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*****AS-PREPARED*** Opening Remarks — Tax Subcommittee Hearing
Laws and Enforcement Governing the Political Activities of Tax-Exempt Organizations
May 4, 2022**

Twelve years ago, the Supreme Court rested its decision in *Citizens United* on the false predicate that “effective disclosure” would let voters know who was speaking to them, and dispel corruption. Instead, a torrent of dark money – a “tsunami of slime” – washed into our politics.

Special interests began to rig our elections from behind a veil of organizations formed under Section 501(c)(4) of the Internal Revenue Code. Unlike most groups spending money in elections, 501(c)(4) organizations aren’t required to disclose their donors.

The statute governing these organizations states they must be “operated exclusively for the promotion of social welfare.” But the IRS muddied the waters with a regulation that allowed social welfare organizations to devote up to 49.9 percent of their spending to political activities and still qualify for 501(c)(4) status. Predictably, these organizations became conduits for secret political spending. In the decade preceding *Citizens United*, 501(c)(4) organizations spent \$103 million on political expenditures; in the decade following it, they spent over \$1 billion. It was a hell of a tsunami.

The dark money flowing through 501(c)(4)s got darker over the years. As soon as the IRS sought to review the explosion of these political groups after *Citizens United*, dark-money interests whipped up a scandal claiming the IRS was unfairly targeting conservative groups for scrutiny. Let me set the record straight—this is false. An exhaustive 2017 report from the Treasury Inspector General for Tax Administration, or TIGTA, found no such unfair targeting of conservative groups, as did a bipartisan investigation from this very committee.

Still, the damage was done. The fake scandal cowed the IRS, and an appropriations rider in place since 2015 has blocked the IRS from promulgating regulations to clarify political rules for 501(c)(4) organizations. This means groups flout limits on political activity with little risk to their tax-exempt, anonymized status.

As early as 2012, a ProPublica investigation found that roughly three in ten of the 501(c)(4) organizations surveyed reported to the FEC that they had spent money on electioneering, but reported to the IRS they spent no money to influence elections either directly or indirectly. It’s hard to see how both statements could be true.

A report out last week from the Citizens for Responsibility and Ethics in Washington describes several recent examples of this problem. Take the NRA. Per CREW:

Between 2008 and 2013, the NRA reported to the FEC that it spent nearly \$11 million in independent expenditures [from its 501(c)(4)]. In 2012, it reported making \$7,448,385 in independent expenditures, more than half of which were spent opposing Barack Obama or supporting Mitt Romney in that year’s presidential race. . . .

Remarkably, the NRA told the IRS under penalty of perjury that it spent absolutely nothing on political campaign activities between 2008 and 2013. Nor did it file a Schedule C disclosing details of its political spending.

Despite this open and notorious predication for investigation into whether there were false statements made, there's no sign that the IRS is doing much to enforce its existing rules. A 2018 TIGTA report estimated that over 1,000 cases of impermissible political activity by 501(c)(4)s weren't even forwarded to the agency's committee tasked with recommending audits, despite meeting the IRS's own criteria. According to a 2020 GAO review, the IRS between 2010 and 2017 conducted only 226 examinations involving impermissible political campaign intervention. Of those, only six percent—a total of 14 examinations—involved 501(c)(4)s. That's fewer than two per year, in the middle of the dark-money tsunami.

We can't tolerate a system that lets 501(c)(4) groups operate without oversight – not when they spend tens, even hundreds, of millions of dollars per election cycle without disclosing their donors. Citizens are denied that most basic right to know what is going on around them in their democracy.

First, we should free the IRS to promulgate clear rules for 501(c)(4) organizations.

Second, the IRS should use the tools and resources it already has to crack down on blatant abuse. Lax enforcement sends a message that the rules don't matter.

Third, referrals need to be made of likely false statements, so that the right officials in law enforcement can investigate. We are aware of no referrals at all to DOJ, despite years of CREW, ProPublica and press reporting.

I hope my colleagues will join me in untying the IRS's hands and providing it the tools and resources to enforce its most basic rules. The premise of transparency in *Citizens United* has been violated for far too long.