

## Defining Nonprofit Political Activity

Imagine there is a law that says you cannot drive fast, but there is no posted speed limit: no definition of what it means to go fast. That's the situation nonprofits face when it comes to political activity. The IRS does not define it, leaving its examiners to look at the "facts and circumstances" of each case to decide whether something is political activity. This has too often resulted in wildly different interpretations of what is allowable political activity, leaving nonprofits confused and uncertain.

Charities (501(c)(3) organizations) know they cannot support or oppose a candidate for elected office. Yet there are many educational activities related to elections that could be undertaken by charities without violating the law. When charities engage in nonpartisan political activities such as encouraging people to vote, our democracy becomes stronger. But without clear definitions of political intervention, many charities choose a safer course and do not engage. When that happens, we all lose.

The lack of clarity in what constitutes political intervention also has implications for other tax-exempt groups. Social welfare groups (501(c)(4) organizations) and trade associations (501(c)(6) organizations), for example, are permitted to engage in some political activity, but they must demonstrate that it is not their primary purpose. This raises two problems. First, how do you know what to count as political activity if it is not clearly defined? Second, how do you define how much activity is "primary" without clear definitions of what you are measuring?

This isn't just a problem for nonprofits and those they serve. Without objective definitions, it is increasingly hard for the IRS to decide whether to approve tax exempt applications – or to enforce the rules for those organizations that already have their tax exemption.

### A Proposal for Defining Political Activity

- a. Some activities should **always** be treated as political campaign intervention:
  - Endorsing a candidate or political party;
  - Contributing to a candidate, party, or PAC; or
  - Offering voters a clear "litmus test" for deciding on candidates.
  
- b. Some activities **might** be treated as political campaign intervention:

Any communication that clearly refers to and expresses a view on a political candidate should be considered political intervention -- unless it fits within the requirements for one of four specific exceptions that protect:

  - Legitimate advocacy on current, specific actions an officeholder can take;

- Nonpartisan efforts to educate the public on candidates' policy positions;
- Measured responses to statements by a candidate about the organization or its core issues; and
- Certain remarks made by speakers at in-person meetings of the organization.

Most of these exceptions would **not** be available if the nonprofit uses paid "mass media" to communicate its message – TV, radio, newspaper, direct mail, online advertising, phone banks, and other media to be defined in the rules.

- c. If an activity does not meet any of the safe harbors above, the organization can still maintain that the activity isn't political intervention in light of all the "facts and circumstances," subject to IRS review but within limits. For example, paid media ads with views on candidates targeted to close races would always be intervention.

### **A Fair System That Works!**

These rules offer predictability, simplicity, and ease of understanding in what constitutes political activity. The proposal protects free speech and encourages civic engagement while still preventing abuses of the system. Nonprofits can focus on their core missions and work without fear. Religious leaders can express their personal views on candidates during non-broadcast services, as long as they don't urge a vote for or against a candidate, without asking a lawyer if it's OK. The IRS will have the tools it needs to enforce the rules for the privilege of being exempt from taxes, without tortuous delay or bias.

### **What You Can Do**

1) Endorse the Bright Lines Project by going [here](#).

2) Call or send an email to the IRS and Treasury Department. Tell them we must be clear about what constitutes political intervention for nonprofits and create regulations to do so. We want bright lines to encourage civic engagement and reduce potential abuses. Contact:

-Treasury Secretary Jack Lew by sending him a message [here](#),

-Acting IRS Commissioner Danny Werfel by leaving him a message here: 1-800-829-4933.

3) Distribute this factsheet widely to others in your networks, and ask them to take action. Our voices need to be heard – and now is the time.

### **About the Authors and the Bright Lines Project**

This proposal was developed by a team of nine tax law experts and vetted by numerous nonprofit leaders and tax experts over a period of more than four years. While the proposal does not solve all problems, it addresses the biggest one.

It's time to fix the system, to strengthen civic engagement and stop abuses. Tell Congress and the IRS we need clear definitions of political activity with bright lines drawn around what can and cannot be done.

For more information please contact Project Coordinator Tom Halloran at [thalloran@citizen.org](mailto:thalloran@citizen.org) or visit our website [www.brightlinesproject.org](http://www.brightlinesproject.org) for a copy of the proposal and full explanation.