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Internal Revenue Service
Attn.: Judith Kindell
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments of the Free Speech Coalition, Inc.,
in Response to IRS Announcement 2000-84

Dear Ms. Kindell:

The Free Speech Coalition, Inc. ("FSC") appreciates the opportunity to comment on the issues raised by IRS Announcement 2000-84. This IRS announcement solicited public comments with regard to the application of Internal Revenue Code provisions governing exempt organizations to certain activities which such organizations may conduct on the Internet.

INTRODUCTION

The Free Speech Coalition is an alliance of liberal, conservative and non-ideological issue-activists who are particularly concerned with the preservation of the rights of nonprofit advocacy organizations. FSC members have felt compelled to band together to defend the interests of Americans who want to participate fully in the formation of public policy in this country without undue governmental interference and restriction. This diverse group, which came together in 1993, includes many of the other nonprofit organizations which have joined in making these comments.

The nonprofit organizations which are members of FSC obviously have a strong interest in the issues raised by the IRS in Announcement 2000-84. FSC understands the service must preserve an audit trail to ensure that nonprofits are held responsible for their actions, but take issue with those issues raised in the announcement that are likely to result in even greater micromanagement (in the guise of regulation) of nonprofits by the IRS. Take, for example the "issue" as to whether statements made in a newsgroup should be deemed to be attributable to a nonprofit maintaining the forum; these intrusions raise serious questions as to whether unreasonable burdens are being raised to free expression and association by nonprofits and their members. Other issues suggest severe penalties for generally innocuous actions, such

as providing a hyperlink to an organization involved in political campaigning, or providing information on politically-related issues on a web page.

We appreciate the decision by the IRS to solicit public comment on these questions before proceeding to regulatory action (or clarification of these issues through the conduct of enforcement actions on exempt organizations). However, we would strongly encourage the IRS not to twist the existing IRC so that it would ostensibly cover new, unanticipated applications — such as those suggested in IRS Announcement 2000-84. Should there truly be a genuine need for new regulation of the use of the internet by nonprofits, the IRS should await the law making of Congress.

COMMENTS

Our response to individual questions posed by Announcement 2000-84 follows.

A. General Issues

*Does a website constitute a **single publication** or communication? If not, how should it be separated into distinct publications or communications?*

A website would normally be one big publication, with moveable, changeable parts. Any other answer would put the service into a metaphysical inquiry with many more questions than easily identifiable answers.

*When **allocating expenses** for a website, what methodology is appropriate? For example, should allocations be based on webpages (which, unlike print publications, may not be of equal size)?*

Any effort to force a nonprofit to allocate costs should be undertaken by the nonprofit, perhaps with assistance from their auditors, and based on a rule of reason. In other words, any reasonable allocation method devised by the nonprofit and its expert consultants should be approved. Any effort to impose from the outside some method of joint cost allocation would create a legal, and financial nightmare. If the service must adopt some objective rule, we suggest that when content on a website is determined to be either of a type subject to restriction (such as grass roots lobbying) or not in furtherance of exempt purposes, a bright line test be adopted; for this purpose the number of web pages upon which such a statement appears, would be an easily ascertainable way in which to allocate; this would provide more than the “column inch” method the service has rejected in hard copy circumstances, but also avoid the “tainting rule” that has been abandoned by the service in areas such as lobbying activity and service provision in connection with licensing agreements.

Unlike other publications of an exempt organization, a website may be modified on a daily

*basis. To what extent and by what means should an exempt organization maintain the information from **prior versions** of the organization's website?*

Taken to an extreme, this question suggests that a nonprofit might be required to save each and every change, including the date and time of change, to its website forever; that would be unreasonable in our view. Any requirement that a web site be capable of storage must recognize that smaller nonprofits may not be able to afford to comply, and therefore might be forced to close down their site. Even large nonprofits should be protected from new burdensome requirements.

*To what extent are statements made by subscribers to a forum, such as a listserv or newsgroup, **attributable** to an exempt organization that maintains the forum? Does attribution vary depending on the level of participation of the exempt organization in maintaining the forum (e.g., if the organization moderates discussion, acts as editor, etc.)?*

The suggestion that an exempt organization should be legally liable for statements made on a forum maintained by that organization (excepting official statements made by an authorized official) is absurd. To impose on exempt organizations the obligation to censor and control such forums would render them useless, and would force such organizations to close these forums down out of fear that penalties might ensue. No nonprofit could afford to have its tax exemption hanging by a thread daily, risking its revocation because an enemy of the organization were to enter a chat room and make improvident statements. Such forums are valuable for their facilitation of communication between individuals sharing similar concerns and interests (e.g., inner-city schools, or governmental actions impacting First Amendment freedoms). For the IRS to require, in essence, the elimination of such forums only serves to reduce the effectiveness and productivity of exempt organizations without resulting in any evident benefit. So long as the organization does not give its formal approval to statements, statements should not be attributed to them. Indeed, a formal disclaimer, disavowing support of any statement made there, should eliminate any attribution.

B. Political and Lobbying Activities

*What facts and circumstances are relevant in determining whether **information** on a charitable organization's website about **candidates for public office** constitutes intervention in a political campaign by the charitable organization or is permissible charitable activity consistent with the principles set forth in Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 86-95, 1986-2 C.B. 73 (dealing with voter guides and candidate debates)?*

Once again, a formal disclaimer from a website, listserv or chat room that is open to the general public should insulate the nonprofit from attribution of the content in any third party communication. For purposes of this question, we can see no fundamental difference between a nonprofit's web site and any other form of statement. Nevertheless, maintaining an Internet web site is not the same as conducting mailings or purchasing advertisements in mass media.

*Does providing a **hyperlink** on a charitable organization's website to another organization that engages in political campaign intervention result in per se prohibited political intervention? What facts and circumstances are relevant in determining whether the hyperlink constitutes a political campaign intervention by the charitable organization?*

Web sites can contain dozens, hundreds, or even thousands of links to other websites. Barring the nonprofit web site from linking to the web site of other groups because of some form of attribution back to the nonprofit would mean that no nonprofit could have any links on its site. Even if a charity linked to a university site, the university site might provide the websites of candidates for the assistance of their students. The IRS has no business checking out first level, second level, or any levels of linkage on web sites so that it can attempt to attribute political action to a charity. If the charity web site stated "Vote Smith, click here to find out how to volunteer" that would be an impermissible statement. Anything else should be permitted.

*For charitable organizations that have **not made the election** under section 501(h), what facts and circumstances are relevant in determining whether lobbying communications made on the Internet are a substantial part of the organization's activities? For example, are location of the communication on the website (main page or subsidiary page) or number of hits relevant?*

*Does providing a **hyperlink** to the website of another organization that engages in lobbying activity constitute lobbying by a charitable organization? What facts and circumstances are relevant in determining whether the charitable organization has engaged in lobbying activity (for example, does it make a difference if lobbying activity is on the specific webpage to which the charitable organization provides the hyperlink rather than elsewhere on the other organization's website)?*

*To determine whether a charitable organization that **has made the election** under section 501(h) has engaged in grass roots lobbying on the Internet, what facts and circumstances are relevant regarding whether the organization made a "call to action"?*

*Does publication of a webpage on the Internet by a charitable organization that **has made an election** under section 501(h) constitute an **appearance in the mass media**? Does an email or listserv communication by the organization constitute an appearance in mass media if it is sent to more than 100,000 people and fewer than half of those people are members of the organization?*

*What facts and circumstances are relevant in determining whether an Internet communication (either a limited access website or a listserv or email communication) is a communication **directly to or primarily with members** of the organization for a charitable organization that has **made an election** under section 501(h)?*

The analysis for lobbying should be the same as for electioneering. If a nonprofit's web site states, "Support increased funding for the school lunch program, click here to find out how to send an e-mail to Congress," that is lobbying. Anything short of that is not.

C. Advertising and Other Business Activities

*To what extent are business activities conducted on the Internet **regularly carried on** under section 512? What facts and circumstances are relevant in determining whether these activities on the Internet are regularly carried on?*

*Are there any circumstances under which the payment of a **percentage of sales** from customers referred by the exempt organization to another website would be **substantially related** under section 513?*

We have no comment on these questions.

*Are there any circumstances under which an online "**virtual trade show**" qualifies as an activity of a kind "traditionally conducted" at trade shows under section 513(d)?*

We have no experience with "virtual trade shows."

D. Solicitation of Contributions

*Are solicitations for contributions made on the Internet (either on an organization's website or by email) in "**written or printed form**" for purposes of section 6113? If so, what facts and circumstances are relevant in determining whether a **disclosure** is in a "conspicuous and easily recognizable format"?*

IRC section 6113 applies only to solicitations "in written or printed form," "by television or radio," or "by telephone." Since a web site or email is none of these, there is no regulatory authority under this section. Only Congress can change the law.

*Does an organization meet the requirements of section 6115 for "**quid pro quo**" contributions with a webpage confirmation that may be printed out by the contributor or by sending a confirmation email to the donor?*

IRC section 6115 requires that in certain cases a nonprofit "provide a written statement." Either of the alternatives in the question would appear to meet this test.

*Does a donor satisfy the requirement under section 170(f)(8) for a **written acknowledgment** of a contribution of \$250 or more with a printed webpage confirmation or copy of a confirmation email from the donee organization?*

IRC section 170(f)(8)'s requirement for a "written acknowledgment" would appear to be met by both of the methods postulated.

CONCLUSION

If the IRS should believe that the current laws do not provide adequate authority for their regulation of nonprofits, the IRS should present these concerns to Congress, and obtain new authority over the Internet activities of exempt organizations, rather than twisting the existing code for purposes it was not intended.

Respectfully submitted,

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