TED CRUZ
TEXAS

United States Senate

COMMITTEES:
AGING
ARMED SERVICES
COMMERCE
JUDICIARY
RULES AND ADMINISTRATION

February 25, 2014

The Honorable John A. Koskinen
Commissioner of Internal Revenue
CC:PA:LPD:PR (REG-134417-13), Room 5205
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comments on IRS NPRM, REG-134417-13

Dear Commissioner Koskinen:

I submit these comments in response to the Notice of Proposed Rulemaking issued by the Internal Revenue Service on November 29, 2013.

It is disturbing that the IRS is proposing new rules that would attempt to further limit the free speech rights of Americans, while the IRS and the Department of Justice still refuse to provide the American people with all the facts surrounding the IRS's targeting of certain organizations based on their political activity.

The IRS's proposed rules would stifle political activity by preventing 501(c)(4) groups from engaging in political speech and voter registration that these groups have engaged in for decades. Given the IRS's recent targeting of conservative groups based on their political activity, these rules would only further politicize an already troubled agency.

Rather than create an entirely new set of definitions for political activity, the IRS should use the definitions created by the bipartisan Federal Election Commission and refined by the courts. The FEC's definitions have been established for years, and they provide clear guidance for speakers without stifling political speech, a vital part of a functioning democracy. Moreover, using the FEC's definitions would let the IRS focus on collecting taxes even-handedly instead of picking political winners and losers.

Specifically, the IRS should scrap its proposed rulemaking and take two alternative actions. First, the IRS should adopt a definition of "political organization," 26 U.S.C. §527(e)(1), that includes only those groups that must register as a political committee with the FEC or an analogous state agency. This eliminates the IRS's discretion in determining what groups count as §527 political organizations, thereby preventing the IRS from getting entangled in politically sensitive judgments.

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Second, the IRS should adopt an interpretation of "promotion of social welfare," 26 U.S.C. §501(c)(4), that includes independent expenditures and other political activities like voter education. For years, the Supreme Court and the FEC have recognized a difference between independent expenditures and direct contributions. Independent expenditures are not coordinated with candidates, whereas direct contributions are coordinated. Informing the public about candidates or issues in elections promotes social welfare by furthering the political dialogue within our democracy. 501(c)(4) groups should therefore be allowed to make independent expenditures, which are designed to inform the electorate as opposed to accruing to the direct benefit of certain candidates through coordination. Likewise, 501(c)(4) groups should be permitted to engage in news stories, voter education, nonpartisan get-out-the-vote drives, and non-express advocacy communication by an organization to its members. All of these activities further our democracy by engaging the citizenry without a direct coordinated benefit to particular candidates.

The IRS should not be used as a tool for partisan warfare. And the federal government must respect the First Amendment rights of our citizens. The proposed new rules do neither.

Respectfully submitted,

Ted Cruz
U.S. Senator