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Free Speech Protection Act

To restore the constitutionally mandated due process of the presumption of innocence until proven guilty to 501(c) organizations which the ambiguous ‘facts and circumstances’ standard does not provide, to clearly define and prohibit restrictions on 501(c) organizations outside of “express advocacy”, and to start the process of getting the IRS out of politics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSE

In order to clarify rules relating to the political activities of nonprofit organizations described under section 501(c) of the Internal Revenue Code of 1986, a distinction must first be drawn between express political advocacy, which includes candidate-related or political party-related activities, and issue or policy advocacy that does not attempt to influence the outcome of an election.

The Federal Elections Commission, guided by the Federal Election Campaign Act, regulates voting and elections. It is within the scope of the Federal Election Commission’s authority to establish rules and regulations for voting and elections, and to define the terms used to describe the various activities associated with voting and elections, many of which are included in 52 USC 30101: Definitions.

When the Internal Revenue Service, in pursuit of its purpose, defines, redefines, or expands the definitions of terms associated with voting and elections, and those terms do not mirror those established by Congress via FECA, or contrary to those terms defined by the Federal Election Commission, confusion occurs.

The Internal Revenue Service is in the tax assessment and collection business, not voting and elections. Determinations as to whether or not a tax-exempt organization has exceeded its exempted functions based on its respective 501(c) classification as it relates to “express political advocacy” should be made by the cognizant federal, state, or local election commission, not by the IRS. Restoring to the “innocent until proven guilty” standard is also necessary as the “facts and circumstances” model has proven to be ripe for abuse in the application process, periodic compliance checks, upon accusation, Form 990 reporting, and through audits. Without free speech the Republic is lost.

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SECTION 2. FREE SPEECH OF NONPROFIT ORGANIZATIONS.

- (a) IN GENERAL. — Restrictions on speech, either directly or indirectly, of tax-exempt organizations under 26 U.S. Code § 501(c) of the Internal Revenue Code of 1986 outside of "express advocacy" are prohibited.
- (b) Notwithstanding any other provision of law, regulation or rule, there shall be a rebuttable presumption that all speech by tax-exempt organizations is within the limitations of their tax-exempt purpose unless it is proven with clear and convincing evidence that such speech is "express advocacy."
- (c) For purposes of this section, the term "express advocacy" has the meaning given such term under section 30101(27) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101(27)).
- (d) Amend 52 U.S.C. 30101, after clause (26), by inserting:
- “(27) EXPRESS ADVOCACY. – The term “express advocacy” means a public communication that –
- (a) expressly advocates a particular outcome of an election of a public candidate by using phrases such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘(candidate’s name) for Congress,’ ‘vote against,’ ‘defeat,’ or ‘reject¹, and
- (b) is susceptible to no interpretation other than expressly advocating a particular outcome of an election.”
- (e) EFFECTIVE DATE. – This section shall become effective immediately.”

- END-

¹ [Buckley v. Valeo, 424 U.S. 1, 15 \(U.S. 1976\)](#)