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Top 25 Comments on IRS Proposed Political Activity Rules: #19 — National Rifle Association

“This ‘keep-’em-guessing’ facts-and-circumstance test is intolerable and must be replaced. ... Particularly with respect to tax laws that affect First Amendment rights, a system that has clear, comprehensible lines is essential.”

As a threshold matter, the NRA notes in its [comments](#) that its ongoing compliance with the tax law has been extraordinarily expensive and time-consuming, in large part because so many of the IRS regulations governing social welfare organizations are “vague and confusing.” The group then praises the IRS for striving to establish more consistent regulations in this arena. The first half of the NRA’s comments are devoted to the argument that the current revenue rules on political activity and 501(c)(4) entities ([Rev. Rul. 2004-6](#) and [Rev. Rul. 2007-41](#)) are unconstitutionally overbroad and vague: “The vagueness doctrine requires that the legislative body or agency promulgating rules draw bright lines so that the people being regulated know what they can and cannot do.”

We note in particular that the comments bring attention to an interesting detail regarding “earmarking,” deploring the requirement that contributions to 501(c)(4) organizations must both explicitly prohibit candidate-related political activity, *and* obtain a written representation from the donee regarding this prohibition. The NRA notes that this requirement is inconsistent with all other earmarking provisions in the Internal Revenue Code.

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AUTHOR

**A&C Alumni**

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EDITORS

**Stephanie L. Petit**
Principal**Eric K. Gorovitz**
Principal