February 27, 2014

Hon. Daniel I. Werfel
Acting Commissioner of Internal Revenue
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

Re: Comments in Response to Notice of Proposed Rulemaking, "Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities," 78 Fed. Reg. 71,535 (Nov. 29, 2013) (REG-134417-13).

Dear Commissioner Werfel:

Please accept the following comments from Stop This Insanity, Inc., a § 501(c)(4) organization commonly known as TheTeaParty.net, in response to the Internal Revenue Service's ("IRS") Notice of Proposed Rulemaking, "Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities," 78 Fed. Reg. 71,535 (Nov. 29, 2013) (REG-134417-13). TheTeaParty.net also requests to make an oral presentation at a public hearing on the proposed regulations.

TheTeaParty.net urges the IRS to abandon this proposed regulation or, at a minimum, substantially curtail many of its expansive and overbroad definitions. The proposed regulation adopts an unduly narrow view of "social welfare," will have a tremendous chilling effect on organizations' exercise of their First Amendment rights and stifle public discourse on issues of national importance, and curtail socially beneficial activities such as voter registration drives and get-out-the-vote efforts.

Part I of these comments explains that the proposed regulations are contrary to the underlying statute they purport to implement, 26 U.S.C. § 501(c)(4). Part II touches on the serious First Amendment concerns that the regulations raise. Part III demonstrates that the proposed regulations fail to comply with the Regulatory Flexibility Act. Finally, Part IV discusses the numerous ways in which the regulations' proposed definitions are overbroad and should be substantially narrowed.

I. THE PROPOSED REGULATIONS EXCEED THE SCOPE OF THE IRS'S AUTHORITY UNDER 26 U.S.C. § 501(c)(4).

The proposed regulations are invalid because they are contrary to the underlying statute they purport to implement, 26 U.S.C. § 501(c)(4). Although agencies generally are entitled to deference in interpreting the statutes they are charged with administering, *Chevron, U.S.A., Inc. v. Nat'l Res. Defense Coun., Inc.*, 467 U.S. 837, 843 (1984), "an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear," *MCI Telecommuns. Corp. v. AT&T Co.*, 512 U.S. 218, 229 (1994). Federal law provides that an organization is entitled to tax-exempt status if it is non-profit and "operates exclusively for the promotion of the social welfare." 26 U.S.C. § 501(c)(4).

Current regulations specify that an organization promotes social welfare if it "is primarily engaged in promoting in some way the common good and general welfare of the people of the community." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i). It must be "operated primarily for the purpose of bringing about civic betterments and social improvements." *Id*. Current regulations go on to specify that the promotion of social welfare "does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." *Id*. § 1.501(c)(4)-1(a)(2)(ii). Thus, so long as an organization's primary purpose is not participating in political campaigns, it may engage in such activity without losing its § 501(c)(4) tax-exempt status.

The proposed regulations dramatically broaden the range of activities that the IRS declares do not "promot[e] . . . social welfare." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii) (proposed). Among other things, the proposed regulations identify the following activities as "candidate-related political activity" that do not promote social welfare, *id*. (proposed):

- any communication within 30 days of a primary election or 60 days of a general election that refers to one or more "clearly identified" candidates or, for general elections, a political party involved in the election, *id*. § 1.501(c)(4)-1(a)(2)(iii)(A)(2) (proposed);
- conducting voter registration drives or get-out-the-vote drives, *id*. § 1.501(c)(4)-1(a)(2)(iii)(A)(5) (proposed);
- preparing or distributing a voter guide that refers to a candidate or political party, *id*. § 1.501(c)(4)-1(a)(2)(iii)(A)(7) (proposed); and
- hosting an event close to an election at which a candidate appears, *id*. § 1.501(c)(4)-1(a)(2)(iii)(A)(8) (proposed);

26 U.S.C. § 501(c)(4) broadly permits organizations to claim tax-exempt status if they exclusively promote social welfare without limitation on the scope of that concept. *Cf. NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976) ("[I]n order to give content and meaning to the words 'public interest' as used in the Power and Gas Acts, it is necessary to look to the purposes for which the Acts were adopted."). The IRS lacks statutory authority to determine that § 501(c)(4) should not extend to certain socially beneficial activities, or to pick and choose among the socially beneficial activities that should entitle an organization to tax-exempt status. It therefore many not determine categorically that all communications that happen to mention a candidate (or an issue associated with a candidate, *see id*. § 1.501(c)(4)-1(a)(2)(iii)(B)(2) (proposed)), voter registration drives, get-out-the-vote efforts, and the publication of voter guides do not further social welfare.

More broadly, many 501(c)(4) organizations seek to promote social welfare specifically by attempting to influence public policy, securing the enactment of new laws and regulations that are in the public interest, and otherwise attempting to ensure that the Government acts in the best interests of the People. There is no statutory basis for the IRS to conclude that an entity which promotes social welfare through such methods nevertheless should be denied tax-exempt status. This conclusion is bolstered by comparing § 501(c)(4) to the immediately preceding companion provision, 26 U.S.C. § 501(c)(3). The Supreme Court repeatedly has recognized that, when Congress includes certain language in one section of a statute, its omission from another, closely related section must be regarded as significant and given legal effect. *Dean v. United States*, 556 U. S. 568, 573 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). Section 501(c)(3) provides that an entity may not qualify for tax-exempt status under that provision if

> a substantial part of [its] activities is . . . carrying on propaganda, or otherwise attempting, to influence legislation . . . [or] participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3). The absence of any similar qualifying language concerning the "social welfare" provision in § 501(c)(4) confirms that Congress intended for § 501(c)(4) groups to be able to engage in such activities. Thus, the IRS's proposed new regulations are contrary to § 501(c)(4), and it should abandon this proposal.

II. THE PROPOSED REGULATIONS RAISE SERIOUS CONSTITUTIONAL ISSUES UNDER THE FIRST AMENDMENT

The IRS's proposed new regulations concerning § 501(c)(4) groups will violate the First Amendment's guarantees of freedom of speech, *see* U.S. Const., amend. I, and freedom of association, *see NAACP v. Button*, 371 U.S. 415 (1963). The Supreme Court has held that legal provisions risk violating the First Amendment if they "chill" a substantial amount of protected expressive or associational activity. *See Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002) ("The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment's vast and privileged sphere."). The proposed regulations contain many vague and broad terms that will unnecessarily chill a substantial amount of protected speech. For example, the regulations substantially limit public communications by § 501(c)(4) organizations about or involving "candidates." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(1), (2), (6)-(8). The term "candidate" includes people who publically offer themselves for election or nomination to an office, as well as those who are proposed by another person for such election or nomination. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(B)(1) (proposed).

Under this definition, a group is reasonably likely to be deterred from discussing any politicians, or even public figures other than politicians, because they cannot know whether anyone—including an editorial writer, blogger, political commentator, or even friend or family member—has "proposed" that person for election or nomination to a public office. *Id*. The chilling effect of this regulation is exacerbated by the fact that it extends not only to people "proposed" for elective office, but appointed positions, as well. Such uncertainty renders the regulation constitutionally suspect because it inevitably leads citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (quotation marks omitted).

The breadth of these regulations are likely to chill § 501(c)(4) groups' discussions of public issues, as well—including communications that do not even mention candidates. The proposed regulations' restrictions on speech extend to communications that do not mention a candidate by name, but rather by "reference to a particular issue or characteristic distinguishing the candidate from others." *Id*. § 1.501(c)(4)-1(a)(2)(iii)(B)(2) (proposed). A group cannot know whether the IRS will determine that some candidate running in an election is associated with a public issue about which the group wishes to speak. The reasonable fear of having the IRS deem a discussion of a public issue to be an implicit reference to a candidate will impermissibly deter a broad range of legitimate, constitutionally protected communications. This provision should be eliminated "to remove the seeming threat or deterrence to constitutionally protected expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

The proposed regulations also likely run afoul of the Supreme Court's ruling in *Regan v. Taxation with Representation*, 461 U.S. 540 (1983). The Court in that case held that the First Amendment permitted Congress to restrict tax-exempt status under § 501(c)(3) only to entities that did not "carry[] on propaganda, or otherwise attempt[] to influence legislation." In upholding this condition, the Court explained:

> It appears that [a group] could still qualify for a tax exemption under § 501(c)(4). It also appears that [a group] can obtain tax-deductible contributions for its nonlobbying activity by [using a] . . . dual structure . . . with a § 501(c)(3) organization for nonlobbying activities and a § 501(c)(4) organization for lobbying. [The group] would, of course, have to ensure that the § 501(c)(3) organization did not subsidize the § 501(c)(4) organization; otherwise, public funds might be spent on an activity Congress chose not to subsidize.

Regan, 461 U.S. at 544.

The *Regan* Court allowed Congress to restrict the political activities of § 501(c)(3) groups in large part because entities establishing such groups could conduct such activities through § 501(c)(4) organizations, instead. The proposed regulations, however, would substantially curtail the ability of § 501(c)(4) groups to engage in some of the activities the *Regan* Court discussed, particularly when a primary or general election is impending. Thus, the new regulations undermine one of the major premises upon which *Regan* relied. The IRS should avoid all of these constitutional issues by declining to proceed with the regulations or, at a minimum, substantially revising them as discussed in Part IV.

III. THE PROPOSED REGULATIONS FAIL TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT AND SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996.

The proposed regulations are invalid because they are not based upon the analysis required by the Regulatory Flexibility Act ("RFA") and the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). IRS regulations promulgated without the analysis required by the RFA and SBREFA are invalid and unenforceable. *See Cook v. United States*, No. 06-CV-909-L (JMA), 2007 U.S. Dist. LEXIS 11576, at *17 (S.D. Cal. Feb. 20, 2007); *see also Wilson v. Comm'r*, 705 F.3d 980, 996 (9th Cir. 2013) (recognizing that the IRS is an "agency" to which these statutes apply). An NPRM for either a legislative rule, or an interpretive rule concerning the Internal Revenue Code that requires small entities to collect

information, must contain an "initial regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." 5 U.S.C. § 603(a).

The initial analysis must describe and, where feasible, estimate the number of small entities to which the proposed rule will apply, *id*. § 603(b)(3); describe the projected "reporting, recordkeeping, and other compliance requirements of the proposed rule," *id*. § 603(b)(4); and identify other rules which may "duplicate, overlap or conflict with the proposed rule," *id*. § 603(b)(5). Importantly, the analysis also must describe "any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." *Id*. § 603(c). The agency also is required to convene a review panel with OMB and the Chief Counsel of the Small Business Administration to identify ways of modifying the rule to minimize its impact on small entities. *Id*. § 609(b).

Similarly, the final rule also must contain a final regulatory flexibility analysis, which contains much of the same information as the initial analysis, but also describes:

> the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Id. § 604(6).

The IRS has refused to provide an initial or final regulatory flexibility analysis for its proposed new regulations concerning § 501(c)(4), stating, "It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities." The Regulatory Flexibility Act allows an agency to decline to conduct flexibility analyses "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b); *see, e.g.*, *Mid-Tex. Elec. Coop., Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) ("[A]n agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.").

The agency must provide "a statement providing the factual basis for such certification." 5 U.S.C. § 605(b). The NPRM offers only a conclusory, one-sentence explanation as to why the RFA does not apply. It states, "Under the proposal, if a section 501(c)(4) organization chooses to contribute to a section 501(c) organization and wants assurance that the contribution will not be treated as candidate-related political activity, it may seek a written representation that the recipient does not engage in candidate-related political activity within the meaning of these regulations." This desultory observation completely ignores the primary impact of the proposed regulations.

The IRS's proposed regulation will have a significant economic impact on a substantial number of small entities. The term "small entity" includes "small organization," which is "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. § 601(4), (6). Most 501(c)(4) organizations, and groups seeking 501(c)(4) status, qualify as "small organizations." The proposed regulations will have a substantial economic impact on them in a variety of ways. Some entities that otherwise would seek recognition as 501(c)(4) organizations will decline to do so under the new regulations, and others will be unable to qualify due to their political activities. Organizations that engage in political activities will become subject to a substantially higher tax burden, which in turn will impact both their ability to promote their primary goals and raise funds. Other entities will substantially curtail, if not entirely eliminate, their political activities in order to avoid the possibility of triggering tax liability under the proposed new regulations. And entities that are unable to qualify for § 501(c)(4) status under the new regulations will be at a substantial disadvantage in fundraising, as many contributors view an organization's tax-exempt status as an indication of its legitimacy. In short, the IRS's certification that the RFA is inapplicable not only lacks an adequate factual basis, but is demonstrably inconsistent with the likely consequences of its proposal.

For similar reasons, the proposed regulations are a "significant regulatory action" that also require a regulatory assessment under Executive Orders 12,866 and 13,563. At a minimum, the proposed regulations would "materially alter" the "rights and obligations" of both current and potential § 501(c)(4) groups, Executive Order 12,866, § 3(f)(3) (Sept. 30, 1993), which receive the equivalent of a "subsidy" from the Government through their tax-exempt status, *see Regan v. Taxation with Representation*, 461 U.S. 540, 544 (1983) ("Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system."). Thus, the IRS's proposed regulations may not be enacted without further study and compliance with both Presidentially and statutorily established procedures.

IV. THE REGULATIONS ARE UNNECESSARILY OVERBROAD AND LIMIT A BROAD RANGE OF SOCIALLY BENEFICIAL ACTIVITY

Even laying aside the myriad statutory and constitutional problems with the proposed regulations, the proposed draft is unnecessarily overbroad. Many of the defined terms should be narrowed so that its proposed restrictions focus more specifically on electioneering activities without unnecessarily chilling speech that furthers organizations' missions or other socially useful activities.

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1. Definition of "candidate"

a. Persons "proposed by another" to run for office—The term "candidate" is defined as including not only a person "who publicly offers himself" as a candidate for elective or appointive office, but also anyone who is "proposed by another[] for selection, nomination, election, or appointment" to any public office. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(B)(1) (proposed). The phrase "proposed by another" is vague and overbroad. Taken at face value, it effectively limits the ability of an entity to mention a person who has been mentioned as a possible candidate by any newspaper article, website, editorial, blogger, analyst, or other commentator.

The proposed definition goes on to specify that a person "proposed by another" for a particular office is considered a "candidate," "whether or not such individual is ultimately selected." *Id*. Under this definition, there is no "end point" at which a person ceases being considered a "candidate."

The definition of "candidate" should be narrowed to focus only on individuals who have filed the requisite paperwork with the FEC and/or appropriate state or local authorities to run in a particular election, or who officially have been nominated or appointed for a particular position. The term should not refer to a potentially limitless universe of people, leaving entities unable to conclusively determine whether or not a particular person might be considered a "candidate." Likewise, it should clearly specify that a person ceases being a "candidate" once the particular election in which they ran has ceased, or their nomination or appointment is no longer pending, regardless of whether that person ultimately obtained a public office.

b. Nominees—As mentioned above, the proposed definition of candidate includes both people running for elective office, as well as people being considered for an appointive position. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(B)(1) (proposed). The regulation treats speech concerning both types of candidate exactly the same, despite the fact that elective and

appointive offices are fundamentally different. A potential or actual nomination to an appointive office typically requires the approval of a legislative body. Section 501(c)(4) organizations should have the right to publicly discuss the deliberations of a legislative body, and whether it should act on the nomination, to the same extent that such organizations may discuss that body's other official acts, such as voting on pending legislation. Indeed, the decision of the U.S. Senate or state legislative chamber to confirm a political nominee is much more akin to such an entity's decision to approve a bill than an election. Thus, the proposed definition of "candidate" should be limited solely to persons presently seeking elective offices.

2. Definition of "clearly identified"—The proposed regulations define the term "candidate-related political activity" as including any communication within 60 days of a general election or 30 days of a primary election that "clearly identifie[s]" a candidate. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(2) (proposed). A candidate may be "clearly identified" not only through her name or photograph, but by "reference to a particular issue or characteristic distinguishing the candidate from others." *Id*. § 1.501(c)(4)-1(a)(2)(iii)(B)(2) (proposed). This definition raises the possibility that, simply by discussing a particular issue, a group inadvertently may engage in "candidate-related political activity" because the IRS concludes that some candidate is associated with that issue. As the Supreme Court has recognized, "[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and government actions." *Buckley v. Valeo*, 424 U.S. 1, 42 (1976). This definition will require § 401(c)(4) groups to forego discussing, educating the public about, or advocating concerning a wide range of issues that the IRS might conclude are associated with a particular candidate somewhere in the nation—including the very issues for which those groups exist. A candidate should be deemed to be "clearly identified" only if a communication contains her name or photograph; the tax-exempt status of organizations should not be placed at risk simply because they choose to discuss issues of public importance.

3. Definition of "candidate-related political activity"

a. References to candidates for public office—The proposed regulations define the term "candidate-related political activity" as including any public communication made 60 days before a general election or 30 days before a primary election that "refers to one or more clearly identified candidates for public office" or, in the case of general elections, a political party represented in that election. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(2) (proposed). This broad definition is untenable and will have a tremendous chilling effect on organizations' speech, particularly in election cycles where incumbent officials are on the ballot. When legislative or executive officials are running for office, groups effectively will be unable to update their members about pending legislative or executive activities that directly affect them or

discuss matters of public record involving those officials. A group should not be required to forego mentioning pending government acts that direct relate to its goals and its members' interests as a condition of maintaining tax-exempt status.

b. References to political parties—As mentioned above, the proposed regulations provide that a public communication made within 60 days of a general election that refers to a political party represented in that election constitutes a "candidate-related political activity." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(2) (proposed). The term general election, in turn, includes any election "for federal, state, or local office," as well as any "special election or . . . runoff election . . . held to elect a candidate." *Id.* § 1.501(c)(4)-1(a)(2)(iii)(B)(4) (proposed). Although federal elections are held every other year, many states hold elections for certain state-level offices during "off" years, so that there is a general election at least annually. Moreover, many states also hold general elections annually for municipal and county offices, which often are separate from the November elections. In such states, where general elections for local offices are held in the Spring, and general elections for state-level or federal offices are held in November, § 501(c)(4) committees can be precluded from using the words "Democrat" and "Republican" (as well as other political parties that may have candidates on the ballot) for a total of 120 out of 365 days each year. Such a restriction is ludicrously overbroad. Section 1.501(c)(4)-1(a)(2)(iii)(A)(2) should be amended so that references to political parties represented in an election do not qualify as "candidate-related political activity."

c. Voter registration and get-out-the-vote drives—The proposed definition of election-related activity is extraordinarily overbroad and includes a wide range of non-partisan activities that traditionally are regarded as public service. Among other things, the new definition of "political activity" includes voter registration drives and get-out-the-vote drives. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(5) (proposed). If an organization simply reminds its members that Election Day is approaching or encourages them to exercise their fundamental constitutional right to vote, it runs of the risk of incurring substantial tax liability. Voter registration and get-out-the-vote drives are longstanding parts of American political culture and commendable activities for organizations to perform. The IRS should not impose potentially substantial tax liability on organizations which help Americans exercise their fundamental constitutional rights by helping to them to register or reminding them to vote.

d. Voter guides—The proposed regulations also specify that preparing or distributing a voter guide qualifies as an "election-related activity." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(A)(7) (proposed). An organization should be permitted, without jeopardizing its tax-exempt status, to inform its members which candidates would best further the organization's

mission or have supported the organization's goals in the past. The IRS should not seek to silence organizations at the very time their members may seek their guidance the most.

4. Applicability to Volunteers—The proposed regulations further specify that "activities conducted by an organization" include activities conducted by "volunteers acting under the organization's direction or supervision." This unnecessarily places a substantial burden on organizations to keep track of all activities performed by each volunteer, and to somehow calculate the market value of its volunteers' efforts.

5. Applicability to Websites—Finally, the proposed regulations clarify that, in determining whether organizations are engaged in political communications, the IRS will consider all of the entity's "official publications," including its website. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(iii)(C) (proposed). Similarly, the definition of "candidate-related political activity" includes materials that an entity has posted on its website well before an election, but remains on the website during the specified pre-election period. *Id*. § 1.501(c)(4)-1(a)(2)(iii)(A)(2), (c)(4)-1(a)(2)(iii)(B)(3), (5)(ii) (proposed).

These definitions raise several concerns. ***First***, many organizations' websites contain archives of old materials, including old press releases, newsletters, and other publications. Counting such old materials as "official publications" and "candidate-related political activity" is unrealistic, and would require entities to essentially "scrub" their site several times a year, going through every page and file line-by-line, as an election approaches.

Second, the regulations suggest that organizations somehow may be held responsible for the content of third-party websites to which they include links. *See* Rev. Rul. 2007-41. Entities cannot reasonably be expected to continuously monitor the content of every third-party site to which they link to ensure that those other sites are not engaged in political communications. This rule would have a substantial chilling effect on 501(c)(4) groups' websites, likely deterring them from linking to other sources with which they wish to associate and which visitors to their website would find helpful.

Third, many websites have "interactive" components, in which visitors are permitted to contribute their own material. Entities should not be held responsible for engaging in political communications simply because visitors to their sites choose to upload a comment or other posting that mentions a candidate. Again, requiring sites to pervasively monitor all opportunities for third-party interaction would impose a substantial burden on them, and likely lead them to limit such opportunities for interaction, thereby further hindering speech.

The rise of social media makes such monitoring even more impracticable and costly. Groups now must maintain an active presence on a wide range of interactive services such as Facebook and Twitter in order to attract and interact with their members and the public. A major feature of such services is that they allow third parties to leave feedback, adding their own content to the group's page. The proposed regulations would hold § 501(c)(4) groups liable for such comments, jeopardizing their tax exemption if third parties happen to discuss candidates or other prohibited topics on the group's social media areas. Groups would be forced to either curtail their social media presence, eliminate the interactivity that lies at the heart of social media, or rigorously scrutinize and censor their visitors' submissions. Overall, holding organizations indiscriminately responsible for any mentions of candidates on their web pages, in old files or archives on their websites, on social media (including in comments or other contributions by third parties), or on other sites to which those organizations link, will lead 501(c)(4) groups to drastically curtail their internet presence and engage in ongoing, rigorous, and very costly oversight of their (and others') websites, with no corresponding public benefit. It is an indiscriminate and impermissible gag on speech.

For these reasons, the IRS should not further pursue its proposed regulations concerning § 501(c)(4) groups. At a minimum, it should substantially curtail the proposed regulations' overbroad definitions of "candidate," "clearly identified," and "candidate-related political activity," and substantially limit the regulations' applicability to the websites of § 501(c)(4) groups.

Sincerely,

/s/ *Dan Backer*

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