

Statement Regarding Sierra Club's Political Activities

Public Citizen has revised its New Stealth PACs report, which chronicled electioneering activities of Section 501(c) groups and was published in September 2004, to reflect that the Sierra Club's Section 501(c)(4) entity had no "political" expenditures in 2000 or 2002. In the original report, Public Citizen estimated that the Sierra Club's Section 501(c)(4) entity had spent \$2.6 million to affect contests in the two election cycles.

After we published our report, the Sierra Club informed Public Citizen that the political advertising we attributed to the (c)(4) was entirely paid for by the Sierra Club Voter Education Fund, a separate Sierra Club account that functions as a "527 organization" for tax purposes. 527 organizations, unlike 501(c)(4) groups, may make unlimited political expenditures without incurring tax liability. A 501(c)(4) group is not required to report political expenditures of an affiliated 527 fund on the 501 (c)(4)'s Form 990.

Thus, the Sierra Club was not required to report political advertising expenditures paid for by its 527 on the Sierra Club's Form 990 or to pay tax on them. We regret our error in attributing political expenditures to the Sierra Club as a 501(c)(4) group rather than to its 527 fund, and we have so informed the IRS.

The reduction in our estimate of the Sierra Club's 501(c)(4) political expenditures from \$2.6 million to zero lowers Public Citizen's 2000 and 2002 estimated expenditures by all groups studied from \$91 million to \$88.4 million, and slightly alters other totals in the report, such as the ratio of expenditures by Republican-leaning and Democratic-leaning groups.

As we stated in the report, determining the funding source of 501(c) communications disseminated by complex organizations – such as those that include a 501(c), a 527 and/or a federally regulated political action committee – is a challenge because 501(c) groups are not required to furnish detailed political expenditure reports. Two features, in particular, of the way the Sierra Club conducts its political activities led us to attribute expenditures to the (c)(4) rather than the 527.

First, Public Citizen obtained transcripts of dozens of Sierra Club ads, which said the ads were paid for by the "Sierra Club" or one of its regional chapters (which are part of the (c)(4) organization). The ads did not say they were paid for by the 527, the "Sierra Club Voter Education Fund." That attribution led us to believe that the (c)(4) had paid for the ads.

The Sierra Club has informed us that it does not attribute advertisements to the 527 fund because (as the tax code permits) the fund is not a "legal entity" separate from the Sierra Club. The Federal Communications Commission's regulations require that political ads accurately identify the person or entity running them. The Sierra Club takes the position, based on informal conversations with the FCC, that it is accurate to say ads paid for by the 527 are sponsored by "the Sierra Club" because the 527 is a part of the Sierra Club. Even so, it would be clearer in our view for the taglines on the Sierra Club ads to say they were paid for by the Sierra Club Voter Education Fund. In addition, it is somewhat unclear to us how the Sierra Club's rationale justifies attributing ads paid for by the 527 to the Sierra Club's *local chapters* (which are not

separate legal entities from the national organization). Compliance with the FCC's attribution rules, however, was not the subject of our report. If, as the Sierra Club has informed us, the ads were paid for by the 527, they do not constitute political expenditures directly by the (c)(4).

Second, Public Citizen believed that even if the ads were paid for with 527 funds, the (c)(4) could be responsible for at least a portion of its 527's political expenditures because the 527 has reported receiving very large contributions from the (c)(4), including at least \$2.3 million in 2002. As a general matter, when a (c)(4) transfers funds to an organization, such as a 527, that the (c)(4) expects will use the funds for electioneering, the transfer is a taxable political expenditure and must be reported as such by the (c)(4).

However, IRS regulations make an exception when a (c)(4) collects contributions and immediately passes them through to its affiliated 527 fund. In that case, the funds are treated as if they were directly contributed to the 527, and the transfer to the 527 is not considered an electioneering expenditure by the (c)(4). The Sierra Club has informed Public Citizen that the funds it has transferred to the 527 fall within this exception and thus are not reportable or taxable as political expenditures by the (c)(4).

The IRS has told Public Citizen that when the exception for immediate transfers is employed, the 527 should report the funds as contributions from the original donors, not from the 501(c)(4) — but it only has to report them if it receives \$200 or more from an individual, the threshold level for reporting by a 527. The Sierra Club has informed Public Citizen that when it transfers funds to the 527, it does not transfer \$200 or more from any one contributor. Thus, in this case the 527 would appear to have had no reporting obligation at all. But because the 527 reported the transfers in the aggregate as contributions from the (c)(4), it created the appearance that they could be political expenditures by the (c)(4) rather than permissible transfers of individual contributions that did not reach the reporting threshold. In short, partly because the Sierra Club apparently reported more than it was required to report, we reached the erroneous conclusion that the 501(c)(4) had made electioneering expenditures by contributing to a 527.

Public Citizen left a message with a Sierra Club official seeking information on these and other subjects before publication of the report and did not receive a response. After the report was published, however, the Sierra Club provided the information described above, and in light of that new information we have changed the report.

We note, however, that the Sierra Club's activities illustrate another way in which (c)(4) groups can be used for political fundraising purposes, albeit in this case without violating existing laws and regulations. We have left references to the Sierra Club's electioneering activities in the report because its 501(c) entity is involved in financing activities to influence the outcomes of elections, even though those expenditures do not appear to require disclosure to the IRS on the Sierra Club's Form 990. Of \$13.7 million in revenue the Sierra Club's Section 527 entity has reported since 2000, \$5.4 million has been transferred from the Sierra Club's 501(c)(4).