

MAY 28, 2014

## IRS Postpones Summer Hearings on Political Rules, Will Do Second Draft

On May 22, 2014, the IRS [announced](#) that “it is likely that we will make some changes” to the heavily-criticized regulation proposed last November by Treasury and the Service to govern 501(c)(4) political activity. The announcement continued: “Given the diversity of views expressed and the volume of substantive input, we have concluded that it would be more efficient and useful to hold a public hearing after we publish the revised proposed regulation. Treasury and the IRS remain committed to providing updated standards for tax-exemption that are fair, clear, and easier to administer.”

This appears to mean that hearings will not be held this summer. Further, we can assume that the publication of a revised regulation will trigger another period for the receipt of written public comments before such hearings occur.

My reaction?

Obviously, the IRS and Treasury need to identify safe harbors for nonpartisan voter engagement and voter education, including registration, GOTV, debates, and voter guides, in view of all the public concerns expressed that these were classified in the first draft of regs as political even if the programs were perfectly neutral. Also, the provision should be softened that treats any mention of a candidate’s name as political if it occurs (or is present on the organization’s website) within 30 days before a primary or 60 days before a general election.

Perhaps less obviously, Treasury and the IRS must revisit the question of where to draw the line on communications outside of the 30- and 60-day periods prior to elections. Will it hold to its first draft and regard as political only those messages that expressly advocate election or defeat of a candidate, as some have argued? If so, the integrity of the nonprofit sector will go down the drain as undisclosed money pours into tax-exempt organizations to pay for so-called “issue ads” that bash or praise candidates and suggest that people “lobby” them on their positions. We need a rule that legitimizes genuine grass roots lobbying, but states a general rule that captures and examines all paid mass media communications that reflect a view on a candidate any time during the election year.

The [Bright Lines Project \(BLP\)](#) has stepped forward with an alternative set of clear, predictable, universal rules to define political campaign activity—developed over four years before the IRS scandal broke. The BLP “Six Rules” were recently elaborated in a thorough [Explanation](#). I serve as the chair of the BLP Drafting Committee, and we are committed to “see the thing done” (movie reference: *True Grit*).

The biggest questions are:

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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(1) Will the IRS and Treasury realize that it was unfair and unworkable to define political intervention only for 501(c)(4) social welfare groups, and now move to propose rules that apply to *all* 501(c) categories, including charities, unions, and business associations?

(2) Will the government state “how much is too much” and set a clear percentage limit, at 40% or lower, for the annual political expenditures of non-charitable 501(c) organizations?

If the new regulations don’t address these two issues, the long nightmare of confusion that has plagued the IRS’s enforcement of the political rules, inserted by Congress in the tax code, will never come to an end.