



February 18, 2025

Federal Election Commission  
1050 First St. NE  
Washington, DC 20463

**Re: REG 2024-06: Modification and Redaction of Contributor Information**

Dear Commissioners:

Campaign Legal Center (“CLC”) respectfully submits this comment on REG 2024-06: Modification and Redaction of Contributor Information,<sup>1</sup> and would be pleased to offer testimony on the proposal, should the Federal Election Commission (the “FEC” or “Commission”) hold a hearing on this subject. CLC has deep concerns about the proposed regulation and urges the Commission not to adopt it, at least as currently proposed. The Commission’s statutory mandate is to ensure transparency in federal elections, and adopting a procedure whereby contributors can redact or withhold statutorily required information from public disclosure — without any public oversight or consideration of the public interest — is fundamentally at odds with that mission.

Courts have created a narrow exemption to the Federal Election Campaign Act’s (the “Act” or “FECA”) disclosure requirements for donors that will face threats, harassment, or reprisals if their identifying information is shared with the government or the public. For decades, courts have effectively administered the exemption, carefully balancing serious concerns about threats and harassment with the compelling First Amendment informational interests underlying FECA’s disclosure provisions. The FEC now proposes to replace that careful judicial balancing with a formulaic process that is both inconsistent with the agency’s statutory mandate and risks undermining voters’ right to access information about the sources of money used to influence American elections. The FEC should not go forward with this effort, which is misguided and unnecessary.

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<sup>1</sup> Modification and Redaction of Contributor Information, 89 Fed. Reg. 103701 (proposed Dec. 19, 2024) (to be codified at 11 C.F.R. §§ 104, 110, 400), <https://sers.fec.gov/fosers/showpdf.htm?docid=425657> (hereinafter “NPRM”).

If the Commission nevertheless proceeds with this rulemaking, a number of critical amendments to the proposed text are essential to ensuring that a final rule appropriately factors the First Amendment interests of voters, whose rights the FEC is charged with protecting. Broadly speaking, the final rule must accurately reflect the legal standards established by the courts for granting an exemption from FECA's disclosure requirements, provide an oversight mechanism to ensure the Commission is accountable for its application of the rule, and provide a means for the Commission, watchdog groups, and the public to monitor and know whether all political actors are respecting the contribution limits and all the other requirements of the Act. If the Commission takes the extraordinary and unprecedented step of creating a pathway by which people can systematically opt out of disclosing statutorily required campaign finance information, it is imperative that the mechanism include robust safeguards against abuse.

### **The Commission Should Not Proceed with This Rulemaking**

As one Commissioner stated at the outset of this rulemaking, the entire undertaking is “a solution in search of a problem.”<sup>2</sup> Over the course of the five decades since the Supreme Court carved out an as-applied reporting exemption in *Buckley v. Valeo*,<sup>3</sup> requests for application of the exemption on the basis of threats, harassment, or reprisals — and even more so, the granting of such an exemption — have been few and far between.<sup>4</sup> In the intervening years, the courts have been open to anyone wishing to seek an exemption, and the FEC has considered exemption extensions via advisory opinion and used an ad hoc process.<sup>5</sup> The Notice of Proposed Rulemaking (“NPRM”) does not identify any problems with the existing mechanisms for obtaining a reporting exemption, which is especially notable given the low frequency with which people seek a reporting exemption. For that reason alone, the Commission's choice to use its resources to create ways to *exempt* compliance with

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<sup>2</sup> See Statement of FEC Vice Chair Ellen L. Weintraub, Open Meeting of Dec. 12, 2024, REG 2024-06 (Requests to Modify or Redact Contributor Information): Draft Notice of Proposed Rulemaking, at 09:54, <https://www.youtube.com/live/SfqGaJGU470?t=175s> (“I think this is a solution in search of a problem”).

<sup>3</sup> 424 U.S. 1 (1976).

<sup>4</sup> Compare *Brown v. Socialist Workers '74 Campaign Cmte. (Ohio)*, 459 U.S. 87, 102 (1982) (granting exemption); *FEC v. Hall-Tyner Election Campaign Cmte.*, 678 F.2d 416, 419 (2nd Cir. 1982) (same); *1980 Illinois Socialist Workers Campaign v. Illinois Bd. of Elections*, 531 F.Supp. 915, 921 (N.D. Ill. 1981) (same), with *Gaspee Project v. Mederos*, 13 F.4th 7, 92 (1st Cir. 2021) (“[A]ppellants’ amended complaint is bereft of. . . factual allegations” regarding threats, harassment, or reprisals); *Rio Grande Found. v. City of Santa Fe*, 437 F.Supp.3d 1051, 1073 (D. N.M. 2020) (concluding there is “not enough evidence to establish a reasonable probability that . . . donors have been or would be subject to threats, harassment, and reprisals”); *Citizens United v. Schneiderman*, 882 F.3d 374, 384 (2nd Cir. 2018) (stating parties supplied only “bare assertions . . . a far cry from [] clear and present danger”); *Doe v. Reed*, 823 F.Supp.2d 1195, 1211 (D. W.D. 2011) (determining that the claim “does not rise to the level or amount of uncontroverted evidence. . . to obtain an as-applied exemption”); *John Doe No. 1 v. Reed*, 561 U.S. 186, 201 (2010) (“[S]cant evidence or argument” and past petition signature disclosures “ha[ve] come without incident.”); *McConnell v. FEC*, 251 F.Supp.2d 176, 247 (D.D.C. 2003) (citing “lack of specific evidence”).

<sup>5</sup> See NPRM at 103703.

the laws it is charged with enforcing is questionable, at best. The American people would be much better served by the FEC's focused attention to addressing real problem areas, such as the explosion of secret, special-interest spending in American elections, brought on by lax coordination rules, regulatory loopholes that continue to go unaddressed, and underenforcement of FECA's core provisions.<sup>6</sup>

The proposed process for seeking an exemption is also grossly imbalanced and thus inconsistent with the legal standard established by the Supreme Court. The draft regulation focuses exclusively on the contributor's asserted fear of threats, harassment, or reprisals, but it says nothing about voters' countervailing First Amendment interests in disclosure, nor does the proposal provide an opportunity for those who might be harmed by the withholding of particular statutorily required disclosure information to advocate for their interests.<sup>7</sup> When the *Buckley* Court recognized an as-applied exemption to FECA's disclosure requirements, it explicitly stated that the exemption would be appropriate only when "the state interest furthered by disclosure [is] so insubstantial that the Act's requirements cannot be constitutionally applied."<sup>8</sup> The Court required *balancing* of the contributor's evidence of threats, harassment, and reprisals with the public's "interest furthered by disclosure."<sup>9</sup> It also stated that the public's interest tends to be outweighed only in cases of disclosures required of minor parties.<sup>10</sup>

However, the Commission's proposed standard reflects none of this nuance. Compounding the problem, the Commission plans to deliberate on the exemption behind closed doors and never publish its decisions or reasoning.<sup>11</sup> *Buckley* presumed exemption requests would be litigated in court, where government attorneys may explain why the state's interest in disclosure outweighs the contributor's asserted concerns. Interested parties can also file amicus briefs in court cases, allowing voters and others harmed by the withholding of required campaign

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<sup>6</sup> See Andy Cerda & Andrew Daniller, *7 Facts About Americans' Views of Money in Politics*, Pew Research Ctr. (Oct. 23, 2023), <https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/> (finding that more than half of Americans think all or most elected officials ran for office to make money and that 73% of people believe campaign donors and lobbyists have too much influence on Congress); *Bipartisan Poll Finds Voters Want Stronger Enforcement of Campaign Finance Laws, Increased Transparency in Elections*, CLC (Nov. 18, 2019), <https://campaignlegal.org/update/bipartisan-poll-finds-voters-want-stronger-enforcement-campaign-finance-laws-increased> (summarizing findings from two polls showing that 83% of people favor transparency in elections, 71% want the FEC to take a more active role in enforcing campaign finance laws, and a majority of voters rate "corruption in the political system" as the most serious problem facing the country).

<sup>7</sup> See NPRM at 103709 (proposed 11 C.F.R. §§ 400.7, 400.9) (articulating a "reasonable probability" standard and stating that the proceedings will remain confidential).

<sup>8</sup> *Buckley*, 424 U.S. at 71.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* at 70 ("[T]he governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election"); see also *Brown*, 459 U.S. at 92 ("Minor party candidates 'usually represent definite and publicized viewpoints' well known to the public, and the improbability of their winning reduces the dangers of corruption and vote-buying." (quoting *Buckley*, 424 U.S. at 70)).

<sup>11</sup> See NPRM at 103709 (proposed 11 C.F.R. § 400.9).

finance information to be heard regarding their particular need for robust disclosure. Additionally, court decisions are subject to review through the appeals process, and it is the constitutional role of Article III courts to balance competing constitutional rights. Consequently, while it is essential that any FEC-created disclosure exemption use the correct legal standard when weighing exemption requests, the proposed process — which happens fully in the dark — still fails to approximate the safeguards provided by courts. (Safeguards that, to a lesser extent, are still present in the advisory opinion context, where voters can submit comments and potentially appeal a decision to federal district court.)

Given that there appears to be no problem to solve, and that other institutions and processes are better suited to adjudicating reporting exemptions than the FEC acting in private, it is surprising that the Commission has chosen to devote its resources to pursuing this rulemaking. Creating a new pathway for contributors to *withhold* statutorily required disclosure information sends the false impression to contributors, regulated entities, and the public at large that the exemption is widely available, when it is in fact quite narrow and rarely granted. Groups and individuals who are ideologically opposed to disclosure may be incentivized to take advantage of the exemption process, leading to frivolous requests that will drain the agency’s resources, taking what little is currently available for other sorely needed rulemaking and enforcement efforts. Thus, even if these frivolous applications are rejected, they may still have the effect of advancing deregulatory goals by diverting funds from enforcement needs and meritorious requests.

Moreover, the proposed rule exceeds the Commission’s own asserted view of the limits of its regulatory authority in attempting to craft a regulatory exemption from a statutory disclosure mandate, and establishing a closed-door expedited, administrative process to administer that exemption.<sup>12</sup> The FEC cannot and should

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<sup>12</sup> See 52 U.S.C. § 30107(a)(8) (granting the FEC authority to make rules only “to carry out the provisions of this Act”); FEC, Federal Election Commission Legislative Recommendations 2024 (Dec. 12, 2024), <https://www.fec.gov/resources/cms-content/documents/legrec2024.pdf> (asking Congress to amend FECA to give the Commission the power to apply the foreign national prohibitions to state ballot measure elections and to apply the personal use restrictions to leadership PACs, because FECA — in the Commission’s view — does not reach those scenarios); Memo. from Chairman Sean J. Cooksey & Comm’rs Allen J. Dickerson & James E. “Trey” Trainor III at 4, to the Comm’n Re: REG 2023-02 (Artificial Intelligence in Campaign Ads) – Draft NOD, <https://www.fec.gov/resources/cms-content/documents/mtgdoc-24-29-A.pdf> (Aug. 8, 2024) (expressing the view of three Commissioners that the FEC cannot regulate the deceptive use of artificial intelligence in elections because “the Commission lacks the statutory authority,” as deepfakes “go well beyond the statute”); cf. *FEC Approves Interim Final Rule Regarding Contributions in the Name of Another*, FEC (May 18, 2023), <https://www.fec.gov/updates/fec-approves-interim-final-rule-regarding-contributions-in-the-name-of-another/> (repealing a regulation struck down by a single district court, claiming that the Commission had no choice but to conform, when in fact agencies do not have to repeal regulations that are invalid in only one jurisdiction). The Commission’s insinuation that it has the authority to move forward with this rulemaking is also out of alignment with Congress’s view of the issue: Lawmakers are aware that FECA does not contain a reporting exemption, have repeatedly proposed the

not improperly expand its authority to create a rule that would reduce transparency and undermine the rights of voters. FECA tasks the FEC with enhancing transparency in elections by enforcing a campaign finance reporting regime that empowers the public with the information needed to cast an informed ballot, spot and deter corruption, and enforce substantive laws like the contribution limits. This rulemaking undermines those interests and devalues the rights of voters. CLC urges the Commission not to move forward with the proposed rule.

### **If the Commission Nevertheless Proceeds, Any Final Rule Must Require Consideration of the Public’s Countervailing Interest in Disclosure**

If the Commission nevertheless proceeds with this rulemaking, there are certain critical deficiencies in the current proposal that must be corrected in any final rule. At the most fundamental level, the regulatory language in the NPRM fails to reflect the standard applied by courts and creates a one-sided test that examines only the contributor’s allegations of threats, harassment, or reprisals. But a disclosure exemption based on the standard established in *Buckley* requires balancing of the contributor’s proffered evidence of potential harm with the public’s interest in disclosure.

Additionally, in the NPRM, the Commission asks a series of questions related to the “scope” of the rule, including: who should be able to seek modification of their identifying information through the new process; what information should be subject to modification or redaction; how long should the grant of an exemption last; how should the Commission process exemption requests; and how should the Commission implement a granted exemption.<sup>13</sup> CLC believes that these are critical questions, and that the Commission’s current approach to each would benefit from greater consideration of the public interest and the agency’s transparency mandate. CLC accordingly identifies certain specific changes to the proposed regulation that will better protect voters’ rights and provide for some modicum of oversight. These recommendations are set forth below.

#### **A. Any Exemption from FECA’s Disclosure Requirements Must Follow the Balancing Test Established by the Supreme Court**

As explained above, the proposed rule fails to conduct the balancing of constitutional interests required by the Supreme Court. The proposed regulatory language states:

If the Commission, after reviewing the request and any supporting documentation, determines by an affirmative vote of four (4) or more of its members that there is a reasonable

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addition of an exemption, but have not passed the applicable legislation. See DISCLOSE Act, S. 512, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/512/titles> (proposing the addition of a threats, harassment, and reprisals exemption); Cong. Research Service, The DISCLOSE Act: Overview and Analysis at 5 (July 26, 2010), <https://crsreports.congress.gov/product/pdf/R/R41264/10> (noting the original introduction of the DISCLOSE Act in 2010).

<sup>13</sup> See NPRM at 103704-07.

probability that the relevant disclosure would subject the contributor to threats, harassments, or reprisals, the Commission may approve, in whole or in part, the modification of the requested information.<sup>14</sup>

That is not the test the Supreme Court prescribed in *Buckley*. The Supreme Court recognized an exemption “where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act’s requirements cannot be constitutionally applied.”<sup>15</sup> The proposed regulation thus fails to adhere to *Buckley* in two ways: (1) it does not require that the alleged threats, harassment, or reprisals must be “serious;” and (2) it does not purport to require any balancing of the contributor’s concerns with the “state interest furthered by disclosure.”<sup>16</sup>

There is no disclosure exemption in FECA, and the Commission lacks any authority to create a regulatory exemption that exceeds what the courts have recognized.<sup>17</sup> At a minimum, any regulation that purports to implement the narrow exemption recognized in *Buckley* must strictly adhere to the judicial standard set forth in the decision. CLC suggests the following formulation:

If the Commission, after reviewing the request and any supporting ~~documentation~~ *evidence*, determines by an affirmative vote of four (4) or more of its members that *the evidence shows there is* a reasonable probability that the relevant disclosure would subject the contributor to *serious* threats, harassments, or reprisals, *and the public’s interest in the information to be modified is insubstantial*, the Commission may approve, in whole or in part, the modification of the requested information.<sup>18</sup>

While CLC believes that administration of the test is best left to the courts for the reasons explained above, this modification will at least correct the legally improper standard reflected in the proposal. With the caveat that the threats, harassments, or reprisals must be “serious,” the Commission will be acknowledging — as federal courts have consistently held for decades — that social consequences, public criticism, boycotts, protests, or similar nonviolent expressions are themselves protected First Amendment speech and do not warrant a reporting exemption.<sup>19</sup>

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<sup>14</sup> *Id.* at 103709 (proposed 11 C.F.R. § 400.7(a)).

<sup>15</sup> *Buckley*, 424 U.S. at 71.

<sup>16</sup> *See id.*

<sup>17</sup> *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2258 (2024) (cautioning that “[t]he views of the Executive Branch” cannot “supersede” the “judgment of the Judiciary”); *id.* at 2263 (stating that it is the role of courts to “interpret the statute and effectuate the will of Congress subject to constitutional limits”).

<sup>18</sup> NPRM at 103709 (proposed 11 C.F.R. § 400.7(a)).

<sup>19</sup> *See, e.g., Rio Grande Found. v. Oliver*, No. 1:19-cv-01174-JCH-JFR, 2024 WL 1345532, at \*16-17 (D.N.M. Mar. 29, 2024); *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 916-22 (E.D. 2011), *aff’d in part, dismissed in part sub nom. ProtectMarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827 (9th Cir. 2014).

Rather, the alleged harm must rise to the level of threats or harassment and be demonstrated by “specific evidence.”<sup>20</sup>

Likewise, explicitly requiring the Commission to balance the donor’s alleged risk of threats, harassment, or reprisals with voters’ constitutional rights to the information FECA requires to be disclosed is necessary to safeguard the informational interests Congress sought to protect when enacting FECA. It will also enable the Commission to heed the Supreme Court’s warning that the informational interest will be higher when a major party or candidate receives the contribution.<sup>21</sup>

As a final point, formally inserting consideration of the public interest into the regulation will better approximate court procedure (though it is impossible to fully match court process). As mentioned above, when a person applies to a court to receive a reporting exemption, the government has an opportunity to present argument on the weight of the public’s interest. That opportunity is wholly lacking from the Commission’s one-sided, closed-door proposal, making it vital that the Commission be required to at least factor the public interest into its decision.

### **B. Characteristics of the Applicant Must, at a Minimum, be Part of the Balancing Test**

One question in the NPRM is who should be allowed to apply for a reporting exemption through the new regulatory process.<sup>22</sup> Proposed 11 C.F.R. part 400 is currently drafted very broadly, using the word “contributor” without defining that term.<sup>23</sup> Accordingly, it appears that the term “contributor” could mean individuals, political committees, or partnerships, or when it comes to some reporting entities, corporations (including nonprofits), corporate LLCs, and labor unions. There is also no monetary cutoff for how much a contributor can give to a single recipient, or to political actors in the aggregate, and still request an exemption.<sup>24</sup>

If the Commission intends to make this process available only to individuals (whether they are applying on their own behalf, or whether a representative acts as their agent in submitting the application), the Commission should make that limitation explicit in the final rule. Based on the explanatory section of the NPRM, that appears to be the Commission’s intent at this time. However, should the Commission ultimately open the process to other types of contributors, then it would be important for the Commission to consider the contributor type when applying the court-mandated balancing test.

Individuals and organizations, after all, are not situated the same. Organizations’ addresses are often already public, and many organizations use offsite addresses to

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<sup>20</sup> See *Buckley*, 424 U.S. at 74.

<sup>21</sup> See *id.* at 70.

<sup>22</sup> See NPRM at 103704-05.

<sup>23</sup> *Id.* at 103708-09 (proposed 11 C.F.R. § 400.1-.9).

<sup>24</sup> See *id.* at 103708 (proposed 11 C.F.R. § 400.3); see also *id.* at 103705 (“Should this procedure only be available to individuals whose contributions were under a specified amount?”).



receive mail, making it less likely they will face threats, harassment, or reprisals if their mailing addresses appear on FEC reports. At the same time, the public's informational interest is likely stronger in the context of organizations. For example, watchdog groups like CLC may use an organization's address to uncover information about the legality of its contributions. Indeed, one indication that an entity may be violating the straw donor ban is the fact that it has formed only recently and shares an address with a political committee that its funding.<sup>25</sup> Accordingly, redacting an entity's address from disclosure reports would deny the public, including groups like CLC, of highly probative information that they are otherwise entitled to under FECA. It is thus crucial that a final rule requires balancing of donors' and voters' interests and that the Commission clarify precisely which types of contributors may be eligible to seek an exemption under the rule.

In addition, the Commission must also consider the amount of money anyone seeking a reporting exemption has contributed to any single entity and to reporting entities in the aggregate during the election cycle. As the Supreme Court highlighted in *Buckley*, one of the reasons contributor information generally needs to become public is so that voters can detect when large contributions result in favors or policy preferences.<sup>26</sup> As it is axiomatic that the risk of corruption increases with the size of a contribution — indeed, that is why there are contribution limits — it follows that the public's interest in disclosure increases with the dollar amount of a contribution.<sup>27</sup>

CLC would also support a limitation confining this administrative process for seeking a disclosure exemption to contributions below a particular threshold amount.<sup>28</sup> When donors spend larger amounts to influence elections, the public

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<sup>25</sup> See Roger Wieand, *What Are Straw Donor Schemes and Why Are They a Problem?*, CLC (Feb. 12, 2025), <https://campaignlegal.org/update/what-are-straw-donor-schemes-and-why-are-they-problem>.

<sup>26</sup> See *Buckley*, 424 U.S. at 67, 70.

<sup>27</sup> See also *Rio Grande Found. v. City of Santa Fe*, 437 F. Supp. at 1065 (explaining that the public interest in disclosure is a “sliding scale” and is more attenuated “when the contributions . . . are slight” (quoting *Sampson v. Buescher*, 625 F.3d 1247, 1259 (10th Cir. 2010)). But that is not to say that government actors and voters alike categorically do not have an interest in transparency around small-dollar contributions, as people — however baselessly — parse ActBlue and WinRed disclosures for evidence of fraud. See, e.g., Press Release, Comm. on House Admin., *Chairman Steil Releases Findings from Subpoena of ActBlue* (Dec. 10, 2024), <https://republicans-cha.house.gov/2024/12/chairman-steil-releases-findings-from-subpoena-of-actblue> (detailing Congressional investigation of ActBlue); *ActBlue Calls Miyares' Investigation Into Fraud Claims a 'Partisan Political Attack and Scare Tactic'*, ABC8News (Aug. 2, 2024), <https://www.wric.com/news/virginia-news/actblue-calls-miyares-investigation-into-fraud-claims-a-partisan-political-attack-and-scare-tactic/> (describing the Virginia Attorney General's investigation of ActBlue based on generally debunked social media claims of “smurfing”).

<sup>28</sup> While it may feel difficult to settle on an exact dollar figure for the cutoff point, the Commission has the legal leeway to approximate where the public's interest in disclosure becomes substantial. In the context of contribution limits, the Supreme Court has stated that it does not “fine tune” the exact dollar figure unless there appears to be a significant mismatch, stating that “distinctions in degree become significant only when they can be said



interest in disclosure is so strong that any consideration of an exemption should occur in the open to allow for oversight and formal presentation of the arguments in favor of transparency (*i.e.*, in court, where there is an appeal process and the government and *amicus curiae* can submit briefs, or via advisory opinion, where there is a comment period and recourse to the courts).

Additionally, any political committee or FEC filer seeking a “blanket exemption” that would allow it to modify or redact information about each of its donors should have to file in court or seek an advisory opinion. It does not appear that the Commission has handled any requests for blanket exemptions via its ad hoc process, and it should adhere to that precedent and continue to handle such matters only through advisory opinions, like it has done historically when extending the Socialist Workers Party’s reporting exemption.<sup>29</sup> Here again, the public’s informational interest would be so severely burdened by losing information about every single contributor to a political cause that any such request must be adjudicated publicly and with additional safeguards.<sup>30</sup>

### **C. Any Redactions Should Be Limited Based on the Balancing of Interests Under the *Buckley* Standard**

Under the Commission’s proposal, contributors can seek redaction of their mailing address, occupation, and/or employer’s name.<sup>31</sup> The proposed rule does not allow redaction of the contributor’s name, and it is crucial that any final rule adhere to that approach.

But even if the Commission cabins the scope of potential redactions to address, occupation, and employer, it remains important that the Commission retain the discretion to limit the scope of any exemption in light of the balancing of interests. The Commission must examine the facts presented by the contributor to determine whether they warrant redaction of each piece of information requested, or whether a more limited exemption would adequately address the alleged concerns.

CLC also urges the Commission to adopt a presumption that zip codes remain unaltered on reports, in the absence of extremely compelling facts.<sup>32</sup> Disclosure of zip codes makes it easier to track a person’s contributions across FEC reports to the same entity to check for excessive contributions without identifying their specific

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to amount to differences in kind.” *See Buckley*, 424 U.S. at 30; *see also Randall v. Sorrell*, 548 U.S. 230, 247 (2006). A reasonable dollar figure would thus pass scrutiny.

<sup>29</sup> *See* Advisory Op. 1990-13 (Socialist Workers Party); Advisory Op. 1996-46 (Socialist Workers Party); Advisory Op. 2003-02 (Socialist Workers Party); Advisory Op. 2009-01 (Socialist Workers Party); Advisory Op. 2012-38 (Socialist Workers Party).

<sup>30</sup> *See Rio Grande Found. v. City of Santa Fe*, 437 F. Supp. 3d at 1065 (referencing a sliding scale of public interest dependent on the amount of activity to be removed from public disclosure).

<sup>31</sup> NPRM at 103708 (proposed 11 C.F.R. § 400.1).

<sup>32</sup> The Commission recommended continuing to disclose zip codes in its legislative proposal to Congress advocating for amendments to FECA shielding individuals’ addresses from public disclosure. Federal Election Commission Legislative Recommendations 2024, *supra* note 12, at 9.

address or location. Disclosure of zip codes would also allow members of the public to trace whether the person is a prolific donor and is likely to hold sway with a candidate or political party. Finally, journalists and scholars often track data about the geographic location of candidates' donor bases, which voters can use to discern whether their representatives are beholden to them or to out-of-state interests.<sup>33</sup> On balance then, the public's interest in zip code data is likely to outweigh the contributor's risks, meaning zip codes should generally remain on reports.

#### **D. The Commission Should Consider, Rather than Ignore, the Public Record in Weighing Requests**

The NPRM states that “[t]he Commission will not undertake an independent investigation to verify or supplement the information in the request.”<sup>34</sup> The proposed regulatory language executes this principle by stating that the Commission will review only “the request and any supporting documentation.”<sup>35</sup> Particularly in the context of a rule that would *exempt* compliance with disclosure requirements that the Commission is statutorily charged with enforcing, this intentionally blind approach is wholly improper. The Commission should thus remove this language from the final regulation and any similar statements from the Explanation and Justification.

First, even in the context of performing responsibilities that *are* explicitly authorized in FECA, Congress never intended the FEC to limit its review to documents submitted to the Commission. FECA itself instructs the Commission to consider “information ascertained in the normal course of carrying out its supervisory responsibilities” when making a reason to believe finding in the enforcement context.<sup>36</sup> Certainly then, the Commission must not blind itself to information already in its possession, such as disclosure reports, when taking on an extra-statutory function of exempting certain information from disclosure. Disclosure reports, for example, could reveal that a person has been making contributions for years to a particular group, when their application claims that they are afraid to make contributions to that group because people who affiliate with similar groups have faced threats, harassment, or reprisals in the past. In this instance, it would be helpful for the Commission to understand the applicant's contribution history and be able to discern that the applicant should be referencing their own experience rather than the experiences of purportedly similarly situated persons.<sup>37</sup> Disclosure reports

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<sup>33</sup> See, e.g., *In State vs. Out-of-State*, OpenSecrets, <https://www.opensecrets.org/elections-overview/in-state-vs-out-of-state> (last visited Feb. 12, 2025).

<sup>34</sup> NPRM at 103705.

<sup>35</sup> *Id.* at 103709 (proposed 11 C.F.R. § 400.7(a)).

<sup>36</sup> See 52 U.S.C. § 3019(a)(2).

<sup>37</sup> See *Citizens United v. FEC*, 558 U.S. 310, 370 (2010) (discounting evidence of donors to other ideological groups facing threats, harassment, or reprisals presented by *amicus curiae*, when Citizens United “has been disclosing its donors for years and has identified no instance of harassment or retaliation”); *Rio Grande Found. v. Oliver*, 2024 WL 1345532, at \*16-17 (declining to strike down challenged electioneering and independent-expenditure reporting laws where the organization cited donors to similar groups facing “boycotts, online harassment, and social ostracism,” but could not cite “any harassment or retaliation of its

would also arm the Commission with knowledge of the total amount the applicant has contributed during the election cycle, which would be relevant to the balancing test if the applicant is seeking modifications to all reports on which their name appears.

Second, it should not be controversial for the Commission to turn to other government sources for information, akin to a court taking judicial notice. For example, if a contributor has tried to obtain a reporting exemption in court before, and been denied, the contributor may be disinclined to mention the litigation in their application to the FEC. But the Commission should be able to consider that court opinion in rendering its decision.

Finally, it is particularly important that the Commission be allowed to consider reliable evidence outside of information submitted by the contributor because the proposed process does not include anyone representing the public's interest. As mentioned throughout this comment, when contributors seek an exemption in the courts or through advisory opinions, others may submit facts and arguments supporting the public's interest in disclosure of the information sought to be withheld. Without an opportunity for someone to play the role of public advocate, the Commission must fill that void and consider the full picture of available information to properly balance the public's interest in disclosure. If the Commission limits itself to the applicant's representations, it will make an already one-sided process even more biased.

#### **E. Reporting Exemptions Should Extend Two Years Without Exception**

According to the NPRM, the "default" time period for a reporting exemption will be two calendar years, but the Commission "will have discretion to adjust this two-year default on a case-by-case basis."<sup>38</sup> CLC believes that two years will be sufficient in all cases, and that the Commission should not retain the discretion to grant a longer exemption.

Two years approximates the length of an election cycle, and much can change in a cycle. Among other things, a particular issue could fade from public discourse, making a person's position on the issue less of a provocative subject. Further, the burden on the contributor to reapply for the exemption after two years, and on the Commission to reconsider the application, will be slight if circumstances have truly not changed during the time period.

Given that there is no reporting exemption in FECA, and that voters have an interest in receiving the information promised to them by statute, the Commission should take care to avoid superfluous exemptions. Adhering to a strict time period for reevaluating exemptions will ensure that voters are not needlessly denied information.

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employees or donors in its over 20-year history"); *cf. Buckley*, 424 U.S. at 71 (stating that only when an organization has "no history upon which to draw may [it] offer evidence of reprisals and threats directed against individuals or organizations holding similar views").

<sup>38</sup> NPRM at 103706.

## **F. The Commission Must Improve the Process for Implementing Modifications and Redactions**

If the Commission adopts a final rule for modifying or redacting contributor information, it must promulgate a more robust and thoughtful process for executing the modifications. The proposed regulation simply provides that the Commission will make modifications or redactions to reports already in its possession, and, moving forward, “any individuals or entities who are required to identify the same contributor in reports or statements filed with the Commission may incorporate those modifications or redactions” during the period the Commission has granted the exemption.<sup>39</sup> This proposal reflects several deficiencies that the Commission should correct.

First, unless a contributor has established that the feared threats, harassment, or reprisals are from the government, the FEC should be responsible for making all modifications and redactions to reports.<sup>40</sup> Reporting entities should file complete disclosure reports with the Commission, with the Commission then modifying or redacting the relevant contributor information. For compliance purposes, it is important that the FEC obtain and review complete reports. This is the best way to ensure that the Commission’s analysts can confirm the legality of all contributions.

If the Commission disregards this proposal, and adopts a final rule that requires reporting entities to modify their reports before submitting them to the Commission, then the Commission must delineate a process for the entities to follow to confirm that the contributor really does have the benefit of a reporting exemption. An effective system would be requiring the contributor to inform the entity receiving their contribution of the exemption and to provide an FEC-issued document substantiating the exemption. The reporting entity should also be required to contact their assigned Reports Analysis Division analyst to confirm that the contributor has really obtained an exemption, as a check on people creating fraudulent FEC documents. The Commission should codify this procedure and clarify that for an entity to satisfy the best-efforts safe harbor, it must follow this procedure and keep complete records about the donor to guard against accepting excessive contributions.

Second, the Commission should clarify that redacted information must actually be redacted with uniform, searchable language indicating the redaction; reporting fields cannot be left blank. If reporting fields are simply left blank, those reviewing reports will likely assume that the entity failed to report statutorily required information, potentially resulting in the filing of a complaint. To avoid filers and the Commission alike expending resources on meritless complaints, and so that the public is not left confused by reports, the Commission must prescribe a format for redactions.

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<sup>39</sup> *Id.* at 103709 (proposed 11 C.F.R. § 400.8).

<sup>40</sup> The FEC’s legislative proposal on the topic of redacting contributors’ street numbers and addresses recognizes that the Commission should still receive all information, even if it is not ultimately reported publicly. Federal Election Commission Legislative Recommendations 2024, *supra* note 12, at 10.

Third, the Commission should assign a contributor ID number to any contributor that obtains a reporting exemption. This number should appear on reports alongside the contributor's name, if there are redactions or modifications to the contributor's information. That way, anyone in the public monitoring reports, who might otherwise rely on address, employer, and occupation information to track a person's contributions across filings, will still have the means to do that, *i.e.*, the contributor ID number would allow observers to confirm that the "Mike Smith" they see on one redacted report is the same "Mike Smith" as on another redacted report. Observers could then check for excessive contributions and assess the overall impact of the contributor's donations on the political ecosystem.

Fourth, and on a more substantive note, the granting of an exemption should not entitle a contributor to modifications and redactions on all future reports. The applicability of the exemption, moving forward, should be something the Commission addresses on a case-by-case basis and makes clear in the decision it issues to the contributor. For example, a person applying for an exemption on the basis of domestic abuse may need their address redacted whenever they make a contribution. But a person who obtains an exemption because their affiliation with a particular political committee will subject them to threats, harassment, or reprisals should not be able to rely on that exemption when making a contribution to a different committee (like a major political party or its candidates). The Commission must tailor the exemption to the specific facts of the request and make clear in its final written response when the exemption will apply in the future.

### **G. The Final Rule Must Include an Oversight Mechanism**

Finally, one of the most troubling aspects of this proposal is that there is no oversight mechanism for lawmakers or members of the public to ascertain whether the Commission is deviating from the Supreme Court's standard and granting exemptions on the basis of weak evidence or failing to consider the public's interest in disclosure. The proposed regulation states that nothing from the Commission's consideration of a request or its findings will be made public without the requester's permission.<sup>41</sup> This effectively leaves everyone outside the Commission in the dark about the handling of exemption requests.

The ideal solution would be for the Commission to publish a file on each request, akin to what it posts to its website at the close of an enforcement matter. The file would include the application, any recommendation from the Office of General Counsel, the vote certification, and any written statement the Commission produces on the merits, including communications informing the requester of the Commission's decision. Although these documents would contain redactions as necessary to protect the applicant from the cited threats, harassments, or reprisals, they would still provide some modicum of information for the public to understand the circumstances in which the Commission granted an exemption, and why.

At a minimum, it is imperative that the Commission publish statistics about the exemption program. The Commission publishes quarterly statics about its

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<sup>41</sup> NPRM at 103709 (proposed 11 C.F.R. § 400.9).

enforcement efforts, so tracking exemption requests using the same or a similar mechanism should not be difficult.<sup>42</sup> Useful statistics to include in any quarterly or annual report include the number of exemptions requested, the number granted, what information was allowed to be redacted or modified in each case where an exemption was granted, and how long the exemption will last (if the Commission retains the discretion to grant exemptions for longer than two years). It would also be useful for the Commission to develop standardized categories for the basis of an exemption, such as domestic violence, the Judicial Security and Privacy Act, and other common bases. This information, taken together, would provide a sense of the Commission's activities and help the public and lawmakers understand whether the exemption process is working or whether reform is needed.

### **Conclusion**

CLC again urges the Commission to close this misguided rulemaking and focus instead on its transparency-protecting mandate. The opaque process the Commission proposes for handling requests for reporting exemptions runs contrary to the public's interest in disclosure and completely overlooks voters' rights. If the Commission moves forward with this rulemaking — and with a novel and improper expansion of its legal authority — it must review the draft regulation with the public interest in mind and overhaul the language to reflect the concerns listed in this comment. Voters have a right to know who is funding campaigns and seeking to sway their vote, and the Commission must center that right in its consideration of new rules.

Respectfully submitted,

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<sup>42</sup> See *Statistics on Enforcement and Compliance Operations*, FEC, <https://www.fec.gov/legal-resources/enforcement/enforcement-profile/> (last visited Feb. 13, 2025).