February 27, 2014

**Via Federal eRulemaking Portal**

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**Re: Comments on Draft Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities**

Dear Commissioner Koskinen:

These comments are submitted by the Wyoming Liberty Group and Republic Free Choice in response to the proposed regulations issued by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") in a Notice of Proposed Rulemaking ("NPRM") on November 29, 2013 defining political activities that are not permissible for groups exempt from taxation under Internal Revenue Code § 501(c)(4).[1]

## I. Interest of the Commenters

The Wyoming Liberty Group is a nonpartisan public policy research organization, advancing the principles of liberty, free markets, and limited government. It is a tax exempt, non-profit educational organization operating under Section 501(c)(3) of the Internal Revenue Code. The Wyoming Liberty Group's mission is to prepare citizens for informed, active and confident involvement in government and to provide a venue for understanding public issues in light of constitutional principles and government accountability. It has an interest in educating about the role of first principles in constitutional matters and ensuring that fundamental liberties, not government authority, remain protected.

Republic Free Choice is an organization operating under Section 501(c)(4) of the Internal Revenue Code. Republic Free Choice's mission is to establish a place for the public to

[1] Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78

discuss issues affecting local government, health, education, citizen rights and more. It seeks to expand citizen input into government affairs, provide greater transparency of government actions, and protect the fundamental rights of citizens.

Benjamin Barr is Washington, DC area attorney specializing in election law and constitutional litigation. He has litigated election law issues nationally, served as counsel to two Chairmen of the Federal Election Commission ("FEC"), and the Supreme Court has cited his First Amendment work in support of enhanced protection. He is the author of more than a dozen scholarly studies on constitutional issues, including co-author of a forthcoming article articulating the importance of political privacy.[2] The comments submitted reflect his knowledge and experience interpreting, attempting to comply with, and litigating against difficult election law standards.

## II. Introduction and Summary

The Wyoming Liberty Group ("WyLiberty") and Republic Free Choice ("RFC") applaud the Treasury and IRS's initiative to make the rules surrounding 501(c)(4) status more readily understandable. However, to properly determine how electoral related speech should be regulated—if at all—its constitutional pedigree must be examined. Today, many government agencies and self-titled reformers treat the vigorous exercise of protected First Amendment political speech as an "'evil' to be tamed, muzzled, or sterilized."[3] This approach is wholly unsupported by the law and inappropriate.

Under existing law, an organization wishing to be recognized as a tax-exempt 501(c)(4) organization must show that it is operated "exclusively for the promotion of social welfare."[4] Likewise, under existing regulations, 501(c)(4) entities may engage in political speech and campaigns but not to the point that this activity is the primary purpose of the group in question. The proposed regulations seek to drastically expand the universe of activities that may be labeled political activity and thus disallow many groups from enjoying 501(c)(4) status. Because the proposed rules target specially protected forms of First Amendment conduct and impose additional burdens against their exercise, the proposed rules are wholly unsupportable.

The Supreme Court has routinely held that "speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection."[5] Protecting this rich Western tradition of citizens sharing their political views, criticizing candidates and public officeholders, and discussing issues should constitute a "civic betterment" and "social improvement" for purposes of tax-exempt status.[6] This is because speech is an "essential mechanism of democracy, for it is the means to hold

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[2] *See generally* Benjamin Barr & Stephen Klein, *Publius Was Not a PAC: Reconciling Anonymous Political Speech, the First Amendment, and Campaign Finance Disclosure*, 14 WYO. L. REV. 253 (2014) (forthcoming), *working paper available* at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2268691.

[3] Federal Election Comm'n v. Central Long Island Tax Reform Immediately Cmte., 616 F.2d 45, 55 (2d Cir. 1980) (Kaufmann, concurring).

[4] 26 U.S.C. § 501(c)(4).

[5] Connick v. Myers, 461 U.S. 138, 145 (1983) (quoting Carey v. Brown, 447 U.S. 455, 467 (1980)).

[6] 26 C.F.R. §§ 1.501(c)(4)– 1(a)(2)(i) .

officials accountable to the people."[7] Thus, the robust exercise of political speech rights is a virtue, not a vice, and any proposed rules should begin with this presumption.[8]

The proposed rules suffer from two major maladies the Commenters wish to bring to light. First, the Treasury and IRS seek to offer clearer standards by referencing, incorporating, and expanding on the practices of the FEC. Given the FEC's problematic and questionable litigation record, looking to its policies and practices for guidance is itself misguided.[9] Because the Supreme Court and many lower federal courts routinely invalidate portions of federal election law and FEC practices, the Treasury and IRS should look to the third branch of government, the judiciary, for guidance as to appropriate standards.[10]

Second, how the Treasury and IRS decide to regulate 501(c)(4) organizations will affect the constitutional validity of its regulation of 501(c)(3) organizations. In *Regan v. Taxation With Representation of Washington*, the Supreme Court upheld burdensome restrictions on 501(c)(3) groups particularly because citizens could create less-regulated 501(c)(4) entities through which to exercise their constitutionally protected rights.[11] To the extent that the proposed rules eliminate this important safety valve for the exercise of constitutional liberties through 501(c)(4) organizations, its existing rules governing 501(c)(3) groups may not survive constitutional review.

Given the deep flaws embodied in the proposed rules, the Secretary of the Treasury should withdraw the NPRM.

## III. The Proposed Rules Should not be Based on Judicially Invalidated Federal Election Law Standards

The Treasury and IRS have chosen to rely on the policies and practices of the FEC in crafting its proposed rules.[12] This is unfortunate given that the FEC's experiments in speech regulation have been routinely corrected and reprimanded by the courts.[13] Rather

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[7] Citizens United v. Federal Election Comm'n, 558 U.S. 310, 339 (2010); *see also* Buckley v. Valeo, 424 U.S. 1, 14–15 (1976).

[8] Federal Election Comm'n v. Wisconsin Right to Life (*WRTL*), 551 U.S. 449, 474 (2007) ("When the First Amendment is implicated, the tie goes to the speaker, not the censor").

[9] *See, e.g.*, Dave Levinthal, *FEC can't Explain Secrecy*, POLITICO, Nov. 11, 2011, http://www.politico.com/news/stories/1111/67534.html; *Miller Asks FEC to Turn Over all Communications with IRS*, CMTE. ON HOUSE ADMINISTRATION, Jul. 31, 2013, http://cha.house.gov/press-release/miller-asks-fec-turn-over-all-communications-irs.

[10] *See generally* Marbury v. Madison, 5 U.S. 137 (1803).

[11] 461 U.S. 540, 544(1983).

[12] Guidance on Candidate-Related Activities, 78 Fed. Reg. at 71538 ("these proposed regulations draw key concepts from the federal election campaign laws, with appropriate modifications reflecting the purpose of these regulations to define which organizations may receive the benefits of section 501(c)(4) tax-exempt status and to promote tax compliance (as opposed to campaign finance regulation)").

[13] *See, e.g.*, Me. Right to Life Cmte. v. Federal Election Comm'n, 914 F. Supp. 8,13 (D. Me. 1996), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996) (per curiam), *cert. denied*, 522 U.S. 810 (1997); Federal Election Comm'n v. Christian Action Network, 894 F. Supp. 946, 958 (W.D. Va. 1995), *aff'd*, 92 F.3d 1178 (4th Cir. 1996) (unpublished); Virginia Society for Human Life v. Federal Election Comm'n, 263 F.3d 379, 392 (4th Cir. 2001); Right to Life of Dutchess County, Inc. v. Federal Election Comm'n, 6 F. Supp. 2d 248,

than focus on the losing arguments and failed standards of the FEC, the Treasury and IRS should focus their attention on standards developed by the final arbiters of these experiments—the judiciary.

There is no shortage of helpful constitutional criteria to guide the Treasury and the IRS in deciding the propriety of the proposed regulations. From *Buckley v. Valeo* to *Citizens United*, federal attempts to regulate speech through complicated, indeterminate, and overbroad experiments are common fare. Two guideposts are especially appropriate here: the related doctrines of vagueness and overbreadth.

One common approach to speech regulation is to create flexible, dynamic standards that empower government actors to exercise their judgment on the go.[14] This approach places great reliance on the ability of bureaucrats to properly carry out the law. This sort of discretionary approach "may maximize the amount of speech" that an agency can prohibit or regulate "but it results in a standard that even the [agency] cannot articulate or apply consistently."[15] This approach is flawed given its propensity to eradicate objective guideposts for regulatory compliance and otherwise instill vagueness and uncertainty into the law.[16]

The Supreme Court has shown little patience for agencies imposing subjective and conflicting regulatory standards where core constitutional liberties are implicated. In *Federal Communications Comm'n v. Fox Television Stations, Inc.*, the Court invalidated the Federal Communications Commission's ("FCC") indecency policy due to vagueness concerns.[17] While the FCC had previously adhered to a strict and narrow indecency standard, its new approach favored flexibility and analyses of facts and circumstances. This flexibility led to unknown compliance standards and conflicting regulatory actions which violated a fundamental rule that "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."[18]

On the other end of the spectrum is a method that favors broad standards that capture wide amounts of speech and place relatively little reliance on the discretion of regulatory staff to carry out the law. The Federal Election Campaign Act's ("FECA") earlier sweeping $1,000 expenditure ban, the Bipartisan Campaign Reform Act's ("BCRA") ban on all contributions by minors, or the electioneering communications ban are all

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253–54 (S.D.N.Y. 1998); Carey v. Federal Election Comm'n, 791 F.Supp.2d 121, 136 (D.D.C. 2011); SpeechNow.org v. Federal Election Comm'n, 599 F.3d 686, 698 (D.C. Cir. 2010); Emily's List v. Federal Election Comm'n, 581 F.3d 1, 25 (D.C. Cir. 2009); Federal Election Comm'n v. Massachusetts Citizens for Life (*MCFL*), 479 U.S. 238, 263–65 (1986); *WRTL*, 551 U.S. at 481–82; Davis v. Federal Election Comm'n, 554 U.S. 724 (2008); *Buckley*, 424 U.S. at 143–44; *Citizens United*, 558 U.S. at 371–72.

[14] *See generally* Federal Communications Comm'n v. Fox Television Stations, Inc., 132 S.Ct. 2307 (2012).

[15] Fox Television Stations, Inc. v. Federal Communications Comm'n, 613 F.3d 317, 332 (2d Cir. 2010), *overruled in part*, 132 S.Ct. at 2320.

[16] *See, e.g.*, Cantwell v. Connecticut, 310 U.S. 296, 308 (1940) ("Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.").

[17] *Fox Television Stations*, 132 S.Ct. at 2320.

[18] *Id.* at 2317.

examples in this regard.[19] The natural problem with this approach is that it limits speech well outside of any area of governmental concern and may deter others from engaging in protected First Amendment conduct.[20]

Since 1975, the Congress and FEC have tinkered with adaptations of these misconceived approaches to speech regulation. The 1970 version of the FECA contained sweeping prohibitions against spending more than $1,000 "relative to a clearly identified candidate."[21] The FEC itself has experimented more frequently with flexible standards that empower Commission staff and commissioners to decide the outer bounds of regulation. This has been made manifest in its promulgation of 11 C.F.R. § 100.22(b) (expanding, but never clarifying, the definition of express advocacy) or in its rulemaking after losing *Wisconsin Right to Life* to create a "two-part, 11-factor balancing test" to decide which speech constitutes electioneering communications.[22] Courts have invalidated most of these approaches.[23]

The related doctrines of vagueness and overbreadth do not make the regulation of political speech impossible, but they do insist upon stringent protections. In particular, they demand that whenever government has an interest in the regulation of a class of speech that rules be readily understood and properly tailored.[24] It is because of this that regulations implicating protected First Amendment conduct must be purposefully limited and carefully defined to pass constitutional muster.[25] It is well known that less inclusive and less flexible standards will capture less speech. This is precisely the constitutional balance struck by the *Buckley*, *WRTL*, and *Citizens United* Courts because political speech occupies the "highest rung of the hierarchy of First Amendment values and is entitled to special protection."[26] Nearly four decades of attempts to circumvent the important doctrines of vagueness and overbreadth have failed. These attempts should not be repeated here.

The proper direction of any reform to existing regulation should be grounded in the wisdom of *Buckley*, *WRTL*, and *Citizens United*. Reform should not duplicate the many failures of the FEC. Certain commenters have examined these problems in detail.[27]

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[19] 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV); BCRA §318; 2 U.S.C. § 441b.
[20] *See generally* Grayned v. City of Rockford, 408 U.S. 104 (1972).
[21] 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV).
[22] *Citizens United*, 558 U.S. at 335.
[23] 11 C.F.R. § 100.22(b) remains codified as part of federal election law though it has been declared unconstitutional or beyond its statutory authorization by several courts. *See supra* note 13.
[24] Republican Party of Minnesota v. White, 536 U.S. 765, 774–75 (2002).
[25] These principles ensure that the exercise of unregulated free speech, not the realization of regulatory edicts, carries a preferred place in our constitutional hierarchy of values. *Buckley*, 424 U.S. at 43–44; *WRTL*, 551 U.S. at 474 ("Where the First Amendment is implicated, the tie goes to the speaker, not the censor"); *Citizens United*, 558 U.S. at 326 (quoting *WRTL*, 551 U.S. at 469) ("First Amendment standards, however, 'must give the benefit of any doubt to protecting rather than stifling speech'").
[26] *Connick,* 461 U.S. at 145.
[27] *See generally* Memorandum from the American Civil Liberties Union to John Koskinen, Commissioner of Internal Revenue (Feb. 4, 2014), *available at* https://www.aclu.org/sites/default/files/assets/2-4-14_--_aclu_comments_to_irs_re_guidance_for_tax_exempt_social_welfare_orgs_on_crpa_4.pdf; Memorandum from the Center for Competitive Politics to John Koskinen, Commissioner of Internal Revenue (Feb. 20,

Specifically, the proposed rules include the very worst features of failed past attempts to regulate political speech. By including expansive definitions, the rules will capture far too much speech by grassroots groups and remove valuable information from our marketplace of ideas. For example, the proposed rules define a "clearly identified candidate" as:

1) Any federal, state, or local candidate or nominee in a race for public office, a recall election, or position in a political organization;[28] where the communication
2) Expressly references the candidate, apparently identifies the candidate by reference ("Governor"), or references an "issue or characteristic" that differentiates the candidate from his opponents.[29]

Speech that is a "public communication" and satisfies these tests will qualify as "candidate-related political activity" if communicated close to an election. But all sorts of speech may touch on sensitive public issues or discuss policy and reference officeholders or candidates without attempting to influence the outcome of an election. The proposed definitions simply reach too far.

For example, Republic Free Choice generates a yearly "Liberty Index" to determine whether particular legislators in Wyoming support liberty-friendly policies.[30] It includes details and analyses about particular pieces of legislation, references officeholders and candidates expressly, but includes no attempt to influence the outcome of particular races. Its goal is to educate individuals in Wyoming about legislation, the import of liberty, and officeholders' positions. Still, under the proposed rules, if communicated near the time of an election, this would constitute impermissible "candidate-related political activity." Such a finding would count against RFC's tax-exempt status and necessarily restrict the number of ideas and perspectives shared by it near the time of an election. In no way do the IRS's proposed rules rationally promote civic betterment or social improvement. Silencing our citizens is a vice, not a virtue.

Expanding the scope of these definitions ensures all sorts of political speech—speech the Supreme Court deems "an essential mechanism of democracy"—will be dampened or eradicated.[31] Unfortunately, by "design or inadvertence," these rules will suppress the exercise of high-value, political speech without any proper safeguards built into the law.[32] Beyond whatever promises of fair play and impartial adjudication the Treasury and IRS might offer, the "First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*."[33] The Treasury and IRS must reverse course and realize

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2014), *available at* http://www.campaignfreedom.org/wp-content/uploads/2013/12/Center-for-Competitive-Politics-Supplemental-Comments.pdf.

[28] Proposed Rule § 1.501(c)(4)-1(a)(2)(iii)(B)(1)).

[29] Proposed Rule § 1.501(c)(4)-1(a)(2)(iii)(B)(2)).

[30] WYOMING LIBERTY INDEX, http://wyominglibertyindex.info (last accessed Feb. 26, 2014).

[31] *Citizens United*, 558 U.S. at 340.

[32] *Id*.

[33] United States v. Stevens, 559 U.S. 460, 480 (2010).

that citizens engaging in acts of self-governance—the exercise of their political speech and association rights—is not a nuisance to be muzzled.

## IV. The Proposed Rules Should not Eviscerate the Delicate Constitutional Balance of *Regan v. Taxation With Representation*

In 1983, the Supreme Court struck a delicate compromise concerning the regulation of two major classes of non-profit entities—501(c)(3) and (4) groups. In particular, it examined the lobbying restrictions applicable to 501(c)(3) organizations in *Regan v. Taxation With Representation*.[34] The Court upheld particularly onerous restrictions because ample alternative channels existed through which these groups could exercise their rights to free speech and petition. A fundamental tenet of this opinion rested on the fact that 501(c)(3) organizations could easily create less regulated 501(c)(4) groups through which to lobby or engage in limited political campaign activity.[35]

As Justice Blackmun signaled in his *Regan* concurrence, the significant restrictions imposed through Section 501(c)(3) would ordinarily be unconstitutional. This is because "it deprives an otherwise eligible organization of its tax-exempt status and its eligibility to receive tax-deductible contributions for all its activities, whenever one of those activities is 'substantial lobbying.' Because lobbying is protected by the First Amendment, § 501(c)(3) therefore denies a significant benefit to organizations choosing to exercise their constitutional rights." For the *Regan* majority and Justices Brennan and Marshall who joined the Blackmun concurrence, Section 501(c)(4) was the lynchpin upholding restrictions applicable to 501(c)(3) groups.

To be clear, later Supreme Court cases have affirmed Justice Blackmun's concurrence in *Taxation With Representation*. In *Rust v. Sullivan*, the Court specifically relied upon the availability of an alternate method to communicate in upholding conditions placed on Title X family planning funding.[36] Likewise, Justice Blackmun's alternative method reasoning was central in *Federal Communications Comm'n v. League of Women Voters*, which invalidated federal prohibitions on editorializing.[37] The inverse of Justice Blackmun's reasoning has held equally true. Where government restricts speech in the first place and leaves only burdensome alternatives, the initial speech restrictions will be invalidated.[38]

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[34] 461 U.S. 540 (1983).

[35] Ellen P. Aprill, *Why the IRS Should Want to Develop Rules Regarding Charities and Politics*, 62 CASE W. RES. L. REV. 643, 683 n. 189 (2012) ("It is generally assumed that the same reasoning [concerning lobbying prohibitions] applies to the campaign intervention prohibition.").

[36] 500 U.S. 173, 196–98 (1991).

[37] 468 U.S. 364, 399–401 (1984).

[38] *See, e.g.*, *MCFL*, 479 U.S. at 255 (federal election prohibition on non-profit corporate expenditures violated the First Amendment in part because the alternative "avenue it leaves open is more burdensome than the one it forecloses"); *Citizens United*, 558 U.S. at 337–38 (declining to validate ban on electioneering communications because forming a political action committee was not an ample alternative method of communicating).

As a result of the *Taxation With Representation* compromise, a corollary rule has emerged. Government enjoys greater regulatory authority to target subsidized speech, like the sort that occurs from a (c)(3) group. But where speech originates from a non-subsidized source, like a (c)(4) organization, it may not regulate so broadly.[39] More restrictive rules against non-subsidized entities may prove fatal under any subsequent constitutional analysis of their propriety.[40]

Understanding the delicate regulatory constitutional balance formulated in *Taxation With Representation* is crucial for this proposed rulemaking. It has been a steadfast rule of constitutional law that "First Amendment freedoms need breathing space to survive."[41] In today's non-profit world, the parallel regulatory structures of Section 501(c)(3) and (4) work to maintain that breathing space, if somewhat imperfectly. Concretely, this means that a wide host of small grassroots non-profits from local Audubon Society chapters to home-grown gun owner organizations may establish one group—a (c)(3) arm—to educate and mobilize on issues, and another—a (c)(4) arm—to take more pointed stances on issues, connect them to candidates, and engage in advocacy surrounding political campaigns. Even this effort requires significant funding to hire competent counsel and tax advisors. Imposing even greater regulatory difficulties for citizens speaking together as a (c)(4) organization works against the central premise of *Taxation With Representation*.

Ensuring that Americans retain the ability to share their voices more vigorously through the (c)(4) structure is decidedly important if the IRS wishes to preserve the constitutional validity of its (c)(3) regulations. While *Taxation With Representation* spoke narrowly to the lobbying prohibition contained in Section 501(c)(3), it is generally recognized that the rationale extends more broadly to other (c)(3) prohibitions. In other words, absent the existence of a meaningful outlet for citizens to speak vigorously—one might say in a manner that is relatively *unabridged*—the entire composition of the IRS's non-profit regulatory structure may topple.

For purposes of the prosed rules, particular commenters have illustratively described the regulatory and constitutional pitfalls of the proposed restrictions for (c)(4) groups.[42] To recall, under current law, a (c)(3) organization "does not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office."[43] In turn, a (c)(4) organization is dedicated to "charitable, educational, or recreational" purposes that promote "social welfare."[44] In turn, the Supreme Court has recognized that (c)(4) groups may validly engage in political speech: "An organization

[39] Funds donated to (c)(4) organizations are non-deductible for purpose of federal tax law and remain fully taxed. I.R.C. §§ 162(e), 527(f).
[40] *See generally* Speiser v. Randall, 357 U.S. 513 (1958).
[41] NAACP v. Button, 371 U.S. 415, 433 (1963).
[42] *See supra* note 27.
[43] 26 U.S.C. § 501(c)(3).
[44] 26 U.S.C. § 501(c)(4).

'may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.'"[45]

Given the import of constitutional freedoms abutting (c)(3) and (c)(4) regulation, the proposed regulations move the Treasury and IRS in the wrong direction for two primary reasons.

First, because the proposed rules seek to treat basic civic engagement by Americans—speaking one's political mind—as a regulatory nuisance to cure rather than a special liberty to protect, the approach is fundamentally flawed. Under current regulations, at least some political speech finds a safe harbor from protection against regulatory burdens even if the test suffers from vagueness concerns. Under the proposed regulations, the Treasury and IRS seek to adopt an even worse approach by embracing over-inclusive and overbroad criteria to transform pockets of protected political speech into impermissible "candidate-related political activity."

The Treasury and IRS should radically adjust their rules to align with first principles enunciated by the Supreme Court. Although political speech and association may, at times, be pesky and impolite, it is the very fabric of a well-functioning government. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."[46] Any move to amend rules governing the exercise of these rights through (c)(4) entities should reflect these principles by embracing political speech and association as *de facto* acts that promote "social welfare." Over-inclusive and overbroad rules that cramp the exercise of First Amendment freedoms simply cannot stand.

Second, given the sheer breadth of the proposed rules, even innocuous, bland, and apolitical speech would be restricted. For example, under proposed Section 1.501(c)(4)-1(a)(2)(iii)(2), speech is improper "candidate-related political activity" if it is communicated shortly before an election and identifies a candidate.[47] For the reasons identified in Section III, *supra*, this is a particularly clumsy and overbroad mechanism to regulate political speech. This sort of over-inclusive approach to speech regulation dampens civic engagement by Americans, pushes ordinary voices out of political debate, and does a disservice to our national welfare.

Either line of reasoning identified by the Commenters here would undo the sensitive compromise of *Taxation With Representation* and place the entirety of Section 501(c)(3) and (4) regulations in jeopardy. To protect against this regulatory collapse, the proposed

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[45] Federal Election Comm'n v. Beaumont, 539 U.S. 146, 150 n.1 (2003) (quoting Rev. Rul. 81–95, 1981–1 Cum. Bull. 332, 1981 WL 166125).

[46] Stromberg v. California, 283 U.S. 359, 369 (1931); *see also* ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948).

[47] Likewise, the proposed definition of "candidate" sweeps too broadly as it covers "an individual who . . . is proposed by another," for "nomination" or "appointment to any federal, state, or local public office." Proposed § 1.501(c)(4)-1(a)(2)(iii)(B)(1).

rules should be withdrawn entirely. Better still, the Treasury and IRS should reconsider rules—such as those proposed by other commenters—that encourage civic engagement, promote the exercise of free speech and association, and cement the special protection of the First Amendment in its rules.[48]

## V. Conclusion

The Wyoming Liberty Group and Republic Free Choice thank you for considering these comments. We looking forward to working with you in developing reform principles that respect the First Amendment, protect grassroots groups from burdensome regulations, and accomplish the regulatory goals of the Treasury and IRS.

Respectfully Submitted,

Benjamin T. Barr

[48] *See supra* note 27.