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Top 25 Comments on IRS Proposed Political Activity Rules: #13 — Center for Competitive Politics

“A rule should respect Supreme Court precedent, comport with the Internal Revenue Code, provide clear guidance, be simple to understand and implement, and provide for equitable enforcement.”

The [Center for Competitive Politics](#) submitted thorough comments that address multiple constitutional concerns, and include their very own proposed rules for consideration by the IRS. CCP’s rules outline clear-cut expenditure limits for 501(c)(4)s, providing that non-social welfare activities (including candidate, social club, or business activities) must not “equal or exceed 50% of total [program service expenses](#).”

CCP’s guiding standard in these comments is [Buckley v. Valeo](#), the 1976 Supreme Court case that interpreted the validity of campaign expenditure limits under the Federal Election Campaign Act, among other things. The Court in [Buckley](#) narrowly defined political expenditures as funds spent to disseminate a viewpoint by “expressly calling for a candidate’s election or defeat” using specific word combinations — what is now commonly referred to as “express advocacy.” CCP’s proposed rules similarly define political activity as expenditures for communications using express advocacy.

However, the CCP’s comments fail to take full account of [Regan v. Taxation with Representation](#), or [Branch Ministries v. Rossotti](#), federal court decisions which contain lower constitutional standards of review for legislation that determines which activities will and will not be subsidized by tax-exemption. Thus, IRS regulations could properly go beyond express advocacy and limit political speech by tax-exempt organizations that favors or disfavors candidates.

In fact, the reality of modern campaign advertising is that very few messages aimed at voters and designed to shape the candidate’s image use words of express advocacy. A 2000 [Brennan Center study on television campaign advertising](#) tellingly documented the absence of express advocacy in campaign messages. Of all the major categories of campaign ads, according to that study, none employed terms of express advocacy like “vote for” or “elect” with any frequency. Only 2% of campaign ads in the 2000 federal elections sponsored by party committees and outside groups used terms of express advocacy. Even candidates themselves rarely employed express advocacy, using such terms in only 10% of their ads.

Thus, drawing the line at express advocacy ultimately may not be much of a “line” at all.

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