



Testimony of Liz Kennedy, Counsel at Demos
Submitted to the United States Senate Committee on Rules and Administration
“Dollars and Sense: How Undisclosed Money and Post-McCutcheon Campaign Finance Will
Affect the 2014 Election and Beyond”
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Chairman Schumer, Senator King, Ranking Member Roberts, and Members of the Committee, thank you for the opportunity to submit this testimony for this hearing on the harm of secret political spending, the impact of the Supreme Court’s recent decision in *McCutcheon v. FEC*, and solutions to address the problem of improper influence of money in politics in America today.

Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Our current system of campaign finance undermines both of those goals. It privileges the voices of the already privileged, and maximizes the political power of those with the most economic power. And, despite the Supreme Court’s consistent affirmation of the constitutionality of disclosure laws, there is a rising tide of dark money from hidden sources that raises fundamental questions about accountability and responsibility in our democracy. The Supreme Court’s “grossly incorrect”¹ decision in *McCutcheon* will further increase the dominance of those who make the largest donations and engage in the most spending, in derogation of the fundamental principle of political equality.² After all, in a democracy the size of a citizen’s wallet shouldn’t determine the strength of her voice or her right to representation.

Secret political spending is a threat to democracy.

The need for transparency in political spending to inform voters and prevent corruption has been uncontroversial, nonpartisan, and widely recognized for decades. In *Citizens United v. FEC* the Supreme Court relied on the assumption that the true sources of political spending would be disclosed to support its decision to allow unlimited corporate money into the political process. Justice Anthony Kennedy wrote that disclosure “enables the electorate to make informed decisions and give proper weight to different speakers and messages.”³ Unfortunately, the disclosure rules that Justice Kennedy thought would ensure transparency and accountability for political spending are not in place, and government has failed thus far to respond to protect voters and prevent corruption.

Organizations that do not disclose their donors spent over \$300 million in secret political spending to affect the 2012 elections.⁴ This is more than twice as much as in the 2010 mid-term

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elections, the first after Citizens United, when secret political spending rose dramatically from its prior levels. Groups that didn't disclose the identities of their donors reported spending over \$130 million dollars in the last mid-term cycle, meaning almost half of all of the outside spending in that election was unaccountable.⁵ In our report, "Auctioning Democracy: The Rise of Super PACs and the 2012 election," Demos and U.S. PIRG found that secret spending spiked dramatically right before the 2010 election, a pattern we expect to see repeated this mid-term cycle.⁶ It is ironic that a decision extolling and relying upon disclosure has led to a significant reduction in the transparency of overall political spending.

The practices that allow for the wide spread dispersal of secret political spending are akin to money laundering. Donors who want to hide their identities can give to tax-exempt groups such as 501(c)(4)s and 501(c)(6)s, and those groups can spend on elections or give to other groups to spend money on elections, all without the public knowing the true source of the financial support. While political action committees including Super PACs have to disclose their donors, there is no informational value in learning the anodyne names of dark money groups (e.g., "Americans for Freedom") because these groups are opaque themselves – i.e. the financial supporters of "Americans for Freedom" remain secret.

Currently, political non-profit groups masked as social welfare non-profits can accept unlimited contributions from donors and promise anonymity to their financial supporters. Their contributors can remain anonymous because FEC regulations improperly apply the statutory disclosure requirements that exist for outside groups. FEC regulations only require disclosure of the name of a contributor to a dark money group if that donor designates their contribution specifically "for the purpose of" political spending; if there is no designation there is no disclosure. This fails to meet the reality of political spending and contributions. Since very few contributors do earmark, the result has been a proliferation of dark money groups and an explosion in the amount of dark money being spent to influence elections and through them the future of the country.

Disclosure requirements are constitutional

The Supreme Court has repeatedly upheld the government's authority to require transparency of political spending because disclosure requirements serve several compelling interests. Disclosure of political spending serves voters' interests in knowing who is funding a political message and about a candidate's financial allegiances; protects against corruption which is more likely to occur in the absence of transparency and accountability; and prevents circumvention of contribution limits and other campaign finance laws by allowing for contributions and their source to be identified.⁷

In both *Citizens United* and *McCutcheon*, the Court relied on disclosure requirements as necessary for campaign finance regulation. In *McCutcheon*, Chief Justice Roberts wrote that “disclosure of contributions minimizes the potential for abuse of the campaign finance system.”⁸ In *Citizens United*, Justice Kennedy wrote:

With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can 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.’ The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”⁹

Voters need information in order to make educated decisions

In *McCutcheon*, Chief Justice Roberts opined that “[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information,”¹⁰ and noted that disclosure requirements are in part “justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending.”¹¹ But the current disclosure regime is ineffective, and, without effective disclosure of the true sources of financial support for political spending, voters lack the tools to exercise informed judgment when evaluating the content of political messages.

Corporations can cloak their political spending by using conduit organizations to disguise their true identity and thus their true agendas. For example, the “Coalition- Americans Working for Real Change” was a business organization opposed to organized labor, and “Citizens for Better Medicare” was funded by the pharmaceutical industry.”¹² When secret spending is directed through these conduits voters are denied the information they need “to make informed decisions and give proper weight to different speakers and messages.”¹³

Transparency fights corruption and abuse

Voters also need to have a window into financial transactions between contributors and candidates to prevent corruption. Secret political spending breeds unaccountable political

favoritism, undermining the health of a representative democracy. Disclosure regulations can deter this corruption. The Supreme Court recognized in its seminal campaign finance case *Buckley v Valeo*, that “[a] public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that might be given in return.”¹⁴ In *McCutcheon*, the Chief Justice reiterated *Buckley*’s conclusion that disclosure requirements also “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”¹⁵

While certain disclosure requirements are currently in place that cover direct contributions above a certain threshold to candidates, parties, and political action committees, there are many avenues for dark spending should people or entities seek to influence politics and policy without revealing their names. For example, foreign companies are currently prohibited from spending in U.S. elections. But absent effective disclosure requirements it is near impossible to monitor and determine if foreign money is being illegally used to fund political spending to influence federal elections.

Free speech does not mean freedom from response, criticism, or accountability for political spending

People and groups should not be allowed to engage in and yet conceal their political spending in order to avoid controversy. Those who choose to use their financial resources to influence elections should not be isolated from the legitimate scrutiny that such activities may receive. The First Amendment was never intended to prevent political actors from being held accountable for their actions in the political marketplace. As a federal judge explained in refusing to exempt the groups who supported the passage of Proposition 8 from California’s disclosure laws:

Plaintiff’s exemption argument appears to be premised . . . on the concept that individuals should be free from even legal consequences of their speech. That is simply not the nature of their right. Just as contributors [] are free to speak in favor of the initiative, so are opponents free to express their disagreement through proper legal means.¹⁶

Even Justice Scalia, not overly fond of other campaign finance laws and provisions, wrote, in a Supreme Court decision upholding disclosure requirements, that:

requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which . . . campaigns anonymously [] and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.¹⁷

Government has a responsibility to act to ensure transparency for political spending

Huge, bi-partisan majorities of Americans support transparency for political spending. Eighty-one percent of Americans believe that corporations should only spend money on political campaigns if they disclose their spending immediately; this included 77 percent of Republicans and 91 percent of liberals. Eighty-six percent of Americans agree that prompt disclosure of political spending would help voters, customers, and shareholders hold companies accountable for political behavior; support for that statement ranged from 83 percent to 92 percent across all political subgroups.¹⁸

There are several opportunities for government to respond to the growing crisis of dark money in our democracy and protect the interests of voters in knowing who is behind political messages meant to influence their votes and elections, and the interests of citizens in seeing their government business conducted in an above board and accountable manner.

Congress should pass comprehensive disclosure legislation

The Citizens United Court relied upon transparency and accountability for political spending as a protection when it unleashed unlimited amounts of money to be spent to impact elections, so in 2010 Congress tried to fix our broken disclosure system with the DISCLOSE Act. Large majorities of both houses of Congress voted for it - it passed the House and received 59 votes in the Senate, but it failed to overcome a filibuster when no Republican would vote for cloture.¹⁹ The DISCLOSE Act was reintroduced in 2012, and continues to be an important solution to achieve disclosure for outside spending. In addition, the “Real Time Transparency Act of 2014” would require 48-hour disclosure of campaign contributions of \$1,000 or more to candidates, committees, and parties, including transfers from joint fundraising committees, which would help bring us a little closer to the Supreme Court’s dream of prompt disclosure.²⁰

Disclosure for political spending is supported by huge, bi-partisan majorities of Americans.²¹ In the past it had bi-partisan support in Congress as well. In 2000, for example, when a disclosure loophole was allowing certain 527 groups to use secret political spending to influence federal elections, a Republican-controlled Congress closed the loophole; that

legislation passed with overwhelming majorities of 385 to 39 in the House and 92 to 6 in the Senate.²² Comprehensive disclosure legislation remains a vitally important goal to ensure that voters receive the information that they need, and to prevent the corruption that hidden access and influence can engender.

The Securities and Exchange Commission should require disclosure of corporate political spending

Citizens United changed the game by suddenly allowing new corporate political spending into elections, but the rules haven't kept up with the current conditions. The Court assumed the new corporate political spending would be transparent – presumably as a result of federal law or regulation - and therefore subject to accountability, since “disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way.”²³

The SEC has the authority and the responsibility to require that publicly traded companies disclose their direct and indirect political spending. On the heels of Citizens United, a bipartisan committee of prominent corporate law professors filed a petition requesting that the SEC engage in this rulemaking.²⁴ This petition has received unprecedented support, including from six state treasurers acting as fiduciaries, founder and former CEO of Vanguard Jack Bogle, the Council of Institutional Investors, and a global coalition of investors managing more than \$690 billion in assets.²⁵ Many Members of Congress have spoken out in favor of the rule.

It is entirely proper for the SEC to act here. The SEC already has two regulations that regulate campaign finance where it interacts with markets. In 1994 it moved to prevent pay to play in the municipal bond market with Rule G-37, after finding that contracts in the profitable municipal bond market were being awarded to investment companies that made contributions to the state and local officials making the contract decisions. And in 2010, the SEC issued Rule 206(5)4, which restricts campaign contributions from investment advisors to the public officials responsible for making investment decisions for public pension, in order to stop pay to play in the public pension fund market after several scandals. Significant similar concerns arise in the context of secret corporate political spending.

The Internal Revenue Service must stop the abuse of social welfare designations by political nonprofits

501(c)(4) “social welfare” organizations have become the primary vehicle for individuals and corporations that want to keep secret the donors financing their campaign expenditures.

501(c)(4)s were responsible for \$256 million in secret political spending in the 2012 election – 85 percent of the \$300 million of dark money spent that cycle (501(c)(6) trade associations spent another \$55 million without disclosing their donors).²⁶ Though Section 501(c)(4) of the Internal Revenue Code provides tax exemption to “civic leagues of organizations not organized for profit but operated exclusively for the promotion of social welfare,” the IRS current test only requires that in order to qualify for 501(c)(4) status, a group has to have the “primary purpose” of engaging in “social welfare” activities.

Even ignoring the conflict between “exclusively” and “primarily”, if a group spends more than 49 percent on political activities, it shouldn’t be eligible for 501(c)(4) status. But engaging in political spending supporting or opposing candidates does not qualify as “social welfare” activity – IRS regulations specify that “the promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of or in opposition to a candidate for public office.” So if a group wants to spend millions of dollars to support or oppose a candidate, it could still engage in that political spending but it should have to disclose its donors like any other political committee.

The IRS should be applauded for recognizing the need for guidance to clarify federal rules governing political activity by tax-exempt organizations. Currently, tax exempt organizations and regulators lack a clear definition of candidate related political activities or a clear threshold for how much political activity is permissible. While there are significant issues with the IRS’s first attempt to promulgate new rules,²⁷ we look forward to continuing to work with the agency to meet its responsibilities to regulate tax-exempt organizations to make sure they aren’t abusing their tax-exempt status to engage in political spending while shielding their donors from accountability and hiding crucial information from voters.

President Obama should issue an executive order requiring disclosure of political spending by government contractors

Disclosure of political spending is particularly important when it is by those who seek to do business with the government. Without transparency for political spending by those competing for government contracts, the public cannot detect if potential contractors are providing financial support to those in charge of the government’s business decisions in order to increase the likelihood of receiving public contracts. Corruption in contracting can lead to sweetheart deals that benefit the recipient of the contract and the recipient of the political contributions at the expense of tax-payers.

In the face of legislative intransigence it is critically necessary and entirely appropriate that the executive exercise the full extent of its more limited authority by requiring disclosure

of political spending by those seeking to do business with the government. An executive order would close the loopholes that allow government contractors to spend political money with only private gratitude but without public accountability. Those seeking to spend money to influence elections and curry favor with elected officials must do so in the light of day.

McCutcheon v FEC will further increase the domination of politics and policy making by the elite donor class, silencing the majority of Americans and damaging our democracy

In addition to addressing disclosure, the Committee has invited testimony on the Court's recent decision in *McCutcheon v. FEC* and how it is likely to affect our electoral process.

With the Court's decision striking down aggregate contribution limits in *McCutcheon*, wealthy donors may now contribute more than \$3.5 million to a single party's candidates and party committees (plus a virtually unlimited amount to supportive PACs).²⁸ Demos projects that this will result in more than \$1 billion in additional campaign contributions through the 2020 election cycle.²⁹ The \$123,200 limit was already twice the income of the average American household. Without an aggregate limit we estimate that in 2012 just 1,219 elite donors would have contributed nearly 50 percent more to candidates and parties than President Obama and Mitt Romney combined raised from more than 4 million small donors.³⁰

This new de-regulatory attack on common sense rules for money in politics will shift the balance of power even further toward wealthy donors and away from ordinary citizens. In his dissent, Justice Stephen Breyer wrote that the *McCutcheon* "decision eviscerates our Nation's campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve."³¹ We risk having our politics and public policy debates devolve into a disagreement between rich people, while the rest of Americans are relegated to the sidelines, their voices unable to be heard above those who can afford to buy million dollar megaphones.

Still in place, at least for now, are limits on the amount an individual may contribute to a particular federal candidate and party committee. A wealthy individual may contribute up to \$2,600 per election (\$5,200 per election cycle) to a federal candidate, \$5,000 per calendar year to a political action committee (PAC) that supports federal candidates, \$10,000 per calendar year to a state or local party committee, and \$32,400 per calendar year to a national party committee.³² But "joint fundraising committees" will allow members of Congress and party officials to solicit much larger checks from big money donors who can contribute to many candidates or parties at once.

In his opinion, Justice Roberts characterized the First Amendment as protecting only an individual's right to "speak" by spending as much he or she can. But the First Amendment promotes more than just self-expression—one of its primary functions is to promote the accountability and responsiveness of government officials to the public as a whole, the hallmarks of a healthy democracy.³³ Justice Breyer wrote in dissent that the "First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech *matters*. . . . Where enough money calls the tune, the general public will not be heard."³⁴

After McCutcheon, even more big money will come from an even smaller number of elite donors. Our elected representatives will be even more dependent on – and thus responsive to – the donor class than ever before. This is largely because an elite "donor class" funds a substantial portion of campaigns. In the 2012 elections, for example, U.S. Senate candidates raised 64 percent of their funds in contributions of at least \$1,000—from just 0.04 percent of the population.³⁵ This means that even the best-intentioned candidates often spend most of their time contacting a narrow set of wealthy donors and hearing about their concerns and priorities.³⁶ In describing the four to six hours of fundraising calls and events he's required to do per day, Connecticut Senator Chris Murphy noted that he wasn't calling anyone "who could not drop at least \$1,000," who he estimated make at least \$500,000 to \$1 million per year. He acknowledged that this meant he was hearing far more about the concerns of the affluent than from people who worked in factories.³⁷

Already, recent research confirms that the U.S. government responds differently to the preferences of the donor class, even when those preferences run counter to those of the general public.³⁸ When the views of the richest 10 percent differ from the rest of us, the 10 percent trumps the 90 percent.³⁹ This research also shows that the very wealthy have starkly different policy priorities than the general public, especially on economic issues.⁴⁰ Americans across the political spectrum believe that money in politics is the reason their representatives are more responsive to private interests with financial resources than to the public interest.⁴¹

The differing policy preferences of the wealthy as compared to the general public would not present a challenge to the democratic vision of a representative government if the active influence of the wealthy on public policy accorded with their numbers. But the degree to which a small cohort of Americans that contribute large sums to federal campaigns exerts a strong influence on the political process and public policy outcomes should be sobering to anyone concerned with the health of our democracy.

The Supreme Court has consistently cited the danger that interdependent relationships between elected officials and financial supporters pose to representative government. They upheld previous campaign finance laws because they understood that corruption of

government is “not confined to bribery of public officials, but extend[s] to the broader threat from politicians too compliant with the wishes of large contributors.”⁴² The possibility that legislators will “decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder” is a more subtle form of corruption than straight *quid pro quo* transactions, but is “equally dispiriting.”⁴³

The current Roberts’ majority has taken a dangerously deregulatory direction, and has struck down almost every campaign finance laws the Court has considered. A prior Supreme Court, in upholding the Bipartisan Campaign Reform Act, recognized that “[t]ake away Congress’ authority to regulate the appearance of undue influence and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic government.”⁴⁴ Indeed, two thirds of Americans say they trust government less because big donors have more influence than regular voters; a quarter of Americans say they are less likely to vote because big donors have so much more influence over elected officials than average Americans.⁴⁵ A new poll has found that the percentage of young voters who say they will definitely vote in the upcoming elections just dropped precipitously; according to the polling director “there’s an erosion of trust in the individuals and institutions that make government work - and now we see the lowest level of interest in any election we’ve measured since 2000.”⁴⁶

Already confidence in Congress is at all time lows, and an influx of more big money from special interest and elite donors will continue to undermine faith in our democracy.⁴⁷ Legitimacy is essential for a functioning democracy, and it rests on the belief by the people that they are fairly represented. But Americans know that financial supporters currently have an improper influence on our politics, and they understand that this is a corruption of democratic government.⁴⁸ Elected representatives have a duty to act with care and integrity in the interests of their constituents and the country as a whole, and not to favor the positions of their financial supporters.

We can respond by empowering average Americans and reclaiming our democracy

Though the Court has severely hampered our ability to protect our democratic politics and policy making there is much we can still do, in addition to ensuring transparency, to democratize the influence of money in politics. In response to McCutcheon, there are several campaign finance measures that could help fight corruption, such as banning or restricting joint fundraising committees, adopting strong anti-coordination rules and solicitation rules,

Invest in government so it responds to the people

To counter the influence of big money we need to encourage a lot more small donors to get involved by incentivizing representatives to reach out to them. The Fair Elections Now Act (S. 2023) and the Government By the People Act (H.R. 20) would provide a multiple matching fund on small contributions from a public fund. Candidates could raise substantial funds from their regular constituents, which will decrease their need to depend on big donors. This means candidates will spend more time hearing from average voters, rather than dialing for dollars from the elite donor class.

Investing in small donor democracy through public financing is the best policy we can currently enact to democratize the influence of money in politics, and has been shown to work successfully. It has worked well in New York City, where a successful matching funds system has led to candidates relying much more heavily on small donors and a more diverse donor pool.⁴⁹ Since Connecticut's system took effect in 2008 more people are running for office and contributing to campaigns, the influence of lobbyists has decreased, and elected representatives have responded to the public will by passing popular programs such as paid sick days and a higher minimum wage.⁵⁰

Reclaim our democratic constitution

McCutcheon has been characterized by retired Supreme Court Justice John Paul Stevens as "grossly incorrect,"⁵¹ but it is just the most recent case in which the Court has fundamentally misread the Constitution and used the First Amendment to remove common sense rules that are necessary to protect government from domination by the elite donor class. As noted by First Amendment scholar and former University of Chicago Law School dean Geoffrey Stone in a column entitled "the First Amendment doesn't protect the right to buy the American government:"

That these five justices persist in invalidating these regulations under a perverse and unwarranted interpretation of the First Amendment is, to be blunt, a travesty. These decisions will come to be counted as among the worst decisions in the history of the Supreme Court.⁵²

There is powerful, widespread disagreement with the Court's current approach, which has only grown since Citizens United; 150 rallies protesting the decision occurred in 41 states the day the McCutcheon decision was announced. We can work through the courts to

overcome the current misunderstanding of the relationship between political speech, money in politics, and the constitution. Even while following precedent, courts have criticized the Supreme Court's money in politics jurisprudence and suggested it is only a matter of time until it is changed. For example, leading Second Circuit Judge Guido Calabresi has written that "all is not well with this law" because:

The ability to express one's feelings with all the intensity that one has—and to be heard—is a central element of the right to speak freely. It is, I believe, something that is so fundamental that sooner or later it is going to be recognized. Whether this will happen through a constitutional amendment or through changes in Supreme Court doctrine, I do not know. But it will happen. Rejection of it is as flawed as was the rejection of the concept of one-person-one-vote. And just as constitutional law eventually came to embrace that concept, so too will it come to accept the importance of the antidistortion interest in the law of campaign finance.⁵³

Just this month in a decision striking New York's Super PAC contribution limits, Judge Paul A. Crotty of the Southern District of New York lamented the influence of big money in politics and wrote that voices of regular citizens "are too often drowned out by the few who have great resources."⁵⁴ Judge Nelson of the Montana Supreme Court felt the *Citizens United* decision dictated that Montana could no longer ban corporate political spending in its state elections, but wrote a scathing critique in which he characterized the Supreme Court's reasoning on campaign finance as "smoke and mirrors," saying further:

To my knowledge, the First Amendment has never been interpreted to be absolute and gloriously isolated from other fundamental rights and values protected by the Constitution. Yet, *Citizens United* distorts the right to speech beyond recognition. Indeed, I am shocked that the Supreme Court did not balance the right to speech with the government's compelling interest in preserving the fundamental right to vote in elections.⁵⁵

This won't be easy, but there are historical examples where the Court has recognized the fundamental error of past decisions and changed course, for example on racial segregation, marriage equality, and regulation of minimum wage and hour laws.

Finally, our founders provided the people with the tools to amend our governing document should our branches of government fail to correctly protect the interests of the

people. Popular anger over the Court's money in politics decisions and the domination of government by the elite donor class has led to a movement for a constitutional amendment. A strong amendment would overturn Buckley, McCutcheon, and Citizens United, and give government the authority to regulate money in politics appropriately. Hundreds of local governments and 16 states have passed resolutions calling on Congress to submit a constitutional amendment to the states for ratification. 36 Senators and 114 Representatives support a constitutional amendment so far in the 113th Congress.

Conclusion

McCutcheon is the latest case in which the Supreme Court misread the Constitution to strike basic protections against the dominance of concentrated wealth on public policy. In the long term we must reclaim our constitution as a tool for democratic self-government, so that we're able to regulate money in politics to serve the fundamental American values of political equality, accountable government, and fair representation for all regardless of wealth. And while the current Court strikes down many limits, we can build up a system that brings people in to the process by empowering small donors with public matching funds.

But in this moment, even if these Supreme Court decisions have damaged our ability to prevent big money and special interest donors from dominating the political discourse and silencing the rest of us, there is an urgent need to require that this political spending at least be transparent and accountable. If the voices of the wealthiest are those being heard by our government, at least the rest of us will know who our government is listening to if they're required to disclose their identities. Congress, the SEC, the IRS, the FEC, and President Obama should all take immediate action to bring an end to the scandal of secret political spending in the interests of voters and our free democratic society.

¹ Burgess Everett, John Paul Stevens to testify on 'dark money', POLITICO, April 27, 2014, <http://www.politico.com/story/2014/04/john-paul-stevens-testify-dark-money-106066.html>.

² See Robert A. Dahl, *Polyarchy: Participation and Opposition* 1 (1971) (Dahl argues that democracy signifies "the continuing responsiveness of the government to the preferences of its citizens, considered as political equals.")

³ *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 916 (2010).

⁴ *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1460 (2014).

⁵ PUBLIC CITIZEN, 12 MONTHS AFTER: THE EFFECTS OF CITIZENS UNITED ON ELECTIONS AND THE INTEGRITY OF THE LEGISLATIVE PROCESS 10 (2011), <http://www.citizen.org/documents/Citizens-United-20110113.pdf>.

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- ⁶ ADAM LIOZ, DEMOS, & BLAIR BOWIE, U.S. PIRG, AUCTIONING DEMOCRACY: THE RISE OF SUPER PACS & THE 2012 ELECTION 5 (2012), <http://www.demos.org/publication/auctioning-democracy-rise-super-pacs-and-2012-election>.
- ⁷ *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*).
- ⁸ *McCutcheon*, 134 S. Ct. at 1459.
- ⁹ *Citizens United*, 130 S. Ct. at 916.
- ¹⁰ *McCutcheon*, 134 S. Ct. at 1460.
- ¹¹ *Id.* at 1459 (quoting *Citizens United*, 588 U.S., at 367) (internal punctuation and citations omitted).
- ¹² See *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 128, 197 (2003).
- ¹³ *Citizens United*, 130 S. Ct. at 916.
- ¹⁴ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (*per curiam*).
- ¹⁵ *McCutcheon*, 134 S. Ct. at 1459 (quoting *Buckley*, 424 U.S. at 67).
- ¹⁶ *Protectmarriage.com v. Bowen*, 830 F. Supp 2d 914, 932 (E.D.Cal., 2011).
- ¹⁷ *Doe v. Reed*, 130 S. Ct. 2811 (2010) (Scalia, J., concurring).
- ¹⁸ LIZ KENNEDY, DEMOS, CITIZENS ACTUALLY UNITED: THE OVERWHELMING, BI-PARTISAN OPPOSITION TO CORPORATE POLITICAL SPENDING AND SUPPORT FOR ACHIEVABLE REFORMS 5 (2012), http://www.demos.org/sites/default/files/publications/CitizensActuallyUnited_CorporatePoliticalSpending.pdf.
- ¹⁹ Editorial, *Keeping Politics in the Shadows*, N.Y. TIMES, July 28, 2010, at A22, available at <http://www.nytimes.com/2010/07/28/opinion/28wed2.html>
- ²⁰ Lisa Rosenberg, *Real time transparency bill a real time response to McCutcheon*, SUNLIGHT FOUNDATION, April 2, 2014, <http://sunlightfoundation.com/blog/2014/04/02/real-time-transparency-bill-a-real-time-response-to-mccutcheon/>
- ²¹ Kennedy, *supra* note xvii, at 5.
- ²² TESTIMONY OF FRED WERTHEIMER, PRESIDENT OF DEMOCRACY 21, BEFORE THE SENATE RULES COMMITTEE, ON THE DISCLOSE ACT OF 2012 5 (2012), http://www.democracy21.org/uploads/DISCLOSE_ACT_OF_2012_SENATE_RULES_COMMITTEE_TESTIMONY_3_26_12.pdf.
- ²³ *Citizens United*, 130 S. Ct. at 916.
- ²⁴ Letter from the Committee on Disclosure of Corporate Political Spending to Elizabeth M. Murphy, Sec'y, U.S. Securities and Exchange Commission (Aug. 3, 2011), at <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>.
- ²⁵ See Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities [File No. 4-637], U.S. Securities and Exchange Commission, at <https://www.sec.gov/comments/4-637/4-637.shtml> (last visited Apr. 29, 2014).
- ²⁶ Outside Spending – 2012, OpenSecrets.org, http://www.opensecrets.org/outsidespending/fes_summ.php?cycle=2012.
- ²⁷ See Letter from Independent Sector to Amy F. Giuliano, Internal Revenue Service (Feb. 27, 2014), at http://www.citizen.org/documents/Independent_Sector_Comments_on_Proposed_Regulations.pdf
- ²⁸ ADAM LIOZ, DEMOS, & BLAIR BOWIE, U.S. PIRG, MCCUTCHEON MONEY: THE PROJECTED IMPACT OF STRIKING AGGREGATE CONTRIBUTION LIMITS 1 (2013) <http://www.demos.org/sites/default/files/publications/McCutcheonMoney-2013.pdf>
- ²⁹ *Id.*

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- ³⁰ *Id.* at 2.
- ³¹ *McCutcheon*, 134 S. Ct. at 1467
- ³² See FEDERAL ELECTION COMMISSION, CONTRIBUTION LIMITS 2013-14, <http://www.fec.gov/pages/brochures/contriblimits.shtml> (last visited Apr. 29, 2014).
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- ³⁴ *McCutcheon*, 134 S. Ct. at 1467 (Breyer, J., dissenting).
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- ⁴³ *McConnell v. FEC*, 540 U.S. 93 (2003).
- ⁴⁴ *McConnell*, 540 U.S. at 144 (internal citations omitted).
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- ⁵⁴ *New York Progress and Protection PAC v. Walsh*, S.D.N.Y., No. 13-6769, April 24, 2014.

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