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Just Released Proposed 501(c)(4) Regulations: A Good Start, But Rough . . .

The U.S. Treasury Department and Internal Revenue Service released [proposed regulations](#) purporting to address the recent controversy over political activity conducted by and through organizations exempt under Section 501(c)(4) of the Internal Revenue Code, which are not required to disclose their donors publicly. We'll have more to say soon, but after an initial quick reading, we think they reflect a well-intentioned, though seriously flawed, attempt to bring much-needed clarity to the definition of political activities that Section 501(c)(4) organizations can conduct.

The proposed regs establish some clear definitions, but if adopted as proposed, they would dramatically (but not necessarily beneficially) change what constitutes partisan political activity under the Tax Code for 501(c)(4) social welfare organizations. They would catch within their sweep activities that until now have never been considered by the IRS to be absolute forms of political intervention, like nonpartisan voter registration drives, educational voter guides, and grass-roots lobbying of officeholders near the time they may be running for re-election. And they might even chill some speech that could be Constitutionally protected.

A more comprehensive, nuanced approach to reducing the influence of dark money on political campaigns and encouraging civic participation has been put forth by the [Bright Lines Project](#) (in which my partners Greg Colvin and Rosemary Fei are key players).

It remains to be seen whether the IRS will build on this first attempt by embracing improvements that will surely be suggested by commentators around the country. If the IRS receives a healthy dose of public input and considers how fair and objective standards can be universally applied to political activity for all tax-exempt and taxable organizations, we can hope that the issuance of new proposed regulations represents a step forward.

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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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