

Shining a Light: Success of the Massachusetts Disclosure Law



Because of the Massachusetts Disclosure Law...

**Secret money in elections
is drastically lower
than it was before.**

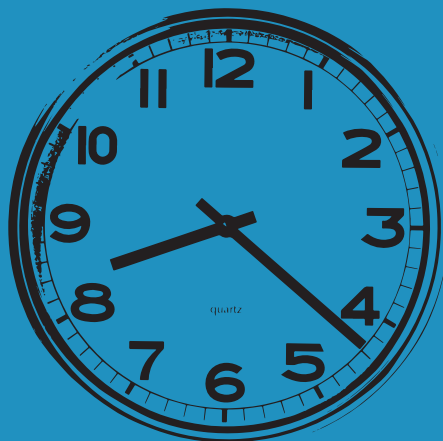


Before Disclosure Law
2010 Election



After Disclosure Law
2014 Election

*Each bill represents approximately 500,000 dollars



**Campaign finance information
is available
before elections.**



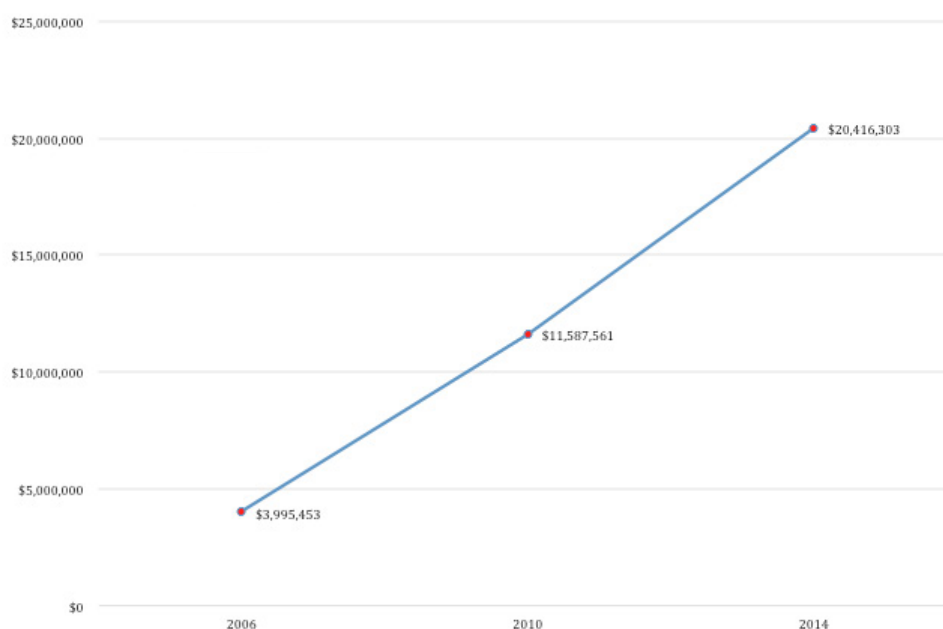
**Voters know the donors
behind the advertisements
they see.**

"Sunshine is the best disinfectant" – Justice Louis Brandeis

Background

Since the Supreme Court's ruling in *Citizens United v. FEC* (2010), "outside" spending in elections -- political spending not coordinated with parties or candidates -- has skyrocketed.¹ In the 2012 federal election cycle, outside groups spent a staggering \$1.1 billion, an over 200% increase from 2008.² At the state level in Massachusetts, outside spending has soared too, in both statewide and legislative races. **Total independent expenditures have jumped from \$4 million in 2006, to \$11.5 million in 2010, to an unprecedented \$20.4 million in 2014!**³

Figure 1: MA Independent Expenditure Totals



Outside spending in Massachusetts, if it continues to grow by approximately 76% between statewide cycles, as it did from 2010 to 2014, will exceed official candidate spending, which decreased approximately 4% in the same time period, within six years.⁴

The jump in outside campaign spending is being fueled largely by a dramatic increase in contributions from hidden donors, or "secret money." Across the country, independent expenditure groups often face few requirements for disclosing where they get their money. This secrecy means the public is unable to find out who, or what, is funding a given campaign and thus to whom or what the candidate may be beholden. This infringes on a voter's ability to make informed choices at the ballot box, and to

¹Outside spending in this report is defined as spending intended to influence an election that is not conducted by or coordinated with a candidate for federal office or a political party. Prior to *Citizens United*, individuals were allowed to make unlimited expenditures, but rarely did so.

²<https://www.opensecrets.org/outsidespending/>

³<http://files.ocpf.us/pdf/releases/2015IEPACstudy.pdf>

⁴Percentages calculated based on respective changes in spending levels for both outside and official candidate spending according to data from the Massachusetts Office of Campaign and Political Finance between 2010 and 2014.

hold officials accountable for actions that could be taken on behalf of campaign funders.⁵

Fortunately, Massachusetts is ahead of the curve, due in large part to Common Cause's efforts to secure transparency laws that protect the public's right to know. For example, Common Cause successfully championed legislation in the 1980s that requires reporting of independent expenditures. In 2009, the organization won reforms requiring disclosure of the funds behind electioneering communications, also called "sham issue" ads (ads that are clearly intended to influence the election even if they do not explicitly say "vote for" or "vote against" a particular candidate). Most recently, in 2014, Common Cause led a victorious lobbying campaign for the Massachusetts Disclosure Law, one of the toughest in the country, which took effect in August of that year. Key provisions of the act include:

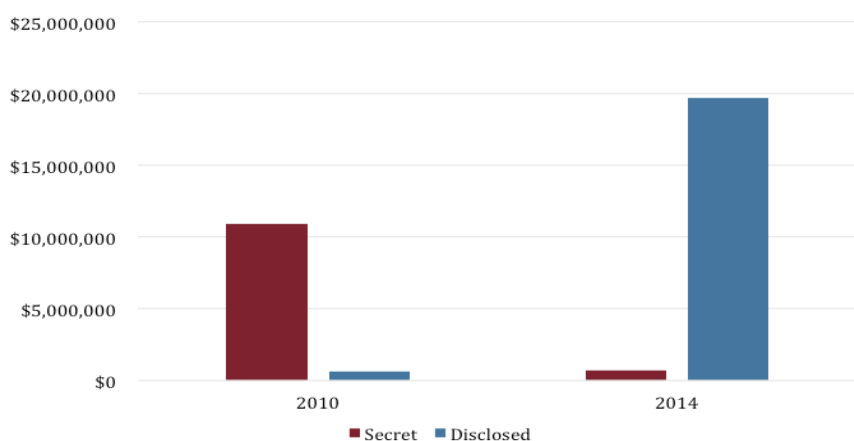
- Organizations must list their top five contributors above \$5,000 in TV or print advertisements.
- Super PACs must disclose their donors within 7 days of running a paid advertisement; state law previously required disclosure after the election.
- Enforcement agencies have clearer authority to regulate funds funneled through intermediary groups by corporations, organizations, and individuals to avoid disclosure.
- Disclosure of Internet and email advertisement electioneering communications is required.

Research

In comparing information from the Office of Campaign and Political Finance (OCPF) for outside spending in 2010 and 2014 – the statewide election years directly before and after enactment of the Massachusetts Disclosure Law – it's clear that the new law has played a big role in increasing transparency in state elections, especially in the availability and timeliness of campaign finance information.

Before getting into each of the impacts of the law, a look at

Figure 2: Overall Secret v.s. Disclosed Independent

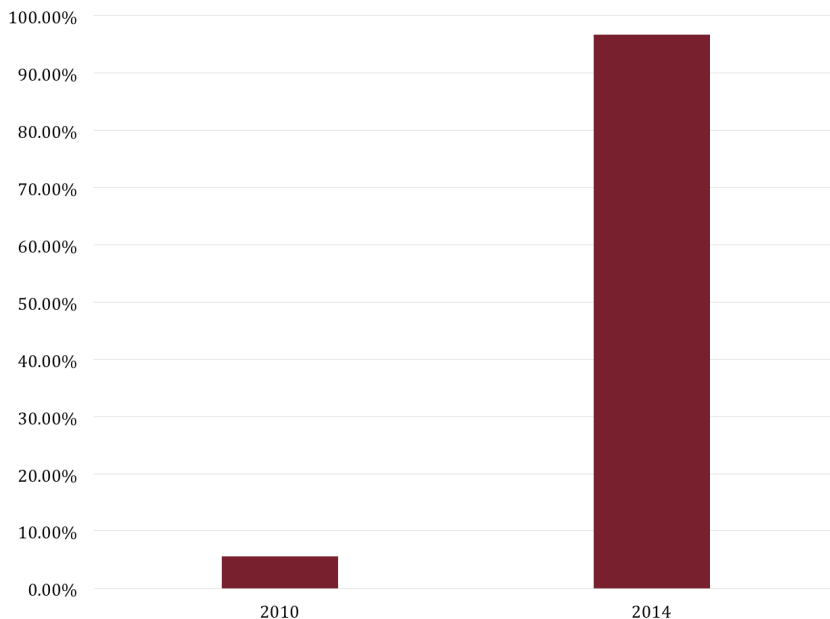


⁵Secret money" is defined in this report as funds coming from outside groups involved in Massachusetts elections that did not disclose any of their donors to the state Office of Campaign and Political Finance (OCPF). Financial disclosure to OCPF is our baseline because that is what our state laws govern and is the location our state's citizens go for campaign finance information about their elections.

overall numbers is in order. Between 2010 and 2014, the amount of secret money in state elections decreased by about 94 percent, from \$10,936,787 to \$688,147.

Similarly, the amount of outside money where donors were reported to OCPF increased by more than 2,900 percent, rising from \$650,774 to \$19,728,056. In terms of the percentage of funds, this represents an increase of 91.1% in outside spending made with disclosure to OCPF.⁶

Figure 3: Overall Percentage of Disclosed Independent Expenditures



The Massachusetts Disclosure Law played a big role in this transparency increase, especially in making campaign finance information available in a timelier way. A shift in the way outside spending was organized between 2010 and 2014 also contributed to the change however.

In 2010, the majority of outside spending in Massachusetts elections was in the form of electioneering communications. This was the only avenue for political spending available to corporations prior to the Supreme Court's decision in *Citizens United*, which, for the first time, allowed corporations also to make independent expenditures. State law prior to 2010 also did not require the disclosure of contributors for electioneering communications; even now some donors are able to use a loophole in the law to avoid disclosure (which we will return to later). After *Citizens United* and subsequent decisions like *SpeechNow*, however, outside spending has been dominated by Independent Expenditure Political Action Committees (IE PACs, aka "Super PACs"), which can raise unlimited funds from individuals, associations, and corporations.

The shift occurred because IE PACs not only can accept unlimited money, but also have the ability to directly advocate for or against a candidate. Because electioneering communications do not use the magic words of "vote for" or "vote against," they are a less effective messaging technique. This makes IE PAC spending an overall better investment for outside groups, even as it adds to their disclosure requirements. The Massachusetts Disclosure Law then enhanced and updated reporting requirements a few months prior to the 2014 election to ensure even greater transparency, including requiring that detailed campaign finance reports be more timely and top donors are disclosed directly

⁶Financial figures and percentages obtained from Massachusetts Office of Campaign and Political Finance reports for contributions to and expenditures by IE PACs, other groups that made IE's, and groups that made electioneering communications between January 2013 and November 2014, as well as January 2009 and November 2010.

to voters on political advertisements.

State Legislative Campaigns

While the majority of outside spending in both 2010 and 2014 took place in governor's races, state legislative campaigns actually saw the largest increase in accessible new campaign finance information between the cycles. In 2010, 14 organizations spent approximately \$950,000 to directly support or oppose legislative candidates with independent expenditures; 55% of that came with no information about contributors to the organization reported to OCPF.⁷ For the rest, contributor information could only be gleaned from extensive searching of data from each organization's general treasury reports, which were separate from their expenditure reports. Three entities meanwhile spent about \$15,000 on electioneering communications dealing with legislative candidates; 80% of their spending came with no information about contributors reported to OCPF.⁸ In 2014, nine independent expenditure political action committees spent about \$1.1 million on legislative races and all disclosed their contributors to OCPF. Each IE PAC's comprehensive contributor reports were also easily accessible through direct links in their expenditure reports.⁹ Within that, for seven of those nine IE PACs, all spending could be traced back to the original contributors (including individual donors), with only two groups (Democrats for Education Reform and Strong Economy Massachusetts) listing an intermediary contributor organization that did not disclose itself. The vast majority of these reports were also available before the election, thanks to the timing requirements for reports established by the Massachusetts Disclosure Law. This important update meant watchdogs, journalists, and voters could all follow the money prior to Election Day, which better allowed people to go to the polls knowing which independent spenders were supporting which candidates, rather than only being able to find out after ballots were cast.

Meanwhile, while it is difficult to determine exactly how much in independent expenditures from non IE PACs was spent on specific legislative candidates (because statewide candidates often are linked with legislative ones in these reports) we estimate that about \$535,000 in independent expenditures was spent by about 15 non IE PAC entities, with about 20% of this money falling into the "secret" category.¹⁰ This type of money came from the general treasuries of various organizations, including political action committees and unions, and included contributors that were for the most part disclosed through separate treasury reports to OCPF. For those that were "secret," they either reported their campaign finance information to another agency outside of OCPF, making it functionally inaccessible to the average voter without extensive time or expertise to search for it, or were unions, whose lack of disclosure we'll return to later.

⁷ http://files.ocpf.us/pdf/releases/pr_independentexpenditure_2010.pdf and data from 2010 OCPF IE and EC reports: <http://www.ocpf.us/Reports/IndependentExpenditures> and <http://www.ocpf.us/Reports/ElectioneeringCommunications>

⁸ Ibid.

⁹ <http://files.ocpf.us/pdf/releases/2015IEPACstudy.pdf> and data from various 2014 OCPF IE PAC reports found at: <http://www.ocpf.us/Reports/IndependentExpenditurePacReports>

¹⁰ Data found at: <http://www.ocpf.us/Reports/IndependentExpenditures>

Finally, \$297,955 in electioneering communications -- all of it from hidden donors -- was spent by two organizations in 2014, the Massachusetts Fiscal Alliance and the American Federation of State County and Municipal Employees.¹¹ We will return to these organizations, as well as the other secret money groups in legislative races, below. In that later section, we will detail how their money has remained secret, and what can be done to increase their disclosure.

Overall then, there were major improvements in disclosure, transparency, and accessibility of information for independent expenditures in legislative races between 2010 and 2014.

The Gubernatorial Contest

By far, the largest amount of outside money in both 2010 and 2014 was spent in gubernatorial contests. And due to this volume, most of the percentage change in secret money between elections can also be attributed to these races. In this section, we'll go beyond the numbers to show exactly how those increases in transparency and accountability played out, as well as what new information actually became available to voters between cycles.

To explain, in 2010, the Republican Governors Association (RGA) directly spent \$4.6 million in Massachusetts through electioneering communications supporting nominee Charlie Baker without disclosing any donors to OCPF. In 2014 however, rather than spending their money directly, the RGA channeled \$10.9 million (which represents the vast majority of the approximately \$11 million spent in pro-Baker funds) through two Massachusetts-based IE PACs, Commonwealth Future and the American Comeback Committee, which did disclose through OCPF's detailed IE PAC reporting system. While the donors technically were disclosed, OCPF records actually provided only limited new information however.

Unlike the legislative IE PACs described above, which provided more nuanced and diverse lists of contributors, the reports for the pro-Baker groups simply display a \$10.9 million layer of RGA funds -- plus information about four individual donors that gave \$5,000 each to Commonwealth Future.¹² At best, these reports should be termed "opaque", and they show a current limit of the disclosure. To find the original donors to the RGA, and thus the real source of the money spent, a voter would need to navigate complex records in out-of-state databases. Alternatively, OCPF could ask for these original donors for their own database, as they have that ability under the Disclosure Law, but they have not done so. The information thus remains elusive to anyone in Massachusetts without the time or expertise to search for it.

¹¹Data found at: <http://www.ocpf.us/Reports/ElectioneeringCommunications>

¹²<http://www.ocpf.us/Filers/Index?q=80920#filer-data> and <http://www.ocpf.us/Filers/Index?q=80936#filer-data>

On the Democratic side, there was a major increase in transparency that deserves recognition. Unlike the RGA, the Democratic Governors Association (DGA) did not directly spend money in Massachusetts in 2010. Instead, the DGA channeled \$2.5 million to the pro-Deval Patrick group, Bay State Future, which did not disclose its donors to OCPF. Their money, alongside funds from the SEIU and Mass Teachers Association, thus accounted for \$3.2 million of that year's secret money.¹³ We know these specific contributors and figures to Bay State Future only from searching the Internal Revenue Service database for the information; it was hidden from OCPF and Massachusetts voters. And while it is worth noting that we could find RGA and DGA donors in federal databases as well, this is still a complex task unlikely to be completed by an average voter in Massachusetts, and is thus not transparent for them.

In 2014, however, the DGA gave \$1.4 million to the pro-Martha Coakley Massachusetts IE PAC, and this information was available on the OCPF website itself, alongside a comprehensive list of all other pro-Coakley IE PAC donors and their contributions. The donors include the Mass Teachers Association, the Service Employees International Union, and Emily's List Massachusetts IE PAC, as well as numerous individual contributors.¹⁴ As many of those intermediary organizations also disclosed their donors to OCPF, it was possible to easily trace much of the money back to its original source. The records thus contain a lot more about who or what contributed to the pro-Coakley group than they did about the pro-Patrick one, despite "opaque" money from the DGA and similar groups.

Overall then, while some work is still needed to bring more transparency to the race, these changes represent a significant improvement in transparency for outside spending in Massachusetts gubernatorial contests.

Accessibility of Information

In addition to the above, one of the biggest impacts of the 2014 Massachusetts Disclosure Law is that information about outside money is now more accessible to the average voter, due both to the previously mentioned timing requirements for reporting and to a new top-five donor disclosure requirement on TV, print and large format internet advertisements.

While most citizens do not regularly check the OCPF database, they do read or view advertisements from campaigns and outside expenditure organizations. To ensure that voters know who, or what, is behind those ads, the 2014 Disclosure Law instituted a new requirement that the top five donors above \$5,000 to any organization be listed directly on political advertisements on TV or in print.

¹³https://forms.irs.gov/app/pod/basicSearch/search?_eventId_displayForm=true&formId=56187&formtype=e8872&execution=e1s5

¹⁴<http://www.ocpf.us/Filers/Index?q=80918#filer-data>



Figure 4 – Listing of Top 5 donors on a pro-Baker ad

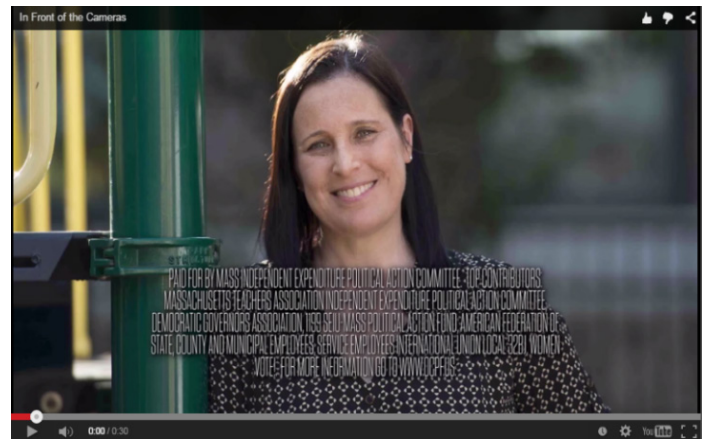


Figure 5 – Listing of Top 5 donors on a pro-Coakley ad

This reform allowed voters in 2014 to see much more campaign finance information than was available and accessible in 2010, and thus to make more informed choices at the ballot box. Importantly, it also required disclosure of the top five donors to electioneering communications organizations that ran TV or print advertisements, when they might have otherwise fallen through the loophole that lets them hide their donors.

While disclosure requirements are the first step, ensuring that the information reported is accessible to voters is also critical. **Figures 4 and 5** demonstrate the accessibility provided by the 2014 law with examples of advertisements from the governor’s race.¹⁵

Impact Summary

While there are still some limits on how far we can trace a money trail, it is clear that Massachusetts voters can now access significantly more information on the OCPF website about contributors to outside spending groups. Important information about the original contributors to some intermediary groups may remain hidden, or just “opaque,” as with the DGA and RGA, but the 2014 Disclosure law has had a substantial impact in improving what is reported to OCPF, and thereby Massachusetts voters. This is especially true in smaller legislative races for the State House of Representatives and Senate. The law also has enhanced the ability of OCPF to trace the source of political spending, although it is unclear how practical it will be for the agency to do that work. Finally, the accessibility of campaign information to voters was also significantly increased through the top five donor disclosure requirement and improved timing of reports.

¹⁵These full campaign ads with Top five Donor Disclosure can be found at <https://www.youtube.com/watch?v=YnVLBhzmK0> and <https://vimeo.com/154496813>

Remaining Secret Money

Our research reveals that despite the successes described above, the donors behind almost \$700,000 in outside spending in Massachusetts during 2014 remained hidden. Although this number seems small in comparison to overall outside spending levels, which was mostly in the governor's race, this lingering secret money was largely used in less expensive races for the House and Senate and thus still had a significant impact.

Two questions thus arise: who are the hidden donors and how can the Disclosure Law be further updated to reveal them? **Figure 6** summarizes the organizations that used secret money in the Massachusetts 2014 election.¹⁶ The next section addresses solutions.

Figure 6: MA Outside Groups with Secret Money	Amount of Secret Money
501 c(4) Organizations	
Massachusetts Fiscal Alliance	\$289,055
Union General Treasury Spending	
SEIU Local 509	\$102,133
1199 SEIU General Treasury	\$100,243
American Federation of State, County, Municipal Employees	\$8,900
Retired State, County and Municipal Employees Association	\$6,061
IUPAT District Council #35	\$421
Union PACs	
32BJ United American Dream Fund	\$110,804
SEIU COPE	\$44,161
527 Organizations	
Progressive Kick Independent Expenditures	\$16,369
College Republican National Committee	\$10,000

The most prominent hidden donor organization in the 2014 elections, the Massachusetts Fiscal Alliance, exploited a loophole that allowed it to evade disclosure requirements by not fundraising specifically for electioneering communications, despite its heavy engagement in such expenditures. It also managed to avoid the top five donor disclosure requirement by running only direct mail electioneering communications, not the TV or print ads covered by the Disclosure Law. Importantly, Mass Fiscal, and five unions who spent directly from their treasuries, are the only organizations which did not report any information about their donors to either OCPF or an out-of-state agency. The two Union PACs actually reported to the Federal Election Commission, while the two 527 organizations reported to the Internal Revenue Service. They are categorized as secret money groups only because their campaign finance information is not accessible through OCPF.

¹⁶Calculated by exploring the contributor records (or lack thereof) of every IE PAC, other entities that made independent expenditures, and electioneering communicators in the OCPF database for the 2014 cycle.

Additionally, while we do not know the individual identities of donors to either union treasuries or Mass Fiscal, this lack of disclosure is less concerning for the former. Unions are funded by dues and small contributions from their members, making the identity of each donor less relevant. When each donor is small, the public interest in knowing who they are is reduced. Unions are also subject to other strict reporting requirements by the Department of Labor, as well as have rules around how their money can be raised and spent. On the other hand, Mass Fiscal Alliance - and any other similar organization formed in the future - could be entirely financed by a single individual who would then be exercising a large influence in Massachusetts politics. And we wouldn't know anything about them. Voters have a right to know who is financing our elections, and this information can change the way they view any particular communication.

After taking all accounts, **total secret money in Massachusetts in 2014 stands at \$688,147.**

Total Secret Money in 2014 MA Elections = \$ 688,147

Solutions

The next question is how can we further enhance the Massachusetts Disclosure Law to capture the activity of these remaining hidden donor groups in state elections, as well as shine a light on intermediary organizations and reveal their original donors.

For the former, there are two ways to bring lingering hidden donor groups into the open. First, the Disclosure law could be revised to require groups financing electioneering communications to disclose their donors, regardless of the stated purpose of their solicitations. The law already allows organizations to set up a separate political committee to pay for electioneering communications, and only disclose donors who give to that fund. Second, the top five donor disclosure requirement could be expanded to apply to more types of advertisements, including direct mail and billboards. This would allow the law to cover all of the most common forms of campaign communications, as well as capture any groups with donors above the rule's \$5000 threshold that previously got away with secret money mailings.

In order to increase the transparency of intermediary money, the state could provide OCPF with the funds and staff needed to search out-of-state databases and compile complete campaign finance information on its website, or at least provide direct links to further information. Determining the precise donors to Massachusetts elections from intermediaries may be extremely difficult, but in some instances, other states such as California have been able to pursue and expose hidden backers of political spending that give through intermediaries to hide their identities.¹⁷

¹⁷<http://www.fppc.ca.gov/media/press-releases/2013-news-releases/fppc-announces-record-settlement-in--11-million-arizona-contribu.html>

Finally, beyond these proposals, it should be noted that there are also many rules and pieces of legislation currently pending in various states, as well as at the federal level, that would enact stronger disclosure requirements in jurisdictions across the country. If passed, these measures would go a long way to shining a light on secret money nationwide, and could have an impact on funds spent in Massachusetts as well.

Conclusion

Despite some remaining problems, **the Massachusetts Disclosure Law has been a major success**, adding transparency and accountability to state elections. As we have shown, the law has significantly contributed to the dramatic decrease in secret money from outside groups between the two statewide election cycles before and after it was enacted. In addition, the reform has been particularly effective in promoting the increased accessibility and timeliness of campaign finance information.

At this point, the Massachusetts state legislature appears to be advancing legislation that would expand the top five donor disclosure requirement to include additional types of advertisements, such as direct mailings and billboards. This measure would make sure all of the most common forms of campaign communications are covered by the Disclosure Law, as well as go a long way to capturing the organizations whose donors still remain hidden in Massachusetts elections. This enhancement would add greater sunshine to the remaining pockets of secret money in our state.