

February 26, 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:

The Arc of U.S is a 501(c)(3) non-profit organization that advocates for and serves people with intellectual and developmental disabilities (I/DD), including Down syndrome, autism, Fetal Alcohol Spectrum Disorders, cerebral palsy, and other diagnoses. The Arc has a network of over 700 chapters across the country promoting and protecting the human rights of people with I/DD and actively supporting their full inclusion and participation in the community throughout their lifetimes and without regard to diagnosis.

We have grave concerns about the proposed regulations from the Internal Revenue Service (IRS) regarding political campaign activity. While we appreciate the intent to create clearer rules for social welfare organizations, the proposed regulations would create more problems than they solve, stifling civic participation for and on behalf of vulnerable people who have most at stake. The history of many people with I/DD is one of oppression and exclusion, and we strongly oppose any efforts that would result in discouraging people with I/DD, their families, or service providers from participating in our democratic process.

While the proposed regulations only apply to 501(c)(4) organizations, they are certain to have a chilling effect on all 501(c) organizations. Given the general confusion and ambiguity about allowable limits for all non-profits, the community is likely to act with customary caution when they cannot be sure whether previously permissible activities (such as sponsoring or funding voter engagement programs, or joining in grass roots lobbying efforts or ballot measure campaigns) would jeopardize their tax status.

The issue that we are most concerned about is the proposed definition for candidate-related political activity. This definition captures some nonpartisan activity that has long been recognized as a legitimate function of nonprofit organizations. For example, the proposed regulations treat as “political”:

• any mention of a lawmaker who is running for office;

• any grassroots lobbying efforts aimed at a lawmaker who is a candidate; and

• any use of the name Democrat or Republican, on our web pages or in our email messages within 60 days of a general election or 30 days of a primary election, even if that communication was just to alert the public of an upcoming debate.

These restrictions would be very onerous for any organization engaged in federal and state advocacy efforts and they fly in the face of longstanding common practice. For instance, we routinely include the party affiliation and state of all Members of Congress in our communications, listing members using the generally accepted format of, for example, Senator John Doe (D-MA) or Representative Jane Doe (R-CA).

Given the fact that the entire House of Representatives and one third of the Senate are up for re-election every two years, planning for and monitoring each of our individual communications to stay outside of the 60/30 day election cycle windows for mentioning candidates for office or elected members’ party affiliation is simply not realistic. Modern communications, which include social networking that makes content permanently available and re-surfaces it as comments or “likes” increase, would make compliance all but impossible.

Nor would this be desirable. We need to conduct business regarding legislative proposals or actions by Members of Congress year round, regardless of election year cycles. We would not be able to properly represent our own constituents if we were unable to mention Members names or actions or to identify them in the usual manner.

Further, during any time of the year, nonpartisan civic activities (such as voter registration, get-out-the-vote drives, and distribution of voter guides) would be defined as candidate-related activity and count against tax-exempt status. This would deprive our constituents of valuable information that they need to be informed and involved in our democratic process.

We urge the IRS and Department of the Treasury to rework the draft regulations with sensible objective definitions that carefully distinguish partisan and nonpartisan activities. Bright-line rules about what is or is not political activity, applicable to everyone, would allow us to more confidently conduct programs such as voter education, candidate forums, voter registration, and get out the vote efforts, without hampering our ability to work with other nonprofits or the public on a level playing field.

We need to ensure that organizations are clearly free to pursue and publicize their legitimate public policy work with lawmakers and on proposed legislation regardless of whether a primary or general election will occur within a certain time period. We need clear definitions of political intervention that apply consistently across the tax code and that are comprehensible both to those inside the IRS who must enforce the law and to those in the nonprofit sector who must comply with the law.

Thank you for your consideration of these comments.

Sincerely,

Marty Ford
The Arc of the United States