



April 9, 2013

Honorable Sheldon Whitehouse  
Chairman  
Senate Judiciary Committee  
Subcommittee on Crime and Terrorism  
224 Dirksen Senate Office Building  
Washington, DC 20510

Honorable Lindsey Graham  
Ranking Member  
Senate Judiciary Committee  
Subcommittee on Crime and Terrorism  
152 Dirksen Senate Office Building  
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**Re: Current Issues in Campaign Finance Law Enforcement**

Dear Chairman Whitehouse and Ranking Member Graham:

The American Civil Liberties Union writes to offer comments in advance of today's hearing on current issues in campaign finance law enforcement, and we thank the subcommittee for its attention to this topic. Although the ACLU opposes campaign finance measures that violate the First Amendment, we strongly agree that constitutional campaign finance laws should be enforced vigorously and consistently to assure the integrity of our electoral, legislative and administrative systems at all levels of government.

We briefly comment on several specific issues below, highlighting a number of areas of common ground between the ACLU and proponents of campaign finance reform.

**1. Continue to Crack Down on Conduit Contributions**

The ACLU supports efforts by the Internal Revenue Service and other federal law enforcement agencies to investigate and prosecute conduit contributions, in which an entity or individual attempts to mask the true source of a direct political contribution by using a straw contributor. Even in a system of unlimited contributions, such transactions, which present a significantly heightened risk of outright bribery and limit the public's ability to properly gauge the loyalties of the candidates they support, are particularly pernicious. The ACLU has long recognized that the prevention of real or perceived corruption may present a compelling government interest that can support properly tailored restrictions on political activity.

There is little that is more corrupting than masking direct contributions to political candidates through the use of straw contributors.

## **2. Appropriately Enforce the Coordination Rules**

Many advocates on both sides of the campaign finance debate properly recognize that independent expenditure-only committees (“IECs”)—colloquially and inaccurately termed “Super PACs”—present a heightened risk of corruption when they coordinate their activities with a particular candidate. As the Supreme Court recognized in

providing services to the candidate. . . .”<sup>7</sup> Current regulations may need to be revised to cover other activities beyond those envisioned in the coordinated communications regulation.<sup>8</sup>

Similarly, although this presents significant First Amendment considerations and must be addressed with care, candidate communications with, or directed at, IECs raise additional concerns and may present another area where regulations could be tightened to promote public integrity without running afoul of the Constitution. During the last election cycle, several practices that were claimed not to present unlawful coordination raised heightened concerns of constitutionally relevant quid pro quo corruption. These included direct fundraising appeals by candidates to IECs, candidates making public statements about the value of IEC communications and candidates appearing in IEC promotional material.<sup>9</sup> Not only do these practices facilitate actual coordination through communications between the candidate and IEC staff, they also often spur donations to the IEC, which in certain cases—under the logic of





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cc: Members of the Senate Judiciary Subcommittee on Crime and Terrorism