



United States Senate Committee on Rules & Administration

Statement for the Record at the Hearing:

“The DISCLOSE Act (S. 2516) and the Need for Expanded Public Disclosure of Funds Raised and Spent to Influence Federal Elections”

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Common Cause is a national nonpartisan advocacy organization founded in 1970 by John Gardner as a vehicle for ordinary citizens to make their voices heard in the political process. Mr. Chairman, on behalf of our 400,000 members and supporters, we appreciate the opportunity to submit this statement for the record.

Common Cause works at the federal, state and local level to advocate for full transparency and disclosure in our elections, including the money spent to influence the outcome of campaigns.

The Money, The Donors, The Secrecy.

The 2014 elections are on pace to shatter all records to become the most expensive midterms in American history. Already, candidates for the House of Representatives and Senate have raised more than \$1 billion.¹ Outside spending has topped \$125 million, which is more than three times the spending of outside groups at this point in the last midterm election cycle in 2010.² Spending by independent expenditure-only committees (“Super PACs”) in the 2014 cycle has surpassed the total amount that Super PACs spent during the entire 2010 midterms.³ This spending comes on the heels of the 2012 presidential election cycle, which was our nation’s first federal election cycle to cost more than \$6 billion, an amount that does not even count the billions spent in state races.

¹ Center for Responsive Politics, 2014 Election Overview, <http://www.opensecrets.org/overview/> (last accessed July 22, 2014).

² Center for Responsive Politics, Outside Spending by Cycle Thru July 22nd of Election Year, <http://www.opensecrets.org/outsidespending/index.php?type=A> (last accessed July 22, 2014); Andrew Mayersohn, “2014 Outside Spending Hits the \$100 Million Mark,” CENTER FOR RESPONSIVE POLITICS, May 30, 2014, <http://www.opensecrets.org/news/2014/05/2014-outside-spending-hits-the-100-million-mark/> (last accessed July 22, 2014).

³ Compare Center for Responsive Politics, 2014 Outside Spending, by Super PAC, <http://www.opensecrets.org/outsidespending/summ.php?cycle=2014&chrt=V&disp=O&type=S> with Center for Responsive Politics, 2010 Outside Spending, by Super PAC, <http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&chrt=V&disp=O&type=S> (last accessed July 22, 2014).

The money fueling these 2014 midterms comes from an extraordinarily small and unrepresentative segment of the population. A little over one-tenth of 1% is delivering 64% – over one billion dollars – of the total contributions to federal candidates, PACs and political parties.⁴

A significant amount of the outside spending comes from sources under no obligation to disclose their donors, corporate or otherwise. Thirty percent of the outside money in 2012 – over \$310 million – came from undisclosed sources.⁵ So far in the current midterm cycle-to-date, over 27% of total outside spending (more than \$35 million) has come from dark money groups.⁶ One group in particular, the Koch brothers’ Americans for Prosperity, plans to spend more than \$125 million on an “aggressive ground, air and data operation” which “would be unprecedented for a private political group in a midterm, and would likely rival even the spending of the Republican and Democratic parties’ congressional campaign arms.”⁷ Unlike the political parties’ campaign arms, however, Americans for Prosperity is under no legal obligation to disclose the donors funding its “aggressive” campaign to influence voters in any of its targeted races.

Money from Undisclosed Sources Flows Through Multiple Entities, Including Super PACs.

While there has been significant and much-needed attention in recent years to the steep rise in the political spending of 501(c)(4) social welfare organizations, some of the secret money is flowing through Super PACs. Unlike 501(c)(4)s, Super PACs are required to disclose their donors to the Federal Election Commission. However, the names of the “donors” can mean little to nothing, depending on the source. For example, a donor may be the name of a shell corporation or other faceless entity. This does do not shed any light on the actual source of the money.

The number of candidate-specific Super PACs has dramatically increased during this election cycle – and with it, the opportunity for more secret money.⁸ For example, the Center for Public Integrity reported earlier this month that two social welfare nonprofit organizations are responsible for donating almost all of the money – over \$2 million – to a Super PAC backing the winner of yesterday’s U.S. Senate Republican primary in Georgia.⁹ Those two nonprofit

⁴ Center for Responsive Politics, Donor Demographics, <http://www.opensecrets.org/overview/donordemographics.php> (last accessed July 22, 2014).

⁵ Center for Responsive Politics, Outside Spending by Disclosure Excluding Party Committees, <http://www.opensecrets.org/outsidespending/disclosure.php?range=tot> (last accessed July 22, 2014).

⁶ Center for Responsive Politics, Outside Spending by Disclosure Excluding Party Committees Cycle to Date, <http://www.opensecrets.org/outsidespending/disclosure.php?range=ytd> (last accessed July 22, 2014).

⁷ Kenneth P. Vogel, “Koch Brothers’ Americans for Prosperity Plans \$125 million Spending Spree,” POLITICO, May 9, 2014, <http://www.politico.com/story/2014/05/koch-brothers-americans-for-prosperity-2014-elections-106520.html>.

⁸ Matea Gold & Tom Hamburger, “Must-have Accessory for House Candidates in 2014: The Personalized Super PAC,” WASHINGTON POST, July 18, 2014, http://www.washingtonpost.com/politics/one-candidate-super-pac-now-a-must-have-to-count-especially-in-lesser-house-races/2014/07/17/aaa2fcd6-0dcd-11e4-8c9a-923ecc0c7d23_story.html.

⁹ Michael Beckel, “Is This Super PAC Subverting Disclosure Rules?,” CENTER FOR PUBLIC INTEGRITY, July 11, 2014, <http://www.publicintegrity.org/2014/07/11/15061/super-pac-subverting-disclosure-rules>.

organizations are under no obligation to disclose the source of the money that they funneled to the Super PAC.

At least 64 of these candidate-specific Super PACs exist so far in this election cycle – more than the 42 that were active in the 2012 federal election and the 21 from 2010.¹⁰ Candidate-specific Super PACs are little more than an extension of a candidate’s principle campaign committee, with the added ability to take unlimited contributions from individuals and corporations – including corporations and social welfare nonprofits that do not disclose their donors.

Although Super PACs are prohibited by law from coordinating with candidates because the coordination would constitute an unlawful contribution, the difference between a candidate-specific Super PAC and a principle campaign committee is becoming a distinction without a difference. During the 2012 presidential election, former Speaker of the House Newt Gingrich made a disturbing yet frank assessment for why his campaign failed. Although he said that running for President is not “a rich man’s game,” he continued that “[i]t’s certainly a game which requires you to have access to a lot of money. We couldn’t have matched Romney’s Super PAC, but in the end, he had I think sixteen billionaires and we had one, and it made it tough.”¹¹ The billionaire that Mr. Gingrich mentions that he “had” is Las Vegas casino magnate Sheldon Adelson, who spent at least \$98 million in the 2012 election cycle, including more than \$20 million to a Super PAC backing Mr. Gingrich.¹²

Secret money is also awash in state level campaigns. During the 2012 election, for example, California Common Cause filed a complaint with California’s Fair Political Practices Commission (FPPC) after an unknown Arizona nonprofit contributed \$11 million to a political action committee active in two ballot proposition campaigns in California.¹³ Earlier this year, this Rules Committee heard testimony from former FPPC Chair (and current FEC Commissioner) Ann Ravel about the case. The FPPC investigated and eventually uncovered \$15 million from two out-of-state nonprofits that sought to evade California’s disclosure regulations.¹⁴ Ultimately, the entities were levied a record \$1 million fine for laundering the money to evade disclosure.¹⁵

As Congress and the Federal Election Commission remain gridlocked, some states have acted to advance transparency in a post-*Citizens United* state and local election landscape. Common Cause chapters led fights to pass and Governors have signed comprehensive DISCLOSE-like

¹⁰ *Id.*

¹¹ Jonathan Karl et al., *Newt Gingrich’s Advice for Mitt Romney: Sharpen Your Animal Instincts*, ABC NEWS/YAHOO! NEWS, June 19, 2012, <http://news.yahoo.com/blogs/power-players/newt-gingrich-advice-mitt-romney-sharpen-animal-instincts-105728293.html> (last accessed July 22, 2014) (emphasis added).

¹² Theodor Meyer, “How Much Did Sheldon Adelson Really Spend on Campaign 2012?,” PROPUBLICA, Dec. 20, 2012, <http://www.propublica.org/article/how-much-did-sheldon-adelson-really-spend-on-campaign-2012>.

¹³ Chris Megerian, “Identity of Donors to Conservative Group Sought,” LOS ANGELES TIMES, Oct. 19, 2012, <http://articles.latimes.com/2012/oct/19/local/la-me-election-money-20121020>.

¹⁴ *Dollars and Sense: How Undisclosed Money and Post-McCutcheon Campaign Finance Will Affect the 2014 Election and Beyond: Hearing Before the United States Senate Committee on Rules and Administration 113th Cong. 1* (2014) (Testimony of Ann M. Ravel, Former Chair, California Fair Political Practices Commission).

¹⁵ *Id.*

legislation in California and Rhode Island. A strong Common Cause-supported disclosure bill is being debated this very week in the Massachusetts statehouse.

Congress Should Pass the DISCLOSE Act.

Common Cause strongly supports the DISCLOSE Act (S. 2516). The DISCLOSE Act already enjoys majority support in the United States Senate and should pass as soon as possible. This is common sense legislation in keeping with our core American values of transparency and accountability in a robust and participatory democracy.

Disclosure serves several purposes in campaigns. First, it protects a voter's right to know who is trying to influence their decision on Election Day. Voters are able to evaluate the merits of an appeal for their vote if they know who is speaking to them. Second, disclosure curbs corruption and its appearance, including the specter of undue influence over public policy. Third, disclosure is critical to the enforcement of our campaign finance laws. The DISCLOSE Act is carefully crafted to further all of these purposes.

The DISCLOSE Act would apply uniformly to organizations across the political spectrum. There are no special exemptions or carve-outs for organizations depending on the size of their membership or their political stances. Ultimately, it will require the disclosure of major donors to those entities – donors contributing and spending \$10,000 or more to influence elections.

The DISCLOSE Act Comports with the Constitution.

The DISCLOSE Act is also consistent with the Supreme Court's disclosure jurisprudence. In a portion of *Citizens United* that had the support of eight members of the Court, Justice Kennedy wrote that "disclosure ... enables the electorate to make informed decisions and give proper weight to different speakers and messages."¹⁶ The same eight justices agreed that disclosure allows "[s]hareholders [to] determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are 'in the pocket' of so-called moneyed interests."¹⁷

In *McCutcheon v. FEC*, the Chief Justice wrote that "[d]isclosure requirements are in part justified based on a governmental interest in providing the electorate with information about the sources of election-related spending."¹⁸ He further opined that "[t]oday, given the Internet, disclosure offers much more robust protections against corruption. ... Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided."¹⁹

Unfortunately, reality belies the latter pronouncement about the availability of campaign finance disclosure "at the click of a mouse." There is no adequate disclosure system in place to fully shine a light on the hundreds of millions of dollars flooding our elections in the form of

¹⁶ *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

¹⁷ *Id.* at 370.

¹⁸ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1459 (2014) (internal quotations omitted).

¹⁹ *Id.* at 1460.

independent expenditures. The DISLCOSE Act, coupled with the Real Time Transparency Act (S. 2207) and the Senate Campaign Disclosure Parity Act (S. 375), would create a regime more in keeping with the transparency the Court assumed was already in place when it opened up our elections to unlimited corporate and special interest money.

Conclusion.

Congress must act to restore transparency in our elections after the sea change in our campaign finance laws after *Citizens United*. Americans of every political stripe agree that campaign spending ought to be transparent and disclosed.

Citizens are working at various levels of government to make this a reality. For example, at the Securities and Exchange Commission, investors, shareholders, academics and others have filed nearly 900,000 comments in support of a rulemaking petition that would require publicly traded companies to disclose their political spending to shareholders. The Internal Revenue Service is examining reforms to its rules that would end abuse of our tax laws to hide campaign spending. These efforts are squarely within these agencies' authority.

Ultimately, though, the DISCLOSE Act is a critical component of shining a light on the money in our campaigns. It will protect Americans' right to know who is seeking to influence their vote on Election Day and who is attempting to influence their elected officials afterwards.

We urge its swift approval.

Thank you for the opportunity to submit this statement for the record.