

NONPROFIT ORGANIZATIONS INSTITUTE

Grantmaking in a Partisan Political Environment

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UT LAW CLE

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Agenda

- Introductions and context-setting
- Core legal principles
- Collaboration and communication
- Case study: election integrity
- Q&A

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Introductions and context-setting

- Enduring prohibition of charities intervening in elections
- Compliance more complex in recent years
- Polarization → “wedge” issues → election intervention

Some perceived causes cited

- Longer election seasons
- Expansion of technological platforms
- Party system fosters extremism

Bottom line: perception can set consequences into motion.

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Core principle: no partisan political activity

Charities may not “participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.” IRC 501(c)(3).

- Applies to candidates and political parties
- Applies directly or indirectly (e.g, via grants)

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No partisan political activity cont'd

Possible Consequences

- IRS penalties for violations can include:
 - taxation (§4945 for private foundations; §4955 for charities)
 - loss of tax exemption
- Other potential consequences: reputational damage, erosion of trust by partners and grantees, distraction from mission, violation of state regulations, congressional subcommittee investigations, unwanted press

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Core principle: who is a candidate?

A candidate includes:

- An individual offering, or proposed by others, as a contestant for public office at national, state, local or international levels. Treas. Reg. 1.501(c)(3)-1(c)(3)(iii).

Examples include:

- Public announcement, official filing, formation of exploratory or fundraising committees or characterization by others in the press

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