

Written by Gun Owners
Friday, 16 January 2009 03:20

STATEMENT OF GUN OWNERS OF AMERICA WITH RESPECT TO NOTICE BY THE INTERNAL REVENUE SERVICE ON REVENUE RULING 2004-6

January 14, 2004

**Judy Kindell
T:EO:RA:G
1111 Constitution Ave., NW
Washington, DC 20224**

Dear Ms. Kindell:

On behalf of 350,000 Second Amendment supporters who are members of Gun Owners of America, we are writing to comment on the genuinely alarming aspects of [Revenue Ruling 2004-6](#)

-- and particularly the "permissible" public policy activities of organizations which are tax exempt under sections 501(c) (4) and 527 of the Internal Revenue Code.

Gun Owners of America, Inc., is a tax-exempt organization under section 501(c) (4) of the Internal Revenue Code. As such, we could suffer unfairly under the breathtakingly unconstitutional implications of the proposed guidelines.

Let us say at the outset, that the proposal shocks -- but does not surprise us. Prior to the adoption of the Wellstone amendment -- when the "electioneering communications" provisions of McCain-Feingold were no more than reporting requirements -- GOA publicly predicted that, should McCain-Feingold be adopted and upheld, the IRS would ultimately question whether the traditional issue advocacy activities of 501(c)(4)'s disqualified those organizations from tax-exempt status.

We did think this process of First Amendment accretion would occur over a period of years, rather than happening within a month of the Supreme Court's decision in *McConnell v. Federal Election Commission*, No. 02-1674 (2003), when the new IRS "guidelines" started the process.

We continue to believe that McCain-Feingold and the Supreme Court's decision in the *McConnell* case are contrary to the Founder's First Amendment intentions -- and will ultimately be consigned to history's garbage bin, together with other judicial expedients like *Plessy v. Ferguson*, 163 U.S. 537 (1896).

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But, for all of the problems with McCain-Feingold, that statute was much more narrowly circumscribed than the proposed IRS guidelines. McCain-Feingold was passed into law -- and, we believe, upheld by the Court -- because of certain "bright-line" distinctions:

- * "Electioneering communications" would have to reach a monetary threshold for reporting purposes.

- * They would have to be ads in the broadcast media.

- * They would have to occur within sixty days of a general election -- or within thirty days of a primary.

By contrast, the proposed guidelines contain no "bright-line" distinctions. Rather, they involve a bunch of "vague" balancing tests which arguably go far beyond McCain-Feingold to reach --

- * print media ads, organizational newsletters, e-mail alerts, and even informal communications by a 501(c) (4);

- * communications made well before an election campaign -- given that the "timing of the communication" is only one of six considerations in determining whether the communication is an "exempt function under section 527(e) (2)"; and

- * communications involving as little as a single contact -- given that the magnitude of a communication is nowhere to be found among the six factors.

These considerations are made even worse by the fact that, by your own admission, the six "aggravating factors" are not exhaustive.

Our organization exists for the express purpose of promoting and defending the Second Amendment to the Constitution of the United States.

Within the last two decades, we can think of no significant Second Amendment issue which has not first reached its legislative boiling point around the time of a general election. This is because most of the Congress's legislative business is increasingly handled on appropriations bills which reach the floor in September and October -- with the most contentious issues being reserved for September and October of election years.

Thus, McClure-Volkmer was first considered in the fall of 1984 as an amendment to language proposed to be stricken by a civil rights amendment to an appropriations bill. The Lautenberg Amendment (imposing a gun ban for minor domestic misdemeanors) and the Kohl Amendment (imposing a gun ban in the vicinity of schools) were both passed as amendments to omnibus appropriations legislation in the fall of 1996. GOA also fought the Brady law through a series of election cycles until its final passage in the fall of 1993 and lobbied against the semi-auto ban during the 1994 primary season. The ban was enacted within two months of the 1994 general election.

Our organization neither approves of these legislative measures, nor the irresponsible mode of lawmaking which often throws gun measures onto appropriations bills. However, the timing is not within our control.

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Under the proposed IRS Guidelines, if Second Amendment groups like GOA are not to become irrelevant to the most important aspects of the legislative process, they must run a gauntlet imposed by a vague list of factors without any "bright-line" distinctions:

- * By definition, our responses to these legislative emergencies are not part of an "ongoing series" of communications.

- * The fact that GOA (1) tries to influence a congressman's actions (2) at the time the issue arises (3) by contacting the congressman's constituents, rather than those of another congressman, is, in and of itself, enough to meet the first three of your six aggravating factors.

- * And, if we include a legislative "target list," we would meet all six of your aggravating factors.

- * Finally, the fact that we are forced to be engaged in a legislative battle because of Congress's own anti-gun initiatives -- and are forced into a time frame dictated by Congress itself -- is only a small part of a larger balancing test under your guidelines.

In the first paragraph of your proposed revenue ruling, you state: "Because public policy advocacy may involve discussion of the positions of public officials who are also candidates for public office, a public policy advocacy communication may constitute an exempt function..."

This suggests that you intend to regulate communications which are intended to be public policy advocacy -- and fail to adhere to a vague set of standards.

For all of its many faults, McCain-Feingold purported to be directed at campaign ads which were disguised as public policy advocacy. Unlike the IRS, McCain did not advertise his bill as an effort to regulate core First Amendment speech related to public policy.

For all of these reasons, we would urge you, in the strongest terms, to consider the constitutional and public policy implications of the step you propose to take. And we would urge you to step back from this precipice.

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