

Responding Briefly to Bob Bauer's Brief Reply On Bright Lines

With appreciation for Bob's interest in grappling with the difficult conceptual and practical problems that would arise from a reform of the IRS rules for tax-exempt political activity, I wanted to respond to his [June 5 posting](#).

The last word of his brief reply to my defense was "intent." Ah yes. In Rule 4 of our Bright Lines Project proposal, we say: "Evidence of intent in relation to the speech is irrelevant." Fortunately, the IRS already agrees with us on that score. Citing the 1988 appellate decision in [*Association of the Bar of the City of New York v. Commissioner*](#), the IRS has fairly consistently taken the position that evidence of nonpartisan (or partisan) intention or motivation is not relevant to determinations of political intervention. So, fortunately, the Service has declared that it will not examine the subjective state of mind of tax-exempt speakers to decide whether intervention was intended. Only objective manifestations of conduct, the "activity itself," should be evaluated. In law journals, as well as IRS announcements, oral statements at ABA meetings, and internal training materials ([Kindell & Reilly, "Election Year Issues" \(2002\)](#)) this question has been settled for over a decade.

Bob also posted an earlier [comment on June 3](#) questioning the use of our Bright Lines proposal where the candidates are divided on a controversial issue. He notes that our general speech rule, when organizations ask candidates to endorse a policy or take a pledge, would cause the activity to be intervention when the candidates differ, because the organization can't report the result without "reflecting a view" on them. There's more to be said. Right now, under Revenue Ruling 76-456, it is political intervention just to ask the question. We would liberalize that, so that organizations could inject their issues into the campaign season and find out where the candidates stand. In many cases, the organizations do hope that all the major candidates will respond positively so that their policy concern will be advanced no matter who is elected. For a good example, see http://ww20.savedarfur.org/index.php/pages/press/clinton_mccain_obama_joint_statement_we_s_tand_united_on_sudan

What if the candidates disagree? Look at the second exception to our general speech rule, allowing comparisons of candidates for purposes of voter education. We hope to channel such situations into a safe harbor in which a debate is held or a voter guide is published based upon offering equal access to each of the participating candidates, with an equal share of space for the organization to express its view, too. Two or more candidates must take part. The comparison can be based on a single question, even a pledge, so long as the principle of equal opportunity to respond is followed, there's no express advocacy, and the result is not broadcast using paid mass media ads. It would strengthen our democracy to foster nonprofit engagement in that kind of open, fair debate during election campaigns.

Greg Colvin
Chair, Drafting Committee
Bright Lines Project
brightlinesproject.org
colvin@adlercolvin.com