



Date: May 15, 2024

To: Acting General Counsel Lisa Stevenson
and
Associate General Counsel Neven Stipanovic
Federal Election Commission
1050 First Street NE,
Washington D.C., 20463

Re: Proposed Directive Concerning Requests to Withhold, Redact, or Modify Contributors'
Identifying Information

Dear Ms. Stevenson and Mr. Stipanovic,

OpenSecrets is the United States' premier nonpartisan organization documenting the ways in which money influences political outcomes and policies. We've been engaged in this work for forty years, and we see the proposed directive about requests to withhold, redact or modify contributors' identifying information as having the potential to severely weaken the disclosure of some of the most fundamental information necessary for a functional democracy.

As Commissioner Dickerson notes, in the past, individuals who face legitimate threats after disclosing their name, address, and employer to the Federal Election Commission have been granted exemptions to having this information made public. This is appropriate in rare cases where the individual is subject to serious threats to their safety or livelihood. It is not appropriate in cases where an individual is worried about facing more mild backlash, embarrassment, or discomfort after making a donation to a political entity. As Justice Antonin Scalia has stated repeatedly, government transparency is necessary for a healthy democracy. In a case in 2010, he argued:¹

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.

¹ *Doe v. Reed*, 561 U.S. 186 (2010), <https://www.law.cornell.edu/supct/html/09-559.ZC4.html>



It is important, here, to draw a distinction between individuals who donate relatively small amounts of money and those who donate tens of thousands. The FEC has a long history of protecting the privacy of smaller donors by not including address information on the searchable website, and OpenSecrets follows suit by not including address information for any donors in our public resources. This safeguard provides a necessary and important balance between protecting the public interest *and* the privacy of smaller donors in particular. We should remember that *Buckley v. Valeo* specified that informing the public was in itself an interest vital enough to permit disclosure, over and above the appearance-of-corruption interest required for independent spending limits.

Commissioner Dickerson recognizes that in the past, specific groups have been granted blanket exemptions to disclosure. Specifically, the Socialist Workers Party of America had previously been granted a blanket exemption to not disclose donor information². However, the consequences to the public interest of this exemption are exceedingly small given the Socialist Workers Party's minuscule involvement in American politics.³ Additionally, the Socialist Workers Party provided detailed evidence of a history of harassment and the Supreme Court has ruled that several other cases do not rise to the level of harassment of reprisals. The risks to democracy for the SWP being granted this exemption pale in comparison to the risks of a major super PAC or candidate committee being granted the same exemption.

When people make the choice to contribute, it is critical to transparency, and therefore both trust in our institutions and to democracy, that the public be made aware of it. In practice, this includes being able to identify the specific source from which the donation originated. It is already difficult to identify the true source of money given to major political committees. In fact, OpenSecrets has identified that 30% of spending – \$153.7 million dollars – by super PACs and Carey Committees thus far in the 2024 cycle has been by groups who have, at best, only partially disclosed their donors⁴. In

² Consent Decree, Socialist Workers 1974 Nat'l Campaign Comm. v. Fed. Election Comm'n, Case No. 74-1338 (D.D.C. 1979) and Advisory Ops. 1990-13 (Socialist Workers Party), 1996-46 (Socialist Workers Party), 2003-02 (Socialist Workers Party), 2009-01 (Socialist Workers Party), 2012-38 (Socialist Workers Party).

³ <https://www.fec.gov/data/committee/C00111476/?tab=summary&cycle=2024>

⁴ Outside Groups Spending by Disclosure, OpenSecrets https://www.opensecrets.org/outside-spending/super_pacs/2024?disp=O&type=S&chart=D, https://www.opensecrets.org/outside-spending/carey_committees/2024?disp=O&type=H&chart=D accessed 5/14/2024



addition to receiving contributions from non-disclosing groups like 501(c)4s, this is the result of donors regularly not providing complete information: PO Box addresses are frequently listed instead of street addresses, and there's often spotty completion of the employer and occupation fields in filings.

It is through the disclosure of address information, specifically, that journalists and watchdogs have been able to identify cases of corruption in the past. In a country with more than 334 million people, name and city are not adequate for true disclosure. Even within one family, it can be difficult to disentangle contributions from different members of the family. There can be consequences for this difficulty. According to OpenSecrets records, major donor Alfonso Fanjul has disclosed 18 variations of his name, 30 different occupations, 82 employers, and 28 street addresses. Without all pieces of this information available in tandem, it would be difficult to identify that these contributions are coming from the same individual donor.

Furthermore, we have seen cases of wealthy donors contributing through family members and unemployed adult children, who often have different names. Address information can link together these donors and uncover potential cases of “straw” donations, as has most recently been unearthed in Vermont.⁵ Allowing more exemptions to the kinds of information disclosed would only decrease transparency and therefore, citizens' faith in the electoral process. It would also increase opportunities for US citizens to act as straw donors for actors, including foreign ones, by using this exemption as cover.

This proposal appears to be tailored to allow the largest donors to apply for exemptions. While the interim proposal calls for a deliberative process on an exemption decision, including a sworn notarized statement from the contributor, what it means in practice is that it is simply a loophole for those with the time and money to pursue the exemption. The contributors most likely to request exemption are those with the most influence and those that citizens most need to know about.

Perhaps even more concerning outside of the interim proposal, is that the deliberations leave open the door for the Commission to create more holes in the disclosure regime that could completely

⁵ <https://campaignlegal.org/update/straw-donor-schemes-arent-legal-loophole-theyre-just-illegal>



eviscerate disclosure as we know it. It is not hard to imagine a path to a place where anyone could check a box in an online form and declare themselves exempt.

Political speech is protected by the US Constitution. This has been confirmed by centuries of court decisions. Recently, in the decision *McCutcheon vs. the Federal Election Commission*⁶, the Supreme Court made it clear that in a system where fewer regulations govern the contributions donors can make, thorough disclosure is even more necessary. Chief Justice Roberts, writing for the majority, stated:

Disclosure requirements may burden speech, but they often represent a less restrictive alternative to flat bans on certain types or quantities of speech. Particularly with modern technology, disclosure now offers more robust protections against corruption than it did when Buckley was decided.

Transparency is necessary for a functional democracy, and individuals who choose to contribute to political candidates and groups need to be identifiable to prevent corruption. Opting out of the disclosure process should be rare, difficult, and only allowable in extreme circumstances.

Respectfully,

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⁶ *McCutcheon v. FEC*, 572 U.S. 185 (2014) https://www.fec.gov/resources/legal-resources/litigation/mccutcheon_sc_opinion.pdf