February 26, 2014

Mr. John Koskinen, Commissioner
Internal Revenue Service
Room 5202
Box 7604, Ben Franklin Station
Washington, D.C. 20044

Dear Mr. Koskinen:

The Citizens' Council for Health Freedom, a 501(c)(3) organization respectfully submits these comments in regard to your Proposed Rule: “Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities.”

The proposed rules pertaining to the classification of political activity, timing of public communication, and treatment of advocacy and public outreach initiatives could negatively impact all classifications of 501(c) organizations. CCHF educates the public on policy issues related to health care. Our organization also works to help citizens be effective and engaged participants in policy discussions.

Although CCHF is a 501(c)3 organization, and thus not involved in any political or campaign activities, we are concerned that the proposed IRS rule is an overreach that, if imposed on one division of 501(c) organizations, could lead to federal encroachments on all nonprofit organizations.

For example, we note that the proposed rule would prohibit 501(c)4 organizations from engaging in activities that 501(c)3 organizations currently engage in with the approval of the IRS, such as voter registration (provided it is not conducted in a partisan manner). If these activities are prohibited in 501(c)4 organizations, how long will it be before the IRS returns with revised rules to impose the same restrictions on 501(c)3 organizations?

In fact, the proposed rule asks commenters to discuss whether the proposed rule should specifically impact 501(c)3 organizations “either in lieu of the facts and circumstances approach reflected in Rev. Rul. 2007-41 or in addition to that approach (for example, by creating a clearly defined presumption or safe harbor.)” However, 501(c)3 organizations cannot involve themselves in any political activity, and this proposed rule is specific to political activity. So, the question must be asked: Why has the IRS even asked about the rule applying to 501(c)3 organizations? That it does ask this question is of great concern, particularly because of the contents of the rule, which would impose unclear, sweeping language and open-to-interpretation definitions, which would serve to significantly deter legitimate and legal 501(c) organization communications.

For example, the proposed rule broadly states, “any public communication that is made within 60 days of a general election and clearly identifies a candidate for public office…would be considered candidate-related political activity.” (NPRM, 78 Federal Register, page 71539)

It says, “any public communication.” This includes Internet, email, and television communications and radio interviews. Thus, if a radio or television reporter asks a policy question of an
organization’s spokesperson and mentions the name of a member of Congress or a sitting state legislator who is up for election, would the spokesperson not be able to discuss the policy issue at hand? Would they have to talk without ever mentioning the person’s name? If they were asked about a statement made by that elected official or candidate, would the organization’s spokesperson be unable to answer the question without facing IRS charges of “engaging in political activities”?

How would this limitation on free speech impact the fundraising efforts of 501(c)3 organizations? We believe this 60-day gag order could impact our fundraising efforts, which take place in the last quarter of the year, including major dinner events. What if a candidate chooses to attend or just shows up last minute, or isn’t yet a candidate when he or she accepts our invitation to speak but then decides to run for office? What is the nonprofit organization to do? Try to find another speaker last minute, cancel the event, un-invite the speaker and refund everyone’s money – and then be on the hook for the hotel room rental bill and its food and beverage minimum?

We are also concerned about the likely impact on our organization’s ability to discuss any policy issues in any way without being charged with political activity. The fear would be that we happen to mention the name of an elected official who happens to be up for election. In essence, the IRS is proposing a gag order, a prohibition that goes far beyond current law’s bright line of “unmistakable, unambiguous” communications that constitute political activity. (11 CFR § 100.22(b))

The proposed rule would likely shut down 501(c) organizations for at least 60 days – over 15% of the year. There would likely be little or no Twitter, no Facebook, no website postings, no radio interviews, no events, no letters to the editor, no videos, no blogs, no emails, no fundraising. With state legislatures in session and Congress in full swing, suddenly policy experts in every state and in Washington, D.C. would suddenly be silenced out of fear of being caught in the IRS’ new and sweeping interpretation of “political activity.”

Until the IRS scandal, the IRS has a stellar reputation of being non-political. But now it is publicly known that certain IRS officials and divisions have been intrusive and obstructive toward 501(c) groups. We believe this proposed open-to-interpretation rule would enable further such obstructive behavior by politically inclined government officials.

The rules being proposed threaten the viability and vibrancy of the nation’s 501(c) organizations, which serve a vital function within the United States on all sides of the political spectrum: informing citizens, analyzing proposed policies, dissecting policy issues, debating issues, engaging in the free exchange of ideas, and encouraging private and public participation in national policy discussions and debates.

These are just a few of our concerns regarding “Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”

We ask that you rescind this proposed rule. We also ask for a public hearing to discuss the broad realm of concerns regarding this proposed restriction on freedom of association and free speech.

Sincerely,

Twila Brase
President and Co-Founder, Citizens’ Council for Health Freedom