the BRIGHT LINES project
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Our First Reaction to Proposed Regulations from IRS/Treasury on Tax-Exempt Political Campaign Activity

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1. We are happy that the IRS and Treasury have taken a **bright-line** approach to defining political activity under the Internal Revenue Code in the form of new regulations proposed on November 29th.

2. It is the first step toward emerging from **decades of uncertainty** under the vague "facts and circumstances" approach that has chilled the free speech and democratic participation of many nonprofits. At the same time, the old approach has allowed a few to game the tax system, seeking to use large undisclosed donations to manipulate election outcomes in America.

3. However, the first draft from the IRS and Treasury addresses only one type of tax-exempt nonprofit—**501(c)(4)** social welfare organizations—leaving the rest under the unpredictable "facts and circumstances" regime.

4. Furthermore, the rules proposed in the IRS/Treasury draft, in the effort to avoid "fact-intensive" decisions about the tax-exempt status of such organizations, have labeled whole categories of civic engagement as political "candidate-related activity," while at the same time failing to apply that label to some clearly partisan activity. This is the result:

    a. **Expressly advocating** for or against candidates or political parties, soliciting political contributions, and distributing a candidate's materials, would be deemed political, properly so.

    b. All voter registration, get-out-the-vote drives, and voter guides referring to candidates or parties, would be deemed political, even though they may be **completely nonpartisan**.

    c. A line would be drawn, 30 days before a primary election and 60 days before a general election. After that point, any communication to 500 or more people that mentions the name of a candidate or a party and any event (including a debate) at which one or more candidates appear, would be deemed political. This would include **grass roots lobbying** unrelated to the upcoming election.

    d. Before the 30/60 day blackout, the draft suggests, communications short of express advocacy would NOT be deemed political, **even if they conspicuously praise or criticize a candidate**.

e. A contribution that a 501(c)(4) makes to another 501(c) group would be deemed political if the recipient does *any* candidate-related activity, no matter how little—even if both organizations agreed that the contribution wouldn't be used for politics.

f. The draft rules have **no safe harbors** for nonprofit speech; they contain no bright-line definition of the civic participation that would qualify as social welfare.

5. Confining the proposed regulation to 501(c)(4) groups is dangerous. Those who prefer the shadows of the uncertain "facts and circumstances" regime will **move to other tax-exempt categories**, such as 501(c)(6) business associations, and perhaps even to 501(c)(3) organizations where the multi-factor rules on issue advertising remain subject to creative manipulation.

6. **501(c)(3) charities** have reason for concern. Although the IRS's treatment of nonpartisan voter registration and get-out-the-vote efforts as political might not apply directly to charities, it is likely to have a chilling effect on charities and their donors. Even if the 501(c)(4) definitions of political activity are not extended to charities (as they easily could be), two different sets of rules would lead to widespread confusion. This is especially true for the many 501(c)(3) organizations with 501(c)(4) affiliates that do important policy work together.

7. At the same time, the IRS proposal contains the seeds of a wonderful **opportunity**—to replace much, if not all, of the vague "facts and circumstances" regime with clear, objective standards defining the political prohibition of Section 501(c)(3). No nonprofits are in greater need of such a definition than 501(c)(3)s. They are the most numerous class of tax-exempt organizations (more than all others combined) and, unlike others, risk their tax-exempt status if they engage in any political activity.

8. Bright-line definitions of political activity would not force **disclosure** of large donations to nonprofits used to influence elections, but they would be essential to any fair and effective disclosure system. Without bright line definitions, disclosure might needlessly tangle nonpartisan groups in burdensome requirements or allow big money efforts to influence elections to avoid disclosure.

9. In essence, we don't want a bad political definition that applies only to 501(c)(4) groups. We want a **good political definition that applies to everybody**.

10. Once again, we are very encouraged that the IRS is interested in drafting rules in this area. We do not want to lose the momentum created by the issuance of these draft rules and we call upon the IRS and Treasury, upon receiving comments from the affected community, to **significantly rework and improve** these proposed regulations promptly, inviting public comment on the reworked proposal and engaging the nonprofit sector throughout the process. The new rules should fairly distinguish between partisan and nonpartisan activities and provide the benefit of bright-line certainty, universally, to all varieties of tax-exempt organizations.

For more about our Bright Lines Project proposal, go to **www.brightlinesproject.org**.