



Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group  
Joan Claybrook, President

October 31, 2006

The Honorable Mark Everson  
Commissioner of Internal Revenue  
Attention: Assistant Commissioner  
Criminal Investigation  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner:

Please see the enclosed complaint, filed pursuant to IRC § 6033, and attached Form 211 describing the failure of the U.S. Chamber of Commerce and Institute for Legal Reform to disclose political expenditures and grants to the IRS as required by law.

Pursuant to 26 U.S.C. 7623, Public Citizen respectfully requests a “reward for information relating to violations of internal revenue laws,” should this complaint lead to payment of back taxes owed by either the Chamber or ILR.

Given the extent of the activities described in our complaint, Public Citizen respectfully requests that the IRS begin this investigation as soon as possible in order to prevent further abuses by the Chamber or its affiliated organizations.

Sincerely,

Joan Claybrook  
President

Attachments (10)

Commissioner of Internal Revenue  
Attention: Assistant Commissioner  
Criminal Investigation  
1111 Constitution Avenue, NW  
Washington, DC 20224

## **COMPLAINT TO THE U.S. INTERNAL REVENUE SERVICE**

### **REQUEST FOR INVESTIGATION**

**Re: The U.S. Chamber of Commerce, EIN 53-0045720 and the Chamber's Institute for Legal Reform, EIN 52-2109035**

#### **COMPLAINT**

Public Citizen respectfully submits this Complaint and Request for Investigation demonstrating that the United States Chamber of Commerce and the Chamber's affiliated Institute for Legal Reform ("ILR"), which is a separate legal entity and files separate Form 990 tax returns, failed to report most taxable political expenditures and failed completely to report grants to other organizations for the years 2000 to 2004.<sup>1</sup> Court records, internal corporate documents, and media reports indicate that the U.S. Chamber and the ILR engaged in a massive effort – both through direct expenditures and through grants made to organizations that carried out the Chamber's wishes – to influence state attorney general and state supreme court races around the country, as well as to affect the outcomes of federal races. The apparent failure of the Chamber and ILR to provide accurate reports of their political expenditures likely resulted in tax avoidance. The organizations' failure to report political expenditures and to provide accurate accounting of their grants constituted a violation of their assertions to the IRS, under penalty of perjury, that their tax forms were "true, correct and complete" and circumvented the transparency objectives of rules requiring that the annual tax forms of 501(c) organizations be made publicly available. Finally, by

---

<sup>1</sup> See Institute for Legal Reform, Form 990, 2004, Statement 5 for verification of the relationship between the two organizations.

commingling funds, the organizations' financial relationship may be an attempt to minimize the tax liability of the relatively small amount of political expenditures they did report in the time period covered in this complaint.

## **SUMMARY OF COMPLAINT**

Public Citizen respectfully submits this complaint and requests a full investigation of the U.S. Chamber of Commerce and its affiliated Institute for Legal Reform for their failure to fully report political expenditures and for their complete failure to report grants. In particular, we allege the following violations:

### **1. Repeated Failure to Report Political Expenditures**

Line 81 of IRS Form 990 for 501(c) groups requires disclosure of "political expenditures." The IRS defines "political expenditures" as spending "intended to influence the selection, nomination, election, or appointment of anyone to a federal, state, or local public office, or office in a political organization."<sup>2</sup> Groups that attempt to influence elections are required to pay taxes, at the highest corporate rate, on their political expenditures or their organization's net investment income for the year, whichever is less. *See* 26 C.F.R. 1.527-6 (2006).

In each year from 2000 to 2003, the U.S. Chamber and ILR each did not report any political expenditures on line 81 of Form 990.<sup>3</sup> These reports contradicted the groups' own assertions, facts asserted in press reports and records of advertisements that clearly conveyed, both in content and timing, activities designed to influence the outcomes of elections.

The groups' failure to report any political expenditures in the years 2000 to 2003 represents a clear violation and warrants an investigation by the IRS.

---

<sup>2</sup> IRS Form 990 Instructions, Line 81, 2005, at p. 30.

<sup>3</sup> U.S. Chamber of Commerce, Form 990, 2000-2003, Line 81; Institute for Legal Reform, Form 990, 2000-2003, Line 81.

## 2. Underreporting of Political Expenditures in 2004

In 2004, both organizations disclosed political expenditures on line 81 for the first time in the years studied. The U.S. Chamber disclosed political expenditures of \$3,957,725; the ILR disclosed political expenditures of \$14,054,733.

This complaint will present compelling evidence that the groups' 2004 reports were inaccurate and, likewise, warrant investigation.

## 3. Failure to Report Grants to other Organizations

Line 22 of Form 990 requires groups to disclose “grants & allocations” and includes an instruction to “attach schedule.” In response to a query from Public Citizen about the definition of a grant, the IRS pointed to a federal regulation that defines grants as including “loans, program-related investments and payments to exempt organizations in furtherance of their exempt purpose.”<sup>4</sup>

There is overwhelming evidence that the U.S. Chamber and ILR contributed millions of dollars to groups between 2000 and 2004 that should have been reported as grants on line 22 of Form 990. Neither the U.S. Chamber nor the ILR reported any grants on line 22 of their Form 990 tax returns for any of the years studied. This complaint will provide compelling evidence that these representations were inaccurate and thus warrant investigation by the IRS.

---

<sup>4</sup> IRS spokeswoman Nancy Mathis, e-mail to Public Citizen Senior Researcher Taylor Lincoln, Aug. 5, 2004.

#### 4. Commingling of Funds by the U.S. Chamber and the ILR Warrants Investigation

The Chamber and ILR are two separate legal entities but shared a bank account as recently as Jan. 12, 2005.<sup>5</sup> The ILR reported \$38.3 million in revenue in 2004.<sup>6</sup> The ILR also reported that it had no investment or interest income.<sup>7</sup> It is unlikely that an organization with \$38.3 million in revenue would not have any investment or interest income. The Chamber reported an income of \$90.9 million in 2004, with minimal investment income.

The Chamber's accounting practices could have tax implications.

Electioneering expenditures of Section 501(c) groups, including the Chamber and IRL, are subject to taxes, at the highest corporate rate, on the lesser of: (1) their net investment income for the taxable year; or (2) their aggregate expenditures for non-exempt (*i.e.*, political) functions. *See* IRC § 527-6 (2006), 26 CFR 1.527-6 (2006).

The IRS should investigate whether the Chamber organization, writ large, commingled funds in a shared bank account for the purpose of hiding accurate reporting for tax avoidance.

#### Conclusion

The need for the IRS to police politically active Section 501(c) groups is greater now than ever. Increased campaign disclosure laws, including requirements that groups registered under Section 527 of the tax code disclose their contributions and expenditures, leave Section 501(c) as an appealing refuge for those that wish to influence elections without disclosure.

Moreover, a Chamber advisor once forecast that business groups in particular would expand their Section 501(c) electioneering activities. U.S. Chamber political advisor Tom Cole

---

<sup>5</sup> Anderson disclosed the organizations' use of a shared bank account in a deposition in the case of Voters Education Committee v. Washington State Public Disclosure Commission, Superior Court of Washington for King County, on Jan. 12, 2005, at 145-146. The text of his comments is available in Section IV.

<sup>6</sup> Institute for Legal Reform, Form 990, 2004.

<sup>7</sup> Institute for Legal Reform, Form 990, 2004, Statement 7.

said, “We’ll start having political shops inside the business groups. They will be full-service combat shops. I think you will ultimately see more soft money in ways that are more difficult to trace.”<sup>8</sup>

His forecast, this complaint will show, has become true. It is the responsibility of the IRS to ensure that 501(c) groups are not allowed to influence elections without abiding by the letter of the law.

### **IRS JURISDICTION AND ENFORCEMENT AUTHORITY**

The U.S. Chamber and ILR are permitted to engage in activities to influence elections, so long as these activities do not constitute the primary purpose of the organizations, but the Internal Revenue Code also requires that all such activities be reported to the IRS as taxable income on the organizations’ annual Form 990 tax returns. *See* IRC §§ 501(b), 527(e)(2), & 6033 (2005); 26 C.F.R. 1.527-6 (2006).

Political activity is defined by the Internal Revenue Code (IRC) as “the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.” *See* IRC § 527(e) (2) (2005). The IRS issued a revenue ruling containing a “facts and circumstances” test to determine whether communications should be considered political and has outlined 11 factors that point in favor of or against a communication being categorized as political.<sup>9</sup> For example, a communication is more likely to be considered political if it mentions a candidate’s name and discusses an issue that is relevant to an ongoing campaign. It is less likely to be considered

---

<sup>8</sup> Peter H. Stone, “New Channels for Campaign Cash,” *National Journal*, Feb. 23, 2002.

<sup>9</sup> Internal Revenue Bulletin: 2004-4, Internal Revenue Service, Jan. 26, 2004.

political if it mentions a candidate only as a public official who is in a position to act on a specific matter that the organization hopes to influence, such as an upcoming vote in Congress or a pending executive action.

In addition, the IRC through the Code of Federal Regulations mentioned above, also requires tax exempt organizations to report grants on line 22 of Form 990. IRS Reg. § 53.4945-4(a) (2) defines grants as “including, but not limited to, such expenditures as scholarships, fellowships, internships, prizes, and awards. Grants shall also include loans, program-related investments and payments to exempt organizations in furtherance of their exempt purpose, whether or not solicited.”

The Internal Revenue Service within the Department of Treasury is the agency responsible for enforcing violations involving nonprofit organizations for tax avoidance and failure to accurately disclose information on Form 990. Failure to report political expenditures and grants would clearly fall within the agency’s jurisdiction. The IRS has the authority to fine a Section 501(c) organization for failure to disclose all the information required on Form 990 tax return, to collect back taxes, to issue a cease-and-desist order, and to require submission of the missing information.

## **ARGUMENT**

### **I. The U.S. Chamber and ILR Failed to Report Any Political Expenditures from 2000 to 2003.**

#### **A. The Chamber and ILR Failed to Report Any Political Expenditures in 2000**

In 2000, neither the U.S. Chamber nor the ILR reported any political expenditures on line 81 of their Form 990 tax returns. This claim is contradicted by the Chamber’s own assertions, as

reported in the press; by the content of television ads sponsored by the Chamber in 2000; and by opinions of a federal judge and a state elections commission.

Despite its failure to report any political expenditures, the Chamber took credit for winning 15 out of 17 state-level supreme court contests in 2000, the *National Journal* reported.<sup>10</sup> The Chamber claimed that it spent \$6 million to affect a handful of judicial contests that year, the *Associated Press* reported.<sup>11</sup> “We’re absolutely committed to being involved in judicial races,” Institute for Legal Reform President Jim Wootton said to the AP.<sup>12</sup> “We’re expecting that with a greater focus on judicial election and selection, the business community will stop leaving the selection and election of judges to the trial lawyers,” Wootton also told the AP.<sup>13</sup>

There is substantial evidence of unreported political expenditures in several states. Evidence pertaining to Mississippi, Ohio, and Michigan in 2000 is listed here:

#### 1. Mississippi

The Mississippi secretary of state estimated that the Chamber spent nearly \$1.2 million to affect Mississippi judicial contests in 2000.<sup>14</sup>

In that election season, the Chamber ran advertisements in support of then-Mississippi Chief Justice Lenore Prather, who ended up losing her race to Chuck Easley.<sup>15</sup> Prather asked the group to withdraw the ads, but her request was to no avail.<sup>16</sup> Another Chamber-backed candidate,

---

<sup>10</sup> “Targeting the State-Level Supremes,” *National Journal’s Congress Daily*, Jan 28, 2004.

<sup>11</sup> Associated Press, “Chamber’s Ad Efforts Failed in Ohio, Worked in Other States,” (Memphis, Tenn.) *Commercial Appeal*, Nov. 9, 2000.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Mark Kozlowski, “Regulating Interest Group Activity in Judicial Elections,” Brennan Center for Justice at NYU School of Law, 2002, at 3; Sid Salter, “Four High Court Posts Contested As Campaign Costs Soar,” (Jackson, Miss.) *Clarion-Ledger*, April 11, 2004, at 1G.

<sup>15</sup> “Tort Reformers Gain in Judicial Elections,” *Federal and State Insurance Week*, Nov. 13, 2000.

<sup>16</sup> *Id.*



Keith Starett, was also unsuccessful in his bid for the state's highest court.<sup>17</sup> Two incumbents whom the Chamber supported in advertisements, Justices Jim Smith and Kay Cobb, were victorious.<sup>18</sup> Ads praising incumbent Kay Cobb told viewers:

She's Kay Cobb and she stands up for us on Mississippi's Supreme Court. Kay Cobb believes justice [should] be swift. That's why she's worked to end the judicial backlog. And Kay Cobb knows justice must be certain. That's why she's fought to eliminate endless appeals and ensure death penalty cases are tried promptly. At the Bureau of Narcotics, she helped punish the drug pushers who victimize our children. And she brings common sense to the Supreme Court. Justice Kay Cobb.<sup>19</sup>

Ads run in favor of Prather labeled her as a "fair and independent voice for Mississippi."<sup>20</sup> The ads also touted her as the first woman to serve on the state Supreme Court.<sup>21</sup> The ads referred viewers to a Web site, [www.LitigationFairness.org](http://www.LitigationFairness.org), which directed visitors to two Chamber-backed candidates' Web sites (those of Prather and Smith) but not to their opponents' sites, under the heading "Mississippi Candidate Information."<sup>22</sup> After seeing Chamber-sponsored ads critical of Frank Valor, the Democratic challenger to Smith, Smith sent a letter to the Chamber asking the group to pull the ads because he said they "go beyond what I consider acceptable and proper in a race for the Supreme Court."<sup>23</sup>

In 2000, the fact that the Chamber and ILR intended to use these expenditures to influence the election was uncovered in litigation. When the state of Mississippi sought to enforce reporting requirements and electoral spending limits under state law, the Chamber filed suit in federal court, claiming that its First Amendment rights were threatened.<sup>24</sup> A federal district court sided with the state, concluding that the ads "contain no true discussion of issues ... although the words 'vote for

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Campaign Media Analysis Group (CMAG) Reports, 2000.

<sup>20</sup> Chamber of Commerce of the U.S. v. Mike Moore, 288 F.3d 187, 213, April 5, 2002.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> "Hinds Judge Orders U.S. Chamber Ads Stopped in One Race," Associated Press, Nov. 4, 2000.

<sup>24</sup> Chamber of Commerce of the U.S. v. Mike Moore, 288 F.3d 187, 213 (April 5, 2002).

the candidate' do not appear anywhere in the advertisements, no reasonable viewer would construe the advertisements otherwise."<sup>25</sup>

The Fifth Circuit Court of Appeals overturned the district court on a First Amendment claim, but the First Amendment holding that was the basis for its decision has no relevance to IRS authority to enforce federal tax law against the Chamber for these expenditures. As the district court concluded, the ads were clearly intended to influence the outcomes of elections and therefore fall within the IRS standard for disclosure of political expenditures.<sup>26</sup> The IRS has a right to regulate such communications – regardless of whether they include express advocacy language – because one's right to operate within Section 501(c) of the tax code is not constitutionally protected, as IRS Commissioner Mark Everson noted in a September 2006 television interview.<sup>27</sup>

In fact, in the course of this litigation, the Chamber itself admitted that these ads were intended to influence the outcomes of elections. In response to a November 2000 Supreme Court ruling that Mississippi was not allowed to prevent the Chamber from running its ads, Chamber president Tom Donohue declared, "[t]hese ads provide crucial information to the citizens of Mississippi on the impact of judicial elections on jobs and justice and are protected under the First Amendment."<sup>28</sup> Regardless of whether the ads were protected by the First Amendment, Donohue's words – "on the impact of judicial elections" – indicate that the Chamber's ads were clearly intended to influence the outcomes of elections. Therefore, those expenditures should have been disclosed on line 81.

---

<sup>25</sup> "Tort Reformers Gain in Judicial Elections," *Federal & State Insurance Week*, Nov. 13, 2000.

<sup>26</sup> *Id.*

<sup>27</sup> IRS Commissioner Mark Everson interview with Chris Matthews, MSNBC's *Hardball*, Sept. 25, 2006. (Everson said: "First, religious liberty and freedom of speech, those are underpinnings of our society, of our democracy. You have a constitutional right to that. But there is no constitutional right to a tax exemption.")

<sup>28</sup> "U.S. Chamber Praises Scalia for Allowing Mississippi Ads," U.S. Chamber Release on Nov. 7, 2000.

## 2. Ohio

Also in 2000, the ILR reportedly paid nearly \$1 million for advertisements attacking Ohio Supreme Court Justice Alice Robie Resnick.<sup>29</sup> After another group running ads in that contest, Citizens for a Strong Ohio, was forced by the Ohio Elections Commission to pull its ads pending an investigation, a strikingly similar ad was aired the next day by the U.S. Chamber.<sup>30</sup>

One Chamber ad that appeared in the contest contrasted Resnick with her opponent, Terry O'Donnell:

What's being said about Judge Terry O'Donnell? 'Highly recommended.' 'One of Cleveland's toughest justices.' 'Thoughtful and respected.' 'A reputation for integrity and intelligence.' And Alice Resnick? 'An unseemly willingness to politicize her office.' 'Lacks judicial temperament.' 'Blind to the ethical compromises of taking 78 percent of her contributions from trial lawyers who get wealthy on settlements affirmed by the Supreme Court.' O'Donnell and Resnick. Big differences.<sup>31</sup>

Another ad strongly suggested that Resnick's votes were for sale to her campaign contributors:

Alice Resnick, she's taken over \$750,000 in contributions from personal injury lawyers, and she rules with them nearly 70 percent of the time. She took over \$20,000 from one influential contributor. On one important vote she cast, after that same contributor sent [a] letter of complaint, Alice Resnick was the only Supreme Court justice to reverse her own vote. Resnick, voting with her contributors, and even changing her vote after they complain.<sup>32</sup>

A protracted legal struggle ensued over the year 2000 activities of the Chamber and Citizens for a Strong Ohio. In May 2003, the Ohio Elections Commission fined the Chamber \$1,000 for violating state election law.<sup>33</sup> Most notable was the Commission's conclusion about the degree of the Chamber's electioneering activities in Ohio in 2000. The Commission ruled that it

---

<sup>29</sup> Doug Oplinger, "Supreme Court Race to Alter Ohio Politics Attack Ads Aim to Create Business-Friendly Bench," *Akron Beacon Journal*, Nov. 3, 2000.

<sup>30</sup> Bob Edwards and Peter Overby, "Supreme Court Race in the State of Ohio," National Public Radio, Nov. 3, 2000.

<sup>31</sup> Campaign Media Analysis Group (CMAG) Reports, 2000.

<sup>32</sup> Campaign Media Analysis Group (CMAG) Reports, 2000.

<sup>33</sup> "U.S. Chamber Campaign Ads Violated State Law, Agency Rules," Associated Press, April 26, 2003.

was “undeniable” that ads the Chamber broadcast in 2000 were “advocating the election of” judicial candidates Deborah Cook and Terry O’Donnell in violation of Ohio law.<sup>34</sup>

The Chamber targeted Resnick because she was part of a 4-3 majority deemed “anti-business” for declaring unconstitutional a legislative overhaul of Ohio’s civil justice system that would have severely restricted consumer access to the courts, according to a press report.<sup>35</sup>

Although Resnick won her election, Chamber-supported Justice Deborah Cook defeated her challenger, Democrat Tim Black.<sup>36</sup> One U.S. Chamber-sponsored television ad made clear that Cook was the group’s choice:

Deborah Cook and Tim Black, compare. Justice Cook is an experienced Ohio Supreme Court justice. Tim Black is a municipal court judge who has never heard an appeal. On education, Deborah Cook has required that instructors who are paid actually have to teach. And Justice Cook regularly rules on important death penalty cases. Tim Black has never ruled on a death penalty case, but he has ruled on a lot of traffic cases. Supreme Court Justice Deborah Cook and Municipal Judge Tim Black. Big difference.<sup>37</sup>

### 3. Michigan

The Chamber disseminated messages that appeared intended to influence at least 22 congressional contests in 2000.<sup>38</sup> Michigan featured prominently. The Chamber spent over \$1 million in the Michigan U.S. Senate race pitting challenger Debbie Stabenow against Republican incumbent Senator Spencer Abraham.<sup>39</sup>

---

<sup>34</sup> Common Cause Ohio v. United States Chamber of Commerce, Ohio Elections Commission, Case No. 2000E-058 (2003).

<sup>35</sup> Catherine Candisky, “High Court Races, Once Dignified, Now Down, Dirty,” *Columbus Dispatch*, Nov. 1, 2000, at 1A.

<sup>36</sup> “Tort Reformers Gain in Judicial Elections,” *Federal & State Insurance Week*, Nov. 13, 2000, see note 9.

<sup>37</sup> Campaign Media Analysis Group (CMAG) Reports, 2000.

<sup>38</sup> Public Citizen analysis of the New Stealth PACs database, which chronicled electioneering activities of 501(c) groups from 2000 to 2004. (Available at [www.stealthpacs.org](http://www.stealthpacs.org))

<sup>39</sup> Public Citizen’s analysis of 2000 Buying Time database.

Pharmaceutical companies, according to the *Wall Street Journal*, gave the Chamber more than \$10 million to run ads in the 2000 congressional races.<sup>40</sup> Many of the ads, such as the one cited below, criticized candidates for supporting a Medicare prescription drug plan opposed by the Chamber and major drug companies:

Debbie Stabenow has prescribed a drug coverage plan for seniors. It pushes millions of seniors into a government-run plan. It puts the private coverage that nine million seniors already have at risk. It puts Washington bureaucrats in charge of what medicines you get and it jeopardizes the entire Medicare system. Call Debbie Stabenow and tell her that Michigan doesn't want the bad medicine she's prescribing.<sup>41</sup>

## **B. The Chamber and ILR Failed to Report Any Political Expenditures in 2002**

In 2002, neither the U.S. Chamber nor the ILR reported any political expenditures on line 81 of their Form 990 tax returns. The inaccuracy of the groups' reporting was evidenced by the Chamber's own public statements about its 2002 strategy and its post-election day claims.

The Chamber said publicly that it planned to spend \$40 million on political campaigns that year, with the money equally divided between congressional and state-level attorney general and judicial races.<sup>42</sup> The Chamber predicted that it would spend at least \$20 million on 35 attorney general and judicial races.<sup>43</sup> After election day, the Chamber issued a press release claiming that it had "devoted manpower and money in key U.S. House and Senate races in a successful effort to elect pro-business candidates – putting 50 people on the ground in 32 states, sending 2 million pieces of mail and placing 1 million phone calls, as well as election day turnout calls in four states."<sup>44</sup>

---

<sup>40</sup> Jim VandeHei, "Some Members Can Hide Behind Chamber's Name to Pursue Private Ends," *Wall Street Journal*, Sept. 11, 2001, at A1.

<sup>41</sup> Campaign Media Analysis Group (CMAG) Reports, 2000.

<sup>42</sup> Brian Tumulty, "U.S. Chamber to Spend \$40 million on '02 Elections," Gannett News Service, Jan. 15, 2002.

<sup>43</sup> *Id.*

<sup>44</sup> U.S. Chamber of Commerce Press Release, "Chamber Highlights Successful Pro-Business Election Effort, Business GOTV Behind Mid-Term Election Victories," Nov. 6, 2002.

“Our candidates won because our issues are the ones that matter with voters,” said U.S. Chamber President and CEO Thomas Donohue. “We took a page from our opponent’s playbook and made sure every voter knew where the candidates stood on our issues.”<sup>45</sup>

The Chamber’s release said its “Institute for Legal Reform worked closely with local chambers and supporters of common-sense civil justice reform to educate the public on the importance of having state judges and attorneys general who enforce the rule of law with integrity and impartiality.”<sup>46</sup>

A quotation in the press release by Donohue indicated that the Chamber was involved in at least 17 contests in which it achieved a desired outcome: “The election of as many as 17 attorney general and state supreme court justice candidates who are committed to a reasonable and balanced liability system will mean continued strides to make state legal systems fairer for everyone.”<sup>47</sup>

The *National Journal* reported that the Chamber and Business Roundtable “working with GOP consultants chalked up an impressive record in winning 17 out of 18 races where they jointly backed pro-business candidates for top judicial posts in states such as Delaware, Florida and Illinois.”<sup>48</sup>

The Chamber and Business Roundtable dubbed their joint effort to affect attorney general and judicial races the “Litigation Fairness Project.” The Project spent close to \$12 million on races in Delaware, Florida and Illinois, the *National Journal* reported.<sup>49</sup>

Although the Chamber vowed to spend millions to help elect business-friendly candidates in the 2002 elections, the group appeared to engage in a strategy of keeping its fingerprints off the

---

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> U.S. Chamber of Commerce Press Release, “Chamber Highlights Successful Pro-Business Election Effort, Business GOTV Behind Mid-Term Election Victories,” Nov. 6, 2002.

<sup>48</sup> “Inside Washington,” *National Journal*, Nov. 9, 2002.

<sup>49</sup> *Id.*

activities it financed that year, in contrast to its strategy in 2000. Speaking about the change in tactics, ILR President Jim Wootton said, “We are going to give some support to some groups but we’re not going to comment on which ones in which states. Our preference is that people in the states who have an interest are leading the educational efforts.”<sup>50</sup>

By mid-August 2002, the Chamber had already reportedly raised more than \$20 million in contributions to help elect business-friendly judges around the country.<sup>51</sup>

## **II. The Chamber and ILR Underreported Political Expenditures in 2004**

In 2004, the U.S. Chamber of Commerce and ILR reported political expenditures on their Form 990 tax returns for the first time in the years 2000 to 2004.

That year, the U.S. Chamber reported on line 81 that it spent \$3,957,725.<sup>52</sup> The ILR reported \$14,054,733 on line 81.<sup>53</sup> But evidence strongly suggests that the combined \$18,012,458 in reported political expenditures was far lower than the actual political expenditures of the two Chamber entities.

The Chamber contributed \$3 million to the November Fund, an organization registered under Section 527 of the tax code, the category reserved for organizations that are engaged in influencing the outcomes of elections.<sup>54</sup> Such contributions, by the IRS definition, would need to

---

<sup>50</sup> Elizabeth Amon, “Ugliness Declines in States’ Judicial Campaigns,” (GA) *Daily Reporter*, Nov. 5, 2002; Elizabeth Amon, “State Judicial Races are Less Nasty – But Still Costly,” *The Recorder* No. 210, published by American Lawyer Media, Oct. 29, 2002.

<sup>51</sup> Philip Gailey, “Can’t Take the Politics out of Elections, Even for Judges,” *St. Petersburg Times*, Aug. 18, 2002, at 3D; Peter H. Stone, “New Channels for Campaign Cash,” *National Journal*, Feb. 23, 2002.

<sup>52</sup> U.S. Chamber of Commerce, Form 990 for 2004, line 81(a).

<sup>53</sup> Institute for Legal Reform, Form 990 for 2004, line 81(a).

<sup>54</sup> The November Fund, Form 8872, Schedule A, November 2002. The IRS describes a group subject to 527 as “a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function. The exempt function of a political organization is influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization.”

be disclosed as political expenditures. The November Fund was formed to run ads attacking vice presidential candidate John Edwards.<sup>55</sup>

Given that \$3 million of the Chamber's political expenditures are accounted for in its contributions to the November Fund, if the Chamber's Form 990 line 81 disclosure of \$3,957,725 is accurate, only \$957,725 could have been spent on its other 2004 political activities.

Overwhelming evidence – most notably an assertion by Chamber President Thomas Donohue – contradicts that aspect of the Chamber's tax form representations. In a "President's Update" memo following election day, Donohue told his board:

Combining [Chamber] activities with ILR's voter education efforts in 16 state supreme court and attorney general contests, as well as our targeted campaign to make legal reform a factor in the presidential race, the Chamber invested up to \$30 million in the November 2nd elections....In House and Senate races, the Chamber endorsed 269 candidates and 249 of them won. But, the real story is what happened in the select number of close, very tough races that we targeted. In the House, we targeted 28 races and were successful, in 20. We targeted nine Senate contests and were successful in seven."<sup>56</sup> [Emphasis added]

Anything approaching \$30 million in expenditures to influence the year's elections would be far greater than the \$18 million that the two Chamber entities reported to the IRS, and dwarf the shade under \$4 million that the U.S. Chamber itself disclosed to the IRS.

The actual figure may have been even higher than \$30 million. The *Los Angeles Times* reported that "informed sources" estimated the group's expenditures to influence the 2004 elections at a figure approaching \$40 million.<sup>57</sup>

The Chamber said in a press release issued shortly after election day that it "deployed 215 people in 31 states, sent out 3.7 million pieces of mail, made 5.6 million phone calls and sent more

---

<sup>55</sup> Peter Wallsten, "Lobbying Tab is \$1.1 Billion for Half a Year," *Los Angeles Times*, Dec. 29, 2004, at 18.

<sup>56</sup> Letter from U.S. Chamber President Thomas Donahue to the U.S. Chamber Board of Directors, "President's Update – November 2004," Dec. 6, 2004.

<sup>57</sup> Tom Hamburger, "Business Groups Invested in Races, Now Wait for Returns," *Los Angeles Times*, Nov. 8, 2004.



than 30 million e-mail messages on behalf of candidates...The Chamber devoted significant additional efforts in nine close Senate races and 28 House races.”<sup>58</sup>

Information available about the Chamber’s effort in individual races further erodes the Chamber’s claim that it held political spending to slightly less than \$1 million aside from its contributions to the November Fund.

In congressional races, the Chamber earmarked \$1 million to derail the re-election bid of Sen. Tom Daschle (D-S.D.).<sup>59</sup> Daschle ended up losing to former U.S. Rep. John Thune. One ad told voters:

Doctors driven out of rural America by skyrocketing insurance rates, leaving the sick nowhere to turn. The crisis is spreading. South Dakota may be next. And where’s Tom Daschle? In Washington, siding with the wealthy trial lawyers. Tom Daschle killed medical malpractice lawsuit reform, increasing costs, driving doctors out of rural America, leaving patients without care. Tom Daschle, more interested in scoring political points than solving our problems. Paid for by the U.S. Chamber of Commerce.<sup>60</sup>

The Chamber reportedly spent more than \$500,000 promoting North Carolina Rep. Richard Burr (R-N.C.) in his effort to win election to the U.S. Senate.<sup>61</sup> The Chamber also reportedly spent more than \$100,000 on television ads favoring Rep. James DeMint (R-S.C.) in his Senate bid.<sup>62</sup>

The ads told voters:

No one will do more for South Carolina’s workers than Congressman Jim DeMint, creating jobs and economic security for our families. He’s lowered taxes on working families to help create better-paying jobs. DeMint has been a leader for South Carolina’s future and our families. How do we know? We are the United States Chamber of Commerce, and jobs are our business. Call Jim DeMint. Thank him for fighting for our families and South Carolina jobs.<sup>63</sup>

---

<sup>58</sup> U.S. Chamber of Commerce Press Release, “Chamber Highlights Successful Pro-Business Election Effort: Business Drive to Get-out-the-Vote behind election Victories,” Nov. 3, 2004.

<sup>59</sup> Jonathan Salant, “GOP gets Backing from U.S. Chamber; Lobby Giving Record Amount to Candidates for Causes it Favors,” Bloomberg News, Sept. 26, 2004, at 1D.

<sup>60</sup> “U.S Chamber Takes on Daschle,” *The Hotline, National Journal Group Inc.*, Aug. 23, 2004.

<sup>61</sup> Mandy Locke, “Burr Vows to Get to Work,” *Raleigh Observer*, Nov. 4, 2004, at A8.

<sup>62</sup> Meg Kinnard, “GOP Candidates Fill Airwaves in S.C. Senate,” *National Journal*, May 10, 2004.

<sup>63</sup> *Id.*

The Chamber poured \$2.3 million into political committees – including the Illinois Republican Party and the Illinois Civil Justice League – that supported Illinois Supreme Court candidate Lloyd Karmeier.<sup>64</sup>

In Washington state, the Institute for Legal Reform funneled \$1.5 million to a group called the Voters Education Committee, which ran ads opposing Democratic attorney general candidate Deborah Senn, just before Senn’s primary.<sup>65</sup> (Senn won the primary election but lost the general election.) The Voters Education Committee was compelled to disclose the Chamber/IRL as the source of its funding by Washington State Public Disclosure Commission.<sup>66</sup>

One Voters Education Committee ad said:

Who is Deborah Senn looking out for? As Insurance Commissioner Senn suspended most of a \$700,000 fine against an insurance company in exchange for the company’s agreement to pay for four new staff members in Senn’s new office. Senn even tried to cover up the deal from state legislators. The *Seattle Post Intelligencer* said Senn’s actions easily could lead to conflict of interest abuses. Deborah Senn let us down. Log on to learn more.<sup>67</sup>

The ILR also contributed \$1 million to Citizens for a Strong Ohio, an Ohio 501(c) group that spent close to \$3 million supporting candidates for that state’s Supreme Court.<sup>68</sup>

The Chamber’s activities in 2004 also won it status as a “force” within the Republican Party, according to the *Wall Street Journal’s* Alan Murray. “Bush-Cheney officials say the Chamber, under Mr. Donohue’s sway, has become a powerful force in the party, financing the

---

<sup>64</sup> Deborah Goldberg, Sarah Samis, Edwin Bender, and Rachel Weiss, “The New Politics of Judicial Elections 2004: How Special Interest Pressure on Our Courts Has Reached a ‘Tipping Point’ – and How to Keep our Courts Fair and Impartial,” Published by the Brennan Center for Justice, the Institute for Money in State Politics, and Justice at Stake (2004), at 19.

<sup>65</sup> David Postman, “Chamber Ads Rile State Groups,” *Seattle Times*, Sept. 22, 2004.

<sup>66</sup> *Id.*

<sup>67</sup> Field reports provided to Public Citizen.

<sup>68</sup> Bruce Freed and Jamie Carroll, “Hidden Rivers: How Trade Associations Conceal Corporate Political Spending and Its Threat to Shareholders,” Center for Political Accountability (2006), at 28.

November Fund and also working aggressively in as many as 30 congressional races,” Murray wrote in the run-up to the 2004 elections.<sup>69</sup>

### **III. The U.S. Chamber and the ILR have Failed to Report Grants made to other Organizations as Required by Law**

Line 22 of Form 990 requires groups to disclose “grants & allocations” and to attach a schedule of such grants. In response to a query from Public Citizen about the definition of a grant, the IRS pointed to a federal regulation that defines grants as including “loans, program-related investments and payments to exempt organizations in furtherance of their exempt purpose.”<sup>70</sup>

The Chamber and the ILR failed to report making any grants in each year from 2000 to 2004.

A Chamber official acknowledged in a January 2005 deposition that the group had partnered with at least six outside groups, although he refused to name the recipients.<sup>71</sup> While the Chamber has been unwilling to disclose, in tax reforms or other mediums, the specifics of its grant making activities, two 501(c) organizations – the American Taxpayers Alliance and Citizens for a Strong Ohio – reported accepting money from the U.S. Chamber, either in their disclosures to the IRS or voluntarily to the public. Separately, several political committees reported receipt of political contributions from the U.S. Chamber between 2000 and 2004. While it is unclear if the letter of the law compels disclosure of contributions by a 501(c) group to political committees, such disclosure almost certainly falls within the intent of disclosure laws set out for 501(c) groups.

---

<sup>69</sup> Alan Murray, “Political Capital: Wary Big Business is Loath to Speak on Bush’s Behalf,” *Wall Street Journal*, Oct. 26, 2004, at A4.

<sup>70</sup> IRS spokeswoman Nancy Mathis, e-mail to Public Citizen Senior Researcher Taylor Lincoln, Aug. 5, 2004.

<sup>71</sup> Voters Education Committee v. Washington State Public Disclosure Commission, Superior Court of Washington for King County, No. 04-2-23551-1 SEA, deposition of Robert Engstrom, Jan. 11, 2005, at 112.

The Chamber's refusal to disclose grants is strategic. The group's electioneering activities frequently elicit criticism from local media, political observers and candidates. Prior to election day 2004, Sean McBride, the Chamber's vice president for communications, refused to provide more specific data on areas where the Chamber was active in state supreme court or attorney general races other than say it was in "20-some" states, including Ohio.<sup>72</sup> "It doesn't help the purpose of our program to give too much information," he said.<sup>73</sup>

#### **A. The Chamber and ILR Used Grants for Covert Political Expenditures**

In a deposition taken on Jan. 11, 2005, ILR Vice President of Political Affairs Robert J. Engstrom acknowledged the group's practice of working with outside organizations. "[s]ometimes we chose to do the activity in our own name, other times we chose not to do it in our own name," Engstrom said.<sup>74</sup> The context of the line of inquiry makes clear that "activity" refers to the broadcast of advertisements.

Elsewhere in the deposition, Engstrom was asked: "There have been other occasions since the 2000 campaign where the U.S. Chamber or the Institute has used partners in their aggressive voter education campaign, correct?"

**Answer:** Right.

**Question:** And approximately how many partners have been used over the last four years?

**Answer:** How many times or how many partners?

**Question:** How many times?

**Answer:** 10s, probably -- in the last, you said two years?

**Question:** Last four years.

**Answer:** Last four years. Probably, oh, 6 to 10 partners.<sup>75</sup>

---

<sup>72</sup> Emily Heller, "Judicial Races Get Meaner," *National Journal*, Oct. 25, 2004.

<sup>73</sup> *Id.*

<sup>74</sup> *Voters Education Committee v. Washington State Public Disclosure Commission*, Superior Court of Washington for King County, No. 04-2-23551-1 SEA, deposition of Robert Engstrom, Jan. 11, 2005, at 112.

<sup>75</sup> *Id.*

This exchange makes clear that the ILR had at least six partners in “aggressive voter education” campaigns in the preceding four years. The context of the questioning strongly suggests that those campaigns involved paid advertising. It is a fair inference to assume that the ILR’s role as a partner in the campaigns included provision of funding, *i.e.*, grants.

**B. Several Groups Are Known to Have Received Chamber Money, but Neither the Chamber nor the Institute for Legal Reform Reported Giving the Grants**

American Taxpayers Alliance (Washington, D.C.)

The American Taxpayers Alliance, registered under Section 501(c)(4) of the tax code, reported on its 2002 Form 990 that it received \$2.6 million from the U.S. Chamber of Commerce.<sup>76</sup> More than \$2.3 million of the money was contributed to the ATA the month before the election, according to the form.<sup>77</sup> In 2002, the ATA spent \$3 million to influence four judicial races.<sup>78</sup> The Chamber did not disclose the grant on its 2002 Form 990.

Citizens for a Strong Ohio (Columbus, Ohio)

A Section 501(c)(4) group called Citizens for a Strong Ohio raised \$3 million in 2004.<sup>79</sup> Much, if not all, of this money was spent on advertisements to influence two Ohio judicial races. Citizens for a Strong Ohio, which voluntarily began reporting its contribution data following controversy over its refusal to do so in 2000, reported receiving \$1 million from the Institute for Legal Reform in 2004.<sup>80</sup>

---

<sup>76</sup> American Taxpayers Alliance Form 990, Federal Supplemental Information from 2002 (on file with complainant).

<sup>77</sup> *Id.*

<sup>78</sup> Inside Washington, *National Journal*, Nov. 9, 2002.

<sup>79</sup> Jon Craig, “Back to Work on Campaign Financing,” *Columbus Dispatch*, Nov. 5, 2004, at 7B.

<sup>80</sup> Bruce Freed and Jamie Carroll, “Hidden Rivers: How Trade Associations Conceal Corporate Political Spending and Its Threat to Shareholders,” Center for Political Accountability (2006), at 24-25.

Aside from its contributions to 501(c) groups, the Chamber also made numerous contributions to political committees between 2000 and 2004 that it did not disclose on its Form 990 tax returns. These included:

Voters Education Committee (Washington state)

In early September 2002, a Washington state group, the Voters Education Committee, a group registered under Section 527 of the tax code, disclosed that it received a \$1.5 million contribution from the U.S. Chamber of Commerce on Aug. 27, 2002.<sup>81</sup> The Voters Education Committee subsequently spent much of the contribution on ads attacking Democratic attorney general candidate Deborah Senn in anticipation of Senn's Sept. 14, 2004 primary election.<sup>82</sup> The Voters Education Committee was pressured into making the disclosure by the Washington state Public Disclosure Commission, which was planning to go to court to compel the disclosure.<sup>83</sup>

Subsequently, in a deposition taken pursuant to a lawsuit stemming from the Voters Education Committee's actions, U.S. Chamber of Commerce counsel Stanton Anderson acknowledged that the \$1.5 million was "debited to the ILR's budget."<sup>84</sup>

Illinois State Organizations

Also in 2004, the Chamber contributed \$2.3 million to various groups supporting Republican challenger for the state Supreme Court of Illinois, Lloyd Karmeier.<sup>85</sup> The money passed through the Illinois Republican Party, the Illinois Chamber of Commerce, another Section

---

<sup>81</sup> David Postman, "Chamber Ads Rile State Groups," *Seattle Times*, Sept. 22, 2004; Voters Education Committee, Form 8872, November 2002, Schedule A.

<sup>82</sup> David Postman, "Chamber Ads Rile State Groups," *Seattle Times*, Sept. 22, 2004.

<sup>83</sup> *Id.*

<sup>84</sup> Voters Education Committee v. Washington State Public Disclosure Commission, Superior Court of Washington for King County, No. 04-2-235-51-1 SEA, deposition of Stanton Anderson on Jan. 12, 2005, at 146.

<sup>85</sup> Deborah Goldberg, Sarah Samis, Edwin Bender, and Rachel Weiss, "The New Politics of Judicial Elections 2004: How Special Interest Pressure on Our Courts Has Reached a 'Tipping Point' – and How to Keep our Courts Fair and Impartial," Published by the Brennan Center for Justice, the Institute for Money in State Politics, and Justice at Stake (2004), at 19.

501(c)(6) organization, and JustPAC, the Section 527 arm of the Illinois Civil Justice League, a Section 501(c)(6) organization.<sup>86</sup> The Chamber's contributions included more than \$2 million to the Illinois Republican Party, the top contributor to the Karmeier campaign.<sup>87</sup> The U.S. Chamber also gave \$200,000 to JustPAC, which aided the Karmeier campaign.<sup>88</sup>

### Republican State Leadership Committee

For the 2003 and 2004 election cycles, the ILR contributed \$1.1 million to the Republican State Leadership Committee (RSLC), a Section 527 group that is the parent organization of the Republican Attorneys General Association.<sup>89</sup> In contrast, the ILR gave only \$10,000 to the Democratic Attorneys General Association.<sup>90</sup> In 2006, the RSLC reported raising more than \$10 million to affect state elections, with the Chamber reportedly ranking among the organization's top 10 contributors.<sup>91</sup> None of these contributions was disclosed on the tax returns of the Chamber or ILR.

### The November Fund

In 2004, the U.S. Chamber also contributed \$3 million to the November Fund, a Section 527 organization.<sup>92</sup> The November Fund ran attack ads targeting Democratic vice presidential nominee and former plaintiffs' lawyer John Edwards.<sup>93</sup> Prior to the election, Citizens for Responsibility and Ethics in Washington filed a complaint with the Federal Election Commission

---

<sup>86</sup> *Id.*

<sup>87</sup> Bruce Freed and Jamie Carroll, "Hidden Rivers: How Trade Associations Conceal Corporate Political Spending and Its Threat to Shareholders," Center for Political Accountability (2006), at 24-25.

<sup>88</sup> *Id.*

<sup>89</sup> Tim Reason, "Spitzer Backlash, as State Attorneys General Clamp Down on Corporate Wrong-doers, Companies Fight Back," CFO Magazine, March 15, 2006.

<sup>90</sup> *Id.*

<sup>91</sup> Mary Ornidorf, "National PAC Routes Funds to AG King," *Birmingham News*, June 14, 2006.

<sup>92</sup> The November Fund, Form 8872, Schedule A, November 2002.

<sup>93</sup> Peter Wallsten, "Lobbying Tab is \$1.1 Billion for Half a Year," *Los Angeles Times*, Dec. 29, 2004, at 18.

accusing the chamber of making an improper corporate contribution.<sup>94</sup> Chamber spokeswoman Linda Rozett called the complaint “speculative.”<sup>95</sup>

### **C. Press Reports Provide Further Evidence of Undisclosed Grants**

Evidence that the Chamber has made grants to outside groups surfaced in numerous press accounts of the group’s electioneering strategy between 2000 and 2004. In a July 2003 *Forbes* article – the most comprehensive press account of the Chamber’s electioneering agenda – the magazine said of the Chamber’s 2002 effort: “This time it took a lower profile [than in 2000], masking its role and allying with groups such as the American Taxpayers Alliance, the Civil Justice League in Illinois and Stop Lawsuit Abuse in Mississippi, funding some of them.” The *Forbes* article also reported that in 2002 the Chamber “pumped \$1 million” into ads opposing Mississippi Supreme Court Justice Chuck McRae, “funneling it through local groups, such as Mississippians for Economic Progress.”<sup>96</sup>

One likely recipient was the Law Enforcement Alliance of America, a Section 501(c)(4) organization based in Virginia that spent millions of dollars to influence close state elections in recent years, including expenditure of \$1.5 million in just the last 10 days of the 2002 attorney general race in Texas.<sup>97</sup>

Several publications suggested that the Chamber funded the LEAA:

---

<sup>94</sup> Sharon Theimer, “Group Targeting Dems Prompts FEC Complaint,” Associated Press, Sept. 22, 2004.

<sup>95</sup> *Id.*

<sup>96</sup> Robert Lenzner and Matthew Miller, “Buying Justice,” *Forbes*, July 21, 2003.

<sup>97</sup> Frank Smyth, “Bankrolling Beltway Badges,” *Texas Observer*, June 30, 2004.



- With the Chamber showing virtually no presence in the Mississippi Supreme Court race in 2002, the *Wall Street Journal* theorized that an ad campaign by the LEAA was underwritten by the Chamber of Commerce.<sup>98</sup>
- A columnist for the (Jackson, Miss.) *Clarion-Ledger* referred to the LEAA as the “political cat’s paw of the U.S. Chamber of Commerce” after the group spent \$191,000 on television commercials praising Mississippi Supreme Court candidate Jess Dickenson and attacking McRae.<sup>99</sup> The LEAA sponsored 51 percent of the total ads aired in the race.<sup>100</sup>
- Travis County, Texas, prosecutors also believed that the Chamber was the “mystery benefactor” that furnished the LEAA with up to \$4.5 million in 2002.<sup>101</sup>

The source of the LEAA’s funding is significant because the LEAA has been very active in electioneering expenditures during recent election cycles.

#### **IV. The Chamber’s Financial Relationship with the ILR Warrants Investigation**

The relationship between the U.S. Chamber of Commerce and the Institute for Legal Reform is so close that the two organizations share a bank account. This was revealed in a Jan. 12, 2005, deposition of U.S. Chamber of Commerce counsel Stanton Anderson in the case of *Voters Education Committee v. Washington State Public Disclosure Committee*.<sup>102</sup> In the following exchange, Michael E. Withey, a lawyer for Deborah Senn, an intervener in the case who was the target of Chamber-funded attack ads broadcast by the Voters Education Committee, referred to a

---

<sup>98</sup> Michael Orey, “Business Targets Judicial Race in ‘Tort Mecca,’” *Wall Street Journal*, Oct. 30, 2002.

<sup>99</sup> Sid Salter, “Special Interest TV Ads Growing in State, National Judicial Campaigns,” (Jackson, Miss.) *Clarion-Ledger*, Nov. 17, 2002, at 1G.

<sup>100</sup> *Id.*

<sup>101</sup> Laylan Copelin, “Mystery Election Donors Targeted; in Suit, Watson Labels Ads Illegal, Wants Corporate Givers Unveiled,” *Austin American-Statesman*, Sept. 28, 2004, at A1.

<sup>102</sup> *Voters Education Committee v. Washington State Public Disclosure Commission*, Superior Court of Washington for King County, Deposition of Stanton Anderson on Jan. 12, 2005, at 90.

previous statement by Chamber lawyer Stephen A. Bokart that “[t]he funds transferred to the VEC came from that combined account.”<sup>103</sup>

Withey: What is the combined account that’s referred to there?

Anderson: Well the overall revenues of the Chamber at some point get reported on a consolidated basis, so, I mean where the actual dollar goes, you know, I’m not sure, but from one account into another. But at some point the Chamber has an account and all of the funds that are raised go into that account, whether it’s from membership dues or from ILR’s activities or from some kind of business activities the Chamber might be engaged in, but they are separately accounted for.

Q. Well, but they are in – when you say – he uses two words, one’s consolidated bank account and the other is that combined account, those are the same accounts, correct?

A. Yes.

Q. And so the, as I understand it then, if you raise money at the U.S. Chamber for membership dues, it goes into that account, correct?

A. Yes.

Q. And if you raise money for the Institute for Legal Reform for whatever reason, it also goes into that consolidated account, correct?

[A lawyer for the Chamber inserts a comment.]

Anderson: At some point, yes.<sup>104</sup>

Earlier in the deposition, Anderson said: “The Institute for Legal Reform is a wholly-owned subsidiary of the U.S. Chamber. It has its own Board of Directors, its own governance processes, and it raises its own funds.”<sup>105</sup>

Section 501(c) groups, including the Chamber and IRL, are subject to taxes, at the highest corporate rate, on the lesser of: (1) their net investment income for the taxable year; or (2) their

---

<sup>103</sup> *Id.*, at 144-146.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*, at 87-90.

aggregate expenditures for non-exempt (*i.e.*, political) functions. *See* IRC § 527-6 (2006), 26 CFR 1.527-6 (2006).

In 2004, the ILR accounted for more than \$14 million of the cumulative \$18 million-plus that the groups disclosed in political expenditures on line 81. The ILR, however, reported paying no taxes on its electioneering expenditures. The ILR's Form 990 contained an explanatory statement, pursuant to the group's assertion that it did not file a form 1120POL, the form upon which it would have declared taxes due on political expenditures: "ILR did not have to file an 1120POL because ILR had no interest or investment income."<sup>106</sup> This is a dubious claim by an organization with \$38.3 million in revenue, the amount the ILR reported in 2004.

The IRS should investigate the Chamber's highly unusual practice of commingling funds in one bank account with the ILR, a separate legal entity. Even if the IRS determines the practice of commingling funds is acceptable, it should determine whether the Chamber has used proper standards in accounting for the credits and debits between the two organizations.

The IRS should also inquire as to whether the funds of other non-profit organizations under the Chamber's umbrella are kept in the same bank account. These organizations, aside from the ILR, as disclosed by the Chamber on its 2004 Form 990, include:

- The Center for International Private Enterprise
- The Center for Workplace Preparation
- The National Chamber Foundation
- The National Chamber Litigation Center
- The Center for Corporate Citizenship
- The Coalition for Reform
- The U.S. Chamber Foundation for Legal Reform

---

<sup>106</sup> Institute for Legal Reform, Form 990, 2004, Statement 7.

Additionally, the Chamber reports a business relationship with the *Madison County Record*, a for-profit newspaper designed to further its political agenda by attacking lawyers and consumers who challenge corporate misbehavior in lawsuits.

Pursuant to 26 U.S.C. Section 7623 – Expenses of detection of underpayments and fraud, Public Citizen respectfully requests a finder’s fee for reporting the U.S. Chamber of Commerce and Institute for Legal Reform for failure to disclosure political expenditures that may have resulted in the avoidance of taxes due on these expenditures.

Respectfully Submitted,

---

Joan Claybrook  
Public Citizen  
20<sup>th</sup> St. NW  
Washington, DC 20009