



February 20, 2014
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Ms. Amy F. Giuliano
Office of the Associate Chief Counsel
(Tax Exempt & Government Entities)
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044
sent electronically via the Federal eRulemaking

Re: (IRS REG-134417-13)

Dear Ms. Giuliano,

I write to comment on proposed rulemaking known as IRS REG-134417-13. I encourage the IRS to continue to work to clarify exactly what counts for tax purposes as “candidate-related political activity.” I write to share my expertise on campaign finance law.

The use of nonprofits organized under IRC 501(c)(4) to hide the true sources of campaign finance spending has been a growing phenomenon, which many members of the press have dubbed “dark money.” This is a problem that pre-dates the Supreme Court’s 2010 decision *Citizens United v. FEC*. The Campaign Finance Institute noted that 501(c)s spent \$60 million in 2004 and \$196 million in 2008.

After *Citizens United*, the amount of unattributed “dark money” in federal elections has skyrocketed to at least \$135 million in the midterm election of 2010 and over \$300 million in 2012. This is troubling in part because the Supreme Court in *Citizens United* upheld the constitutionality of disclosure of the sources of political advertising.

¹ Institutional affiliation is provided for identification purposes only. This statement reflects the views of the author and not Stetson University College of Law.



If you would like more background on the constitutionality of disclosure of the sources of political spending, please review these two law review articles: Ciara Torres-Spelliscy, *Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics After Citizens United and Doe v. Reed*, 27 GA. ST. U. L. REV. 1057 (Summer 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878727; and Ciara Torres-Spelliscy, *Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws*, 16 NEXUS: CHAP. J. L. & POL'Y 59 (2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1833484.

The Rules as drafted are at once too broad and too narrow. They are too broad because as currently drafted they would cover nonpartisan get out the vote (GOTV) activities. These should be excluded from the final rule. Nonpartisan GOTV has traditionally been carved out of the definitions of political contributions or expenditures. Thus it would be odd for the IRS to sweep in this neutral pro-democratic activity into rules that are geared towards capturing partisan political activities.

On the other hand, the rule is also too narrow in the following respects: (1) the rule should apply to 501(c)(6)s as well as 501(c)(4)s; (2) if you are covering state and local elections—as you should—then the 30 days before a primary and 60 days before a general election time frames will not match the state and local definitions of ads that are typically defined as “electioneering communications” across the nation. Some states have different time frames. I suggest that the IRS cover those political ads that are defined by federal, state and local laws as triggering campaign finance disclosure, so that you avoid the oddity of spending being considered political for state reporting purposes, but not for IRS reporting purposes (or vice versa).

Sincerely,
/s/Ciara Torres-Spelliscy
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