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Feb. 17, 2025

Federal Election Commission
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Submitted via email and USPS

REG 2024-06: Proposal Is Both Unnecessary and Contrary to the Commission's Fundamental Mission to Facilitate Donor Disclosure in Federal Elections

Public Citizen and Transparency International, USA, voice our objections to the proposed rulemaking ("Modification and Redaction of Contributor Information") on the grounds that:

- The rulemaking seeks to address a problem that is not significant, if such a problem exists at all, and is therefore unnecessary; and
- The proposal undercuts what has long been the primary mission of the Federal Election Commission, which is to facilitate donor disclosure in federal elections.

1. Proposed Rulemaking 2024-06 Is Unnecessary

The Federal Election Campaign Act of 1971, as amended, established a system of contribution limits and enshrined transparency of the sources and expenditures of money in federal elections as a critical means to curtail corruption and, more importantly, to inform voters of the interests behind that money. Decision after decision by the courts have consistently recognized the value of transparency of money in politics and upheld donor disclosure.

The U.S. Supreme Court in *Buckley v. Valeo* recognized that, under certain limited circumstances, FECA's disclosure requirements as applied to a minority party could be waived upon evidence of potential harm to donors.[1] This exemption has only rarely been applied to minor parties and only under extraordinary circumstances. In 1979, for example, a court-ordered consent decree in *Socialist Workers Party v. FEC* exempted donor disclosure for the Party (SWP) following an extensive case record of government harassment.[2] The Court reaffirmed the exemption in *Brown v. Socialist Workers Party* after documenting a full factual record of a long history of government surveillance and disruption of SWP, including the creation of a Custodial Detention List by the FBI that targeted all SWP members for arrest in time of a national emergency.[3]

[1] Buckley v. Valeo, 424 U.S. 1 at 71 (1976).
[2] Socialist Workers Party 1974 National Campaign Committee v. Federal Election Commission, Civil Action No. 74-1338 (D.D.C. 1979).
[3] Socialist Workers Party v. Attorney General, 642 F.Supp. 1357 at 1395 (S.D.N.Y. 1986).

These exemptions to the donor disclosure requirements are extremely rare. The few court-ordered exemptions have generally involved minor parties and, as noted in the NPRM, only from "time to time" and applied only upon an extensive case record of extraordinary harassment. The Federal Election Commission (FEC) has little involvement in these cases. The FEC exercises its discretionary authority to grant exemptions through advisory opinions and informal requests. The Commission has issued advisory opinions on such exemptions to one organization: the Socialist Workers' Party. The Commission has *occasionally* received informal requests to redact an individual's address from publicly available documents, which have easily been managed on an *ad hoc* basis.

There are few, if any, complaints from the public or political committees about the current system of limited exemptions to donor disclosure based on the potential of harassment. Simply put, there is no demand nor need to formalize the donor disclosure exemption beyond how it is currently handled.

2. Proposed Rulemaking 2024-06 Is Contrary to the Commission's Core Mission of Transparency of Money in Federal Elections

The Federal Election Commission has always taken its mission to provide transparency of money in elections very seriously and has excelled at doing so with the tools available. This mission has crossed ideological lines on the Commission between those who support and those who oppose stronger regulations on campaign money. All commissioners regardless of party affiliation have historically agreed at least on the principle of full disclosure of the sources and expenditures of money in elections – until now.

Commissioner Allen Dickerson originally proposed a new rule on May 2, 2024, to withhold, redact or modify the identifying information of campaign contributors upon request. The opening line of the proposal reads: "The Federal Election Campaign Act's disclosure requirements are not absolute."

NPRM 2024-06 proposes to simplify and standardize request for donor exemption into a widely-available process, albeit not as sweeping and damaging as originally proposed by Dickerson. Nevertheless, the proposed rulemaking seeks to scale back donor disclosure requirements. In this climate of partisan polarization and political mistrust, any new rule making exemption requests readily available to all individuals would likely have the effect of encouraging such requests beyond the current narrow scope of fear of threats, harassment or reprisals.

In addition, the NPRM makes it clear that the General Counsel's office and the Commission "will not undertake an independent investigation to verify" the veracity of such requests. Instead, it is the responsibility of the individual requestor to be factual and not exaggerate the claims.

This is a recipe for abuse and would likely have the consequence of setting back the Federal Election Campaign Act's – and the Commission's – primary mission: enhanced donor disclosure of money in politics.

Donor disclosure is critical to the integrity of the democratic process and should not be easily sidestepped. Justice Kennedy, in the 2010 *Citizens United* decision which weakened contribution limits, made clear that the disclosure requirements must not also be undermined. Kennedy flatly rejected any effort to weaken the disclosure requirements. He wrote that disclosure ensures "that voters are fully informed about the person or group who is speaking" and gives voters the ability "to evaluate the arguments to which they are being subjected."[4] Kennedy explained further: "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[5]

Furthermore, disclosure of the sources of political spending bolsters the citizens' moral responsibility to stand behind their speech. As Justice Scalia wrote in his concurring opinion in *Doe v. Reed*:

> *"There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed…. [Eliminating such disclosure] does not resemble the Home of the Brave."*[6]

CONCLUSION

Public Citizen and Transparency International, USA, urge the Federal Election Commission to reject the Proposed Rule 2024-06 ("Modifications and Redaction of Contributor Information") on the grounds that the rulemaking is both unnecessary and will likely reduce transparency of those footing the bill to influence our vote.

If a hearing on the rulemaking is held, Craig Holman of Public Citizen requests to testify.

Respectfully Submitted,

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[4] Citizens United v. FEC, 558 U.S. 310 (2010) at 368.
[5] Id., at 371.
[6] Doe v. Reed, 561 U.S. 186 at 228 (2010).