



Analysis: 87% of Public Comments Sampled Oppose IRS 501(c)(4) Rulemaking

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.¹ In those 90 days, an astounding number of concerned citizens wrote to the IRS in opposition to the proposed rulemaking, many of whom made it clear that they were worried about the rulemaking's inevitable effect of stifling the speech rights of a broad swath of societally-important social welfare organizations, which these citizens look to for guidance and education on topical political issues and candidates for office.

Analysis

The Institute for Free Speech performed an analysis of the comments and found that the vast majority of submissions – a remarkable **87%** – opposed the new regulations, with only **5%** of public commenters favoring the regulation. The remaining **7%** voiced partial support for the proposed rulemaking while noting opposition to varying aspects of the proposal. **1%** of the comments sampled were neutral about the rulemaking or otherwise indistinguishable. Impressively, nearly 4 in 10 comments sampled (**38%**) were unique comments submitted by concerned citizens who were motivated to comment on this rulemaking, not because of urging by any organization, but out of sheer concern over the ramifications of the rulemaking.

Those who opposed the rulemaking typically cited concerns over IRS involvement in free speech, the impact the rules would have on nonprofit organizations, or partisan abuse of the agency. Favorable comments voiced general support for expanding campaign finance disclosure and limiting political advocacy activity by tax-exempt organizations, but often included requests for amendments to the proposed rule to protect nonpartisan activity.

Public Comment Sample on IRS REG-134417-13		
<i>Public Comment Category</i>	<i># Comments</i>	<i>%</i>
Oppose Rulemaking:	1277	87%
Partial Support and Opposition:	98	7%
Support Rulemaking:	67	5%
Neutral/Unclear:	16	1%
Total Public Comments:	1458	100%
# Of Form Letter/Petition Comments:	907	62%
# Of Unique Comments:	551	38%
Total Public Comments:	1458	100%

¹ 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).

Conclusion

An astounding 87% of public comments sampled opposed this rulemaking. Even among the minority of comments submitted to the IRS favoring greater regulation of political activity of (c)(4) groups, most requested amendments to the proposed rulemaking. Even fewer comments expressed full support for the proposed regulations. The lack of any statistically significant support for the rulemaking combined with the overwhelming majority of comments submitted in opposition to it

demonstrates the widespread public backlash against the IRS's latest effort to regulate political speech. This further bolsters our contention that the proposed rulemaking should be withdrawn and re-worked with sensitivity to the First Amendment rights of all social welfare organizations.

Methodology

To gauge public opinion of comments filed on IRS REG-134417-13, we analyzed a 1% sample of the 143,852 total comments submitted to the IRS during the 90-day public comment period from November 29, 2013 to February 27, 2014. Our sample accounts for "comments posted" to www.regulations.gov as of July 8th, 2014. Our sample is large, producing a 1.7% margin of error with 95% confidence. Regulations.gov provides exportable spreadsheets containing all public comments on rulemakings proposed by participating federal agencies, such as the IRS. We downloaded all public comments on IRS REG-134417-13, sorted them by the date they were received by the IRS, and selected every 100th comment for our sample. Each comment in the sample was then read and categorized as either "oppose rulemaking," "partial support and opposition," "support rulemaking," or "neutral/unclear." Additionally, we tracked whether the comments were original or copies of form letter or petition comments sent out by organizations.

