United States Senate
WASHINGTON, DC 20510

March 9, 2012

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

Dear Commissioner Shulman:

We write to ask the Internal Revenue Service ("IRS") to immediately change the administrative framework for enforcement of the tax code as it applies to groups designated as "social welfare" organizations. These groups receive tax and other advantages under section 501(c)(4) of the Internal Revenue Code (hereinafter, "IRC" or the "Code"), but some of them also are engaged in a substantial amount of political campaign activity. As you know, we sent a letter last month expressing concerns about the 501(c)(4) issue; an investigation this week by the *New York Times* has uncovered new, specific problems on how 501(c)(4)s conduct business. We wanted to address those new concerns in this letter.

IRS regulations have long maintained that political campaign activity by a 501(c)(4) entity must not be the "primary purpose" of the organization. These regulations are intended to implement the statute, which requires that such organizations be operated exclusively for the public welfare. But we think the existing IRS regulations run afoul of the law since they only require social welfare activities to be the "primary purpose" of a nonprofit when the Code says this must be its "exclusive" purpose. In recent years, this daylight between the law and the IRS regulations has been exploited by groups devoted chiefly to political election activities that operate behind a facade of charity work.

A related concern, raised in a March 7th *New York Times* article, concerns whether certain nonprofits may be soliciting corporate contributions that are then treated by the company as a business expense eligible for a tax deduction. The *Times* wrote: "Under current law, there is little to no way to tell whether contributions are being deducted, especially because many of the most political companies are privately held." This potential abuse distorts the objectives of vital revenue mechanisms and undermines the faith that we ask citizens to place in their electoral system.

We propose that the IRS make three administrative changes to curtail these questionable practices and bring IRS tax regulations back into alignment with the letter and spirit intended by those who crafted the Code:

- First, we urge the IRS to adopt a bright line test in applying its "primary purpose" regulation that is consistent with the Code's 501(c)(4) exclusivity language. The IRS currently only requires that the purpose of these non-profits be "primarily" related to social welfare activities, without defining what "primarily" means. This standard should

be spelled out more fully by the IRS. Some have suggested 51 percent as an appropriate threshold for establishing that a nonprofit is adhering to its mission, but even this number would seem to allow for more political election activity than should be permitted under the law. In the absence of clarity in the administration of section 501(c)(4), organizations are tempted to abuse its vagueness, or worse, to organize under section 501(c)(4) so that they may avail themselves of its advantages even though they are not legitimate social welfare organizations. If the IRS does not adopt a bright line test, or if it adopts one that is inconsistent with the Code's exclusivity language, then we plan to pursue legislation codifying such a test.

- Second, such organizations should be further obligated to document in their 990 IRS form the exact percentage of their undertakings dedicated to "social welfare." Organizations should be required to "show their math" to demonstrate that political election activities and other statutorily limited or prohibited activities do not violate the "primary purpose" regulation.

- Third, 501(c)(4) organizations should be required to state forthrightly to potential donors what percentage of a donation, if any, may be taken as a business expense deduction. As the *New York Times* reported in its March 7th article, some of these organizations do not currently inform donors whether a contribution is tax deductible as a business expense at all.

The IRS should already possess the authority to issue immediate guidance on this matter. We urge the IRS to take these steps immediately to prevent abuse of the tax code by political groups focused on federal election activities. But if the IRS is unable to issue administrative guidance in this area then we plan to introduce legislation to accomplish these important changes.

Sincerely,

Charles E. Schumer
United States Senator

Michael Bennet
United States Senator

Sheldon Whitehouse
United States Senator

Tom Udall
United States Senator

Jeanne Shaheen
United States Senator

Jeff Merkley
United States Senator

Al Franken
United States Senator