



INDEPENDENT SECTOR
A vital voice for us all

February 27, 2014

Ms. Amy F. Giuliano
Office of the Associate Chief Counsel (Tax Exempt and Government Entities)
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

SENT VIA FEDERAL E-RULEMAKING PORTAL

RE: Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

Dear Ms. Giuliano:

Independent Sector¹ and the undersigned organizations appreciate the opportunity to provide comments on the Notice of Proposed Rulemaking issued by the Internal Revenue Service (IRS) and the Treasury Department regarding guidance on what constitutes candidate-related political activity for tax-exempt 501(c)(4) social welfare organizations, as well as the current standards by which social welfare organizations are considered to be operating exclusively for the promotion of the common good and general welfare of the people of the community.

Need for guidance

We applaud the IRS for recognizing the need for guidance to clarify federal rules governing political activity by tax-exempt organizations and transition beyond the ambiguous facts and circumstances approach to determine whether and to what extent an organization has engaged in political activity. We are also encouraged that the IRS prioritized the issuance of the proposed rules and invited public comment on several key areas of reform. We look forward to engaging in this important dialogue as regulations are developed.

Currently, tax exempt organizations and regulators lack a clear definition of candidate related political activities or a clearly defined threshold for how much political activity is permissible. This clarification is a critical first step to begin addressing the current ambiguity in defining what constitutes political activity, provide regulators with a clear standard by which they review

¹ Independent Sector is a coalition of nonprofits, foundations, and corporations whose members represent tens of thousands of organizations and individuals locally, nationally and globally who are committed to advancing the common good in America and around the world.

applications for tax exempt status, and ensure transparency and even application of regulations for tax exempt organizations.

We looked forward to the release of such guidance to provide much needed clarity for tax-exempt organizations to faithfully comply with regulations without fear of penalties and sanctions, while continuing to engage in the vital, nonpartisan advocacy efforts that benefit and sustain the communities they serve.

Concerns with proposed guidance

Unfortunately, the proposed guidance fails to provide the necessary clarity for organizations engaging in candidate-related political activities and threatens to undermine the key role that charitable and social welfare organizations play in civic engagement work and public policy debates.

Nonpartisan voter engagement and candidate forums

The proposed guidance includes an overly broad definition of candidate-related political activities that conflates partisan and nonpartisan activities. For the first time, nonpartisan voter registration efforts, get-out-the vote campaigns, voter guides, and nonpartisan candidate forums undertaken by 501(c)(4) social welfare organizations to encourage civic participation and educate the general public would be considered political.

Social welfare organizations would now be subject to limits on the amount of nonpartisan civic engagement activities they could pursue. This undermines one of the key ways these organizations advance their missions: helping the American public understand major issues in elections and encouraging them to register and cast their votes. This change would send a message to organizations and their donors that even longstanding and widely acceptable nonpartisan activities that encourage civic participation would no longer be considered to promote the common good and general welfare of our nation.

Many communities rely on the nonpartisan resources provided by tax-exempt organizations to assist in voter registration and increasing turnout in elections, understand the electoral process and the mechanics of voting, as well as inform the general public about policy issues and positions of candidates. In 2012, only 59 percent of all eligible voters participated in the general election. A recent study by Nonprofit VOTE determined that nonpartisan voter engagement activities provided by nonprofit organizations increased participation across all registered voters, with the biggest impact on turnout among least-likely voters.² Reclassifying as political and limiting these activities could set a dangerous precedent for stifling important and irreplaceable civic engagement work by the tax-exempt sector.

Defining nonpartisan voter engagement activities as political for 501(c)(4) organizations is akin to imposing it on charities. Given the express prohibition for 501(c)(3) charitable organizations to engage in candidate-related political activity, risk-averse charities and their funders may be hesitant to engage in civic engagement activities defined as political in Section 501(c)(4) in order to avoid

² "Can Nonprofits Increase Voting among their Clients, Constituents, and Staff: An evaluation of the track the vote program." Nonprofit Vote. 2013. <http://www.nonprofitvote.org/documents/2013/08/can-nonprofits-increase-voting-executive-summary.pdf>

association with activities that the IRS views as political. The reclassification also sidesteps existing legislation such as the Motor Voter Act, where lawmakers spelled out the key role nonprofits play in registering citizens to vote via nonpartisan means and enabling qualified voters to cast ballots on Election Day.

Similarly, nonpartisan candidate forums would now be defined as political under the proposed guidance, thereby subjecting another traditionally nonpartisan activity to the limits for engaging in permissible candidate-related political activities by 501(c)(4) organizations. This new classification would include candidate forums and debates conducted within a 30 or 60-day blackout period, even under well-known guidelines requiring a nonpartisan approach, such as inviting all candidates to be heard. This new definition would deprive the public of an opportunity to be educated about candidate positions and what they stand for, undermining a significant opportunity to facilitate an informed and engaged electorate in our democracy.

Federal guidance defining the scope of what it means to promote the common good versus engaging in political activity should recognize, if not support, the critical importance of nonpartisan voter engagement efforts that encourage the citizenry to fulfill their civic responsibilities. Our laws have long permitted tax-exempt organizations to encourage voter registration, urge eligible citizens to vote, and provide nonpartisan resources to assist the public in making informed judgments about candidates and their views. Our laws and regulations should facilitate more civic engagement, not less.

Blackout periods

Under the proposed guidance, any “public communication” that clearly identifies a candidate, or any forum where candidates appear within 30 days of a primary and 60 days of a general election, would now be defined as candidate-related political activity. This would create significant barriers for 501(c)(4) organizations to fulfill their missions and serve their communities by reducing access to elected officials and their views, while placing strict limits on issue advocacy in the days and weeks ahead of an election.

Incumbents whose work impacts the programs and services of a tax-exempt organization would become “untouchable” during the 30 day and 60 day blackout period. Any engagement of an incumbent by a 501(c)(4) organization, including events during the blackout periods, would be curbed. This would extend even to the organization simply acknowledging the incumbent’s role in policy issues or proposals. This forced separation of nonprofit organizations from key decision makers in our democracy would stifle informed decision-making and strain the crucial relationship between civil society and elected officials.

Any effort to influence legislation during the blackout periods that refers to an elected official who is running for re-election would now be considered political activity. This would blur the lines between what constitutes political activity and lobbying, which 501(c)(4) organizations are currently permitted to engage in without limitation. It also seeks to undermine longstanding advocacy

campaigns by 501(c)(4) organizations that may – by no fault of their own – require action within 30 days of a primary or 60 days of a general election.

Historically, lawmakers have shaped major legislation in close proximity to elections. For example, the law banning assault weapons expired within 60 days before the 2004 general election, and the \$700 billion “TARP” bank bailout bill was passed in October before the 2008 election. Much of this nonpartisan issue advocacy would be reclassified as political activity, potentially limiting the voice of those organizations in important public policy debates. The guidance would also open the door for elected officials to bypass the objections of opposing voices and pass controversial legislation within the 30 or 60 day blackout period.

The classification as political activity of public communications clearly identifying a candidate within 30 days of a primary and 60 days of a general election would extend to many critical communication methods employed by 501(c)(4) organizations, including newsletters, email alerts, social media, and websites. Even further, these same communications would be deemed political within 60 days of a general election with the mere mention of a political party. Organizations would presumably have to erase content mentioning candidates or parties during the blackout period or else risk classifying those communications as political activity and potentially exceeding their limit. This requirement would place an undue burden on organizations with extensive digital archives and links mentioning public officials, which would necessitate vigilant monitoring, removal, and republishing of content throughout the election cycle.

Missing elements from proposed guidance

Despite reclassifying additional activities as political and broadening the scope of candidate-related political activities, the proposed guidance misses the mark by failing to provide clarity around how much political activity is permissible. Without establishing a clear dollar or percentage limit for the amount of political activity 501(c)(4) social welfare organizations may engage in, enforcement of the rules will remain subjective and require evaluations to be handled on a case-by-case basis. This will simply perpetuate the existing uncertainty on the part of organizations engaging in political activity.

Additionally, by failing to create a uniform definition of candidate-related political activities for all tax-exempt organizations, the proposed guidance may cause unintended consequences for 501(c)(3) charitable organizations, the largest segment of the nonprofit sector. While 501(c)(3) charities are already – appropriately – prohibited from engaging in political activity, they are permitted to engage in many nonpartisan civic engagement activities that would now be redefined by the IRS as political activities by 501(c)(4) organizations. Risk-averse charities and their funders may become hesitant to engage in activities the IRS has defined as political, even if the definition does not explicitly extend to them.

The proposed guidance redefines candidate-related political activity only for 501(c)(4) organizations, which fails to address any of the underlying problems across the full spectrum of tax-exempt organizations. If faced with new restrictions on the timing and types of political activities subject to limits for 501(c)(4) organizations, donors can merely shift their contributions to support these identical activities conducted by other tax-exempt organizations where the rules would not apply – such as 501(c)(6) trade associations. Indeed, some have already begun employing this

strategy. Just as troubling, despite the express prohibition on charities from engaging in political activity, under the new guidance social welfare organizations could establish new charity arms and shift the newly-classified political activities to an affiliated charity. Perversely, donors would get the added benefit of a tax deduction for funding the very activities the IRS is seeking to restrict.

In addition, the lack of a clearly defined limit for permissible candidate-related political activities and retaining conflicting definitions for other tax-exempt entities makes it extremely difficult for both the IRS and the tax-exempt sector to effectively evaluate the potential impact of each element of the proposed guidance. Additional clarity about expectations and requirements will serve to increase compliance among all types of 501(c) organizations attempting in good faith to comply with the laws and regulations, and reduce the opportunity for abuses by those who seek to circumvent them.

Recommendations

The proposed guidance for 501(c)(4) social welfare organizations on candidate-related political activities, while a welcome first step, should be substantially reworked to address the concerns outlined above.

Specifically, we urge the IRS in its subsequent proposed guidance to:

- Revise the definition of candidate-related political activities to avoid infringement on nonpartisan civic engagement work, voter registration activities, and candidate forums traditionally undertaken by tax-exempt organizations and avoid excessively restrictive blackout periods prior to elections that may undermine long-standing, nonpartisan issue advocacy;
- Create a universal definition of political activity across all 501(c) organizations in order to provide clarity and consistency for the consideration of tax-exempt status applications and to prevent the shifting of political activity to tax-exempt organizations not covered under the current proposed guidance; and
- Establish a clear limit of the amount of permissible political activity, defined either by a clear percentage or dollar amount indexed for inflation.

We believe that IRS proposed guidance would be best served by rejecting a subjective facts and circumstances test in favor of a bright-line definition of political intervention that applies to all relevant 501(c) organizations, which the current guidance fails to provide. Independent Sector endorses the Bright Lines Project³, whose recommendations should be incorporated into any future IRS proposed guidance in this area. These recommendations outline a uniform set of rules that would apply across all tax-exempt categories, provide predictability and clarity for what constitutes political activity, and protect free speech and encourage civic engagement while preventing many prevalent abuses of the system.

A multitude of factors contribute to the current ambiguity and uncertainty on the part of exempt organizations, the lack of enforcement of the existing rules governing political activity, and the

³ "The Bright Lines Project: Clarifying IRS Rules for Political Intervention." Bright Lines Project. December, 2013. <http://www.citizen.org/documents/bright-lines-project-december-2013-summary.pdf>.

increasing misuse of 501(c)(4) social welfare organizations for partisan political purposes. We urge the IRS to consider in totality these contributing factors, including existing donor disclosure and registration and reporting requirements. In evaluating these issues, we further recommend that reforms reflect the principles on 501(c)(4) political activity⁴ adopted by Independent Sector in 2012.

We encourage the IRS to engage tax-exempt organizations in a meaningful dialogue to address the many concerns expressed during this comment process, and provide the public an opportunity to provide input on a revised proposed rule that better defines permissible political activity while preserving the important advocacy role and vital voice of tax-exempt organizations in civic engagement and public policy work.

Conclusion

We appreciate that the IRS recognizes the need to clarify the rules governing political activity and for prioritizing this important issue. Tax-exempt organizations and regulators could benefit substantially from a revised definition of candidate-related political activities clearly defining a limit for permissible political activity that applies to all 501(c) organizations while preserving their critical advocacy role. We look forward to working with the IRS and the broader tax-exempt community to move toward new rules that address the issues outlined above.

Thank you for your consideration.

Sincerely,

Independent Sector

A. von Schlegell & Co.
ACT Theatre
Advancement Project
The Advocacy Fund
AIM Independent Living Center
American Alliance of Museums
American Autoimmune Related Diseases Association
American Friends Service Committee
Americans for the Arts
Americans for the Arts Action Fund
The Arc
Association for Healthcare Philanthropy
BethanyKids
California Conservation Corps
CCTV Center for Media & Democracy
Center for Strategic Philanthropy & Civic Engagement
Church in Ocean Park (CA)

⁴ "Principles for Evaluating Legislative and Regulatory Proposals on 501(c)(4) Electoral Campaign Activity." Independent Sector. December 2012.
http://www.independentsector.org/principles_501c4_electoral_campaign_activity#sthash.7r3Npbkj.dpbs

Colcom Foundation
Colorado Nonprofit Association
Colorado Participation Project
Connecticut Association of Nonprofits
Connecticut Nonprofit Human Services Cabinet
Cultural Alliance of Fairfield County
The Damon and Stella Foundation for Mental Health
Dance/USA
Dayton NAACP Youth Council
Demos
Donors Forum
Ecology Project International
Emerging Practitioners in Philanthropy (EPIP)
Environmental Working Group
Epilepsy Foundation
EWG Action Fund
The Fordham Center for Nonprofit Leaders
Freshwater Future
General Service Foundation
Georgia Center for Nonprofits
The Global Fund for Women
Golden Gate National Parks Conservancy
Goodwill Industries International, Inc.
Goodwill Industries of Greater Detroit
Goodwill Industries of South Central California
Goodwill Industries of the Valleys
Goodwill SOLAC
Grantmakers Forum of New York
Grassroots International
Greater Philadelphia Cultural Alliance
Greenwalt CPAs
Habitat for Humanity International
Health Care Foundation of Greater Kansas City
The Health Trust
The Henry Ford
IMA World Health
Imo People Development Foundation
InterAction
Janis Brewer Consulting
jdcPartnerships
Jewish Family Service of Los Angeles
LeadingAge
League of American Orchestras
The Lutheran Home Association
Lutheran Services in America
McAlpine Consulting for Growth
Me Sudah Ummah Art & Cultural Organization
Michigan Nonprofit Association
The Milligan Foundation

The Minneapolis Foundation
Minnesota Council of Nonprofits
NARAL Pro-Choice Missouri
National Health Council
National Wildlife Federation
NEO Law Group
NETWORK, A National Catholic Social Justice Lobby
New Advances for People with Disabilities
Nonprofit Association of Oregon
Nonprofit VOTE
Nuclear Information and Resource Service
The Oasis Network For Churches
Ohaha Family Foundation
The ONE Campaign
OPERA America
The P.M. Brady Company, Inc.
Parkinson's Action Network
Peace and Justice Action League of Spokane
The People's Law Firm, Inc.
Performing Arts Alliance
The Portland Foundation (IN)
Progressive Secretary, Inc.
Public Allies
Real Change
Restoration Society Foundation, Inc.
Rochester Area Foundation
Save the Children USA
South Carolina Association of Nonprofit Organizations
The Springfield Institute
The Stanley Foundation
Statewide Poverty Action Network
Tacoma Pierce County Affordable Housing Consortium
Tides
Transitions
Unite 2 Fight Paralysis
United Negro College Fund (UNCF)
Vahu Development Institute - Community Development and Civic Empowerment Program at the Chiang Mai University
The Viscardi Center
Washington Community Action Network
Washington Nonprofits
World Food Program USA
YMCA of Greater Seattle
YMCA of the USA