

MYL PAC  
% Nick Staddon, Secretary  
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Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, DC 20463  
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Re: AO 2013-17 Tea Party Leadership Fund

November 12, 2013

Dear Commissioners:

Please accept this comment regarding AO 2013-15 Conservative Action Fund on behalf of Make Your Laws PAC, Inc. (MYL PAC).

In its request, the Tea Party Leadership Fund (TPLF) asks to be exempted from the FECA's disclosure requirements, claiming that disclosures would subject their contributors to reprisals, on the same basis as the exemption granted to the Socialist Workers Party (SWP).

MYL PAC supports all grassroots political activity, and enabling ordinary people to control political power is one of our core goals. Because transparency of our political process is necessary for the public to make informed decisions about policy, in general we strongly support the clear and public disclosure of political contributions and expenditures.

We also support balancing that interest in disclosure with the protection of individuals, to avoid chilling effects. Everyone should be free to express and promote their political views without fear of any violent or governmental reprisal.

We believe this balance is well captured in the *Buckley* decision.

As we have not evaluated the substantive merits of the TPLF's claims, we are not arguing for or against their request.

Rather, we would like to highlight three considerations that we feel should be addressed in any request for a reporting exemption: the elements of the Buckley exemption, a distinction between contributor and expenditure exemption, and the transitivity of exemptions.

### 1. *Elements of the Buckley exemption*

The *Buckley* exemption has three distinct elements:

1. reasonable probability
2. that the compelled disclosure of [its] contributors' names
3. will subject [the contributors] to threats, harassment, or reprisals from either Government officials or private parties

The first element — reasonable probability — is evaluated on a per-person basis.

The Democratic and Republican parties are both very large, and one could surely show that some of their members have been subject to threats, harassment, or reprisals for their political beliefs. Indeed, given their size, the absolute number of such individual reprisals probably far outstrips the number of reprisals towards SWP members.

However, taken as a whole, it is very unlikely that any given Republican or Democrat would face such consequences merely for having given to their respective party committees.

The second element — disclosure — is a question of incremental risk, i.e. whether someone would be more likely to be targeted because they are publicly listed as a contributor.

If someone's risk is based solely on other factors, and being publicly listed as a contributor does not increase their risk, then it would not justify withholding transparency. If being listed would subject someone to reprisals when they otherwise would not be, or significantly increase their risk, then this factor is met.

This also means that reprisals against entities who would be required to report anyway (like PACs and their treasurers<sup>1</sup>) are not covered by the *Buckley* exemption.

The third element — reprisals — covers violence, governmental harassment, and the like.

It does not include purely social or political consequences that are intrinsic to political debates in an open democracy.

### 2. *Draft A does not explain a basis for exempting non-contributions*

Draft A proposes that the TPLF be exempt from reporting "its itemized disbursements, its electioneering communications, and its independent expenditures". However, it does not explain why TPLF *payees* are vulnerable to reprisal.

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<sup>1</sup> We note that the SWP's exemption does not cover its treasurers' identities.

TPLF's contributors may be at risk when its advertising agencies and law firms are not, because the latter are not generally assumed to take any personal position about their clients' beliefs. We note that as a legal and management consultant for the TPLF, payments to Mr. Backer would be covered by the disbursement reporting exemption in Draft A.

Again, we have no position on whether Mr. Backer or other recipients of TPLF funds are subject to a reasonable probability of reprisal for their roles, and we hope they are not. We suggest simply that the Commission evaluate this question separately from the question of whether *contributors* are subject to a reasonable probability of reprisal.

### *3. Are disclosure exemptions transitive for conduits?*

As a non-partisan, conduit-focused PAC, we would like to know whether an exemption such as that granted to the SWP and requested by the TPLF would extend transitively to us. If one of our users would like to make an earmarked contribution to the SWP or the TPLF, would we also be exempt from reporting their identity (and/or the identity of the exempt recipient)?

If the Commission does not answer the question in this context, and we receive an earmark contribution request for an exempt entity, we will have to ask this in a later AOR, so that we can protect any of our users who are under a reasonable probability of reprisal.

We suggest even if the Commission does not answer the question now, it should consider this possibility as part of the full scope of disclosure exemptions.

If you have any questions or comments, please do not hesitate to contact me at [sai@makeyourlaws.org](mailto:sai@makeyourlaws.org) or (717) 469-5695.

Sincerely,  
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Make Your Laws PAC, Inc.