United States Senate
WASHINGTON, DC 20510

February 16, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

We write to inquire if the Internal Revenue Service ("IRS") is investigating or intends to investigate whether groups designated as "social welfare" organizations, and thus receiving tax and other advantages under section 501(c)(4) of the Internal Revenue Code (IRC), 26 U.S.C. § 501(c)(4), are improperly engaged in a substantial or even a predominant amount of campaign activity. In section 501(c)(4), Congress created a tax preference for social welfare organizations because the nation benefits greatly from their social welfare activities. It is contrary to the letter and the spirit of the statute for political organizations formed primarily to advocate for a political candidate or to run attack ads against other candidates to take advantage of section 501(c)(4).

Under the IRC and IRS regulations, section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare to obtain tax exempt status. Section 501(c)(4) establishes tax-exempt status for nonprofits "operated exclusively for the promotion of social welfare . . . ." 26 U.S.C. § 501(c)(4). IRS regulations state that a nonprofit operates "exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare for the people of the community." 26 U.S.C. § 501 (c)(4), 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i) (emphasis added). The regulations require that a social welfare organization "is one which is operated primarily for the purpose of bringing about civic betterments and social improvements." *Id.*

Even more to the point is what the regulations say about campaign activities: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." *Id.* § 1.501(c)(4)-1(a)(2)(ii). This standard is clear, and it appears to preclude the formation of 501(c)(4) organizations for campaign-related purposes.

Courts have interpreted section 501(c)(4) to prohibit a group organized under that section from engaging in more than an insubstantial amount of campaign activity. Courts have consistently found that the presence of a single substantial non-exempt purpose precludes exempt status, regardless of the number or importance of the exempt purposes. *See Contracting Plumbers Coop. Restor. Corp. v. U.S.*, 488 F.2d 684, 686 (2d. Cir. 1973); *see also American*

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Ass'n of Christian Sch. Vol. Emp. v. U.S., 850 F.2d 1510, 1516 (11th Cir. 1988). The IRS is tasked with applying this strict statutory interpretation of 501(c)(4) by the courts.

IRS regulations, however, appear more permissive than the statute as interpreted by the courts. For example, the IRS authorizes section 501(c)(4) social welfare organizations to engage in federal election activities, including electioneering communications, as long as such activities do not constitute the "primary" activity of the organization. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i). Some political organizations argue that section 501(c)(4) organizations can spend up to forty-nine percent of their total expenditures on campaign activities without such activities constituting the "primary" activity of the organization. While this forty-nine percent threshold appears to violate the language of the statute and the subsequent interpretation of several courts, we are concerned that some political organizations may still be violating this exceptionally high threshold.

We are aware that non-profit organizations have filed a petition for rulemaking with the IRS to revise existing regulations governing whether an organization that intervenes or participates in elections is entitled to obtain or maintain an exemption from taxation under section 501(c)(4). We urge you to investigate these allegations and to seriously consider launching a rulemaking to prevent this type of abuse of the tax code.

We urge you to protect legitimate section 501(c)(4) entities by preventing non-conforming organizations that are focused on federal election activities from abusing the tax code. We thank you for your prompt attention to this matter and look forward to your response.

Sincerely,

Michael F. Bennet
U.S. Senator

Al Franken
U.S. Senator

Jeff Merkley
U.S. Senator

Charles E. Schumer
U.S. Senator

Jeanne Shaheen
U.S. Senator

Tom Udall
U.S. Senator

Sheldon Whitehouse
U.S. Senator