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

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

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**Debbie Fine, Open Society Foundations**  
**Bridget Weiss, Arnold & Porter**

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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	▪ Charity, education, religion, science, etc.	▪ Charity, education, religion, science, etc.	▪ Social welfare or advocacy (lobbying)	▪ Political
Examples	▪ Gates Foundation ▪ Robert Wood Johnson Foundation	▪ Sierra Club Foundation ▪ American Red Cross ▪ Heritage Foundation	▪ Sierra Club ▪ Heritage Action for America	▪ Political action committees ▪ Campaign committees
Tax Benefits	▪ Tax exemption ▪ Contributions deductible ▪ Gift tax deduction	▪ Tax exemption ▪ Contributions deductible ▪ Gift tax deduction	▪ Tax exemption ▪ Gift tax exemption	▪ Tax exemption ▪ Gift tax exemption
Lobbying	▪ None	▪ Limited	▪ Unlimited	▪ Rare (and usually taxable)
Election-Related Activity	▪ Can't support or oppose candidates ▪ Nonpartisan activities OK (with limitations)	▪ Can't support or oppose candidates ▪ Nonpartisan activities OK	▪ Partisan activity cannot be "primary" activity ▪ Political activity may be taxable	▪ Primary purpose must be partisan activity



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"