BERNARD SANDERS
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JOINT ECONOMIC

United States Senate
WASHINGTON, DC 20510–4504

332 SENATE DIRKSEN OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224–5141

1 CHURCH STREET, 2ND FLOOR
BURLINGTON, VT 05401
(802) 862–0697
1 (800) 339–9834

www.sanders.senate.gov

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The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 201510-6200

Dear Chairman Baucus and Ranking Member Hatch:

Thank you for undertaking the monumentally important task of reforming the Internal Revenue Code (IRC) and asking for our input. I write today to express the need to reevaluate the IRC's treatment of political activity and definition of political organizations.

Given the fact that my suggestions represent the interests of the middle class of this country and not powerful corporate special interests, I have no problem with making them public.

Earlier this year, many of us in Congress were concerned when it appeared the IRS was singling out certain groups seeking tax exemptions for special treatment based on their assumed political leanings. But the real scandal here was not the increased scrutiny—rather, it was that the rules governing acceptable levels of "political" activity for nonprofits are so opaque as to be meaningless. Any rewrite of the Tax Code must establish clear definitions and limits for issue advocacy and election activity.

Currently, 501(c)(3)s are not allowed to engage in any political activity, following a 1954 ban. 501(c)(4)s, on the other hand, are governed by conflicting laws and regulations: the IRC states a (c)(4) organization must be "operated exclusively for the promotion of social welfare"[1], but defines that further as "primarily engaged in promoting in some way the common good and general welfare of the people of the community."[2] The IRS created a facts and circumstances test to delineate when an organization is "primarily" engaged in promoting social welfare, which includes unlimited lobbying and issue advocacy; under the test, if less than half of the organization's work is overtly political, it could still qualify for tax-exempt status. But based on

[1] 26 U.S.C.A. § 501(c)(4)(a) (2010).
[2] Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (1960).

the IRS revelations and what we saw in the last election, where corporations and wealthy donors donated to (c)(4)s to avoid the disclosure rules governing super PACs,[3] it's clear we need to reform this section.

Therefore, I urge you to adopt the following changes to Internal Revenue Code, specifically as applied to §§ 501(c)(3)—(6) and 527:

- **Revise the definition of "political activity."**
  The current "facts and circumstances" test looks at six factors to determine if a communication is an exempt function (a confusing term in and of itself, and one that should be redefined as "political function"), including whether the communication identifies a candidate for public office, the communication identifies that candidate's position on a public policy issue, and it is not part of an ongoing series of substantially similar advocacy communications by the organization on that issue.[4] The test is unclear and easy to navigate around.

  Instead, the IRS should simplify the test: does the communication refer to a clearly identified candidate for public office or political party; is it meant for part or all of the candidate's electorate; does it reflect a view on the candidate?

- **Ban 501(c)(4), (c)(5) and (c)(6) organizations from most political activity.**
  The First Amendment protects the right to petition the government and the right of free speech. Americans should, and do, have the right to organize and advocate for issues they believe in. And they should have the right to organize and ask people to vote for or against their preferred candidates—but that does not mean they have the right to have such activities subsidized by the federal government, a position which has been taken by both those on the right and the left.[5]

  The Center for Responsive Politics reports that political nonprofits, which includes (c)(4)s, (c)(5)s, and (c)(6)s, spent slightly over $300 million in the 2012 election.[6] There is simply no reason the taxpayers should subsidize that level of political activity.

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[3] Israel, Josh. "How Real Disclosure Laws Could Help Fix the IRS Problem", *ThinkProgress*, May 14, 2013, http://thinkprogress.org/justice/2013/05/14/2006851/how-real-disclosure-laws-could-help-fix-the-irs-problem/

[4] Rev. Rule 2004-6.

[5] *See, e.g.*, Dolan, Eric. "Rep. McDermott wonders why tea party groups applied for taxpayer-funded subsidies", *Raw Story*, Jun 4, 2013 http://www.rawstory.com/rs/2013/06/04/rep-mcdermott-wonders-why-tea-party-groups-applied-for-taxpayer-funded-subsidies/; Samples, John., et. al. "More Government for All: How Taxpayers Subsidize Anti-Tax Cut Advocacy", *Cato Policy Analysis*, Jul. 10, 2001. http://www.cato.org/sites/cato.org/files/pubs/pdf/pa407.pdf

[6] Center for Responsive Politics. "2012 Outside Spending, by Group", viewed Jul. 25, 2013 http://www.opensecrets.org/outsidespending/summ.php?disp=O (select filter: Non-Disclosing Groups)

Member organizations, of course, should retain the ability to engage in certain political conversations—for example, they should be able to provide their members with voter guides, and discuss official actions. A 10% threshold for such activity should suffice.

Should a union, social welfare group, or trade organization wish to engage in higher levels of political activity, the group can establish a separate account under § 527.

Clarifying the limits on acceptable political activity will go a long way towards bringing more transparency and fairness into our democracy. I thank you for your consideration of these proposals and look forward to working with you on this important project.

Sincerely,

Bernard Sanders
United States Senator