Graves Garrett LLC

Edward D. Greim
edgreim@gravesgarrett.com
Direct Dial: (816) 256-4144
Fax: (816) 817-0863

Clayton J. Callen
ccallen@gravesgarrett.com
Direct Dial: (214) 453-2502
Fax: (214) 853-4358

January 28, 2014

Via Electronic Mail:
Office of Management and Budget
Attn: Desk Officer for the Department of the Treasury
Office of Information and Regulatory Affairs
Washington, DC 20503
www.regulations.gov

Re: Comments Regarding Paperwork Burden Posed By I.R.S. Reg-134417-13

On behalf of the Missouri Alliance for Freedom ("MAF") and Empower Texans, Inc., we respectfully submit the following comments in regard to Notice of Proposed Rulemaking REG-134417-13, which proposes sweeping new restrictions on Section 501(c)(4) social welfare entities such as MAF[1] and Empower Texans.

In the Notice, the Service has requested comments related to the collection of information required by the proposed regulations in accordance with the Paperwork Reduction Act, 44 U.S.C. § 3507. Although we intend to submit more general comments addressing the proposed regulations' impact on "social welfare" organizations, the following comments specifically relate to the collection of information imposed by the regulations. The Notice drastically understates the significant paperwork and recordkeeping burdens the regulations would impose, and the impact of the regulations on "social welfare" organizations. This burden is particularly troubling in light of the unnecessarily broad, and likely unconstitutional, restrictions from which the paperwork and recordkeeping requirements arise. The Service's estimates related to the collection of information should be revised to make transparent the true nature of the burden that would be imposed on Section 501(c)(4) organizations.

[1] MAF is a Missouri non-profit corporation that operates as a social welfare organization consistent with Section 501(c)(4) of the Internal Revenue Code. It has not yet sought recognition of its tax-exempt status.

Graves Garrett LLC

- **The Proposed Regulations Would Significantly Curtail the Activities of "Social Welfare" Organizations**

As an initial matter, we agree that the current "facts and circumstances" test performed by the Service to determine whether the activities of a Section 501(c)(4) organization constitute candidate advocacy lacks sufficient clarity. *See* 26 C.F.R. § 1.527(e)(2); IRS Rev. Rul. 2004-6. However, the quest for clarity does not require or justify significantly curtailing the ability of Section 501(c)(4) organizations to engage in activities in furtherance of promoting "social welfare," including activities related to relevant public policy issues and non-partisan election-related activities. Yet that is precisely what the proposed regulations threaten to do. The Service concedes as much by noting that the regulations "might sweep in" activities that would not "be captured under the IRS's traditional facts and circumstances approach." This is a significant understatement: the regulations would prohibit Section 501(c)(4) organizations from engaging in a wide array of non-partisan issue-related activities that they have long been permitted to perform. Indeed, issue-oriented public policy activities (including lobbying and grassroots legislative advocacy) have historically been the most important and effective means of promoting social welfare.

Moreover, such activities constitute "core political speech" protected by the First Amendment. And where lines must be drawn in regard to such speech, "the tie goes to the speaker, not the censor." *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 474 (2007). The Service's proposed regulations, though purporting to provide clarity, draw lines that greatly restrict the ability of Section 501(c)(4) organizations to engage in protected speech. We will more fully address these issues when submitting general comments prior to the February 27th deadline, but these fundamental issues are also relevant in considering the burdensome collection of information imposed by the regulations.

- **The Notice Does Not Disclose the Full Extent of Required Recordkeeping and Reporting**

The proposed regulations would greatly expand the definition of "candidate-related political activity." *See* § 1.501(c)(4)-1. For example, any public communication within 60 days of a general election, or 30 days of a primary election, identifying a candidate will be deemed "candidate-related political activity," irrespective of the *content* of the communication. Similarly, producing

voter guides and conducting non-partisan get-out-the-vote and voter registration drives would constitute "candidate-related political activity" under the rule. By greatly expanding the scope of "candidate-related political activities," the regulations impose additional recordkeeping requirements on Section 501(c)(4) organizations, as such activities must be calculated and reported to the Service (including work performed by volunteers). This, along with other additional recordkeeping and reporting requirements, were not noted in the Notice or referred to the Office of Management and Budget in accordance with the Paperwork Reduction Act, as is required for new "reporting or recordkeeping requirements." 5 C.F.R. § 1320.3(c)(1). Thus, the Notice does not accurately assess the collection of information associated with the proposed regulations.

- **The Notice Underestimates the Required Collection of Information**

As to the collection of information that *is* addressed in the Notice, the estimated burden is vastly understated. Specifically, the newly proposed definition of "candidate-related political activity" includes any grant or contribution that a Section 501(c)(4) organization makes to any other Section 501(c) organization that engages in "candidate-related political activity," regardless of the amount of such activities performed by the recipient organization. The regulation provides a safe harbor if the "contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in such activity…and [t]he contribution is subject to a written restriction that it not be used for candidate-related political activity…." *See* § 1.501(c)(4)-1(a)(2)(iii)(D). Notably, this provision acts not only as a restriction on the contributing organization, but also the recipient organization, because after receiving such a grant or contribution, the recipient organization is restricted in its ability to engage in such activities in the future.

Moreover, the regulation will require that Section 501(c)(4) organizations prepare and execute grant letters and agreements in order to qualify under the safe harbor. This is both tedious and time-consuming, and will often require the review of legal counsel and negotiations between the respective organizations. The Notice estimates the annual burden placed on record keepers as "2 hours." In light of our experience in representing Section 501(c)(4) organizations, we do not believe that this is a realistic or accurate estimate of the time required to prepare, execute, and record such agreements, particular in the case of organizations who make large numbers of grants and contributions falling within the scope of the regulation.

Graves Garrett LLC

Even more importantly, however, the significant paperwork and recordkeeping requirements imposed by the regulations are not "necessary for the performance of the functions of the IRS." As noted above, the proposed regulations encompass a wide swath of non-partisan, issue-based activities at the very heart of the purpose for which Section 501(c)(4) organizations exist. By taxing such entities for such activities, and putting them at risk of losing their Section 501(c)(4) tax-exempt status, the Service is undermining the promotion of "social welfare," and is delving into a body of law beyond the scope of the Service's intended purpose. Campaign-related expenditures are already regulated by both federal and state campaign finance laws, and organizations qualifying as "political committees" under such laws may register as tax-exempt Section 527 organizations under the Internal Revenue Code. By creating an additional, and significantly broader, and more restrictive regulation aimed at Section 501(c)(4) organizations, the Service would create a new, arduous layer of federal regulation relating to activities more properly (and currently) addressed through the regulations of the Federal Election Commission and state campaign finance laws.

Indeed, because the new regulations would adopt definitions of political activity that differ not only from the Section 527 rules, but also from the preexisting layers of state and federal campaign law, Section 501(c)(4) organizations face the prospect of having to keep an extra set of books to categorize and value each of their activities under the Service's new regulations. Even if it were not for campaign finance law, the same activity could be treated one way for purposes of Section 527, and another way under the newly-proposed regulations. Differing treatment requires keeping a separate set of books, devoting more resources to recordkeeping and compliance, and, ultimately, devoting fewer resources to core political speech and the advancement of social welfare. That cannot be in anyone's interest.

Thank you for considering our comments. It is our hope that, in considering these and other comments submitted by the public, the Service will promulgate regulations providing greater clarity to Section 501(c)(4) organizations. However, it should do so in a manner that does not unnecessarily burden and limit the activities of such organizations. The proposed regulations do not meet this objective.

Graves Garrett LLC

Sincerely,

Edward D. Greim

Clayton J. Callen

cc: Internal Revenue Service

1100 Main Street, Suite 2700 Kansas City, MO 64105
ph 816.256.3181 www.gravesgarrett.com

1700 Pacific Avenue, Suite 3600 Dallas, TX 75201
ph 214.453.2003 www.gravesgarrett.com