



NONPARTISAN ADVOCACY IN PARTISAN TIMES

How Foundations Can
Support and Engage in
Election Season Activities in
Texas





About Us

At BOLDER ADVOCACY, we are lawyers, coaches and nonprofit experts with one big goal: to make advocacy easy and accessible for you, the nonprofit and foundation leaders who want to be great fighters for your cause. This resource was prepared in collaboration with PHILANTHROPY ADVOCATES, a statewide funder's collaborative that empowers philanthropy to invest and engage in public and higher education policy and advocacy.



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INTRODUCTION

Election season provides foundations and their grantees with the unique opportunity to boost civic engagement and advance their missions by interacting with voters and candidates.

It also gives funders the ability to strengthen democracy by broadening the civic dialogue and giving a voice to underrepresented communities.

While 501(c)(3) organizations have wide latitude to engage in issue-based advocacy and get-out-the-vote activities, both public and private foundations should be careful not to support or oppose candidates for public office. This guide provides an overview of how foundations can interact with voters, candidates, and their grantees during an election year by engaging in and supporting nonpartisan advocacy during partisan times.





WHAT IS NONPARTISAN ADVOCACY?

Public (i.e. community foundations) and private foundations are generally permitted to engage in and fund nonpartisan advocacy. What do we mean by being “nonpartisan”? It’s any communication or activity that does not support or oppose a political party or candidate for public office. The Internal Revenue Code prohibits public and private foundations, as with all 501(c)(3) organizations, from endorsing candidates or suggesting who voters should (or should not) support. In short, foundations should refrain from making partisan expenditures, using foundation resources in a partisan way, and engaging in partisan communications. However, they can move forward with most nonpartisan election-season activities.¹



The IRS doesn’t provide concrete guidance about whether an activity or communication is partisan or nonpartisan; instead it looks at all of the “facts and circumstances” surrounding a communication to determine whether it is 501(c)(3) permissible.

Here’s how to think about this: Picture a spectrum of risk. To determine whether a communication looks partisan, the foundation should consider how likely it is that the communication will be viewed as trying to help or hurt a candidate’s election or defeat. If the communication could be interpreted as helping or hurting a candidate, it is more likely to be high risk.

¹ While both private and public foundations can engage in nonpartisan advocacy, additional rules apply to private foundation voter registration activities and funding. See the section of this guide entitled “Special Rules for Private Foundation Support for Voter Registration Drives” for more information. Private foundations should also avoid supporting or opposing ballot measures since that activity qualifies as lobbying and would expose the foundation to a prohibitive excise tax.

WHAT IS NONPARTISAN ADVOCACY?

When assessing the “facts and circumstances” of a communication or activity to determine the level of risk, consider factors including:

Does the communication talk about a candidate?
How close to the election is the communication made?
Is the communication timed to coincide with a non-electoral event, such as passage of a bill?
Is the communication emphasizing a wedge issue that is prominent in the election and/or issues that candidates have clearly contrasting positions about?
Does the communication talk about voting, or the or the upcoming election, in a way that could be seen as an effort to help or hurt a candidate?

Communications that are likely to be considered partisan include those that signal to voters that someone is a good or bad candidate and those that criticize the personal characteristics of a candidate in an upcoming election. For example, a partisan statement could include a foundation statement that compares the foundation’s position on an issue to where a candidate stands on that issue or a statement that suggests a candidate is unfit for public office.

On the other hand, a general reminder about the importance of voting with instructions on how voters can locate their polling location or a statement that reminds people of how they can access an election protection hotline if they notice abnormalities at the polls is likely to be low risk for a foundation so long as additional factors don’t exist pointing toward a preference for a political party or candidate.

FOUNDATION ENGAGEMENT IN ELECTION SEASON ADVOCACY

Both public and private foundations can engage in voter education, candidate education, and get-out-the-vote (GOTV) efforts, including helping voters find the information they need to exercise their right to vote. As long as their activities and communications remain nonpartisan, foundations can educate the public about candidates and the voting process, engage with elected officials and candidates, and promote civic engagement.

Some ways foundations can do this include:



Providing nonpartisan public education and training sessions about how to participate in the political process.



Conducting candidate education on issues that are central to the foundation's mission. Be sure to offer educational materials to all candidates in a race, and make every effort to provide all candidates with the same information.



Hosting a nonpartisan candidate debate or forum as an educational tool for voters. You'll need to invite all viable candidates to participate, use an impartial moderator, cover a broad range of issues, and [take additional steps](#) to ensure a fair debate for all candidates.



Preparing [candidate questionnaires and creating voter guides](#) on a wide range of issues to provide nonpartisan information to the voting public.



Making grants to support all of the nonpartisan election-related activities listed above.²



Public (i.e. community) foundations are also permitted to support or oppose ballot measures. Just remember that your ballot measure advocacy should count against your organization's lobbying limit and may need to be reported in accordance with Texas campaign finance laws.

² See section on "special rules for private foundation support for voter registration drives."

FOUNDATION SUPPORT FOR ELECTION-RELATED ACTIVITIES



Both public and private foundations can fund the following activities through general support grants or specific project grants:

- nonpartisan public education and training sessions about participation in the political process
- nonpartisan candidate education on public interest issues
- nonpartisan candidate debates or forums
- nonpartisan publication of voting records or legislative scorecards
- nonpartisan preparation of candidate questionnaires and voter guides

In addition, public and private foundations are also permitted to

- make general support grants to charities that are promoting ballot measure campaigns, and
- make specific project grants to charities that are promoting ballot measure campaigns and fund up to the non-lobbying portion of the proposal.

Private foundations may conduct, and fund public charities to engage in, the non-partisan voter engagement activities described above, but federal tax law imposes added restrictions on private foundation grants (or other expenditures) earmarked for voter registration activities and lobbying, including endorsing or supporting ballot measure campaigns.

Public foundations, on the other hand, may

- make earmarked lobbying grants to charities that are promoting ballot measure campaigns, and
- fund and conduct nonpartisan get-out-the-vote and voter registration drives.

SPECIAL RULES FOR PRIVATE FOUNDATION SUPPORT FOR VOTER REGISTRATION DRIVES

Private foundations may fund public charities to engage in nonpartisan voter engagement activities, such as candidate and public education and get-out-the-vote initiatives. However, federal tax law imposes added restrictions on private foundation grants (or other expenditures) earmarked for voter registration activities.

Private foundations may make grants earmarked for voter registration activities only if certain requirements under section 4945(f) of the Internal Revenue Code are met. Otherwise, the private foundation providing the grant will be taxed for all expenditures supporting the public charity's voter registration activity. Section 4945(f) requires:

- The organization sponsoring or conducting the voter registration drive (the sponsoring organization) must be a 501(c)(3) organization;
 - The registration activities of the sponsoring organization must be nonpartisan, conducted in five or more states, and occur over more than one election cycle;
 - A contribution for such activities may not be subject to conditions requiring use in a specific state (or political subdivision) or in a specific election cycle;
 - At least 85% of the sponsoring organization's income must be directly spent on activities relating to the purpose for which it was organized and operated; and
- At least 85% of the sponsoring organization's support, other than gross investment income, must be contributed by exempt organizations, the general public, or government units; no more than 25% of its support may come from any one exempt organization; and no more than 50% of its support may come from gross investment income (interest, dividends, or other investment-related income).

A private foundation may earmark funds for voter registration and a public charity may accept such funding only if the charity's program meets the criteria and special rules provided under section 4945(f). A public charity may seek an advance ruling from the IRS stating that it satisfies the 4945(f) requirements. It is recommended that private foundations make voter registration grants only to those organizations that have received pre-certification.

It is important to remember that these requirements apply to grants from private foundations that are earmarked for voter registration and to grants made to public charities that engage exclusively (or almost exclusively) in voter registration activities only. If a private foundation provides a general support grant to a charity, the charity may choose to use some, or all, of the grant for voter registration work without penalty to the charity or to the private foundation.

PARTISAN WORK ON PERSONAL TIME

Both public and private foundations are prohibited from engaging in or funding any partisan political activity (activity that supports or opposes candidates for public office). However, this restriction does not apply to the activities of officers, directors, or employees of foundations who engage in election-related activities on their own time, with their own resources, and in their personal capacity only.

It is essential that foundation representatives do not use facilities, equipment, personnel, or other foundation resources to support or oppose a candidate and that they do not endorse or oppose candidates at foundation events. Foundations should make staff aware, in writing, of policies against using organizational resources for supporting or opposing candidates, ideally in the organization's personnel manual.



Need More Guidance?

Bolder Advocacy is here to help! Just call our Technical Assistance hotline at 1-866-NP-LOBBY or complete [this form](#), email us at advocacy@afj.org, or visit our website at bolderadvocacy.org. Please share this with your funders, and encourage them to reach out to us with their questions.



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I am
a voter