



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-19-A
AGENDA ITEM
For the meeting of May 16, 2024

TO: The Commission
The Office of the Commission Secretary

FROM: Allen J. Dickerson *AD*
Commissioner

DATE: May 2, 2024

RE: Proposed Directive Concerning Requests to Withhold, Redact, or Modify
Contributors' Identifying Information

The Federal Election Campaign Act's disclosure requirements are not absolute. From the beginning, the Supreme Court has recognized that the compelled publication of individuals' political affiliations, street addresses, and employment details encroaches upon the "privacy of association and belief guaranteed by the First Amendment."¹ Such intrusions have survived constitutional scrutiny only because they have been found properly tailored to the government's legitimate interests.

But they are also subject to individual exceptions. Where a person or group can show "a reasonable probability" that compelled disclosure "will subject them to threats, harassment, or reprisals from either Government officials or private parties," they must be excused from disclosing the information that will put them at risk.²

This is a Constitutional right – Americans are entitled to make political contributions without being attacked, threatened, or fired – but it is also common sense and the right thing to do. The Commission has acted accordingly. For nearly twenty-five years, it granted a blanket exception permitting the Socialist Workers Party to protect its donors' confidentiality.³

¹ *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (*per curiam*) (collecting cases).

² *Id.* at 74.

³ Consent Decree, *Socialist Workers 1974 Nat'l Campaign Comm. v. Fed. Election Comm'n*, Case No. 74-1338 (D.D.C. 1979) and Advisory Ops. 1990-13 (Socialist Workers Party), 1996-46 (Socialist Workers Party), 2003-02 (Socialist Workers Party), 2009-01 (Socialist Workers Party), 2012-38 (Socialist Workers Party).

More recently, the Commission has granted several private requests to redact or substitute individual mailing addresses on Commission reports. This was commendable. But many individuals may not have been intrepid or connected enough to file a request. Given the importance of the rights involved, the country's charged political atmosphere, and basic principles of fairness, the Commission has an obligation to adopt a formal process providing for "a fair consideration" of particular contributors' situations.⁴

Accordingly, I propose that the Commission begin the process of drafting and adopting a regulation that will bring its procedures into compliance with the Constitution and relevant case law. In the interim, I propose the attached Directive as a stopgap measure until such a regulation can be adopted.

I ask that this matter be placed on the agenda for the Commission's May 16, 2024 Open Meeting.

⁴ *Buckley*, 424 U.S. at 74.

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE	
	REVOKES: N/A	NO. XX
	EFFECTIVE DATE: XX	
Requests to Withhold, Redact, or Modify Identifying Information		

The Federal Election Campaign Act requires political committees to file reports with the Commission identifying individuals and other persons making contributions over \$200 during the calendar year. According to FEC regulations, identification, in the case of an individual, includes his or her full name, mailing address, occupation, and the name of his or her employer.

Pursuant to binding judicial decisions, the Commission has granted as-applied exemptions to the Act’s reporting requirements where organizations or individual contributors demonstrate “a reasonable probability” that such disclosure “will subject [contributors] to threats, harassment, or reprisals from either Government officials or private parties.”¹

The Commission is issuing this directive to standardize its consideration of such requests.

1. The Commission will promulgate a standardized form whereby an individual contributor, or an organization acting on behalf of one or more of its contributors, may seek relief from the reporting requirements of the Act. The form will provide space to describe relevant identifying information, as well as options to request:
 - a. A letter from the Commission excusing the filing of enumerated identifying information;
 - b. Redaction, in whole or in part, of a contributor’s name, address, and employer information;
or
 - c. Modification, in whole or in part, of identifying information published by the Commission (by, for instance, replacing a contributor’s residential address with his or her business address).

¹ *Buckley v. Valeo*, 424 U.S. 1, 74 (1976) (*per curiam*); *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 198 (2003) (quoting same); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 367 (2010) (citing *McConnell* quoting *Buckley*). See also Consent Decree, *Socialist Workers 1974 Nat’l Campaign Comm. v. Fed. Election Comm’n*, Case No. 74-1338 (D.D.C. 1979) and Advisory Ops. 1990-13 (Socialist Workers Party), 1996-46 (Socialist Workers Party), 2003-02 (Socialist Workers Party), 2009-01 (Socialist Workers Party), 2012-38 (Socialist Workers Party).

2. Requestors will complete the form and append a sworn, notarized statement providing the factual basis for his or her belief that there is a reasonable probability that the relevant disclosure would subject the requestor to threats, harassments, or reprisals from either government officials or private parties.
3. Upon receipt of an application, the Office of General Counsel will immediately circulate the request and accompanying affidavit for approval on a 48-hour no-objection ballot. If any commissioner objects, the form shall be placed on the agenda for the next executive session of the Commission.
4. If the request is approved by tally vote, the Office of General Counsel, the Reports Analysis Division, and the Office of the Chief Information Officer shall, within five business days, notify the requester of the Commission's decision and effect any approved changes to the reports published by the Commission.
5. Alternatively, the Commission may, by four affirmative votes, approve, in whole or in part, the request made in the application and direct Commission staff to notify the requester of its decision and effect any approved changes to the reports published by the Commission.
6. In all cases, regardless of outcome, the applications submitted pursuant to this Directive shall be kept confidential and shall not be placed on the public record.

The Commission approved Directive Number XX on [REDACTED].