

Message

From: Ingram Sarah H [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=USER MAILBOXES/CN=XCFBB]
Sent: 1/24/2010 4:54:17 PM
To: Lerner Lois G [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=User Mailboxes/cn=LGLern00]; Marks Nancy J [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=Counsel/cn=IRSCOUNSEL_NO-Recipients-NOCLNJM]; Livingston Catherine E [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=Counsel/cn=IRSCOUNSEL_NO-Recipients-NOCLCEL]
CC: Pyrek Steve J [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=User Mailboxes/cn=SJPyre00]; Schultz Ronald J [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=G9ZLB]; Flax Nikole C [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=KKZMB]; Ingram Sarah H [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=User Mailboxes/cn=XCFBB]; Grant Joseph H [/O=INTERNAL REVENUE SERVICE/OU=WASHINGTON DC/CN=RECIPIENTS/CN=User Mailboxes/cn=VRGLB]
Subject: RE: Political Activity by Corporations

Guys – I agree with you all – let’s prepare a FAQ that can go on the web and be given to the press office. I think we start with the press office and then work the pros/cons of putting on the web.

Here’s my concern – there are those eager to take the test of the tax-exemption issue to the courts and, if I were them, would be even more eager now. In prior meetings, my proposal that we cooperate with that desire (let’s get an answer whatever it is) has not been greeted with enthusiasm at any level. I remain interested in that as one of a number of options, but we have not had the right internal conversations.

Even assuming some discussion of that option, Lois et al. are right we need a quick, plain vanilla, no-news, kinda blurb.

Lois – I assume these guys will hit us up first thing Monday morning at coffee and in the hallways and not wait for the general session Tuesday. Can you tread water Monday and I’ll be firm Tuesday at the 8:30 general session?

From: Lerner Lois G
Sent: Friday, January 22, 2010 6:12 PM
To: Marks Nancy J; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporations

Thanks Nan--Cathy is a good one to have involved. Unfortunately, Judy Kindell is at the ABA so she and I haven't had any chance to talk. What you described in the first paragraph is exactly what I had in mind, but understand that the sensitivity surrounding this issue may mean we just have that piece available in our back pockets so we wouldn't have to scramble letter, but initially put the softer item on the web or to our media folks. Sarah--your thoughts?

Lois G. Lerner
Director, Exempt Organizations

**Government
Exhibit**

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From: Marks Nancy J [mailto:Nancy.J.Marks@IRSCOUNSEL.TREAS.GOV]
Sent: Friday, January 22, 2010 6:05 PM
To: Lerner Lois G; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporations

I'm pulling Cathy into this (thanks for being mindful of her unavailability Lois but she has a bit of a window right now and was brainstorming this issue herself). Are you thinking of something like--we've had some inquiries about whether the Supreme Court decision in ... applies to the laws governing political activity by charities followed by a fairly short plain english no which briefly summarizes the constraints (to remind people) distinguishes the opinion and maybe cites to the authority for concluding that these constraints do not violate first amendment rights.

I guess, and this is an issue for Steve and Sarah which I know you've served up to them, the question is whether we take it head on with a general statement or whether we come in softer maybe putting a Q&A on the web site and equipping public affairs with the same Q&A. I might be inclined to the softer approach because so far the public debate does not seem to be running too far off the mark. That is more of a PR call which I happily leave in your hands. (your section of the ACT stampeding--not a pretty thought)

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, January 22, 2010 5:53 PM
To: Marks Nancy J; Ingram Sarah H
Cc: Pyrek Steve J
Subject: RE: Political Activity by Corporations

I'm going to need them by Tuesday at the latest! Sarah--perhaps we can head off the stampede from the EO ACT by a general statement in the larger ACT meeting?

Lois G. Lerner

Director, Exempt Organizations

From: Marks Nancy J [mailto:Nancy.J.Marks@IRSCOUNSEL.TREAS.GOV]
Sent: Friday, January 22, 2010 4:01 PM
To: Lerner Lois G; Ingram Sarah H; Miller Steven T
Subject: RE: Political Activity by Corporations

Thanks Lois I was wondering along the same lines--thought a few plain english Q&A's might be helpful. I gave Bill Wilkins a bit of background and also my read that this didn't change our position on the exempts in case he got the question at the EO lunch at the ABA

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, January 22, 2010 3:16 PM
To: Ingram Sarah H; Miller Steven T; Marks Nancy J
Subject: Political Activity by Corporations

I'm sure you've heard about the S Ct.'s decision in Citizen's United that corporations have first amendment rights and the prohibitions on corporate spending in elections are unconstitutional. While I don't think that changes our legal position--that tax-exemption is a privilege and if you want the privilege you have to play by the rules, I do think we need to be prepared to respond to inquiries about c3 and c4 spending in elections. Last November when the opinion was expected, EO practitioners asked if the IRS would put out a press release reminding folks of the c3 prohibition on campaign

spending. They weren't arguing about whether the prohibition was legal--instead they were trying to stave off confusion in the event the court struck down the corporate prohibition. I'm sure they will be back asking soon. This also coming on the eve of our hearing on 7611 seems like much fodder for the press. I've asked Steve Pyrek to see if there have been press inquiries, but I am more concerned about folks getting questions on this at speaking opportunities. I know I have a few coming up and it is likely I'll be asked. I know this is a very sensitive issue, so thought it best to raise it with all of you to get high level direction as soon as possible. Thanks

Lais J. Leener

Director, Exempt Organizations