

# Election 2020 Lessons Learned: Techniques and Activities

University of Texas Law CLE  
37<sup>th</sup> Annual Nonprofit Organizations Institute  
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IN TRANSITION, SO FOR NOW...  
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## Agenda

- Overview of exempt organization electoral activities
- Electoral activities for affiliated organizations
- Issues raised by pandemic-related strategies
- Rules for post-election efforts

## Types of Organizations: Tax Benefits or Advocacy?

	501(c)(3) Public Charity (Exclusively for public good)	501(c)(4), 501(c)(5), 501(c)(6) (Mostly for exempt purpose)	527 Political Organization (Exclusively political)
Examples	<ul style="list-style-type: none"> <li>Sierra Club Foundation</li> <li>NAACP</li> <li>American Red Cross</li> </ul>	<ul style="list-style-type: none"> <li>Sierra Club</li> <li>AFL-CIO</li> <li>Chamber of Commerce</li> </ul>	<ul style="list-style-type: none"> <li>Sierra Club Political Committee</li> <li>Sierra Club Indep. Action</li> <li>Emily's List</li> </ul>
Tax Benefits	<ul style="list-style-type: none"> <li>Tax exemption</li> <li>Deductible contributions</li> <li>Foundation grants</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption</li> </ul>
Lobbying	Limited	Unlimited	Rare (and usually taxable)
Election-related Activity	Can't support or oppose candidates Nonpartisan activity is OK	Partisan activity may not be primary activity May be taxable	Primary purpose is partisan activity

## Basic Rule for 501(c)(3)s

May not “participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office”

*in other words...*

May not support or oppose a candidate for public office

*in other words...*

No “electioneering”



No support or opposition for **candidates**, but charities **can support or oppose ballot measures** (initiatives, referenda, etc.)

## Basic Rule for Other 501(c)s

Primary purpose may not be “exempt function” as defined under IRC section 527(e)

*in other words...*

Primary purpose may not be electioneering

### **527(f) Tax**

501(c)s are liable for tax on the *lesser* of:

- Political expenditures, or
- Investment income

(If owed, file Form 1120-POL)

## Basic Rule for 527s

Primary purpose must be “exempt function” as defined under IRC section 527(e)

*in other words...*

Primary purpose must be electioneering

### **527s are liable for tax on:**

- Non-political expenditures, and
- Investment income

(If owed, file Form 1120-POL)

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