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# 12 Months After

The Effects of *Citizens United* on Elections  
and the Integrity of the Legislative Process

January 2011

## **Acknowledgments**

This report was written by the Congress Watch division of Public Citizen with advice from Public Citizen's Litigation Group.

## **About Public Citizen**

Public Citizen is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



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# 12 Months After

## Executive Summary

### A. The Effects of *Citizens United*

On January 21, 2010, in *Citizens United v. Federal Election Commission*, the U.S. Supreme Court scuttled the longstanding American tradition of prohibiting overt corporate spending to influence elections.

On the one-year anniversary of the decision, this report offers an assessment of its impact. Below, we provide a brief history of the legal restrictions on corporate involvement in elections and the events that led to the *Citizens United* decision. We document the dramatic increase in outside spending in the 2010 elections and assess the enhancement of power that corporate lobbyists now enjoy. Finally, we discuss a comprehensive package of legislative and constitutional reforms that can be pursued at the federal, state and local levels to mitigate the damage caused by *Citizens United*—or to reverse it altogether.

#### 1. The Historical Context: *Citizens United* Ended a Century Long Legal Consensus on Prohibiting Corporate Spending in Elections.

For more than a century leading up to *Citizens United*, the Congress had restricted the use of corporate money in politics, beginning with the 1907 Tillman Act, followed by the 1925 Federal Corrupt Practices Act, the 1943 War Labor Disputes Act, the 1947 Taft-Hartley Act, the 1971 Federal Election Campaign Act (FECA), and the 2002 Bipartisan Campaign Reform Act (BCRA). *Citizens United* overturned much of this law and allowed unrestricted outside spending by corporations on federal, state, local and judicial elections. In doing so, the Court also reversed decades of judicial precedents that upheld these legislative efforts to regulate corporate money in elections, including a Supreme Court decision issued just a few years earlier.<sup>1</sup>

*Citizens United* was nothing less than a sweeping rewrite of constitutional law. It immediately caused a gushing stream of corporate money to flood into elections, posing grave threats to the integrity of the legislative process.

#### 2. The Data: *Citizens United* Resulted in Soaring Outside Expenditures and Diminishing Disclosure of Contributors.

*Citizens United* led to even greater spending by corporate-funded outside groups than political observers expected. This spending appears to have been influential in affecting out-

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<sup>1</sup> The Roberts Court reversed the earlier decisions in the 1990 case *Austin v. Michigan Chamber of Commerce* [*Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990)], which held that the government can prohibit corporations from using their own funds for express advocacy, and *McConnell v. FEC* [*McConnell v. FEC*, 540 U.S. 93 (2003)], which applied that principle to uphold the constitutionality of the McCain-Feingold law regarding “electioneering communications,” which restricts corporate funding of broadcast advertisements that mention candidates close to elections.

comes. Outside groups spent more than four times as much money to influence the 2010 elections as they did in 2006, the last mid-term cycle. In November's congressional elections, winning candidates were helped more (or harmed less) by outside spending than their opponents in 80 percent of the congressional races in which power changed hands from Democratic to Republican control or vice versa.

Much of this new money came from secret sources. Americans were able to learn the origins of only about half of it. This new reality conflicted directly with the rationale of *Citizens United*. Justice Anthony Kennedy's opinion for the majority was based in part on the assumption that any dangers posed by the new flood of corporate spending in elections would be mitigated by disclosure.

"This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages," Kennedy wrote.<sup>2</sup>

But no requirement for such disclosure was in place at the time for the 501(c)(4) and 501(c)(6) non-profit organizations that proved to be the favored conduits for corporate election spending. Congress nearly approved a measure to address that problem in 2010, the DISCLOSE Act, but the bill failed by one vote in the face of a Senate Republican filibuster.

### **3. The Insidious Effects: Unfettered Corporate Spending Threatens to Undermine Legislative Integrity by Giving Lobbyists Even More Power.**

*Citizens United* has further empowered and emboldened corporate lobbyists, who now wield a large club when they walk the halls of Congress. Members of Congress and their staffs are fully aware of the massive campaign war chests that lobbyists can use to reward their friends and punish their enemies. Corporate lobbyists have long enjoyed special access on Capitol Hill, but today they can play the role of king-makers in Congress.

#### **B. The Public Backlash Against *Citizens United***

##### **1. The Public and the Press Express Outrage.**

The public was outraged by the *Citizens United* decision—both by its concrete harms and by the notion of granting corporations the same First Amendment rights as human beings. Polls have consistently shown that Americans across the political spectrum disagree with *Citizens United's* prescription.

##### **2. *Citizens United* Has Spurred Interest in Many Proposals to Mitigate Its Damage, Including an Amendment to the Constitution.**

Throughout American history, only a few Supreme Court decisions have drawn so much public criticism as *Citizens United*. The opinion spawned numerous robust petition campaigns to amend the Constitution to specify that the First Amendment protects the free

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<sup>2</sup> *Citizens United v. Federal Election Commission*, 130 S. Ct. at 916.

speech rights of people, not corporations. Public Citizen has joined with other groups in collecting about three-quarters of a million signatures calling for an amendment to clarify for the Court what the First Amendment really means.

*Citizens United* also has spurred interest in numerous other measures to strengthen democracy:

- the DISCLOSE Act, which would inform voters of the funders behind electioneering ads;
- the Fair Elections Now Act (FENA), which would establish a system of citizen-funded elections that would allow candidates to run viable campaigns without depending on support from corporations and wealthy individuals;
- the Shareholder Protection Act, a measure that would require approval by those who own a company—the shareholders—before corporations can make political expenditures; and
- pay-to-play laws, which restrict campaign contributions and expenditures from government contractors on behalf of those who are responsible for awarding the contracts.

Meanwhile, at least 16 states have passed laws in response to *Citizens United*, taking such steps as mandating disclosure of independent expenditures; prohibiting the use of foreign money to influence elections; and requiring approval by corporate boards to spend money from corporate treasuries to influence elections. Several additional states have legislative responses pending.

## I. *Citizens United's* Role in Dismantling Campaign Finance Law and Spurring Corporate Spending

In this section, we discuss the longstanding national policy of prohibiting the use of corporate money to influence elections, the radical departure marked by the *Citizens United* opinion, and the fallout from the opinion.

### A. History: Longstanding Ban on Corporate Spending In Elections Overturned by *Citizens United*

#### 1. Corporate Money in Elections Prohibited for More Than a Century

By the time *Citizens United* decision was issued, Congress had spent more than a century developing a comprehensive legal framework that had limited the use of corporate money to influence federal elections. The Supreme Court, in turn, had consistently upheld this legislative framework.

At the turn of the last century, the patronage system for financing campaigns through assessments on government salaries was quickly being displaced by corporate contributions, as more and more business interests began aggregating large sums of wealth. Substantial corporate financing of elections first became readily apparent in the 1896 presidential election.<sup>3</sup> Corporate funding of campaigns became an all-out scandal in the 1904 presidential election, when the losing candidate, Alton Parker, publicly accused President Theodore Roosevelt of secretly financing his campaign with contributions from life insurance companies, a charge that was later substantiated in an investigation by the state of New York.<sup>4</sup> Public outrage ensued as it became evident that the insurance companies were seeking legislation from the federal government that would limit the ability of policyholders to sue the companies.

President Roosevelt sought to assuage the furor in his 1905 State of the Union address when he urged Congress to prohibit all corporate contributions to campaigns. Roosevelt proclaimed:

The fortunes amassed through corporate organization are now so large, and vest such power in those that wield them, as to make it a matter of necessity to give to the sovereign—that is, to the Government, which represents the people as a whole—some effective power of supervision over their corporate use.<sup>5</sup>

Congress responded in 1907 by passing the Tillman Act. Introduced by Sen. Ben Tillman (D-S.C.), the act banned corporations from “mak[ing] a money contribution in connection with any election to any [federal] political office”—specifically, “any election at which

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<sup>3</sup> Matthew Josephson, *THE POLITICOS, 1865-1896* (1938) at 699.

<sup>4</sup> Adam Winkler, “Other People’s Money: Corporations, Agency Costs and Campaign Finance Law,” *Georgetown University Law Journal*, 92:871 (2004) at 886.

<sup>5</sup> Theodore Roosevelt, State of the Union Address (Dec. 5, 1905), available at: [www.thoedore-roosevelt.com/sotu5.html](http://www.thoedore-roosevelt.com/sotu5.html).



Presidential and Vice Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator.”<sup>6</sup> The legislation specified that any corporation breaking these laws could be subject to a fine of up to \$5,000 (more than \$114,000 in 2008 dollars), in addition to penalties of up to \$1,000 and jail time for associated individuals. The Tillman Act was eventually subsumed under the Federal Corrupt Practices Act of 1925.

Although the Tillman Act prohibited direct contributions (as opposed to outside expenditures, which were at issue in *Citizens United*), the law was significant in the context of *Citizens United* in that it established an understanding that individuals enjoyed greater latitude to influence political campaigns than corporations. “Let individuals contribute as they desire,”<sup>7</sup> Roosevelt said prior to the law’s passage. “But let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly.”

In 1943, in the War Labor Disputes Act, Congress temporarily extended the ban on corporate contributions to labor unions. Large labor unions had evolved through the New Deal as another vehicle capable of amassing large sums of money that could be used for political purposes. In the 1944 elections, labor unions responded to the War Labor Disputes Act by using that money for independent expenditures on behalf of their favored candidates (rather than contributions). In 1947, Congress enacted the Taft-Hartley Act to clarify that both campaign contributions and independent expenditures by corporations and unions were prohibited by law. The legislative history indicates that Congress believed both contributions and expenditures by corporations and unions were already prohibited by the Federal Corrupt Practices Act. As Sen. Robert Taft (R-Ohio) explained, “[T]he previous law prohibited any contribution, direct or indirect, in connection with any election.” The new legislation, he continued, “only makes it clear that an expenditure . . . is the same as an indirect contribution, which, in my opinion, has always been unlawful.”<sup>8</sup>

Subsequently, the Watergate scandal that emerged from the 1972 presidential campaign served as a catalyst for the strongest campaign rules in U.S. history. Amendments to the Federal Election Campaign Act (FECA) set a \$1,000 limit on campaign contributions and established a system of spending ceilings and a voluntary system of public financing for presidential candidates.

In 1976, in *Buckley v. Valeo*, the Supreme Court struck down FECA’s spending ceilings but upheld the constitutionality of limiting contributions to candidates, as well as the system of public financing for presidential candidates, deeming them to be reasonable steps to stem corruption:

To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascer-

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<sup>6</sup> Tillman Act, 1907.

<sup>7</sup> President Theodore Roosevelt, Sixth Annual Message to Congress, December 1906.

<sup>8</sup> Sen. Taft, Congressional statement, 93 CONGRESSIONAL RECORD 6594 (1947).

tained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.<sup>9</sup>

In 1982, the Court again squarely addressed the restrictions on corporate financing of candidate elections in *FEC v. National Right to Work Committee*. This case challenged the law's requirement that corporations may finance candidate campaigns only through political action committees (PACs) that solicit contributions from individuals within the company, subject to contribution limits and disclosure. The Court described the careful "step by step" evolution of federal law regulating corporate and union campaign spending and affirmed the PAC requirement. The Court agreed that government was justified in "ensur[ing] that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions."<sup>10</sup>

In 1986, in *FEC v. Massachusetts Citizens for Life*, the Court carved out an exception to the ban on corporate political spending for ideological nonprofit corporations that were not established by a for-profit corporation, have no shareholders and do not accept contributions from business entities. At the same time, the Court reaffirmed "the legitimacy of Congress' concern" about the financing of campaigns by "organizations that amass great wealth in the economic marketplace."<sup>11</sup>

The Court again affirmed restrictions on corporate spending in candidate elections in 1990 in *Austin v. Michigan State Chamber of Commerce*. Citing its earlier decisions, the Court found that the government has a valid interest in ensuring that corporations do not spend their "resources amassed in the economic marketplace to obtain an unfair advantage in the political marketplace."<sup>12</sup> Then, in 2003, in *FEC v. Beaumont*, the Court relied on *Austin* once again to uphold the ban on corporate campaign contributions, even as applied to nonprofit corporations. The Court recounted a "century of congressional efforts to curb corporations' potentially deleterious influences on federal elections."<sup>13</sup>

Although the ban on independent corporate spending to influence elections remained an accepted reality under FECA as construed in *Buckley v. Valeo* and subsequent decisions, interpretation of the prohibition was limited to express advocacy campaign ads, defined in a footnote in *Buckley v. Valeo* as messages using "words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"<sup>14</sup>

Eventually, the national political parties took advantage of this narrow definition of express advocacy to aid their candidates by running corporate-funded advertisements that pro-

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<sup>9</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976) at 26-27.

<sup>10</sup> *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982) at 207-209.

<sup>11</sup> *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) at 257.

<sup>12</sup> *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990) at 659.

<sup>13</sup> *FEC v. Beaumont*, 539 U.S. 146 (2003) at 152.

<sup>14</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976) at 1.

moted or attacked candidates while assiduously avoiding using these “magic words.” Corporate money used to pay for these sham “issue ads” became known as “soft money.”

In the 1996 reelection campaign of President Bill Clinton, the Democratic Party accepted unlimited corporate contributions and then transferred this “soft money” to state Democratic committees. These committees, in turn, spent soft money on television and radio advertisements that directly benefited the Clinton campaign and other Democratic candidates.

Use of soft money soared after that. In the 2000 election cycle, national and congressional party committees broke all previous records in soft money fundraising. National Republican Party committees raised \$249.9 million and spent \$252.8 million in soft money, while national Democratic Party committees raised \$245.2 million in soft money and spent \$244.8 million.<sup>15</sup>

Congress responded in 2002 by passing the Bipartisan Campaign Reform Act (BCRA), commonly known as McCain-Feingold. Two key pillars of the act dramatically curbed the use of corporate and union funds in federal elections.

First, the act prohibited federal officeholders, candidates and the national parties from soliciting and spending soft money and restricted the use of soft money by state and local parties in relation to federal election activities. Second, BCRA made campaign advertisements that did not use the magic words subject to disclosure requirements, contributions limits and prohibitions on the use of corporate or union money. Broadcast advertisements that depict a candidate, target that candidate’s election district, and air within 30 days of the candidate’s primary election or 60 days of the general election were categorized as “electioneering communications,” subject to regulation under federal campaign finance laws.

BCRA, like the preceding Watergate reforms, was promptly challenged and soon made its way to the Supreme Court. In *McConnell v. Federal Election Commission*, the Court in 2003 upheld BCRA’s key provisions.

## 2. The Court’s Retrenchment of Campaign Finance Law

The sensible state of affairs created by BCRA and affirmed by the Court lasted for only about three-and-a-half years. In June 2007, the Supreme Court reversed the *McConnell* decision in part by allowing corporate and union money to finance electioneering communications if the ads were “issue oriented.” The Federal Election Commission (FEC), the agency charged with implementing and enforcing the campaign finance law, responded later that year by exempting groups making electioneering communications from disclosing contributors’ identities except in special cases in which donors specifically earmarked money for that purpose.<sup>16</sup> Thus, corporations, trade associations and corporate-funded front groups could spend money from their treasuries without disclosing the sources of those

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<sup>15</sup> Craig Holman, THE END OF LIMITS ON MONEY IN POLITICS: SOFT MONEY NOW COMPRISES THE LARGEST SHARE OF PARTY SPENDING ON TELEVISION ADS IN FEDERAL ELECTIONS, NYU’s Brennan Center for Justice (2001).

<sup>16</sup> 11 C.F.R. § 104.20(c)(9).

funds as long as the donors did not specifically give money to finance electioneering advertisements.

Just before the 2010 elections, the three Republicans on the FEC issued a statement endorsing an even narrower interpretation of the disclosure rule. They opined that electioneering groups should only have to disclose those donors who specified that their money would be used for a specific ad, aired in a specific race.<sup>17</sup> When Ellen Weintraub, a Democratic commissioner on the agency who voted for the disclosure rule in 2007, read the Republican statement, she commented: “This is an unprecedented narrow reading of the regulation. It’s certainly not what I intended when I voted for that regulation.”<sup>18</sup> Because few donors are apt to attach such specific instructions to their contributions, the effect of the Court’s *Federal Election Commission v. Wisconsin Right to Life Right to Life*<sup>19</sup> opinion and subsequent FEC interpretations has been to gut the disclosure requirement enshrined in BCRA.

*Citizens United* resulted from a separate challenge to BCRA’s electioneering communications provision. At the center of the legal battle was a film, “Hillary: The Movie,” by a group called Citizens United—a non-profit membership group that accepts money from business corporations—about 2008 Democratic presidential candidate Hillary Clinton. The film had been shown in theaters and circulated as a DVD. Those showings were not subject to BCRA’s electioneering communications rules because they were not broadcast. However, Citizens United also planned to show the movie through on-demand satellite transmissions, which did fall under BCRA’s definition of “electioneering communications.” Because Citizens United used its general treasury funds (which included money from business corporations), its satellite transmission of the film would have violated BCRA. Citizens United also prepared three television ads to promote the movie. The ads also fell under the campaign finance law’s definition of “electioneering communications” and were therefore subject to disclosure requirements under BCRA—requirements with which Citizens United did not wish to comply.

On Dec. 13, 2007, Citizens United filed a complaint in the U.S. District Court for the District of Columbia challenging the constitutionality of the statutory provisions governing disclosure and funding of “electioneering communications.” On Jan. 15, 2008, the District Court denied Citizens United’s motion for a preliminary injunction, in which Citizens United requested that the Court prevent the FEC from enforcing the law. The Court later dismissed Citizens United’s lawsuit, and Citizens United petitioned the Supreme Court to hear the case.

In a stunning move in the summer of 2009, the Supreme Court on its own initiative transformed the *Citizens United* case from a limited challenge to BCRA into a sweeping challenge to one of the oldest and most established pillars of campaign finance doctrine: the ban on direct corporate and union spending to influence political campaigns. After briefings and

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<sup>17</sup> Statement of Reasons for Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, Freedom’s Watch, Inc., MUR 6002 (Aug. 13, 2010), available at: <http://eqs.sdrdc.com/eqsdocsMUR/10044274536.pdf>

<sup>18</sup> Robert Wechsler, “Ethical Officials and Disclosure Rules,” CityEthics.org (Sep. 16, 2010).

<sup>19</sup> *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

oral arguments, the Court instructed all parties in the case to re-file amended briefs in 30 days to address the constitutionality of the ban on corporate spending. On Jan. 21, 2010, the Court voided all prohibitions on independent corporate spending to influence federal, state, and local elections.

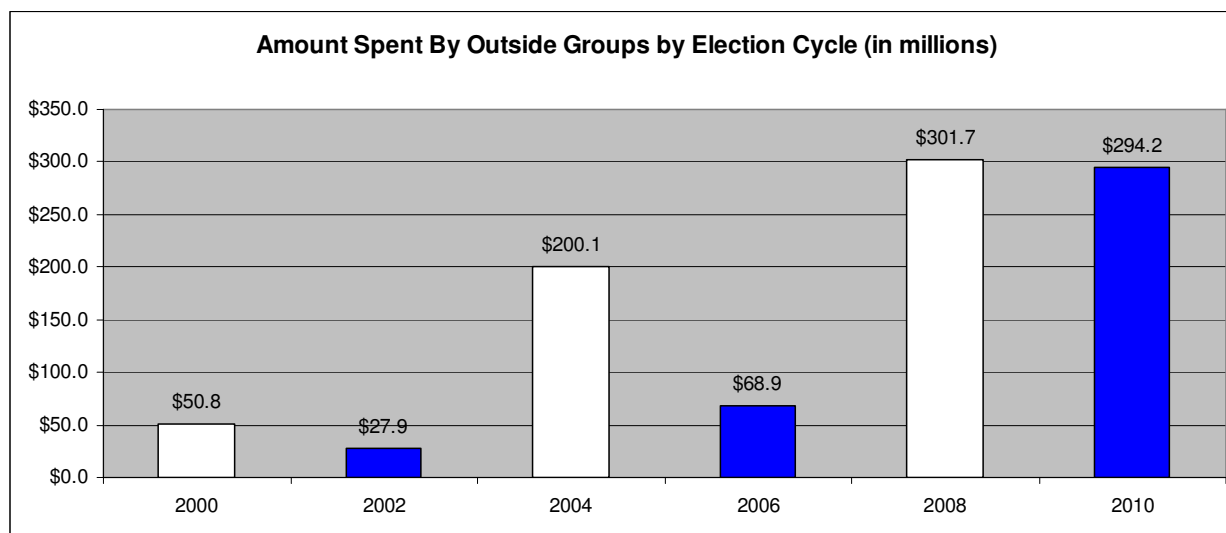
For the first time in decades, corporate spending to influence elections was legal.

## B. What the Data Show: Corporate Expenditures Soared While Disclosure of Donors Plummeted

The explosion in corporate spending prompted by *Citizens United* was even more shocking than expected in 2010.

### 1. Outside Groups' Spending Soared by 427 Percent Over Last Mid-Term Elections

Spending by outside groups jumped to \$294.2 million in the 2010 election cycle from just \$68.9 million in 2006, the last mid-term election cycle. The 2010 figures nearly matched the \$301.7 million spent by outside groups in the 2008 presidential cycle. Because spending in presidential cycles normally dwarfs spending in mid-term elections, the uncharacteristically high spending in 2010 presages blockbuster spending in the upcoming 2012 elections.



Source: Center for Responsive Politics ([www.opensecrets.org](http://www.opensecrets.org)). Mid-term cycles in blue.

Of the \$294.2 million spent in the 2010 cycle, \$228.2 million (or 77.6 percent) was spent by groups that accepted contributions larger than \$5,000 (the previous maximum a federal political action committee, or PAC, could accept in a single election cycle) or that did not reveal any information about the sources of their money.

Nearly half of the money spent (\$138.5 million, or 47.1 percent) came from only 10 groups.

## 2. Disclosure of Donors Behind Outside Spending Plummetts

Contrary to the Supreme Court’s promise that voters would be able to “give proper weight to different speakers and messages,” voters were left completely in the dark about who funded about half the messages that were blasted into their living rooms.

Of the 308 groups (excluding party committees) that reported spending money on electioneering communications or independent expenditures to influence the 2010 election cycle, only 166 (53.9 percent) provided any information about their sources of money before the elections.<sup>20</sup> Groups that did not provide any information about their sources of money collectively spent \$135.6 million, 46.1 percent of the total spent by outside groups during the election cycle.

Among the top 10 groups, which accounted for nearly half of all spending, seven disclosed nothing about their donors. These seven groups accounted for 73.6 percent of the total amount spent by the top 10 groups.

**Top 10 Spending Outside Groups, 2010 Election Cycle**

Group	Amount Spent	Disclosed Funders?
U.S. Chamber of Commerce	\$31,207,114	No
American Crossroads	\$21,553,277	Yes
American Action Network Inc.	\$20,935,958	No
Crossroads Grassroots Policy Strategies	\$16,660,986	No
American Future Fund	\$9,610,700	No
Americans For Job Security (AJS)	\$9,005,422	No
SEIU COPE	\$8,340,028	Yes
American Fed. of State County And Municipal Employees AFL-CIO	\$7,378,120	No
60 Plus Association	\$7,096,125	No
National Rifle Association Of America Political Victory Fund	\$6,702,664	Yes
<b>Total</b>	<b>\$138,490,394</b>	--

Source: Public Citizen’s analysis of Federal Election Commission (FEC) data.

The paltry disclosure reflected a certain irony in relation to recent federal Court opinions: While the Court’s dismantling of campaign finance laws in *Citizens United* upheld—and celebrated—the constitutionality of laws mandating disclosure, the net effect of the opinion has been a significant reduction in transparency.

Among groups broadcasting electioneering communications, nearly 100 percent disclosed their funders in the 2004 and 2006 election cycles (the first two election cycles after BCRA created this category of campaign ads). In the 2008 elections, the first after *Wisconsin Right*

to Life, the share of groups disclosing their funders plummeted to less than 50 percent. In 2010, barely a third of electioneering communications groups disclosed their funders.

**Disclosure by Groups Making Electioneering Communications,  
2004-2010**

Year	# of Groups Reporting ECs	# of Groups Reporting the Donors Funding ECs	Pct. of Groups Reporting the Donors Funding ECs
2004	47	46	97.9
2006	31	30	96.8
2008	79	39	49.3
2010	53	18 <sup>21</sup>	34.0

Source: Public Citizen's analysis of Federal Election Commission data.

Among groups making independent expenditures (expenditures expressly intended to influence elections) disclosure of donors fell from 90 percent in 2004 and 97 percent in 2006 to only 70 percent in 2010. Notably, the only groups that could withhold information about their funders in the past were "qualified non-profits," groups that have no business purpose and receive their funding exclusively from individuals. No such assurance exists for the independent expenditures groups that concealed their donors in 2010.

**Disclosure Among Top 30 Groups Making Independent Expenditures, 2004-2010**

Year	Groups Disclosing Funders	Groups Not Disclosing Funders	Pct. Of Groups Reporting the Donors funding IEs
2004*	26	3	89.7
2006	29	1	96.7
2008	25	5	83.3
2010	21	9	70.0

Source Public Citizen's analysis of Federal Election Commission data and the Center for Responsive Politics: [www.opensecrets.org/outsidespending/index.php](http://www.opensecrets.org/outsidespending/index.php)

\* Once case is ambiguous and was not included

<sup>21</sup> Americans for Prosperity and Focus on the Family affiliate CitizenLink each disclosed contributions accounting for less than 1 percent of the amount they spent on the elections, are not included among the groups disclosing their donors.

### 3. Winners in Contests in Which Party Control Changed Hands Enjoyed Huge Edge in Outside Support

Not surprisingly, spending by outside groups was focused on close elections, and appeared to have a significant effect on results. Of 75 congressional contests in which partisan power changed hands, spending by outside groups favored the winning candidate in 60. In the six Senate contests in which power changed hands, winning candidates enjoyed an average advantage of \$2.7 million over their opponents in spending by outside groups that either accepted. Excluding the North Dakota Senate contest, which was not competitive and was not the subject of outside spending, winning candidates enjoyed an average advantage of \$3.3 million, amounting to a 7-to-1 edge over their opponents.

#### Spending By Outside Groups\* in 2010 Senate Contests Resulting in a Partisan Change of Power

State	Incumb. Party	Winner	Winner Aid from Groups	Loser	Loser Aid from Groups	Winner Advantage or Disadvantage
IL	D	Mark Kirk (R)	\$8,736,439	Alexander Giannoulis (D)	\$786,880	\$7,949,559
PA	D	Pat Toomey (R)	\$7,121,759	Joseph A. Sestak (D)	\$1,859,345	\$5,262,414
WI	D	Ronald Harold Johnson (R)	\$2,157,477	Russ Feingold (D)	\$40,830	\$2,116,647
AR	D	John Boozman (R)	\$750,530	Blanche Lincoln (D)	\$0	\$750,530
IN	D	Daniel R. Coats (R)	\$274,987	Brad Ellsworth (D)	\$12	\$274,975
ND	D	John Hoeven (R)	\$0	Tracy Potter (D)	\$0	\$0
--	--	Average	<b>\$3,173,532</b>		<b>\$447,845</b>	<b>\$2,725,688</b>

Source: Public Citizen analysis of Federal Election Commission data

\* Analysis excludes spending by committees that disclosed their donors and accepted contributions of no more than \$5,000.

#### C. *Citizens United's* Insidious Consequences: Even More Leverage for K Street

Much has been written about the damage caused by the *Citizens United* decision to the financing of federal, state and local elections. While the flood of new and unlimited corporate money into elections is indeed a cause for worry, there is another danger to our democratic process that often gets overlooked: the damage to the integrity of the legislative process itself.

*Citizens United* has given corporate lobbyists a new and very large club to wield in legislative negotiations—the ability to tap into a well of corporate to reward legislators whom they like and to punish those they do not. Corporate lobbyists are often members of businesses' senior management. From this perch, they can coordinate and direct the campaign



contributions and electioneering expenditures of the company in a way that best achieves the company's political objectives.

The issue boils down to one simple question that a House staffer asked during a congressional briefing on the impact of the *Citizens United* decision: "How do I say 'no' to a deep-pocketed corporate lobbyist who now has all the resources necessary to defeat my boss in the next election?"<sup>22</sup> The question remains unanswered.

To be sure, well-financed lobbyists have always held privileged access to lawmakers and disproportionate influence over the legislative process through campaign contributions and fundraising. Many of the lobbyists have always played the game of campaign fundraising as part of the art of influence peddling on Capitol Hill. A 2006 report by Public Citizen confirmed what many of us already knew: lobbyist and special interest money is pervasive in congressional campaigns. Lawmakers rely heavily on large PAC and lobbyist contributions far more than on small contributions from constituents. The report also showed that most lobbyist money goes to lawmakers who are in their party's leadership or are committee or subcommittee chairs—especially those on the appropriations committee.<sup>23</sup>

On occasion, when lobbyists do not cover their tracks well, a scandal erupts. The Westar lobbying scandal is a case in point. When Westar Energy Corporation came under investigation for business fraud, its board of directors decided to release all company executive e-mails for public inspection. Much to everyone's surprise, the internal Westar Energy Company e-mails outlined a plan by the company's lobbyist to buy a "seat at the table" in a conference committee by contributing cash to influential lawmakers in exchange for their support of a special regulatory exemption for Westar. The company e-mails said that Reps. Joe Barton (R-Texas), Tom DeLay (R-Texas), and Billy Tauzin (R-La.) requested that Westar make contributions to their political allies instead of to their own campaigns. Westar executives complied by contributing a total of \$63,000, following a carefully drawn schedule by Westar lobbyist Douglas Lawrence outlining how much each executive was to donate to the various candidates across the country. The contributions included a \$25,000 soft money donation to DeLay's Texans for a Republican Majority PAC (TRMPAC) for use in Texas state elections. The congressional leaders inserted the exemption sought by Westar in the Investment Company Act, only to repeal the exemption when the scandal became public.<sup>24</sup>

A similar lobbyist-run money-for-favors scandal broke about the same time. During the 2002 election cycle, Freddie Mac lobbyist Mitch Delk hosted at least 45 fundraising events for federal officeholders and candidates—many of whom oversaw Freddie Mac. While Delk reported absorbing the costs of dinners at most of the fundraising events as in-kind contri-

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<sup>22</sup> The question was posed by an anonymous congressional staffer to Craig Holman of Public Citizen during a congressional briefing sponsored by Rep. John Larson (D-Conn.), Common Cause, Public Campaign and Public Citizen regarding the *Citizens United* decision and the Fair Elections Now Act, Rayburn House Office Building, Washington D.C. (Jan. 25, 2010).

<sup>23</sup> Public Citizen, "Under the Influence: Special Interest Money and Members of Congress" (Oct. 18, 2006), available at: <http://www.cleanupwashington.org/sii/>

<sup>24</sup> Public Citizen complaint to Noel Hillman, Chief, Department of Justice, Public Integrity Section (June 17, 2003), available at: <http://www.citizen.org/documents/WestarDOJltr.pdf>

butions to the officeholders and candidates, he paid significantly discounted prices for the events, according to news accounts, the low-balling of which kept Delk's total contributions within federal limits. But if the actual value of the events were charged, Delk would have exceeded these limits.

Delk enlisted Epiphany Productions—which was primarily a Republican fundraising business—to organize these fundraising events. In at least 19 of the events, Epiphany Productions appeared not to have been paid by the campaigns for its services, which would constitute an illegal corporate contribution to the campaigns. In at least another 19 Delk fundraising events, Epiphany Productions was paid late—by up to 20 months—and apparently only after news stories reported the questionable fundraising activity.

A complaint filed with the FEC by Public Citizen resulted in a record \$3.8 million settlement against Freddie Mac, though there was no admission of guilt by the company and the lobbyist and Epiphany productions were both let off scot-free.<sup>25</sup>

These sordid stories of influence peddling by lobbyists through campaign contributions and fundraising highlight the key component necessary for a lobbyist to buy a seat at the table: Lobbyists must raise large sums of money—beyond the limits of individual contributions—in order to buy influence. Since campaign contributions are limited to \$2,400 per election, lobbyists from Westar and Freddie Mac had to bundle large numbers of contributions and corporate soft money donations to have sway. Some lobbyists can manage such bundling activity to buy influence without breaking the law, but it is a difficult exercise and each bundled donation remains subject to the contribution limits.

Under *Citizens United*, corporate lobbyists no longer need to perform these chores. Now, they can simply dip into the corporate treasury and spend as much money for or against candidates as the CEO deems necessary. No fundraising events need be hosted, no arm twisting of managerial staff need be applied, no shareholder approval need be attained and no disclosure of the spending need be given to shareholders or the public. Even more alarming, there are no limits on how much money a corporation can spend on electioneering.

As documented in the election spending figures cited above, corporations spent heavily in the 2010 elections. The success rate of corporate spending in the 2010 elections—outside groups favored the winners in 60 of 75 contests in which partisan control changed hands<sup>26</sup>—has vastly elevated the king-maker status of corporate lobbyists in Congress.

House Speaker John Boehner (R-Ohio), who owes his new leadership position in no small part to corporate election spending, is welcoming K Street lobbyists as close partners in the legislative process. There are 82 incoming House Republican freshmen in the 112<sup>th</sup> Congress, and Boehner with his partners from K Street have been hard at work screening ap-

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<sup>25</sup> Public Citizen's complaint against Freddie Mac and Mitch Delk is available at: <http://www.citizen.org/documents/ACFAB5.pdf>

<sup>26</sup> Public Citizen, "Outside Job" (Nov. 3, 2010), available at: <http://www.citizen.org/outside-job>. Figures reported here are slightly different due to results that were finalized after Nov. 3.

plicants for congressional staff positions. Congressional Republican leaders and the National Republican Congressional Committee have been working hand-in-hand with Republican strategists and lobbyists in compiling a list of about 80 potential chiefs of staff for the incoming lawmakers.<sup>27</sup>

While most pollsters agreed that Republicans were going to make substantial gains in the 2010 congressional elections for a variety of reasons, outside spending clearly was a major factor in ushering in the largest Republican freshmen class in nine decades. Former Rep. Dan Maffei (D-NY), who was unseated by a Republican challenger by the slim margin of 648 votes has said that corporations unhappy with his legislative positions on health care reform and Wall Street regulation were able to throw the election to his opponent. Six different conservative groups relying significantly on anonymous corporate funds spent more than \$562,000 against Maffei.

“Clearly the *Citizens United* decision decided this race,” Maffei said. “And the continued activism of this (Supreme) Court is essentially throwing away hundreds of years of jurisprudence. I don’t know if the Democrats would have retained the (House) majority without the decision, but clearly, it would have been a lot closer.”<sup>28</sup>

Maffei is not alone in believing that his policy stances against major corporate interests, particularly the health care industry and Wall Street, led to his removal from office because of the corporations’ new found ability to spend unlimited funds in campaigns. Defeated incumbent congressman John Hall (D-N.Y.) bluntly said that the “country was bought” by corporate interests. “The extremist ... appointees to the Supreme Court, who claimed in their confirmation hearings before the Senate that they would not be activist judges, made a very activist decision in that it overturned more than a century of precedent. And as a result there were millions of extra dollars thrown into this race.”<sup>29</sup>

Rep. Peter DeFazio (D-Ore.) survived his election challenge, despite an onslaught of outside spending. No member of the House has been as tough on Wall Street than DeFazio. And Wall Street pushed back. A New York hedge-fund manager dumped \$300,000 into a shadowy group that funded a television campaign seeking to defeat him. Dozens of hedge-fund managers, bankers, and their CEOs spent millions of corporate funds in the 2010 elections to buy the results they want, prompting DeFazio to consider an impeachment drive against Chief Justice John Roberts in response to the *Citizens United*.<sup>30</sup>

The impact corporate electioneering spending had on members of Congress in the 2010 elections—which will be felt even more pointedly in the 2012 elections and beyond as more corporate interests adjust to the new world of campaign finance—has a direct bearing on the legislative thinking of members of Congress and their staff. Corporate lobbyists,

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<sup>27</sup> Jackie Kucinich and Anna Palmer, “GOP Wants Insiders to Staff Outsiders,” *Roll Call* (Oct. 26, 2010).

<sup>28</sup> Mark Weiner, “Dan Maffei Reflects on His Loss to Ann Marie Buerkle,” *Post-Standard* (Dec. 20, 2010).

<sup>29</sup> David Freedlander, “Soon To-Be Ex-Congressman John Hall Warns Against Creeping Fascism,” *New York Observer* (Dec. 28, 2010).

<sup>30</sup> John Nichols, “In the Wake of Citizens United Ruling, Democratic Rep Considers Impeaching Chief Justice John Roberts,” *The Nation* (Oct. 25, 2010).

who once held sway in the halls of Congress with promises of fundraisers, now can negotiate legislation with the club of unlimited corporate cash that many corporations are perfectly willing to spend in determining the fate of lawmakers.

As we have already seen in the 2010 elections, any member of Congress who says “no” to deep-pocketed corporate lobbyists risks their wrath. Members and their staff are well aware of the dangers of provoking the hostility of corporate lobbyists—as well as the rewards of befriending K Street lobbying and their paying clients.

In one swift and radical decision, five justices on the U.S. Supreme Court turned back the clock on the American legislative process a century, reminiscent of the days when the Robber Barons largely dictated the legislative agenda of Congress—a period so fraught with corruption and decay that Congress was finally compelled to prohibit corporate financing of elections under the 1907 Tillman Act.

## II. The Silver Lining: *Citizens United* Evokes Public Outrage, Calls for Redress

Fans of democracy had no reason to celebrate the day the Court released the *Citizens United* opinion, but the backlash against the opinion has been encouraging. The decision has served to crystallize public opinion against the longstanding absurdity of the Courts treating corporations as having the same constitutional rights as people. That in turn has engendered public calls for change.

In this section, we discuss the public opinion reaction to *Citizens United* and the policy initiatives that have been undertaken in response to the opinion.

### A. Polling: Public Pressure to Address *Citizens United*'s Harms

The scope and nature of the *Citizens United* decision has been roundly condemned by the public and the press, in surveys and editorials.

#### 1. Polls Show Public Overwhelmingly Disagrees With *Citizens United* Opinion

Surveys have repeatedly found widespread public opposition to the *Citizens United* ruling.

**Washington Post-ABC:** Americans of both parties overwhelmingly oppose allowing corporations and unions to spend as much as they want on political campaigns, and most favor new limits on such spending, according to a February 2010 Washington Post-ABC News poll. Eight in 10 poll respondents said they opposed the high Court's decision to allow unfettered corporate political spending, with 65 percent "strongly" opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits. The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent opposed) and independents (81 percent opposed).<sup>31</sup>

**Greenberg Quinlan Rosner Research and McKinnon Media:** This February 2010 poll, on behalf of Common Cause, Change Congress, and the Public Campaign Action Fund, showed that Americans oppose the Court's *Citizens United* decision by a margin of 64 percent to 27 percent.<sup>32</sup>

**Survey USA:** This nationwide poll conducted in February 2010 also found huge majorities of Americans opposed to the ruling. Among respondents, 78 percent said corporations should be limited in the amount they are allowed to spend to influence elections; 79 percent of Democrats and 67 percent Republicans think Congress should be able to place limits on the amount of money corporations spend to influence elections; 75 percent of those who consider themselves "moderate" said Congress should be able to place limits on the

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<sup>31</sup> Dan Eggen, "Large Majorities Opposes Supreme Court Decision on Campaign Financing," *Washington Post* (Feb. 17, 2010).

<sup>32</sup> Greenberg Quinlan Rosner Research, "Strong Campaign Finance Reform: Good Policy, Good Politics" (Feb. 8, 2010).

amount of money corporations spend to influence elections; 70 percent said they believe corporations already have too much influence in elections.<sup>33</sup>

**Hart Research Associates:** This nationwide poll conducted in June 2010 found that 95 percent of respondents believed that corporations spend money on politics in order to buy influence. Of those who had heard of the *Citizens United* decision, 61 percent opposed the ruling while only 20 percent supported it. After respondents were read a description of the ruling, 78 percent opposed the decision while only 11 percent supported it. Seventy-two percent of respondents worried that the decision will have a negative impact on the political system.<sup>34</sup>

Full disclosure of corporate money in politics was also overwhelmingly supported by 89 percent of respondents in the Hart Research Associates poll. But 62 percent said that disclosure is not enough—a sentiment that also crossed party lines (68 percent of Democrats, 61 percent independents, and 55 percent of Republicans). More than three in four voters said that Congress should support a constitutional amendment if needed to limit the amount of money corporations can spend in elections.<sup>35</sup>

**New York Times/CBS:** In an October 2010 poll, 92 percent of respondents said that it was important for the law to require campaigns and outside spending groups to disclose how much money they have raised, where the money came from and how it was used.

**Survey USA:** In October 2010, 84 percent of voters polled, including 80 percent of Republicans and 81 percent of independents, said they believe voters have a right to know who is paying for ads for a particular candidate.

The Survey USA poll found strong support for a variety of legislative measures that could help rein in the abuses of corporate spending in elections.<sup>36</sup> These include:

- 75 percent agreed that publicly traded corporations should get shareholder approval before supporting or opposing any candidate;
- 82 percent supported a limit on the influence from government contractors in elections;
- 85 percent supported a complete ban on foreign corporate influence (including 90 percent of independent voters); and

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<sup>33</sup> Survey USA, “Americans Broadly in Favor of Limiting What Corporations Can Spend in Elections” (Feb. 2-9, 2010), available at: <http://www.surveyusa.com/client/PollReport.aspx?g=05cabb5f-599f-47a8-98fb-e3e254e425e4&c=161>

<sup>34</sup> Hart Research Associates, “Protecting Democracy from Unlimited Corporate Spending” (June 6-7, 2010)

<sup>35</sup> *Id.*

<sup>36</sup> SurveyUSA, “Americans Broadly in Favor of Limiting What Corporations Can Spend in Elections” (Feb. 2-9, 2010), available at: <http://www.surveyusa.com/client/PollReport.aspx?g=05cabb5f-599f-47a8-98fb-e3e254e425e4&c=161>

- 87 percent wanted companies rescued by the government banned from spending on elections.

## 2. Newspaper Editorials Resoundingly Criticize *Citizens United* Opinion

Newspaper editorial boards similarly reflect the national mood. Dozens of editorials across the country have condemned the Supreme Court's decision to allow unlimited corporate spending in elections and have supported a wide array of measures to reduce the damage. A sampling of excerpts from these editorials is given below.<sup>37</sup>

### Here Comes the Cash

September 20, 2010

*The Baltimore Sun (Md.)*

Big money and political campaigns have long been bedfellows, but what is novel and troubling in this political season is the lack of disclosure. By funneling money into trade associations, contributors can often escape detection. That eliminates the one safeguard our porous campaign finance laws had previously afforded—if politicians were being bought, we could have at least figured out by whom.

Short of public financing for Congressional elections - an unlikely event in this political climate - what is needed are regulations mandating clear and timely disclosure of who is spending money on political campaigns. The Senate should pass the Disclose Act.

### Rove v. Obama

October 10, 2010

*Bangor Daily News (Maine)*

Crossroads GPS is set up as a 501(c)4 nonprofit, meaning that its "primary purpose" must not be political. But, as *The New York Times* points out, IRS officials say that what may seem like political activity to a lay person may not be considered as such under the agency's rules.

So existing law, weakened by the Supreme Court's *Citizens United* ruling, is letting a flood of unidentified money flow into the congressional races, mainly this year to support Republican nominees.

This lack of transparency, which also allows unions and trade associations to pour money into Democratic campaigns, has troubling implications far beyond the coming election.

### 'Speech': Campaign Cash

October 8, 2010

*Charleston Gazette (W.V.)*

The *Citizens United* decision let business firms pour company cash into political campaigns. Corporations traditionally back Republicans. The ruling also let labor unions spend member dues in campaigns—presumably for Democrats—but unions are penniless, compared to corporations.

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<sup>37</sup> Newspaper editorials on the *Citizens United* decision compiled by Democracy 21 (Nov. 18, 2010).

The Supreme Court breakthrough even lets businesses hide their identity as they funnel cash to front committees that buy smear ads. To halt this concealment, Democrats in Congress drafted the Disclose Act, which would force big donors out into the daylight. They still could spend freely to buy elections, but they could no longer hide from the public.

The House passed the Disclose Act, but Democrats in the Senate twice could not overcome Republican opposition. "Not a single Senate Republican and only two in the House have been willing to vote for the Disclose Act," the *San Jose Mercury News* noted.

The Senate is expected to try again after the election—before more winning Republican senators take their seats. We hope the bill finally passes. It's disgusting that firms now can spend millions of company money to sway elections, under the silly pretext that such spending is free speech. At least, they shouldn't be allowed to hide while they do it.

### **Our views: Torrents of cash**

November 7, 2010

*Florida Today (Fla.)*

You can blame the U.S. Supreme Court and its disastrous February [January] ruling that allowed corporations, unions and wealthy individuals to spend limitless amounts of money on campaigns, much of it in secret.

This destructive practice will get worse in the 2012 presidential election, further threatening the integrity of elections and the sanctity of our democracy.

### **Where's The Accountability?**

October 4, 2010

*Hartford Courant (Conn.)*

Now, considering the changing campaign finance landscape, even disclosure looks good. Too bad it has become a dirty word.

The U.S. Supreme Court's awful *Citizens United* decision allowing corporations and unions to donate unlimited amounts of campaign money, combined with the soaring popularity among political operatives of certain nonprofit corporations that can accept unlimited amounts of money from anonymous donors, poses a new threat to our democracy.

The nonprofits are spending big this election cycle on U.S. Senate and House elections. But voters don't know who's supplying the money and are thus unable to make informed decisions. That's a sure-fire recipe for corruption.

Whatever happened to disclosure, folks?

### **Corporate big bucks literally buying U.S. politicians**

October 15, 2010

*Idaho Mountain Express & Guide (Idaho)*



Influencing American democracy through anonymous financing is not the American way. Accountability by, and identity of, donors must be restored.

The notion that corporations should enjoy the same rights as individual voters is an outlandish judicial conclusion. No group of voters has the collective financial power of a single major corporation.

### **Elections: Too much, too secret**

October 25, 2010

*Journal Sentinel (Wis.)*

It is a simple enough concept: When it comes to political campaigns, the governed cannot be kept in the dark by those who govern, those who aspire to govern or those who would seek to influence how or to whose benefit we are all governed.

In a democracy, it shouldn't be left to groups with the public interest at heart to sleuth out the kingmakers. In a government of the people and by the people, who "the people" are should not be a secret.

The U.S. Supreme Court, in its *Citizens United* ruling this year, opened the floodgates for this kind of spending. But it also has said donor transparency could be required. This should be the preferred route.

### **Money from special interests is stealing our democracy**

October 17, 2010

*Kalamazoo Gazette (Mich.)*

The people need to have full disclosure of the names of individuals and groups that are secretly contributing huge amounts of money right now to attack and defeat candidates and, in doing so, influencing the outcome of elections in America.

### **Elections, Incorporated**

September 28, 2010

*Minnesota Daily (Minn.)*

Now, even the right of the public to know where and how much these special interests are spending is at stake. Last week the U.S. Senate failed to advance legislation that would merely require special interests to disclose these essential details.

Amid all the gathering armies of wealth and influence, one thing seems sure: once it's in play, money has a way of entrenching itself in politics. Meanwhile, the voice of a single American vote isn't getting any louder. Without fast and sweeping campaign finance reform, we risk it shrinking to a whisper.

### **Corporations, wealthy dominating politics**

November 3, 2010

*San Jose Mercury News (Calif.)*

After the Supreme Court's radical decision in the *Citizens United* case, corporations now have the same rights to make political donations as individuals, drowning the voices of those who don't earn billions or employ armies of lobbyists. And anyone who thinks campaign spending only influences elections is delusional; it's directly related to what laws are made or blocked.

### **Elections for sale**

November 8, 2010

*Toledo Blade (Ohio)*

Decided by a 5-4 majority in a fit of judicial activism, the high Court's ruling gutted federal campaign-finance law and its long-established principles. The majority preposterously equated the First Amendment rights of corporations and unions with those of individual citizens.

In dissent, then-Justice John Paul Stevens warned prophetically that this "radical change in the law dramatically enhances the role of corporations and unions—and the narrow interests they represent—in determining who will hold public office."

Worse yet, many of the independent sources of money in this high-profile election were unknown to voters. Secrecy offered the incentive for unscrupulous interests to spend freely.

### **Our view on campaign finance: Who's buying this election? Who knows?**

September 27, 2010

*USA Today*

This noxious mix of unlimited money and secrecy means that Americans have no idea who is trying to buy this year's elections. Some of these ads could be underwritten by a single industry, a single company, or even a single person with a vendetta.

### **B. Policy Responses to *Citizens United***

Behind the widespread opposition to the *Citizens United* decision expressed by the public and press lies the hope for minimizing the damage to our elections and legislative process and, ultimately, reversing the ruling itself. Americans are acutely aware of the decision and are furious that five justices on the Supreme Court would take it upon themselves to grant corporations the same rights as people under the First Amendment. The public is ready for action, both by pressuring Congress and state legislatures to enact legislation that can help mitigate the dangers to our democracy and to send to the states a constitutional amendment clarifying that the First Amendment is primarily intended to protect the rights of people, not corporations.

Public Citizen has identified at least five federal responses to the *Citizens United* decision. Many of these can be applied within the individual states as well. Congress and state legislatures can approve legislation that provides candidates with public campaign funds to offset the corporate onslaught; improve corporate governance procedures so that decisions to make corporate political expenditures involve informed choices by shareholders of the

companies; enhance disclosure of corporate political spending; restrict political spending by government contractors; and amend the U.S. Constitution to return the First Amendment—and our Congress and legislatures—to the people.

## 1. Public Financing of Elections

Public financing is the single most effective legislative remedy to unlimited corporate spending in elections. The public financing plans now under consideration have been designed specifically to overcome the barriers imposed by the Courts on campaign finance laws as well as to embrace the new small donor phenomenon seen in the 2008 election. The Fair Election Now Act (FENA) would create a congressional public financing system as follows:

- Qualified candidates would be provided with generous amounts of public funds—more money than nearly all winning House or Senate candidates have been able to raise from private sources—giving candidates ample new resources to respond to attacks from corporate spenders.
- Participating candidates would not be bound by spending ceilings, which enable those who are the targets of excessive corporate spending to continue raising funds in small donations and spending without limit.
- Small in-state donors who give \$100 or less to a candidate would have their contributions matched fourfold with public dollars, making small donors very important players in financing campaigns.

In the last Congress, the Fair Elections Now Act (S. 752 and H.R. 1826) was introduced in the Senate by Sens. Dick Durbin (D-Ill.) and Arlen Specter (D-Pa.) and in the House of Representatives by Reps. John Larson (D-Conn.) and Walter Jones, Jr. (R-N.C.). The House bill had more than 100 cosponsors and should be reintroduced and passed as soon as possible to provide congressional candidates with an alternative to corporate-funded elections in 2012 and beyond.

It also is critical that we modernize the presidential public financing system in advance of the 2012 presidential elections. Public financing also is key to addressing the corrosive influence of corporate spending in elections for federal, state, local and judicial candidates.

For a sample public financing law, see the Fair Elections Now Act at: <http://www.citizen.org/fairelectionsnow>.

## 2. Shareholder Protection Act

Corporate executives should not be able to take other people's money—corporate funds from investors and shareholders, including funds that citizens invest through retirement accounts—and spend it to further their own political agenda without shareholders' consent or even knowledge.

Public Citizen, U.S. PIRG and others are now promoting a U.S. Shareholder Protection Act (H.R. 4790) that is tailored to the American context and made considerably stronger than a comparable law that has operated successfully in the United Kingdom since 2000.

Specifically, the Shareholder Protection Act would:

- Mandate prior approval by shareholders for an annual political expenditure budget chosen by the management for a publicly held corporation.
- Require that each specific corporate political expenditure over a certain dollar threshold be approved by the Board of Directors and promptly disclosed to shareholders and the public.
- Require that institutional investors inform all persons in their investment funds how they voted on corporate political expenditures.
- Post on the Securities Exchange Commission web page how much each corporation is spending on elections and which candidates they support or oppose.

For the text of the proposed law, see Appendix A, “Shareholder Protection Act.”

### **3. DISCLOSE (Democracy Is Strengthened by Casting Light on Spending in Elections) Act**

The DISCLOSE Act (H.R. 5175 and S. 3628), proposed but not enacted in the last Congress, is principally a disclosure measure, designed to enhance transparency for the public of who is financing independent campaign ads. It fills in many of the holes of the existing transparency regime, especially when it comes to funneling campaign money through outside groups—holes that were made all the more pronounced with the expected onslaught of unlimited corporate financing in the recent elections.

Although the need for this measure was heightened by *Citizens United*, the Court’s opinion in the 2007 *Federal Election Commission v. Wisconsin Right to Life* case had already rendered additional disclosure measures necessary.<sup>38</sup> The enhancement of transparency alone makes this measure a valuable response to the *Citizens United* decision that Congress and state legislatures should approve without delay.

Among the improvements in disclosure of political expenditures that the act would create are: a 24-hour reporting requirement for independent expenditures of \$10,000 or more prior to 20 days before an election, and expenditures of \$1,000 or more within 20 days of an election; extending the “electioneering communications” period for disclosure purposes to 90 days before a primary election through the general election; and require registered lobbyists and lobbying organizations to report the date and amount of each independent expenditure and electioneering communication in excess of \$1,000.

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<sup>38</sup> *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

By far the most important enhancement to campaign finance disclosure offered by the DISCLOSE Act is the requirement that all electioneering groups and political organizations report all donors who have given \$1,000 or more to the entity's political budget, if that entity spends more than \$10,000 on electioneering activities. An entity that meets the threshold can either disclose all of its donors of \$1,000 or more (and who have not specified that the donation cannot be used for election-related activity) or, alternatively, establish a "Campaign-Related Activity" for receiving and disbursing political expenditures. Donors who have not given money for campaign purposes would be exempt from the disclosure requirement. Transfers of funds into a political account shall be deemed campaign expenditures and the sources of the funds fully disclosed. Thus, the ability of front groups to hide the identities of corporate donors to their political campaign budgets would be ended, all the while maintaining the protection of anonymity to those donors who do not intend their money to be used for campaign purposes. These reports would be posted on the Internet.

Furthermore, broadcast campaign ads sponsored by an outside group would be required to include a "stand by your ad" disclaimer in which the CEO or highest ranking official of the organization must appear in the ad saying that he or she "approves of this message." If the message is sponsored by a front group, the top funder of the group must also record a stand-by-your-ad disclaimer. Finally, the top five donors of the group must be listed on the screen at the end of the advertisement in the same fashion that is currently practiced in the state of Washington.

These are all good, solid disclosure requirements that would close existing loopholes and provide timely information to voters. No longer would pharmaceutical companies be able to secretly launder money into a front group, such as the United Seniors Association, which received more than 90 percent of its funds from a single undisclosed corporate source but pretended to be a mass organization of concerned citizens opposed to health care reform in its television ads promoting or attacking candidates.<sup>39</sup>

Of all the campaign finance laws, none stand on firmer constitutional ground than disclosure. With very few exceptions, state and federal Courts have upheld a wide array of disclosure requirements, beginning in recent history with the 1976 landmark decision, *Buckley v. Valeo*.<sup>40</sup> The Supreme Court held that three compelling governmental interests justified reporting requirements: (i) enhancing the knowledge of voters about a candidate's possible allegiances; (ii) deterring actual and apparent corruption; and (iii) enforcing contribution limits. Even the current Roberts Court, which has shown a shocking degree of hostility to many campaign finance restrictions, has upheld disclosure requirements. In the 2007 *Wisconsin Right to Life* decision, the Roberts Court poked a gaping loophole in the ban on corporate funding of electioneering communications, but left the reporting requirement untouched. The same Court in *Citizens United* voted 8-1 to uphold the disclosure requirements of BCRA. In the controversial *Doe v. Reed* case involving disclosure of petition signatories on an initiative petition defining the institution of marriage, the Court upheld disclosure. As Justice Scalia noted during Court proceedings regarding the concern that disclosure could

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<sup>39</sup> Public Citizen, *The New Stealth PACs* (2004).

<sup>40</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

deter expression: “The fact is that running a democracy takes a certain amount of civic courage.”<sup>41</sup>

For a sample disclosure law that lifts the veil of secrecy from corporate political spending, see Appendix B, the DISCLOSE Act.

#### 4. Pay-to-Play Restrictions on Government Contractors

In the context of government contracting, pay-to-play is the all-too-common practice of a business entity making campaign contributions or expenditures on behalf of a public official with the hope of gaining a lucrative government contract. Rarely does pay-to-play constitute outright bribery for a government contract. Rather, pay-to-play usually involves a business entity buying access for consideration of a government contract. Nevertheless, the appearance of corruption—and the public cynicism—that arises when the timing of campaign contributions and the issuance of government contracts closely coincides warrants some prudent safeguards in government contracting procedures.

Simply put, an effective pay-to-play law generally limits campaign contributions and expenditures from business entities, their decision making officers and spouses and dependents—during the calendar year prior to commencement of negotiations—to, say, \$250 or less on behalf of candidates and officeholders ultimately responsible for the contract, and bans such contributions and expenditures altogether during commencement of negotiations through termination of the contract. Additionally, the business entity and its decision-making officers are prohibited from making contributions and expenditures of, say, \$5,000 or more on behalf of all public officials responsible for a contract, in the aggregate, for the year preceding contract negotiations. If a business entity discovers that its officers have exceeded the aggregate limit, the business entity may “cure” the violation by getting the excess contributions and expenditures returned.

Eight states, the Securities Exchange Commission and several local jurisdictions currently restrict government contractors from making campaign contributions to those responsible for issuing government contracts, known as “pay-to-play” restrictions.<sup>42</sup> The objective of pay-to-play policies is to reduce corruption and favoritism in the awarding of government contracts and thereby enhance fair and competitive bidding for taxpayer-funded projects. Since pay-to-play restrictions are narrowly tailored to apply to a specific class of persons (government contractors), this anti-corruption policy should be viewed as government contracting reform rather than campaign finance reform.

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<sup>41</sup> Tom Goldstein, SCOTUS blog (May 4, 2010).

<sup>42</sup> The eight states with pay-to-play laws that restrict campaign contributions from government contractors include: Connecticut, Hawaii, Illinois, Kentucky, New Jersey, Ohio, South Carolina and West Virginia as well as the Securities and Exchange Commission for bond traders. The federal government also prohibits campaign contributions from government contractors [2 U.S.C. 441c(a)(1)]. However, because businesses may make campaign contributions through PACs, the ban on campaign contributions under this provision applies exclusively to individuals who constitute sole proprietors of government contracts, including contracts for federal highway projects.

Jurisdictions that have adopted pay-to-play restrictions have done so in response to the actual or perceived awarding of contracts by government officials based on favoritism to campaign contributors rather than merit or cost effectiveness. As documented below, such contracting scandals frequently have cost taxpayers dearly in the form of a “hidden tax” – through rigging the pool of potential contract bidders, inflating bids on contracts, issuing contracts for unnecessary work, and/or inefficiency and waste in awarding contracts to businesses not qualified to do the job.

As former U.S. Attorney Christopher Christie (now New Jersey governor) described the situation of campaign contributors routinely winning government contracts in New Jersey, which led to that state’s pay-to-play law: “Contracts are being given for work that isn’t needed. Or second, contracts are given to people who aren’t qualified to do the job, so the job isn’t done right and they have to come back and do the work again.”<sup>43</sup>

The courts have generally been protective of these narrow efforts to preserve integrity in government regulations and government contracting. The challenge to the SEC’s pay-to-play reform measure—the first effort to overturn pay-to-play regulation—was soundly rebuffed by the courts. The federal appellate court, which decided the case, ruled that “the regulation is closely drawn and thus ‘avoid[s] unnecessary abridgement’ of First Amendment rights, *Buckley v. Valeo*, 424 U.S. at 25, 96 S.Ct. at 638. Rule G-37 constrains relations only between the two potential parties to a quid pro quo: the underwriters and their municipal finance employees on the one hand, and officials who might influence the award of negotiated municipal bond underwriting contracts on the other. Even then, the rule restricts a narrow range of their activities for a relatively short period of time. The underwriter is barred from engaging in business with the particular issuer for only two years after it makes a contribution, and it is barred from soliciting contributions only during the time that it is engaged in or seeking business with the issuer associated with the donee.”<sup>44</sup> The U.S. Supreme Court declined to review the case.

A more recent challenge to a pay-to-play law was also turned back by a federal appeals court in the state of Connecticut. The United States Court of Appeals for the Second Circuit upheld nearly all of Connecticut’s pay-to-play law. Interestingly, while the Court upheld the state’s very strict prohibition against contractors from contributing to the campaigns of state candidates, it invalidated the provision that prohibited contractors from soliciting campaign contributions from others.<sup>45</sup> Nevertheless, the core of the law stands.

For a sample pay-to-play law, see Appendix C, “Pay-to-Play Model Law.”

## 5. Constitutional Amendment

Corporations are not people. They do not vote, and they should not be able to influence election outcomes. It is time to end the debate about the freedom of speech of for-profit

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<sup>43</sup> Associated Press, “Officials’ Crimes Cost N.J., Taxpayers,” *Trenton Times* (August 19, 2003).

<sup>44</sup> *Blount v. SEC*, 61 F.3d 968 (1995).

<sup>45</sup> *Green Party of Connecticut v. Garfield*, 2010 U. S. App. LEXIS 14248 (2d Cir. Conn. July 13, 2010).

corporations by amending the Constitution to make clear that for-profit corporations do not have the same First Amendment rights as people and the press. A constitutional amendment is the only way to finally overcome the profound challenges to our democracy posed by the *Citizens United* decision.

Public Citizen is working with other groups in petitioning Congress to propose a constitutional amendment to the states that clarifies to the Supreme Court that the First Amendment does not guarantee unlimited corporate spending in elections. These petition drives so far have netted more than three quarters of a million signatures. The specific petition that Public Citizen is promoting is given below.

*The Free Speech for People Amendment Petition to the U.S. Congress:*

*WHEREAS the First Amendment to the United States Constitution was designed to protect the free speech rights of people, not corporations;*

*WHEREAS, for the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically-enacted reforms;*

*WHEREAS, this corporate takeover of the First Amendment has reached its extreme conclusion in the United States Supreme Court's recent ruling in *Citizens United v. FEC*;*

*WHEREAS, the United States Supreme Court's ruling in *Citizens United v. FEC* overturned longstanding precedent prohibiting corporations from spending their general treasury funds in our elections;*

*WHEREAS, the United States Supreme Court's ruling in *Citizens United v. FEC* will now unleash a torrent of corporate money in our political process unmatched by any campaign expenditure totals in United States history;*

*WHEREAS, the United States Supreme Court's ruling in *Citizens United v. FEC* presents a serious and direct threat to our democracy;*

*WHEREAS, the people of the United States have previously used the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and self-government;*

*Now hereby be it resolved that we the undersigned voters of the United States call upon the United States Congress to pass and send to the states for ratification a constitutional amendment to restore the First Amendment and fair elections to the people.*

There are a few ways to approve amendment to the U.S. Constitution. An amendment has to be proposed either by a 2/3 vote of both houses of Congress, or else by a constitutional



convention convened when the legislatures of 2/3 of the states so request. The amendment has to be ratified either by the legislatures of 3/4 of the states, or by conventions in 3/4 of the states, depending on which means of ratification Congress proposes. All of the amendments to the Constitution, of which there are now 27, were proposed by Congress, and all but one were ratified by state legislatures. The convention route has never been used for proposing an amendment, and was used only once for ratifying an amendment (the 21st, which eliminated Prohibition).

The first 10 amendments (called the Bill of Rights) were proposed and ratified within a period of two-and-a-half years. Most successful amendments have taken one to two years, although the amendment authorizing the income tax took almost four. Prohibition was ratified 13 months after it was proposed by Congress, and the amendment repealing it took only 11 months from proposal by Congress to ratification. The 18-year-old vote amendment was ratified in fewer than four months.

The most recent amendment to the Constitution—the 27th Amendment, prohibiting congressional pay raises from going into effect until after another congressional election— took more than 200 years to ratify: It was proposed together with the Bill of Rights and ratified in 1992.

Congress sometimes puts time limits on the ratification process. (The constitutionality of those time limits is itself debatable). The Equal Rights Amendment had a time limit and failed to win ratification after 10 years, as did an amendment to give congressional representation to the District of Columbia.

Passing a constitutional amendment is not an insurmountable task. The U.S. Constitution has been amended 27 times in history. More importantly, once Congress finally submits a constitutional amendment to the states for ratification, it has a very high likelihood of passage. Since the founding of the nation, there have been more than 10,000 constitutional amendment proposals introduced in Congress. Of these 35 have been submitted to the states, and 27 of these 35 have been ratified. The key is to get Congress to act.

Immediately following the *Citizens United* decision right up to the first day of the 112<sup>th</sup> Congress, several lawmakers have introduced constitutional amendments to address corporate spending in elections. Public Citizen applauds the support of Sen. John Kerry (D-Mass.) former Sen. Arlen Specter (D-Pa.) and Reps. Donna Edwards (D-Md.), John Conyers (D-Mich.), Leonard Boswell (D-Iowa) and Marcy Kaptur (D-Ohio) in supporting a constitutional amendment to overturn *Citizens United*, and we are well on our way to expand that list of congressional supporters.

## 6. State Legislative Responses

In addition states are responding to *Citizens United*, which had the effect of invalidating the laws of 24 states that prohibited or limited corporate spending in state and local elections.

At least 16 states have subsequently passed legislation to respond to the *Citizens United* opinion within the constraints that the decision set. While states no longer can prohibit or

limit independent corporate spending, they are allowed to mandate greater disclosure or to prohibit electioneering expenditures by foreign interests or government contractors.

The most prevalent response among states is to require independent groups to disclose activities to influence elections. Such requirements, triggered by varying spending thresholds, often call for disclosure of the amount spent and the candidate favored or opposed. The most effective of these state disclosure laws, such as those recently approved in Alaska and Minnesota, following the key elements of the DISCLOSE Act, requiring full disclosure of corporate and union funds funneled into the campaign coffers of outside groups. It is the superb disclosure law in Minnesota, for example, that alerted the public that Target and Best Buy made substantial contributions to MN Forward, a conservative group that promoted the election of Minnesota Republican gubernatorial candidate Tom Emmer.

At least two states have passed new laws banning the use of foreign money in their elections. Arizona and Iowa has approved corporate governance laws to ensure that a company's board of directors or shareholders are involved in decisions to make corporate political expenditures. Eight states and dozens of local jurisdictions have pay-to-play laws on the books, which restrict campaign contributions from government contractors. And more than a dozen states provide some form of public financing to candidates, with the most comprehensive public financing systems in Arizona, Connecticut and Maine.

Many other states are now contemplating their legislative responses to the *Citizens United* decision. States that have approved such legislative responses to date are charted below.

State Legislative Responses to *Citizens United* Decision

State	Require Disclosure of Amounts and Other Details Of Expenditures to State Board	Define Corporations Making Independent Expenditures as Political Committees	Require Corporations Spending Money in Elections to Obtain Approval Board Members or Other Officers	Require Media Outlets to Obtain Written Auth. for Independent Expenditures and to Make File Publicly Available	Restrict Campaign Contributions from Government Contractors (Pay-to-Play)	Require Corporate-Funded Ads to Include Approval Messages from CEO	Ban Foreign Money in State Elections
Alaska	x						
Arizona	x		x				
Colorado	x				x		x
Connecticut	x				x		
Hawaii					x		
Illinois					x		
Iowa	x		x			x	x
Kentucky					x		
Massachusetts						x	
Minnesota	x						
New Jersey					x		
North Carolina	x			x			
South Carolina					x		
South Dakota	x						
Tennessee		x					
West Virginia					x		

Sources: National Conference of State Legislatures and staff files

**Appendix A: Shareholder Protection Act (H.R. 4790)**

111TH CONGRESS

2D SESSION H. R. 4790

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2010

Mr. CAPUANO (for himself, Mr. ACKERMAN, Mr. FILNER, Mr. GRAYSON, Mr. HIMES, Mr. HOLT, Mrs. MALONEY, Mr. PALLONE, Mr. PETERS, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Shareholder Protection Act of 2010”.

## SEC. 2. FINDINGS.

Congress finds the following:

(1) Corporations make significant political contributions and expenditures that directly or indirectly influence the election of candidates and support or oppose political causes. Decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders.

(2) Corporations, acting through their boards and executives, are obligated to conduct business for the best interests of their owners, the shareholders.

(3) Historically, shareholders have not had a way to know, or to influence, the political activities of corporations they own. Shareholders and the public have a right to know how corporations are spending their funds to make political contributions or expenditures benefitting candidates, political parties, and political causes.

(4) Corporations should be accountable to their shareholders in making political contributions or expenditures affecting Federal governance and public policy. Requiring the express approval of a corporation's shareholders prior to making political contributions or expenditures will establish necessary accountability.

## SEC. 2. SHAREHOLDER APPROVAL OF CORPORATE POLITICAL ACTIVITY.

The Securities Exchange Act of 1934 is amended by inserting after section 14 the following new section:

### “SEC. 14A. SHAREHOLDER APPROVAL OF CERTAIN POLITICAL EXPENDITURES.

“(a) SHAREHOLDER AUTHORIZATION FOR POLITICAL EXPENDITURES.—Any solicitation of any proxy or consent or authorization in respect of any security of an issuer shall—

“(1) contain a description of the specific nature of any expenditures for political activities proposed to be made by the issuer for the forthcoming fiscal year, to the extent the specific nature is known to the issuer and including the total amount of such proposed expenditures; and

“(2) provide for a separate shareholder vote to authorize such proposed expenditures in such amount.

“(b) RESTRICTION ON EXPENDITURES.—No issuer shall make any expenditure for political activities in any fiscal year unless—

“(1) such expenditure is of the nature of those proposed by the issuer pursuant to subsection (a)(1); and

“(2) authorization for such expenditures has been granted by votes representing a majority of outstanding shares pursuant to subsection (a)(2).

“(c) FIDUCIARY DUTY; LIABILITY.—A violation of subsection (b) shall be considered a breach of a fiduciary duty of the officers and directors who authorized such an expenditure. The officers and directors who authorize such an expenditure without first obtaining such authorization of shareholders shall be jointly and severally liable in any action brought in any court of competent jurisdiction to any shareholder or class of shareholders for the amount of such expenditure.

“(d) DEFINITION OF EXPENDITURE FOR POLITICAL ACTIVITIES.—As used in this section:

“(1) The term ‘expenditure for political activities’ means—

“(A) an independent expenditure, as such term is defined in section 301(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. 20 431(17));

“(B) contributions to any political party, committee, or electioneering communication, as such term is defined in section 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and

“(C) dues or other payments to trade associations or other tax exempt organizations that are, or could reasonably be anticipated to be, used for the purposes described in subparagraph (A).

“(2) Such term shall not include—

“(A) direct lobbying efforts through registered lobbyists employed or hired by the issuer;

“(B) communications by an issuer to its shareholders and executive or administrative personnel and their families; or

“(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation.”.

### SEC. 3. DISCLOSURE OF PROXY VOTES BY INSTITUTIONAL INVESTORS.

Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraph (5) as paragraph (7) and inserting after paragraph (4) the following:

“(5) DISCLOSURE OF VOTES.—Each institutional investment manager subject to this subsection shall include in the reports required under this subsection, at least annually, a statement of how it voted on any shareholder vote provided for under section 14A(a) that occurred since the manager’s last such statement, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission. Not later than 6 months after the date of enactment of this paragraph, the Commission shall issue rules and regulations to implement this paragraph.

“(6) SAFE HARBOR FOR CERTAIN DIVESTMENT DECISIONS.—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any institutional investment manager, or any employee, officer, or director thereof, based solely upon a decision of the investment manager to divest from, or not to invest in, securities of an issuer because of expenditures for political activities made by that issuer.”.

### SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.

(a) REQUIRED VOTE.—The Securities Exchange Act of 1934 is amended by adding after section 16 the following new section:

“SEC. 16A. REQUIRED BOARD VOTE ON CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.

“(a) LISTING ON EXCHANGES.—Effective not later than 180 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsection (b).

“(b) REQUIREMENT FOR VOTE IN CORPORATE BYLAWS.—The corporate bylaws of an issuer shall expressly provide for a vote of the directors of the issuer on any individual expenditure for political activities (as such term is defined in section A(d)(1)) in excess of \$50,000. An issuer shall make publicly available the individual votes of the directors required by the preceding sentence within 48 hours of the vote, including in a clear and conspicuous location on the Internet website of the issuer.”.

(b) NO EFFECT ON DETERMINATION OF COORDINATION WITH CANDIDATES OR CAMPAIGNS.—For purposes of determining whether an expenditure for political activities by an issuer under the Securities Exchange Act of 1934 is an independent expenditure under the Federal Election Campaign Act of 1971, the expenditure may not be treated as made in concert or cooperation with, or at the request or suggestion of, any candidate or committee solely on the grounds that any director of the issuer voted on the expenditure as required under section 16A(b) of the Securities Exchange Act of 1934 (as added by subsection (a)).

#### 5 SEC. 5. REPORTING REQUIREMENTS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) REPORTING REQUIREMENTS RELATING TO CERTAIN POLITICAL EXPENDITURES.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall modify its reporting rules under this section to require issuers to disclose quarterly any expenditure for political activities (as such term is defined in section 14A(c)(1)) made during the preceding quarter and the individual votes by board members authorizing such expenditures. Such a report shall be filed with the Commission and provided to shareholders and shall include—

“(A) the date of the expenditures;

“(B) the amount of the expenditures;

“(C) the name or identity of the candidate, political party, committee, or electioneering communication, as such term is defined in section 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and

“(D) if the expenditures were made for or against a candidate, including an electioneering communication, the office sought by the candidate and the political party affiliation of the candidate.

“(2) PUBLIC AVAILABILITY.—The Commission shall ensure that, to the greatest extent practicable, the quarterly reports required by this subsection are publicly available through the Commission website in a manner that is searchable, sortable, and downloadable, consistent with the requirements of section 24.”.

SEC. 5. REPORT. The Comptroller General of the United States shall annually conduct a study on the compliance with the requirements of this Act by public corporations and their management, as well as the effectiveness of the Securities and Exchange Commission in meeting the reporting and disclosure requirements of this Act. Not later than April 1 of each year, the Comptroller General shall submit to Congress a report of such study.

SEC. 6. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provision or amendment to any person or circumstance shall not be affected thereby.



## Appendix B: Excerpted DISCLOSE Act

Title: To amend the Federal Election Campaign Act of 1971 to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Democracy is Strengthened by Casting Light on Spending in Elections Act” or the “DISCLOSE Act”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

### TITLE I—PROMOTING EFFECTIVE DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY

#### Subtitle A—Treatment of Independent Expenditures and Electioneering Communications Made by All Persons

Sec.101. Independent expenditures.

Sec.102. Electioneering communications.

Sec.103. Mandatory electronic filing by persons making independent expenditures or electioneering communications exceeding \$10,000 at any time.

#### Subtitle B—Expanded Requirements for Corporations and Other Organizations

Sec.111. Additional information required to be included in reports on disbursements by covered organizations.

Sec.112. Rules regarding use of general treasury funds by covered organizations for campaign-related activity.

Sec.113. Optional use of separate account by covered organizations for campaign-related activity.

Sec.114. Modification of rules relating to disclaimer statements required for certain communications.

Sec.115. Indexing of certain amounts.

#### Subtitle C—Reporting Requirements for Registered Lobbyists

Sec.121. Requiring registered lobbyists to report information on independent expenditures and electioneering communications.

#### Subtitle D—Filing by Senate Candidates With Commission

Sec.131.Filing by Senate candidates with Commission.

### TITLE II—DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY

Sec.201. Requiring disclosure by covered organizations of information on campaign-related activity.

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**TITLE III—RESTRICTION ON INTERNET COMMUNICATIONS TREATED AS PUBLIC COMMUNICATIONS**

Sec.301. Restriction on internet communications treated as public communications.

**TITLE IV—OTHER PROVISIONS**

Sec.401. Judicial review.

Sec.402. No effect on protections against threats, harassments, and reprisals.

Sec.403. Severability.

Sec.404. Effective date.

**SECTION 2. FINDINGS.**

(a) General Findings.—Congress finds and declares as follows:

(1) Throughout the history of the United States, the American people have been rightly concerned about the power of special interests to control our democratic processes. That was true over 100 years ago when Congress first enacted legislation intended to restrict corporate funds from being used in Federal elections, legislation that Congress amended in 1947 to expressly include independent expenditures. The Supreme Court held such legislation to be constitutional in 1990 in *Austin v. Michigan Chamber of Commerce* (494 U.S. 652) and again in 2003 in *McConnell v. F.E.C.* (540 U.S. 93).

(2) The Supreme Court's decision in *Citizens United v. Federal Election Commission* on January 21, 2010, invalidated legislation restricting the ability of corporations and labor unions to spend funds from their general treasury accounts to influence the outcome of elections.

Findings Relating to Disclosures and Disclaimers.—Congress finds and declares as follows:

(1) The American people have a compelling interest in knowing who is funding independent expenditures and electioneering communications to influence Federal elections, and the government has a compelling interest in providing the public with that information. Effective disclaimers and prompt disclosure of expenditures, and the disclosure of the funding sources for these expenditures, can provide shareholders, voters, and citizens with the information needed to evaluate the actions by special interests seeking influence over the democratic process. Transparency promotes accountability, increases the fund of information available to the public concerning the support given to candidates by special interests, sheds the light of publicity on political spending, and encourages the leaders of organizations to act only upon legitimate organizational purposes.

(2) Protecting this compelling interest has become particularly important to address the increase in special interest spending on election-related communications which Congress finds will result from the Supreme Court's decision in the *Citizens United* case. The current disclosure and disclaimer requirements were designed for a campaign finance system in which such expenditures were subject to prohibitions that no longer apply.

(3) More rigorous disclosure and disclaimer requirements are necessary to protect against the evasion of those current rules that were not the subject of the *Citizens United* case. Organizations that engage in election-related communications have used a variety of methods to attempt to obscure their sponsorship of communications from the general public, including multiple transfers of funds between different individuals and organizations. Robust, enhanced disclosure and disclaimer requirements are necessary to ensure that the electorate is informed about who is actually paying for particular election-related communications, and that the shareholders and members of organizations are aware of their organizations' election-related spending.

(4) Various factors, including the frequency of political campaigns that effectively begin long before election day, have also rendered the existing system of disclosure and disclaimer requirements (including the limited time periods during which some of those requirements currently apply) inadequate to protect fully the government's compelling interests. Those interests include ensuring that the electorate is fully informed about the sources of election-related spending, and that shareholders, voters and citizens alike have the information they need to hold corporations and elected officials accountable.

(5) The pervasive nature of campaign advertising means that most Americans, even those who might not be otherwise engaged in the political process, will come into contact with campaign advertising. Moreover, the lengthy nature of most modern campaigns means that many Americans will be exposed to campaign advertising for an extended period of time prior to the actual election. Many of these Americans may lack ready access to the information provided through the existing disclosure requirements. For this reason, disclaimers on the campaign advertising itself are particularly important in improving the knowledge of the American people about who is funding independent expenditures and electioneering communications to influence Federal elections.

(6) Effective disclaimers enable the American people to assess advertisements as they see or hear them, making them aware of the sources of funding behind advertisements, and enabling them to use that information to help evaluate the persuasiveness of the advertisements. Effective disclaimers can also alert the electorate to connections between different advertisements, such as when different advertisements are supported by the same funding source. It is thus particularly important that disclaimers on all advertising be presented in a manner that can be quickly and easily understood, and is likely to be observed and retained, by those seeing or hearing the advertisement.

(7) The current lack of accountability and transparency with respect to special interest political spending allows that spending to serve as a private benefit for the officials of special interest organizations, to the detriment of those organizations and their shareholders and members.

(8) Election-related communications by not-for-profit charitable organizations raise certain additional, particularized issues. In the past, such organizations have sometimes been established in order to permit the actual sponsors of election-related

communications to obscure their identities from voters and the general public. At the same time, other such organizations are familiar, established associations of persons dedicated to a common and transparent charitable, educational, or recreational purpose. The importance of enhanced disclosures of the sources of funding of a not-for-profit organization's election-related communications is diminished where certain conditions are met. If an organization is long-established, the public is more likely to be familiar with the organization and its purposes, making it less important to require disclosure of the organization's donors in order for the public to fairly understand and evaluate its communications. Similarly, national organizations with broad-based membership are likely to be better known, making enhanced disclosure of the organization's donors less critical. Organizations that have a substantial membership, particularly a geographically dispersed and long-standing membership, are less likely to serve as conduits for a small number of donors who use the organization to express their own personal views in the guise of an organizational communication. Organizations that accept only limited funds from corporations and do not use any corporate funds to subsidize campaign-related activities are less likely to be used to obscure corporate sources of political communications. In rare cases where all of these characteristics describe a particular non-profit organization, the existing disclosure and disclaimer requirements will provide sufficient information to enable the public to understand who is actually speaking.

(c) Findings Relating to Campaign Spending by Lobbyists.—Congress finds and declares as follows:

(1) Lobbyists and lobbying organizations, and through them, their clients, influence the public decision-making process in a variety of ways.

(2) In recent years, scandals involving undue lobbyist influence have lowered public trust in government and jeopardized the willingness of voters to take part in democratic governance.

(3) One way in which lobbyists may unduly influence Federal officials is through their clients making independent expenditures or electioneering communications targeting elected officials.

(4) Disclosure of such independent expenditures and electioneering communications will allow the public to examine connections between such spending and official actions, and will therefore limit the ability of lobbyists to exert an undue influence on elected officials.

## TITLE I—PROMOTING EFFECTIVE DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY

### Subtitle A—Treatment of Independent Expenditures and Electioneering Communications Made by All Persons

#### SEC. 101. INDEPENDENT EXPENDITURES.

(a) Revision of Definition.—Subparagraph (A) of section 301(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(17)) is amended to read as follows:

“(A) that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved mentions a candidacy, a political party, or a challenger to a candidate, or takes a position on a candidate’s character, qualifications, or fitness for office; and”.

(b) Uniform 24-hour Reporting for Persons Making Independent Expenditures Exceeding \$10,000 at Any Time.—Section 304(g) of such Act (2 U.S.C. 434(g)) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) INDEPENDENT EXPENDITURES EXCEEDING THRESHOLD AMOUNT.—

“(A) INITIAL REPORT.—A person (including a political committee) that makes or contracts to make independent expenditures in an aggregate amount equal to or greater than the threshold amount described in subparagraph (C) shall electronically file a report describing the expenditures within 24 hours.

“(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person shall electronically file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures in an aggregate amount equal to or greater than the threshold amount with respect to the same election as that to which the initial report relates.

“(C) THRESHOLD AMOUNT DESCRIBED.—In this paragraph, the ‘threshold amount’ means—

“(i) during the period up to and including the 20th day before the date of an election, \$10,000; or

“(ii) during the period after the 20th day, but more than 24 hours, before the date of an election, \$1,000.

“(2) PUBLIC AVAILABILITY.—Notwithstanding any other provision of this section, the Commission shall ensure that the information required to be disclosed under this subsection is publicly available through the Commission website not later than 24 hours after receipt in a manner that is downloadable in bulk and machine readable.”.

(c) Effective Date.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to contributions and expenditures made on or after January 1, 2011, without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments.

(2) REPORTING REQUIREMENTS.—The amendment made by subsection (b) shall apply with respect to reports required to be filed on or after January 1, 2011, without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments.

## SECTION 102. ELECTIONEERING COMMUNICATIONS.

(a) Expansion of Period Covering General Election.—Section 304(f)(3)(A)(i)(II)(aa) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)(i)(II)(aa)) is amended by striking “60 days” and inserting “120 days”.

(b) Effective Date; Transition for Communications Made Prior to Effective Date.—The amendment made by subsection (a) shall apply with respect to communications made on or after January 1, 2011, without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments, except that no communication which is made prior to January 1, 2011, shall be treated as an electioneering communication under section 304(f)(3)(A)(i)(II) of the Federal Election Campaign Act of 1971 (as amended by subsection (a)) unless the communication would be treated as an electioneering communication under such section if the amendment made by subsection (a) did not apply.

#### SECTION 103. MANDATORY ELECTRONIC FILING BY PERSONS MAKING INDEPENDENT EXPENDITURES OR ELECTIONEERING COMMUNICATIONS EXCEEDING \$10,000 AT ANY TIME.

Section 304(d)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(d)(1)) is amended—

(1) by striking “or (g)”; and

(2) by adding at the end the following: “Notwithstanding any other provision of this section, any person who is required to file a statement under subsection (f) or subsection (g) shall file the statement in electronic form accessible by computers, in a manner which ensures that the information provided is searchable, sortable, and downloadable.”

#### Subtitle B—Expanded Requirements for Corporations and Other Organizations

#### SECTION 111. ADDITIONAL INFORMATION REQUIRED TO BE INCLUDED IN REPORTS ON DISBURSEMENTS BY COVERED ORGANIZATIONS.

(a) Independent Expenditure Reports.—Section 304(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(g)) is amended by adding at the end the following new paragraph:

“(5) DISCLOSURE OF ADDITIONAL INFORMATION BY COVERED ORGANIZATIONS MAKING PAYMENTS FOR PUBLIC INDEPENDENT EXPENDITURES.—

“(A) ADDITIONAL INFORMATION.—If a covered organization makes or contracts to make public independent expenditures in an aggregate amount equal to or exceeding \$10,000 in a calendar year, the report filed by the organization under this subsection shall include, in addition to the information required under paragraph (3), the following information (subject to subparagraph (B)(iv)):

“(i) If any person made a donation or payment to the covered organization during the covered organization reporting period which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity—

“(I) subject to subparagraph (C), the identification of each person who made such donations or payments in an aggregate amount equal to or

exceeding \$600 during such period, presented in the order of the aggregate amount of donations or payments made by such persons during such period (with the identification of the person making the largest donation or payment appearing first); and

“(II) if any person identified under subclause (I) designated that the donation or payment be used for campaign-related activity with respect to a specific election or in support of a specific candidate, the name of the election or candidate involved, and if any such person designated that the donation or payment be used for a specific public independent expenditure, a description of the expenditure.

“(ii) The identification of each person who made unrestricted donor payments to the organization during the covered organization reporting period—

“(I) in an aggregate amount equal to or exceeding \$600 during such period, if any of the disbursements made by the organization for any of the public independent expenditures which are covered by the report were not made from the organization’s Campaign-Related Activity Account under section 326; or

“(II) in an aggregate amount equal to or exceeding \$6,000 during such period, if the disbursements made by the organization for all of the public independent expenditures which are covered by the report were made exclusively from the organization’s Campaign-Related Activity Account under section 326 (but only if the organization has made deposits described in subparagraph (D) of section 326(a)(2) into that Account during such period in an aggregate amount equal to or greater than \$10,000),

presented in the order of the aggregate amount of payments made by such persons during such period (with the identification of the person making the largest payment appearing first).

“(B) TREATMENT OF TRANSFERS MADE TO OTHER PERSONS.—

“(i) IN GENERAL.—Subject to clause (iii), for purposes of the requirement to file reports under this subsection (including the requirement under subparagraph (A) to include additional information in such reports), a covered organization which transfers amounts to another person (other than the covered organization itself) for the purpose of making a public independent expenditure by that person or by any other person, or (in accordance with clause (ii)) which is deemed to have transferred amounts to another person (other than the covered organization itself) for the purpose of making a public independent expenditure by that person or by any other person, shall be considered to have made a public independent expenditure.

“(ii) RULES FOR DEEMING TRANSFERS MADE FOR PURPOSE OF MAKING EXPENDITURES.—For purposes of clause (i), in determining whether a covered organi-

zation which transfers amounts to another person shall be deemed to have transferred the amounts for the purpose of making a public independent expenditure, the following rules apply:

“(I) The covered organization shall be deemed to have transferred the amounts for the purpose of making a public independent expenditure if—

“(aa) the covered organization designates, requests, or suggests that the amounts be used for public independent expenditures and the person to whom the amounts were transferred agrees to do so;

“(bb) the person making the public independent expenditure or another person acting on that person’s behalf expressly solicited the covered organization for a donation or payment for making or paying for any public independent expenditures;

“(cc) the covered organization and the person to whom the amounts were transferred engaged in written or oral discussion regarding the person either making, or paying for, any public independent expenditure, or donating or transferring the amounts to another person for that purpose;

“(dd) the covered organization which transferred the funds knew or had reason to know that the person to whom the amounts were transferred intended to make public independent expenditures; or

“(ee) the covered organization which transferred the funds or the person to whom the amounts were transferred made one or more public independent expenditures in an aggregate amount of \$50,000 or more during the 2-year period which ends on the date on which the amounts were transferred.

“(II) The covered organization shall not be deemed to have transferred the amounts for the purpose of making a public independent expenditure if—

“(aa) the transfer was a commercial transaction occurring in the ordinary course of business between the covered organization and the person to whom the amounts were transferred, unless there is affirmative evidence that the amounts were transferred for the purpose of making a public independent expenditure; or

“(bb) the covered organization and the person to whom the amounts were transferred mutually agreed (as provided in section 325(b)(1)) that the person will not use the amounts for campaign-related activity.

“(iii) SPECIAL RULE REGARDING TRANSFERS AMONG AFFILIATES.—

“(I) SPECIAL RULE.—



“(aa) IN GENERAL.—Clause (i) and (ii) shall not apply in the case of an amount transferred by one covered organization to another covered organization which is treated as a transfer between affiliates under subclause (II).

“(bb) REPORTING BY TRANSFEREE.—In the case of any such transfer or transfers between affiliates in an aggregate amount equal to or greater than \$50,000 in a calendar year, any report filed under subparagraph (A) by the covered organization that receives the transferred funds shall include the information required under that subparagraph relating to donations or payments made—

“(AA) to the affiliate which transferred the funds where such donations or payments were made to the affiliate in the 12-month period prior to the transfer, and

“(BB) to any affiliate which transferred an aggregate amount equal to or greater than \$50,000 to any affiliate described in subitem (AA) in the 12-month period prior to the transfer.

“(II) DESCRIPTION OF TRANSFERS BETWEEN AFFILIATES.—A transfer of amounts from one covered organization to another covered organization shall be treated as a transfer between affiliates if—

“(aa) one of the organizations is an affiliate of the other organization; or

“(bb) each of the organizations is an affiliate of the same organization,

except that the transfer shall not be treated as a transfer between affiliates if one of the organizations is established for the purpose of disbursing funds for campaign-related activity.

“(III) DETERMINATION OF AFFILIATE STATUS.—For purposes of subclause (II), the following covered organizations are considered to be affiliates of each other—

“(aa) a membership organization (including trade or professional associations) and the related State and local entities of that organization or group;

“(bb) a national or international labor organization and its local unions, or an organization of national or international unions and its State and local central bodies; and

“(cc) a corporation and its wholly owned subsidiaries.

“(IV) COVERAGE OF TRANSFERS TO AFFILIATED SECTION 501(c)(3) ORGANIZATIONS.—This clause shall apply with respect to an amount transferred by a covered organization to an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from

tax under section 501(a) of such Code in the same manner as this clause applies to an amount transferred by a covered organization to another covered organization.

“(iv) SPECIAL THRESHOLD FOR DISCLOSURE OF DONORS.—Notwithstanding clause (i) or (ii) of subparagraph (A), if a covered organization is required to include the identification of a person described in such clause in a report filed under this subsection because the covered organization is deemed (in accordance with clause (ii)) to have transferred amounts for the purpose of making a public independent expenditure or because clause (iii)(I)(bb) applies to such covered organization, the organization shall include the identification of the person only if the person made donations or payments (in the case of a person described in clause (i)(I) of subparagraph (A)) or unrestricted donor payments (in the case of a person described in clause (ii) of subparagraph (A)) to the covered organization during the covered organization reporting period involved in an aggregate amount equal to or exceeding \$10,000.

“(C) EXCLUSION OF AMOUNTS DESIGNATED FOR OTHER CAMPAIGN-RELATED ACTIVITY.—For purposes of subparagraph (A)(i), in determining the amount of a donation or payment made by a person which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity, there shall be excluded any amount which was designated by the person to be used—

“(i) for campaign-related activity described in clause (i) of section 325(d)(2)(A) (relating to independent expenditures) with respect to a different election, or with respect to a candidate in a different election, than an election which is the subject of any of the public independent expenditures covered by the report involved; or

“(ii) for any campaign-related activity described in clause (ii) of section 325(d)(2)(A) (relating to electioneering communications).

“(D) EXCLUSION OF AMOUNTS PAID FROM SEPARATE SEGREGATED FUND.—In determining the amount of public independent expenditures made by a covered organization for purposes of this paragraph, there shall be excluded any amounts paid from a separate segregated fund established and administered by the organization under section 316(b)(2)(C).

“(E) COVERED ORGANIZATION REPORTING PERIOD DESCRIBED.—In this paragraph, the ‘covered organization reporting period’ is, with respect to a report filed by a covered organization under this subsection—

“(i) in the case of the first report filed by a covered organization under this subsection which includes information required under this paragraph, the shorter of—

“(I) the period which begins on the effective date of the Democracy is Strengthened by Casting Light on Spending in Elections Act and ends on the last day covered by the report, or

“(II) the 12-month period ending on the last day covered by the report; and

“(ii) in the case of any subsequent report filed by a covered organization under this subsection which includes information required under this paragraph, the period occurring since the most recent report filed by the organization which includes such information.

“(F) COVERED ORGANIZATION DEFINED.—In this paragraph, the term ‘covered organization’ means any of the following:

“(i) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(ii) Any labor organization (as defined in section 316).

“(iii) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(iv) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

“(G) OTHER DEFINITIONS.—In this paragraph—

“(i) the terms ‘campaign-related activity’ and ‘unrestricted donor payment’ have the meaning given such terms in section 325; and

“(ii) the term ‘public independent expenditure’ means an independent expenditure for a public communication (as defined in section 301(22)).”.

(b) Electioneering Communication Reports.—

(1) IN GENERAL.—Section 304(f) of such Act (2 U.S.C. 434(f)) is amended—

(A) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8); and

(B) by inserting after paragraph (5) the following new paragraph:

“(6) DISCLOSURE OF ADDITIONAL INFORMATION BY COVERED ORGANIZATIONS.—

“(A) ADDITIONAL INFORMATION.—If a covered organization files a statement under this subsection, the statement shall include, in addition to the information required under paragraph (2), the following information (subject to subparagraph (B)(iv)):

“(i) If any person made a donation or payment to the covered organization during the covered organization reporting period which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity—

“(I) subject to subparagraph (C), the identification of each person who

made such donations or payments in an aggregate amount equal to or exceeding \$1,000 during such period, presented in the order of the aggregate amount of donations or payments made by such persons during such period (with the identification of the person making the largest donation or payment appearing first); and

“(II) if any person identified under subclause (I) designated that the donation or payment be used for campaign-related activity with respect to a specific election or in support of a specific candidate, the name of the election or candidate involved, and if any such person designated that the donation or payment be used for a specific electioneering communication, a description of the communication.

“(ii) The identification of each person who made unrestricted donor payments to the organization during the covered organization reporting period—

“(I) in an aggregate amount equal to or exceeding \$1,000 during such period, if the organization made any of the disbursements which are described in subclause (II) from a source other than the organization’s Campaign-Related Activity Account under section 326; or

“(II) in an aggregate amount equal to or exceeding \$10,000 during such period, if the organization made from its Campaign-Related Activity Account under section 326 all of its disbursements for electioneering communications during such period which are, on the basis of a reasonable belief by the organization, subject to treatment as disbursements for an exempt function for purposes of section 527(f) of the Internal Revenue Code of 1986 (but only if the organization has made deposits described in subparagraph (D) of section 326(a)(2) into that Account during such period in an aggregate amount equal to or greater than \$10,000),

presented in the order of the aggregate amount of payments made by such persons during such period (with the identification of the person making the largest payment appearing first).

“(B) TREATMENT OF TRANSFERS MADE TO OTHER PERSONS.—

“(i) IN GENERAL.—Subject to clause (iii), for purposes of the requirement to file statements under this subsection (including the requirement under subparagraph (A) to include additional information in such statements), a covered organization which transfers amounts to another person (other than the covered organization itself) for the purpose of making an electioneering communication by that person or by any other person, or (in accordance with clause (ii)) which is deemed to have transferred amounts to another person (other than the covered organization itself) for the purpose of making an electioneering communication by that person or by any other person, shall be considered to have made a disbursement for an electioneering communication.

“(ii) RULES FOR DEEMING TRANSFERS MADE FOR PURPOSE OF MAKING COMMUNICATIONS.—For purposes of clause (i), in determining whether a covered organization which transfers amounts to another person shall be deemed to have transferred the amounts for the purpose of making an electioneering communication, the following rules apply:

“(I) The covered organization shall be deemed to have transferred the amounts for the purpose of making an electioneering communication if—

“(aa) the covered organization designates, requests, or suggests that the amounts be used for electioneering communications and the person to whom the amounts were transferred agrees to do so;

“(bb) the person making the electioneering communication or another person acting on that person’s behalf expressly solicited the covered organization for a donation or payment for making or paying for any electioneering communications;

“(cc) the covered organization and the person to whom the amounts were transferred engaged in written or oral discussion regarding the person either making, or paying for, any electioneering communication, or donating or transferring the amounts to another person for that purpose;

“(dd) the covered organization which transferred the funds knew or had reason to know that the person to whom the amounts were transferred intended to make electioneering communications; or

“(ee) the covered organization which transferred the funds or the person to whom the amounts were transferred made one or more electioneering communications in an aggregate amount of \$50,000 or more during the 2-year period which ends on the date on which the amounts were transferred.

“(II) The covered organization shall not be deemed to have transferred the amounts for the purpose of making an electioneering communication if—

“(aa) the transfer was a commercial transaction occurring in the ordinary course of business between the covered organization and the person to whom the amounts were transferred, unless there is affirmative evidence that the amounts were transferred for the purpose of making an electioneering communication; or

“(bb) the covered organization and the person to whom the amounts were transferred mutually agreed (as provided in section 325(b)(1)) that the person will not use the amounts for campaign-related activity.

“(iii) SPECIAL RULE REGARDING TRANSFERS AMONG AFFILIATES.—

“(I) SPECIAL RULE.—

“(aa) IN GENERAL.—Clause (i) and (ii) shall not apply in the case of an amount transferred by one covered organization to another covered organization which is treated as a transfer between affiliates under subclause (II).

“(bb) REPORTING BY TRANSFEREE.—In the case of any such transfer or transfers between affiliates in an aggregate amount equal to or greater than \$50,000 in a calendar year, any report filed under subparagraph (A) by the covered organization that receives the transferred funds shall include the information required under that subparagraph relating to donations or payments made—

“(AA) to the affiliate which transferred the funds where such donations or payments were made to the affiliate in the 12-month period prior to the transfer, and

“(BB) to any affiliate which transferred an aggregate amount equal to or greater than \$50,000 to any affiliate described in subitem (AA) in the 12-month period prior to the transfer.

“(II) DESCRIPTION OF TRANSFERS BETWEEN AFFILIATES.—A transfer of amounts from one covered organization to another covered organization shall be treated as a transfer between affiliates if—

“(aa) one of the organizations is an affiliate of the other organization; or

“(bb) each of the organizations is an affiliate of the same organization,

except that the transfer shall not be treated as a transfer between affiliates if one of the organizations is established for the purpose of disbursing funds for campaign-related activity.

“(III) DETERMINATION OF AFFILIATE STATUS.—For purposes of subclause (II), the following covered organizations are considered to be affiliates of each other—

“(aa) a membership organization (including trade or professional associations) and the related State and local entities of that organization or group;

“(bb) a national or international labor organization and its local unions, or an organization of national or international unions and its State and local central bodies; and.

“(cc) a corporation and its wholly owned subsidiaries.

“(IV) COVERAGE OF TRANSFERS TO AFFILIATED SECTION 501(C)(3) ORGANIZATIONS.—This clause shall apply with respect to an amount transferred by a covered organization to an organization described in paragraph (3) of

section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code in the same manner as this clause applies to an amount transferred by a covered organization to another covered organization.

“(iv) SPECIAL THRESHOLD FOR DISCLOSURE OF DONORS.—Notwithstanding clause (i) or (ii) of subparagraph (A), if a covered organization is required to include the identification of a person described in such clause in a statement filed under this subsection because the covered organization is deemed (in accordance with clause (ii)) to have transferred amounts for the purpose of making an electioneering communication or because clause (iii)(I)(bb) applies to such covered organization, the organization shall include the identification of the person only if the person made donations or payments (in the case of a person described in clause (i)(I) of subparagraph (A)) or unrestricted donor payments (in the case of a person described in clause (ii) of subparagraph (A)) to the covered organization during the covered organization reporting period involved in an aggregate amount equal to or exceeding \$10,000.

“(C) EXCLUSION OF AMOUNTS DESIGNATED FOR OTHER CAMPAIGN-RELATED ACTIVITY.—For purposes of subparagraph (A)(i), in determining the amount of a donation or payment made by a person which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity, there shall be excluded any amount which was designated by the person to be used—

“(i) for campaign-related activity described in clause (i) of section 325(d)(2)(A) (relating to independent expenditures) with respect to a different election, or with respect to a candidate in a different election, than an election which is the subject of any of the public independent expenditures covered by the report involved; or

“(ii) for any campaign-related activity described in clause (ii) of section 325(d)(2)(A) (relating to electioneering communications).

“(D) COVERED ORGANIZATION REPORTING PERIOD DESCRIBED.—In this paragraph, the ‘covered organization reporting period’ is, with respect to a statement filed by a covered organization under this subsection—

“(i) in the case of the first statement filed by a covered organization under this subsection which includes information required under this paragraph, the shorter of—

“(I) the period which begins on the effective date of the Democracy is Strengthened by Casting Light on Spending in Elections Act and ends on the disclosure date for the statement, or

“(II) the 12-month period ending on the disclosure date for the statement; and

“(ii) in the case of any subsequent statement filed by a covered organization under this subsection which includes information required under this

paragraph, the period occurring since the most recent statement filed by the organization which includes such information.

“(E) COVERED ORGANIZATION DEFINED.—In this paragraph, the term ‘covered organization’ means any of the following:

“(i) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(ii) Any labor organization (as defined in section 316).

“(iii) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(iv) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

“(F) OTHER DEFINITIONS.—In this paragraph, the terms ‘campaign-related activity’ and ‘unrestricted donor payment’ have the meaning given such terms in section 325.”.

(2) CONFORMING AMENDMENT.—Section 304(f)(2) of such Act (2 U.S.C. 434(f)(2)) is amended by striking “If the disbursements” each place it appears in subparagraph (E) and (F) and inserting the following: “Except in the case of a statement which is required to include additional information under paragraph (6), if the disbursements”.

(c) Exemption of Certain Section 501(c)(4) Organizations.—Section 301 of such Act (2 U.S.C. 431) is amended by adding at the end the following:

“(27) EXEMPT SECTION 501(C)(4) ORGANIZATION.—The term ‘exempt section 501(c)(4) organization’ means, with respect to disbursements made by an organization during a calendar year, an organization for which the chief executive officer of the organization certifies to the Commission (prior to the first disbursement made by the organization during the year) that each of the following applies:

“(A) The organization is described in paragraph (4) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, and was so described and so exempt during each of the 10 previous calendar years.

“(B) The organization has at least 500,000 individuals who paid membership dues during the previous calendar year (determined as of the last day of that year).

“(C) The dues-paying membership of the organization includes at least one individual from each State. For purposes of this subparagraph, the term ‘State’ means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.



“(D) During the previous calendar year, the portion of funds provided to the organization by corporations (as described in section 316) or labor organizations (as defined in section 316), other than funds provided pursuant to commercial transactions occurring in the ordinary course of business, did not exceed 15 percent of the total amount of all funds provided to the organization from all sources.

“(E) The organization does not use any of the funds provided to the organization by corporations (as described in section 316) or labor organizations (as defined in section 316) for campaign-related activity (as defined in section 325).”.

SEC. 112. RULES REGARDING USE OF GENERAL TREASURY FUNDS BY COVERED ORGANIZATIONS FOR CAMPAIGN-RELATED ACTIVITY.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

“SEC. 325. SPECIAL RULES FOR USE OF GENERAL TREASURY FUNDS BY COVERED ORGANIZATIONS FOR CAMPAIGN-RELATED ACTIVITY.

“(a) Use of Funds for Campaign-Related Activity.—

“(1) IN GENERAL.—Subject to any applicable restrictions and prohibitions under this Act, a covered organization may make disbursements for campaign-related activity using—

“(A) amounts paid or donated to the organization which are designated by the person providing the amounts to be used for campaign-related activity;

“(B) unrestricted donor payments made to the organization; and

“(C) other funds of the organization, including amounts received pursuant to commercial activities in the regular course of a covered organization’s business.

“(2) NO EFFECT ON USE OF SEPARATE SEGREGATED FUND.—Nothing in this section shall be construed to affect the authority of a covered organization to make disbursements from a separate segregated fund established and administered by the organization under section 316(b)(2)(C).

“(b) Mutually Agreed Restrictions on Use of Funds for Campaign-Related Activity.—

“(1) AGREEMENT AND CERTIFICATION.—If a covered organization and a person mutually agree, at the time the person makes a donation, payment, or transfer to the organization which would require the organization to disclose the person’s identification under section 304(g)(5)(A)(ii) or section 304(f)(6)(A)(ii), that the organization will not use the donation, payment, or transfer for campaign-related activity, then not later than 30 days after the organization receives the donation, payment, or transfer the organization shall transmit to the person a written certification by the chief financial officer of the covered organization (or, if the organization does not have a chief financial officer, the highest ranking financial official of the organization) that—

“(A) the organization will not use the donation, payment, or transfer for campaign-related activity; and

“(B) the organization will not include any information on the person in any re-

port filed by the organization under section 304 with respect to independent expenditures or electioneering communications, so that the person will not be required to appear in a significant funder statement or a Top 5 Funders list under section 318(e).

“(2) EXCEPTION FOR PAYMENTS MADE PURSUANT TO COMMERCIAL ACTIVITIES.—Paragraph (1) does not apply with respect to any payment or transfer made pursuant to commercial activities in the regular course of a covered organization’s business.

“(c) Certifications Regarding Disbursements for Campaign-related Activity.—

“(1) CERTIFICATION BY CHIEF EXECUTIVE OFFICER.—If, at any time during a calendar quarter, a covered organization makes a disbursement of funds for campaign-related activity using funds described in subsection (a)(1), the chief executive officer of the covered organization or the chief executive officer’s designee (or, if the organization does not have a chief executive officer, the highest ranking official of the organization or the highest ranking official’s designee) shall file a statement with the Commission which contains the following certifications:

“(A) None of the campaign-related activity for which the organization disbursed the funds during the quarter was made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate, or political committee of a political party or agent of any political party.

“(B) The chief executive officer or highest ranking official of the covered organization (as the case may be) has reviewed and approved each statement and report filed by the organization under section 304 with respect to any such disbursement made during the quarter.

“(C) Each statement and report filed by the organization under section 304 with respect to any such disbursement made during the quarter is complete and accurate.

“(D) All such disbursements made during the quarter are in compliance with this Act.

“(E) No portion of the amounts used to make any such disbursements during the quarter is attributable to funds received by the organization that were subject to a mutual agreement (as provided in subsection (b)(1)) that the organization will not use the funds for campaign-related activity by the person who provided the funds from being used for campaign-related activity pursuant to subsection (b).

“(2) APPLICATION OF ELECTRONIC FILING RULES.—Section 304(d)(1) shall apply with respect to a statement required under this subsection in the same manner as such section applies with respect to a statement under subsection (c) or (g) of section 304.

“(3) DEADLINE.—The chief executive officer or highest ranking official of a covered organization (as the case may be) shall file the statement required under this subsection with respect to a calendar quarter not later than 15 days after the end of the quar-

ter.

“(d) Definitions.—For purposes of this section, the following definitions apply:

“(1) COVERED ORGANIZATION.—The term ‘covered organization’ means any of the following:

“(A) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(B) Any labor organization (as defined in section 316).

“(C) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(D) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

“(2) CAMPAIGN-RELATED ACTIVITY.—

“(A) IN GENERAL.—The term ‘campaign-related activity’ means—

“(i) an independent expenditure consisting of a public communication (as defined in section 301(22)), a transfer of funds to another person (other than the transferor itself) for the purpose of making such an independent expenditure by that person or by any other person (subject to subparagraph (C)), or (in accordance with subparagraph (B) and subject to subparagraph (C)) a transfer of funds to another person (other than the transferor itself) which is deemed to have been made for the purpose of making such an independent expenditure by that person or by any other person; or

“(ii) an electioneering communication, a transfer of funds to another person (other than the transferor itself) for the purpose of making an electioneering communication by that person or by any other person (subject to subparagraph (C)), or (in accordance with subparagraph (B) and subject to subparagraph (C)) a transfer of funds to another person (other than the transferor itself) which is deemed to have been made for the purpose of making an electioneering communication by that person or by any other person.

“(B) RULE FOR DEEMING TRANSFERS MADE FOR PURPOSE OF CAMPAIGN-RELATED ACTIVITY.—For purposes of subparagraph (A), in determining whether a transfer of funds by a covered organization to another person shall be deemed to have been made for the purpose of making an independent expenditure consisting of a public communication or an electioneering communication, the following rules apply:

“(i) The transfer shall be deemed to have been made for the purpose of making such an independent expenditure or an electioneering communication if—

“(I) the covered organization designates, requests, or suggests that the amounts be used for such independent expenditures or electioneering communications and the person to whom the amounts were transferred agrees to do so;

“(II) the person making such independent expenditures or electioneering communications or another person acting on that person’s behalf expressly solicited the covered organization for a donation or payment for making or paying for any such independent expenditure or electioneering communication;

“(III) the covered organization and the person to whom the amounts were transferred engaged in written or oral discussion regarding the person either making, or paying for, such independent expenditures or electioneering communications, or donating or transferring the amounts to another person for that purpose;

“(IV) the covered organization which transferred the funds knew or had reason to know that the person to whom the amounts were transferred intended to make such independent expenditures or electioneering communications; or

“(V) the covered organization which transferred the funds or the person to whom the amounts were transferred made one or more such independent expenditures or electioneering communications in an aggregate amount of \$50,000 or more during the 2-year period which ends on the date on which the amounts were transferred.

“(ii) The transfer shall not be deemed to have been made for the purpose of making such an independent expenditure or an electioneering communication if—

“(I) the transfer was a commercial transaction occurring in the ordinary course of business between the covered organization and the person to whom the amounts were transferred, unless there is affirmative evidence that the amounts were transferred for the purpose of making such an independent expenditure or electioneering communication; or

“(II) the covered organization and the person to whom the amounts were transferred mutually agreed (as provided in subsection (b)(1)) that the person will not use the amounts for campaign-related activity.

“(C) SPECIAL RULE REGARDING TRANSFERS AMONG AFFILIATES.—

“(i) SPECIAL RULE.—

“(I) IN GENERAL.—Subparagraph (A) and (B) shall not apply in the case of an amount transferred by one covered organization to another covered organization which is treated as a transfer between affiliates under clause (ii).

“(II) REPORTING BY TRANSFEREE.—In the case of any such transfer or

transfers between affiliates in an aggregate amount equal to or greater than \$50,000 in a calendar year, any report filed under subparagraph (A) by the covered organization that receives the transferred funds shall include the information required under that subparagraph relating to donations or payments made—

“(aa) to the affiliate which transferred the funds where such donations or payments were made to the affiliate in the 12-month period prior to the transfer, and

“(bb) to any affiliate which transferred an aggregate amount equal to or greater than \$50,000 to any affiliate described in item (aa) in the 12-month period prior to the transfer.

“(ii) DESCRIPTION OF TRANSFERS BETWEEN AFFILIATES.—A transfer of amounts from one covered organization to another covered organization shall be treated as a transfer between affiliates if—

“(I) one of the organizations is an affiliate of the other organization; or

“(II) each of the organizations is an affiliate of the same organization, except that the transfer shall not be treated as a transfer between affiliates if one of the organizations is established for the purpose of disbursing funds for campaign-related activity.

“(iii) DETERMINATION OF AFFILIATE STATUS.—For purposes of clause (ii), the following covered organizations are considered to be affiliates of each other—

“(I) a membership organization (including trade or professional associations) and the related State and local entities of that organization or group;

“(II) a national or international labor organization and its local unions, or an organization of national or international unions and its State and local central bodies; and-

“(III) a corporation and its wholly owned subsidiaries.

“(iv) COVERAGE OF TRANSFERS TO AFFILIATED SECTION 501(C)(3) ORGANIZATIONS.—This subparagraph shall apply with respect to an amount transferred by a covered organization to an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code in the same manner as this subparagraph applies to an amount transferred by a covered organization to another covered organization.

“(3) UNRESTRICTED DONOR PAYMENT.—The term ‘unrestricted donor payment’ means a payment to a covered organization which consists of a donation or payment from a person other than the covered organization, except that such term does not include—

“(A) any payment made pursuant to commercial activities in the regular course

of a covered organization's business; or

“(B) any donation or payment which is designated by the person making the donation or payment to be used for campaign-related activity or made in response to a solicitation for funds to be used for campaign-related activity.”.

SEC. 113. OPTIONAL USE OF SEPARATE ACCOUNT BY COVERED ORGANIZATIONS FOR CAMPAIGN-RELATED ACTIVITY.

(a) In General.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 112, is further amended by adding at the end the following new section:

“SEC. 326. OPTIONAL USE OF SEPARATE ACCOUNT BY COVERED ORGANIZATIONS FOR CAMPAIGN-RELATED ACTIVITY.

“(a) Optional Use of Separate Account.—

“(1) ESTABLISHMENT OF ACCOUNT.—

“(A) IN GENERAL.—At its option, a covered organization may make disbursements for campaign-related activity using amounts from a bank account established and controlled by the organization to be known as the Campaign-Related Activity Account (hereafter in this section referred to as the ‘Account’), which shall be maintained separately from all other accounts of the organization and which shall consist exclusively of the deposits described in paragraph (2).

“(B) MANDATORY USE OF ACCOUNT AFTER ESTABLISHMENT.—If a covered organization establishes an Account under this section, it may not make disbursements for campaign-related activity from any source other than amounts from the Account, other than disbursements for campaign-related activity which, on the basis of a reasonable belief by the organization, would not be treated as disbursements for an exempt function for purposes of section 527(f) of the Internal Revenue Code of 1986.

“(C) EXCLUSIVE USE OF ACCOUNT FOR CAMPAIGN-RELATED ACTIVITY.—Amounts in the Account shall be used exclusively for disbursements by the covered organization for campaign-related activity. After such disbursements are made, information with respect to deposits made to the Account shall be disclosed in accordance with section 304(g)(5) or section 304(f)(6).

“(2) DEPOSITS DESCRIBED.—The deposits described in this paragraph are deposits of the following amounts:

“(A) Amounts donated or paid to the covered organization by a person other than the organization for the purpose of being used for campaign-related activity, and for which the person providing the amounts has designated that the amounts be used for campaign-related activity with respect to a specific election or specific candidate.

“(B) Amounts donated or paid to the covered organization by a person other than the organization for the purpose of being used for campaign-related activity, and for which the person providing the amounts has not designated that the

amounts be used for campaign-related activity with respect to a specific election or specific candidate.

“(C) Amounts donated or paid to the covered organization by a person other than the organization in response to a solicitation for funds to be used for campaign-related activity.

“(D) Amounts transferred to the Account by the covered organization from other accounts of the organization, including from the organization’s general treasury funds.

“(3) NO TREATMENT AS POLITICAL COMMITTEE.—The establishment and administration of an Account in accordance with this subsection shall not by itself be treated as the establishment or administration of a political committee for any purpose of this Act.

“(b) Reduction in Amounts Otherwise Available for Account in Response to Demand of General Donors.—

“(1) IN GENERAL.—If a covered organization which has established an Account obtains any revenues during a year which are attributable to a donation or payment from a person other than the covered organization, and if the organization and any such person have mutually agreed (as provided in section 325(b)(1)) that the organization will not use the person’s donation, payment, or transfer for campaign-related activity, the organization shall reduce the amount of its revenues available for deposits to the Account which are described in subsection (a)(3)(D) during the year by the amount of the donation or payment which is subject to the mutual agreement.

“(2) EXCEPTION.—Paragraph (1) does not apply with respect to any payment made pursuant to commercial activities in the regular course of a covered organization’s business.

“(c) Covered Organization Defined.—In this section, the term ‘covered organization’ means any of the following:

“(1) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(2) Any labor organization (as defined in section 316).

“(3) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(4) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

“(d) Campaign-related Activity Defined.—In this section, the term ‘campaign-related activity’ has the meaning given such term in section 325.”.

(b) Clarification of Treatment as Separate Segregated Fund.—A Campaign-Related Activity Account (within the meaning of section 326 of the Federal Election Campaign Act of

1971, as added by subsection (a)) may be treated as a separate segregated fund for purposes of section 527(f)(3) of the Internal Revenue Code of 1986.

#### SEC. 114. MODIFICATION OF RULES RELATING TO DISCLAIMER STATEMENTS REQUIRED FOR CERTAIN COMMUNICATIONS.

(a) Applying Requirements to All Independent Expenditure Communications.—Section 318(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d(a)) is amended by striking “for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate” and inserting “for an independent expenditure consisting of a public communication”.

(b) Stand by Your Ad Requirements.—

(1) MAINTENANCE OF EXISTING REQUIREMENTS FOR COMMUNICATIONS BY POLITICAL PARTIES AND OTHER POLITICAL COMMITTEES.—Section 318(d)(2) of such Act (2 U.S.C. 441d(d)(2)) is amended—

(A) in the heading, by striking “OTHERS” and inserting “POLITICAL COMMITTEES”;

(B) by striking “subsection (a)” and inserting “subsection (a) which is paid for by a political committee (including a political committee of a political party), other than a political committee which is described in subsection (e)(7)(B),”; and

(C) by striking “or other person” each place it appears.

(2) SPECIAL DISCLAIMER REQUIREMENTS FOR CERTAIN COMMUNICATIONS.—Section 318 of such Act (2 U.S.C. 441d) is amended by adding at the end the following new subsection:

“(e) Communications by Others.—

“(1) IN GENERAL.—Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television (other than a communication to which subsection (d)(2) applies because the communication is paid for by a political committee, including a political committee of a political party) shall include, in addition to the requirements of that paragraph, the following:

“(A) The individual disclosure statement described in paragraph (2) (if the person paying for the communication is an individual) or the organizational disclosure statement described in paragraph (3) (if the person paying for the communication is not an individual).

“(B) If the communication is an electioneering communication or an independent expenditure consisting of a public communication and is paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, the significant funder disclosure statement described in paragraph (4) (if applicable), unless, on the basis of criteria established in regulations promulgated by the Commission, the communication is of such short duration that including the statement in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the communication’s content to consist of



the statement.

“(C) In the case of a communication which is transmitted through television, if the communication is an electioneering communication or an independent expenditure consisting of a public communication and is paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, the Top Five Funders list described in paragraph (5) (if applicable), unless, on the basis of criteria established in regulations promulgated by the Commission, the communication is of such short duration that including the Top Five Funders list in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the communication’s content to consist of the Top Five Funders list.

“(2) INDIVIDUAL DISCLOSURE STATEMENT DESCRIBED.—The individual disclosure statement described in this paragraph is the following: ‘I am \_\_\_\_\_, and I approve this message.’, with the blank filled in with the name of the applicable individual.

“(3) ORGANIZATIONAL DISCLOSURE STATEMENT DESCRIBED.—The organizational disclosure statement described in this paragraph is the following: ‘I am \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, and \_\_\_\_\_ approves this message.’, with—

“(A) the first blank to be filled in with the name of the applicable individual;

“(B) the second blank to be filled in with the title of the applicable individual;  
and

“(C) the third and fourth blank each to be filled in with the name of the organization or other person paying for the communication.

“(4) SIGNIFICANT FUNDER DISCLOSURE STATEMENT DESCRIBED.—

“(A) STATEMENT IF SIGNIFICANT FUNDER IS AN INDIVIDUAL.—If the significant funder of a communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 is an individual, the significant funder disclosure statement described in this paragraph is the following: ‘I am \_\_\_\_\_. I helped to pay for this message, and I approve it.’, with the blank filled in with the name of the applicable individual.

“(B) STATEMENT IF SIGNIFICANT FUNDER IS NOT AN INDIVIDUAL.—If the significant funder of a communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 is not an individual, the significant funder disclosure statement described in this paragraph is the following: ‘I am \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_. \_\_\_\_\_ helped to pay for this message, and \_\_\_\_\_ approves it.’, with—

“(i) the first blank to be filled in with the name of the applicable individual;

“(ii) the second blank to be filled in with the title of the applicable individual; and

“(iii) the third, fourth, and fifth blank each to be filled in with the name of

the significant funder of the communication.

“(C) SIGNIFICANT FUNDER DEFINED.—

“(i) INDEPENDENT EXPENDITURES.—For purposes of this paragraph, the ‘significant funder’ with respect to an independent expenditure consisting of a public communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 shall be determined as follows:

“(I) If any report filed by any organization with respect to the independent expenditure under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$100,000 which was designated by the person to be used for campaign-related activity consisting of that specific independent expenditure (as required to be included in the report under section 304(g)(5)(A)(i)), the person who is identified among all such reports as making the largest such payment.

“(II) If any report filed by any organization with respect to the independent expenditure under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$100,000 which was designated by the person to be used for campaign-related activity with respect to the same election or in support of the same candidate (as required to be included in the report under section 304(g)(5)(A)(i)) but subclause (I) does not apply, the person who is identified among all such reports as making the largest such payment.

“(III) If any report filed by any organization with respect to the independent expenditure under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$10,000 which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity (as required to be included in the report under section 304(g)(5)(A)(i)) but subclause (I) or subclause (II) does not apply, the person who is identified among all such reports as making the largest such payment.

“(IV) If none of the reports filed by any organization with respect to the independent expenditure under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person (other than the organization) who made a payment to the organization in an amount equal to or exceeding \$10,000 which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related

activity, but any of such reports includes information on any person who made an unrestricted donor payment to the organization (as required to be included in the report under section 304(g)(5)(A)(ii)) in an amount equal to or exceeding \$10,000, the person who is identified among all such reports as making the largest such unrestricted donor payment.

“(ii) ELECTIONEERING COMMUNICATIONS.—For purposes of this paragraph, the ‘significant funder’ with respect to an electioneering communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, shall be determined as follows:

“(I) If any report filed by any organization with respect to the electioneering communication under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$100,000 which was designated by the person to be used for campaign-related activity consisting of that specific electioneering communication (as required to be included in the report under section 304(f)(6)(A)(i)), the person who is identified among all such reports as making the largest such payment.

“(II) If any report filed by any organization with respect to the electioneering communication under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$100,000 which was designated by the person to be used for campaign-related activity with respect to the same election or in support of the same candidate (as required to be included in the report under section 304(f)(6)(A)(i)) but subclause (I) does not apply, the person who is identified among all such reports as making the largest such payment.

“(III) If any report filed by any organization with respect to the electioneering communication under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an amount equal to or exceeding \$10,000 which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity (as required to be included in the report under section 304(f)(6)(A)(i)) but subclause (I) or subclause (II) does not apply, the person who is identified among all such reports as making the largest such payment.

“(IV) If none of the reports filed by any organization with respect to the electioneering communication under section 304 during the 12-month period which ends on the date of the disbursement includes information on any person who made a payment to the organization in an

amount equal to or exceeding \$10,000 which was provided for the purpose of being used for campaign-related activity or in response to a solicitation for funds to be used for campaign-related activity, but any of such reports includes information on any person who made an unrestricted donor payment to the organization (as required to be included in the report under section 304(f)(6)(A)(ii)) in an amount equal to or exceeding \$10,000, the person who is identified among all such reports as making the largest such unrestricted donor payment.

“(5) TOP 5 FUNDERS LIST DESCRIBED.—With respect to a communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, the Top 5 Funders list described in this paragraph is—

“(A) in the case of a disbursement for an independent expenditure consisting of a public communication, a list of the 5 persons who provided the largest payments of any type in an aggregate amount equal to or exceeding \$10,000 which are required under section 304(g)(5)(A) to be included in the reports filed by any organization with respect to that independent expenditure under section 304 during the 12-month period which ends on the date of the disbursement, together with the amount of the payments each such person provided; or

“(B) in the case of a disbursement for an electioneering communication, a list of the 5 persons who provided the largest payments of any type in an aggregate amount equal to or exceeding \$10,000 which are required under section 304(f)(6)(A) to be included in the reports filed by any organization with respect to that electioneering communication under section 304 during the 12-month period which ends on the date of the disbursement, together with the amount of the payments each such person provided.

“(6) METHOD OF CONVEYANCE OF STATEMENT.—

“(A) COMMUNICATIONS TRANSMITTED THROUGH RADIO.—In the case of a communication to which this subsection applies which is transmitted through radio, the disclosure statements required under paragraph (1) shall be made by audio by the applicable individual in a clearly spoken manner.

“(B) COMMUNICATIONS TRANSMITTED THROUGH TELEVISION.—In the case of a communication to which this subsection applies which is transmitted through television, the information required under paragraph (1)—

“(i) shall appear in writing at the end of the communication in a clearly readable manner, with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 6 seconds; and

“(ii) except in the case of a Top 5 Funders list described in paragraph (5), shall also be conveyed by an unobscured, full-screen view of the applicable individual, or by the applicable individual making the statement in voice-over accompanied by a clearly identifiable photograph or similar image of the individual.

“(7) APPLICABLE INDIVIDUAL DEFINED.—In this subsection, the term ‘applicable individual’ means, with respect to a communication to which this paragraph applies—

“(A) if the communication is paid for by an individual or if the significant funder of the communication under paragraph (4) is an individual, the individual involved;

“(B) if the communication is paid for by a corporation or if the significant funder of the communication under paragraph (4) is a corporation, the chief executive officer of the corporation (or, if the corporation does not have a chief executive officer, the highest ranking official of the corporation);

“(C) if the communication is paid for by a labor organization or if the significant funder of the communication under paragraph (4) is a labor organization, the highest ranking officer of the labor organization; or

“(D) if the communication is paid for by any other person or if the significant funder of the communication under paragraph (4) is any other person, the highest ranking official of such person.

“(8) COVERED ORGANIZATION DEFINED.—In this subsection, the term ‘covered organization’ means any of the following:

“(A) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(B) Any labor organization (as defined in section 316).

“(C) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(D) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

“(9) OTHER DEFINITIONS.—In this subsection, the terms ‘campaign-related activity’ and ‘unrestricted donor payment’ have the meaning given such terms in section 325.”.

(3) APPLICATION TO CERTAIN MASS MAILINGS.—Section 318(a)(3) of such Act (2 U.S.C. 441d(a)(3)) is amended to read as follows:

“(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state—

“(A) the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication;

“(B) if the communication is an independent expenditure consisting of a mass mailing (as defined in section 301(23)) which is paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, or which is paid for in whole or in part

by a political committee described in subsection (e)(7)(B), the name and permanent street address, telephone number, or World Wide Web address of—

“(i) the significant funder of the communication, if any (as determined in accordance with subsection (e)(4)(C)(i) or (e)(7)(A)(i)); and

“(ii) each person who would be included in the Top 5 Funders list which would be submitted with respect to the communication if the communication were transmitted through television, if any (as determined in accordance with subsection (e)(5) or (e)(7)(A)(ii)); and

“(C) that the communication is not authorized by any candidate or candidate’s committee.”.

(4) APPLICATION TO POLITICAL ROBOCALLS.—Section 318 of such Act (2 U.S.C. 441d), as amended by paragraph (2), is further amended by adding at the end the following new subsection:

“(f) Special Rules for Political Robocalls.—

“(1) REQUIRING COMMUNICATIONS TO INCLUDE CERTAIN DISCLAIMER STATEMENTS.—Any communication consisting of a political robocall which would be subject to the requirements of subsection (e) if the communication were transmitted through radio or television shall include the following:

“(A) The individual disclosure statement described in subsection (e)(2) (if the person paying for the communication is an individual) or the organizational disclosure statement described in subsection (e)(3) (if the person paying for the communication is not an individual).

“(B) If the communication is an electioneering communication or an independent expenditure consisting of a public communication and is paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325, or which is paid for in whole or in part by a political committee described in subsection (e)(7)(B), the significant funder disclosure statement described in subsection (e)(4) or (e)(7) (if applicable).

“(2) TIMING OF CERTAIN STATEMENT.—The statements required to be included under paragraph (1) shall be made at the beginning of the political robocall, unless, on the basis of criteria established in regulations promulgated by the Commission, the communication is of such short duration that including the statement in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the communication’s content to consist of the statement.

“(3) POLITICAL ROBOCALL DEFINED.—In this subsection, the term ‘political robocall’ means any outbound telephone call—

“(A) in which a person is not available to speak with the person answering the call, and the call instead plays a recorded message; and

“(B) which promotes, supports, attacks, or opposes a candidate for election for Federal office.”.

SEC. 115. INDEXING OF CERTAIN AMOUNTS.

Title III of the Federal Election Campaign Act of 1971, as amended by section ~~213~~ 113, is amended by adding at the end the following new section:

“SEC. 327. INDEXING OF CERTAIN AMOUNTS.

“(a) Indexing.—In any calendar year after 2010—

“(1) each of the amounts referred to in subsection (b) shall be increased by the percent difference determined under subparagraph (A) of section 315(c)(1), except that for purposes of this paragraph, such percent difference shall be determined as if the base year referred to in such subparagraph were 2009;

“(2) each amount so increased shall remain in effect for the calendar year; and

“(3) if any amount after adjustment under paragraph (1) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.

“(b) Amounts Described.—The amounts referred to in this subsection are as follows:

“(1) The amount referred to in section 304(g)(5)(A)(i)(I).

“(2) The amount referred to in section 304(g)(5)(A)(ii)(I).

“(3) Each of the amounts referred to in section 304(g)(5)(A)(ii)(II).

“(4) The amount referred to in section 304(g)(5)(B)(ii)(I)(ee).

“(5) Each amount referred to in section 304(g)(5)(B)(iii)(I)(bb).

“(6) The amount referred to in section 304(f)(6)(A)(i)(I).

“(7) The amount referred to in section 304(f)(6)(A)(ii)(I).

“(8) Each of the amounts referred to in section 304(f)(6)(A)(ii)(II).

“(9) The amount referred to in section 304(f)(6)(B)(ii)(I)(ee).

“(10) Each amount referred to in section 304(f)(6)(B)(iii)(I)(bb).

“(11) Each of the amounts referred to in section 318(e)(4)(C).

“(12) The amount referred to in section 325(d)(2)(B)(i)(V).

“(13) Each amount referred to in section 325(d)(2)(C)(i)(II).”.

Subtitle C—Reporting Requirements for Registered Lobbyists

SEC. 121. REQUIRING REGISTERED LOBBYISTS TO REPORT INFORMATION ON INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS.

(a) In General.—Section 5(d)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(d)(1)) is amended—

(1) by striking “and” at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (I); and

(3) by inserting after subparagraph (F) the following new subparagraphs:

“(G) the amount of any independent expenditure (as defined in section 301(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(17)) equal to or greater than \$1,000 made by such person or organization, and for each such expenditure the name of each candidate being supported or opposed and the amount spent supporting or opposing each such candidate;

“(H) the amount of any electioneering communication (as defined in section 304(f)(3) of such Act (2 U.S.C. 434(f)(3)) equal to or greater than \$1,000 made by such person or organization, and for each such communication the name of the candidate referred to in the communication; and”.

(b) Effective Date.—The amendments made by this section shall apply with respect to reports for semiannual periods described in section 5(d)(1) of the Lobbying Disclosure Act of 1995 that begin on or after January 1, 2011.

Subtitle D—Filing by Senate Candidates With Commission

SEC. 131. FILING BY SENATE CANDIDATES WITH COMMISSION.

Section 302(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)) is amended to read as follows:

“(g) FILING WITH THE COMMISSION.—All designations, statements, and reports required to be filed under this Act shall be filed with the Commission.”.

TITLE II—DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY

SEC. 201. REQUIRING DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 115, is amended by adding at the end the following new section:

“SEC. 328. DISCLOSURES BY COVERED ORGANIZATIONS TO SHAREHOLDERS, MEMBERS, AND DONORS OF INFORMATION ON DISBURSEMENTS FOR CAMPAIGN-RELATED ACTIVITY.

“(a) Including Information in Regular Periodic Reports.—

“(1) IN GENERAL.—A covered organization which submits regular, periodic reports to its shareholders, members, or donors on its finances or activities shall include in each such report, in a clear and conspicuous manner, the information described in paragraph (2) with respect to the disbursements made by the organization for campaign-related activity during the period covered by the report.

“(2) INFORMATION DESCRIBED.—The information described in this paragraph is, for each disbursement for campaign-related activity—

“(A) the date of the independent expenditure or electioneering communication involved;

“(B) the amount of the independent expenditure or electioneering communication involved;

“(C) the name of the candidate identified in the independent expenditure or electioneering communication involved and the office sought by the candidate;



“(D) in the case of a transfer of funds to another person, the information required by subparagraphs (A) through (C), as well as the name of the recipient of the funds and the date and amount of the funds transferred;

“(E) the source of such funds; and

“(F) such other information as the Commission determines is appropriate to further the purposes of this subsection.

“(b) Posting of or Hyperlink to Information Included in Reports Filed With Commission.—

“(1) REQUIRING POSTING OF OR HYPERLINK TO CERTAIN INFORMATION.—If a covered organization maintains an Internet site, the organization shall—

“(A) post on such Internet site, in a machine readable, searchable, sortable, and downloadable manner and through a direct link from the homepage of the organization, the information described in paragraph (2); or

“(B) post on such Internet site a hyperlink from its homepage to the location on the Internet site of the Commission which contains the information described in paragraph (2).

“(2) INFORMATION DESCRIBED.—The following information is described in this paragraph:

“(A) The information the organization is required to report under section 304(g)(5)(A) with respect to public independent expenditures.

“(B) The information the organization is required to include in a statement of disbursements for electioneering communications under section 304(f)(6).

“(3) DEADLINE; DURATION OF POSTING.—The covered organization shall post the information or the hyperlink described in paragraph (1) not later than 24 hours after the Commission posts the information described in paragraph (2) on the Internet site of the Commission, and shall ensure that the information or the hyperlink remains on the Internet site of the covered organization until the expiration of the 1-year period which begins on the date of the election with respect to which the public independent expenditures or electioneering communications are made.

“(c) Covered Organization Defined.—In this section, the term ‘covered organization’ means any of the following:

“(1) Any corporation which is subject to section 316(a), other than a corporation which is an organization described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(2) Any labor organization (as defined in section 316).

“(3) Any organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, other than an exempt section 501(c)(4) organization (as defined in section 301(27)).

“(4) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.”.

### TITLE III—RESTRICTION ON INTERNET COMMUNICATIONS TREATED AS PUBLIC COMMUNICATIONS

#### 2 SEC. 301. RESTRICTION ON INTERNET COMMUNICATIONS TREATED AS PUBLIC COMMUNICATIONS.

Section 301(22) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) is amended by adding at the end the following new sentence: “A communication which is disseminated through the Internet shall not be treated as a form of general public political advertising under this paragraph unless the communication was placed for a fee on another person’s Web site.”.

### TITLE IV—OTHER PROVISIONS

#### SEC. 401. JUDICIAL REVIEW.

(a) Special Rules for Actions Brought on Constitutional Grounds.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia, and an appeal from a decision of the District Court may be taken to the Court of Appeals for the District of Columbia Circuit.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(b) Intervention by Members of Congress.—In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised, any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate who satisfies the requirements for standing under article III of the Constitution shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) Challenge by Members of Congress.—Any Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

#### SEC. 402. NO EFFECT ON PROTECTIONS AGAINST THREATS, HARASSMENTS, AND REPRISALS.

Nothing in this Act or in any amendment made by this Act shall be construed to affect any provision of law or any rule or regulation which waives a requirement to disclose information relating to any person in any case in which there is a reasonable probability that the disclosure of the information would subject the person to threats, harassments, or reprisals.

**SEC. 403. SEVERABILITY.**

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.

**SEC. 404. EFFECTIVE DATE.**

Except as otherwise provided, this Act and the amendments made by this Act shall take effect on January 1, 2011, and shall take effect without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments.

## Appendix C: Model Pay-to-Play Law

Be It Enacted by the General Assembly and the Senate of the State of \_\_\_\_\_:

### 1. Preamble

- (a) It is hereby declared that all individuals, businesses, associations and other persons have a right to participate fully in the political process of \_\_\_\_\_, including making and soliciting contributions and campaign expenditures on behalf of candidates, parties and officeholders in state office. Nevertheless, when a person or business interest makes or solicits major contributions or expenditures in order to obtain a contract awarded by a governmental agency, it is a violation of the public's trust in government and raises legitimate public concerns about whether the contract has been awarded on the basis of merit.
- (b) It is further declared that the growing infusion of funds donated by business entities into the political process at all levels of government has generated widespread cynicism among the public that special interest groups are "buying" favors from elected officeholders.
- (c) Thus, it is hereby declared that, for the purposes of protecting the integrity of government contractual decisions and of improving the public's confidence in government, it will be the policy of the State of \_\_\_\_\_ to prohibit awarding government contracts to business entities which are also major financial supporters to candidates, parties and government officeholders.

### 2. Prohibition on Awarding Public Contracts to Contributors

- (d) Any other provision of law to the contrary notwithstanding, the state or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services from any professional business entity, if the value of the transaction exceeds \$17,500, if that entity has solicited or made any contribution of money, pledge of a contribution, including in-kind contributions, or campaign expenditure to a campaign committee of any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any state, county or municipal party committee or legislative leadership committee, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding commencement of negotiations for the contract or agreement.
- (e) No business entity or professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the state or any department or agency thereof or of its independent authorities either for the rendition of personal services or furnishing any material, supplies or equipment or for selling any land or building, if the value of the transaction exceeds \$17,500, shall knowingly solicit or make any contribution of money,

pledge of a contribution, including in-kind contributions, or campaign expenditure to any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any state, county or municipal party committee or legislative leadership committee, between the commencement of negotiations for and the later of the termination of negotiations or the completion of the contract or agreement.

- (f) For purposes of this statute, a “business entity” seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.
- (g) For purposes of this statute, a “professional business entity” is a business entity as defined in subsection (c) above which provides services by individuals who are required to be professionally licensed under the laws or regulations of \_\_\_\_\_.
- (h) Any individual meeting the definition of “professional business entity” under this section, including principals who own 10% or more of the equity in the corporation or business trust, partners, and officers of an entity, may annually contribute, or make a campaign expenditure, up to a maximum of \$250 each to any state candidate, or \$500 to any state, county or municipal party committee or legislative leadership committee, without violating subsection (a) of this section. However, any group of individuals meeting the definition of “business entity” under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute, or make campaign expenditures, in excess of \$5,000 to all state candidates and officeholders with ultimate responsibility for the award of the contract, and all state, county and municipal political parties and legislative leadership committees combined, without violating subsection (a) of this section.
- (i) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
  - (1) The Legislature, if the contract requires approval or appropriation from the Legislature; also, in the case of contracts awarded by independent authorities, if one or more of the appointees to the authority must be selected or affirmed by one or more members of the Legislature; and/or
  - (2) The Governor, if a public officer who is responsible for the award of a contract is appointed by the Governor, whether or not the appointment is subject to the advice and consent of the Senate, including independent authorities, and excluding members of boards, commissions, boards of trustees, and other such entities appointed by the Governor.

**3. Contributions and Expenditures Made Prior to the Effective Date**

No contribution or expenditure of money or any other thing of value, including in-kind contributions, made by a business entity or professional business entity to any state candidate or state, county or municipal party committee or legislative leadership committee shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution or expenditure was made by the business entity prior to the effective date of this section.

**4. Contribution and Expenditure Statement by Professional Business Entity**

(a) Prior to awarding any contract or agreement to procure services with any professional business entity, the state or any its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the business entity made under penalty of perjury that:

- (1) The bidder or offeror has not made a contribution or expenditure in violation of Section 52:37-2 of this Act;
- (2) The bidder or offeror has not knowingly violated any provision of the campaign finance laws of \_\_\_\_\_.

(b) The professional business entity shall have a continuing duty to report any violations of this Act that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the state and shall be in addition to any other certifications that may be required by any other provision of law.

**5. Reasonable Notice by Candidates, Party and Legislative Leadership Committees**

State candidates for political office, and state and county party committees and legislative leadership committees, shall use reasonable efforts to notify financial supporters and potential contributors that contributions and expenditures, including in-kind contributions, from a business entity or professional business entity and certain individuals associated with the business entity or professional business entity defined in Sections 52:37-2(c) and (d) of this Act may affect the ability of that business entity or professional business entity to contract or continue to contract with the state for "property, goods, and services" as defined in Section 52:37-2 of this Act. Such reasonable efforts shall include, but not be limited to, notification in written fundraising solicitations or donor information request forms or other fundraising solicitation materials. The failure of a business entity or professional business entity to receive the notice prescribed in this section shall not be a defense to a violation of this Act.

**6. Return of Excess Contributions and Expenditures**

A professional business entity or state candidate or officeholder or state, county or municipal party committee or legislative leadership committee may cure a violation

of Section 2 (e) of this Act, if, within 30 days after the general election, the professional business entity seeks and receives reimbursement of a contribution or expenditure from the state candidate or state, county or municipal political party or legislative leadership committee that otherwise would exceed the limits.

## 7. **Penalty**

- (a) It shall be a breach of the terms of the government contract as well as a violation of the state elections code for a business entity or professional business entity as defined in Section 52:37-2(c) or (d) or any other person to violate section 52:37-2(b) or to knowingly conceal or misrepresent campaign expenditures or contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution or expenditure, subject to penalties prescribed in Section 19:44A-22 of the \_\_\_\_\_ Statutes and any other penalties prescribed by law.
- (b) No person shall make and no person, other than a candidate or the candidate's controlled committee, shall accept any contribution or campaign expenditure on the condition or with the agreement that it will be made in support of any other particular candidate, subject to penalties prescribed in Section 19:44A-22 of the \_\_\_\_\_ Statutes and any other penalties prescribed by law.
- (c) Any business entity or professional business entity as defined in Sections 52:37-2(c) and (d) who knowingly fail to reveal a contribution or expenditure made in violation of this Act, or who knowingly makes or solicits contributions or expenditures through intermediaries for the purpose of concealing or misrepresenting the source of the funds, shall be disqualified from eligibility for future state contracts for a period of four calendar years from the date of the determination of violation by the Director of the Division of Purchase and Property or the Director of the Division of Building and Construction, as the case may be, and shall have any contract with the state then in effect immediately terminated.

## 8. **Local Option**

Any county or municipality in the State of \_\_\_\_\_ shall have the option to promulgate and implement its own ordinances restricting campaign contributions and expenditures by government contractors appropriate for the local jurisdiction.

## 9. **Annual Disclosure**

- (a) Any business entity or professional business entity making a contribution or expenditure on behalf of any candidate, committee, or political party, and which has received, in any calendar year \$50,000 or more through contracts from the state or county shall file an annual disclosure statement with the \_\_\_\_\_ Election Law Enforcement Commission setting forth all political contributions and expenditures made by the business entity or professional business entity during the twelve months prior to the reporting deadline.

- (b) The Election Law Enforcement Commission shall prescribe forms and procedures for the reporting required in subsection (a) which, at a minimum, shall require the following information:
- (1) The names and addresses of the persons or firms making the contributions or expenditures, and the amount contributed or spent;
  - (2) The name of the candidate, committee, or political party supported by the contributions or expenditures;
  - (3) The amount of money received from the state or county, the dates, and information identifying each contract and describing the service performed or goods provided.
- (c) The Election Law Enforcement Commission shall maintain a list of such reports for public inspection both at the commission's office and through the commission's electronic disclosure Web site.

#### **10. Severability**

If any provision of this law, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

#### **11. Effective Date**

This Act shall take effect immediately.