



FEDERAL ELECTION COMMISSION

Washington, DC

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: May 15, 2024

SUBJECT: Agenda Document No. 24-19-A -Comment

Attached is a comment received from Public Citizen and Transparency International U.S. This matter is on the May 16, 2024 Open Meeting Agenda.

Attachment

RECEIVED

By Office of the Commission Secretary at 11:53 am, May 15, 2024

RECEIVED

By Office of General Counsel at 11:04 am, May 15, 2024

May 15, 2024

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
1050 First Street, NE
Washington, D.C. 20463

Submitted via email and USPS

**Agenda Document No. 24-19-A: Proposal Is 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 has proposed a new rule 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.” Dickerson’s proposal then goes on to call for posting a form on the FEC web site to allow any individual donor, or an organization acting on behalf of one or more of its contributors, to request exemption from the disclosure requirements if that donor or organization feels that transparency might lead to harassment.

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

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

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.

However, the Dickerson proposal seeks to vastly expand donor exemption far beyond its original intent to all persons, all parties and all organizations in the mainstream political universe who demonstrate a “reasonable probability” that donor disclosure could 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 Biden supporters, Trump supporters, Democrats, Republicans, Independents, and organizations of all political persuasions. The proposal even calls for posting a simple form on the FEC web site for any person or organization to request an exemption from the disclosure requirements.

This proposal 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 persons and parties who are concerned about being intimidated about their campaign donations.
- Eviscerate the nation’s campaign finance disclosure system.
- 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

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).

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. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously (McIntyre) and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.”*⁶

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 resolution also cuts into the very fabric of a functional democratic society.

For these reasons, Public Citizen and Transparency International U.S. strongly urge the Federal Election Commission to reject the rulemaking request of Agenda Document No. 24-19-A, “Proposed Directive Concerning Requests to Withhold, Redact, or Modify Contributors’ Identity Information.”

Respectfully Submitted,

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen
215 Pennsylvania Avenue, SE
Washington, D.C. 20003
(202) 454-5182

Scott Greytak
Director of Advocacy,
Transparency International U.S.
1100 13th St. NW, Suite 800
Washington, DC 20005
(202) 642-1515

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