
*United States
House of Representatives
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs*

*HSLDA Testimony in Opposition to the Internal Revenue
Service's Proposed Regulation Defining Candidate Related
Political Activities*



Testimony of
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Senior Counsel
Home School Legal Defense Association

February 27, 2014

Mr. Chairman, thank you for the honor of being invited to testify before this Committee. My name is James R. Mason, III, and I am Senior Counsel for the Home School Legal Defense Association, a section 501(c)(4), tax-exempt organization. In that capacity, I oversee HSLDA's compliance with state and federal tax laws, campaign-finance laws, lobbying laws, and other areas of government affairs. Before coming to work at HSLDA in 2001, I was employed by the law firm of Bopp, Coleson, and Bostrom. There I worked on several important campaign-finance cases in which federal courts, including the Supreme Court of the United States, struck down regulations of political speech as being unconstitutional under the First Amendment.¹ The constitutional issues in these campaign-finance cases are closely related to the constitutional issues raised by the IRS proposed rules.

HSLDA is a national organization founded in 1983, which has as its primary purpose the protection of the right of parents to educate their children at home. We have over 80,000 members in all 50 states and the District of Columbia.

HSLDA strongly opposes this Proposed Rule in its entirety. This Proposed Rule unlawfully restricts the First Amendment free speech rights of millions of Americans who belong to social-welfare organizations and who depend on these organizations to influence public policy and society in beneficial ways. The Proposed Rule also oversteps the Congressionally-mandated jurisdiction of the Internal Revenue Service.

Many 501(c)(4) organizations from across the political spectrum are dedicated to giving a voice to citizens so that together they can effect social and political change. The Sierra Club is a 501(c)(4) organization dedicated to protecting the environment. The National Rifle Association is a 501(c)(4) organization dedicated to protecting gun rights. The American Civil Liberties Union is a 501(c)(4) organization dedicated to preserving civil liberties. And there are countless other organizations which are also 501(c)(4) organizations which are made up of millions of American citizens who wish to speak with one voice on an issue of importance to them.

One of HSLDA's main activities is monitoring federal, state, and local legislation. When a bill, ordinance, regulation, or policy change is proposed that will affect the ability of parents to homeschool, we frequently alert them about the proposal. Sometimes we urge them to contact their elected officials, by name, to express their support or opposition to the proposed legislation. We communicate with homeschoolers about legislative issues to advance our policy goals in the public interest.

¹ *Randall v. Sorrell*, 548 U.S. 230 (2006); *Federal Election Com'n v. Beaumont*, 539 U.S. 146 (2003); *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004); *Beaumont v. Federal Election Com'n*, 278 F.3d 261 (4th Cir. 2002); *Virginia Society for Human Life, Inc. v. Federal Election Com'n*, 263 F.3d 379 (4th Cir. 2001); *Florida Right to Life, Inc. v. Lamar*, 238 F.3d 1288 (11th Cir. 2001); *Perry v. Bartlett*, 231 F.3d 155 (4th Cir. 2000); *Daggett v. Com'n on Governmental Ethics and Election Practices*, 205 F.3d 445 (1st Cir. 2000); *Iowa Right to Life Committee, Inc. v. Williams*, 187 F.3d 963 (8th Cir. 1999); *Kansans for Life, Inc v Gaede*, 38 F.Supp. 928 (D. Kan 1999).

Under current law, we need not worry about whether a particular elected official is also a candidate or whether an election is near. But under the Proposed Rule's 30 and 60 day pre-election windows, what would be an issue-advocacy communication on Monday would be a "candidate-related political activity" (CRPA) on Tuesday—without changing a single word. Even worse, if the issue advocacy communication is posted on our website on Monday, by some strange IRS alchemy it would be magically transformed into a CRPA on Tuesday.

HSLDA urges that the entire Proposed Rule be rejected. In addition to the arguments listed above, the Proposed Rule would threaten the ability of HSLDA to advocate for homeschool freedom at the local, state, and federal level, and would threaten the ability of HSLDA to share what elected officials, judges, and government officials are saying about homeschooling, both good and bad. Each and every provision of the proposed rule would have a serious negative effect on HSLDA's ability to advocate for homeschool freedom as we have done since our founding in 1983.

There are numerous specific problems with the Proposed Rule:

1. Even though the Proposed Rule is directed only at 501(c)(4) organizations, it will affect 501(c)(3) organizations.

The IRS's claim that these proposed rules will not affect the ability of 501(c)(3) charities to engage in limited nonpartisan activities fails to take into account that the final rule for 501(c)(4) groups will be used as guidance for other tax-exempt organizations. For example, the proposed rules treat nonpartisan voter registration drives when conducted by a 501(c)(4) organization as a CRPA, but not so when done by a 501(c)(3) charity. There are many small 501(c)(3) organizations around the country that routinely share nonpartisan voter guides or conduct nonpartisan voter registration drives. Their actions benefit the public and are currently legal. But if this Proposed Rule is finalized, it will chill the environment for 501(c)(3) organizations, effectively silencing them as well. Many of these small charities cannot afford high-priced lawyers and would decide it is not worth the risk to engage in these previously safe activities.

2. Proposed Rule § 1.501(c)(4)-1(ii) only applies to 501(c)(4) organizations and not 501(c)(5) and 501(c)(6) organizations, which limits the free speech rights of certain organizations while allowing the same speech by other organizations.

This Proposed Rule does not apply to labor unions. If the IRS wished to regulate candidate-related political activities in a rational, fair manner, this Proposed Rule would not have been published without being equally applied to similarly-situated tax-exempt organizations. Labor unions, for example, are spared from the new definitions. In addition to being unfair on its face, it invites abuse by regulators.

HSLDA believes that no tax-exempt organizations should be regulated in the way the Proposed Rule would allow. HSLDA believes that the long standing abilities of 501(c)(4), 501(c)(5), and 501(c)(6) organizations, as well as other organizations, to be engaged in public policy and to share with the public where politicians stand on issues, is vital to a vigorous public discussion and part of a healthy democracy. Therefore, HSLDA would also oppose any revisions to the Proposed Rule that would include 501(c)(5) and 501(c)(6) organizations.

3. Proposed Rule § 1.501(c)(4)-1(ii) is an unprecedented and unconstitutional attempt by the Internal Revenue Service to usurp Congress' authority to set tax policy.

HSLDA believes that this Proposed Rule is such a broad, intrusive, and substantive change in longstanding federal tax policy that it should be left to Congress to decide, not executive agencies. Congress has shown willingness in the past to change the rules for 501(c) organizations as needed. Elected representatives of the people, not unelected rule makers, should hold a vigorous and open debate about whether there should be more restrictions on 501(c) organizations. If the Proposed Rule were to be adopted, HSLDA and other organizations would likely challenge these Rules as exceeding the IRS' legal authority under the law.

4. Proposed Rule § 1.501(c)(4)-1(ii) would negatively affect HSLDA in numerous ways, impairing our ability to communicate with our nationwide membership about homeschool freedom.

If the Proposed Rule were to be adopted, it would significantly impair HSLDA's ability to communicate with our membership and the homeschool community; it would increase our costs; and it would negatively affect thousands of other 501(c)(4) organizations around the nation.

- a. Nonpartisan voter registration drives: As part of our mission of encouraging civic involvement, HSLDA encourages our members to conduct nonpartisan voter registration drives, supports these nonpartisan voter registration drives, and has also conducted nonpartisan voter registration drives. If the Proposed Rule were adopted, HSLDA would be severely hampered in our ability to conduct these nonpartisan voter registration drives.
- b. Candidate debates: As part of our mission of encouraging civic involvement, HSLDA encourages and supports our members as they conduct nonpartisan candidate debates. Homeschoolers wish to know how candidates from the local to federal level view homeschooling. If this Proposed Rule were adopted, HSLDA would be prohibited from conducting candidate debates, and possibly even helping our members organize and conduct their own candidate debates.

- c. Voter guides, voting records, and key votes: As part of our mission to enable homeschool families to know where their elected officials stand on issues, HSLDA circulates voter guides, lets homeschool families know how their elected officials vote, and occasionally scores and publishes key votes on issues that relate to homeschool freedom. If this Proposed Rule were adopted, HSLDA would be prohibited from doing this as part of its social-welfare mission, and homeschool families would be in the dark about how their elected officials act in regards to homeschool freedom.
- d. Prohibition on making any mention of incumbent elected officials within 30 days of a primary or 60 days of a general election: HSLDA routinely communicates with our nationwide membership and the broader homeschool community regarding pending legislation and about how officials vote on homeschooling. This goes all the way from local school board officials and town council members, to state legislators and governors, to federal Members of Congress. If Majority Leader Harry Reid were to vote in the Senate for a resolution commending homeschoolers the month before his election, and this Proposed Rule had been adopted, HSLDA would be prohibited from mentioning this to the homeschool community until after the election. In addition, if this Proposed Rule were adopted, HSLDA may need to routinely scrub our website of all references to elected officials before primaries and elections.

This Proposed Rule would damage HSLDA, other 501(c)(4) organizations, and our nation's long standing Constitutional freedoms. HSLDA strongly opposes the Proposed Rule and urges Congress to intervene to prevent it from being promulgated.

JAMES R. MASON, III

PROFESSION

Engaged in the general practice of law with non-profit advocacy organization Home School Legal Defense Association (HSLDA), Purcellville, Virginia since August of 2001.

NATURE OF PRACTICE

Trial and appellate practice in areas of civil rights and constitutional law.

CASES

Romeike v. Holder, 718 F.3d 528 (6th Cir. 2013), holding that Germany's enforcement of its general school-attendance law against homeschoolers did not amount to persecution under the Immigration and Nationality Act;

Loudermilk v. Danner, 449 Fed.Appx. 693 (9th Cir. 2011), holding that a reasonable police officer would not have known, at time of search, that it was coercive to explain to parents that taking temporary custody of parents' children under state law was viable option, or that consent to search was involuntary when officers withdrew their initial threat to enter home without warrant;

Combs v. Homer-Center School District, 540 F.3d 231 (3d Cir. 2008), holding that Pennsylvania law governing reporting and superintendent review requirements of home-schooled children was not unconstitutional under the First Amendment;

Loudermilk v. Arpaio, 2007 WL 2892951 (D. Ariz. 2007), holding that the complaint, viewed in the light most favorable to Plaintiffs, sufficiently alleged that the defendant exerted coercive pressure on the plaintiffs to allow the search of their home so that their children would not be removed;

Durkee v. Livonia Cent. School Dist., 487 F.Supp.2d 313 (W.D. N.Y. 2007), holding that the IDEA does not permit a school district to compel the evaluation of a student for determination of eligibility for publicly-funded special education services where the student's parent objects to the evaluation and refuses to accept publicly-funded special-education services;

Combs, et. al v. Homer-Center School District, et al, --- F.Supp.2d ---- (2006 WL 1453532) holding that the Pennsylvania homeschooling statute did not violate Pennsylvania Religious Freedom Protection Act (PRFPA), and did not violate Free Exercise Clause.

Fitzgerald v. Camdenton R-III School District, 439 F.3d 773 (8th Cir. 2006), holding that the federal Individuals with Disabilities in Education Act (IDEA) does not give public schools jurisdiction over homeschooled children who may have special needs;

Owens v. Parinello, 365 F.Supp.2d 353 (2005), seeking damages and relief based on alleged violations of a student's constitutional rights to due process and equal protection; also alleging violation of New York homeschool statute;

In re Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365 (Pa.Super., 2005) holding that a social services petition failed to establish probable cause under the 4th Amendment, and was insufficient support for a court order to compel parents to cooperate with a "home visit;"

Theiss v. Principi, 18 Vet.App. 204 (Vet.App. 2004), holding that Department of Veterans Affairs' interpretation that a home school is not an "educational institution" for purposes of entitlement to dependent pension benefits was not a reasonable statutory interpretation;

Landell v. Sorrell, 382 F.3d 91 (4th Cir. 2004) challenging Vermont's comprehensive campaign finance system. Reversed *sub nom under Randall v. Sorrell*, 126 S.Ct. 2479 (U.S. Sup. Ct. 2006), holding that (1) Vermont campaign finance statute's expenditure limits on amounts candidates for state office could spend on their campaigns violated First Amendment free speech protections, and (2) statute's contribution limits on contribution amounts for campaigns of candidates for state office violated First Amendment free speech protections;

Goulart v. Meadows, et al, 345 F.3d 239, 246 (4th Cir. 2003), holding that (1) county policy banning use of community centers for private educational activity did not implicate First Amendment right of free expression of parents of homeschooled children; (2) minimal judicial scrutiny applied to review of county policy, in equal protection analysis; and (3) policy did not violate equal protection rights of parents;

In re Stumbo, 582 S.E.2d 255 (N.C. 2003), holding that an anonymous report of a naked two-year old child on a driveway unsupervised was insufficient to constitute "neglect" for purposes of child welfare investigations;

Pelletier v. Maine Principals' Association, 261 F.Supp.2d 10 (D.Me. 2003), holding that homeschooling parents did not have a fundamental right to have their children participate in sports through the public school;

Harrahill v. City of Monrovia, 104 Cal.App.4th 761, (Cal.App.2.Dist., 2002), holding that a city ordinance that prohibited children from being in public places other than school during school hours was constitutional;

Beaumont v. Federal Election Commission, 278 F.3d 261 (4th Cir. 2002), striking down federal statute and regulations banning corporate independent expenditures and contributions as applied to a nonprofit, ideological corporation (reversed);

Virginia Society for Human Life, Inc. v. Federal Election Commission, 263 F.3d 379 (4th Cir. 2001), striking down FEC regulation of “issue of advocacy,” nationwide injunction issued;

Florida Right to Life v. Lamar, 238 F.3d 1288 (11th Cir. 2001); striking down Florida’s “political committee” statute as unconstitutional under the First Amendment;

Touchston v. McDermott, 234 F.3d 1130 (11th Cir. 2000); Florida Election Case challenging constitutionality of Florida’s “Manual Recount Statute” on behalf of voters (dismissed after Florida Legislature substantially revised the statute);

Perry v. Bartlett, 231 F.3d 155 (4th Cir. 2000), striking down state campaign finance statute;

Daggett v. Governmental Comm’n on Ethics and Elections, 205 F. 3d 445 (1st Cir. 2000), upholding state campaign finance statute;

Iowa Right to Life v. Williams, 187 F. 3d 963 (8th Cir. 1999), striking down a state regulation of “issue advocacy” and a state statute requiring political committees to immediately notify “benefited” candidates after making an independent expenditure and requiring the candidate to “disavow” the communication or count it as a contribution;

Virginia Society for Human Life, Inc v. Caldwell, 187 F.3d. 633 (4th Cir. 1999), affirming the district court's denial of motion to recover attorneys' fees and expenses under 42 U.S.C. § 1988;

Kansans for Life v. Gaede, 38 F. Supp. 928 (D. Kan. 1999), striking down state election commission reporting requirement (no appeal taken)

ADMITTED

U.S. Supreme Court (June 24, 2002); Oregon Supreme Court (September 1996); U.S District Court, Western District of Michigan (October 2003); U.S. District Court, Southern District of Indiana (March 2001); U.S. Court of Appeals for Veterans Claims (October 2001); U.S. Court of Appeals for the First Circuit (February 2000); U.S Court of Appeals for the Third Circuit (July 2006); U.S. Court of Appeals for the Fourth Circuit (March 2000); U.S Court of Appeals for the Fifth Circuit (December 2006); U.S Court of Appeals for the Sixth Circuit (August 2012); U.S. Court of Appeals for the Eighth Circuit (March 1999); U.S. Court of Appeals for the Ninth Circuit (December 2010); U.S. Court of Appeals

for the Eleventh Circuit (February 2000); and the U.S. Court of Appeals for the Federal Circuit (April 2005).

OTHER LEGAL EXPERIENCE

Associate: Bopp, Coleson, & Bostrom, Terra Haute, Indiana; May 1998 to August 2001

Judicial Clerk: Oregon State Court of Appeals, Judge Walter I. Edmonds; August 1996 to May 1998

Law Clerk: Norfolk City Attorney's Office, Norfolk, Virginia. Contract employee, 80 hours per month, 1995-1996 academic year. Assisted Senior Deputy in all aspects of civil litigation including: analyzing cases/researching legal issues; drafting briefs in support of motions in Federal Court.

Law Clerk: National Legal Foundation, Virginia Beach, Virginia. May-September 1995. Public Interest First Amendment Law Firm. Assistant to Executive Director, Robert Skolrud.

EDUCATION

May 11, 1996: Regent University School of Law, Virginia Beach, Virginia
Juris Doctor, *Magna Cum Laude* (5/106)

HONORS

Law Review: Editor-in-Chief

Award of Excellence: Outstanding Graduate—selected by the faculty

Jean B. James Memorial Scholarship: “In recognition of a strong commitment to Christ, family, the sanctity of marriage and a vision for the preservation of liberty through faith and rule of law.”

PUBLICATION

Note: *Smith's Free-Exercise Hybrids Rooted in Non-Free-Exercise Soil*; Regent University Law Review, Fall 1995

UNDERGRADUATE

Bachelor of Science in American Studies, 1978; Oregon State University Naval R.O.T.C. Scholarship

PROFESSIONAL EXPERIENCE

Parole and Probation Officer, Oregon 1987-1993

Supervised a caseload of felony offenders. Reported in writing to local judges and testified in court. Conducted background investigations on law enforcement applicants. Made public presentations to local civic groups. Wrote policy and initiated Electronic Supervision Program.

AWARDS RECEIVED

Top Scholastic Award, Oregon Police Academy, 1988

Letters of Commendation: 1990, 1990, 1989, 1988

MILITARY

Surface Warfare Officer, U.S. Navy, 1978-1982

Officer-of-the-Deck, Underway. Command Duty Officer: Responsible for the security of the vessel import. Handled complicated, dangerous situations in the absence of the vessel's Commanding Officer. First Lieutenant: Managed up to 100 officer and enlisted personnel during complex amphibious operations. Administrative/Personnel Officer: Managed 10 clerical personnel in ship's office.

NAVAL RESERVES

Naval Liaison Officer, 1984-1994

Recalled to active duty for Operation Desert Storm. Served as Naval Liaison Officer between Military Sealift Command and foreign flag vessels laden with vital military cargo in Persian Gulf.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

James R. Mason

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2011. Include the source and amount of each grant or contract.

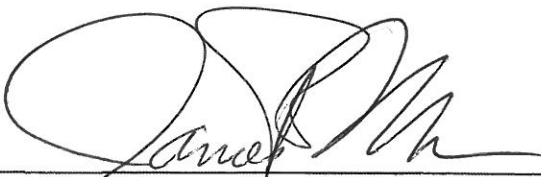
None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Home School Legal Defense Assoc. I am the
Senior Counsel.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None.



I certify that the above information is true and correct.
Signature:

2/24/14

Date: