

February 27, 2014

Internal Revenue Service  
CC:PA:LPD:PR (REG-134417-13),  
Room 5205  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities (REG-134417-13)

Dear Sir or Madam:

On behalf of the American Council on Education (ACE) and the undersigned higher education associations, I am writing regarding the Notice of Proposed Rulemaking issued by the Department of the Treasury and the Internal Revenue Service (collectively, the “Department”) regarding section 501(c)(4) of the Internal Revenue Code (“Code”), which addresses the candidate-related activities of tax-exempt social welfare organizations, 78 Fed. Reg. 230 (Nov. 29, 2013) (“NPRM 501(c)(4)”). Specifically, I write in response to the Department’s request for comments on whether the proposed framework for political campaign activities of section 501(c)(4) organizations should be adopted for section 501(c)(3) organizations.

Together, we represent approximately 4,300 traditional two- and four-year nonprofit public and private colleges and universities. Higher education plays a unique role in American society and fulfills many needs, including undergraduate education, graduate and professional training, basic research, and public service. A fundamental component of our mission is to advance civic learning and democratic engagement among our students, faculty and the nation.

Private nonprofit colleges and universities are organized under section 501(c)(3) of the Code. Public higher education institutions are tax-exempt state entities, but some are also registered as 501(c)(3) organizations. As a result, all of these institutions operate under the current regulatory “facts and circumstances” test for analyzing whether a section 501(c)(3) organization is engaged in prohibited political campaign intervention. See NPRM 501(c)(4), p. 71536.

We are deeply concerned about the potential application of the proposed definition of prohibited candidate-related activities for section 501(c)(4) organizations to section 501(c)(3) organizations, in particular non-partisan election-related activities including voter registration, get-out-the-vote drives, distribution of materials, voter guides, “public communication” related to a candidate, and hosting events with candidates. Such campaign-related activities regularly occur at colleges and universities across the country because they are at the core of our mission to advance civic learning and democratic engagement. Unfortunately, the proposed rules

devalue such non-partisan activities and overlook the critical historic role colleges and universities play in civic engagement. In addition, the proposed rules are inconsistent with other federal law that requires colleges and universities to distribute voter registration forms to their students. Accordingly, we respectfully urge the Department not to extend the proposed section 501(c)(4) campaign-related activity rules to 501(c)(3) organizations and instead to continue to apply the current regulatory “facts and circumstances” test to 501(c)(3) organizations, including colleges and universities.

## I. Civic Engagement and Higher Education

Even before the founding of the United States, colleges and universities were instilled with a deep commitment to a civic mission. Benjamin Franklin, who helped found the University of Pennsylvania, and Thomas Jefferson, the founder of the University of Virginia, “sought to establish institutions committed to public and practical arts that they believed were necessary to secure the fragile emerging democracy.”<sup>1</sup> Signed by President Lincoln in 1862, the Morrill Act led to the creation of land-grant colleges and helped democratize higher education in the United States. While the Morrill Act itself emphasized a practical education, many of the land-grant institutions incorporated “citizenship” into their mission. “[T]he Trustees of the Ohio Agricultural and Mechanical College [later becoming The Ohio State University] declared in 1873 that they desired not ‘to educate those confided to them simply as Farmers or Mechanics, but as men, fitted by education and attainments for the greater usefulness and higher duties of citizenship.’ . . . Andrew White, president of Cornell University, stressed the need to teach and cultivate an ethos of public service in all students.”<sup>2</sup>

The civic mission of higher education continued into the twentieth century. “The German system emphasized detached scholarship. The English sought to prepare an aristocratic elite. In contrast, Charles Eliot, president of Harvard, wrote as follows in 1908: ‘At bottom, most of the American institutions of higher education are filled with the democratic spirit. Teachers and students alike are profoundly moved by the desire to serve the democratic community.’”<sup>3</sup> Following World War II, President Truman established the President’s Commission on Higher Education. The Truman Commission’s multi-volume report, entitled tellingly “*Higher Education for American Democracy*,” emphatically stated: “The first and most essential charge upon higher education is that at all levels and in all its fields of specialization, it shall be the carrier of democratic values, ideals, and process.”<sup>4</sup>

Drawing on this long and distinctive commitment, civic learning and democratic engagement remain an important component of U.S. higher education today. In recent years, campus civic

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<sup>1</sup> The National Task Force on Civic Learning and Democratic Engagement. *A Crucible Moment: College Learning & Democracy’s Future* (2012), p.17.

<sup>2</sup> Ehrlich, Thomas, ed, *Civic Responsibility and Higher Education*. American Council on Education and The Oryx Press (2000), p. 47.

<sup>3</sup> *Id.* at. 37.

<sup>4</sup> *A Crucible Moment*, p. 18.

engagement has taken on new forms, such as the growth of campus-sponsored community service. Many colleges and universities have active programs intended to encourage and facilitate community service by students through volunteer activities on- and off-campus as well as in service-learning courses. The trend is evident on public and private campuses across the spectrum of nonprofit higher education, from community colleges to major research universities. Since 2006, the Corporation for National and Community Service annually designates individual colleges and universities as members of The President's Higher Education Community Service Honor Roll for their efforts in solving community problems and the civic engagement of their students. Research has demonstrated the positive correlation between such student civic engagement, increased retention and completion rates.<sup>5</sup> In addition, the positive effects of higher education's civic mission on our students and the nation as a whole continue after college in the form of higher rates of volunteerism, a clearer understanding of political issues, and increased voter participation.<sup>6</sup>

To be sure, there is a need to deepen and broaden civic learning and democratic engagement in higher education. Organizations such as Campus Compact, a coalition of nearly 1,200 college and university presidents, were formed to help renew and enhance efforts to fulfill the civic purpose of higher education. Academic researchers assess current models and propose new alternatives to advance the goal. But despite the work to be done, the higher education community remains deeply committed to our civic mission.

## II. Detrimental Effects on Higher Education

Given our long-standing commitment to civic engagement, we are deeply concerned about potential restrictions on long-permissible speech and other non-partisan campaign-related activities, many of which regularly take place on our campuses. These activities go to the heart of the role our institutions play as "intellectual and public commons." We strongly believe that student learning would be harmed, political discourse on campus chilled, and our civic mission severely undercut if the proposed 501(c)(4) restrictions are imposed on 501(c)(3) organizations.

Under the proposed restrictions, any "public communication" which clearly identifies a candidate within 30 days of a primary and 60 days of a general election would be barred as impermissible candidate-related political activity. "Public communication" as defined would include any communication through a broadcast medium, website, newspaper or other periodical reaching more than 500 people. "Candidate" covers any individual seeking election to "any federal, state or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector." "Clearly identified" means including the candidate's name, a photograph or drawing of the candidate, or "the identity of the candidate is apparent by reference, such as by use of the candidate's recorded voice or of terms such as "the Mayor," "your Congressman," "the incumbent," "the Democratic nominee," or "the Republican candidate for County Supervisor." In addition, a candidate may be "clearly identified" by reference to an issue or characteristics used to distinguish

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<sup>5</sup> Id. at 8.

<sup>6</sup> Baum, Sandy, Jennifer Ma, and Kathleen Payea, *Education Pays 2013: The Benefits for Individuals and Society*. The College Board (2013), pp. 31-32.

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the candidate from other candidates.” NPRM 501(c)(4), p. 71541.

Because of the broad definitions of “public communication,” “candidate,” and “clearly identified,” we have serious doubts whether the proposed restrictions on speech are even constitutionally permissible under the First Amendment. In addition, these restrictions would needlessly force colleges and universities to police the content of numerous communication media connected to their campuses to ensure they do not violate the time-period restrictions contained in the proposed regulations. All colleges and universities regularly maintain websites and publish various periodicals. Increasingly, schools offer online education, often for several hundred students at a time. Many own and operate public television or radio stations, particularly in rural areas where they may be a primary source of news or public events coverage. Student organizations, student-run media and broadcast stations abound on our campuses. Faculty publish research in university-sponsored journals and books through university presses.

During the specified time periods, colleges and universities would have to review and potentially remove *any* references across a plethora of communication media to *any* elected officer holders seeking re-election as well as to any other candidates, including those who are affiliated in some fashion with the institution. This would seem to apply to any higher education administrator, faculty or staff member, student, alumni or trustee or regent seeking public office as defined in the proposed regulations. Proscribed references to candidates need not even refer to the coming election to render them impermissible political activity. Universities, for example, would likely have to remove *any* reference to a sitting governor seeking re-election—his or her name, contact information, photograph—from any of their covered communication media. This would even be true of references to the governor while acting in an official capacity as head of the state in which a public university is an arm of the government. Any public communication by a college or university regarding legislation that refers to a public official seeking re-election while acting in a legislative capacity would be barred as candidate-related political activity. The provision could also apply to course-related materials distributed in classes enrolling more than 500 students. This prohibition also would seem to apply to news coverage referencing candidates by a university-owned public television or radio station. In short, complying with this regulation would be an enormous, time consuming, costly and difficult task for many colleges and universities.

In a provision that goes to the core of our civic mission, the proposed regulations would prohibit colleges and universities from “[h]osting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program.” NPRM 501(c)(4), p. 71541. We strongly believe that this prohibition will rob the nation of a significant element of our civic life, as well as damage the invaluable civic learning and political engagement nurtured for generations by the higher education community.

Many colleges and universities serve as anchor institutions for communities across the country, providing a welcoming gathering spot where a range of community events, including political or campaign-related events, can and do regularly take place. Throughout the history of the

United States, thousands of events involving elected officials or candidates at all levels engaged in political discourse—debates, speeches, forums or panels—have occurred on college campuses large and small, urban and rural. Indeed, it is not hard to identify the most prominent recent example of such events—the presidential and vice-presidential debates. From 1988 to 2012, 23 of the 26 debates took place on a college or university campus, all of which would be prohibited as candidate-related activity.<sup>7</sup>

Our deep connection to the nation’s political discourse is a history about which the higher education community is justifiably proud and from which our country as a whole has reaped untold benefits in helping build a stable, vibrant democracy. The proposed prohibition would put this history of political discourse at risk. We strongly oppose the application of this provision to 501(c)(3) organizations, including colleges and universities.

We share similar deep concerns about several of the other candidate-related activities covered by the proposed regulation, in particular “get-out-the-vote” drives, distribution of material, and the preparation or distribution of voter guides. The application of these provisions to colleges and universities would lead many institutions to be wary about permitting such activities on campus. It would likely have a significant chilling effect on the many student and other community groups using campus facilities and resources to engage in such campaign-related activities, sacrificing an important opportunity for student learning about the democratic process. For example, it is absurd to imagine that campus student Republicans or Democrats clubs would have to be prevented from engaging in such candidate-related activities before an election.

### **III. Other Federal Law Requires Voter Registration by Higher Education**

The application of the prohibition on voter registration drives in the proposed regulations to colleges and universities would conflict with requirements of other federal law. Specifically, Section 487 of the Higher Education Act of 1965, as amended, mandates that “[t]he institution [of higher education]. . . will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make forms widely available to students at the institution.”<sup>8</sup>

### **IV. Conclusion**

For all these reasons, we believe the application of the proposed 501(c)(4) regulations to 501(c)(3) organizations would fundamentally damage the role that colleges and universities have played for hundreds of years in encouraging civic learning and democratic engagement.

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<sup>7</sup> *Debate History*, Commission on Presidential Debates.  
<http://www.debates.org/index.php?page=debate-history> (retrieved on Feb. 21, 2014).

<sup>8</sup> See Higher Education Act of 1965, 20 U.S.C.A. § 1094(a)(23)(A) (2013).

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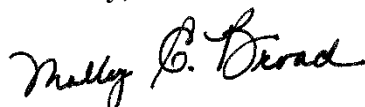
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Accordingly, we respectfully urge the Department not to take such a profound step and instead to continue to apply the current regulatory “facts and circumstances” test to 501(c)(3) organizations, including colleges and universities.

Thank you for considering our comments on the section 501(c)(4) NPRM. If you have any questions or would like to discuss these comments further, please do not hesitate to contact me.

Sincerely,



Molly Corbett Broad  
President

On behalf of:

ACPA - College Student Educators International  
Alabama Association of Independent Colleges and Universities  
American Association of Colleges for Teachers Education  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
American Indian Higher Education Consortium  
APPA  
Appalachian College Association  
Arkansas' Independent Colleges and Universities  
Association for Biblical Higher Education  
Association of Advanced Rabbinical and Talmudic Schools  
Association of American Colleges and Universities  
Association of American Medical Colleges  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Community College Trustees  
Association of Governing Boards of Universities and Colleges  
Association of Independent Colleges and Universities in Massachusetts  
Association of Independent Colleges and Universities in New Jersey  
Association of Independent Colleges and Universities of Ohio  
Association of Independent Colleges and Universities of Pennsylvania  
Association of Independent Colleges and Universities of Rhode Island  
Association of Independent Colleges of Art and Design  
Association of Independent Kentucky Colleges and Universities  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities

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Association of Research Libraries  
College and University Professional Association for Human Resources  
Commission on Independent Colleges and Universities in New York  
Conference for Mercy Higher Education  
Council for Advancement and Support of Education  
Council for Christian Colleges & Universities  
Council of Graduate Schools  
Council of Independent Colleges  
Georgia Independent College Association  
Hispanic Association of Colleges and Universities  
Independent Colleges and Universities of Florida  
Independent Colleges and Universities of Missouri  
Independent Colleges and Universities of Texas  
Independent Colleges of Indiana  
Independent Colleges of Washington  
Independent Higher Education of Colorado  
Iowa Association of Independent Colleges and Universities  
Kansas Independent College Association  
Maryland Independent Colleges and Universities Association  
NASPA – Student Affairs Administrators in Higher Education  
National Association for Equal Opportunity in Higher Education  
National Association of College and University Business Officers  
National Association of Independent Colleges and Universities  
North Carolina Independent Colleges and Universities  
The New American Colleges and Universities  
UNCF  
University Professional & Continuing Education Association  
Wisconsin Association of Independent Colleges and Universities  
Women’s College Coalition  
Yes We Must Coalition