Feb. 26, 2014

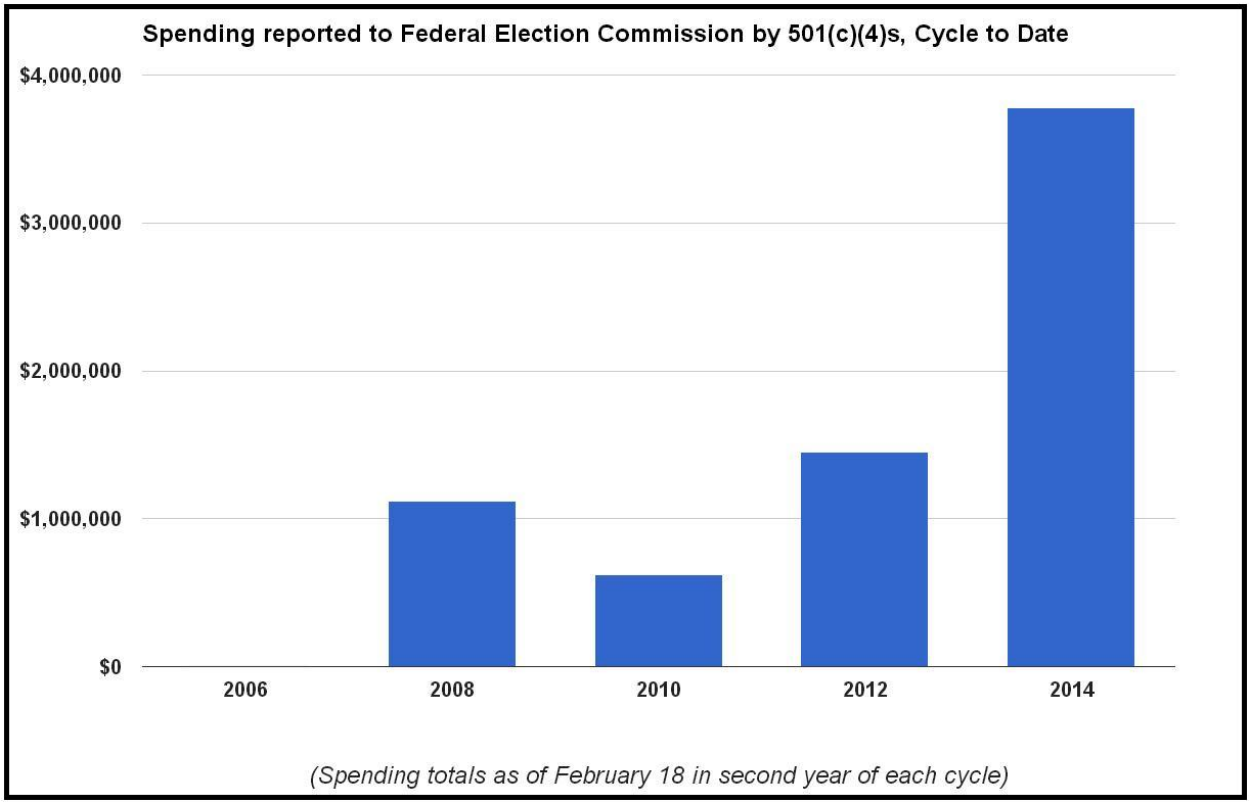
Ms. Amy F. Giuliano
Office of the Associate Chief Counsel (Tax Exempt and Government Entities)
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044
VIA FEDERAL E-RULEMAKING PORTAL
RE: PROPOSED GUIDANCE FOR TAX-EXEMPT SOCIAL WELFARE ORGANIZATIONS ON CANDIDATE-RELATED POLITICAL ACTIVITIES

Dear Ms. Giuliano:

Thank you for the opportunity to comment on the guidelines proposed by the IRS regarding candidate-related political activity by 501(c)(4) social welfare organizations. The Center for Responsive Politics believes that it is critical for the IRS to provide clear guidance to address two questions: 1) What constitutes nonexempt political activity on the part of 501(c)(4) organizations; and 2) what share of the overall operations of these groups can be devoted to nonexempt activities. We hope our comments are helpful in moving the agency towards a fair and reasonable set of standards in this area.

The Center for Responsive Politics has endorsed the Bright Lines Project's call[1] for clearer rules regarding nonprofit political activities. Our support is based on the fact that political activity on the part of tax-exempt nonprofits is not going away, but steadily increasing. Over the last four election cycles, the amount of spending by 501(c)(4) social welfare organizations in particular has grown dramatically. In 2006, just $1.3 million in political spending was reported to the Federal Election Commission (FEC) by 501(c)(4) organizations, while by the 2010 cycle, that total had risen to $92 million. In 2012, the number more than doubled, to $256 million,[2] and so far in the 2014 cycle, spending by 501(c)(4) organizations already outpaces totals at the same point in the previous cycle -- even though this is not a presidential election year.

[1] "Endorsing Organizations," The Bright Lines Project: http://www.brightlinesproject.org/endorsing-organizations/
[2] "Political Nonprofits summary," The Center for Responsive Politics: http://www.opensecrets.org/outsidespending/nonprof_summ.php



We are writing today not to comment on the merit of specific definitions or limits proposed in the call for comment. Rather, we hope to highlight the importance of creating strong metrics for the new guidelines that are based on robust data, without which the new rules risk being unenforceable. Furthermore, we believe that by focusing on the data, the IRS might begin to shift away from more superficial methods of selecting groups that merit increased scrutiny, such as those that came to light in 2013. No group of citizens who band together to exercise their First Amendment rights should be subject to excessive scrutiny solely due to what they call their organization. All groups, no matter what their political views, should be evaluated based on whether their tax-exempt activities match what's allowed under law. To that end, the IRS needs data sufficient to assess the activities of these groups on a grand scale.

Establishing robust data monitoring is imperative not only because it provides greater assurance that the agency will avoid past missteps going forward, but also because voters have a right to know who is trying to influence their vote. The increasing use of 501(c)(4) organizations as political attack machines that don't disclose the sources of their funds to the public threatens that right.

The IRS, like it or not, is in the position of policing the growing use of exempt organizations as a means to circumvent disclosure. Creating clear rules that apply to all relevant organizations, regardless of their political views, is one major step the IRS could take to assure that it is an unbiased arbiter in this increasingly fraught national debate.

And beyond creating such rules is the matter of enforcement. In proposing the new guidelines, the IRS said the aim was to “reduce the need to conduct fact-intensive inquiries by replacing this test with more definitive rules.” If, however, there is insufficient data for making such determinations quickly, the IRS will still be required to assess 501c4s’ activities on an individual basis through time-consuming “facts and circumstances” analysis. Our aim in providing comment is to suggest changes the IRS might make in how it collects data in order to make any of the proposed regulations enforceable, regardless of how the limits are defined.

About the Center for Responsive Politics

The Center for Responsive Politics is the nation's premier research group tracking money in U.S. politics and its effect on elections and public policy. Nonpartisan, independent and nonprofit, the organization aims to create a more educated voter, an involved citizenry and a more transparent and responsive government.

In 2012, CRP began a project to track and assess the activities of nonprofit organizations active in federal elections. We have used the basic data the IRS makes available free to the public along with the additional data it provides at a cost to create an entirely new data set. Now totaling more than sixteen thousand manually input records from more than 1,000 individual 990s, CRP’s nonprofit data includes more detailed summary information than the Business Master File or the 990 extracts, and it details specific grants between nonprofits over a period of more than four years, going back to 2008. All of this data is matched to FEC data for exact time periods and provided to the public.[3]

Our familiarity with data from both the IRS and the FEC gives us unique insight into how the two work, how they overlap, where they conflict and where there are holes. In the following pages, we will focus on where the IRS data is lacking (to the extent that this can be known) and how that might be remedied. We do not write as lawyers, but as data experts who are very familiar with the rules that dictate political activity from the perspective of both the IRS and the FEC.

No system: The IRS does not track data reported to the Federal Election Commission

The IRS appears to have no system by which it monitors political spending reported to the IRS by exempt organizations. If it doesn’t keep track of that spending, the agency will have difficulty enforcing any new guidelines.

In March 2013, then-Deputy Commissioner for Services and Enforcement Steven Miller told Sen. Carl Levin in a letter that the IRS "[does] not have a system that formally tracks FEC filings of

[3] All of the data can be found in subsections of the Political Nonprofits section of our site: http://www.opensecrets.org/outsidespending/nonprof_summ.php

501(c)(4) organizations."[4]

Indeed, neither the FEC nor the IRS keep track of 501(c) organizations that are reporting political spending. The FEC does not require that exempt organizations provide their employee identification numbers (EINs), nor does it require filers to specifically describe their status under the Internal Revenue Code -- whether it be 501(c)(4), 501(c)(5), 501(c)(6), or some other subset of the section 501(c) category -- when they file 24-hour and 48-hour reports.

The IRS also does not require exempt organizations to disclose to the agency what, if any, committee IDs they were assigned when they reported spending to the FEC. This can be particularly confusing because, unlike the single EIN that is assigned to each group by the IRS, a nonprofit reporting spending to the FEC can be given multiple committee IDs, based on the kind of spending reported.

For example, American Action Network (EIN:27-0730508), a 501(c)(4), was formed in 2010. That same year, AAN reported nearly $19 million in political spending to the FEC. More than $4 million was in the form of independent expenditures (express advocacy), for which it was given the committee ID C90011230. The remaining $15 million spent by AAN came in the form electioneering communications (issue ads), for which the group was assigned the committee ID C30001648.

Tracking this spending would be made easier if the IRS required exempt organizations to list, somewhere on their annual 990s, the committee IDs issued to them by the FEC and any spending they reported to the FEC during their fiscal year. This wouldn't place an undue burden on the group itself, because by the time the group is preparing its form 990, its FEC reports will have long since been filed.

The IRS should also establish procedures for tracking nonprofit political spending reported to the FEC. The IRS maintains that Section 6103 of the U.S. Code, which protects taxpayer confidentiality, prohibits coordination with the FEC on this, but Section 6103 does not forbid the IRS itself from creating a system that tracks FEC data, which is freely available. There is no legal roadblock that prevents the IRS from creating a system in which scrutiny is triggered by certain verifiable activity by nonprofits filing reports with the FEC. This alone would help the IRS move away from less effective methods, such as targeting groups based on their names.

The tracking process can be tedious, starting with identifying which FEC filers are exempt organizations. It is not a given that the name or address filed with both agencies will be the same.

The differences can be small: VotesVets Action Fund, Inc (EIN:51-0596352) has filed with the

[4] Letter from Steven Miller to Senator Carl Levin, March 15, 2013.
https://www.documentcloud.org/documents/625200-3-15-2013-response-to-senator-levin-501-c-4.html

FEC as VoteVets.org Action Fund.[5] But sometimes the names are completely different, which is often the result of the considerable lag time between when a group files spending reports with the FEC and when the group files its annual return with the IRS. Such was the case when, over the course of a few weeks in 2010, a group reported to the FEC that it spent nearly $1.4 million for electioneering communications under the name CSS Action (C30001713).[6] Yet the following month, the group filed its first annual 990 with the IRS, covering the previous year of 2009. In that filing, the group used a different address and a different name, Americans for Stable Quality Care.[7]

Agency	Name Provided	Date(s) Filed	Dates Covered	Address Provided
FEC	CSS Action Fund	9/30/2010 to 10/15/2010	9/28/2010 to 10/24/2010	300 M St SE STE 1102 Washington, DC 20003
IRS	Americans for Stable Quality Home Care	11/15/2010	1/1/2009 to 12/31/2009	2200 17th St NW Suite 107 Washington, DC 20009

It wasn't until a year later, in November 2011, that the group (using the same EIN, 27-0575325) filed its 2010 form 990, declaring a name change -- to Citizens for Strength and Security Action Fund, doing business as CSS Action Fund[8] -- and a change of address.[9] Moreover, in December 2011, Citizens for Strength and Security Action Fund terminated, but it did not notify the IRS of this fact until November 2012. By that time, another group, Citizens for Strength and Security Fund (EIN:27-4510380), had been formed by employees of the same political consulting firm, Hilltop Public Communications.[10]

Even when the names and addresses are the same, it is necessary to verify that the entity filing with the FEC is not the super PAC or 527 arm of the organization. The former is easier because, unlike a 501(c)(4) or a 527, the super PAC will be given a committee ID that clearly designates it as an FEC committee.[11] However, a 527, like 501(c) organizations, will receive a committee ID based on the kind of spending the group engages in; it could have different committee IDs for

[5] VoteVets.org Action Fund summary, Federal Election Commission: http://docquery.fec.gov/cgi-bin/fecimg/?C90010620
[6] CSS Action Fund summary, Federal Election Commission: http://docquery.fec.gov/cgi-bin/fecimg/?C30001713
[7] Americans for Stable Quality Care, Form 990 covering 1/1/2009 - 12/31/2009: https://www.documentcloud.org/documents/625586-citizens-for-strength-amp-security-action-fund.html
[8] Citizens for Strength and Security Action Fund, Form 990 covering 2010: https://www.documentcloud.org/documents/366336-citizens-for-strength-amp-security.html
[9] Though the Potomac Ave address was listed on the filing itself, it did not show in the FEC summary data, which means that someone would need to actually view the filing in order to make the connection. Example of filing: http://docquery.fec.gov/pdf/220/10931474220/10931474220.pdf#navpanes=0
[10] See Exhibit A. Also, Citizens for Strength and Security's activities were described in greater detail in "Shape-Shifting by Liberal Dark Money Groups Seems Meant to Confuse," by Robert Maguire and Viveca Novak, Center for Responsive Politics: http://www.opensecrets.org/news/2013/05/shape-shifting-by-liberal-dark-mone.html
[11] All FEC committees are given an ID start with the alphanumeric sequence "C0"

electioneering communications and for independent expenditures, as could its 501(c) arm.

Since many 501(c)(4)s also have one or more 527s, sorting out which arm of the organization is filing a report with the FEC can be confusing. Take for example Patriot Majority, which has operated the following groups over the years that have filed spending with the FEC:

Committee ID	Group Name	Type
C00469890	Patriot Majority	Super PAC
C30000988	Patriot Majority Midwest	527
C30001127	Patriot Majority	527
C30001218	Patriot Majority West	527
C30001705	Patriot Majority USA Fund	527
C90012956	Patriot Majority USA	501(c)(4)

Furthermore, the 501(c)(4) arm of Patriot Majority listed above is not the only 501(c)(4) the group has controlled over the years. Like Citizens for Strength and Security, Patriot Majority has -- in the course of terminating versions of itself while starting new entities with similar names and boards of directors -- changed addresses and EINs multiple times over the years.[12] The 501(c)(4) listed above is the third iteration of Patriot Majority 501(c)(4)s. The second (EIN:26-24958846) was founded as the American Alliance for Economic Development but changed its name to Patriot Majority USA in 2010. That year, it did not file spending reports with the FEC, but it did contribute to other politically active nonprofits -- some of which then gave to Patriot Majority's 527.[13]

The takeaway here is that the process of matching IRS and FEC data has many pitfalls. And even if the process is quick enough for most individual groups, it's complicated and time-consuming when conducted on a large scale for the ever-growing number of exempt organizations spending money to influence elections. This would not be the case if the IRS required groups to provide relevant information about their filings with the FEC, such as the committee IDs they have been assigned and, even better, the amounts they reported spending during their fiscal year.

Creating a system that monitors FEC filings is only the start. There are well-financed 501(c)(4) organizations engaged in electioneering on the state level whose activities will not be captured in the FEC data. In order to get a full picture of a group's political activities, the IRS will need 990 filers to provide the relevant state-level IDs and spending information that describe its activities in state-specific races.

Insufficient 990 data: The IRS does not, and in some cases cannot, collect some important data

[12] See Exhibit B

[13] Choma, Russ. "Liberal Group with Ties to Unions Ends Donor Disclosure," Center for Responsive Politics. August 23, 2012: www.opensecrets.org/news/2012/08/patriot-majority.html

The IRS does not make public what data it collects and creates from form 990 filings; the Internal Revenue Manual (IRM) pages dealing with submission processing[14] are redacted so that it's not possible to know what the agency keys in from each part of a form. Still, we can say with some assurance that certain data isn't created, either because it is not referenced in the IRM or because there's no requirement that groups provide it on their 990s.

For instance, the 990 Schedule I is not referenced in the manual. That's notable, since the "candidate-related political activity" listed in the agency's proposed rules includes "grants to section 527 political organizations and other tax-exempt organizations that conduct candidate-related political activities."

Moving away from "facts and circumstances" analysis of political activities necessitates creating comprehensive data that can be used to highlight filings worthy of scrutiny based on a set of universal criteria.

Such data would also help to highlight irregularities that might be worthy of the attention of the IRS. CRP's research has found several instances where the amount of money reported in grants to one group does not appear to be reflected in the receipts of another. For example, a 501(c)(4) organization called the Center to Protect Patient Rights (EIN:26-4683543) reported, in its filing for the fiscal year covering 1/1/2011 to 12/31/2011, a grant of $1,614,985 to another 501(c)(4) called American Commitment (EIN:45-2600535),[15] which was founded by the head of the first group, Sean Noble.[16] Yet in American Commitment's initial 990 filing, covering the same fiscal year as the CPPR filing, it reported just $216,500 in revenues. [17] Neither group changed the mismatched amounts[18] in amendments[19] or subsequent filings.[20] Being able to highlight informational inconsistencies like this might help the IRS carry out its oversight function.

Regarding Schedule I information, wording in the IRS' proposed rules raises questions about how useful it is to consider grants in the first place. Specifically, the IRS says that "a grantor can rely on a written certification from a grantee stating that it does not engage in, and will not use grant funds for, candidate-related political activity." This, in some cases, will drastically reduce the effectiveness of the rule being proposed.

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[14] Internal Revenue Manual 3.24.12: http://www.irs.gov/irm/part3/irm_03-024-012r.html
[15] Center to Protect Patient Rights, Form 990 for 2011, Schedule I, Part II, Line9: https://www.documentcloud.org/documents/540820-center-to-protect-patient-rights-2011.html#document/p16/a99709
[16] American Commitment, Form 990 for 2011, Part VII, Line 1: https://www.documentcloud.org/documents/540823-americancommitment-2011.html#document/p7/a84800
[17] *Ibid* Part I, Line 12: https://www.documentcloud.org/documents/540823-americancommitment-2011.html#document/p1/a84799
[18] See Exhibit D for illustration
[19] Center to Protect Patient Rights, Form 990 for 2011 (amended), Schedul I, Part II, Line 9: https://www.documentcloud.org/documents/784970-center-to-protect-patient-rights-amended-2011.html#document/p13/a135197
[20] American Commitment, Form 990 for 2012, Part I, Line 12 "Prior Year": https://www.documentcloud.org/documents/836821-american-commitment-2012.html#document/p1/a135198

To illustrate this point, look at the case of Freedom Partners (EIN:45-3732750) and CPPR in 2012. Freedom Partners, a 501(c)(6) business league, spent nearly $238 million during its first year in existence, and more than 99 percent of that spending was made up of grants to other groups,[21] most of which were 501(c)(4) organizations. Nearly half of Freedom Partners' grants, about $115 million, went to a limited liability corporation called Corner Table LLC[22] that is a disregarded entity of CPPR.[23] CPPR itself gave out more than $112 million in grants.

Many of the grants from Freedom Partners and CPPR went to the same organizations.[24] In at least two instances, total grants from Freedom Partners and CPPR totaled more than 90 percent of the recipients' total income:

- **American Future Fund** (EIN:26-0620554): In its most recent form 990, AFF reported nearly $68 million in revenues,[25] more than 92 percent of which came from grants from CPPR ($49 million)[26] and Freedom Partners ($13.6 million).[27] During the time covered by all three groups' form 990 filings, American Future Fund reported to the FEC that it paid out more than $25.4 million in political spending.[28] It was also implicated, along with CPPR, in campaign finance violations in California that resulted in CPPR being fined $500,000.[29]

- **American Commitment** (EIN:45-2600535): Revenues for American Commitment came in at more than $11.7 million in 2012.[30] This income included grants from Freedom Partners ($6.3 million) and CPPR ($4.8 million), as well as $300,000 from a third

[21] Freedom Partners Chamber of Commerce, Form 990 for 11/2/2011 to 10/31/2012, Part I, Line 13: https://www.documentcloud.org/documents/797553-freedom-partners-2011-clear.html#document/p1/a144837
[22] *Ibid* Schedule I, Part II, Line 2 (Page 1), Line 2 (Page 2) and Line 7 (page 3): https://www.documentcloud.org/documents/797553-freedom-partners-2011-clear.html#document/p24/a144839
[23] Center to Protect Patient Rights, Form 990 for 2012, Schedule R, Part I, Line 3: https://www.documentcloud.org/documents/889175-center-to-protect-patient-rights-2012.html#document/p31/a144841
[24] For an extensive illustration, see Exhibit C
[25] American Future Fund, Form 990 for 2012, Part I, Line 12: https://www.documentcloud.org/documents/889174-american-future-fund-2012.html#document/p1/a144846
[26] Center to Protect Patient Rights, Form 990 for 2012, Schedule I, Part II, Line 5: https://www.documentcloud.org/documents/889175-center-to-protect-patient-rights-2012.html#document/p19/a144849
[27] Freedom Partners Chamber of Commerce, Form 990 for 11/2/2011 to 10/31/2012, Schedule I, Part II, Line 10 (Page 1): https://www.documentcloud.org/documents/797553-freedom-partners-2011-clear.html#document/p24/a144850
[28] American Future Fund summary 2012, Center for Responsive Politics: http://www.opensecrets.org/outsidespending/detail.php?cycle=2012&cmte=American+Future+Fund
[29] Gold, Matea and Tom Hamburger, "California donor disclosure case exposes how nonprofits can play in politics," *The Washington Post*, http://www.washingtonpost.com/politics/california-donor-disclosure-case-exposes-how-nonprofits-play-in-politics/2013/11/04/70e0b7ac-4246-11e3-a624-41d661b0bb78_story.html?hpid=z1
[30] American Commitment, Form 990 for 2012. Part 1, Line 12: https://www.documentcloud.org/documents/836821-american-commitment-2012.html

501(c)(4) with close links to CPPR called Americans for Responsible Leadership.[31]

Americans for Responsible Leadership was funded almost entirely by CPPR in 2012. ARL reported $25.3 million in revenues in 2012;[32] nearly 98 percent of those funds came in the form of a $24.7 million grant from CPPR.[33] Like CPPR and AFF, ARL was implicated in the California campaign finance violations, and like CPPR, ARL was fined $500,000. However, in addition to its activities in California, ARL reported an additional $9.8 million in political spending to the FEC in 2012.[34]

Yet, despite the mathematical certainty that these groups used Freedom Partners and CPPR grant money for political activities, both Freedom Partners and CPPR have rejected responsibility because they require grant recipients, as a condition of getting the funds, to agree that they won't use the money for politics. Freedom Partners notes in its Schedule I that

> All grants were made pursuant to specific grant letter agreements, which included prohibitions on the use of the grant funds, for example, activities that would violate federal, state or local laws, rules or regulations, or that would be considered lobbying activities under federal or state law. In addition, all grant letter agreements were made subject to express prohibitions or protections against the use of grant funds for electioneering purposes. The grant letters also contained a review and monitoring procedure which requires reports on the use of the grant funds upon request, and return of any funds used in violation of the agreement.[35]

CPPR's 2012 filing states that it

> carefully evaluates the missions and activities of recipient organizations prior to making any grants to ensure that funds are used only for tax exempt education and social welfare purposes of recognized tax-exempt section 501(c)(3), 501(c)(4), and 501(c)(6) organizations. Grants are accompanied by a letter of transmittal indicating how grant funds may be used. The organization maintains records in its corporate and accounting records regarding the amounts of grants made to organizations, the status of those organizations, and the approval of grants by the board of directors. The organization does not currently have procedures for monitoring the use of grant funds in the United States

[31] Americans for Responsible Leadership, Form 990 for 2012, Schedule I, Part II, Line 5: https://www.documentcloud.org/documents/892837-americans-for-responsible-leadership-2012.html#document/p21/a144855
[32] Americans for Responsible Leadership, Form 990, Part I, Line 12: https://www.documentcloud.org/documents/892837-americans-for-responsible-leadership-2012.html
[33] Center to Protect Patient Rights, Form 990 for 2012, Schedule I, Part II, Line 11: https://www.documentcloud.org/documents/889175-center-to-protect-patient-rights-2012.html#document/p19/a144856
[34] Americans for Responsible Leadership summary 2012, Center for Responsive Politics: http://www.opensecrets.org/outsidespending/detail.php?cmte=C90012931&cycle=2012x`
[35] Freedom Partners Chamber of Commerce, Form 990 for 11/2/2011 to 10/31/2012, Schedul I, Part IV: https://www.documentcloud.org/documents/797553-freedom-partners-2011-clear.html#document/p27/a144859

once grants are made.[36]

The claims of careful scrutiny on the part of both Freedom Partners and CPPR ring hollow; evidence of the political activities of the grant recipients is not difficult to find. And the claim by CPPR that its funds are only to be used by "recognized" 501(c)(4)s is odd, since it gave a sizeable grant to American Commitment, which neither appears to have received an exemption from the IRS[37] nor to have sought exemption in the first place.[38] It's hard to imagine CPPR didn't know that, given that its head, Sean Noble, founded American Commitment, and both groups are represented by the same lawyer. This raises questions about whether the IRS will review the content of the letters, and whether or not the grantee stuck to the terms of the agreement.

Though it's unknown whether the two donor groups, Freedom Partners and CPPR, will follow up with their grant recipients and recoup the funds that were used for political activity, past history suggests it's unlikely. For example, in 2010, CPPR and another 501(c)(4) called the American Justice Partnership (EIN: 20-2222409) gave $11.7 million and $2.4 million, respectively, to American Future Fund, which reported $9.4 million in political spending to the FEC,[39] out of $21.4 million in total expenditures reported on their form 990s.[40] Though neither donor included language that year about conditions of the grants, neither group stopped contributing to AFF despite the mathematical certainty that some of their money was included in AFF's political spending. In fact, quite the opposite happened: Both groups continued to give money to AFF. AJP followed up in 2011 by giving another $50,000 to American Future Fund. CPPR did the same, giving $1.1 million in 2011[41] (more than 40 percent of AFF's revenue that year), followed by the aforementioned $49 million in 2012. The grants CPPR gave to AFF in both 2010 and 2012 were the largest grants the group gave out those years.

There are other clues that the conditions supposedly imposed on how grant money is used are hardly ironclad. American Future Fund's campaign finance violations in California, which the state's Fair Political Practices Commission called "campaign money laundering,"[42] weren't perpetrated alone, but coordinated with CPPR, the donor group. Also, both groups have for years been represented by the same lawyer. The idea that no one knew AFF would spend the money in the manner it did strains credulity, and we are not aware of any attempt by CPPR to recoup

[36] Center to Protect Patient Rights, Form 990 for 2012, Schedule I, Part IV: https://www.documentcloud.org/documents/889175-center-to-protect-patient-rights-2012.html#document/p24/a144860

[37] It is not contained in the EO Business Master FIle

[38] It has never checked "application pending" on its 990s. Furthermore, in 2012, American Commitment's lawyers responded to a request for the group's Form 1024 materials stating that "American Commitment has not yet filed its 1024." https://www.documentcloud.org/documents/697078-american-commitment-letter-holtzmanvogel-josefiak.html

[39] American Future Fund summary 2010, Center for Responsive Politics: http://www.opensecrets.org/outsidespending/detail.php?cycle=2010&cmte=American+Future+Fund

[40] American Future Fund, Form 990 for 2010, Part I, Line 18: https://www.documentcloud.org/documents/335900-american-future-fund.html#document/p1/a99521

[41] Center to Protect Patient Rights, 2011 form 990: https://www.documentcloud.org/documents/784970-center-to-protect-patient-rights-amended-2011.html

[42] "Americans for Responsible Leadership Admits Campaign Money Laundering, Discloses $11 million donor," California Fair Political Practices Commission: http://www.fppc.ca.gov/press_release.php?pr_id=766

the funds it claims to have given to AFF for social welfare activities.

Funding by CPPR and Freedom Partners of a constellation of politically active nonprofits in the name of social welfare did not happen in a vacuum. Other organizations provided grants to such groups while assuring the IRS that the grants were monitored and conditions were set on how the money could be used. America Votes (EIN:26-4568349) gave the Bull Moose Sportsmen's Alliance Action Fund (EIN: 27-3038521) a grant of $495,000 between 7/1/2010 and 6/30/2011.[43] The grant accounted for between 71 percent and 100 percent of Bull Moose Sportsmen's 2010 revenues of $350,000, depending upon when the grant was actually given. BMSAAF spent $117,000 on independent expenditures in 2010 -- some, or all, of which had to have originated with America Votes. Like CPPR, America Votes stated that it "maintains ongoing contact with [grantees]," allowing it to "monitor the use of their grants."[44]

In 2012, Crossroads Grassroots Policy Strategies (EIN:27-2753378) gave $26.4 million to Americans for Tax Reform (EIN:52-1403587),[45] making up a more than 85 percent of ATR's total revenue that year. As with Freedom Partners and CPPR, the Crossroads GPS grants came with conditions, which it laid out as follows:

> Crossroads GPS carefully evaluates the missions and activities of recipient organizations prior to making any grants to ensure that funds are used only for 501(c)(4) and 501(c)(6) purposes of recognized tax-exempt section 501(c)(4) and 501(c)(6) organizations...Grants are accompanies by a letter of transmittal stating that the funds are to be used only for 501(c)(4) exempt purposes, and not for political expenditures, consistent with the organization's tax-exempt mission.[46]

However, the size of the grant from Crossroads GPS to ATR meant that only $4.6 million of ATR's revenue[47] came from sources other than Crossroads GPS. Yet ATR reported $15.8 million in independent expenditures to the FEC, meaning that at least $11.2 million of the money ATR got from Crossroads GPS was spent on politics, despite the letter Crossroads GPS had its grantees sign.

There is precedent for this flow of money to ATR. In 2010, Crossroads GPS gave the group $4 million, and CPPR gave it another $4.2 million. ATR told the FEC that it spent $4.1 million on independent expenditures. Later, on its 990 covering 2010, the group reported just $1.9 million in political spending -- but elsewhere on the same form, confusingly, it said it spent $8 million on

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[43] America Votes, Form 990 covering 7/1/2010-6/30/2011, Schedule I, Part II, Line 10: https://www.documentcloud.org/documents/697877-america-votes-2011.html#document/p47/a144882
[44] *Ibid*, Schedule I, Part IV: https://www.documentcloud.org/documents/697877-america-votes-2011.html#document/p47/a144882
[45] Crossroads GPS, Form 990, Schedule I, Part II, Line 2: https://www.documentcloud.org/documents/836224-crossroads-gps-2012.html#document/p78/a144884
[46] Crossroads GPS, Form 990 for 2012, Schedule I, Part IV: https://www.documentcloud.org/documents/836224-crossroads-gps-2012.html#document/p80/a144883
[47] Americans for Tax Reform Reported almost $31 million in revenue in 2012: https://www.documentcloud.org/documents/835887-americans-for-tax-reform-2012.html#document/p1/a144885

"election related advertisements." Given that ATR only had $12.4 million in revenues that year, at least some Crossroads and/or CPPR funds must have been used for those "election related" ads. It doesn't appear, though, that either CPPR or Crossroads GPS attempted to settle up with ATR after the 2010 midterms.

It is important to note that in both 2010 and 2012, ATR reported nothing but independent expenditures to the FEC. This kind of spending is, unambiguously, spending that is political in nature, according to the IRS. Yet in both instances, ATR significantly underreported its political spending to the IRS. In 2010, it reported $4.1 million in independent expenditures to the FEC and only $1.9 million in political spending to the IRS. In 2012, it told the FEC it paid out $15.8 million on independent expenditures, while claiming to the IRS that it made only $9.8 million in political expenditures. This is an example of why the IRS needs to begin to monitor spending reported to the FEC.

It's unclear how far the IRS will go to verify that a grant-maker follows up on pledges by recipients that they won't use funds for political purposes -- or if the IRS has resolved how far up a chain of grantor organizations liability can go in some of the more complex money flows. In 2012, nearly all of CPPR's revenues -- besides what was used in the California campaign finance case -- came from Freedom Partners. The IRS should decide whether or not to apply a portion of CPPR's "candidate-related political activity" to Freedom Partners, as the provenance of most of CPPR's funds.

Up to this point, we've focused on the data that the IRS does not appear to collect from 990 forms. Since the details relating to what is collected from other sections is kept from the public, there is no way to know what holes there may be in data that is collected from other sections. However, there is relevant financial information that it would be impossible for the IRS to collect because it is not requested anywhere on the form 990.

For example, the IRS may or may not key in data pertaining to the "independent contractors" listed in Part VII, section B of the form 990. Even if it does, the information required is severely limited. First, at most, only five contractors are listed on any 990. Crossroads GPS paid more than $100,000 to 17 entities,[48] and yet only five are listed. The League of Conservation Voters paid at least that much to 31 entities.[49]

These totals are useful because reported payments to independent contractors can be matched up to FEC expenditures data, which are updated throughout the election cycle on a running basis. By the time a group's 990 is filed with the IRS, its reports to the FEC are a matter of record. The FEC data can be referenced to compare payments to consultants the organization

[48] Crossroads GPS, Form 990 for 2012, Part VII, Section B, Line 2: https://www.documentcloud.org/documents/836224-crossroads-gps-2012.html#document/p10/a146236
[49] League of Conservation Voters, Form 990 covering 1/1/2012 - 12/31/2013, Part VII, Section B, Line 2: https://www.documentcloud.org/documents/835279-league-of-conservation-voters-2012.html#document/p8/a146238

hired for political expenditures. The totals reported to the two agencies could diverge for legitimate reasons, but radically different amounts could be flagged for further examination.

For example, in 2012, four of American Future Fund's top five independent contractors were also listed as payees in the group's reports of political expenditures to the FEC. However, the totals reported to the IRS for each of these contractors were considerably higher:

Independent Contractor	Reported to FEC	Reported to IRS
Mentzer Media Services	$15,406,741	$26,988,277
Direct Response	$1,690,828	$5,417973
Angler LLC	$4,225,325	$5,258,184
Google	$2,020,000	$2,500,000

The question is whether the disparity between the totals reported to the FEC and the IRS were attributable to different, strictly social-welfare activities that did not need to be reported to either agency, or to activities that were political, but fell outside the FEC's reporting windows. If the IRS had data triggers set up to look for such disparities, it could ask these important questions.

We've already noted that the IRM makes no reference to Schedule I. However, even if the IRS were to begin keying in grant data, it would not be date-specific, as such information is not required on the forms. Because 990 filings are based on each organization's chosen fiscal year, the IRS will run into difficult questions when trying to sort out whether a donor group gave funds to another group during a time the recipient engaged in politics if the grantor and grantee use different fiscal years. This becomes even more difficult when there are multiple layers, where a donor provides the majority of funds to a second group, which gives a grant to a third group that engages in politics. Each group could use a different fiscal year, making it very difficult to know when the money flowed down each rung of the ladder.

Lack of clarity about calculations: IRS has not specified how percentages are calculated

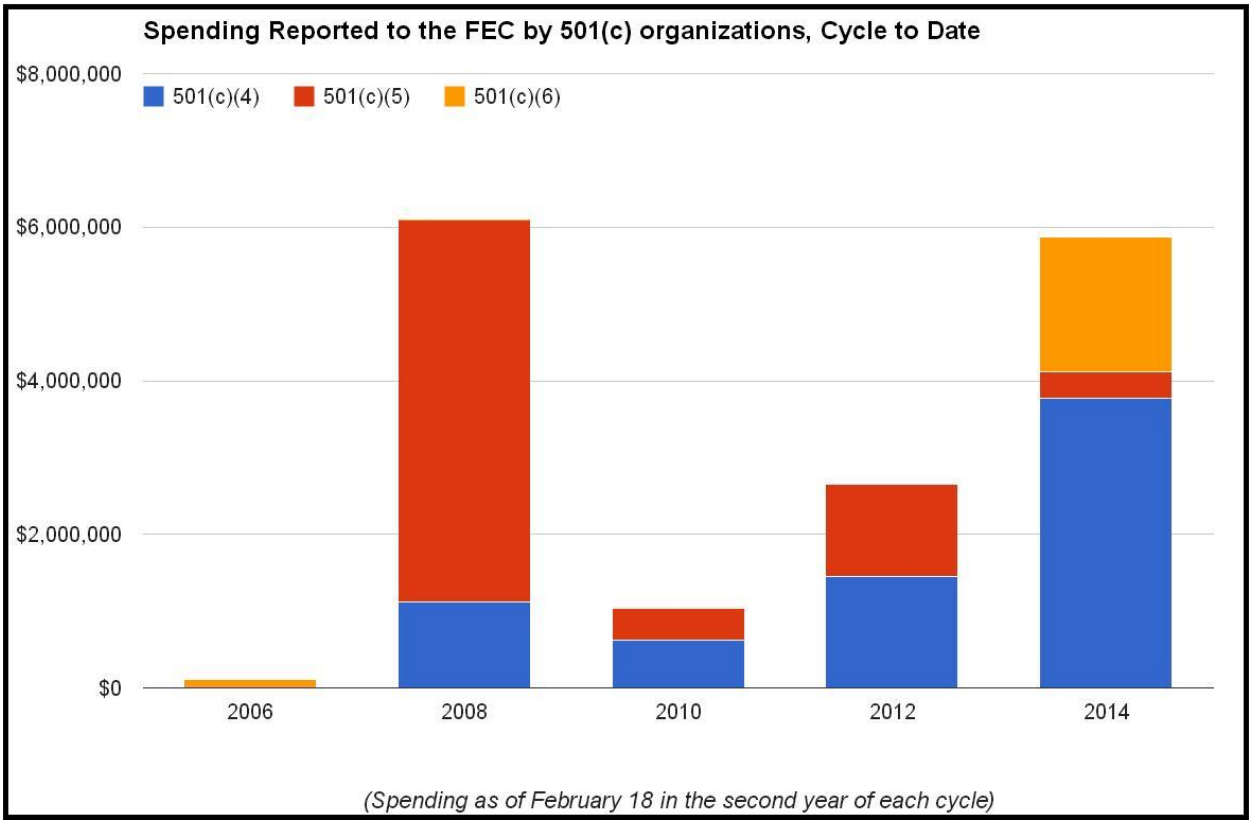
In its request for public input on the proposed guidelines, the IRS noted the "considerable public focus regarding the proportion of a section 501(c)(4) organization's activities that must promote social welfare" and requested initial comments on the issue. Though we will not comment on what limits should be set for 501(c)(4) groups, we do stress the importance of establishing a method for calculating the proportion.

Questions have been raised as to whether the agency has a standard for measuring political activity as a proportion of overall activities. Political spending might, for example, be measured

against a group's overall revenues or as a proportion of overall expenditures, which can be quite different. Political spending might be measured over a period of multiple years, or a single fiscal year. Other factors like volunteer hours devoted to the group's political activities might also be factored in. In reality, some equation that references many facets of a group's financial profile is going to give the best picture of its overall political activities. It will be up to the IRS to establish a clear, fair and reasonable method, if it hopes to move away from its reliance on "facts and circumstances" analysis.

Focus on 501(c)(4)s too narrow: Other organizations also engage in significant electioneering

The focus by the IRS on 501(c)(4) organizations alone is too narrow. Though political activity on the part of 501(c)(4) organizations has exploded in recent years, other classes of organizations -- particularly 501(c)(5) unions and 501(c)(6) trade associations -- have also engaged in considerable poliltical activity over the same period.[50] And so far in the 2014 election cycle, spending by all three types of organizations eclipses all cycles but 2008, the first election following the *Wisconsin Right to Life v. FEC* decision.



Even though spending by 501(c)(5) and 501(c)(6) organizations is significantly less than spending by 501(c)(4) organizations, stricter scrutiny of only the latter would almost inevitably

[50] "Political Nonprofits Summary: Reported Spending by Type of 501(c)" Center for Responsive Politics: http://www.opensecrets.org/outsidespending/nonprof_summ.php

lead to a shift in funds toward the lesser-used vehicles.

There are signs that this is already the case. Freedom Partners, the 501(c)(6) discussed above, is an obvious example of how the rules would be ineffective if they do not include groups other than 501(c)(4) organizations. Though Freedom Partners has never reported direct political expenditures from its treasury, it gave enormous grants to some of the most politically active 501(c)(4) organizations engaged in the 2012 elections. If the new IRS rules dictate that a 501(c)(4) donor organization must be held to account for the political activities of its grantees, as mentioned above, more money will almost surely flow to 501(c)(6) groups that can get around the rule.

Conclusion

The IRS is right to seek greater clarity in the rules that govern political activity on the part of 501(c)(4) organizations that are spending ever greater sums of money in federal and state elections without disclosing the sources of their funds. Clear rules are needed not only to avoid wrongheaded or excessive scrutiny of ideological groups based on superficial criteria but also so that individuals who are considering forming a 501(c)(4) have a clear understanding of the rules that apply. Groups that seek to engage in significant electioneering should be presented with clear rules so that they know if the aims of their group would be better suited by a 527 committee.

Many of the comments that have been submitted to the IRS in connection with this proposed rulemaking have focused on what should or shouldn't be considered "candidate-related political activity," and this is an important debate. However, the Center for Responsive Politics hopes that its comments will shine a light on the technical, data-related challenges that the IRS must consider, whatever the outcome of the larger debate. If the IRS does not address the challenges posed by insufficient data, it risks reverting back to analyzing individual groups' activity through an imprecise "facts and circumstances" screen.

In closing, we would like to also suggest that the IRS consider providing better public access to data relating to 501(c) organizations. As we've written in the pages above, we suspect with some confidence that the internal data at the IRS is insufficient to enforce the proposed rules, but we know from experience that the data the IRS provides to the public -- and the manner in which it provides it -- is abysmal.

The two main public data sets that include summary data for specific organizations, the EO Business Master File (EOBMF) and the 990 Extract, are missing crucial data points. The EOBMF, for example, lacks top-level totals for expenditures and total grants. And, while the 990 Extract includes more data points, it still lacks totals for the amount an organization gives out in grants in a particular year. Moreover, both of these data sets include only 501(c) organizations whose status has been recognized by the IRS, despite the fact that some of the largest, most politically active 501(c) organizations have yet to receive, or even seek, an exemption from the

IRS by filing a Form 1024. Still more, the data in these files, with few exceptions,[51] covers a single year. Thus, any analysis of multiple years of data requires considerable work manually inputting totals reported on 990s for each year from hundreds of organizations (as we at CRP know well).

Because we work extensively with individual 990 filings, we are also acutely aware of how disappointingly complicated and costly the 990 request process can be. The IRS does not maintain a searchable database of the documents, though it could easily incorporate the filings into the database of 527 organizations it maintains. To exacerbate the issue, the IRS also has no online request form for individual filings. Instead, those interested in obtaining the documents must fill out a form 4506-a, print it out, then fax or mail it to the IRS. Once the request is approved, the IRS mails hard copies of the documents, rather than providing electronic copies.

The IRS does have electronic copies of the documents, but -- astoundingly -- it provides them in bulk on DVDs that come in the mail every month at a cost of $2,300.[52] Not only does the DVD content come at a cost that is far too high for most individuals, and even many organizations, but the manifest files provided in each DVD lack even the most basic summary data that would help users wade through the thousands of 990s included on each disc. The only relevant information included with each record in the manifests is the name of the organization, its EIN and assets, and the tax period reported in the filing the record represents. Even very basic qualifiers like subsection code are absent from the manifests, and though this can often be remedied by linking the data to the EOBMF, that helps only in instances involving groups whose request for exemption has been approved by the IRS.

Ideally, the manifests would include the following basic information about all filings:

- **Name**
- **EIN**
- **Subsection code**
- **Organization address**
- **Tax period**
- **Total revenues**
- **Total expenditures**
- **Total grants**

The process for getting useful information from the IRS is unnecessarily tedious and costly. This is unacceptable at this point in the 21st century, all the more so given that the information is public. Section 6104 of the U.S. Code ensures that the public has the right to inspect 990 filings

[51] The extract includes data on all 990s filed by exempt organizations in a given year. In some cases, groups file multiple 990s because, for example, they are amending a previous year's filing while also filing their 990 for the most recent year. Organizations that do this will have multiple records in the extract, but the vast majority only have one record in the data.

[52] "Copies of Scanned EO Returns Available"
http://www.irs.gov/Charities-&-Non-Profits/Copies-of-Scanned-EO-Returns-Available

and 1024 application materials, yet those trying to exercise that right are forced by the IRS to jump through so many hoops that the law might as well not exist.

We appreciate your consideration of our views as you finalize the regulations.

Sincerely,

/s/ Sheila Krumholz
Executive Director

Exhibit A

Citizens for Strength & Security Fund

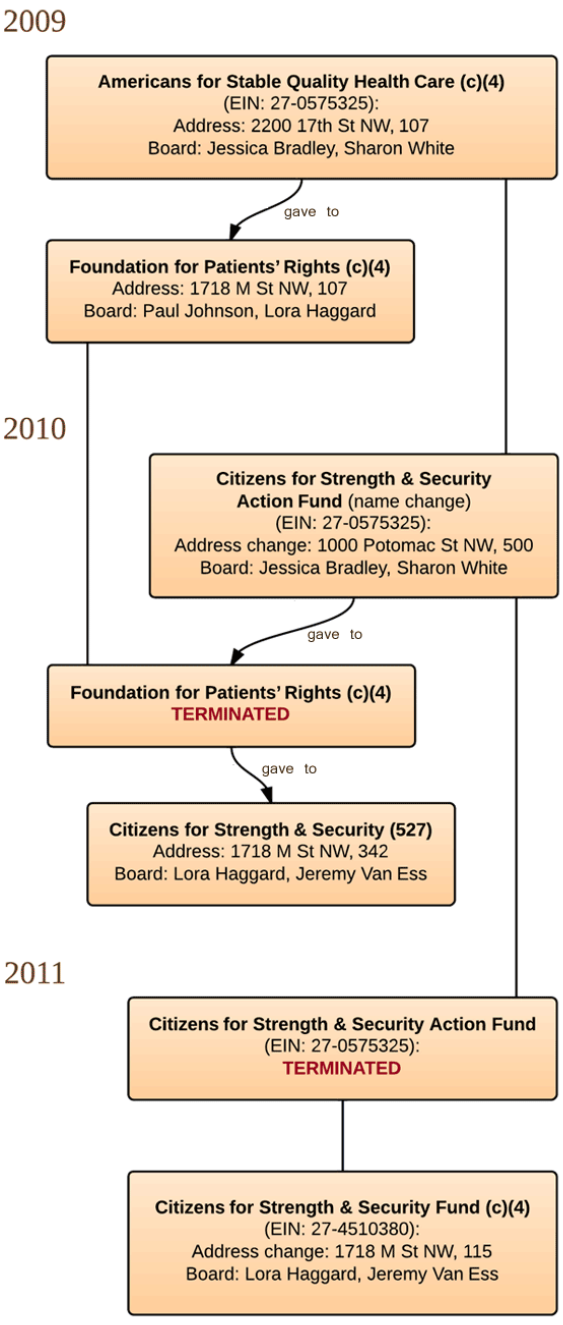


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Exhibit B

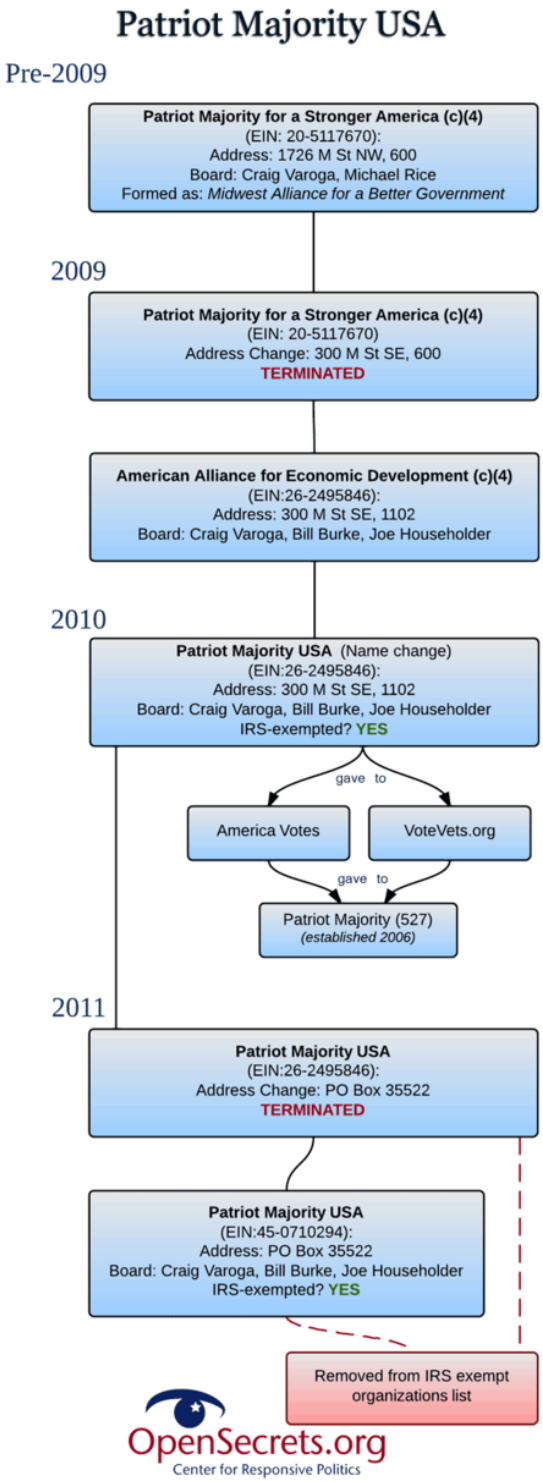
Patriot Majority USA
Pre-2009
Patriot Majority for a Stronger America (c)(4)
(EIN: 20-5117670):
Address: 1726 M St NW, 600
Board: Craig Varoga, Michael Rice
Formed as: Midwest Alliance for a Better Government
2009
Patriot Majority for a Stronger America (c)(4)
(EIN: 20-5117670)
Address Change: 300 M St SE, 600
TERMINATED
American Alliance for Economic Development (c)(4)
(EIN:26-2495846):
Address: 300 M St SE, 1102
Board: Craig Varoga, Bill Burke, Joe Householder
2010
Patriot Majority USA (Name change)
(EIN:26-2495846):
Address: 300 M St SE, 1102
Board: Craig Varoga, Bill Burke, Joe Householder
IRS-exempted? YES
gave to
America Votes
VoteVets.org
gave to
Patriot Majority (527)
(established 2006)
2011
Patriot Majority USA
(EIN:26-2495846):
Address Change: PO Box 35522
TERMINATED
Patriot Majority USA
(EIN:45-0710294):
Address: PO Box 35522
Board: Craig Varoga, Bill Burke, Joe Householder
IRS-exempted? YES
Removed from IRS exempt organizations list
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Exhibit C

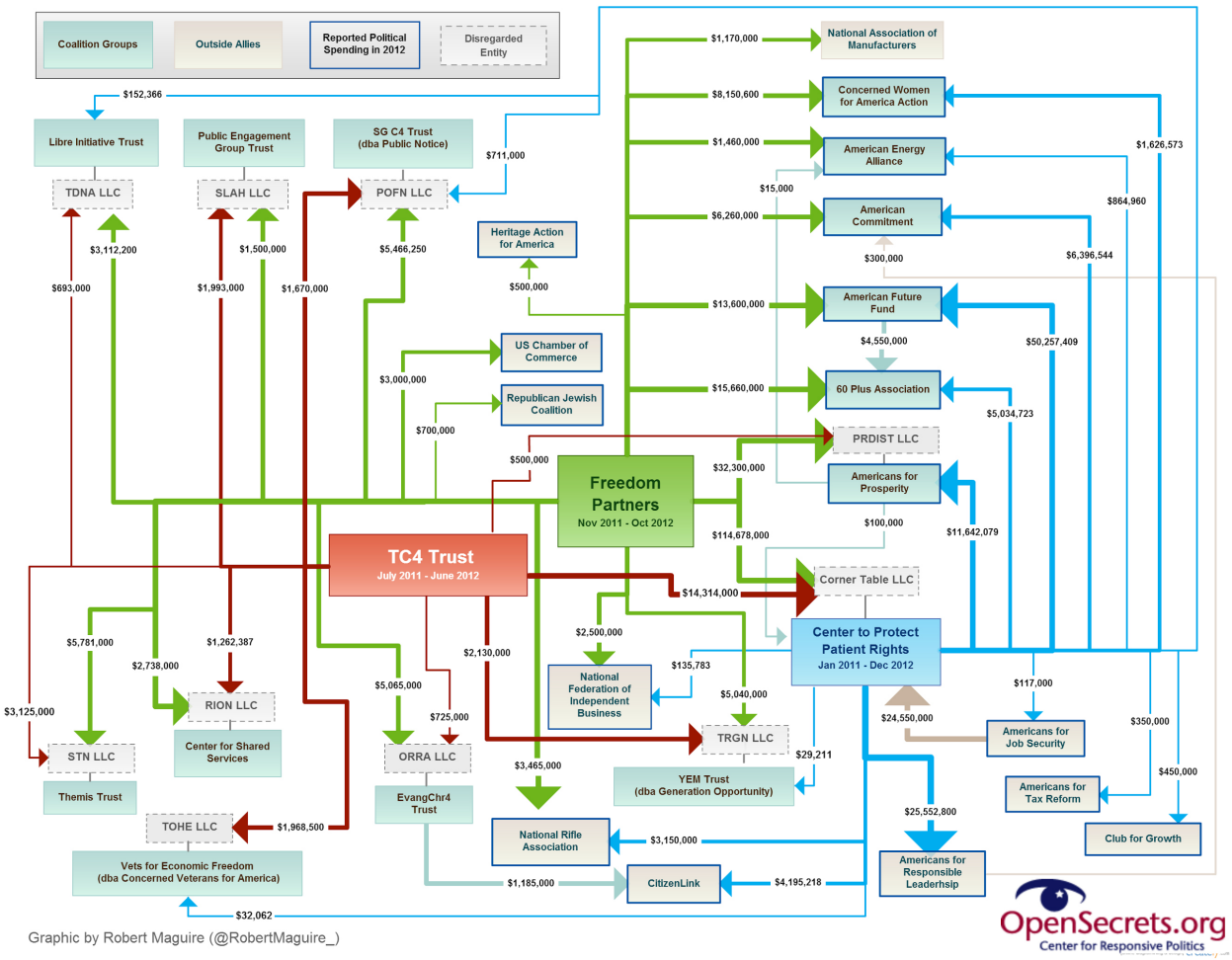
Coalition Groups
Outside Allies
Reported Political Spending in 2012
Disregarded Entity
Libre Initiative Trust
Public Engagement Group Trust
SG C4 Trust (dba Public Notice)
TDNA LLC
SLAH LLC
POFN LLC
Heritage Action for America
US Chamber of Commerce
Republican Jewish Coalition
Freedom Partners
Nov 2011 - Oct 2012
TC4 Trust
July 2011 - June 2012
RION LLC
Center for Shared Services
STN LLC
Themis Trust
TOHE LLC
Vets for Economic Freedom (dba Concerned Veterans for America)
ORRA LLC
EvangChr4 Trust
National Federation of Independent Business
National Rifle Association
CitizenLink
TRGN LLC
YEM Trust (dba Generation Opportunity)
National Association of Manufacturers
Concerned Women for America Action
American Energy Alliance
American Commitment
American Future Fund
60 Plus Association
PRDIST LLC
Americans for Prosperity
Corner Table LLC
Center to Protect Patient Rights
Jan 2011 - Dec 2012
Americans for Job Security
Americans for Tax Reform
Club for Growth
Americans for Responsible Leadership
$152,366
$711,000
$3,112,200
$693,000
$1,993,000
$1,500,000
$1,670,000
$5,466,250
$500,000
$3,000,000
$700,000
$500,000
$1,170,000
$8,150,600
$1,460,000
$15,000
$6,260,000
$300,000
$13,600,000
$4,550,000
$15,660,000
$32,300,000
$114,678,000
$100,000
$14,314,000
$1,626,573
$864,960
$6,396,544
$50,257,409
$5,034,723
$11,642,079
$117,000
$350,000
$450,000
$24,550,000
$25,552,800
$5,781,000
$2,738,000
$1,262,387
$3,125,000
$5,065,000
$725,000
$2,130,000
$2,500,000
$135,783
$5,040,000
$29,211
$3,465,000
$3,150,000
$1,185,000
$4,195,218
$1,968,500
$32,062
Graphic by Robert Maguire (@RobertMaguire_)
OpenSecrets.org
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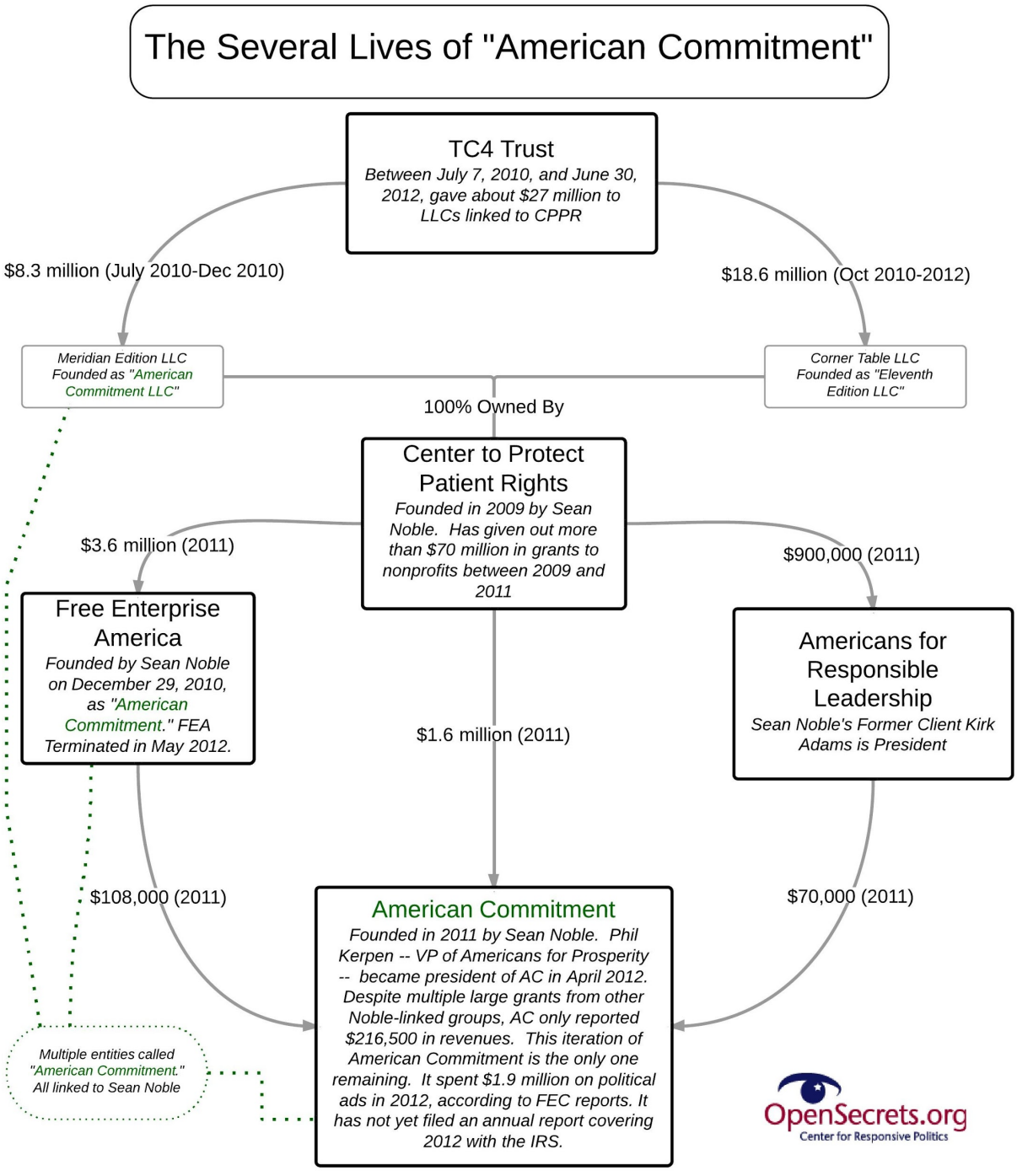
Exhibit D


The Several Lives of "American Commitment"
TC4 Trust
Between July 7, 2010, and June 30, 2012, gave about $27 million to LLCs linked to CPPR
$8.3 million (July 2010-Dec 2010)
$18.6 million (Oct 2010-2012)
Meridian Edition LLC
Founded as "American Commitment LLC"
Corner Table LLC
Founded as "Eleventh Edition LLC"
100% Owned By
Center to Protect Patient Rights
Founded in 2009 by Sean Noble. Has given out more than $70 million in grants to nonprofits between 2009 and 2011
$3.6 million (2011)
$900,000 (2011)
Free Enterprise America
Founded by Sean Noble on December 29, 2010, as "American Commitment." FEA Terminated in May 2012.
Americans for Responsible Leadership
Sean Noble's Former Client Kirk Adams is President
$1.6 million (2011)
$108,000 (2011)
$70,000 (2011)
American Commitment
Founded in 2011 by Sean Noble. Phil Kerpen -- VP of Americans for Prosperity -- became president of AC in April 2012. Despite multiple large grants from other Noble-linked groups, AC only reported $216,500 in revenues. This iteration of American Commitment is the only one remaining. It spent $1.9 million on political ads in 2012, according to FEC reports. It has not yet filed an annual report covering 2012 with the IRS.
Multiple entities called "American Commitment." All linked to Sean Noble
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