

**To: Mitch McConnell, Majority Leader of the Senate**

**Paul Ryan, Speaker of the House of Representatives**

From: Patrick M. Collins, Law and Policy Student, Arizona State University

Date: September 24, 2017

**Re: The Regulation of Political Action Committees in the Funding of Elected Officials**

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**Introduction:** My name is Patrick Collins and I am a student of the College of Public Service and Community Solutions at Arizona State University. I have always followed politics very closely, and I enjoy analyzing what is happening in government at a local, state, and federal level.

**Statement of Issue:** The United States has a problem in the campaign fundraising process. It is a problem that is affecting everybody in this country, and is alienating elected officials from their constituency. The problem is the proliferation of Political Action Committees, or PACs, with the biggest problem being with Super Political Action Committees, or super PACs. According to the United States Federal Exchange Commission, super PACs are “committees that may receive unlimited contributions from individuals, corporations, labor unions and other PACs for the purpose of financing independent expenditures and other independent political activity.” There are several issues with this very broad definition. First, the fact that the contributions can be “unlimited” should be a red flag for any constituency, because this allows partisan mega donors to contribute to an official’s campaign, and have that official serve their interests ahead of the constituency’s. Additionally, these super PAC donations can be completely untraceable. These PACs take donor’s money, and then repackage and distribute it into campaigns, leaving regulatory agencies and the public at large in the dark. All this dark money can lead to partisan politics being played in the federal government, and forgetting the needs of the constituency. We saw this in action when the United States Senate was tasked with voting on a health care bill in July. It was the Senate’s second time voting on the bill, and we saw two senators, Dean Heller of Nevada and Jeff Flake of Arizona, stick with the party over the needs of the constituency. For Flake, the bill he voted yes on only had a 6% approval rating in Arizona, according to an Arizona Republic poll. Why would Jeff Flake vote for a bill that only a handful of Arizonans support. This was due, in part, to the PAC advertisements that were launched against the senators that voted no on the first bill. Flake is in a tight primary battle to hold on to his senate seat, and wouldn’t do anything that may make him unpopular within his party, or he’d be subject to PAC attack ads. This is just one example of a much larger issue. The United States Senate and House of Representatives needs to work on implementing regulations on these Political Action Committees, and return the power to the constituency’s elected officials are supposed to serve, and not have elected officials serving the interests of whoever has the most money.

In the 2016 election cycle, according to a report done by The Center for Responsible Politics, “2,394 groups organized as super PACs have reported total receipts of \$1,791,027,147 and total independent expenditures of \$1,061,703,002.” Those figures don’t even include PACs. When dealing with a billion dollar plus political organizations, it is easy for corruption to occur. Policy changes are needed to regulate the money that all these organizations control, to ensure a more open political process, a more informed voting population, and an improved, nonpartisan United States.

## **Policy Options:**

**1. Establish a new PAC that operates in every congressional district, and limit the activities of these congressional PACs:** All PACs as they exist now are partisan political organizations. This has led to the proliferation of special interest money being present in politics. This has corrupted officials, and made them lose sight of who they are supposed to represent. By establishing nonpartisan committees in every congressional district, you allow the interests of every district to be seen, on a district by district basis. This allows for the people of the district to put money into things that serve their interests, instead of the interests of who has the most money.

There should also be a limit on the actions of these committees. These PACs should only be involved in screening, endorsing, and supporting candidates. These PACs should not be taking political stances on issues, but instead just educating the constituency on the candidates they are expected to choose between.

**Advantages:** The advantages of enacting this policy is clear. It limits special interest money in political races, and allows the people of the district to fund interests that are important to the people of that district. It also gets politicians to focus on the needs and wants of the people of the district they represent, since the contributions they receive are exclusive to the district that they represent. It would also lead to a better-informed constituency, since all PAC advertising materials would be specific to the district's interests and issues. As the New York Times reported, "Such PAC's would meet a great need and fill a gap in the political process. It is sad that, in most Congressional districts, the only information regularly available to citizens that enables them to focus on issues in Congress that might concern them is the self-serving propaganda provided by Congressmen's newsletters." By establishing these nonpartisan committees, you can combat the national special interest PAC propaganda.

By limiting the action of these committees, it will fill a void in the current political landscape. It is impossible to find a place where you can get nonpartisan information on any candidate. By establishing these PACs and limiting their political activity, you are ensuring the PACs will remain nonpartisan and deliver only the facts on the candidates, and serve the district in a nonpartisan and faithful way.

**Disadvantages:** There are a few drawbacks to this plan. The first is funding. People may not be inclined to contribute to the local PAC, and mega donors would certainly not want to donate to PACs that don't serve their interests. After all, we cannot tell PACs how to spend their money, because the *Citizens United v. Federal Election Commission* Supreme Court case rules it as a first amendment right for these PACs to spend money as they wish. We can't require these national PACs and super PACs to fund their new, local, smaller PAC counterparts. Even if these national PACs did contribute to these local PACs, there's no guarantee that these local PACs would just become smaller arms of these PACs, and making the problem worse, not better.

Limiting the actions of these committees could be difficult, as these local committees could argue that their free speech rights granted in *Citizens United v. Federal Election Commission* case. In that ruling, it was decided that PAC money can be spent as it wishes, because these corporations have the same political free speech rights as any person, and that it is not the government's place to limit or infringe on campaign contributing by these PACs. These rulings could spell trouble for the interests of the local PACs, as it would probably require these PACs to follow the proposed guidelines, without any real law governing their activities.

**2. Establish a new federal tax section, in which all registered PACs have to register through. Then, make the organizations that register under this new heading be more public with their information:**

This solution would entail an addition to the United States tax code. It would require an addition that specifically has a section for political action organizations to register through, if they want to maintain their tax-exempt status. And after establishing this new heading, make the guidelines for disclosure as open as possible. By requiring PACs to disclose who they are taking money from, and where that money is going, it will eliminate the "dark money" in politics.

**Advantages:** The advantages to this solution are clear and numerous. For starters, establishing this new tax heading will allow the government to keep better tabs on all the actions of these political organizations. It also allows the people of this nation to do the same.

There are huge advantages to the added disclosures of this heading. By making the donations going into the PAC public, everyone can see what money is tied up in the PACs decisions. This thought is also present in the second part of the disclosure. By ensuring that PACs are disclosing where the money goes, voters can clearly see what is influencing the decisions of their elected representatives, and decide whether or not they agree or disagree with those campaign contributions from PACs. Overall, it would lead to a better-informed voting population, and would allow voters to elect the best person to represent them.

Also, by making all this information public, PACs may eliminate some of the shadier elements of their operations. By establishing these disclosures, it would eliminate any kind of hazy dark money in the political machine. All of it would be public, and these PACs may be pickier in the donations they accept and the money they put into campaigns.

**Disadvantages:** There are few disadvantages to making this information public. The first would be the overwhelming amount of paperwork that would have to be done on behalf on the PAC, and then processed by the government. With countless numbers of PACs, and 2,394 organized super PACs, that would require a lot of man hours to processed by the Federal Election Commission and Internal Revenue Service. It may simply be too expensive to have this solution implemented.

Additionally, there may be additional legal challenges to having all this information public. By having this information public, donors may establish corporations that give money to the PACs, and that would continue the problem trying to be addressed.

**3. Eliminate the PAC:** This solution is vast and harsh, but is a potential solution to the problem. By eliminating PACs altogether, we are eliminating the problem entirely.

**Advantages:** By eliminating the cover of a PAC, partisan mega donors and special interests would be more public in their donations to campaigns. This would enable voters to know exactly where their congressman's campaign money is coming from, since it didn't come from the cover of a PAC. This would also give voters a clear look into the congressman's interests, and whether he/she is serving their special interests, and not the interests of the constituency.

**Disadvantages:** The disadvantages of this plan are constitutional. It would need to be reviewed on whether or not eliminating the PAC is a violation of first amendment rights. The case for this solution that it doesn't limit donations, but instead changes the way people have to donate, with them being private instead of via PAC.

There is an inherent disadvantage to this solution by increasing private donations, as individuals have no responsibility to disclose political contributions. It would be solely on the candidates and the campaigns to disclose that information, and disclosing names, and it may be a violation of law to disclose contributions of private citizens and private corporations.

**Policy Recommendation:** On this issue, the recommendation is the second option: Establish a new federal tax section, in which all registered PACs have to register through. Then, make the organizations that register under this new heading be more public with their information. While this solution may be costly, it may be necessary to take on these costs to ensure more open elections, and allow the American people to be more informed when they vote for their representatives. In this case, the cost incurred is a necessary step to clear the gray areas surrounding Political Action Committees, and ensure the best results are possible in the elections of this country.

### **Implementation:**

**1. Pass an amendment to the tax code that requires PACs to register under the new federal tax-exempt heading:** This bill would simply require PACs to register under a new code, which would be setting up the second part of this solution. This bill would also close the old tax heading, ensuring that PACs do not and cannot re-register under the old heading that they currently use. The bill would also give PACs a six-month grace period, and that grace period would end on the last day of the fiscal year, to ease complicated tax documents. The new heading would be active the first day of the next fiscal year.

**2. Establish the new Campaign Contribution Commission:** Establish a commission consisting of people from the Federal Election Commission and Internal Revenue Service

to process these new tax documents. The IRS would be tasked with verifying the forms are correct and complete according to the new regulations put in place by the changes in the tax code. The Federal Election Commission would then be tasked with repackaging the information in the tax forms, and making them available to the American people. This new commission has two co-directors, one appointed by the Federal Election Commission, and one appointed by the Internal Revenue Service. This commission is nonpartisan, and is to only distribute the forms and documents relevant to PAC activity.

There will also be an extension of this commission of three federal judges, appointed by the Senate, to evaluate the effectiveness of the commission and the new regulations. It will also be tasked with ruling on issues where PACs may or may not have broken the new regulations, and to rule on matters where clarification of the code is necessary.

**3. Pass a law requiring the new heading be subject to public disclosure:** The second piece of legislation required to implement this solution would mandate that all the PACs that were required to register under this new heading. It would include mandates that PACs disclose all the source of all donations over five hundred dollars, and include that all donators that donate over five hundred total dollars be included in these filings. It would also require that all PAC donations to government entities be included in a disclosure. This would require the PACs to disclose all donations the PAC has made to any campaign, and it includes both direct and indirect contributions. “Direct contribution(s)” is defined as any money that went directly into a campaign’s fund. “Indirect contribution(s)” is defined as any activity that the PAC engaged in on behalf of a candidate. This includes any campaigning, either for the candidate or against their opponent, that the PAC engages in, without directly giving to the candidate. This filing would also require the PACs to separate those two things, so voters know exactly how much money was put into campaigns of the people they are voting for, indirectly and directly.

**4. Require a comprehensive report from the new Campaign Contribution Commission, including comprehensive information on PAC activity, after every midterm and general election:** This report will include general information on PAC contributions, and if there is reason for concern over the activity of PACs in election seasons. This will allow lawmakers to make changes to the code as new problem arise. It would also give Congress the ability to determine if PACs are acting fraudulently or illegally, and whether or not there is action required on behalf of the government.

**Evaluation Plan:** A policy implementation such as the one recommended here will require frequent reevaluations, and periodic corrective action. It is the responsibility of the Campaign Contribution Commission to evaluate the effect of PAC contributions, and ensure the most accurate data is available to review. It will be in conjunction with the judges of that commission to compile a comprehensive report every election season to review the tax aspects and the legality of PAC actions over the campaign season, relative to the new disclosure requirements.

The report will be made public, and the Senate will hold a special bipartisan hearing after every election report is released. The hearing will be co-chaired by the majority and minority leaders of

each party, to prevent partisan solutions to the problems that may appear. It will be eight people, including the chairmen. The hearing will be held to discuss issues that the senators find within the report, and if there are amendments required to shore up some weak spots within the tax code or within the commission. If it finds issues, it will introduce a bill that will amend those weaknesses, and then the bill will go through the lawmaking process. These evaluations will be conducted after every national election, and can be called in emergency situations by the majority and minority leaders of the Senate.

A successful implementation will mean that the commission did its duty to inform the American public. There is no established way to measure whether or not the information is being read by the people. However, due to the PACs having to disclose this information, and with the government closely watching their activity, PACs will be required to amend the shadier aspects of their operations, and become a more open form of political activism.

An unsuccessful implementation would mean that PAC reform never happened. If there are legal loopholes that have allowed PACs to work around the new regulations, then the implementation of this change would have failed.

There are ways to ensure a successful implementation, and it will require Congress to work closely with the Internal Revenue Service and the Federal Election Commission to ensure that this policy is written and implemented as strongly and as loophole free as it could be. Congress should write the policy, while the IRS and FEC should be providing their own suggestions and input on how to successfully write the law so it can be implemented without mass confusion on the part of the IRS or FEC.

**Conclusion:** Political action committees have poured billions into campaigns across the country for eighty years. Recently, the money they are spending has become more and more private, and it is leaving the American people in the dark. They are electing public officials that are being corrupted by the large amounts of money that PACs and special interests are giving them. By pursuing corrective actions and making the process more open, the government exposes both the sources of dark money and PAC funding, as well as exposing the special interests that are guiding the decisions of lawmakers across the country.

The resolution proposed here will allow the American people to make more informed voting decisions, will limit the shadier aspects of political action committees, and will lead the United States to more open and more informed elections, ensuring the prosperity of this country as it was meant to be: for the people and by the people.