

The University of Texas School of Law
36th Annual Nonprofit Organization Institute

Ask the Experts: Hot Compliance Topics and Opportunities for Public Charities

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The Issues We Are Seeing

- The “hot topics” faced by public charities vary widely based on each charity’s specific activities.
- There are a few issues being raised more generally across the board.
- We will discuss a few of those, as well as questions/topics submitted during the course of the conference.
- And, of course, we will play “stump the experts” and take questions from the audience.

Election-Related Activities

- We seem to be in an endless election cycle.
- The mid-terms just ended, but already politicians, the news media, funders, and nonprofits are looking to the 2020 elections.
- Advocacy groups (501(c)(4)s) and political organizations (527s) of course will be fully engaged promoting their issues and preferred candidates.
- Our focus is on public charities, which are strictly prohibited from supporting or opposing any candidate for public office, but they can still do a lot to educate, register, and motivate voters.
- This is an entire course topic in and of itself, but here is a quick overview.

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Electioneering

- Any “participat[ion] or interven[ion]...in any political campaign on behalf of (or in opposition to) any candidate for public office” is considered electioneering or political activity
 - However, no clear statutory or regulatory definition given
 - Applies to US and non-US elections
 - Determined instead under a facts and circumstances test
 - IRS has provided examples of what is or is not political, as well as factors it will consider
 - IRS guidance in Revenue Rulings 2004-6 and 2007-41
- Basic inquiry
 - Is the organization signaling, through the content or delivery of its communications or activities, that it favors or disfavors any candidate or political party?

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Electioneering (cont'd)

Electioneering

- Expressly support or oppose candidates
- Endorse candidates
- Contribute to candidates
- Rate or score candidates on the issues
- Compare organization's position to candidate's
- Provide other assistance to candidates (in-kind contributions)
- Support other organizations' political activity

Not Electioneering

- Register voters
- Educate voters about candidates
- Take positions on issues
- Legislative scorecards
- Educate candidates
- Get out the vote

But only if you do so in a fashion that does not favor one candidate or another

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Electioneering (cont'd)

IRS "Facts and Circumstances" Analysis

Good Facts

- No reference to candidate or elections
- External factor driving timing
- Broad range of issues
- History of similar work on issue
- Ongoing communication about central issue of organization

Bad Facts

- Reference to candidate (as candidate)
- Timing motivated by election
- Politically motivated targeting
- Compare preferred candidate to candidate position
- "Wedge issues"

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