CLC
ADVANCING DEMOCRACY THROUGH LAW

December 4, 2017

The Honorable Thad Cochran
Chairman
U.S. Senate Committee on Appropriations
S-128, The Capitol
Washington, D.C. 20510

The Honorable Patrick Leahy
Vice Chairman
U.S. Senate Committee on Appropriations
S-146A, The Capitol
Washington, D.C. 20510

Dear Chairman Cochran and Vice Chairman Leahy:

The Campaign Legal Center strongly opposes measures in the appropriations bill that threaten to undermine important protections for the democratic process.

Our concerns, explained in more detail below, are the following:

- Section 633 of the appropriations bill would supercharge presidential joint fundraising committees, handing presidential candidates even more control over the six- or seven-figure checks raised through joint fundraisers;
- Section 107 appears to prohibit the Internal Revenue Service (IRS) from enforcing existing laws limiting tax-exempt entities from engaging in partisan political activities, and Section 124 blocks the IRS from issuing new regulations clarifying the rules for nonprofit political activity;
- Section 629 prohibits the Securities and Exchange Commission (SEC) from studying or implementing a rule requiring public companies to disclose political spending to shareholders.

We urge you to oppose these provisions for the following reasons.

Section 633 would grant presidential candidates even more control over how parties spend the six- and seven-figure checks raised through joint fundraising committees.

In the 2016 election cycle, both Hillary Clinton and Donald Trump entered into joint fundraising agreements with their respective national and state parties, allowing a donor to write a single six- or seven-figure check that was ostensibly divided between the participating committees.

Although an individual donor may only give $2,700 per election to a presidential candidate, $33,400 per year to a national party committee (like the Democratic National Committee or Republican National Committee) and $10,000 per year to each of a party's 50 state party committees, joint fundraising allows for the aggregation of these contribution limits. This is how Clinton's joint fundraising committee, for example, could accept a $356,100 check from a single donor: by adding together Clinton's $2,700 contribution limit, the DNC's $33,400 limit, and the $10,000 contribution limit for each of the 32 participating state parties.

But in 2016, the money raised through Clinton's and Trump's presidential joint fundraising committees did not stay with the state parties. Instead, as soon as the joint fundraising proceeds were deposited in the state party accounts, almost all of it was sent back to the DNC or the RNC—which then spent the money to benefit their party's presidential candidate.

The Senate appropriations bill would make this already problematic situation even worse.

Currently, the only check on a presidential candidate controlling how the national party spends joint fundraising proceeds are the "party coordinated expenditure limits." As the name suggests, party coordinated expenditure limits cap how much the DNC or RNC may spend in coordination with a candidate.

By narrowing the definition of "coordination" for purposes of the party coordinated expenditure limits, the Senate bill would effectively eliminate those limits, and allow presidential candidates to control how the parties spend the entirety of the massive checks raised through joint fundraisers.

This means that a megadonor who writes a six- or seven-figure check to a candidate's joint fundraising committee can be especially confident that the money is going to benefit that candidate, and may expect that the level of gratitude owed is commensurate with the size of the contribution.

Other appropriations measures aim to further entrench the role of dark money in our political process. Section 107 would appear to prohibit the IRS from enforcing existing laws prohibiting or limiting tax-exempt entities from engaging in partisan political activities. Moreover, Section 124 blocks the IRS from issuing, revising, or finalizing rules clarifying the definitions of political activity for 501(c)(4) entities. This ill-informed measure has been included in past appropriations bills and has the effect of depriving tax-exempt groups of the clarity needed in order to protect robust civic engagement while allowing bad dark money actors to continue abusing their tax-exempt status.

Section 629 of the appropriations bill would also hinder the ability of the Securities and Exchange Commission (SEC) to protect investors by blocking the SEC from studying, developing, proposing, finalizing, issuing, or implementing a rule requiring public companies to disclose political spending to shareholders. This proposal goes beyond inappropriate riders included in past appropriations measures by prohibiting the SEC from even *studying* such a rule.

Disclosure of corporate political spending has immense value for investors and serves as a key tool to promote transparency for shareholders and the public-at-large. It gives potential investors a better understanding of how companies operate and promotes a truly free market. Shareholders have a legitimate interest in knowing how their money is being spent and how those expenditures may impact the value of their investments. The ability of companies, their management, and their boards to spend resources for political purposes without shareholders' knowledge gives rise to significant investor protection and corporate governance concerns.

The Supreme Court's 2010 *Citizens United v. FEC* decision fundamentally changed our nation's campaign finance laws. In the years since that decision, at least $800 million has been spent on political advertising by organizations that do not disclose their donors. This year, "[u]ndisclosed donors provided nearly half of the more than $20 million in outside campaign spending" in the three hotly contested 2017 special elections for U.S. House seats in Georgia, Montana, and South Carolina, according to an analysis by *Bloomberg BNA*. The result is that investor demand for this information has only increased, as the magnitude of the problem and the potential for abuse has skyrocketed.

We urge you to oppose any effort to undermine limits on presidential fundraising and the integrity of the IRS and SEC.

Sincerely,

Trevor Potter
President, Campaign Legal Center

Brendan Fischer
Director, Federal and FEC Reform Program