

Testimony Submitted for the Record
House Committee on Ways and Means
Subcommittee on Oversight
Hearing on Growth of the Tax-Exempt Sector and the Impact on the American Political
Landscape
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Chairman Schweikert, Ranking Member Pascrell, and members of the Subcommittee, thank you for the opportunity to submit testimony regarding the growth of the tax-exempt sector and the impact on the American political landscape.

Citizens for Responsibility and Ethics in Washington (CREW) is a nonpartisan, nonprofit organization committed to promoting ethical, transparent and accountable governance, protecting our political system from corruption, and reducing the influence of money in politics. For more than a decade, CREW has sought to fight against those who would seek to use – and abuse – tax-exempt organizations, particularly those organized under section 501(c)(4) of the tax code, to circumvent the disclosure requirements that serve as a cornerstone of the anti-corruption interests in the American campaign finance system. Building on this committee’s September 2023 request for information to understand section 501 tax-exempt entities,¹ this hearing marks an important opportunity for Congress to address weaknesses in the law and deficiencies in the current approach to enforcement that have undermined efforts to fight corruption in our political system.

Since the Supreme Court’s 2010 ruling in *Citizens United v. Federal Election Commission* and the subsequent U.S. Court of Appeals for the District of Columbia’s ruling in *SpeechNow.org v. Federal Election Commission* altered the legal landscape for political activity by corporations, including certain types of tax-exempt nonprofit organizations, the American political system has been flooded with anonymously-sourced spending.² As a result, American voters have often been left in the dark about who is trying to influence their decisions at the ballot box and who may be influencing the decisions of the elected officials who set policies that directly impact their day-to-day lives.

¹ Debra Perlin and Matthew Corley to the Honorable Jason Smith, et al., Re: Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code, Sept. 8, 2023, https://www.citizensforethics.org/wp-content/uploads/2023/09/CREW-Response-House-Ways-and-Means-RFI-c4_c3-political-activity.pdf.

² Karl Evers-Hillstrom, More money, less transparency: A decade under Citizens United, *OpenSecrets*, Jan. 14, 2020, <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>; Anna Massoglia and Karl Evers-Hillstrom, ‘Dark money’ topped \$1 billion in 2020, largely boosting Democrats, *OpenSecrets*, Mar. 17, 2021, <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>.

Much of that secret spending has been shielded from public view through the use of section 501(c)(4) organizations that engage in political activity without disclosing who finances their expenditures.

The ability to conduct unlimited independent campaign spending or to make unlimited contributions to super PACs while avoiding donor disclosure transformed these types of tax-exempt groups into a favorite vehicle for individuals and organizations that want to impact elections without facing public scrutiny or accountability. For these same reasons, as the Department of Justice recently described during the sentencing of former Ohio House Speaker Larry Householder following his conviction on federal racketeering charges that centered on his acceptance of tens of millions from an energy company into a section 501(c)(4) organization he controlled, “a 501(c)(4) is the perfect vehicle for bribery” because it can receive “unlimited and unreported payments” that can benefit the interests of public officials.³

Political activity is not supposed to be the heart of these organizations’ operations. Section 501(c)(4) provides tax-exempt status to organizations “not organized for profit but operated exclusively for the promotion of social welfare.”⁴ IRS regulations interpret the statute to mean a section 501(c)(4) organization must be “primarily engaged in promoting in some way the common good and general welfare of the people of the community.”⁵ The regulations further provide that “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office” does not promote social welfare.⁶ The IRS has not formally defined the “primary activity” standard and instead provides that all the “facts and circumstances” are to be taken into account in determining the “primary activity” of a section 501(c)(4) organization.⁷

The current IRS posture is widely understood to mean that a section 501(c)(4) organization may not dedicate more than 50 percent of its expenditures to political activities. Effectively, this allows politically-minded section 501(c)(4) organizations to spend large sums influencing elections as long as they can offset it with other spending, which can often be

³ Press Release, United States Attorney’s Office, Southern District of Ohio, Former Ohio House Speaker sentenced to 20 years in prison for leading racketeering conspiracy involving \$60 million in bribes, June 29, 2023, <https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy>; Government’s Sentencing Mem. for Def. Larry Householder at 15, *United States v. Larry Householder*, No. 1:20-cr-00077-TSB (S.D. Ohio. Jun. 22, 2023), ECF No. 278, <https://www.documentcloud.org/documents/23857046-larry-householder-sentencing-memo>.

⁴ 26 U.S.C. § 501(c)(4).

⁵ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). As CREW has long noted, by allowing section 501(c)(4) organizations to be only “primarily” engaged in social welfare, the regulation misinterprets the plain meaning of the word “exclusively” in the statute.

⁶ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁷ Rev. Rul. 68-45, 1968-1 C.B. 259.

done through activities such as sham issue ads or grants to other politically-active nonprofits that may still support their political goals, just less explicitly.

Over the years, CREW has filed numerous complaints with the IRS requesting investigations of whether politically-active section 501(c)(4) organizations were operated primarily to influence elections or failed to properly report their political activity to the IRS. Unfortunately, as CREW explained in an April 2022 report, the IRS has done a poor job of enforcing the law related to political activity by section 501(c)(4)s.⁸

According to a 2020 Government Accountability Office report, between 2010 and 2017, the IRS conducted and closed 226 examinations related to tax-exempt organizations' failures to comply with the rules on political campaign activity.⁹ But only 14 of those examinations involved section 501(c)(4) organizations, despite the immense increase in political activity by these organizations during the same time period.¹⁰ For much of the time since *Citizens United*, the IRS did not revoke any section 501(c)(4) group's tax-exempt status for violating the law's limits on their political spending.¹¹

The sharp rise in political activity unleashed by *Citizens United* combined with the IRS's lax enforcement has led some observers to believe that the IRS has given up on this part of its job. While there are certainly legislative and regulatory changes that could help address concerns about the exploitation of loopholes to use tax-exempt organizations to influence American elections without disclosing funding sources, more vigorous enforcement by the IRS of the current rules related to political activity by nonprofit organizations is also essential.

The IRS can and should take appropriate steps to improve enforcement related to political activity in the tax-exempt sector, but Congress has also placed considerable constraints on the agency that limit its ability to act on its own. In particular, the IRS cannot currently act on its own to issue further guidance related to political activity by section 501(c)(4) organizations. Since 2015, a budget rider has prohibited the IRS from using funds "to issue, revise, or finalize any regulation, revenue ruling, or other guidance ... to determine whether a [501(c)(4)] organization is operated exclusively for the promotion of social welfare."¹²

⁸ Matt Corley and Adam Rappaport, [The IRS is not enforcing the law on political nonprofit disclosure violations](https://www.citizensforethics.org/reports-investigations/crew-reports/the-irs-is-not-enforcing-the-law-on-political-nonprofit-disclosure-violations/), *Citizens for Responsibility and Ethics in Washington*, Apr. 28, 2022, <https://www.citizensforethics.org/reports-investigations/crew-reports/the-irs-is-not-enforcing-the-law-on-political-nonprofit-disclosure-violations/>.

⁹ U.S. Government Accountability Office, Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives (Feb. 2020), <https://www.gao.gov/assets/710/705927.pdf>.

¹⁰ *Id.*; See also <https://www.opensecrets.org/outside-spending/dark-money-groups/summary>.

¹¹ Maya Miller, [How the IRS Gave Up Fighting Political Dark Money Groups](https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation), *ProPublica*, Apr. 18, 2019, <https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation>.

¹² Department of the Treasury Appropriations Act, 2016, Pub. L. No. 114-113, § 127 129 Stat. 2433 (2015).

At the bare minimum, Congress should remove this rider and allow the IRS to clarify the rules for all stakeholders. Members should also look seriously at closing loopholes in campaign finance law that politically-active tax-exempt organizations exploit to minimize the activities they report to the IRS as direct or indirect campaign intervention. For instance, Congress should address the digital electioneering communications loophole that means paid online ads that target candidates in close proximity to elections do not need to be reported to the Federal Election Commission if they avoid using express advocacy language, even if the same exact ad run during the broadcast of a TV show would trigger reporting as an electioneering communication.¹³

Thanks to the Supreme Court's *Citizens United* decision, tax-exempt organizations that are not required to disclose their contributors, particularly those organized under section 501(c)(4), have played a significantly increased role in the funding of American elections, resulting in serious gaps in the American public's knowledge about who is seeking to influence their votes and their elected leaders. Congress should take action to shine light on dark money by empowering the IRS to both enforce and clarify the rules governing political activity by tax-exempting organizations and by closing loopholes in campaign finance law that those organizations exploit to spend large sums influencing elections while keeping the sources of that spending in the shadows.

¹³ Making electioneering communications, Federal Election Commission, <https://www.fec.gov/help-candidates-and-committees/other-filers/making-electioneering-communications/>; Matt Corley, [Trump admin alums' dark money group exploits loopholes to obscure spending](https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-admin-alums-dark-money-group-exploits-loopholes-to-obscure-spending/), *Citizens for Responsibility and Ethics in Washington*, Nov. 10, 2022, <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-admin-alums-dark-money-group-exploits-loopholes-to-obscure-spending/>.