



Written by [Thomas R. Eddlem](#) on December 20, 2013

IRS Seeks to Stamp Out Voter Information

The IRS has [proposed](#) new regulations that would carve out an exception to federal rules on tax-exempt organizations, regulations that would essentially ban conservative tax-exempt educational organizations from informing voters about federal candidates' voting records before elections.

[Federal law](#) allows organizations created for "educational" purposes to apply for tax-exempt status, including organizations that take a position on public issues, so long as the "civic leagues or organizations [were] not organized for profit but operated exclusively for the promotion of social welfare" and — according to current IRS rules — their mission was not "primarily" to affect elections. The [proposed regulations](#), which would take effect after a public commentary period, specifically target "distribution of a voter guide and accompanying material that refers to a candidate or a political party." Even a link on an objective website to another website that contains an opinion would be [policed](#) by the nearly all-inclusive embrace of the proposed regulations: "When a charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site."



The proposed new regulations have no basis in any [law enacted by Congress](#), or provision of the [U.S. Constitution](#), but are instead the result of the Obama administration response to intensive lobbying by the political Left against voter information organizations in the wake of the [Supreme Court's 2009 Citizens United decision](#). The proposed regulations themselves, [published in](#) the November 29 *Federal Register*, acknowledge they were the result of political lobbying: "The Treasury Department and the IRS have received requests for guidance on the meaning of 'primarily' as used in the current regulations under section 501(c)(4)."

Under the proposed new rules, organizations under 501(c)(4) of the IRS code would no longer qualify for



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tax-exempt status if they are primarily engaged in education on the voting records of public officials, even if the organizations are not engaged in electoral activity. [According to](#) the IRS:

These proposed regulations draw from Federal Election Commission rules in defining “expressly advocate,” but expand the concept to include communications expressing a view on the selection, nomination, or appointment of individuals, or on the election or defeat of one or more candidates or of candidates of a political party. These proposed regulations make clear that all communications — including written, printed, electronic (including Internet), video, and oral communications — that express a view, whether for or against, on a clearly identified candidate (or on candidates of a political party) would constitute candidate-related political activity.

The [new regulations](#) would also automatically classify as “political” mere mention of a candidate that is disbursed just before an election:

The proposed regulations also would treat as candidate-related political activity certain activities that, because they occur close in time to an election or are election-related, have a greater potential to affect the outcome of an election. Currently, such activities are subject to a facts and circumstances analysis before a determination can be made as to whether the activity furthers social welfare within the meaning of section 501(c)(4).... Under the proposed definition, any public communication that is made within 60 days before a general election or 30 days before a primary election and that clearly identifies a candidate for public office (or, in the case of a general election, refers to a political party represented in that election) would be considered candidate-related political activity.

The political status quo deems that no information about the voting records of public officials constitutes a public service or a benefit to the “social welfare” at the time of election. Of course, election time is the time when such information is most needed by voters. The 2009 *Citizens United* decision of the U.S. Supreme Court [affirmed](#) the rights of citizens to band together into a corporation — in the case of the Citizens United organization, a non-profit corporation — and inform their fellow citizens about the record of candidates for political office. The decision overturned as unconstitutional more than a century of congressional statutes that banned political activity by corporations, which began with the [racist](#) 1907 [Tillman Act](#).

Since the Supreme Court affirmed *Citizens United*, much of the political Left has screeched for repeal of the decision, whether by legislation, regulation, or even constitutional amendment. MoveToAmend.org — an organization formed after *Citizens United* that seeks a constitutional amendment to eliminate the right of political association, except with established political parties — [declares](#) that “money is not speech, and that human beings, not corporations, are persons entitled to constitutional rights.”

Of course, money has always been related to free speech and a free press. Freedom of the press has always been for those who purchase a press, just as people whose speech has been magnified have been those who have purchased television and radio stations. *Citizens United* was about whether people who don’t own a major television network have as much of a right to pool their money to buy political advertisements as do individual billionaires, who dole out millions — or [even billions of their own vast wealth](#) — for their own special interest causes.

Moreover, the right of political association has a tradition that goes back to the founding era, when opponents to the Federalist Party associated into [Democratic Societies](#) to inform voters, as well as



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organizations that informed voters about attacks against freedoms of speech and press under the [1798 Sedition Act](#). Alexis De Toqueville [wrote](#) in *Democracy in America* that Americans back in the 1830s recognized organizing into organizations that informed about political candidates and political issues was a fundamental right, one that was a positive influence in society:

In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multitude of different objects, than in America.... The right of association with these views is very analogous to the liberty of unlicensed writing' but societies thus formed possess more authority than the press. When an opinion is represented by a society, it necessarily assumes a more exact and explicit form. It numbers its partisans, and compromises their welfare in its cause: they, on the other hand, become acquainted with each other, and their zeal is increased by their number.

Whereas the political Left screams about how “corporations are not people” today, De Toqueville [testified](#) to the long American tradition where political association was a cherished right of the people.

The political motivation of the IRS regulations as a bludgeon against the political Right was made apparent by the fact that the regulations have been proposed only for 501(c)(4) organizational non-profits — used primarily by conservative and libertarian organizations, and not for 501(c)(3) organizations on the Left — such as the [NAACP](#), which spends millions on electioneering and political lawsuits — or on 501(c)(6) labor union organizations: “These proposed regulations do not address the definition of political campaign intervention under section 501(c)(3),” the proposed regulation changes acknowledge. The *Federal Register* posting did acknowledge that the IRS is open to considering muzzling labor and unions and agricultural associations in the future as well, however, even if the current proposal would not do so.



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