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Top 25 Comments on IRS Proposed Political Activity Rules: #15 — FEC Commissioners

We take this opportunity to combine two very different comments, both from members of the Federal Election Commission.

Three (Republican) FEC Commissioners

“In our experience, both as FEC Commissioners and in our previous roles as counsel to participants in the political process, we cannot emphasize enough the need to comply with the congressional call for ‘expert, uniform enforcement’ of laws regulating federal campaign finance.”

FEC Chairman Lee E. Goodman, Commissioner Caroline C. Hunter, and Commissioner Matthew S. Peterson submitted joint comments that urge the IRS to harmonize its policies and definitions with respect to candidate-related political activity with FEC policies, definitions, and agency precedent. The Commissioners point out that the Federal Election Campaign Act requires the FEC and IRS to “consult and work together to promulgate rules, regulations, and forms which are mutually consistent.”

Two (Democratic) FEC Commissioners

“The proposed rules outlined in the NPRM contain only limited cross-references to the FEC’s regulations, leaving most important determinations in the hands of the IRS. This is a reasonable approach. We encourage the IRS to pursue clear guidance that represents the best of its independent judgment.”

Vice Chair Ann M. Ravel and Commissioner Ellen L. Weintraub submitted comments which do “not reach the specifics of the proposed rules,” but rather make “two general points based on [their] perspective as FEC Commissioners.” First, they urge the IRS to consider the important public interest in disclosure of candidate-related political spending, quoting Justice Antonin Scalia: “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.”

Their second point differs distinctly from the position taken by three of their Republican co-Commissioners. Commissioners Ravel and Weintraub state that “the IRS should not feel obligated to defer to the FEC in determining how to apply section 501(c)(4)’s ‘primary purpose’ test or in determining what constitutes ‘political activity.’” The Commissioners otherwise applaud the IRS — like many other commenters — for attempting to provide clarity to an otherwise ambiguous regime.

Any Shared Sentiments?

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As noted, the two groups of Commissioners come out diametrically opposed on the necessary level of IRS deference to FEC definitions. Still, they do share some similarities. For example, the Commissioners view the rules through an exclusively federal lens, neglecting to address their impact at the non-federal level. The IRS, however, will need to make rules that work effectively at the state and local levels, as well as at the federal level. One should not presume that every aspect of the federal regime would be welcome or workable in the thousands of non-federal elections held across the country in which tax-exempt organizations may be engaged.