Common Cause
Holding Power Accountable

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United States Senate Committee on Finance
Subcommittee on Taxation and IRS Oversight

Testimony of
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For the Hearing
"Laws and Enforcement Governing the Political Activities of Tax Exempt Entities"

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Chairman Whitehouse and distinguished members of the Committee, thank you for the opportunity to submit written testimony. Prior to joining Common Cause, I served the public in leadership roles at nonpartisan governmental oversight agencies—one at the state level and one at the municipal level. I was the Director of the Citizens' Election Program for the State Elections Enforcement Commission in Connecticut, and the Deputy General Counsel of the New York City Campaign Finance Board.

Common Cause is a nonpartisan, nonprofit citizen lobby that works to improve the way government operates for all of us. Common Cause has more than 1.5 million members around the country who are committed to open and accountable government that serves the public. Common Cause advocates at the federal, state and local level for meaningful disclosure and real transparency in our elections as key means to increased government accountability and reducing the undue influence of ultra-wealthy special interests in our politics.

Americans deserve to know who is trying to influence their voices and their votes. Disclosure allows voters to evaluate the strength, content and agenda of political messages, and is a crucial tool for holding people accountable to the voters. In *Citizens United v FEC*, the Supreme Court reaffirmed the importance of disclosure of political spending, ruling 8-1 that transparency in political spending empowers the electorate with the tools needed to make informed decisions about speakers and messages.[1]

Nonetheless, the system is not transparent due to outdated disclosure laws in the wake of *Citizens United* (and the Republican filibusters of the DISCLOSE Act), and the failure of both the Federal Election Commission and the Internal Revenue Service to enforce existing laws, however incomplete, against apparent bad actors. Secret money spending by outside groups since *Citizens United* has exceeded $1 billion dollars in federal elections and the spending race continues. Unfortunately for the American

[1] 558 U.S. 310, 371 (2010).

public, a lot has had to go wrong to make it possible for them to be so completely in the dark about so much political spending.

First, one of the basic statutory principles of campaign finance law found in the federal statute and *mirrored in almost every state* requires the formation of a "political committee" once any organization receives contributions or makes expenditures in excess of $1,000 in a year and whose major purpose is to influence the covered election. 52 U.S.C. § 30101. The FEC has failed to enforce this basic tenet of campaign finance law due to deadlocked votes engineered by some of its commissioners' ideological opposition to the law, which has allowed these organizations to spend huge sums without registering and complying with this fundamental rule applicable to political actors.

This deadlock could be partially ameliorated by strict enforcement by the IRS fulfilling its own mandate and enforcing the laws governing nonprofit political spending. Congress never intended for social welfare organizations to exist as conduits for secret political spending. In exchange for a tax exemption, these nonprofits are required to engage exclusively for social welfare, which the IRS has said does not include political campaign intervention.[2] The IRS regulations muddied the waters with a primary purpose analysis that is inconsistent with the exclusivity requirement of the Internal Revenue Code.[3]

The use of 501(c)(4) social welfare organization status by organizations spending unlimited money in secret should face aggressive enforcement by the IRS. This is not happening. Because it is well known that this is not and has not been happening, partisan political operatives on the right and the left have excelled at establishing phony social welfare organizations that collectively pump hundreds of millions of dollars from secret sources into our elections. Rather than carry out their election-related spending through tax-exempt organizations which requires donor disclosure pursuant to Section 527, major political groups continue to masquerade as social welfare nonprofits under Section 501(c)(4) because they want to keep their donors anonymous.

This long running scandal is no secret and it is time for the IRS to rethink its priorities to stop the continued misuse of social welfare organizations. This includes updating its outdated regulations that were written long before the Supreme Court changed campaign finance jurisprudence in *Citizens United* and subsequent decisions. It is true that Congress, through appropriations riders in recent years, has prevented the Treasury Department and IRS from setting clearer definitions and updating its regulations.

But it still falls squarely within the IRS's authority to enforce the existing laws governing nonprofit political spending. Should the IRS continue to fail to enforce against these bad actors, they are enabling tax fraud by some of the biggest political spenders meanwhile allowing them to remain anonymous to the public as to their funding sources. The IRS must stop looking the other way and require the overtly political groups masquerading as social welfare nonprofits under Section 501(c)(4) to carry out their election related spending through tax-exempt organizations in accordance with Section 527.

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[2] 26 U.S.C. § 501 (c)(4); Treas. Reg. § 1.501(c)(4)-(1)(a)(2)(ii)

[3] Treas. Reg. § 1.501(c)(4)-(1)(a)(2)(i)

Political operatives should not be able to circumvent the constitutionally sound bedrock policy of disclosure by circumventing inconsistent enforcement and vague regulations governing organizations that Congress never intended would engage in election-related spending. This ongoing scandal threatens the integrity of our elections and undermines confidence in our democracy.