A Timeline Chronicle of the Regulation of 501(c)(4) Organizations

IRS Rules Applied	Federal Election Laws Applied

1954

•Through the Johnson Amendment, Congress adds text to the Internal Revenue Code (IRC) that explicitly bans (c)(3)s from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of–or in opposition to–any candidate for public office." They *did not* make a similar change to the language defining (c)(4)s.

1960

•Text for the (c)(4) regulation is finalized. A (c)(4) must operate exclusively for the promotion of social welfare, defined as "primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements."

•IRS specifies that "social welfare" does not include "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." (26 CFR 1.501(c)(4)-1)

1968

•IRS clarifies that if an organization is "primarily engaged in promoting in some way the common good and general welfare of the people of the community," but also engages in non-social welfare activities, it still qualifies for the exemption. Additionally, the IRS will apply a facts and circumstances test to decide what constitutes "primary activity." (Rev. Rul. 68-45, 1968-1 C.B. 259)

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1971

- Congress passes the Federal Election Campaign Act (FECA). The FECA prohibits corporations and labor organizations from using general treasury funds to make cash or in-kind contributions to a candidate for federal office. Expenditures *coordinated* with a candidate or campaign are considered in-kind contributions, and therefore prohibited. Additionally, the FECA bans corporations from "express advocacy," ads that use magic words like "vote for," or "vote against," a candidate. Non-express advocacy ads are not banned.

1981

- IRS clarifies that if an organization is "primarily engaged in promoting in some way the common good and general welfare of the people of the community," and also participates in political campaigns (financial assistance and in-kind services) on behalf of or in opposition to candidates for public office, it still qualifies for the exemption.

- Additionally, funds used for such political activity (described as *influencing* or attempting to influence *the selection, nomination, election, or appointment of any individual to any Federal, state, or local public office* or office *in a political organization*, or the election of Presidential or Vice-Presidential electors, *whether or not such individuals or electors are selected, nominated, elected, or appointed*) will be subject to the tax imposed on political organizations. (Rev. Rul. 81-95, 1981 C.B. 332)

1983

- The Supreme Court holds that the lobbying restriction on (c)(3)s does not violate the First Amendment or the equal protection component of the Fifth Amendment because (c)(3)s may establish a separate (c)(4) to expand their capacity to lobby beyond the limited expenditures allowed for (c)(3)s. (Regan v. Taxation With Representation, 461 U.S. 540)

1986

- Supreme Court holds that if (c)(4)s meet certain factors, they would be considered “qualified nonprofit corporations" (also known as MCFLs) and able to engage in independent expenditures. Independent expenditures are communications made without coordination with a candidate or campaign that includes “express advocacy” in support of or in opposition to a candidate.

1987

- Congress enacts a new section of the tax code to impose taxes on (c)(3)s that engage in political activity. Prior to this, the only remedy for the violation of supporting or opposing candidates was revocation of the organization’s exempt status. Congress chooses not to apply this provision to the political activities of (c)(4)s (IRC 4955).
- Congress enacts a new section of the tax code to seek an injunction against a (c)(3) that flagrantly violated the political campaign prohibition, to prevent further political expenditures by the organization. Congress chooses not to apply this provision to the political activities of (c)(4)s. (IRC 7409)

2000

- Congress amends the IRC to include additional notice, disclosure, and reporting requirements for political organizations. (Public Law 106-230) It rejects proposals to increase disclosure requirements for (c)(4)s and other 501c organizations.

2002

- Congress passes the Bipartisan Campaign Reform Act (BCRA) of 2002 (also known as the McCain-Feingold Act), which made substantial amendments to FECA. Congress broadens the scope of their previous “express advocacy” ban to “electioneering communications,” in order to address “sham issue ads" (those which do not use the “magic words” associated with express advocacy, but are clearly in support or opposition of a candidate).
- BCRA defines electioneering communications as broadcast, cable, and satellite communications that clearly refers to a candidate and targets the candidate’s constituency within 60 days of a general election or within 30 days of a primary, caucus or convention.
- Under BCRA, corporations and unions can make campaign expenditures only through separate funds called political action committees (PACs), which are subject to limitations on where they can get funds and require certain disclosure requirements.

2003

- The Supreme Court upholds the BCRA, including the provision-banning unions and corporations from using funds for “electioneering communications” and the 30/60 day ban. (McConnell v. Federal Election Commission, 540 U.S. 93)

2004

- IRS clarifies situations in which (c)(4)s activity constitutes “political activity” and is therefore subject to the tax imposed on political organizations. The IRS says the factors to consider are if: (1) the communication identifies a candidate for public office; (2) the timing of the communication coincides with an electoral campaign; (3) the communication targets voters in a particular election; (4) the communication identifies candidate’s position on the public policy issue that is the subject of communication; (5) the position of the candidate on the public policy has been raised as distinguishing the candidate from others in the campaign right in the communication itself or in other public communications; and (6) the communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue. (Rev. Rul. 2004-6)

2007

- The Supreme Court creates a test to distinguish between ads that are the “functional equivalent to express advocacy” (and therefore banned under the “electioneering communications” provision of the BCRA) and those ads that are permissible “issue advocacy” ads. If there cannot be any reasonable interpretation other than an appeal to vote for or against a clearly identified federal candidate, then it will be considered the “functional equivalent to express advocacy.”
- If an ad is considered an “issue advocacy” ad, it is permissible to run it within the 30/60 day timeframe before an election. (Federal Election Commission v. Wisconsin Right to Life, Inc. (aka Wisconsin Right to Life II), 551 U.S. 449)

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2010

- The Court holds that corporations and unions have a First Amendment right to engage in independent expenditures to influence elections without having to create a PAC. Their rationale states that since this type of spending is not in coordination with candidates, it could not lead to corruption concerns. The Court upheld the BCRA's mandatory disclosure requirements. (Citizens United, 558 U.S. 310)
- The DC Circuit Court of Appeals holds that Political Action Committees (PACs) that make independent expenditures and do not make any direct monetary or in-kind contributions to federal candidates may accept unlimited contributions from individual donors. These "independent-expenditure only committees" are commonly referred to as Super PACs. (Speechnow.org v. Federal Election Commission, 599 F.3d 686)

2011

- In July, the IRS releases a statement that all current examinations relating to the application of the gift tax to contributions to (c)(4)s should be closed until further notice, and no new investigations will be opened because it is a "difficult area with significant legal, administrative, and policy implications" (Memorandum from Steven Miller, Deputy Commissioner for Services and Enforcement). (Dating back to 1924, (c)(3)s have been exempt from the gift tax. In 1974, Congress amended the tax code to exempt political organizations from the gift and estate tax. No similar exclusion exists for contributions to (c)(4)s.)

2013

- In May, Lois Lerner, the head of the IRS tax-exempt organizations division, discloses at the American Bar Association Tax Annual Meeting that those in charge of reviewing (c)(4) applications segregated out applications that included words like "tea party" and "patriot." She also revealed that such applications were inappropriately sent additional questions (which were often too specific), or their applications were delayed (American Bar Association Tax Annual Meeting). The IRS issues proposed rulemaking that would re-classify much of the civic engagement work that (c)(4)s do during election season as "candidate-related political activity," even when it is nonpartisan like voter registration drives. This is a significant move away from the facts and circumstances approach that the IRS had traditionally used to define "candidate-related political activity."
- In December, the IRS announces an expansion of the expedited process for certain (c)(4) applicants whose applications indicate that the organization may be involved in political campaign intervention or in providing private benefit to a political party and otherwise do not present any issue with regard to exempt status. (IRS Announcement on Expedited Process for (c)(4)s)

2014

- The IRS announces that due to the amount of comments submitted for the proposed regulation, a revised proposed regulation will be published and a public hearing held before final regulations are issued. (IRS Update on the Proposed New Regulation on 501(c)(4) Organizations)

2015

- In December, Congress enacts the Protecting Americans From Tax Hikes Act (PATH), which requires that organizations intending to operate as 501(c)(4)s must notify the IRS within 60 days from their date of establishment. This notification requirement will also apply to certain established 501(c)(4) organizations and includes changes to Form 990 reporting.
- The Fair Treatment for All Gifts Act clarifies that the gift tax does not apply to contributions made to 501(c)(4) organizations.

2016

- In January, the D.C. Circuit Court of Appeals overturns a lower court decision on an interpretation of the FECA. The decision upholds the FEC disclosure rule which requires that nonprofits who fund "electioneering communications" in excess of $10,000 must only release information on donors who in the aggregate contributed more than $1,000 AND specified that the funds be used for electioneering purposes. (Van Hollen v. FEC, 811 F.3d 486)
- In February, the IRS announces that implementation of the new PATH Act requirements will be put on hold for both new and existing 501(c)(4)s until further notice. (IRS Notice 2016-09)
- On July 8, the IRS issued regulations implementing the PATH Act that require new 501(c)(4) organizations to file Form 8976 within 60 days of formation. Organizations that have neither filed at least one Form 990, 990-EZ, or 990-N or filed Form 1024 on or before July 8, must file Form 8976 by September 6. All other organizations created after July 8 have to file within 60 days of formation.