

February 27, 2014

CC:PA:LPD:PR (REG-134417-13)
Room 5205, Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, REG-134417-13

These comments are submitted in response to the Notice of Proposed Rulemaking (NPRM) on Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities.

While we appreciate the stated goal of the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) of providing greater clarity to reduce the need for detailed factual analyses in determining whether an organization will engage in political activity, we do not think this NPRM is the right approach. **We request that Treasury and the IRS withdraw the proposed regulation and work with the regulated community to develop a better approach.**

The NPRM overreaches by capturing as “political” (defined in the NPRM as “Candidate-Related Political Activity” or CRPA) certain activities without regard to whether they are conducted on a partisan or nonpartisan basis, and in many cases without adding clarity (for instance, by failing to define certain key terms), yet only addresses some of the relevant issues long unsettled for 501(c)(4) organizations.

If adopted, the proposed regulations would reclassify as CRPA much of the civic engagement work that 501(c)(4)s conduct during election season, such as promoting public participation in elections, strengthening democracy by educating voters, and educating candidates about the needs of the community. Therefore the NPRM would limit how much of this activity—which has long been recognized by the IRS as promoting the general welfare of the community—501(c)(4)s can do.

For instance, we are troubled that activities such as the following are defined as CRPA:

- **Voter registration and GOTV:** The NPRM would classify as CRPA *all* voter registration and get-out-the-vote activities, including efforts to encourage citizens to participate in a referendum election even where no candidates are on the ballot. This will limit the ability of social welfare organizations to encourage eligible citizens to participate in the democratic process by registering to vote and then voting in elections.
- **Hosting nonpartisan candidate events:** Any event within 30 days of a primary or 60 days of a general election would be considered CRPA if one or more candidates in such election appear as part of the program—even in a non-candidate capacity. The result will be to restrict the ability of 501(c)(4) organizations to sponsor candidate debates and forums which seek to educate the public concerning the candidates’ views, and will also narrow the opportunities available for public officials to meet with their constituents.
- **Public communications:** Any public communication disseminated within 30 days of a primary or 60 days of a general election that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election will be treated as CRPA. *This is true even if the candidate is referenced in a non-candidate capacity.* This will limit the

ability of 501(c)(4)s to communicate on many policy-related issues in a wide array of communications, including websites, newspapers, magazines, paid advertising, and any other communication that reaches or is intended to reach more than 500 persons. The NPRM abandons the carefully reasoned distinctions between political and legitimate policy advocacy communications the IRS adopted in earlier rulings.

- **Grants and transfers to 501(c) organizations:** The NPRM considers as CRPA any gift, grant, subscription, loan, advance, or deposit of money or anything of value to any organization described in 501(c) that engages in CRPA, unless the contributor obtains a written statement that the grantee does not engage in CRPA and the contribution is subject to a written restriction that it not be used for CRPA. This proposal is far more restrictive than current law, and could significantly deter legitimate social welfare activities by 501(c)(4) organizations. For instance, grantees may be uncertain about their future plans and reluctant to certify they will never engage in CRPA activities. Moreover, the full amount of the grant will be treated as CRPA regardless of the amount of CRPA actually conducted by the grantee organization. In addition, it would deter many 501(c)(4)s from transferring funds to 501(c)(3) organizations that are engaging in nonpartisan, charitable activities now considered CRPA for 501(c)(4)s. These 501(c)(3) organizations, already absolutely prohibited from engaging in partisan political activities, would not be able to certify that they do not engage in any CRPA.
- **Judicial and executive branch appointments:** Activities seeking to influence nominations and appointments to executive and judicial branch positions are deemed to be CRPA. There is no legal basis for broadening the definition of candidate beyond elected public office, and in fact doing so completely ignores the Service's longstanding position, formally stated in Notice 88-76, that such activities do not constitute participation or intervention in a political campaign.

The NPRM states that Treasury and the IRS are considering whether the "primary" standard in the current regulations should be changed and if so, whether it should be redefined to incorporate an "insubstantial part" test. Treasury and the IRS should not use this NPRM to restrict the amount of political activity that 501(c)(4)s may undertake. Congress has chosen over many years and on numerous occasions not to limit the amount of political campaign activity that may be undertaken by 501(c)(4) organizations under the IRS' long-standing "primary purpose" standard. Treasury and the IRS should not therefore revise the primary purpose test for political activity in the current regulation.

Finally, we strongly recommend that Treasury and the IRS adopt the same sets of rules for defining political campaign activity for 501(c)(3) and 501(c)(4) organizations. Having two sets of definitions of political campaign activity would only lead to confusion and misunderstanding in the regulated community, especially among the many small and mid-sized organizations that cannot afford to retain legal counsel. However, we do not support applying the new restrictive definition of CRPA to 501(c)(3)s; rather, this provides another reason for rejecting the far-reaching definition of CRPA set forth in the NPRM for 501(c)(4)s.

For all of these reasons, we urge Treasury and the IRS to withdraw the NPRM and work closely with the regulated community (whether through public hearings, new rulemakings, or other avenues) to determine the best way to address the issues raised in this NPRM.

Respectfully submitted,

Organizations joining in comments

Alliance for Justice
Alliance for Justice Action Campaign
Action for the Common Good
America Votes
American Association of University Women (AAUW)
American Federation of Teachers, Washington
Americans for the Arts Action Fund
APACE
Arizona Advocacy Network
Asian Pacific Self-development and Residential Association (APSA)
Chicago Coalition for the Homeless
Center for Inquiry
Center for Popular Democracy
Change Lab Solutions
Colorado Nonprofit Association
DC Children and Youth Investment Trust Corporation
Donors Forum
Environmental Working Group
EWG Action Fund
Faultline Foundation
Feminist Majority
Georgia Equality
Human Rights Campaign
Jewish Alliance for Law & Social Action
Lydia B Stokes Foundation
Maine Association of Nonprofits
Maine Women's Lobby
Manes and Tails Organization
Maryland Nonprofits
Maternal and Child Health Access
MichUHCAN
Ms. Foundation for Women
MoveOn.org Civic Action
NAACP National Voter Fund
NARAL Pro-Choice America
National Disability Rights Network
National Employment Lawyers Assn
National Committee for Responsive Philanthropy
NETWORK, A National Catholic Social Justice Lobby
Nevada Conservation League
OneAmerica Votes
Peace & Justice Action League
PICO Action Fund
PICO National Network
PLACE Practitioners Leveraging Assets for Community Enhancement
Planned Parenthood Action Fund
Population Action International
ProGeorgia
ProgressNow Nevada Action

Social Impact Law
Stand for Children Leadership Center
Statewide Poverty Action Network
Texas Campaign for the Environment
The Corridor Counts
The Micah Project
The Partnership for Working Families
The Voter Participation Center
The Washington Bus
Tides/The Advocacy Fund
Utahans Against Hunger
Washington CAN!
Washington Public Campaigns
Wild Swan Resources
Women's Voices
Women Vote Action Fund

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Wana Stephens, American Association of University Women
Kristen Zehner, AFSCME Retirees Local
Maryann Martindale, Alliance for a Better Utah
Rochelle Rubin, Alpern Family Foundation Inc.
Herman Martinez, American Friends Service Committee
Janine Motta, Animal Protection League of NJ
Randy Harrison, American Postal Workers Union
Mireya Reith, Arkansas United Community Coalition
Timmy Lu, Asian Pacific Environmental Network Action
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