



INDEPENDENT SECTOR

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Principles for Evaluating Legislative and Regulatory Proposals on 501(c)(4) Electoral Campaign Activity

The misuse of 501(c)(4) social welfare organizations for partisan political purposes creates a crisis of integrity for the nonprofit sector. Those seeking to exercise their First Amendment rights must follow the law by creating and operating organizations either for social welfare or for partisan political purposes using the appropriate organizational form. Additional clarity about expectations and requirements will serve to increase compliance among those 501(c)(4) organizations attempting in good faith to comply with the laws and regulations, and reduce the opportunity for abuses by those who seek to circumvent them.

Even as these important objectives are pursued, it is critical that the voice of the nonprofit sector – and particularly 501(c)(3) organizations – can be heard in policy debates.

To accomplish these ends, the rules governing electoral campaign activity by, and donations to, 501(c)(4) organizations must be made more clear and be more effectively enforced. The rules should permit 501(c)(4) social welfare organizations to use electoral campaign activity as a modest component of their strategy to accomplish their social welfare missions, while protecting the right of voters to know who is financing electoral campaign activity and eliminating the misuse of 501(c)(4) organizations to sidestep the rules that apply to 527 political organizations.

The following specific tenets provide a framework for evaluating specific legislative or regulatory proposals:

1. Registration: 501(c)(4) organizations that intend to engage in electoral campaign activity should be required to formally file an exemption application with the IRS upon commencing operations.
2. Expenditure and activity limits: 501(c)(4) organizations should be permitted to engage in a modest amount of electoral campaign activity, defined by a clear percentage and/or dollar limit (similar to the 501(h) limits on lobbying by 501(c)(3) organizations) that is indexed for inflation.
3. Donor disclosure:
 - a. 501(c)(4) organizations that have a Board policy and organizational practice of not engaging in electoral campaign activity should not be subject to donor disclosure requirements.
 - b. 501(c)(4) organizations that engage in electoral campaign activity (i) should be required to disclose the identity and contribution amount of donors who give more than a specific annual contribution threshold, unless the donor prohibits the use of his/her donated funds for electoral campaign activity, and (ii) should be required to be transparent with donors, members, and the public about their work on electoral campaign activity.

- c. If an organization has not notified a donor in writing at the time of solicitation that the funds may be used for electoral campaign activity and may subject the donor to disclosure, then it should be prohibited from using those funds for electoral campaign activity unless written consent is obtained from the donor to use the funds for that purpose and to disclose the donor's identity as required by law or regulation.
 - d. Organizations should not be subject to donor disclosure requirements if a federal regulatory body determines that the organization's exempt purpose involves issues for which donor disclosure would create a substantial likelihood of personal harm to donors.
- 4. Reporting of expenditures: 501(c)(4) organizations should be required to report to the IRS on a quarterly basis (and more frequently during federal election years) expenditures on electoral campaign activity, in addition to the quarterly FEC reports they are already required to file when engaging in express advocacy or electioneering communications, and should be required to make this information publicly available on their website in a timely manner.
- 5. Disclosure and reporting threshold: 501(c)(4) organizations that engage in a very minimal amount of electoral campaign activity should be exempt from donor disclosure and expenditure reporting requirements.
- 6. Applicability of gift tax: Consistent with the rules that apply to both 501(c)(3) charitable organizations and 527 political organizations, no gift tax should be imposed on donors who make contributions to 501(c)(4) social welfare organizations.
- 7. Accountability mechanisms (penalties): A 501(c)(4) organization that exceeds its expenditure limit, as well as organization leaders that violate the law knowingly or with reason to know, should be subject to penalties commensurate with the violation in order to deter future violations and the subversion of regulations. The IRS and FEC should promulgate rules in a timely fashion, and be appropriately staffed and funded to ensure expeditious and transparent enforcement.