



N.C. Center for Nonprofits

February 20, 2014

Ms. Amy F. Giuliano
Office of the Associate Chief Counsel (Tax Exempt and Government Entities)
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

RE: Comments on Proposed Guidance for Tax-Exempt Social Welfare Organizations on
Political Activities

Dear Ms. Giuliano:

Thank you for the providing the opportunity to offer comments in response to the notice of proposed rulemaking establishing a definition of political activity for 501(c)(4) social welfare organizations. The N.C. Center *for* Nonprofits is providing comments on the potential impact of the proposed rulemaking on 501(c)(3) nonprofits in North Carolina.

We agree that it is important to create greater clarity about what types of political activity are permissible for all 501(c) organizations so that tax-exempt nonprofits are not co-opted by partisan political operatives. We appreciate this initial attempt by the Internal Revenue Service (IRS) and the Treasury Department to develop guidance on this important issue. However, we are concerned that the proposed definition of “candidate-related political activity” is too broad. We are also concerned that establishing rules for political activity that only apply to 501(c)(4)s and not to other 501(c) organizations will confuse the public and diminish legitimate nonpartisan civic engagement by 501(c)(3) public charities.

About the N.C. Center *for* Nonprofits

The N.C. Center *for* Nonprofits is a 501(c)(3) public charity that was founded in 1990 to enrich North Carolina's communities and economy through a strong nonprofit sector and nonprofit voice. Today, it serves as an information center on effective practices in nonprofit organizations, a statewide network for nonprofit board and staff members, and an advocate for the nonprofit sector as a whole. The Center has nearly 1,600 member nonprofits – all of which are 501(c)(3) organizations – that serve all 100 counties of North Carolina.

Since its founding, the Center has helped get nonprofits involved in nonpartisan civic engagement including voter registration, voter education, and get-out-the-vote activities. For the last five years, the Center has been a partner of Nonprofit VOTE, a national project that provides resources to nonprofits so they can help the people they serve participate in the democratic process and vote.

Potential Impact of Proposed Rulemaking on 501(c)(3)s in North Carolina

Although the proposed rulemaking, as drafted, would only define nonpartisan political activity for 501(c)(4) social welfare organizations, it is likely to cause substantial confusion among 501(c)(3) nonprofits, potential funders, and the public about the nature of nonpartisan voter registration, voter education, and get-out-the-vote activities and grassroots lobbying by charitable organizations. This would greatly restrict the nonpartisan civic engagement work of 501(c)(3) public charities.

As a result, the Center recommends that:

1. Any final rule should create a single definition of political activity that applies to all 501(c)s, not just to 501(c)(4)s;
2. This definition should expressly exclude *nonpartisan* voter registration, voter education, and get-out-the-vote activities and *nonpartisan* grassroots lobbying activities that mention policymakers by name during the period shortly before an election;
3. To the extent that the final rules retain the definition of “candidate-related political activity” from the proposed rulemaking, contributions to 501(c)(3) organizations should not be included in the definition of “candidate-related political activity.”

Single Definition of Political Activity for all 501(c) Organizations

A definition of political activities that applies to all tax-exempt organizations would provide clarity to 501(c)(3) nonprofits about the types of nonpartisan civic engagement that is permissible for them and would avoid the confusion and burden caused by multiple definitions. It also would eliminate incentives for partisan political operatives to game the system of tax-exemption by funneling anonymous money through 501(c)(5) labor unions, 501(c)(6) trade associations, or other types of 501(c) organizations instead of 501(c)(4)s.

According to December 2012 data from the National Center for Charitable Statistics at the Urban Institute, 76% of tax-exempt nonprofits in North Carolina are 501(c)(3) organizations, while only 6% are 501(c)(4) social welfare organizations. An additional 6% are either 501(c)(5) labor unions or 501(c)(6) trade associations. This means that more than three-fourths of North Carolina nonprofits are prohibited from engaging in any partisan political activity. This ban on electioneering is appropriate, since it maintains the public trust in 501(c)(3) public charities. Unfortunately, an increasing number of media stories about “political nonprofits” has created a misperception among nonprofits, funders, policymakers, and the general public that charitable nonprofits can be partisan.

Nonpartisan Civic Engagement Should Not Be Categorized as Political Activity

A clear definition of political activity for all tax-exempt nonprofits is essential. However, the proposed definition of “candidate-related political activity” is overbroad, treating as political a variety of activities that 501(c)(3) public charities and other tax-exempt 501(c) organizations typically conduct in a nonpartisan way.

Our experience is that many 501(c)(3) nonprofits are already hesitant to engage in nonpartisan civic engagement. A separate, broader definition of political activity for 501(c)(4)

social welfare organizations will confuse 501(c)(3)s and discourage even more of them from engaging in legal, nonpartisan voter registration, voter education, and get-out-the-vote activities. This would be harmful, since many communities in North Carolina rely on 501(c)(3) nonprofits like community health centers, churches, and senior centers to help with nonpartisan voter registration and because nonprofits have proven so effective at this. Research from Nonprofit VOTE found that 81% of North Carolinians who were contacted by 501(c)(3) nonprofits encouraging them to register and vote actually participated in the 2012 election, much higher than the 69% overall turnout rate in North Carolina.

Those 501(c)(3) organizations sophisticated enough to understand that nonpartisan civic engagement would still be permissible despite the broad definition of political activity for 501(c)(4)s may find it harder to obtain funding for these legitimate and important activities. It is quite likely that many risk-averse private foundations would stop funding nonpartisan civic engagement work if a regulation were adopted defining such work as political for 501(c)(4)s.

The Center urges the IRS to provide clear guidance that *nonpartisan* civic engagement activities are permissible for all 501(c)s, including 501(c)(3)s. It would be helpful to include a safe harbor that excludes specific nonpartisan civic engagement activities that are *per se* nonpartisan. Existing IRS guidance, particularly Revenue Ruling 2007-41, provides examples of nonpartisan activities that should be included in this safe harbor. Specifically, the following types of nonpartisan civic engagement should be excluded from any definition of political activity:

- Nonpartisan voter registration and get-out-the-vote efforts that are conducted independently from political campaigns, political parties, and other political organizations;
- Nonpartisan candidate forums and debates, even if they are conducted within 30 days of a primary or 60 days of a general election;
- Nonpartisan voter guides; and
- Grassroots lobbying communications that mention policymakers who are also candidates for office, even if they are conducted within 30 days of a primary or 60 days of a general election.

It would also be helpful for the regulations to address situations that do not fall within this safe harbor for *per se* nonpartisan activity but which may be deemed nonpartisan under a facts and circumstances test. Existing IRS guidance, including Revenue Ruling 2007-41, could also serve as a useful starting point for developing this facts and circumstances test.

This clearer definition of *per se* nonpartisan activity would encourage more 501(c)(3) public charities to engage in nonpartisan civic engagement activities, which would benefit communities throughout North Carolina.

Contributions from 501(c)(4) Organizations to 501(c)(3) Public Charities Should Not Be Characterized as Political Activity

To the extent that the IRSs adopt final regulations consistent with those in the proposed rulemaking, the Center recommends that contributions made to a 501(c)(3) nonprofit be specifically excluded from the definition of “candidate-related political activity.” Partisan political intervention is already impermissible for 501(c)(3) organizations, so 501(c)(3)s should

not be required to affirmatively provide in writing that they do not engage in candidate-related political activity. Without this exclusion, it is possible that members of the public and potential donors may be confused about whether 501(c)(3)s are engaged in impermissible partisan political intervention if they receive contributions from 501(c)(4)s that are deemed candidate-related political activity because they have failed to provide adequate written notice to the donor 501(c)(4).

Conclusion

The Center recognizes the importance of having a clear definition of political activity for 501(c)(4) social welfare organizations. However, we ask the IRS and the Treasury Department to rewrite these proposed rules to create a single, clearer definition of political activity for all 501(c) organizations that will provide assurance to 501(c)(3) public charities that their nonpartisan civic engagement and grassroots lobbying are legal, non-political activities.

Sincerely,



Jane Kendall
President



David Heinen
Director of Public Policy and Advocacy