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AN EQUAL SAY AND AN EQUAL CHANCE FOR ALL

The Racial Equity Impact of Secret Political Spending by Government Contractors

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The Supreme Court's decision in *Citizens United v. FEC* allowed corporations to spend unlimited amounts of money to influence American politics. But, the American public is kept from understanding the full impact of new corporate money in politics because of the explosion of secret political spending and the failure to adopt common sense disclosure requirements.

Since *Citizens United*, more than $600 million in dark money has been spent in U.S. elections through 501(c)(4) and (c)(6) organizations that do not have to disclose their funders. Secret corporate political spending threatens the integrity of our democratic self-government, as those with the deepest pockets can overwhelm other voices. This financial influence leads to the needs and wants of corporations being prioritized and can skew important public policy outcomes, often in ways that perpetuate racial inequities. But while politicians typically know who is spending money to support their political fortunes, the public is denied the ability to properly assess when "elected officials are 'in the pocket' of … moneyed interests."[1]

Many have called for measures that would pull back the curtain on corporate political spending. Greater transparency of such spending is particularly needed with respect to government contractors, who are given taxpayer dollars to do the people's business.[2] These contractors

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often turn around and engage in political spending to influence policies that preserve their profits at the public's expense, or affect contracting decisions. Government contractors often heavily advocate for, and profit when the federal government adopts, policies that disproportionately harm people of color and other traditionally disenfranchised populations. An executive order requiring government contractors to disclose their political spending would help the public hold government contractors accountable for political spending that benefits their bottom lines while entrenching structural racism in our country.

I. Political Spending by Government Contractors

The federal government expends much of the public purse through contractors that provide goods and services. Currently, there are a number of companies that profit from government contracts and then spend money in politics to influence politicians to support policies they view as benefitting their bottom line. Often these policies have a disproportionately negative effect on people of color and fail to reflect the priorities of the American public. It is, therefore, unsurprising that many companies and 501(c)(4) and (c)(6) organizations are actively advocating to preserve their right to flood the political sphere with dark money, thereby avoiding public accountability.[3]

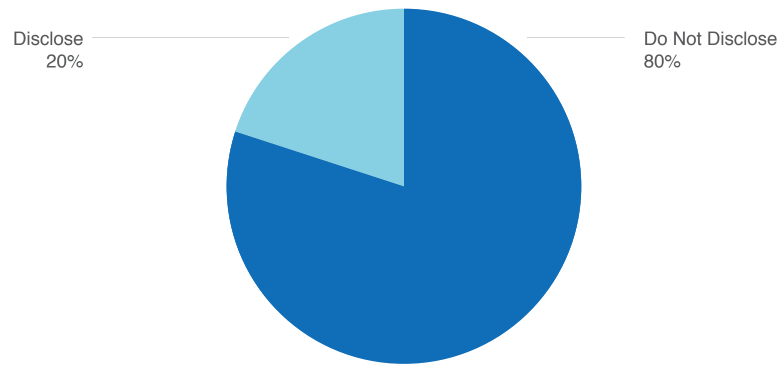
Requiring government contractors to disclose the money they spend in politics through all channels will allow the public to better assess what corporations are getting for their political investments. Even when only partially accounted for, since they fail to capture sums spent through secret channels, the numbers are staggering. According to the Sunlight Foundation:

> Between 2007 and 2012, 200 of America's most politically active corporations spent a combined $5.8 billion on federal lobbying and campaign contributions. [But] what they gave pales compared to what those same corporations got: $4.4 trillion in federal business and support.[4]

That amount is "more than the $4.3 trillion the federal government paid the nation's 50 million Social Security recipients over the same period."[5]

A closer look at the top 20 publicly traded federal contractors in 2013 and 2014—17 of which remained the same in both years[6]—gives a further glimpse into the extent of the dark money problem among federal contractors. In 2013 and 2014, these government contractors were among the top corporate political spenders.[7] During the last election cycle, the PACs and employees of these companies contributed over $50 million to candidates[8] and received over $261 billion in federal contracts.[9]

Figure 1. The Top 20 Publicly Traded Federal Contractors & Disclosure of Dark Money



However, these numbers only reflect part of the story. Of the aforementioned publicly traded federal contractors, 80 percent *do not* disclose the amounts that they contributed to 501(c)(4) and 501(c)(6) organizations.[10] This is deeply troubling given that the number of groups filtering dark money into our political system has increased exponentially in recent years[11]—so much so that the 2014 mid-term was dubbed, by some, as the "dark money election."[12] And since secret political spending has been growing exponentially in each election since *Citizens United*, we can expect 2016 to be even worse.

II. Secret Political Spending by Government Contractors Contributes to Racial Inequities in the United States

The interests of government contractors are often not in alignment with those of the general public and, in particular, people of color. Such contractors have helped reinforce systems of structural racism that exist in the U.S. Two recent examples of such efforts can be seen in the ways that government contractors have: (a) actively worked to defeat efforts to increase the minimum wage, and (b) sought to strengthen an already racially biased and flawed system of incarceration.

The government contracting process also contributes to racial inequity in other ways. First, spending by government contractors and other members of the donor class operates to maintain an unrepresentative government. And, second, there have been numerous instances where government contracts have been awarded to those with political connections and resulted in the waste of public dollars, which could have been allocated to programs that help promote racial equity and dismantle systems of structural racism.

A. Corporate Political Spending Keeps the Minimum Wage Below a Living Wage

Government contractors actively oppose efforts to raise the minimum wage, a policy that would help lift people out of poverty and improve racial equity in our nation. As a recent Dēmos report explained, government contractors often benefit from paying many of their workers low wages while providing exorbitant compensation for company executives:

> Through federal contracts and other funding, our tax dollars are fueling the low-wage economy and exacerbating inequality. Hundreds of billions of dollars in federal contracts, grants, loans, concession agreements, and property leases go to private companies that pay low wages, provide few benefits, and offer employees little opportunity to work their way into the middle class.[13]

An increase in the minimum wage would raise millions of Americans out of poverty.[14] Since 2009, the federal minimum wage has stood at only $7.25 per hour.[15] At this rate, a full-time worker earns only $15,080 each year—which falls below the federal poverty guidelines for households of two or more.[16] Individuals living at such a low-income level will not be able to help generate growth in the American economy. Rather, they have to rely on food stamps and other public assistance benefits just to make it from one paycheck to the next.

Furthermore, increasing the minimum wage is an important tool in efforts to improve racial equity in our nation. This is clear when one looks at the demographic makeup of our nation's low-wage workforce: while people of color make up only 32 percent of the American workforce, they comprise approximately 42 percent of the minimum wage workforce.[17]

However, while the American public strongly favors raising the minimum wage[18]—and while such a reform would improve the lives of hard-working Americans, advance racial justice, and increase the amount of money being spent in the economy—legislation aimed at increasing the federal minimum wage has been defeated numerous times over the years.[19]

Members of the legislature opposing a minimum wage increase frequently argue that raising it would harm businesses.[20] These arguments often closely parallel those that have been made by government contractors, who are members of 501(c)(4) and (c)(6) organizations—like the International Franchise Association ("IFA") and the "Jeffersonian Project," the 501(c)(4) arm of the American Legislative Exchange Council ("ALEC")—that actively oppose raising the minimum wage.[21]

Dark money groups and their affiliates have issued publications arguing against a minimum wage increase,[22] lobbied against increasing the minimum wage,[23] and drafted language that prevents any political subdivision within a state from raising the minimum wage above what is required by the state,[24] which has been introduced in at least 12 state legislatures.[25] In addition, IFA is actively challenging the ordinance enacted by the City of Seattle, which increases the minimum wage to $15, in court.[26]

Despite the fact that the American public largely supports proposals to increase the minimum wage, government contractors have consistently campaigned against efforts to establish a living wage. The current minimum wage allows contractors to increase their profits at the expense of their employees and benefit from a low-wage workforce which, in the United States, is comprised of a disproportionately high percentage of people of color. The public has a right to know how contractors are spending the tax dollars of hard-working Americans to advocate against the interests of hard-working Americans.

B. Corporate Political Spending Maintains the Prison-Industrial Complex

It is no secret that the U.S. criminal justice system is racially biased. Our society is one that: incarcerates Blacks at nearly six times the rates of whites; sentences Blacks for drug offenses at nearly 10 times the rate of whites, despite the fact that whites use drugs at five times the rate as Blacks; imposes sentences on Black males that are approximately 20 percent longer than whites convicted of similar crimes; and disproportionately assigns the death penalty to people of color.[27]

The private prison industry thrives on maintaining a system that incarcerates high numbers of people and keeps them in jail for longer terms. And, in recent years, there has been a boom in the growth of the federal private prison population that has vastly outpaced the growth in the incarceration rate. According to data recently released by the Bureau of Justice Statistics, between 2000 and 2012, the number of individuals held in private federal prisons increased by 10.1 percent on average each year; however state private prisons only saw an annual increase of 2 percent.[28] In addition, as of 2012, approximately half of all individuals housed at immigrant detention facilities were at privately operated facilities, as compared to approximately one-fourth a decade prior.[29]

Three of the largest for-profit private prisons in the U.S. are the Corrections Corporation of America ("CCA"), The GEO Group, Inc. ("GEO"), and Management and Training Corporation ("MTC"). According to the Center for Responsive Politics, in the 2014 election cycle, these groups spent $3.698 million on lobbying federal officials and the PACs and employees of these companies contributed $552,636 to federal campaigns.[30] But this may only be a fraction of what these companies have filtered into the federal political system because it includes only those contributions that have been *disclosed*. There is no way of knowing how much money these companies have funneled into the political process through 501(c)(4) and (c)(6) organizations.

The payout for CCA, GEO, and MTC's efforts: in 2013 and 2014, these companies received over $1.561 billion in contracts from the federal government.[31]

These for-profit private prison companies have openly described how they benefit from policies that result in higher rates of incarceration. As CCA noted in its 2014 Annual Report:

> The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them…. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes[.][32]

It is, therefore, no surprise that CCA, GEO and others support policies (like three-strikes and truth-in-sentencing laws) that dole out harsher punishments, result in lengthier sentences, and increase rates of incarceration among the general American public and the immigrant population.[33] In addition, these groups have actively opposed legislation that would subject the private prison industry to the same federal public records laws as government-run prisons.[34]

CCA, GEO, and MTC are also all members of ALEC,[35] which, as noted above, recently opened a 501(c)(4) arm that has been dubbed the "Jeffersonian Project."[36] ALEC has frequently supported policies that disproportionately harm individuals of color, including policies that have resulted in the explosion of the prison population over the last few decades.[37] By donating to the "Jeffersonian Project" or one of the many other 501(c)(4) or (c)(6) organizations that exist, groups like CCA, GEO, and MTC are able to influence politicians outside the public's line of sight.

When legislators benefit from secret corporate political spending by private prison companies, and then support policies that advance the prison-industrial complex and increase the profits for these private prison companies, they are helping to maintain a system of criminal injustice that will imprison approximately 1 in 3 Black males over the course of their lifetimes.[38] The current system disproportionately punishes people of color and creates "devastating economic consequences" for communities whose populations are incarcerated at inflated rates.[39]

C. Corporate Political Spending by Government Contractors Perpetuates Inequities in Political Representation

People of color are underrepresented in elected office. In total, of the 535 members of Congress, there are only 96 people of color (nearly 18%),[40] meaning that over 82% of Congress is white, non-Hispanic. And, of these elected officials, only 46 (approximately 8.6%) are Black.[41] However, the 2014 population estimates produced by the U.S. Census Bureau show that these numbers do not reflect the demographic makeup of our nation. The Census Bureau estimates that, in 2014, only 62.2% of the U.S. population was white, non-Hispanic and 14.3% of the population identified as Black.[42]

The role of money in politics is one large factor contributing to the underrepresentation of people of color in Congress and elected office more generally. For instance, candidates of color often lack "access to networks of wealthy donors"[43] and tend to raise significantly less than their white counterparts.[44]

Government contractors and other companies have contributed to this problem in several ways. First, whites dominate the boards of large companies,[45] which makes it unlikely that corporate spending will be appropriately "responsive to the needs of people of color."[46] Indeed, as demonstrated by the case studies above, the money that government contractors and other large companies tend to spend on politics is adverse to the interests and needs of people of color and other disenfranchised groups. This is deeply troubling when one considers the fact that, "[o]n issue after issue—from the minimum wage, to paid sick leave, to the regulation of predatory lenders—it is the donor class whose views and priorities win out in the end."[47]

Second, companies contribute more to efforts to elect white candidates.[48] This helps sustain an unrepresentative democracy that is unresponsive to the needs of people of color. Studies have shown that white legislators from both sides of the aisle respond less frequently to the needs and concerns raised by people of color, while legislators of color will respond more frequently to their constituents of color and are more likely to advocate for issues and support policies that are of importance to people of color.[49]

D. Corporate Political Spending Fosters Pay-to-Play Corruption at the Expense of Public Investment

Secret political spending fosters a pay-to-play culture that benefits the politically well connected. The federal government hands out hundreds of billions of dollars of contracts each year without undertaking a meaningful bidding process.[50] These contracts have reportedly favored large contributors "over small competitors, reward[ed] political connections rather than management skill," and resulted in numerous instances of fraud, mismanagement, and waste.[51] The current system, which results in the inefficient allocation of taxpayer dollars, can have an enormous impact on the lives of the American public.

When federal dollars go to waste, the American public suffers. Requiring contractor disclosure could help combat pay-to-play corruption and encourage a competitive bidding process that will save taxpayer dollars and allow them to be reallocated to our nation's education system[52] and other programs that help reduce the racial wealth gap and foster racial equity.

III. We Need an Executive Order to Require Disclosure of Secret Corporate Political Spending by Government Contractors

When the U.S. Supreme Court decided *Citizens United* in 2010, it held that the First Amendment grants corporations the right to spend an unlimited amount of funds on politics.[53] At the same time, the Court upheld requirements that the true source of political spending be disclosed, recognizing that "transparency enables the electorate to make informed decisions," "see whether elected officials are 'in the pocket' of … moneyed interests," and "give proper weight to different speakers and messages."[54]

The Court envisioned a "prompt" disclosure regime facilitated by the Internet, which would allow shareholders and citizens "to hold corporations and elected officials accountable."[55] But this modern disclosure system does not yet exist. Instead, corporations have funneled contributions through 501(c)(4) and (c)(6) organizations that do not have to disclose their funders. This allows corporations to keep their political spending in the dark.

President Obama can act to improve the problem of dark money in politics dramatically by issuing an Executive Order to require federal contractors to fully disclose the money they spend in politics. This Order would be an important first step in bringing corporate political spending out of the dark and into the light, to illuminate what candidates are in the pockets of big businesses with interests that diverge from those of the American public and, in particular, people of color.

Endnotes

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4. Posting of Bill Allison & Sarah Harkins to Sunlight Foundation Blog, http://sunlightfoundation.com/blog/2014/11/17/fixed-fortunes-biggest-corporate-political-interests-spend-billions-get-trillions/ (Nov. 17, 2014, 09:26 EST) ("Fixed Fortunes: Biggest corporate political interests spend billions, get trillions").
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6. In order to conduct this analysis, Dēmos examined the top contractors in 2013 and 2014, as reported by the U.S. government's Federal Procurement Data System ("FPDS"). Federal Procurement Data System, Top 100 Contractors Report, https://www.fpds.gov/fpdsng_cms/index.php/en/reports/62-top-100-contractors-report3.html (last visited Aug. 11, 2015). This revealed that, in 2013 and 2014, 17 of the top 20 publicly traded federal contractors remained the same. These companies were: Lockheed Martin, Boeing, Raytheon, General Dynamics, Northrop Grumman, McKesson, United Technologies Corp., Humana, Hewlett-Packard, General Electric, Honeywell International, Amerisourcebergen, Merck & Co., UnitedHealth Group, IBM, Pfizer, and Cardinal Health. The remaining companies included in the top 20 list for each year included FedEx, Berkshire Hathaway, and Chevron, in 2013, and Accenture, Valero Energy, and Exxon Mobile, in 2014.
   The information obtained from FPDS was then examined next to the CPA-Zicklin Index of Corporate Political Disclosure and Accountability, which reports on the corporate disclosure practices of the top 300 publically traded companies. Center for Political Accountability, et al., The 2014 CPA-Zicklin Index of Corporate Political Disclosure and Accountability: How Leading Companies are Making

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7. Center for Responsive Politics, OpenSecrets.org, https://www.opensecrets.org/ (information obtained by conducting searches related to each company).
8. *Id.*
9. USAspending.gov, https://www.usaspending.gov/Pages/Default.aspx (based on recipient searches).
10. Center for Public Accountability, et al., *supra* note 6.
11. Robert Maguire, *How 2014 is Shaping Up to be the Darkest Money Election to Date*, OpenSecrets.org, Apr. 30, 2014, https://www.opensecrets.org/news/2014/04/how-2014-is-shaping-up-to-be-the-darkest-money-election-to-date/.
12. *See, e.g.*, Paul Blumenthal, *It's Time to Name the 2014 Midterms the Dark Money Election*, Huff. Post, Sept. 4, 2014, http://www.huffingtonpost.com/2014/09/04/dark-money-2014_n_5761774.html.
13. Amy Traub & Robert Hiltonsmith, Dēmos, Underwriting Bad Jobs: How Our Tax Dollars are Funding Low-Wage Work and Fueling Inequality 1 (2013), *available at* http://www.demos.org/sites/default/files/publications/UnderwritingBadJobs-Final-2.pdf. Dēmos has previously noted that government contractors often also pay their workers "low wages, … barely enough to afford essentials like food, health care, utilities and rent." *Id.* "At the same time, many of these companies are providing their executives with exorbitant compensation. . . . We find that nearly two million private sector employees working on behalf of America earn wages too low to support a family, making $12 or less per hour." *Id.*
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21. The U.S. Chamber of Commerce, a 501(c)(6) organization that also represents big business, but whose membership is not public, has also lobbied against increasing the minimum wage. *See, e.g.*, *The Lobbyists Behind Senate Failure to Advance Minimum Wage Increase*, theRealNews.com, Oct. 3, 2014, http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=11804; Robbie Feinberg, *The Money Against the Minimum Wage*, OpenSecrets.org, Apr. 4, 2014, https://www.opensecrets.org/news/2014/04/the-political-money-against-the-min/.
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40. AP, *New Congress Includes More Women, Minorities*, N.Y. Times, Jan. 4, 2015, http://www.nytimes.com/aponline/2015/01/04/us/politics/ap-us-congress-by-the-numbers.html?_r=0.
41. *Id.*
42. 14.3% of the population identified as black "alone or in combination." Sandra L. Colby & Jennifer M. Ortman, U.S. Census Bureau, Projections of the Size and Composition of the U.S. Population: 2014 to 2060 8-10 (2015), *available at* https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf.
43. Adam Lioz, Dēmos, Stacked Deck: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy 27 (2014), *available at* http://www.demos.org/sites/default/files/publications/StackedDeck2_1.pdf.
44. *Id.* at 28 ("[A] study of more than 3,000 candidates running for 2,000 state legislative in 2006 found that adjusting for factors such as incumbency, partisanship, and district income 'non-white candidates raise an average of 47% less compared to white candidates when all other mitigating factors are controlled.' The effect of race was even greater in the South, where candidates of color raised nearly 64 percent less than their white counterparts.").
45. The Alliance for Board Diversity, an organization that promotes the inclusion of women and people of color on corporate boards, issued a report in 2012 that found that whites held 86.7 percent of Fortune 500 board seats, with only 7.4 percent of these seats being held by Blacks and 3.3 percent being held by Latinos. Alliance for Board Diversity, Missing Pieces: Women and Minorities on Fortune 500 Boards 9 (2012), http://theabd.org/2012_ABD%20Missing_Pieces_Final_8_15_13.pdf.
46. Lioz, *supra* note 43, at 30.
47. Wade Henderson & Michael Waldman, *Obama Can Answer Dark-Money Problem*, U.S.A. Today, July 31, 2015, http://www.usatoday.com/story/opinion/2015/07/31/obama-campaign-donations-minority-poor-communities-column/30838431/.
48. Lioz, *supra* note 43, at 29.
49. *Id.* at 30-31.
50. Kennedy & Skaggs, *supra* note 2, at 2.
51. *Id.* at 2, 5.
52. *See, e.g.*, Greg LeRoy, *Opinion: New Rule on Tax-Break Disclosure*, Pagosa Daily Post, Aug. 19, 2015, http://pagosadailypost.com/2015/08/19/opinion-new-rule-on-tax-break-disclosure/ (describing the "huge costs" schools suffer when revenue is lost because tax dollars have been diverted toward other expenditures).
53. *Citizens United*, 558 U.S. at 357.
54. *Id.* at 370-71.
55. *Id.* at 370.

Dēmos 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.

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