TESTIMONY OF JENNY BETH MARTIN, PRESIDENT
TEA PARTY PATRIOTS

SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS HEARING
OF THE
HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM ON

FEBRUARY 27, 2014

Chairman Jordan and Members of the Subcommittee:

Thank you for the opportunity to appear here today and to discuss with the Subcommittee the proposed IRS regulations, and how those regulations will intimidate and silence grassroots public interest organizations.

Tea Party Patriots, Inc. is the largest of the tea party grass roots organizations. Today, we are hosting in this city a celebration of the five-year anniversary of that movement. On February 27, 2009, Americans met in 48 different cities to protest the wasteful, profligate, and out-of-control spending that we saw in Washington. The tea party groups that grew out of that protest represent the largest grass roots response to government overreach that this country has seen since its founding.

Tea Party Patriots is guided by and empowers more than 3,000 local grass roots organizations. Those organizations deal with a variety of local issues, and we all agree on three core values of fiscal responsibility, constitutionally limited government, and free markets. Everything that Tea Party Patriots does is focused on advancing one of those core values. We provide training and resources to local groups, and we serve as a megaphone to transmit their concerns to elected officials.

For these past five years, we and our local groups have worked, educated, organized, networked, rallied, met and tirelessly tried to put the brakes on government policies that we believe are harmful to the American economy and the American dream that we want to pass on to our children.

It is ironic that today, the fifth anniversary of the tea party movement, is also the deadline for public comments on the Internal Revenue Service's proposed regulations for certain nonprofit groups. If adopted, those regulations will permanently silence grassroots organizations within the tea party movement. They

will silence not only our local groups, but *any* citizens' organization, regardless of its philosophical leanings or beliefs. I know this because Tea Party Patriots has lived under this scrutiny for the past three years.

On December 17, 2010, Tea Party Patriots applied for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. Our sister organization, Tea Party Patriots Foundation, applied for tax exemption under section 501(c)(3). The IRS never acknowledged Tea Party Patriots' application. Fourteen months later, in February 2012, the IRS sent exhaustive requests for more information about our activities. Tea Party Patriots responded with almost two boxes of documents. We heard nothing more until May 2013, when we learned from news reports that the IRS had targeted groups with "tea party" or "patriots" in their name. Tea Party Patriots quite naturally believed that we were in that targeted group.

Even after admitting that it had targeted groups, and a TIGTA report detailed the abuses, the IRS still did not let up. In August 2013, the IRS requested yet more documents and information. It asked us to provide, for example, all fundraising communications for the 60 days before the November 6, 2012 election, and all materials that we used in various "Get Out the Vote" activities. That request made no sense under the current standards for evaluating non-profit applications. The regulations proposed three months later, however, explain the requests, as they include specific provisions classifying any mention of a candidate's name within 60 days of an election and get-out-the-vote efforts as taxable political activity.

We provided yet more boxes of documents to the IRS. Nevertheless, as of today, 3 years, 2 months, and 11 days after our application, we have not received a decision about our tax-exempt status. Two weeks ago, Tea Party Patriots Foundation finally received its tax-exempt status letter, a mere 1155 days after it applied.

Let me be very clear: Tea Party Patriots does not engage in *any* political activities. We made a decision from the beginning not to engage in any political or campaign activities because we did not want to run afoul of the law – even though the law *allows* us to conduct *some* political activities. We have scrupulously avoided campaign and political activities since our incorporation, but we *still* have not been able to satisfy the IRS that we deserve our tax-exempt status.

Over the past four years, Tea Party Patriots has assisted local organizations with activities that the IRS for five decades has not classed as political activity.

We have produced voter guides, hosted candidate debates, encouraged voter registration, supported get-out-the vote efforts, and assisted local groups in lobbying on specific local and national legislation. We have invited members of Congress to speak at our rallies and events, not as candidates, but as experts on important topics. We have posted news about national events on our social media sites. The current rules recognize all of those activities as non-political. The proposed rules would classify all of them as political.

Attached to my testimony are the Comments that Tea Party Patriots is submitting today to the IRS. We believe that those comments reflect the views of millions of Americans, and accurately assess the dangers that these regulations pose to 501(c)(4) groups. The reason that Americans form organizations is because we need a place to meet. We need tools to communicate with each other. Places and tools are not free -- and we don't expect them to be. We want to pay for them. We want to abide by the rules and track the money according to accepted procedures. The new regulations, however, go beyond accountability and into censorship.

Tea Party Patriots has had to spend thousands of hours and tens of thousands of dollars, mostly from small donors, in attorney and accountant's fees to satisfy a government bureaucracy that refuses to be satisfied. Even after all of that time and expense, the IRS still refuses to tell us whether it will acknowledge our tax exempt status. No citizen, whether liberal or conservative, tea party or progressive, should have to suffer like this.

The problems with the proposed regulations are myriad, but let me explain just a few of the worst effects. The proposed rules would interfere with Tea Party Patriots' relationships with the local groups and volunteers who are the heart of the tea party movement. The changed regulations attribute to us the time of all of our volunteers, a standard that clearly interferes with those volunteers' freedom of association and freedom of expression. It also places an onerous burden on us, diverting us from our core activities to track the activities of thousands of volunteers. Smaller groups simply will not have the resources to document volunteer hours, and will give up.

Tea Party Patriots provides grants to local groups, always with the requirement that the grants not be used for any political activity. Under the proposed regulations, those groups' independent decisions to use other funds for candidate-related political activity, even anything as innocuous as a local candidate

forum, will become political activity on our part. That broad standard will gut our ability to direct financial resources to grass roots groups.

The proposed regulations would censor our Internet communications. Under the proposed standard, Tea Party Patriots would not be able to mention any politician by name on its website within 30 days of a primary. Within 60 days of a general election, we cannot mention either politicians or political parties. As a national group, we will have to scrub our website before any primary or general election anywhere in the country. We will not be able to tell American citizens something as basic as which of their elected representatives voted for controversial legislation, such as the Affordable Care Act.

The proposed rules would restrict nonpartisan voter registration and voter education activities of 501(c)(4) groups, while allowing unions, trade associations, and other nonprofits – in fact, *any* group other than a 501(c)(4) – to engage in those important activities. Such voter suppression in any other context would be clear and unacceptable.

Local groups and Tea Party Patriots would no longer be able to host candidate debates, candidate forums and presentations by public officials who are also candidates for office. Americans would no longer be able to meet with candidates and ask them direct questions. Rather, they could receive information only from 30-second media ads.

The proposed rules would attribute to a citizens group the value of 'remarks' by leaders of or volunteers discussing a candidate. Thus, if I were quoted in the *New York Times* about a Senate candidate during September of this year, Tea Party Patriots would be required to place a monetary value on that news report, and count it against the organization's primary purpose. That interference with a free press and free speech cannot enrich our public conversation.

Tea Party Patriots vehemently opposes these proposed IRS regulations for 501(c)(4) organizations and we urge Congress to stop the IRS from implementing them. We oppose these proposed regulations *not* because Tea Party Patriots wishes to engage in political activities (as presently defined); rather, we oppose these proposed regulations because of the permanent damage they would do to the *non-political* advocacy of every grassroots citizens' organization in America. The IRS should not be engaged at all in attempting to regulate, restrict or encumber the protected First Amendment rights of the American people.

The proposed rules will not only limit free speech, but they create cracks in the trust that is the foundation of our government. A government of the people and by the people must trust the people, and the people must trust the government. When the people are afraid of a government agency, when they see that agency as a bunch of thugs who abuse power, the trust is shattered. A free people should not fear a politicized bureaucracy that delves into their social media, communications, and records to determine what they said, whom they heard speak, and what they think about their government.

We need to fill the cracks in the foundation, solve this problem and a host of others, not by adding more rules to the 67,000 pages of tax code, but by replacing it all with a flat, fair rate. Until then, Mr. Chairman, we ask that you and others in our government will stop this infringement on the rights of the American people to freely associate, speak their minds, and petition their government.

Thank you.

JENNY BETH MARTIN'S FULL BIO

Jenny Beth Martin is co-founder and national coordinator of the Tea Party Patriots, the nation's largest tea party organization with more than 3,500 locally affiliated groups nationwide. She was named number 15 in TIME magazine's 100 Most Influential Leaders in 2010 and recently co-authored the book "Tea Party Patriots: The Second American Revolution". Jenny Beth lives with her husband and twins in Atlanta, Georgia.

Prior to her role as co-found of the Tea Party Patriots, Jenny Beth was graduated from Reinhardt College in Waleska, GA, in June of 1990 and later received her BBA in Management Information Systems from the University of Georgia. She is married to Lee Martin and they have 10 year old boy girl twins.

Following her graduation from UGA in 1992, Jenny Beth had a successful career as a computer programmer and senior information technology manager with Mead and The Home Depot. In 2001 she left that career to work on building a family.

With the help of fertility treatments Jenny Beth and Lee were finally able to conceive twins in 2002. In March 2003 their son and daughter were born.

Since the death of her grandmother to breast cancer in 1998, Jenny Beth has made charities which focus on the detection and treatment of the disease a high priority. She participated in the "Atlanta Breast Cancer 3-Day" which raises money for increasing breast cancer early detection programs for impoverished women.

Through "Hands-On-Atlanta" she served as a tutor for inner-city pre-teen girls at a middle school off of Bankhead Highway in Atlanta. She also served as a Bible Study and Sunday School teacher in the Methodist Church.

Jenny Beth, in her role as one of the National Coordinators of the Tea Party Patriots, the National Tea party movement, and the Atlanta Tax Day Tea Party, promotes the ideas of fiscally responsible government, constitutionally limited government and free markets.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Jennifer Martin (Jenny Beth)

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2011. Include the source and amount of each grant or contract.

— None —

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Tea Party Patriots President
Tea Party Patriots Foundation President

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

— None —

I certify that the above information is true and correct.
Signature:

Date: 2/24/2014

TEA PARTY PATRIOTS

PURSUE YOUR AMERICAN DREAM

February 27, 2014

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: IRS REG-134417-13 *Notice of Proposed Rulemaking: Guidance for Tax Exempt Social Welfare Organizations on Candidate-Related Political Activities* – Comments of Tea Party Patriots, Inc.

Dear Commissioner Koskinen:

The Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") have solicited public comments regarding IRS REG-134417-13 *Notice of Proposed Rulemaking: Guidance for Tax Exempt Social Welfare Organizations on Candidate-Related Political Activities,* Fed. Reg. 71,535 (proposed Nov. 29, 2013) ("the NPRM" and "Proposed Regulations").

These comments are submitted by Tea Party Patriots, Inc., a not-for-profit Georgia corporation ("Tea Party Patriots" or "TPP"), whose application for exempt status pursuant to Section 501(c)(4) of the Internal Revenue Code was submitted in December, 2010. We were just advised by the IRS on February 26, 2014 that it is "going to be granted" – we have still not received a letter of determination of exempt status, but after more than three years, the day before my appearance before Congress and before the deadline for submitting these comments, the IRS has advised that it intends to finally grant our c4 status. This three year delay, which has cost Tea Party Patriots thousands of dollars in legal and accounting fees and countless staff hours in responding to the IRS intrusive inquiries, has occurred despite the fact that Tea Party Patriots engages in zero political activities as defined under current law.

Tea Party Patriots vigorously opposes the NPRM in its entirety and requests that the Proposed Regulations be withdrawn.

The regulations and IRS precedent governing 'political activities' under which Tea Party Patriots has operated for the past three-plus years were formulated under existing IRS regulations in existence since 1959. This sudden rulemaking, out of the blue and with no advance notice to the public, would completely redefine normal and customary programs of thousands of 501(c)(4) organizations nationwide and is startling, to say the least.

Tea Party Patriots rejects as utterly false and misleading the claimed reason for the NPRM, namely, the report of the Treasury Inspector General for Tax Administration Report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053; issued May 14, 2013) (the "TIGTA Report") and the report of Daniel Werfel, Principal Deputy Commissioner of the Internal Revenue Service entitled "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" (issued June 24, 2013) (the "Werfel Report"). It is apparent that the topics addressed in the NPRM and the decision by the IRS to treat these activities as 'political' started three (3) years ago – and these Proposed Regulations are an extension of those targeting efforts and are the true, underlying motivation of the IRS in offering the NPRM. This is and has been at the heart of the targeting of groups such as Tea Party Patriots these past several years: the topics in the NPRM are the very topics which TPP has been required to address in the various IRS letters to TPP and other groups such as ours since 2010.

To claim that these Proposed Regulations would 'clarify' anything so as to 'avoid' these sorts of problems in the future is disingenuous at best. Indeed, there is now publicly available information confirming that these regulations really are not for the purpose of 'clarifying' supposed IRS employee 'understanding' of 'political activities'. It was recently revealed that the NPRM did *not* arise or derive from either of the Reports issued in May and June of 2013, contrary to the (mis)representations in the introduction to the NPRM. *See* Letter from Darrel Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to the Honorable John Koskinen, Commissioner, Internal Revenue Service (Feb. 4, 2013)("Issa/Jordan Letter").

Because these Proposed Regulations are vague, complex, uncertain and constitutionally flawed, Tea Party Patriots urges the IRS to withdraw the NPRM and not to proceed further with this rulemaking.

I. Procedural Flaws in the NPRM Cannot Be Remedied and Require Withdrawal of the NPRM.

After the issuance on November 29, 2013 of the NPRM, Tea Party Patriots submitted Freedom of Information Act ("FOIA") requests to Treasury and the IRS on December 10, 2013 for all background documents related to the NPRM in order that we might fully understand the genesis and meaning of the Proposed Regulations.

Neither Treasury nor the IRS have complied with their statutory FOIA obligations to provide the responsive documents and have advised us that the documents will not be made available until April 7, 2014. The FOIA Requests and responses are attached hereto as Attachment A.

Based upon the representation by Treasury (the IRS has yet to respond *at all*), we have formally requested that the IRS and Treasury extend the public comment period for thirty days *after* the documents are made available to us.

We hereby renew the request that the Comment Period for the NPRM be extended to a date at least thirty (30) days after Treasury makes available the underlying documents related to the NPRM. Our February 4, 2014 letter to you and Secretary Lew is attached hereto as Attachment B and made a formal part of these comments.

Curiously, though, despite the correspondence with us regarding the date on which related documents will be made available pursuant to our FOIA request, the Regulations.gov website, (the official site for the NPRM and the online filing of comments regarding the Proposed Regulations), contains a tab for publication of documents related to the Proposed Regulations. For documents related to this NPRM, under the tab for "Related Documents", the IRS and Treasury have stated "NONE".[1]

Clearly, there is something amiss. The government tells the general public that there are "no related documents" but the IRS and Treasury have advised us that it will take until April 7, 2014 to retrieve and forward the related documents to us. Someone is NOT telling the truth.

Tea Party Patriots submitted comments on January 28, 2014, to the Office of Management and Budget ("OMB"), detailing the deficiencies in the analysis of the Proposed Regulations required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)); the Regulatory Flexibility Act (5 U.S.C. chapter 6) and the Administrative Procedures Act (5 U.S.C. chapter 5).

Treasury and the IRS have utterly failed either to acknowledge or address the myriad recordkeeping, paperwork and compliance burdens these Proposed Regulations would impose on every citizens group in the country, as detailed in the comments we submitted to OMB. We have asked OMB to return the Proposed Regulations to Treasury and the IRS for a proper review and analysis as required under federal law. Our letter to OMB is attached as Attachment C.

And to add to the puzzlement regarding the source, background, related documents and results of the legally required reviews and analysis of the NPRM, the Regulations.gov website, contains some curious 'conclusions' regarding the Proposed Regulations.

The IRS and Treasury have identified the NPRM in terms of its "Priority" as "Substantive, Nonsignificant". What does that mean?

As defined in Executive Order 12866, an "economically significant" rulemaking action is one that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under 5 U.S.C. 801 (Pub. L. 104-121), but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 *or rules that are a priority of the agency head.* If these Proposed Regulations are 'substantive' – which they certainly are – but are not "significant" to the IRS, Treasury or the Commissioner of the IRS, then why are we being forced to deal with these at all?

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[1] The Regulations.gov entry is available: http://www.regulations.gov/#!docketDetail;D=IRS-2013-0038 (last accessed February 24, 2014)

Other information on the NPRM's web page reflect the conclusions of Treasury and the IRS regarding the NPRM, under the heading of "Unified Agenda" and Regulatory Plan[2] information:[3]

Publication Period: Fall 2013
Agenda Stage of Rulemaking: Proposed Rule
Major Rule: *Undetermined*
Legal Authorities: 26 USC 7805
Legal Deadlines: None
Government Levels Affected: No
Federalism Implications: No
Unfunded Mandates: Undetermined
Requires Regulatory Flexibility Analysis: No
Small Entities Affected: No
International Impacts: No
Energy Effects: No
Included in Regulatory Plan: No"

What do these 'conclusions' on the Regulations.gov website mean?

"Major Rule: "Undetermined"." Is the IRS saying this is *not* a 'major rule'? Certainly for many thousands of social welfare organizations, the Proposed Regulations are a major and substantial change in the current law. Yet, IRS and Treasury state that whether this is or is not a 'major rule' is 'undetermined'?

"Regulatory Flexibility Analysis Required—No." This analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) ("the Act") if the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act. The IRS and Treasury concluded "no" analysis was required. Yet the number of small 501(c)(4) organizations impacted by the NPRM is in the *thousands*. Why was no proper analysis under the Regulatory Flexibility Act conducted?

"Small Entities Affected: No." The IRS and Treasury have simply ignored the thousands upon thousands of small entities (businesses, governmental jurisdictions, or organizations) which will be impacted by the NPRM. Even though Treasury and IRS have admitted they conducted no analysis under the Regulatory Flexibility Act, the agencies should at least acknowledge there *are* actual, real-life effects on a vast number of small entities as a result of the Proposed Regulations, something the IRS and Treasury have refused to do.

And most disturbing of all, the Proposed Regulations were developed 'off plan' meaning that no one other than the small group of drafters, their superiors and some political insiders in the IRS and Treasury (and maybe other locations) in Washington, D.C., were even aware that these Proposed Regulations were being developed prior to the announcement two days before Thanksgiving, 2013

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[2] The Federal Register publishes the Unified Agenda and the Regulatory Flexibility Agenda for each agency rulemaking and includes the Unified Agenda's definitions for conclusions regarding proposed regulations, published for public review during the comment period as required by law.
[3] The Regulations.gov entry is available: http://www.regulations.gov/#!docketDetail;D=IRS-2013-0038 (last accessed February 24, 2014).

that the NPRM was being issued later in the week, which it was: on the day *after* Thanksgiving. *See* Issa/Jordan Letter (exposing the source and timing of the NPRM and confirming that the Proposed Regulations were developed "off plan", under cover of darkness and out-of-sight of the American people)

The secrecy surrounding the development of the NPRM, completely outside the regulatory framework and rulemaking plans of Treasury or the IRS, devoid of any of the analyses required by law to protect citizens and entities against overreaching federal rulemaking, and the failure of the IRS and Treasury to note the impact on small organizations, to publish related documents and to identify this as a Major Rule are procedural deficiencies that are serious, substantial, and insurmountable. The IRS and Treasury should terminate this rulemaking immediately and should not move forward in any manner in promulgating the Proposed Regulations.

In the future, all rulemaking by the IRS and Treasury should conform to the requirements of federal law applicable to agency rulemaking – with which the IRS apparently believes it is exempt from having to comply. It is shocking to realize the extent to which the IRS arrogantly and regularly disregards its legal obligations under provisions of law enacted by Congress or contained in Executive Orders. It is certainly the case with this NPRM and it is time for the abject lawlessness of the IRS to cease.

II. Background of Tea Party Patriots in Relationship to the Proposed Regulations.

As background, the failure of the IRS to process TPP's application for exempt status in the same manner as similar applications have been processed for decades prior to 2010 is a violation of TPP's constitutional rights and the laws and procedures of the United States – and is deeply disturbing to our organization, its leaders and our grassroots volunteers across the country.

The TIGTA Report documented the targeting of conservative and tea party organizations for intensive and differential scrutiny over the past several years, based on the *names* and *missions* of applicant organizations, and ensnared TPP in an IRS web of unlawful, burdensome and intrusive investigations into our internal operations, programs and activities. *See* TIGTA Report, pages 5-21.

TPP is suffering these outrageous indignities because our name includes *two* of the terms identified on the internal IRS 'be on the lookout' ("BOLO") list... 'tea party' and 'patriots'. Our application for exempt status for Tea Party Patriots never stood a chance of being reviewed in the time-honored manner. Indeed, it has not been – and still is not being – handled in the same manner as the process described in IRS Manual 3.45.1 *Processing Employee Plan and Exempt Organization Determination Applications and User Fees*, using the application IRS Form 1024 *Application for Recognition of Exemption under Section 501(a)* (Rev. September 1998).

To be clear, Tea Party Patriots has *not* engaged in political activities. We have made a conscious effort not to engage in political activities even though we are legally permitted to do so. Notwithstanding the fact that Tea Party Patriots has never engaged in political activity, as currently defined, the new definitions appear to be tailored to stop TPP and other Section 501(c)(4) groups from engaging in activities that the law does – and should – allow. This unilateral effort by the IRS to change the current law is startling in its scope and breadth, reaching activities that are *not* and should not be defined as candidate-related. The Proposed Regulations are not designed to provide

clarity, but rather to silence *all* Section 501(c)(4) organizations – *even* if the group doesn't engage in political activities as that term is commonly understood.

Tea Party Patriots decision(s) to refrain from engaging in political activities has, nonetheless, paid no dividends in terms of obtaining our exempt status from the IRS, which continues to target our organization and withheld our exempt status determination for reasons that defy understanding or explanation.

The NPRM was issued, according to the 'Background' statement contained in the Notice, in part because of 'confusion' of IRS employees regarding what is and is not 'political activity':

> "Recently, increased attention has been focused on potential political campaign intervention by section 501(c)(4) organizations. A recent IRS report relating to IRS review of applications for tax-exempt status states that "[o]ne of the significant challenges with the section 501(c)(4) [application] review process has been the lack of a clear and concise definition of 'political campaign intervention.'" Internal Revenue Service, "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" at 20 (June 24, 2013). In addition, "[t]he distinction between campaign intervention and social welfare activity, and the measurement of the organization's social welfare activities relative to its total activities, have created considerable confusion for both the public and the IRS in making appropriate section 501(c)(4) determinations." *Id.* at 28. The Treasury Department and the IRS recognize that both the public and the IRS would benefit from clearer definitions of these concepts."
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> *NPRM* at 71,536.

The IRS has proposed permanent regulations that would apply to every citizens group in America as a 'solution' to the problems the IRS itself created when it abandoned its normal, published procedures for processing applications (such as ours) for exempt status under Section 501(c)(4) of the IRC. The IRS itself wreaked havoc internally and externally on a process that had historically operated without such difficulties for a long time before 2010.

Our organization has not faced any particular challenges in understanding what is and is not "political activity" as that term has been articulated, explained and understood for *decades* by the IRS. *See generally* Rev. Rul. 78-248, 1978-1 C.B. 154; Rev. Rul. 80-282, 1980-2 C.B. 178; Rev. Rul. 86-95, 1986-2 C.B. 73; and Rev. Rul. 2007-41, 2007-1 C.B. 1421. And if there was any question, Tea Party Patriots simply refrained from those activities.

We have operated for the past three years in accordance and compliance with those understandings and legal guidance. Still, the IRS continued to withhold our letter of determination of exempt status until yesterday and to now propose regulations that would upend *everyone's* understanding of what does and does not constitute 'political activities'. The Proposed Regulations

will make permanent the utter confusion *generated* by the IRS and which is now proposed to be inflicted on every social welfare organization from now on. It would seem that the only people on the planet who do not know and understand the difference between 'candidate-related political activity' and such activities as grassroots lobbying are the IRS employees: the same IRS employees who have written and published these quite incomprehensible Proposed Regulations.

Tea Party Patriots reiterates that it has refrained from engaging in political activities or making expenditures for such activities since it was established in 2010. Indeed, in order to be able to continue to ensure that Tea Party Patriots remained wholly non-political, in the last year, we established an independent expenditures political committee, the Tea Party Patriots Citizens Fund (TPPCF), registered with the Federal Election Commission. All political activities related to TPP are undertaken by and through the TPPCF, with funds raised separately for and spent by the PAC, not through TPP.

The purpose of advising you of these facts is to ensure that neither you, your colleagues in the IRS or Treasury, or those who fear the tea party citizens movement will be in the slightest confused by our position on the Proposed Regulations.

We oppose these Proposed Regulations *not* because Tea Party Patriots wishes to engage in political activities (as presently defined); rather, we oppose these Proposed Regulations because of the permanent damage they would do to the *non-political* advocacy of every grassroots citizens organization in America.

And we oppose these Proposed Regulations because we do not believe the IRS should be engaged at all in attempting to regulate, restrict or encumber the protected First Amendment rights of the American people.

If enacted into law, the Proposed Regulations would require Tea Party Patriots to develop substantial and costly procedures for reviewing, tracking, recording, reporting and calculating *values* for activities that are, under present law, normal 'primary purpose' activities for a social welfare organization such as ours. We would be required to:

- Review all programs and activities and apply the new 'candidate-related political activity' definitions to *every* program to ascertain whether TPP's current programs would or would not continue to count (in whole or in part) toward TPP's major/primary purpose;
- Track and record the costs of all 'candidate-related political activities';
- Develop a methodology (unspecified in the Proposed Regulations) for calculating and reporting the value of *volunteer activities* spent on 'candidate-related political activity';
- Report to the IRS on our Form 990 our total expenditures for candidate-related political activities – including the value of TPP volunteer 'candidate-related political activities'; and
- Develop sufficient activities and programs that do not qualify as 'candidate-related political activities' and ensure that the appropriate amount is *spent* on such activities in order to continue to operate as a Section 501(c)(4) social welfare organization.

All of this will be inflicted on our citizens organization that engages in *no* political activities as presently defined in the law – but which would nonetheless be required to revamp its programs and activities to fit within this new framework that demolishes the ability of a grassroots

organization such as ours to engage in our fundamental mission of citizen education and mobilization on policies, legislation and issues.

III. Specific Comments on Certain Proposed Definitions of Candidate-Related Political Activity.

Tea Party Patriots is not commenting on every flaw in the NPRM; the problems are too numerous. Rather, TPP is focusing its substantive comments on the following essential problems with the Proposed Regulations.

1. *Nonpartisan Voter Registration should always count toward the primary purpose of a section 501(c)(4) social welfare organization.*

The Proposed Regulations define 'candidate-related political activity' to include the "conduct of a voter registration drive or 'get-out-the-vote' drive". Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(5); *NPRM* at 71,541.

To that specific point, in January, 2006, the *Funders Committee for Civic Participation,* a project of The Proteus Fund (a Section 501(c)(3) public foundation, which leverages funding for liberal and progressive causes, issued a report *Voter Engagement Evaluation Project,* which detailed the efforts of a number of liberal foundations who engaged in "close collaboration of funders and the nonprofit organizations that toiled in the field during the 2004 election cycle." Proteus Fund, *Funders' Committee for Civic Participation and Proteus Fund report on the Voter Engagement Evaluation Project* (issued Jan. 2006).[4] The Report further described the substantial involvement of Section 501(c)(3) organizations during the 2004 election cycle: "The breadth and intensity of Section 501(c)(3) voter engagement activity in the 2004 election cycle was enormous. Approximately 3 million new voters were registered in underrepresented communities by a handful of national organizations and by hundreds of community-based, faith-based and service provider organizations. Overall, the voter turnout was the highest since 1968... [F]ollowing the election, a rapid and dramatic decline in funding occurred... The resulting gaps could hinder the ability to generate and sustain the level of grassroots election-year energy and enthusiasm witnessed in 2004 for future election cycles." *Id.* at 2.

What did these liberal groups do (and continue to do)?

1. Register voters

2. Integrate nonpartisan electoral work with issue organizing

3. Effective use of voter lists to enhance field operations

4. Increased coordination of voter engagement activity (voter registration, education, protection and mobilization).

Id. at 2-3.

[4] Available on-line at: http://funderscommittee.org/files/files/media/resources/VEEP-FINAL.pdf (last accessed Feb. 15, 2014).

The IRS Proposed Regulations would allow all exempt organizations – except for Section 501(c)(4) organizations – to continue to engage in nonpartisan voter registration activities, and expenditures for such activities will be counted toward those organizations' primary purpose. Only Section 501(c)(4) organizations would face the reclassification of nonpartisan voter registration to non-primary purpose activities. Even Section 501(c)(3) organizations could continue to conduct such activities, notwithstanding the absolute prohibition on partisan campaign intervention by charitable organizations. Under the NPRM, every type of exempt organization could continue to engage in nonpartisan voter registration activities – but if a Section 501(c)(4) organization does so, such expenditures will not count toward the organization's primary purpose.

What sense does that make? None, is the answer. It is utterly mystifying to Tea Party Patriots that, under the Proposed Regulations, if our volunteers set up a card table at a county fair to register people to vote, with *no* mention of any candidate, that such activities will no longer count toward the organization's primary purpose. How is that *possibly* 'candidate-related political activity'?

We have seen this very topic on the questionnaires sent to hundreds of tea party groups over the past four years: "did the organization engage in voter registration activities?" Apparently, the IRS concluded during the past few years that registering people to vote is somehow 'political' and is to be discouraged by the federal government – but only when such activities are conducted by tea party or conservative 501(c)(4) organizations, not when carried out by liberal Section 501(c)(3) organizations.

There have been substantial debates over the past several years regarding efforts to ensure the integrity of America's elections by requiring voters to produce photo identification to prove their identity at the time of voting[5]. Tea Party Patriots supports efforts to protect the rights of every voter by ensuring only legally eligible votes are cast.

But one thing on which Tea Party Patriots can agree with liberal commentators who oppose voter identification laws is this: "As [Dr. Martin Luther] King did, we must develop a national citizens' movement to ensure that ... [c]itizens, not politicians, safeguard our voting rights. King's approach demonstrates that citizens must protest, lobby and build a mass movement to protect the right to vote. The power of the vote, *mobilized through ongoing initiatives for voter education and registration*, can pressure and compel change from our elected officials". Marcus Anthony Hunter commentary, Washington Post, January 20, 2014. (emphasis added).[6]

The Proposed Regulations would *eliminate* that citizen power to conduct voter education and registration. This is nothing short of *real* voter suppression.

The very idea that the IRS would erect stumbling blocks into voter registration activities is astonishing. This provision of the NPRM is indicative of the faulty and unconstitutional thinking

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[5] *See, i.e.,* John Fund "Voter Fraud: We've Got Proof It's Easy", *National Review Online* (Jan. 12, 2014) (available online at: http://www.nationalreview.com/article/368234/voter-fraud-weve-got-proof-its-easy-john-fund)(last accessed Feb. 24, 2014); John Fund and Hans von Spakovsky, *Who's Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk* (Encounter Books, 2012).

[6] Article available online at http://www.washingtonpost.com/opinions/voter-suppression-is-a-threat-to-all/2014/01/19/abc56154-7fa6-11e3-9556-4a4bf7bcbd84_story.html (last accessed Feb. 24, 2014).

underlying the entirety of the Proposed Regulations, not to mention the terrible public policy that it represents.

2. Nonpartisan Voter Guides, Candidate Forums and Candidate Debates should always count toward the primary purpose of a Section 501(c)(4) social welfare organization.

The Proposed Regulations include as 'candidate' related political activities' the preparation or distribution of voter guides that identify candidates or political parties. Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(7); *NPRM* at 71,541. The Proposed Regulations also include the "hosting or conducting an event with 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program" as 'candidate-related political activity'. Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(8); *NPRM* at 71,541.

As with nonpartisan voter registration, every citizens group is established to advocate or support *something*. Whether the organization is formed under Section 501(c)(3), (4), (5), (6), or all the way through to Section 501(c)(29), there is a purpose to and mission of every organization. Some or all of those entities have an interest in public policy, issues and/or legislation. There should *never* be a rule or a policy or a law that in any way inhibits or discourages any citizens organization, whatever its designation under the Tax Code, from being able to develop information about the views and positions of public issues and policies on a nonpartisan basis – and to disseminate that information to the voting public.

In a nation where commentators bemoan the disinterest of the American people in voting and elections, why would the IRS interject itself into the midst of the efforts by TPP and hundreds – if not thousands – of citizens groups to educate themselves and others on the views, records and policy positions of candidates for office?

Questions pertaining to whether or not tea party and conservative groups prepared or published voter guides, hosted candidate debates or allowed candidates to address their meetings have appeared repeatedly in the intrusive questionnaires posed to tea party applicants for exempt status these past several years. It is clear that the IRS set about to intentionally inhibit citizens groups from gathering and publishing information about the policy positions of candidates for office that might be of interest to their members and fellow citizens and to create a hostile environment for citizens groups in conducting programs to help citizens become informed about candidates and their views on issues.

The NPRM would codify and make permanent this deliberate effort on the part of the IRS to discourage citizens groups from inquiring of candidates their views and positions on issues and then disseminating that information to their fellow citizens. It is astounding that the government would seek to silence this exercise by citizens of their fundamental right to learn and share information regarding candidates' views on the issues of the day.

3. Grassroots lobbying should always count toward the primary purpose of a Section 501(c)(4) social welfare organization; the only true 'clarity' is the authentic express advocacy standard articulated by the US Supreme Court in Buckley v. Valeo.

Under the Proposed Regulations, the definition of 'candidate-related political activity' includes "any public communication with 30 days of a primary election or 60 days of a general

election that refers to one or more clearly identified candidates in that election, or, in the case of a general election, refers to one or more political parties represented in that election." Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(2); *NPRM at 71,541*. According to the NPRM, the Proposed Regulations take the approach that this provision applies to 'candidate-related political activity' "without regard to whether a public communication is intended to influence the election or some other, non-electoral action (such as a vote on pending legislation) and without regard to whether such communication was part of a series of similar communications." *NPRM* at 71,539.

There should be absolutely *no* time when TPP is restricted from engaging in public communications regarding or grassroots lobbying about on any issue of interest to our organization. TPP should be able to engage in such efforts to influence the public policies of this country *whenever* there are decisions to be made by elected and appointed officials on issues TPP and its members care about – and to do so without being forced to calculate the dates and costs and value of its many calls to action that 'mention' a sitting legislator within the 30 or 60 days before an election.

The NPRM establishes an arbitrary blackout period during which ordinary grassroots lobbying activities would be recast as 'candidate-related political activities'. A grassroots lobbying effort, urging citizens to contact their elected representatives on an issue to be decided upon by a public body, would *not* count toward TPP's primary purpose if it occurs within the 30 days before "a primary" or 60 days before a general election.

The practical result is that one day a communication is grassroots lobbying, squarely within the organization's primary purpose; the very next day, the same communication for the exact same purpose would no longer count toward TPP's primary purpose. That is utter nonsense.

But worse, this is an incumbent-protection racket. The Proposed Regulations would have the perverse effect of protecting public officials from the citizens by rendering groups such as Tea Party Patriots mute during any period when there is an election *somewhere* in the United States. Indeed, we have seen in recent weeks that sitting members of the United States Senate are urging the IRS to 'crack down' further and to silence citizens organizations even *now* – because of their fear that the groups are telling the public how these Senators voted in Washington. *See* Becket Adams, "Chuck Schumer Calls on IRS to Crack Down on Tea Party Funding: 'Redouble Those Efforts Immediately," The Blaze.com (Jan. 24, 2014).[7]

The First Amendment does not allow the government to use its power to protect incumbent officials from the citizens. This provision in the Proposed Regulations is as odious as any part of the NPRM. It would create a permanent buffer between the voting public and the voting records of incumbent officials – and the calls *by* sitting members of Congress to the IRS to 'do something' to *protect* sitting members of Congress is the very reason the NPRM must be abandoned in its entirety.

4. The only way to clarify the rules on 'political activities' by Section 501(c) organizations is to adopt a real express advocacy standard – as articulated in Buckley v. Valeo almost 40 years ago.

[7] Article available here: http://www.theblaze.com/stories/2014/01/24/chuck-schumer-calls-for-irs-to-crack-down-on-tea-party-funding/ (last accessed Feb. 24, 2014).

The Treasury Department and IRS requested comments on how excluding certain grassroots lobbying is "consistent with the goal of providing clear rules that avoid fact-intensive determinations". *NPRM* at 71,539.

There is only one way to provide actual 'clarity' and which completely "avoids fact-intensive determinations", and that is for the IRS to adopt the one true 'bright line' rule, articulated by the United States Supreme Court in the 1976 decision in *Buckley v. Valeo,* 424 U.S. 1 (1976), in which the Court charted the guaranteed path to clarity that the NPRM claims it seeks:

> "The constitutional deficiencies described in *Thomas v. Collins* [323 U.S. 516 (1945)] can be avoided only by reading [the statute at issue] as limited to communications that include explicit words of advocacy of election or defeat of a candidate... This is the reading of the provision suggested by the nongovernmental appellees in arguing that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." We agree that, in order to preserve the provision against invalidation on vagueness grounds, [the statute] must be construed to apply only to expenditures for communications that, in express terms advocate the election or defeat of a clearly identified candidate for federal office. [n. 52]"

Id. at 43-44 (emphasis added).

The *Buckley* Court went on to describe the "express terms" that would advocate the election or defeat of a clearly identified candidate for federal office in Footnote 52:

> "This construction would restrict the application of [the statute at issue] to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"

Id. at 44, n.52.

The reason the Supreme Court adopted the real 'express advocacy' test was precisely to avoid constitutionally flawed government regulation of protected First Amendment speech – exactly like that in the Proposed Regulations and evidenced most clearly in the proposed restrictions on grassroots lobbying and other public communications about issues, legislation, judicial nominations or any other subject on which a citizens group might have the temerity to discuss publicly.

The only approach which conforms to the First Amendment's protection of citizen speech, and which is 100% clear and easily understandable by all is to adopt a rule which mirrors the *Buckley* standard of express advocacy. Expenditures to propagate the views of Tea Party Patriots that do not expressly call for a candidate's election or defeat should *not* be treated as candidate related political activities, partisan campaign intervention or political activities – or, quite simply, to be subject to the scrutiny of the IRS.

Tea Party Patriots strenuously objects to the definition of "express advocacy" contained in the NPRM. Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(2); *NPRM* at 71,541.

The Proposed Regulations' definition of "express advocacy" is Orwellian, in that the definition envisions a "listener based" understanding, something the Supreme Court in *Buckley* absolutely and specifically *rejected*:

> "In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances *wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.*
>
> *Such a distinction offers no security for free discussion.* In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. *Id.* at 535. *See also United States v. Auto. Workers,* 352 U.S. 567, 595-596 (1957) (Douglas, J., dissenting); *Gitlow v. New York,* 268 U.S. 652, 673 (1925) (Holmes, J., dissenting)."

Buckley, 424 U.S. at 43.

The NPRM's faux definition of 'express advocacy' flies directly in the face of the Supreme Court's reasoning in adopting an actual 'bright line' standard, as required by the First Amendment. The Supreme Court articulated an 'express advocacy' standard which is the only true definition. The rewriting of the 'express advocacy' standard into the *opposite* of the Supreme Court's definition is completely unacceptable and will be completely driven by the 'facts and circumstances' of the communication, something the IRS claims these Proposed Regulations would eliminate.

5. Actual expenditures for programs and activities should be the only measurement of the percentage of an organization's primary purpose – and the 'value' of volunteer activities should not be subject to recording, calculation or reporting.

The Proposed Regulations specifically attribute all activity conducted by "volunteers acting under the organization's direction or supervision" to the organization for purposes of determining the organization's amount of 'candidate-related political activity'. Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(C); *NPRM* at 71,541.

Tea Party Patriots depends heavily on a vast network of volunteer leaders and activists that make up our organization nationwide. The Proposed Regulations seem intent upon interfering with the rights of our members and supporters to engage in activities with Tea Party Patriots by virtue of the NPRM's inclusion of the value of 'volunteer' activities as a component for calculating our organization's 'primary purpose'. *NPRM* at 71,540-71,541

The inclusion of the value of 'volunteer activities' for purposes of calculating our organization's 'primary purpose' is the primary reason that Tea Party Patriots did not enter into the 'expedited' process that Acting Commissioner Werfel offered last summer. Tea Party Patriots Letter dated June 26, 2013; attached as Attachment D.

For the first time, with no definitions and no legal authority, and contrary to the specific instructions for preparation of the Form 990, the IRS requested that Tea Party Patriots and countless other organizations agree as a pre-condition of receiving an "expedited" Letter of Determination of Exempt Status (after almost three years), to the following (bold added; italics in original):

"Representations and Specific Instructions

1. During each past tax year of the organization, during the current tax year, and during each future tax year in which the organization intends to rely on a determination letter issued under the optional expedited process, the organization has spent and anticipates that it will spend 60% or more of *both* the organization's total expenditures *and* its total time **(measured by employee and volunteer hours)** on activities that promote the social welfare (within the meaning of Section 501(c)(4) and the regulations thereunder).

2. During each past tax year of the organization, during the current tax year, and during each future tax year in which the organization intends to rely on a determination letter issued under the optional expedited process, the organization has spent and anticipates that it will spend less than 40% of *both* the organization's total expenditures *and* its total time **(measured by employee and volunteer hours)** on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office (within the meaning of the regulations under Section 501(c)(4)).

IRS Letter 5228 (Rev. 9-2013). *See* Attachment D.

Now, the IRS proposes to make that 'measurement' permanent for all Section 501(c)(4) organizations.

Tea Party Patriots *strenuously* objects to the inclusion of 'volunteer activities' or hours in any measurement of our primary purpose calculations. It is our belief that such inclusion interferes with our First Amendment rights of association by interjecting the federal government into intrusive inquiries of our internal operations and activities in association with our members, grassroots supporters and volunteers.

Our Section 501(c)(4) organization is a group of individuals exercising their freedom of association. The Supreme Court has reinforced the right of association time after time. *See, e.g., Gibson v. Florida Legislative Comm.,* 372 U.S. 539 (1963); *Shelton v. Tucker,* 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958). Of particular relevance here is the right of *expressive* association, which protects the ability to associate to advocate public or private viewpoints. *N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 13 (1988). This right is infringed when organizations must "abandon or alter" activities protected by the First Amendment. *Bd. of Dirs. of Rotary Int'l. v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987).

The Supreme Court also has recognized that the right to engage in activities protected by the First Amendment implies "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984). For this reason, "impediments to the exercise of one's right to choose one's associates can violate the right of association protected by the First Amendment . . . ." *Hishon* v. *King & Spalding*, 467 U.S. 69, 80, n. 4 (1984) (POWELL, J., concurring) (citing *NAACP* v. *Button*, 371 U.S. 415 (1963); *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958)).

Group association and pooling of financial resources, certainly the at the heart of every Section 501(c)(4) organization, is strictly protected because it "enhances effective advocacy." *Buckley,* 424 U.S. at 65 (quoting *Ala. ex rel. Patterson,* 357 U.S. at 460). As noted in *Buckley,* "The right to join together for the advancement of beliefs and ideas is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'" *Id.* at 65-66 (internal citations omitted).

We believe that the provisions related to 'volunteer activities' as a component for calculating adherence to the primary purpose requirements is a dangerous and constitutionally invalid interference with our First Amendment rights of association.

Additionally, there is absolutely *nothing* about this provision that meets the IRS's claimed premise of the NPRM which is ostensibly to provide 'clarity' in this process. What, exactly, is 'clear' about the provision related to the 'volunteer' components of the Proposed Regulations?

As Tea Party Patriots advised OMB in our January 28, 2014 comments, there is absolutely zero clarity, guidance, information or instruction insofar as the definitions of 'volunteers', the valuation to be assigned to volunteers, the manner in which volunteer time is to be tracked, recorded, calculated and /or reported. The paperwork and recordkeeping obligations of this provision alone are mind-boggling.

The proposed inclusion of 'volunteer activities' is contrary to current IRS guidance which presently directs organizations to monitor their 'primary purpose activities' by tracking *program expenditures.* 2013 IRS Form 990 Instructions, *Return of Organization Exempt From Income Tax*, p. 64.[8] *"2013 Instructions for Schedule C, Form 990 or 990-EZ, Political Campaign and Lobbying Activities*, Department of the Treasury."

The NPRM would impose a new component *requiring* that nonprofit organizations include in their 'primary purpose' calculations 'volunteer activities'; yet, there is no further definition, guidance, means of measurement, or other directions as to how such 'volunteer activities' are to be captured, calculated or reported on the Form 990.

The NPRM is totally silent on exactly *how* an organization is supposed to perform the calculations necessary for measuring the value of its 'volunteer activities', but at the very least *someone,* either organization staff or the volunteers themselves, would be required or expected to keep time records of the time spent engaged in activities related to the organization, and submit those to the organization. The organization would then have to perform some manner of valuation of the volunteers' time spent on its behalf, but not only would the organization be required to obtain / maintain the actual time records, but the records would also have to include records of the specific activities in which the volunteers were engaged. Some of the volunteer activities would count toward the organization's 'primary purpose' but others would not – and the category of activities that would NOT count toward an organization's primary purpose are substantially increased under the NPRM.

[8] The IRS has provided guidance for section 501(c)(4) social welfare organizations on its website. Life Cycle of a Social Welfare Organization, IRS.Gov, (accessed January 26, 2014), http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Life-Cycle-of-a-Social-Welfare-Organization.

The recordkeeping in this area alone is monstrous and is completely disregarded by Treasury and the IRS in the NPRM.

And, by extension, the preposterous notion in the NPRM that a public statement by "volunteers acting under the organization's direction or supervision" are to be attributed to the Section 501(c)(4) organization for purposes of calculating the percentage "spent" for primary purpose activities is burdensome, vague and violates the First Amendment association rights of every Section 501(c)(4) organization in the country.

There are countless questions that arise from these sections of the NPRM: would the comments of volunteers posted on their personal social media pages or accounts be attributed to Tea Party Patriots? At what point is a volunteer associated with Tea Party Patriots no longer acting or speaking in association with Tea Party Patriots but rather in his or her individual capacity, as a free and independent citizen of the United States? What is a guest speaker or a volunteer becomes a candidate for office after his/her appearance or association with Tea Party Patriots? Is there to be a retroactive attribution to Tea Party Patriots?

If "clarity" is the watchword of the NPRM, how exactly does an organization avoid a comprehensive "facts and circumstances" inquiry into whether a statement by a volunteer is or is not 'attributable' to the organization, when that is the case, how far that 'attribution' standard extends in the past or in the future, just for starters? It would appear that, yet again, the Proposed Regulation is unclear, requiring many more intrusive fact-based inquiries than ever imagined under the current 'facts and circumstances' test – which is totally contrary to the stated purpose of the NPRM.

III. Responses to specific questions posed in the NPRM.

The IRS has requested specific comments on certain questions. Tea Party Patriots hereby submits its responses to the questions posed:

- *The standard under current regulations that considers a tax-exempt social welfare organization to be operated exclusively for the promotion of social welfare if it is "primarily" engaged in activities that promote the common good and general welfare of the people of the community;*

1. *How this standard should be measured;*

2. *Whether this standard should be changed;*

Tea Party Patriots Comments: Tea Party Patriots submits that political activities by social welfare organizations *do* promote the common good and the general welfare of the people of the community – and *all* the activities that the IRS proposes to define as 'candidate-related political activities' – other than true *Buckley* defined express advocacy communications urging the election or defeat of clearly identified candidates – *should* be counted toward the primary purpose, social welfare mission of any Section 501(c)(4) organization that engages in those activities. That would ensure the clarity the IRS claims to be seeking, and would not impose the substantial recordkeeping and paperwork burdens on organizations that the IRS is attempting to levy.

The standard should be measured *solely* by program expenditures and *not* by any subjective measure such as 'volunteer hours' – and the only change in the standard should be that every activity contained in the NPRM should be recognized as a primary purpose activity, other than the *Buckley* standard of express advocacy expenditures supporting or opposing candidates using *express* language as described in *Buckley*.

Insofar as the percentage of *Buckley* standard expenditures, the present standard that allows political activities to a limit of 49.9 percent of an organization's program expenditures is not a problem and there is no need to change it. Tea Party Patriots does not make *any* political expenditures but we respect the rights of other Section 501(c)(4) organizations to make such expenditures up to the 49.9% of their total program expenditures.

Specific questions regarding 'paperwork burden'; the IRS has concluded that none of these proposed regulations will have any impact on any section 501(c)(4) entity other than the paperwork that 'might' be associated with a c4's contributions to another entity engaging in CRPA. Clearly, the IRS has disregarded completely the enormous paperwork burdens that these proposed regulations will impose upon most section 501(c)(4) entities. The following are the questions posed by the IRS as required by law regarding potential paperwork burden/impact of proposed federal regulations:

> *3. Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;*
>
> *4. The accuracy of the estimated burden associated with the proposed collection of information;*
>
> *5. How the quality, utility, and clarity of the information to be collected may be enhanced;*
>
> *6. How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology.*

Tea Party Patriots Comments: Tea Party Patriots has attached to these comments its January 28, 2014 letter to OMB, in which we detailed the substantial failure of the IRS and Treasury to conduct an accurate, authentic analysis of the substantial paperwork burden(s) that will be imposed on every Section 501(c)(4) organization in America if these the NPRM is permanently promulgated.

The IRS has recognized that it is proposing an entirely new set of regulations that will be different from those applicable to 501(c)(3) and other organizations, and different still from the definitions of section 527 exempt function activity for political organizations. It asks for comments regarding:

> *7. Is it beneficial to have a more uniform set of rules relating to political campaign activity for other 501(c) tax-exempt organizations; should the same or a similar approach be adopted in addressing political campaign activities of other section 501(c) organizations?*

8. The Treasury Department and the IRS request comments on the advisability of adopting this approach in defining activities that do not further exempt purposes under sections 501(c)(5) [labor unions] and 501(c)(6) [business leagues].

9. Should the regulations under section 527 be revised to adopt the same or a similar approach in defining section 527 exempt function activity?

Tea Party Patriots Comments: It is wholly unacceptable to treat similarly situated exempt organizations differently, particularly when the organizations engage in the same activities. TPP objects to the NPRM in its entirety, and submits that these regulations should not be imposed on *any* organization. But as a general and important principle, any regulations defining 'political activity' should be the exact same definitions and applied equally to *all* Section 501(c) organizations—ALL of them, from Section 501(c)(3) through Section 501(c)(29). The definitions should never be different for one group or another. As we pointed out in our OMB comments, the NPRM would require organizations to keep multiple sets of books according to the varying definitions within the IRS regulations related to 'political activities'. This is ridiculous. And hardly furthers the notion of 'clarity'.

The regulations require 501c4 entities to 'primarily' engage in 'social welfare activities'. Treasury and the IRS pose the question regarding the meaning of "primarily" as used in the current regulations under section 501(c)(4). The current regulations provide, in part, that an organization is operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) if it is "primarily engaged" in promoting in some way the common good and general welfare of the people of the community. Treas. Reg. §1.501(c)(4)–1(a)(2)(i). As part of the same 1959 Treasury decision promulgating the current section 501(c)(4) regulations, regulations under section 501(c)(3) were adopted containing similar language: "[a]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)." Treas. Reg. §1.501(c)(3)–1(c)(1). Unlike the section 501(c)(4) regulations, however, the section 501(c)(3) regulations also provide that "[a]n organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Id.

Some have questioned the use of the "primarily" standard in the section 501(c)(4) regulations and suggested that this standard should be changed. The Treasury Department and the IRS are considering whether the current section 501(c)(4) regulations should be modified in this regard and, if the "primarily" standard is retained, whether the standard should be defined with more precision or revised to mirror the standard under the section 501(c)(3) regulations. Given the potential impact on organizations currently recognized as described in section 501(c)(4) of any change in the "primarily" standard, the Treasury Department and the IRS wish to receive comments from a broad range of organizations before deciding how to proceed. Accordingly, the Treasury Department and the IRS invite comments from the public on:

10. What proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4)?

11. Should additional limits be imposed on any or all activities that do not further social welfare?

12. How should the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations be measured for these purposes?

Tea Party Patriots Comments: As stated previously, TPP believes that the present law is sufficient and that the IRS has not legal authority or directive to unilaterally change the law, absent an Act of Congress. The IRS should *not* be in the business of soliciting ideas for 'additional limits' to be imposed on Section 501(c)(4) organizations; that is the job of the duly elected Congress of the United States.

With regard to Question #12 – this is the fundamental problem the IRS caused that started this entire scandal involving applicants for Section 501(c)(4) status. The IRS should only review the information contained in the published Form 1024 for purposes of reviewing the qualifications of organizations as social welfare organizations. The IRS has been and continues to treat exempt status applications of tea party organizations – including Tea Party Patriots - as 'program audits'. There was and is no legal authority for the IRS to have abandoned the published Form 1024, the instructions to the Form 1024 and the process that had been employed for decades prior to the targeting initiative. The IRS should cease altogether its efforts to 'screen' applicants through the unlawful process in which it has been engaged these past four years. If an organization submits the Form 1024 that is publicly available to the American people, together with the duly required materials and information according to the application form and instructions, and answers under penalty of perjury the questions posed on the Form 1024, then the application should be processed and approved and the *only* information sought is to amplify that which appears on the Form 1024. That was the process prior to 2010, when the IRS unilaterally rewrote the process and departed completely from the Form 1024 and the instructions. That is the legally defined process to which the IRS should return.

Under the approach in these proposed regulations, CRPA would be subject to what the IRS describes as "a more definitive rule", consistent with the goal of providing greater clarity. According to the IRS, the proposed regulations would identify certain specific activities as candidate-related political activity. The Treasury Department and the IRS acknowledge that the approach taken in these proposed regulations, may be both more restrictive and more permissive than the current approach.

13. Are the proposed regulations "clearer" than the current standards?

14. Is the proposed approach justified by the need to provide greater certainty to section 501(c)(4) organizations regarding their activities and reduce the need for fact-intensive determinations?

Tea Party Patriots Comments: Clearer? There is nothing about the Proposed Regulations that is 'clearer'. There is no certainty and no clarity *other* than the clear and certain motive to chill the First Amendment rights of all Americans and their citizen organizations. Where is the certainty? Only that an organization that engages in protected First Amendment activities such as voter registration, nonpartisan voter guides, legislative voting records, grassroots lobbying and public statements that seek to educate and inform the public about the voting records and official actions of their elected representatives will be

targeted for extinction by the IRS. That is the only certainty and clarity that these Proposed Regulations provide.

The Proposed Regulations are vague, unclear and will necessitate an even *more* intrusive, fact-based inquiry into the inner-workings of every social welfare organization in the country.

Definition of 'candidate'. The Treasury Department and the IRS note that defining "candidate-related political activity" in these proposed regulations to include activities related to candidates for a broader range of offices (such as activities relating to the appointment or confirmation of executive branch officials and judicial nominees) is a change from the historical application in the section 501(c)(4) context of the section 501(c)(3) standard of political campaign intervention, which focuses on candidates for elective public office only. See Treas. Reg. §1.501(c)(3)–1(c)(3)(iii). 1. These proposed regulations instead would apply a definition that reflects the broader scope of section 527 and that is already applied to a section 501(c)(4) organization engaged in section 527 exempt function activity through section 527(f).

15. Should the definition of candidate include every public official, local/state and federal, appointive and elective, as envisioned by these proposed regulations?

Tea Party Patriots' Comments: NO.

Time period for 'electioneering communications'. The proposed time period is 30 days before a primary (or caucus) and 60 days before the general election. Any and all public communications that refer to, reference, or depict any 'candidate' (meaning, any public official) is CRPA.

16. Should the time period be longer (or shorter)?

17. Should there be particular communications that (regardless of timing) that are excluded from the definition because they can be presumed to neither influence nor constitute an attempt to influence the outcome of an election?

18. How is a proposed exclusion consistent with the goal of providing clear rules that avoid fact-intensive determinations?

Tea Party Patriots Comments: NO. There should be no reference to 'electioneering communications' anywhere in the IRS regulations. If there is to be a clear definition, then the IRS should adopt the *Buckley* express advocacy standard, that if an expenditures for a communication expressly advocates the election or defeat of a clearly identified candidate for office, using words such as vote for, vote against, support, oppose, elect or defeat, then that is a candidate-related political activity and does not count against the organization's primary purpose. And that is true whenever the communication occurs.

That's it. Simple. Understandable. Clear. No facts or circumstances, no clock or calendar watching, nothing but clarity.

Appointive offices treated differently. The Treasury Department and the IRS note that this rule regarding public communications close in time to an election would not apply to public communications identifying a candidate for a state or federal appointive office that are made within a specified number of days before a scheduled appointment, confirmation hearing or vote, or other selection event.

19. Should a similar rule should apply with respect to communications within a specified period of time before such a scheduled appointment, confirmation hearing or vote, or other selection event?

Tea Party Patriots Comments: No. None of this should be included in any IRS regulations.

Election-related education. The Treasury Department and the IRS acknowledge that under the facts and circumstances analysis currently used for section 501(c)(4) organizations as well as for section 501(c)(3) organizations, certain election-related activities (voter guides, candidate debates, candidate forums) may not be considered political campaign intervention if conducted in a non-partisan and unbiased manner. However, these determinations are highly fact-intensive.

20. Are there any particular activities conducted by section 501(c)(4) organizations that should be excepted from the definition of candidate-related political activity as voter education activity?

21. If so, how would the proposed exception be described to both ensure that excepted activities are conducted in a non-partisan and unbiased manner and to avoid a fact-intensive analysis?

Tea Party Patriots Comments: See prior comments contained in this letter.

Activities by Third Parties attributed to section 501(c)(4) organization as CRPA.

22. Whether, and under what circumstances, should material posted by a third party on an interactive part of the organization's Web site be attributed to the organization for purposes of this rule?

Tea Party Patriots Comments: Never. Is the IRS going to hire a battalion of snoops to peruse our websites? How is that promoting 'clarity'?

Responsibility for CRPA of a linked website. The Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a

charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. See Rev. Rul. 2007–41.

23. *Should the consequences of establishing and maintaining a link to another Web site be the same or different as described above for purposes of the proposed definition of candidate-related political activity?*

Tea Party Patriots Comments: See our comments to OMB. No, there should *never* be a 'charge' to an organization for linking to a third party's website. This is wholly subject to a 'facts and circumstances' inquiry into every organization's website and every link from the organization's site to any/all other sites. What is 'clear' about that other than that the IRS is intent upon chilling the First Amendment rights of organizations to disseminate information to the citizens.

CONCLUSION:

Tea Party Patriots submits these comments in opposition to the Proposed Regulations in their entirety. Tea Party Patriots hereby requests public hearings to be conducted throughout the United States and both of the undersigned hereby request the opportunity to testify at any and all public hearings scheduled to discuss the Proposed Regulations.

Please contact the undersigned at the number below if you have questions regarding these comments.

Sincerely,

Jenny Beth Martin, President
Tea Party Patriots, Inc.
1025 Rose Creek Dr; STE 620-322
Woodstock, GA 30189

Cleta Mitchell, Esq., Counsel
Tea Party Patriots, Inc.
c/o FOLEY & LARDNER, LLP
3000 K Street, NW #600
Washington, DC 20007
(202) 295-4081 (ofc)
cmitchell@foley.com

Attachment A:

FOIA Requests by Tea Party Patriots to the Treasury Department and the Internal Revenue Service and Respective Responses

FOIA REQUEST TO TREASURY

FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
TELEPHONE: 202.672.5300
FACSIMILE: 202.672.5399
WWW.FOLEY.COM

FACSIMILE TRANSMISSION

Total # of Pages 6 (including this page)

TO:	PHONE #:	FAX #:
Hugh Gilmore, Director Disclosure Svcs./FOIA/Dept. of the Treasury		202-622-3895

From : Cleta Mitchell, Esq.
Email Address : cmitchell@foley.com
Sender's Direct Dial : 202.295.4081
Date : December 10, 2013
Client/Matter No : 999100-0100
User ID No : 0310

MESSAGE:

If there are any problems with this transmission or if you have not received all of the pages, please call 202.672.5517.

Operator:	Time Sent:	Return Original To: Catherine D. Kidwell

FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

December 10, 2013

VIA FAX (202) 622-3895

Hugh Gilmore, Director, Disclosure Services
FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, D.C. 20220

Re: **Freedom of Information Act Request**

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (the "Department"), 31 CFR Part 1, Subpart A, I am requesting copies of all Department records related to the following topics:

1. IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of "political" or "lobbying" for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

3. The Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053) (issued May 14, 2013) (the "Report") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

This request includes (but is not limited to) the following:

a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.

c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including and not limited to the General Counsel's Office and the Secretary's executive office.

d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed $25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:
1 = Tax Return/Return Information

Phone Number / ***202-622-6500***
E-mail Address / ***TIGTACommunications@tigta.treas.gov***
Website / ***http://www.treasury.gov/tigta***

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)[13] were forwarded to a team of specialists[14] for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

**********|**********
**********|**********
*1***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. ********|**********

[13] Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.
[14] Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2013

RE: 2013-12-071

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K. St., N.W. – Suite 600
Washington, DC 20007-5109

Dear Ms. Mitchell:

This concerns your Freedom of Information Act (FOIA) request of December 10, 2013, which was e-mailed to Hugh Gilmore with the U.S. Department of the Treasury. You have requested records concerning IRS News Release 2013-92, November 26, 2013 and Notice of Proposed Rulemaking, Reg. 134417-13; political activities of social welfare organizations or business leagues and the Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications Report for Review". A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search and review of the information requested due to consultation required between two or more program offices and the timeframe of the requested records. This will require an additional processing extension of ten (10) days.

Further inquiries concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202/622-3895 or mailed to:

FOIA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Sincerely,

Digitally signed by Ryan Law
DN: cn=Ryan Law, o=Disclosure Services, ou=U.S. Department of the Treasury, email=FOIA@treasury.gov, c=US
Date: 2013.12.23 14:46:55 -05'00'

Ryan Law
Director, Disclosure Services

****
*** TX REPORT ***
****

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FOLEY & LARDNER LLP

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ORIGINAL WILL BE SENT BY CERTIFIED MAIL MAIL

Total # of Pages 2 (including this page)

TO:	PHONE #:	FAX #:
Ryan Law Director, Disclosure Services FOIA Request Disclosure Services Department of the Treasury		202-622-3895

From :	Cleta Mitchell, Esq.
Email Address :	cmitchell@foley.com
Sender's Direct Dial :	202.295.4081
Date :	January 6, 2014
Client/Matter No :	999100-0100
User ID No :	0310

MESSAGE:

FOLEY
FOLEY & LARDNER LLP

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3000 K STREET, N.W.
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202.672.5300 TEL
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January 6, 2013

VIA FAX & CERTIFIED MAIL
CERTIFIED MAIL NO.: 7007 1490 0003 8436 0903

Ryan Law
Director, Disclosure Services
FOIA Request
Disclosure Services
Department of the Treasury
Washington D.C. 20220
Fax: 202-622-3895

Re: **Freedom of Information Act Request 2013-12-071**

Dear Mr. Law:

I am in receipt of your December 20, 2013 letter regarding the above-referenced Freedom of Information Act request. Your letter states that unusual circumstances exist with regard to the FOIA request.

Please commence production of responsive documents and records as soon as possible, even if your search is incomplete. I expect that production can begin before the required response date of January 9th (20 business days after the request is received). If production is not completed by that date, I ask that you advise us as to the status of the search at that time and continue to produce responsive documents and records by the required date under an extension (10 business days after the original deadline (January 24th)).

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

January 6, 2014

Cleta Mitchell
Foley & Lardner LLP
Washington Harbour
3000 K St NW, Ste 600
Washington, DC 20007-5109

Dear Cleta Mitchell:

I am responding to your Freedom of Information Act (FOIA) request dated December 10, 2013 that we received on December 12, 2013.

I am unable to send the information you requested by January 13, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to January 28, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by January 28, 2014. We have extended the response date to April 7, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

JAN 13 2014

- Where the records are located, or
- In the District of Columbia

You may file suit after January 28, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14347-0041.

Sincerely,

Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group

FOIA REQUEST TO IRS

FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

December 10, 2013

VIA OVERNIGHT MAIL
TRACKING NO.: 7973-5820-5562

Paula Curren
Internal Revenue Service
Attn: Disclosure Scanning Operation
4800 Buford Hwy – Stop 93A
Chamblee, GA 39901-0093

Re: **Freedom of Information Act Request**

Dear Ms. Curren:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Internal Revenue Service ("IRS"), 26 C.F.R. Section 601.702, I am requesting copies of the following IRS records:

1. All records related to IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance"), including but not limited to the following:

   a. Correspondence to / from any agent, employee, or representative of the IRS with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

   b. Internal IRS documents, memorandums, and communications between or among any agent, employee, representative of the IRS, including, but not limited to, Danny Werfel, William Wilkins, and Amy F. Giuliano related to the Guidance.

2. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating to political activities of social welfare organizations and the topics contained in the Guidance from January 1, 2008 to present.

3. All records related to consideration and standards for processing tax-exempt status of organizations classified, denoted, or otherwise set apart by the IRS as "potential political cases" as described in the May 14, 2013 Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference

Number 2013-10-053) (the "Report") that were used, or in any way relied upon, for the development of the Guidance. See attached for page 5 of the Report.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed $25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:
1 = Tax Return/Return Information

Phone Number / ***202-622-6500***
E-mail Address / ***TIGTACommunications@tigta.treas.gov***
Website / ***http://www.treasury.gov/tigta***

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)[13] were forwarded to a team of specialists[14] for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

**********|**********
**********|**********

*1***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. ********|**********

[13] Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

[14] Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

Jan 6, 2014

Thank you, Denise.

And to be clear, we want the records/documents related to any formal/informal task force(s), staff groups that were established or formed any time since Jan 1, 2008 whose deliberations and discussions form any part of the basis of the proposed rules / NPRM to which we refer as the "Guidance". Hope that makes sense.

Thank you! Cleta

Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street NW #600
Washington, DC 20007
(202) 295-4081 (direct)
(202) 431-1950 (cell)
(202) 672-5399 (fax)
cmitchell@foley.com

From: Higley Denise [mailto:Denise.Higley@irs.gov]
Sent: Monday, January 06, 2014 2:13 PM
To: Mitchell, Cleta
Subject: FOIA Request F14347-0041

Cleta,

Per our phone conversation today pertaining to your Freedom of Information Act (FOIA) request dated December 10, 2013, this is to confirm our conversation pertaining to item two of your request. The January 1, 2008, date listed in item two is an arbitrary date. The records you are seeking are any and all communication, etc., from the inception of any task force and/or team that was put together relating to the preparation of the Notice of Proposed Rulemaking, Reg-134417-13 (Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities) 78 Fed. Reg 71535-71542.

In other words, a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rulemaking Reg-134417-13.

Thank you for your time and clarification regarding this FOIA request. The case number assigned to your request is F14347-0041.

Denise Higley
Tax Law Specialist
HQ Disclosure Office FOIA
M/S 7000
1973 N Rulon White Blvd
Ogden, UT 84404
801-620-7638 fax: 801-620-7676

Attachment B:

Letter Requesting Extension of Comment Period

FOLEY

FOLEY & LARDNER LLP

ATTORNEYS AT LAW

WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
202.295.4081
cmitchell@foley.com EMAIL

CLIENT/MATTER NUMBER
105604/0101

February 4, 2014

VIA HAND-DELIVERY

The Honorable Jack Lew
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Request for Extension of Deadline for Filing Public Comments regarding IRS Notice of Proposed Rulemaking for Section 501(c)(4) Organizations

Dear Sirs:

On behalf of Tea Party Patriots, a not-for-profit grassroots citizens organization, we hereby request that the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") extend the deadline for filing public comments regarding the IRS Notice of Proposed Rulemaking for Section 501(c)(4) organizations ("the NPRM") until a date *after* your departments have complied with the Freedom of Information Act requests filed by the undersigned on December 10, 2013 ("Tea Party Patriots FOIA Requests").

Attached please find the Tea Party Patriots FOIA requests filed on December 10, 2013 with both of your departments and the "responses" received to date.

The deadline for public comments regarding the NPRM is February 27, 2014; however, Treasury has indicated that it will not provide responsive documents regarding the NPRM until April 7, 2014 and we have yet to receive any documents from the IRS or even any indication as to when responsive documents will be forthcoming.

The NPRM has provided *zero* documents at the public website where such background documents related to a rulemaking are normally posted.

In fact, the Regulations.gov website tab for "Related Documents" states that there are "none". See http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001. Accessed February 4, 2014.

Accordingly, we hereby request that the deadline for public comments regarding the NPRM be extended until at least thirty (30) days after Treasury and the IRS make public all documents and materials related to the NPRM, in order that the public can be fully informed as to the meaning, development and origins of the proposed regulations.

We should not have to file suit against your agencies simply to obtain what is lawfully required of your agencies to furnish and which is necessary information for us to fully understand the NPRM and to formulate proper comments regarding the proposed regulations.

Please contact me at (202) 295-4081 if you have questions regarding this request.

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq., Counsel
Tea Party Patriots

cc: Ms. Jenny Beth Martin, President
Tea Party Patriots

Attachment C:

Letter to OMB from Tea Party Patriots and FreedomWorks, Inc. Detailing Deficiencies under the Paperwork Reduction Act of 1995; the Regulatory Flexibility Act and the Administrative Procedures Act

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January 28, 2014

Office of Management & Budget
Attn: Desk Officer for the
Department of the Treasury
Office of Information & Regulatory Affairs
Washington, DC 20503

Re: **Re: Comments on the Collection of Information under the Proposed Guidance for Tax-Exempt Social Welfare Organizations ("the NPRM")**

To Whom It May Concern:

On behalf of Tea Party Patriots, Inc. and FreedomWorks, Inc., the undersigned hereby submits these comments. As a practicing attorney in Washington, D.C., representing a multitude of non-profit citizens organizations, including the two 501(c)(4) tax exempt social welfare organizations on whose behalf these comments are submitted, these comments are reflective of the significant reporting and recordkeeping burdens that will be imposed on a substantial number of Section 501(c)(4) social welfare organizations if the NPRM is adopted as final regulations of the Internal Revenue Service ("IRS"). *See* 78 F.R. 71535; Internal Revenue Service Bulletin 2013-52, December 23, 2013.

Tea Party Patriots, Inc. is a grassroots citizens organization that applied in December, 2010 for tax exempt status as a 501(c)(4) social welfare organization and is *still* awaiting a Letter of Determination of Exempt Status from the Internal Revenue Service ("IRS"). Tea Party Patriots has an interest in the NPRM by virtue of the fact that it has functioned as a social welfare exempt organization in accordance with the published rules and guidance of the IRS for more than three (3) years and appears to have a better understanding of the applicable law and parameters governing its operations than the IRS employees and agents who have as yet been unable to make a decision regarding Tea Party Patriots' application for exempt status, despite multiple rounds of intrusive and burdensome questions and inquiries about the organization.

FreedomWorks, Inc. is a grassroots citizens organization founded in 1984 and recognized as a tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code for the past thirty (30) years. The NPRM will substantially disrupt the operations and activities of FreedomWorks in which the organization has engaged for more than three decades.

If issued in final form and upheld on judicial review, the NPRM would undermine the mission and existence of both of these organizations by reclassifying as 'candidate-related political activities' their core First Amendment programs of citizen involvement in government through grassroots lobbying and the organizations' commitment to holding public officials accountable to the citizenry for their public actions, voting records and decisions.

Introduction to NPRM

On November 29, 2013, the Internal Revenue Service ("IRS") and the Department of Treasury ("Treasury") issued a notice of proposed rulemaking ("NPRM") containing proposed regulations defining and restricting "candidate-related political activities" (*"CRPA"*) by social welfare organizations described under Section 501(c)(4) of the Internal Revenue Code. 78 FR 71535, *et seq*. The IRS contends its employees need a simpler and easier way to manage the definition of "political activities" and have published the proposed regulations under the guise of 'clarity', 'certainty', and a reduction in the need for 'detailed factual analysis of whether an organization is described in Section 501(c)(4)'. However, these proposed regulations do nothing of the kind; they are vague and uncertain and will create even greater confusion and less clarity than the present law, and will impose immense paperwork burdens on thousands of social welfare organizations across the country notwithstanding the statements of Treasury and the IRS to the contrary.

For purposes of the Paperwork Reduction Act ("PRA"), Regulatory Flexibility Act, and related Executive Orders, the immediate concern is that Treasury and the IRS have completely disregarded the recordkeeping, compliance and paperwork burdens that these proposed regulations would impose. In fact, the IRS and Treasury concluded that only one small section of the proposed regulations would require *any* evaluation under the PRA, to-wit, the grant-making aspects of the proposed regulations. But even that estimated paperwork burden was wholly insufficient with an estimate of 'two hours' per year. A more comprehensive discussion of that estimate follows below.

To say that the PRA assessment of the NPRM is completely inadequate is....well, completely inadequate. Treasury and the IRS consideration of and compliance with the provisions of the PRA is nonexistent.

OMB must take immediate steps to ensure that the actual paperwork burdens are assessed and revised, something that the IRS and Treasury have utterly failed to do.

The NPRM Fails to Comply with OMB Directives to Reduce Paperwork Burdens and Information Collection by Federal Agencies

Treasury and the IRS have completely ignored the April 7, 2010 and June 22, 2012 Memoranda from Cass R. Sunstein, Administrator of the Office of Information and Regulatory Affairs ("OIRA") directing the heads of Executive Departments and Agencies and Independent

Regulatory Agencies to take certain steps to ensure compliance with the President's memorandum of January 21, 2009 calling for "a system of transparency, public participation, and collaboration." The April 2010 Memorandum noted that a central goal of OMB in this Administration is to evaluate whether the collection of information by an agency is: necessary, whether it minimizes the information collection burden and maximizes the practical utility of and public benefit from information collected by or for the Federal Government. The June 2012 Memorandum, on its very first page, restated this goal: "Eliminating unjustified regulatory requirements, including unjustified reporting and paperwork burdens, is a high priority of this Administration." Continuing on the first page, the memorandum stresses that agencies should produce "significant quantifiable reductions in paperwork burdens."

Here, neither Treasury nor the IRS made even a token attempt to conduct an evaluation of the information collection burdens necessitated by the NPRM if the proposed rules are issued as final regulations.

Similarly, on June 22, 2012, OIRA issued a Memorandum directing agencies to take further steps to eliminate unjustified regulatory requirements. The NPRM is wholly inconsistent with the directives in these various edicts from the White House, OMB, and OIRA.

While it is common practice for Treasury and the IRS to claim themselves exempt in their rulemaking(s) from the Administrative Procedure Act[1] (5 U.S.C. §§551 *et seq.*) and the Regulatory Flexibility Act (44 U.S.C. §§3501 *et seq.*), those claims of exemption rest on their assertions that they are acting in furtherance of congressional directives and/or legislative actions and Treasury and the IRS have no discretion insofar as the promulgation of new regulations to implement such congressional action. While such a claim of exemption is always arguable, here, it is totally without legal basis. This NPRM arises from no intervening congressional action or statutory change. The NPRM is totally discretionary by the IRS and Treasury. As IRS and Treasury state, the purpose of the NPRM (allegedly) is to "provide greater certainty and reduce the need for detailed factual analysis in determining whether an organization is described in section 501(c)(4)." 78 FR at 71537. Accordingly, any and all claims of exemption are wholly inappropriate and wrong as a matter of law.

We also note for the record – and will be explaining this point in more detail in our forthcoming comments on the NPRM – the absurdity of the assertion by IRS and Treasury that the NPRM is not a "significant" rule under Executive Order 12866 as supplemented by Executive Order 13563 and will not have a "significant economic impact on a substantial number of small entities." 78 FR at 71540.

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[1] In the preamble to the NPRM, IRS claims as follows: "It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations." 78 FR at 71540.

There are Multiple *Different* Types of Paperwork and Compliance Burdens Ignored by Treasury and IRS in the NPRM .

It is impossible to detail all of the paperwork and compliance consequences that the NPRM would impose on every grassroots organization in America but suffice to say that the NPRM would require voluminous and complicated record-keeping by every 501(c)(4) group, as well as any other 501(c) group that may have financial interactions with a 501(c)(4) organization. New systems would necessarily have to be established and maintained by all 501(c)(4) organizations, and many other 501(c) organizations, in order to comply with these regulations. Indeed, for a 501(c)(4) organization to maintain and preserve its exempt status as a social welfare organization, the compliance and paperwork obligations are enormous.

The only 'paperwork' burden acknowledged by the IRS is for grants from a 501(c) organization to any other 501(c) organization, which means that not only will 501(c)(4) groups be forced to learn and operate under these rules, but any other 501(c) organization that expects to *receive* a grant from another organization must also learn and establish systems for complying with these new rules. Both grantors and grantees must track whether the grantee is engaged in or intends to engage in the programs and behaviors described in the NPRM. Even if the grant is for an entirely different purpose, not involving or used for 'candidate-related political activities', the grant is converted to a non-primary purpose activity if a grantee engages or 'has engaged' in 'candidate-related political activity'. The only paperwork burden acknowledged by Treasury and the IRS is for this 'special' grant-making process; yet, even those paperwork burdens are substantially underestimated by IRS and Treasury which estimate a mere 2 hours per year which, as noted herein, is preposterously low.

The analysis by Treasury and the IRS of the 'special rules for grantmaking' is a contradiction of the interpretation of the PRA contained in the Sunstein April 2010 Memorandum. The April 2010 Memorandum restated that the requirements of the PRA applies not only to "requests for information to be sent to the government, such as forms (e.g., the IRS 1040), written reports (e.g., grantee performance reports), and surveys (e.g., the Census)" but also to " recordkeeping requirements (e.g., OSHA requirements that employers maintain records of workplace accidents)." The NPRM implicates both elements – information to be sent to the IRS and required recordkeeping – but the paperwork burden analysis of the NPRM by Treasury and the IRS completely disregards both.

Because the proposed regulations are vague, misleading, and provide insufficient direction to organization officers and leaders or to legal and accounting practitioners to be able to accurately and fully advise clients as to their meaning, the actual burdens will only become fully known in time, well after the regulations are imposed.

This is the opposite of the President's stated objectives on January 21, 2009 when he pledged an Administration of "transparency, public participation, and collaboration". Surely OMB will not

allow the Department of Treasury and IRS to simply hide the truth about the impact of the NPRM insofar as the compliance, paperwork and recordkeeping burdens are concerned.

This is also the opposite of the claimed purpose of the NPRM, which allegedly seek 'clarity'; these proposed regulations provide anything but clarity.

Knowing that there are many hidden burdens contained in the NPRM, there are, nonetheless, some specific paperwork and compliance burdens that immediately come to mind as known examples of paperwork and compliance burdens ignored by the IRS and Treasury and which must be addressed by OMB. The examples herein are more than sufficient reason for OMB to reject the NPRM and to return to Treasury and the IRS for an actual assessment of the true paperwork burdens to which these proposed regulations would give rise.

Examples of Compliance and Paperwork Burdens Directly Caused by the NPRM:

1. **Volunteer Time and Activity Recordkeeping.** Current IRS guidance allows an organization to monitor its 'primary purpose activities' by tracking its *program expenditures.* 2013 IRS Form 990 Instructions, *Return of Organization Exempt From Income Tax*, p. 64.[2] See Attachment A, "*2013 Instructions for Schedule C, Form 990 or 990-EZ, Political Campaign and Lobbying Activities*, Department of the Treasury." The proposed regulations in the NPRM would impose a new component *requiring* that nonprofit organizations include in their 'primary purpose' calculations 'volunteer activities'; yet, there is no further definition, guidance, means of measurement, or other directions as to how such 'volunteer activities' are to be captured, calculated or reported on the Form 990. The NPRM is totally silent on exactly *how* an organization is supposed to perform the calculations necessary for measuring the value of its 'volunteer activities', but at the very least *someone,* either organization staff or the volunteers themselves, would be required or expected to keep time records of the time spent engaged in activities related to the organization, and submit those to the organization. The organization would then have to perform some manner of valuation of the volunteers' time spent on its behalf, but not only would the organization be required to obtain / maintain the actual time records, but the records would also have to include records of the specific activities in which the volunteers were engaged. Some of the volunteer activities would count toward the organization's 'primary purpose' but others would not – and the category of activities that would NOT count toward an organization's primary purpose are

[2] The IRS has provided guidance for section 501(c)(4) social welfare organizations on its website. Life Cycle of a Social Welfare Organization, IRS.Gov, (accessed January 26, 2014), http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Life-Cycle-of-a-Social-Welfare-Organization.

substantially increased under the NPRM. The recordkeeping in this area alone is monstrous and is completely disregarded by Treasury and the IRS in the NPRM.

2. **Primary Purpose Recordkeeping:** The proposed regulations would create a new definition and category of activities – *candidate-related political activities ("CRPA")* – which would NOT count toward a 501(c)(4) organization's primary purpose. Therefore, every 501(c)(4) organization will necessarily be required to establish new policies and procedures for reviewing each and every activity in which it engages in order to determine whether the activities and programs constitute *CRPA* as newly defined. Then, an organization would have to establish compliance systems to allocate the costs of its programs and activities on an ongoing basis to track which programs and expenditures qualify as primary purpose and which do not.

   One of the most egregious parts of the proposed regulations is that the definitions proposed in the NPRM would convert *non*-candidate related political activities *into* candidate related political activities (and thus, would be converted to non-primary purpose activities) merely by the passage of time.

   Example: Legislative Voting Histories. Many social welfare organizations maintain and publish voting records of members of elected bodies as a fundamental component of their mission. Organizations develop such legislative voting records and score cards and post the information on their websites or disseminate the information to their membership or the general public. This is core First Amendment activity and common for many grassroots, social welfare organizations – and under current law, such activities count as a primary purpose activity of a social welfare organization. *See Rev. Rul. 80-282, 1980 -2 C.B. 178.*

   However, under the proposed definitions of *CRPA* , legislative voting records will be converted to *CRPA* if the information remains available on the organization's website within the new 'communications close to an election' window ("the window"), and is not timely removed by the 31st day preceding a primary election or the 61st day preceding a general election.

   A multitude of questions arise just for this *one* activity:

   - How are the costs to be calculated and allocated between the development and posting of the information before the window and remaining publicly available within the window?
   - Is it the entire cost of the production of the voting record when it was first prepared and published at the time *outside* the window when it *did* qualify as a primary purpose activity? Or is the calculation to be some portion thereof?

- What methodology must be employed by the organization to be able to calculate the value of the activity which was once, but is no longer, deemed to support the organization's primary purpose?

Every organization would be required to develop a system for tracking, analyzing, allocating and reallocating costs of the publication of legislative votes if or when the information is still publicly available during the period 'close to an election' (as further described below) on the organization's website or in other materials of the organization. In sum, every c4 organization would necessarily have to maintain a constantly updated status of its expenditures – including the value of its volunteer activities – on an ongoing basis in order to make judgments about what activities it can engage in at any given moment, whether there is a primary election somewhere that might implicate the organization's communications and activities about grassroots lobbying, legislative voting records, calls for citizen action, and other activities and programs in which citizens' organizations have been engaged for decades.

Organizations will be required to constantly monitor all their activities and programs in order to know what communications must be removed from the websites, or withheld from their publications, and so forth, and to maintain sufficient records and a chart of accounts of 'primary purpose' and 'non-primary purpose' activities, expenditures – and volunteer efforts -- in order to ensure that the group's 'primary purpose' is not endangered by engaging in some activity or activities that may or will no longer count toward the group's primary purpose.

The records and compliance systems necessary to ensure that the overall program expenditures and volunteer activities fall within the primary purpose as redefined by the NPRM are enormous – and ignored altogether by the IRS and Treasury.

3. Definition of Communications 'Close in Time to an Election' Imposes Substantial Paperwork Burdens. The NPRM's definition of 'communication close in time to an election' is utterly vague and insufficiently narrow to be comprehensible. The NPRM provides that any public communication within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election' is a *CRPA*. However, the definition doesn't limit the application of the new restrictions insofar as the *recipients* of the communication, *e.g.*, to persons or voters eligible to vote for the candidate that is referenced. The proposed definition only states that it is a communication within the specified time frame and that a candidate 'in the election' is referenced. The result is that an organization that makes communications about any public official who may also be a candidate for office – the same or another office – is subject to restrictions and expenditure calculations if there is a primary *anywhere* within 30 days of the communication.

An organization would be required to continually monitor the primary calendars of every state and to allocate and reallocate the costs of the group's communications – and volunteer activities – for purposes of calculating the group's primary purpose expenditures, including the value of attendant volunteer activities, to know when and whether it will or will not be able to make communications that reference elected officials who might also be 'candidates' in a primary or general election.

A communication about a candidate on the ballot in California is still a *CRPA* even if the communication is made in Illinois – such that the organization would be constantly required to monitor all primary election dates for any office anywhere – and to calculate the non-primary purpose of any activity or expenditure that is disqualified by the presence on a ballot of an official referenced in a communication.

Again, Treasury and the IRS have cobbled together an unintelligible set of regulations that will cause substantial paperwork, compliance and recordkeeping burdens on every social welfare organization in America.

4. Conflicting definitions in the regulations will require multiple accounting systems for organizations in order to comply with different provisions of the regulations. The NPRM proposes to create an entirely new set of definitions that deal with what are commonly referred to as political activities by exempt organizations, such that the regulations would now contain three different definitions in this area, which are different, incompatible and contradictory:

- 'exempt activities' for political organizations: This definition would continue to be applied to 501(c)(4) organizations for purposes of calculating the tax imposed on 501(c)(4) organizations who engage in activities that are exempt for Section 527 political organizations but taxable to 501(c)(4) organizations engaging in the same activities. Section 527(f); (e)(2).

- 'partisan campaign intervention'[3] – which is impermissible activity for a 501(c)(3) organization, but allowable to 501(c)(4) and other 501(c) groups,

[3] An organization is an "action organization" and thus disqualified from section 501(c)(3) status if "if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate." Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).

provided that expenditures for such programs do not constitute a majority of the organization's program expenditures.

- 'Candidate-related political activities' – the proposed new definitions contained in the NPRM

The paperwork, accounting and recordkeeping burdens associated with having multiple definitions of the same and/or similar activities are voluminous. The NPRM is silent on the subject of whether 'candidate-related political activities' are subject to the Section 527e tax. Preamble to Prop. Reg., 78 Fed. Reg. 71535, 71537 (Nov. 29, 2013), [REG-134417-13], Section 1,b, "Interaction with section 527."

Thus, a 501(c)(4) organization would continue to be required to keep track of its 527 exempt activities for purposes of calculating and reporting the taxable political expenditures on its 1120-POL return. The organization would have to maintain a second accounting system for its 'candidate-related political activities' for purposes of calculating its primary purpose expenditures – and while there may be some overlap, the definitions are not identical and the issue of taxation of *CRPA* is not addressed in the NPRM.

Further, if an organization has a companion 501(c)(3) educational and charitable affiliate –which many 501(c)(4) organizations do – the irony is that the 501(c)(3) organization would still be able to conduct nonpartisan voter registration, candidate forums, candidate debates and voter guides – all of which are permissible for 501(c)(3) organizations and do not count as 'partisan campaign intervention' – but which must now be tracked and counted as NON-primary purpose activities for a 501(c)(4) organization. Thus, organizations will necessarily have to maintain multiple accounting systems to capture and report the costs of the same activities in multiple ways and for different purposes, pursuant to different sections of the Internal Revenue Code.

The recordkeeping and mathematical analyses triggered by these proposed regulations is enormous. Yet, the IRS and the Treasury Department blithely disregard any and all paperwork burdens their handiwork would impose.

5. Public Communications By Third Parties "Attributable" to a 501(c)(4) Organization. One of the most insidious parts of the NPRM is that not only would communications by the organization over which it has control constitute *CRPA*, but also communications that could be 'attributable' to the organization when published by others (such as a news article or media interview) could also be deemed to be *CRPA* . For instance, if an officer *or a volunteer* makes a reference to a 'candidate' at an event sponsored by the organization and is quoted in the newspaper referencing the candidate, that becomes a 'candidate-related political activity' that must be measured, calculated and is disallowed as a

primary purpose activity / expenditure of the organization. The NPRM specially notes that such a communication or statement need not be made in the context of a 'previously scheduled' event; presumably, then, an interview by a news outlet with a representative of the organization can result in a 'candidate-related political activity' when published by the news outlet.

The proposed regulations would, accordingly, force organizations to create vast monitoring systems to track the quotes and references to the organization, its officers, employees *and volunteers* in order to then record and evaluate whether a 'candidate-related political activity' communication has occurred and, if so, undertake the requisite calculations and recordkeeping obligations attendant to such communications.

As with the rest of the NPRM, Treasury and IRS have disregarded altogether the paperwork burdens associated with this section.

Further, in the same section, the NPRM states:

> The "...proposed regulations also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity. The proposed regulations do not specifically address material posted by third parties on an organization's Web site. The Treasury Department and the IRS request comments on whether, and under what circumstances, material posted by a third party on an interactive part of the organization's Web site should be attributed to the organization for purposes of this rule. In addition, the Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. See Rev. Rul. 2007–41. The Treasury Department and the IRS request comments on whether the consequences of establishing and maintaining a link to another Web site should be the same or different for purposes of the proposed definition of candidate-related political activity." (emphasis added)

It is a relatively simple matter under existing regulations for a 501(c)(3) organization to know and understand that it should not link to a third party website that does (or may) engage in partisan campaign activity.

It is another matter entirely to extrapolate from and extend such a rule to 501(c)(4) organizations and their posting(s) and links to other websites for purposes of this very broad and impossibly vague and ill-defined purpose. If the IRS and Treasury conclude in final

regulations to adopt this approach, it will require every 501(c)(4) to either stop linking to any third party website or else establish at substantial cost and effort a constant monitoring system of any websites to which the organization may link. Even linking to a media website could trigger a 'cost' for purposes of primary purpose calculations if a media website contains references to candidates within the window restricting such references.

Conclusion

It is difficult to estimate the entire compliance and paperwork burden caused by the NPRM. The organizations making this comment estimate that the development, installation, and education required to create a record-keeping system adequate to meet the requirements set forth above in the first example (volunteer time and activity record) alone will require at least 100 hours annually of staff and compliance professional time. This is a conservative estimate; the true burden may well be multiples of that number. In addition, these organizations conservatively estimate that the collection, calculation, and valuation of volunteer time and activities for purposes will require an additional 100 hours of work annually. Again, this is a conservative estimate and the true burden may also be multiples of that number. Further, there are other latent record-keeping burdens in the NPRM that cannot be estimated.

In drafting the NPRM, Treasury and the IRS have completely ignored the purposes of the PRA, as set forth by Congress: "The purposes of this chapter [the PRA] are to— (1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions..." The organizations making this comment are nonprofit organizations and instead of minimizing the paperwork burden of these and similar organizations, the NPRM seeks to dramatically increase the size of the paperwork burden.

OMB should reject the proposed regulations and return the entire NPRM to the Department of Treasury and the IRS for proper analysis pursuant to the Paperwork Reduction Act and Regulatory Flexibility Act.

Further, a public hearing should be conducted by OMB and/or OIRA on the subject of the paperwork and regulatory burdens the NPRM will impose on organizations exempt under Section 501(c) of the Code. The undersigned would be pleased to testify at such a hearing.

Please contact me at (202) 295-4081 should you have any questions regarding these comments.

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq., Counsel
Tea Party Patriots, Inc., and
FreedomWorks, Inc.

Cc: Internal Revenue Service
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Attachments

2013

Instructions for Schedule C (Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Schedule C (Form 990 or 990-EZ) and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form990.

General Instructions

Note. Terms in **bold** are defined in the *Glossary* of the instructions for Form 990.

Purpose of Schedule

Schedule C (Form 990 or 990-EZ) is used by:

- Section 501(c) organizations, and
- Section 527 organizations.

These organizations must use Schedule C (Form 990 or 990-EZ) to furnish additional information on **political campaign activities** or **lobbying activities**, as those terms are defined below for the various parts of this schedule.

Who Must File

An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 3, 4, or 5, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990. An organization that answered "Yes" on Form 990-EZ, Part V, line 46 or Part VI, line 47, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ. An organization that answered "Yes" to Form 990-EZ, Part V, line 35c, because it is subject to the section 6033(e) notice and reporting requirements and proxy tax, must complete Part III of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ.

If an organization has an ownership interest in a **joint venture** that conducts **political campaign activities** or **lobbying activities**, the organization must report its share of such activity occurring in its **tax year** on Schedule C (Form 990 or 990-EZ). See Instructions for Form 990, Appendix F. *Disregarded Entities and Joint Ventures—Inclusion of Activities and Items.*

Part I. Political campaign activities. Part I is completed by section 501(c) organizations and section 527 organizations that file the Form 990 (and Form 990-EZ). If the organization answered "Yes" to Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46, then complete the specific parts as follows.

- A section 501(c)(3) organization must complete Parts I-A and I-B. Do not complete Part I-C.
- A section 501(c) organization other than section 501(c)(3) must complete Parts I-A and I-C. Do not complete Part I-B.
- A section 527 organization that files the Form 990 or Form 990-EZ must complete Part I-A. Do not complete Parts I-B and I-C.

Part II. Lobbying activities. Part II is completed only by section 501(c)(3) organizations. If the organization answered "Yes" to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47, then complete the specific parts as follows.

- A section 501(c)(3) organization that elected to be subject to the lobbying expenditure limitations of section 501(h) by filing Form 5768 and for which the election was valid and in effect for its **tax year** beginning in the year 2013, must complete Part II-A. Do not complete Part II-B.
- A section 501(c)(3) organization that has not elected to be subject to the lobbying expenditure limitations of section 501(h) (or has revoked such election by filing Form 5768 for which the revocation was valid and in effect for its **tax year** beginning in the year 2013) must complete Part II-B. Do not complete Part II-A.

Part III. Section 6033(e) notice and reporting requirements and proxy tax. Part III is completed by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that received membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19, section 5.01, 1998-7 I.R.B. 30 as adjusted by Rev. Proc. 2012-41; section 3.22; 2012-45 I.R.B. 539 and that answered "Yes" to Form 990, Part IV, line 5 or "Yes" to Form 990-EZ, line 35c, regarding the proxy tax.

If an organization is not required to file Form 990 or Form 990-EZ but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

Definitions

Definitions in this section are applicable throughout this schedule, except where noted. The following terms are defined in the *Glossary*.

- **Joint venture.**
- **Legislation.**
- **Lobbying activities.**
- **Political campaign activities.**
- **Tax year.**

TIP *See Revenue Ruling 2007-41, 2007-25 I.R.B. 1421, for guidelines on the scope of the tax law prohibition of campaign activities by section 501(c)(3) organizations.*

Section 527 exempt function activities. Section 527 exempt function activities include all functions that influence or attempt to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

Political expenditures. Any expenditures made for **political campaign activities** are political expenditures. An expenditure includes a payment, distribution, loan, advance, deposit, or gift of money, or anything of value. It also includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

Specific legislation. Specific **legislation** includes (1) legislation that has already been introduced in a legislative body and (2) specific legislative proposals that an organization either supports or opposes.

Definitions (Part II-A)

Definitions in this section are applicable only to Part II-A.

Expenditure test. Under the expenditure test, there are limits both upon the amount of the organization's grassroots lobbying expenditures and upon the total amount of its direct lobbying and grassroots lobbying expenditures. If

the electing public charity does not meet this expenditure test, it will owe a section 4911 excise tax on its excess lobbying expenditures. Moreover, if over a 4-year averaging period the organization's average annual total lobbying or grassroots lobbying expenditures are more than 150% of its dollar limits, the organization will lose its exempt status.

Exempt purpose expenditures. In general, an exempt purpose expenditure is paid or incurred by an electing public charity to accomplish the organization's exempt purpose.

Exempt purpose expenditures include:

1. The total amount paid or incurred for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition (not including providing athletic facilities or equipment, other than by qualified amateur sports organizations described in section 501(j)(2));

2. The allocable portion of administrative expenses paid or incurred for the above purposes;

3. Amounts paid or incurred to try to influence legislation, whether or not for the purposes described in 1 above;

4. Allowance for depreciation or amortization; and

5. Fundraising expenditures, except that exempt purpose expenditures do not include amounts paid to or incurred for either the organization's separate fundraising unit or other organizations, if the amounts are primarily for fundraising.

See Regulations section 56.4911-4(c) for a discussion of excluded expenditures.

Lobbying expenditures. Lobbying expenditures are expenditures (including allocable overhead and administrative costs) paid or incurred for the purpose of attempting to influence legislation:

- Through communication with any member or employee of a legislative or similar body, or with any government official or employee who may participate in the formulation of the legislation, and
- By attempting to affect the opinions of the general public.

To determine if an organization has spent excessive amounts on lobbying, the organization must know which expenditures are lobbying expenditures and which are not lobbying expenditures. An electing public charity's lobbying expenditures for a year are the sum of its expenditures during that year for direct lobbying communications (direct lobbying expenditures) plus grassroots lobbying communications (grassroots lobbying expenditures).

Direct lobbying communications (direct lobbying expenditures). A direct lobbying communication is any attempt to influence any legislation through communication with:

- A member or employee of a legislative or similar body;
- A government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation; or
- The public in a referendum, initiative, constitutional amendment, or similar procedure.

A communication with a legislator or government official will be treated as a direct lobbying communication if, but only if, the communication:

- Refers to specific legislation, and
- Reflects a view on such legislation.

Grassroots lobbying communications (grassroots lobbying expenditures). A grassroots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any part of the general public.

A communication is generally not a grassroots lobbying communication unless (in addition to referring to specific legislation and reflecting a view on that legislation) it encourages recipients to take action about the specific legislation.

A communication encourages a recipient to take action when it:

1. States that the recipient should contact legislators;

2. States a legislator's address, phone number, or similar information;

3. Provides a petition, tear-off postcard, or similar material for the recipient to send to a legislator; or

4. Specifically identifies one or more legislators who:

a. Will vote on legislation;

b. Opposes the communication's view on the legislation;

c. Is undecided about the legislation;

d. Is the recipient's representative in the legislature; or

e. Is a member of the legislative committee that will consider the legislation.

A communication described in item 4 above generally is grassroots lobbying only if, in addition to referring to and reflecting a view on specific legislation, it is a communication that cannot meet the full and fair exposition test as nonpartisan analysis, study, or research.

Exceptions to lobbying. In general, engaging in nonpartisan analysis, study, or research and making its results available to the general public or segment of members thereof, or to governmental bodies, officials, or employees is not considered either a direct lobbying communication or a grassroots lobbying communication. Nonpartisan analysis, study, or research may advocate a particular position or viewpoint as long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

A communication that responds to a governmental body's or committee's written request for technical advice is not a direct lobbying communication.

A communication is not a direct lobbying communication if the communication is an appearance before, or communication with, any legislative body concerning action by that body that might affect the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization, as opposed to affecting merely the scope of the organization's future activities.

Communication with members. For purposes of section 4911, expenditures for certain communications between an organization and its members are treated more leniently than are communications to nonmembers. Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements.

1. The communication is directed only to members of the organization.

2. The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members.

3. The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization).

4. The communication does not directly encourage the member to engage in grassroots lobbying (whether individually or through the organization).

Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and that satisfies the requirements of items (1), (2), and (4), above (under ***Grassroots lobbying communications***), but does not satisfy the requirements of item (3), are treated as expenditures for direct lobbying.

Expenditures for a communication directed only to members that refers to,

and reflects a view on, specific legislation and satisfies the requirements of items (1) and (2) above, but does not satisfy the requirements of item (4), are treated as grassroots expenditures, whether or not the communication satisfies the requirements of item (3). See Regulations section 56.4911-5 for details.

There are special rules regarding certain paid mass media advertisements about highly publicized legislation; allocation of mixed purpose expenditures; certain transfers treated as lobbying expenditures; and special rules regarding lobbying on referenda, ballot initiatives, and similar procedures. See Regulations sections 56.4911-2 and 56.4911-3.

Affiliated groups. Members of an affiliated group are treated as a single organization to measure lobbying expenditures. Two organizations are affiliated if one is bound by the other organization's decisions on legislative issues (control) or if enough representatives of one belong to the other organization's governing board to cause or prevent action on legislative issues (interlocking directorate). If the organization is not sure whether its group is affiliated, it may ask the IRS for a ruling letter. There is a fee for this ruling. For information on requesting rulings, see Rev. Proc. 2013-4, 2013-1 I.R.B. 126 (or latest annual update).

Members of an affiliated group measure both lobbying expenditures and permitted lobbying expenditures on the basis of the affiliated group's tax year. If all members of the affiliated group have the same tax year, that year is the tax year of the affiliated group. However, if the affiliated group's members have different tax years, the tax year of the affiliated group is the calendar year, unless all the members of the group elect otherwise. See Regulations section 56.4911-7(e)(3).

Limited control. Two organizations that are affiliated because their governing instruments provide that the decisions of one will control the other only on national legislation are subject to the following provisions.

- The controlling organization is charged with its own lobbying expenditures and the national legislation expenditures of the affiliated organizations,
- The controlling organization is not charged with other lobbying expenditures (or other exempt-purpose expenditures) of the affiliated organizations, and
- Each local organization is treated as though it were not a member of an affiliated group. For example, the local organization should account for its own expenditures only and not for any of the national legislation expenditures deemed as incurred by the controlling organization.

Definitions (Part III)

Definitions in this section are applicable only to Part III.

Lobbying and political expenditures. For purposes of this section only, lobbying and political expenditures do not include direct lobbying expenditures made to influence local legislation. Nor does it include any political campaign expenditures for which the tax under section 527(f) was paid (see Part I-C). They do include any expenditures for communications with a covered executive branch official in an attempt to influence the official actions or positions of that official.

Covered executive branch official. Covered executive branch officials include the President, Vice-President, officers and employees of the Executive Office of the President, the two senior level officers of each of the other agencies in the Executive Office, individuals in level I positions of the Executive Schedule and their immediate deputies, and individuals designated as having Cabinet level status and their immediate deputies.

Direct contact lobbying. This means a:

1. Meeting,
2. Telephone conversation,
3. Letter, or
4. Similar means of communication that is with a:

a. Legislator (other than a local legislator), or

b. Covered executive branch official and that is an attempt to influence the official actions or positions of that official.

In-house expenditures include:

1. Salaries, and
2. Other expenses of the organization's officials and staff (including amounts paid or incurred for the planning of legislative activities).

In-house expenditures do not include: Any payments to other taxpayers engaged in lobbying or political activities as a trade or business or any dues paid to another organization that are allocable to lobbying or political activities.

Specific Instructions

Part I-A. Political Activity of Exempt Organizations

Note. Section 501(c) organizations other than those exempt under section 501(c)(3) may establish section 527(f)(3) separate segregated funds to engage in political activity. Separate segregated funds are subject to their own filing requirements. A section 501(c) organization that engages a separate segregated fund to conduct political activity should report transfers to the fund in Parts I-A and I-C. The separate segregated fund should report specific activities on its own Form 990 if the fund is required to file.

Line 1. Section 501(c) organizations should provide a detailed description of their direct and indirect **political campaign activities** in Part IV. If the section 501(c) organization collects political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfers them to that fund as prescribed in Regulations section 1.527-6(e), do not report them here. Such amounts should be reported in Part I-C, line 5e.

Section 527 organizations should provide a detailed description of their exempt function activities in Part IV.

Line 2. Enter the total amount that the filing organization has spent conducting the activities described on line 1.

Line 3. If the organization used volunteer labor for its **political campaign activities** or section 527 exempt function activities, provide the total number of hours. Any reasonable method may be used to estimate this amount.

Part I-B. Section 501(c)(3) Organizations—Disclosure of Excise Taxes Imposed Under Section 4955

Section 501(c)(3) organizations must disclose any excise tax incurred during the year under section 4955 (political expenditures), unless abated. See sections 4962 and 6033(b).

Line 1. Enter the amount of taxes incurred by the organization itself under section 4955, unless abated. If no tax was incurred, enter -0-.

Line 2. Enter the amount of taxes incurred by the organization managers under section 4955, unless abated. If no tax was incurred, enter -0-.

Line 3. If the filing organization reported a section 4955 tax on a Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, for the tax year, answer "Yes."

Line 4. Describe in Part IV the steps taken by the organization to correct the activity that subjected it to the section 4955 tax. Correction of a political expenditure means recovering the expenditure to the extent possible and establishing safeguards to prevent future political expenditures. Recovery of the expenditure means recovering part or all

of the expenditure to the extent possible, and, where full recovery cannot be accomplished, by any additional corrective action that is necessary. (The organization that made the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.)

Part I-C. Section 527 Exempt Function Activity of Section 501(c) Organizations Other Than Section 501(c)(3)

Note. Section 501(c) organizations that collect political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfer them to that fund as prescribed in Regulations section 1.527-6(e), do not report them on lines 1 or 2. Such amounts are reported on line 5e.

Line 1. Enter the amount of the organization's funds that it expended for section 527 exempt function activities. See Regulations section 1.527-6(b).

Line 2. Enter the amount of the organization's funds that it transferred to other organizations, including a separate segregated section 527(f)(3) fund created by the organization, for section 527 exempt function activity.

Line 3. Total exempt function expenditures. Add lines 1 and 2 and enter on line 3 and on Form 1120-POL, line 17b.

Line 4. If the filing organization reported taxable political expenditures on Form 1120-POL for this year, answer "Yes."

Line 5. In columns (a), (b), and (c), enter the name, address and employer identification number (**EIN**) of each section 527 political organization to which payments were made. In column (d), enter the amount paid from the filing organization's funds. In column (e), enter the amount of political contributions received and promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, enter information in Part IV.

Part II-A. Lobbying Activity

Only section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)) complete this section.

Part II-A provides a reporting format for any section 501(c)(3) organization for which the 501(h) lobbying expenditure election was valid and in effect during the 2013 **tax year**, whether or not the organization engaged in **lobbying activities** during that tax year. A **public charity** that makes a valid section 501(h) election may spend up to a certain percentage of its exempt purpose expenditures to influence **legislation** without incurring tax or losing its tax exempt status.

Affiliated groups. If the filing organization belongs to an affiliated group, check Part II-A, box A and complete lines 1a through 1i.

- Complete column (a) for the electing member of the group.
- Complete column (b) for the affiliated group as a whole.

If the filing organization checked box A and the limited control provisions apply to the organizations in the affiliated group, each member of the affiliated group should check box B and complete column (a) only.

If the filing organization does not check box A, do not check box B.

Affiliated group list. Provide in Part IV a list showing each affiliated group member's name, address, **EIN**, and expenses. Show which members made the election under section 501(h) and which did not.

Include each electing member's share of the excess lobbying expenditures on the list.

Nonelecting members do not owe tax, but remain subject to the general rule, which provides that no substantial part of their activities may consist of carrying on propaganda or otherwise trying to influence **legislation.**

Lines 1a through 1i. Complete lines 1a through 1i in column (a) for any organization required to complete Part II-A, but complete column (b) only for affiliated groups.

Lines 1a through 1i are used to determine whether any of the organization's current year lobbying expenditures are subject to tax under section 4911. File Form 4720 if the organization needs to report and pay the excise tax.

Line 1a. Enter the amount the organization expended for grassroots lobbying communications.

Line 1b. Enter the amount the organization expended for direct lobbying communications.

Line 1c. Add lines 1a and 1b.

Line 1d. Enter all other amounts (excluding lobbying) the organization expended to accomplish its exempt purpose.

Line 1e. Add lines 1c and 1d. This is the organization's total exempt purpose expenditures.

Lines 1h and 1i. If there are no excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member of the affiliated group as having no excess lobbying expenditures. However, if there are excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member as having excess lobbying expenditures. In such case, each electing member must file Form 4720, and must pay the tax on its proportionate share of the affiliated group's excess lobbying expenditures. Enter the proportionate share in column (a) on line 1h or line 1i, or on both lines. In Part IV, provide the *affiliated group list* described above. Show what amounts apply to each group member. To find a member's proportionate share, see Regulations section 56.4911-8(d).

Line 1j. If the filing organization reported section 4911 tax on Form 4720 for this year, answer "Yes."

Line 2. Line 2 is used to determine if the organization exceeded lobbying expenditure limits during the 4-year averaging period.

Any organization for which a lobbying expenditure election under section 501(h) was in effect for its **tax year** beginning in 2013 must complete columns (a) through (e) of lines 2a through 2f except in the following situations.

1. An organization first treated as a section 501(c)(3) organization in its tax year beginning in 2013 does not have to complete any part of lines 2a through 2f.

2. An organization does not have to complete lines 2a through 2f for any period before it is first treated as a section 501(c)(3) organization.

3. If 2013 is the first year for which an organization's section 501(h) election is effective, that organization must complete line 2a, columns (d) and (e). The organization must then complete all of column (e) to determine whether the amount on line 2c, column (e), is equal to or less than the lobbying ceiling amount calculated on line 2b and whether the amount on line 2f is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed the applicable ceiling amounts. When this occurs, all five columns must be completed and a re-computation made unless exception 1 or 2 above applies.

4. If 2013 is the second or third tax year for which the organization's first section 501(h) election is in effect, that

organization is required to complete only the columns for the years in which the election has been in effect, entering the totals for those years in column (e). The organization must determine, for those 2 or 3 years, whether the amount entered in column (e), line 2c, is equal to or less than the lobbying ceiling amount reported on line 2b, and whether the amount entered in column (e), line 2f, is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed applicable ceiling amounts. When that occurs, all five columns must be completed and a re-computation made, unless exception 1 or 2 above applies. If the organization is not required to complete all five columns, provide a statement explaining why in Part IV. In the statement, show the ending date of the tax year in which the organization made its first section 501(h) election and state whether or not that first election was revoked before the start of the organization's tax year that began in 2013.

Note. If the organization belongs to an affiliated group, enter the appropriate affiliated group totals from column (b), lines 1a through 1i, when completing lines 2a, 2c, 2d, and 2f.

Line 2a. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1f, filed for each year.

Line 2c. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1c, for each year.

Line 2d. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1g, for each year.

Line 2f. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1a, for each year.

Enter the total for each line in column (e).

Part II-B. Lobbying Activity

Only section 501(c)(3) organizations that have not filed Form 5768 (election under section 501(h)) or have revoked a previous election can complete this section.

Part II-B provides a reporting format for any section 501(c)(3) organization that engaged in **lobbying activities** during the 2013 **tax year** but did not make a section 501(h) lobbying expenditure election for that year by filing Form 5768. The distinction in Part II-A between direct and grassroots lobbying activities by organizations that made the section 501(h) election does not apply to organizations that complete Part II-B.

Nonelecting section 501(c)(3) organizations must complete Part II-B, columns (a) and (b), to show lobbying expenditures paid or incurred.

Note. A nonelecting organization will generally be regarded as engaging in lobbying activity if the organization either contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or the government's budget process; or advocates the adoption or rejection of **legislation.**

Organizations should answer "Yes" or "No" in column (a) to questions 1a through 1i and provide in Part IV a detailed description of any activities the organization engaged in (through its **employees** or **volunteers**) to influence legislation. The description should include all lobbying activities, whether expenses were incurred or not. Examples of such lobbying activities include:

- Sending letters or publications to government officials or legislators,
- Meeting with or calling government officials or legislators,
- Sending or distributing letters or publications (including newsletters, brochures, etc.) to members or to the general public, or
- Using direct mail, placing advertisements, issuing press releases, holding news conferences, or holding rallies or demonstrations.

For lines 1c through 1i, enter in column (b) the lobbying expenditures paid or incurred. Enter total expenditures on column (b), line 1j.

Line 1f. Grants to other organizations are amounts from the organization's funds given to another organization for the purpose of assisting the other organization conducting **lobbying activities.**

Line 1g. Direct contact is a personal telephone call or visit with legislators, their staffs, or government officials.

Line 1h. Rallies, demonstrations, seminars, conventions, speeches, and lectures are examples of public forums conducted directly by the organization or paid for out of the organization's funds.

Line 1i. Answer "Yes" if the organization engaged in any other activities to influence legislation.

Line 2a. Answer "Yes" if a section 501(c)(3) organization ceased to be described as a section 501(c)(3) organization because the amount on line 1j was substantial.

Line 2b. Enter the amount of taxes, if any, imposed on the organization itself under section 4912, unless abated.

Line 2c. Enter the amount of taxes, if any, imposed on the organization managers under section 4912, unless abated.

Line 2d. If the filing organization reported a section 4912 tax on a Form 4720 for this year, answer "Yes."

Part III. Section 6033(e) Notice and Reporting Requirements and Proxy Tax

Only certain organizations that are tax-exempt under:

- Section 501(c)(4) (social welfare organizations),
- Section 501(c)(5) (agricultural and horticultural organizations), or
- Section 501(c)(6) (business leagues),

are subject to the section 6033(e) notice and reporting requirements, and to a potential proxy tax. These organizations must report their total lobbying expenses, political expenses, and membership dues, or similar amounts.

Section 6033(e) requires certain section 501(c)(4), (5), and (6) organizations to tell their members what portion of their membership dues were allocable to the political or **lobbying activities** of the organization. If an organization does not give its members this information, then the organization is subject to a proxy tax. This tax is reported on Form 990-T.

Part III-A

Line 1. Answer "Yes" if any of the following exemptions from the reporting and notice requirements apply. By doing so, the organization is declaring that substantially all of its membership dues were nondeductible.

1. Local associations of employees' and veterans' organizations described in section 501(c)(4), but not section 501(c)(4) social welfare organizations.

2. Labor unions and other labor organizations described in section 501(c)(5), but not section 501(c)(5) agricultural and horticultural organizations.

3. Section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that receive more than 90% of their dues from:

a. Organizations exempt from tax under section 501(a), other than section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations,

b. State or local governments,

c. Entities whose income is excluded from gross income under section 115, or

d. Organizations described in 1 or 2, above.

4. Section 501(c)(4) and section 501(c)(5) organizations that receive more than 90% of their annual dues from:

a. Persons,

b. Families, or

c. Entities,

who each paid annual dues of $108 or less in 2013 (adjusted annually for inflation). See Rev. Proc. 2012-41, section 3.22.

5. Any organization that receives a private letter ruling from the IRS stating that the organization satisfies the section 6033(e)(3) exception.

6. Any organization that keeps records to substantiate that 90% or more of its members cannot deduct their dues (or similar amounts) as business expenses whether or not any part of their dues are used for lobbying purposes.

7. Any organization that is not a membership organization.

Special rules treat affiliated social welfare organizations, agricultural and horticultural organizations, and business leagues as parts of a single organization for purposes of meeting the nondeductible dues exception. See Rev. Proc. 98-19, section 5.03, 1998-1 C.B. 547.

Line 2. Answer "Yes" for line 2 if the organization satisfies the following criteria of the $2,000 in-house lobbying exception.

1. The organization did not make any political expenditures or foreign lobbying expenditures during the 2013 reporting year.

2. The organization made lobbying expenditures during the 2013 reporting year consisting only of in-house direct lobbying expenditures totaling $2,000 or less, but excluding:

a. Any allocable overhead expenses, and

b. All direct lobbying expenses of any local council regarding legislation of direct interest to the organization or its members.

If the organization's in-house direct lobbying expenditures during the 2013 reporting year were $2,000 or less, but the organization also paid or incurred other lobbying or political expenditures during the 2013 reporting year, it should answer "No" to question 2. If the organization is required to complete Part III-B, the $2,000 or less of in-house direct lobbying expenditures should not be included in the total of Part III-B, line 2a.

Line 3. Answer "Yes" for line 3 if the organization on its prior year report agreed to carryover an amount to be included in the current year's reasonable estimate of lobbying and political expenses.

Complete Part III-B only if the organization answered "No" to **both** line 1 and line 2 or if the organization answered "Yes" to line 3.

Part III-B. Dues Notices, Reporting Requirements, and Proxy Tax

Dues notices. An organization that checked "No" for both Part III-A, lines 1 and 2, and is thus responsible for completing Part III-B, must send dues notices to its members at the time of assessment or payment of dues, unless the organization chooses to pay the proxy tax instead of informing its members of the nondeductible portion of its dues. These dues notices must reasonably estimate the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a. An organization that checked "Yes" for Part III-A, line 3, and thus is required to complete Part III-B, must send dues notices to its members at the time of assessment or payment of dues and include the amount it agreed to carryover in its reasonable estimate of the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a.

Dues, Lobbying, and Political Expenses

IF ...	THEN ...
The organization's lobbying and political expenses are more than its membership dues for the year,	The organization must: (a) Allocate all membership dues to its lobbying and political activities, and (b) Carry forward any excess lobbying and political expenses to the next tax year.
The organization: (a) Had only *de minimis* in-house expenses ($2,000 or less) and no other nondeductible lobbying or political expenses (including any amount it agreed to carryover); or (b) Paid a proxy tax, instead of notifying its members on the allocation of dues to lobbying and political expenses; or (c) Established that substantially all of its membership dues, etc., are not deductible by members.	The organization need not disclose to its membership the allocation of dues, etc., to its lobbying and political activities.

Members of the organization cannot take a trade or business expense deduction on their tax returns for the portion of their dues, etc., allocable to the organization's lobbying and political activities.

Proxy Tax

IF ...	THEN ...
The organization's actual lobbying and political expenses are more than it estimated in its dues notices,	The organization is liable for a proxy tax on the excess.
The organization: (a) Elects to pay the proxy tax, and (b) Chooses not to give its members a notice allocating dues to lobbying and political campaign activities,	All the members' dues remain eligible for a section 162 trade or business expense deduction.
The organization: (a) Makes a reasonable estimate of dues allocable to nondeductible lobbying and political activities, and (b) Agrees to adjust its estimate in the following year*.	The IRS may permit a waiver of the proxy tax.
*A facts and circumstances test determines whether or not a reasonable estimate was made in good faith.	

Allocation of costs to lobbying activities and influencing legislation. An organization that is subject to the lobbying disclosure rules of section 6033(e) must use a reasonable allocation method to determine total costs of its direct lobbying activities; that is, costs to influence:

- **Legislation**, and
- The actions of a covered executive branch official through direct communication (for example, President, Vice-President, or cabinet-level officials, and their immediate deputies) (section 162(e)(1)(A) and section 162(e)(1)(D)).

Reasonable methods of allocating costs to direct lobbying activities include, but are not limited to:

- The ratio method,
- The gross-up and alternative gross-up methods, and
- A method applying the principles of section 263A.

For more information, see Regulations sections 1.162-28 and 1.162-29. The special rules and definitions for these allocation methods are discussed under *Special Rules*, later.

An organization that is subject to the lobbying disclosure rules of section 6033(e) must also determine its total costs of:

- *De minimis* in-house lobbying,

- Grassroots lobbying, and
- **Political campaign activities.**

There are no special rules related to determining these costs.

All methods. For all the allocation methods, include labor hours and costs of personnel whose activities involve significant judgment about lobbying activities.

Special Rules

Ratio and gross-up methods. These methods:

- May be used even if volunteers conduct activities, and
- May disregard labor hours and costs of clerical or support personnel (other than lobbying personnel) under the ratio method.

Alternative gross-up method. This method may disregard:

- Labor hours, and
- Costs of clerical or support personnel (other than lobbying personnel).

Third-party costs. These are:

- Payments to outside parties for conducting lobbying activities,
- Dues paid to another membership organization that were declared to be nondeductible lobbying expenses, and
- Travel and entertainment costs for lobbying activity.

Direct contact lobbying. Treat all hours spent by a person in connection with direct contact lobbying as labor hours allocable to lobbying activities.

Do not treat as direct contact lobbying the hours spent by a person who engages in research and other background activities related to direct contact lobbying, but who makes no direct contact with a legislator, or covered executive branch official.

***De minimis* rule.** If less than 5% of a person's time is spent on lobbying activities, and there is no direct contact lobbying, an organization may treat that person's time spent on lobbying activities as zero.

Purpose for engaging in an activity. The purpose for engaging in an activity is based on all the facts and circumstances. If an organization's lobbying communication was for both a lobbying and a non-lobbying purpose, the organization must make a reasonable allocation of cost to influence **legislation**.

Correction of prior year lobbying costs. If in a prior year, an organization treated costs incurred for a future lobbying communication as a lobbying cost to influence legislation, but after the organization filed a timely return, it appears the lobbying communication will not be made under any foreseeable circumstance, the organization may apply these costs to reduce its current year's lobbying costs, but not below zero. The organization may carry forward any amount of the costs not used to reduce its current year's lobbying costs to subsequent years.

Example 1. Ratio method.
X Organization incurred:

1. 6,000 labor hours for all activities,
2. 3,000 labor hours for lobbying activities (3 employees),
3. $300,000 for operational costs, and
4. No third-party lobbying costs.

X Organization allocated its lobbying costs as follows:

Lobbying labor hrs.		Total costs of operations		Allocable third-party costs		Costs allocable to lobbying activities
3,000 / 6,000 (Total labor hrs.)	×	$300,000	+	$ -0-	=	$150,000

Example 2. Gross-up method and alternative gross-up method.
A and B are employees of Y Organization.

1. A's activities involve significant judgment about lobbying activities.
2. A's basic lobbying labor costs (excluding employee benefits) are $50,000.
3. B performs clerical and support activities for A.
4. B's labor costs (excluding employee benefits) in support of A's activities are $15,000.
5. Allocable third-party costs are $100,000.

If Y Organization uses the gross-up method to allocate its lobbying costs, it multiplies 175% times its basic labor costs (excluding employee benefits) for all of the lobbying of its personnel and adds its allocable third-party lobbying costs as follows:

Basic lobbying labor costs of A + B		Allocable third-party costs		Costs allocable to lobbying activities
(175% × $65,000)	+	$100,000	=	$213,750

If Y Organization uses the alternative gross-up method to allocate its lobbying costs, it multiplies 225% times its basic labor costs (excluding employee benefits) for all of the lobbying hours of its lobbying personnel and adds its third-party lobbying costs as follows:

Basic lobbying labor costs of A		Allocable third-party costs		Costs allocable to lobbying activities
(225% × $50,000)	+	$100,000	=	$212,500

Section 263A cost allocation method. The examples that demonstrate this method are found in Regulations section 1.162-28(f).

Part III-B, Line 1. Enter the total dues, assessments, and similar amounts allocable to the 2013 reporting year. Dues are the amounts the organization requires a member to pay in order to be recognized as a member.

Payments that are similar to dues include:

1. Members' voluntary payments,
2. Assessments to cover basic operating costs, and
3. Special assessments to conduct lobbying and political activities.

Line 2. Include on line 2a the total amount of expenses paid or incurred during the 2013 reporting year in connection with:

1. Influencing **legislation**;
2. Participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for any public office;
3. Attempting to influence any segment of the general public with respect to elections, legislative matters, or referendums; and
4. Communicating directly with a covered executive branch official in an attempt to influence the official actions or positions of such official.

Do not include:

1. Any direct lobbying of any local council or similar governing body with respect to legislation of direct interest to the organization or its members;
2. In-house direct lobbying expenditures, if the total of such expenditures is $2,000 or less (excluding allocable overhead); or
3. Political expenditures for which the section 527(f) tax has been paid (on Form 1120-POL).

Reduce the current year's lobbying expenditures, but not below zero, by costs previously allocated in a prior year to **lobbying activities** that were cancelled after a return reporting those costs was filed.

Carryforward any amounts not used as a reduction to subsequent years.

Include the following on line 2b.

1. Lobbying and political expenditures carried over from the preceding tax year.

2. An amount equal to the taxable lobbying and political expenditures reported on Part III-B, line 5 for the preceding tax year, if the organization received a waiver of the proxy tax imposed on that amount.

Line 3. Enter the total amount of dues, assessments, and similar amounts received, for which members were timely notified of the nondeductibility under section 162(e) that were allocable to the 2013 reporting year.

Example.

- Membership dues: $100,000 for the 2013 reporting year,
- Organization's timely notices to members: 25% of membership dues nondeductible, and
- Line 3 entry: $25,000.

Line 4. If the amount on line 2c exceeds the amount on line 3 and the organization sent dues notices to its members at the time of assessment or payment of dues, include the amount on line 4 that the organization agrees to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year and include the amount on the 2013 Schedule C (Form 990 or 990-EZ), in Part III-B, line 2b (carryover lobbying and political expenses), or its equivalent.

If the organization did not send notices to its members, enter "-0-" on line 4.

Line 5. The taxable amount reportable on line 5 is the amount of dues, assessments, and similar amounts received:

1. Allocable to the 2013 reporting year, and

2. Attributable to lobbying and political expenditures that the organization did not timely notify its members were nondeductible.

Report the tax on Form 990-T.

If the amount on line 1 (dues, assessments, and similar amounts) is *greater* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from the total lobbying and political expenditures (line 2c) to determine the taxable amount of lobbying and political expenditures (line 5).

If the amount on line 1 (dues, assessments, and similar amounts) is *less* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from dues, assessments, and similar amounts (line 1) to determine the taxable lobbying and political expenditures (line 5).

Subtract dues, assessments, and similar amounts (line 1) from lobbying and political expenditures (line 2c) to determine the excess amount to be carried over to the following tax year and reported on Part III-B, line 2b (carryover lobbying and political expenditures), or its equivalent, on the next year Schedule C (Form 990 or 990-EZ) along with the amounts the organization agreed to carryover on line 4.

Underreporting of lobbying expenses. An organization is subject to the proxy tax for the 2013 reporting year for underreported lobbying and political expenses only to the extent that these expenses (if actually reported) would have resulted in a proxy tax liability for that year. A waiver of proxy tax for the tax year only applies to reported expenditures.

An organization that underreports its lobbying and political expenses is also subject to the section 6652(c) daily penalty for filing an incomplete or inaccurate return. See Instructions for Form 990 *General Instructions H. Failure-to-File Penalties*, and Instructions for Form 990-EZ *General Instructions G. Failure-to-File Penalties*.

Examples. Organizations A, B, and C:

1. Reported on the calendar year basis,

2. Incurred only grassroots lobbying expenses (did not qualify for the under $2,000 in-house lobbying exception (*de minimis* rule)), and

3. Allocated dues to the tax year in which they were received.

Organization A. Dues, assessments, and similar amounts received in 2013 were greater than its lobbying expenses for 2013.

Workpapers (for 2013 Form 990) — Organization A

1.	Total dues, assessments, etc., received	$800	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Subtract line 3 from both lines 1 and 2	$700	$500
5.	Taxable amount of lobbying expenses (smaller of the two amounts on line 4)		$500

TIP *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were greater than lobbying expenses, there is no carryovers of excess lobbying expenses to the 2014 Schedule C (Form 990 or 990-EZ), Part III-B, line 2b.

See the instructions for Part III-B, line 5, for the treatment of the $500.

Organization B. Dues, assessments, and similar amounts received in 2013 were less than lobbying expenses for 2013.

Workpapers (for 2013 Form 990) — Organization B

1.	Total dues, assessments, etc., received	$400	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Subtract line 3 from both lines 1 and 2	$300	$500
5.	Taxable amount of lobbying expenses (smaller of the two amounts on line 4)	$300	

TIP *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were less than lobbying expenses, excess lobbying expenses of $200 must be carried forward to the 2014 Schedule C (Form 990 or 990-EZ) Part III-B, line 2b (excess of $600 of lobbying expenses over $400 dues, etc., received). The $200 will be included along with the other lobbying and political expenses paid or incurred in the 2014 reporting year.

See the instructions for Part III-B, line 5, for the treatment of the $300.

Organization C. Dues, assessments, and similar amounts received in 2013 were greater than lobbying expenses for 2013 and the organization agreed to carryover a portion of its excess lobbying and political expenses to the next year.

Workpapers (for 2013 Form 990) — Organization C

1.	Total dues, assessments, etc., received	$800	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Less: Amount agreed to carryover	100	100
5.	Subtract line 3 and 4 from both lines 1 and 2	$600	$400
6.	Taxable amount of lobbying expenses (smaller of the two amounts on line 5)		$400

The amounts on lines 1, 2, 3, 4, and 6 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, 4, and 5.

See the instructions for Part III-B, line 5, for the treatment of the $400.

Part IV. Supplemental Information

Use Part IV to enter narrative information required in Part I-A, line 1, Part I-B, line 4, Part I-C, line 5, Part II-A, line 1 (affiliated group list), Part II-A, line 2, and Part II-B, line 1. Also use Part IV to enter other narrative explanations and descriptions. Identify the specific part and line number that the response supports, in the order in which they appear on Schedule C (Form 990 or 990-EZ). Part IV can be duplicated if more space is needed.

Attachment D:

Letter from IRS to Offer "Expedited Processing" (dated June 26, 2013);

Internal Revenue Service
P.O. Box 2508, Room 4106
Cincinnati, Ohio 45201

Department of the Treasury

Date: JUN 26 2013

Tea Party Patriots, Inc.
c/o Jenny Beth Martin
1025 Rose Creek Drive, Ste. 620-322
Woodstock, GA 30189

Employer ID number:
27-0470227
Person to contact:
Joseph R. Herr
Contact telephone number:
(513) 263-3725
Contact fax number:
(513) 263-4488
Employee ID number:
ID # 0110233

Dear Applicant:

The IRS is instituting an optional expedited process for certain organizations applying for recognition of exemption under Section 501(c)(4) whose applications have been pending with the IRS for more than 120 days as of May 28, 2013. Organizations can make representations to the IRS under penalties of perjury regarding their past, current, and future activities and receive a determination letter based on those representations.

If you choose to apply for this expedited process, complete and return pages 5-7, *Representations and Specific Instructions*. We will send you a favorable determination letter within 2 weeks of receipt of the signed representations.

Determination letters issued under the optional process will be based on the representations of the organization and may not be relied upon if the organization's activities are different from what is represented to the IRS. The representations are subject to verification on audit. Organizations that don't make the representations will have their applications reviewed based on the legal standards applied to all the facts and circumstances.

If you can make the representations required for eligibility under this optional process and want to participate, please follow the instructions set forth at the end of this letter, *Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)*. Send the *signed* representations within 45 days from the date of this letter to the address below:

Internal Revenue Service
P.O. Box 2508, Room 4106
Cincinnati, OH 45201

You can send the information by fax to (513) 263-4488. Your fax signature becomes a permanent part of your filing. Do not send an additional copy by mail.

If you have questions, you can contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

Joseph R. Herr
Exempt Organization Specialist

Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)

In the interest of effective and efficient tax administration and to assist in the transparent and consistent review of applications for tax-exempt status under Section 501(c)(4), the IRS is offering an optional expedited process for certain organizations that have submitted 501(c)(4) applications. This optional expedited process is currently available only to applicants for 501(c)(4) status with applications pending for more than 120 days as of May 28, 2013, that indicate the organization may be involved in political campaign intervention or issue advocacy.

In this optional process, an organization will represent that it satisfies, and will continue to satisfy, set percentages with respect to the level of its social welfare activities and political campaign intervention activities (as defined in the specific instructions on pages 5-7). These percentage representations are not an interpretation of law but are a safe harbor for those organizations that choose to participate in the optional process.

Under this optional expedited process, an applicant will be presumed to be primarily engaged in activities that promote social welfare based on certain additional representations (on pages 5-7) made by the organization regarding its past, present, and future activities. Like the Form 1024 exemption application itself, these representations are signed on behalf of the organization under penalties of perjury. Applicants that provide the representations will receive a favorable determination letter within two weeks of receipt of the representations.

Importantly, this is an optional process. The standards and thresholds reflected in the representations are criteria for eligibility for expedited processing rather than new legal requirements. No inference will be drawn from an organization's choice not to participate. An organization that declines to make the representations will have its application reviewed under the regular process in which the IRS looks to all facts and circumstances to determine whether an organization primarily engages in activities that promote social welfare.

Like all organizations receiving a favorable determination of exempt status, organizations participating in this optional expedited process may be subject to examination by the IRS and the organization's exempt status may be revoked if, and as of the tax year in which, the facts and circumstances indicate exempt status is no longer *warranted. An organization* that receives a determination letter under this expedited process may rely on its determination letter as long as its activities are consistent with its application for exemption and the representations, and the determination letter will expressly indicate that the letter was based on the representations. An organization may no longer rely on the determination letter issued under this optional expedited process as of the tax year in which its activities (including the amount of expenditures incurred or time spent on particular activities) cease to be consistent with its application for exemption and any of the representations, if the applicable legal standards change, or if the determination letter is revoked. If the organization determines that it continues

to be described in Section 501(c)(4) notwithstanding the fact that its activities are no longer consistent with the representations below, it may continue to take the position that it is described in Section 501(c)(4) and file Form 990, *Return of Organization Exempt From Income Tax*, but it must notify the IRS about such representations ceasing to be correct on Schedule O, *Supplemental Information*, of the Form 990.

Representations and Specific Instructions

1. During each past tax year of the organization, during the current tax year, *and* during each future tax year in which the organization intends to rely on a determination letter issued under the optional expedited process, the organization has spent and anticipates that it will spend 60% or more of *both* the organization's total expenditures *and* its total time (measured by employee and volunteer hours) on activities that promote the social welfare (within the meaning of Section 501(c)(4) and the regulations thereunder).

2. During each past tax year of the organization, during the current tax year, and during each future tax year in which the organization intends to rely on a determination letter issued under the optional expedited process, the organization has spent and anticipates that it will spend less than 40% of *both* the organization's total expenditures *and* its total time (measured by employee and volunteer hours) on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office (within the meaning of the regulations under Section 501(c)(4)).

Specific instructions

For purposes of these representations, "total expenditures" include administrative, overhead, and other general expenditures. An organization may allocate those expenditures among its activities using any reasonable method.

For purposes of these representations, activities that promote the social welfare do not include any expenditure incurred or time spent by the organization on:

- Any activity that benefits select individuals or organizations rather than the community as a whole;
- Direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office;
- Operating a social club for the benefit, pleasure, or recreation of the organization's members; and
- Carrying on a business with the general public in a manner similar to organizations operated for profit.

For purposes of these representations, direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office ("candidate") includes any expenditure incurred or time spent by the organization on:

- Any written (printed or electronic) or oral statement supporting (or opposing) the election or nomination of a candidate;

- Financial or other support provided to (or the solicitation of such support on behalf of) any candidate, political party, political committee, or Section 527 organization;

- Conducting a voter registration drive that selects potential voters to assist on the basis of their preference for a particular candidate or party;

- Conducting a "get-out-the-vote" drive that selects potential voters to assist on the basis of their preference for a particular candidate or (in the case of general elections) a particular party;

- Distributing material prepared by a candidate, political party, political committee, or Section 527 organization; and

- Preparing and distributing a voter guide that rates favorably or unfavorably one or more candidates.

In addition, ***solely*** for purposes of determining an organization's eligibility under this optional expedited process, direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate includes any expenditure incurred or time spent by the organization on:

- Any public communication within 60 days prior to a general election or 30 days prior to a primary election that identifies a candidate in the election. For this purpose, "public communication" means a communication by means of any broadcast, cable, or satellite communication; newspaper, magazine, or other periodical (excluding any periodical distributed only to the organization's dues paying members); outdoor advertising facility, mass mailing, or telephone bank to the general public; and communications placed for a fee on another person's Internet website;

- Conducting an event at which only one candidate is, or candidates of only one party are, invited to speak; and

- Any grant to an organization described in Section 501(c) if the recipient of the grant engages in political campaign intervention.[1]

Although other activities may constitute direct or indirect participation or intervention in a political campaign (see Revenue Ruling 2007-41 for examples of factors to consider), representations may be based on the specific activities described in these instructions.

[1] An organization may rely on a representation from an authorized officer of the recipient if the organization does not know whether the recipient engages in any political campaign intervention and may assume that a Section 501(c)(3) organization does not engage in political campaign intervention.

Under penalties of perjury, I declare that I am authorized to sign these representations on behalf of the above organization, and that to the best of my knowledge and belief, the facts stated in the representations are true, correct, and complete.

Signature of officer, director, trustee or other authorized official Date

Title and printed name

Organization name and Employer Identification Number