacy organizations that already use legal advocacy as a strategy may find some of the framing and insights helpful as well. This paper is one in a series that includes others addressing how funders can support legal advocacy and how to evaluate legal advocacy as well as a more technical paper focused on the status of the U.S. court system for addressing issues of social justice.³

Our work for this paper is built upon previous research pieces focused on the use of legal advocacy as a strategy⁴ as well as several commissioned evaluations of legal advocacy work and the work of other scholars

¹ Supreme Court rules gay couples nationwide have a right to marry. *The Washington Post*. June 26, 2015. https://www.washingtonpost.com/politics/gay-marriage-and-other-major-rulings-at-the-supreme-court/2015/06/25/ef75a120-1b6d-11e5-bd7f-4611a60dd8e5_story.html?hpid=z1.

² The Atlas Learning Project is a three-year effort supported by The Atlantic Philanthropies and guided by the Center for Evaluation Innovation to synthesize and strategically communicate lessons from the advocacy and policy change efforts that Atlantic and other funders have supported in the U.S. See atlaslearning.org for more on the project.

³ To access these papers and other resources of legal advocacy, see ccgrp.com/legal-advocacy.

and researchers in the field of legal advocacy. These sources have been bolstered by new research that TCC has conducted over the last year including interviews with dozens of lawyers, advocacy organizations, and funders. TCC has also reviewed relevant literature and program files to bring together information on how people think about and use legal advocacy. Altogether, we interviewed 41 people — 20 individuals representing 16 philanthropies and 21 individuals representing 20 legal advocacy organizations — giving us a broad understanding of how different types of organizations that are involved with different issues consider legal advocacy strategies.

Our research about philanthropic support for legal advocacy shows that it is frequently less understood and less utilized than other advocacy strategies that are seen as more tangible or less confrontational. Further, the capacity to do the work necessary for this strategy is not always present. For example, Bolder Advocacy's analysis of their Advocacy Capacity Tool (ACT) showed that litigation came in second-to-last among strategies which advocacy organizations felt they had enough capacity to implement.⁵ However, without the capacity to use legal advocacy, many social change movements may not be fully utilizing all available strategies.

But before going any further, we must define legal advocacy.

“Mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process.”

— Thurgood Marshall

⁴ The reader is referred to two works in particular for good overviews of the value of legal advocacy. The first is *Public Interest Litigation and Social Change in South Africa*. The book, published in October 2014, is by Steven Budlender, Gilbert Marcus, and Nick Ferreira. While it is internationally focused, it does an excellent job of laying out context and outcome examples. It is available at: <http://www.atlantiphilanthropies.org/sites/default/files/uploads/Public-interest-litigation-and-social-change-in-South-Africa.pdf>. Second is *Legal Change: Lessons from America's Social Movements*, edited by Jennifer Weiss-Wolf and Jeanine Plant-Chirlin and published by the Brennan Center for Justice. This 2015 publication explores a number of issues through concrete examples.

⁵ ACT Data & Analysis: the first 280 users of the advocacy capacity tool. <http://bolderadvocacy.org/act-data-analysis-the-first-280-users-of-the-advocacy-capacity-tool>.



II. What is Legal Advocacy?

In its broadest sense, legal advocacy is anything that pertains to developing, defining, or interpreting laws. However, through our research and interviews, it is clear that people interpret the term “legal advocacy” in many different ways, with some people using it synonymously with litigation or strategic litigation.

Legal advocacy is carried out by a variety of different kinds of social sector organizations. There are a few highly visible organizations that use the strategy such as the American Civil Liberties Union, the NAACP Legal Defense Fund, and the Southern Poverty Law Center. However, there are many more that are known only within smaller circles. These include:

- **Organizations that do legal advocacy, but on specific issues.** For example, the Education Law Center “advocates for equal educational opportunity and education justice,”⁶ and the Natural Resources Defense Council advocates for the environment.
- **Organizations that serve specific populations.** These are sometimes called legal defense funds (LDFs) and in addition to the NAACP-LDF include the Mexican American Legal Defense, Educational Fund (MALDEF); Asian Americans Advancing Justice (AAJC); and the Indian Law Resource Center (ILRC).
- **Legal aid organizations.** These important organizations serve individual clients, generally those

with limited or no resources, addressing their specific legal needs. The National Legal Aid and Defender Association (NLADA) is a “nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel.”⁷ They support those doing the work and have a wealth of resources. However, many legal aid organizations receive federal funds that come with a host of limitations on their use for legal advocacy.

- **Multi-service organizations.** These are organizations that don’t have legal advocacy as a core service area but engage in legal advocacy in various ways

“What we put in the legal advocacy bucket is everything — the ability to provide direct legal services to clients to tease out issues, elevating impact litigation to interpret, enforce, and improve the law, then legislative and administrative advocacy where the laws are made.”

— Anne Erickson,
Empire Justice Center

⁶ Retrieved from <http://www.edlawcenter.org/about/mission-history.html>.

⁷ Retrieved from http://www.nlada.org/About/About_Home.

to complement or enhance their other services. For example, the Heartland Alliance is a leading anti-poverty organization in the Mid-West. It offers a range of direct services including developing affordable housing and delivering health services. In addition, recognizing the need for protecting human rights and access to justice, the Heartland Alliance National Immigrant Justice Center provides direct and population-based legal services and impact litigation.

- **Pro-bono law firms.** Many private law firms will offer services for social issues they care about free or on a reduced rate basis. Pro-bono attorneys play a key role in supplementing frequently over-stretched legal staff at nonprofit organizations.

Legal advocacy itself is an umbrella term with a set of activities subsumed under it. These most often include:

- **Research and publications.** A nonprofit may conduct research to find data around civil rights violations that they suspect are happening and then release papers — documenting their findings to legislators, to other nonprofits in the relevant fields, or to the general public. Researched information is also often used as a starting place for further legal advocacy work. Research might also include legal theory development and research about how to frame a particular issue or what laws are an issue.
- **Writing draft policy.** Organizations may provide legislators with sample language for policies for which they are lobbying to increase the likelihood that the desired language will be in the proposed law.
- **Administrative or executive advocacy.** Administrative advocacy focuses on changing policy regulations. Often focusing on government agencies, whether at the national, state, or local level, legal advocates will push for enforcement of existing laws by government agencies or try to change regulations that already exist.
- **Legal support.** Legal support, or legal aid, is provided to individuals who need representation but who may

By leveraging a national network of *pro bono* attorneys, the National Immigrant Justice Center, a Heartland Alliance Program, is able to provide legal services to thousands of immigrants. Through direct representation, NIJC identifies systemic barriers to due process and develops litigation strategies to advance reform. NIJC also pursues legislative and executive advocacy strategies alongside strategic communications to build awareness and strengthen public support.

have limited resources. Often provided through legal aid clinics, legal support used to tie into legal advocacy by allowing attorneys to understand to what extent individual cases were actually symptomatic of more systematic abuses. However, due to various restrictions on legal support organizations that receive federal funds, this link between legal aid and legal advocacy has been greatly weakened.⁸

- **Writing amicus briefs.** Amicus briefs are testimony or legal opinion submitted by individuals or organizations that are not part of a legal case. They are meant to provide support or bring in ideas that the original lawyers cannot address for various

⁸ The Legal Services Corporation, which is the vehicle for federal funding of legal aid organizations, prevents lobbying (see 45 CFR 1612.3), filing of class action lawsuits (see 45 CFR 1617.3), and supporting undocumented residents (see 45 CFR 1626.3) among many other restrictions. For a full list of restrictions see <http://www.lsc.gov/about-lsc/laws-regulations-guidance/lsc-regulations>.

reasons; however, the court has full discretion over whether to admit these briefs or not.⁹

- **Litigation.** Litigation is often considered the very last avenue that legal advocates will try. This involves filing a court case that aims to remedy the action that advocates believe is harmful or discriminatory. These cases are often class action lawsuits — lawsuits brought on behalf of large groups of individuals claiming a shared discrimination or harm. In recent years courts have become increasingly unfavorable to class action suits and tightened the restrictions on when such suits can be brought.¹⁰ However, cases can also be brought on behalf of specific individuals to set a precedent that will apply to a broader group. Legal cases may be settled outside of court or may go through the court system of a verdict followed by an appeals process.

In Appendix A we have outlined the advantages, disadvantages, and strategic considerations for using each legal advocacy strategy.

What Can Legal Advocacy Accomplish?

Legal advocacy, when used as one strategy within a broader movement, can accomplish work that, without this tactic, the movement would not have been able to do for many years or perhaps ever. The Atlantic Philanthropies outlined three ways that their grant partners use strategic litigation.¹¹

- To clarify, assert, and protect rights of classes of vulnerable individuals through improving laws or improved implementation and enforcement of laws. For example, work led by the NAACP LDF focused on reforming laws on school discipline to disrupt the school-to-prison pipeline;
- To improve legal representation at scale. For example, work being done by Catholic Legal

Immigration Network to provide legal representation to protect the rights of immigrants in the U.S.;

- To spotlight facts on the ground to inform the opinions of the judiciary, legislators, and the general public. For example, the Proteus Action League’s work on affecting opinions about the death penalty on a state-by-state basis across the country.

⁹ For example, 45 separate Amicus Briefs were submitted to the Supreme Court for *Whole Woman’s Health v. Cole* focused on a Texas Law, HB2 that created restrictions around where and how abortions can be provided. These included briefs from medical experts, from social science researchers, from Texas women, from legal experts, from scientists, from women and female physicians sharing their experiences of obtaining or providing abortions, from business organizations (focused on the detrimental economic impact), from government agencies (including the United States of America via the Department of Justice and multiple cities and states), Republican officials, religious leaders, economists and historians, and health care providers. See: <http://www.reproductiverights.org/document/amicus-briefs-in-support-of-whole-womans-health> for more information.

¹⁰ The Supreme Court’s rulings in *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal* both increased pleading hurdles so that plaintiffs now need to spend more time to prove that their claims are plausible. These cases have increased the rate of dismissals of class action law suits. For more on this, see LCCR’s paper, “Obstacles to Social Justice Litigation.” See also: Alexander A. Reinert, *Measuring the Impact of Plausibility Pleading*, 101 Va. L. Rev. 2117 (Dec. 2015). Further, while legal aid organizations used to be able to bring class action lawsuits, they are now prohibited from doing so if they receive federal funding, erasing an important step in connecting legal representatives to potential class action lawsuits. See footnote 8 for more.

¹¹ Internal document of The Atlantic Philanthropies.



III. How Can Legal Advocacy Complement Other Advocacy Strategies?

Our conversations with legal advocates made one thing very clear — legal advocacy does not work as effectively when done in isolation. Instead, it derives greater strategic value when used in connection with other advocacy strategies to amplify the visibility of the desired social change and to increase the likelihood of overall success. Below, we have outlined legal advocacy’s connection to four other advocacy strategies by outlining the areas of potential synergies and concerns. These are:

- **Legislative advocacy** (i.e., efforts to influence legislative bodies — through lobbying and other means)
- **Grassroots organizing** (i.e., efforts to mobilize the community to influence decision-makers)
- **Public awareness and education** (i.e., efforts to share knowledge with community members about relevant issues, changes in law, or their rights)
- **Communications** (i.e., efforts to publicize ongoing work to raise its visibility).

Connections to Legislative Advocacy

Potential synergies for legal advocacy and legislative advocacy.

Used together, these two strategies can be mutually reinforcing. Working on both strategies at the same time can shift public perception of and/or legislators’ opinions on an issue. And, while the threat of litigation can persuade (or deter) legislative action, a strong legislative advocacy base can ensure that legislators remain supportive of the issue regardless of legal outcomes. Finally, it is likely that legislative advocates will call in lawyers or legal experts when policy development is happening, either to help them draft policy language or to be ready to critique the suggested language.

Potential areas of concerns for legal advocacy and legislative advocacy.

Ensuring that the strategies are synergistic requires a high degree of connectedness between legislative and

legal advocates. Without this coordination, each strategy may hinder the other. For example, legal advocates may pursue strategies that make legislators less likely to act on policy, as they feel that the courts are settling the matter. Further, legislative reforms during the course of legal proceedings can make the legal action obsolete, which has drawbacks such as the inability to recoup attorneys' fees and blunting potential moral victories for victim communities. However, legal advocates may have some important limitations in terms of how closely they can collaborate on or what information they can share in the context of a particular case.

Connections to Grassroots Organizing

Potential synergies for legal advocacy and grassroots organizing.

There are four main ways that legal advocates and grassroots organizers work together synergistically.

1. Maintaining pressure. A great example of this is *Floyd v. City of New York*, a case brought by the Center for Constitutional Rights on behalf of a large coalition aiming to end the New York City Police Department's stop-and-frisk policy. Once the initial case was won, then-Mayor Michael Bloomberg chose to appeal the case. Mayor-elect Bill de Blasio campaigned on reforming the NYPD, and, when he was elected, community groups kept the pressure on him to drop the appeal. He ultimately did, stating, "This is what the democratic process is supposed to do...and that includes the judicial process. It's supposed to bring up the truth of what's happening in our society, and oftentimes truths that are being ignored."¹² In this way, grassroots organizers can work with legal advocates to ensure enough pressure remains on decision-makers.

2. Sharing information about the issue. The second main interaction is sharing information about the issue. Organizers can provide legal advocates with an on-the-ground voice and help them see whether changes in policy are making a difference. Legal

Community Catalyst, an advocacy organization funded by The Atlantic Philanthropies, uses legislative advocacy, research, community organizing and empowerment, and litigation to support affordable healthcare for all. Successes include numerous class action lawsuits that reduced the price of prescription drugs and the integration of consumer-friendly reforms into the Affordable Care Act.

advocates can provide information — gleaned from Freedom of Information Act (FOIA) requests or made public through discovery — to organizers about how policies are being implemented. Organizers can then use this to strengthen their community-organizing work.

3. Acting as the legal voice. Legal advocates can also act as the legal voice of the community. In areas where visibility is difficult to achieve or where legislators seem uninterested because the affected group has limited power, legal advocates can represent a community's desire for change.

4. Legal support. In 2001 organizers from around the country prepared to go to Quebec City to demonstrate at the Third Summit of the Americas pursuing a Free Trade Area of the Americas. Behind

¹² Mayor Bill de Blasio quoted in *The New York Times*. See: "Mayor Says New York City will Settle Suits on Stop-and-Frisk Tactics." Jan 30, 2014, Benjamin Weiser and Joseph Goldstein. http://www.nytimes.com/2014/01/31/nyregion/de-blasio-stop-and-frisk.html?_r=0

the scenes, a legal support team provided guidance on laws and regulations related to crossing a national border and then supported participants who were detained by police during the action, thus supporting mobilizers throughout the duration of mobilization actions.¹³

Potential areas of concern for legal advocacy and grassroots organizing.

The relationship between legal advocates and grassroots organizers can be fraught. Legal advocates sometimes have a reputation (accurate or not) of being uninterested in listening to the community's voice, or they may take actions that either do not support the community's vision of how change should look or do not properly include community input on what a win should look like. In these situations a legal win that benefits the community can still happen, but the circumstances around the win may prevent knowledge or adoption of the policy change. One advocacy organization explained its tensions with grassroots organizers by noting that their legal advocacy arm is often criticized by organizers for being insufficiently attuned to the community's framing and prioritization of issues.

Connections to Public Awareness and Education

Potential synergies for legal advocacy and public awareness and education.

Legal advocacy also has several complementary affinities with public awareness and education work. This work is often, but not always, conducted alongside legal support services. Public awareness and education services are seen as strengthening a community's ability to push for change (thus also complementing grassroots organizing work), to understand their legal rights, and to be aware of changes in policy. Several organizations highlighted this as a way to create change before a case is even brought because it can empower the community to take greater action. For example, the Empire Justice

Center (EJC) trains youth to know their education rights so that they can assert these rights informally and then follow up with EJC if grievances are not resolved. Training often targets specific audiences such as lawyers and grassroots leaders. Some legal advocacy organizations take the time to train lawyers practicing in their issue area on the policy changes taking place. Others educate community leaders who, they hope, will share information with other individuals in their communities. For example, one organization we spoke to works on civil rights and justice related to religious liberty. In the wake of the Patriot Act and other anti-terrorism legislation, it found that many religious charity organizations faced IRS compliance investigations, so they provide training that breaks down the rules of compliance for these organizations.

Potential areas of concern for legal advocacy and public awareness and education.

Legal advocates may not have the time to coordinate these training efforts and may have to work closely with another organization to find the right audiences and ensure that these audiences are aware of and attend the training sessions.

“The legal side strengthens and informs other parts of the movement. It often means more targeted or incremental solutions — through the courts or the legislature — which sometimes creates some real tensions [with organizers] who want to solve the problem right now by taking it to the street.”

— Anne Erickson,
Empire Justice Center

¹³ Fighting the FTAA: Quebec City, 2001. *The Thistle*; volume 13, No 4, June/July 2001. <http://www.mit.edu/~thistle/v13/4/quebec.html>.

Connections to Media

Potential synergies for legal advocacy and media.

Legal advocates often use the phrase “trying cases in the court of public opinion” to refer to the way media can influence the public’s views on an issue and how this influence can then have an effect on how the case decision is perceived. Furthermore, even an unsuccessful case can change public opinion, which can lead to non-litigation changes.¹⁴ Every advocate we interviewed stressed how important it is to be connected to media — either through an in-house department or through direct relationships with media representatives. Litigation, in particular, was seen as a way to immediately increase the visibility of an issue in the media. Various organizations referenced how media would ask them for their view and quotes whenever they brought a case forward instead of their having to proactively provide press releases. Media are particularly powerful because they allow legal advocates to broadcast their own narrative. For example, the Center for Constitutional Rights very purposefully used language around racial discrimination for their work on stop-and-frisk, even though such discrimination was hard to prove legally, because that was how the community perceived the issue. That narrative was then picked up by media in a way that highlighted the issue of racial discrimination with the NYPD’s strategies before the case was won.

Potential areas of concern for legal advocacy and media.

The major concern of legal advocates is the possibility that the media will remain unfavorable to the framing of the issue or to providing any media attention to the subject. For example, immigrant rights advocates working on behalf of undocumented people with criminal justice convictions expressed how hard it is to get positive framing in the media, even in outlets that are sympathetic to undocumented immigrants in other situations.

“We work extensively with partners. We provide technical assistance, give advice, share information, and give materials to local advocates on the ground. We try to leverage our knowledge by sharing that with others.”

— Bebe Anderson,
Center for Reproductive Rights

¹⁴ Koppelman, A. M. (2008). The Limits of Strategic Litigation. *Law & Sexuality*, 17, 1-5.

IV. Readiness for Legal Advocacy

Organizations that are just beginning to think about legal advocacy may have a few questions about starting this work: Should we get involved? What are the necessary resources? Does it make more sense to do legal advocacy ourselves or partner with an established legal advocacy organization?

This section focuses on answering these questions in a way that provides organizations with the information they need to evaluate their own readiness. We have arranged these readiness questions into three sections: issue-area readiness, organizational readiness, and partnering readiness.

Is Our Issue Ready for Legal Advocacy?

Advocates we spoke to had differing perspectives on issue readiness. On the one hand, several mentioned the importance of not starting an impact litigation case before the case has strong legal support (e.g., strong precedent, a strong plaintiff). This is a matter of concern because a loss can create precedent that makes it much harder to achieve an ultimate legal win for the issue. For example, a recent Supreme Court case brought by the Menominee Tribe of Wisconsin concerned the statute of limitations on filing suit over government noncompliance on obligatory payments. While the government's obligations were not in dispute, the Tribe had clearly missed the statutory window of opportunity for filing a claim. After losing in the Court of Appeals, they appealed to the Supreme Court, where they lost on a 9-0 vote. Perhaps worse than the vote, the Court's

First Focus Campaign for Children — a grantee of The Atlantic Philanthropies — works to expand access to health care for children. It has an explicit communications strategy that includes regional editorials, national op-eds, outreach to Capitol Hill trade papers, social media, and several health-focused and policy-focused blogs to ensure that all types of audiences hear about the potential and progress of their work.

opinion actually appears to make the ability of future plaintiffs to sue for compliance even more difficult. According to at least one legal expert, "Future Indian tribes with similar problems may well wish that the

“The key to making litigation effective is to not litigate in a vacuum and to use it so it’s integrated with a variety of other communications and organizing and public education strategies. Litigation is a catalyst...you are pretty much guaranteed media attention and the attention of people of power and mobilized communities.”

— A legal advocate

tribe in this case had accepted its defeat at the court of appeals without pushing for such a stern limitation on the doctrine from the Supreme Court itself.”¹⁵

However, advocates also mentioned the importance of bringing cases forward which they felt were morally and legally justified regardless of what other partners thought. One example involved advocates concerned with the federal government’s encouraging a partnering legal advocacy organization to hold off on filing suit, because they felt close to changing a regulation in a way that would not attract a lot of unwanted media attention and potential backlash. The legal advocacy organization felt that the work was moving too slowly and brought a lawsuit anyway to bring about their desired change. This example highlights the delicate balance between working as a partner at the level of coordinating strategy versus working as a partner at the level of using different strategies to push the same issue forward. Though we had limited examples from our interviews, there also seemed to be an element of geographic closeness. National issues that are brought either in federal court or in several states at once are much more prone to having a legal advocate file a suit before all advocates believe that the way is adequately prepared. State and

local issues typically attract a smaller set of partners who consequently need to work together more closely to leverage their work.

Is Our Organization Ready for Legal Advocacy?

Our interviews with legal advocates across sectors suggested that organizational readiness to engage in legal advocacy depends on three main criteria: (1) Having access to the resources necessary to do the work, (2) Having a clear and strategic vision for the task, and (3) Having legal readiness (i.e., the legal resources and opportunities) in place to pursue the work.

Necessary resources

The readiness characteristic most frequently mentioned by legal advocates was access to resources. While funding is frequently the foremost concern (perhaps because of the recognized cost of doing legal work), it is not the only resource issue. Experienced advocates identified four types of resources critical to doing legal advocacy work. These are:

- A. Access to funding.** Unsurprisingly, limited or lack of funding came up again and again as a key missing resource that prevented legal advocacy work. Advocates mentioned the difficulty of getting any targeted funding for legal advocacy strategies — and in particular for litigation, which only a handful of national philanthropies were reportedly willing to touch. Most advocacy organizations supported their legal advocacy work through general operating grants or general fundraising, but they felt continually constrained by the amount and type of funding and found it challenging to find new funders who would support such work.
- B. Access to communication resources.** This message was nearly universal: communications are a fundamental part of effective legal advocacy. Some interviewees identified this as an area in which legal professionals have greatly increased their savvy and strategic use. A communications team — whether internal staff

¹⁵ The case is *Menominee Tribe of Wisconsin v. United States*. A detailed analysis of the case, including author Ronald Mann’s quotation, can be found at: <http://www.scotusblog.com/2016/01/opinion-analysis-justices-rebuff-tribes-claim-for-equitable-tolling-in-government-contract-dispute/>.

or consultants — and research on messaging are both important elements of being able to leverage legal advocacy work. The communications piece was seen as critical for preparation for two main reasons: it helps the advocacy organization set the narrative around its work; and it pushes awareness of the work and its potential implications to audiences who might not have heard about them otherwise. When working on administrative advocacy, for example, an organization may be trying to change or standardize how regulations are enforced. By working with a media team to publicize this effort, the organization is able to spread awareness beyond their usual channels. For example, one advocacy organization we spoke to described its intentionality around messaging and its link to public opinion. One interviewee said, “Intentionality in messaging... helps these issues to move the ball and also [to shift] attitudes more generally towards immigration.”

“Finding foundations that fund litigation has been hard... because [foundations] want their money on other activities. We have to use a lot of unrestricted revenue [to resource it].”

— Kevin Prindiville,
Justice in Aging

C. Access to legal expertise. Accessing people who could help or lead legal advocacy is also crucial for readiness. While some legal advocacy work such as creating a research brief to inform policymakers does not require a law background, many elements — such as litigation, amicus briefs, or legal support — do require one. As such, organizations that want to engage in legal advocacy have to have access, whether through internal staff, consultants, or pro-bono resources, to lawyers who are able to effectively

“We often use pro-bono law firms, but that comes with limitations. You need to understand all of the different kinds of costs involved — big deal cases are ridiculously expensive. To bring them well you have to meet with clients regularly, have to hire experts.”

— Karen Tumlin,
National Immigrant Law Center

represent the organization and the views of those whom the organization serves. If these people are contractors or pro-bono support, they must be sufficiently integrated with the organization to be able to provide meaningful support.

D. Access to research. “In 2011, the New York Police Department made over 684,000 street stops — a 14% increase over 2010 (and a 603% increase since 2002, Bloomberg’s first year in the office)! Close to 90% of the stops resulted in no arrest or summons whatsoever.”¹⁶ This statement, written by Communities United for Police Reform (CUPR), shows the value that access to data and research can have on a movement. CUPR was a coalition that was started to unite organizations in different sectors that were all focused on discriminatory policing — including legal advocacy, traditional advocacy, and grassroots organizations. Though the grassroots organizations had long known stop-and-frisk disproportionately affected minorities and low-income individuals, among others, they did not have the data to prove that until they started partnering with the Center for Constitutional Rights — which received the data from the NYPD as part of their legal discovery process. These and other data formed a critical core to demonstrate a pattern of discriminatory behavior, as a judge ruled in 2013.

¹⁶ Communities United for Police Reform: the issue. <http://changethenypd.org/issue>.

“Strategy and vision takes time and energy. When you have a visionary and strategic leader, they shouldn't spend all their time [fundraising] to keep lights on...foundations [should fund these organizations] at larger levels and with multiyear supports...They can expect results and will see results.”

— Sherrilyn Ifill,
NAACP Legal Defense and Educational Fund

Research and data form a critical component of legal advocacy strategies, but advocates have told us that such research takes specialized expertise and time.

A vision for the work

Like any type of advocacy, legal advocacy requires a clear vision. This should come through at the action level (e.g., what the goals for each law suit are) as well as at a more comprehensive level (e.g., how using legal advocacy will help this movement). Key elements of vision highlighted by practitioners in the field include:

- A. Organizational vision.** Like any nonprofit, the organization (or the campaign) leading the advocacy work should have a clearly articulated description of the desired endgame. Once a clear vision is in place, it is easier to decide whether legal action is a necessary step in achieving the vision and, if it is, how to proceed.
- B. Vision for legal advocacy actions.** Legal advocacy needs a vision for its specific approach distinct from the overall organizational vision. Each legal advocacy action taken (for example, each amicus brief filed or each regulation challenged) should have a clear vision behind it to ensure that it is part

of a comprehensive strategy to help fulfill the overall vision. According to many people we interviewed, having a clear legal advocacy vision is frequently a strength of legal advocates. For example, lawyers will approach cases with a clear idea of what legal theory is to be tested, choosing not to pursue certain avenues so that such issues can be addressed on appeal or in other cases or venues. While non-legal advocates should appreciate the nuance and strategy involved in the process, this is not an excuse for legal advocates to shroud their approach in mystery, a critique sometimes leveled at them.

- C. Vision for how legal advocacy intersects with other movement strategies.** Organizations, regardless of whether they bring a case alone or as part of a larger coalition, should have an awareness of the other strategies used by other actors in the field and how the legal action can support or complement this work. Some people we contacted indicated that this is an area that can be a challenge for legal advocates. According to these interviewees, legal advocates are known for putting their heads down with singular focus and intent. This is perfectly reasonable, given a lawyers' preeminent duty to their clients. There was near unanimity, however, in the belief that the most effective legal advocacy is positioned as a part of a larger advocacy or movement strategy.
- D. Vision of the key plaintiff.** Plaintiff identification and selection is a key component of strategic litigation. Legal aid groups and mobilization or community-based service organizations are important allies in this process. Once a plaintiff/group is identified, their own vision of what the case is can change, so why they personally are committed to it becomes important. Legal cases are rarely won quickly; instead, they are often subject to multiple appeals and reversals. Further, plaintiffs open themselves up to public commentary and legal examination in a way that can feel uncomfortable. Choosing lead plaintiffs who have a clear vision and commitment allows the case to have more stability and can give it that extra spark of vitality.

E. **Vision of the community.** Finally, legal advocacy should work in favor of the community voice and vision — not just those of the organization. Therefore, understanding the community’s point of view on the issues and its narrative is crucial for being ready to use legal advocacy to advance those goals. More than anything, this should be the grounding for legal advocacy work. If the interest of and value to a community is not there, success is likely to be limited.

“In every [legal] case we try to surface the voice of impacted communities who bear the ultimate burdens of injustice ... and remain accountable to their demands.”

— Baher Azmy,
Center for Constitutional Rights

Legal readiness

It feels self-evident (even tautological) to note that legal readiness is a readiness criterion for legal advocacy. However, legal advocates consistently referred to this as a critical component of their work and provided several elements that they use to assess legal readiness.¹⁷ Many of these elements pertain primarily to litigation:

A. **Readiness to engage in discovery.** Before a case is brought to trial, each side is allowed to request information from the other side in a procedure known as discovery. A thorough discovery process is crucial to having the evidence necessary to start a legal action. Even if a case is not filed, data found through discovery can enhance movement work. For example, legal organizations may find data that prove discrimination or may find examples of intent through FOIA requests. This information can then be shared with grassroots mobilizers to better engage and support their communities

or can be used to approach policy-makers about potential policy remedies.

B. **Favorable — or non-hostile — courts.** To a certain extent in federal cases, advocates often have the opportunity to select the district in which the case will be tried. Some advocates expressed that being able to file a suit in a favorable district can be a supporting factor for choosing to file an action. For non-federal cases, there can still be an element of assessing how favorable or hostile local and higher courts are on an issue, particularly when an appeal is likely. The existence of a less-than-favorable venue does not necessarily mean avoiding pursuit, as there may be both compelling legal and non-legal reasons to move forward. However, an assessment of a particular jurisdiction’s favorability is important to both understanding the potential for winning and the potential for backlash or negative consequences.

C. **A strong legal team.** Litigation takes many thousands of hours of labor, so having a strong and committed legal team — and having the resources to work with and pay this team — is essential to being ready to bring a case forward.

D. **A strong plaintiff.** As described above, a strong plaintiff is an important part of litigation-related legal advocacy. Given that many strategic litigation

“A lot of the strength of inequality and discrimination is the inability to prove that it really happens. Litigation has the power of discovery to search for information — it takes something that was an allegation and makes it a fact.”

— Sherrilyn Ifill,
NAACP Legal Defense and Educational Fund

¹⁷ For more on legal readiness, please see the detailed companion piece in this series authored by the Lawyers’ Committee for Civil Rights Under Law entitled “Towards a More Just Justice System.” Accessible at <https://lawyerscommittee.org/newsroom/#publications> and tccgrp.com/legaladvocacy.

cases are likely to be subject to several rounds of appeals, a plaintiff that has a strong case is essential to being able to prove standing again and again.

E. A clear target for redress. In many instances, legal advocates target public sector policies or laws that are perceived to be harmful. In these instances, the governing body and its legal representatives are the obvious target for seeking to remedy the issue. However, there are instances where the target for redress may be an individual or organization. In these instances, the type of solution sought may be a policy change, compliance with legal obligations, or even punishment.

Are We Ready to Partner for Legal Advocacy?

Legal advocacy often utilizes partnerships from advocacy and non-advocacy sectors. Therefore, having partners who can effectively work together — whether in a coalition or otherwise — is essential to making

sure that the work moves forward . We recommend that organizations thinking about potential partners focus both on making sure that they have a base of strong legal expertise (whether from a legal advocacy organization, from pro-bono lawyers, or from another source) and also on being certain that they have enough partners who are working on complementary but non-legal strategies such as grassroots organizing or lobbying. Therefore, legal advocacy organizations will want to strengthen their relationships with typical advocates and with media, while typical advocacy organizations may want to strengthen their relationships with legal advocates and lawyers. Developing relationships that are based on trust with an understanding that partners are using different strategies to achieve the same goals is essential to lasting partnerships that can endure through the amount of time it often takes for legal actions to bear fruit. In Table 1, we have identified characteristics to look for in partners, how non-legal advocates can support legal ones, and how coalitions can think about positioning legal partners.

Table 1: How to Partner for Legal Advocacy

Characteristics to look for in partners	How partners can support legal advocates	How coalitions can position legal partners
<ul style="list-style-type: none"> • Similar goals. Strong partnering organizations should have similar goals, even if they use different strategies to reach them. This helps ensure that they are working towards the same end point. • Similar values. An organization that values community empowerment is likely to approach social justice work quite differently from an organization that values moving the issue forward at any cost. • A strategic and long-term vision. Legal advocacy is often a long-term strategy, so partnering with organizations that understand and plan for long timeframes can ensure that the partners are on the same page. This is often enhanced by financial stability, which can ensure that partnering organizations will be around for the long term. • Unique characteristics. Partners should have some characteristics distinct from the legal advocacy organization. This might include, among others: having different target audiences, having a strong reputation on a certain issue or in a geographic area, or having relationships with funders that the legal advocate does not. 	<ul style="list-style-type: none"> • Provide different insight. Partners that are deeply involved with the community can keep legal advocates informed of what individuals in the community are experiencing and also how the community as a whole is approaching an issue. Partners that are deeply involved in legislative advocacy work can share how legislators are thinking about the issues and how they are likely to change that thinking in light of legal threats. • Understand legal advocacy’s role. Non-legal partners who have a clear understanding of different strategies that legal advocates can use can include these strategies in their brainstorming on ways to move the issue forward. These proactive brainstorming intervention ideas can help the legal advocates be active partners on the issue. • Consider activities that leverage legal actions. Planning communications, organizing, building awareness, and other activities that leverage and build upon legal work can be mutually beneficial. 	<ul style="list-style-type: none"> • Legal partners as the voice for the movement. Some coalitions may want to see legal action as representing the voice for the entire movement. In these situations, the legal action will likely be litigation and have the support of the disenfranchised community. • Legal partners as one strategy among many. Other coalitions may prefer to use legal advocacy as one tool in their arsenal. This would include using legal advocacy when necessary, but being perfectly willing to use other non-legal approaches first. • Legal action as outside of the coalition. Some coalitions may shy away from legal action being brought on behalf of the supporting coalition. This often happens in broader coalitions where members have consensus on a few key issues but not on broader overarching issues or values. In these situations, legal action may be brought independently by the legal advocacy organization while their campaign role is to provide updates and legal insights.



V. What Challenges Should We Anticipate?

Across the board, advocacy organizations that we interviewed mentioned several challenges that they faced when doing legal advocacy work: its notably intense demands on time, its strategic complications, and its dependence on a set of partners.

Movement/coalition challenges. Movement barriers include challenges that legal advocates may face working within larger movements or coalitions. Beyond the general challenges they have in common within all coalitions (e.g., group vision/mission, cohesion, managing engagement), legal advocates may struggle with:

- **Finding the right role to play in the movement.** Legal advocacy organizations who are joining a new coalition or working with partners for the first time may struggle with finding the right role to play in the movement or coalition. For example, how proactive should they be in offering legal advocacy strategies? If there are multiple legal advocacy organizations working within a movement, how can an organization define its role relatively clearly? One organization we spoke to said it participated actively in a coalition with diverse partners but that the coalition ultimately ended up being uninterested in litigation as a strategy. The legal advocate then had to split its work between the lawsuit happening outside of the coalition (but

complementary to its goals) and its other work taking place within the coalition.

- **Communicating about their work with partners.** Legal advocates may also find it difficult to communicate clearly about legal work taking place to partners who have limited experience with legal advocacy. They may have to continually explain when and how various legal strategies can be used, or, conversely, they may not be able to share some information with other advocates for legal or strategic reasons.
- **Staying aware of non-legal activities.** To best support a coalition or movement, the legal advocacy organization needs to be aware of non-legal work taking place and think about any synergies it could add to this work. This could include playing an active role within the coalition even when the legal advocacy work is not taking a lead role.

Resource challenges. Resource challenges will vary by organization but often include access to funding to pursue legal advocacy and enough staff to do the work.

- **Accessing funding to pursue legal advocacy.** As mentioned previously, virtually all of the organizations interviewed spoke of their difficulty

in finding funders who were willing to support legal advocacy. Those few who were able to gain specific support for it typically worked with national funders active in the issue area on which the advocacy focused. The majority of organizations funded their legal support work through general operating funding and individual donations, both of which are resource-intensive avenues to rely on for sustainable funding.

- **Having enough staff (or consultants) to pursue the work.** Regardless of whether advocacy organizations had predominantly in-house counsel or primarily used pro-bono support, getting access to enough person-hours to do the necessary work was seen as a barrier. Some organizations working on more controversial issues found it hard even to get pro-bono support from law firms. The time intensity of legal advocacy, and particularly of litigation, while not quite prohibitive, was a definite factor in deciding what actions were feasible to undertake.

Motivational challenges. Given the long timeframe of legal advocacy, there can be barriers to sustaining motivation. The main challenge is maintaining the plaintiff/defendant's commitment to continue to support the case. While less of an issue in class action suits, in cases with one or two plaintiffs, as noted above, it can be exhausting to live out the arduous cycle of decision and appeal. This can be amplified by the fact that litigation plaintiffs may fear that any "missteps" will be publicized by the media. Finally, plaintiffs may lose their own motivation to participate or change their opinions about the case.¹⁸ The second type of motivational challenge is maintaining the organization's willingness to keep participating in legal advocacy work, particularly if legal wins are hard to come by or if the issue starts to lose public support.

Legal Challenges. There are, unsurprisingly, a host of legal challenges associated with legal advocacy. Many of these are specific to litigation, but some are relevant regardless of what type of action is being taken. Among the barriers seasoned advocates described include:

- **Positioning of and response to the legal action.** All legal actions are grounded in law specifying when they can be used. For actions like bringing administrative complaints, the response is often in the hands of a party who may be hostile to the issue and may purposefully delay responding.
- **Balancing the plaintiff/defendant legal needs with a broader case.** Strategic litigation is defined by its focus on broader social change. While we generally think of strategic litigation as being proactive (defined by being the plaintiff), there are incidents when the legal advocacy is related to the criminal or civil defense of an individual or group. In both situations the plaintiff/defendant is also an individual who has been harmed in some way by existing policies. This can create a tension for attorneys, whose primary duty is to their clients. When plaintiffs agree to expand their litigation case into strategic litigation, they gain certain benefits (such as being able to create broader community change), but they also lose some of their ability to get closure or possibly win their individual case more easily.
- **Lawyer standing barriers.** A lawyer filing the suit must have standing in the relevant court system (for example, in a state court). A lawyer who does not have this standing must work with another lawyer who does. For national organizations that do not have state chapters, it can be hard to find a lawyer who has standing and is willing to collaborate on the case. Further, organizations that bring the lawsuit "gain standing only if the lawsuit is related to the organization's purpose of existence,"¹⁹ thus making necessary a clear link between a legal advocacy organization's mission and the case it is bringing forward.
- **Difficulties finding a plaintiff.** Before a litigation case can be filed, a plaintiff, too, must have standing: the legal right to bring a case to court. Typically, standing is only granted when plaintiffs have sustained or will sustain harm due to a particular situation. This can be challenging for

¹⁸ An example of this is Norma McCorvey, the lead plaintiff in *Roe v. Wade*, who came out as against reproductive rights after the case was decided. See *The Washington Post*, January 22, 2016, The fascinating life of Norma McCorvey, the 'Jane Roe' in *Roe v. Wade* — <https://www.washingtonpost.com/news/soloish/wp/2016/01/22/the-fascinating-life-of-norma-mccorvey-the-jane-roe-in-roe-v-wade/>.

¹⁹ Krishnan, Jayanth K., "Public Interest Litigation in a Comparative Context" (2001). *Articles by Maurer Faculty*. Paper 420. <http://www.repository.law.indiana.edu/facpub/420-53>.

organizations that are working on issues that have social stigmas. This issue extends to bringing general claims for a group of people — class actions. A national organization we spoke to said they sometimes found it difficult to find plaintiffs with standing not because people were not being harmed but because people were concerned about the backlash that could accompany becoming a plaintiff. In addition, there is great incentive to have a plaintiff (or group of plaintiffs) who has a solid case that cannot be easily disputed given the likelihood of appeal.

- **Having precedent.** Law cases work on the norm of precedent. When a case is decided, elements of the legal decision will create precedent that informs decisions in future cases. An action brought forward without good precedent will make it harder for counsel to successfully argue the case. Thus, established precedent is sometimes a necessary precursor to presenting a meaningful litigation case and, if there is no precedent in place, progress may be slower as legal advocates work to build that precedent.²⁰
- **Mood of the courts.** Several advocates we spoke with said the court system itself has changed in ways making it less welcoming as a means of social redress. This was frequently noted as a distinct difference from the civil rights movement era, when the courts were seen as a proper venue for moving civil rights issues forward when legislators were unwilling or unable to do so.

²⁰ See, for example, work happening on abolishing the death penalty that first focused on executing juveniles who committed crimes as juveniles, then on looking at sentencing the developmentally disabled to death, then on older adolescents.



VI. What Happens After a Legal Decision?

“The legal win is important, but the legal win itself can mean different things, like an immediate order to provide benefits versus a really good settlement agreement. It could mean losing a short-term battle at the district court, but winning a long-term victory by setting precedent on appeal. Or you could lose the case but win change for your clients in the legislature or the court of public opinion.”

— Anna Rich,
Justice in Aging

Legal advocates spoke again and again of how legal actions are just one step in a much longer process. As explored in ORS Impact’s recently released brief, also part of the Atlas Learning Project, implementation after a policy win is an important part of making sure advocacy efforts translate into changes.²¹ We were curious to hear what activities advocates felt were important after a legal action is won or lost. We found that, while some actions were taken regardless of the outcome of the case, others were dependent on the outcome. The table on the following pages shares some of the key activities reported based on the outcome of legal advocacy.

²¹ Beyond the Win: Pathways for Policy Implementation. ORS Impact. Available at atlaslearning.org.

Table 2: Follow-up Actions for Legal Advocacy

Actions taken after a win

- **Monitoring and enforcing the win.** Also called implementation, monitoring ensures that the prescribed change is actually taking place. As James Goldston²² noted in a talk on public interest litigation, courts have limited capacity to enforce rulings. Therefore, the legal advocate must remain vigilant during this time frame. It may be that the lead advocacy agency is given the opportunity to provide ongoing feedback to a regulatory or enforcing body or that the organization may monitor enforcement on their own through community networks or legal support services.
- **Helping people get the gains of the win.** Slightly distinct from active monitoring and enforcing is a public education piece around helping inform the community about the new policy and its impact and helping them access the new policies as relevant. For example, Empire Justice Center used legal advocacy to change policies that were pushing children who had a right to public schools out of the schools they attended. Once the policies were changed, the organization still had to work with youth to teach them what their rights for schooling were.
- **Recovering fees.** Though this has become more limited with court regulations over time, in some cases organizations bringing forward a case are able to recoup some of their costs in trying the action.
- **Defense of erosion.** For many years after a win, an organization is likely to have to remain vigilant for attempts to erode the new right. This often happens through legislative laws that are contrary to the intention of the new legal right.
- **Managing backlash.** In some situations, there may be backlash against the legal win. When this is the case, the whole legal advocacy movement — including grassroots mobilizers and communications people — need to be prepared to keep pushing the issue by applying the force of public opinion.

Actions taken after a loss

- **Pulling out the wins.** After a loss, legal minds are likely to pull out any wins involved in the loss. These would include any points conceded that could create precedent for future cases.
- **Working other channels to win.** If the loss is resounding, the advocates are likely to work the other channels for changing the issue even harder. These may include legislative advocacy or mobilizing but may also include escalating the issue. For example, if executive advocacy is not changing the policy, litigation might.
- **Revisit legal theory.** After a legal loss, advocates are likely to revisit their legal strategy and pick apart what elements led to the loss. This information is helpful to see what arguments are sticking and what need to be changed for a more successful challenge.

²² Law Talks: James A. Goldston on Public Interest Litigation. Listen at <https://www.opensocietyfoundations.org/voices/law-talks-james-goldston-public-interest-litigation>.

Continuation of Table 2

Actions taken regardless of the legal outcome

- **Frame the outcome.** Once a legal advocacy action has been resolved, advocates will frame the outcome for their own communications and for the larger media narrative. For a win, this is likely to include describing how the win was deserved and how it will impact lives and the importance of ongoing monitoring. For a loss, it is likely to include the next steps and why the fight is not yet over.
- **Find financial resources for the next leg of the battle.** Regardless of what the next steps are, the legal advocacy organization is likely to look for funding to sustain its ability to follow-through. This may include publicizing the finding as a call-to-arms for additional support.
- **Re-examine strategy.** All advocates are used to the ongoing cycle of reflection after a period of heavy action to determine the right next steps. Legal advocates are no exception, often taking the opportunity after a major legal action to reflect on what worked, what did not work, and how their perception of the favorability of the change held up in reality.

“In cases where you win a detailed structural injunction [a court order requiring the defendant to take certain actions to comply with the law], you should be prepared for the possibility of a long compliance period that requires an ongoing commitment of resources to enforce the injunction.”

— Cecillia Wang,
ACLU



VII. How Can We Work with Funders on Legal Advocacy?

“Even when we fall short of securing a favorable court decision, we can still lay a foundation for future policy change.”

— Mary Meg McCarthy,
Heartland Alliance

During our interviews, many advocates expressed thanks for their long-term funders and to their underwriters who were willing to support them either through funding legal advocacy or through funding general operating support. However, advocates also had several notions that would make the relationship more effective. This section of the report is meant to highlight some of these opportunities and their likely implications for legal advocates.

- **How to find funders who support legal advocacy.** Finding funders who back legal advocacy is no easy task. Our own work on finding funders to interview took many hours of searching through the Foundation Mapping database²³ and asking funders who we knew were already funding legal advocacy about others. We found that funders are most likely to support legal advocacy if they already back other types of advocacy in a specific issue area. Therefore, it may be easier to find new sponsors for legal advocacy by looking at which funders are already underwriting advocacy work in the relevant issue area.
- **How to prove success to funders.** Advocates spoke about how some funders were interested in seeing a win but not interested in the amount of preparation and follow-up it takes to achieve and enforce one. In doing our own evaluation work on legal advocacy

²³ For more information on our foundation mapping process, please see Appendix C.

organizations, we have found that there is not a lot of information available on how to evaluate this work in the interim, though we share our own set of relevant indicators in the next section of this paper.

- **How to talk to funders about the realistic timeframe of cases.** Another item of frustration for some advocates was the funder’s lack of willingness to consider the realistic timeframe for a legal advocacy strategy. One advocate explained, “If funders want to be involved in supporting this work, having a 3-5 year window is ineffective.” This is a hard attitude to change because many funders themselves are tied to grant cycles or to board members that may not encourage long-term grantmaking. Sharing timeframes for well-recognized legal advocacy movements (like school desegregation and the gay

marriage movement) may help at least show the likelihood that any legal work will take place over a long period of time.

- **How to emphasize partnerships.** Funders we spoke to in the movement are enthusiastic about funding coalitions or collaborations between advocacy and non-advocacy organizations. Given that the vast majority of legal advocates we spoke to are involved in these partnerships, there may be some way to stress how community organizing and empowerment is being built alongside advocacy work.

In addition to these areas raised by advocates, funders to whom we spoke highlighted several key guidance points or things they look for when working with legal advocates. These are presented in the table below.

Insights into Funder Legal Advocacy Grant Assessment

Funders identified six key areas that they consider when making legal advocacy grants. These include:

- **Strategic alignment:** Does the organization’s vision for change align with our goals? Does the organization have a clear end game beyond the legal strategy, and is there a compelling case that the proposed activities will be worth it?
- **Strategic position:** Does the organization demonstrate that it understands its unique role and that it is a good partner with other legal and non-legal organizations?
- **Reputation:** Is the organization viewed positively by other legal and non-legal organizations operating in the space as a thoughtful and respectful partner with an ability to get things done?
- **Leadership:** Does the organization have visionary leaders who can talk about mistakes, are humble and willing to collaborate, and understand parameters of success?
- **Legal capacity:** Does the organization have a track record of success in the work, and do they have the credentials and levels of support necessary to do the work, including potential clients?
- **Non-legal program capacity:** Does the organization have sound finance and staffing practices; do they have financial stability; and do they have or have access to complementary activity expertise such as that in communications, research, and mobilization among others?



VIII. How Can We Evaluate Legal Advocacy?

Evaluation of effectiveness has become a core component of work in the philanthropic sector. The ability to demonstrate value is something that drives strategy, resource allocation, and fundraising. The straight-forward answer of winning or losing in aspects of legal advocacy might make it seem particularly easy to evaluate. However, as with other advocacy areas, people in the field cautioned against using win/loss as the only criterion.

But what should be measured before the legal judgment? Getting to effective assessment beyond the win/loss, however, was more challenging. Many people we interviewed confessed that this was an area over which they continue to struggle. Some embraced the “win” approach, preferring not to assess effectiveness until there was a perceived natural reflection point. But there were some good examples where legal advocates had clearly articulated short-term indicators such as wider media coverage of the issue, an increasing number of organizations or nonprofits working on the issue, or publishing research.

Organizations also noted difficulty getting foundations to understand definitions of success beyond a “win.” One legal director said, “Funders should understand what success looks like in dialogue with us. It’s not just wins or court victories but also postponements and local press and the quality of partnering. In funding, I know there is a push to quantify but it can be very hard to say how many

people were benefitted by a particular law.” Another organization said, “Counting wins is not the point... we believe influence is a measure of how our thinking impacts the field, and the idea of what justice looks like.”

On the next page we present seven different answers to the question of what success looks like for legal advocacy. For each of these answers, we also included a set of measures that could be used by advocacy organizations or foundations to measure the quality of the work.

“Funders can’t just emphasize outcomes. They have to be more creative. Maybe the outcome is we won the case and we believe that will lead to more money for [people affected by this situation.] But [you should also be able to say] we mobilized supporters and received media attention and had people write op-eds.”

— A legal advocate

Table 3: Defining and Measuring Success in Legal Advocacy

What counts as success?	How to measure it?
Increasing visibility	<ul style="list-style-type: none"> • Number and type of media hits on the issue • Coverage of the issue geographically • Number of leaders talking about the case/issue • Extent to which the issue is carrying over into policy work
Changing the media narrative	<ul style="list-style-type: none"> • Number of media pieces with a quote from the plaintiff, lawyers, or similarly involved person • Extent to which key words or phrases from press releases are being picked up • Media approach to the issue • Change in media approach to the issue over time
Empowering the affected community	<ul style="list-style-type: none"> • Number of media pieces with a quote from the plaintiff or community members • Extent to which the community's interpretation and language is being brought forward by the legal advocates • Extent to which community members feel their voices are increasingly heard • Extent to which more community members are involved in mobilizing or in work related to the issue
A legal win	<ul style="list-style-type: none"> • Defeating efforts to dismiss the case • Securing good information through discovery • Breadth of the win • Precedent setting • Judicial relief • Recovery of fees • Positive settlement • Changing the court's understanding of an issue or of rights • Number of people likely to be impacted
A legislative or executive win	<ul style="list-style-type: none"> • Change in number and type of complementary or supportive policies emerging through legislative channels • Change in number and type of policies emerging that are against the ideal legal outcome
A court of social norms win	<ul style="list-style-type: none"> • Change in polling on the issue among different demographic groups • Change in the involvement of community groups
Effective strategy	<ul style="list-style-type: none"> • Strength and quality of partnerships • Extent to which advocates are working in coordination with organizations using other advocacy strategies • Extent to which legal advocates can cite other community work happening on the issue • Participation in a relevant coalition if available • Time spent debriefing after "wins" or "losses"



IX. Conclusion

In the last thirty years legal advocacy — particularly with litigation — has faced several setbacks in the ease with which it is possible to do this work. Given these setbacks, many advocates feel that the field is different now from when they started and that each case has a narrower ability to create impact. Despite this, advocates were united in their views of the importance of using legal advocacy as a strategy for moving social movements forward. Many mentioned the view that constitutional and judicial rights had to be fought for and won within the judicial system itself, particularly in a time when many rights (such as the right to vote) are seen almost as partisan issues.

This paper seeks to boost the visibility of legal advocacy as a strategy and expand the understanding of its potential impact, particularly for advocacy organizations that have used more traditional strategies in the past. We also wanted to highlight its importance as a critical arm of many social change movements. When working alongside media, grassroots leaders, community organizers, and legislative advocates, legal advocacy organizations have the opportunity to make broad and lasting change.



Appendix A:

Strategic Considerations for Using Legal Advocacy Strategies

Research and publications to inform legislative policy

Advantages

- Transforming data into usable facts and recommendations for various audiences
- Decision makers are likely to use such information from reputable organizations in their policymaking process
- Building an academic fact base for an issue

Disadvantages

- Time commitment to collecting and analyzing data
- The need to carefully target publications to specific audiences in a way that gives relevant recommendations

Strategic Considerations

- Do you have enough staff that can understand and sift through data to create meaning?
- Who are the intended audiences, and what is their sense of your reputation?

Writing draft policy

Advantages

- A concrete way to write policy exactly as advocates prefer
- Clearly applicable to policymakers

Disadvantages

- A policy which may have been close to being written may be put on the back burner for political reasons

Strategic Considerations

- Do you know policymakers who trust your work and would look at policy drafts?

Administrative advocacy aimed at changing policy regulations

Advantages

- There are clear rules guiding how administrative advocacy can happen
- With an amenable department, it can lead to wide-ranging changes
- Data used can also be used for legal challenges

Disadvantages

- Departments may not always be amenable
- There may be significant work in pulling together evidence

Strategic Considerations

- Is the department likely to be amenable to the challenge?
- If the challenge fails, is there another way to use the gathered information?

Legal support provided to individuals as part of a larger legal strategy

Advantages

- Strong tie-in with values of supporting people who have been wronged
- Builds precedent for other legal strategies

Disadvantages

- Considerable time and effort in representing people on an individual basis

Strategic Considerations

- Do you have the resources to do individual legal support?
- Is legal support building a case for more systemic change?

Writing *amicus* briefs to support other law cases

Advantages

- Relatively straightforward to write to show support for an issue
- Can bring in other issues that the lawyers cannot bring up because of page limits

Disadvantages

- May have limited impact
- Legal guidelines and restrictions

Strategic Considerations

- Do you have the legal knowledge necessary to write an amicus brief?
- Do you have a complementary argument that will boost the position taken?

Class action lawsuits aiming to change policies for a large group of affected people

Advantages

- Can impact a whole class at people at once
- Likely to raise the visibility of the issue

Disadvantages

- Quite resource intensive and requires a lot of preparation work, including finding plaintiffs and establishing standing to make a class action case
- Losing the case can create poor precedent

Strategic Considerations

- Is there enough evidence that the issue is systemic?
- Is the case likely to create good precedent?

FOIA requests

Advantages

- Can provide information proving discrimination or harm that is not accessible otherwise
- You do not need to be a lawyer/ have legal standing to do it

Disadvantages

- Data may be immense and need to be analyzed thoroughly to provide any value and may be potentially costly (due to copying)

Strategic Considerations

- What will the organization do with the data after the FOIA request?
- What are the next steps if the FOIA request is not granted?

Strategic litigation

Advantages

- Can create broad-reaching impact
- Can raise public visibility of an issue

Disadvantages

- Time and resource intensive
- Long-term strategy, likely subject to multiple appeals

Strategic Considerations

- Does precedent suggest a case is likely to be successful?
- What are the options if the case fails or creates poor precedent?
- Is the case a test case (challenging the legality of laws, or attempting to redefine laws) or a structural reform case (challenging the failed enforcement of existing law)?²⁴

²⁴ As explained by Helen Hershkoff in *Public Interest Litigation: Selected Issues and Examples*, page 10. Accessed at: <http://go.worldbank.org/IQKM0BQA40>.

Appendix B: Interviewee List

Advocates

Name	Position	Organization
Cecillia Wang	Director, ACLU Immigrants' Rights Project	American Civil Liberties Union
Kim Sweet	Executive Director	Advocates for Children of New York
Michael Waldman	President	Brennan Center for Justice
Diana Kasdan	Director of Foundation Relations	Brennan Center for Justice
Brendan Cummings	Strategic Litigation Group Director	Center for Biological Diversity
Vincent Warren	Executive Director	Center for Constitutional Rights
Judith A. Stein	Executive Director	Center for Medicare Advocacy
Bebe Anderson	Vice President, US Legal Program	Center for Reproductive Rights
Deborah Gordon Klehr	Executive Director	Education Law Center
Anne Erickson	President and CEO	Empire Justice Center
Mary Meg McCarthy	Executive Director	Heartland Alliance
Chris Fabricant	Director of Strategic Litigation	The Innocence Project
Marsha Levick	Deputy Director and Chief Counsel	Juvenile Law Center
Glenn Katon	Legal Director	Muslim Advocates
Sherrilyn Ifill	President and Director-Counsel	NAACP Legal Defense and Education Fund
Karen Tumlin	Managing Attorney	National Immigration Law Center
Kevin Prindiville	Executive Director	National Senior Citizens Law Center (now Justice in Aging)

Rhonda Brownstein	Legal Director	Southern Poverty Law Center
Jim Blew	President	StudentsFirst
Amanda Keton	Legal Director	Tides Center
Stephen Golub	Professor	Central European University

Funders

Name	Position	Organization
Jason McGill	Vice President, Social Justice Programs	Arcus Foundation
Annmarie Benedict	Programme Executive	Atlantic Philanthropies
Sara Kay	Head of Advocacy and Health Equity Programmes	Atlantic Philanthropies
Geri Mannion	Program Director, U.S. Democracy and Special Opportunities Fund	Carnegie Corporation
Eric Ward	Program Officer	Ford Foundation
Lourdes Rivera	Senior Program Officer	Ford Foundation
Kirsten Levingston	Program Officer	Ford Foundation
Ruth Levine	Program Director, Global Development and Population	The William and Flora Hewlett Foundation
Mary Page	Director, Human Rights	MacArthur Foundation
Adrian Arena	Director, International Human Rights	Oak Foundation
James Goldston	Executive Director	Open Society Foundation
Allison Brown	Program Officer	Open Society Foundation
Stephen A. Foster	President and CEO	Overbrook Foundation
Lana Dakan	Program Officer, Population and Reproductive Health	Packard Foundation
Rebecca Rittgers	Fund Director	Proteus Fund
Keesha Gaskins	Director for the Democratic Practice —US Program	Rockefeller Brothers Fund
Tim Silard	President	Rosenberg Foundation
Cassie Schwerner	Senior Vice President of Programs	Schott Foundation
Christy Pennoyer	Director	The William C. Bullitt Foundation



Appendix C:

How to Conduct Foundation Mapping

TCC Group used the Foundation Center’s Foundation Map tool to help us find foundations that fund in the areas of legal advocacy. While generally a paid tool, it is available via a 24-hour free trial. The steps we used, steps that we believe other advocacy organizations can use to find relevant funders, are as follows:

- 1.** Go to <http://maps.foundationcenter.org/home.php> and sign up for a membership, or register for a free trial.
- 2.** Search for key words related to legal advocacy. We used “legal advocacy,” “class action,” “strategic litigation,” and “social impact litigation,” though organizations may want to also use some issue-focused keywords.
- 3.** Filter the search as desired — for example, by areas served, year, specific foundation name, amounts of money, or other criteria.
- 4.** Review the grants made by foundations that fit the selected criteria.



About TCC Group

At TCC Group, we are committed to addressing complex social problems by heightening our clients' understanding of their collaborative role in society; we help them strengthen strategy, build capacity, and advance assessment and evaluative learning. We envision an effective social sector that addresses society's complex problems through a collaborative approach that harnesses the diverse skills, energy, and visions of its stakeholders.

TCC Group has more than 35 years of experience working in the social impact field with companies, philanthropies, and nonprofit organizations. Our unique strength as a firm lies in our ability to assist clients at all stages of development across the interlocking areas of planning, execution, and evaluation. Our approach is data-driven and outcomes-based, draws from the knowledge of in-house program management and evaluation teams, and ensures that our clients develop actionable and measurable strategic goals to communicate effectively with their stakeholders.



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