

*- Edited Transcript -*

# *Creating Clarity for Nonprofits*

Tuesday, September 30, 2014 ▪ 12:00 to 1:30 p.m.  
Hudson Institute ▪ Betsy and Walter Stern Conference Center ▪ 1015 15th Street, NW ▪  
Suite 600

## **Event Description**

Nonprofit political activity is at a crossroads. At a time when commentators from across the political spectrum are increasingly interested in the Internal Revenue Service's treatment of nonprofit political activity, a vital voice has so far been missing, that of the voter.

On September 30<sup>th</sup> Hudson Institute and Public Citizen presented the recent results of a bipartisan poll asking voters across the country what their opinions are on clearer rules for political activity and the relationship between changing IRS rules and free speech. Pollsters **Celinda Lake**, of Lake Research Partners, a Democratic polling firm, and **Robert Carpenter**, of Chesapeake Beach Consulting, a Republican polling firm, presented the poll results. Also joining the panel was **John Tyler**, General Counsel for the Ewing Marion Kauffman Foundation, a leading foundation focused on education and entrepreneurship, and **Lisa Gilbert**, Director of Congress Watch at Public Citizen, a nonprofit that works to ensure all citizens have a voice in the nation's capital. Hudson Institute's **William Schambra** moderated the discussion.

## **PROGRAM AND PANEL**

12:00 p.m.	Welcome by Hudson Institute's <b>William Schambra</b>
12:10	Panel discussion <b>Robert Carpenter</b> , Founder of Chesapeake Beach Consulting <b>Lisa Gilbert</b> , Director of Congress Watch at Public Citizen <b>Celinda Lake</b> , President of Lake Research Partners <b>John Tyler</b> , General Counsel for the Ewing Marion Kauffman Foundation
1:10	Question-and-answer session
1:30	Adjournment

WILLIAM SCHAMBRA: Good afternoon on behalf of the Bradley Center for Philanthropy and Civic Renewal. Kristen McIntyre and I welcome you to a panel discussion entitled “Creating Clarity for Nonprofits,” which will, as the invitation suggested, discuss the recent results of a bipartisan poll asking voters across the country what their opinions are on clearer rules for political activity and the relationship between changing IRS rules and free speech.

It's a particular honor to co-host today's panel with the prominent Washington, DC, nonprofit Public Citizen, which prides itself on ensuring that all citizens are represented in the halls of power. I should add that Public Citizen paid for the survey and we paid for the sandwiches, so I think we're probably coming out ahead. [LAUGHTER] The sandwiches would have to be pretty good sandwiches.

First, our customary preview of coming attractions. On November 4<sup>th</sup>, in what is likely to be the final panel discussion of some 100 or so the Bradley Center has held over the past 10 years, we will discuss a monograph commissioned by the Center entitled, “[The Historical Split Between Charity and Philanthropy](#),” from a promising young historian by the name of Ben Soskis. The monograph addresses perhaps the central concept of modern philanthropy, namely the much-heralded distinction between philanthropy on the one hand and charity on the other. Although most treatments of that division have regarded philanthropy as manifestly superior to charity, Ben's essay suggests that there's a valuable dialogue between them that should be preserved. That has, of course, been a recurring theme in the Bradley Center's work as well.

We're still putting the panel together, but one of its members will be Patty Stonesifer, one of those rare individuals who executed a reverse career commute between the world of philanthropy and charity, moving from the presidency of the Bill and Melinda Gates Foundation to directing the local DC nonprofit Martha's Table.

It's Election Day. I understand that, but that's always an ominously quiet eye of the electoral storm, so come and ponder a topic that will get your minds off the evening's coming tumult.

It must be said that in recent years electoral activity and nonprofits have not seemed so far apart, which is why today's panel is a timely conversation about an increasingly common problem, namely the lack of legal clarity when it comes to legally permissible political activity by charitable organizations. Public Citizen has been working on this problem for some time and in May of 2013 released a set of six proposed rules, which were designed to clarify the IRS regulations governing political activity by nonprofit organizations.

Today's panel, I should be very clear about this, today's panel isn't going to be a discussion in detail of the wisdom or lack of wisdom of those recommendations, but will rather seek to assess the public's receptiveness or perhaps even eagerness for reform in this area through a survey that I will now ask our distinguished panelists to discuss.

We will hear first today from the two pollsters who conducted the survey, one a prominent Democrat and the other a prominent Republican. Our first speaker will be Celinda Lake of Lake Research Partners and then we'll hear from Robert Carpenter of Chesapeake Beach Consulting.

We'll then move to Lisa Gilbert, director of Congress Watch at Public Citizen, and we'll close with John Tyler, general counsel Ewing Marion Kauffman Foundation. So, Celinda.

CELINDA LAKE: Thank you very much. It's delightful to be here and I want to say I am so pleased to be doing this poll bipartisanly with my colleague Bob Carpenter. Our firms have worked together for decades, but this is truly a bipartisan issue, so it should be reflected by bipartisan polling. And I'm always delighted to work with Public Citizen. They have long been a colleague and a friend of our firms and do incredibly important work.

This is a survey that we conducted from July 26<sup>th</sup> through 29<sup>th</sup>. The margin of error is plus or minus 3.5 percent. It covers 800 likely 2014 general election voters.

The first thing we looked was how people think about this general concept. We found that more than eight in 10 voters think it's important to have clear rules in place concerning the political activities that nonprofit organizations can and cannot do. And almost two-thirds of the voters, feel that it is very, very important.

Bob will talk about this more, but if you're looking for bipartisan consensus, while the elites may be divided, the voters are united. In fact, every demographic and political group thought this issue was important and every demographic and political group supported some kind of change. Eighty-six percent thought it was important and 57 percent thought it was very important.

These are surprisingly high numbers, honestly, for what is probably a fairly new issue for people who are not short of problems on their minds. They are worried about jobs. They're worried about education. They're worried about healthcare. They're worried about retirement. So, frankly, we were surprised at the intensity and the height of the concern.

We then asked voters if they favored or opposed changing the way nonprofit organization activities are regulated to establish more clear and fair rules for what is counted as a political activity. Support again for these changes was remarkably high, given this is a brand new issue to people, and remarkably across the board. Forty-nine percent of the voters said they favored these changes and 34 percent strongly favored them. Only 10 percent opposed them and 41 percent said that they are not sure how they feel, which is not surprising given the fact that this is a very technical area to be asking the public about.

A transparency requirement was extremely popular as well. In fact, we're seeing across the board; transparency and accountability being very, very, very strong concepts right now with the American public. Nearly two-thirds of the voters, 63 percent, said they felt more favorable toward new rules that include disclosure. Again, as Bob will discuss, this was bipartisanly true across every demographic and political group.

So, 63 percent more favorable, 40 percent much more favorable and only 8 percent less favorable. Remember, the error here is plus or minus 3.5%. So, 4% of this poll thinks that Bob Carpenter is president of the United States. [LAUGHTER] Basically, no one was less favorable toward this position and only 29 percent said that they didn't know how they felt about this idea.

Again, what we're seeing is that transparency in general is a very, very, very strong concept right now and people like public disclosure and they don't think there's enough of it going on.

Now often when you're polling on technical areas, we find that it depends very much on how you word the questions. So we decided to develop questions to see how the public feels about this issue when we're arguing our side versus their side. We argued that we needed clearer rules and standards versus this proposal restricting Americans' right of free speech, which is the argument that has been put out there.

On our side we argued the absence of clear rules governing what counts as political activity allows special interest and big money groups to rig the system. This allows corporations and wealthy special interests to hide money and secretly influence elections. We need clear rules and standards to pull back the curtain so that the source of the money is transparent. The public has the right to know who is influencing elected officials. A lot of strong language in there; the idea of rigging the system, referring to campaign finance reform, rigging elections, and pulling back the curtain and letting people know.

On the other side, though, we were no slouches. We had a very strong argument as well. We said the last thing we need is to give the government more power to restrict American citizens' right of free speech, but that's exactly what this proposal does. It gives more power to the bureaucratic IRS, which targets our enemies, limits our free speech, and will stifle the activities of well-meaning nonprofits. This proposal is another layer of red tape in abuse that we don't need. We said the dreaded G word, government. We said the dreaded IRS. We said waste, fraud, abuse, red tape, bureaucracy, and we held it up against free speech, which is a very, very powerfully held norm with the public.

In that debate, we need clearer rules and standards, got 60 percent of the public. This proposal restricts Americans' right of free speech got 27 percent, and only 13 percent said that they didn't know which side they felt more strongly about.

So, there was a very, very strong sense here in the public that this is an important issue. That this is another example of abuse that is going on out there. We need clear rules. We need more transparency. The lack of clear rules and lack of transparency is actually inhibiting the right of ordinary people to have their free speech and their vote.

Now let me turn it over to Bob to talk more about the bipartisan nature and some of the details.

ROBERT CARPENTER: Thank you, Celinda. It's always a pleasure to participate in a survey with Celinda. Every time I do something with Celinda I find out a little bit more about her. Up to this point I thought she liked me, but now she's making me be president, which is kind of a nightmare. [LAUGHTER]

Let me talk a little bit about the bipartisan responses that we found, but also get into some of the question wording a little bit.

As Celinda mentioned, the 8 in 10 voters that think it's important to have clear rules in place was very bipartisan. Eighty-seven percent of Democrats, 84 percent of Independents, and 88 percent of Republicans agreed with this. So, very, very strong numbers across the partisan spectrum for having clearer rules in place.

We asked the question two different ways. The wording of the question was switching topics, as you many know, some types of nonprofit organizations are not allowed to support or oppose candidates for public office, but can engage in nonpartisan activities like voter registration, voter education, and get out the vote efforts.

Then we asked them how important they thought it was to have clear rules in place. That was the phrase 1 of the first question. Half the respondents got that. The other half got the same basic question with four words added. Switching topics, as you may know, some types of nonprofit organizations, which are tax exempt, and then the question continued.

Both of those, very high numbers, 84 percent for the first one, 88 percent for the second one, and the bipartisanship was very apparent on both of them. Eighty-six versus 87 among Democrats, 83 versus 85 among Independents, and 85 versus 90 among Republicans. So, again, very, very strong numbers.

Celinda and I both do a lot of candidate work and we know that candidates would love to get 85 percent of the vote and some do, but again, I like to say when I'm doing a polling presentation, think of these in terms of candidate support when you're looking at numbers. A candidate would be happy with 55 percent. A candidate would be thrilled with 85 percent.

We also asked the questions, as Celinda mentioned, several other ways and talked about regulating the charities and nonprofit organizations in terms of what they can do in political activity. Again, we asked the question two different ways to see if there was any difference in the responses and there wasn't.

The first way we asked the question: The Internal Revenue Service is in charge of regulating what these charities and nonprofit organizations are permitted to do when it comes to political activity. Some people have proposed to change the way nonprofit organizations' activities are regulated to establish more clear and fair rules for what is counted as political activity. Would you favor or oppose this change or are you not sure? To that, 49 percent favor, 10 percent oppose, 41 percent aren't sure, even with the IRS being mentioned as the regulator. When we asked the question saying that it was government in charge of regulating these charities instead of the IRS, so we swapped out IRS for government, we got equally strong numbers. Forty-eight percent in favor, 10 percent opposed, and 42 percent unsure.

Very little space between the partisans on this one. For the first question, 53 among the Democrats, 56 for the IRS versus government among Democrats. Fifty versus 50 among Independents and 46 versus 40 among Republicans. So, a slight drop with Republicans on this question, though they favored the IRS over the government by a margin of 46 to 40, which is somewhat interesting.

In terms of the other issues that we looked at and the other questions, again we continue to see very, very little space between the partisans. In terms of the question, part of the change would involve more certainty the sources of the funding are disclosed, 63 percent were favorable to that, 66 Democrat, 62 Independent, and 61 Republican. Again, very, very little difference there.

Finally, Celinda mentioned the two statements that were read about the absence of clear rules versus the free speech argument and what we saw there was finally some divide between partisans. Sixty percent overall favored the absence of clear rules is a problem versus 27 percent the free speech argument. Seventy-one versus 18 among Democrats, 61/26 among Independents, and 49/37 among Republicans.

So, while the Republican number was significantly lower than the Democratic number, we still had a plurality of Republicans saying we need clear rules. The free speech argument is trumped by that. With that, let me stop and turn it over to Lisa and we'll be happen to take your questions at the appropriate time.

LISA GILBERT: Thanks so much Bob and Celinda. It's fabulous to be here at this important bipartisan event. I'm Lisa Gilbert, director of Public Citizen's Congress Watch Division. Public Citizen is a membership-based national organization. Our mission is to take on powerful interests on behalf of the American public.

As part of that work we engage in a number of types of good government work, including housing the Bright Lines project, as was mentioned earlier. The Bright Lines project is intended to redefine political intervention for tax-exempt entities with a set of safe harbors and clear, bright lines. The work on this project began almost five years ago. It's spearheaded by a drafting committee of prominent tax attorneys, several of whom are here with us today, and is currently focused on the important ongoing IRS rulemaking.

Rulemaking in this area is long overdue and we believe it's important for three main reasons. First, by clarifying the definition of political intervention we will enable more nonprofits to participate in nonpartisan political activities safely as they gain more understanding of what they can and cannot do. Secondly, we'll deal with some of the abuses of the system as a few groups continue to try to game the tax code seeking to use large undisclosed donations to manipulate election outcomes. And finally, Bright Line rules will relieve the IRS from having to figure out if political organizations or if nonprofits are doing political work really based on no clear criteria than knowing political activity when they see it.

The IRS is work right now to promulgate a rule in this area in an attempt to create a clear standard, a definition for political activity in this space. As such, we really applaud it. They're working to remedy the uncertainty of the current rule, all the facts and circumstances standard, which is the test that the IRS uses right now to try to determine on a case by case basis whether nonprofit activity is political or not.

Though the initial proposal that the agency came out with earlier this year did have some serious flaws, we're very encouraged that Commissioner Koskinen has made clear that the IRS is working to fix those flaws and that they will be re-proposing the new rules early in the new year.

Again, we think the need for these rules is really obvious. The polling readout just told us that the public agrees and they support this type of clarity that the rules will bring.

In addition, Public Citizen's own analysis of the non-form comments to the first rule proposal, which we did in May, tells us that of the 245 unique organizations that commented to the agency, 67 percent used their comment to call for the rules to be revised or for hearing. This statistic ranged across party lines. Among the commenters there was agreement about the initial flaws in the first proposal, but also agreement that there's a need to fix the current problematic system that the IRS is using via a strong revised rule.

The Bright Lines project's comment was also squarely within that camp. We want the rule making to continue, but we also found flaws in the first proposal as it was issued. We want to see it improved.

So, I just wanted to flag two concerns that we had with the initial proposal that we hope will be addressed in the upcoming re-proposal next year. First, the first proposal applied only to one type of tax-exempt entity, to 501(c)(4) social welfare organizations. We worry that defining political activity differently for different sorts of tax-exempt entities will create inconsistencies as well as potentially drive organizations to reincorporate as different sorts of 501(c)s to avoid any kind of new Brighter Line definition.

A second problem I wanted to flag is that in an effort to get as far as possible from the vagueness of the current facts and circumstances test, the IRS went to the polar opposite direction and labeled whole categories of civic engagement as political candidate-related activity. The result of that is that first draft swept in a bunch of activities that can be truly nonpartisan, like voter registration and voter guides.

Again, we are really encouraged that the IRS and Treasury are moving forward with these rules. It's an important space and we're looking to them to significantly rework the draft rules before they release their new version next year. We hope that the agencies lean on the Bright Lines Project's drafting to do so. We think that our principles create a clear and objective definition of freedom of speech, protect civic engagement, and will create safe harbors.

I'll close just by saying that we're really excited about the possibilities for bipartisan cooperation, that events like this one, a poll release here at Hudson Institute, really represent.

We hope the IRS knows that they have the support that they need to develop a comprehensive and clear definition for political activity in addition to hopefully dealing with other topics, like how much activity these groups should do and to whom or which type of organizations these definitions should apply.

Thanks so much. I look forward to questions and I'll turn it over to John.

JOHN TYLER: Good afternoon. I suppose that many of you are veterans of the Bradley Center events and as you know, the Bradley Center events would not be Bradley Center events without

a provocative and hopefully constructive viewpoint. Given this panel, I think that is my role here today.

Given that my observations have not been vetted by either my employer or any of the organizations where I serve on their boards, nothing I say should be attributed to anybody but me.

So, jumping in. Exempt organizations have a long history in the United States of voter engagement. They were at the forefront of the women's suffrage movement and the civil rights movements. They have historically been and are current sources of important and useful information for voters, those who are stakeholders in the organizations, and for the public generally.

The types of engagement range from hosting debates, presidential debates most notably, producing and disseminating voter guides, hosting candidate forums, and any number of other ways that exempt organizations engage.

As such, exempt organizations are an essential part of civil society. They are critical to the functioning of civil society; most notably because exempt organizations are fundamentally expressions of, and mechanisms for, the exercise of freedom of speech and freedom of assembly.

Free speech and free assembly are not just incidental to our democratic republic, they are essential. They are innate. They are inherent in the ability of our democratic republic to function. As a result there is and must be opportunities for civic engagement by exempt organizations with voters and even with candidates.

We can't or shouldn't have rules that effectively remove exempt organizations from civil society, because doing so can and will disenfranchise many and undermine these inherent principles of the democratic republic.

The Bright Lines Project is, I think, a thoughtful and diligent effort to balance various perspectives and values. There's much to admire about the project and its approach to addressing various issues.

One of the problems that we are facing, not with the Bright Lines Project, but for instance with the current legal environment for (c)(4)s, is the appearance of unbounded discretion in the IRS as far as determining whether an organization is exempt or not. And in determining whether or not an organization is complying with regulations.

On one hand, unbounded discretion is a threat to civic engagement. On sort of the other hand, and Lisa alluded to this with the proposed regulations that came out of Treasury, there are degrees to which there's absolute certainty about that engagement.

When you look at those regulations, any type of engagement by an exempt organization, by a (c)(4), given the letter of the regulations, any type of mentioning a candidate is forbidden. It's unlawful intervention. Those regulations were very clear.

So, the problem with the regulations was not necessarily the lack of clarity or even whether they were fair. Not only were the regulations clear as far as what's allowed and what's not allowed, they applied across the board, so they were both clear and fair.

Given that, and by the way, I don't agree with the regulations. I think that the regulations would have created huge amounts of problems, not just for (c)(4)s but for (c)(3)s, given the likelihood that there would have been migration to the (c)(3) area.

Given that as it relates to the survey and the clear preferences for clarity that the survey shows and given the fact that the proposed regulations and now withdrawn regulations were clear, I'm not sure where the value added is from the survey.

I say for a couple of reasons. One is that the survey actually seems to suffer from some of its own ambiguities, some of its own lack of clarity. Second, as was already talked about a little bit, but I want to drill down a little bit more, some of the questions seem to be biased towards a particular result.

Let's start with ambiguities about the survey. Clarity can go in a whole host of different directions. So, is clarity for its own sake what the public wants? Or, do they want clarity that is meaningful? The survey doesn't answer that question.

Like I said, you can have clarity about no mentioning candidates within 30 or 60 days of an election. That's clear but that is also harmful. So, what do they mean by clarity? And is it clarity for its own sake, there's some ambiguity around that.

Then you can get to clarity at what cost? At what cost to civic engagement? So, the proposed regulations were clear and they undermined civic engagement by exempt organizations. Based on the survey, it's almost as if it could be read that clarity at any cost is acceptable. The ambiguity about where does clarity fit relative to other factors and other values becomes an issue.

There are also some things where there's lack of clarity. Not only do we need definitions about what is political intervention or candidate-related activity and the other synonyms that are floating around, but how much is too much? Is it 49 percent? Is it 15 percent? Is it 85 percent?

There's no discussion of that. So, there's actually ambiguity around the question of how much is too much or what does the public think about how much is too much? Now, the survey didn't go in that direction. It's just to point out there are important gaps in the regulatory environment. That is one of them.

Both of those surveyors, Celinda and Bob, mentioned question 15 and 16, where there was a substantial number, 41 and 42 percent of people who responded that they don't know or they were not sure. I think Celinda's explanation of that is right. This is a complicated area, so it would be expected that a large number of people say they don't know or they aren't sure.

But that lack of knowledge or that lack of an opinion has to mean something. I don't know what it means, but I think it's got to mean something more than people aren't sure on that question.

For instance, how does the response to that question compare and measure against a question where there was more certainty? Can you get to consistent results or are they potentially inherently inconsistent? I don't know the answer to that question, but it seems like it's something that needs to be considered.

That's one and hopefully constructive observation about the ambiguities of the survey. The second has to do with some of what I think might be biases in the survey; most particularly the questions around choosing free speech or clarity. The protocol for that was they read the statements and then if somebody said I don't know, I'm not sure, neither of these or both of these, the surveyors asked them, encouraged them, by saying which statement comes closer to your views?

As if to encourage pick one or the other and the third, I don't know, or both or neither is not really a good option. Now, there are reports of both neither and don't know, but there is an affirmative effort to move people off of that position.

As Celinda read the responses and the positions, I guess I would disagree with her about whether A and B, clarity versus free speech, are equally weighted in the use of incendiary language. The clear rules language included 'rig the system,' and Celinda pointed to all these. So, rig the system versus restrict American citizens' right of free speech. Secretly influence elections. A bureaucratic IRS. Pull back the curtain. Layers of red tape and abuse. Influencing elected officials. Verses the IRS will stifle the activities of well-meaning nonprofits. I juxtapose them as if they are juxtaposed.

In my mind the clear rules incendiary language is much harsher, much sharper than the free speech language. Particularly when one of the survey questions, it relates to the IRS stifling the activities of well-meaning nonprofits, most of the people surveyed didn't view nonprofits being stifled as a problem that anybody's wrestling with.

They asked a couple of questions about their views on whether exempt organizations or public charities are not speaking out, or afraid to speak out and to engage. Most people didn't view that as a problem. In fairness to the surveyors, they didn't know that when they were designing the surveys.

There are many reasons that the proposed regulations fell short and there are many good reasons for them to have been withdrawn. I do think that one of the good outcomes from the proposed regulations was it got a lot of people's attention. Some 150,000 or more responses. That's civic engagement. That's policy engagement. That's not necessarily a bad thing. And then when the government looks at the responses and then withdraws and says we hear you, we're going to start over again, that's a good thing. That is the way civil society is supposed to work.

There are many reasons that the regulations fell short. There are also many reasons to appreciate the work of the Bright Lines Project as I mentioned before. What I'm not sure about is whether

this survey either substantively serves as an effective, substantive critique of the regulations or even substantively moves the ball for the Bright Line Project.

WILLIAM SCHAMBRA: Thank you very much. Maybe we can let our other panelists respond to what John had to say. When I read the survey results and knowing something about public opinion in this sector, which is the public is pretty vague, even Congressmen are pretty vague, on the difference between 501(c)(3)s and (c)(4)s and the degree to which nonprofits of various kinds can engage in political activity.

Is this outpouring of sentiment in favor of clarity a result of just sort of a general inclination to like good things, i.e., clarity? Or, does it reflect something deeper than that?

CELINDA LAKE: Thank you, John, for your good comments and provocative comments.

First of all, I think a couple of things. We're not attempting to measure the Bright Line specific agenda or the rules or anything like that. What we're trying to get at is, what are the core values underneath? What are the core orientations that people have that they're going to use to respond?

We also combine with this polling other polling that we're doing in other areas. We know, for example, that people think that special interests are rigging the elections and they're coming at it from a lot of hidden ways. We know from other work we've done that people are very, very upset about campaign finance money and the way it's spent. We know that people want disclosure and transparency.

We know that in general people think that there is a lot of rigging and back-dooring and loopholes just in general and it kind of goes to your question. In general, people want support for rules that are applied more fairly and for rules that are clearer.

Just to answer a couple of specific questions and then I'll turn it over to my colleague to expand on them. In terms of the initial question, we didn't test the principle of clarity. I agree. If we had tested that, it would have had some of the same critiques. We said the lack of clearly defined rules for what is treated as political activity and what is not. So, we tried to get a little more concrete.

I think, yes, people want clarity for clarity's sake and they want it across a variety of arenas in part because they think a lack of clarity leads to abuse. And they also think the lack of clarity makes it very, very hard to enforce things.

The second thing is about clarity at what cost. What we tried to do in this survey was go from the general to the specific. Ask how important is this? Do you support or not support this change? Would you be more favorable if it had disclosure?

And clarity at what cost, that's the attempt of their side argument. To suggest what costs, such as the IRS is coming in and they're going to hound your local Boys and Girls Club.

The one thing I really would strongly disagree with is the notion that these statements weren't weighted. I mean, just throw the IRS into anything. Saying we're going to celebrate the 4<sup>th</sup> of July with the IRS would depress the feelings about the 4<sup>th</sup> of July significantly for the public.

I think government regulation and red tape are not minor issues. And free speech is the number one thing that people like. It's one of the reasons they want more campaign finance reform because they don't think it's free speech. They think it is paid speech. So, I would disagree that we didn't have it equally loading on both sides.

How much is too much? Absolutely great question. I'm not sure the public would be able to answer it because honestly, then we're starting to get into a level of detail that I just don't think they have the information for.

And a really good point about where were those 41 percent who were undecided. As you said, in the positioning, we pushed people on the do you support or not changing the rules. We did not push people deliberately. That's part of why we got such a high don't know response.

Both the people who favor the regulations and the people who weren't sure were more favorable to our disclosure, and we didn't put this in the memo so there is no reason anyone would know this except us, and it's a really good question. The people who both favored the regulation and didn't know agreed with our side in the debate. So, super good question.

Where does those who don't know go on the other questions and what does it tell us about where their broader inclinations are? I think the answer is where they went on the follow-up questions tells us that they were leaning toward our side, but this is a complicated area and people just aren't as sure how they feel about it.

We also saw, as you might expect, some people with less education, lower information, less partisanship being more in the don't know because just less familiar with what we're talking about. And in that question, we didn't push people to give us an answer. So let me turn it over to Bob for additional comments.

**ROBERT CARPENTER:** Let me make a couple of comments. In terms of the issue of clarity, in my mind the public was pretty clear. We asked them how important they thought it was to have clear rules in place governing the political activities that organizations like these can and cannot do, and 84 percent said it was important. Eighty-four percent believe that it's important to have clear rules in place. I'm not sure how we could have rephrased that to make it any clearer of the importance.

In terms of the 'don't know' responses to question 15 and 16, as John mentioned, we would need to go back and look at the cross tabs to see where they were and where they went on other questions. But, as Celinda suggested, the strong numbers throughout this section of the survey tell me that they're probably on the side of greater disclosure and that they're on the side of favoring some sort of IRS action.

In terms of the IRS or the bias nature of the he said/she said, if you will, as Celinda mentioned, I'm not sure how we could have structured that question to make it less biased. If anything, I think that the opposition argument is probably, if there is a bias in the question, I think it's probably in favor of the opposition, of the free speech side.

Because again, restrict Americans' right of free speech gives more power to the bureaucratic IRS, which targets our enemies, limits free speech, stifled the activity of well-meaning nonprofits, and adds another layer of red tape and abuse. It's a pretty loaded series of statements.

Anytime we try to say that other people or opponents feel this way, supporters feel this way, we go out of our way to balance the statements so that we are reducing bias if there is any to the smallest amount. I would suggest, and Celinda probably would agree with me, but that in my experience questions like these are often hard for the client to handle.

CELINDA LAKE: Right.

ROBERT CARPENTER: Because they know what their side is. They know what their argument is and they are trying to frame the opposition's argument to in some cases make it weaker. Now, that was not the case with this survey. Public Citizen gave us the authority and the free rein to craft these series of questions. However, oftentimes the client will want you to write the opposition argument from their point of view. As pollsters we have to say to them, it's not your argument, it's their argument. So oftentimes we're pulling a statement or series of statements directly off the opposition's website or from comments that they have made.

It's difficult for us to get that by some clients and I think in this case, we did a pretty good job. The client, Public Citizen, allowed us to do that. I don't know that the opposition statement, if you will, is something that Public Citizen necessarily wanted out there. [LAUGHTER] I mean, why would they be saying that this proposal restricts free speech? But, that is what the opposition is saying so that's the way we had to craft it.

Finally, let me just say that Celinda mentioned the IRS and the negativity surrounding that. I could do a survey tonight which said Santa Claus works for the IRS and I could get Santa Claus to have an unfavorable rating by a margin of probably 2 or 3 to 1. The IRS, it's an inflammatory term. That's one of the reasons we used it.

Just to wrap up, I think that we made every effort to make these particular question as unbiased as we possibly could. It's half of my product, so I think we did a pretty good job. [LAUGHTER]

WILLIAM SCHAMBRA: Lisa, do you want to say anything?

LISA GILBERT: Not to weigh in on any of the specifics, I think Bob and Celinda did a great job of explaining how we crafted the questions and certainly how we figured out the opposition arguments that were used in the questions.

As I mentioned in my remarks, we don't think the first proposed regulation is perfect. There were lots of problems with it and one of them was this tradeoff of the cost of clarity and the cost of

civic engagement. We want the next version of the rules to fix that and we didn't need to test how to public felt about that because, certainly if we asked them if it would be a good thing to make it harder to do voter registration or voter guides, we know what we would get.

Instead, we wanted to test how strongly they feel about the need for these rules. And it turns out they feel very strongly, which we thought was great and helpful, hopefully, to the IRS and to Treasury as they move forward.

JOHN TYLER: I could repeat my speech, but I won't. I did have one question for Rob and Celinda. In the free speech option, I just don't understand the questions or the comment.

It gives more power to the bureaucratic IRS, which I do understand that part, which targets our enemies. Who is 'our'? Who are our enemies? The IRS targeting them? And how would the respondents have vetted that part of this? I didn't understand that.

CELINDA LAKE: It's a good question. In retrospect, honestly, as you were making your comments, because I noticed that you emphasized that when you were talking, I was thinking that that is a good place where, I mean the opposition talks about an enemies list and putting everybody on the enemies list and all that. But, I kind of agree with you. I think that probably could have been better worded.

Interestingly, if it had been very confusing to people we would have had a lot more people in 'don't know' and we didn't. But, I think honestly, if I had it to do over again, that is the one part I would tweak as well.

ROBERT CARPENTER: I would just add to Celinda's comments that the targeting our enemies statement is certainly a reference to the alleged activities of the IRS with regard to conservative organizations. Including that and again, this is being read to somebody over the phone, so they're not necessarily hearing every single word. They don't have it in front of them like we do. It's not something that we sent to them and let them read through it, think about it, and respond.

We read them a statement of probably 100+ words and asked for their vote, if you will, for statement A or statement B. So, focusing on two or three words in a 100-word question is not the way that the respondent is hearing it.

But back to the 'target our enemies,' I think that that was as direct reference to the activities of the IRS.

CELINDA LAKE: It was meant to tap into that. What we were trying to do is put in hot buttons for the other side. That was the intention. But again, I think in retrospect we probably could have worded it a little bit better.

WILLIAM SCHAMBRA: Let's go to audience for Q&A. Before we do, I neglected to mention Emily Peterson Kasson's contribution to this panel. She was our counterpart over at Public Citizen as we organized this and was the driving force behind it. So, thank you Emily for all that you did for this panel.

Q: I'm Scott Walter at the Capital Research Center. First I wanted to second Bill's initial comment, which was about whether people actually know the difference between (c)(3) and (c)(4). US Senators sitting in hearings to reform the charity laws make it painfully clear that they don't know the difference between (c)(3)s and (c)(4)s.

I think it's a shame pollsters so rarely ask people a knowledge question instead in addition to the opinion questions, because the incredible ignorance on this would perhaps suggest whether citizens, in fact, do care that much about these things as we're pretending they do in this meeting.

My question is to Ms. Lake, though. If I understood you correctly, you made the point about how the question about whether voters support changing IRS rules got a very big 'don't know/not sure,' 41 percent here. Yet, I see at the end of the press release from Public Citizen about this a quotation from Celinda Lake, "The voters are speaking with a unified voice in favor of new rules." Isn't that an overstatement by far if almost half admit they don't know and aren't sure?

CELINDA LAKE: A couple of things. First of all, let me speak to your initial point about knowledge and measuring knowledge. In this case, we don't need to measure knowledge because you're right, nobody's got any. That would have been a bad use of Public Citizen's polling callers. [LAUGHTER] If we would have agreed to do that, we should have been fired.

The other thing, honestly, our firm doesn't really like to ask knowledge questions that much because it goes back to something that Bob said. Think about it. The average person is not sitting with their iPad and their Encyclopedia Britannica right in front of them focused on this. The average person's grabbing our poll because they just took dinner off the burner, the kids are doing their homework, the dog has just come in with a cat in his mouth, and we're asking them how do you feel about the IRS rules? [LAUGHTER]

This is a very distracted person, and what you get is you get college-educated people doing significantly better than non-college educated people and younger people doing better on knowledge questions than older people. Maybe some of that is true, but I think a lot of that is artifact of cognitive skills, the setting that we're in, etc. So, we don't particularly like to ask knowledge questions.

More important though is we have a very fundamental belief in our business, which is, if the facts don't fit the frame, people reject the facts not the frame. That may be deeply disappointing to people in this room who are fact-oriented, but facts don't matter that much. It's the core values and that's what we were trying to get at here.

In terms of the overwhelming support, it's a good point about how that quote sounds out of context and it's a fair critique. It was intended to be in the context of the memo. I'm not defending the wording of it. It could perhaps have been more artfully constructed. But what we were trying to say is that other people who had opinions, there was overwhelming support.

And, frankly, we were flabbergasted by the importance question. In fact, as Lisa could tell you, we didn't want to ask the importance question. We argued against asking it because we thought about the job market, ISIS, and healthcare costs and you want to ask how important this is?

Also, people are so cynical right now because of the campaigns going on. So we didn't even want to ask that question. I'm personally flabbergasted at the level of response, and it's because this whole area is tapping into a very big concern that is out there right now, which is that special interests are rigging the system and that we don't even know about it. We don't even understand it. There is lack of clarity. They're getting in the back door. They're getting in the front door. They're getting in side door. They're knocking down the door. They're tunneling in. Why can't we get this system straightened away and fair and clear and public?

I think our intention was to say that there is very little opposition. That was really the intent of that quote, but good point, it was out of context. I mean, when it's at the end of all that data, that it is clear what it means, but out of context it could be misinterpreted.

WILLIAM SCHAMBRA: Other questions? This gentleman right down in front.

Q: Thank you. I'm Dave Rabinowitz. As has been mentioned many times, poll results depend very strongly on how the questions are worded. However they also depend on the order the questions are asked, the precise script that is used. And, on the phone, it depends on the voice of the interviewer, the tone of voice, and how the participants are selected. An awful lot of people, especially young people, don't have listed phone numbers because cell phones are not listed.

So results of polls almost always support the position of whoever was commissioning the poll. Almost always. My question is, have there been other polls on this question by other organizations? And how have their results compared with yours?

CELINDA LAKE: A couple of things. First of all, publicly-released polls may almost always support the positions of the organization that is releasing them [LAUGHTER], but I would respectfully say you haven't been in on any Bob and Celinda briefings. [LAUGHTER] In fact, a rival polling firm of ours on the Democratic side once said to one of my favorite Congressmen, whom you may know, Pat Williams, the ex-Congressman from Montana, a great progressive, that Celinda's data is always positive. He then asked if they had ever been in behind a closed-door briefing with me, because that is not true. So, it's not true that the data is always good news.

In fact, honestly, this data has a variety of findings. I mean, 41 percent don't know. That's a high number and it suggests a malleability here of the public. This is likely registered voters of the 2014 electorate, so it tends to be an older electorate to begin with.

We also pay a lot of attention to procedures. We monitor the calling every night to get at the tone, because you're right about the tone. We have a very highly-trained, diverse set of interviewers. So we are trying to control for all of that.

To answer your specific question, I don't know of any other poll. I'm not saying there hasn't been, but I'm not aware of any other polling in this area, but I don't know everything that's been done.

LISA GILBERT: Yes, this is the first of its kind, although there has been a lot of polling around democracy issues generally.

ROBERT CARPENTER: If I may, let me just add to two points that Celinda made. One, we do make calls to cell phones now because we have to; it used to be 18 to 29, now it's probably 18 to 40. If we didn't call cell phones, we wouldn't get that. The percentage of calls that are made to cell phones continually creeps up. I think we're up to 25 or 30 percent now, where even four years ago 15 was the threshold.

So, we're making more and more calls to cell phones, which as you probably know are a little more difficult because we can't do the computer-generated call. We have to have a live person because of federal law, so there is an increased cost, but we do it because we have to. Because we are only as good as our last numbers. There are plenty of clients that I've had, and I'm sure Celinda has had, that didn't like our numbers and so during their re-election or their next election, we weren't working for them.

As Celinda pointed out, not all data is good. I had the wife of a Congressman call me once and tell me that my numbers were basically crap and that she wanted the poll redone. I asked her for some specifics and she continued to go on and on and somehow the conversation got terminated. I still to this day don't know how that happened. [LAUGHTER]

But not all data is good. Not all data is good news. We are not going to list the clients that have screamed at us or thrown us out of their office, but we could.

Going into this project, I don't think either one of us expected the numbers that we saw in terms of the super majorities. And I don't know that Public Citizen expected that either. We put together this instrument, bipartisan, so that it did encompass multiple points of view. We have many people on the call. I think in total, there was probably 10, maybe 15, revision calls of this survey going back and forth, involving a lot of different people. But again, we're only as good as our last numbers. If they're bad, Public Citizen or any other client is not going to hire us again.

Polling clients are paying a lot of money to get fair and accurate numbers. We're not going to inflate them. I don't want Public Citizen to launch an entire campaign on bogus numbers. That doesn't serve them and it doesn't serve me, because eventually they're going to come back and they're going to say we did this and you said that.

I've been doing this for 20-plus years and Celinda probably the same, if not a year or two more. Again, we're only as good as our numbers.

Q: Gary Bass, Bauman Foundation. It seems some of you in the room may not know the two firms. I do know the two firms and I'd happily stipulate you are the Cadillac of firms. The methodologies, the appropriateness of the questions, knowing that you checked the news media

to look at all the opposition language that was used, knowing that you look at the data to make sure that there is demographic representation, knowing all that, I want to stipulate you did a great job on the survey itself.

ROBERT CARPENTER: Thank you.

GARY BASS: We should move on to talk about the implications. I am willing to buy in that people want clearer rules. That's fine.

John, I'm also willing to buy into your point, which is how does knowing that we want clearer rules help shape the substantive kind of rules we ultimately want?

I think for what the purpose of the poll was, I think it did a fine job, which is to start us on the dialogue that says to the IRS that we want clearer rules. The public wants clearer rules. Do this.

Now at the next stage, there has to be a more technical discussion around what kind of clearer rules make sense in a society where we want strong, active civic engagement.

ROBERT CARPENTER: Thank you.

WILLIAM SCHAMBRA: No response to that from our panel [LAUGHTER] other than thank you? In the back, please.

Q: Hi. I'm Richard Skinner at American University. My question is actually more at Lisa and John. Lisa, you discussed the growing flow of money into c(3) charities, c(6) trade associations. There is also some political money going down to limited-liability companies. Could you comment more broadly about the implications of this for the IRS, for the rules being adopted?

John, I'd like to know if you think this a problem.

LISA GILBERT: We found a number of initial flaws with the first proposal that came out. I chose to highlight two. One of them is the issue that you mentioned, which is we don't think it makes sense to have a definition that's different for political intervention for different types of (c) entities, be it a trade association, a labor union, or a charity, because it will create confusion in an already confusing and wonky space.

Also, we think that it's possible that organizations will change what they are to avoid what is a clearer, brighter line definition in the next rule proposal if it's only applying to (c)(4)s. So, it's certainly a concern.

JOHN TYLER: I think that there's a fundamental reality that whatever rules that get put in place ostensibly to cover (c)(4)s will migrate into the other areas. So, (c)(3)s, (c)(6)s, (c)(5)s, etc., whether directly applicable or not. So it either needs to be acknowledged on the front end and the rules applied uniformly, or it needs to be understood that there's going to be migration and people need to pay attention to whatever the rules are that are narrower, because the end result will likely be that they apply across the board.

WILLIAM SCHAMBRA: One of the questions asked, and this sort of goes to the point that you weren't simply parroting the concerns of the folks who hired you to do the surveys, if the current rules suppress the ability of nonprofits to express freely their opinions. And the public seemed to be not particularly stirred by that concern.

I wonder if it is because possibly the public has the opposite concern, i.e., too many of these groups are too deeply involved. In other words, going directly to the opposite position that Gary Bass would hold, which is that these (c)(3)s, (c)(4)s, and so forth, should be more politically engaged? Are they concerned that there's too much political engagement?

CELINDA LAKE: I don't know that we fully explored it. I would make a distinction, and maybe I heard Gary differently, that there is civic engagement and there is political activity in real people's minds. I think people would be appalled, for example, we said this is going to cut back on voter registration. People would be like absolutely not. So, I would distinguish between civic engagement and political engagement.

Civic engagement, people want even more of and they want to facilitate it. They think that voting is pretty easy now, but they like increasing fair access to voting. We just released earlier today a study that we did on the Voting Rights Act, which was off the charts popular with the public. They thought it was a core provision of the Constitution. They were flabbergasted that it would ever be outdated. It was like saying, well, free speech is outdated, so we're going to revise it. They were just flabbergasted that could happen. They wanted it immediately restored. And the South felt even more strongly about it than any other region in the country. So, totally contrary to convention wisdom.

Then there is political activity. People would outlaw political activity tomorrow if they could. [LAUGHTER] They hate candidates, they hate politics. They hate political ads. They hate negative advertising. They hate the phone calls that they have late at night, except for polling, of course. [LAUGHTER] They hate the direct mail and throw it away as fast as they can. Need I go on?

And, they think the system's completely supported by dark money. They think that everybody is getting around it every way they can. And, every time they impose restrictions, they get overturned and they don't think it's free speech. They think it is paid speech.

My own personal view of it, you can't fool the public all the time. They're right. [LAUGHTER] Now, whether or not people are so clear about the political activities that nonprofits can engage in? In general, people think that nonprofits aren't supposed to be that political, which is different than civic engagement, again, and it varies by culture.

I mean, particularly African American religious people think there is nothing wrong with preaching from the pulpit and having candidates there. A lot of Protestants think 'Oh, my God, is that even legal? And it's insane and wouldn't Jesus be upset by it anyway?' [LAUGHTER]

There are a lot of differences here, but I think the two core anchors, at least that we've seen in the data, is one, it's great if you could have real civic engagement and more of it; people registering to vote, participating, and having their say.

Two, the system is rigged by big money and groups getting around every which way to Sunday to spend more money, not disclose what it is, and drown out the voice of the public. Special interests drown out the voice of the public and they're damn mad about it because the core principle that voters have is Election Day is the one day where we're all equal and we all get our say. And people think the system is rigged against that and they want to tip it back. Those are two core anchor principles that I think apply here.

JOHN TYLER: One of the things that I worry about relative to the question and to Celinda's response, and it goes back to Bill's introductory comment and Scott, your observation about people don't know the difference between a (c)(3) and a (c)(4). Start throwing in 527, PACs, and other things and they don't know the difference between those as well, so people don't know that a (c)(5) even exists, much less what it is. However, there are fundamental differences.

When people perceive abuse in the nonprofit sector, I worry about whether they're taking it out in their charitable donations to (c)(3) organizations, for which there is a charitable deduction. You don't get a charitable deduction by giving to a (c)(4). I am absolutely concerned about the effect of perceptions on the charitable sector, which doesn't answer the question about whether they should be able to do more or less?

The question was framed in terms of abuse and the splash into the (c)(3) sector and the effect on charitable donations and fundamentally charitable activity causes me concern.

WILLIAM SCHAMBRA: Yes, because the headlines are always about how nonprofits are deeply engaged in politics, which plays directly into your comment about the aversion of people to political engagement. They don't understand that the nonprofits referred to are (c)(4)s, not (c)(3)s, so yes, the possibility of confusion is very real.

Q: Hi, Scott Blackburn with the Center for Competitive Politics. I have a question specifically about the poll and then maybe a more general question. On this last comparison question, the rules and standards versus free speech, it references a proposal. Was the proposal read before the question? And what exactly was that proposal?

CELINDA LAKE: That proposal was changing the IRS rules. It is on page 2 at the bottom of your memo. It was basically, some people propose changing the way nonprofit activities are regulated to establish more clear and fair rules for what is counted as political activity.

This gentleman in front referred to the fact that question order makes a big difference and he's absolutely right. The question order is reflected in the memo. We went from general to kind of push the question if you will, or engage debate. So, general to specific.

SCOTT BLACKBURN: Thanks. More generally, I was wondering. Do you think that the FEC should have more of a role in defining political speech? And should the IRS definition of

political speech that you push for in new regulations differ from FEC definitions, which are already all across the board?

CELINDA LAKE: I'll give that to Lisa.

LISA GILBERT: Certainly the FEC has a role in this space, a very important one, a defined one, but so does the IRS. They need to figure this out as it relates to who is or isn't tax-exempt in the enforcement actions that they do. The definition is incredibly important and we need to get it right for all the reasons we've discussed here today.

Certainly, as I mentioned before, consistency is a good thing across this space, but I won't go so far as to advocate that it should be the same. There's just a lot of work to be done in both spaces.

JOHN TYLER: It is not just the IRS that regulates exempt organizations as it relates to these activities. The IRS has a role. The FEC has a role. States have a role. The likelihood of harmonizing everything across the board, I think, is unlikely.

WILLIAM SCHAMBRA: More questions? We have time for one more. Scott, go ahead. No one else seems to want the final question.

SCOTT WALTER: Thank you, Bill. I just want to follow up on Ms. Lake's, I suspect, perfectly accurate description that the average American, if you say civic engagement, he goes hooray. And if you say political engagement, he says that's terrible. Of course, the question is, is that remotely coherent?

I actually have a question for Ms. Gilbert on this, who explicitly said that we wouldn't want to get rid of voter registration from (c)(3)s. I suspect the average American wouldn't necessarily know a (c)(3) can even do voter registration. However, more importantly, can you really name a single 501(c)(3) in America that is genuinely nonpartisan in its voter registration, that just randomly happens to register people somewhere? With the micro-targeting capacities that exist, especially for companies like Catalyst and whatnot, which are unbelievably powerful, I don't think there is a single one that ignores it.

LISA GILBERT: I don't think it makes sense for me sit up here naming organizations. I think that there are genuinely groups out there that think about registration for its own sake. That more people voting is a good thing. So, it's a good, civic engagement and is a good in and of itself. Certainly, we don't want IRS rules that trample on that.

WILLIAM SCHAMBRA: Ironically enough, of course, in this area, voter registration is one of the few things that actually did manage to trigger legislation, right? After the Cleveland mayoral race, the evidence of Ford Foundation participation led to Congressional action, which severely restricted that. And as we all know, for all the problems and abuses in this area, getting Congressional action is almost impossible. So, this issue of voter registration actually packed a fairly powerful negative punch at one point.

Q: Hi, I'm Joanne Florino with the Philanthropy Roundtable. My question has to do with the wording of candidate-related activities. The Roundtable, I will say, submitted a comment. It had to do with the fact that that's such a broad notion. We keep using political, candidate-related and partisan, and they keep getting used interchangeably.

My concern is that you are a (c)(3) and you have been advocating against domestic violence or sexual assault on campus. This has been your passion for years and years. You happen to be in the state of New York. You're very concerned about sexual assault in the military. And guess what? It's 2016 and Kirsten Gillibrand's a candidate for Senator. This is something you've been doing all along, but now this has become a candidate-related issue. What I want to hear about is, how you think those rules can be addressed in a way that it doesn't limit their free speech?

I have to tell you, I'm appalled about the free speech part of this. I joked with somebody this morning that I'm not sure there would be much that I'd put in front of free speech and that must mean I'm very old. Warm puppies or free speech? No, I'll take free speech. Thank you.

But, I think that that's a concern of mine. It's a big one for the (c)(3) community. And I agree with John. These things are going to trickle. They're going to trickle down or up, depending on where you think virtue lies among the 501(c)s.

I think that that issue, and I want to hear about candidate-related as a topic, because it seems to me that that's where we have a lot of disputes in the (c)(4) universe.

LISA GILBERT: You're definitely pinpointing one of the hardest things about drafting these rules for the IRS, which is getting the candidate-related activity definition right. It does have impacts across the sector, so it is really important to do so.

The way that they're doing it right now doesn't work, which is why we need these new rules. This vague facts and circumstances test makes it hard for them to figure out when something is political and when it isn't.

Certainly one of the things that the Bright Lines Project is trying to do is to figure out how do we define things like that? And then, what are the safe harbors that make sense, so that we can protect activities around issues that organizations care about and are core to their mission?

That is one of our safe harbors, that kind of issue advocacy. We hope that when the IRS drafts these rules again that a safe harbor like that is in there because certainly it will impact (c)(4)s, but also potentially (c)(3)s.

WILLIAM SCHAMBRA: Thank you to our panel and to everyone for attending. [APPLAUSE]