Statement for the Record from Campaign Legal Center

United States Senate Committee on Finance
Subcommittee on Taxation and IRS Oversight

Hearing on "Laws and Enforcement Governing the Political Activities of Tax-Exempt Entities"

May 4, 2022

Dear Chair Whitehouse, Ranking Member Thune, Chair Wyden, and Ranking Member Crapo:

Thank you for the opportunity to submit this statement to the Senate Finance Subcommittee on Taxation and IRS Oversight regarding the crucial importance of transparency about who is spending money to influence our elections. The Subcommittee's hearing on "Laws and Enforcement Governing the Political Activities of Tax-Exempt Entities" is crucial and timely.

Campaign Legal Center ("CLC") is a nonpartisan, nonprofit organization dedicated to defending and strengthening American democracy through law. CLC's Federal Reform team works to uncover campaign finance violations, file complaints seeking administrative enforcement, and advocate for reforms to strengthen and ensure the consistent and robust enforcement of campaign finance laws.

Voters have a fundamental right to know who is spending money to influence our elections. Indeed, transparency about the true sources of election spending is essential to the right of self-government and necessary to hold officeholders accountable to the public, both of which are core First Amendment values. Untraced political spending undermines these values. Voters' right to meaningfully participate in the democratic process is impeded without information about who financially supports which candidates and positions. Disclosure of the true sources of election spending is also essential to securing elections against corruption and foreign interference.

For years, the Federal Election Commission ("FEC") — the federal agency responsible for enforcing federal campaign finance laws and ensuring that voters are informed about the true sources of election spending — has been failing to protect voters' fundamental right to

transparent campaigns. The Internal Revenue Service's ("IRS") total failure to police the abuse of federal nonprofit rules is exacerbating the problem.

Specifically, these federal regulators routinely permit groups engaged in extraordinary levels of political campaign activity to operate as 501(c)(4) "social welfare" nonprofits and withhold basic information about the donors financing their political campaign activity. Congress should enact legislative reforms to stop this unaccountable and untraceable political campaign spending.

Organizations that are exempt from taxation under Section 501(c)(4) of the federal tax code are not required to disclose their donors, even if they engage in campaign activity, including spending on communications that explicitly urge voters to support or oppose a specific candidate. These groups may also give millions of dollars to support the activities of independent-expenditure-only committees — commonly referred to as "super PACs" — which can receive unlimited contributions, including funds from corporations and wealthy special interests, to buy communications expressly advocating for or against candidates, so long as their activities are not coordinated with any candidate or political party.

While super PACs — like all political committees — must identify their contributors in publicly available disclosure reports, 501(c)(4) groups do not have a similar legal obligation, making them an ideal conduit for political spending by corporations and wealthy special interests who seek to keep their identities concealed. As such, these nonprofit groups have become an increasingly common front for secret political spending, or what commentators often refer to as "dark money."

Guidance from the IRS indicates that political campaign activity cannot be a 501(c)(4) organization's "primary activity," but the agency does not enforce that restriction. After careful review, we could find no example in recent memory of a 501(c)(4) organization losing its federal tax-exempt status based on its political campaign activity, despite ample evidence of such activity. Consequently, these groups are able to benefit from 501(c)(4) tax-exempt status while engaging in massive amounts of political campaign activity with impunity, secure in the knowledge that their tax-exempt status will not be challenged and their undisclosed donors will remain secret.

At the same time, the FEC, whose sole mission is interpreting and enforcing federal campaign finance laws, has consistently failed to enforce the rules requiring groups whose "major purpose" is nominating or electing federal candidates to register and report as political committees, or "PACs." Under the Federal Election Campaign Act ("FECA") and the U.S. Supreme Court's 1976 decision in *Buckley v. Valeo*, any group that raises or spends more than $1,000 on elections in a calendar year and has the "major purpose" of nominating or electing federal candidates must register with the FEC as a political committee, maintain records, and file periodic disclosure reports detailing their receipts and disbursements.

The FEC, however, has virtually ceased enforcing these legal requirements. As has been well documented, the FEC is deeply hampered by ideological division and the agency routinely deadlocks when faced with allegations that a 501(c)(4) group is breaking the law by failing to register and report as a political committee, regardless of how many millions of dollars that group may have spent to influence elections.

The upshot of these administrative failures is an extraordinary and unrelenting increase in secret spending on our elections. Because 501(c)(4) organizations do not disclose their donors — a fact well known to wealthy special interests seeking to conceal their identities — the increase in 501(c)(4) political activity has routinely deprived voters of the essential information needed "to make informed decisions and give proper weight to different speakers and messages," as Justice Kennedy wrote for the U.S. Supreme Court in *Citizens United v. FEC*. In fact, the Court's support for political disclosure has been strong across the ideological spectrum, and it has repeatedly rejected First Amendment challenges to laws requiring disclosure of the sources of election-related spending.

Yet the problem persists, and a few examples help illustrate the situation. The 501(c)(4) organization "One Nation" disclosed that in 2020 alone, it had raised $172 million and spent $195 million. An enormous amount of its spending was on political campaign activity — e.g., it contributed more than $77 million to Senate Leadership Fund, a super PAC also run by One Nation's president. Likewise, "Majority Forward" is a 501(c)(4) organization that has spent tens of millions of dollars in every recent election. It shares staff, including its president, with Senate Majority PAC, a super PAC to which Majority Forward contributed $14.6 million in 2021. These are not isolated examples. Numerous 501(c)(4) groups have similarly directed vast amounts on election spending while evading oversight and accountability.

CLC has not stood idly by. We have filed numerous FEC complaints on this issue, and when the FEC fails to act, we have sought federal court orders requiring the FEC to enforce the law or authorizing us to directly pursue enforcement against the violators. Most recently, CLC filed suit against 45Committee, a 501(c)(4) organization that hid its donors while spending as much as $38 million in 2016 to help elect former President Donald Trump. CLC's suit alleges that 45Committee failed to register as a political committee as required by federal law, thereby avoiding disclosure of its donors and spending. By enforcing campaign finance law against this secret money group, CLC seeks to ensure that the public has the critical information it needs to evaluate who is influencing elections. However, voters should not need to rely on lawsuits from organizations like CLC to fill the void of inaction left by the FEC and IRS.

Congress can improve the dire current state of affairs by addressing loopholes that allow 501(c)(4) groups to spend millions on elections without disclosing the true sources of that money, and by removing the appropriations rider that curtails the IRS's ability to issue meaningful guidance on, and enforce, the rules governing nonprofit political campaign activity.

Dark money funneled into our elections through 501(c)(4) groups poses a serious and ongoing threat to the bedrock principle of electoral transparency. We urge Congress to respond accordingly by taking the necessary steps to end secret spending in our elections.

Respectfully submitted,

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