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JUDICIARY

United States Senate

WASHINGTON, DC 20510-3905

July 15, 2015

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Lynch:

I write to express concern about the enforcement of our tax laws as they relate to the critical issue of campaign finance. In light of the Internal Revenue Service's failure to promulgate rules clarifying limitations on political spending by 501(c)(4) "social welfare" organizations, I urge the Department of Justice to take appropriate steps to investigate a pattern of open and notorious abuses.

As you know, when the Supreme Court struck down provisions of the Bipartisan Campaign Reform Act ("BCRA" or "McCain-Feingold") in *Citizens United v. Federal Election Commission* in 2010, it assumed that the BCRA's disclosure requirements would create "a regime of effective disclosure."¹ Such a regime, to the extent it ever was established, has completely broken down with regard to non-profits—in large part because of ambiguous and permissive Treasury Department rules regarding political spending by these organizations. Many of the groups formed as 501(c)(4)s precisely because the current virtually lawless regime allows them to avoid disclosure.

While Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for nonprofits "operated *exclusively* for the promotion of social welfare,"² Treasury regulations allow 501(c)(4) organizations to engage in campaign intervention as long as their "primary" activity involves social welfare. Because Internal Revenue Service regulations are so unclear, groups reporting millions of dollars in election spending to the Federal Election Commission simultaneously answer "no" to questions on official tax forms asking whether they participate in political activity.

Tax-exempt non-profits tailored to specific candidates' political needs are operating in plain view with no apparent fear of accountability or repercussions. Acknowledging her own agency's inability to effectively police political spending, Federal Election Commission Chairwoman Ann Ravel likened the atmosphere to the "Wild West."³ She also went so far as to say that, "The

¹ *Citizens United v. FEC*, 558 U.S. 310, 370 (2010).

² Associated regulations state that "[t]he 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."

³ Bykowicz, Julie, "Candidates get Creative in Funding Search," *Associated Press*, June 17, 2015

likelihood of the laws being enforced is slim.”⁴ As the *New York Times* recently reported, “scant enforcement” has led some nonprofits to “become huge political operations” and “unofficial extensions of ... campaigns.”⁵ According to the *Washington Post*, the widespread collaboration between candidates and their “independent” allies “indicates that candidates and their advisors have little fear that they will face serious scrutiny from law enforcement.”⁶ That these groups are engaging so openly in abuses undermines the rule of law and threatens our democracy.

I have been told that the Department of Justice cannot act independently to investigate tax-related violations because of a combination of statutory and self-imposed restrictions, even in cases where the most important evidence – potentially false forms, signed under oath – is already in the public domain. I note that false statement prosecutions under 18 U.S.C. § 1001 are governed by the regular criminal code, not the tax code. Given the increasing, and increasingly brazen, role of dark money in federal elections, I hope you will reconsider the Department’s position.

Sincerely,



Sheldon Whitehouse
United States Senator

⁴ Lichtblau, Eric, “F.E.C. Can’t Curb 2016 Election Abuse, Commission Chief Says,” *New York Times*, May 2, 2015

⁵ Lichtblau, Eric, “IRS Expected to Stand Aside as Nonprofits Increase Role in 2016 Election,” *New York Times*, July 5, 2015.

⁶ Gold, Matea, “It’s Bold but Legal: How Campaigns and their Super PAC Backers Work Together,” *Washington Post*, July 6, 2015.