



May 3, 2011

Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

President Obama:

The Center for Competitive Politics is writing to express our concern over reports that you are considering signing an executive order forcing public disclosure of payments and donations made by government contractors and private citizens to independent organizations that are not political committees. We believe such an order would be seriously misguided, unworkable in practice, result in an unnecessary invasion of privacy, and is based on a fundamental misunderstanding of what information currently must already be disclosed.

The draft executive order dated April 13, 2011 states that “entities submitting offers for federal contracts” would be required to disclose “certain political contributions and expenditures” and that certification of compliance would be required as a condition of receiving a contract.

However, political contributions to candidates and political parties, and expenditures, are already disclosed to the Federal Election Commission or, in the case of certain 527 organizations, to the Internal Revenue Service, and are publicly available. Requiring entities bidding for federal contracts to file this information again would be duplicative and would not provide any information that is not already available to the public.

In addition, contributions made to independent organizations for the purpose of paying for political ads must be disclosed as well, and those organizations must file a report when they make an expenditure. So, there are no “political contributions and expenditures” that are not disclosed.

Instead, the order would force private citizens and companies to disclose membership dues and charitable donations they make to organizations that may engage in political speech in addition to their other activities. By doing so, it would impose substantial damages on citizen privacy, First Amendment rights, and the federal contracting process.

One major objection is that the terms of the executive order would go well beyond disclosure of contributions made to groups for the purpose of funding independent expenditures or

electioneering communications, which again is already required. Instead, citizens who donate to finance the general operations of an organization in order to aid their broad mission will have their support disclosed, resulting in their identification as funders of political ads that they had no intention of funding and may even oppose.

This would produce the odd result of an executive order that is supposed to promote transparency instead providing false information to the public.

Such an outcome would also violate the right to privately associate with organizations engaged in promoting social welfare, which is an important liberty protected by the First Amendment. In the landmark 1958 case *NAACP v. Alabama*, the Supreme Court rejected the state's claim that the NAACP must turn over its membership list.

By requiring individuals to disclose charitable donations that are not made with the intent of funding political speech, the executive order threatens to undermine the right to private association, making the order vulnerable to constitutional challenge.

Additionally, the executive order would actually achieve the exact opposite of what it purports to do, in that it makes it more likely and easier for contracts to be awarded or denied based on political and charitable contributions.

It is sometimes assumed that officeholders already know the source of funds for independent expenditures and electioneering communications, so disclosure merely makes the spending visible to the public. However, all the evidence suggests that political figures in fact do not know who is funding this political speech, but desperately want to find out.

The executive order proposed here would provide that information to officeholders, allowing them the opportunity to do what they could not effectively do before—reward or punish citizens and companies based on their political and charitable giving.

The Center for Competitive Politics strongly urges you to not issue an executive order that would strip citizens of basic privacy protections and First Amendment rights through a process that would give false information to the public while actually increasing the likelihood that partisan politics will intrude on federal contracting decisions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sean Parnell". The signature is fluid and cursive, with the first name "Sean" and last name "Parnell" clearly distinguishable.

Sean Parnell
President