



# INSTITUTE FOR FREE SPEECH

## Analysis: 97% of Comments from 955 Organizations, Experts, and Public Officials Oppose IRS’s Proposed 501(c)(4) Rulemaking in its Current Form

On November 29, 2013, just months after it was revealed that the Internal Revenue Service had been targeting applications for tax-exempt 501(c)(4) status from conservative groups for added scrutiny and lengthy delays, the Agency proposed expansive new regulations governing the activity of 501(c)(4) organizations. The proposed rules, officially numbered IRS REG-134417-13, purport to clarify the allowable activity of 501(c)(4) organizations, and would severely limit or prohibit a breathtaking range of nonpartisan political activity, much of which is currently permissible without limit.

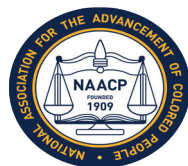
As required by law, the IRS issued a 90-day public comment period during which individuals and organizations were able to submit comments on the proposed rulemaking. The rulemaking quickly garnered the most public comments out of any rulemaking proposed by the IRS in the history of the Federal eRulemaking Portal, Regulations.gov.<sup>1</sup> In those 90 days, an astonishing number and type of organizations, experts, and public officials wrote to the IRS in opposition to the proposed rulemaking, either in whole or in part, most of which made it clear that they were worried about the rulemaking’s inevitable effect of stifling their speech rights. These organizations spanned the political spectrum from the Alliance for Justice, AFL-CIO, and American Civil Liberties Union to the American Conservative Union, National Right to Work Committee, and the U.S. Chamber of Commerce.

### Analysis:

Altogether, **955** organizations, experts, and public officials on the local, state, and federal level submitted substantive comments on the proposed rulemaking. This number includes organizations from across the tax code – 501(c)(3) charitable organizations, 501(c)(4) social welfare groups, 501(c)(5) labor unions, and 501(c)(6) trade associations – as well as experts, such as nonprofit tax lawyers and certified public accountants, and public officials, like members of Congress and current and former FEC Commissioners. According to our analysis, **611** commenters (**64%**) expressed opposition to the proposed regulations, **314** (**33%**) voiced partial support for the regulations with serious caveats about provisions contained in the current rulemaking, and just **30** (**3%**) offered support for the regulations, as proposed. Taken together, an astounding **97%** of comments analyzed oppose the rulemaking in its current form.

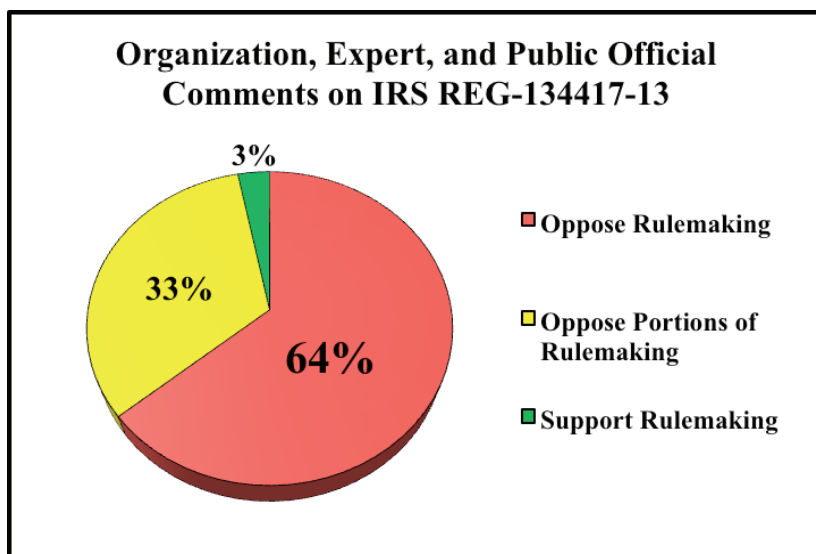
Organizations, experts, and public officials who commented in opposition to the regulations focused mainly on its threat to free speech, the potential impact of the regulations on the vitality of nonprofit organizations, and concerns about the political connection of the rulemaking to the yet-to-be-resolved IRS targeting scandal involving conservative-leaning organizations. About one-third of those who commented commended the IRS for taking steps to rework the current

Organization/Expert/Public Official Comments on IRS REG-134417-13		
Organization/Expert/Public Official Comment Category	# Comments	%
Oppose Rulemaking:	611	64%
Oppose Portions of Rulemaking:	314	33%
Support Rulemaking:	30	3%
Total Organization/Expert/Public Official Comments:	<b>955</b>	100%



<sup>1</sup> John Koskinen, “Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen before the National Press Club,” Internal Revenue Service. Retrieved on July 8, 2014. Available at: <http://www.irs.gov/uac/Newsroom/Prepared-Remarks-of-Commissioner-of-Internal-Revenue-Service-John-Koskinen-before-the-National-Press-Club-2014> (April 2, 2014).

rules and, in some cases, to decrease the alleged influence of politically active social welfare organizations. However, these commenters had great concerns regarding the effects of the rulemaking on inarguably nonpartisan activities such as voter registration drives or candidate forums. These organizations and experts generally advocated for a stricter differentiation between partisan and nonpartisan activities in the final draft of the regulations. The comments supporting the proposed regulation as written maintained that the rulemaking's proposed definition of "candidate-related political activity" was a necessary change, reasoning that those groups that no longer fit the 501(c)(4) definition will not lose tax-exempt status, but rather will have to file as a 527 group and disclose their supporters. Those who support the regulations – typically organizations and experts advocating for greater regulation of political speech – see the disclosure of donor lists due to this change of tax status as a positive byproduct of the proposed rules.



### ***Conclusion:***

All told, **97%** of organizations, experts, and public officials who commented oppose the rulemaking in its current form, with **64%** of those commenters opposing it outright. Notwithstanding the overwhelming sentiment in opposition to the proposed rulemaking, the sheer number of organizations, experts, and public officials that took the time to comment vividly illustrates the far-reaching effects this proposed rule would have on social welfare organizations, if enacted. Organizations who commented on this rulemaking differ markedly in size, history, mission, and political orientation, but the overwhelming majority of those who commented are bound by one common trait: they oppose this rulemaking, as written, for a seemingly limitless number of reasons. This fact is even more apparent given that organizations that wouldn't be affected by the proposed rulemaking, such as 501(c)(5) labor unions and 501(c)(6) trade associations, took the time to comment, out of fear that a future rulemaking of this nature may apply to their organizations. The impressive and bipartisan opposition to this rulemaking further bolsters our contention that the proposal should be withdrawn and re-worked with sensitivity to the First Amendment rights of all social welfare organizations and individuals impacted by this rule.

### ***Methodology:***

To analyze comments from organizations, experts, and public officials on IRS REG-134417-13, we used the exportable spreadsheets of all public comments on rulemakings proposed by federal agencies, such as the IRS, on Regulations.gov. During the 90-day public comment period from November 29, 2013 to February 27, 2014, we downloaded the total available public comments submitted to the IRS on IRS REG-134417-13 on a daily basis. Our analysis takes into account the **143,852** "comments posted" to Regulations.gov as of July 8, 2014. Furthermore, our totals account for each individual organizational, expert, or public official signee onto a comment submission. For example, we count the number of signees onto a letter, rather than counting a sign-on letter itself as one organizational submission, in order to properly account for the number of organizations, experts, and public officials registering an opinion on the rulemaking. Each comment was sorted by whether it had an attachment, as nearly all substantive organizational comments were submitted in the form of a Microsoft Word or PDF attachment. All comments in this form were read and analyzed, and each one originating from an organization was categorized as either "oppose rulemaking," "oppose portions of rulemaking," or "support rulemaking." In some cases, comments with PDF attachments were submitted by individuals. These comments were excluded from our analysis, unless the individual was an elected or appointed official or an expert on election law, tax law, or compliance, such as a current or former Federal Election Commission Commissioner, nonprofit tax lawyer, law professor, or certified public accountant. As a check, we cross-referenced our organizational, expert, and public official comment compilation with that of Public Citizen, to ensure that all comments compiled by Public Citizen are included in this analysis.

# Comments Filed by Organizations, Experts, and Public Officials Opposing IRS Rulemaking Governing 501(c)(4) Organizations

## Comments by the Institute for Free Speech

[Proposing an Alternative Rule](#)

[A Critique of the Proposed Rule](#)

[Compliance with the Paperwork Reduction Act](#)

### Comments by Social Welfare Groups (501(c)(4) Organizations)

[The 60 Plus Association, Inc.](#)  
[Alliance for Natural Health – USA America, Inc.](#)  
[American Civil Liberties Union](#)  
[American Conservative Union](#)  
[American Energy Alliance](#)  
[American Future Fund](#)  
[American Motorcyclist Association](#)  
[Americans for Limited Government](#)  
[Americans for Tax Reform](#)  
[Americans United for Life Action](#)  
[Center for Equal Opportunity](#)  
[Center for Individual Freedom, American Commitment, and American Encore, Inc.](#)

[Citizens United](#)  
[Clean Water Action](#)  
[Council for Citizens Against Government Waste](#)  
[DownsizeDC.org, Inc.](#)  
[Family Research Council Action](#)  
[Free Speech Coalition](#)  
[FreedomWorks](#)  
[Hispanic Leadership Fund](#)  
[Institute for Liberty](#)  
[The Leadership Conference on Civil and Human Rights](#)  
[Let Freedom Ring](#)  
[Liberty Counsel Action](#)

[Motorcycle Riders Foundation](#)  
[NAACP-National Voter Fund](#)  
[National Congress of American Indians](#)  
[National Council of La Raza Action Fund](#)  
[National Defense Committee](#)  
[National League of Taxpayers Petition](#)  
[National Pro-Life Alliance Petition](#)  
[National Rifle Association of America](#)  
[National Right to Life Committee](#)  
[National Right to Work Committee](#)  
[National Right to Work Committee Petition](#)  
[National Taxpayers Union NETWORK](#)

[NumbersUSA Action](#)  
[Our Generation, Inc.](#)  
[Public Advocate of the United States](#)  
[Right to Work Foundation](#)  
[Rock the Vote](#)  
[Small Business & Entrepreneurship Council](#)  
[Taxpayers Protection Alliance](#)  
[TheTeaParty.net](#)  
[Traditional Values Coalition](#)  
[Western Organization of Resource Councils](#)

### Comments by Charities (501(c)(3) Organizations)

[Alliance Defending Freedom](#)  
[Alliance for Justice](#)  
[Alliance for Justice 65 Organization](#)  
[Coalition Letter](#)  
[American Action Forum and Bipartisan Policy Center, Inc.](#)  
[American Association of Christian Schools](#)  
[American Association of University Women](#)  
[American Center for Law and Justice](#)  
[American Council on Education](#)  
[American Jewish Committee](#)  
[American Society of Civil Engineers](#)

[Anti-Defamation League](#)  
[The Arc of U.S.](#)  
[Association of Christian Schools International](#)  
[Cause of Action](#)  
[Center for Nonprofit Advancement](#)  
[Center for Security Policy](#)  
[Citizens' Council for Health Freedom](#)  
[Competitive Enterprise Institute](#)  
[Concerned Women for America](#)  
[Evangelical Council for Financial Accountability](#)  
[Federation for American Immigration Reform](#)

[Food and Water Watch](#)  
[Ford Foundation](#)  
[The Heritage Foundation](#)  
[Home School Legal Defense Association](#)  
[Indiana University](#)  
[Institute for Justice](#)  
[Jewish Federations of North America](#)  
[Judicial Watch](#)  
[Landmark Legal Foundation](#)  
[National Alliance of Community Economic Development Associations](#)  
[National Alliance on Mental Illness](#)  
[National Association for the Advancement of Colored People](#)

[National Center for Learning Disabilities](#)  
[National Disability Rights Network](#)  
[National Women's Law Center](#)  
[Overseas Vote Foundation and U.S. Vote Foundation](#)  
[Philanthropy Roundtable](#)  
[Project Vote](#)  
[Tradition, Family, Property, Inc.](#)  
[United States Conference of Catholic Bishops](#)  
[Washington University in St. Louis](#)  
[YR Alumni Network, Inc.](#)

### Comments Filed by Labor and Agricultural Organizations (501(c)(5) Organizations)

[American Farm Bureau Federation](#)

[Joint Labor Organization Comments \(AFL-CIO, AFSCME, AFT, IAM, NEA, SEIU, and UFCW\)](#)

[Sergeants Benevolent Association of the NYPD](#)

### Comments by Trade Associations (501(c)(6) Organizations)

[American Bankers Association](#)  
[American Coatings Association](#)  
[American Composites Manufacturers Association](#)  
[American Foundry Society](#)  
[American Home Furnishings Alliance](#)  
[American Lighting Association](#)  
[American Petroleum Institute](#)  
[American Road and Transportation Builders Association](#)  
[American Society of Association Executives](#)  
[American Veterinary Medical Association](#)  
[Association of Home Appliance Manufacturers](#)

[The Association for Hose and Accessories Distribution](#)  
[Aerospace Industries Association](#)  
[CropLife America](#)  
[Edison Electric Institute](#)  
[Global Cold Chain Alliance](#)  
[International Dairy Foods Association](#)  
[International Sign Association](#)  
[National Association of Home Builders](#)  
[National Association of Manufacturers](#)  
[National Marine Manufacturers Association](#)  
[National Retail Federation](#)

[National Shooting Sports Foundation](#)  
[National Waste and Recycling Association](#)  
[North American Die Casting Association](#)  
[NPES, The Association for Suppliers of Printing, Publishing and Converting Technologies](#)  
[Precision Machined Products Association](#)  
[Precision Metalforming Association](#)  
[Solar Energy Industries Association](#)  
[U.S. Chamber of Commerce](#)

### Comments Filed by Members of Congress and Appointed Officials

[29 Republican Senators](#)  
[81 Members of the Republican Study Committee](#)  
[House Administration Committee Members](#)  
[House Judiciary Committee Chairman Bob Goodlatte](#)

[House Ways and Means Committee Members](#)  
[Representative Peter Vislosky](#)  
[Representatives Darrell Issa and Jim Jordan](#)  
[Republican FEC Commissioners](#)

[Senate Finance Committee Members](#)  
[Senator Ron Johnson](#)  
[Senator Ted Cruz](#)

### Comments Filed by State and Local Organizations

[Alaska Chamber](#)  
[Alliance Colorado](#)  
[The Arc of Colorado](#)  
[The Arc of Maryland](#)  
[The Arc of New Mexico](#)  
[The Arc of North Carolina](#)  
[The Arc of South Carolina](#)  
[The Arc of Tennessee](#)  
[Arizona Chamber of Commerce and Industry](#)  
[Associated Oregon Industries](#)  
[Association of Washington Business](#)  
[Blue Cross and Blue Shield of Minnesota](#)  
[The Business Council of New York State](#)  
[The California Association of Marriage and Family Therapists](#)  
[CitizenLink](#)

[Disability Law and Advocacy Center of Tennessee](#)  
[Election Integrity NJ](#)  
[Foundation for Government](#)  
[Accountability, Freedom Foundation, and Mackinac Center for Public Policy](#)  
[Georgia Chamber of Commerce](#)  
[Greater Phoenix Chamber of Commerce](#)  
[The Idaho Nonprofit Center](#)  
[Illinois Policy Institute](#)  
[Independent Metal Craft, LLC](#)  
[Lakeland 912 Project](#)  
[League of Women Voters of Pulaski County](#)  
[Maryland Nonprofits](#)  
[Michigan Chamber of Commerce](#)  
[Minnesota Chamber of Commerce](#)

[Missouri Alliance for Freedom, Citizens for Self-Governance, and Empowerment](#)  
[Texans](#)  
[Montana Native Vote](#)  
[N.C. Center for Nonprofits](#)  
[Nebraska Christian Home Educators Association](#)  
[New Yorkers for Constitutional Freedoms](#)  
[North Carolina Chamber](#)  
[Northern Plains Resource Council](#)  
[The Ohio Society of CPAs](#)  
[Pennsylvania Chamber of Business and Industry](#)  
[Rhode Island Center for Freedom and Prosperity](#)  
[Rio Grande Foundation](#)  
[Solid Ground](#)

[South Carolinians for Responsible Government](#)  
[State Chamber of Oklahoma](#)  
[Tampa 912 Project](#)  
[Tennessee Chapter of the Sierra Club](#)  
[Texas Association of Business](#)  
[Texas Classroom Teachers Association](#)  
[Twinbrooke Women's Group](#)  
[Virginia Organizing](#)  
[Virginia Society of Association Executives](#)  
[Washington Housing Alliance Action Fund](#)  
[Wyoming Liberty Group and Republic Free Choice](#)

### Comments Filed by Experts and Law Firms

[Barnaby Zall](#)  
[Bell, McAndrews & Hiltachk LLP](#)  
[Citizens for a Constitutional Government](#)  
[Craig Lair of Rose Law Firm](#)

[Exempt Organizations Practitioners](#)  
[First Amendment Advocates](#)  
[Former FEC Commissioners](#)  
[James V. DeLong](#)

[John T. Lind, CPA](#)  
[Sally Wagenmaker](#)  
[Strickland Brockington Lewis LLP](#)