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FOR JUSTICE

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June 6, 2013

The Honorable Joseph Foster
33 Capitol Street
Concord, NH 03301

Re: *Political Spending by Charitable Organizations in New Hampshire*

Dear Attorney General Foster:

I am writing on behalf of the Brennan Center for Justice at N.Y.U. School of Law¹ to urge you to use your powers as overseer of charities in New Hampshire to address the growing problem of election spending by secretive political groups that purport to be charitable organizations. By requiring politically active 501(c)(4) groups that raise money from New Hampshire residents to disclose their political spending, you can promote the interests of both the voters and charitable donors of New Hampshire.

Anonymous spending has played a large — and growing — role in recent elections, as donors have poured millions of dollars into groups that claim non-profit status to shield their donors' identities while spending millions on electioneering. At the federal level, in 2010, outside spenders that did not reveal any information about their donors spent 46.1% of the total amount spent by outside spenders — \$135.6 million.² In 2012, groups that don't disclose their donors spent a staggering \$333 million.³ Spending by these dark money groups has swelled in state elections as well. In 2010, less than \$60,000 of the more than \$3.5 million spent by tax-exempt groups in New Hampshire elections was disclosed to the Secretary of State's Office.⁴

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center's Money in Politics project works to reduce the real and perceived influence of money on our democratic values. N.Y.U. School of Law students Stephanie Bazell and Paula Vera assisted with the preparation of this letter.

² PUBLIC CITIZEN, 12 MONTHS AFTER: THE EFFECTS OF *CITIZENS UNITED* ON ELECTIONS AND THE INTEGRITY OF THE LEGISLATIVE PROCESS 10 (2011), *available at* <http://www.citizen.org/documents/Citizens-United-20110113.pdf>.

³ Ctr. for Responsive Politics, *Outside Spending*, OPENSECRETS.ORG, <http://www.opensecrets.org/outsidespending/> (last visited May 1, 2013).

⁴ Coal. for Open Democracy, *The Need for Full Disclosure Now: New Hampshire Citizens Must Regain the Right to Know Who is Bankrolling Their Elections 2*, *available at* <http://www.coalitionforopendemocracy.org/wp-content/uploads/2009/01/cod8pgdisclosurefinaldec17.pdf>.

Although federal regulators have been slow to act to require disclosure of political non-profits' funders, there are opportunities for state regulators to shine disinfecting sunlight on secretive election spending. New York Attorney General Eric Schneiderman, for example, recently promulgated new disclosure rules to bring political spending by dark money 501(c)(4) groups into the light. These rules, which took effect June 5, will create greater transparency in elections and help ensure both the integrity of charitable organizations and donors' confidence in them.⁵ Schneiderman's work on the issue has received widespread support among good government groups and other elected officials. I urge you to join Attorney General Schneiderman's efforts to promote political accountability by promulgating rules to require disclosure of political spending by New Hampshire charities.

A 501(c)(4) organization, unlike a 501(c)(3) non-profit, may spend some of its money on elections, but its primary purpose must relate to an overall mission of promoting social welfare — not politics. Under an informal IRS rule, this means a 501(c)(4) organization can spend a substantial portion of its budget on political expenditures and retain its nonprofit status.

Under federal election regulations, 501(c)(4) organizations may decline to disclose the identity of a donor unless that donor earmarks his or her money as being for a specific election-related project.⁶ Unsurprisingly, shrewd donors easily avoid this requirement.⁷ By passing money to super PACs through intermediary 501(c)(4) organizations that conceal their donors' identities, donors can also anonymously give to super PACs, even though these groups are required to report their contributors. In short, lax enforcement by federal regulators has allowed these organizations to flourish, leaving the public in the dark about who is funding the spending on elections.

Potential charitable donors can also be misled by loosely regulated 501(c)(4) organizations. Some organizations, for example, will seek solicitations by holding themselves out as being “grassroots,” “advocat[ing] for and against specific legislation at the state and federal levels,”⁸ and “mobilizing Americans . . . to ensure opportunity and freedom for the next generation.”⁹ Some of these organizations fail to mention that they spend millions of dollars worth of such donations on political ads.¹⁰ While large political non-profits such as

⁵ Press Release, N.Y. State Attorney General Eric Schneiderman, A.G. Schneiderman Adopts New Disclosure Requirements for Nonprofits That Engage in Electioneering (June 5, 2013), <http://www.ag.ny.gov/press-release/ag-schneiderman-adopts-new-disclosure-requirements-nonprofits-engage-electioneering>.

⁶ 11 C.F.R. § 104.20(c)(9).

⁷ Kim Barker, *How Nonprofits Spend Millions on Elections and Call it Public Welfare*, PROPUBLICA (Aug. 18, 2012, 11:25 PM), <http://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare>.

⁸ See AMERICANS FOR PROSPERITY, <http://americansforprosperity.org/> (click “DONATE” button at top of page) (last visited Jan. 7, 2013).

⁹ *About Us*, PRIORITIES USA, <http://www.prioritiesusa.org/about> (last visited Jan. 14, 2013).

Crossroads GPS and Priorities USA receive a great deal of media attention, even small organizations can be dangerous because they can use their lesser-known status and reduced scrutiny to easily obscure their political activity from potential donors.

Attorney General Schneiderman recently promulgated new regulations to bring transparency to this political spending. Under the regulations, a copy of which is attached for your reference, charities soliciting funds within New York State must disclose both the amount and the percentage of their expenses spent on elections, even if the elections occur in other states. Furthermore, any charity that spends at least \$10,000 on New York state or local elections must also disclose the identities of donors who contributed at least \$1,000 to the organization in the past year. Donors who specify that their funds are not to be used for political purposes are exempt from disclosure.¹¹ These rules will ensure greater transparency by informing voters about who is spending to influence their votes and will protect donors from having their funds unknowingly used in a manner with which they disagree, improving donor confidence in charities.

Similar rules can and should be implemented in New Hampshire. Among the Attorney General's duties in regulating New Hampshire charitable organizations is the making of "rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them."¹² This provision of New Hampshire law gives your office the power to require appropriate disclosure of political spending by charities operating within the state to ensure that the public is well informed about New Hampshire elections and that donors are not misled as to how their charitable donations will be used.

I hope that you will act swiftly to address the growing role of anonymous 501(c)(4) political spending. If there is any assistance that the Brennan Center can provide, please do not hesitate to contact me. Thank you for your time and consideration.

Respectfully submitted,



David Earley
Counsel

Attachment

¹⁰ See AMERICANS FOR PROSPERITY, *supra* note 8; see also Robert Maguire, Ctr. for Responsive Politics, *Obama's Shadow Money Allies File First Report*, OPENSECRETS BLOG (Jan. 8, 2013, 11:17 AM), <http://www.opensecrets.org/news/2013/01/obamas-shadow-money-allie.html>.

¹¹ N.Y. CODES R. & REGS. tit. 13, § 91.6 (c)(1)(i).

¹² N.H. REV. STAT. ANN. § 7:28(III).