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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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April 7, 2014

Honorable John A. Koskinen
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Proposed Treasury Regulations Relating to Internal Revenue Code ("Code") Section 501(c)(4)
Tax-Exempt Social Welfare Organizations

Dear Commissioner Koskinen:

The public comment period for the proposed regulations addressing candidate-related political activity by Code section 501(c)(4) organizations closed on February 27, 2014. The Internal Revenue Service ("IRS") received over 150,000 public comments, an all-time record, the overwhelming majority of which were negative. Now that the regulatory process has moved into the next phase, we write to emphasize that the proposed regulations would, if you allow them to be finalized and thereby acquire the force of law, fundamentally alter the nature of tax exempt 501(c)(4) organizations in a manner that is an affront to the principles of the First Amendment, which prohibits government suppression of speech, and the right of all American citizens to participate in the democratic process.

You are in a unique position to stop the 501(c)(4) proposed regulations from becoming final. As set forth in Treasury Regulations, you must approve regulations before they can become final.¹ And as Treasury Secretary Lew confirmed in a hearing before the Senate Finance Committee on March 5, 2014, you can stop the proposed regulation from becoming final by exercising your right to not sign off on the final regulation. We therefore write to urge you, in the strongest possible terms, to exercise your authority and stop the proposed regulations from becoming final by not signing off on the final regulation if it reaches your desk for approval.

A section 501(c)(4) organization is a non-profit organization, the tax-exempt purpose of which is the "promotion of social welfare." Under current regulations, 501(c)(4) organizations may engage in activities in support of or opposition to a candidate for election to public office, so long as the primary activity of the organization is the promotion of social welfare. The phrase "promotion of social welfare" has long been defined as "promoting in some way the common good and general welfare of the people of the community" or "bringing about civic betterments and social improvements."

¹ "Regulations and Treasury decisions are prepared in the Office of the Chief Counsel. **After approval by the Commissioner**, regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval." Treas. Reg. § 601.601(a)(1) (emphasis added).

Thus, section 501(c)(4) organizations may, under current law, educate the public on important issues, even those that may be politically charged, because those activities fall within the definition of promoting social welfare. Section 501(c)(4) organizations are allowed to conduct voter registration drives, "get out the vote" drives, hold candidate forums and distribute voter guides outlining candidates' positions on issues important, in the view of the organization, to the public. Section 501(c)(4) organizations also may weigh in on candidates for *appointed* public office, such as federal judicial nominations. The proposed regulations, however, categorize all of these activities as political activity not consistent with the promotion of social welfare and could, effectively, force conservative grassroots organizations all over the country to shut down.

The proposed regulations appear to be a continuation of the harassment and intimidation of conservative groups that has taken place at the IRS over the last few years. When the proposed regulations were first made public, the IRS said that they were drafted in response to a 2013 report of the Treasury Inspector General for Tax Administration ("TIGTA") that revealed all the issues the agency was having with regard to section 501(c)(4) applications. However, a recent hearing in the House Ways and Means Committee revealed that these regulations were under consideration for two years before the TIGTA report was issued. Furthermore, the regulation project was not listed on the annual Treasury Guidance Plan when the drafting began and thereby was hidden from public view, a process that some IRS officials labeled "off-plan."

When the IRS decides to hide a draft regulation from public view, especially a controversial regulation such as this, it is obvious that someone in the Administration does not want the public to know that the regulation is being drafted. The inevitable conclusion is that the regulation is motivated by electoral politics and that the IRS is being influenced by the Administration and partisans in Congress even when the agency is supposed to be independent and non-partisan. At best, the appearance of impropriety represents yet another devastating blow to the American public's confidence in the IRS. Commentators from across the political spectrum recognize the flaws in this proposed regulation. Under no circumstances should the proposed regulation be finalized and accorded the force of law.

Mr. Koskinen, we recognize that you were not the IRS Commissioner when the proposed regulations were drafted and published. But as IRS Commissioner you now have the unilateral power to stop the proposed regulation from becoming a final regulation. *The proposed regulation cannot become final unless you personally approve of and sign the final regulation clearance package.* So we call on you to stand your ground and stop this terrible proposed regulation from becoming a final regulation by refusing to sign it if it reaches your desk. Your appearance on February 5, 2014, before the House Ways and Means Committee was troubling because you testified that you would address concerns regarding the 501(c)(4) regulations "to the extent I have any control" over the process. According to the law and Secretary Lew, you have complete control over whether the proposed regulation becomes final.

Congress granted the Commissioner of the IRS a five-year term of office so that Commissioners will be free from political pressure when making decisions and taking action to implement and administer our nation's tax laws. We urge you to exercise the power you have been granted to stop the proposed regulation and to begin restoring confidence in the IRS as an agency that will not be used as a weapon in the service of this or any future Administration's political agenda.

Respectfully Submitted,

Quin Hatch

Mike Crayon

Mike Enji

John Thune

Jimmy John

Pat Rooney

Chuck Grassley

Pat Roberts

John Cornyn

Tommy Thompson

Rob Portman