

UTLAW CLE TEXAS Law

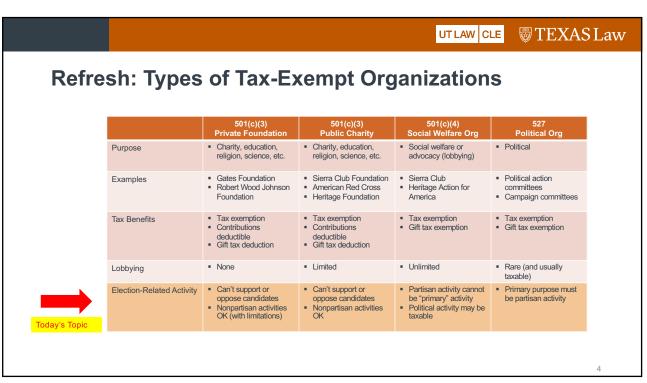
## **Agenda**

- 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

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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 <u>electioneering</u> or <u>political activity</u>
  - 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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# Title search: Election Year Issues for Tax-Exempt Organizations

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"