



AMERICANS FOR LIMITED GOVERNMENT

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February 24, 2014

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
CC:PA:LPD:PR (REG-134417-13)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Via electronic submission

Re: Notice of Proposed Rulemaking on Section 501(c)(4) Organizations

Dear Commissioner Koskinin:

I write today on behalf of Americans for Limited Government (ALG) to provide comment on the Notice of Proposed Rulemaking (NPRM) from the Department of the Treasury and the Internal Revenue Service (IRS), published on November 29, 2013, at 78 Fed. Reg. 71,535, *et seq.*

The NPRM if finalized into a Final Rule would affect ALG because ALG is an organization that is recognized as exempt from taxation under Section 501(c)(4) of the Internal Revenue Code (IRC). Many of the types of speech that the IRS through the NPRM seeks to eliminate, such as mentioning the name of a Member of Congress, are used by ALG on a daily basis. The harm to the free exchange of ideas, news, and commentary that would result from the NPRM cannot be easily overstated. As such, ALG submits these comments and requests that the NPRM be immediately withdrawn.

The NPRM is deeply problematic for several reasons as have been discussed by numerous commenters. This comment will focus on one particular problematic aspect of the NPRM, that it discriminates against 501(c)(4) entities while not applying the same regulations to 501(c)(5) organizations which are similar in most relevant respects.

As an initial matter, the IRS lacks the authority to promulgate a final rule based on the instant NPRM in that Congress, while it prohibited 501(c)(3) entities from engaging in certain political activity, chose to not include those prohibitions for 501(c)(4) entities.¹

I. The NPRM Violates the Principles of Equal Protection Because it Fails to Treat Similar Organizations in a Similar Manner.

The NPRM applies only to organizations that are exempt from taxation under Section 501(c)(4) of the IRC, despite the fact that many other types of organizations are recognized as exempt under the IRC. One type of organization that is similar to 501(c)(4) organizations are 501(c)(5) organizations. These organizations are listed in the IRC as, “Labor, agricultural, or horticultural organizations.”²

Labor organizations represent a significant part of the universe of exempt organizations and they have substantial annual revenue. This revenue is detailed in annual financial reports that are filed with the U.S. Department of Labor pursuant to Title II of the *Labor-Management Reporting and Disclosure Act of 1959* (LMRDA).³ These reports are filed with the Labor Department’s Office of Labor-Management Standards and provide information on the labor organizations’ receipts, disbursements, assets, and liabilities, as well detailed information on their membership, personnel, and itemized disclosure of major disbursements in functional expense categories.

An examination of the data from these reports discloses that not only do labor organizations bring in billions of dollars, but also that they spend a significant amount of money in categories that would be considered “candidate-related political activity” as defined by the NPRM. For fiscal year 2012, the latest year for which the most complete dataset is available, covered labor organizations reported total receipts of \$19,712,239,302 and disbursements of \$19,647,065,427.⁴ Of the total receipts, dues amount for \$8,983,632,879 and per capita tax \$2,960,828,000.⁵

On the disbursements side, \$772,121,027 was spent on Political Activities and

¹ See, David S. Addington, *Comments in Response to Notice of Proposed Rulemaking on “Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities,”* 78 Fed. Reg. 71535 (November 29, 2013), The Heritage Foundation, December 19, 2013, at 3 *et seq.*

² 26 U.S.C. § 501(c)(5).

³ 29 U.S.C. § 431 *et seq.* These filing requirements also apply to labor organizations covered by the *Civil Service Reform Act*, and the *Foreign Service Act*.

⁴ Yearly Data from the Office of Labor-Management Standards for Fiscal Year 2012, File *lm_data_data_2012*, downloaded January 30, 2014. Available online at: www.unionreports.gov.

⁵ Yearly Data from the Office of Labor-Management Standards for Fiscal Year 2012, File *ar_receipts_total_data_2012*, downloaded January 30, 2014. Available online at: www.unionreports.gov.

Lobbying.⁶ This is the amount that was reported by the largest labor organizations, those having receipts of \$250,000 or more in the fiscal year.⁷ By regulation, the types of expenditures that fall into this category are as follows:

Direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigations expenses). It does not matter whether the lobbying attempt succeeds.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and all other political disbursements.⁸

Many of these types of expenditures closely track with the types of expenditures that the NPRM defines as "candidate-related political activity."

An examination of the data by individual labor organization reveals that some labor organizations spend tens of millions of dollars in this category. The fifteen largest labor organizations by receipts for fiscal year 2012 reported spending the following amounts on political activities and lobbying:⁹

⁶ Yearly Data from the Office of Labor-Management Standards for Fiscal Year 2012, File ar_disbursements_total_data_2012, downloaded January 30, 2014. Available online at: www.unionreports.gov.

⁷ Instructions for Form LM-2 Labor Organization Annual Report, 75 Fed. Reg. 74,936, 90, December 1, 2010.

⁸ Instructions for Form LM-2 Labor Organization Annual Report, 75 Fed. Reg. 74,936, 5,016, December 1, 2010.

⁹ Note, some of the labor organizations in this list have calendar year fiscal years, but some do not.

Labor Organization**Political Activities and Lobbying**

Electrical Workers	\$4,801,519 ¹⁰
Steelworkers	\$11,295,205 ¹¹
Service Employees International Union	\$113,820,009 ¹²
National Education Association	\$39,854,561 ¹³
American Federation of Teachers	\$21,457,153 ¹⁴
Communication Workers of America	\$3,230,142 ¹⁵
National Association of Letter Carriers	\$2,113,404 ¹⁶
United Auto Workers	\$29,880,534 ¹⁷
United Food and Commercial Workers	\$13,186,535 ¹⁸
New York State United Teachers	\$11,062,836 ¹⁹
American Federation of State, County and Municipal Employees	\$70,011,153 ²⁰

¹⁰ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Electrical Workers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-116. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹¹ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Steelworkers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-094. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹² Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Service Employees International Union with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-137. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹³ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the National Education Association with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-342. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁴ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the American Federation of Teachers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-012. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁵ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Communication Workers of America with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-188. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁶ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the National Association of Letter Carriers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-509. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁷ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the United Auto Workers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-149. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁸ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the United Food and Commercial Workers with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-056. Available online at: www.unionreports.gov (accessed February 11, 2014).

¹⁹ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the New York State United Teachers with the Office of Labor-Management Standards (OLMS), OLMS File No. 070-581. Available online at: www.unionreports.gov (accessed February 11, 2014).

²⁰ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the American Federation of State, County and Municipal Employees with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-289. Available online at: www.unionreports.gov (accessed February 11, 2014).

Airline Pilots Association	\$4,306,643 ²¹
AFL-CIO	\$45,026,246 ²²
SEIU Local Union 1199	\$13,031,548 ²³
Teamsters	\$10,459,093 ²⁴

Looking deeper at the data, one can see that the Service Employees International Union reported disbursements with the purpose of, "Support for political advocacy" over 1,200 times in their filing.²⁵ Each of these 1,200 line items is for a disbursement of \$5,000 or more. The National Education Association reported numerous disbursements on the Political Activities and Lobbying schedule to pay for communications to members. For instance, one vendor received \$112,000 for "Mshp communicatn [sic] strategy."²⁶ Given the NPRM's broad definition of "public communication" it is highly likely that the National Education Association's disbursements here would constitute "candidate-related political activity" if the NPRM applied to 501(c)(5) entities. The American Federation of State, County and Municipal Employees reported on the same schedule that they made disbursements totaling \$2,281,044 to an "Advertising and Media Company" vendor.²⁷ The purpose of these disbursements was for media buys in various states. There is no shortage of further examples.

Since many labor organizations, as demonstrated above, have significant disbursements that would meet the NPRM's definition of "candidate-related political activity," one has to question why the IRS chose to not include labor organizations when crafting the NPRM. In many respects 501(c)(4) and 501(c)(5) organizations are similar. They both advocate for positions on behalf of their members. While the positions that are taken

²¹ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Air Line Pilots Association with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-179. Available online at: www.unionreports.gov (accessed February 11, 2014).

²² Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the AFL-CIO with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-106. Available online at: www.unionreports.gov (accessed February 11, 2014).

²³ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Service Employees Local Union 1199 with the Office of Labor-Management Standards (OLMS), OLMS File No. 031-847. Available online at: www.unionreports.gov (accessed February 11, 2014).

²⁴ Statement B, Line 51, Form LM-2 for Fiscal Year 2012 filed by the Teamsters with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-093. Available online at: www.unionreports.gov (accessed February 11, 2014).

²⁵ Schedule 16 - Political Activities and Lobbying, Form LM-2 for Fiscal Year 2012 filed by the Service Employees International Union with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-137. Available online at: www.unionreports.gov (accessed February 19, 2014).

²⁶ Schedule 16 - Political Activities and Lobbying, Form LM-2 for Fiscal Year 2012 filed by the National Education Association with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-342. Available online at: www.unionreports.gov (accessed February 19, 2014).

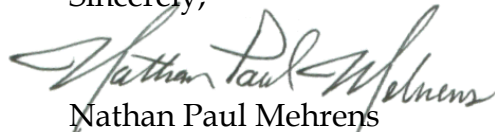
²⁷ Schedule 16 - Political Activities and Lobbying, Form LM-2 for Fiscal Year 2012 filed by the American Federation of State, County and Municipal Employees with the Office of Labor-Management Standards (OLMS), OLMS File No. 000-289. Available online at: www.unionreports.gov (accessed February 19, 2014).

may differ depending on the type of organization involved, they are still nonetheless treated similarly in most areas of the law. As a matter of equity and equal protection, 501(c)(4) organizations should not be treated with a higher level of speech regulation than applies to 501(c)(5) organizations.

Conclusion

As demonstrated above, the NPRM fails to treat similar organizations in a similar manner. Additionally, the IRS doesn't even bother to explain why they are proposing to treat similar organizations differently. Based on the foregoing, the NPRM should be immediately withdrawn.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Paul Mehrens".

Nathan Paul Mehrens
President and General Counsel