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Federal Election Commission
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Submitted via email and USPS

Agenda Documents No. 24-44-A and No. 24-44-B: Proposals Are Contrary to the Commission's Fundamental Mission to Facilitate Donor Disclosure in Federal Elections

The Federal Election Commission (FEC) 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 or 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.”

Agenda Documents No. 24-44-A and No. 24-44-B to be addressed by the Commission on December 12, 2024, are regulatory proposals to advance this anti-transparency effort, albeit not as sweeping and damaging as originally proposed by Dickerson. Nevertheless, both agenda items seek to scale back donor disclosure requirements. The agenda items are proposed regulations in search of a problem that does not exist and would 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.

Public Citizen and Transparency International U.S. sternly oppose this effort to undermine the Commission’s primary mission.

BACKGROUND

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.

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.”¹ Kennedy explained further: “This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”²

The U.S. Supreme Court in *Buckley v. Valeo* recognized that, under certain circumstances, FECA’s disclosure requirements as applied to a minority party could be waived upon evidence of potential harm to donors.³ 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.⁴ 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.⁵

These exemptions to the donor disclosure requirements are extremely rare, as-applied to but a few minor parties, and only upon an extensive case record of extraordinary harassment.

The Commission has ever since managed well the court-ordered exemptions to donor disclosure. 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.

However, these new proposals seek to vastly expand donor exemption far beyond its original intent to all individual contributors in the mainstream political universe who claim that donor disclosure might result in intimidation. In Dickerson’s words, today’s “charged political atmosphere” warrants the expansion of the donor exemption to all persons who can demonstrate a fear of intimidation. No doubt, this would include Harris supporters, Trump supporters, Democrats, Republicans, Independents, and donors of all political persuasions. At least these specific agenda items do not include Dickerson’s initial idea to allow anyone seeking to conceal their campaign financing to request so merely by tapping a button on the Commission’s web site.

These proposals would likely:

- Transform the donor disclosure exemption from an as-applied rarity granted under extraordinary circumstances for a minor party into a common and systemic exemption available to all individuals who are concerned about being intimidated by their campaign donations.
- Set back significantly the nation’s campaign finance disclosure system.

¹ *Citizens United v. FEC*, 558 U.S. 310 (2010) at 368.

² *Id.*, at 371.

³ *Buckley v. Valeo*, 424 U.S. 1 at 71 (1976).

⁴ *Socialist Workers Party 1974 National Campaign Committee v. Federal Election Commission*, Civil Action No. 74-1338 (D.D.C. 1979).

⁵ *Socialist Workers Party v. Attorney General*, 642 F.Supp. 1357 at 1395 (S.D.N.Y. 1986).

- Deprive voters of critical election information from which to judge the merits of speakers and campaign messages.
- Engulf the Federal Election Commission under a huge new caseload of paperwork, further incapacitating the struggling agency.

The proposal also strikes against the very core of a fair and open democracy. Democracy without a system of meaningful disclosure of money in politics endangers the integrity of the political process. Disclosure of the sources of political spending is a necessary check on the power of money and 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

The more the public becomes aware of this anti-transparency effort before the FEC, the greater will be the public outcry. In just the last 24 hours, well over 4,000 citizens have signed a petition being circulated by Public Citizen that will soon be presented to the Commission. The petition reads quite simply:

To the Federal Election Commission

Democracy without a system of meaningful disclosure of money in politics endangers the integrity of the political process. Disclosure of the sources of political spending is a necessary check on the power of money and bolsters the moral responsibility of citizens to stand behind their speech. The FEC should reject the anti-transparency proposals of allowing individual donors to evade disclosure.

CONCLUSION

The proposed rulemaking before the Commission today to vastly expand the donor exemption far beyond its original purpose would undermine effective disclosure of the sources of political spending, deprive voters of critical election information, swamp the FEC under a wave of new paperwork, and runs contrary to the core mission of the agency. The resolutions also cut into the very fabric of a functional democratic society.

Furthermore, Agenda Documents No. 44-24-44-A and B are wholly unnecessary. They propose regulating a problem that does not exist. And in so doing, the proposals would in fact compound today's charged political atmosphere engulfed in suspicion and conspiracies.

⁶ *Doe v. Reed*, 561 U.S. 186 at 228 (2010).

For these reasons, Public Citizen and Transparency International U.S. strongly urge the Federal Election Commission to reject the rulemaking proposals of Agenda Document No. 24-44-A and No. 24-44-B, "Requests to Modify or Redact Contributor Information."

Respectfully Submitted,

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