



**Common Cause Testimony to the
Subcommittee on Elections of the Committee on House Administration
Hearing on the Federal Election Commission: Reviewing Policies, Processes and
Procedures**

November 3, 2011

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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. On behalf of our 300,000 members and supporters, we appreciate the opportunity to submit this testimony to this Subcommittee regarding the Federal Election Commission.

The Supreme Court's 5-4 decision in *Citizens United v. FEC* overturned decades of well-settled law and opened up the floodgates to unlimited corporate and union spending in our electoral process. In the most recent 2010 elections, over \$3.6 billion in political spending influenced the vote -- a historic high for a midterm election.¹ Of that sum, \$133 million funded independent expenditures and electioneering communications by groups that never disclosed the source and/or donors of their money.² With the 2012 presidential election well underway, Super PACs and other so-called independent groups have announced their plans to shatter outside spending records. For example, American Crossroads announced its goal to raise and spend \$240 million, doubling its original aspirations.³ A former political operative of President Obama is leading a Super PAC that hopes to raise close to \$100 million.⁴

Distressingly, at precisely the time when a deluge of secret money is inundating our political system, inaction at the Federal Election Commission has resulted in a vacuum around the enforcement and administration of campaign finance laws. The 2010 midterm elections provided a mere glimpse of a new and rapidly changing campaign finance regime that is riddled with loopholes and flush with secret cash. Shadow political organizations headed by candidates' well-known political associates are exploiting weak coordination rules, directly threatening contribution limits and dismantling the confidence of the American people in their representative democracy. While an individual may lawfully contribute up to \$2,500 to a candidate per election -- those same individuals, along with corporations and unions, are now free to contribute an

¹ See Center for Responsive Politics, OPENSECRETS.ORG, "The Money Behind the Elections," <http://www.opensecrets.org/bigpicture/index.php>.

² See Center for Responsive Politics, OPENSECRETS.ORG, "2010 Outside Spending by Non-Disclosing Groups," <http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&chrt=V&disp=O&type=U>.

³ Nicholas Confessore, *Outside Groups Eclipsing G.O.P. as Hub of Campaigns*, N.Y. TIMES, Oct. 29, 2011 at A1.

⁴ Jeanne Cummings, *New Democratic Money Group to Take on Republicans*, POLITICO, Apr. 29, 2011.

unlimited amount of money to parallel but “independent” Super PACs, which are then entitled to spend an unlimited sum of money supporting or opposing candidates.

This new system gravely mocks contribution limits and is a carte blanche invitation to corruption and the appearance thereof. This new “Wild West” style of campaigning, the likes of which Americans have not witnessed since pre-Watergate, undermines the integrity of our government and severely challenges longstanding campaign finance law.

The FEC has failed to act in accordance with its mission. Three-three votes, often fragmented by party, result in deadlock and prevent the agency from acting. Although the law mandates that the FEC cannot exceed three commissioners from the same party, stalemates were not as frequent as they have become in recent years. Over the past decade, deadlocks have increased substantially,⁵ blocking enforcement actions and causing regulatory paralysis.

The inability to administer the law materially alters the electoral playing field and keeps voters in the dark. For example, although promulgating robust disclosure rules is squarely within the FEC’s purview, nearly two years after the Supreme Court *upheld* disclosure requirements by an 8-1 vote in *Citizens United*, the FEC remains gridlocked over the issue, and the secret spending continues unabated. Three commissioners have repeatedly sought to open the already inadequate disclosure rules to public comment, only to be met with stiff opposition by the remaining three commissioners.⁶

There are specific action steps that could begin to address FEC dysfunction. Five of the six current commissioners have outlasted their term appointments, and yet they still remain seated on the FEC. Given the sudden influx of secret money and an FEC at its most anemic, the President must name new commissioners who will enforce the law before the crisis of confidence drags our elections even further into the shadows. The Senate must act swiftly on the nominations, and refrain from past practices of undermining the President’s authority by pressing for nominees that merely advance partisanship. When the President names new commissioners, it will restore some confidence in the system, provided that the new commissioners are demonstrably committed to the nonpartisan administration of election and campaign finance laws. Moreover, Congress must address the FEC’s cumbersome enforcement capabilities that fail to deter, on a consistently timely basis, candidates and other entities from flouting the law. An agency with a robust adjudicatory function is one possible solution to this problem.

Our democracy and its legitimacy demands transparency and accountability. The FEC is in place to guard against the corrosive influence of money in our electoral process, which destroys sound policy and drowns out the voices of American citizens. While the fundraising arms race continues unabated in a new era of unlimited secret money, now is precisely the time that commitment to our campaign finance laws is most critical.

⁵ T.W. Farnam, *FEC Still Hasn’t Issued New Campaign Spending Rules*, WASH. POST, Mar. 25, 2011.

⁶ Jonathan D. Salant, *U.S. Federal Election Commission Deadlocks on Greater ’12 Donor Disclosure*, BLOOMBERG, June 15, 2011 <http://www.bloomberg.com/news/2011-06-15/u-s-federal-election-panel-considers-increased-donor-disclosure-for-2012.html>