

FEBRUARY 2024

UT LAW | CLE

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

ELECTION YEAR ISSUES FOR TAX-EXEMPT ORGANIZATIONS

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

1

UT LAW | CLE

 **TEXAS Law**

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

2

2

1

Refresher on Political Activities

3

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



Today's Topic

4

4

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???

5

5

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

6

6

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Election Year Issues for Tax-Exempt Organizations

Also available as part of the eCourse

[2024 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the

41st Annual Nonprofit Organizations Institute session

"Election Year Issues: Political Engagement and Affiliated Structures"