



November 15, 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

SENT VIA FEDERAL E-RULEMAKING PORTAL

RE: PROPOSED GUIDANCE FOR TAX-EXEMPT SOCIAL WELFARE
ORGANIZATIONS ON CANDIDATE-RELATED POLITICAL ACTIVITIES

Dear Ms. Giuliano:

We know that your team has been working steadily on a revised set of regulations to define political intervention for 501(c)(4) social welfare groups, and, as seems likely from the Commissioner's recent remarks, for all tax-exempt organizations. So have we at the Bright Lines Project.

We believe that so long as Congress has chosen to treat partisan and nonpartisan activities differently under the Internal Revenue Code (IRC), it is essential for the IRS to provide clear, predictable guidance so that people can engage in the civic affairs of their towns, cities, counties, states, and nation with confidence that the IRS will be fair in the enforcement of federal tax law. We think this is important to citizens of all political persuasions, and we found from surveys of public opinion recently sponsored by the Bright Lines Project that the person in the street – regardless of party affiliation – agrees and supports what you are doing.

We have endeavored, in the attached draft regulations, to take a creative approach, making a complex subject simpler and easier to follow. The first four pages contain the heart of the matter, a succinct operational tool for dissecting cases of potential political intervention, followed by a "glossary"—a dozen pages of definitions.

Page 1 begins with statutory references to IRC sections 501, 162, 4945, 4955, and 271 to set the scope to which the definition of political intervention would apply, followed by three basic steps to determine whether an activity is political intervention: (i) Is it *per se* intervention? (ii) Is it within a safe harbor? (iii) If neither, is it intervention under a facts and circumstances analysis? Our hope is that the cases requiring a facts and circumstances examination will be vastly reduced by this sorting process.

By the way, we do not include a reference to IRC section 527 because it is incongruent with the rest of the Code. As we previously said in the May 2014 Explanation that the Bright Lines Project submitted to you, Congress should first amend section 527--then it can be brought into the coherent regulatory pattern the IRS is designing.

Page 2 lists all the forms of *per se* intervention (9 total), including three types of “explicit advocacy.” We suggest this term rather than “express advocacy” so that federal tax law might hew to a single standard nationwide rather than be at the mercy of varying and shifting interpretations under federal election law and the campaign finance laws of the fifty states.

Page 3 lists all the safe harbors (11 total) we propose to protect grass roots lobbying, voter education and engagement, and other types of nonpartisan speech as well as the proper use and transfer of organizational resources to others.

Pages 4-16 present a series of definitions (28 total) arranged alphabetically, with some subsidiary terms defined within others.

Please note, the first time a defined term appears within the forms of *per se* intervention or within the safe harbors, it is highlighted in yellow.

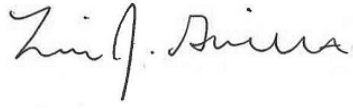
By simplifying our analysis and off-loading most details to the definitions, we have isolated the building blocks that are needed to construct a fully effective set of political activity regulations. This is designed to promote a robust public conversation about the scope and phrasing of the definitions, and whether the identified *per se* intervention and safe harbor activities should be increased or decreased. It’s a framework everybody can use.

This is our initial draft of regulations to define political intervention comprehensively under the Code. The content will continue to be under discussion among us on the Bright Lines Project Drafting Committee until the public comment period ultimately closes, and we may submit later versions. For now, the majority of the Committee, and Public Citizen, believe that this draft merits your consideration by briefly stating a method for judging cases of potential political intervention, accompanied by definitions that can capture more or less activity, depending on how one wants to draw lines that encourage free speech while discouraging tax abuse.

Very truly yours,



Gregory L. Colvin
Chair, Drafting Committee of the Bright Lines Project

A handwritten signature in black ink, appearing to read "Lisa Gilbert". The signature is fluid and cursive, with the first name "Lisa" and last name "Gilbert" clearly distinguishable.

Lisa Gilbert
Director, Congress Watch and Bright Lines Project, Public Citizen

With contributions from: Gary Bass, Eve Borenstein, Terence Dougherty, Rosemary Fei, Craig Holman, Jim Joseph, Beth Kingsley, Scott Nelson, Emily Peterson-Cassin, John Pomeranz, Ezra Reese, and Barbara Rhomberg

BRIGHT LINES PROJECT

Proposed Regulations

Draft November 15, 2014

§1.501(a)-2 Political Intervention.

(a) Statutory references. If and only if an **organization** engages in political intervention as described in subsection (b) of this section, such **activity** shall constitute--

(1) For all purposes under section 501, participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(2) For all purposes under section 162, participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) Under section 4945, influencing the outcome of any specific public election;

(4) Under section 4955, participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; and

(5) Under section 271, influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(b) Determinations of political intervention--(1) In general. If an organization--

(i) Conducts an activity described in this section as **per se intervention**, it shall be determined to be engaged in political intervention;

(ii) Conducts an activity described in this section as within a **safe harbor**, it shall not be determined to be engaged in political intervention; or

(iii) Conducts an activity not described in this section as *per se* intervention nor as within a safe harbor, it shall be determined to be engaged in political intervention only upon a **facts and circumstances analysis** described in this section.

Only objective manifestations of political intervention in the conduct of the activity described in this section are considered; evidence of the organization's intent or motive is not relevant to the determination.

(2) **Per se intervention.** The following activities are *per se* intervention, as further described in the definitions set forth in subsection (c):

(i) **Communications**, made at any time or place and in any manner, that **explicitly advocate** that recipients take one or more of the following actions:

(A) With respect to one or more **clearly identified candidates**, or groups of candidates identified by political party affiliation or otherwise--

(1) Vote for, vote against, elect, defeat, support, or oppose such candidates(s); or

(2) Make contributions to elect, defeat, support, or oppose such candidate(s), in the form of contributions to candidates, to political parties, to political committees, or to any organization having the primary purpose of political intervention; or

(B) Select a candidate or group of candidates to support or oppose based on one or more criteria that clearly distinguish certain candidates from other candidates, including but not limited to positions on certain issues, past actions, expected future actions, or characteristics such as gender, age, race, or religion, or any other criterion or qualification stated in the communication.

(ii) Communications that refer to and **reflect a view** on one or more clearly identified candidates, groups of candidates, or political parties that are delivered by **paid mass media advertising** and contain an **election reference**.

(iii) Communications that refer to and reflect a view on one or more clearly identified candidates, groups of candidates, or political parties that do not come within a safe harbor, and are **targeted to close contests** within the candidate's **election year**.

(iv) **Voter engagement** communications that refer to and reflect a view on one or more clearly identified candidates, groups of candidates, or political parties (unless such view is contained in **comparative voter education** materials), or that are targeted based on the voter's expressed candidate or party preference.

(v) Providing an organization's **resources** by transfer to another, if the transferee uses such resources for political intervention, if such use was reasonably foreseeable, and if the transferor did not take **reasonable steps** to prevent such use, except for **ordinary business transactions** and **affiliate transactions**.

(vi) **Reportable contributions**.

(vii) **Dual function** communications.

(3) Safe harbors. The following activities are within safe harbors, as further described in the definitions set forth in subsection (c):

(i) Communications that do not refer to and reflect a view on one or more candidates and contain no voter engagement communication.

(ii) Communications that refer to and reflect a view on one or more candidates, not consisting of paid mass media advertising, solely to--

(A) Influence official action, with no election reference;

(B) Provide comparative voter education;

(C) Engage in self-defense; or

(D) Make personal oral remarks at a meeting.

(iii) Communications that refer to and reflect a view on one or more candidates, not consisting of paid mass media advertising, with no election reference, made prior to the candidate's election year.

(iv) Voter engagement communications--

(A) That are untargeted, targeted to the organization's natural constituency, or targeted to under-represented voters; and

(B) In which any references to specific candidate elections or to wedge issues do not indicate any preference for a candidate, political party, or issue outcome, and if any view is reflected on a candidate, it is solely in the context of comparative voter education that is not distributed by paid mass media advertising, except for postal mailings.

(v) A use of resources that does not consist of political intervention, directly or indirectly, by the organization itself or by another to whom an organization's resources are provided.

(vi) A use of resources in an ordinary business transaction.

(vii) A use of resources in an affiliate transaction.

(viii) Activities that are within previously established safe harbors.

(4) Facts and circumstances analysis--(i) In general. A “facts and circumstances analysis” is used to determine whether an activity is or is not political intervention in cases of activities that are neither *per se* intervention nor within a safe harbor. The burden of proof is on the organization to show that the activity (i) directly furthered an exempt purpose or a proper business or investment purpose of the organization and (ii) was unrelated to supporting or opposing one or more candidates. All relevant facts and circumstances may be considered, including but not limited to the timing, scope, and impact of the activity; the full content, any disclaimers or disclosures, audience selection, and method of distribution of any communications; the events leading up to the activity; the context or environment in which the activity occurs; the relationship of the activity to the organization’s ongoing programs, projects, and operations; the impartiality of the organization’s methods; and any steps taken to limit, correct, or curtail the activity. However, evidence of the organization’s intent, motive, or desire to intervene or not to intervene is irrelevant to the analysis.

(ii) Burden of proof. In a facts and circumstances analysis, the organization bears the burden of proof to demonstrate more probably than not that an activity furthered a proper exempt or business purpose, and was unrelated to political intervention. In such cases, no presumption that the activity constitutes political intervention shall arise from the fact that the activity is not within a safe harbor described in this section.

(c) Definitions. For the purposes of this section--

(1) Activity. An “activity” means a communication attributed to an organization or a use of its resources permitted by an organization.

(2) Attributed. A communication is “attributed” to an organization if it is made by its directors or trustees, officers, employees, volunteers or agents acting in its name or on its behalf. Principles of agency under the common or civil law in the jurisdiction applicable to the organization shall determine whether a communication made by another is made on behalf of an organization. In some situations under this section, a disclaimer of intervention may be required or may be effective to prevent an individual’s communication from being attributed to an organization. Communications by others that the organization knowingly permits to occur on its premises, in its publications, at its official functions, on its website or on other physical or electronic locations it controls, shall also be attributed to an organization unless contained within a defined space and time or portion of a larger communication that utilizes an insubstantial part of the organization’s resources, is identified as set aside for individuals within the organization’s natural constituency to express their personal views, and is accompanied by a disclaimer of intervention.

(3) Candidate--(i) In general. A “candidate” is a person who offers himself or herself as a candidate for election to public office. A person is not a candidate merely because there is public speculation that the person will seek election to public office, because the person is expected by the organization to seek election or re-election, or because the person is proposed by others to be a candidate. A person becomes a candidate when he or she either publicly states an intention to seek election to public office, or takes affirmative public steps to launch a candidacy, such as forming or maintaining a campaign committee to accept contributions or seeking endorsements.

(ii) Candidates proposed or opposed by the organization. With respect to an organization, the term “candidate” also includes a person whose candidacy for elective public office is expressly proposed, encouraged, supported, discouraged, or opposed in a communication made by that organization.

(iii) Recall elections. In the case of a recall election, a public official becomes a candidate when petitions begin to circulate to recall the public official (or, with respect to an organization, when a communication made by the organization expressly proposes, encourages, supports, discourages, or opposes the recall of the public official).

(4) Candidate pledge. A communication reflects a view on candidates if it contains the results of a “candidate pledge” solicitation, which is a request by an organization made to one or more candidates, asking the candidate to pledge his or her support or opposition, to sign or endorse, or to otherwise take a stand or make a commitment in favor of a position suggested by

the organization, if the organization publicizes or otherwise causes the candidates' responses or failures to respond to be communicated to others. However, if all candidates for a specific public office make substantially identical responses, a communication containing the responses does not reflect a view on the candidates.

(5) Clearly identified. A candidate is “clearly identified” if a communication refers to the candidate by name or title, or includes the candidate’s voice or image, or uses nicknames or epithets publicly associated with the candidate, or uses any other description or image that, in context, would be understood as a reference to a particular candidate by a reasonably informed reader, viewer or listener. A group of candidates is “clearly identified” if a communication clearly identifies each of the candidates, or if the communication refers to a group of candidates by party, political, ideological, or issue affiliation, or by characteristics such as gender, race, ethnicity, religion, or occupation, or otherwise uses a descriptive term from which a reasonable reader, viewer or listener would be able to distinguish those candidates included within the reference from those who are not.

(6) Communication. The term “communication” means any oral, written, or visual communication to the public, to the organization’s natural constituency, or to any segment of either. A “communication” includes, without limitation, brochures, newsletters, or other printed material of any length; letters; emails and messages distributed through social networking media or other electronic communications services; website content; content delivered on broadcast media or by film, video, or other recordings; billboards, signs, posters, or other visual displays; and speeches or oral communications, delivered in person, by telephone or by other means. All material presented to the reader, viewer, or listener at the same time and in the same manner constitutes the same communication. The content of the communication includes not only the material appearing within the communication itself, but also that material immediately presented to the reader, viewer, or listener upon taking any single action that is encouraged by the organization in the communication, at the time the single action is first encouraged by the organization and for 30 days thereafter.

(7) Comparative voter education--(i) In general. The term “comparative voter education” means a communication that provides information about the candidates to prospective voters using an even-handed process in the selection and presentation of content. Such communications may compare the candidates for an office on issues of importance to the organization or to the electorate in general, and may include the organizations’ views on such issues in addition to the candidates’ views, provided that the organization’s share of the content is no greater the share provided to any of the candidates. Comparative voter education may include, without limitation, preparing, disseminating, and publicizing the results of candidate questionnaires, sponsoring candidate debates or forums, preparing questions to be asked of all candidates at public appearances or debates, and compiling and disseminating statements made to the public by candidates about campaign issues, so long as an equal opportunity to participate

is provided to candidates. Comparative voter education may also consist of preparing and distributing objective campaign data.

(ii) Equal opportunity to participate. An “equal opportunity to participate” in comparative voter education means that all candidates seeking the same public office (or all who meet an objective threshold of viability) shall be offered the same process for participation; all such candidates shall be offered equal time at any debate, public forum, or series of public forums, or in any audio or video recording, and an equal amount of space or text in written materials. If participation by a candidate requires an appearance, a written or oral response, or other action by the candidate, then all such candidates must be provided with a full description of the planned comparative voter education communication, a copy of any content describing the organization’s views that will be presented in the materials or at the event, and the requirements (including any deadlines) for the candidate’s participation. Such information must be provided to the candidates with reasonable advance notice before any deadline for a candidate’s participation and before the date and time scheduled for the event or appearance. The amount of advance notice that is reasonable will depend on all of the facts and circumstances, but in no event will notice of less than 72 hours for a written response, or less than one week for a personal appearance, be considered reasonable. If the final comparative voter education communication is reduced or altered from the full description provided to the candidates, the change must not be favorable or unfavorable toward any candidate.

(iii) Materials compiled by the organization independently. If the comparative voter education communication is compiled from public statements of the candidates, or from public records, or from polling or other data or information gathered without participation of the candidates, the communication must provide equivalent information using the same methodology for all candidates seeking the same public office (or for all who meet an objective threshold of viability), and must devote approximately equal time, text, or space to each such candidate taking into account variations in the amount of publicly available data. In such cases, the organization must present the materials gathered about each candidate to that candidate, and give each candidate an equal opportunity to participate in the preparation of the communication by providing reasonable corrections or explanations pertaining to such materials for inclusion in the final communication. However, if the comparative voter education communication consists solely of objective campaign data, the organization is not required to comply with the immediately preceding sentence.

(iv) Objective campaign data. The term “objective campaign data” means only the conduct and presentation of the results of scientific surveys of public opinion, including voters’ candidate preferences prior to elections, and the reporting of data from public campaign finance disclosure records, so long as the communication contains no element of opinion indicating that the organization has a preference for or against the election of any candidate.

(v) Lack of participation by candidates. Provided that all candidates (or all who meet an objective threshold of viability) have been given an equal opportunity to participate, the communication will still qualify as comparative voter education even if some candidates do not appear at debates or forums, or respond to questionnaires, or otherwise take action that is required to participate in the activity. However, at least two candidates must participate to qualify as a comparative voter education communication, even if there is only one viable candidate for election to the office.

(vi) Objective threshold of viability. The term “objective threshold of viability” means a percentage or other minimum standard of support in a scientific survey of public opinion on voters’ candidate preferences, for the purpose of selecting two or more leading candidates seeking the same public office to be featured in a comparative voter education communication that does not include all candidates seeking that office.

(8) Disclaimer of intervention. A “disclaimer of intervention” is a prominent oral or written statement made in connection with an individual’s remarks about one or more candidates, stating that such remarks are his or her personal opinion only. The individual’s title or affiliation with a specific organization may be disclosed in connection with such remarks, but only within a disclaimer prominently stating that his or her title or affiliation is provided for identification purposes only and that such remarks are not made on behalf of the named organization. In situations described in this section, in which an individual’s remarks are not attributed to an organization, even though the organization knowingly permits such remarks to occur on its premises, in its publications, at its official functions, on its website or on other physical or electronic locations it controls, the disclaimer shall include a prominent statement that such remarks are not made on behalf of the host organization. A disclaimer of intervention is not valid if the individual’s remarks are made in the course and scope of employment by the organization, or are requested, directed, authorized, or funded by the organization.

(9) Dual function. A “dual function” communication is one that includes both political intervention and content that is not political intervention. A dual function communication is treated as entirely political intervention.

(10) Educational methodology. The term “educational methodology” refers to advocacy of particular viewpoints or positions that is “educational” within the meaning of § 1.501(c)(3)-1(d)(3) and looks to the method used by the organization to develop and present its views. The method used by the organization is not considered educational if it fails to provide a factual foundation for the viewpoint or position being advocated or fails to provide a development from the relevant facts that materially aids a reader, viewer, or listener in a learning process. The facts that purport to support the viewpoints or positions must not be distorted. The presentation must not make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations. The

method must not fail to consider the reader, viewer, or listener's background or training in the subject matter.

(11) Election. An "election" is a process culminating in a vote by the public to determine whether a candidate will serve in a public office. The term "election" includes general, special, and runoff elections; recall and confirmation elections; and votes by members of a political party or by voters generally to select nominees for an elective office, whether by open or closed primary election, or by caucus, convention, or other means. The term "election" does not include the process of filling a vacancy in an otherwise elective office by executive appointment or by the vote by a legislative or administrative body. If the law of the jurisdiction requires another decision-making process beyond the vote of the public to finally select the public official, such as a vote by the U.S. House of Representatives taken when no presidential candidate has a majority of electoral votes or the electoral vote is tied, that process is part of the "election." However, efforts to resolve uncertainty or disputes as to the final result of the public vote, such as recounts or litigation, shall not be regarded as part of the "election." A non-electoral procedure by which a public officeholder may be removed, such as resignation or conviction upon impeachment, is not an election. Solely for the purposes of this section, an "election" does not include votes by the public upon initiatives, referenda, constitutional amendments, bond issues, or other ballot measures, whether or not such voting occurs at the same time as voting upon candidates.

(12) Election reference. A communication includes an "election reference" if it refers to a future election, to voting in a future election, to the fact that a person is a candidate in a future election, or to one or more of the person's opponents in a future election. Such references may be direct or indirect, such as referring to the date of the election ("November 4th," "on Tuesday"), a future term that the candidate might serve ("four more years"), or other phrasings ("the Senate is up for grabs").

(13) Election year. The "election year" means the period of 365 days prior to the date of the general election ultimately determining whether a specific candidate serves in a public office.

(14) Exempt purposes. "Exempt purposes" are the purposes for which an organization is organized and operated that justify its claim to be described in a subsection of section 501(c).

(15) Explicitly advocate. To "explicitly advocate" means to urge readers, viewers, or listeners to take one or more of the actions listed in subsection (2)(i) above using words or phrases that express or imply command, such as but not limited to "vote for," "vote against," "re-elect," "reject," "cast your ballot for," "Smith for Congress," "Jones in 2016," "donate to Brown," "help defeat," "it's a man's job," "not another Catholic," "vote pro-choice," or "vote to stop the war." To "explicitly advocate" also means to use electioneering words, campaign slogans, images, photos, drawings, symbols, or other forms of expression which, in context, are

susceptible of no reasonable interpretation other than to urge recipients to take one or more of such actions.

(16) Influence official action. A communication is made to “influence official action,” if it reflects a view on a public official and the view has a direct, limited, and reasonable relationship to specific actions that the official may yet perform within his or her current term of office. Such specific actions include, without limitation, introducing, voting upon, ratifying, or vetoing legislation, pursuing an official investigation, hearings, law enforcement, or a judicial procedure, issuing or modifying regulations or rulings, taking executive or administrative action, appointing or removing another public official, or resigning. The relationship between the view and the specific action is “direct” if it refers expressly to the action, it is “limited” if it does not go beyond facts and arguments that pertain to the action, and it is “reasonable” if the connection between the view and persuading the official to take the action is logical and apparent to the reasonable reader, viewer, or listener. The action is one that the official “may yet perform” if he or she has the power and authority to initiate the action, or if there are objective, ascertainable facts making it reasonable to conclude that there is a significant chance that the opportunity to take or not take the action will be presented to the official.

(17) Natural constituency. An organization’s “natural constituency” includes its members, employees, students, patients, clients, visitors, subscribers, customers, event attendees, donors, volunteers, shareholders, and others who have provided contact information to the organization in the ordinary course of the organization’s exempt purpose program or trade or business, and not obtained in the course of any political intervention activity. A communication by an organization is targeted to its natural constituency if its distribution is designed to reach its entire natural constituency, or the communication is made available to its natural constituency at times when and locations where the organization is conducting programs or activities unrelated to any election.

(18) Organization. The term “organization” refers to any entity, nonprofit or for-profit, whether incorporated or not, to which the Internal Revenue Code applies. For purposes of the business expense deduction under section 162, “organization” refers to any taxpayer engaged in trade or business, including individual taxpayers.

(19) Paid mass media advertising. The term “paid mass media advertising” means a communication to the general public placed for a fee on one of the following media operated by another person: a broadcast, cable, or satellite facility, newspaper, magazine, outdoor advertising facility, mass mailing service, telephone bank, another person’s web site or internet communications service, or similar mass media. “Mass mailing” means a mailing by United States mail or fax delivery of more than 500 pieces of material of an identical or substantially similar nature within any 30-day period. The commissioner shall issue a public notice containing a list of “similar mass media” to identify advertising media of similar reach and

impact, to be modified as of January 1st of even-numbered years as needed to reflect changes in communications technology and election campaign utilization as they occur.

(20) Personal oral remark at a meeting. A “personal oral remark at a meeting” is an oral statement made by anyone (other than a candidate) who is present in person at an official meeting or function of an organization, provided that all of the following apply—

(i) The remark is delivered in person to an audience that is physically present in single room or location, and the organization does nothing to cause any broader or later communication of the remark to occur, whether written, electronic, recorded, broadcast, or otherwise transmitted (except to the extent reasonably necessary to accommodate disabled access);

(ii) No communication that announced or promoted the meeting or function contained any election reference; and

(iii) A disclaimer of intervention as prescribed by paragraph (c)(9) of this section is made during the meeting or function, which includes a statement that no speaker is advocating that listeners vote for or vote against any candidates for public office, make contributions to elect or defeat any candidates or parties, or use any specific criteria to choose candidates to be supported or opposed.

(21) Previously established safe harbors. Activities described in the following “previously established safe harbors” are not political intervention--

(i) An organization publishes a newsletter containing the voting records of all legislative incumbents on selected issues important to it, compared to the organization’s position on those issues, as soon as practical after the close of each legislative session, not geared to the timing of any election. The newsletter contains no election reference nor does it expressly or impliedly advocate the election or defeat of any incumbent or mention his or her qualifications for public office. The newsletter points out the limitations of judging an incumbent based on a few selected votes and notes the need to consider other aspects of the incumbent’s performance. The newsletter is distributed to the usual subscribers and not targeted toward particular areas in which elections are occurring. *[Rev. Rul. 80-282]*

(ii) A university offers a course in political science that includes a requirement that students participate in a political campaign of a candidate of the students’ choice. The university does not influence the students’ choice of political campaign. The course is solely for the purpose of improving and developing the student’s skills, and the campaign participation requirement is germane to the course of instruction. The university is not party to the dissemination of the students’ political views. *[Rev. Rul. 72-512]*

(iii) A university provides facilities, funding, and faculty advisors for a campus newspaper that publishes students’ opinions on legislative and political matters. The newspaper

is staffed and edited by students, and no university faculty has any control over the newspaper's editorial policies. A statement on the editorial page makes it clear that the views expressed are not those of the university. The process of gathering news, writing stories and analyzing data improves and develops the skills of the students and is an extension of the formal instructional process. The expression of editorial opinions is a commonly accepted feature of journalism, and student newspapers are an established feature of university operation and life. *[Rev. Rul. 72-513]*

(iv) An organization invites a candidate to speak or appear at an official event of the organization in non-candidate capacity, for reasons (such as the candidate's current public office or position, expertise, accomplishments, civic or charitable activities, or renown) that are unrelated to the individual's candidacy for public office. The organization makes no election reference in publicity leading up to the event, and neither the organization nor the candidate make any election reference during the event. The organization maintains a nonpartisan atmosphere and does not permit any political campaign activity to occur at the event. *[Rev. Rul. 2007-41]*

[Include safe harbors that arise under other areas of tax law, such as personal use of telephone, photocopier, or other office equipment as an incidental fringe benefit of employment.]

(22) Public office. A “public office” is a position in the executive, legislative, or judicial branch of a federal, state, local, or foreign government.

(23) Reflects a view. A communication “reflects a view” on one or more clearly identified candidates if it praises or criticizes the candidate or his or her policy views (or indicates that the candidate supports or opposes the organization’s views), or otherwise portrays the candidate in a positive or negative light, considering the communication as a whole (including content, tone, and images). Thus, a communication reflects a view only if it is favorable or unfavorable to the candidate and a reasonable reader, viewer, or listener would discern the organization’s candidate preference from the communication, knowing the contemporary context in which it is made. A written or oral biographical statement about a person, without an election reference, presented to introduce or describe the person in a situation entirely unrelated to any election activity, such as a public speech, community service recognition, or published writing, does not reflect a view even if the person is, at the same time, a candidate.

(24) Self-defense--(i) In general. A “self-defense” communication is a response by an organization to a public or publicly-reported statement by a candidate or candidates that either--

(A) Disparages or criticizes the organization, whether expressly or by implication;

(B) Comments upon a specific public policy position or action that the organization has taken publicly in furtherance of its exempt or business purposes within the 12 months preceding the communication; or

(C) Results in unsolicited press inquiries to the organization in the wake of the candidate’s statement.

To be described as a self-defense communication, the response must be prepared using an educational methodology and any references to a clearly identified candidate must be limited to addressing the topic of the candidate's statement.

(ii) Dissemination of a self-defense communication. A communication that is distributed in response to a candidate statement described in subparagraphs (i)(A) or (i)(B) above is made in self-defense only if it is disseminated in a manner commensurate in medium and scale, and proximate in time, to the publicity of the candidate's statement to which the communication responds. The dissemination is commensurate in medium and scale to the publicity of the candidate’s statement if the medium of distribution and the recipients of the distribution are reasonably calculated to enable the organization’s response to reach an audience comparable to the audience for the publicity of the candidate’s statement. The response must not deliberately exceed the scale of the publicity of a candidate’s statement by attempting to reach a broader audience. A self-defense communication distributed in response to unsolicited press

inquiries described in subparagraph (i)(C) above must be disseminated only to the requesting press organizations.

(25) Targeted--(i) In general. A communication is “targeted” if its distribution is designed to reach a specific audience based upon criteria used to select certain potential voters to receive the communication while not selecting others. Thus, an “untargeted” communication is one designed to reach the public or potential voters generally, without taking into consideration any criteria for selection.

(ii) Close contest. An organization’s communications are targeted to a “close contest” as a selection criterion if their distribution is designed to reach more than the lesser of 50,000 or 5% of the individuals, cumulative per election, within an electoral jurisdiction or district (including states in a United States presidential election) during all times in which two candidates for a specific public office are within ten or fewer percentage points of each other in a scientific survey of voter opinion the results of which were first publicly reported within the prior 30 days.

(iii) Under-represented voters. A communication is targeted to “under-represented voters” as a selection criterion if its distribution is designed to reach groups of potential voters who have below-average rates of registration or voting, based on voting records or on demographic characteristics correlated historically with such below-average rates.

(26) Use of resources--(i) In general. The term “resources” includes any money, facilities, or property (including tangible and intangible property) owned, leased, or controlled by an organization, the compensated time of any organization employee, consultant, or agent, and any services provided by the organization using either paid staff or volunteers. The term “use of resources” means any activity by an organization that is not a communication and involves the deployment of any of its resources in any way, including (A) providing the resource by gift, grant, loan, sale, rental, exchange or any other method of transfer to another person or entity or (B) putting the resource to use itself.

(ii) Reasonable steps to prevent use for political intervention. When an organization transfers its resources to another, the requirement for “reasonable steps to prevent use for political intervention” is ordinarily satisfied by contractual or legal restrictions regarding the authorized or allowable use of resources by the transferee, unless the organization doubts or reasonably should doubt the transferee will comply with such restrictions. Reasonable steps also consist of the following--

(A) Transfers to section 501(c)(3) or 501(c)(29) organizations. If a transfer is made to an organization described in section 501(c)(3) or section 501(c)(29), the transferor organization is deemed to have taken reasonable steps to prevent use for political intervention if, prior to the transfer, the transferor organization verifies that that the transferee is described in section 501(c)(3) or section 501(c)(29), unless the transferor organization doubts or

reasonably should doubt the transferee's compliance with the prohibition on political intervention arising from the transferee's exempt status. A transferor may rely on IRS determination letters, IRS Publication 78, or the IRS Business Master File to the same extent as grantors and contributors may rely on such rulings or determination letters for the purposes of sections 170, 4945, or 4966. A foreign organization that does not have such a ruling or determination letter is treated as an organization described in section 501(c)(3) if the transferor makes a reasonable judgment that it is so described in compliance with the provisions of § 53.4945-6(c)(2)(ii). Any organization described in section 509(a)(1) under § 53.4945-5(a)(4) is treated as an organization described in section 501(c)(3).

(B) Expenditure responsibility and controlled grants. A transferor organization that makes a grant to another is deemed to have taken reasonable steps to prevent use for political intervention if the transferor (1) exercises expenditure responsibility with respect to the grant, within the meaning of section 4945(h), or (2) makes a controlled grant. For the purposes of this subparagraph (B), a "controlled grant" is a grant that meets the following requirements:

(1) The grantor limits the use of the grant to a specific project, program, or use that furthers the grantor's exempt purposes and that does not include political intervention; and

(2) The grantor maintains records to establish that the grant was used in furtherance of the grantor's exempt purposes and was not used for political intervention.

(iii) Ordinary business transaction. An "ordinary business transaction" is a transfer of resources to a person or entity that is--

(A) Made by the organization in return for consideration that equals or exceeds the fair market value of the resources provided by the organization,

(B) Similar to other transactions engaged in by the organization, and

(C) Without preference for or against any candidate, group of candidates, or group having the primary purpose of political intervention.

"Without preference" means that the resource is available to candidates or groups involved in the same election on an equal basis. If the organization provides the resource only to those candidates or groups who request to use it, that does not indicate a preference. Providing the resource, or taking affirmative steps to offer it, to competing candidates or groups is not required to avoid a preference. However, "without preference" does mean that the organization must not decline similar requests from or impose different terms and conditions upon competing candidates or groups, and must not make the availability of the resource known to certain candidates or groups and not to their competitors.

(iv) Affiliate transaction. An “affiliate transaction” is a transaction between an organization and one or more of its chapters, branches, or other affiliated entities in which the organization provides a resource to the affiliate consisting of--

(A) A license or other permission to use the organization’s name, logo, or other trademarks or service marks as part of the affiliate’s branding, whether or not the affiliate provides consideration for the resource, so long as the affiliate’s communications using such name or mark are clearly and conspicuously distinct from communications by the organization and identified as communications of the affiliate; or

(B) Mailing lists or other intellectual property (including lists with email addresses, phone numbers, or any other form of contact information), so long as the affiliate provides consideration that equals or exceeds the fair market value of the resource provided by the organization; or

(C) Any other resource, in return for either consideration that equals or exceeds the fair market value of the resource provided by the organization, or reimbursement of the actual cost to the organization to provide it.

(v) Reportable contribution. A “reportable contribution” is any transaction or other use of resources by an organization that is subject to public disclosure, whether under applicable campaign finance law, tax law, or other law governing funds used to influence candidate elections, in any jurisdiction to which the organization is subject, as a contribution made to, for the benefit of, or at the behest of, a candidate or an organization that has the primary purpose of engaging in political intervention.

(27) Voter engagement. A “voter engagement” communication is a communication directed to potential voters that encourages them to register to vote, or assists or offers to assist them in registering to vote, or encourages them to cast their ballots or offers to assist with voting in an election.

(28) Wedge issue. A “wedge issue” is a federal, state, or local public policy issue on which two or more candidates have publicly expressed clearly distinct positions, other than a ballot measure to be voted on by the public at the same time as the candidates’ election.

(d) Examples. The provisions of this section are illustrated by the following examples:

[presented in the Bright Lines Project Explanation submitted in May 2014; more may be provided later]