



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

September 20, 2004

The Honorable Mark Everson
Commissioner
Internal Revenue Service
1111 Constitution Ave.
Washington, D.C. 20224

Dear Commissioner:

Public Citizen's Congress Watch issued a 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 report is enclosed and 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. In addition, Public Citizen found that many of these groups may have used their 501(c) status as a haven to avoid the disclosure requirements they would face if they were registered under Section 527 of the Internal Revenue Code.

Additionally, Public Citizen's report shows that two 501(c) groups – the U.S. Chamber of Commerce and the Pharmaceutical Research and Manufacturers of America (PhRMA) – likely made grants of millions of dollars to other non-profit organizations but reported no “grant” activity on the relevant line of their 990 tax forms. The organizations to which the U.S. Chamber and PhRMA made grants appear to have used large amounts of the money for election activities.

Public Citizen requests that the IRS review its procedures for monitoring and enforcing the tax code when it comes to regulating electioneering activities of 501(c)(4)-(6) non-profit groups. There appears to be a considerable amount of confusion among non-profit organizations as to what constitutes a political expenditure versus a lobbying expenditure. The IRS needs to make this distinction clear to all filers.

Some of the apparent egregious violations documented in this report may warrant enforcement action. However, the major purpose of this report is to recommend regulatory and statutory reforms based on the problems we found. Therefore, we urge the IRS to focus on the nature of the problems uncovered and to develop procedures to prevent them in the future.

In Section III of Public Citizen's report, we propose that the IRS take the following steps to prevent future abuses:

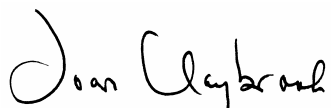
- Reiterate the differences between “political expenditures” and “lobbying expenditures” to be reported on Form 990 and enforce the distinction according to IRS definitions. Currently, many filers appear to be employing the definitions under federal election law of “express advocacy” and “issue advocacy” in identifying political versus lobbying expenditures, which effectively conceals the extent of political activity conducted by 501(c) non-profit groups. The IRS must make it very clear that the tax code definitions of political versus lobbying activity apply for Form 990 reporting purposes.
- Add a new line, 81(c), to Form 990 for “candidate-related expenditures” requiring that paid communications that are not to a group's members or primarily for advocacy fundraising purposes be reported on Line 81(c) according to a bright-line standard of whether the communications depict a candidate and target the candidate's voting constituency. Such expenditures would not necessarily constitute taxable “exempt” activity to influence elections – only an IRS facts-and-circumstances analysis could substantiate whether such ads were indeed political expenditures – but it would help flag to the IRS those groups with a significant emphasis on candidates and elections.
- Require 501(c)(4)-(6) non-profit organizations to report subtotals of “lobbying expenditures” and “political expenditures” by functional category as is required for other expenditure activity by these groups so that the public may discern the particular types of activity, such as broadcast advertisements versus direct mail.
- Provide a better means for tracking transfers and grants of funds between 501(c)(4)-(6) non-profit organizations and Section 527 groups. The movement of funds between these groups can be very substantial, sometimes resulting in a single entity financing the activities of another electioneering non-profit organization. Currently, transfers and grants frequently go unreported, making it very difficult for the public to track the exchange of funds between groups.
- Create a searchable, sortable and downloadable electronic filing and disclosure system for Form 990 filings. Electronic filing of Form 990s will expedite the processing of these financial forms by the IRS, and electronic disclosure will enable easy and affordable access to these records by the public.

In addition, Public Citizen recommends that Congress provide the IRS with the authority to impose appropriate penalties on those who prepare and file Form 990s for the accuracy of the reports, if the preparer should reasonably have known of any inaccuracies, and that Congress allocate additional financial resources to the Exempt Organizations Division of the IRS to carry

out its mandate of monitoring and enforcing the tax code with respect to 501(c) non-profit groups excessively involved in electoral activities.

Public Citizen respectfully requests that the IRS give due attention to the problem of excessive electioneering activity by some 501(c) non-profit groups and consider the regulatory changes recommended above.

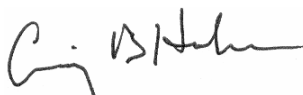
Sincerely,



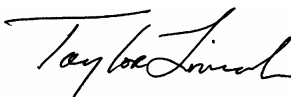
Joan Claybrook
President
Public Citizen



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

cc: Steven Miller, Director, Exempt Organizations Div.
Lois Lerner, Director, Exempt Organizations Div.
Evelyn Petschek, Commissioner, Tax Exempt and Gov't Entities Div.
Rosie Johnson, Director, Exempt Organizations Examination Div.