



December 9, 2019

Via Electronic Submission

The Honorable Charles P. Rettig
Commissioner, Internal Revenue Service
U.S. Department of Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments to the Internal Revenue Services on Reg-102508-16; Guidance Under Section 6033 on Reporting Requirements of Exempt Organizations

Dear Commissioner Rettig:

The League of Women of the United States (“LWV”) appreciates the opportunity to comment on the Notice of Proposed Rulemaking by the Internal Revenue Service (“IRS”). We respectfully write to urge the agency not to adopt a proposed rule which surely would invite more foreign money into U.S. elections. Our request is supported in three parts:

1. The proposed rule would allow gigantic and unbridled sums of opaque money to flow through 501(c)(4) organizations to influence elections in violation of existing statutes;
2. The IRS shares a joint responsibility in the longstanding ban on foreign national spending and historically agencies work together to safeguard the nation;
3. Protecting the integrity of state and federal elections must be of paramount importance to the federal government.

The League of Women Voters (LWV)

The LWV is a nonpartisan, community-based organization that promotes political responsibility by encouraging Americans to participate actively and knowledgeably in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, LWV now has nearly half a million members



and supporters, is organized in more than 850 communities within every state, and representing nearly every congressional district in the country.

For nearly 100 years, the LWV has worked to protect every U.S. citizen's right to vote and educate voters in an unbiased way about candidates and elections. As part of its mission, LWV—through state and local affiliates—operates one of the longest-running and largest nonpartisan voter registration efforts and most effective nonpartisan voter programs in the nation.

One of LWV's primary goals is to promote an open government system that is representative, accountable, and responsive to opportunities for citizen participation in government decision making. To realize this goal, LWV has been a leader in seeking campaign finance reform at the local, state, and federal levels for more than thirty years. And in our policy manual, which guides our work at all levels, the position on campaign finance states:

The League of Women Voters of the United States believes that the methods of financing political campaigns should ensure a public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and allow maximum citizen participation in the political process.

I. The proposed rule would allow gigantic and unbridled sums of opaque money to flow through 501(c)(4) organizations to influence elections in violation of existing statutes.

Our nation has seen an explosion in the sums of money being spent by 501(c)(4) organizations to elect or defeat candidates for public office. This is contrary to law for social welfare organizations and, we believe, is often contrary to the overly lax regulations defining how much political activity is allowed for such organizations. In addition, this money is not disclosed to the public, which means that voters are deprived of vital information that would help them judge how much credibility should be given to the advertising and campaigning by these 501(c)(4) organizations.

A few of the news articles reporting on these problems include:

- A Tampa Bay Times article on the rise of dark money in 2016, unlimited and anonymous. <https://www.tampabay.com/news/politics/stateroundup/the-rise-of-dark-money-in-2016-unlimited-and-anonymous/2244212/> (2015)
- A Washington Post article on how [d]ark money's deceptive power flows down to the states. <https://www.washingtonpost.com/opinions/dark-moneys->

[deceptive-power-flows-down-to-the-states/2016/06/28/e156af50-3d61-11e6-80bc-d06711fd2125_story.html](https://www.motherjones.com/politics/2019/03/dark-money-democrats-republicans-mitch-mcconnell/) (2016)

- An article by Mother Jones entitled, “Both Parties Are Addicted to Dark Money. Only One is Trying to Quit” published in early 2019. <https://www.motherjones.com/politics/2019/03/dark-money-democrats-republicans-mitch-mcconnell/>

A quick internet search of the terms “dark money” or “secret money” yields 77 million articles. The enormous degree of coverage of this topic is indicia that the issue is one of great public concern and interest across conservative, liberal, and independent audiences. The range of these articles and the information within show that the abuses not only tarnish the reputation and credibility of federal government, but importantly tarnishes agencies who fail to tap down on campaign finance and provide clearer oversight in this space. The depth of this issue also shows the very nature of this growing topic undermines our democracy by corrupting our elections with unlimited amounts of opaque money that overwhelms the voices of regular citizens and voters. That “liberal,” “conservative,” or “independent” organizations are violating the law and biasing our elections should not be relevant. Based on the above information, the IRS must act to protect the public and fulfill their duty to enforce the law or support overall information that assists with law enforcement.

II. The IRS shares a joint responsibility in the longstanding ban on foreign national spending and historically agencies work together to safeguard the nation.

Currently, donor reporting rules require nonprofit entities to report the names and addresses of major donors to the IRS along with the amount of each donation but stops short of requiring reporting or disclosure of donor information to the public. However, the amount of each donation is reported absent identifying information.

In 2018, the Treasury Department issued a Revenue Procedure doing away with the requirement to report donor information to the IRS, and instead organizations kept that information internally with the understanding that it must be furnished to IRS upon request. The requirement to report the amount of each major donation remained intact with the new procedure until a federal district court ruled that the new procedure violated the Administrative Procedures Act. The ruling was based upon the fact that the Department failed to include a notice-and-comment period, a mandatory requirement when a legislative regulation is amended.

The above chronology presents the set of circumstances leading to this comment period, but it is remiss to try to remedy a procedure that is already marred with long-lasting and insurmountable issues. Put another way, this comment period is attempting to mitigate a defective exercise that in due course leads to less transparency in government and leads to Americans having less faith in the pillars of democracy.

In sum, the Federal Election Commission and the Department of Justice have long-shared the responsibility to enforce the ban on foreign national spending in U.S. elections, such enforcement also is rightly shouldered by other agencies for support. The IRS already requires nonprofit organizations to report donor information which is important collection activity ascertaining whether these groups are using the funds properly. This same information could be critical information in sounding the alarm where foreign funds risk being used to unduly influence elections. This is nothing more than the IRS using already collected information to assist in campaign finance oversight. Based on these facts, the IRS must act to protect the public and fulfill their duty to enforce the law or support overall information that assists with law enforcement.

III. Protecting the integrity of state and federal elections must be of paramount importance to the federal government.

The IRS code is clear in laying out the eligibility of a 501(c)(4) entity. A social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must not be organized for profit and must be operated exclusively to promote social welfare. To be operated exclusively to promote social welfare, an organization must operate primarily to further the common good and general welfare of the people of the community.¹ The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.² While these social welfare organizations may engage in some political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f).³

With the code clarified, the only outstanding question is why IRS would want to turn a blind eye to its role of ensuring that organizations classified in this way maintain compliance with the law of limited political activity and the related donations associated with it?

¹ <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>

² Id.

³ Id.

The agency has offered several rationales for this promulgated rule but none rise to the level of warranting an abandonment of the outlined agency's duty of oversight. One such rationale includes the concern over inadvertent disclosure of confidential information. However, with the existence and progression of technology, corporations and government alike, deal with cyberthreats yet that hasn't led to the elimination of electronic devices and the collection of confidential information. To the contrary, consumers face increased interaction with technology which often makes transactions faster. And in today's world, commonplace threats require standard investments in security to keep information safe, and accountability when these processes fail. The IRS duty is no different and the threat of disclosure is not at a level that would warrant renunciation.

And there is case law to support this fact. In *Americans for Prosperity v. Becerra*⁴, a case within the Ninth Circuit which rejected a claim that California's Schedule B filing requirement substantially infringed on a charitable organization's First Amendment rights. Americans for Prosperity Foundation argued that the risk of inadvertent public disclosure of these forms would deter contributors and threaten charitable donors to harassment and reprisal. The court held that the Foundation failed to show that contributors had in fact been deterred or that they would face any serious reprisals as a result of California's nonpublic collection of such donor information.

Thus, the consideration of this case makes the answer clear: the threat of inadvertent disclosure is low, and the low bar requires IRS to maintain oversight and information collection authority. Simply put, the IRS cannot abdicate its role to avoid concerns of inadvertent public disclosure.

Additionally, as aptly noted in the comments submitted by Democracy 21, if a foreign national contributes to a section 501(c)(4) social welfare organization which then spends the money for campaign purposes, the social welfare group becomes the vehicle of potentially laundered foreign national funds into state and federal elections. Because this clearly violates the federal law which prohibits such foreign money in American elections, it is imperative that the federal government fulfill its duty to ensure that foreign governments are prohibited from laundering unlimited amounts of money into U.S. elections through nonprofit groups.

In the absence of Congressional action guaranteeing tangible transparency about the special interest spending big money on elections, the IRS's long-standing non-public reporting requirements have offered one of the few means by which federal

⁴ 903 F.3d 1000 (9th Cir. 2018)

regulators can efficiently detect foreign money in U.S. elections. This proposed rule would eliminate that crucial protection against foreign interference. This is not the time for the IRS to abdicate the important role of information collection and oversight in this area. For the above reasons, the IRS must prioritize the protection and the integrity of state and federal elections, and act to protect the public and fulfill their duty to enforce the law or support overall information that assists with law enforcement.

Summary

Over approximately the past decade, political spending by “dark money” nonprofits that keep their donors hidden from the public has reached nearly \$1 billion.⁵ These nonprofits provide an avenue for foreign interests to launder money into U.S. elections without detection. Although the lack of public disclosure makes foreign money schemes difficult to identify, there is substantial evidence of foreign nationals seeking to interfere in U.S. elections.⁶

For over 40 years, all nonprofits organized under Section 501(c) of the tax code have been required to confidentially report the names and addresses of their “substantial contributors” or donors who give over \$5,000 annually.⁷ For many (and very likely, most) politically-active nonprofits, these confidential filings are the only reports filed with any federal agency disclosing their sources of income. As a result, these confidential donor reports offer one of the most efficient ways for law enforcement to identify and investigate foreign contribution schemes. Conversely, these confidential disclosure requirements likely help deter politically-active 501(c) organizations from accepting illegal foreign political donations in the first place.

Foreign actors have sought to interfere in U.S. elections in the past, and there is no reason to believe they will avoid doing so in the future. The already-challenging task of preventing foreign money from flowing into U.S. elections becomes significantly harder if the IRS eliminates these minimal reporting requirements.

Recent polls show that 83% of voters across partisan lines support publicly disclosing contributions to organizations involved in elections, with a majority 56%

⁵ Anna Massoglia, *State of Money in Politics: Billion-dollar ‘dark money’ spending is just the tip of the iceberg*, OPENSECRETS.ORG: OPEN SECRETS BLOG (Feb. 21, 2019), <https://www.opensecrets.org/news/2019/02/somp3-billion-dollar-dark-money-tip-of-the-iceberg>.

⁶ See Special Counsel Robert S. Mueller, III, Report On the Investigation Into Russian Interference In The 2016 Presidential Election: Volume 1 (March 2019).

⁷ Substantial contributors are reported on Schedule B of a nonprofit’s annual return, filed on Forms 990 and 990-EZ.



strongly in support.⁸ This statistic is an important consideration for IRS and LWV urges the agency to only adopt rules that strengthen transparency and prevent opaque money via groups interested in using nonprofits in away that abuse their tax-exempt status to secretly influence elections. The IRS must maintain and protect its minimal non-public disclosure requirements.

For these reasons, League of Women Voters of the United States urges the Internal Revenue Service to not to adopt the proposed rule and we respectfully request a public hearing on this matter.

Respectfully Submitted,

/s/

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/s/

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⁸ AIG Research and GS Strategy Group, *Poll Finds Overwhelming Support for Public Disclosure of Political Contributions to Organizations* (Nov. 13, 2019), <https://campaignlegal.org/sites/default/files/2019-11/CLC%20DISCLOSURE%20MEMO.pdf>.