

SENATE DEMOCRATIC POLICY AND COMMUNICATIONS COMMITTEE

“Hearing: Democracy For Sale: How Our Broken Campaign Finance System Allows Foreign Governments to Buy Influence in Our Elections and What We Can Do About It

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Chairwoman Stabenow, Senator Whitehouse and other Senators:

Thank you for this opportunity to submit testimony for today’s hearing regarding politically active nondisclosing nonprofits (“dark money organizations”) and the possibility of foreign funding of those activities.

The Center for Responsive Politics has been “following the money” and its effects on U.S. politics and policy for 34 years. I, myself, have been doing this work at the Center for most of those years, and I can attest to the fact that the work of unveiling the sources of money spent to shape U.S. elections has now become extremely challenging. As always, it comes down to transparency. When our laws have required transparency in campaign finance – for example, requiring disclosure of soft money to the parties in 1991 – the press, the public and groups like ours have been able to effectively investigate and track money in U.S. politics. During the late 1990s, having disclosure of this information was critical to congressional investigations, which concluded that foreigners had indeed contributed to U.S. political committees, in violation of the law.

Today, the laws governing transparency of money in politics have not kept pace with other changes to our campaign finance system. In particular, the *Citizens United* decision threw the door wide open to unlimited contributions from unlimited and *secret* sources giving to supposedly independent outside groups interested in shaping electoral outcomes.

We already know from past campaign finance scandals that foreign corporations, individuals and governments had the wherewithal and the willingness to try to shape U.S. elections in the past. Given this, it defies logic to think that those motivations or opportunities no longer exist – particularly since foreign donations can be given easily, legally and secretly to nonprofits that are now allowed to be highly politically active.

Particularly given apparent foreign interference in last year's elections, and the wide-ranging and serious ramifications of such interference, Congress must act, and act quickly, to defend our democracy.

For our part, CRP's researchers have spent countless hours delving into 990 tax forms filed by nonprofits over the past decade, trying to disentangle networks of dark money organizations, and to the degree possible, tease out the identity of their hidden funders. CRP investigators work to analyze the meager information provided in public IRS forms along with other public information about the financial activities of politically active organizations reported to the Federal Election Commission and other government entities.

It is painstaking work, given the massive number of nonprofits in the U.S., so we partner with GuideStar to make sifting through the data more efficient. Unfortunately, by necessity, it is also largely forensic work, given that tax forms are filed anywhere from five to 10 and a half months after an organization's fiscal year ends, and in some cases the filings aren't submitted until we come looking.¹ What this means, depending on an individual group's fiscal year, is that even if an organization is filing on time, it can be revealing financial information about its election activities that is already almost two years old.²

We also use, and offer on our OpenSecrets.org website, FCC records on political ad buys to examine data on broadcast ads by nonprofits, whether that spending is reported to the FEC or not. In contrast, information about spending on highly targeted political messaging on social media platforms such as Facebook remains largely secret, limiting what we can know about funders of the online political messaging that was reputed to be so highly influential in the 2016 elections.³

¹ For example, when we requested returns from the Government Integrity Fund seven months after the group should have filed them, we were told that the group would file them the following week (but they took more than a month to file): <https://www.opensecrets.org/news/2016/06/group-that-backed-tom-cotton-in-14-got-a-big-boost-from-club-for-growth/>

² For example, if a politically active nonprofit runs on a July to June fiscal year, it can spend heavily on political ads in July. Then, once it's fiscal year ends, the following June, it has 10 and a half months to file its 990, which in most case means the group will wait until May of subsequent year (i.e. 22 months after the spending took place) to file.

³ For example, one of the largest most politically active nonprofits in the last cycle was One Nation, run by the same political operatives that run Crossroads GPS. In October 2016, Citizens for Responsibility and Ethics in Washington noted that One Nation had been posting ads on its Youtube page that did not correspond with filings that would have had to have been submitted to the FEC if they were run on television, suggesting that they were using a web-ad loophole: <https://www.citizensforethics.org/big-spending-non-profit-one-nation-exploiting-online-ad-loophole/>

In report after report, CRP Political Nonprofits Investigator Robert Maguire and our team of researchers and reporters have documented the byzantine process and exorbitant fees demanded by politically active nonprofits claiming tax-exempt status to obtain their application materials and tax forms, and the virtual stakeouts we have had to arrange in order to do so.⁴ On top of that, we've spent thousands of dollars and countless hours monitoring IRS documents for these groups, trying to piece together what activities they are actually engaged in when their tax forms lead to dead ends. The IRS, in contrast, may take months or years to approve an organization's status, yet never ask the group any questions at all.⁵

If "this" is due diligence, it is neither efficient nor effective, and the IRS should be called upon to use all of the information available to it – including reports filed with the FEC – to corroborate information reported to it by nonprofits seeking tax-exempt status. The IRS should also be required to provide free, electronic information to the public on groups seeking tax breaks. Until then, if due diligence requires no stone unturned, one sometimes has to be willing to fork over \$428 for a Form 1024 application,⁶ only to see that it contains a print out of every single page of a group's website, along with their lease, as was the case with the 501(c)(4) nonprofit, American Bridge 21st Century, one of a number of nonprofits about which we have written that have posed challenges to gathering what is supposed to be public information on their tax-exempt financial activity.

From this work we have identified patterns that ought to be concerning to policymakers who believe that the public should be an active participant in their democracy, and that

⁴ CRP's 2015 report detailing what we had to go through to get tax documents for Rosebush Corp—a pass-through nonprofit that funded super PACs and other politically active nonprofits—details the unnecessary complexity: <https://www.opensecrets.org/news/2015/01/14-months-of-runaround-more-on-how-to-obtain-or-not-public-documents-from-the-irs/>

⁵ And in some cases, when they do ask questions, they seem willing to accept almost any response. For example, a politically active nonprofit called the American Future Fund, which pursues no demonstrable social welfare beyond political activity and funding other groups that do, applied for recognition as tax exempt in 2012. Upon being asked by the IRS about reports of its possible involvement in a campaign money laundering scheme in California and millions of dollars-worth of direct candidate advocacy in federal elections, American Future Fund not only affirmed that the information the IRS was presenting was accurate but also that it did not "anticipate that its future activities will differ substantially from those it has carried on to date." Still, the IRS approved the group's application: <https://www.opensecrets.org/news/2014/04/nonprofits-exemption-was-granted-despite-record-fine-big-political-spending/>

⁶ "This 2,143-Page IRS Document Could Be Yours for Just \$428.60 (Plus Shipping)" <https://www.opensecrets.org/news/2014/07/this-2143-page-irs-document-could-be-yours-for-just-428-60-plus-shipping/>

they need and deserve effective and meaningful disclosure of money in politics in order to be able to do so. We have found:

- Politically active nonprofits that report to the IRS political spending that contradicts their FEC reports covering the same period;
- Entities that raise and spend tens of millions of dollars but have no employees, no volunteers, nor even a bricks-and-mortar presence, but exist only as a UPS box – raising the specter of money laundering organizations whose sole function is to act as intermediaries, obscuring money’s source and pathways;
- Purported “social welfare” and “business league” nonprofits whose financial activity spikes in election years and then plummets in non-election years to far lower levels reflecting their pre-*Citizens United* activity – a pattern more typical of political campaign committees than organizations devoted to social uplift.

Why does this matter? Because if it’s difficult for an organization like the Center for Responsive Politics to follow the money, it will be unlikely that American voters will fare any better. And the identity of the messenger behind political advertising is clearly fundamental to understanding the credibility of their message.

Does knowing whether an ad on indoor clean-air rules is funded by a tobacco company change the way we absorb the message? Or whether a pro-gun rights ad is paid for by a gun manufacturer? Of course it does. Voters quite logically evaluate campaign communications differently when they have information about who is promoting the message, which is why political operatives and donors seek anonymity – to take away the ability of people to think critically about and possibly discount their message.

Unfamiliar and innocuous-sounding names used by politically active nondisclosing nonprofits may actually lead voters to find their claims to be more credible than those from organizations with which they are already familiar.⁷ Studies suggest that when voters are exposed to ads from unfamiliar groups they “lean in” to listen more carefully, giving their messages more attention and value than they would if they knew who was behind the message. When voters are being bombarded with political messages but cannot accurately judge their credibility because essential information is being withheld from them, they are far more likely to make judgements based on incomplete, misleading or false information and therefore are prevented from making decisions in their own best interest. When such a situation is allowed to exist, the integrity of our democracy is in danger.

7 “Why We Should Care About Dark Money Ads.” <http://mediaproject.wesleyan.edu/blog/why-we-should-care-about-dark-money-ads/>

But voters are not the only ones being short changed by this system of readily available loopholes for disclosure. Other government regulators, such as those at the FEC, do not have access to important financial information in real time that would help them to investigate groups in a timely manner.⁸

At a time when there are daily headlines about foreign interference in the 2016 elections, concerns about foreign governments tampering with state-based election systems, and fake news emanating from foreign countries that microtarget American social media users, it is no longer sufficient to rely on historical norms or societal pressure to deter misbehavior in political finance.

There is evident need to better monitor foreign involvement in U.S. politics, including oversight of the paid campaigns by foreign governments to influence U.S. policies. The Foreign Agents Registration Act's weak disclosure rules allowed Trump advisers Mike Flynn and Paul Manafort to lobby on behalf of foreign governments without disclosing that they had done so until months after the fact. One tool that can facilitate this oversight is Foreign Lobby Watch, a free, user-friendly database that CRP launched on OpenSecrets.org earlier this year, allowing people to more easily delve into these reports and to know who is selling their services to foreign governments and corporations who seek to shape U.S. policies.

President Reagan said, "Trust, but verify." Given foreign meddling in U.S. elections, lax enforcement, the rise of megadonors and secret channels through which to fund politics, it is urgent for public officials to provide the American people with a comprehensive and trustworthy means by which to verify who is bankrolling politically active nonprofits and how they shape our elections and policies.

Justice Kennedy, in writing to uphold disclosure laws as an important basis upon which *Citizens United* was decided, wrote, "...transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

⁸ The case of Carolina Rising is perhaps one of the best examples of this. Not only did the group spend virtually all of its money running positive ads about a single Senate candidate, Thom Tillis, who won his election, but the head of the nonprofit was on live TV from the Tillis victory party saying "\$4.7 million. We did it." However, the FEC deadlocked on whether to proceed with an investigation of the group partly because of the fact that the Office of General Council did not have access to Carolina Rising's tax return, which hadn't been filed yet, and therefore, the OGC could not have known that the group's overall spending was barely more than what they had spent supporting Tillis: <https://www.opensecrets.org/news/2016/11/fec-deadlocks-wont-investigate-dark-money-group-that-spent-all-its-funds-on-an-election/>

Unfortunately, the Court's decision was based on incomplete information. We do not have and are not guaranteed a transparent campaign finance system. We must clearly communicate this fact and rectify it, because allowing the current façade of transparency to continue will only worsen cynicism and distrust and is deeply damaging to our common goal of protecting the integrity of our democracy.

Thank you.