

## Wiley Rein's Jan Baran Interviewed by Major Media Outlets on IRS Scandal

*The Washington Post, The Wall Street Journal*  
May 21, 2013

Jan Baran, co-chair of Wiley Rein's Election Law & Government Ethics Practice, was interviewed by *The Washington Post, The Wall Street Journal* and several other news outlets regarding the U.S. Internal Revenue Service's (IRS) admitted targeting of conservative groups seeking 501(c)(4) tax-exempt status.

Federal law permits social welfare organizations with 501(c)(4) tax exemptions to engage in election campaign activity, as long as those efforts comprise less than 50 percent of a group's activities, according to Mr. Baran, who previously served as general counsel to George H.W. Bush's presidential campaign and the Republican National Committee.

Selective targeting by the IRS hindered the fundraising efforts of some conservative groups that waited up to three years for the agency to rule on their 501(c)(4) applications, Mr. Baran said in a May 17 video interview with *The Wall Street Journal*.

"The practical effect was fairly serious because these groups really depend on having an exemption letter from the IRS, to prove to donors and supporters that they qualify as tax exempt," he said.

While the number of 501(c)(4) applications has doubled to more than 3,000 over the past few years, that doesn't justify the agency's selection of certain ideological or political groups for extra scrutiny, Mr. Baran said May 15 on *National Public Radio's The Diane Rehm Show*.

### Practice Areas

Election Law & Government Ethics

"That would be like saying in the 501(c)(3) charitable application process, if there was all of a sudden a surge in the number of applications from Islamic organizations, that somehow there ought to be increased scrutiny just because somebody is an Islamic applicant," he said. "We wouldn't accept that, and I don't think we should accept additional scrutiny on that basis when it comes to 501(c)(4)s."

Mr. Baran told *The Washington Post* that the IRS may not have broken any laws by singling out certain groups' applications for extra scrutiny. "I am not aware of any statute that prohibits IRS targeting of applicants," he said in the May 18 article.

"It is possible for a taxpayer to sue individual [IRS] employees for allegedly denying them constitutional rights. This usually arises in the context of searches or seizures in violation of the 4th Amendment," Mr. Baran added. "In any case, such suits are private civil suits, not criminal suits, and are very difficult to succeed in."

Congress never provided the IRS with clear criteria for determining if a group qualifies as a 501(c)(4), Mr. Baran told *The Fiscal Times* in a May 17 article. "It's done on an ad hoc basis and under very vague standards, and that's part of the problem," he said.

The IRS is among federal agencies that have faced increasing pressure from some lawmakers to increase their oversight of political spending in the wake of the U.S. Supreme Court's *Citizens United* decision, Mr. Baran told *The Wall Street Journal*. The 2010 ruling freed corporations and labor unions to make unlimited independent political expenditures.

"These proponents of more regulation have to realize that the proper way to achieve that is through normal order, starting with legislation," he said. "You've got to pass a law if you want to change the rules."

But the odds of passing such a law are "very low because regulating in this area, whether it's tax law or campaign finance, is very, very difficult and controversial," he added.

Mr. Baran told *The National Law Journal* the IRS controversy will probably lead to delays for all 501(c)(4) applicants as the agency shows heightened sensitivity to applying the tax laws evenly.