

# United States Senate

WASHINGTON, DC 20510

December 9, 2019

The Honorable Steven T. Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Charles T. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Re: Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations (CC:PA:LPD:PR (REG-102508-16))

Dear Secretary Mnuchin and Commissioner Rettig:

We submit the below comment regarding the Department of the Treasury and Internal Revenue Service (IRS) Notice of Proposed Rulemaking<sup>1</sup> pertaining to reporting regulations under section 6033 of the Internal Revenue Code (the “Tax Code”).<sup>2</sup> In particular, we write to voice our opposition to the proposal that would eliminate the requirement that tax-exempt organizations, other than those organized under section 501(c)(3) or 527 of Tax Code, disclose the names and addresses of their contributors on Schedule B of Forms 990 and 990-EZ.

We intend this comment to provide important context on the decade-long campaign by corporate special interests to enhance and entrench their political power, and to pressure the IRS—a would-be cop on the beat—into regulatory negligence.

## I. BACKGROUND

### A. Historical Context

The backdrop to this comment is the ancient, elemental tension in government between two classes of citizens: a wealthy influencer class that occupies itself with rent-seeking from government and desires rules of engagement that make government more amenable to its

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<sup>1</sup> 26 C.F.R. 1.6001-1(c) (revision); 87 FR 47447 (2019).

<sup>2</sup> 26 U.S.C. § 6033(a)(1).

influence;<sup>3</sup> and the general population, which has an abiding interest in a government with the capacity to resist those special-interest influencers. The big influencers stand apart from the public not only in their interests, but in the power they seek to wield. In the United States today, this problem has become particularly acute, with massive special interest influence extending throughout our democratic institutions. The influence of a few heavily-engaged political interests well exceeds that of other industries, organizations, and ordinary Americans.<sup>4</sup>

Today's influencer class deploys its effort through corporations, corporate trade associations, billionaires with vast fortunes garnered through corporate success, trusts of billionaire families, and an array of corporate-funded "think tanks" and front groups that purport to work in the "public interest" but which hide the true interests behind them. The front groups themselves present a novel assortment of donor-assisted funds like Donors Trust, entities organized under section 501(c)(4) of the Tax Code, and shell corporations. A small but powerful consortium of influencers has unleashed this complex web of anonymous organizations into the political system to push an extreme anti-regulatory agenda to enhance their own private wealth.

The explosion of anonymous influence raises obvious concerns of domestic political corruption. When influencers can wield their power anonymously, in back rooms, away from regulators and the public, the problem of influence and corruption is worsened, both by secrecy and lack of accountability. In recent years, as foreign influence into our politics has become a national security issue, the prospect that these front groups present avenues for anonymous influence by foreign interests presents an added, urgent significance.

#### B. Citizens United and Donor Disclosure

While these tensions have always been present in our democracy, the 2010 *Citizens United* decision has exacerbated them and further tipped the scales in favor of a wealthy elite. This decision allowed unlimited political spending, an obvious benefit to the subset of political interests that have both unlimited money to spend and important political purposes worth spending it on. Second, it paved the way to unlimited anonymous political spending by utterly failing to police the unlimited spending it unleashed. Third, it provided the opportunity for

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<sup>3</sup> A distinctive feature of a big, persistent, predatory influencer class is that it seeks not just to win the game but to rig the game in its favor. There is first a vicious cycle between power and money: "With money we will buy partisans, with partisans votes, and with votes money. . . ." H.W. Brands, *Heirs of the Founders*, at 231 (Double Day, Penguin House LLC 2018) (Senator Calhoun criticizing President Jackson, making reference to a political strategy dating back to ancient Rome.).

<sup>4</sup> Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (2012) (explaining that the country's policymakers respond almost exclusively to the preferences of the economically advantaged); Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress – and a Plan to Stop It*, 143-47 (2011) (noting that dependency on donors causes Congress to spend more time on issues that matter to their funders than to the general public); see generally Larry Bartles, *Economic Inequality and Political Representation*, Princeton Univ. Dep. of Politics (2002), <http://princeton.edu/~piirs/events/PU%20comparative%20Conf%20May%202007/20Gilnes.pdf> ("In almost every instance, senators appear to be considerably more responsive to the opinions of affluent constituents than to the opinions of middle-class constituents, while the opinions of constituents in the bottom third of the income distribution have no apparent statistical effect on their senators' roll call votes.").

private threats and promises as to what political spending, anonymized or not, could be brought to bear. The result has been to disable American democracy on issues dominated by a few big influence groups.

In *Citizens United*, the Supreme Court struck down provisions of the Bipartisan Campaign Reform Act (“BCRA”),<sup>5</sup> allowing unlimited corporate spending in elections. That decision was premised on the presumption that BCRA’s disclosure requirements, which remained intact, created a regime of “effective disclosure” that would “provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”<sup>6</sup> That presumption could not have been more inaccurate: following *Citizens United*, that “effective disclosure” regime has completely collapsed. With regard to non-profit groups, this collapse took place in large part because of ambiguous and permissive Treasury rules regarding political spending.

Corporate special interests, and their sophisticated political operatives, lawyers, and contributors, have effectively identified and exploited the IRS’s weak and outdated regulations. They began funneling money into organizations created under section 501(c)(4) of the Internal Revenue Code precisely because these organizations did not have to publicly disclose their contributors.<sup>7</sup>

After *Citizens United*, political spending by 501(c)(4) groups exploded. Since 2010, 501(c)(4) organizations have spent over \$800 million on political expenditures, compared to \$103 million in the previous decade.<sup>8</sup> Political expenditures from undisclosed sources in the 2012 general election alone topped \$312 million.<sup>9</sup> In one representative case, the American Action Network, a 501(c)(4), raised \$41.9 million in one year, \$24.6 million of which came from a single anonymous donor.<sup>10</sup> *Citizens United* effected a seismic shift in the political ecosystem. These figures, while staggering, are only a piece of the massive, sophisticated political operation of these big influencers. For example, these figures do not include money spent on “issue ads” (which are often just thinly veiled political attack ads), or on official lobbying expenditures, or on conventions and retreats in exotic locations designed to “educate” policy makers, or on impact litigation and amicus briefs that these organizations have turned into a burgeoning legal industry.

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<sup>5</sup> *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

<sup>6</sup> *Id.* at 370. The justices upheld BCRA’s disclosure requirements by an 8-1 margin. *Id.* at 372.

<sup>7</sup> See, e.g., Trevor Potter & B. B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the Dark Money Election*, 27 NOTRE DAME J.L. ETHICS & PUB. POL’Y 383, 463-64 (2013) (discussing the formation of Crossroads GPS, a 501(c)(4) spin-off of super PAC American Crossroads, formed to protect donors from disclosure).

<sup>8</sup> *Outside Spending*, OPENSECRETS.ORG, <https://www.opensecrets.org/outsidespending/index.php?type=A&filter=N> (last visited Dec. 3, 2019).

<sup>9</sup> *Dark Money Basics*, OPENSECRETS.ORG, <https://www.opensecrets.org/dark-money/basics> (last visited Nov. 21, 2019).

<sup>10</sup> Scott Bland, *Ryan-linked group Raised \$24.6M From an Anonymous Donor*, POLITICO (May 18, 2018), <https://www.politico.com/story/2018/05/18/american-action-network-24-6-million-anonymous-donor-554680>.

While the amount of spending is immense, the number of outside groups doing the bulk of the spending is not. In 2016 alone, just ninety-five 501(c)(4) and 501(c)(6) trade associations made independent expenditures of \$50,000 or more, totaling more than \$185 million.<sup>11</sup> The ten largest of those spenders were responsible for 77% of this total, and the top three spenders were responsible for nearly half.<sup>12</sup>

Our most powerful forces now hide from open debate and public accountability by virtue of having interposed a one-way mirror between themselves and the public square. The result has been widely described as a “tsunami of slime.”<sup>13</sup>

### C. The IRS Has Wrongly Given Up the Fight Regulating Non-Profit Political Activity

The impotence of the IRS’s existing 501(c)(4) regulations has been thoroughly discussed before.<sup>14</sup> By law, 501(c)(4) groups must be set up “*exclusively...* for the promotion of social welfare,”<sup>15</sup> which, according to the IRS’s own regulations, “*does not* include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.”<sup>16</sup> Nevertheless, Treasury regulations allow 501(c)(4) social welfare organizations to engage in campaign activity so long as the “primary” activity of the organizations is social welfare.<sup>17</sup>

IRS permits 501(c)(4)s to engage in express political activity as long as it is less than half of the organization’s spending. The remainder of that spending can be on a combination of “issue ads”, and transfers to other organizations that spend money on political ads.<sup>18</sup> In some cases, 501(c)(4) organizations have operated in a manner indistinguishable from PACs,<sup>19</sup> and some

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<sup>11</sup> *Political Nonprofits: Top Election Spenders*, OPENSECRETS.ORG, [https://www.opensecrets.org/outsidespending/nonprof\\_elec.php?cycle=2016](https://www.opensecrets.org/outsidespending/nonprof_elec.php?cycle=2016) (last visited Dec. 3, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> Joe Hagan, *The Coming Tsunami of Slime*, N.Y. MAG. (Jan 22, 2012) <https://nymag.com/news/features/negative-campaigning-2012-1/>.

<sup>14</sup> *See, e.g.*, Letter from Senators to Department of Treasury and IRS (Feb. 27, 2014), <https://www.whitehouse.senate.gov/imo/media/doc/2014-02-27%20501c4%20Rules%20Comments%20Signed%20FINAL.pdf>.

<sup>15</sup> 26 U.S.C. § 501(c)(4)-1(a)(1)(ii) (emphasis added).

<sup>16</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) (emphasis added).

<sup>17</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

<sup>18</sup> *See, e.g.*, Kim Barker, *New Tax Return Shows Karl Rove’s Group Spent Even More on Politics than it Said*, PROPUBLICA (Nov. 25, 2013), <https://www.propublica.org/article/new-tax-return-shows-karl-roves-group-spent-more-on-politics-than-it-said>.

<sup>19</sup> *See, e.g.*, Tom Hamburger and Matea Gold, *Crossroads GPS Probably Broke Election Law, FEC Lawyers Concluded*, WASHINGTON POST, (Jan. 15, 2014), [https://www.washingtonpost.com/politics/crossroads-gps-likely-broke-election-law-fec-staff-reports-concluded/2014/01/15/15af18b6-7d73-11e3-93c1-0e888170b723\\_story.html](https://www.washingtonpost.com/politics/crossroads-gps-likely-broke-election-law-fec-staff-reports-concluded/2014/01/15/15af18b6-7d73-11e3-93c1-0e888170b723_story.html); Federal Election Commission, First General Counsel’s Report, MUR: 6396 (Crossroads Grassroots Policy Strategies), Nov. 21, 2012.

operatives and contributors have created intricate webs of organizations to further thwart disclosure requirements and shield their contributors from scrutiny.<sup>20</sup>

These groups have an obvious imperative to maintain the status quo of ambiguous and unenforced regulation, so it should come as little surprise that they and their political allies have spent the last decade publicly deriding and politicizing the IRS to keep it from cleaning up these murky waters.

In 2013, the Treasury Inspector General of the Tax Administration (TIGTA) issued a report that found that the IRS had singled out certain conservative groups for increased scrutiny.<sup>21</sup> Notably, the 2013 report did not look into whether other political groups were similarly targeted.<sup>22</sup> That important omission, however, did not stop the big special interests from using the report as a cudgel against the IRS. The problem is that this argument wasn't true. In 2017, TIGTA released a more comprehensive audit of IRS's treatment of potential political groups, and found that left-leaning groups had in fact also been flagged for closer scrutiny.<sup>23</sup> The new audit found that from 2004-2013, groups with the words like "progressive," "green energy," "occupy," and "healthcare legislation" in their names or descriptions were subjected to additional inspection. So, instead of ideologically targeting certain groups, the IRS under both Republican and Democratic administrations looked into groups across the political spectrum.

However, the damage had been done. Powerful special interest groups and their political allies successfully slashed the IRS budget, threatened to impeach the then-Commissioner, and even passed legislation prohibiting the IRS from issuing clarifying rules regarding 501(c)(4) political activity.<sup>24</sup>

As a result, the IRS has been cowed from regulating or even investigating a small, powerful cadre of savvy political operatives who have formed and funded a flotilla of non-profit front groups, through which they can funnel money into elections, in contravention of a clear statute and the IRS's own rules. They have gotten away with it even in the face of open and notorious abuses. According to one ProPublica study, from 2015-2019, the IRS failed to strip any non-

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<sup>20</sup> See, e.g., Matea Gold, *Koch-Backed Political Coalition, Designed to Shield Donors, Raised \$400 million in 2012*, WASHINGTON POST (Jan. 5, 2014), [https://www.washingtonpost.com/politics/koch-backed-political-network-built-to-shield-donors-raised-400-million-in-2012-elections/2014/01/05/9e7cfd9a-719b-11e3-9389-09ef9944065e\\_story.html](https://www.washingtonpost.com/politics/koch-backed-political-network-built-to-shield-donors-raised-400-million-in-2012-elections/2014/01/05/9e7cfd9a-719b-11e3-9389-09ef9944065e_story.html) (Describing the Koch-backed coalition: "Tracing the flow of the money is particularly challenging because many of the advocacy groups swapped funds back and forth. The tactic not only provides multiple layers of protection for the original donors but also allows the groups to claim they are spending the money on "social welfare" activities to qualify for 501(c)(4) tax-exempt status.").

<sup>21</sup> Treasury Inspector Gen. For Tax Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013) <https://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>.

<sup>22</sup> Treasury Inspector Gen. For Tax Admin., *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review* (September 28, 2017) <https://www.treasury.gov/tigta/auditreports/2017reports/201710054fr.pdf>.

<sup>23</sup> Treasury Inspector Gen. For Tax Admin., *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review* (September 28, 2017) <https://www.treasury.gov/tigta/auditreports/2017reports/201710054fr.pdf>.

<sup>24</sup> See Maya Miller, *How the IRS Gave Up Fighting Political Dark Money Groups*, PROPUBLICA (April 18, 2019), <https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation>.

profit of its tax-exempt status, despite receiving thousands of complaints of abuse from watchdog groups and concerned taxpayers.<sup>25</sup> Discrepancies between sworn statements made to the IRS and to election regulators, by the same organization, have been turned a blind eye.<sup>26</sup>

Since *Citizens United*, powerful special interests have exploited this regulatory surrender, exploiting it to spend millions of anonymous dark money dollars in elections; they disarmed one of the only cops on the beat, further entrenching their influence and advantage.

## II. THE CURRENT RULEMAKING: HERE THEY GO AGAIN

Now these same influencers are back for more, attempting to protect themselves behind yet another anonymizing barrier — one that becomes highly relevant should the IRS ever rouse itself out of its current regulatory stupor. In fact, the current rulemaking appears to come at the behest of many of the biggest and most politically active special interest spenders, who wrote a letter to President Trump and Treasury Secretary Mnuchin in May 2018, asking them to “do everything you can to encourage the IRS to initiate a rulemaking” to change the contributor disclosure requirement.<sup>27</sup>

The theory of speech-chilling transparency is at variance even with *Citizens United*, and flies in the face of practical political experience. The value of secrecy exists, self-servingly, largely in the imaginations of right-wing billionaires and the groups that do their bidding. The groups argue that disclosing their contributors to the IRS subjects their donors to harassment and intimidation from “activist” state attorneys general. What the groups don’t tell you is that many of their donors are among the most wealthy, powerful, and politically connected citizens and corporations in our society. They don’t mention that they also have been able to raise hundreds of millions of dollars in non-secret donations over the last decade, complying with the donor disclosure requirements.

The groups petitioning for this rule claim to represent “millions” of Americans; in fact many are part of a singular, integrated network of non-profits and front groups funded by the Koch family, which owns the second largest private company in the United States<sup>28</sup> and has made billions of

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<sup>25</sup> Maya Miller, *How the IRS Gave Up Fighting Political Dark Money Groups*, PROPUBLICA (April 18, 2019), <https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation>.

<sup>26</sup> In 2012, ProPublica investigated 501(c)(4) filings from 104 organizations that had reported electioneering activity to the Federal Election Commission or state equivalents, saying “here is what we spent on elections.” ProPublica cross-checked those claims with what the organizations had reported to the IRS. Thirty-two groups had told the IRS they spent no money to influence elections, either directly or indirectly. Both statements cannot be true. See Kim Baker, *How Nonprofits Spend Millions on Elections and Call it Public Welfare*, PROPUBLICA (Aug. 18, 2012), <https://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare>; see also, Hearing: “Current Issues in Campaign Finance Law Enforcement,” U.S. Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, Apr. 9, 2013.

<sup>27</sup> Coalition Letter to President Trump and Secretary Mnuchin (May 15, 2018), <https://cfif.org/v/images/pdfs/CFIF-Coalition-Letter-to-WH-and-Treasury-Schedule-B-FINAL-05-2018.pdf>.

<sup>28</sup> *America’s Largest Private Companies*, FORBES.COM, <https://www.forbes.com/largest-private-companies/list/> (last accessed Dec. 2, 2019).

dollars in the fossil fuel industry.<sup>29</sup> The Kochs have wielded this network to create an illusion of multiplicity and a screen of anonymity, from behind which they pursue an aggressive anti-regulatory and climate denial political agenda, spending hundreds of millions in elections since 2010 and threatening to spend hundreds more.<sup>30</sup>

While we do not know the full extent of the Koch's non-profit network, through exhaustive reporting and analysis of public filings, we do have some insight into their web of organizations that joined the May 2018 letter. For example, Freedom Partners Chamber of Commerce signed the letter. Freedom Partners is a 501(c)(6) that has been referred to as "the Koch brothers' secret bank."<sup>31</sup> The Kochs use Freedom Partners to fund their phalanx of politically active non-profits, including Americans for Prosperity (AFP), another group that signed the May 2018 letter, which has spent approximately \$60 million in federal elections and received at least \$64 million in contributions from Freedom Partners Chamber of Commerce.<sup>32</sup> In 2016, AFP received a \$48.7 million gift from a publicly undisclosed donor.<sup>33</sup>

Other signatories that are part of the Koch network include:

- **ALEC Action:** ALEC Action is a non-profit that drafts model anti-regulatory legislation. Only about 2% of ALEC's funding comes from membership dues; the other 98% comes from foundations, corporate interests, and business associations, including the Koch family.<sup>34</sup> In 2009, Koch corporate and foundation gifts likely amounted to about three times more income for ALEC than the dues from all of its legislative members combined.<sup>35</sup>
- **American Commitment:** American Commitment is 501(c)(4) organization that has spent millions on political advertisements and has been identified by watchdog groups for

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<sup>29</sup> Jane Mayer, *New Koch*, NEW YORKER (Jan. 17, 2016), <https://www.newyorker.com/magazine/2016/01/25/new-koch>.

<sup>30</sup> Matea Gold, *Charles Koch Downgrades His Political Network's Projected 2016 Spending from \$889 million to \$750 million*, WASH. POST, Oct. 21, 2015.

<sup>31</sup> Mike Allen and Jim Vandehei, *The Koch Brothers' Secret Bank*, POLITICO, (Sept. 11, 2013), <https://www.politico.com/story/2013/09/behind-the-curtain-exclusive-the-koch-brothers-secret-bank-096669#ixzz2hj4y518o>.

<sup>32</sup> *Americans for Prosperity Receipts reported to IRS by Contributing Organizations since 2010*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/include/popup990.php?cycle=2020&cmteid=Americans+for+Prosperity> (last visited Nov. 21, 2019).

<sup>33</sup> Frank Bass and Andrew Perez, *Koch Flagship Dark Money Organization Received \$48.7 Million Gift During Election Year*, MAPLIGHT.ORG (April 12, 2018), <https://maplight.org/story/koch-flagship-dark-money-organization-received-48-7-million-gift-during-election-year/>.

<sup>34</sup> Lisa Graves, *A CMD Special Report on ALEC's Funding and Spending*, CENTER FOR MEDIA AND DEMOCRACY (July 13, 2011), <https://guides.libraries.uc.edu/c.php?g=222561&p=1472886>.

<sup>35</sup> *Id.*

filing inconsistent 990 reports to the IRS.<sup>36</sup> At least 78% of the group's \$13 million in funding between 2011 and 2013 came from the Koch network.<sup>37</sup>

- **American Encore:** Formerly known as the Center to Protect Patient Rights, American Encore is an Arizona-based 501(c)(4) organization run by Sean Noble, a political consultant recruited by the Kochs.<sup>38</sup> Under its former name, it received over \$115 million from Freedom Partners for 2012 elections – more than any other recipient during that campaign cycle<sup>39</sup> – and acted as a pass-through entity for millions of dollars in spending on California ballot initiatives, in what that state's election officials called the largest instance of campaign finance “money-laundering” they had ever seen.<sup>40</sup>
- **Americans for Tax Reform:** Americans for Tax Reform is a 501(c)(4) organization that has spent millions on lobbying and political advertisements. It received \$4.2 million from the Koch-backed group now known as American Encore (see above) in 2010,<sup>41</sup> making up about a third of the group's revenue for that year, and at least \$350,000 more from that same group in 2012.<sup>42</sup>
- **Competitive Enterprise Institute:** Competitive Enterprise Institute (CEI) is a think tank and advocacy group whose primary aims include undoing environmental regulations and preventing action to acknowledge or mitigate the threat of climate change. It is funded primarily by the fossil fuel industry. In 2019, the Charles Koch Institute was a “Silver Sponsor” of CEI's annual gala, and American Fuel & Petrochemical Manufacturers, a

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<sup>36</sup> Robert Maguire and Viveca Novak, *American Commitment's Missing Millions*, OpenSecrets.com (April 26, 2019), <https://www.opensecrets.org/news/2013/04/american-commitments-missing-millions/>.

<sup>37</sup> Michael Beckel, *Koch-Linked Organization Uses “Dark-Money” to Fight Political Disclosure*, CENTER FOR PUBLIC INTEGRITY (Dec. 15, 2014), <https://publicintegrity.org/federal-politics/koch-linked-organization-uses-dark-money-to-fight-political-disclosure/>.

<sup>38</sup> Kim Barker and Theodor Meyer, *The Dark Money Man: How Sean Noble Moved the Kochs' Cash into Politics and Made Millions*. PROPUBLICA (Feb. 14, 2014), <https://www.propublica.org/article/the-dark-money-man-how-sean-noble-moved-the-kochs-cash-into-politics-and-made-millions>.

<sup>39</sup> Nicholas Confessore, *Tax Filings Hint at Extent of Koch Brothers' Reach*, NEW YORK TIMES (Sep. 12, 2013), <https://www.nytimes.com/2013/09/13/us/politics/tax-filings-hint-at-extent-of-koch-brothers-reach.html>

<sup>40</sup> Michael Winter, “Calif. accuses Ariz. group of laundering \$11M donation,” USA TODAY (Nov. 5, 2012), <https://www.usatoday.com/story/news/politics/2012/11/05/election-california-arizona-money-laundering-koch-brothers/1684137/>.

<sup>41</sup> Janie Lorber, *Norquist's Rainmaker Skills Grow with Budget Impasse*, ROLL CALL (Nov. 30, 2012), [https://www.rollcall.com/news/norquists\\_rainmaker\\_skills\\_grow\\_with\\_budget\\_impasse-219566-1.html](https://www.rollcall.com/news/norquists_rainmaker_skills_grow_with_budget_impasse-219566-1.html).

<sup>42</sup> Glenn Kessler, “Democrats claim the Koch Brothers want to ‘protect tax cuts for companies that ship our jobs overseas’,” WASHINGTON POST (Mar. 14, 2014), <https://www.washingtonpost.com/news/fact-checker/wp/2014/03/14/democrats-claim-the-koch-brothers-want-to-protect-tax-cuts-for-companies-that-ship-our-jobs-overseas/>.



trade association of which Koch Industries is a member, was a “Platinum Sponsor.”<sup>43</sup> Through 2014, it has also received over \$790,000 from Koch family foundations.<sup>44</sup>

- **State Policy Network:** The State Policy Network (SPN) is a group of 64 think tanks that work closely with ALEC to push for partisan anti-regulatory legislation.<sup>45</sup> SPN think tanks received a combined \$83 million in 2011, and have received significant contributions from Donors Trust and Donors Capital Fund, identity scrubbing organizations tied to the Koch family.<sup>46</sup>
- **60 Plus Association:** The 60 Plus Association is a 501(c)(4) organization that spent over \$12 million in federal elections between 2010 and 2014.<sup>47</sup> It has been fined by the FEC for failing to disclose that the Center for Patient Rights (itself a Koch-backed group) was a donor behind certain political expenditures.<sup>48</sup> According to filings, the Koch-funded Freedom Partners and American Encore each gave 60 Plus \$16 million since 2009.<sup>49</sup>
- **Taxpayers Protection Alliance:** The Taxpayer Protection Alliance is an advocacy group that is part of the Koch network. In 2011, the Koch-funded 501(c)(6), Americans for Job Security, gave the Taxpayers Protection Alliance \$1.1 million.<sup>50</sup>

Hypotheticals of average citizens donating to a non-profit being politically targeted and outed by enterprising partisan attorneys general are self-serving, are not based in any current reality, and distract from the real vices of influence, corruption, and “slime” that anonymity enables. The front groups’ support for this proposed rule protects the complex web of non-profits, “think tanks,” and institutes, concocted and funded by a small group of corporate and billionaire interests, that spend millions to push a special interest agenda. The IRS should not be swayed by these sheep’s clothing concerns about the First Amendment propagated by some of the biggest

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<sup>43</sup> CEI 35<sup>th</sup> Anniversary Dinner and Reception brochure, archived at <https://web.archive.org/web/20190710182657/https://int.nyt.com/data/documenthelper/1366-cei-gala-program/1438e537f20a04a672f6/optimized/full.pdf#page=1>

<sup>44</sup> Including the now-defunct Claude R. Lambe Charitable Foundation (\$364,820), David H. Koch Charitable Foundation (\$315,000) and Charles G. Koch Foundation (\$119,703).

<http://conservativetransparency.org/top/?recipient=839&yr=&yr1=&yr2=&submit=>

<sup>45</sup> Jane Mayer, *Is Ikea the New Model for the Conservative Movement*, NEW YORKER (Nov. 15, 2013), <https://www.newyorker.com/news/news-desk/is-ikea-the-new-model-for-the-conservative-movement>; Ed Pilkington and Suzanne Goldenberg, *State Conservative Groups Plan US-wide Assault on Education, Health and Tax*, THE GUARDIAN (Dec. 5, 2013) <https://www.theguardian.com/world/2013/dec/05/state-conservative-groups-assault-education-health-tax>.

<sup>46</sup> Tal Kopan, *Report: Think Tanks Tied to Kochs*, POLITICO (Nov. 11, 2013), <https://www.politico.com/story/2013/11/koch-brothers-think-tank-report-099791>

<sup>47</sup> *60 Plus Assn Outside Spending Summary*, OPENSECRETS, <https://www.opensecrets.org/outsidespending/detail.php?cycle=2014&cmte=60+Plus+Assn> (last visited Dec. 3, 2019).

<sup>48</sup> *FEC Letter and Conciliation Agreement Re MUR 6816* (July 7, 2016), <https://www.fec.gov/files/legal/murs/6816/16044397382.pdf>.

<sup>49</sup> 60 Plus Association, Issue One, <https://www.issueone.org/dark-money-groups-60-plus-association/#1534455950245-69ca73d0-55fa> (last visited December 3, 2019).

<sup>50</sup> Libby Watson, *Conservatives Are Owning the Dark Money Game*, SPLINTER (Sept. 13, 2018), <https://splinternews.com/conservatives-are-owning-the-dark-money-game-1829028870>.

political wolves, whose “speech” is hardly at risk. The goal of requiring contributor disclosure is not to silence speech, but to protect healthy and open public debate, and prevent corruption and abuse, by providing the IRS with the “effective disclosure” it requires to actually enforce its laws.<sup>51</sup>

### **III. REQUIRING DISCLOSURE OF CONTRIBUTORS TO THE IRS WOULD HELP ENSURE THE LAW IS FOLLOWED, PROTECT NATIONAL SECURITY, AND PREVENT CORRUPTION**

While we understand that the IRS’s primary duty is to administer federal tax laws, not campaign finance laws, the IRS’s continued inaction to enforce 501(c)(4) rules following *Citizens United* in 2010 has created a lawless zone, with essentially no meaningful limits on political activity by 501(c)(4) organizations and other tax-exempt organizations. Requiring these politically active organizations to disclose contributors to the IRS is the bare minimum the IRS should be doing to enforce the Tax Code and prevent unlawful contact. It is after all a tax law that these tax-exempt groups were not intended to shield political electioneering activity.

In particular, collection by the IRS of contributor information is a strong deterrent against foreign interference in our political system and against other prohibited actors using non-profits to conceal illegal activity. While the Federal Election Campaign Act prohibits foreign nationals from engaging in election spending,<sup>52</sup> the IRS’s proposed regulation would make it more difficult to prevent, or even detect, foreign money flowing through non-disclosing tax-exempt organizations into our political system.<sup>53</sup> Under the proposed rule, a foreign national could funnel money into a 501(c)(4), which in turn could spend the money on political advertisements and the IRS would be none the wiser. In fact, National Rifle Association Institute for Legislative Action (NRA), one of the signatories of the letter asking for the proposed rule change, has been investigated by the FBI for allegedly funneling Russian money into the 2016 election.<sup>54</sup> The same dark money channels that are available to the wealthy billionaires are also available to

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<sup>51</sup> We suspect many of these same groups will also submit formal comments supporting the proposed rule change. Rather than be swayed by a seemingly organic groundswell of independent groups supporting the rule, the IRS would be well served to examine the connections between the groups to determine just how “independent” they actually are.

<sup>52</sup> 52 U.S.C. § 30121; *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.C. Cir. 2011) (“[T]he United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.”), *aff’d* 565 U.S. 1104 (2012) (mem.).

<sup>53</sup> Memorandum from Vice Chair Ellen L. Weintraub to the FEC, Proposal to Launch Rulemaking To Ensure That U.S. Political Spending Is Free from Foreign Influence 4 (Sept. 9, 2016), [https://www.fec.gov/resources/cms-content/documents/2018-05\\_ELW\\_Rulemaking\\_Proposal\\_to\\_Combat\\_Foreign\\_Election\\_Influence.pdf](https://www.fec.gov/resources/cms-content/documents/2018-05_ELW_Rulemaking_Proposal_to_Combat_Foreign_Election_Influence.pdf) (“The proliferation of dark money groups in the wake of *Citizens United* has made it impossible to know the sources of all the funds flooding into our political system.”).

<sup>54</sup> Peter Stone and Greg Gordon, *FBI Investigating Whether Russian Money Went to the NRA to Help Trump*, MCCLATCHY (Jan. 18, 2018), <https://www.mcclatchydc.com/news/nation-world/national/article195231139.html>.

foreign nationals and have already been exploited.<sup>55</sup> Requiring contributor disclosure would deter foreign nationals from laundering money through opaque non-profits and into our elections. It would also have a similar deterring effect on federal contractors, who are also prohibited from making political contributions.<sup>56</sup>

From an enforcement perspective, there is real value in requiring groups to disclose their contributors. The people that use 501(c)(4)s for nefarious purposes, like anonymously smearing a political opponent, operate their organizations in a shadowy, slippery manner. They often pop up in one election cycle and shut down or change names shortly thereafter.<sup>57</sup> Requiring disclosure helps ensure organizations maintain full, accurate, and accessible records internally, and provides a second, external source for disclosure information that for an evasive front group may prove hard to obtain.<sup>58</sup>

Receiving a request from the IRS is a giant tip off for a bad actor, and provides it the opportunity to try to scuttle or obstruct the investigation. When weighed against vague, phony, and self-serving “privacy” concerns, contributor disclosure is a commonsense and minimally burdensome requirement.

#### IV. CONCLUSION

*Citizens United* provided the wealthy special-interest class with significant new political artillery, which they swiftly ran through 501(c)(4) organizations to unload nearly a billion dollars of anonymous money into our elections — the “tsunami of slime.” To protect their unprecedented powers of political influence, these elites engaged in a public campaign to bludgeon the IRS into a state of regulatory stasis. They are now back, asking the IRS to further hamstring its own ability to perform even the most basic oversight. The IRS should reject this invitation.

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<sup>55</sup> See Greg Gordon and Peter Stone, *Russia Investigators Likely Got Access to NRA's Tax Filings, Secret Donors*, MCCLATCHY (July 2, 2018), <https://www.mcclatchydc.com/news/politics-government/article214075459.html/> (Russian nationals provided contributions to one of the largest and most active 501(c)(4) organizations); see also Press Release, U.S. Dep't of Just., Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor (Oct. 27, 2017), <https://www.justice.gov/usao-sdca/pr/mexican-businessman-jose-susumo-azano-matsura-sentenced-trying-buy-himself-mayor> (a Mexican businessman made illegal political contributions to candidates in a mayoral campaign in an effort to buy influence). Indeed, some of the most politically active trade associations openly admit to taking foreign money and ask the public to “trust us” that they properly segregate that money. Ian Vandewalker and Lawrence Norden, *Getting Foreign Funds Out of America's Elections*, BRENNAN CTR. FOR JUST. 14 (2018), [https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final\\_April9.pdf](https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final_April9.pdf).

<sup>56</sup> 52 U.S.C. § 30119(a)(1).

<sup>57</sup> See, e.g., Baker, *supra* note 27 (“America's Future Fund, a Louisiana 501(c)(4) incorporated in June 2009 by lawyer Bryan Jeanson, spent more than \$100,000 in October 2010 sending political mailers to Nevada voters. The following February, it dissolved.”).

<sup>58</sup> *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 316 F. Supp. 3d 349, 413 (D.D.C. 2018) (noting that a 501(c)(4) organization should be able to comply with additional disclosures of its donors because it is already required to provide this information to the IRS).

Sincerely,



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Sheldon Whitehouse  
United States Senator



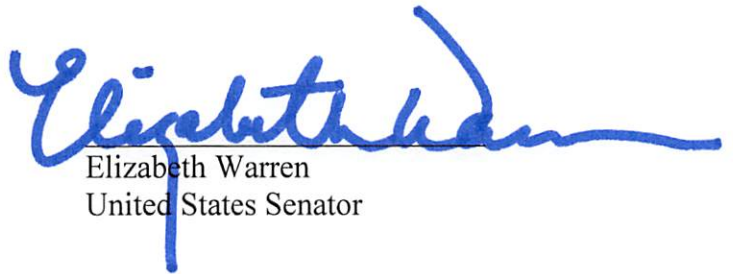
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Tom Udall  
United States Senator



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Richard Blumenthal  
United States Senator



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Elizabeth Warren  
United States Senator