

**FEBRUARY 2024**

**UT LAW | CLE**

 **TEXAS Law**  
The University of Texas at Austin  
School of Law

# **ELECTION YEAR ISSUES FOR TAX-EXEMPT ORGANIZATIONS**

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## **Agenda**

- Refresher: “the basics” of political activities for tax-exempts
  - Partisan vs. nonpartisan political activities
  - Framework for identifying political activity
  - Specific election year activities
- Considerations: Special concerns for tax-exempt organizations operating within affiliated entity structures
- Evaluating and mitigating risk in affiliated entity structures

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# Refresher on Political Activities

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## Refresh: Types of Tax-Exempt Organizations

	501(c)(3) Private Foundation	501(c)(3) Public Charity	501(c)(4) Social Welfare Org	527 Political Org
Purpose	<ul style="list-style-type: none"> <li>Charity, education, religion, science, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Charity, education, religion, science, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Social welfare or advocacy (lobbying)</li> </ul>	<ul style="list-style-type: none"> <li>Political</li> </ul>
Examples	<ul style="list-style-type: none"> <li>Gates Foundation</li> <li>Robert Wood Johnson Foundation</li> </ul>	<ul style="list-style-type: none"> <li>Sierra Club Foundation</li> <li>American Red Cross</li> <li>Heritage Foundation</li> </ul>	<ul style="list-style-type: none"> <li>Sierra Club</li> <li>Heritage Action for America</li> </ul>	<ul style="list-style-type: none"> <li>Political action committees</li> <li>Campaign committees</li> </ul>
Tax Benefits	<ul style="list-style-type: none"> <li>Tax exemption</li> <li>Contributions deductible</li> <li>Gift tax deduction</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption</li> <li>Contributions deductible</li> <li>Gift tax deduction</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption</li> <li>Gift tax exemption</li> </ul>	<ul style="list-style-type: none"> <li>Tax exemption</li> <li>Gift tax exemption</li> </ul>
Lobbying	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Limited</li> </ul>	<ul style="list-style-type: none"> <li>Unlimited</li> </ul>	<ul style="list-style-type: none"> <li>Rare (and usually taxable)</li> </ul>
Election-Related Activity	<ul style="list-style-type: none"> <li>Can't support or oppose candidates</li> <li>Nonpartisan activities OK (with limitations)</li> </ul>	<ul style="list-style-type: none"> <li>Can't support or oppose candidates</li> <li>Nonpartisan activities OK</li> </ul>	<ul style="list-style-type: none"> <li>Partisan activity cannot be "primary" activity</li> <li>Political activity may be taxable</li> </ul>	<ul style="list-style-type: none"> <li>Primary purpose must be partisan activity</li> </ul>



Today's Topic

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## Refresh: How Does the IRS Define “Political Activity”?

- **Very broad definition:** 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
  - Determined 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, directly or indirectly, through the content or delivery of its communications or activities, that it favors or disfavors any candidate or political party?
- **Partisan vs. Nonpartisan:** **Nonpartisan** election-related educational or civic engagement activity *may not* be considered “political” activity or campaign intervention

↑ What does nonpartisan mean anyways???

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## Refresh: Examples of Partisan and Nonpartisan Political Activity

### Yes – Partisan Political Activity

- Contribute to candidates
- Expressly support or oppose 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
- Target voters (by demographic or region) to produce a particular electoral outcome

### No – Not (Necessarily) Partisan Political Activity

- When consistent with the organization’s mission:
- Advocate for issues (**but** look out for wedge issues)
  - Educate voters about issues or candidates
  - Promote civic engagement – how to participate in elections
  - Protect voters
  - Produce legislative scorecards
  - Educate all candidates
  - Register voters without regard to voting inclination
  - Get out the vote activities (GOTV)

↑ Only if you do not favor one “side” over the other

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Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Election Year Issues for Tax-Exempt Organizations

Also available as part of the eCourse

[Answer Bar: How to Protect Your Nonprofit](#)

First appeared as part of the conference materials for the  
41<sup>st</sup> Annual Nonprofit Organizations Institute session

"Election Year Issues: Political Engagement and Affiliated Structures"