national RIGHT TO LIFE committee, inc.

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May 17, 2013 (202) 626-8820

RE: "Follow the Money Act of 2013" (S. 791)

Dear Senator:

The National Right to Life Committee (NRLC), representing state right-to-life organizations nationwide, urges you to oppose the so-called "Follow the Money Act" (S.791), introduced by Senators Wyden and Murkowski on April 23.

Because this legislation would severely impede the exercise of our organization's constitutional rights, and the rights and privacy of our donors and supporters, NRLC intends to include any roll call that occurs on S. 791, including any cloture vote, in our scorecard of key roll calls of the 113th Congress.

Organizations that seek to restrict the right to free speech about issues and candidates are touting the "Follow the Money Act" as the latest great thing in "campaign finance reform," a necessary preventative against future scandals. In reality, the bill is itself a recipe for political corruption. It is yet another manifestation of the ongoing scandal of the use of the coercive power of government to intimidate or punish citizens who dare to speak out regarding the actions of federal legislators and executive branch officials.

The "Follow the Money Act" would be better titled the "IRS Political Speech Overseer Act of 2013." The bill is a 47-page compendium of devices for government intimidation of nonprofit advocacy organizations that communicate with the public about federal public policy issues, and about the positions and votes of those who make our laws. The bill would make the Internal Revenue Service (IRS), and the Secretary of the Treasury (a political appointee), into overseers of an ever-expanding maze of restrictions on independent speech about legislative and political matters, and into executioners for nonprofit groups that offend the powers-that-be.

So what could go wrong?

We commend to you an excellent analysis of the bill issued by the Center for Competitive Politics (CCP), titled *A First Look: The Wyden-Murkowski "Follow the Money Act of 2013*, by David Keating and Eric Wang, issued on April 25, 2013. (http://www.campaignfreedom.org/2013/04/25/a-first-look-the-wyden-murkowski-follow-the-money-act-of-2013/)

The CCP analysis notes:

> The bill would radically expand the reach of government regulation on speech critical of elected officials and force many, if not nearly all, advocacy groups to register and file burdensome reports with the federal government. The registration and reporting scheme also includes the threat of stiff tax penalties on groups and individuals, along with an organizational death sentence that could be imposed by the IRS for errors. If enacted, this bill would dragoon the IRS into a role as political campaign enforcer, a role the IRS is ill-equipped for and does not want. . . .
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> Section 301 sets up a process by which the Treasury Secretary and the FEC are ordered to jointly issue regulations on how the law would apply to citizens groups. . . . This would mark the first time in the history of modern campaign finance law that the party that controls the White House could effectively take charge of writing a portion of campaign finance regulations. If the FEC and Treasury cannot agree on joint regulations by September 2014, the bill makes clear who is really in charge – the Obama Treasury Department, which would then act on its own, passing regulations for the 2016 election cycle. This of course is a terrible idea. . . .
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> More worrisome is that the IRS would be forced to yank nonprofit status for a group that makes an error of $25,000 or more on its reports. This denial of nonprofit status would in many cases result in a financial catastrophe and effective death sentence for such groups. Because of the burdensome reporting requirements that will in many cases require daily reporting of contributions, errors are much more likely to occur. A group with a budget in the millions filing reports that were 99% correct could easily make errors totaling over $25,000 in an election cycle, and find its tax status threatened as a result.
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> Tax-exempt groups (other than 501(c)(3) organizations) do not provide any tax relief to donors or receive any "tax subsidies" from the government, as these groups may only accept donations that are not tax deductible. Generally, tax-exempt status means only that donations are not considered income to the groups, but the money given to the organizations has already been taxed to the donor. . . .
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> This death sentence is all the more worrisome because the provisions in the bill are so vague and broad that the government for the first time would have enormous discretion to decide which groups would live on, and which would die.

Beyond inviting retaliation against disfavored groups by government actors, the bill opens the door to widespread private retaliation against and intimidation of citizens who support advocacy organizations on the causes that they believe in. The bill requires nonprofit advocacy groups to place in the public domain the names donors of more than $1,000, if the group engages in as little as $10,000 worth of activity, during a two-year period, that the bill defines as "Independent Federal Election-Related Activity" (IFERA). The bill defines IFERA as:

> any expenditure that . . .considering the facts and circumstances, a *reasonable person* would conclude is made solely *or substantially* for *the purpose of influencing* or attempting to influence the nomination or election of any individual to any Federal office (*including* an expenditure for a public communication that *promotes, attacks, supports, or opposes* a candidate) . . . [italics added for emphasis]

This incredibly sweeping and vague definition would apply not only to broadcast ads, but to mailings or any other mode of communication to the public, and even communications to our own members, including congressional scorecards. It would also cover such activities as research, polling, and "message development." The definition of IFERA could encompass virtually any communication that deals with the positions or votes of Members of Congress, including "legislative alert" communications that urge citizens to contact their federal representatives about upcoming votes in Congress. For example, the following hypothetical radio ad would likely be regarded as an IFERA:

> Last summer, Congressman Joe Doe voted against enacting a national ban on sex-selection abortions. Next week, the U.S. House of Representatives will vote again on the same bill. Please call Congressman Doe at 202-225-XXXX and tell him that you don't understand why he thinks baby girls should be aborted just because they are girls. Urge him to vote for the Prenatal Nondiscrimination Act! This ad is sponsored by the National Right to Life Committee. Our three major donors are John Roe of New Orleans, Louisiana, Susan Jones of Sacramento, California, and Jack Smith of Butte, Montana. Our FEC number is C, three, zero, zero, zero, one, nine, four, five.

You will notice that about half of the hypothetical radio script is devoted to a disclaimer. S. 791 imposes a general requirement that all of this information must be delivered in audio form, which would add 10 seconds or more to script time, consuming expensive time needed to explain our views. The prime sponsors of S. 791, Senators Wyden and Murkowski, have said that the purpose of the bill is "disclosure, for disclosure's sake," and that would be bad enough, but this absurd disclaimer requirement is an illustration of how the bill is permeated by an animus towards independent political commentary and is replete with devices to reduce and deter such speech as much as possible.

Advocacy on federal public policy issues and federal legislation is central to NRLC's mission, and as a result, under S. 791 the names and addresses of every NRLC donor of as little as $1,000 (within a two-year period) would be placed into a public database, accessible on the Internet.

Our members and supporters have a right to support our public advocacy about important and controversial issues without having their identifying information posted on the Internet, exposing them to harassment or retribution by those – inside or outside of the government – who may disagree with their beliefs. The sponsors of the bill obliquely recognize the potential for retaliation against donors, because they have included a provision to allow an organization to ask the FEC to keep confidential the name of a donor who "has demonstrated that disclosure of the person's identity will place the person at a particularized and specific risk of substantial injury to his or her person or business as a consequence of the disclosure." This might be an appropriate standard for admission to the Justice Department's Witness Protection Program, but we respectfully submit that citizens should be able to support advocacy groups that represent their views on controversial issues of the day, without being required to seek special permission from a federal regulatory agency to protect their privacy – permission that in practice would probably be very difficult or impossible to obtain.

As the ACLU recently noted in a commentary on S. 791, "[T]he public should also be able to anonymously support advocacy organizations that engage on the issues of the day, even if they praise or criticize candidates or nominees for their positions on those issues. Absent anonymity, some donors – on both the left and the right – will simply not donate out of the legitimate fear they will be harassed or retaliated against for their advocacy."

The National Right to Life Committee urges that you reject the invitation to expanded government harassment of independent citizen groups and their donors that is embodied in S. 791, by voting against any attempt to advance this legislation or any other legislation that incorporates the same animating principles. NRLC intends to include any roll call on S. 791, including any cloture vote, in our scorecard of key roll calls of the 113th Congress.

Thank you for your consideration of NRLC's position on this crucial issue.

Sincerely,

David N. O'Steen, Ph.D.
Executive Director

Douglas Johnson
Legislative Director