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Bright Lines Project Overview

What is the Definition of Political Activity? The Bright Lines Project Offers Answers for Both Sides of the Aisle

Legislative Solutions Are a Real Possibility

As the recent scandal over the Internal Revenue Service's (IRS) scrutiny of 501(c) applications demonstrates, the standards used by the IRS to determine whether a nonprofit organization qualifies for tax-exempt status are blurry and hard to decipher for both the IRS and applicants.

The underlying problem – which has been somewhat lost in the ensuing media storm and political battle on Capitol Hill – is that the language of the Internal Revenue Code makes organizations that engage in political activity ineligible for 501(c) status but leaves to the IRS the task of defining political activity. The IRS's approach looks to “all the facts and circumstances” to determine whether an entity is engaged in political intervention — an ambiguous standard that has caused confusion both inside the IRS and for applicants for tax-exemption.

We need bright line definitions of “political activity” for use in considering 501(c) applications. That's why, over the past four years, a team of tax law experts and nonprofit leaders have been working to define what constitutes political activity for tax purposes. Led by prominent tax attorneys Greg Colvin and Beth Kingsley, the effort is aptly named the Bright Lines Project (BLP). The BLP aims to remedy both the internal and external problems created by the ambiguous standard, by proposing definitions, exceptions and analytical steps for recognizing and regulating political intervention within the tax-exempt sector. Public Citizen took the helm of the BLP nine months ago and is leading the legislative and advocacy efforts on Capitol Hill.

A Bipartisan Consensus: We Need Bright Lines

Members of Congress from both sides of the aisle are calling for a solution.

In a [joint statement](#) released in May, U.S. Sens. John McCain (R-Ariz.) and Carl Levin (D-Mich.) spoke of the importance of a bipartisan approach: “The Permanent Subcommittee on Investigations has been for several months examining on a bipartisan basis whether the IRS has adequately enforced rules regarding the extent to which tax exempt nonprofit 501(c)(4) groups engage in partisan politics.”

And during a House Ways and Means Committee hearing, U.S. Rep. Ron Kind (D-Wis.) gave the following advice to Acting IRS Commissioner Danny Werfel: “We too have a role to play ... I think the IRS would be helped if there were brighter line rules, for people to institute more objective criteria than is used.”

Even the IRS itself sees a problem and is looking into solutions.

In [its 30-day report](#), the IRS noted, “One of the significant challenges with the 501(c)(4) review process has been the lack of a clear and concise definition of ‘political campaign intervention’. For example, it is often difficult to determine whether or not a particular paid advertisement is taking a position on a public policy issue or constitutes an attempt to influence an election, and, in turn, how that decision might factor into the overall evaluation of whether an organization is primarily engaged in promoting social welfare. Such complicated determinations currently rely on lengthy revenue rulings and judicial opinions with examples that serve to assist an evaluation based on all facts and circumstances.”

The Bright Lines Solution

The Bright Lines Project has developed six proposed rules designed to clarify the IRS regulations governing nonprofit organizations’ political activities.

[<http://www.citizen.org/documents/BLP-clarifying-irs-rules-on-political-intervention.pdf>]

Our central principle is this: The federal tax definition of political speech, aimed at conditioning tax-exempt status for political organizations on the special disclosure rules applicable to 527 organizations, should reach beyond express advocacy and cover all speech that supports or opposes a candidate for elective public office.

In the proposal, that broader speech test is modeled on the test for lobbying activity that the IRS adopted in 1990, and draws bright lines, so that any communication to any part of the electorate that (a) refers to a clearly identified candidate, and (b) reflects a view on that candidate, is considered political.

Within the proposal, safe harbor exceptions have been allowed for: commentary aimed at a public official’s performance in office, for candidate comparisons based on an equal opportunity to speak, for responses to candidates who attack an organization or take aim at its issues, and for personal, oral expressions of opinion that may occur at an organization’s meetings.

Next Steps

We believe the BLP can move as a part of the comprehensive tax reform package or as stand-alone legislation. With the Senate Finance Committee’s “blank slate” approach to reform and the consensus that this part of the code must be reformed, there is a real opportunity for the BLP to be proposed as part of the reform package, or, at least, the process can be used as a springboard to create a bright line standard.

Now is the time to move to safe harbors, bright lines, predictability, simplicity and ease of understanding; the Bright Lines Project has been developed to achieve all of these.