118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 118–663
Part 1

PREVENTING FOREIGN INTERFERENCE IN AMERICAN ELECTIONS ACT

SEPTEMBER 12, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. STEIL, from the Committee on House Administration, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 8399]

The Committee on House Administration, to whom was referred the bill (H.R. 8399) to amend the Federal Election Campaign Act of 1971 to further restrict contributions of foreign nationals, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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49–006

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preventing Foreign Interference in American Elections Act".

SEC. 2. MODIFICATIONS TO FOREIGN MONEY BAN.

(a) ADDITIONAL RESTRICTIONS.—

(1) IN GENERAL.—Section 319(a)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30121(a)(1)) is amended—

(A) by striking "or" at the end of subparagraph (B); and

(B) by adding at the end the following new subparagraph:

"(D) a donation for the purpose of—

"(i) voter registration activity;

"(ii) ballot collection;

"(iii) voter identification;

"(iv) get-out-the-vote activity;

"(v) any public communication that refers to a clearly identified Federal, State, or local political party; or

"(vi) the administration of a Federal, State, or local election; or".

(2) CONFORMING AMENDMENT.—Section 319(a)(2) of such Act (52 U.S.C. 30121(a)(2)) is amended by striking "subparagraph (A) or (B) of paragraph (1)" and inserting "subparagraph (A), (B), or (D) of paragraph (1)".

(b) PROHIBITION ON AIDING OR FACILITATING VIOLATIONS.—Section 319(a) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30121(a)), as amended by subsection (a), is amended—

(1) by striking "or" at the end of paragraph (1)(D);

(2) by striking the period at the end of paragraph (2) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(3) a person to knowingly aid or facilitate a violation of paragraph (1) or (2).".

(c) INDIRECT CONTRIBUTIONS.—Section 319 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30121) is amended by adding at the end the following new subsection:

"(c) INDIRECT CONTRIBUTIONS.—For purposes of this section, a person shall be treated as having indirectly made a contribution, donation, expenditure, or disbursement described in subparagraphs (A), (B), (C), or (D) of subsection (a)(1) if such person has made a contribution or donation to a person with a designation, instruction, or encumbrance (whether direct or indirect, express or implied, oral or written, or involving intermediaries or conduits) which results in any part of such contribution, donation, expenditure, or disbursement being used for an activity described in subparagraphs (A), (B), (C), or (D) of subsection (a)(1).".

(d) ENFORCEMENT PROVISIONS.—Section 319 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30121), as amended by subsection (c), is amended by adding at the end the following new subsection:

"(d) ENFORCEMENT.—

"(1) USE OF CERTIFICATION AS A DEFENSE.—

"(A) IN GENERAL.—In the case of any allegation that a person has violated subsection (a), any person alleged in the complaint may, in connection with a response to such allegation under section 309(a)(1), submit, under penalty of perjury, a certification that no such violation has occurred.

"(B) EFFECT OF SUBMISSION.—The Commission shall take into consideration any certification submitted under subparagraph (A) in making a determination under section 309(a)(2) whether there is reason to believe such violation has occurred.

"(2) LIMITATION ON INVESTIGATIONS.—

"(A) IN GENERAL.—If the Commission makes a determination under section 309(a)(2) that there is reason to believe a violation of subsection (a) has occurred or is about to occur, any investigation of such alleged violation shall be limited in scope to the factual matter necessary to determine whether such alleged violation occurred.

"(B) PETITION TO QUASH SUBPOENA OR ORDER ON BASIS NOT LIMITED IN SCOPE TO NECESSARY FACTUAL MATTER.—

"(i) IN GENERAL.—A person subject to an investigation by the Commission following a determination of the Commission that there is reason to believe a violation of subsection (a) has occurred or is about to occur may file a petition in any United States district court with jurisdiction to quash any subpoena or order of the Commission issued under paragraph (3) or (4), respectively, of section 307(a) on the basis that the

subpoena or order is not limited in scope to the factual matter necessary to determine whether such alleged violation occurred as required under subparagraph (A).

"(ii) CLARIFICATION.—Nothing in clause (i) shall be construed to alter the right of any person to otherwise challenge the power of the Commission to issue a subpoena under section 307(a)(3) or an order under section 307(a)(4).".

(e) REPORTING.—

(1) CONTRIBUTIONS AND EXPENDITURES OF POLITICAL COMMITTEES AND POLITICAL PARTIES.—Section 304(b) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104(b)) is amended—

(A) by striking "and" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(9) under penalty of perjury, a certification that the committee has complied with the requirements of section 319(a).".

(2) INDEPENDENT EXPENDITURES.—

(A) COMMITTEE REPORTS.—Section 304(b)(6)(B)(iii) of such Act (52 U.S.C. 30104(b)(6)(B)(iii)) is amended—

(i) by striking "and a certification" and inserting "a certification"; and

(ii) by inserting ", and a certification, under penalty of perjury that the independent expenditure does not violate section 319(a)" before the semicolon at the end.

(B) OTHER PERSONS.—Section 304(c)(2) of such Act (52 U.S.C. 30104(c)(2)) is amended—

(i) by striking "and" at the end of subparagraph (B);

(ii) by redesignating subparagraph (C) as subparagraph (D); and

(iii) by inserting after subparagraph (B) the following new subparagraph:

"(C) under penalty of perjury, a certification that the independent expenditure does not violate section 319(a); and".

(3) ELECTIONEERING COMMUNICATIONS.—Section 304(f)(2) of such Act (52 U.S.C. 30104(f)(2)) is amended by adding at the end the following new subparagraph:

"(G) A certification, under penalty of perjury, that the disbursement does not violate section 319(a).".

SEC. 3. PROTECTING PRIVACY OF DONORS TO TAX-EXEMPT ORGANIZATIONS.

(a) RESTRICTIONS ON COLLECTION OF DONOR INFORMATION.—

(1) RESTRICTIONS.—An entity of the Federal government may not collect or require the submission of information on the identification of any donor to a tax-exempt organization.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) The Internal Revenue Service, acting lawfully pursuant to section 6033 of the Internal Revenue Code of 1986 or any successor provision.

(B) The Secretary of the Senate and the Clerk of the House of Representatives, acting lawfully pursuant to section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604).

(C) The Federal Election Commission, acting lawfully pursuant to—

(i) section 510 of title 36, United States Code; or

(ii) any provision of title III of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(D) An entity acting pursuant to a lawful order of a court or administrative body which has the authority under law to direct the entity to collect or require the submission of the information, but only to the extent permitted by the lawful order of such court or administrative body.

(b) RESTRICTIONS ON RELEASE OF DONOR INFORMATION.—

(1) RESTRICTIONS.—An entity of the Federal government may not disclose to the public information revealing the identification of any donor to a tax-exempt organization.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) The Internal Revenue Service, acting lawfully pursuant to section 6104 of the Internal Revenue Code of 1986 or any successor provision.

(B) The Secretary of the Senate and the Clerk of the House of Representatives, acting lawfully pursuant to section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604).

(C) The Federal Election Commission, acting lawfully pursuant to—

(i) section 510 of title 36, United States Code; or

(ii) any provision of title III of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(D) An entity acting pursuant to a lawful order of a court or administrative body which has the authority under law to direct the entity to disclose the information, but only to the extent permitted by the lawful order of such court or administrative body.

(E) An entity which discloses the information as authorized by the organization.

(c) TAX-EXEMPT ORGANIZATION DEFINED.—In this section, a "tax-exempt organization" means an organization which is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code. Nothing in this subsection may be construed to treat a political organization under section 527 of such Code as a tax-exempt organization for purposes of this section.

(d) PENALTIES.—It shall be unlawful for any officer or employee of the United States, or any former officer or employee, willfully to disclose to any person, except as authorized in this section, any information revealing the identification of any donor to a tax-exempt organization. Any violation of this section shall be a felony punishable upon conviction by a fine in any amount not exceeding $250,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

SEC. 4. EFFECTIVE DATE.

(a) MODIFICATIONS TO FOREIGN MONEY BAN.—

(1) IN GENERAL.—Except as provided in paragraph (2), section 2 and the amendments made by section 2 shall apply with respect to donations or other amounts provided on or after the date of the enactment of this Act.

(2) REPORTING REQUIREMENTS.—Subsection (e) of section 2 and the amendments made by such subsection shall apply with respect to reports filed under the Federal Election Campaign Act of 1971 on or after the date of the enactment of this Act.

(b) PROTECTING PRIVACY OF DONORS.—Section 3 shall apply with respect to donations made on or after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 8399, Preventing Foreign Interference in American Elections Act, introduced by Representative Bryan Steil (WI–01) and co-sponsored by Representative Stephanie Bice (OK–05) prohibits foreign nationals from funding ballot harvesting, ballot collection, get-out-the-vote activities, or the administration of a federal, State, or local election. It also clarifies that federal law's existing foreign national campaign finance prohibition on indirect contributions covers attempts to circumvent the ban through intermediates or instructions, and protects Americans' First Amendment rights to donate to nonprofit organizations as they see fit by prohibiting any entity of the federal government from disclosing the donor information of any nonprofit organization.

BACKGROUND AND NEED FOR LEGISLATION

BACKGROUND

Congress created the Federal Election Commission ("FEC") in 1974[1] and gave it the authority to enforce all civil violations of federal campaign finance law.[2] The agency is a bipartisan commission of six commissioners who serve single, non-renewable six-year terms, though many commissioners "hold over" until a new com-

[1] Federal Election Campaign Act Amendments of 1974, 52 U.S.C. § 30106 (1974).
[2] *Id.* at § § 30106(b)(1), 30107(e).

missioner is appointed.[3] No more than three commissioners may be affiliated with the same political party.[4] Commissioners are appointed by the president, traditionally upon the recommendation of Senate leadership, and are subject to confirmation by the United States Senate.[5] For the FEC to act, a majority vote of the commissioners is required.[6]

The FEC is tasked with enforcing the Federal Election Campaign Act ("FECA"). Under FECA, foreign nationals[7] are prohibited from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election ("foreign national campaign finance prohibition").[8] Foreign nationals are also prohibited from contributing or donating to political party committees[9] and from making expenditures, including independent expenditures, or disbursements for electioneering communications.[10]

While FECA's foreign national campaign finance prohibition is broad, it does *not* prohibit foreign nationals from engaging in modern election activities. For example, foreign nationals can lawfully donate to fund election administration in a federal, State, or local election, get-out-the-vote efforts, voter registration drives, and ballot collection or voter identification activities. In the 2020 presidential election, these types of activities were exploited by Meta Chief Executive Officer Mark Zuckerberg and his wife Priscilla Chan. The couple donated $350 million to a 501(c)(3) organization, the Center for Tech and Civic Life ("CTCL"), that donated those funds across jurisdictions across the United States ostensibly for the purpose of helping them administer an election during COVID–19, but in reality were used for get-out-the-vote efforts and voter registration drives to help Joe Biden win the presidency.[11]

The Supreme Court has consistently held that spending money in connection with political activities, including making donations or expenditures, qualifies as protected speech under the First Amendment.[12] It has also recognized that the *only* constitutional reason for restricting money spent on political activities is the prevention of *quid pro quo* corruption or its appearance.[13] Although the Court has never squarely been presented with the question, it

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[3] *Id.* at § 30106(a)(2)(A)–(B). Commissioners are allowed to serve holdover terms in the event a replacement is not confirmed before their term expires. One commissioner has been at the FEC since 2002, 16 years longer than the standard term.

[4] *Id.* at § 30106(a)(2)(A).

[5] *Id.* at § 30106(a)(1).

[6] *Id.* at § 30106(c).

[7] Foreign national is defined as "(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or (2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8." *See* 52 U.S. Code § 30121(b).

[8] *Id.* at § 30121(a)(1)(A).

[9] *Id.* at § 30121(a)(1)(B).

[10] *Id.* at § 30121(a)(1)(C).

[11] The Editorial Board, *Zuckerbucks Shouldn't Pay for Elections*, Wall Street Journal (Jan. 3, 2022), https://www.wsj.com/articles/zuckerbucks-shouldnt-pay-for-elections-mark-zuckerberg-center-for-technology-and-civic-life-trump-biden-2020-11640912907.

[12] *See* Buckley v. Valeo, 424 U.S. 1 (1976); Davis v. FEC, 554 U.S. 724 (2008); Citizens United v. FEC, 558 U.S. 310 (2010); McCutcheon v. FEC, 572 U.S. 185 (2014); FEC v. Ted Cruz for Senate, 596 U.S. 289 (2022).

[13] Buckley, 424 U.S. 25–26; Federal Election Commission v. National Conservative Political Action Commission, 470 U.S. 480, 497 (1985); Citizens United, 558 U. S. 359; McCutcheon, 572 U. S. 207; Cruz, 142 S.Ct. 1652 (2022).

previously affirmed a three-judge court's decision, authored by then-Judge Kavanaugh, that upheld the prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates.[14]

FECA originally allowed corporations[15] to use independent expenditures to engage political speech by so long as their speech did not expressly advocate the election or defeat of a clearly identified federal candidate.[16] However, the Bipartisan Campaign Reform Act ("BCRA") of 2002 commonly known as "McCain-Feingold"[17] prohibited corporations from "using their general treasury funds to make independent expenditures for speech defined as an 'electioneering communication' or for speech expressly advocating the election or defeat of a candidate" ("general treasury funds prohibition").[18] FECA defines an electioneering communication as any broadcast, cable, or satellite communication that refers to a clearly identified federal candidate[19], is publicly distributed[20] within 30 days of a primary or 60 days of a general election and is targeted to the relevant electorate.[21] To give an example of an electioneering communication, the Wisconsin Right to Life once ran several radio advertisements in Wisconsin, asking voters to contact then Wisconsin Senator Russ Feingold and ask him to oppose filibustering President George W. Bush's federal judicial nominees.[22] The ads ran in Wisconsin, throughout August 2004, and Senator Feingold's primary was slated to take place on August 15th, 2004.[23]

In contrast, FECA defines an independent expenditure as an expenditure[24] by a person that "expressly advocating the election or

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[14] *See* Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012). Importantly, the three-judge decision did *not* rely on Congress' power under the Elections Clause of Article I, Section 4 to justify the foreign national spending prohibition. *Cf.* Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report The%20Elections%20Clause States%20Primary%20Constitutional%20 Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

[15] The definition of corporation is broad and encompasses any separately incorporated entity (other than a political committee that has incorporated for liability purposes only). 11 CFR §§ 100.134(l), 114.12(a). The term corporation covers both for-profit and nonprofit corporations and includes nonstock corporations, incorporated membership organizations, incorporated cooperatives, incorporated trade associations, professional corporations and, under certain circumstances, limited liability companies.

[16] Wisconsin Right to Life, 127 S.Ct. at 2659.

[17] *See* Pub. L. No. 107–155, 116 Stat. 81 (2002). The law is referred to as "McCain-Feingold" because the main sponsors of the bill were then-Senators John McCain (AZ) and Russ Feingold (WI).

[18] Citizens United, 558 U.S. 886.

[19] A candidate is "clearly identified" if the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Representative," or "the incumbent." *See* 11 CFR § 100.29(b)(2).

[20] A communication is "publicly distributed" for the purposes of the rules governing electioneering communications when it is aired, broadcast, cablecast or otherwise disseminated through the facilities of a radio or television station, cable television system or a satellite system. *See* 11 CFR § 100.29(b)(3).

[21] 52 U.S.C. § 30104(f)(3)(A). A communication is "targeted to the relevant electorate" when it is receivable by 50,000 or more persons in the candidate's district (for a House candidate) or state (for a Senate candidate). In the case of presidential and vice-presidential candidates, the communication is publicly distributed if it can be received by 50,000 or more people in a state where a primary election or caucus is being held within 30 days or anywhere in the United States 30 days prior to the nominating convention or 60 days prior to the general election. *See* 11 CFR § 100.29(b)(5).

[22] *See generally* Federal Election Comm'n v. Wisconsin Right to Life, Inc., 127 S.Ct. 2652 (2007).

[23] *Id.*

[24] FECA defines an expenditure as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and . . . a written contract, promise, or agreement to make an expenditure." *See* 52 U.S.C. § 30101(9)(A).

defeat of a clearly identified candidate; and . . . is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents."[25] Unlike an electioneering communication, an independent expenditure will feature magic words like "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."[26]

In the first constitutional challenge to the BCRA, the Supreme Court upheld a facial challenge to the general treasury funds prohibition with the caveat that the electioneering communication constituted express advocacy or its functional equivalent.[27] But several years later, the Wisconsin Right to Life, a 501(c)(4) organization, wanted to run the Wisconsin advertisements described above 30 days before the Wisconsin primary in violation of the BCRA's general treasury funds prohibition.[28] The Supreme Court held in *FEC v. Wisconsin Right to Life* that the BCRA's general treasury prohibition, as applied to the Wisconsin electioneering communications, was unconstitutional as it prohibited issue advertisements[29] (i.e. advertisements *other than* expressly advocating for the election or defeat of a candidate), and the Court had never recognized a compelling government interest in regulating issue advertisements.[30]

Following the Supreme Court's decision in *Wisconsin Right to Life*, Citizens United, a 501(c)(4) organization, wanted to run a documentary titled "Hillary: The Movie", a film criticizing then-Senator Hillary Clinton who was seeking the Democratic party nomination for president. As in *Wisconsin Right to Life*, Citizens United wanted to run the documentary in violation of the BCRA's general treasury funds prohibition. In *Citizens United* v. *FEC*, the Supreme Court first rejected Citizens United's contention that its documentary did not constitute express advocacy, recognizing it was "a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President."[31] This allowed the Court to reach the constitutional question as to whether the BCRA's general treasury fund prohibition violated the First Amendment.[32] The Court held the prohibition violated the First Amendment because "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption"[33] as

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[25] *Id.* at § 30109(17).
[26] Buckley 424 U.S. at 44, n. 52.
[27] McConnell v. Federal Election Comm'n, 540 U.S. 93, 206 (2003). *In Federal Election Comm'n v. Wisconsin Right to Life*, Inc., Chief Justice Roberts and Justice Alito reasoned that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." Wisconsin Right to Life, 127 S.Ct. at 2667 (opinion of Roberts, C.J.). In an opinion concurring in part and concurring in the judgment, Justice Scalia, joined by Justices Kennedy and Thomas argued that McConnell's holding bifurcating between express advocacy or its functional equivalent and everything else was wrong, unconstitutionally infringed on political speech, and that part of the opinion should be overturned. *Id.* at 2684–86 (Scalia., J. concurring in part and concurring in the judgment).
[28] Wisconsin Right to Life, 127 S.Ct. at 2661.
[29] *Id.* at 2670–71. The advertisements were not express advocacy or its functional equivalent because they ". . . may reasonably be interpreted as something other than as an appeal to vote for or against a specific candidate . . . and therefore fall outside the scope of McConnell's holding." As such, the BCRA's application to the advertisements were unconstitutional under the First Amendment because the Supreme Court has never recognized a compelling government interest in regulating issue advertisements. *Id.* at 2671.
[30] *Id.* at 2671.
[31] Citizens United, 130 S. Ct. at 890.
[32] *Id.* at 892.
[33] *Id.* at 909.

they represent "political speech presented to the electorate that is not coordinated with a candidate."[34] The Court also upheld BCRA's disclaimer and disclosure requirements, and left unscathed the federal prohibition on foreign individuals or associations from engaging in political speech.[35] As a result of *Citizens United*, corporations, including nonprofits, can use their general treasury funds to run independent expenditures or electioneering communications with no limits.

As *Citizens United* was being litigated, a group of individuals formed a political action committee (PAC), organized under § 527 of the Internal Revenue Code called SpeechNow.Org to challenge the contribution limits on PACs. PACs are organized to raise and spend money to elect and defeat candidates; they can receive limited contributions, contribute to candidate committees, national party committees, or other PACs.[36] But SpeechNow.Org argued it *only* wanted to run independent expenditures and therefore the contribution limits on it were unconstitutional.[37] The United States Court of Appeals for the D.C. Circuit held, relying on *Citizens United*, that the contribution limits on SpeechNow were unconstitutional as independent expenditures do not corrupt or give the appearance of corruption and the government has no anti-corruption interest in limiting contributions to independent expenditure—only organizations.[38] However, the court upheld the organizational and reporting requirements that required SpeechNow and other PACs to disclose their contributors.[39] This D.C. Circuit opinion is widely seen as giving the green light to Super PACs.

In response to the D.C. Circuit's opinion in *SpeechNow.Org*, the FEC formalized the process for groups to become Super PACs or independent expenditure only committees.[40] Today, Super PACs can receive unlimited contributions from individuals, corporations, nonprofits, etc., so long as the contributor is not a foreign national.[41] Additionally, Super PACs have to disclose the name of the contributor, and the date and amount of the contribution.[42] And unlike traditional PACs, Super PACs *cannot* contribute to candidates, parties, or other PACs. Moreover, when Super PACs make independent expenditures, they cannot be made in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate's campaign or a political party of the candidate they are supporting. Finally, as the name suggests, Super PACs solely exist

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[34] *Id.* at 910.

[35] *Id.* at 911, 913–17. *See also* Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012). The Supreme Court of the United States has never been presented with the question whether the foreign national prohibition violates the First Amendment, but has previously affirmed a three-judge court's decision, authored by then-Judge Kavanaugh, which upheld the foreign national prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates. In addition, on November 30, 2023, the U.S. House of Representatives Committee on House Administration passed H.R. 3229, Stop Foreign Funds in Elections Act out of committee. That legislation prohibits foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation to a State or local ballot initiative, referendum, or recall election.

[36] What Is a PAC?, Open Secrets, https://www.opensecrets.org/political-action-committees-pacs/what-is-a-pac.

[37] SpeechNow.Org v. FEC, 599 F. 3d 686, 689–90 (D.C. Cir. 2010) (en banc).

[38] *Id.* at 695.

[39] *Id.* at 697–698.

[40] FEC Approves Two Advisory Opinions on Independent Expenditure-Only Political Committees, Federal Election Commission (July 22, 2010), https://www.fec.gov/updates/fec-approves-two-advisory-opinions-on-independent-expenditure-only-political-committees/.

[41] 52 U.S.C. § 30121.

[42] *Id.* at § 30104.

to make independent expenditures in support of or to defeat a candidate of which there are no limits on.[43]

While it is unlawful for foreign nationals to contribute to a Super PAC, it is lawful for foreign nationals to donate to 501(c)(3) or (c)(4) organizations (*i.e.* nonprofit organizations) so long as the organization allows those types of donations. It is also lawful for a 501(c)(3) organization to donate to a 501(c)(4) organization, but not to a campaign, PAC, or Super PAC.[44] But the real problem arises when a foreign national uses a 501(c)(4) organization as a pass-through and instructs the organization to contribute some or all the donation to a Super PAC. The public becomes aware that a 501(c)(4) organization contributed to a Super PAC because Super PACs have to disclose their donors[45] and 501(c)(4) organizations have to provide a list of certain grants on their tax returns.[46] However, the law does not require 501(c)(4) organizations to disclose their donors, which makes it difficult to determine if foreign nationals make donations to them and how they utilize those donations.[47] In contrast, 501(c)(3) organizations are required to disclose some of their donors[48] and grants,[49] which helps identify whether foreign nationals donate to these organizations and to some extent how these organizations utilize those donations.

Both the Berger Action Fund and the Sixteen Thirty Fund are 501(c)(4) organizations with close ties to Hansjörg Wyss, a billionaire that classifies as a foreign national under federal law because he is a citizen of Switzerland.[50] Remarkably, between 1990 and 2006, he donated $119,000 directly to U.S. candidates and political committees in violation of the foreign national campaign finance prohibition; but the statute of limitations has since passed on those charges and the FEC declined to take action against him.[51] In 2007, Wyss created the Berger Action Fund which has donated $339 million to left-leaning nonprofits since 2016.[52] Wyss is also associated with the Wyss Foundation, which is registered as a 501(c)(3) organization and "works with" the Berger Action Fund.[53] According to the *New York Times*, Mr. Wyss uses the Wyss Foundation and Berger Action Fund and a "daisy chain of opaque organizations that mask the ultimate recipients of his money" to shell out $208 million from 2016 to 2020 to groups that helped Demo-

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[43] *See* Citizens United, 558 U.S. 310 (2010); SpeechNow.Org, 599 F.3d 686 (2010) (en banc).

[44] 26 U.S.C. § 501(c)(3); *see also* The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Internal Revenue Service (May 30, 2024), https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations.

[45] *Supra* note 42.

[46] Aaron Sachs, Tax Brief: Form 990, Schedule I Grants and Other Assistance, Jones & Roth (April 25, 2024), https://www.jrcpa.com/tax-brief-form-990-schedule-i-grants-and-other-assistance/#:~:text=The%20IRS%20Form%20990's%20Schedule,stipends%2C%20and%20other%20similar%20payments.

[47] 501(c)(4) Organizations: Giving with an Edge, Patterson Belknap (March 7, 2024), https://www.pbwt.com/publications/501c4-organizations-giving-with-an-edge#:~:text=In%20addition%2C%20a%20501(c,its%20annual%20federal%20tax%20return.

[48] *Id.*

[49] *Supra* note 46.

[50] Senator Bill Hagerty, *Exclusive—Sen. Bill Hagerty: Time to Close the Loophole Allowing Foreign Billionaires to Interfere in Our Elections*, Breitbart (April 17, 2024), https://www.breitbart.com/politics/2024/04/17/exclusive-sen-bill-hagerty-time-to-close-the-loophole-allowing-foreign-billionaires-to-interfere-in-our-elections/.

[51] Brian Slodysko, *Group steers Swiss billionaire's money to liberal causes*, Associated Press (April 4, 2023), https://apnews.com/article/dark-money-democrats-wyss-politics-elections-601d40cd%20015691%2090559d%20545%20418%20afe396.

[52] *Id.*

[53] About Us, The Wyss Foundation, https://www.wyssfoundation.org.

crats take the White House and Congress to advance their agenda.[54]

In fact, in a four-year period, the Berger Action Fund gave more than $135 million to the Sixteen Thirty Fund—which gave $63 million in 2020 to Super PACs that supported President Biden or other Democrats that year.[55] In 2020 alone, the Sixteen Thirty Fund funneled $410 million to left-leaning groups to unseat President Trump and the Republicans' Senate majority.[56] The Sixteen Thirty Fund also spent $141 million in 2018 to oppose the nomination of Supreme Court Justice Brett Kavanaugh.[57] The Berger Action Fund also contributed $72 million to Democrat-aligned groups in 2021, more than $62 million of which went to groups running ads promoting Democrats in the 2022 midterms and supporting President Biden.[58] The group contributed an additional $63 million to Democrat groups in 2022.[59]

In May of 2021, Americans for Public Trust filed a complaint with the FEC alleging that Wyss violated FECA by indirectly violating the foreign national campaign finance prohibition by donating to nonprofits like the Wyss Foundation and the Berger Action Fund and having those organizations give to groups like the Sixteen Thirty Fund for the intended purpose of influencing American elections, and that the Wyss Foundation, Berger Action Fund, Sixteen Thirty Fund and related groups were acting like PACs and should be required to report and register as such.[60] While Republican and Democratic commissioners split on these issues and ultimately voted to dismiss the complaint,[61] the FEC's general counsel report concluded there was not enough information to conclude Wyss made indirect contributions for electoral purposes but did conclude the Sixteen Thirty Fund spent much of its budget on electoral politics.[62]

In September of 2023, the Committee on House Administration held a full committee oversight hearing of the FEC featuring all six

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[54] Kenneth P. Vogel, *Swiss Billionaire Quietly Becomes Influential Force Among Democrats,* New York Times (May 3, 2021), https://www.nytimes.com/2021/05/03/us/politics/hansjorg-wyss-money-democrats.html.

[55] *Id.*

[56] Scott Bland, *Liberal 'dark money' behemoth funneled more than $400M in 2020,* Politico (November 17, 2021), https://www.politico.com/news/2021/11/17/dark-money-sixteen-thirty-fund-522781.

[57] *Supra* note 54.

[58] *Supra* note 51.

[59] Caitlin Oprysko, Wyss' nonprofit showered liberal groups with more than $63M, Politico (Feb. 16, 2024), https://www.politico.com/newsletters/politico-influence/2024/02/16/wyss-dark-money-group-showered-liberal-groups-with-more-than-63m-00142025.

[60] Wyss Complaint, Americans for Public Trust (May 15, 2021), https://americansforpublictrust.org/document/wyss-complaint/. The complaint also alleged that the groups should be required to publicly report their contributions and expenditures like other PACs.

[61] The Republican commissioners did not participate on the vote of whether the Wyss Foundation, the Berger Action Fund, the Sixteen Thirty Fund, and other groups should be required to register as PACs. The Democratic commissioners voted to dismiss the claim, so the allegation failed by a 0–3 vote. The Republican and Democratic commissioners split on the question of whether Wyss used his organizations to indirectly violate the foreign national campaign finance prohibition. As such, the allegation failed by a 3–3 vote. *See* In the Matter of Hansjörg Wyss; The Wyss Foundation; Berger Action Fund, Inc.; New Venture Fund; Sixteen Thirty Fund, MUR 7904, Federal Election Commission (July 31, 2022), https://www.fec.gov/files/legal/murs/7904/7904_15.pdf.

[62] Additionally, Democratic super-lawyer Marc Elias represented Wyss and various investigations before the FEC in the investigation. *See* Mark Hemingway, *The Progressive Benefactor Who Makes U.S. Barriers to Foreign Cash Look Like Swiss Cheese,* RealClear Investigations (Aug. 22, 2023), https://www.realclearinvestigations.com/articles/2023/08/22/the_progressive_benefactor_who_makes_us_barriers_to_foreign_cash_look_like_swiss_cheese_973986.html.

commissioners.[63] At the hearing, Chairman Bryan Steil (WI–01) asked all six commissioners whether the loophole that foreign nationals exploit by using 501(c)(4) organizations as a pass-through to contribute to Super PACs should remain open. The commissioners unanimously agreed that the loophole should be closed.[64]

FEC ENFORCEMENT PROCEDURES

The traditional enforcement process the FEC uses for violations of campaign finance law is costly, arduous, and time and resource-consuming.[65] As such, it is reserved for serious and substantive violations of federal campaign finance law. Under the traditional process, the FEC receives a complaint or referral, the agency's general counsel notifies the respondent that it has received a complaint, and the respondent is permitted to respond.[66] Importantly, the general counsel is appointed by the commissioners and acts under their direction.[67] Next, the commissioners vote whether to find "reason to believe" the complaint's allegations.[68] If the Commission finds reason to believe the complaint's allegations, the FEC's general counsel is directed to commence an investigation or negotiate a compromise.[69]

If no compromise is reached, the FEC's general counsel investigates the matter further. If the investigation determines there is "probable cause" that the respondent engaged in unlawful activity, the general counsel files a brief with the commissioners explaining why there is reason to believe the respondent is in violation of the law.[70] The commissioners then vote on whether to continue enforcement action based on information in that brief.[71] If a majority of the commissioners agree with the brief the general counsel is empowered by the commissioners to continue to negotiate with the respondent.[72] If that negotiation fails, the FEC will file suit in federal court.[73] In all, this process could take over a year for the FEC to secure a final judgment holding that the respondent is in violation of the law.

DONOR PRIVACY AND THE FIRST AMENDMENT'S FREEDOM OF ASSOCIATION

The Supreme Court has held that "implicit in the right to engage in activities protected by the First Amendment [lies] a corresponding right to associate with others."[74] This is commonly understood as the right of association. It furthers "a wide variety of political, social, economic, educational, religious, and cultural ends," and "is especially important in preserving political and cul-

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[63] *See* Committee Action, *infra* note 102.
[64] Full Committee Hearing: "Oversight of the Federal Election Commission", Committee on House Administration at 1:21:20–1:21:30 (Sept. 20, 2023), https://www.youtube.com/watch?v=Po3jvGO7ib4&list=PL-KddTi3pbJp_VvGAjRMab15pn8NPz4qw.
[65] *See* 52 U.S.C. § 30109 with enabling regulations at 11 CFR § § 111.1–111.24 (2024).
[66] 11 CFR § § 111.4–111.6 (2024).
[67] 52. U.S.C. § 30106(f)(1).
[68] 11 CFR § 111.9(a) (2024).
[69] 11 CFR § § 1A111.7–111.10 (2024).
[70] 11 CFR § 111.16 (2024) (this is known as the general counsel's probable cause brief).
[71] 11 CFR § 111.17 (2024).
[72] 11 CFR § 111.18 (2024).
[73] 11 CFR § § 111.18–111.19 (2024).
[74] Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984).

tural diversity and in shielding dissident expression from suppression by the majority." [75]

In *NAACP* v. *Alabama ex rel. Patterson,*[76] the Supreme Court held the First Amendment's freedom of association protected the National Association for the Advancement of Colored People from compelled disclosure of its members. This was because,

> on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances . . . it [is] apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.[77]

In the 60 years since this decision, the First Amendment's freedom of association has been protected and strengthened by the Supreme Court.[78] Most recently, in *Americans for Prosperity Foundation* v. *Bonta,*[79] a California law required Americans for Prosperity Foundation and the Thomas Moore Law Center to disclose the names, contribution amounts, and addresses of their major donors.[80] The Supreme Court held this substantial intrusion into the group's donors was unconstitutional.[81] While California Attorney General Bonta argued these disclosures were needed so California could prevent wrongdoing by charitable organizations, there was "not a single, concrete instance in which pre-investigation collection of [this information] did anything to advance the Attorney General's investigative, regulatory or enforcement efforts." [82] Similarly, California's need for this information before initiating an investigation was highly questionable as it was only one of three states to impose this requirement and did not seriously enforce it until 2010.[83]

In short, *Americans for Prosperity Foundation* and *NAACP* both stand for the proposition that compelled disclosure of an organization's members can violate an organization's freedom of association. This is because "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association" and there is a "vital relationship between freedom to associate and privacy in one's associations . . . " [84]

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[75] *Id.*
[76] 357 U.S. 449 (1958).
[77] *Id.* at 462–63.
[78] *See* NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958); Shelton v. Tucker, 364 U.S. 479 (1960); Bates v. Little Rock, 361 U.S. 516 (1960); Healy v. James, 408 U.S. 169 (1972); Elrod v. Burns, 427 U.S. 347 (1976); Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984); Boy Scouts of America v. Dale, 530 U.S. 640 (2000); Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021).
[79] 141 S. Ct. 2373 (2021).
[80] *Id.* at 2380.
[81] *Id.* at 2389.
[82] *Id.* at 2386.
[83] *Id.* at 2387.
[84] *Id.* at 2382 citing NAACP v. Alabama ex rel. Patterson, 357 U.S. at 460–462.

Government targeting of tax-exempt organizations because of disagreement with their political views is sadly not a hypothetical problem. From 2010 through 2013, the Internal Revenue Service ("IRS") intentionally and unlawfully discriminated against conservative organizations with words like "patriot" or "Tea Party" in their names seeking tax-exempt status.[85] After years of litigation, in October 2017, the IRS signed a consent decree in federal court and admitted to targeting conservative organizations.[86] The IRS confessed,

> its treatment of [conservative organizations] during the tax-exempt determinations process, including screening their applications based on their names or policy positions, subjecting those applications to heightened scrutiny and inordinate delays, and demanding of some Plaintiffs' information that U.S. Treasury Inspector General, Tax Administration determined was unnecessary to the agency's determination of their tax-exempt status, was wrong.[87]

The goal of this targeting was obvious—to silence and harass conservative organizations and individuals associated with them from using their voices to advocate for conservative policies. Following the horrific actions taken by the IRS, Congress recognized that other government agencies might also be in the position to harass tax exempt organizations because of disagreement with their message. One such agency is the Securities and Exchange Commission, an independent government agency. Beginning in 2015, Congress has included in every appropriations bill that has funded the Securities and Exchange Commission, an appropriations rider prohibiting the agency from using any of the funds made available to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations."[88] This prohibition is too important to be subject to yearly renewal. Instead, it must be enacted into permanent law so political organizations of both political parties know the Securities and Exchange Commission will not target them.

In the 118th Congress, Representative Bryan Steil (WI–01) introduced H.R. 4563, the American Confidence in Elections Act ("ACE" Act) of which Representative Stephanie Bice (OK–05) is an original co-sponsor.[89] That legislation included an earlier version of H.R. 8399 that prohibited tax-exempt entities that received donations from foreign nationals within the last four years from contributing

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[85] Jonathan Weisman, *I.R.S. Apologizes to Tea Party Groups Over Audits of Applications for Tax Exemption,* New York Times (May 10, 2013), https://www.nytimes.com/2013/05/11/us/politics/irs-apologizes-to-conservative-groups-over-application-audits.html.

[86] Emily Cochrane, *Justice Department Settles With Tea Party Groups After I.R.S. Scrutiny,* New York Times (Oct. 26, 2017), https://www.nytimes.com/2017/10/26/us/politics/irs-tea-party-lawsuit-settlement.html.

[87] Eric Heisig, *Tea Party groups settle lawsuit against IRS; agency apologizes for discrimination during Obama's presidency,* Cleveland.com (Oct. 27, 2017), https://www.cleveland.com/court-justice/2017/10/tea_party_groups_settle_lawsui.html.

[88] *See* Consolidated Appropriations Act, 2016, H.R. 2029, 114th Cong. § 1 (2015); Consolidated Appropriations Act, 2017, H.R. 244, 115th Cong. § 1 (2017); Consolidated Appropriations Act, 2018, H.R. 1625, 115th Cong. § 2 (2018); Consolidated Appropriations Act, 2019, H.J. Res. 31, 116th Cong. § 1 (2019); Consolidated Appropriations Act, 2020, H.R. 1158, 116th Cong. § 1 (2019); Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. § 2 (2020); Consolidated Appropriations Act 2022, H.R. 2471, 117th Cong. § 2 (2022); Further Consolidated Appropriations Act 2024, H.R. 2882, 118th Cong. § 1 (2023).

[89] American Confidence in Elections Act, H.R. 4563, 118th Cong. § 1 (2023).

to Super PACs and other political committees.[90] The ACE Act also contains the Speech Privacy Act,[91] which is included in H.R. 8399 to ensure that all Americans' First Amendment rights to donate to nonprofit organizations as they see fit by prohibiting any entity of the federal government from disclosing the donor information of any nonprofit organization.[92]

In the 118th Congress, Senator Bill Hagerty (TN) introduced the Senate version of the Preventing Foreign Interference in American Elections Act.[93] The legislation mirrors H.R. 8399 with the addition of Section 2(b) that prevents foreign nationals from making a contribution or donation in connection with state or local ballot initiatives, referenda, or recall election. Section 2(b) was removed from H.R. 8399 because the Committee on House Administration passed Representative Fitzpatrick's (PA–01) H.R. 3229, Stop Foreign Funds in Elections Act[94] in a markup in November 2023[95] that mirrors Section 2(b).

NEED FOR LEGISLATION

Representative Steil's H.R. 8399, the Preventing Foreign Interference in American Elections Act would prohibit foreign nationals from funding ballot harvesting, ballot collection, get-out-the-vote activities, or the administration of a federal, State, or local election. It would also clarify that federal law's existing foreign national campaign finance prohibition on indirect contributions covers attempts to circumvent the ban through intermediates or instructions, and protects Americans' First Amendment rights to donate to nonprofit organizations as they see fit by prohibiting any entity of the federal government from disclosing the donor information of any nonprofit organization.

First, the legislation updates federal law's existing foreign national campaign finance prohibition to cover modern election activities like ballot harvesting and get-out-the-vote activities. This is particularly important because an increasing number of 501(c)(3) and (c)(4) organizations are engaging in these activities[96] and it is lawful for foreign nationals to fund these activities directly or indirectly through nonprofit organizations. More importantly, the legislation prohibits foreign nationals from directly funding federal, State, or local election administration activities, commonly known as "Zuckerbucks".[97] While CTCL's distribution of Mark

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[90] *Id. See* Section 163, available at https://cha.house.gov/_cache/files/c/8/c8c3a700-383e-41b9-9091-33f0c88442a3/35A104982A7B97FD73578C57B7992BDD.majority-ans-xml27.pdf.

[91] Speech Privacy Act of 2023, H.R. 4471,118th Cong. § 1 (2023).

[92] The Speech Privacy Act of 2023 is found in Section 308 of H.R. 4563, the American Confidence in Elections Act, available at https://cha.house.gov/_cache/files/c/8/c8c3a700-383e-41b9-9091-33f0c88442a3/35A104982A7B97FD73578C57B7992BDD.majority-ans-xml27.pdf.

[93] Preventing Foreign Interference in American Elections Act, S. 4145, 118th Cong. § 2 (2024).

[94] Stop Foreign Funds in Elections Act, H.R. 3229, 118th Cong. § 1 (2023). A similar version of H.R. 3229 can also be found in H.R. 4563, the American Confidence in Elections Act. *See* Section 161, available at https://cha.house.gov/_cache/files/c/8/c8c3a700-383e-41b9-9091-33f0c88442a3/35A104982A7B97FD73578C57B7992BDD.majority-ans-xml27.pdf.

[95] Full Committee Markup Nov. 30, 2023, Committee on House Administration, https://cha.house.gov/hearings?ID=492432B5-97F9-48BB-92B5-1497B20089E9.

[96] Comparison of 501(c)(3) and 501(c)(4) Permissible Activities, Alliance For Justice (July 11, 2022), https://afj.org/resource/comparison-of-501c3-and-501c4-permissible-activities/.

[97] In February of 2024, the Committee on House Administration passed H.R. 7319, End Zuckerbucks Act of 2024 that would prohibit 501(c)(3) organizations from providing funding for federal, State, or local election administration activities, and would prohibit the District of Columbia from accepting private donations to help it administer any election. *See also* H. Rept. 118–509, Part I, available at https://www.congress.gov/congressional-report/118th-congress/house-report/509/1?outputFormat=pdf.

Zuckerberg's $350 million donation to swing the 2020 election was bad enough, imagine if CTCL was a foreign organization or the donation it received from Zuckerberg came from a foreign national like Hansjörg Wyss. As both situations are perfectly legal under federal law, this legislation would prohibit them.[98]

As described above, foreign nationals are using nonprofits as pass-through organizations to engage in and influence American elections. While this conduct likely violates the foreign national campaign finance prohibition on "indirect" contributions, the FEC has had difficulties enforcing it. This legislation would modernize what constitutes an "indirect" contribution and prevent foreign nationals from giving nonprofits a donation with any type of instruction that results in the nonprofit using any of the donation to influence American elections. This provision is intentionally broad to cover any type of instruction given by a foreign national to a nonprofit whether direct, indirect, express, implied, oral, written, or involving intermediaries or conduits. Moreover, the prohibition ensures that no part of the foreign national's donation is used to influence American elections. This provision is designed to not just shut, but completely close off the ability of foreign nationals to engage in American elections using nonprofit organizations.

The FEC enforces substantive violations of campaign finance law through complaints or referrals. If the FEC receives a complaint or referral that a foreign national has violated the foreign national campaign finance violation, this legislation allows the accused to submit a certification, under penalty of perjury, explaining that no violation of the law has occurred. This certification is important because for any FEC investigation to get off the ground, the commissioners must vote to find there is "reason to believe" the complaint's allegations. And a successful vote of the commissioners can only occur if there is bipartisanship amongst the commissioners as the FEC is made up of three Democratic and three Republican commissioners. Under this legislation, the commissioners must consider the foreign national's certification when determining whether there is "reason to believe" the complaint's allegations.

The legislation also protects nonprofit organizations in any investigation into whether a foreign national has violated the foreign national campaign finance prohibition. First, any investigation can only proceed if the commissioners vote to find there is "reason to believe" the complaint's allegations. Second, the investigation is limited to the factual matter necessary to determine whether the complaint's allegations are accurate. This prevents broad or wide-ranging probes into issues outside of the complaint's allegations and outside of the FEC's jurisdiction. In addition, if the FEC were to subpoena a nonprofit's records during an investigation, the nonprofit organization can sue the FEC in U.S. federal district court to quash the subpoena or any order of the FEC on the basis that it is not limited to the scope of the factual matter necessary to determine whether the complaint's allegations are accurate. Finally, and most importantly, the legislation does not impose new legal liability on nonprofit organizations. Even if a foreign national uses

[98] Foreign nationals could not engage in these activities in 28 States as those States have prohibited their election offices from accepting donations to help them administer an election. *See* Sarah Lee, Jon Rodeback, Hayden Ludwig, *States Banning or Restricting "Zuck Bucks"*, Capital Research Center (April 10, 2024), https://capitalresearch.org/article/states-banning-zuck-bucks/.

a nonprofit in violation of the foreign national campaign finance prohibition, existing campaign finance law and this legislation does not create new legal liability.

Finally, this legislation includes the Speech Privacy Act because of the importance that donors in all organizations, no matter their party affiliation, are protected from having their membership disclosed and threats of reprisal that would follow. In short, the Speech Privacy Act statutorily codifies the Supreme Court's holdings in *NAACP v. Alabama ex rel. Patterson* and *Americans for Prosperity Foundation v. Bonta.* It will give voters confidence that no matter their political affiliation, their speech is protected under the First Amendment. It prohibits the Internal Revenue Service or any other government agency from targeting political groups based on their beliefs. It ensures that donors, no matter the group they are giving to or the reason for the donation, are protected from mandatory disclosure. Organizations should be able to exercise their First Amendment rights without fear that their donors will be disclosed—and therefore targeted—because of the government's disagreement with the content of their message. Similarly, donors of these organizations should be reassured that they can support causes without concern that their information will be made public because of the government's disagreement with their views. This legislation reassures organizations and their donors that they may enjoy their First Amendment rights without fear of government retaliation.

It is antithetical to the First Amendment that the IRS or any federal government agency would ever be used to target an organization because of its political beliefs, or who its donors might be. As such, these organizations need to be protected to prevent events like what transpired at the IRS between 2010 and 2013.

Unlike other attempts to prevent foreign nationals from influencing American elections, the Preventing Foreign Interference in Americans Elections Act takes important steps to protect nonprofit organizations. First, it includes the Speech Privacy Act to protect nonprofit organizations and their donors. Second, it does not create any new legal liability for nonprofit organizations. Third, it does not require nonprofit organizations to disclose their donors with any government agency, unless a specifically targeted investigation by the FEC, with safeguards built into the process, is allowed to proceed. And in that circumstance, only the FEC is allowed to investigate, and it is *only* allowed to investigate the specific factual matter as described in the complaint. It cannot engage in a wide-reaching investigation. Finally, the legislation does not give the Internal Revenue Service any new authorities or create any new nonprofit reporting requirements. Instead, it keeps investigatory power with the FEC, which is highly unlikely to be used for partisan ends because the agency requires bipartisanship amongst its commissioners before it can move forward with any investigation.

COMMITTEE ACTION

INTRODUCTION AND REFERRAL

On May 14, 2024, Representative Bryan Steil (WI–01) joined by Representative Stephanie Bice (OK–05), introduced H.R. 8399, Preventing Foreign Interference in American Elections Act. The bill

was referred to the U.S. House of Representatives Committee on House Administration and the Committee on Oversight and Accountability.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House Rule XIII, in the 118th Congress, the Committee on House Administration held three full committee hearings to develop H.R. 8399.

1. On May 11, 2023, the Committee held a full committee hearing titled, "American Confidence in Elections: Protecting Political Speech." The hearing took place almost a decade to the day since the Internal Revenue Service scandal involving then Acting Director of Exempt Organizations Lois Lerner apologizing for inappropriately targeting conservative organizations' applications for tax-exempt status.[99] It focused on the importance of enhancing protections for political speech and donor privacy to protect individuals and groups from retribution, harassment, or intimidation based on their beliefs. Witnesses included: Ms. Harmeet K. Dhillon, Managing Partner, Dhillon Law Group Inc., Ms. Audrey Perry Martin, Partner, The Gober Group, Mr. Justin Riemer, Principal, Riemer Law, LLC, Mr. Bradley A. Smith, Chairman and Founder, Institute for Free Speech, and Mr. Stephen Spaulding, Vice President for Policy & External Affairs, Common Cause.[100]

2. On September 20, 2023, the Committee held a full committee hearing titled, "Oversight of the Federal Elections Commission." The hearing represented the first traditional oversight hearing of the Federal Election Commission in more than a decade.[101] The committee heard testimony from all six commissioners and the agency's inspector general. The first panel of witnesses included the Honorable Dara Lindenbaum, Chairwoman, the Honorable Sean Cooksey, Vice Chairman, the Honorable Shana Broussard, Commissioner, the Honorable Allen Dickerson, Commissioner, the Honorable Ellen Weintraub, Commissioner, and the Honorable James Trainor, Commissioner. The second panel featured Mr. Christopher Skinner, Inspector General.[102]

3. On May 16, 2024, the Committee held a full committee hearing titled, "American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference." The hearing highlighted the dangers associated with noncitizen voting, how States do not have the tools nor resources to clean their voter rolls, and what steps Congress can take to rectify these problems. It also touched on the loopholes in the federal campaign finance system that allow foreign nationals to spend money in U.S. elections and how Congress can close those loop-

[99] Matt Nese, *It's Been 10 Years Since the IRS's Tea Party Scandal. Will Congress Finally Act?,* Reason Foundation (May 10, 2023), https://reason.com/2023/05/10/its-been-10-years-since-the-irss-tea-party-scandal-will-congress-finally-act/.

[100] *American Confidence in Elections: Protecting Political Speech: Hearing Before the H. Comm. On Admin.,* 118th Cong. (2023).

[101] The last traditional oversight hearing of the Federal Election Commission before the Committee on House Administration occurred on November 3, 2011. *See Federal Election Commission: Reviewing Policies, Processes and Procedures: Hearing Before the Subcomm. on Elections of the H. Comm. on Admin., 112th Cong.* (2011).

[102] *Oversight of the Federal Election Commission: Hearing Before the H. Comm. on Admin.,* 118th Cong. (2023).

holes. Witnesses included the Honorable Cord Byrd, Florida Secretary of State, the Honorable Hans A. von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, the Honorable J. Christian Adams, President and Chief Executive Officer of the Public Interest Legal Foundation, Caitlin Sutherland, Executive Director of Americans for Public Trust, and Michael Waldman, President and Chief Executive Officer of the Brennan Center for Justice.[103]

COMMITTEE CONSIDERATION

On May 23, 2024, the Committee on House Administration met in open session and ordered the bill, H.R. 8399, Preventing Foreign Interference in American Elections Act, as amended, reported favorably to the House of Representatives, by a record vote of six to one, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee's consideration of H.R. 8399:

1. Vote on an amendment to H.R. 8399, offered by Mr. Morelle, failed by a record vote of five noes and two ayes. Noes: Steil, B., Griffith, M., Carey, M., D'Esposito, A., Lee, L. Ayes: Morelle, J., Sewell, T.
2. Vote on an amendment to H.R. 8399, offered by Mr. Morelle, failed by a record vote of five noes and two ayes. Noes: Steil, B., Griffith, M., Carey, M., D'Esposito, A., Lee, L. Ayes: Morelle, J., Sewell, T.
3. Vote on an amendment to H.R. 8399, offered by Mr. Morelle, failed by a record vote of five noes and one yes. Noes: Steil, B., Griffith, M., Carey, M., D'Esposito, A., Lee, L. Yes: Morelle, J.
4. Vote on an amendment in the nature of a substitute to H.R. 8399 offered by Mr. Steil, passed by a record vote of five ayes and one no. Ayes: Steil, B., Griffith, M., Carey, M., D'Esposito, A., Lee, L. No: Morelle, J.
5. Vote to report H.R. 8399 favorably, as amended, to the House of Representatives passed by a record vote of six ayes and one no. Ayes: Steil, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A., Lee, L. No: Morelle, J.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 8, Clause 3—"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;" [104]
- Article I, Section 8, Clause 4—"To establish an uniform Rule of Naturalization, . . . throughout the United States;" [105]

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[103] *American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference: Hearing Before the H. Comm. On Admin.,* 118th Cong. (2024).
[104] U.S. CONST. art. I, § 8, cl. 3.
[105] U.S. CONST. art. I, § 8, cl. 4.

• Article IV, Section 4—"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; . . ." [106]

• Article I, Section 8, Clause 18—"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [107]

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 8399.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 8399 are to prohibit foreign nationals from funding ballot harvesting, ballot collection, get-out-the-vote activities, or the administration of a federal, State, or local election. It would also clarify that federal law's existing foreign national campaign finance prohibition on indirect contributions covers attempts to circumvent the ban through intermediates or instructions, and protects Americans' First Amendment rights to donate to nonprofit organizations as they see fit by prohibiting any entity of the federal government from disclosing the donor information of any nonprofit organization.

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[106] U.S. CONST. art. IV, § 4.

[107] U.S. CONST. art. I, § 8, cl. 18. In *U.S. v. Singh*, the United States Court of Appeals for the Ninth Circuit held that the foreign national spending prohibition was justified under Congress' powers to provide for a uniform rule of naturalization, and was necessary and proper to the exercise of its immigration and foreign relations powers. *See* 924 F. 3d 1030, 1042–1043 (2019). Importantly, the court did *not* rely on the Elections Clause of Article I, Section 4 to justify the prohibition. *Cf* Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 8399 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 8399 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

H.R. 8399 does not establish or authorize any new advisory committees.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides a short title for the bill: Preventing Foreign Interference in American Elections Act.

Section 2. Modifications to foreign money ban

Section 2(a) amends federal law's foreign national campaign finance prohibition to include donations for the purpose of: (i) voter registration activity, (ii) ballot collection, (iii) voter identification, (iv) get-out-the-vote activity, (v) any public communication that refers to a clearly identified Federal, State, or local political party, or (vi) the administration of a Federal, State, or local election.

Section 2(b) amends federal law's foreign national campaign finance prohibition to also encompass persons that knowingly aid or facilitate a violation of the foreign national campaign finance prohibition.

Section 2(c) provides a new definition for what constitutes an indirect contribution under the foreign national campaign finance prohibition. Under it, a person is treated as having indirectly made a contribution, donation, expenditure, or disbursement if the person has made the contribution or donation to a person with a designation, instruction, or encumbrance (whether direct or indirect, express or implied, oral or written, or involving intermediaries or

conduits) which results in any part of such contribution, donation, expenditure, or disbursement being used for an activity described in the foreign national campaign finance prohibition.

Section 2(d)(1)(A) provides a defense for persons suspected of violating the foreign national campaign finance prohibition. When a complaint is filed with the Federal Election Commission alleging a violation of the prohibition, the person can respond to the allegation by submitting, under penalty of perjury, a certification that no such violation has occurred.

Section 2(d)(1)(B) provides that the Federal Election Commission shall take into consideration the certification provided under Section 2(d)(1)(A) when making a determination whether there is reason to believe a violation of the foreign national campaign finance prohibition has occurred.

Section 2(d)(2)(A) limits the scope of any Federal Election Commission investigation into a violation of the foreign national campaign finance prohibition to the factual matter necessary to determine whether such alleged violation has occurred.

Section 2(d)(2)(B) allows persons subject to a Federal Election Commission investigation of the foreign national campaign finance prohibition to file a petition in any U.S. district court with jurisdiction to quash any subpoena or order of the Federal Election Commission on the basis that the subpoena or order is not limited to the scope of the factual matter necessary to determine whether such alleged violation occurred as required by Section 2(d)(2)(A). In addition, this provision does not alter the rights of any person to otherwise challenge the power of the Federal Election Commission to issue a subpoena under the Commission's other authorities.

Section 2(e)(1) requires political committees and/or political parties in their reports of receipts and disbursements to certify, under penalty of perjury, that they have complied with the foreign national campaign finance prohibition.

Section 2(e)(2) requires entities making independent expenditures to certify on their statements, under penalty of perjury, that they have complied with the foreign national campaign finance prohibition.

Section 2(e)(3) requires entities making electioneering communications to certify that their disbursement, under penalty of perjury, complies with the foreign national campaign finance prohibition.

Section 3. Protecting privacy of donors to tax-exempt organizations

Section 3(a)(1) prohibits any entity of the Federal government from collecting or requiring the submission of information on the identification of any donor to a tax-exempt organization.

Section 3(a)(2) prohibits exceptions to 3(a)(1). Those are: (A) The Internal Revenue Service, acting lawfully pursuant to section 6033 of the Internal Revenue Code of 1986; (B) The Secretary of the Senate and the Clerk of the House of Representatives, acting lawfully pursuant to section 3 of the Lobbying Disclosure Act of 1995, (C) The Federal Election Commission acting lawfully pursuant to its authorities under the campaign finance statutes and federal law that deal with presidential inaugural committees, or (D) an entity acting pursuant to a lawful order of a court or administrative body which has the authority under law to direct the entity to collect or

require the submission of the information, but only to the extent permitted by the lawful order of such court or administrative body.

Section 3(b)(1) restricts an entity of the Federal government from disclosing to the public information revealing the identification of any donor to a tax-exempt organization.

Section 3(b)(2) provides exceptions to 3(b)(1), which are the same exceptions found in 3(a)(2) and also includes an entity which discloses the information as authorized by the organization.

Section 3(c) provides a definition for a tax-exempt organization of an organization described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of the code. This section also comes with a rule of construction that this subsection should not be construed to treat political organizations under section 527 of the code as tax-exempt.

Section 3(d) provides penalties for persons that unlawfully disclose any information revealing the identification of any donor to a tax-exempt organization. For officers or employees of the United States that unlawfully disclose this information, their actions are a felony punishable upon conviction by a fine in any amount not exceeding $250,000 or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and they will also be dismissed from office or discharged from any employment upon conviction of such offense. For former officers or employees of the United States, their actions are also a felony punishable upon conviction by a fine in any amount not exceeding $250,000 or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Section 4. Effective date

Section 4(a)(1) provides that Section 2 (above) applies with respect to donations or other amounts provided on or after the date of the enactment of the act.

Section 4(a)(2) provides that the requirements in Section 2(e) apply to reports filed under the Federal Election Campaign Act of 1971 on or after the date of enactment of the act.

Section 4(b) provides that Section 3 applies with respect to donations made on or after the date of the enactment of this act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

* * * * * * *

TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

* * * * * * *

REPORTS

SEC. 304. (a)(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report

shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be compete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A)(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year.

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in

accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6)(A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) NOTIFICATION OF EXPENDITURE FROM PERSONAL FUNDS.—

(i) DEFINITION OF EXPENDITURE FROM PERSONAL FUNDS.—In this subparagraph, the term "expenditure from personal funds" means—

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) DECLARATION OF INTENT.—Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with—

(I) the Commission; and

(II) each candidate in the same election.

(iii) INITIAL NOTIFICATION.—Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with—

(I) the Commission; and

(II) each candidate in the same election.

(iv) ADDITIONAL NOTIFICATION.—After a candidate files an initial notification under clause (iii), the candidate shall file an

additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with—

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) CONTENTS.—A notification under clause (iii) or (iv) shall include—

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) NOTIFICATION OF DISPOSAL OF EXCESS CONTRIBUTIONS.—In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) ENFORCEMENT.—For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309.

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act—

(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) SOFTWARE FOR FILING OF REPORTS.—

(A) IN GENERAL.—The Commission shall—

(i) promulgate standards to be used by vendors to develop software that—

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) ADDITIONAL INFORMATION.—To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) REQUIRED USE.—Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) REQUIRED POSTING.—The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of the Internal Revenue Code of 1954;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party com-

mittee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 315(d) of this Act; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 315(b);

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or

committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, [and a certification] *a certification*, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee*, and a certification, under penalty of perjury that the independent expenditure does not violate section 319(a)*;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 315(d) in the Act, together with the date, amount, and purpose of any such

expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); [and]

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor[.]*; and*

(9) under penalty of perjury, a certification that the committee has complied with the requirements of section 319(a).

(c)(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include—

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; [and]

(C) under penalty of perjury, a certification that the independent expenditure does not violate section 319(a); and

[(C)] *(D)* the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d)(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) POLITICAL COMMITTEES.—

(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.—The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 323 APPLIES.—

(A) IN GENERAL.—In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) SPECIFIC DISCLOSURE BY STATE AND LOCAL PARTIES OF CERTAIN NON-FEDERAL AMOUNTS PERMITTED TO BE SPENT ON FEDERAL ELECTION ACTIVITY.—Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B).

(3) ITEMIZATION.—If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) REPORTING PERIODS.—Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(f) DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.—

(1) STATEMENT REQUIRED.—Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(G) A certification, under penalty of perjury, that the disbursement does not violate section 319(a).

(3) ELECTIONEERING COMMUNICATION.—For purposes of this subsection—

(A) IN GENERAL.—(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which—

(I) refers to a clearly identified candidate for Federal office;

(II) is made within—

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) EXCEPTIONS.—The term "electioneering communication" does not include—

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii).

(C) TARGETING TO RELEVANT ELECTORATE.—For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons—

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) DISCLOSURE DATE.—For purposes of this subsection, the term "disclosure date" means—

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) CONTRACTS TO DISBURSE.—For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) COORDINATION WITH INTERNAL REVENUE CODE.—Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.

(g) TIME FOR REPORTING CERTAIN EXPENDITURES.—

(1) EXPENDITURES AGGREGATING $1,000.—

(A) INITIAL REPORT.—A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) EXPENDITURES AGGREGATING $10,000.—

(A) INITIAL REPORT.—A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) PLACE OF FILING; CONTENTS.—A report under this subsection—

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) TIME OF FILING FOR EXPENDITURES AGGREGATING $1,000.—Notwithstanding subsection (a)(5), the time at which the state-

ment under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) REPORTS FROM INAUGURAL COMMITTEES.—The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) DISCLOSURE OF BUNDLED CONTRIBUTIONS.—

(1) REQUIRED DISCLOSURE.—Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person reasonably known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) COVERED PERIOD.—In this subsection, a "covered period" means, with respect to a committee—

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold.

(3) APPLICABLE THRESHOLD.—

(A) IN GENERAL.—In this subsection, the "applicable threshold" is $15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) INDEXING.—In any calendar year after 2007, section 315(c)(1)(B) shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the "base period" shall be 2006.

(4) PUBLIC AVAILABILITY.—The Commission shall ensure that, to the greatest extent practicable—

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.

(5) REGULATIONS.—Not later than 6 months after the date of enactment of the Honest Leadership and Open Government Act of 2007, the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission—

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) COMMITTEES DESCRIBED.—A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) PERSONS DESCRIBED.—A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is—

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995;

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act or a current report under section 5(b)(2)(C) of such Act; or

(C) a political committee established or controlled by such a registrant or individual.

(8) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) BUNDLED CONTRIBUTION.—The term "bundled contribution" means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is—

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) LEADERSHIP PAC.—The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.

* * * * * * *

CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS

SEC. 319. (a) PROHIBITION.—It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; **[**or**]**

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

(D) a donation for the purpose of—

(i) voter registration activity;

(ii) ballot collection;

(iii) voter identification;

(iv) get-out-the-vote activity;

(v) any public communication that refers to a clearly identified Federal, State, or local political party; or

(vi) the administration of a Federal, State, or local election;

(2) a person to solicit, accept, or receive a contribution or donation described in **[**subparagraph (A) or (B) of paragraph (1)**]** *subparagraph (A), (B), or (D) of paragraph (1)* from a foreign national**[**.**]***; or*

(3) a person to knowingly aid or facilitate a violation of paragraph (1) or (2).

(b) As used in this section, the term "foreign national" means—

(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act) and who is not law-

fully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(c) INDIRECT CONTRIBUTIONS.—For purposes of this section, a person shall be treated as having indirectly made a contribution, donation, expenditure, or disbursement described in subparagraphs (A), (B), (C), or (D) of subsection (a)(1) if such person has made a contribution or donation to a person with a designation, instruction, or encumbrance (whether direct or indirect, express or implied, oral or written, or involving intermediaries or conduits) which results in any part of such contribution, donation, expenditure, or disbursement being used for an activity described in subparagraphs (A), (B), (C), or (D) of subsection (a)(1).

(d) ENFORCEMENT.—

(1) USE OF CERTIFICATION AS A DEFENSE.—

(A) IN GENERAL.—In the case of any allegation that a person has violated subsection (a), any person alleged in the complaint may, in connection with a response to such allegation under section 309(a)(1), submit, under penalty of perjury, a certification that no such violation has occurred.

(B) EFFECT OF SUBMISSION.—The Commission shall take into consideration any certification submitted under subparagraph (A) in making a determination under section 309(a)(2) whether there is reason to believe such violation has occurred.

(2) LIMITATION ON INVESTIGATIONS.—

(A) IN GENERAL.—If the Commission makes a determination under section 309(a)(2) that there is reason to believe a violation of subsection (a) has occurred or is about to occur, any investigation of such alleged violation shall be limited in scope to the factual matter necessary to determine whether such alleged violation occurred.

(B) PETITION TO QUASH SUBPOENA OR ORDER ON BASIS NOT LIMITED IN SCOPE TO NECESSARY FACTUAL MATTER.—

(i) IN GENERAL.—A person subject to an investigation by the Commission following a determination of the Commission that there is reason to believe a violation of subsection (a) has occurred or is about to occur may file a petition in any United States district court with jurisdiction to quash any subpoena or order of the Commission issued under paragraph (3) or (4), respectively, of section 307(a) on the basis that the subpoena or order is not limited in scope to the factual matter necessary to determine whether such alleged violation occurred as required under subparagraph (A).

(ii) CLARIFICATION.—Nothing in clause (i) shall be construed to alter the right of any person to otherwise challenge the power of the Commission to issue a subpoena under section 307(a)(3) or an order under section 307(a)(4).

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JAMES COMER, KENTUCKY
CHAIRMAN

ONE HUNDRED EIGHTEENTH CONGRESS

JAMIE RASKIN, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
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September 11, 2024

Hon. Bryan Steil
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Steil,

I am writing to you concerning H.R. 8399, the Preventing Foreign Interference in American Elections Act. There are certain provisions in the legislation that fall within the Rule X jurisdiction of the Committee on Oversight and Accountability.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this important bill, I am willing to waive this committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill, Committee on Oversight and Accountability does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction. I request that you urge the Speaker to name members of this committee to any conference committee which is named to consider such provisions.

Please place this letter into the committee report on H.R. 8399 and into the Congressional Record during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

James Comer

James Comer
Chairman
Committee on Oversight & Accountability

cc: The Honorable Mike Johnson, Speaker
House of Representatives

The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Joe Morelle, Ranking Member
House Committee on Administration

Jason Smith, Parliamentarian
House of Representatives

DISSENTING VIEWS

Committee Democrats fervently believe Congress has a duty to stem the tide of foreign money in our elections. For this reason, Committee Democrats proudly advocate for the passage of the *Freedom to Vote Act*, which contains several provisions aimed at stemming this tide, including the *DISCLOSE Act* and the *Honest Ads Act*. H.R. 8399 is incongruous, however, with that critical duty.

H.R. 8399 does absolutely nothing to get foreign money out of our politics. Several provisions of this bill would make it more likely that foreign donors would be able to fund election activities in the United States by hampering donor disclosure requirements that ensure Americans know whether foreign donors are contributing to political campaigns. The bill would also restrict the Federal Election Commission's ("FEC") law enforcement capacity, giving foreign donors free rein to flaunt federal law without consequence.

Americans are frustrated by a campaign finance system that seems to be stacked in favor of special interests and dark money donors. And Committee Democrats know that robust transparency is the best way to reassure the American people that their political system works for them. As Justice Louis Brandeis famously stated, "[s]unlight is said to be the best of disinfectants." [1]

H.R. 8399 ALLOWS UNDISCLOSED FOREIGN DONATION TO INFLUENCE THE SUPREME COURT

At the Committee's May 23, 2024, mark-up, Committee Democrats offered an amendment to H.R. 8399 to prohibit foreign donors from promoting, supporting, attacking, or opposing the nomination or Senate confirmation of an individual who is under consideration for a federal judgeship. At a time when Americans are rightfully concerned about malign donor influence in the federal judiciary—including on the United States Supreme Court—this amendment would have reassured Americans that foreign donors will not be able to influence our courts.

Several high-profile investigations have, in recent months, revealed deeply concerning relationships between Supreme Court justices and Republican mega donors. Indeed, whether it has been the brazen financial dealings between Justice Clarence Thomas and billionaire Harlan Crow, or Justice Samuel Alito's astonishingly bad judgement in flying an upside-down American flag—a discredited symbol of extremism and election denialism—outside of his home in the days following the January 6 attack on the Capitol, the American people are in disbelief about the state of our judiciary. The day before the Committee's mark-up, public reporting confirmed that Justice Alito has been flying another flag associated

[1] Louis D. Brandeis, *What Publicity Can Do*, in OTHER PEOPLE'S MONEY AND HOW BANKERS USE IT 92, 92 (1914).

with Donald Trump's attempt to steal the 2020 election—the "Appeal to Heaven" flag—outside of his vacation home. This was a flag that rioters carried as they stormed the Capitol.

Polls have shown that these ethical lapses have deeply hurt Americans' faith in the fairness of our judiciary.[2] This is the result of the millions of dark dollars that extremist Republicans have been spent to reshape our federal courts for partisan ends. *The Washington Post* reported that The Federalist Society, a conservative legal organization consisting of members that oppose abortion rights, voting rights, and civil rights generally, raised more than $250 million between 2014 and 2017—some of that money going to fund advertisements in support of or opposed to judicial nominees.[3] Another extremist conservative interest group, the Judicial Crisis Network, has received tens of millions of dollars in anonymous, dark money funding since it was founded in 2008, spending massively on efforts to influence the Supreme Court.[4]

Americans should not have to worry that foreign donors—in addition to extremists and conservative activists—are influence peddling on our nation's highest court. The Democratic amendment would have—at the very least—enabled Americans to know whether any of this money came from foreign donors. Committee Republicans unanimously rejected the amendment.

COMMITTEE REPUBLICANS OPPOSE DISCLOSING FOREIGN DONORS

Why would Committee Republicans propose legislation that undermines transparency, inviting even more undisclosed dark, likely foreign, money to infiltrate our political system, as this bill would do? Why would Committee Republicans hamstring law enforcement's ability to ensure the rule of law, to see to it that our federal campaign finance laws are fairly enforced, as this bill would do? They do so because they favor unlimited, undisclosed dark money—including from foreign donors.

H.R. 8399 includes some exemptions for the donor-shielding provisions, but these exceptions do not salvage the bill. Instead, they gloss over systemic issues that need to be solved. In 2017, the Trump administration reversed a years-long rule requiring certain 501(c) organizations to report major donors to the Internal Revenue Service ("IRS"). Since then, the dark money ecosystem has hobbled the IRS. Moreover, millions of dollars in dark money go unreported to the FEC due to loopholes unsolved by H.R. 8399.

Finally, a dysfunctional FEC has ceased all meaningful enforcement of existing laws. Indeed, the FEC has informed the Committee that it had acted on barely half of the nonpartisan staff's recommended foreign interference investigations, including none that involved former President Trump, his campaign, or his associ-

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[2] Jeffrey M. Jones, *Supreme Court Trust, Job Approval at Historical Lows*, GALLUP (Sept. 29, 2022), https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx#:~:text=Line%20graph.,Americans'%20trust%20in%20the%20judicial%20branch%20of%20the%20federal%20government,expressed%20this%20level%20of%/o20trust.

[3] Robert O'Harrow Jr. & Shawn Boburg, *A conservative activist's behind-the-scenes campaign to remake the nation's courts*, WASH. POST (May 21, 2019), https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/.

[4] Sen. Chuck Schumer et al., *Captured Courts: The Impact of the Judicial Crisis Network's Dark-Money Scheme on Our Courts*, SENATE DEMOCRATIC POLICY & COMMUNICATIONS COMMITTEE, (Apr. 2022), https://www.democrats.senate.gov/imo/media/doc/Capturcd%20Courts%20Report%204-5-22.pdf.

ates. In matters requiring dark money groups to register and report with the FEC, the FEC acted on only five of nonpartisan career staff's two dozen recommendations.

Committee Democrats would be eager to work in a bipartisan manner to prevent foreign money in American elections. But H.R. 8399 would not do that. This bill is designed to further open the floodgates to undisclosed foreign donations, to kneecap the FEC and other law enforcement agencies. For these reasons, Committee Democrats oppose.

JOSEPH D. MORELLE,
Ranking Member.

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