



# TaxNewsFlash

## Exempt Organizations

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### Social welfare standards for exemption held unconstitutionally vague

The U.S. District Court for the District of Columbia on September 30, 2025, held that the standards the IRS applied in denying a nonprofit advocacy organization's application for tax exemption under section 501(c)(4) as a "social welfare" organization "transgress the heightened vagueness standard applicable to civil regulations, including tax-exemption regulations, that affect speech covered by the First Amendment." However, because no other standard was proposed, the court could not find that the organization was entitled to such status at the summary judgment stage.

The case is: *Freedom Path, Inc. v. IRS*, Case No. 20-cv-1349-JMC (D.D.C. September 30, 2025). Read the court's [memorandum opinion and order](#) (60 pages)

#### Summary

The court partially granted the nonprofit organization's (Freedom Path) motion for summary judgment on its central claim, finding that the IRS standards used to determine tax eligibility are unconstitutionally vague. The court criticized the lack of a clear definitions for how much political activity is permissible (the "Primary Activity inquiry") and for what constitutes political campaign intervention (the "Political Activity inquiry"), noting that the ambiguous rules give the IRS too much discretion and risk discriminatory enforcement against organizations based on their political views.

Despite finding the IRS's rules unconstitutional, the court did not grant Freedom Path's motion for a determination that it qualified for tax-exemption because neither the IRS nor Freedom Path offered "an alternative standard for deciding the ultimate question of Freedom Path's exemption eligibility that is both constitutionally permissible and appropriately grounded in the statutory and regulatory scheme." The court also noted that a longstanding "appropriations rider" repeatedly added by Congress to its appropriations laws prevents the IRS from creating new, clearer rules for section 501(c)(4) organizations, meaning it could not simply remand Freedom Path's exemption application to the IRS for a new determination.

The court thus asked the IRS and Freedom Path "to file renewed motions advancing interpretations of the Primary Activity inquiry and Political Activity inquiry that are (a) not unconstitutionally vague and (b) appropriately rooted in the statutory and regulatory scheme, and constitutional principles, that govern this tax exemption in light of the [c]ourt's findings in this opinion."

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