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TRI Policy Brief

Will the IRS Redefine Free Speech in 2016?

The IRS is attempting to issue a rule that would redefine the meaning of political activity to allow the government to regulate free speech and redefine the discussion of issues as electioneering. If the rule is enacted, non-profit organizations – including, but not limited to, educational institutions, policy advocacy groups, labor unions, churches, and business leagues – could be prohibited by their tax status from engaging in what is now constitutionally protected free speech.

The proposed rule (REG 134417-13) is staggeringly broad. Any communication that even named an elected official during election season could be considered electioneering. It could prevent education and advocacy groups from discussing issues when the public is considering them, and from criticizing the voting behavior of politicians.

It is the most radical attempt to protect politicians from public criticism in decades.

Even more radically, any pre-existing material on a nonprofit's website would be considered electioneering unless it was deleted: organizations would have to “search and destroy” any content that names or even references any individual seeking public office anywhere in America, including special elections, local elections, and private political party offices. This is an impossible requirement for an organization to achieve with certainty.

Download TRI full report at: <https://taxrevolution.us/free-speech>

Congress postponed application of the rule by defunding it through September 2016, but IRS Commissioner John Koskinen has announced that the IRS intends to pursue the rule as soon as it is able to do so.

Implementing the rule as written would put the IRS in direct conflict with the Supreme Court, infringe upon the political freedom of non-profit organizations, lay the groundwork for further restrictions of speech, and silence hundreds of thousands of organizations from discussing the statements and actions of politicians.

Congress should act immediately to protect the right of private associations to engage in political speech, by passing legislation to positively define “candidate-related political activity” as only express advocacy or electioneering.