Congress of the United States
Washington, DC 20515

February 27, 2014

Ms. Amy F. Giuliano
Office of the Associate Chief Counsel (Tax Exempt and Government Entities)
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

SENT VIA FEDERAL E-RULEMAKING PORTAL

RE: PROPOSED GUIDANCE FOR TAX-EXEMPT SOCIAL WELFARE ORGANIZATIONS ON CANDIDATE-RELATED POLITICAL ACTIVITIES

Dear Ms. Giuliano:

We are submitting this comment to commend the Internal Revenue Service (IRS) for taking the first steps to implement clear standards for the permissible use of the 501(c)(4) tax-exempt social welfare designation, and applaud the IRS for providing an opportunity for the public to weigh in with their comments, questions, and concerns.

When Congress set up the tax benefits structure for non-profit organizations, including social welfare organizations that are exempt from tax by reason of being described in section 501(c)(4) of the Internal Revenue Code, its intention was to encourage work that would benefit the general welfare of the United States, not to provide highly partisan political organizations seeking to influence the election or defeat of candidates for public office with the means to conceal the sources of their tax-exempt money. However, in recent years, and particularly since the Supreme Court decision in *Citizens United v. Federal Election Commission*, we have seen an explosion in the use of the tax-exempt social welfare designation to create organizations with the principal, if not sole, intent of aggregating funds intended to influence an election for public office.

The number of applications for 501(c)(4) social welfare designations has nearly doubled since the *Citizens United* decision, according to the Treasury Inspector General for Tax Administration. And the Center for Responsive Politics has documented why: social welfare tax exempt status is being abused by political operatives as a means for raising and spending unlimited and undisclosed funds in our elections. Total political spending by 501(c)(4)s ballooned from just $1 million in 2006, to $92 million during the 2010 election, and $250 million by the 2012 election. Sources of funds to 501(c)(4)s are not subject to our nation's disclosure laws, so the donors behind this explosion in election spending by 501(c)(4)s remain hidden from voters.

We have identified two primary goals which we believe the IRS should consider before issuing any final rule. First, the IRS must reaffirm that 501(c)(4) organizations are intended to promote the general welfare of a community and to educate the public; not to collect millions of dollars in

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anonymous political contributions to be used for partisan political purposes, including advocating for the election or defeat of candidates for public office. This can be achieved by ensuring that partisan political activities constitute at most an insubstantial part of a 501(c)(4)'s function.

Second, the IRS must remove any ambiguity over who qualifies for the 501(c)(4) tax-exempt social welfare designation, and remove subjective criteria which may be used to determine such qualifications. Instead, the IRS should focus on establishing clear rules that will be used to determine whether the activities of an organization satisfy the criteria for tax exemption as a social welfare organization, including the use of an organization's time and resources. Groups that choose to focus on electioneering activities certainly must be able to do so, but out in the open as political organizations, subject to disclosure.

We are very pleased that the proposed guidance that the IRS is currently considering fundamentally addresses both of these issues. Resolving these issues is particularly important because there remain serious concerns with both the effectiveness and the fairness of the IRS' current "facts and circumstances" test that has come under increasing scrutiny over the past year. We believe that providing clear guidelines such as those proposed under the new definition of "candidate-related political activity" is a step in the right direction. However, we encourage the IRS to make some improvements to the proposed regulations. While the proposed rule currently being considered captures a great deal of partisan electioneering activity by 501(c)(4)s, there may be even further activities which are clearly partisan electioneering, but will not be captured such as paid mass media ads that praise or disparage specific candidates for elected office outside of the 30/60 day pre-election timeframe set forth in the proposed rules. It's our hope that you will consider some possible means to tighten-up these restrictions against different forms of electioneering activity before issuing any final rule.

We would also urge you to consider some concerns that have been raised by groups clearly striving to legitimately operate in the interest of social welfare about whether or not their nonpartisan political activities should be considered candidate-related political activity. Genuine grassroots lobbying over congressional matters, publishing nonpartisan voter guides, and organizing nonpartisan voter registration drives should be viewed as legitimate educational activities and thus a proper use of the tax-exempt designation. We know that many of these organizations have submitted or will be submitting comments and we hope you will take them into consideration prior to issuing a final rule.

We feel strongly that the IRS must move forward with the current rulemaking process. The current practice of using subjective criteria for determining 501(c)(4) tax-exempt status is unworkable. The abuse of the tax-exempt status, which was intended to benefit communities across America rather than serve as a vehicle for secret political operatives, must end.

Sincerely,

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