United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

February 27, 2014

VIA U.S. MAIL & EMAIL (Patrick.Maloney@treasury.gov)

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20520

The Honorable John Koskinen
IRS Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W
Washington, D.C. 20224

RE: Proposed Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, RIN (1545-BL81)

Dear Mr. Secretary and Mr. Commissioner:

This letter responds to the request for comment on a notice of proposed rulemaking to address campaign-related activities of social welfare organizations (hereinafter "proposed rule"), issued by the Internal Revenue Service (IRS) and Department of the Treasury.[1] These comments offer support for the proposed rule as well as recommendations to strengthen it and prevent the types of misunderstandings, delays, and disagreements that have recently characterized this area of the tax code.

Need for Proposed Rule

Post Citizens United,[2] the increase in political activity by §501(c)(4) organizations has been dramatic. According to the Wall Street Journal, "Several groups organized this way have become some of the biggest-spending players in American politics, including Crossroads GPS, which raised more than $200 million from undisclosed donors during the 2012 election cycle to spend on Republican causes, and Priorities USA, which backs Democrats."[3] In 2013, the public learned that many organizations of all political outlooks had been waiting, sometimes for years, for the IRS to determine their tax-exempt status. As the proposed rule points out, "one of the significant challenges with the §501(c)(4) [application] review process has been the lack of a clear and concise definition of 'political campaign intervention.'"[4] It is clear that IRS personnel, Congress, the tax exempt community, and the general public are confused about the contours of the application and enforcement of the law, which is why the proposed rule is so necessary.

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[1] Proposed Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, Prop. Treas. Reg. § 1.501(c)(4), 78 Fed. Reg. 230 (2013).

[2] Citizens United v. FEC, 558 U.S. 310 (2010).

[3] *IRS's Proposed Rules Limiting Social-Welfare Groups Send Lawyers Scouting for Taxable, For-Profit Options to Raise Cash*, by Thomas Catan, Wall Street Journal, January 5, 2013

[4] The above is taken from the June 24, 2013 IRS report, "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action."

Subcommittee Investigation

For the last year, the U.S. Senate Permanent Subcommittee on Investigations has been conducting a review of IRS enforcement efforts related to §501(c)(4) organizations engaged in campaign-related activities. Our investigation, though still preliminary, has led us to endorse two primary principles to improve IRS enforcement efforts, both of which can be addressed by this rule. First, the final rule needs to respect the statutory requirement that, to maintain their tax exempt status, social welfare organizations must engage "exclusively" in social welfare activities. Second, the final rule needs to build upon the proposed rule's use of bright line standards to minimize the uncertainty, subjective determinations, and delays required by the current "facts and circumstances" test and address the public criticisms of IRS enforcement efforts in this area.

Comments on the Rule

The proposed rule presents a set of much needed bright line standards that would reduce intrusive IRS inquiries, subjective determinations, and delays when reviewing requests for tax exempt status from §501(c)(4) organizations. The proposed rule requests comment on a variety of issues.

This letter addresses 12 of those issues and offers some additional suggestions: (1) it recommends enforcing the law's exclusivity requirement and imposing a limit of 15% on candidate-related political activities; (2) it supports simplifying the tax code by using the same definition of "candidate" for §501(c) and §527 organizations; (3) it supports the proposal's using bright line standards instead of the "facts and circumstances" test to identify "candidate-related political activity" and to use standards that bring federal tax law into closer alignment with federal election law, including with respect to electioneering communications and independent expenditures; (4) it supports using a broad definition of "communication" to identify candidate-related political activities; (5) it supports treating all expenditures reported to the Federal Election Commission (FEC) as candidate-related political activities; (6) it supports treating all contributions to candidates and campaign organizations as candidate-related political activities; (7) it supports treating contributions made to other tax exempt groups as candidate-related political activity under certain circumstances; (8) it recommends treating voter registration activities as useful social welfare activities; (9) it recommends treating voter guides shortly before elections as candidate-related political activity; (10) it supports treating candidate events held before elections as candidate-related political activity, other than nonpartisan candidate debates; (11) it supports maintaining the prohibition on partisan political campaign intervention activity by §501(c)(3) organizations; (12) it recommends applying the proposed rule's approach to all §501(c) organizations, but at a minimum to §501(c)(5) and §501(c)(6) organizations; and (13) it provides additional suggestions related to handling §501(c)(4) organizations that exceed specified limits or re-form under a new name, and related to increasing the transparency and usefulness of the federal §501(c) website.

(1) Enforcing the Exclusivity Requirement

The proposed rule requests comments regarding how the "exclusively" requirement in the §501(c)(4) statute should be applied to organizations describing themselves as social welfare organizations.

Section §501(c)(4) of the tax code states: "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare … are exempt from taxation."[5] The key implementing regulation, however, does not, as the law demands, require §501(c)(4) organizations to operate exclusively to promote social welfare. Instead, it distorts the statutory standard by providing: "An organization is operated **exclusively** for the promotion of social welfare if it is **primarily** engaged in promoting in some way the common good and general welfare of the people of the community."[6] The regulation substitutes the word "primarily" for the word "exclusively," contrary to the plain wording of the statute and the plain meaning of the word "exclusively."

A revised rule should acknowledge and respect the §501(c)(4) statutory standard of exclusivity and implement the law as written. The revised rule could also permit §501(c)(4) organizations to engage in an insubstantial amount of candidate related political activity, without endangering its social welfare status. This approach would mirror the §501(c)(3) statute which allows a §501(c)(3) organization to engage in an insubstantial amount of lobbying activity.[7]

To ensure that candidate-related political activity constitutes an insubstantial rather than primary activity of a social welfare organization, the revised rule should specify a low percentage of spending by the §501(c)(4) organization that may be used on those activities. To be consistent with the approach taken under §501(c)(3) for "insubstantial" lobbying activities, the revised rule could provide, for example, that the organization's aggregate spending on candidate-related political activities may not exceed 15% of all dollar expenditures made or 15% of all volunteer hours expended by the organization during the reporting period.[8]

This explicit, numerical limit would provide a bright line standard that would ensure only an insubstantial amount of candidate-related political activities is undertaken, and enable the tax exempt community and IRS to evaluate compliance with the law in a relatively quick and mechanical fashion. While the proposed rule did not recommend a specific percentage, it requested comments on the issue, and this particular numerical limit would require minimal

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[5] 26 U.S.C. §501(c)(4)

[6] Treasury Regulations, Subchapter A, Sec. 1.50(c)(4)-1. [Emphasis added.]

[7] According to the IRS, "In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as *lobbying*). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status." IRS guidance, http://www.irs.gov/Charities-%26-Non-Profits/Lobbying. [Emphasis is in original.]

[8] Case law has determined that an activity may be treated as "insubstantial" if it uses no more than 5 to 15% of an organization's expenditures. See Vision Service Plan v. United States, 96 A.F.T.R.2d 2005-7440, 2005-7443 (E.D. Cal. 2005), affirmed 2008 WL 268075, 1 (9th Cir. 2008); Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974) (spending between 16.6% and 20.5% of an organization's time on lobbying is substantial); Seasongood v. Commissioner, 227 F.2d 907 (6th Cir. 1955) (devoting less than 5% of activities to lobbying is not substantial).

subjective interpretation by IRS personnel, and bring the rule back into alignment with the statute.

(2) Using Consistent Candidate Definition

One of the common sense steps proposed in the rule is to bring the definition of "candidate" for §501(c)(4) organizations in line with the definition of "candidate" for § 527 organizations, so that both rules would cover candidates for federal, state, and local elective office as well as persons appointed to government positions. Providing a uniform definition of candidate for both § 501(c)(4) and §527 organizations would simplify the tax code, ensure a consistent approach for the IRS, the tax exempt community, and the public, and apply §501(c)(4)'s proposed new limitation on campaign activity to all types of campaigns. To further simplify the tax code, the proposed rule may want to apply the same definition of "candidate" to all §501(c) organizations.

(3) Reducing Reliance on the Facts and Circumstances Test

To reduce the extensive inquiries, subjective determinations, and delays associated with the facts and circumstances test now used by the IRS to determine when a §501(c)(4) organization is engaged in candidate-related political activity, the proposed rule would appropriately create a set of bright line standards that draw from existing federal election laws.

Using Time Periods to Identify Covered Communications. The proposed standards would focus in particular on electioneering communications and independent expenditures which, together, represent the bulk of expenditures on modern day federal election campaigns. Under federal election law, objective criteria are currently used to identify electioneering communications and independent expenditures. The proposed rule would incorporate the same objective criteria to identify candidate-related political activities by social welfare organizations. Under the proposed new rule, electioneering communications within 30 days of a primary election or within 60 days of a general election and any other communication that triggered reporting to the FEC would be considered "candidate-related political activity" that is not social welfare activity.

Right now, instead of using objective criteria, the IRS conducts a detailed and time-consuming analysis, using the facts and circumstances test, to determine whether spending on a particular television or radio ad qualifies as political campaign intervention. The new rule would abandon that approach in favor of the bright line standards that are already used in federal election law and which have already been upheld by the Supreme Court. The proposed approach would bring the federal tax code into alignment with federal election law, simplify and expedite IRS analysis of the two largest categories of campaign spending, and eliminate subjective IRS evaluations of individual ads and expenditures. It would also provide §501(c)(4) organizations with easy to understand standards that would simplify their planning and reporting. In addition, the proposed rule would appropriately broaden the §501(c)(4) approach to include, not only activities related to federal elections, but also activities related to state and local elections.

Expanded Time Periods. While the 30 and 60 day time periods for electioneering communications in the proposed rule provide a sensible, coordinated approach between federal tax and election laws, the proposed rule should go beyond federal election law by expanding those time periods, given that modern electioneering often occurs outside the 30/60 day window. Indeed, many millions have already been spent by the end of January 2014. The Public Interest Research Group (PIRG) found that about half of the dark money spent on TV advertisements in the 2012 Presidential race was not even reported to the FEC, because it occurred outside the 30/60 day window.[9] The proposed rule should take modern campaigning practices into account and expand the proposed time periods for covered electioneering communications to begin on January 1 in a non-presidential election year and, in years in which a presidential election takes place, one year before the date of the presidential general election, except in states where primaries and caucuses are in the same year as the Presidential election, in which case 60 days before them, whichever is earlier. Without this change, groups whose primary goal is to influence elections may continue to operate under the guise of social welfare organizations instead of campaign organizations under § 527, in order to spend substantial sums on candidate-related political activities without having to disclose their donors.

(4) Covering all Types of Communications

In addition to specifying the time periods during which covered communications take place, the proposed rule would make it clear that all types of candidate related political activity communications made by social welfare organizations would be covered, including written, printed, electronic, Internet, video and oral communications. This approach is broader than that taken in federal election law, which only applies to radio and television advertisements, but would bring the proposed rule in line with modern election practices.

Legislative Advocacy. A key issue is whether the proposed rule should count all communications that identify a candidate during a covered time period as candidate-related political activity, or whether an exception should be made for communications that also mention legislation or engage in what has become known as issue advocacy. As the proposal stands now, all communications that identify a candidate within the specified 30 or 60-day electioneering window would be treated as candidate-related political activity with no exceptions. Some §501(c)(4) organizations argue they should be able to send an email to third parties during the covered time period asking them to contact a sitting Member of Congress about supporting or opposing pending legislation, without having such communications count as "candidate related political activity." Unless they can do so, these groups contend they will be inhibited from engaging in advocacy activities that are appropriate for social welfare organizations.

Separating issue advocacy from electioneering communications raises a host of difficult issues. Distinguishing between the two would require the IRS to revert to a facts and circumstances test with all the subjective determinations, delays, and disagreements that follow. Another factor is the history of abusive conduct by social welfare organizations claiming to be engaged in issue advocacy when they could reasonably be seen as engaging in candidate-related political activity. Asking the IRS to combat that abusive conduct when its expertise lies in tax law rather than election law threatens to continue the same problems engulfing the IRS today.

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[9] PIRG, *Billion Dollar Democracy,* January 2013, http://www.uspirg.org/reports/usp/billion-dollar-democracy

(5) Treating FEC Expenditures as Candidate-Related Political Activity

Since many organizations apply for tax exempt status each year, one of the critical tasks facing the IRS under the proposed rule would be to identify those that engage in candidate-related political activities so that it can enforce the new proposed limits. Right now, the IRS identifies those organizations in a painstaking and lengthy analytical process, using the facts and circumstances test, that includes IRS review of an organization's 990 annual tax returns and often requires the IRS to obtain and analyze answers to questionnaires, an organization's brochures and other materials, and its website and communications.

The proposed rule proposes a common sense alternative requiring any expenditure for political activity communication which is reported to the FEC to also be considered candidate-related political activity for §501(c)(4) purposes. This approach would allow the IRS to quickly and easily identify those §501(c)(4) organizations engaged in candidate-related political activity by utilizing the reports already filed by those organizations with the FEC under federal election law. Under this approach, many organizations would essentially self-identify as engaged in candidate-related political activity, without having to undergo any investigation by the IRS. The proposed rule would appropriately include both independent expenditures and electioneering communications to identify organizations involved in candidate-related political activity.

(6) Treating Candidate Contributions as Candidate-Related Political Activity

The proposed rule would also make it clear that any contribution of money or thing of value to a candidate or §527 campaign organization would be treated as candidate-related political activity. Those types of contributions are already required to be reported to the FEC, and are appropriate examples of actions that should consistently be treated as candidate-related political activity. The proposed rule would also make it clear that in-kind contributions expressing clear support for a political candidate, such as volunteer hours or free meals, would be counted as §501(c)(4) candidate-related political activity. These common-sense provisions would bring additional clarity to the IRS, the public, and the tax exempt community, and streamline IRS evaluations of these activities, while bringing federal tax and election laws further into alignment.

(7) Treating Contributions to Other § 501(c) Organizations as Candidate-Related Political Activity

The proposed rule contemplates treating contributions which are made by one §501(c) organization to another §501(c) organization as candidate-related political activity, unless the recipient organization provides a certification that it does not engage in candidate-related political activity. Currently, some §501(c) organizations move large amounts of funds among themselves in ways which are almost untraceable by regulators or the public, and which may be designed to obscure or avoid donor disclosure rules.[10] The proposed rule would address this problem by providing a bright line rule that is easy to understand and enforce.

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[10] "Social welfare groups-known as 501(c)(4)s, after their designation in tax law-are becoming a vehicle of choice for big donors to hide large donations in politics. Unlike donors to political committees, those who give to social

A more narrow bright line approach would be to treat such contributions as candidate-related activity if the recipient organization engages in that type of activity, and only in those circumstances require the donor organization to get an affirmative written commitment from the recipient organization that it will not use the donation for any candidate-related political activity.

(8) Treating Voter Registration As A Useful Social Welfare Activity

As currently written, the proposed rule would treat all voter registration activities as candidate related activities. That approach would be a mistake. Registering votes is an essential activity for a functioning democracy; it is central to the health and vibrancy of our electoral system. Both nonpartisan and partisan voter registration drives add to the rolls new voters whose voices should be heard. Registering more voters – for whatever reason at whatever time period during the year – should be seen as a beneficial social welfare activity that forms the legitimate basis for a tax exempt organization under §501(c)(4).

(9) Treating Voter Guides Shortly Before Elections As Candidate-Related Political Activity

The proposed rule would appropriately classify voter guides as "candidate related political activity." Voter guides are inherently tied to candidates and elections. Under current practice, the IRS conducts an individualized review of specific voter guides to determine whether they attempt to influence a federal election using the facts and circumstances test that is time consuming, subjective, and nontransparent to outside parties. The proposed rule would replace that approach with a bright line standard in which all dollars or volunteer hours spent by a §501(c)(4) organization on producing a voter guide would be treated as candidate-related political activity. This approach would simplify and expedite IRS reviews and eliminate subjective IRS evaluations of individual documents and expenditures. It would also provide §501(c)(4) organizations with easy to understand standards that would simplify their planning and reporting.

At the same time, while the current proposal makes sense, it could be improved by adding a temporal limitation that would more narrowly target election-related activities and would recognize that voter guides prepared outside the context of an immediate election can help produce an informed electorate – a legitimate social welfare activity. The proposed limitation would make the provision subject to the same time periods that the proposed rule would apply to electioneering communications and independent expenditures, so that only voting guides that are developed or issued within 30 days before a primary election or 60 days before a general election would be treated as candidate-related political activities.

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welfare groups can give unlimited amounts while remaining private and bypassing public disclosure laws. NPR and the Center for Responsive Politics [CRP] investigated the world of these secretive social welfare groups, using tax records to track money not otherwise reported and found that millions of dollars is traded between groups. CRP data show that their federal spending increased more than 80-fold between 2004 and 2012 election cycles. It's an abrupt swing in campaign financing." *Social Welfare, a River of Political Influence*, November 5, 2013, NPR, http://www.npr.org/2013/11/05/242354030/from-social-welfare-groups-a-river-of-political-influence

(10) Treating Candidate Events As Candidate-Related Political Activity Other Than Nonpartisan Candidate Debates

The proposal would also appropriately characterize as candidate-related political activity any instance of a §501(c)(4) organization's hosting or conducting an event with a candidate within 30 days of a primary election or 60 days of a general election. While this approach offers a common sense bright-line standard, an exception should also be made for social welfare organizations that host a nonpartisan candidate debate. Nonpartisan candidate debates have a long and honored tradition in this country and clearly contribute to an informed electorate. It should also be seen as an activity that promotes social welfare. At the same time, bright line standards are needed to ensure that this activity does not require a facts and circumstances test involving the types of intrusive inquires, subjective determinations, and delays that the proposed rule is designed to end. Those bright line standards could cover only those debates in which candidates are from multiple political parties, including the two major political parties, and in which candidates are not only invited, but attend.

(11) Preserving Nonpartisan Status of §501(c)(3) Charities

The proposed rule seeks comment on whether the strict prohibition on §501(c)(3) tax exempt charities engaging in partisan candidate-related activities should be maintained. It should.

The statute creating the §501(c)(3) tax exemption contains very clear language prohibiting §501(c)(3) charities from directly or indirectly participating or intervening in any political campaign on behalf of or in opposition to any candidate for elective public office.[11] There is no statutory basis for weakening that prohibition.

Tax exempt §501(c)(3) charities are already allowed to engage in nonpartisan campaign activities, such as nonpartisan voter registration, voter guides, and candidate debates, and there is no reason to add partisan campaign activities to their plate. Several other tax-exempt organizations already have the ability to engage in partisan campaign activities, including § 527 campaign organizations and, to a lesser extent, §501(c)(4) social welfare groups, §501(c)(5) labor unions, and §501(c)(6) business organizations. With so many tax-exempt organizations already allowed to engage in partisan campaign activities, there is no justification for expanding those activities to §501(c)(3) charities.

In addition, the tax code currently allows donors to § 501(c)(3) charities to deduct their charitable contributions from their taxes. That deduction was created by Congress to promote charitable activities. There is no statutory basis for creating an entirely new federal tax deduction for partisan campaign activities.

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[11] "Under the Internal Revenue Code, all section §501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. The prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes." IRS guidance, http://www.irs.gov/uac/Election-Year-Activities-and-the-Prohibition-on-Political-Campaign-Intervention-for-Section-§501(c)(3)-Organizations

(12) Applying Proposed Rule to Other §501(c) Organizations

The proposed rule, which currently applies only to §501(c)(4) organizations, requests comment as to whether its limitations on candidate-related political activity should also apply to other §501(c) organizations. They should.

Ideally, all §501(c) organizations, other than §501(c)(3) charities which already operate under a flat prohibition on partisan campaign activities, should be limited to conducting only an insubstantial portion of their activities on candidate-related political activities or partisan campaign work. At a minimum, §501(c)(5) labor unions and §501(c)(6) business organizations ought to operate under the same constraints as §501(c)(4) organizations.

Under the current structure of the tax code, campaign-related activities ought to be conducted by § 527 campaign organizations which are exempted from taxation, but are also required to disclose their donors. Section 501(c)(3) prohibits charities from engaging in any partisan campaign activities, while the remaining § 501(c) organizations operate under a hodge podge of rules and guidance. To alleviate the current confusion, and simplify and strengthen both compliance and IRS oversight of § 501(c) organizations, the tax exempt community would benefit from a standardized approach consistently applied across the board. The proposed rule could provide that approach by making it clear that candidate-related political activity should comprise no more than an insubstantial amount of any § 501(c) organization's activities, other than a § 501(c)(3) charity which is limited to engaging in nonpartisan activities. Organizations that want to spend the bulk of their time and resources on either candidate-related political activities or partisan campaign activities should operate as tax exempt §527 campaign organizations with disclosure obligations.

At a minimum, the proposed rule's approach to candidate-related political activity should be applied, not only to §501(c)(4) organizations, but also to §501(c)(5) and §501(c)(6) organizations. Tax exempt labor unions and business organizations have increasingly been used to conduct campaign activity.[12] Unless they are subject to the same proposed, bright line standards as §501(c)(4) organizations, they will require analysis under the IRS's time-consuming, subjective, and intrusive facts and circumstances test that has already raised so many concerns. IRS oversight using the facts and circumstances test might even have to be intensified for those groups if organizations seeking to avoid the bright line standards for §501(c)(4) organizations re-organize as §501(c)(5) or §501(c)(6) organizations. To prevent the same types of problems occurring with IRS oversight of those groups, Treasury should act now to curb potential abuses and install consistent bright line rules for all tax-exempt organizations.

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[12] In 2012, the Sunlight Foundation reported: "Additionally, the Chamber of Commerce, a §501(c)(6) organization (a tax-exempt trade-association) and several labor unions (classified as §501(c)(5) organizations) are also actively spending [in election campaigns], as they have in previous cycles." *Dark Money in the 2012 Elections (So Far)*, The Sunlight Foundation, July 16, 2012 http://sunlightfoundation.com/blog/2012/07/16/dark-money/. According to one media source, "Another possibility drawing interest, election lawyers say, is for donors to organize themselves as trade associations, akin to the U.S. Chamber of Commerce, which doesn't have to disclose donor names." *IRS's Proposed Rules Limiting Social-Welfare Groups Send Lawyers Scouting for Taxable, For-Profit Options to Raise Cash*, Wall Street Journal, Thomas Catan, January 5, 2013.

(13) Additional Comments

While the proposed rule does not contemplate the following issues, they would be helpful to include in a final rule.

(a) Automatic 527 Designations. The final rule may want to tackle how to handle §501(c)(4) organizations that exceed the limits on candidate-related political activity. Right now, those organizations can voluntarily surrender their tax exempt status, dissolve, invoke another type of tax exemption, reorganize, or take other action, each of which raises a host of complex tax and fairness issues. The new rule should consider establishing a bright line standard that any §501(c)(4) organization found to have exceeded the limit during a covered period would be automatically treated as tax exempt under §527 of the tax code. That approach would eliminate any subjective determination by the IRS regarding the organization's appropriate tax status, allow the organization to continue to operate as a tax exempt entity, and apply the same disclosure obligations to that organization as apply to other §527 groups involved with campaign activities.

(b) Reorganizations. The final rule should also consider establishing a bright line rule to handle the increasingly common situation in which a §501(c)(4) organization re-forms under a different name. A few organizations are now on their third or fourth names, making them difficult to track and analyze. The new rule should consider requiring any §501(c)(4) organization that dissolves or terminates its status with the IRS, and later re-forms under a new name, to report the name of all predecessor organizations on its Form 1024 application and annual 990 tax returns. Similarly, groups that disband as §527 campaign organizations and then re-form as §501(c)(4) social welfare organizations should have to report the names of all predecessor organizations on the Form 1024 application and annual 990 tax return. Requiring that information would help the IRS and the public track organizations choosing to operate under different names.

(c) Increased Transparency. Finally, the rule should implement the President's 2013 budget proposal to increase the transparency of the IRS tax exempt website and make Form 1024 applications and 990 annual returns more easily accessible to the public. In addition, the rule should require all 990 tax returns, when made public, to include Schedule B, "Schedule of Contributors," in redacted form, to provide information about the number and size of contributions made to organizations. Ensuring the uniform release of that information would help the public, regulators, and the tax exempt community to better understand the number of donations made to a particular organization and the dollar amount of each donation.

In sum, this letter supports the issuance of the proposed rule creating bright line standards, which would minimize the types of intrusive fact gathering, subjective judgments, and delays that have attracted criticism, and which would provide the tax exempt community and public with transparent, easy-to-understand standards. If these bright line standards do not resolve how to handle particular expenditures or how to categorize a particular organization, or if the IRS has reason to gather additional information, the IRS could then employ the more intensive facts and circumstances test as a backup, not an alternative. It is also important for the Treasury Department to issue a final rule in the near future so that it can take effect before the 2016 election season intensifies.

Thank you for this opportunity to comment on the proposed rule.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: The Honorable John McCain
Ranking Minority Member
Permanent Subcommittee on Investigations