



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

September 20, 2004

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Hon. Bradley A. Smith
Hon. Ellen L. Weintraub
Hon. David M. Mason
Hon. Danny L. McDonald
Hon. Scott E. Thomas
Hon. Michael E. Toner

Dear Chairperson and Members of the Commission:

Public Citizen's Congress Watch issued the enclosed report today, entitled *The New Stealth PACs: Tracking 501(c) Non-Profit Groups Active in Elections*, that documents and assesses the apparent electioneering activity of thirty 501(c)(4), 501(c)(5) and 501(c)(6) non-profit groups highly active in federal elections. The report details the findings from a first-of-its-kind database created by Public Citizen that chronicles the election activities of these non-profit groups since 2000. The database is available at a new Web site, <http://www.stealthpacs.org/>.

The New Stealth PACs report reveals that 26 groups registered under Section 501(c)(4)-(6) of the tax code spent at least \$91 million for the apparent purpose of influencing the outcomes of elections in 2000 and 2002. However, these groups collectively reported only \$12.2 million of such expenditures to the Internal Revenue Service and reported none of this activity to the Federal Election Commission. In addition, Public Citizen found that 10 of the groups in this study engaged in enough "political" activity to call into question whether they violated the terms of their 501(c) status by having as their major purpose promoting the election or defeat of candidates.

Public Citizen is also providing you with another report, entitled *Big PhRMA's Stealth PACs: How the Drug Industry Uses 501(c) Non-Profit Groups to Influence Elections*. This second report highlights what seems to be a particularly egregious evasion of the tax code and, perhaps, campaign finance law by four 501(c) groups: United Seniors Association, 60 Plus Association, Seniors Coalition, and America 21. These new stealth PACs have been heavily engaged in political activity and appear to be funded primarily by one special interest group – the Pharmaceutical Research and Manufacturers of America (PhRMA).

Compiling the database and information in these reports was a major task. There are no FEC disclosure reports to rely on, as there are for PACs, nor is there a database like the one the IRS maintains on the activities and finances of 527 groups. As a result, the information in the *New Stealth PACs* database and this report is incomplete and only begins to tell the hidden story of the electoral activities of some 501(c) groups.

While most of the report's recommendations for reform are addressed to the Internal Revenue Service, Public Citizen recommends that the FEC enforce its existing disclosure regulations for Qualified Non-Profit Corporations (QNCs), a special class of *incorporated* 501(c)(4) non-profits, in order to vindicate the public's right to know who is financing electioneering advertisements while remaining faithful to the U.S. Supreme Court's dictum that QNCs deserve less intrusive regulation than those applicable to for-profit corporations. Currently, the letter of the FEC's disclosure regulations require QNCs to report all persons who contribute more than \$200 in support of the organizations' political expenditures, but the FEC has consistently permitted QNCs to report only contributors who specifically earmark their contributions for express advocacy. The FEC's failure to enforce its own regulatory requirements against this narrow class of incorporated 501(c)(4)s allows these entities to conceal their contributors for campaign activity, enjoying privileges not available to other non-profit groups which have to disclose their contributors when they engage in independent expenditures or electioneering communications.

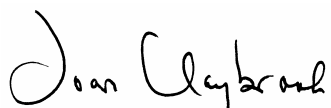
Furthermore, Public Citizen's research suggests that some of these 501(c)(4)-(6) non-profit groups – beyond QNCs – may have electioneering as their major purpose, which could render them political committees subject to the requirements of federal election law. Though many of these politically active 501(c) groups claim to be non-partisan, those attempting to influence elections almost always use their resources to help candidates of a single party. Our study found that non-profit groups aligned with the Republican Party spent at least \$55.8 million to influence elections in 2000 and 2002, while Democratic non-profit groups spent at least \$35.2 million, according to Public Citizen's estimates.

The FEC is currently embroiled in the issue of largely-unregulated electioneering activity of non-profit groups. Section 527 political organizations have appropriately become the focus of this controversy, given that their primary purpose is to affect federal elections. In Public Citizen's view, it is critical that the FEC not further burden the activities of 501(c) non-profit groups that are engaged in legitimate issue advocacy and whose major purpose is not engaging in electioneering activity. We are very protective of the right of legitimate issue advocacy groups to challenge the policies of government and to praise or condemn the positions of officeholders.

While 501(c) non-profit groups are entitled to an extraordinary level of constitutional protection because of their unique educational and lobbying nature, it must also be recognized that a small number of 501(c)(4)-(6) groups may be exploiting the tax code to evade the requirements applicable to political committees. An appropriate remedy is readily available. Public Citizen once again wants to remind the FEC that its General Counsel proposed sound guidelines for the agency to regulate the electioneering activities of Section 527 and 501(c) non-profits, but which the Commission rejected, on August 19, 2004. [Agenda Document 04-75]

Public Citizen respectfully requests that the FEC give due attention to the findings of this report and reevaluate its regulations on Qualified Non-Profit Corporations and the appropriate standard for determining political committee status.

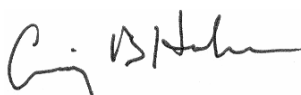
Sincerely,



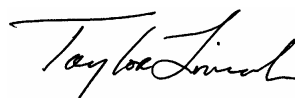
Joan Claybrook
President
Public Citizen



Frank Clemente
Director
Public Citizen's Congress Watch



Craig Holman
Legislative Representative
Public Citizen's Congress Watch



Taylor Lincoln
Senior Researcher
Public Citizen's Congress Watch