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112TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
112–571

THIRD SEMIANNUAL REPORT ON THE ACTIVITIES

OF THE

COMMITTEE ON HOUSE ADMINISTRATION

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

ONE HUNDRED TWELFTH CONGRESS

TOGETHER WITH MINORITY VIEWS



JUNE 29, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC, June 29, 2012.

Hon. KAREN HAAS,
Clerk of the House,
The Capitol, Washington, DC.

DEAR MS. HAAS: Pursuant to Rule XI, clause 1, paragraph (d) of the Rules of the U.S. House of Representatives, I hereby transmit the Third Semiannual Report on the Activities of the Committee on House Administration. This report summarizes the activities of the Committee with respect to its legislative and oversight responsibilities in the 112th Congress from December 2011 to June 2012.

Sincerely,

DANIEL E. LUNGREN,
Chairman.

Union Calendar No. 441

112TH CONGRESS *2d Session* } HOUSE OF REPRESENTATIVES { REPORT 112–571

THIRD SEMIANNUAL REPORT ON THE ACTIVITIES OF THE COMMITTEE ON HOUSE ADMINISTRATION DURING THE 112TH CONGRESS

JUNE 29, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANIEL E. LUNGREN of California, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

INTRODUCTION

The Committee on House Administration (Committee) is charged with the oversight of federal elections and the day-to-day operations of the House of Representatives. During the 112th Congress, the Committee has two subcommittees: the Subcommittee on Elections, which examines issues related to elections and voting systems, and the Subcommittee on Oversight, which focuses on identifying and reducing wasteful spending within House operations and establishing best practices to help improve services to the House community.

COMMITTEE FUNDING

Under House rule X, clause 6, the Committee on House Administration is charged with the responsibility of reporting an expense resolution to grant authorization for the expenses, including salaries, of the select and standing committees of the House.

In November 2011, the Committee held an oversight hearing to review the budgets for all the standing and select committees (except the Committee on Appropriations) in 2011, and to review budget planning for 2012. During the hearing, Committee members asked the Chairs and Ranking Members about how each committee

operated with their lower budgets and whether the committees could continue to perform their responsibilities with future cuts to their budgets. Each committee was also questioned on whether they have held to the practice of giving the minority one-third of the committee's budget.

On December 14, 2011, Chairman Lungren introduced a resolution regarding committee funding, H. Res. 496, which reduced most House Committee budget authorizations by 6.4% for the second session of the 112th Congress. This reduction, matching the appropriated funds provided for 2012, further reduced House spending and promoted a greater level of efficiency within Committee operations. On December 16, 2011, the Committee, by voice vote, agreed to a motion to favorably report the resolution to the House. On February 1, 2012, the House considered H. Res. 496, adjusting the amount provided for the expenses of certain committees of the House of Representatives in the 112th Congress. The resolution was considered under a motion to suspend the rules. The resolution was agreed to by voice vote. H. Res. 496, when combined with the enactment of H. Res. 22—a resolution introduced by Mr. Walden which cut House committee budgets by 5% at the beginning of the 112th Congress—represents the largest percentage cut to committee budgets since the 104th Congress.

MEMBERS' REPRESENTATIONAL ALLOWANCE

The Committee has jurisdiction over the use of appropriations from the accounts of the U.S. House of Representatives for the Members' Representational Allowance (MRA) as well as official travel by Members and staff, and compensation, retirement and other benefits of Member office employees. The MRA is the annual authorization made to each Member of the House to obligate U.S. Treasury funds not to exceed a certain amount. These funds may be used by the Member to pay ordinary and necessary business expenses incurred by the Member and his or her congressional office employees in support of the conduct of the Member's official and representational duties on behalf of the district from which the Member is elected.

On July 22, 2011, the House passed H.R. 2551, the Legislative Branch Appropriations Act, 2012. This bill appropriates $573,939,282 for Members' Representational Allowances for 2012. That amount represents a 6.4% reduction from the 2011 appropriation level for committee budgets.

The Committee adjusted MRA authorizations by 6.4% to reflect the change in appropriation level. The total amount authorized for all Members' Representational Allowances for 2012 was $597,313,512. The average MRA for 2012 was $1,354,452. This reduction, matching the appropriated funds provided for 2012, promoted a greater level of efficiency within office operations.

COMMISSION ON CONGRESSIONAL MAILING STANDARDS

On January 9, 2012, the Commission on Congressional Mailing Standards (Franking Commission) sent a Dear Colleague letter on the pre-approval process for generic communication templates. Members can request a template advisory opinion for recurring communications, such as meeting notices, that will not change throughout the year.

On January 17, 2012, the Franking Commission sent a Dear Colleague letter explaining the United States Postal Service price increases on mailing services. For example, the letter informed offices of the increase of the price of first class postage.

As an advisory measure, the Franking Commission sent thirty Dear Colleague letters to the state delegations to notify them of the 90-day election cut-off dates. These letters explained that Members are prohibited from sending unsolicited mass mailings and mass communications 90 days prior to an election in which they will appear on a ballot as a candidate for public office.

OVERSIGHT AND LEGISLATIVE ACTIVITIES OF THE COMMITTEE

Officers of the House

One of the key responsibilities of the Committee is to provide oversight of the Officers of the House, whose organizations serve primary roles in the operation of the legislative process and in providing the day to day administrative and operational infrastructure necessary to support the Members and staff of the House.

Clerk of the House

The Office of the Clerk is charged with overseeing nine departments including the Office of Art and Archives, the Legislative Resource Center, and the Office of Official Reporters. However, the Clerk's primary responsibilities reside with the legislative activities of the House. This includes managing the legislative bills originating in the House as well as overseeing the voting system.

On January 17, 2012, with the technical leadership and direction of House Leadership, the Committee on House Administration and the Committee on Rules, the Clerk launched a new website, docs.house.gov, to serve as the central location for all legislation to be considered by the House. The documents are displayed in XML, an open, machine-readable format. The Committee continues to work with the Clerk, House Leadership and the Committee on Rules regarding the posting requirements for Committee documents. Additionally, the Committee stayed apprised of the Clerk's progress on the development of a system to capture the financial disclosure requirements necessitated by the passage of S. 2038, the STOCK Act.

The Committee worked with the Clerk's office on the implementation of Congressman Paulsen's legislative branch appropriations amendment, effective January 4, 2012, that prohibited the use of funds to deliver the Congressional Record to Member offices and the use of funds to deliver bills, resolutions and joint resolutions unless requested by a Member office. The Clerk made more copies available for pickup in the Legislative Resource Center and Rayburn Resource Center to accommodate Member office needs.

Sergeant at Arms

With the upcoming party conventions and presidential inauguration, oversight of the House Sergeant at Arms (HSAA) and the United States Capitol Police (USCP) is as always, a main focal point for the Committee. Working with our colleagues in the minority, the Committee continued to ensure that both the HSAA and the USCP have the appropriate resources and personnel to provide

the high level of security to the Capitol grounds that we have come to expect. The Committee has resumed the regular bi-weekly oversight meetings with the HSAA and continues to meet with the USCP on a continuous basis to receive updates on topics vital to security.

Regarding emergency response planning and execution, the Committee has asked the HSAA to continue the emergency response training of staff culminating in multiple emergency response drills and alternate chamber exercises. During the past quarter, the Office of Emergency Management (OEM) has conducted five separate evacuation drills, testing new procedures that were implemented based on the lessons learned from the real-world evacuations of the earthquake on August 23rd, 2011. In addition, the Committee has asked the HSAA to explore technical solutions for emergency response messaging. As requested by the Committee, the HSAA has updated their website to include Law Enforcement Coordinator training and security tools to supplement district security efforts. In conjunction with the Law Enforcement Coordinator program, the HSAA continues to work the physical security outreach to Member district offices through ADT. Along with the ADT security outreach and the assignment of Law Enforcement Coordinators, the Committee asked the HSAA to determine possible recommendations for additional security measures for the beginning of Fiscal Year 2013.

Chief Administrative Officer

The Office of the Chief Administrative Officer (CAO) provides support functions for the House. The office supports the budget, finance, procurement, facilities, and information technology needs of the House and all of its components. The Committee is charged with overseeing the CAO's office.

At the direction of the Committee, the CAO accomplished several process improvement and cost-savings initiatives over the past six months. These included expansion of the Purchase Card program, online ordering and payment for flags, and giving staff the option to receive earnings statements electronically rather than on paper.

House Information Resources

The Committee continued to work with HIR to improve technological services and energy efficiency for the House community.

The Committee also worked with HIR to support a House.gov website for mobile devices. This new website will enhance the experience for visitors and staff who use smart phones to access information about the House and the Capitol Complex. The URL is M.HOUSE.GOV.

On February 2, 2012, the Committee held a conference on Legislative Data and Transparency in the Cannon Caucus room. One hundred and fifty attendees representing House, academic and private sector stakeholders participated. House, Library, and GPO administrative offices responsible for drafting and publishing legislative documents presented the work of their offices and participated in panel discussions with outside parliamentary, transparency, and technology speakers. The conference enabled the exchange of technical and policy information and helped House stakeholders map future transparency initiatives.

Inspector General

House Rule II creates the Office of the Inspector General (OIG) and charges the Committee with oversight of the office. During the first half of the year the OIG, with the approval and support of the Committee, produced four management advisory reports and nine audit reports.

Of particular note was the FY 2011 House Financial Statement Audit which the Committee approved on March 27, 2012. The House received a clean opinion on its financial statements and internal controls over financial reporting. This is a direct result of CAO Dan Strodel's ability to restore the House's good financial standing through the successful implementation of a comprehensive internal controls program and a new financial management system. It is an improvement over the 2009 and 2010 audits which received adverse opinions on internal controls. Also noteworthy, this is the first time in the history of the House that the audit has been completed this soon after the close of the fiscal year.

The Committee also worked with the OIG to create awareness in the House community of several schemes involving newspaper subscriptions and renewals. Offices appreciated the notifications and were able to prevent payments to unscrupulous vendors.

The Architect of the Capitol

The Architect of the Capitol (AOC) is responsible for the maintenance, operation, development, and preservation of the entire Capitol Complex, which includes 17.4 million square feet of buildings and more than 460 acres of land. Certain decisions regarding management of the House Office buildings and the House side of the Capitol reside with the House Office Building Commission, but the Committee supervises and oversees AOC implementation of all its programs.

The Committee met regularly with the Architect of the Capitol, his senior staff, the House Office Building Superintendent, his senior staff, and other AOC management and staff. The Committee continued to monitor the operations of the AOC, including, but not limited to, the AOC's waste-to-energy initiative, which diverts up to 90% of the Capitol Complex's non-recyclable solid waste from landfills through the utilization of local waste-to-energy facilities, the American Veterans Disabled for Life Memorial (AVDLM), the Union Square (and Capitol Reflecting Pool) transfer and maintenance, the House Office Building garage repairs, the RFP solicitation (posted in March) for the Library's Residential Scholars Center, completion of the Botanic Garden's Bartholdi Fountain (which opened in April after a multi-year renovation), the Statue of Freedom Conservation, the Dome Skirt renovation, and its various staff changes. Committee staff and representatives from House Leadership and the AOC have continued to work through the planning phases and continued to spread awareness among Members and staff of major renovations of the Cannon House Office Building, Phase I of which is scheduled to begin in FY2017.

Office of Congressional Accessibility Services

The Office of Congressional Accessibility Services (OCAS) was created by the Capitol Visitor Center Act of 2008. OCAS operates under the direction of the Congressional Accessibility Services

Board and is charged with providing and coordinating accessibility services for individuals with disabilities including Members of Congress, officers and employees of the House and Senate, and visitors in the U.S. Capitol Complex. The Committee on House Administration is charged with overseeing the agency and meets with OCAS staff monthly.

During the last six months, the Committee approved minor revisions to the Communication Access Real-time Translation (CART) and Sign Language Interpreting Services Policies. OCAS also worked with the Committee and the CVC to ensure the CVC experience is as accessible as possible. In the next few months, the audio-descriptive tour for Exhibition Hall will be complete. OCAS also provided accessibility services at various special events including the State of the Union Address, the unveiling of the slave labor commemorative marker in the CVC, and the Memorial Day Concert. Finally, OCAS trained over 1,000 Congressional staff in the past six months on disability etiquette and accessibility services so they can better serve constituents with special needs.

Library of Congress

The Committee's Subcommittee on Oversight conducted an oversight hearing on the Library of Congress (LOC) on April 18, 2012, entitled "Library of Congress: Ensuring Continuity and Efficiency During Leadership Transitions." Law Librarian David Mao, CRS Director Mary Mazanec, Register of Copyrights Maria Pallante, and Associate Librarian for Library Services Roberta Shaffer, testified before the subcommittee. Questions for the record were received on May 9.

In March, oversight staff conducted a site visit to the LOC's Audio-Visual Conservation Center in Culpeper, VA. The Packard Campus continues to be the focus of the Library's FY2012 revolving fund legislative proposals for the Committee and the Committee's video archiving project.

The Committee also oversaw the appointment of several high-profile positions within the Library this year. David Mao was appointed the 23rd Law Librarian on January 4; Gayle Osterberg was appointed the new Director of Communications, effective January 30; Karen Keninger became the new Director of the National Library Service for the Blind and Physically Handicapped, effective March 26; and Mark Sweeney was named Director of Preservation on April 2.

Joint Committee on Printing and U.S. Government Printing Office

The Government Printing Office (GPO) produces, preserves and distributes the official publications and information products of the Congress and federal government. At the end of the first session of the 112th Congress, William J. Boarman's recess appointment as Public Printer expired. Pursuant to 44 U.S.C. 304, the Deputy Public Printer, Ms. Davita Vance-Cooks, assumed the duties of Acting Public Printer at the start of the second session of the 112th Congress. The Committee and the Joint Committee on Printing (JCP) Chairman, Representative Gregg Harper, provided support to Ms. Vance-Cooks during her transition and have actively ensured GPO continues to meet the goals set out in GPO's Strategic Plan for FY2012–2016.

As demonstrated through recent actions, the Joint Committee's primary focus has been on decreasing Congress's reliance on tangible documents while still maintaining the government's interests in preservation, authentication, and availability for perpetuity. This year, the House printed fewer copies of the President's FY2013 Budget and adopted a resolution reducing by 50% the quantity of pocket Constitutions produced for the House. The House also adopted an amendment to the Legislative Branch Appropriations Act, 2013, offered by Representative Harper to strictly limit the printing of the 2012 edition of the U.S. Code for the House, thereby providing Congress with significant savings. Finally, in this effort to eliminate unnecessary printing, the Committee and JCP continue aggressive outreach to Member and House committee offices urging them to opt out of receiving printed versions of House publications.

The Committee on House Administration and JCP have also examined methods to make the House more efficient and transparent through its distribution of legislative information. In the first quarter of 2012, at the direction of the Committee on House Administration, the Government Printing Office and the Library of Congress unveiled a Congressional Record Application for tablet and mobile devices. This application is updated at the same time the information is released on GPO's Federal Digital System (FDsys) and is typically available before the print edition, thereby allowing the public at large to see the information concurrently with Congress.

The Committee on House Administration has been working with GPO and its Inspector General to review billing practices for committees and support offices in the House. The goal of GPO is to use best practices, utilize additional controls and streamline the billing process for the House.

Furthermore, the conference report to the Consolidated Appropriations Act, 2012 (Public Law 112–74), included a requirement for the National Academy of Public Administration (NAPA) to conduct an independent operational review of GPO to update past studies of GPO's operations and offer recommendations for additional cost saving opportunities beyond those that GPO has already implemented. The Committee on House Administration participated in interviews and has agreed to assist NAPA in various capacities.

Finally, to help ensure the printing practices of the federal government are conducted at the best price and agencies are continuing to follow the law, the Joint Committee on Printing asked the Government Accountability Office to audit the total number of internal printing plants, the total amount of in-plant work produced, and the print procurement practices of all Federal departments and agencies.

Smithsonian

The Committee serves as the primary legislative and oversight body for the Smithsonian Institution, a federal trust instrumentality composed of 19 museums, numerous research centers, and the National Zoo. Approximately two-thirds of the Institution's funding is from direct federal appropriations. Trust funds, which

include private donations and revenues from museum shops, restaurants and theaters, provide the remaining funding.

In early January 2012, the Committee became aware that Smithsonian Journeys, part of the Smithsonian Enterprises Division, began offering trips to Cuba as part of a people-to-people exchange. Although the Smithsonian had met the legal requirements to offer such trips, the program raised concerns because of the benefits it could provide Cuba's regime, a nation which has remained on the U.S. Department of State's State Sponsors of Terrorism list since 1982. On January 18, 2012, Chairman Lungren requested documentation regarding the Smithsonian's decision and the application to the Treasury to offer people-to-people exchanges. The Smithsonian responded on February 3, 2012. The materials provided generated additional questions and inquiries to the Smithsonian regarding the trips. In April, the Smithsonian indicated modifications would be made to the Cuba trip's planned itinerary including the addition of a briefing for trip participants by the U.S. Interests section in Havana. The first Smithsonian Journey's trip to Cuba occurred May 4–13, 2012 and the Committee requested post-trip materials for review.

The Committee has also been actively engaged in providing regular oversight of the Smithsonian Institution through ongoing staff meetings and briefings.

In February, Committee staff met with the newly-appointed Inspector General, Scott Dahl. Mr. Dahl provided background on ongoing initiatives of his office, including an assessment of the management of the design and construction of the National Museum of African American History and Culture (NMAAHC). On February 22, Committee staff attended the Groundbreaking Ceremony for the NMAAHC. Authorized in 2003, the NMAAHC is scheduled to open to the public in 2015. Construction costs are estimated at $500 million; the authorizing legislation provided for a 50–50 public-private funding ratio. The Museum will be built on a five-acre site adjacent to the Washington Monument on the National Mall. The Committee will continue to monitor progress of the NMAAHC construction to determine if the project remains on schedule and within budget.

Elections

In response to the request made at the Subcommittee on Elections hearing on November 3, 2011, the Federal Election Commission (FEC) on December 2, 2011, provided to the Committee over 1,300 pages of documents relating to its enforcement, reports analysis, and audit processes. The Committee and the FEC entered into a period of consultation regarding redactions and exclusions proposed by the FEC. At the conclusion of this process, on May 23, 2012, the FEC posted the documents in the form agreed on its web site. This marked the first time the documents had been made available to the public and the regulated community. The FEC also announced that it will hold a public hearing on September 12, 2012, to provide an opportunity for the public to ask questions about the documents and the FEC's processes.

The Committee continued to exercise its responsibilities for oversight of the Federal Election Commission and the Election Assistance Commission (EAC), reviewing information provided by the

commissions and meeting with staff of both commissions and the FEC commissioners (the EAC has had no commissioners since December 2011) regarding the operations and policy initiatives of the commissions. The Committee also continued to seek the elimination of the Election Assistance Commission as provided for in H.R. 672 and H.R. 3463.

ADDITIONAL OVERSIGHT ACTIVITIES OF THE COMMITTEE

Congressional Internship Program for Individuals with Intellectual Disabilities

Established by Representative Gregg Harper in the spring of 2010, and administered by the Committee on House Administration, the Congressional Internship Program for Individuals with Intellectual Disabilities provides students with varying intellectual disabilities an opportunity to gain congressional work experience. The program, which includes spring, summer and fall sessions, pairs congressional offices with students from George Mason University's Mason LIFE Program—a postsecondary education program for young adults with intellectual disabilities. In 2010, the program started as a pilot with six House offices participating. By May 2012, fifty-seven Congressional offices had begun to participate in the program. Participating interns receive stipends for their work on Capitol Hill through a grant provided by The HSC Foundation.

HEARINGS AND MEETINGS OF THE COMMITTEE

On April 18, 2012, the Subcommittee on Oversight held a hearing entitled "Library of Congress: Ensuring Continuity and Efficiency During Leadership Transitions." There was one panel of witnesses for this hearing. The Subcommittee heard testimony from Mr. David Mao, Law Librarian for the Law Library of Congress, Ms. Roberta Shaffer, Associate Librarian for Library Services, Ms. Mary Mazanec, Director of the Congressional Research Service, and Ms. Maria Pallante, Register of Copyrights for the U.S. Copyright Office.

LEGISLATION WITHIN THE COMMITTEE'S JURISDICTION CONSIDERED BY THE HOUSE

On February 1, 2012, the House considered H. Con. Res. 90, authorizing the printing of the 25th edition of the pocket version of the United States Constitution. The concurrent resolution was agreed to by unanimous consent.

Also, on February 1, 2012, the House considered H. Res. 496, adjusting the amount provided for the expenses of certain committees of the House of Representatives in the One Hundred Twelfth Congress. The resolution was considered under a motion to suspend the rules. The resolution was agreed to by voice vote.

Also, on February 1, 2012, the House considered H.R. 3835, to extend the pay limitation for Members of Congress and federal employees. The House considered the bill under a motion to suspend the rules. The bill passed by a vote of 309–117.

On February 9, 2012, the House considered H. Con. Res. 99, authorizing the use of Emancipation Hall in the Capitol Visitor Center for a ceremony to unveil the marker which acknowledges the

role that slave labor played in the construction of the United States Capitol. The House passed the measure by unanimous consent.

On March 1, 2012, the House considered H. Res. 562, directing the Office of the Historian to compile oral histories from current and former Members of the House of Representatives involved in the historic and annual Selma to Montgomery, Alabama, marches, as well as the civil rights movement in general, for the purposes of expanding or augmenting the historic record and for public dissemination and education. The resolution was considered under a motion to suspend the rules. The resolution was agreed to by a vote of 418–0.

On March 22, 2012, the House considered H. Con. Res. 108, permitting the use of the rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust. The House agreed to the concurrent resolution by unanimous consent.

On May 7, 2012, the House considered H. Con. Res. 105, authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha. The House considered the concurrent resolution under a motion to suspend the rules. The concurrent resolution was agreed to by a vote of 376–0.

On June 5, 2012, the House considered H. Con. Res. 128, authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to award the Congressional Gold Medal, collectively, to the Montford Point Marines. The House agreed to the concurrent resolution by unanimous consent.

APPENDIX A

COMMITTEE RESOLUTIONS ADOPTED DURING THE PERIOD OF THIS REPORT

ADOPTION OF COMMITTEE'S VIEWS AND ESTIMATES

(Committee Resolution 112–11)

Adopted March 9, 2012

MINORITY VIEWS OF RANKING MEMBER ROBERT A. BRADY, REP. ZOE LOFGREN AND REP. CHARLES A. GONZALEZ

It is our purpose in these Minority views to sharpen the focus on particular subject matter of great concern to us, as well as to express our disagreement with some of the views of the Committee Majority. We are especially concerned about the Committee's activities, and lack of activity, with respect to our jurisdiction over federal election law. Within these views, we provide an array of materials on that subject to create a record that we wish had been created during the last six months.

ELECTIONS

H.R. 5799, The Voter Empowerment Act

In the wake of the 2010 election cycle, state legislatures passed an unprecedented number of restrictive voting laws. Obstacles to the ballot—new voter ID requirements, arbitrary voter registration restrictions including the elimination of same-day registration, shortening of early voting and absentee voting periods, requiring proof of citizenship, and making it more difficult to restore voting rights—have endangered our democracy. While the purported justification for these disenfranchising laws is to curb voter fraud, there is scant evidence that voter fraud of the type addressed by these laws actually exists. As a result of this phantom problem, millions of eligible Americans will lose their right to vote.

The Florida Division of Elections, at the direction of Governor Rick Scott, is currently engaged in a large-scale voter purge effort in an attempt to remove eligible voters from their rolls. In 2011, Scott instructed then-Secretary of State Kurt Browning to remove from Florida's rolls a list of non-citizens culled from the Department of Highway Safety and Motor Vehicle database, even though the database did not contain up-to-date citizenship information. This effort produced a list of approximately 180,000 names. Then-Secretary Browning, however, considered the list too unreliable to be used.

Secretary Browning resigned in February 2012, and Governor Scott continued with the purge, sending to local election officials instead a list of 2,600 names of people he claimed were non-citizens and directing that they be purged. He did so despite evidence that the list was based on unreliable data. So far, a considerable number of individuals identified on the list have come forward to prove their citizenship. Most county elections officials in the state have refused to use the list. On June 12th, the Department of Justice filed suit in the U.S. District Court in Miami seeking an injunction to stop the purge, alleging violations of the National Voter Registration Act. On June 27, 2012, U.S. District Judge Robert Hinkle denied the Department of Justice's request for an injunction.

The Democratic Members of the Committee on House Administration refuse to stand idly by while the Constitutionally protected right to vote is mercilessly assailed. They worked extensively with the Democratic staff of the House Committee on the Judiciary, numerous voting and civil rights groups, and dozens of Members of Congress to draft legislation by which the federal government could meet its Constitutional obligation to regulate voting and protect the right to vote of millions of American citizens. As a result, Rep. John Lewis, with 126 original cosponsors, introduced H.R. 5799, the Voter Empowerment Act (VEA), on May 17, 2012. The Voter Empowerment Act would protect and enhance the right to vote by providing access, protecting integrity, and ensuring accountability.

The Majority has given no indication that the Committee will be considering the Voter Empowerment Act or any other legislation on the subject in the remaining six months of this Congress.

PROVISIONS OF THE VOTER EMPOWERMENT ACT

1. Access to the polls

If enacted, the VEA would provide increased access to polls to eligible citizens through a number of methods. Current voter registration processes can be inefficient and exclusionary and are vulnerable to mistakes or manipulation. The VEA modernizes the registration system and automatically and permanently registers all eligible, consenting citizens and updates changes of registration information, while also protecting voters' privacy. Further, by providing for online registration, the VEA alleviates time and transportation constraints that are sometimes obstacles to registering to vote.

While every American's right to vote is under attack, voters with disabilities have always endured additional, often unique, challenges when attempting to cast a ballot. The VEA removes some of these impediments by ensuring that disabled voters have easy access to registration and absentee ballots, providing grants to states to ensure access to the ballot, and by exploring other methods of safe and effective voting for the disabled community.

Young voters also face many obstacles at the polls. State laws with confusing and arbitrary residency requirements can pose particular challenges to college students. To combat this problem, the VEA requires universities that receive federal funding to offer and encourage voter registration to students. The bill also allows prospective voters as young as 16, if they will be 18 years old and otherwise eligible to vote at the next election, to pre-register. This will help to ensure that they are able to address all of the paperwork in advance, so that their right to vote is not denied simply because their birthdays fall too close to election day.

The VEA would also make voting easier for members of our Armed Forces. By simplifying the registration process, ensuring that military voters are not improperly removed from registration lists, and ensuring that military absentee ballots make it to their destination, the VEA ensures that defending democracy abroad does not mean losing the right to vote at home.

The VEA also makes voting more accessible to all eligible Americans by implementing "vote by mail" programs and requiring adequate notification if a polling place is moved.

2. Accountability

If no one is held accountable for failures in election management, there is little incentive for improvement. As a result, even easily redressed problems are allowed to fester. State and local governments have no greater responsibility than protecting the republican system by which our leaders are elected. Though the new Majority failed to read that provision during their farcical exercise at the beginning of the 112th Congress, Section 4 of Article IV of the Constitution demands it of "every State in this Union" and calls upon the Federal government to ensure that this is so. The VEA, therefore, would take great strides to create new provisions by which citizens can hold accountable those who are responsible for running their elections.

The first step to accountability is recognition of what problems there are. It is cliché to recognize that the many eyes of our millions of voters are apt to see many problems more quickly than even the best analysis. The VEA, therefore, creates a national voter hotline to ensure that problems can be reported, addressed, corrected, and prevented. The lessons learned from this centralized resource can also help every state and locality learn from the others, so that no mistake need be repeated and best practices can be learned.

Sometimes mechanical failure prevents voters from casting a ballot. The VEA sets standards for voting machines, confirms that voters voted for their intended candidate, and provides a fail-safe paper copy of a cast ballot while still protecting voters' privacy.

The Election Assistance Commission, created by the Help America Vote Act in the wake of Florida's disastrous handling of the 2000 election, is the only federal agency responsible for providing assistance and guidance to local election officials in administering elections. The VEA reauthorizes EAC, which saves cash-strapped states critical resources, to ensure the highest election standards are being met nationwide. The Majority has pursued a misguided course by unsuccessfully seeking to abolish the agency several times during the 112th Congress.

H.R. 4010, DISCLOSE 2012 Act

On February 9, the Disclosure of Information on Spending on Campaigns Leads to Open and Secure Elections Act of 2012 ("DISCLOSE 2012 Act") was introduced by Rep. Chris Van Hollen. The DISCLOSE 2012 Act is similar to a bill passed by the House in the 111th Congress but defeated in the Senate after falling short of defeating a Republican filibuster despite receiving a strong and bipartisan majority vote.

H.R. 4010 seeks to restore the American people's trust in our elections process in the aftermath of the U.S. Supreme Court's disastrous 2010 decision in Citizens United v. Federal Election Commission. Among the primary components of the legislation:

• The DISCLOSE 2012 Act would require any corporation, labor organization, section 501(c) organization, Super PAC or section 527

organization that spends $10,000 or more on a "campaign-related disbursement" to file a disclosure report with the Federal Election Commission within 24 hours of the expenditure, and to require disclosure for each additional $10,000 or more that is spent. The FEC must post the report on its website within 24 hours of receiving it.

• The legislation strengthens the "Stand by Your Ad" requirements enacted under the Bipartisan Campaign Reform Act of 2002, ensuring that they apply to all outside spending groups. Any covered organization that pays for an independent expenditure or electioneering communication broadcast on radio or TV must disclose in the ads its top five funders (for a TV ad) or top two funders (for a radio ad). The head of the organization also must appear in the ad and state that he or she approves the broadcast message; and

• The legislation requires any covered organization that submits regular reports to its shareholders, members or donors to include in such reports any information that is required to be reported to the FEC under the legislation, and to post a hyperlink on its homepage to the location of the organization's disclosure report on the FEC website.

We strongly support DISCLOSE 2012 Act and promptly called on the majority to hold hearings on the bill. As the majority declined to hold any hearings, Rep. Gonzalez, Ranking Member of the Subcommittee on Elections, asked for and received use of the Committee hearing room to hold a forum, "The Most Expensive Seat in the House: The State of Our Campaign Finance System," to address the explosion of money in politics during the current election cycle, on April 18, 2012. [A full transcript of the Forum follows at the end of these views]

American Tradition Partnership, Inc. v. Bullock Amicus Brief

In May, 2012, the Democratic Members of the Committee filed an amicus brief in support of the Montana State Supreme Court's decision in American Tradition Partnership, Inc. v. Bullock. That court in American Tradition Partnership upheld a Montana law banning corporations from making campaign contributions in state elections. The Democratic Members were hopeful that the U.S. Supreme Court would seize the opportunity to remedy some of the mess that has resulted from the ruling in Citizens United.

The brief highlighted that Citizens United was decided on false premises. The Supreme Court based its decision on the idea that transparency and disclosures would prevent the corruption long associated with unfettered and undisclosed campaign contributions. However, in the years since the Citizens United opinion, attempts to require disclosure of corporate campaign financing have been unsuccessful. On June 25, 2012, the Supreme Court summarily reversed the Montana State Supreme Court's decision.

The Democratic Members view this outcome as a missed opportunity to reverse the ruling in Citizens United. While the Democratic Members would prefer to see the passage of legislation that mandates disclosure of corporate contributions, they maintained in their brief, and still maintain in light of the Supreme Court's ruling, that Citizens United was wrongly decided, under false premises and poses a grave threat to our democracy.

SMITHSONIAN INSTITUTION

Service by staff on corporate boards

We are concerned about recent discussions at the Smithsonian of a proposal to reverse current Smithsonian policy and the 2007 recommendations of the Independent Review Commission by allowing Smithsonian personnel to serve again on the boards of directors of profit and nonprofit corporations.

In 2007, when scandals involving Smithsonian governance exploded, then-Chairman Brady criticized this practice of corporate board service and commended the Board of Regents for acting quickly to implement reforms. Now is not the time for backsliding. At a time of severe budget constraints and pay freezes, at the Smithsonian and government-wide, the Board has more important priorities than to encourage the staff to moonlight from their official responsibilities, and we hope this proposal will be dropped.

We were pleased to learn that the Board has delayed potential action and may be having second thoughts.

Smithsonian Museum of African-American History and Culture

On February 22, 2012, President Obama attended the groundbreaking for the Smithsonian's National Museum of African American History and Culture on the National Mall. Congress authorized the Museum in 2003 and it is anticipated to open in 2015. We urge fulfillment of Congress's bipartisan commitment of remaining Federal funds, funds which, along with private funds being raised by the Smithsonian, will help to ensure completion of this historic project on schedule.

Smithsonian Journeys to Cuba

Under clause 1(k) of House Rule X, our Committee has no jurisdiction over foreign policy. This fact has apparently been overlooked in the majority's continuing criticism of Smithsonian Journeys's new "people to people" exchange trips to Cuba. The Majority complained in the Committee's "Views and Estimates" to the Budget Committee earlier this year that the Smithsonian's participation "lends an imprimatur of government support for these trips." In the current activities report, the majority expresses concern that the trips could benefit the Castro regime.

Just to be clear, *it is the United States government, through the Departments of State, Treasury and other agencies which have authorized and licensed these trips.*

Smithsonian Journeys is part of Smithsonian Enterprises, which operates in the commercial marketplace to produce unrestricted trust fund revenues which may be spent for the Smithsonian's operations. The Smithsonian's travel program, like many similar ones by museums, universities and other organizations across the country, has been licensed by the Office of Foreign Assets Control of the Department of the Treasury, is consistent with American law and policy, and buttresses the Smithsonian's overriding mission to support "the increase and diffusion of knowledge."

As of late June, two trips to Cuba have been successfully conducted and two additional ones are scheduled by the end of the year.

The minority was very disappointed by the decision to eliminate continued funding for the restoration and maintenance of the Capitol Dome. It has been well documented that the cast-iron dome is eroding from water leaks stemming from pinholes in the Statute of Freedom. In Fiscal Year 2011, Phase I of the Dome restoration plan was started. This first Phase will repair and restore ironwork, sandstone and brick masonry along the skirt. The last time that the dome underwent major renovation was in 1960, 52 years ago. As the most recognizable symbol of our republic, we should spend what is prudent to properly care for this icon.

Cuts are a risk to safety

Lead is a health hazard and, according to the EPA, exposure could result in high blood pressure or reproductive or memory problems, with more significant risks for children including nervous system and brain development. Phase IIA funds would allow for the renovation and repair of the dome's exterior including, priming, resurfacing, and repainting of the Dome's exterior.

In addition, Phase II funds would allow safety improvements for the AOC workers that maintain the dome such as a new fall protection system. The Architect of the Capitol included in his statement to the Legislative branch appropriation bill that, "The planned Phase IIA repairs . . . will provide the appropriate life-safety systems are in place for the protection of AOC employees charged with the continuous care and maintenance of the Dome." Without these steps, the millions of visitors to the Capitol may be exposed to potentially unsafe conditions during their visit.

Dome will deteriorate further

The next phase in Dome funding would prevent a further degradation to the dome. Continued deferred maintenance only increases corrosion to the ironwork on the exterior of the dome, and without the gutter system water will continue to deteriorate the dome.

Deferred maintenance means higher costs

According to the Architect of the Capitol, if the project is not funded this fiscal year, the total cost of the rehabilitation of the dome will increase due to the rapidly deteriorating conditions. Deferred maintenance may also mean that the taxpayer money spent on Phase I will be wasted if the first part of work to be completed this fall needs to be re-done.

Major Architect and Engineering Groups Opposed

A coalition of architectural, engineering and trade groups sent a letter to Congressional leaders in opposition to the cuts to the AOC's FY2013 budget, warning of further deterioration of the U.S. Capitol, as well as increased costs and safety concerns. Signatories include: American Institute of Architects, American Society of Civil Engineers, the National Trust for Historic Preservation, the Glass Association of North American, the Illuminating Engineering Society of North America, Ingersoll Rand, the Institute for Market

Transformation, the National Institute of Building Sciences, AEC Science & Technology, Ecobuild America, American Society of Heating, Refrigerating and Air-Conditioning Engineers, and International Facility Management Association. These are experts in their fields and their opinions should be respected.

Union Square

We regret that neither this Committee nor the Senate Committee on Rules and Administration has yet reported a bill to resolve questions left unanswered when Congress, utilizing an appropriations bill, transferred control of Union Square from the National Park Service to the Architect of the Capitol last December. Given the apparent bipartisan agreement over the policy issues presented, we are mystified at the delay.

Congress transferred control of Union Square, the small portion of the National Mall at the foot of Capitol Hill containing the Reflecting Pool, to the Architect on the recommendation of security officials concerned about the potential effects of a comprehensive Park Service plan to renovate the Mall, which could offer significant implications for security of the Capitol and the Capitol Grounds. To avoid entangling the Park Service's plan to improve the entire Mall with the unique security issues surrounding the Capitol, Congress simply incorporated Union Square into the Capitol Grounds and got out of the Park Service's way. Unfortunately, the transfer provision failed to state whether the Architect should allow limited commercial activity on the Square, as the Park Service had traditionally done, or instead administer Union Square consistently with the rest of the Grounds, where commercial use is generally prohibited by law.

Our Committee staffs worked diligently with bipartisan Senate Rules Committee staff to fashion a provision to maintain the Park Service's practice of permitting limited commercial use and provide the Architect, the Capitol Police Board and the Capitol Police with the necessary legal authority. However, the House Appropriations Committee has complicated the process by including a somewhat different provision in the Legislative Appropriations legislation for fiscal year 2013.

Whatever the merits of the Appropriations Committee's provisions, we are worried that if the legislative committees of both Houses simply yield to the appropriations bill as a vehicle, the questions and potential legal problems caused by the transfer provision enacted last December will very likely have remained unresolved for at least a full year and probably longer. In the meantime, the Architect, the Capitol Police responsible for administering and protecting Union Square, and the commercial firms interested in continuing to use it, deserve prompt answers to these concerns. We believe the House Administration Committee should report the necessary legislation and work with others to pass it through the House as soon as possible.

LIBRARY OF CONGRESS

Library Hearing and Copyright

We thank Chairman Gingrey for convening the Oversight Subcommittee on April 18, 2012, to examine continuity and efficiency at the Library of Congress in a period of transition. The subcommittee received testimony from four recently appointed heads of key service units (Ms. Roberta Shaffer, Associate Librarian for Library Services; Ms. Maria Pallante, the Register of Copyright; Dr. Mary Mazanec, Director, Congressional Research Service; and Mr. David Mao, the Law Librarian of Congress).

Transition is never simple and the tasks undertaken by each of the service-unit leaders will not be easy in an era of shrinking budgets. We hope that each and every member of Library management will bring to the Committee's attention any concern we may need to address, especially in areas where the Library provides services directly to the American public. In order to provide proper oversight of Library activities, we will continue to monitor the operations of these service units to ensure a smooth leadership transition—particularly the Register of Copyrights, whose travel itinerary and public comments have caused some to question her impartiality. We trust that the Register, whose position is largely ministerial, will redouble efforts to allay such concerns.

Rayburn Research Center

The Congressional Research Service, in response to budget cuts, has been reducing some of its traditional services to Members and staff. In recent years, it has closed the CRS reference centers in the U.S. Capitol and the Longworth Building and drastically reduced the size of the congressional staff reading room in the Madison Building under the guise of a "renovation" which transferred most of the space to library communications staff.

Changes in the way Members and staff seek and use information provide some justification for these cutbacks. However, when CRS decided to pull back its staff and resources from the Rayburn Research Center, the Committee staff thought it odd that they still wanted to retain use of the room for other CRS functions. A bipartisan recommendation by the Committee was made to the House Leadership that, since CRS would no longer be providing useful functions to the House in this space, that the House should reclaim the room to meet its own needs.

DEFENSE OF MARRIAGE ACT (DOMA)

We continue to be confused by the Republican Leadership's stubborn insistence that taxpayer dollars be used to defend discrimination. In case after case, judges have held DOMA an unconstitutional violation of the Fifth Amendment to the U.S. Constitution, just as the Obama Administration stated in their explanation for the discontinuance of defending constitutional challenges to Section 3.

The House has filed briefs in twelve DOMA lawsuits thus far, and out of the four that have been adjudicated, the House has lost in each matter based on the courts' opinion that Section 3 of DOMA is unconstitutional.

On February, 22, 2012, in Golinski v. OPM, a Federal district court judge in California found DOMA unconstitutional under the Equal Protection clause and protections afforded by the Fifth and Fourteenth Amendments.

On May 24, 2012, in Dragovich v. United States Department of Treasury, a federal judge in California found the denial of benefits under DOMA unconstitutional for the same reason.

On May 31, 2012, in Gill v. OPM, DOMA was ruled unconstitutional by the First Circuit Federal Appeals Court in Boston. In a unanimous decision, the three judge panel found that the Federal Government cannot deny rights and privileges such as pension, tax and health benefits to same sex couples in states where they can legally marry.

On June 6, 2012, in Windsor v. United States, a U.S. District judge for the Southern District of New York found section 3 of DOMA unconstitutional.

Despite these repeated losses, the Majority continues to abuse precious taxpayer dollars for perceived political advantage and to prolong discrimination which has gone on far too long.

VIEWS OF REP. CHARLES A. GONZALEZ (TX–20) TO ACCOMPANY THE THIRD SEMIANNUAL REPORT ON ACTIVITIES OF THE COMMITTEE ON HOUSE ADMINISTRATION

After consideration of the Third Semiannual Report on Activities of the Committee on House Administration prepared by the Majority, I find that I cannot approve it. The principal reason for my disapproval is that the report is not a comprehensive accounting of the activities of the Committee. The extent of this failure is partially indicated by the issues covered by the Minority Views submitted by Ranking Member Brady that find no mention in the Majority's report. The Committee is obligated to make a more complete accounting to the House of what the Committee has done than was offered by the Majority. Because it fails to meet that standard, I disapprove of the Majority's report.

CHARLES A. GONZALEZ,
Member of Congress.

"THE MOST EXPENSIVE SEAT IN THE HOUSE: THE STATE OF OUR CAMPAIGN FINANCE SYSTEM"

A CONGRESSIONAL FORUM REVIEWING THE IMPACT OF CITIZENS UNITED

As soon as the Supreme Court handed down its decision in Citizens United, the need for a review of our campaign finance system was clear. Regardless of how one viewed that decision, it was indisputable that it represented a major change in how campaigns for federal offices would be run. The magnitude of this change was only made clearer by the 2010 election. After the Republican Majority blocked all efforts to examine these changes and their significance for the country, the Ranking Member of the Subcommittee on Elections convened a congressional forum in the hopes that he could shed some light on this subject. When the Court ruled, they had no idea what the impact of their decision would be. Now, we can show what it has been and what we can expect for the future. This subject is too important to go unremarked upon by the House of Representatives. The following will lay out a brief history of the changes that led to the forum, what was discussed, and what comes next. It is hoped that this record will inform the American people and lay a foundation for the essential congressional action to come.

A CAMPAIGN FINANCE SYSTEM NIXON WOULD HAVE LOVED

In 2012, we commemorate the 40th anniversary of the scandal known as Watergate. Watergate remains a touchstone, exemplifying many of the worst excesses of political scandal and sham-

ing our entire country.[1] The most shocking thing about this anniversary, however, is that many of the things that made Watergate so shocking wouldn't even be illegal today.

"A lot of us believe Watergate might never have happened without all that money sloshing around."[2] That's what John Dean told the Washington Post's Dan Eggen in early June, but Eggen notes that, today:

> there's little need for furtive fundraising or secret handoffs of cash. Many of the corporate executives convicted of campaign-finance crimes during Watergate could now simply write a check to their favorite Super PAC or, if they want to keep it secret, to a compliant, non-profit group. Corporations can spend as much as they want to help their favored candidates, no longer prohibited by law from spending company cash on elections.[3]

Even opponents of campaign finance regulation agree that the current system is a threat. Former Republican National Committee Chairman Haley Barbour has called it a "bad system" that leads to donations given "under the table".[4] While Barbour's preferred solution is to allow unlimited donations to candidates and political parties, we are encouraged that he recognizes some of the dangers inherent in the present system. Those dangers were laid out most starkly more than 30 years ago by John Terry Dolan, the founder of National Conservative Political Action Committee, another group[5] seeking to influence elections through independent expenditure:

> Groups like ours are potentially very dangerous to the political process. We could be a menace, yes. Ten independent expenditure groups, for example, could amass this great amount of money and defeat the point of accountability in politics. We could say whatever we want about an opponent of a Senator Smith and the senator wouldn't have to say anything. A group like ours could lie through its teeth and the candidate it helps stays clean.[6]

These are chilling words, but their truth is beyond question. A recent study of campaign ads in the 2012 presidential race was headlined, "Presidential Ads 70 Percent Negative in 2012, Up from 9 Percent in 2008".[7] One of the reasons for this is the 1100% increase in spending by interest groups, 86% of which has gone for

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[1] Bernstein, Jonathan, "Nixon Against Government", "A plain blog about politics", June 08, 2012 (*http://plainblogaboutpolitics.blogspot.com/2012/06/nixon-against-government.html*).

[2] Dan Eggen, "Post-Watergate campaign finance limits undercut by changes", The Washington Post, June 16, 2012 (*http://www.washingtonpost.com/politics/post-watergate-campaign-finance-limits-undercut-by-changes/2012/06/16/gJQAinRrhV_print.html*).

[3] Id. It is, of course, also worth noting that some of those executives didn't suffer all too greatly at the time, with one rising to spend 18 years as a member of the United States Senate.

[4] Justin Worland, "Haley Barbour Criticizes Campaign Finance Law", Roll Call, June 15, 2012 (*http://atr.rollcall.com/haley-barbour-criticizes-campaign-finance-law/*).

[5] Chuck Lane, "NCPAC's Waterloo: TAKING SIDES", The Harvard Crimson, September 25, 1982 (*http://www.thecrimson.com/article/1982/9/25/ncpacs-waterloo-pbbbefore-1980-a-hit/*).

[6] Myra MacPherson, "The New Right Brigade; John Terry Dolan's NCPAC Targets Liberals And the Federal Election Comission [sic]", The Washington Post, August 10, 1980.

[7] Erika Franklin Fowler, "Presidential Ads 70 Percent Negative in 2012, Up from 9 Percent in 2008", Wesleyan Media Project, May 02, 2012 (*http://mediaproject.wesleyan.edu/2012/05/02/jump-in-negativity/*).

negative advertising.[8] Restore Our Future, Inc., for example, spent $42.5 million on independent expenditures between December 08, 2011, and April 11, 2012, of which 93.5% was spent on negative ads.[9] These ads are also filled with misleading and outright false allegations.

UNACCOUNTABLE AND UNTRUE

According to the Annenberg Public Policy Center of the University of Pennsylvania, "from December 1, 2011 through June 1, 2012, 85% of the dollars spent on presidential ads by four top-spending third-party groups known as 501(c)(4)s were spent on ads containing at least one claim ruled deceptive by fact-checkers".[10] The highest spender covered was Crossroads GPS as "contain[ing] so many factually misleading attacks [11] that it took two articles for us to cover them [12] all." [13] In Annenberg's analysis of third-party spending from the Iowa Caucuses through the Wisconsin primary, "23.3 million (56.7%) of the 41.1 million dollars were spent on 19 ads containing deceptive or misleading claims." [14] The pro-Romney Super PAC "Restore Our Future, Inc." was responsible for 89% of the misleading funding, and "outspent the pro-Gingrich and pro-Santorum super PACs by 20 to 1." [15] There is no question that these ads were designed to help the Republican Party to defeat President Obama, and that those by Restore Our Future helped Mitt Romney to become its presidential nominee, but neither the Republican National Committee nor Romney himself would "have to say anything" and each "stays clean", exactly as Mr. Dolan warned.

This ability to smear an opponent with falsehoods unreservedly is an insidious twist in American campaigns. When advertisements are produced by a political campaign, the candidate risks a backlash if the public perceives her as lying to them. The requirement a candidate "Stand-by-your-ad" via the now familiar, "I'm Mitt Romney, and I approved this message" tag at the beginning or end

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[8] Paul Steinhauser, "Study: Campaign ads much more negative than four years ago", CNN.com, May 03, 2012 (*http://politicalticker.blogs.cnn.com/2012/05/03/study-campaign-ads-much-more-negative-than-four-years-ago/*).

[9] Federal Election Commission, "Report on Independent Expenditures of Restore Our Future, Inc.'", retrieved June 18, 2012 (*http://query.nictusa.com/cgi-bin/com_supopp/C00490045/*).

[10] Annenberg Public Policy Center, "High Percent of Presidential Ad Dollars of Top Four 501(c)(4)s Backed Ads Containing Deception, Annenberg Study Finds", June 20, 2012 (*http://www.docstoc.com/docs/123115463/High-Percent-of-Presidential-Ad-Dollars-of-Top-Four-501(c)(4)s-Backed-Ads-Containing-Deception-Annenberg-Study-Finds*). The study notes that, "[a]s of June 1st, no Democratic leaning 501(c)(4) had paid for advertising in the presidential race." The missing comma after "2011" is in the original.

[11] FactCheck.org, "A Bogus Tax Attack Against Obama", May 17, 2012 (*http://factcheck.org/2012/05/a-bogus-tax-attack-against-obama/*).

[12] FactCheck.org, "'Obama's Promise,' Part II", May 18, 2012 (*http://factcheck.org/2012/05/obamas-promise-part-ii/*).

[13] FactCheck.org, "Soft Glove, Same GPS Fist", May 23, 2012 (*http://factcheck.org/2012/05/soft-glove-same-gps-fist/*). This article is a description of Crossroads GPS's second major ad, which FactCheck.org summarizes as, "an attack [that] uses factual claims to deceive, not to inform."

[14] FlackCheck.org, "APPC calculates dollars spent by four highest spending third party groups on deceptive TV ads", April 27, 2012 (*http://www.flackcheck.org/press/april-27-2012/*) & FlackCheck.org, "Calculating Dollars Tied to Deception in the 2012 Republican Presidential Ads—FlackCheck.org", YouTube, April 27, 2012 (*http://www.youtube.com/watch?v=j5PdH0AvRh4*).

[15] FlackCheck.org, "APPC calculates dollars spent by four highest spending third party groups on deceptive TV ads", April 27, 2012 (*http://www.flackcheck.org/press/april-27-2012/*).

of each advertisement, further cemented that check.[16] But Mr. Romney can say—indeed, to avoid legal liability he must say so and honestly—that he had no control over those Crossroads GPS or Restore Our Future advertisements, disclaiming any responsibility for their deceptive[17] content. Dr. Ornstein explained the impact of this unaccountability during the forum:

> [I]t really used to be [that] Members of Congress . . . were recruited to come here by people in their communities who went to them and said, "You have done wonderful things. You have built a great reputation. How about spending some time in public service?"
>
> Now if I wanted to go to somebody like that now, I would say, "It is time to spend some time in public service. And here is what is going to happen: The first thing is, brace yourself for the $5 million that will come in by your opponent and other related groups, designed to strip the bark off you and destroy that reputation you have spent your career building. And they will know they have succeeded when your kids come home from school crying and say they can't go back anymore because of all the embarrassment that they face from their friends and fellow students."[18]

Is this really the world we want? Is this what campaign finance is supposed to mean? Is this what elective office is supposed to be?

A NEW WORLD OF CAMPAIGN FINANCE

In 2010, the law of campaign finance changed dramatically. In January, the Supreme Court released its decision in *Citizens United* v. *FEC* (558 U.S. (2010), 130 S.Ct. 876), striking down limitations on spending for so-called "independent expenditures". In March, the Court of Appeals for the District of Columbia Circuit released its decision in *SpeechNOW.org* v. *FEC* (599 F.3d 686) (2010), holding that the logic of Citizens United meant that such unlimited donations could also go to political action committees (PACs). Thus was born the Super PAC. This represented a major change in the law surrounding campaign finance. Major parts of the Bipartisan Campaign Reform Act of 2002, properly known as "Shays-Meehan" but more commonly referred to as "McCain-Feingold",[19] a law duly passed less than eight years earlier with bipartisan majorities by a divided Congress,[20] were ruled unconstitutional. By March, outside spending had increased 767% over the previous mid-term election.[21]

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[16] Dr. Ornstein said at the forum, "*one of the most significant and commendable provisions of the Bipartisan Campaign Reform Act was the 'stand by your ad' provision that David Price authored.*" See Transcript 47:929–32 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=3105*).

[17] Annenberg Public Policy Center, "High Percent of Presidential Ad Dollars of Top Four 501(c)(4)s Backed Ads Containing Deception, Annenberg Study Finds", see note 10, supra.

[18] See Transcript 79:1619–34 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t= 5380*).

[19] Pub. L. No. 107–155, 116 Stat. 81 (codified in various sections of title 2 of the United States Code).

[20] 148 Cong. Rec. H465–66 (*http://clerk.house.gov/evs/2002/roll034.xml*); 148 Cong. Rec. S2160–61 (*http://www.gpo.gov/fdsys/pkg/CREC-2002-03-20/pdf/CREC-2002-03-20-pt1-PgS2096- 2.pdf*).

[21] Richard Hasen, "The Numbers Don't Lie: If you aren't sure Citizens United gave rise to the super PACs, just follow the money", Slate.com, March 09, 2012 (*http://www.slate.com/articles/*

This was clearly a new world and it was recognized as such. In his address on the State of the Union in January, 2010, days after the decision in Citizens United and before that in SpeechNow, President Obama spoke of how, "the Supreme Court reversed a century of law that I believe will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections."[22] The President's statement, though certainly not without foundation,[23] was criticized even as he was making it and by no less an authority than Associate Justice Samuel Alito.[24] Clearly, this was an issue of great moment and one it was incumbent on Congress to address. The Committee on House Administration, recognizing our role in oversight over elections and campaign finance law, held three hearings on the subject between February and May, 2010[25], and marked up the DISCLOSE Act[26] which passed the House on June 24, 2010.[27] While companion legislation was blocked in the Senate by Republican filibuster, a strong majority of 58 senators voted in support.[28]

THE OPENING OF THE 112TH CONGRESS

All of these steps, of course, were taken when the implications of Citizens United and SpeechNow remained largely speculative, however. Until the next election had run its course, there was limited data on which to act. That data soon arrived. In the 2010 election cycle, outside spending rose to $299.8 million, an increase of 335% over the previous mid-term election, which had itself set a new record for mid-terms.[29] "[I]ndependent expenditures by PACs, groups and individuals jumped from $43.6 million in 2008 to $204 million in the 2010 cycle", an increase of 369%.[30] Spending on the average House campaign rose 32%, in real dollars, over 2008. This was the largest increase in decades despite coming in a mid-term election when we were still recovering from the Great Recession. Such increases have historically come in presidential election years.[31] Such drastic change called on the Committee on House Ad-

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news__and__politics/politics/2012/03/the__supreme__court__s__citizens__united__decision__has__led__to__an__explosion__of__campaign__spending__.html).

[22] Barack Obama, "Remarks by the President in State of the Union Address", January 27, 2010 (*http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address*).

[23] See Citizens United v. FEC, 130 S.Ct. 876, 930 (Stevens, J., dissenting).

[24] Martin Kady, II, "Justice Alito mouths 'not true'", Politico.com, January 27, 2010 (*http://www.politico.com/blogs/politicolive/0110/Justice__Alitos__You__lie__moment.html*).

[25] H.R. Rep. No. 111–492, pt. 1 at 39–40 (2010) (*http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt492/pdf/CRPT-111hrpt492-pt1.pdf*).

[26] H.R. 5175, 111th Cong. §2 (2010) *http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.05175:*. See also Chris Van Hollen, Section-by-Section Summary of "DISCLOSE Act" (*http://vanhollen.house.gov/UploadedFiles/DISCLOSE__Summary__042910.pdf*).

[27] 156 Cong. Rec. H4828 (*http://clerk.house.gov/evs/2010/roll391.xml*).

[28] 156 Cong. Rec. S6285 (*http://www.gpo.gov/fdsys/pkg/CREC-2010-07-27/pdf/CREC-2010-07-27-pt1-PgS6278-5.pdf*). N.B. While a supporter of the legislation, Senate Majority Leader Harry Reid changed his vote from Yea to Nay for a procedural reason, q.v., David M. Herszenhorn, The New York Times, July 27, 2010 (*http://www.nytimes.com/2010/07/28/us/politics/28donate.html*).

[29] Center for Responsive Politics, "Total Outside Spending by Election Cycle, Excluding Party Committees", Retrieved June 26, 2012 (*http://www.opensecrets.org/outsidespending/cycle__tots.php*).

[30] Cynthia Bauerly, Keynote Address to Symposium, "Accountability After Citizens United", April 29. 2011 (*http://www.brennancenter.org/content/pages/accountability__after__citizens__united__transcript__section__ii*).

[31] See "Campaign Expenditures Since 1990—2012 Dollars", Appendix B. *http://democrats.cha.house.gov/sites/democrats.cha.house.gov/files/Campaign%20Expenditures%20Since%201990% 20-%202012%20Dollars.xlsx.*

ministration, as the congressional body with jurisdiction over this issue, to act, especially as races for House seats are the most likely to be affected by independent expenditures.[32]

The newly empowered Majority did nothing.

In August, 2011, campaign finance became a national story when it was revealed that someone or some ones had created phony, shell corporations just to disguise their donations to Restore Our Future, Inc., the Super PAC created to support Mitt Romney's run for president.[33] Mr. Gonzalez wrote to FEC and the Department of Justice urging them to investigate whether this practice was a violation of federal law, by the donor or by Restore Our Future.[34]

The Majority took no action.

In September, 2011, an article on the front page of the New York Times concluded with a startling admission: "I had someone else pay for me to go [to "a recent Romney fund-raising event,"] because I didn't want people to know I was there."[35] In October, 2011, it was reported that teenage children with no obvious means of income had maxed out their donations to the presidential campaign of Texas Governor Rick Perry.[36] Both actions would be illegal under the Federal Election Campaign Act.[37] October also saw revelations of financial misconduct surrounding the campaign of Hermann Cain, revelations that would lead to a federal probe.[38]

The Majority was uninterested.[39]

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[32] E.J. Dionne, Jr., "Secret money fuels the 2012 elections", The Washington Post, June 13, 2012 (*http:"www.washingtonpost.com/opinions/secret-money-fuels-the-2012-elections/2012/06/13gJQAsZ4FaV_story.html*).

[33] Campaign Legal Center, "FEC Complaint Filed Against Apparent 'Straw Company' that Gave $1 million to Romney-linked 'Super PAC'", August 05, 2011, (*http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=1427:august_5-2011-fec-complaint-filed-against-apparent-straw-company-that-gave-1-million-to-romney-linked-super-pac-&catid= 63:legal-center-press-releases&Itemid=61*) & Campaign Legal Center, "FEC and DOJ Asked to Investigate More 'Straw Companies' Making Million Dollar Contributions to Romney-linked 'Super PAC'", August 11, 2011 (*http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=1436:-fec-and-doj-asked-to-investigate-more-straw-companies-making-million-dollar-contributions-to-romney-linked-super-pac–8-11-11&catid=63:legal-center-press-releases&Itemid=6*).

[34] Committee on House Administration, Democratic Office, "Gonzalez Calls for Investigation of Potential Campaign Finance Law Violations", August 16, 2011 (*http://democrats.cha.house.gov/press-release/gonzalez-calls-investigation-potential-campaign-finance-law-violations*).

[35] Mimi Swartz, "A Crisis of Confidence Deep in the Heart of Texas", The New York Times, September 28, 2011 (*http://www.nytimes.com/2011/10/02/magazine/a-crisis-of-confidence-deep-in-the-heart-of-texas.html*).

[36] Christina Wilkie, "Contributions To Rick Perry From Big Donors' Children Raise Questions", The Huffington Post, October 25, 2011 (*http://www.huffingtonpost.com/2011/10/25/perry-2012-donations-children_n_1030771.html*).

[37] 2 U.S.C. 441f.

[38] Daniel Bice, "Activities of former Cain operative scrutinized", Milwaukee Journal Sentinel, March 29, 2012 (*http://www.jsonline.com/watchdog/noquarter/activites-of-former-cain-operative-scrutinized-nc4pt5q-145029735.html*).

[39] It is worth noting that Stephen Colbert, whose platform is broad but limited to approximately 88 minutes per week, and whose jurisdiction is broader than that of any single congressional committee, has expended vastly more time exploring our campaign finance law than has the House Committee responsible for elections in the entire 112th Congress. Mr. Colbert has spent hours of airtime explaining and exploring how campaigns are financed and the implications thereof. Millions of Americans know what Super PACs are only because of Mr. Colbert's efforts and his explanations, with the able assistance of former FEC Chairman and his "personal lawyer" Trevor Potter, are so good that they played an invaluable role in the forum. Anyone seeking an entertaining and educational introduction to the issue would do well to visit *http://www.colbertnation.com/video/tags/Colbert%20Super%20PAC* and simply start watching some of the many clips. See also Dahlia Lithwick, "Colbert v. the Court: Why, in the battle over Citizens United, the Supreme Court never had a chance", Slate.com, Feb. 2, 2012 (*http://www.slate.com/articles/news—and—politics/jurisprudence/2012/02/stephen_colbert_is_winning_the_war_against_the_supreme_court_and_citizens_united_.single.html*).

Much ado was made of the Subcommittee on Elections hearing of November 3, 2011, it being the first hearing in years dedicated explicitly to providing oversight of the Federal Election Commission.[40] There was reason to hope that the subject of campaign finance and the implications of the system created since Citizens United would be discussed. Perhaps the subcommittee would focus on the greater than 400% increase in the rate of deadlocked votes preventing FEC from enforcing campaign finance law?[41] As the subcommittee's Ranking Member, Mr. Gonzalez raised all of these concerns in his opening statement and questions.[42] The Chairman's focus, and that of every Member of the Majority, however, was on getting FEC to release documents, some obsolete,[43] describing how it enforces campaign finance laws.[44] The document release that followed, after much expenditure of time and energy, may "have made it a little easier for campaign operatives to decide whether violating campaign finance laws is worth the fines they might have to pay",[45] but they did nothing to examine the changes in campaign financing, let alone to attempt to explore or address the problem.

On February 15, 2012, more than two years after Citizens United and more than a year after the 112th Congress convened, the Committee's three Democrats wrote a letter to Chairman Lungren, urging him "to convene the Committee on House Administration to conduct oversight hearings on the increasing role and influence of undisclosed money in our electoral system."[46] The Chairman did not respond. Nor did the Committee take any action in this area beyond continuing to press FEC for those enforcement guidelines.

THE MINORITY ACTS

These issues are so important, so vital to the working of our democracy, that the public must be made aware of them. They demanded the scrutiny of a congressional hearing and, with the Majority blocking one of those, a Minority-called forum was the next

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[40] Committee on House Administration, "Federal Election Commission: Reviewing Policies, Processes and Procedures", November 03, 2011 (*http://cha.house.gov/hearing/subcommittee-elections-hearing-federal-election-commission-reviewing-policies-processes-and*).

[41] Public Citizen, "Roiled in Partisan Deadlock, Federal Election Commission Is Failing", October 13, 2011 (*http://www.citizen.org/documents /fec-deadlock-statement.pdf*); Wang, Marian, "As Political Groups Push Envelope, FEC Gridlock Gives 'De Facto Green Light'", ProPublica, November 07, 2011 (*http://www.propublica.org/ article/as-political-donors-push-envelope-fec-gridlock-gives-de-facto-green-light/single*); Jesse Zwick, "Broken Federal Election Commission Fails to Enforce Campaign-Finance Laws", The Washington Independent, September 28, 2010 (*http://washingtonindependent.com/98816/broken-federal- election-commission-fails-to-enforce-campaign-finance-laws*).

[42] Federal Election Commission: Reviewing Policies, Processes And Procedures Hearing before the Subcomm. on Elections of the H. Comm. on House Administration, 112th Cong. 3–4 (statement of Rep. Charles A. Gonzalez) , 54–55 (questions from Rep. Gonzalez) (2011) (*http://www.gpo.gov/fdsys/pkg /CHRG-112hhrg72282/pdf/CHRG-112hhrg72282.pdf*).

[43] Id. at 50 (answer of Ellen Weintraub, FEC Commissioner) ("The document that I think of as the enforcement manual is a large, cumbersome, rather out of date collection of memoranda that are not—a number of them have been superseded.").

[44] Committee on House Administration, "Harper Calls on FEC to Disclose Enforcement Standards", November 03, 2011 (*http://cha.house.gov/press-release/harper-calls-fec-disclose-enforcement-standards*).

[45] Committee on House Administration, Democratic Office, "Gonzalez Calls for Increased Action on Campaign Finance and Electoral Protection from FEC and House Republicans", May 23, 2012 (*http://democrats.cha.house.gov/ press-release/gonzalez-calls-increased-action-campaign-finance-and-electoral-protection-fec-and*).

[46] Committee on House Administration, Democratic Office, "House Administration Democrats Urge Oversight on the Role of Money in Elections and the DISCLOSE 2012 Act", February 15, 2012 (*http://democrats.cha.house.gov/press-release/house-administration-democrats-urge-oversight-role-money-elections-and-disclose–2012*).

step. We had to get the word out and this was the only route we had left. In his capacity as Ranking Member of the Subcommittee on Elections, Mr. Gonzalez asked Chairman Lungren for use of the Committee's hearing room as a venue in which he could conduct a forum of his own on the subject and the chairman graciously agreed. On April 18, 2012, Mr. Gonzalez gaveled to order, "The Most Expensive Seat in the House: The State of Our Campaign Finance System". Mr. Gonzalez sat in the chair and was joined by Democratic Leader Nancy Pelosi (CA–8), Committee Ranking Member Robert A. Brady (PA–1), Michael Capuano (MA–8), Keith Ellison (MN–5), David Price (NC–4), and Chris Van Hollen (MD–8), author of the DISCLOSE Acts of 2010 and 2012.[47]

It had been hoped that the first panel would consist of Super PACs donors. Mr. Gonzalez invited the eight largest donors to the largest Super PACs to testify.[48] At the time the invitations went out, these largest donors were:

1. Sheldon & Miriam Adelson, whose family's $18.9 million in contributions constituted 80% of the receipts of "Winning Our Future";
2. Harold Simmons, whose $10 million in individual and corporate contributions to "American Crossroads" was 28% of their reported receipts;
3. Bevin Albertani, Political Director of Laborers' Political League—Education Fund, which gave $350,000 to "House Majority PAC", 12% of its total receipts;
4. Virginia James, who gave $1 million to "Club for Growth Action", 19% of their total;
5. Jeffrey Katzenberg, who contributed $2 million, fully 32% of the receipts of "Priorities USA Action";
6. Bob Perry, whose $4 million in contributions was 9% of the total reported by "Restore Our Future, Inc.";
7. Foster Friess, whose $1.6 million contribution was 28% of the total received by "Red White and Blue Fund";
8. Peter Thiel, whose $2.6 million dollars was 71% of the total contributions received by "Endorse Liberty, Inc."

These donors were invited to testify, in writing or in person, about how they felt about our campaign finance system, including why they were contributing. It would have been particularly interesting to hear Mr. Adelson describe the sentiments of a conflicted donor. As Mr. Gonzalez noted in his opening remarks, Mr. Adelson had recently told a reporter, "I'm against very wealthy people attempting to [influence] or influencing elections. But as long as it is doable, I am going to do it."[49] It is to be regretted that Mr. Adelson declined to speak further to the American people and to Congress on such an important topic. The forum was fortunate, however, to have a most distinguished panel of experts who were eager to discuss this subject with the Members.

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[47] Further information about the forum is available at *http://democrats.cha.house.gov/event/congressional-forum-campaign-finance* and the full video is available at *http://www.youtube.com/watch?v=tTt5VbHUxNA*.

[48] These letters may be found in Appendix C.

[49] Steve Bertoni, "Billionaire Sheldon Adelson Says He Might Give $100M To Newt Gingrich Or Other Republican", Forbes.com, February 21, 2012 (*http://www.forbes.com/sites/stevenbertoni/2012/02/21/billionaire-sheldon-adelson-says-he-might-give-100m-to-newt-gingrich-or-other-republican/*).

The first witness recognized was Dr. Norman Ornstein, a longtime observer of Congress and politics who hold a Ph.D. in political science from the University of Michigan. Next to testify was Monica Youn, J.D., the inaugural Brennan Center Constitutional Fellow at NYU School of Law. Zephyr Teachout, J.D., associate professor of law at Fordham University School of Law, followed Ms. Youn. The final witness was Paul S. Ryan, J.D., senior counsel at the Campaign Legal Center. The witnesses' testimony and the questions from the Members covered a great deal of ground, from the Founders' great concerns about corruption to the misunderstandings upon which the Supreme Court had decided Citizens United to the impact the decision had already had, not only on campaign finance but on the nature of American politics and the public perception of our government.

THE $44 MILLION ELEPHANT IN THE ROOM

In the months since the forum, the problems with our campaign finance system have only become more obvious to those paying attention. For several reasons, most coverage of the rise of Super PACs and of campaign finance in general has focused on presidential campaigns. First, the race for the presidency is the premier race in the country. Second, it begins earlier, at least in the most public forms of advertising, than congressional races. Third, the amounts of money are vastly larger.[50] Ironically, the same reasons make Super PAC spending less influential in presidential races than it is in congressional races. Because there is more information and so much money, it is harder for a Super PAC to mislead voters or to completely overwhelm a given candidate. This is not to suggest it is impossible. "The super PAC money kept Gingrich afloat for longer than he would have [been] without it—and when it dried up, his campaign faded".[51] It was Super PAC spending that defeated Romney in South Carolina[52], Gingrich in Florida[53], and Santorum in Ohio[54] and Illinois.[55] The Romney campaign did not even air ads in Louisiana, while his Super PAC spent $667,990.[56] It would be a grave mistake, however, to ignore the much greater role Super PACs can play at the congressional level, and one of the goals was to shine some light on this influence.

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[50] Mike Allen & Jim VandeHei, "GOP groups plan record $1 billion blitz", Politico, May 30, 2012 (*http://www.politico.com/news/stories/0512/76849.html*).

[51] Jim Garofoli, "Gingrich's failed run shows super PACs' power", The San Francisco Chronicle, May 02, 2012 (*http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/05/02/MN801OCM7C.DTL*).

[52] National Journal Staff, "Gingrich Wins South Carolina Primary", National Journal, March 05, 2012 (*http://www.nationaljournal.com/2012-presidential-campaign/gingrich-wins-south-carolina-primary-20120121*).

[53] The $15.3 million of the pro-Romney "Restore Our Future" was 450% more than the $3.4 million spent by the pro-Gingrich "Winning Our Future". Alexander Burns, "Gingrich forces outspent by nearly $12 million on Florida airwaves", Politico, January 29, 2012 (*http://www.politico.com/blogs/burns-haberman/2012/01/gingrich-forces-outspent-by-nearly-million-on-florida-112749.html*).

[54] Arden Farhi, "Santorum cries foul over Romney's Ohio spending", CBS News.com, March, 06, 2012 (*http://www.cbsnews.com/8301-503544_162-57391887-503544/santorum-cries-foul-over-romneys-ohio-spending/*).

[55] David Espo & Steve Peoples, "Romney routs Santorum", Deseret News, March 20, 2012 (*http://www.deseretnews.com/article/765561518/Romney-routs-Santorum-in-GOP-primary-in-Illinois.html*).

[56] Kristin Jensen & Lisa Lerer, "Santorum Wins In Louisiana As Romney Struggles In South", March 25, 2012 (*http://www.bloomberg.com/news/2012-03-25/santorum-wins-republican-primary-in-louisiana-ap-projects-1-.html*).

At the forum, Mr. Price told of how, two weeks before one election, one Super PAC, "dumped $680,000 into that race in the form of a media buy",[57] pushing an "endangered" candidate to victory, while "[h]undreds of thousands of dollars parachuted into [another] race in the last 2 weeks" helped to defeat a second candidate.[58] One of the major players in such congressional races in 2010 was a group called the Center to Protect Patients' Rights, which "gave more than $44 million in 2010 to other tax-exempt groups, many of which spent millions on TV ads attacking Democrats running for the House and Senate".[59] Despite its "name giv[ing] the misleading impression that it is solely concerned about health care", CPPR has not limited its influence to one issue. For example, one of its few fully disclosed donations, of $100,000,[60] went to a group focused on influencing redistricting in Florida.[61] The full extent of causes receiving support from CPPR can only be guessed at. Certainly, there are congressional candidates who must recognize that, if they take certain positions, they may face a sudden, $600,000 media buy, but they'd never know from whence the money came.

Much like the mysterious corporations that sprung up solely to contribute to the pro-Romney Super PAC and then disappear,[62] CPPR appears to exist solely to move undisclosed money from donors to recipients. Because CPPR and many of its recipients are 501(c)(4) organizations, it is not required to disclose its donors and most of them do not need to disclose that they had received money from it. In this way, donors to CPPR are able to wield great influence on our political campaigns with no way for the public to learn about who is behind these efforts. Indeed, we cannot know whether CPPR's $44 million came from one person, one company, or one million different donors. This mysterious font of funding has had a major impact not only on American elections but on the lives of every one of our citizens affected by the legislators CPPR helped to defeat or to elect, but we do not know whom to praise or blame.

Now, casino mogul Sheldon Adelson, who has a net-worth of more than $24 billion, has pledged "limitless" donations, exceeding $100 million, to Restore Our Future, Inc., the Super PAC supporting Mitt Romney's presidential campaign.[63] (While it is implicit that Restore Our Future is focused on Mr. Romney, its public claim is that it is explicitly focused on supporting congressional candidates and only those "in the know" would be aware of its connec-

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[57] This American Life: "Take The Money and Run For Office", Chicago Public Media (March 30, 2012) (*http://www.thisamericanlife.org/radio-archives/episode/461/transcript*). See Appendix A.

[58] See Transcript 45:889–46:896 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=2902*).

[59] Viveca Novak & Robert Maguire, "Mystery Health Care Group Funneled Millions to Conservative Nonprofits", Center for Responsive Politics, May 18, 2012 (*http://www.opensecrets.org/news/2012/05/cppr.html*); Appendix A. Except where otherwise noted, all facts in this and the next paragraph may be found within the same article.

[60] National Institute on Money in State Politics, "Report on 2010 activities of 'Protect Your Vote'", retrieved June 24, 2012 (*http://www.followthemoney.org/database/StateGlance/committee.phtml?c=4538*).

[61] Abel Harding, "Effort fighting Florida redistricting stokes ACORN fears", The Florida Times-Union, September 22, 2010 (*http://jacksonville.com/opinion/blog/403455/abel-harding/2010-09-22/effort-fighting-florida-redistricting-stokes-acorn-fears*).

[62] See note 34, supra.

[63] Steve Bertoni, "Exclusive: Adelson's Pro-Romney Donations Will Be 'Limitless,' Could Top $100M", Forbes.com, June 13, 2012 (*http://www.forbes.com/sites/stevenbertoni/2012/06/13/exclusive-adelsons-pro-romney-donations-will-be-limitless-could-top-100m/*).

tion to Romney.[64] That puts congressional candidates in a position of either fearing or competing for its many millions.) Interestingly, this comes after Adelson's family donated more than $20 million to Winning Our Future, a different Super PAC with the mission of defeating Mr. Romney's campaign, and which funded ads calling Romney "more ruthless than Wall Street".[65] As Ms. Youn mentioned at the forum, those donations to defeat Mr. Romney were made openly, and were disclosed to FEC.[66] The recent donation to Restore Our Future became public only when an anonymous source leaked the information to the magazine Forbes, and Adelson has said that he plans to make his future donations to "non-profits affiliated with political PACS, which don't have to disclose the names of donors" such as the Karl Rove-run Crossroads GPS.[67] Of course, the co-founder of Crossroads GPS and its affiliated Super PAC American Crossroads is former Republican National Committee Communications Director Ed Gillespie, who left those groups to become "Mitt Romney's senior adviser".[68] Rove himself recently attended the "First National Romney Victory Leadership Retreat", along with the head of Restore Our Future.[69] These actions show how thin a veneer the "independence" of "independent expenditures" truly is.

CORPORATE INFLUENCE

Although Mr. Adelson's and his family members made their contributions as individuals, the greatest concern unleashed by Citizens United is the idea of corporations becoming able to make unlimited spending on campaigns for the first time since the Gilded Age. More than a century ago, Theodore Roosevelt declared, in Osawatomie, Kansas, "every special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution . . . does not give the right of suffrage to any corporation. . . . The citizens of the United States must effectively control the mighty

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[64] Restore Our Future's home page declares, "we restore our future by supporting candidates" (emphasis added). *http://restoreourfuture.com/* (retrieved June 25, 2012). Only by searching other portions of the website or gaining extrinsic knowledge would a citizen know of Mr. Romney's strong ties to the group. Interestingly, one campaign donation Restore Our Future has disclosed was of $25,000 to the Independent Expenditure-Only Committee "CITY ATTORNEY JAN GOLDSMITH 2012 COMMITTEE" on March 30, 2012 (*http://query.nictusa.com/cgi-bin/com_rcvd/C00490045/*), one day before Restore Our Future received a contribution of $25,000 from "CITY ATTORNEY JAN GOLDSMITH 2012 C". (*http://query.nictusa.com/cgi-bin/com_ind/C00490045/*).

[65] Christopher Palmeri & Beth Jinks, "Adelson's $10 Million PAC Bet Gives Gingrich Boost For Southern Primaries", Bloomberg, January 25, 2012 (*http://www.bloomberg.com/news/2012-01-25/adelson-s-10-million-pac-bet-gives-gingrich-boost-for-southern-primaries.html*); Alicia Mundy & Sarah Murray, "Adelson Gives $10 Million to Pro-Romney Super PAC", Washington Wire, June 13, 2012 (*http://blogs.wsj.com/washwire/2012/06/13/adelson-gives-10-million-to-pro-romney-super-pac/*).

[66] See Transcript 76:1559ff (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=5185*).

[67] See Mundy & Murray at note 65, supra.

[68] FactCheck.org, "A New Front in the 'War on Women'", May 01, 2012 (*http://www.factcheck.org/2012/05/a-new-front-in-the-war-on-women/*).

[69] Josh Israel, "Rove 'Makes A Mockery' Of Law: Super PAC Co-Founder To Attend Romney Strategy Session This Weekend", ThinkProgress, June 21, 2012 (*http://thinkprogress.org/justice/2012/06/21/503791/rove-makes-a-mockery-of-law-super-pac-co-founder-to-attend-romney-strategy-session-this-weekend/mobile=nc*). "Karl Rove, of course, runs a superPAC. And there have been reports that the head of the pro-Romney superPAC, Restore Our Future, was also on hand. Is there a conflict of interest in that at all?" Guy Raz, "Romney Backers Wrap Up Utah Retreat", Weekends on All Things Considered, June 24, 2012 (*http://www.npr.org/2012/06/24/155673445/romney-backers-wrap-up-utah-retreat*).

commercial forces which they have themselves called into being."[70] This seems a simple concept.

Unlike people, corporations are creations of the state. They can be called into existence at any time and, as happened with several donors to Restore Our Future, wink out of existence just as quickly.[71] As Mr. Ryan explained at the forum:

> These (c)(4)s that are going to be spending tens or hundreds of millions of dollars in this year's elections on attack ads—and they will be doing the dirty work of candidates, they will be doing the attack ads—they can dissolve overnight. They can dissolve at the drop of a hat.
>
> And those of us sitting in this room today, God willing, we will be here in December. We will be alive. We will be held accountable for the actions we take between now and then. That can't be said for these 501(c)(4) and other types of outside groups that, again, can dissolve with the filing of some paperwork with a secretary of state's office at the drop of a hat. That is a big problem.[72]

Less than six months into 2012, corporations have donated tens of millions of dollars to Super PACs, and that is counting only the money about which we know.[73] There is simply and literally no way to know how much undisclosed and unlimited corporate money has been pledged, donated, or already spent influencing this year's elections.

Some commentators have focused on the absence of Fortune 500 companies on FEC disclosure forms, confidently stated that big corporations have not begun to contribute as many feared.[74] It may be that they have not for, as Prof. Teachout pointed out, "The culture of corporations has not yet adopted the Citizens United law. They have not yet hired the best campaigners. They have not yet figured out all the loopholes. This is 2 years in."[75] So, the fact that we have not seen a Fortune 500 company on a Super PAC's FEC disclosure forms doesn't indicate that we shouldn't expect to see one or many or even all of them very soon indeed.

Of course, the fact that we don't actually know who is providing the money is also part of the point.[76] We know that undisclosed spending jumped from effectively 0% in 2006 to 47% in 2010, while spending from donors who are fully disclosed plummeted from roughly 90% to below 50%.[77] There is only one way to know that one of the multiple $10 million donations to Crossroads GPS—to

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[70] Theodore Roosevelt, "The New Nationalism", August 31, 1910 (*http://www.pbs.org/wgbh/americanexperience/features/primary-resources/tr-nationalism/*).

[71] Democracy 21 and Campaign Legal Center Call for FEC and Justice Department Investigations of Additional $1 Million Contributions to Pro-Romney Super PAC, Thursday, August 11, 2011; *http://www.democracy21.org/index.asp?Type=B_PR&SEC=%7B91FCB139–CC82–4DDD-AE4E–3A81E6427C7F%7D&DE=%7B79EE1D8A–56BC–4168–A3DE–8CF4E07503F8%7D*.

[72] See Transcript 50–988–99 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=3271*).

[73] See Appendix B.

[74] Stuart Rothenberg, "How Citizens United Is Affecting Campaigns", Roll Call, May 22, 2012 (*http://www.rollcall.com/issues/57_139/How-Citizens-United-Is-Affecting-Campaigns-214705–1.html*).

[75] See Transcript 31:607–10 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=2012*).

[76] "We don't know who these donors are. We don't even know whether these donors are individuals or whether they are corporations." Monica Youn, see Transcript 23:452–24:454 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=1477*).

[77] Spencer MacColl, "Citizens United Decision Profoundly Affects Political Landscape", Center for Responsive Politics, May 05, 2011 (*http://www.opensecrets.org/news/2011/05/citizens-united-decision-profoundly-affects-political-landscape.html*). See Appendix B.

say nothing of undisclosed donations about which we know nothing—didn't come from Exxon-Mobil or JPMorganChase, Inc., and that's for the donor or recipient to tell us.[78] In fact, we cannot even be sure that those companies know that they didn't make the donations. At the forum, Ms. Youn told the story of "a multinational pharmaceutical corporation that . . . found out that one of its mid-level managers was spending corporate funds to support an openly racist candidate in Mississippi, and he was doing that without the knowledge of upper management."[79] Had there been disclosure requirements, this company would have found out immediately. For that matter, we cannot know that the money wasn't donated by a foreign corporation or even a foreign government, in violation of United States law.[80]

Whether the donor knows or not, we can be fairly confident that they won't tell us. In the recent case out of Montana, a Super PAC promoted itself by writing to potential donors, "[W]e're not required to report the name or the amount of any contribution that we receive. So, if you decide to support this program, no politician, no bureaucrat, and no radical environmentalist will ever know you helped make this program possible."[81] With even Mr. Adelson embracing anonymous giving,[82] despite the protections his vast wealth provides, secrecy will be the norm unless Congress changes the law. We can, however, be sure that the recipients of this largesse will know who contributed, as well as who didn't.[83] How could this not cause "corruption or the appearance of corruption"?[84] In fact, we know that it has. A recent study by the Brennan Center reported that, "69% of respondents agreed that new rules that let cor-

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[78] T.W. Farnam, "Mystery donor gives $10 million to Crossroads GPS group to run anti-Obama ads", The Washington Post, April 13, 2012 (*http://www.washingtonpost.com/politics/mystery-donor-gives-10-million-to-crossroads-gps-group-to-run-anti-obama-ads/2012/04/13/gIQAzdtdFT_story.html*).

[79] See Transcript 72:1476–14821 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=4900*).

[80] 2 U.S.C. 441(e). Stephen Braun, "Super PAC Foreign Donations A Risk In 2012 Presidential Election", The Huffington Post, February 10, 2012 (*http://www.huffingtonpost.com/2012/02/10/super-pac-donations_n_1267750.html*). Professor Teachout also has described the rise of "extraterritorial electioneering", ways in which foreign individuals and even governments have already worked directly to influence the outcome of American elections. Teachout, Zephyr, "Extraterritorial Electioneering and The Globalization of American Elections", 162 Berkeley Journal of International Law [Vol. 27:1], February 08, 2009, pp. 161–190 (*http://www.boalt.org/bjil/docs/BJIL27.1_Teachout.pdf*).

[81] *Western Tradition Partnership, Inc.* v. *Attorney General*, 271 P.3d 1, 13 (MT, 2011), 2011 MT 328, ¶19 (*http://applicationengine.mt.gov/getContent?vsId={1C0B7886-01C0-49E3-A71A-C06CA7E71040}&impersonate=true&objectStoreName=PROD%20OBJECT%20STORE&objectType=document).*

[82] See note 67, supra.

[83] "[T]he problem is not just that the source of the money is publicly secret, it is that it is privately very much not secret—word will get back to the powers that be, on Capitol Hill and, presumably, a Romney White House, about who gave and who did not give. . . . Those who are hit up for money know this, and have to worry about whether they will be at a disadvantage in future intra-industry fights, if their competitor gives and they don't. If it starts to look like a shakedown, that's because it is." Alec MacGillis, "Full Disclosure: Praise For Fred Hiatt", The New Republic, June 19, 2012 (*http://www.tnr.com/blog/plank/104133/full-disclosure-praise-fred-hiatt*).

[84] Citizens United, 130 S.Ct. at passim, and Buckley v. Valeo, 424 U.S. 1, 26 (1976). Cf. American Tradition Partnership, Inc. v. Bullock, 567 U.S._(2012) (Breyer, J., dissenting) ("Montana's experience, like considerable experience elsewhere since the Court's decision in Citizens United, casts grave doubt on the Court's supposition that independent expenditures do not corrupt or appear to do so.") (*http://www.supremecourt.gov/opinions/11pdf/11-1179h9j3.pdf*).

porations, unions and people give unlimited money to Super PACs will lead to corruption.'" [85]

THE 501(C)(4) BLACK HOLE OF LEGALLY UNDISCLOSED GIVING

The situation has become so bad that prominent Republicans, non-federal officials whose campaigns have always been funded by large, corporate donations, are aghast. Texas Governor Rick Perry has been "decrying 'Washington special interests' trying to buy a Texas Senate seat." [86] Those "Washington special interests" are the Super PACs "Club for Growth Action" and "FreedomWorks for America". [87] The former has disclosed 791 donations from 597 donors in this cycle, but 73% of its money has come from just 16 donors, each having given more than $100,000. [88]

As of June 18, 2012, of the $3.3 million the Super PAC "FreedomWorks for America" reported receiving in this election cycle, 52% was donated in 204 separate donations by its sister organization, the 501(c)(4) FreedomWorks. [89] The way this works is that contributions to the 501(c)(4) are not disclosed, since it is registered with the Internal Revenue Service as a "tax-exempt . . . social welfare organization", barred from "direct or indirect participation or intervention in political campaigns". [90] So a donor can contribute to FreedomWorks without disclosure, FreedomWorks then contributes to "FreedomWorks for America", and the only name disclosed is "FreedomWorks." Similarly, the 17th largest donor to "Club for Growth Action" is the Club for Growth 501(c)(4). [91] As satirist Stephen Colbert, who has taken to calling 501(c)(4)s "Spooky PACs", [92] asked, in a segment of his show played at the forum, "What is the difference between that and money laundering?" We join former FEC Chairman Trevor Potter in responding, "It's hard to say." [93]

But a 501(c)(4) doesn't even need a sister Super PAC to engage in this negative advertising. In implementing the ban on social welfare organizations engaging in politics, IRS has ruled that "a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity." [94] As Mr. Ryan explained at the forum, this means that a 501(c)(4)

> can spend . . . 49 cents out of every dollar you have given it on hard-hitting, express advocacy ads urging the election

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[85] Brennan Center for Justice, "National Survey: Super PACs, Corruption, and Democracy", April 24, 2012 (*http://www.brennancenter.org/content/resource/national_survey_super_pacs_corruption_and_democracy/*). See Appendix C.

[86] Priya Anand & Richard S. Dunham, "Senate candidate Cruz pockets big bucks across U.S.", San Antonio Express-News, June 12, 2012 (*http://www.mysanantonio.com/news/local—news/article/Senate-candidate-Cruz-pockets-big- bucks-across-3629079.php*).

[87] Jonathan Gurwitz, "Washington groups misfire in Senate race", San Antonio Express-News, June 09, 2012 (*http://www.mysanantonio.com/opinion/columnists/jonathan_gurwitz/article/Washington-groups-misfire-in-Senate-race-3620108.php*).

[88] Analysis of FEC data, see Appendix B.

[89] *Id.*

[90] Internal Revenue Service, "Social Welfare Organizations", Page Last Reviewed or Updated: April 04, 2012 (*http://www.irs.gov/charities/nonprofits/article/0,,id=96178,00.html*).

[91] Analysis of FEC data, see Appendix B.

[92] "Colbert Super PAC SHH!—Corporate Campaign Players & Super Secret 'Spooky PACs'", The Colbert Report, May 08, 2012 (*http://www.colbertnation.com/the-colbert-report-videos/413970/may-08-2012/corporate-campaign-players_super-secret_spooky-pacs-*).

[93] "Colbert Super PAC_Trevor Potter & Stephen's Shell Corporation", The Colbert Report, September 29, 2011 (*http://www.colbertnation.com/ the-colbert-report-videos/398531/september-29-2011/ colbert-super-pac_ trevor-potter_ stephen-s-shell_ corporation*).

[94] See note 88, *supra*.

> of [a specific candidate] and [then] spend the other 51 cents on ads that are nearly as hard-hitting, sham issue ads that either attack an opponent on the basis of some issue, but certainly identify the candidates in the race, yet don't contain words of express advocacy and, therefore, don't fall under the rubric of "candidate election intervention" for tax law purposes. [95]

These Super PACs and 501(c)(4)s provide examples of some of the holes in our disclosure law never contemplated in the Citizens United decision. Indeed, the Court in Citizens United called for and explicitly relied upon disclosure to be our chief protection from the impact of its decision. [96] "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." [97] This was also, once, the view of most Members of Congress. [98] As a result of this clear mandate for disclosure, "The courts, especially since Citizens United blew away campaign finance limits, seem much more apt to uphold broad disclosure rules." [99] Unless and until Republicans, in Congress and among

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[95] See Transcript 75:1544-76:1552 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=5138*). It should be noted that IRS has begun to look into the implications of its policy and whether such groups are abusing the policy to procure a tax-exempt status not intended to cover political committees. Jonathan D. Salant, "IRS Denial Of Tax Exemption To U.S. Political Group Spurs Alarms", Bloomberg, June 08, 2012 (*http://www.bloomberg.com/news/2012-06-08/irs-denial-of-tax-exemption-to-u-s-political-group-spurs-alarms.html*).

Similarly, the Federal Communications Commission has taken steps to increase transparency for political advertising on broadcast stations by moving to require that stations post their "political file information online." This would allow the public to learn who is actually paying for radio and television campaign advertisements. *Federal Communications Commission*, "Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee", Second Report and Order, April 27, 2012, at 17 (*http://transition.fcc.gov/Daily__Releases/Daily__Business/2012/db0508/FCC-12-44A1.pdf*).

On March 30, 2012, the District Court for the District of Columbia granted Mr. Van Hollen summary judgment in his suit to require FEC to demand "that every person who funds electioneering communications must disclose all contributors." Federal Election Commission, "Summary of *Van Hollen* v. *FEC*", retrieved June 24, 2012 (*http://www.fec.gov/law/litigation/van__hollen.shtml*).

On June 12, 2012, the Fourth Circuit Court of Appeals affirmed the FEC's ruling that the producers of a video much like that at the heart of Citizens United were clearly producing "electioneering communications" and, therefore, subject to FEC's disclosure requirements. Campaign Legal Center, "Donor Disclosure Provisions Again Upheld by Fourth Circuit in Real Truth About Obama", June 12, 2012 (*http://www.campaignlegalcenter.org/index.php?option=com__content&view= article&id=1759:june-12-2012-donor-disclosure-provisions-again-upheld-by-fourth-circuit-in-real-truth-about-obama*).

Thus, the Executive Branch, independent federal agencies, and the federal judiciary have all taken steps aimed at increasing disclosure of campaign spending, while the House of Representatives, designed to be the most responsive part of the Federal government, has failed to act.

[96] As Professor Teachout explained at the forum, bribery laws have been so interpreted as to be no protection against corruption when it comes to campaign finance. "[I]n the context of bribery laws, we say, 'Don't worry, campaign finance laws will cover it.' And then, in Citizens United and other cases, Kennedy says, 'Don't worry, bribery laws will cover it.' And what you end up is this great cavity where what you and I and the rest of the country knows is corruption in the sense the Founders meant is allowed to go on." See Transcript 30:592-31:598 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=1915*).

[97] Citizens United v. FEC, 130 S.Ct. at 916. See also, Bauerly at note 30, *supra*, and Thomas Jefferson as quoted at note 104, infra.

[98] See, "Remember When Washington Republicans Supported Disclosure and Transparency?", Appendix C.

[99] Rick Hasen, "Breaking News: 4th Circuit Upholds FEC's 'Major Purpose' Test for Political Committees, Subjecting Groups Like Crossroads GPS to Potential Liability for Not Registering as Super PACs", Election Law Blog, June 12, 2012 (http://electionlawblog.org/?p=35602).

FEC commissioners,[100] stop blocking the enactment and enforcement of new disclosure laws and rules, however, we are faced with a situation never contemplated by the eight justices of the Supreme Court[101]: unlimited contributions without disclosure.

This brings us back to the subject of just how involved large corporations have become in campaigns. As bad as the 501(c)(4) black hole may be, the public would at least know which specific 501(c)(4) had spent the money, even if, "Americans for A Better America"[102] isn't very revealing. Perhaps we would learn to be suspicious of anyone hiding behind anodyne names or anonymity. But, in this post-Citizens United world, companies don't even need to spend the money to influence how legislators vote. Ms. Youn told the story of a case from North Carolina in 2008.[103] It was a matter of state law, and North Carolina already allowed the independent expenditures now made possible in federal campaigns. One Super PAC-equivalent, created by a group of North Carolina farmers:

> supported a particular farm subsidy [so] they made up a whole campaign of attack ads against particular legislators they knew were the swing votes. They then took these ads to the legislators and screened them behind closed doors and said, "These are the ads we will run against you if you do not support our position on this legislation." And some of these legislators changed their votes.[104]

This group never had to run a single ad, but that does not mean disclosure laws could not prevent such abuses. If the group would have been forced to disclose the farmers behind any ads it did run, the effectiveness of the ads and, thus, of the threat, could have been substantially weakened. This is the full power of disclosure. By arming American citizens with the facts, we empower them to control events. In the words of Thomas Jefferson, "well informed [citizens] can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights."[105] There are many layers to this fundamental truth. The first is that the public must know about the problems before it "may be relied on to set them to right." We hope that this forum has helped to inform in this regard. The second is that the public should know who is financing the campaign ads that have so dominated during the elections since Citizens United.

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[100] Norman Ornstein, "Mitch McConnell Vs. Himself on Disclosure Issues", Roll Call, June 20, 2012 (*http://www.rollcall.com/issues/57_154/Mitch-McConnell-Vs-Himself-on-Disclosure-Issues-215491-1.html*), Appendix A.

[101] "The section of the opinion upholding the constitutionality of federal disclosure requirements had added force behind it. All the justices except Clarence Thomas signed on—providing a resounding 8–1 endorsement." Trevor Potter, "Was the Court Conned in Citizens United?", Bloomberg, May 23, 2011 (*http://www.bloomberg.com/news/2011–05-23/was-the-court-conned-in-citizens-united-.html*).

[102] See Transcript 48:935ff (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=3105*).

[103] Brennan Center for Justice, "Duke v. Leake", November 05, 2008 (*http://www.brennancenter.org/content/resource/jackson_v_leake/*).

[104] See Transcript 51:1012–21 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=3328*).

[105] Thomas Jefferson, letter to Richard Price, January 8, 1789. The Papers of Thomas Jefferson, ed. Julian P. Boyd, vol. 14, p. 420 (1958). See also Doe v. Reed, 130 S.Ct. 2811, 2837 (2011) (Scalia, J., concurring) ("There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."). For an analysis of opposing views, see Richard L. Hasen, "Citizens: Speech, no consequences", Politico, May 31, 2012 (*http://dyn.politico.com/printstory.cfm?uuid=54DFD684-5DA5-4F88-A1D8-3FB4B227EB12*).

And the third is that the lack of such disclosure has, as discussed above,[106] lead to ads full of misleading and outright false claims, creating a misinformed public. This is not what our Founder intended.

THIS IS NOT WHAT OUR FOUNDERS WANTED

We've heard a great deal in the past three years about the Tea Party. I'm sorry to say that the story behind the real Tea Party, the Boston Tea Party, is sadly misunderstood. The cry in 1773 was a simple one: No taxation without representation.[107] The modern Tea Party seems to have forgotten the second half, but it's the key to the whole thing. Those Massachusetts patriots weren't protesting taxation. They accepted taxation as a fair price to pay for membership in what was then the greatest country in the world. What drove them, on the night of December 16, 1773, to commit a felony by breaking into those tea ships and casting their cargo into Boston Harbor was the fact that they had no say in what those taxes would be and how they would be spent because they had no say in the setting of those taxes because they could not vote for their own representatives. That was the injustice. Not the taxation but the lack of representation.

It was the quest to have a representative government that led to our country's founding. That's why no right is more important or more protected by the Constitution than the right to vote. In the past 207 years, we have amended the Constitution 15 times. Seven of those amendments, almost half of the amendments over more than two centuries, are about protecting, in the words of the 14th Amendment, "the right to vote". Our elections are a vital part of what makes this country great. Oversight of elections is the greatest responsibility under the jurisdiction of the Committee on House Administration. If something is happening which is proven to distort the opportunity of our populace to vote as it wishes, something must be done. We have factual information that the result of Citizens United is a misinformed populace. This misinformation is interfering with free and public elections. As Members of this Committee, we have not just the opportunity but the responsibility to bring this fact to the public's attention and to act to remedy it. The Committee has failed to meet that responsibility.

Almost 130 years ago, the Supreme Court listed two great threats to our democracy: the violent suppression of the right to vote and the corrupting influence of money in politics. On March 03, 1884, Mr. Justice Miller wrote, for a unanimous Supreme Court, that the "right to vote for a member of congress [is] fundamentally based upon the constitution [and i]t is as essential to the successful working of this government that the great organisms of its executive and legislative branches should be the free choice of the people" [108] He closed his opinion with this peroration:

> If the recurrence of such acts as these prisoners stand convicted of [i.e., beating potential Black voters to intimi-

[106] See subsection "Unaccountable and Untrue" on page 2, supra.

[107] This simple request, of course, is still denied our fellow American citizens who live in the nation's capital, and we hope to see the day that their right to full participation in our shared government is realized.

[108] Ex parte Yarbrough "The Ku Klux Cases", 110 US 651, 665–66.

> date them] are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.
>
> If the government of the United States has within its constitutional domain no authority to provide against these evils—if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint—then indeed is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it are at the mercy of the combinations of those who respect no right but brute force on the one hand, and unprincipled corruptionists on the other.[109]

From the Founders debating how to prevent corruption at the Constitutional Convention in the 18th Century,[110] through the Supreme Court listing unrestricted use of "money in elections" as one of the great threats to our democracy in the 19th Century,[111] to the Congress passing the Tillman Act of 1907 [112] and the Federal Elections Campaign Act of 1971 [113] in the 20th Century, and the Bipartisan Campaign Finance Reform Act of 2002 [114] in the 21st Century, campaign finance regulation has always been one of the top priorities of government. In that Osawatomie speech, Theodore Roosevelt would go on to say, "There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done." [115] The Members of Congress and witnesses who supported and participated in our forum have contributed to that long and hard work, but there is much more to be done. Indeed, the failure of Congress to enact new legislation in the immediate aftermath of Citizens United has only made the task harder. As Prof. Teachout put it during the forum, when it comes to corporate spending on elections, "We are playing checkers now, and it is about to be chess. I mean, this hasn't begun yet." [116]

The 112th Congress has failed to meet its obligation in this regard but our country will survive and we will have another opportunity to do what was not done in this Congress. It is hoped that the record from this forum will serve as a foundation for the work that is to come. Because it must come. Our history and the American people demand it.

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[109] *Id.* at 667.

[110] Zephyr Teachout, "The Anti-Corruption Principle", Cornell Law Review [Vol. 94:341], pp. 341–414 (*http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Teachout-Final.pdf*).

[111] Ex parte Yarbrough "The Ku Klux Cases". (110 US 651).

[112] Pub. L. No. 59–36, 34 Stat. 864 (codified as amended at 2 U.S.C. 441b (2006)).

[113] Pub. L. 92–225, 86 Stat. 3, enacted February 7, 1972, 2 U.S.C. 431 et seq. (1971) See also the Federal Election Campaign Act Amendments of 1974, Pub. L. 93–443, 88 Stat. 1263 (codified as amended at 2 U.S.C. 431–455 (2006)).

[114] Pub. L. No. 107–155, 116 Stat. 81 (codified in various sections of title 2 of the United States Code); see also, Federal Election Commission, "Bipartisan Campaign Reform Act of 2002", retrieved June 24, 2012 (*http://www.fec.gov/pages/bcra/bcra_update.shtml*).

[115] Roosevelt, "The New Nationalism", at note 70, supra.

[116] See Transcript 52:1027–28 (*http://www.youtube.com/watch?v=tTt5VbHUxNA#t=3404*).

APPENDIX A: NEWS ARTICLES

[From the Los Angeles Times, Apr. 17, 2012]

SECRET DONORS POUR MILLIONS OF DOLLARS INTO CROSSROADS GPS

(By Matea Gold)

WASHINGTON.—Crossroads GPS, a conservative nonprofit group that is one of the most prominent critics of President Obama, raised nearly $77 million in its first 19 months from a small cadre of secret donors, including two dozen who wrote checks of $1 million and more.

The organization, founded in part by GOP strategist Karl Rove, received two single donations worth $10 million each between June 1, 2010 and the end of 2011, according to newly filed tax documents the group released Tuesday. It is impossible to know who gave the money, as the group simply listed each individual contribution and left blank the areas on the form for the names and addresses of the donors.

Crossroads GPS reported the identity of the donors to the IRS, as required, but does not have to reveal them publicly.

As a 501(c)4 social welfare organization, Crossroads GPS cannot make political activity its primary purpose, unlike its sister "super PAC," American Crossroads. Both are able to accept unlimited donations from both individuals and corporations.

Together, the two groups have emerged as the most muscular new players in the political landscape, aiming to spend $300 million this year to promote conservatives and defeat Obama.

As a tax-exempt group, Crossroads GPS ostensibly faces more limits on its political activity, but it is free to run so-called "issue ads" that stop short of calling for the election or the defeat of a candidate.

Earlier this month, Crossroads GPS spent $1.7 million to run one such ad in six presidential swing states attacking Obama's energy policy.

Campaign finance reform advocates argue that the organization is essentially a political player hiding behind its tax status. Democracy 21 and the Campaign Legal Center on Tuesday repeated their calls to the IRS to investigate Crossroads GPS's tax status, as well as that of several others, including the conservative group American Action Network and Priorities USA, a tax-exempt group affiliated with a pro-Obama super PAC.

"It is essential that the IRS act to stop the farce that Crossroads GPS is a 'social welfare' organization," Fred Wertheimer, president of Democracy 21, said in a statement. "Karl Rove and Crossroads GPS are thumbing their nose at the American people. They are injecting secret, million dollar and multi-million dollar contributions

into federal elections in direct conflict with the basic right of citizens to know the donors financing campaign expenditures to influence their votes."

Crossroads GPS spokesman Jonathan Collegio said the group carefully hews to its nonprofit role, saying it only spends "a portion of its resources on political activity that furthers its social welfare mission."

He said its donors "are individuals and businesses that support its vision of lower taxes and smaller government."

"Environmental groups and labor groups have been airing ads promoting their causes and targeting politicians for years, but the brunt of Wertheimer's criticism focuses on conservative groups engaging in the same activity," Collegio said.

In 2010 and 2011, Crossroads GPS spent at least $43 million on media, according to its tax documents. It also doled out nearly $16 million in grants to an array of conservative organizations, including $4 million to Grover Norquist's Americans for Tax Reform and $2.75 million for the Center for Individual Freedom, a group that was originally launched more than a decade ago by former tobacco industry executives who sought to counter government restrictions on smoking. After getting involved in an eclectic range of causes over the years, the center emerged as a player in the 2010 midterm elections, spending at least $2.5 million on negative ads against about 10 Democratic members of Congress.

The fund-raising success of Crossroads and its super PAC counterpart was reflected in the robust compensation paid to the groups' president, Steven Law, a former general counsel of the U.S. Chamber of Commerce and deputy secretary of the Department of Labor. Over the 19-month period, Law earned $1.09 million in salary and bonuses from the two groups, the tax records show.

The Tribune Washington Bureau/Los Angeles Times reported in February that many political operatives are reaping financial rewards as super PACs and their nonprofit kin have proliferated with little oversight.

[From Fresh Air from WHYY, Feb. 23, 2012]

EXAMINING THE SUPERPAC WITH COLBERT'S TREVOR POTTER

Republican and Democratic SuperPACs, empowered by the Supreme Court's Citizens United decision, can collect unlimited contributions from individuals, corporations and unions. Potter became a celebrity when he signed on as Stephen Colbert's lawyer and advised the satirical TV host on how to create his own SuperPAC.

TERRY GROSS, HOST: This is FRESH AIR. I'm Terry Gross. SuperPACs have led to what was described in the New York Times yesterday as a new breed of super-donor. About two dozen individuals, couples or corporations have given a million dollars or more this year to Republican superPACs that have poured that money directly into this year's presidential campaign.

SuperPACs, both Republican and Democratic, are empowered by the Supreme Court's Citizens United decision and other rulings to collect unlimited contributions from individuals, corporations and

unions. We're going to talk about this new post-Citizens United world of campaign financing.

Our first guest is Trevor Potter, who has become something of a celebrity since he became Stephen Colbert's lawyer and advised Colbert on how to create his own superPAC. Potter is the founding president of the Campaign Legal Center and helped defend the 2002 McCain-Feingold law, which enacted campaign finance restrictions.

From 1991 to '95, he served on the Federal Election Commission. He served as general counsel to John McCain's presidential campaigns in 2000 and 2008. Potter has not only been advising Stephen Colbert on his PAC, Potter helped Colbert set up an organization known as a 501(c)(4). Officially designated as social welfare organizations, 501(c)(4)s have spent tens of millions on advertising in political campaigns, and they are not required to disclose their donors. Here's Stephen Colbert and Trevor Potter on "The Colbert Report," setting up a 501(c)(4).

(SOUNDBITE OF TV SHOW, "THE COLBERT REPORT")

STEPHEN COLBERT: So how do I gets me one, Trevor?

TREVOR POTTER: Well, lawyers often form Delaware corporations, which we call shell corporations, that just sit there until they're needed.

COLBERT: So like some anonymous shell corporation?

POTTER: Right, and I happen to have one here in my briefcase.

COLBERT: Let's see it. OK, what's it called?

POTTER: It's called Anonymous Shell Corporation.

(SOUNDBITE OF LAUGHTER)

COLBERT: OK, brrmm, brrmmm, Anonymous Shell Corporation filed in Delaware. OK, I got this. So now I have a (c)(4)?

POTTER: Right, now we need to turn it into your shell corporation, your anonymous one, and we do that by having normally a board of directors meeting.

COLBERT: And who's on the board of directors?

POTTER: Well, just you. We can just have you do this.

COLBERT: Sounds like a nice group of people.

(SOUNDBITE OF LAUGHTER)

COLBERT: All right, let's do it. Call to order. Let's do this thing.

POTTER: All right. So this says that you are the sole director of the corporation.

COLBERT: I am.

POTTER: And that you are now electing yourself president, secretary and treasurer.

COLBERT: Sounds like a great board.

POTTER: And you are authorizing the corporation to file the papers with the IRS in May 2013.

COLBERT: So I could get money for my (c)(4), use that for political purposes, and nobody knows anything about it till six months after the election?

POTTER: That's right, and even then they won't know who your donors are.

COLBERT: That's my kind of campaign finance restriction. OK, OK, so now I've signed it. I have a (c)(4)?

POTTER: You have a (c)(4). It's up and going.

COLBERT: Can I take this (c)(4) money and then donate it to my superPAC?

POTTER: You can.

(SOUNDBITE OF LAUGHTER)

COLBERT: But wait, wait, superPACs are transparent.

POTTER: Right, and . . .

COLBERT: And the (c)(4) is secret. So I can take secret donations of my (c)(4) and give it to my supposedly transparent superPAC . . .

POTTER: And it'll say given by your (c)(4).

COLBERT: What is the difference between that and money laundering?

(SOUNDBITE OF LAUGHTER)

POTTER: It's hard to say.

(SOUNDBITE OF LAUGHTER)

COLBERT: Well, Trevor, thank you so much for setting me up.

GROSS: That's my guest, Trevor Potter, with Stephen Colbert on "The Colbert Report." Trevor Potter, welcome to FRESH AIR.

POTTER: Thanks, Terry, good to be with you.

GROSS: So what can Stephen Colbert now use his 501(c)(4) to do?

POTTER: Well, it can engage in direct political activity. It can urge the election or defeat of candidates. It could lobby Congress, any number of public efforts related to public policy, essentially.

GROSS: So the 501(c)(4) is officially supposed to be a social welfare organization?

POTTER: Yes, that's the oddity here, of course, is that I've started by saying it could engage in political activity and run radio and television ads, which is not what we think of (c)(4)s doing. But through a combination of lassitude by the IRS and general confusion, (c)(4)s are now being used to engage in political activities. That wasn't the idea. They were set up by Congress to do public policy work, which was usually thought of as lobbying or arguing for one side or another of an issue in public.

But they've become very popular because they do not disclose their donors, and they can engage in some amount of political work. There's a dispute in the—amongst tax lawyers as to how much work they can engage in, but many lawyers would say up to just under half of their spending can be for directly political activities, including urging the election or defeat of federal candidates, and they can do all that with money that is not disclosed to the public.

GROSS: So you were an advisor to John McCain's campaign in 2000 and 2008. You served on the Federal Elections Commission. What can candidates do now when raising money that they weren't allowed to do before, that they weren't allowed to do under McCain-Feingold?

POTTER: We're really in a different world. Part of it involves candidates raising money, but most of it involves these new so-called superPACs. Throughout the—almost all of my career, until

this year, what candidates could do was raise a small amount of money from each individual donor, it used to be $1,000, and then under McCain-Feingold it became $2,000 and was inflation-adjusted, so it's 2,500. But that's still a very small amount of money that an individual can give to a candidate.

So throughout the campaigns I've been involved with, candidates would have fundraisers and accept contributions of maybe as little as 250 or $500 from donors. They would hope to have someone max out, as they call it, at the full $2,500 this year, and then if their spouse gave, you could double that to now 5,000.

And that's the sort of money that candidates have been looking for. It has led, over the last couple cycles, to what we call bundlers, which means people who have a lot of wealthy friends they can ask money for, so that you go to a fundraiser, and your host gives you the 5,000, themselves and their spouse, but then they've asked their friends, their neighbors, their business associates, people in the same line of work to come to the fundraiser.

And in the McCain experience, where you may recall he was running really a low-funded campaign for a long period of time, they'd be thrilled if they could raise $25,000 at a fundraiser. $50,000 was a very successful fundraiser. Well, you jump from that sort of world to the world of the superPACs, where individuals can and do give $100,000, $500,000, some have given more than a million.

Famously, one of Newt Gingrich's supporters has given, I believe, 10 million between himself and his spouse to these supposedly outside groups that then spend money to elect the candidates. So we've changed the game from what really are small donors, either over the Internet or a couple hundred dollars, to a world where one person or a handful of people can bankroll a presidential candidate.

GROSS: So the people who you're referring to, the husband and wife who gave to the Newt Gingrich campaign, that's Sheldon Adelson and his wife, they apparently saved the Newt Gingrich campaign because Gingrich wouldn't have had the money to carry on; a similar thing with Rick Santorum and one of his major funders, Foster Friess. Would they have been able to do that in previous years? I mean, would there be a way that they could have just given as individuals to the campaigns, as opposed to giving through a PAC?

POTTER: No, there really isn't. What they could have done in previous years is taken their own personal money and spent it, in the case of Gingrich in South Carolina, in the case of the Romney backers, they could have spent it in Iowa, but they would have had to do so by putting their own names on an ad.

So it would have said, you know, I'm Adelson and I approved this ad and it's paid for by me. And no donor, no matter how wealthy, has ever really done that in the 30 years since Watergate, when these laws were put into effect. What changed this . . .

GROSS: Why not? Why not?

POTTER: That's a good question. I think because people first of all are much more comfortable giving to an organized political entity, which is what these political committee superPACs are. What you would have had to have done, before this year, is decide that you wanted to support a particular candidate. You would have had

to go out and find somebody who knew how to do political ads, where to spend them, what the most effective approach was.

You'd create your budget. You then would have hired the professionals, done the ads and then put your name on them. So you essentially would become a political player yourself. And I think the wealthy individuals who are giving, in most cases that just doesn't occur to them to do something like that. They say what entity can I give to.

GROSS: So the Supreme Court decision Citizens United opened the door for the creation of superPACs, and superPACs can get as much money as any individual corporation wants to give, but they have to reveal who they are. So . . .

POTTER: Right. To be fair on this—to the court, at least—what they said is corporations have the same right as individuals to make independent political expenditures. Then along came a lower court, the D.C. Circuit, which said if you have a right, a constitutional right to make independent expenditures on your own, you have a constitutional right to do so through a political committee.

And so superPACs didn't come directly from Citizens United, but they came from a lower court effectively sort of guessing that the Supreme Court meant to include the sort of groups we are now seeing, where they take unlimited contributions from a number of people and then engage in this unlimited spending.

GROSS: So watching this campaign, what are some of the loopholes you've seen playing out in ads, in funding—you know, some of the things that weren't in—that you think the Supreme Court didn't necessarily count on but people have found loopholes and ways around so that they can do it anyways?

POTTER: I think there are two things that we are seeing play out here that are clearly contrary to what the Supreme Court was thinking, maybe three. So the first is that the court assumes, as a matter of law, that this spending is going to be independent of the candidates. In their original case, the Buckley v. Valeo case, they talk about independent spending being spending that is wholly independent of candidates and campaigns.

And because it's wholly independent, the court says it can't corrupt the candidate, you're not buying anything, there's no agreement with the candidate. The candidate might not even like the spending, and therefore since it's wholly independent, and there's no danger of corruption, it cannot be constitutionally limited. That's the theory.

Well, the practice is we are seeing these committees are actually pretty closely tied to candidates. They are not anyone's definition of wholly independent. They are created and run by friends of the candidates, family members of the candidates, former employees of the candidates, longtime fundraisers of the candidates, business partners of the campaign manager.

There is a whole web of ties here. The effect of that is that when donors give to these committees, they feel they are safely giving to a group that has the candidate's best interests in mind and knows what the candidate wants. This is amplified by the fact that candidates refer to them as my superPAC, which a number of candidates do, or the superPAC run by my good friends.

Under an advisory opinion from the Federal Election Commission last year, it is permissible for these candidates to attend meetings of donors, potential supporters for these PACs, and endorse the PAC. They can't solicit an unlimited amount of money, but they can go in and say you're doing great work, this is really important to my campaign. If the message is these are my people, I want you to support this group, then someone can, in fact, go out and write a check for a million dollars. They just can't be directly solicited by the candidate.

So we've ended up in a world that I think the Supreme Court did not understand or expect in Citizens United, where these supposedly wholly independent groups are closely linked to the candidates, where the people running the groups say, well, I decide what to do because I watch the candidate on television and do what he suggests, which is what one of the Gingrich people said.

So there's a close tie in the fundraising, in the personnel, in the goals of these groups, with individual candidates. And that's simply, I think, functionally very different from what the court thought was going to happen.

GROSS: So theoretically the head of the superPAC and the candidate are not supposed to coordinate, but given all the ties that you've just pointed out, one has to assume that there's some amount of knowledge of what the other is doing.

And I want to play another clip from "The Colbert Report" that kind of—that I think kind of, you know, really illustrates really well the kind of loopholes to help you get around the no-coordination rule. And this is a scene from "The Colbert Report" after Colbert has decided to run for president of South Carolina. So he has to give up his superPAC, the superPAC that you helped him create.

So he hands it over to Jon Stewart, in spite of the fact that they're business partners, and it's legal, in spite of the fact that they're business partners. And in this scene, Colbert and Stewart are asking for your advice, since you are at this point not only Colbert's lawyer, but you've become Stewart's lawyer too, since he now heads the superPAC. And that's legal.

POTTER: Right, something they point out they think is also a little odd that is legal.

GROSS: Right, OK, so here we go. Jon Stewart speaks first.

(SOUNDBITE OF TV SHOW, "THE COLBERT REPORT")

JON STEWART: Now that I have the superPAC, can I run ads supporting Stephen Colbert, who I believe in very deeply, perhaps attacking his potential opponents, who I don't believe in at all?

POTTER: Yes, you can, as long as you do not coordinate.

(SOUNDBITE OF LAUGHTER)

COLBERT: Well, that's interesting.

(SOUNDBITE OF LAUGHTER)

STEWART: Red flag.

COLBERT: What?

STEWART: I am busy.

COLBERT: Of course. You have a show.

STEWART: Can I legally hire Stephen's current superPAC staff to produce these ads that will be in no way coordinated with Stephen?

POTTER: Yes.

STEWART: Whew. . . !

POTTER: As long as they have no knowledge of Stephen's plans.

COLBERT: Well, that's easy. I don't know what the hell I'm doing.

(SOUNDBITE OF LAUGHTER)

COLBERT: OK, Jon, I guess you'd better leave for fear that we would coordinate with each other. I cannot let you know my plans.

STEWART: I don't want to know.

COLBERT: From now on, Jon, from now on, I will just have to talk about my plans on my television show and just take the risk that you might watch it.

GROSS: OK, so that was a scene from "The Colbert Report" with Jon Stewart and Stephen Colbert. That's an interesting point there, that, you know, you're not supposed to coordinate, but the PAC, the people who are running the PAC at the very least know what you're saying from your speeches. I mean, they know what your priorities are. They know what you want.

POTTER: Well, and in this election cycle, whether it's life imitating art or the other way around, but you had a situation in South Carolina where Newt Gingrich went out and said I can't coordinate with my superPAC, but I can speak to them publicly, and I am speaking to them right now, and I am asking them to take down certain ads or to at least correct the text of them.

So you have this example in real life of a candidate not communicating while communicating with a superPAC. I think what that Colbert episode points out, as you sort of walk through it, is that the rules that the Federal Election Commission has established for what constitutes coordination are just ridiculously narrow. In fact, two federal courts have told the Federal Election Commission that they are inadequate and ordered them to come up with new rules, but they haven't done so.

So for the moment the rules simply cover a candidate requesting or advising a PAC on the content of the message or where it is broadcast, as opposed to any of the other things that they might do, such as help with fundraising, share staff over time, something like that.

GROSS: Now, do you think that the Supreme Court anticipated any of the loopholes that we're seeing or even anticipated the existence of superPACs or anticipated that 501(c)(4)s and (c)(6)s would be used as ways of funneling opaque money into the theoretically transparent superPAC?

POTTER: Well, we actually know the answer to that, which is no, they didn't anticipate it. The reason we know it is that Justice Kennedy wrote in his majority opinion in Citizens United that today for the first time corporations will be able to give unlimited—spend unlimited amounts for independent expenditures and also that will be fully disclosed, so that shareholders will know where

their money is going, and citizens will know who is spending on the ads they're seeing.

And then he goes on for several pages to talk about how important it is to have that sort of disclosure, how people need to know where the money is coming from so that it isn't just some unknown group giving, but they have a sense of what the interests are being the spending.

So he obviously thought that all of this spending was going to be disclosed. That's a little bit of a mystery because even in 2010, when that decision came down, there had been a fair amount of stories about spending by 501(c)(4)s and (c)(6)s and how that money wasn't disclosed. But they also hadn't had any real experience here.

They appear not to have been aware of the details of some of the FEC's regulations and enforcement actions, where the commission has not enforced the existing spending laws. And this is a case—that's an element of the case. It was not briefed to the Supreme Court.

You may recall that one of the things about Citizens United is that it was really on a rush schedule. It was a special case with its own day of oral argument, and there a lot of aspects that were not considered when the court was saying do corporations have a right as people, as persons, to make this independent expenditures. So the court assumed and stated that there would be full disclosure, when, in fact, that's not how the system is working. And I think that has to be a big surprise to Justice Kennedy who wrote that.

GROSS: So let's talk about where the FEC, the Federal Election Commission, comes in. You used to serve on the commission. Part of its job is to hold candidates and PACs accountable. How good of a job has it been doing?

POTTER: Well, it's had its critics for years. One of the reasons I joined the commission is that as a lawyer in private practice I was frustrated by the commission. I thought it wasn't being very effective or very efficient. And I thought, well, this is an opportunity to improve the way the agency operates.

However, the criticism the commission is really changed in recent years—because people used to say the commission was ineffective or disorganized. Now the complaint is the commission is again, and again, and again deadlocked and unable to act at all.

There are three—effectively—Republicans, three Democrats on the commission. It takes four votes to do anything. And the three Republicans currently on the commission do not appear to believe that the commission should be a regulator of spending in elections. They are largely deregulatory in philosophy. They opposed or have criticized McCain-Feingold, the law that they're supposedly enforcing. And what we're seeing is a split on the commission between those commissioners who want to enforce the law and those who say it would be wrong to do so or that it would crimp speech.

The result of that is the commission is essentially now missing in action. It is not a watchdog because it's sitting there tied up, unable to move by this 3–3 deadlock in a whole range of important cases.

GROSS: So, if the FEC isn't serving as a watchdog is anybody else, or is any other group?

POTTER: No. I think that's our current problem. The commission should be doing that. That's the role that Congress has assigned it—and it is not. By the way, five of the six commissioners have—are serving expired terms. They shouldn't be there. But the President has to nominate successors and Congress has to confirm them. And that hasn't happened.

GROSS: You—the President hasn't even nominated people? Or that Congress just hasn't confirmed them?

POTTER: He nominated one person who then withdrew. There are no nominees now for any of the five seats that are supposed to be vacant. And therefore, Congress hasn't done anything because there's no one to do anything with.

The White House says privately that they haven't done anything because the Republicans' leadership on the Hill has not cooperated in helping them nominate names, identify Republicans who could serve. But either way, we have a deadlock on the commission, a deadlock in the nomination process between the White House and Congress, and a commission that is unable to function.

At the same time, the IRS, which could be dealing with these C4s and the disclosure issues we've been talking about—the political spending—has visibly done nothing. There is no sign that it is involved. In fact, they backed off recently when some of their agents—professional career people—were asking questions about C4s and their tax status and contributions to them, a number of Republican members of Congress objected and the IRS commissioner announced that it was all a mistake, they would no longer ask those questions of the C4s. So the IRS seems to be out of action, afraid, I think, of political controversy. That leaves the Justice Department.

There two problems with that. One is, of course, it's part of the Obama administration, so that anything it does runs the risk of being seen as political and anti-Republican. And the other problem is that its jurisdiction is only if there is an actual criminal act. The FEC is supposed to enforce the laws, unless the violation is so bad that it is what the legal standard is knowing and willful—that you knew you were breaking the law and you did it anyway. And in that case, the Justice Department has jurisdiction. So that's a much higher standard for them to get involved.

GROSS: So, let's get to like the bottom line of all this. Obviously, you think this kind of unlimited and often opaque campaign spending that is in a lot of ways actually kind of coordinated with the candidates, is not a good thing for the electoral process. That's your point of view, otherwise you wouldn't be opposed to this kind of unlimited spending. So make the case for us. What's the problem? I mean, why do you think that individuals and corporations shouldn't be allowed to give as many millions as they want?

POTTER: Well, first . . .

GROSS: And anonymously or by name.

POTTER: Right. I mean first my initial objection as a lawyer is that I don't think what we're seeing now is what the law provides. I don't think it's what the Supreme Court was doing in the Buckley case and the Citizens United case. They didn't expect this coordina-

tion and this lack of disclosure. It's not what Congress provided for in McCain-Feingold in the parts that are still good law and should be enforced. So I think as what sometimes gets called an officer of the court, a person who is supposed to, as a lawyer, focus on public policy, I have a problem with the fact that what we're seeing now is not what the law says we should be seeing.

Beyond that, when we look to the future and I think the only way we're going to get out of this mess is to have Congress again write a new law after this election cycle. The question of should you have unlimited, undisclosed spending in a democracy is the question on the table, because that's what we're heading to unless we change.

I don't think that is healthy. It seems to me that you do have a real problem here of corruption. It becomes effectively bribery if you can give an unlimited amount to a candidate for office, who then acts on your legislative agenda—either to vote for legislation you want or to sink legislation you don't want. If that is secret, so that that money is given and the donor or the spender knows it and the beneficiary knows it but the public doesn't, I think you will see more mistrust of the political system.

We run a risk here of citizens feeling that their vote doesn't count because the Members of Congress are going to do what the major donors tell them to do. We run a risk that people will think their small contribution doesn't count because candidates are going to get millions of dollars from people who can give that kind of money, not the average small donor. That, to me, is not how a democratic system works.

GROSS: Trevor Potter, thank you so much for talking with us.

POTTER: Thanks very much.

GROSS: Trevor Potter is the founding president of the Campaign Legal Center and is Stephen Colbert's lawyer, advising Colbert on his superPAC.

[From Roll Call, June 20, 2012]

MITCH MCCONNELL VS. HIMSELF ON DISCLOSURE ISSUES

(By Norman Ornstein)

"I think you'd have to go back to Richard Nixon to find the last time you had group of people both through the campaign and through the power of the federal government really trying to harass and silence critics, and I think they need to be called on it."

That was Senate Minority Leader Mitch McConnell (R–Ky.) talking to Fox News in his renewed public campaign against disclosure of contributors to campaigns and to groups trying to influence lawmakers and elections. It was startling to me: the Nixonian McConnell accusing proponents of transparency of Nixonian behavior. This may set a new standard for chutzpah.

McConnell's comment was only part of his efforts; the central focus last week was his ballyhooed speech in ostensible support of the First Amendment at the American Enterprise Institute.

Regrettably, I was on an airplane when McConnell gave his speech. Had I been there, I would have tried to ask the first question. (It would not be the first time I would have asked a question

that cut against the grain at AEI; commendably, no one at my institution has ever tried to dissuade me or muzzle me.)

My question, not surprisingly, would have started with McConnell's own eloquent words repeated many times in the years leading up to the passage of the Bipartisan Campaign Reform Act in 2002, his mantra about campaign finance reform for much of his career. Namely, that Republicans are in favor of disclosure, that disclosure is the core of campaign finance reform, including disclosure for so-called electioneering communications or "issue advocacy" that is clearly designed to influence election outcomes. It would have included McConnell's full-throated support for more and more disclosure during the debate on law. It would have asked what has changed—except the law and the presumed advantage McConnell and his partisans now have with huge and secret contributions to super PACs, 501(c)(4)s and other shadow and sham nonprofits set up to change election outcomes.

McConnell now sings a different tune, one that complains about the criticism that the poor billionaires and corporations face when their contributions to these shadow groups are disclosed.

His comment to Fox was a complaint about agencies such as the IRS enforcing their regulations and holding accountable organizations that manipulate the law to avoid lawful disclosure. In complaining that this is Nixonian, McConnell was trying to intimidate the IRS (which has long been too timid about cracking down on groups that have flaunted their clear political goals while claiming status as nonprofits that claim only modest involvement in political activities).

If I had been able to follow up, I would have included a reference to the Supreme Court's full-throated support for full disclosure—8–1 even in Citizens United—and to Justice Antonin Scalia's statement in another case about the need for civic courage, for people to stand up in public for their political acts. As Scalia wrote, "Harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance."

And I would have asked why it is appropriate, even good, for powerful corporations and wealthy individuals to hide their deep involvement in political campaigns, leaving voters in the dark about who is paying millions for attack ads.

McConnell is not the only hypocrite here, although he wins the title of Hypocrite-in-Chief. When the DISCLOSE Act came up in the Senate in the aftermath of Citizens United, it passed the House and got 59 votes in the Senate—but died on a filibuster because not a single Republican, including those who had supported campaign reform, was willing to support it.

Now a stripped-down version is coming up—simply requiring disclosure of the name of anyone who gives more than $10,000 to a group to influence elections. There is no excuse for anyone who has voiced support for disclosure—even if they have not expressed the support as expansively as McConnell did in 2007, when he said, "I think what we ought to do is we ought to have full disclosure, full disclosure of all the money that we raise and how it is spent"—to vote against this bill.

McConnell's anti-disclosure stance has extended beyond his opposition to this bill. He is the driving force behind the failure of the

Federal Election Commission, despite repeated rebukes by the courts, to enforce the laws on the books and court rulings about disclosure. Far more often than not, it is the three Republicans virtually handpicked by McConnell who have stymied the FEC from doing its job.

Once, after I wrote a column criticizing FEC Commissioner Donald McGahn, McConnell wrote a pious rejoinder, saying that his oath was to enforce not just the laws passed by Congress but the rulings of the Supreme Court—except, apparently, when he doesn't like what the court has written. Thus, McGahn and his posse have repeatedly flouted the 8–1 Supreme Court position on disclosure.

The DISCLOSE Act is a modest step to bring us the kind of system that McConnell used to lionize. It will likely fail on a filibuster. And that should at least open up the way for another action by President Barack Obama, using his recess appointment authority to replace McGahn and four other commissioners whose terms have expired to bring back a commission that will do its job and counter the real Nixonian actions, evasion of disclosure.

[From OpenSecretsblog, May 18, 2012]

MYSTERY HEALTH CARE GROUP FUNNELED MILLIONS TO CONSERVATIVE NONPROFITS

(By Viveca Novak and Robert Maguire)

A secretive, well-funded group whose name gives the misleading impression that it is solely concerned about health care gave more than $44 million in 2010 to other tax-exempt groups, many of which spent millions on TV ads attacking Democrats running for the House and Senate and have begun spending for the same purpose this year.

None of the groups—including eight of the most politically active nonprofits in 2010—disclose their donors, and the role of the Center to Protect Patients' Rights (CPPR) in funding them has not previously been reported.

Based in Arizona, CPPR provided large grants to a cluster of well-known conservative organizations that operate under section 501(c)(4) of the tax code, which classifies them as "social welfare" groups and allows them to keep their funding sources from public view. Politics is not supposed to be their primary purpose, although critics say many of the organizations have stretched the rules too far.

American Future Fund received the largest grant from CPPR, a total of $11.7 million for "general support." That amount exceeded the nearly $10 million the group told the Federal Election Commission it spent supporting or opposing Democratic candidates in ads in the midterm elections ("independent expenditures") or broadcasting slightly less explicit appeals close to election day ("electioneering communications"). In fact, the gift was more than half of the $23.3 million the group raised all year.

American Future, which is based in Iowa, ran a series of hard-hitting ads against Democratic candidates around the country in 2010 that left little doubt where the group stood, even when the ads didn't refer to the election. "With the biggest tax cut in Amer-

ican history looming, [Bruce] Braley was the deciding vote to adjourn the house. Instead of fighting for lower taxes, Braley went home," one ad, which ran in October 2010, said of the Iowa Democrat. "Tell Braley: Don't vote to raise taxes on Iowa families."

LAYERS OF ANONYMITY

The donors to the Center to Protect Patient Rights are almost entirely unknown. Such tax-exempt organizations must detail the groups to whom they gave grants, but not the sources of their own funds. A small grant of $200,000 came to CPPR from American Action Network, yet another 501(c)(4), according to the Form 990 tax return that American Action filed with the Internal Revenue Service this week.

And if its donors are unknown, so is much else about CPPR. According to its own 2010 tax return, which was filed last November, it is run by Sean Noble, who is listed as its director, president and executive director. Noble describes himself on his Twitter account as a "PR/Political consultant, conservative strategist/operative, former GOP Hill chief of staff, blogger, proud father, fighting for liberty." Noble was chief-of-staff to former Republican Rep. John Shadegg of Arizona, for whom he worked for 13 years, and since then has worked as a political consultant and in public relations.

Noble took no salary from CPPR, but his firm, Noble Associates, was paid $340,000 by the group for "management services." Noble was also paid $10,000 to lobby for the group.

He is currently managing partner of DC London Inc., a political consulting firm that offers robo-calling and other services. CPPR's other director and secretary is Courtney Koshar, an anesthesiologist in the Phoenix area.

The organization's mission, as listed on the tax form, is "Building a coalition of like-minded organizations and individuals, and educating the public on issues related to health care with an emphasis on patients rights. Engaging in issue advocacy and activities to influence legislation related to health care."

Noble did not return our calls seeking comment. But in a piece last year, Politico described Noble as a "Koch operative," referring to the wealthy conservative brothers from Koch Industries who have been instrumental in funding a conservative network of groups. Open Secrets Blog has been unable to confirm the Koch connection independently.

Adding to the confusion is the fact that CPPR's name is almost exactly the same as that of another group, the Coalition to Protect Patients' Rights, a group that organized lobbying efforts against health care overhaul proposals being debated in Congress in 2009. And CPPR gave the Coalition $205,000 in 2010. Further, the records for both groups were listed as being stored at the same Glendale, Ariz., address by a woman who describes herself as an employee of DCI Group, a lobbying firm practiced in manufacturing "grassroots" campaigns for the tobacco industry and others that has handled public relations for the Coalition.

But the Coalition's spokesman, physician and lawyer, Donald Palmisano, told Open Secrets Blog he'd never heard of the other group, as did a publicist with DCI Group.

The second-largest grant from CPPR, $5.6 million, went to Americans for Limited Government, also for "general support," as were all the CPPR gifts. That amounted to more than half the group's $9 million budget for 2010. The creation of libertarian real estate mogul Howard Rich, Americans for Limited Government distributes money to its own large network of 501(c)(3) and (c)(4) organizations. One such group, Colorado at Its Best, in turn funded a group called Clean Government Colorado in 2008, which backed a ballot initiative that critics said would limit the ability of public employees' unions to make political contributions. In 2010, ALG funded a group called Alaskans for Open Government, which in turn provided money to another group backing an "anti-corruption" ballot initiative. The Alaska group eventually ran into trouble over failing to disclose its own sources of funding.

Americans for Job Security received $4.8 million from CPPR. That group, which is a 501(c)(6) business association under the tax code, spent about $9 million in the 2010 elections expressly attacking Democrats and running electioneering ads, according to Center for Responsive Politics figures. It has a history of running attacks on Democrats dating back to the late 1990s.

Other beneficiaries of CPPR funding included anti-tax maven Grover Norquist's Americans for Tax Reform, which received $4.2 million and spent about that amount on independent expenditures in 2010, almost all against Democrats; Americans for Prosperity, which has strong ties to Charles and David Koch and which received close to $2 million from CPPR and spent a little less than that on negative issue ads mentioning candidates close to the election; and Club for Growth, which received $690,000 from CPPR and spent more than $8 million on independent expenditures against Democrats in 2010, as well as against some Republicans in primary contests.

All these groups may have spent more—and in some cases definitely did so—on political ads that escaped reporting requirements. For instance, according to its 990 form, American Future spent a total of $21.4 million in 2010, of which $14.7 went to "media services," indicating possible spending on ads that was greater than the $10 million it reported to the Federal Election Commission.

This table shows all the recipients of CPPR grants in 2010:

Non-Profit	2010 CPPR Grant
American Future Fund	$11,685,000
60 Plus Assn	8,990,000
Americans for Limited Government	5,585,000
Americans for Job Security	4,828,000
Americans for Tax Reform	4,189,000
Revere America	2,300,000
Americans for Prosperity	1,924,000
US Health Freedom Coalition	1,430,000
Susan B Anthony	1,025,000
Club for Growth	690,000
Americans United for Life Action	559,000
The Institute for Liberty	457,000
American Energy Alliance	250,000
Coalition to Protect Patient Rights	205,000
Freedom Vote	200,000
Protect Your Vote	100,000
Hispanic Leadership Fund	47,000
Americans United for Life	45,000

Non-Profit	2010 CPPR Grant
Tea Party Patriots	30,000
Common Sense Issues Coalition	25,000
Common Sense Issues	10,000
Concerned Women 4 America	4,500

Another recipient of CPPR's money is Freedom Vote, a 501c4 based in Columbus, Ohio that was created by Republican operatives in 2010 to finance get-out-the-vote operations usually done by the party. The group had a total income of $1.3 million that year, according to its 990; $200,000 of it came from CPPR. Another $900,000 came from Crossroads GPS.

Jim Nathanson, who identified himself as Freedom Vote's executive director, told Open Secrets Blog that the group is still active and planning on participating in the 2012 election, but said the organization is "still in the planning, formulating stage. We are doing things, but nothing is finalized." Asked whether the group is fundraising, Nathanson said it is, but wouldn't go into details. "It probably wouldn't be appropriate to say anything, simply because things are not fully developed."

LINKS BETWEEN GRANTEES

The tax documents of American Action, the Center to Protect Patients Rights and some other politically active groups—especially on the Republican side, where such groups are more prevalent—make it plain that a number of deep-pocketed donors are willing to help finance tax-exempt groups that spend at least a portion of their resources attacking the other party. Many seem to prefer remaining anonymous and hence prefer making gifts to c(4)s rather than super PACs. Each super PAC must disclose its donors.

Some of the groups receiving CPPR funds did, in fact, concentrate on health care, or at a minimum on opposition to the Patient Protection and Affordable Care Act signed into law by President Obama on March 23, 2010. One of those, the US Health Freedom Coalition, was given $1.4 million by CPPR and bankrolled a proposition on the Arizona ballot in 2010 rejecting the requirement in the federal health care overhaul that all individuals have health insurance. (It passed.)

Several of the recipients of funds from CPPR are anti-abortion groups: the Susan B Anthony List, Americans United for Life and Americans United for Life Action received a total of $1.85 million. Another $35,000 went to two arms of an organization called Common Sense Issues, which had used controversial "push-polling" to help former Arkansas Gov. Mike Huckabee's presidential bid in 2008. In 2010, it asked candidates to sign a pledge to oppose taxpayer funding of abortion and ran ads in a number of House and Senate races.

Some of the recipients of CPPR's largesse are linked in another way: they use the same vendors. For instance, five of the groups, led by Americans for Limited Government and the American Future Fund, paid a total of about $7.5 million to a Phoenix firm called Direct Response for telecommunications and direct mail.

Mentzer Media made more than $25 million in 2010 from four CRRP grant recipients plus American Crossroads and Crossroads

GPS, the super PAC and 501(c)(4) linked to Karl Rove. The American Future Fund paid Mentzer the largest sum, $10 million.

Mentzer is being used this year by the pro-Mitt Romney super PAC Restore Our Future, and in 2004 made more than $18 million running the Swift Boat Veterans for Truth attacks on the war record of Democratic presidential candidate John Kerry.

Staff at the Democratic Congressional Campaign Committee were unaware of CPPR, though they are highly familiar with its grantees, many of which ran ads against the House candidates the DCCC was supporting in 2010. "Voters have a right to know who is behind the ads they see so they can evaluate the claims," said Deputy Executive Director Jennifer Crider, bemoaning the fact that some 501(c)(4) organizations are extremely active on the political front but, unlike other political organizations, don't have to release the names of their donors.

The DCCC's former chairman, Rep. Chris Van Hollen of Maryland, recently won a lawsuit challenging an FEC rule that allowed groups like those funded by CPPR to avoid disclosing their donors when they ran electioneering communications ads. This month an appellate court refused to stay the decision. It's unclear, though, what that means for disclosure in this cycle. There's evidence that groups have responded to the ruling by not running ads that fit the definition of electioneering communications.

APPENDIX B: DATA SOURCES

Chart 1

OUTSIDE SPENDING IN ELECTIONS

Through March 8 of Election Year

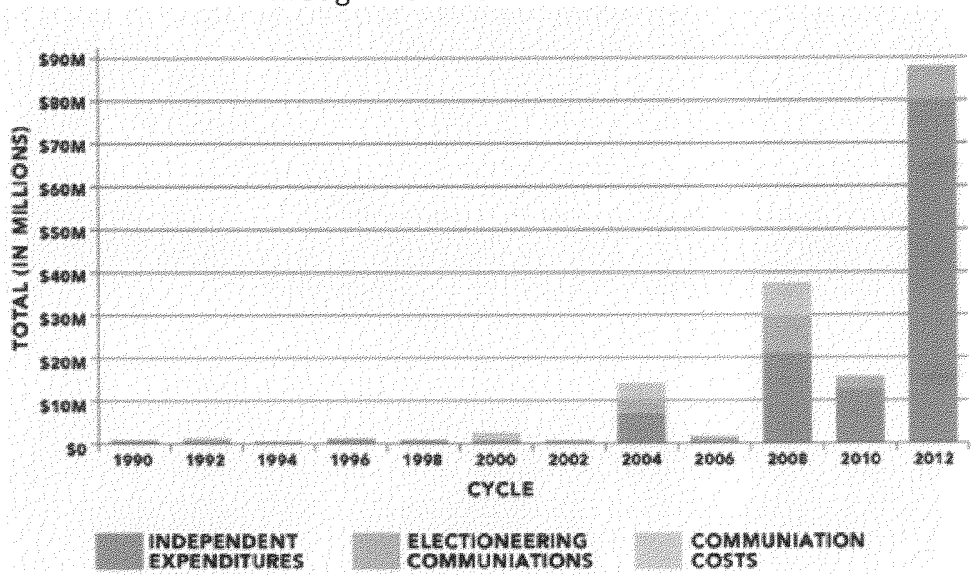


Chart produced by the Center for Responsive Politics, retrieved from Hasen, Richard, "The Numbers Don't Lie: If you aren't sure Citizens United gave rise to the super PACs, just follow the money", *Slate.com*, March 9, 2012 http://www.slate.com/articles/news_and_politics/politics/2012/03/the_supreme_court_s_citizens_united_decision_has_led_to_an_explosion_of_campaign_spending_.html

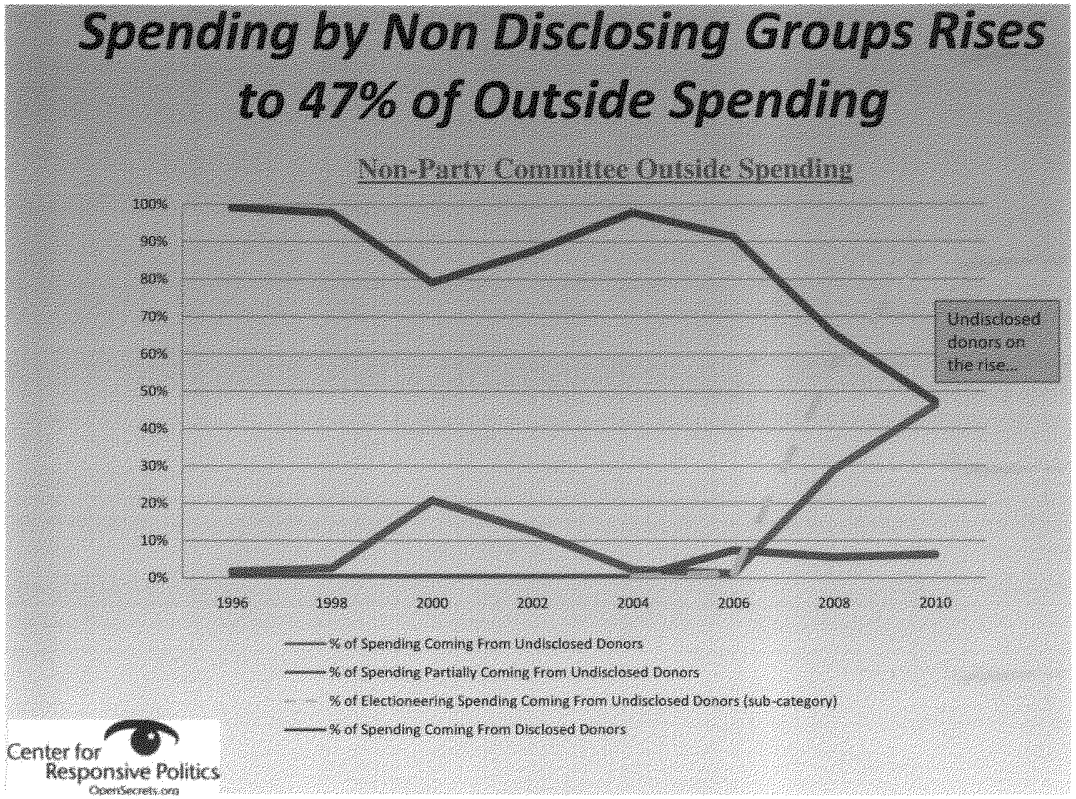
OUTSIDE SPENDING BY CYCLE
THRU MARCH 8TH OF ELECTION YEAR
EXCLUDING PARTY COMMITTEES

DATA SET

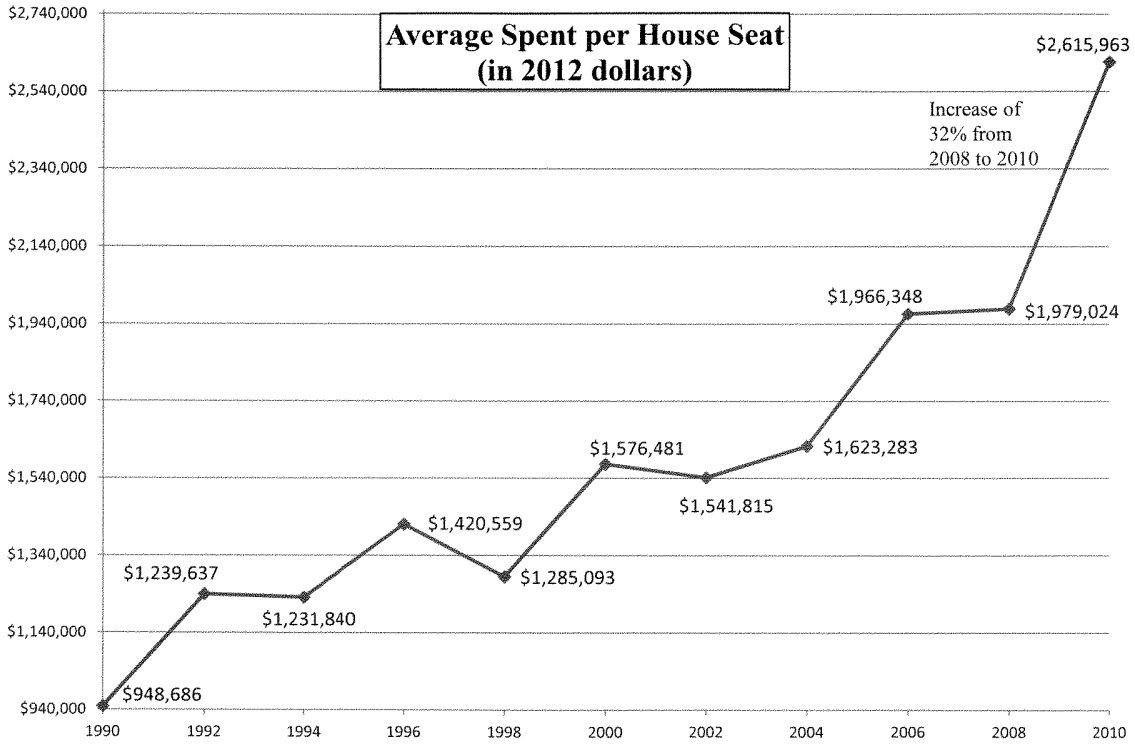
CYCLE	INDEPENDENT EXPENDITURES	ELECTIONEERING COMMUNIATIONS	COMMUNIATION COSTS	TOTAL
1990	$962,880	N/A	$99,259	$1,062,139
1992	$811,276	N/A	$740,755	$1,552,031
1994	$549,913	N/A	$130,488	$680,401
1996	$1,049,014	N/A	$366,584	$1,415,598
1998	$789,236	N/A	$262,287	$1,051,523
2000	$801,852	N/A	$1,814,238	$2,616,090
2002	$688,156	N/A	$170,151	$858,307
2004	$7,255,423	$3,326,613	$3,641,494	$14,193,530
2006	$1,223,466	$466,200	$142,198	$1,831,864
2008	$21,083,282	$8,729,874	$7,696,093	$37,509,249
2010	$12,825,737	$2,613,549	$436,787	$15,876,073
2012	$80,051,990	$7,873,896	$88,989	$88,014,875

Chart produced by the Center for Responsive Politics, retrieved from Hasen, Richard, "The Numbers Don't Lie: If you aren't sure Citizens United gave rise to the super PACs, just follow the money", *Slate.com*, March 9, 2012 http://www.slate.com/articles/news_and_politics/politics/2012/03/the_supreme_court_s_citizens_united_decision_has_led_to_an_explosion_of_campaign_spending_.html

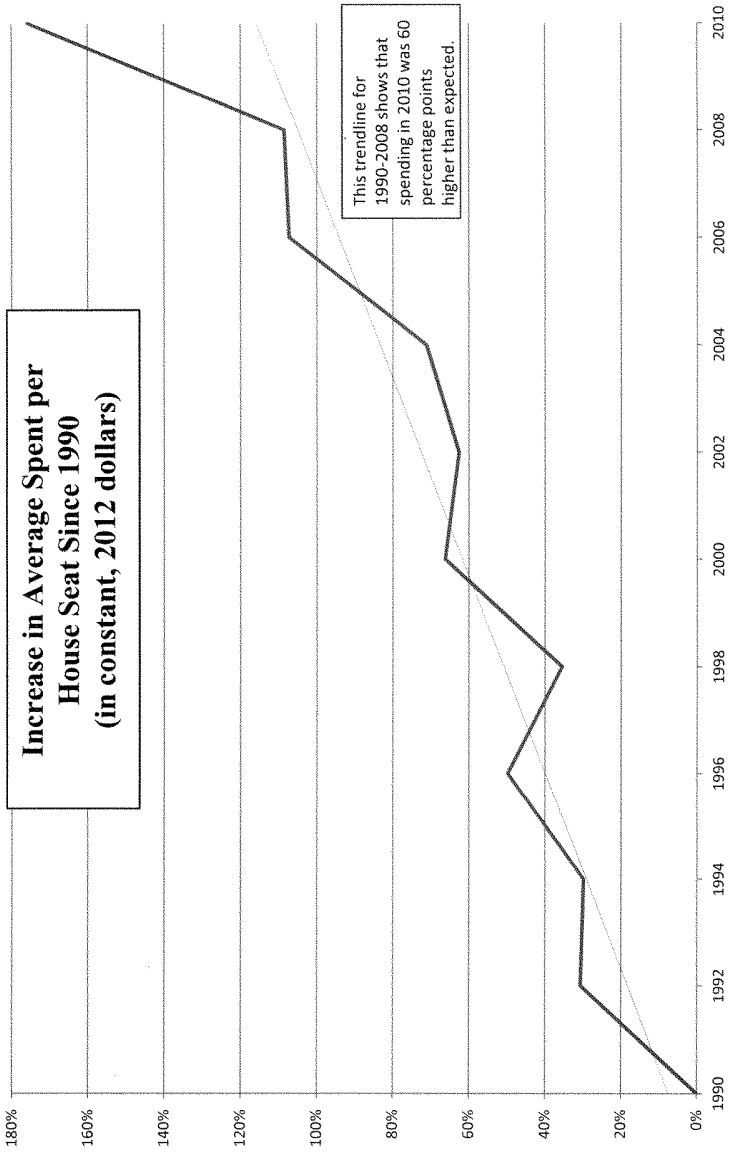
Chart 2


Spending by Non Disclosing Groups Rises to 47% of Outside Spending
Non-Party Committee Outside Spending
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
1996
1998
2000
2002
2004
2006
2008
2010
Undisclosed donors on the rise...
% of Spending Coming From Undisclosed Donors
% of Spending Partially Coming From Undisclosed Donors
% of Electioneering Spending Coming From Undisclosed Donors (sub-category)
% of Spending Coming From Disclosed Donors
Center for Responsive Politics
OpenSecrets.org

Union Money Accounted for 62 Percent of Liberal Outside Spending in 2010
Total Outside Spending by Liberal Groups
$180.00
$160.00
$140.00
$120.00
$100.00
$80.00
$60.00
$40.00
$20.00
$0.00
Millions
2004
2006
2008
2010
Non-Union Money
$100.31
$27.81
$72.49
$35.65
Union Money
$20.79
$10.89
$86.31
$59.55
*All $ amounts are in millions
**All numbers include independent expenditures and electioneering communications only
Center for Responsive Politics
OpenSecrets.org



Amounts derived from the Campaign Finance Institute (http://www.cfinst.org/data/pdf/VitalStats_t2.pdf) and the Center for Responsive Politics (http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2010).
Inflation calculated *via* the Bureau of Labor Statistics CPI Inflation Calculator (www.bls.gov/data/inflation_calculator.htm).



Amounts derived from the Campaign Finance Institute (http://www.cfinst.org/data/pdf/VitalStats_t2.pdf) and the Center for Responsive Politics (http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2010).
Inflation calculated *via* the Bureau of Labor Statistics CPI Inflation Calculator (www.bls.gov/data/inflation_calculator.htm).

SUPER PAC DONATIONS THROUGH 18 JUNE, 2012, TO SUPER PACS REPORTING AT LEAST $1M IN TOTAL RECEIPTS

[Accounting for 89.75% of total disclosed donations]

	Super PAC	Donors	Donations	Total Donated	Average Donation	Average per Donor
1	RESTORE OUR FUTURE, INC	602	752	$56,512,634.77	$75,149.78	$75,149.78
2	AMERICAN CROSSROADS	261	326	$29,884,896.20	$91,671.46	$91,671.46
3	WINNING OUR FUTURE	152	174	$23,809,014.33	$136,833.42	$136,833.42
4	PRIORITIES USA ACTION	334	405	$10,543,760.62	$26,033.98	$26,033.98
5	CLUB FOR GROWTH ACTION	597	790	$6,409,709.13	$8,113.56	$8,113.56
6	MAJORITY PAC	100	121	$6,114,774.36	$50,535.33	$50,535.33
7	WORKERS' VOICE	12	18	$5,908,363.73	$328,242.43	$328,242.43
8	HOUSE MAJORITY PAC	80	111	$5,881,363.59	$52,985.26	$52,985.26
9	AMERICAN BRIDGE 21ST CENTURY.	70	121	$5,872,747.72	$48,535.11	$48,535.11
10	MAKE US GREAT AGAIN, INC	60	66	$5,585,174.00	$84,623.85	$84,623.85
11	CONGRESSIONAL LEADERSHIP FUND.	38	42	$5,223,752.65	$124,375.06	$124,375.06
12	ENDORSE LIBERTY, INC	89	102	$3,570,296.27	$35,002.90	$35,002.90
13	NEA ADVOCACY FUND	3	5	$3,510,951.65	$702,190.33	$702,190.33
14	FREEDOMWORKS FOR AMERICA.	500	741	$3,302,311.66	$4,456.56	$4,456.56
15	OUR DESTINY PAC	24	37	$3,188,364.25	$86,172.01	$86,172.01
16	CAMPAIGN FOR PRIMARY ACCOUNTABILITY INC.	63	71	$2,869,667.00	$40,417.85	$40,417.85
17	COOPERATIVE OF AMER. PHYSICIANS IE COMMITTEE.	2	34	$2,556,100.94	$75,179.44	$75,179.44
18	NAT'L ASSOC. OF REALTORS CONGRESSIONAL FUND.	1	14	$1,810,778.00	$129,341.29	$129,341.29
19	TEXAS CONSERVATIVES FUND	21	21	$1,430,000.00	$68,095.24	$68,095.24
20	PLANNED PARENTHOOD VOTES.	7	10	$1,113,663.28	$111,366.33	$111,366.33
	Totals:	3,016	3,961	$185,098,324	$46,730.20	$61,372.12

The mean average donation reported to FEC during this cycle was for $23,947. The median donation was for $500.
Data courtesy of Federal Election Commission; Analysis and Aggregation by Mr. Gonzalez's Personal Staff.

THE MOST EXPENSIVE SEAT IN THE HOUSE: THE STATE OF OUR CAMPAIGN FINANCE SYSTEM

House Campaign Spending (In Constant 2012 Dollars)

Year	Average Spent per House Seat	Increase From Previous Year	% Δ Year-over-Year	Δ of 1990	Average Winner Spent	% Δ of 1990	Most Expensive Single Campaign	Increase From Previous Year	% Δ Year-over-Year	% Δ of 1990
1990	$948,686	.....	.....	0%	$715,303	0%	$2,996,907	.....	.....	0
1992	1,239,637	$290,951	30.67	31	888,790	24	8,886,573	$5,889,665.18	197	197
1994	1,231,840	−7,798	−0.63	30	798,888	12	4,057,667	−4,828,905.09	−54	35
1996	1,420,559	188,720	15.32	50	985,024	38	8,154,769	4,097,101.23	101	172
1998	1,285,093	−135,466	−9.54	35	915,356	28	10,665,625	2,510,856.03	31	256
2000	1,576,481	291,388	22.67	66	1,119,385	56	9,278,164	−1,387,460.26	−13	210
2002	1,541,815	−34,666	−2.20	63	1,145,282	60	10,392,436	1,114,271.20	12	247
2004	1,623,283	81,468	5.28	71	1,255,917	76	6,088,721	−4,303,714.96	−41	103
2006	1,966,348	343,065	21.13	107	1,622,323	127	9,231,153	3,142,432.16	52	208
2008	1,979,024	12,676	0.64	109	1,558,049	118	7,802,737	−1,428,415.41	−15	160
2010	2,615,963	636,938	32.18	176	1,514,858	112	12,268,240	4,465,502.46	57	309

Amounts derived from the Campaign Finance Institute (http://www.cfinst.org/data/pdf/VitalStats__.pdf) and the Center for Responsive Politics (http://www.opensecrets.org/bigpicture/elec__stats.php?cycle=2010).
Inflation calculated via the Bureau of Labor Statistics CPI Inflation Calculator (www.bls.gov/data/inflation__calculator.htm).

SUPER PAC DONATIONS FROM FED-CODED "ORGANIZATIONS" THROUGH 18 JUNE, 2012, TO SUPER PACS REPORTING AT LEAST $1M IN TOTAL RECEIPTS

	Super PAC	Corporate Donors	Corporate Donations	Total Corporate Donations	Average Corporate Donation	Average per Corp. Donor	Total Donations
1	RESTORE OUR FUTURE, INC.	84	95	$10,733,600.00	$112,985.26	$75,149.78	$56,512,634.77
2	AMERICAN CROSSROADS	25	30	8,727,569.60	290,918.99	91,671.46	29,884,896.20
3	WINNING OUR FUTURE	1	1	1,000.00	1,000.00	136,833.42	23,809,014.33
4	PRIORITIES USA ACTION	6	8	485,234.42	60,654.30	26,033.98	10,543,760.62
5	CLUB FOR GROWTH ACTION	2	44	90,457.63	2,055.86	8,113.56	6,409,709.13
6	MAJORITY PAC	12	14	471,680.36	33,691.45	50,535.33	6,114,774.36
7	WORKERS' VOICE	6	12	4,706,776.23	392,231.35	328,242.43	5,908,363.73
8	HOUSE MAJORITY PAC	80	111	5,881,363.59	52,985.26	52,985.26	5,881,363.59
9	AMERICAN BRIDGE 21ST CENTURY	9	37	1,202,319.24	32,495.11	48,535.11	5,872,747.72
10	MAKE US GREAT AGAIN, INC	17	19	1,867,000.00	98,263.16	84,623.85	5,585,174.00
11	CONGRESSIONAL LEADERSHIP FUND	4	8	75,252.65	9,406.58	124,375.06	5,223,752.65
12	ENDORSE LIBERTY, INC	7	7	12,500.00	1,785.71	35,002.90	3,570,296.27
13	NEA ADVOCACY FUND	3	5	3,510,951.65	702,190.33	702,190.33	3,510,951.65

14	FREEDOMWORKS FOR AMERICA	7	210	1,967,024.26	9,366.78	4,456.56	3,302,311.66
15	OUR DESTINY PAC	1	1	22,819.35	22,819.35	86,172.01	3,188,364.25
16	CAMPAIGN FOR PRIMARY ACCOUNTABILITY INC	7	7	131,000.00	18,714.29	40,417.85	2,869,667.00
17	COOP. OF AMER. PHYSICIANS IE COMMITTEE	2	34	2,556,100.94	75,179.44	75,179.44	2,556,100.94
18	NAT'L ASSOC. OF REALTORS CONG. FUND	*	*	*	*	*	1,810,778.00
19	TEXAS CONSERVATIVES FUND	5	5	265,000.00	53,000.00	68,095.24	1,430,000.00
20	PLANNED PARENTHOOD VOTES	3	6	3,663.28	610.55	111,366.33	1,113,663.28
	Totals:	281	654	42,711,313	65,307.82	151,997.56	185,098,324.15

N.B. ''Organization'' includes corporations including Yahoo! and Contran, LLC, as well as unions. E.g., 99.09% of donations to NEA Advocacy Fund came from three donations from NEA itself. ''Entity type is not a data element the FEC codes or validates,'' and these numbers reflect the filings by the Super PACs.

*The National Association of Realtors Congressional Fund disclosed 14 donations to FEC, each from ''Association of Realtors, National.'' However, as these were coded as coming from an individual rather than from an organization, they are not included here.

The mean average donation from an ''Organization'' reported to FEC during this cycle was for $44,593. The median donation from an ''Organization'' was for $2,543.

The mean average donation reported to FEC during this cycle was for $23,947. The median donation was for $500.

Data courtesy of Federal Election Commission; Analysis and Aggregation by Mr. Gonzalez's Personal Staff.

SUPER PAC DONATIONS FROM FEC-CLASSIFIED ORGANIZATIONS THROUGH 18 JUNE, 2012, TO SUPER PACS REPORTING AT LEAST 1M IN CORPORATE DONATIONS

[Accounting for 81.82% of total disclosed donations from organizations]

	Super PAC	Corporate Donors	Corporate Donations	Total Corporate Donations	Average Corporate Donation	Average per Donor
1	RESTORE OUR FUTURE, INC.	84	95	$10,733,600.00	$112,985.26	$127,780.95
2	AMERICAN CROSSROADS	25	30	8,727,569.60	290,918.99	349,102.78
3	WORKERS' VOICE	6	12	4,706,776.23	392,231.35	784,462.71
4	NEA ADVOCACY FUND	3	5	3,510,951.65	702,190.33	1,170,317.22
5	COOP. OF AMERICAN PHYSICIANS IE COMMITTEE	2	34	2,556,100.94	75,179.44	1,278,050.47
6	FREEDOMWORKS FOR AMERICA	7	210	1,967,024.26	9,366.78	281,003.47
7	MAKE US GREAT AGAIN, INC	17	19	1,867,000.00	98,263.16	109,823.53
8	HOUSE MAJORITY PAC	12	20	1,213,500.00	60,675.00	101,125.00
9	AMERICAN BRIDGE 21ST CENTURY	9	37	1,202,319.24	32,495.11	133,591.03
	Totals:	165	462	36,484,841.92	78,971.52	221,120.25

N.B. Organization Includes corporations including Yahoo! and Contran, LLC, as well as unions. E.g., 99.09% of donations to NEA Advocacy Fund came from three donations from NEA itself. ''Entity type is not a data element the FEC codes or validates'', and these numbers reflect the filings by the Super PACs.

Data courtesy of Federal Election Commission; Analysis and Aggregation by Mr. Gonzalez's Personal Staff.

SUPER PAC DONATIONS THROUGH 18 JUNE, 2012, TO SUPER PACS REPORTING AT LEAST %1M IN TOTAL RECEIPTS

[Accounting for 89.75% of total disclosed donations]

	Super PAC	Donors	Donations	Total Donated	Average Donation	Average per Donor
1	RESTORE OUR FUTURE, INC.	602	752	$56,512,634.77	$75,149.78	$75,149.78
2	AMERICAN CROSSROADS	261	326	29,884,896.20	91,671.46	91,671.46
3	WINNING OUR FUTURE	152	174	23,809,014.33	136,833.42	136,833.42
4	PRIORITIES USA ACTION	334	405	10,543,760.62	26,033.98	26,033.98
5	CLUB FOR GROWTH ACTION	597	790	6,409,709.13	8,113.56	8,113.56
6	MAJORITY PAC	100	121	6,114,774.36	50,535.33	50,535.33
7	WORKERS' VOICE	12	18	5,908,363.73	328,242.43	328,242.43
8	HOUSE MAJORITY PAC	80	111	5,881,363.59	52,985.26	52,985.26
9	AMERICAN BRIDGE 21ST CENTURY	70	121	5,872,747.72	48,535.11	48,535.11
10	MAKE US GREAT AGAIN, INC	60	66	5,585,174.00	84,623.85	84,623.85
11	CONGRESSIONAL LEADERSHIP FUND	38	42	5,223,752.65	124,375.06	124,375.06
12	ENDORSE LIBERTY, INC	89	102	3,570,296.27	35,002.90	35,002.90
13	NEA ADVOCACY FUND	3	5	3,510,951.65	702,190.33	702,190.33
14	FREEDOMWORKS FOR AMERICA	500	741	3,302,311.66	4,456.56	4,456.56
15	OUR DESTINY PAC	24	37	3,188,364.25	86,172.01	86,172.01
16	CAMPAIGN FOR PRIMARY ACCOUNTABILITY INC	63	71	2,869,667.00	40,417.85	40,417.85
17	COOPERATIVE OF AMER. PHYSICIANS IE COMMITTEE	2	34	2,556,100.94	75,179.44	75,179.44
18	NAT'L ASSOC. OF REALTORS CONGRESSIONAL FUND	1	14	1,810,778.00	129,341.29	129,341.29
19	TEXAS CONSERVATIVES FUND	21	21	1,430,000.00	68,095.24	68,095.24
20	PLANNED PARENTHOOD VOTES	7	10	1,113,663.28	111,366.33	111,366.33
	Totals:	3,016	3,961	185,098,324	46,730.20	61,372.12

The mean average donation reported to FEC during this cycle was for $23,947. The median donation was for $500.
Data courtesy of Federal Election Commission; Analysis and Aggregation by Mr. Gonalez's Personal Staff.

APPENDIX C: SUPPLEMENTAL MATERIALS

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
AARON SCHOCK, ILLINOIS
TODD ROKITA, INDIANA
RICH NUGENT, FLORIDA

PHILIP KIKO, STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
http://cha.house.gov

ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Ms. Bevin Albertani
Political Director
Laborers' Political League - Education Fund
905 16th Street
Washington, DC 20006

Dear Ms. Albertani:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC House Majority PAC, with your $350,000 amounting to 12% of their total $3,020,220 in contributions through January of this year. I would, therefore, like to invite your or someone else from the Education Fund to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

Your written testimony may be as long as you wish, but we will follow the practice of official hearings and I ask that you limit your oral remarks to five minutes. The purpose of this forum is to draw a clear picture of how current laws and regulations apply to campaign finance, how campaigns are now acting as a result, and what the future may or should hold, and I hope that you will engage with the Members who are asking question and with your fellow witnesses to ensure that we succeed.

If you should have any questions concerning this forum, how it will be conducted or how it differs from an official hearing, please feel free to contact Mr. Abboud *via* email or at (202) 225-2061.

I look forward to hearing your testimony at the forum on the important topic of campaign finance reform.

Sincerely,

Charles A. Gonzalez
Ranking Member
Subcommittee on Elections

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
AARON SCHOCK, ILLINOIS
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ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Ms. Virginia James
P.O. Box 60
Lambertville, NJ 08530-0060

Dear Ms. James:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC Club for Growth Action, with your $1 million amounting to 19% of their total contributions through January of this year. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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I look forward to hearing your testimony at the forum on the important topic of campaign finance reform.

Sincerely,

Charles A. Gonzalez
Ranking Member
Subcommittee on Elections

DANIEL E. LUNGREN, CALIFORNIA
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Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
http://cha.house.gov

ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Jeffrey Katzenberg
CEO
Dreamworks Animation
100 Universal Plaza
Building 5121
Universal City, CA 91608

Dear Mr. Katzenberg:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC Priorities USA Action, with your $2 million amounting to 32% of their total contributions through January of this year. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

Your written testimony may be as long as you wish, but we will follow the practice of official hearings and I ask that you limit your oral remarks to five minutes. The purpose of this forum is to draw a clear picture of how current laws and regulations apply to campaign finance, how campaigns are now acting as a result, and what the future may or should hold, and I hope that you will engage with the Members who are asking question and with your fellow witnesses to ensure that we succeed.

If you should have any questions concerning this forum, how it will be conducted or how it differs from an official hearing, please feel free to contact Mr. Abboud *via* email or at (202) 225-2061.

I look forward to hearing your testimony at the forum on the important topic of campaign finance reform.

Sincerely,

Charles A. Gonzalez
Ranking Member
Subcommittee on Elections

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
AARON SCHOCK, ILLINOIS
TODD ROKITA, INDIANA
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PHILIP KIKO, STAFF DIRECTOR

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JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Bob Perry
CEO & Owner
Perry Homes, Inc.
P.O. Box 34153
Houston, TX 77234

Dear Mr. Perry:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC Restore Our Future, Inc., with your $4 million amounting to 9% of their total contributions through January of this year. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Sheldon and Dr. Miriam Adelson
3355 Las Vegas Blvd. S.
Las Vegas, NV 89109

Dear Dr. & Mr. Adelson:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that your family, including your daughter Shelley Maye, has donated more than 80% of the $18.9 million given to the Super PAC Winning Our Future, with each of you contributing $7.5 million through January of this year. Especially in light of Mr. Adelson's having told Forbes magazine, "I'm against very wealthy people attempting to or influencing elections," I would like to invite you to testify at the forum, in written testimony or in person, about what you think of our current campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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Charles A. Gonzalez
Ranking Member
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ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Foster Friess
PO Box 9790
Jackson, WY 83002

Dear Mr. Friess:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC Red White and Blue Fund, with your $1.6 million amounting to 28% of their contributions through January of this year. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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Charles A. Gonzalez
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ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Harold Simmons
Contran Corporation
5430 Lyndon Baines Johnson Fwy
Suite 1700
Dallas, TX 75240-2620

Dear Mr. Simmons:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you, individually and through Contran Corporation, are the largest single donor to the $22.8 million in contributions to the Super PAC American Crossroads, with your $10 million individually and the $2 million from your corporation amounting to 28% of their contributions. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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Sincerely,

Charles A. Gonzalez
Ranking Member
Subcommittee on Elections

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ONE HUNDRED TWELFTH CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

April 13, 2012

Mr. Peter Thiel
President
Clarium Capital Management, LLC
1 Letterman Dr Bldg C Ste 400
San Francisco, CA 94129

Dear Ms. Thiel:

I will hold a forum on campaign finance reform on Wednesday, April 18, 2012, at 1:30 PM in room 1310 of the Longworth House Office Building. I hope to illuminate the significant changes that have occurred in our campaign finance environment over the past two years, particularly in light of the decisions in the 2010 cases of *Citizens United v. FEC* and *SpeechNow.org v. FEC*. While the forum will not be an official hearing of the Committee on House Administration, it is my sincere hope that the Committee Majority will be inspired to hold hearings of its own on this vital subject. Until then, I hope that this forum, with your participation, will lay a solid foundation.

I understand that you are the largest single donor to the Super PAC Endorse Liberty, Inc., with your $2.6 million amounting to 71% of their total contributions through January of this year. I would, therefore, like to invite you to testify at the forum, in written testimony or in person, about your views of the current state of our campaign finance system. If you should choose to accept this invitation, I ask that you alert Khalil Abboud (khalil.abboud@mail.house.gov) of the Committee staff as early as possible. We would be happy to make appropriate arrangements for anyone you might wish to bring with you. If you should have any questions or concerns about your testimony, Mr. Abboud should be able to assist you.

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Sincerely,

Charles A. Gonzalez
Ranking Member
Subcommittee on Election

[From the Honorable Chris Van Hollen (D–MD), June 24, 2010]

REMEMBER WHEN WASHINGTON REPUBLICANS SUPPORTED DISCLOSURE AND TRANSPARENCY?

WHAT HAPPENED???

Rep. John Boehner: "I think what we ought to do is we ought to have full disclosure, full disclosure of all of the money that we raise and how it is spent. And I think that sunlight is the best disinfectant." (NBC, Meet the Press Transcript, 02/11/2007)

Sen. Mitch McConnell: "We need to have real disclosure. And so what we ought to do is broaden the disclosure to include at least labor unions and tax-exempt business associations and trial lawyers so that you include the major political players in America. Why would a little disclosure be better than a lot of disclosure?" (The Hill, Campaign finance bill has GOP wary, 04/22/2010)

Rep. John Boehner: "The House is going to take up 527 legislation next week. And there may be several proposals on the floor in terms of how we rein in their activity. I think this was a gaping loophole in the McCain-Feingold campaign finance reform bill. I think it needs to be fixed. To have all of this unregulated campaign cash going to these organizations and allowing them to engage in campaign activities without any disclosure is—it's wrong. And so we've worked closely with Senator McCain. The House needs to deal with this, and we will next week." (Boehner Press Conference, 3/30/06)

Rep. John Boehner: "The 527s were created out of the bipartisan campaign finance reform, something that many of us foresaw, that we were pushing money out of a regulated system into an unregulated system. You know, most people wanted to get rid of soft money because they didn't think it was regulated, even though soft money had to be disclosed in terms of who gave it, what amounts, and how you spent it—and there were rules around how you could spend it. And when you look at what happened after campaign reform passed, these 527 organizations erupted. There is no disclosure of where their money comes from or how they spend it or what they do with it. And they're spending hundreds of millions of dollars trying to influence federal elections. And I believe that these organizations ought to be covered under the same kind of regulations that govern political parties." (Boehner Remarks, 3/16/06)

Rep. Vern Ehlers: "Republican Vernon J. Ehlers of Michigan, called 527s "a curse to the political process" that lacks accountability." (Congressional Quarterly, 6/29/05)

Rep. Eric Cantor: "Anything that moves us back towards that notion of transparency and real-time reporting of donations and contributions I think would be a helpful move towards restoring confidence of voters." (Newsweek, SCOTUS Ruling Spells Disaster for Political Transparency, 01/21/2010)

Sen. Lamar Alexander: "I support campaign finance reform, but to me that means individual contributions, free speech and full disclosure. In other words, any individual can give whatever they want as long as it is disclosed every day on the Internet. Otherwise, you restrict free speech and favor super-rich candidates—candidates with famous names, the media and special interest groups,

all of whom can spend unlimited money." (Washington Post, Presidential Candidate Lamar Alexander, 05/19/1999)

Sen. John Cornyn: "I think the system needs more transparency, so people can more easily reach their own conclusions." (McClatchy, What do both parties have in common? Wall Street donations, 04/25/2010)

Sen. John McCain: "This is not a partisan issue. It should not advantage one party over the other. What reform does is create transparency, equality, and participation, and inspire confidence in those we represent. The strength and real muscle in this fight lies with the American people. During the long battle in the Senate to pass campaign finance reform, we called on the American public to make their voices heard on Capitol Hill. They answered, and the impact was astounding." (Congressional Record, Speech on Bipartisan Campaign Reform Act, 02/04/2004)

Sen. Susan Collins: "Sen. Collins . . . believes that it is important that any future campaign finance laws include strong transparency provisions so the American public knows who is contributing to a candidate's campaign, as well as who is funding communications in support of or in opposition to a political candidate or issue." (The Hill, GOP senators avoid co-sponsoring campaign finance reform legislation, 04/20/2010)

Sen. Jeff Sessions: "I don't like it when a large source of money is out there funding ads and is unaccountable . . . To the extent we can, I tend to favor disclosure." (The Hill, Campaign finance bill has GOP wary, 04/22/2010)

Sen. Thad Cochran: "We are Senators with varying political views, but we agree that the public has a right to expect electronic filing and online disclosure of campaign finance records." (Roll Call, Four Senators Urge Expansion of Mandatory Electronic Filing, 09/12/2009)

Rep. Kevin McCarthy: "The best way, the fairest way, is greater transparency. Let people understand where it is going and what's happening." (Newsweek, SCOTUS Ruling Spells Disaster for Political Transparency, 01/21/2010)

Rep. Fred Upton: "But advocates of full disclosure say the groups skirt the law with barely concealed electioneering, such as messages that encourage viewers to call a certain lawmaker if they agree with the group's views. 'It's a gigantic loophole that needs to be closed,' said Rep. Fred Upton, R–Mich., a moderate who supports campaign finance reform." (Newport News Daily Press, 6/10/00)

Rep. David Dreier: "Well, let me just say at the outset, Ray, that I, I agree with him that we need to move ahead with campaign finance reform. I'm one who wants to empower the voters and have greater disclosure, that's really my priority when it comes to campaign finance reform." (NPR, 1/6/97)

Rep. David Dreier: "Well, the fact of the matter is George Bush has, in fact, reformed. He's reformed frivolous lawsuits, he's reformed education, he's reformed taxes, he's reformed patient protection. He's done all that as the governor of Texas. Now, there has not been a lot of attention focused on it, but that's something to which we can all look and be extremely proud. On the issue of campaign finance reform, he's been out there arguing vigorously for full

disclosure. He wants to make sure that we have parity established, if we eliminate soft money for both unions and businesses. And so, Yes, he's been reforming. He's been doing it and he's got proposals for when he gets to the White House that he wants us to move." (MSNBC, 2/15/00)

ANNENBERG PUBLIC POLICY CENTER CALCULATES DOLLARS SPENT BY FOUR HIGHEST SPENDING THIRD PARTY GROUPS ON DECEPTIVE TV ADS ATTACKING OR SUPPORTING REPUBLICAN PRESIDENTIAL CONTENDERS

For Immediate Release: April 27, 2012
Contact: Kathleen Hall Jamieson at *info@flackcheck.org* or 215–898–9400

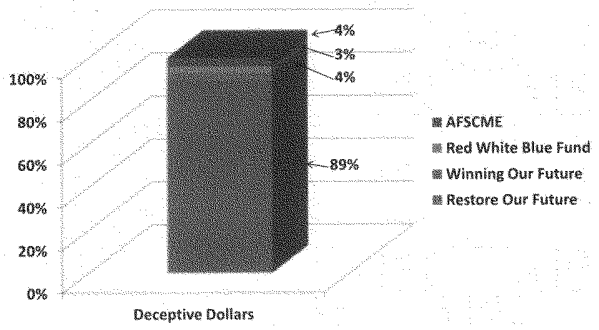
Drawing on spending estimates from Kantar Media CMAG and the fact checking of FactCheck.org, the Annenberg Public Policy Center has created a dollars in deception measure (DDs) calculating dollars spent on televised presidential third party ads by the groups calling themselves "The Red White and Blue Fund," "Winning Our Future,""Restore Our Future," and the American Federation of State, County and Municipal Employees (AFSCME).

From Iowa through Wisconsin, 23.3 million (56.7%) of the 41.1 million dollars were spent on 19 ads containing deceptive or misleading claims.

Most of the dollars in deception (an estimated $20.8 million) were aired by the pro-Romney super PAC "Restore Our Future" (estimated 8.8 million DDs—dollars in deception—attacking former House Speaker Newt Gingrich, an estimated 9.4 million DDs attacking former Pennsylvania Senator Rick Santorum, and an estimated 2.6 million in DDs making the case for the election of former Massachusetts governor Mitt Romney).

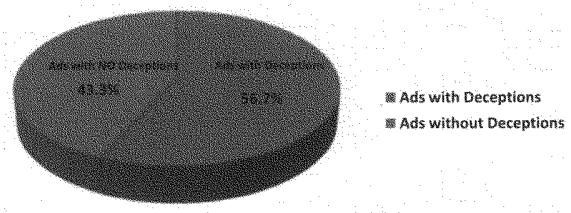
"Restore Our Future" outspent the pro-Gingrich and pro-Santorum super PACs by 20 to 1.

Deceptive Dollars by Group
(Iowa Caucuses through Wisconsin Primary)



Source: Kantar Media CMAG
April 5, 2012

Estimated Television Ad Spending By Third Party Groups: "Restore Our Future," "Red White and Blue Fund," "Winning Our Future," AFSCME
(Iowa Caucuses through Wisconsin Primary)



Source: Kantar Media CMAG
April 5, 2012

The study also found:

- The other three third party presidential groups spent an estimated 2.5 million DDs attacking former Massachusetts Governor Mitt Romney:
  - The pro-Santorum super PAC "Red White and Blue Fund" spent an estimated $685,050

- The pro-Gingrich super PAC "Winning Our Future" an estimated $917,670
- The pro-Democratic labor union American Federation of State, County and Municipal Employees an estimated $846,380

"Restore Our Future" spent DDs against Gingrich and Santorum on such deceptions as:

- "Gingrich not only teamed up with Nancy Pelosi on global warming, but together they co-sponsored a bill that gave $60 million a year to a U.N. program supporting China's brutal 'One Child' policy." (est. $2,394,813)
- Two versions of a claim against Santorum:
  - "Santorum voted to let convicted felons vote." Ad shows visual of men walking in orange prison jumpsuits, suggesting felons currently serving their time would be allowed to vote. (est. $4,849,010)
  - "With your values, how would you have voted? Would you have voted to let convicted violent felons regain the right to vote? Rick Santorum voted 'yes,' joining Hillary Clinton." Ad shows visual of men walking in orange prison jumpsuits, suggesting felons currently serving their time would be allowed to vote. (est. $3,879,830)

The pro-Santorum super PAC "Red White and Blue Fund" made this deceptive claim:

- "Romney left Massachusetts $1 billion in debt." (est. $603,140)

The pro-Gingrich super PAC Winning Our Future made the following deceptive claim against Romney:

- "Romneycare costs spiraled out of control, hiking premiums squeezing household budgets." (est. $412,530)

The amounts spent on television ads advancing the deceptive claims (when multiple misleading claims appeared in the same ad, the total spent airing the ad is apportioned by claim):

- "While Romney was a director at the Damon Corporation, the company was defrauding Medicare of millions." Ad shows visual of Mitt Romney morphing into Florida Governor Rick Scott, who was accused of Medicare fraud, while Romney was not, with text and voiceover saying: "Corporate Greed, Medicare Fraud. Sound Familiar?" (AFSCME, est. $423,190)
- "The company was fined $100 million, but Romney, himself, made a fortune." Ad shows visual of Mitt Romney morphing into Florida Governor Rick Scott, who was accused of Medicare fraud, while Romney was not, with text and voiceover saying: "Corporate Greed, Medicare Fraud. Sound Familiar?" (AFSCME, est. $423,190)
- "Romney supervised a company guilty of massive Medicare fraud" Visual in ad called "Blood Money" pastes the text, "ILLEGAL ACTIVITY . . . UNDER ROMNEY'S NOSE." A shorter version of the ad pastes the text, "Company (in small print) GUILTY OF MASSIVE MEDICARE FRAUD (in large, bold print)" over Romney's face, and pastes the text, "ILLEGAL ACTIVITY" over an image of Romney. ("Winning Our Future," est. $325,980)

- "Romney left Massachusetts $1 billion in debt." ("Red White and Blue Fund," est. $603,140)
- "Meet the Real Mitt Romney: Supported the Wall Street Bailout, putting Americans trillions in debt" ("Red White and Blue Fund," est. $81,910)
- "Romneycare costs spiraled out of control hiking premiums, squeezing household budgets" ("Winning Our Future," est. $412,530)
- "[Romney] thinks judges can overrule parents on abortions." ("Winning Our Future," est. $179,160)
- "Gingrich not only teamed up with Nancy Pelosi on global warming, but together they co-sponsored a bill that gave $60 million a year to a U.N. program supporting China's brutal One Child' policy." ("Restore Our Future," est. $2,394,813)
- "Newt was fined $300,000 for ethics violations" ("Restore Our Future," est. $2,440,769)
- "Gingrich took $1.6 million dollars from Freddie Mac just before it helped cause the economic meltdown" ("Restore Our Future," est. $2,211,690)
- "With your values, how would you have voted? Would you have voted to let convicted violent felons regain the right to vote? Rick Santorum voted yes,' joining Hillary Clinton." Ad shows visual of men walking in orange prison jumpsuits, suggesting felons currently serving their time would be allowed to vote. ("Restore Our Future," est. $3,879,830)
- "Santorum voted to let convicted felons vote." Ad shows visual of men walking in orange prison jumpsuits, suggesting felons currently serving their time would be allowed to vote. ("Restore Our Future," est. $4,849,010)
- "While Newt was speaker, earmarks exploded." Ad shows on-screen text: "While Newt Was Speaker, Earmarks Nearly Doubled To $14.5 Billion." Fact checking found this figure to be inaccurate. ("Restore Our Future," est. $1,255,480)
- "As speaker, Gingrich supported tax payer funding of some abortions." ("Restore Our Future," est. $152,237)
- "On the economy, Rick Santorum says, I don't care what the unemployment rate's gonna be.'" ("Restore Our Future," est. $696,990)
- "Freddie Mac helped cause the economic collapse, but Gingrich cashed in. Freddie Mac paid Newt $30,000 an hour, $1.6 million." ("Restore Our Future," est. $325,583)
- "[Romney] turned a deficit into a surplus without raising taxes." ("Restore Our Future," est. $2,486,785)
- "[Mitt Romney] took over a state facing huge deficits, and he turned it around without raising taxes, vetoing hundreds of bills." ("Restore Our Future," est. $154,765)

To see a video release illustrating these findings and an analysis of what is deceptive about each of these claims, click here to go to FlackCheck.org's "Stand by Your Ad" deception log.



Presidential Ads 70 Percent Negative in 2012, Up from 9 Percent in 2008

May. 2, 2012 by efowler

Super PACs Sponsor Bulk of Presidential Ads; Obama, Crossroads GPS Battle in Same States

(MIDDLETOWN, CT) – The 2012 presidential race is shaping up to be an overwhelmingly negative one, much more negative than the 2008 contest to date. As Table 1 shows, 7 out of 10 of the ads aired in this year's presidential contests have been negative—that is, they mentioned an opponent. This compares to fewer than 1 in 10 ads aired during the 2008 presidential race up to this point that were negative.

Table 1: Tone of Ads in Presidential Race (2008 and 2012)*

2008	Negative	Positive
Candidate	8.6%	91.4%
Interest Group	25.2%	74.8%
Party	-	-
Total	*9.1%*	*90.9%*

2012	Negative	Positive
Candidate	52.5%	47.5%
Interest Group	86.0%	14.0%
Party	2.2%	97.85%
Total	*70.0%*	*30.0%*

*Totals are from 1/1/2007 through 4/22/2008 and from 1/1/2011 through 4/22/2012. Numbers include all presidential advertising on broadcast television and national cable.

CITE SOURCE OF DATA AS:

Kantar Media/CMAG with analysis by the Wesleyan Media Project

"One reason the campaign has been so negative is the skyrocketing involvement of interest groups, who have increased their activity by 1100 percent over four years ago" said Erika Franklin Fowler, co-director of the Wesleyan Media Project. "But we cannot attribute the negativity solely to outside groups. Even the candidates' own campaigns have taken a dramatic negative turn."

Interest group airings, though few in 2008, were overwhelmingly positive (75 percent) in that year compared to only 14 percent positive this year. Candidate airings, which made up the bulk of the airings in 2008, were only 9 percent negative in 2008. So far in this election cycle more than half of the ads sponsored by candidates (53 percent) have been negative.

Table 2 shows that the total number of presidential ads (through April 22) was just over 200,000 airings on broadcast television and national cable. Candidate-sponsored ads, which made up 96.6

percent of the total airings in 2008, declined to just over a third (35.8 percent) of the total this year. Making up for most of the difference are outside groups (including Super PACs) who have sponsored almost 60 percent of the ads aired this year, compared to just 3 percent of ad airings in 2008. An estimated $112M has been spent to date on 207,000 ads compared to $190M spent on just under 300,000 ads in 2008. Much of this decline in spending and ad volume is due to the lack of a nomination contest on the Democratic side this year.

"Such levels of outside group involvement in a presidential primary campaign are unprecedented," said Travis Ridout, co-director of the Wesleyan Media Project. "This is truly historic. To see 60 percent of all ads in the race to-date sponsored by non-candidates is eye-popping," he added.

Table 2: Advertising in 2012 Presidential Race

Year		Candidate	Interest Group	Party	Total
2008	Ads Aired	289,622	10,062	0	299,684
	Row %	96.64%	3.36%	0.00%	100.00%
	Est. Cost	$183.4M	$6.3M	$0	$189.6M
2012	Ads Aired	74,267	123,062	9,897	207,226
	Row %	35.80%	59.40%	4.80%	100.00%
	Est. Cost	$28.1M	$77.5M	$6.1M	$111.7M
% volume increase		-74.36%	1123.04%		-30.85%
% spending increase		-84.68%	1139.12%		-41.09%

*Totals are from 1/1/11 through 4/22/12. Amounts include all presidential advertising on broadcast television and national cable.

CITE SOURCE OF DATA AS:

Kantar Media/CMAG with analysis by the Wesleyan Media Project

Table 3 displays the top sponsors of general election advertising spots. Crossroads GPS has aired nearly 17,000 (mostly anti-Obama) spots. This compared to 10,500 spots from the Obama campaign and 9,842 spots from the Democratic National Committee. Americans for Prosperity, another Republican group, has aired over 7,000 ads. General election advertising so far has favored the GOP at a ratio of 1.31:1, with 33,420 anti-Obama, pro-Republican spots aired compared to 25,516 anti-Republican, pro-Obama spots aired.

Table 3: Top General Election Ad Spenders

Group	Nbr Ads	Est. Spending	Party or Party Favored	Markets Airing
Crossroads GPS	16,747	$12.6M	GOP	47
Barack Obama	10,570	$3.5M	Dem	36
Democratic National Committee	9,842	$6.1M	Dem	22
Americans for Prosperity	7,115	$6.9M	GOP	36
American Energy Alliance	4,771	$3.3M	GOP	26
American Future Fund	2,838	$2.9M	GOP	21
Priorities USA Action	2,447	$1.3M	Dem	22
Environmental Defense	1,606	$1.1M	Dem	11
American Petroleum Institute	1,493	$1.7M	GOP	15
AFSCME	1,051	$1.2M	Dem	7
American Crossroads	401	$0.2M	GOP	9
Republican National Committee	55	$0.02M	GOP	17

*Totals are from 1/1/11 to 4/22/12. Amounts include broadcast television and national cable spots.

CITE SOURCE OF DATA AS:

Kantar Media/CMAG with analysis by the Wesleyan Media Project

"The biggest difference between general and primary election ads so far is that the majority of general election airings and spending has come from groups that do not need to disclose their donors," said Michael M. Franz, co-director of the Wesleyan Media Project. "That's a lot of money and airtime backed by undisclosed sources."

Candidates have relied heavily on Super PACs to air ads on their behalf during the 2012 presidential campaign. Wesleyan Media Project analysis (Table 4) reveals that several candidates relied upon their Super PACs to pay for a majority of their advertising, including Jon Huntsman, Newt Gingrich, Rick Santorum and Mitt Romney. Ron Paul was least reliant on Super PAC advertising of all the major candidates. About 20 percent of Obama's advertising has been sponsored by his Super PAC, though the Democratic National Committee has also aired a substantial number of ads on his behalf.

Table 4: Super PAC Sponsorship of Advertising

	Candidate	SuperPAC	% SuperPAC
Huntsman	68	811	92.30%
Gingrich	6,373	11,558	64.50%
Santorum	6,330	11,471	64.40%
Romney	30,135	49,565	62.20%
Perry	11,979	6,465	35.10%
Obama	10,570	2,447	18.80%
Paul	7,860	755	8.80%

*Totals are from 1/1/11 to 4/22/12. Amounts include broadcast television and national cable spots.

CITE SOURCE OF DATA AS:

Kantar Media/CMAG with analysis by the Wesleyan Media Project

Recent Presidential Activity

Since Santorum dropped out of the race on April 10, Romney and his Super PAC continued to focus on the primary race, blanketing Pennsylvania with 2,076 spots from April 11 to April 22.

The Obama campaign and Priorities USA Action (Obama's Super PAC) have been going toe-to-toe with Crossroads GPS across markets in Iowa, North Carolina, Ohio, Colorado, Florida, Virginia, and Nevada, as Table 5 shows. All but four of the markets in Table 5 feature ads from both pro-Obama and pro-Romney forces, meaning voters in these markets are already experiencing the back and forth of the general election.

> *"Early general election spending reveals that both parties are focused on markets in the same key battleground states," notes Travis N. Ridout, co-director of the Wesleyan Media Project. "The past couple of weeks, Obama and his Super PAC have been on the air in a few more markets than Crossroads GPS, but both sides have focused their advertising in markets in Nevada, Colorado, Florida, Virginia, Iowa, and Ohio."*

Table 5: Number of Ads Aired by Sponsor and Market (April 11-22, 2012)

Obama		Priorities USA Action		Crossroads GPS	
Las Vegas	190	Tampa	143	Las Vegas	300
Grand Junction	173	Ft. Myers	97	Cleveland	289
Orlando	163	Toledo	89	Tampa	281
Cleveland	155	Orlando	87	Ft. Myers	265
Charlottesville	132	Cleveland	84	Charlottesville	231
Colorado Springs	121	West Palm Beach	82	Orlando	224
Reno	114	Charlottesville	73	Columbus, Ohio	199
Tampa	113	Columbus, Ohio	70	West Palm Beach	184
Ft. Myers	104	Richmond	67	Colorado Springs	183
Richmond	103	Des Moines	59	Reno	183
Toledo	95	Cedar Rapids	57	Richmond	167
Des Moines	86			Grand Junction	163
West Palm Beach	86			Toledo	156
Columbus, Ohio	85			Cedar Rapids	136
Lima	80			Lima	121
Cedar Rapids	78			Des Moines	120
Norfolk	31				
Denver	30				
Roanoke	28				
Dayton	18				

Amounts include broadcast television.

CITE SOURCE OF DATA AS:
Kantar Media/CMAG with analysis by the Wesleyan Media Project

Independent groups have been active not just in the presidential campaign. Since April 1, numerous outside groups have aired ads on behalf of a variety of candidates, as Table 6 shows (only groups with more than 250 airings are reported). For instance, the Club for Growth has been airing ads in the Republican Senate primaries in Indiana and Nebraska, Americans for Prosperity has been involved in the Nebraska Senate race, and the American Action Network has weighed in on Senate contests in Florida and Indiana.

Table 6: Activity of Independent Groups*

Group	Number of Ads	Races Active
American Energy Alliance	4,028	President
Crossroads GPS	3,202	President
Restore Our Future, Inc.	2,135	President
Environmental Defense	1,608	President
Club For Growth	1,486	Indiana and Nebraska Senate
Right Direction Wisconsin PAC	1,411	Wisconsin Governor
Priorities USA Action	908	President
Americans For Prosperity	710	Nebraska Senate
American Action Network	610	Florida and Indiana Senate
League of Conservation Voters	592	Ohio Senate, PA17
Citizens For Strength And Security	478	Montana Senate
Red, White, And Blue Fund	442	President
America Works USA	387	Missouri Governor
Patriot Majority USA	336	Missouri Senate, GA12
Constitution Trust	266	NC Lieutenant governor
Campaign For Primary Accountability	252	PA17, PA18

*Totals are from 4/1/12 to 4/22/12, and only for groups who aired a minimum of 250 ads. Amounts include broadcast television and national cable spots.
CITE SOURCE OF DATA AS:
Kantar Media/CMAG with analysis by the Wesleyan Media Project

Wisconsin Governor Recall

Although the presidential race has received the majority of attention this year, there are some other highly competitive races around the country. One that has seen a lot of advertising, in particular, is the recall race of the Wisconsin governor, Scott Walker. Over 17,000 spots at an estimated cost of $6M have flooded the state. Table 7 shows that Walker and his ally, Right Direction Wisconsin PAC (an arm of the Republican Governor's Association) have aired considerably more advertisements than his Democratic opponents. Combined, the pro-Walker advertisers have aired over 10,000 ads. That compares to fewer than 5,000 ads combined from Democratic candidate Kathleen Falk and an outside group, Wisconsin for Falk, working on her behalf. Democrat Tom Barrett has aired more than 1,700 ads.

"Wisconsinites have been inundated with advertising surrounding the gubernatorial recall election," said Mike Franz, co-director of the Wesleyan Media Project. "Walker and his allies hold a substantial advantage to date in the air war in all markets except Madison, and the incumbent governor's ads have been more positive than his competitors' ads."

Table 7: Advertising in the Wisconsin Governor Recall

Sponsor	Number Ads	Est. Spending
Tom Barrett	1,731	$0.47M
Kathleen Falk	742	$0.17M
Wisconsin for Falk	4,180	$1.8M
Greater Wisconsin Political Fund	549	$0.15M
Doug LaFollette	70	$0.01M
Hari Trivedi	9	$0.06M
Right Direction Wisconsin PAC	3,483	$1.3M
Scott Walker	6,553	$2.0M

*Totals are from 1/1/2012 through 5/1/2012. Amounts include broadcast television.

CITE SOURCE OF DATA AS:
Kantar Media/CMAG with analysis by the Wesleyan Media Project

Data reported here do not cover local cable buys, only broadcast television and national cable buys. All cost estimates are precisely that: estimates.

The Wesleyan Media Project provides real-time tracking and analysis of all political television advertising in real-time. Housed in Wesleyan's Quantitative Analysis Center – part of the Allbritton Center for the Study of Public Life – the Wesleyan Media Project is the successor to the Wisconsin Advertising Project, which disbanded in 2009. It is directed by Erika Franklin Fowler, assistant professor of government at Wesleyan University, Michael M. Franz, associate professor of government at Bowdoin College and Travis N. Ridout, associate professor of political science at Washington State University.

The Wesleyan Media Project is supported by grants from The John S. and James L. Knight Foundation, the Rockefeller Brothers Fund, and Wesleyan University. Data provided by Kantar Media/CMAG with analysis by the Wesleyan Media Project using Academiclip, a web-based coding tool.
Periodic releases of data will be posted on the project's website and dispersed via Twitter@wesmediaproject. To be added to our email update list, click here.

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Wesleyan University, in Middletown, Conn., is known for the excellence of its academic and co-curricular programs. More than 2,700 undergraduates and over 200 graduate students from around the world pursue their classroom studies, research projects, and co-curricular interests in ways that are demanding and intensely rewarding.

The John S. and James L. Knight Foundation supports transformational ideas that promote quality journalism, advance media innovation, engage communities and foster the arts. We believe that democracy thrives when people and communities are informed and engaged. For more, visitwww.knightfoundation.org.

The Rockefeller Brothers Fund advances social change that contributes to a more just, sustainable, and peaceful world. The Fund's grantmaking is organized in three thematic programs that support work in the United States and at the global level: Democratic Practice, Sustainable Development, and Peacebuilding; and in three pivotal place programs that address these themes in specific contexts: New York City, Southern China, and the Western Balkans. For more, visitwww.rbf.org.

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HIGH PERCENT OF PRESIDENTIAL AD DOLLARS OF TOP FOUR 501(C)(4)S BACKED ADS CONTAINING DECEPTION, ANNENBERG STUDY FINDS

For Immediate Release: June 20, 2012
Contact: Kathleen Hall Jamieson at 215–898–9400

An analysis by the Annenberg Public Policy Center conducted for the Center for Responsive Politics found that from December 1, 2011 through June 1, 2012, 85% of the dollars spent on presidential ads by four top-spending third-party groups known as 501(c)(4)s were spent on ads containing at least one claim ruled deceptive by fact- checkers at FactCheck.org, PolitiFact.com, the Fact Checker at the Washington Post or the Associated Press.

Under IRS rules, a 501(c)(4) operates "only to promote social welfare to benefit the community." As long as it is organized primarily to promote the community's general welfare, it may lobby for legislation and participate in political campaigns.

These groups don't have to disclose their donors.

From December 1, 2011 through June 1, 2012, the four top presidential campaign- spending 501(c)(4)s spent an estimated $24.9 million[1] ($24,916,690) of their $29.3 million ($29,320,110) presidential ad dollars on ads containing deceptions.

[1] All monetary figures are estimates provided by Kantar Media CMAG, 12/1/2011 through 6/1/2012.

The four top presidential campaign-spending 501(c)(4)s:

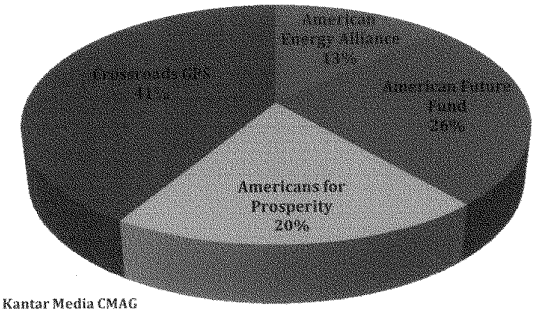
- American Energy Alliance, which champions free market energy policies and spent an estimated $3.3 million ($3,269,000) on deceptive presidential ads.

- Americans for Prosperity, founded by billionaire businessman and conservative activist David Koch to support lower taxes and limited government spending, spent an estimated $5 million ($5,018,000) on presidential ads containing deceptions.

- American Future Fund, a Republican-leaning group founded by longtime Iowa political operative Nick Ryan and headed by state Senator Sandra Greiner, spent an estimated $6.4 million ($6,365,930) on deceptive presidential ads.

- Crossroads GPS, a conservative public policy advocacy group advised by former Bush lieutenant Karl Rove and former RNC director Ed Gillespie, spent an estimated $10.3 million ($10,263,760) on deceptive presidential ads. The group is a companion organization to the super PAC American Crossroads.

Presidential Deceptive Dollars by Top 501(c)(4) Group (%)
(12/1/11-6/1/12)



Source: Kantar Media CMAG

As of June 1st, no Democratic leaning 501(c)(4) had paid for advertising in the presidential race.

The claims [2] ruled deceptive by the fact-checkers included:

- "Obama personally lobbied to kill a pipeline bringing oil from Canada" (Est. $191,490 spent on claim)—Crossroads GPS
- "Obama opposed exploring for energy in Alaska" (Est. $1,634,500 spent on claim)—American Energy Alliance
- "The stimulus bill sent tens of millions of dollars to build traffic lights in China" (Est. $2,509,000 spent on claim)—Americans for Prosperity
- "Obama's White House is full of Wall Street executives." (To support this claim, the viewer is shown photos of seven people. But one never worked as an investment banker (Geithner); two have resumes that fall far short of being "Wall Street executives" (Rahm Emanuel and Louis Caldera); and one was not part of the White House (Jon Corzine). While the ad's narrator focuses on these seven "Wall Street executives," 27 names scroll up the screen under the header of "Obama's Wall Street Inner Circle." FactCheck.org found 14 of those names don't belong on the list.) (Est. $2,647,445 spent on claim)—American Future Fund

To see other deceptive claims by these 501(c)(4) groups as well as evaluations of them by the major fact-checking groups, go to the FlackCheck.org Deception Log.

A study released by APPC in April found that from the Iowa Caucus through the Wisconsin primary 56.7 percent of the dollars spent by the four top-spending third-party groups (three super PACs and AFSCME) on presidential campaign ads was spent on ads containing at least one deception.

"Across the history of campaign communication, third-party ads have been both more attack-driven and more deceptive than candidate-sponsored ones," noted APPC Director Kathleen Hall Jamieson at the Center for Responsive Politics' "Shadow Money" seminar at the National Press Club today. "Unsurprisingly, our 2012 APPC studies of third-party deception confirm that as the level of donor disclosure drops, the level of duplicity rises. This year, presidential super PAC ads are more deceptive than those sponsored by presidential candidates and C4 presidential ads more duplicitous than super PAC ones."

[From the Brennan Center for Justice]

NATIONAL SURVEY: SUPER PACS, CORRUPTION, AND DEMOCRACY

AMERICANS' ATTITUDES ABOUT THE INFLUENCE OF SUPER PAC SPENDING ON GOVERNMENT AND THE IMPLICATIONS FOR OUR DEMOCRACY

SUMMARY

A recent national survey conducted on behalf of the Brennan Center for Justice at NYU School of Law demonstrates that the spending of Super PACs in this year's election cycle has given rise to a large, bipartisan consensus that such outsized spending is dangerous for our democracy. Historical polling has repeatedly shown

[2] Dollars spent per deceptive claim is calculated by dividing the total dollars spent on the ad by the number of deceptive claims in the ad, so when multiple deceptive claims appeared in the same ad, the total spent airing the ad is apportioned by claim.

that Americans believe elected officials favor the interests of large contributors to their own campaign war-chests. This new poll reveals for the first time that Americans have similar fears of elected officials favoring big donors to nominally independent Super PACs—and also that many are less likely to vote because of Super PAC spending.

From April 12–15, 2012, the independent Opinion Research Corporation conducted a national telephone survey of 1,015 adults living in the continental United States.[1] A summary of responses to each polling question is provided below. A detailed Appendix, including the poll's script, methodology, and responses broken down by demographics, is available on the Brennan Center's website at http://www.brennancenter.org/Super__PAC__Poll__Appendix.

The poll reveals that nearly 70 percent of Americans believe Super PAC spending will lead to corruption and that three in four Americans believe limiting how much corporations, unions, and individuals can donate to Super PACs would curb corruption. Of those who expressed an opinion, more than 80 percent believe that, compared with past elections, the money being spent by political groups this year is more likely to lead to corruption. And, most alarmingly, the poll revealed that concerns about the influence Super PACs have over elected officials undermine Americans' faith in democracy: one in four respondents—and even larger numbers of low-income people, African Americans, and Latinos—reported that they are less likely to vote because big donors to Super PACs have so much more sway than average Americans.

SUPER PAC SPENDING HAS PRODUCED WIDESPREAD PERCEPTIONS OF CORRUPTION

By significant margins, Americans believe new rules that allow individuals, corporations, and unions to donate unlimited amounts to Super PACs will lead to corruption. These beliefs are held equally by both Republicans and Democrats.

- 69% of respondents agreed that "new rules that let corporations, unions and people give unlimited money to Super PACs will lead to corruption." Only 15% disagreed.[2] Notably, 74% of Republicans and 73% of Democrats agreed with this statement.[3]
- 73% of respondents agreed that "there would be less corruption if there were limits on how much could be given to Super PACs." Only 14% disagreed. Here, 75% of Republicans and 78% of Democrats agreed.
- Only about 1 in 5 Americans agree that average voters have the same access to candidates (and influence on candidates) as big donors to Super PACs. Two-thirds of Americans disagree.

OF THOSE EXPRESSING AN OPINION, MORE THAN FOUR IN FIVE BELIEVE SPENDING IN THIS ELECTION CYCLE IS MORE LIKELY TO LEAD TO CORRUPTION

- Half of respondents—and 85% of those expressing an opinion—agreed that spending in this election is more likely to lead to corruption than in previous elections. Only 9% of respondents thought that, compared to previous elections, it was less likely that the money spent by political groups in this election will lead to cor-

ruption. Republicans (51%) and Democrats (54%) both agreed that spending in this election is more likely to lead to corruption.

BROAD BIPARTISAN MAJORITIES BELIEVE ELECTED OFFICIALS FAVOR THE INTERESTS OF SUPER PAC DONORS OVER THE PUBLIC INTEREST

Large majorities of Americans believe that members of Congress will favor the interests of those who donate to Super PACs over those who do not—and that Super PAC donors can pressure elected officials to alter their votes.

- More than two-thirds of all respondents (68%)—including 71% of Democrats and Republicans—agreed that a company that spent $100,000 to help elect a member of Congress could successfully pressure him or her to change a vote on proposed legislation. Only one in five respondents disagreed.
- More than three-quarters of all respondents—77%—agreed that members of Congress are more likely to act in the interest of a group that spent millions to elect them than to act in the public interest. Similar numbers of Republicans (81%) and Democrats (79%) agreed. Only 10% disagreed.

THE PERCEPTION THAT SUPER PACS HAVE EXCESSIVE INFLUENCE OVER GOVERNMENT THREATENS GRAVE CONSEQUENCES FOR PARTICIPATORY DEMOCRACY

An alarming number of Americans report that their concerns about the influence of donors to outside political groups make them less likely to engage in democracy. Communities of color, those with lower incomes, and individuals with less formal education are more likely to disengage due to concerns about how much influence is wielded by Super PAC donors.

- Two in three Americans—65%—say that they trust government less because big donors to Super PACs have more influence than regular voters. Republicans (67%) and Democrats (69%) uniformly agree.
- One in four Americans—26%—say that they are less likely to vote because big donors to Super PACs have so much more influence over elected officials than average Americans.
  - Less wealthy and less educated Americans were significantly more likely to say they would be less likely to vote because of Super PAC influence: 34% of respondents with no more than a high school education, and 34% of those in households with an annual income less than $35,000, said they would be less likely to vote.[4]
  - A higher number of African-American and Hispanic voters also stated that the disproportionate influence of Super PAC donors will discourage them from voting: 29% of African Americans and 34% of Hispanics said they were less likely to vote because of Super PAC influence.[5]
- 41% of respondents—including 49% of those who have no more than a high school education and 48% of those with household incomes under $35,000—believe that their votes don't matter very much because big donors to Super PACs have so much more influence.[6]

ENDNOTES

[1] The survey included 764 landline interviews and 251 cell phone interviews, and was weighted to account for geographic, demographic, and socioeconomic underrepresentation.

[2] Unless otherwise indicated, the margin of error for reported survey results is 3.1%.

[3] The margin of error for all reported results for Republicans is 4.9%, and the margin of error for all reported results for Democrats is 4.6%. Smaller numbers of independent voters agreed with the statements in the survey; this was largely because independent voters were more likely to report having no feeling about whether they agreed or disagreed.

[4] The margin of error for all reported results for those with a high school education or less is 5.1%, and the margin of error for all reported results for those with household incomes less than $35,000 is 5.3%.

[5] The margins of error for this particular result for African-Americans and Hispanics are 9.6% and 13.0%, respectively. Because of low sample sizes, we were not able to conclude that these results were statistically significant.

[6] Respondents with a high school education or less, and respondents with household incomes under $35,000, were significantly more likely to believe that their votes don't matter very much because big donors to Super PACs have so much more influence.

(ORDER LIST: 565 U.S.), FRIDAY, FEBRUARY 17, 2012, ORDER IN PENDING CASE

11A762: AMERICAN TRADITION PARTNERSHIP, INC., ET AL. V. BULLOCK, ATT'Y GEN. OF MT, ET AL.

The application for stay presented to Justice Kennedy and by him referred to the Court is granted, and the Montana Supreme Court's December 30, 2011, decision in case No. DA 11–0081, is stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

Statement of Justice Ginsburg, with whom Justice Breyer joins, respecting the grant of the application for stay.

Montana's experience, and experience elsewhere since this Court's decision in *Citizens United* v. *Federal Election Comm'n,* 558 U.S. ____ (2010), make it exceedingly difficult to maintain that independent expenditures by corporations "do not give rise to corruption or the appearance of corruption." Id., at ____ (slip op., at 42). A petition for certiorari will give the Court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, Citizens United should continue to hold sway. Because lower courts are bound to follow this Court's decisions until they are withdrawn or modified, however, *Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U.S. 477, 484 (1989), I vote to grant the stay.

SUPREME COURT OF THE UNITED STATES

AMERICAN TRADITION PARTNERSHIP, INC., FKA WESTERN TRADITION PARTNERSHIP, INC., ET AL. v. STEVE BULLOCK, ATTORNEY GENERAL OF MONTANA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 11–1179. Decided June 25, 2012

Per Curiam.

A Montana state law provides that a "corporation may not make . . . an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." Mont. Code Ann. 13–35–227(1) (2011). The Montana Supreme Court rejected petitioners' claim that this statute violates the First Amendment. 2011 MT 328, 363 Mont. 220, 271 P. 3d 1. In *Citizens United* v. *Federal Election Commission,* this Court struck down a similar federal law, holding that "political speech does not lose First Amendment protection simply because its source is a corporation." 558 U.S. _____, _____ (2010) (slip op., at 26) (internal quotation marks omitted). The question presented in this case is whether the holding of Citizens United applies to the Montana state law. There can be no serious doubt that it does. See U.S. Const., Art. VI, cl. 2. Montana's arguments in support of the judgment below either were already rejected in Citizens United, or fail to meaningfully distinguish that case.

The petition for certiorari is granted. The judgment of the Supreme Court of Montana is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

AMERICAN TRADITION PARTNERSHIP, INC., FKA WESTERN TRADITION PARTNERSHIP, INC., ET AL. v. STEVE BULLOCK, ATTORNEY GENERAL OF MONTANA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 11–1179. Decided June 25, 2012

JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

In *Citizens United* v. *Federal Election Commission,* the Court concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." 558 U.S. _____, _____ (2010) (slip op., at 42). I disagree with the Court's holding for the reasons expressed in Justice

Stevens' dissent in that case. As Justice Stevens explained, "technically independent expenditures can be corrupting in much the same way as direct contributions." Id., at _____ (slip op., at 67–68). Indeed, Justice Stevens recounted a "substantial body of evidence" suggesting that "[m]any corporate independent expenditures . . . had become essentially interchangeable with direct contributions in their capacity to generate quid pro quo arrangements." Id., at _____ (slip op., at 64–65).

Moreover, even if I were to accept Citizens United, this Court's legal conclusion should not bar the Montana Supreme Court's finding, made on the record before it, that independent expenditures by corporations did in fact lead to corruption or the appearance of corruption in Montana. Given the history and political landscape in Montana, that court concluded that the State had a compelling interest in limiting independent expenditures by corporations. 2011 MT 328, ¶¶ 36–37, 363 Mont. 220, 235–236, 271 P. 3d 1, 36–37. Thus, Montana's experience, like considerable experience elsewhere since the Court's decision in Citizens United, casts grave doubt on the Court's supposition that independent expenditures do not corrupt or appear to do so.

Were the matter up to me, I would vote to grant the petition for certiorari in order to reconsider Citizens United or, at least, its application in this case. But given the Court's per curiam disposition, I do not see a significant possibility of reconsideration. Consequently, I vote instead to deny the petition.

CONGRESSIONAL FORUM: THE MOST EXPENSIVE SEAT IN THE HOUSE: THE STATE OF OUR CAMPAIGN FINANCE SYSTEM

WEDNESDAY, APRIL 18, 2012

Washington, DC.

The forum met at 1:59 p.m., in Room 1310, Longworth House Office Building, Hon. Charles A. Gonzalez, presiding.

Present: Representatives Gonzalez, Pelosi, Brady of Pennsylvania, Price of North Carolina, Ellison, Van Hollen, and Capuano.

Mr. GONZALEZ. Good afternoon, everybody. We will start off with an apology. But, obviously, we had votes, and that is always the first order of business.

At this time, I want to call this forum to order, and I would like to begin by thanking House Administration Chairman Dan Lungren for allowing us to use the committee room.

The past 2 years since the Supreme Court's decision in Citizens United have seen a revolution in campaign finance laws, and it is time that we looked into it. Even before Citizens, the Jack Abramoff scandal and others showed how corruption damages our nation.

But even the appearance of corruption is destructive. Seventy-five percent of Americans believe campaign contributions buy results in Congress. That is a threat to our democracy itself.

We have waited 15 months for the committee of jurisdiction to hold hearings. We can't wait any longer. I am only sorry this is the first discussion the House has held on this subject, and the only hope is to see official hearings some day. But we will do what we can to bring light to the issue.

Since Citizens United, we have entered a different world. As we see on Chart 1, outside spending in campaigns has drastically increased. The spending on the most expensive campaign for the House of Representatives rose from $1.7 million in 1990 to $11.7 million in 2010.

Spending by groups that don't disclose their donors increased from 1 percent to 47 percent, Chart 2, as you can see. Part of this has been facilitated by this new invention referred to as the "Super PAC." And we will have a clip on what, in essence, is a Super PAC.

[Video shown.]

> TED KOPPEL. [What is the difference] between a PAC and a Super PAC?
>
> STEPHEN COLBERT. Well, it gets technical but, without going into too much detail, one of them has the word "Super" in front of it and that makes it a Super PAC.

Other than that, as far as I can tell, the difference between a PAC and a Super PAC is a cover letter. Because I formed a PAC but a PAC can only take so much money, it can only spend so much money and I wanted to spend unlimited amounts of money and receive, more importantly, unlimited amounts of money. And so my lawyer told me all I had to do is add a cover letter that said 'I intend this to be a Super PAC,' and it was a Super PAC.

TED KOPPEL. So now you can take all the money that people are unwise enough to send you?

STEPHEN COLBERT. Any amount. Did you bring your checkbook?

TED KOPPEL. Of course. How much money have you collected so far?

STEPHEN COLBERT. Oh, the fun thing about that is I don't have to tell you.

[End video]

Mr. GONZALEZ. What was the Supreme Court thinking? The justices were fully aware of the threat that is posed by political contributions to judges who run for judicial posts, but they saw no such threat to the legislative branch. And we know that Justice Scalia laughed at the idea that people who sign political petitions should remain anonymous because, as he said at oral argument, "The fact [is] that running a democracy takes a certain amount of civic courage, and the First Amendment does not protect you from criticism or even nasty phone calls when you exercise your political rights to legislate or to take part in the legislative process."

In his concurring opinion in that case, Justice Scalia was even more blunt. "Requiring people to stand up in public for their political acts fosters civic courage without which democracy is doomed." Yet an individual or a corporation can remain anonymous when making a monetary contribution.

And we should also have a clip here on how that can be done and effectuated.

[Video shown.]

STEPHEN COLBERT. Ok, so now I can get corporate individual donations of unlimited amount for my (c)(4). What can I do with that money?

TREVOR POTTER. Well, that (c)(4) could take out political ads and attack candidates or promote your favorite ones as long as it's not the principal purpose for spending its money.

STEPHEN COLBERT. No, my principle purpose is an educational entity. Right?

TREVOR POTTER. There you go.

STEPHEN COLBERT. I want to educate the public that gay people cause earthquakes.

TREVOR POTTER. There are probably some (c)(4)s doing that.

STEPHEN COLBERT. Ok, can I take my (c)(4) money and then donate it to my Super PAC?

TREVOR POTTER. You can.

STEPHEN COLBERT. Wait, wait. Super PACs are transparent!

TREVOR POTTER. Right.

STEPHEN COLBERT. And the (c)(4) is secret. So I can take secret donations of my (c)(4) and give it to my supposedly transparent Super PAC?

TREVOR POTTER. And it'll say, Given by your (c)(4).

STEPHEN COLBERT. What is the difference between that and money laundering?

TREVOR POTTER. It's hard to say.

STEPHEN COLBERT. Well, Trevor, thank you so much for setting me up.

[End video]

Mr. GONZALEZ. Now, Mr. Colbert may be using satire, but his point is very real. Phony corporations have been set up to disguise donations. W Spann LLC gave $1 million to the Super PAC, Restore Our Future, and only investigative journalism and the donor's embarrassment revealed the millionaire behind the money. There are criminal probes into other such donations, but some are completely legal.

It used to be that every politician, whatever else they thought about campaign finance reform in general, was for disclosure. There is a list of old quotes on the press table that are available to those that want to see those previous positions taken by the same individuals that would oppose DISCLOSE today. All that, of course, has changed, as I just mentioned.

Even some of the biggest donors to super PACs are opposed to the idea of unlimited donations. One prominent contributor, whose family has contributed more than $15 million to a Super PAC, said, "I'm against very wealthy people attempting to or influencing elections. But as long as it is doable, I am going to do it."

I am sorry that none of the major Super PAC donors accepted my invitation to testify today, but we do have four panelists here today that are very familiar with the subject and some very articulate Members of Congress that are supporting that which we can do in the way of disclosure.

I will begin by recognizing the distinguished Democratic leader Nancy Pelosi for an opening statement.

Ms. PELOSI. Thank you very much, Ranking Member Gonzalez, for your leadership in bringing us here today on this important issue, so important that it is fundamental to our great democracy.

I am honored to be here with you and with our ranking member of the full committee, Congressman Brady, and our other colleagues: Congressman Chris Van Hollen, author of the DISCLOSE Act; with David Price, a respected Member of Congress, who brings academic as well as governmental credentials to this discussion; Keith Ellison, Congressman Keith Ellison, who is working at the grassroots level to try to offset some of the cynicism that is growing regarding the use of money in campaigns; and Congressman Capuano, a respected member of this committee who has worked hard on this issue.

It is important because our Founders had intended that we were a democracy, which meant we are a government of the people and that the votes and the voices of the people would determine the outcomes of elections, not the bank books of a very few people.

Nearly a century ago, Supreme Court Justice Louis Brandeis wrote about the dangers of corporate interests dominating our economy, stifling competition, and harming our Nation. And he reminded us in the face of these forces that, "Sunlight is said to be the best of disinfectants." We agree.

Today, we come together in that same tradition to shed sunlight on our democratic process and preserve the integrity of our elections, our democracy, to call on our colleagues to protect the voices and the votes of the American people. Our effort today is necessary because more than 2 years ago, with the Citizens United decision, the Supreme Court opened the floodgates of uninhibited special interest spending; secret, undisclosed spending in our elections; and unlimited corporate influence over our public policy debate.

In response to the Citizens United ruling, Democrats have worked to restore transparency, fairness, and accountability to our political process. We have worked to create what we believe is necessary, a new politics free from special interest and big money.

It is with that goal in mind that today we have come together for a forum—thank you, Mr. Ranking Member Gonzalez and Mr. Brady—for a forum called "The Most Expensive Seat in the House: The State of our Campaign Finance System."

While I appreciate the recognition that Ranking Member Gonzalez made to the chairman, who gave us permission to use the room, I think it is really necessary to say if you need any more argument about the need for openness, you only need look to the fact that the chairman denied us the ability to use the cameras, the room's built-in cameras so that we can transmit what is happening here more fully.

In fact, the Republican majority has denied us hearings on legislation called the DISCLOSE Act, which would require corporations to report their campaign-related activities and, as Mr. Van Hollen leads us in saying, calling upon them to stand by their ads the same way candidates must do.

Already 160 Members have cosponsored this legislation, and I hasten to add that our Mr. Brady, when he was chairman, enabled the Republicans in the minority to have at least three hearings at their request. We hope that the Republican majority will enable this to be a full-fledged hearing. They won't let this proceeding be called a hearing, so it is a forum.

This legislation, the DISCLOSE Act, passed the House in 2010 with bipartisan support only to be blocked in the Senate by the Republicans. We must fight for full disclosure to get unlimited secret donations out of our politics. We must fight for reform to empower small donors and the grassroots to have a greater role in our elections, and I contend that when we reduce the role of money in politics—and not just Citizens United, but all big money in politics—we will increase the number of women, minorities, and young people in elective office. It will have a very wholesome impact on our system.

Ultimately, we must fight to amend our Constitution to overturn the Supreme Court decision that had strengthened the hands of the special interest at the expense of the people's interest. So I am very honored to join my colleagues in welcoming this very distinguished panel to our forum today.

Norman Ornstein of the American Enterprise Institute; Paul Ryan, FEC Program Director; Zephyr—like the wind—Teachout, Professor, Fordham University School of Law; and Monica Youn, Brennan Center Constitutional Fellow. They will be more appropriately introduced.

But today's forum, this effort is about nothing less than our democracy. The votes of the many must determine the outcome of elections, not the bankroll of the very privileged few.

With that, Mr. Chairman, I once again commend you for holding this forum and salute you for your leadership on this subject.

Mr. GONZALEZ. Madam Leader, thank you. Thank you for your leadership and your participation today.

To the witnesses, you will be given 5 minutes to make your oral remarks. If you submit anything in writing, please understand that will become part of the record, and you can supplement that, of course. But we are going to try to keep it to 5 minutes, and then we will have Q&A and maybe even a second round of Q&A.

Our first witness is Norman J. Ornstein, who received his B.A. from the University of Minnesota and a Master's and a Ph.D. in political science from the University of Michigan. Dr. Ornstein is a longtime observer of Congress and politics. He writes a weekly column for Roll Call and is an election analyst for CBS News.

He served as coordinator of the American Enterprise Institute-Brookings Election Reform Project and participates in AEI's Election Watch series. He also serves as a senior counselor to the Continuity of Government Commission. Mr. Ornstein led a working group of scholars and practitioners that helped shape the law known as McCain-Feingold that reformed the campaign finance system. He was elected as a fellow of the American Academy of Arts and Sciences in 2004.

His many books include "The Permanent Campaign and Its Future." He coauthored "The Broken Branch: How Congress Is Failing America and How to Get It Back on Track" and also has coauthored, the most recently, "Vital Statistics on Congress 2008."

And with that, I will turn it over for testimony by Dr. Ornstein.

STATEMENTS OF NORMAN ORNSTEIN, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE; MONICA YOUN, BRENNAN CENTER CONSTITUTIONAL FELLOW, NYU SCHOOL OF LAW; ZEPHYR TEACHOUT, ASSOCIATE PROFESSOR, FORDHAM UNIVERSITY SCHOOL OF LAW; AND PAUL S. RYAN, FEC PROGRAM DIRECTOR, CAMPAIGN LEGAL CENTER

STATEMENT OF NORMAN ORNSTEIN

Mr. ORNSTEIN. Thanks, Mr. Chairman, Madam Leader, and members of this panel, many of whom I have worked with on some of these issues.

I do have a written statement. I just want to make three quick points.

The first is about the Citizens United decision, a decision that I think has reverberated around the country, and I have seen it in my own travels, in discussions with people more than any other in the last several decades. The first thing I want to say is I actually

have never seen a decision more poorly reasoned or removed from reality as this one.

The idea, first of all, that corporations should be treated the same as people when it comes to political involvement. When individuals in the society have a multiplicity of interests and motives, some of them very personal related to their own lives, but others that reach out to the larger society and with an interest in the futures of our children and grandchildren. Corporations have one motive, which is profits.

At the same time, the idea that money equals speech—the more money, the more speech, the better—flies in the face of another reality. If I am speaking with my own voice or just with one microphone to amplify it and you have 30-foot speakers and an amplifier that can shake the seats at Nationals Park, and we are both trying to speak at the same time, I don't view that as something that is good for dialogue in a society. But we have now created a situation where there is enormous leverage for those with those amplifiers.

And I have to say that sitting in the Supreme Court, as it argued—had an oral argument over the McComish decision, another in a string of destructive decisions made by the court, the logic applied there, which was involving the public funding system in Arizona, where if a multimillionaire spent significant sums of his or her own money and opted out of that public funding system, that the candidate who had opted in could raise a little bit more money. The idea that that would damage the speech of the multimillionaire is a kind of logic that, it seemed to me, belonged on another planet or in another galaxy. But that is what we are talking about here.

And finally, the idea in Citizens United and Justice Kennedy's decision that independent expenditures can't be corrupting also belongs in another galaxy. The point I would make there is, For anybody who has been for more than 10 minutes around the halls of this body or in any legislative body, but now especially in the aftermath of Citizens United, watching the pressures to raise money, watching what happens when Members no longer have to worry simply about competing against a candidate but against now the nightmare that, with 3 weeks to go in an election, some alien predator group anonymously can parachute in behind your lines and spend $20 million to slime you, and you have to raise money in small increments—there is no time to do it—has put everybody on notice that they better raise war chests in advance.

And that means whether you are in this building or standing outside, watching Members stream out in any odd moment to do call time, which has now become far more significant, and knowing what, as a member of this committee Barney Frank has said, the demeaning process of having to go out and either beg for money or shake people down. If that is not corrupting, I am not sure what is.

And frankly, the independent amounts, the large amounts that can be spent, the unlimited amounts, I have had lots of people—senators in particular—tell me of their experiences sitting down with somebody who says the equivalent of, you know, "I am working with Americans for a Better America, and they have got more money than God. They really want this amendment. And, if any-

body challenges them and doesn't do it, I don't know what they will do. But $20 million in the last few weeks of a campaign, that is not beyond them." The result is, we not only will have more money, but we are going to have more amendments, more provisions that nobody will know about, without a dime being spent. That is what unlimited money can do.

My final point is, this is a problem with the Supreme Court. That is a big lift until we get a change in the court. We have to turn to other agencies where we can begin to get some other impact that can bring us back to true independence instead of the farce that we have now that Stephen Colbert and our colleague, Trevor Potter, have pointed out so well, and to real disclosure.

It would be nice if we could have gotten—it would have been nice if we had gotten one Republican in the Senate to support the DISCLOSE Act, including those who now talk eloquently about the need for it in the last Congress. It would be nice now if we can get a Federal Election Commission not to deadlock 3–3 on almost every instance in which we enforce the law.

The problem is not just Citizens United. It is that laws on the books, everybody who is involved in this process knows you can do almost anything that you want.

I hope you will support the Federal Communications Commission as it moves forward now, commendably, with its action to require broadcasters to put in their public file online, in real time, the donors to the ads that they are giving, which is being resisted strenuously by the same broadcasters who are making billions of dollars in profits from all of the ads that are going up. And I hope that you will also work with the IRS to enforce its own regulations and the Securities and Exchange Commission to require public corporations to disclose all of their expenditures in this area.

And finally, let me just say, it is worth thinking about an idea that has been raised by a lawyer named Gregory Colvin to introduce a law that would limit the political expenditures of 501(c)(4)s. I am not sure how much we can rely on the IRS, and it may be worthwhile, as well, to pass a law that makes this more explicit.

Thank you very much.

[The statement of Mr. Ornstein follows:]

TESTIMONY OF NORMAN J. ORNSTEIN, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, BEFORE THE CONGRESSIONAL FORUM ON CAMPAIGN FINANCE REFORM, APRIL 18, 2012

Mr. Chairman and members of the Forum, thank you for the opportunity to testify on the new world of campaign finance since the Citizens United decision. I have written a fair amount about this decision and its destructive and disastrous consequences for the nation, and I will draw on some of that writing here.

I cannot recall a Supreme Court decision that has generated more interest and more dismay. As I travel around the country and abroad, it comes up repeatedly as a disaster in the making. The decision itself, in my judgment, was an embarrassment in terms both of reasoning and a lack of attachment to reality. The idea that corporations are fundamentally the same as individuals when it comes to participation in the electoral arena is at best wrong-headed. Individuals have multiple interests and motives, some intensely personal but others more public interested, including a long-term concern for the wellbeing of one's children and grandchildren, while corporations have one interest, maximizing profits.

The idea that money equals speech, and the more speech the better, ignores what happens when one entity might have only his or her own voice while the next one has thirty foot speakers and a ten-foot high amplifier that can wholly drown out everyone else. The notion that "independent" contributions cannot be corrupting re-

flects a breathtaking naivete—something underscored in a recent commentary by conservative jurist Richard Posner. Consequences aside, Justice Anthony Kennedy's decision may go down as one of the most poorly reasoned and bolstered decision in modern times.

For all its problems, Citizens United at least offered full-throated, 8–1 support for robust disclosure and made it clear that the decision applied only to corporate involvement in independent expenditure campaigns, not in direct involvement in the campaigns themselves. But that unequivocal support for disclosure and clear invocation of the need for real independence, has been met with chicanery and obfuscation on the part of the Federal Election Commission, a near-total lack of action to enforce its own clear regulations by the Internal Revenue Service, and the new ardent opposition to disclosure by former champions like Mitch McConnell and John Boehner, making disclosure a farce and independence non-existent.

On the IRS, the recent revelation that an anonymous donor gave $10 million to American Crossroads GPS to run negative ads against President Obama shows what a farce it is to enable Karl Rove's organization to qualify as a "social welfare" group, when it could not be more clear that American Crossroads GPS exists for one purpose, to influence elections and to provide a safe haven for those who do not want to disclose their identities. The same is true for many other 501(c)4s.

As for the idea that Citizens United and its progeny could not be corrupting, anyone who has spent more than a nanosecond in the real world has seen the reality. I have had conversations with several incumbents in the Senate who are up in 2012 who say the same thing: They can handle any of the several prospective opponents they might face—but all of them fear a stealth campaign, landing behind their lines and spending $20 million on "independent" campaigns designed to trash the incumbent as someone who should be behind bars, not serving in the Senate.

Most politicians understand that constituents who like them don't really know a lot about them; voters don't spend a lot of time focusing on politics and politicians. So a vicious and unrelenting ad campaign can work. What do candidates then do? All of them are working overtime to raise their own, protective war chests—meaning every spare moment is spent on "call time," begging for money or shaking down potential donors.

Ask almost any lobbyist. I hear the same story there over and over—the lobbyist met with a lawmaker to discuss a matter for a client, and before he gets back to the office, the cell phone rings and the lawmaker is asking for money. The connections between policy actions or inactions and fundraising are no longer indirect or subtle.

Now comes the third component. As one Senator said to me, "We have all had experiences like the following: A lobbyist or interest representative will be in my office. He or she will say, 'You know, Americans for a Better America really, really want this amendment passed. And they have more money than God. I don't know what they will do with their money if they don't get what they want. But they are capable of spending a fortune to make anybody who disappoints them regret it.'" No money has to be spent to get the desired outcome.

This is what Citizens United hath wrought. It is thoroughly corrupting. And it is why, at minimum, we need to encourage the IRS to do its job and implement its own regulations related to 501(c)(4)s, rejecting the status for sham organizations that manipulate the process only to shield the identity of donors and making big donors pay a gift tax on their sham contributions; encourage and defend the Federal Communications Commission in its commendable decision to put online information from TV stations about the funders of political ads; urge the Securities and Exchange Commission to require public companies to disclose their political spending to shareholders in their annual reports; and extend the current regulations for private contractors with the government who have to disclose their direct campaign contributions and expenditures to include the stealth contributions to influence campaigns. Besides urging the president to implement the executive order to accomplish the latter goal, I encourage you also to urge the president to use his recess appointment authority to replace the five of six Federal Election Commission members whose terms have expired.

Finally, I would encourage you to examine a proposal by lawyer Gregory Colvin to amend the Internal Revenue Code to put an annual limit on political expenditures by 501(c)4s, which might be a more fruitful route than relying on the IRS itself to act.

Mr. GONZALEZ. Thank you very much, Dr. Ornstein.

I am going to be going a little out of order. I don't mean to throw you all off, but the next witness is going to be Monica Youn from

the Brennan Center, Constitutional Fellow. Her education consists of a B.A. from Princeton, Master's in philosophy from Oxford, and J.D. from the Yale Law School.

Monica Youn is the inaugural Brennan Center Constitutional Fellow at NYU School of Law, where she focuses on election law and First Amendment issues. She is the editor of "Money, Politics, and the Constitution: Beyond Citizens United," a book of essays by leading constitutional scholars, and she has published law review articles on election law issues.

She has litigated election law cases in federal courts across the Nation and has testified before Congress on multiple occasions. Her political commentary has been published in Roll Call, Slate, the L.A. Times, among other publications. She has appeared on MSNBC; PBS; the NewsHour; Democracy Now!; and the Bill Moyers Journal.

Her work at the Brennan Center has been recognized by the New Leaders Council, which named her one of their "40 under 40" nationwide leaders in 2010 and by Common Cause, which awarded her the John Gardner Award for Extraordinary Leadership.

Ms. Youn.

STATEMENT OF MONICA YOUN

Ms. YOUN. Thank you.

Well, it is 6 months out from the general election, and it seems a little bit early for a weather report. But it seems already clear to everyone in this room and outside this room that the 2012 election is shaping up to be a perfect storm of money in politics.

We have unprecedented levels of outside spending, combined with massive loopholes in federal disclosure laws, which has led to a situation that is really kind of the worst of all possible worlds.

I wanted to focus my testimony, first of all, on the definition and derivation of Super PACs. I then wanted to talk specifically about what changed in the law between the post-Citizens United era and the pre-Citizens United era, and then to talk about—very briefly about some of the faulty assumptions underlying the logic of Citizens United.

So Super PACs are the latest and greatest soft money loophole, a phenomenon that threatens to overwhelm our politics. Unlike the other major players in campaign fundraising—candidates, political parties, and traditional PACS—Super PACS have a court-conferred advantage. They do not have to play by the same fundraising rules as everyone else.

Those other entities are all bound by federal contribution limits, which regulate that both the source and amount of contribution, and none of those entities can receive contributions from corporate or union general treasury funds. By contrast, Super PACs can raise and spend unlimited funds not only from wealthy individuals, but also directly from corporate treasuries. And, because of loopholes in federal election disclosure laws, including the (c)(4) loophole discussed by Stephen Colbert and, you know, the anonymous shell corporations also created by Stephen Colbert, many of the sources of these funds remain cloaked in secrecy.

So this morning's L.A. Times, for instance, reported that Crossroads GPS, which is the (c)(4) that funds American Crossroads, has

received $77 million in undisclosed donations, money that we can expect to have a major impact on what happens with—on the electoral spending that Crossroads GPS is permitted under current laws to engage in. We don't know who these donors are. We don't even know whether these donors are individuals or whether they are corporations.

So how did we get to this state of affairs? There has been a lot of debate over whether the Supreme Court created Super PACs in its Citizens United decision. I find a lot of that discussion, frankly, beside the point.

The Supreme Court didn't create or even mention Super PACs. Super PACs didn't exist at the time of Citizens United. But the logic of Citizens United directly dictated that when the D.C. Circuit heard the case, SpeechNow, that created Super PACs, it had no choice but to follow along with that reasoning.

So what has actually changed? Because a lot of people will say, "Well, you know, this is politics. Politics ain't beanbag. There was already corporate money in politics. There were already wealthy donors pouring millions of dollars into independent spending."

But you know, prior to Citizens United, corporations and unions could participate in politics, but they had to do so through their separate segregated funds or PACs. These consisted, crucially, of money that was limited and money that was voluntarily contributed by individuals—by shareholders, by corporate officers. And so, they had to abide by the same fundraising rules as everyone else. Go, hat in hand and say, "Hey, who wants to support the corporation's political agenda?"

So, for example, in the 2008 election cycle, ExxonMobil did exactly that. They went around, hat in hand, to their employee shareholders. They collected about $700,000, which is a very respectable amount of money.

But during the same election cycle, ExxonMobil's corporate profits were $80 billion. That is a difference of more than 100,000 times. And what Citizens United does is it allows the amount of money that every corporation has available to it to act as a potential election war chest to increase by these kinds of exponential figures. After Citizens United, corporations can spend money, often through a shell corporation or other loophole, and do so in an undisclosed manner.

So, secondly, about wealthy individuals. So, some people have said, look, we all know about the Wyly brothers way back in the day. We know about George Soros, all spending money. You know, the Swift boat advertising. You know, wealthy donors have always poured money into politics.

But that money had to be disclosed. Now that donors can cloak their electoral influence in secrecy, we are seeing dark money overwhelm the system. So as these slides will show you, the amount of total outside spending until March 8th of this year was $88 million, which is more than twice as much as 2008 and more than six times as much as in the 2004 cycle. So, now that that money is in the dark, we are seeing individual wealthy donors just flood to this new dark avenue.

So why did the court do this? And without—I am out of time here. So I am just going to briefly mention the three faulty assumptions that underlay the court's reasoning in Citizens United.

First of all, that independent expenditures are truly independent. As I explain in my written testimony, that would depend on having a workable definition of what constitutes a coordinated expenditure, a definition that the FEC has utterly failed to promulgate or to enforce.

The second, that existing disclosure laws will protect against corruption. Corporate political spending is not required to be disclosed either to shareholders or to corporate boards or to voters. It is very easy to keep this law in the dark. But even if disclosure laws worked, disclosure is necessary, but not sufficient. Disclosure points out the outliers, but it doesn't really take care of the heart of the problem.

And thirdly, that quid pro quo corruption is the only problem Congress can constitutionally protect against. As Mr. Ornstein mentioned in his testimony, we now have lots of instances of "Americans for a Better America" or other, similarly euphemistic, wealthy interests throwing their weight around, you know, and acting in a way that is utterly unaccountable.

This may resemble an oligopoly. This may resemble a plutocracy. But it very little resembles what we have come to think of as democracy.

Thank you very much.

[The statement of Ms. Youn follows:]

TESTIMONY OF MONICA YOUN, BRENNAN CENTER CONSTITUTIONAL FELLOW AT NYU SCHOOL OF LAW, BEFORE THE CONGRESSIONAL FORUM ON "THE MOST EXPENSIVE SEAT IN THE HOUSE: THE STATE OF OUR CAMPAIGN FINANCE SYSTEM" APRIL 18, 2012

I thank Ranking Member Gonzalez for convening this forum and for inviting me to testify.

In previous congressional testimony,[1] I explored the aftermath and implications of the Supreme Court's watershed campaign finance decision Citizens United v. FEC.[2] Rather than reiterating that analysis here, I will focus my testimony more narrowly on the linkage between Citizens United and recent developments in our campaign finance system, paying particular attention to the "Super PAC" phenomenon that has dominated the early phases of the 2012 election cycle.

THE RISE OF SUPER PACS

Although the 2012 election cycle is still in its beginning stages, it is already clear that campaign fundraising will be dominated by the massive new independent expenditure vehicles nicknamed "Super PACs." Unlike traditional federal PACs, Super PACs only engage in independent expenditures, and do not donate money directly to federal candidates. Also unlike traditional PACs, which are bound by federal contribution limits and cannot accept corporate or union contributions, Super PACs can

[1] The Fair Elections Now Act: A Comprehensive Response to Citizens United: Hearing Before the S. Jud. Comm., Subcomm. on Constitution, Civil Rights & Human Rights, 111th Cong. (2011) (statement of Monica Youn); The First Amendment and Campaign Finance Reform after Citizens United: Hearing Before H. Jud. Comm., Subcomm. on Constitution, Civil Rights & Civil Liberties, 110th Cong. (2010) (statement of Monica Youn). On the issue of campaign finance disclosure, I would also respectfully refer the Committee to the recent written testimony of my Brennan Center colleagues in the Senate Rules Committee's hearings on the DISCLOSE Act of 2012. The Democracy Is Strengthened by Casting Light On Spending in Elections Act ("DISCLOSE") Act of 2012: Hearing on S. 2219 Before the S. Comm. on Rules and Admin., 112th Cong. (2012) (statement of Adam Skaggs and Mimi Marziani).

[2] 130 S.Ct. 876 (2010).

take in and spend unlimited amounts, including monies from corporate and union treasury funds.[3]

As of May 2012, Super PACs have raised almost $160 million dollars this election cycle and have spent close to $90 million—more than six months from the general election.[4] In state after state, Super PACs have outspent the campaigns of those they are supporting.[5] And, in numerous primaries, Super PAC spending has been credited as the deciding factor in electoral results.[6]

Although the Supreme Court's opinion in Citizens United did not create or contemplate Super PACs, the logic of Citizens United directed the result in SpeechNow v. FEC,[7] the D.C. Circuit decision that legalized Super PACs. In Citizens United, Justice Kennedy's opinion stated that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."[8] Accordingly, under the Court's reasoning, since restrictions on independent expenditures serve no anti-corruption interest, they fail to pass constitutional muster. Following this reasoning, the SpeechNow court held that corporations and unions could make unlimited donations to PACs, so long as those PACs only engaged in "independent expenditures" and did not directly coordinate with a campaign.

The Super PAC phenomenon throws into sharp relief the faulty assumption that underlies the majority's reasoning in Citizens United—that no risk of corruption attaches to expenditures that are technically "independent" of a candidate's campaign. While Super PACs were freed from contribution limits because they declared themselves legally "independent" of candidate campaigns, the reality is that they are anything but independent.

THE MYTH OF "INDEPENDENCE"

Despite the Supreme Court's repeated explanation that independent expenditures must be truly and wholly independent—made "without any candidate's approval (or wink or nod),"[9]—the FEC has failed to promulgate regulations that "rationally separate[ ] election-related advocacy from other activity" since the Bipartisan Campaign Reform Act was enacted in 2002.[10] As a result, under the FEC's current regulations, candidates can coordinate extremely closely with a supportive Super PAC, and yet still be deemed not to have produced any "coordinated communications,"[11] and not to have "coordinated" with that candidate's campaign.[12]

Since Citizens United, the FEC has deadlocked on several opinions concerning the meaning of "coordination" and "independent," establishing beyond question that the agency will not meaningfully distinguish wholly independent groups from those that, in reality, coordinate closely with candidates. Most egregiously, the FEC failed to reject a Super PAC's request that it be permitted to claim continued legal independence, and not be deemed to issue "coordinated communications" despite producing television ads that were "fully coordinated" with candidates. That the FEC deadlocked on this request, issuing no binding ruling, underscores that the agency tasked with overseeing the nation's campaign finance laws is unable or unwilling to enforce any meaningful lines between groups that meet the Court's strict definition as "wholly independent" from candidates, and those that claim independence while actually coordinating closely with candidates and undermining campaign finance rules. Indeed, the FEC has allowed candidates to appear at fundraisers, and solicit funds, for Super PACs that exist for the sole purpose of electing those candidates—while permitting the Super PACs to continue claiming legal independ-

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[3] *See also* FEC Advisory Opinion 2010–11, July 22, 2010, at http://saos.nictusa.com/aodocs/AO%202010-11.pdf.

[4] 2012 Outside Spending, by Super PACs, Opensecrets.Org, http://www.opensecrets.org/outsidespending/summ.php?cycle= 2012&chrt=V&disp=O&type=S (last visited April 13, 2012).

[5] For instance, in Alabama and Mississippi almost all of the television ads promoting presidential contenders were paid for by Super PACs rather than the candidates' campaigns. Greg Giroux, *Super-PAC Ads Dominate Republican Race in Alabama, Mississippi,* Bloomberg Businessweek (March 13, 2012), http://www.businessweek.com/news/2012-03-12/super-pacs-dominate-republican-ads-aired-in-alabama-mississippi-primaries.

[6] *See, e.g.,* Paul Blumenthal, *Newt Gingrich South Carolina Surge Boosted By Super PAC Spending Spree,* HuffingtonPost.Com (Jan. 20, 2012, 2:05 PM), http://www.huffingtonpost.com/2012/01/20/newt-gingrich-south-carolina-super-pacs-pending-n-1219093.html.

[7] 599 F.3d 686 (D.C. Cir. 2010), *cert. denied*, 131 S.Ct. 553 (2010).

[8] 130 S.Ct. at 909.

[9] Colorado Republican Federal Campaign Comm. v. FEC, 533 U.S. 431, 442 (1996); McConnell v. FEC, 540 U.S. 93, 221–22 (2003).

[10] *See, e.g.*, Shays v. FEC, 414 F.3d 76, 102 (D.C. Cir. 2005), *aff'g* 337 F. Supp. 2d 28 (D.D.C. 2004); Shays v. FEC, 528 F.3d 914, 925 (D.C. Cir. 2008), *aff'g* 508 F. Supp. 2d 10 (D.D.C. 2007).

[11] *See* 11 C.F.R. § 109.21.

[12] *See* 11 C.F.R. § 109.20.

ence.[13] In short, the dysfunctional FEC has now effectively sanctioned almost limitless cooperation between Super PACs and the candidates they seek to elect—defying any notion that the groups meet any commonly-held definition of "independence."

The result is that many candidates (including all of the competitive presidential candidates) have an affiliated Super PAC acting as a de facto arm of their campaign. The proliferation of candidate-specific Super PACs provides ample opportunity for corruption, as contribution limits have become irrelevant and supporters can give unlimited gifts that are functionally indistinguishable from contributions to the candidates. For this reason, Judge Richard Posner recently concluded, after considering the current state of affairs:

> It thus is difficult to see what practical difference there is between super PAC donations and direct campaign donations, from a corruption standpoint. A super PAC is a valuable weapon for a campaign. . . . [T]he donors to it are known; and it is unclear why they should expect less *quid pro quo* from their favored candidate if he's successful than a direct donor to the candidate's campaign would be.[14]

Super PACS have further blurred the already problematic distinction between direct contributions and independent expenditures.

THE END-RUN AROUND CONTRIBUTION LIMITS

Campaign contribution limits—including the century-old ban on corporate contributions to candidates—are one of the cornerstones of federal campaign finance regulation. The creation of Super PACs that function as shadow campaigns has eviscerated contribution limits and the ban on corporate campaign contributions.

First, Super PACs have rendered the dollar limits on individuals' direct contributions to candidates toothless, if not entirely illusory. Individuals who have donated the legal maximum to their favored candidate can still give unlimited amounts to a super PAC dedicated to electing that candidate, with knowledge that the latter contribution is just as valuable to the candidate as the former. Wealthy donors have seized on this contribution limit end-run. For example, in 2011, 84% of the 205 donors to the super PAC supporting Mitt Romney had given the maximum donation to Romney's primary campaign—including five donors who each gave $1 million or more to the super PAC.[15] The Super PAC supporting President Obama has also benefitted from the largesse of donors who have given the maximum amount to his campaign, receiving $2 million from DreamWorks CEO Jeffrey Katzenberg (and another $100,000 from DreamWorks partner Stephen Spielberg) and $1 million from comedian Bill Maher. The $2,500 contributions that all these donors have given to the candidate's actual campaign committees pale in comparison to what they have donated to candidates' shadow campaigns.

Second, candidate-specific Super PACs have made a mockery of the prohibition on corporate campaign contributions by allowing corporations to contribute millions for electioneering expenditures that are as valuable to candidates as contributions to their own war- chests. Even at this early stage of the campaign, numerous corporations have donated more than $1 million to Super PACs working to elect specific candidates; other companies have made valuable, albeit lesser, Super PAC contributions.[16] We can expect corporate participation in Super PACs to increase as the election cycle moves from party primaries to the general election.

Moreover, corporations have made political contributions that favor candidates while avoiding public disclosure of this spending by routing their dollars through nonprofit organizations that spend money to influence elections—including by donating to Super PACs—but are not required to disclose their donors.[17]

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[13] 13 Derek Willis *Federal Officials Can't Raise Unlimited Funds, F.E.C. Says,* Caucus Blog, NYTimes.com (June 30, 2011), http://thecaucus.blogs.nytimes.com/2011/06/30/federal-officials-cant-raise-unlimited-funds-f-e-c-says/ (explaining that while the FEC rejected a request to allow federal officials to raise unlimited funds for Super PACs, such candidates would be allowed to solicit contributions for Super PACs up to the legal limits).

[14] Richard Posner, *Unlimited Campaign Spending—A Good Thing?,* The Becker-Posner Blog (April 8, 2012), http://www.becker-posner-blog.com/2012/04/ unlimited-campaign-spendingagood-thing-posner.html.

[15] Paul Harris, Super PAC Donors Often Max Out on Individual Donations, Study Finds, Guardian, Feb. 21, 2012.

[16] *See* Phil Hirschkorn, Super PAC Donors by the Numbers, CBS NEWS (Mar. 22, 2012), http://www.cbsnews.com/8301–503544__162–57402073–503544/super-pac-donors-by-the-numbers (listing several corporations that each gave $1 million to super PACs).

[17] Andrew C. Byrnes & Cortlin H. Lannin, *I Went Down to the Crossroads: Lifting the Blindfold about the Origin of 501(c)(4) Political Advertisements,* 46 U.S.F. L. REV. 481, 483, 493–96 (2011); *see also* Jonathan D. Salant, *Payday Lender Political Donors Hidden in Corporate*

THE CONCENTRATION OF POLITICAL INFLUENCE

Super PACs allow a few wealthy donors to wield disproportionate influence over candidates. Over $50 million in contributions to Republican Super PACs during the current election has come from "[a]bout two dozen individuals, couples or corporations."[18] More than 78% of the money donated to the super PACs active in the presidential election has come from just ninety donors who each gave more than $100,000.[19] Over two-thirds of the money donated to Super PACs came from donors who gave $500,000 or more.[20] A super PAC backing Newt Gingrich received almost all of its money from casino magnate Sheldon Adelson and his family, who donated over $16 million.[21] On the other side of the aisle, more than three-fourths of the money contributed to the Super PAC supporting President Obama has come from donors giving over $500,000.[22]

The enormous amounts given by a small number of donors raise the clear possibility that candidates will feel indebted to donors and grant them favors once in office. For instance, Billionaire Julian Robertson has acknowledged that, in light of the $1.25 million he has given to Restore Our Future, Romney might take Robertson's phone call if he became president.[23] It has long been an unfortunate truth of our politics that major donors receive increased access to candidates and officeholders,[24] but to have such expectations of access predicated on supposedly "independent" expenditures highlights the extent to which Super PACs' purported "independence" is a widely-recognized fiction.

THE EROSION OF PUBLIC CONFIDENCE

Finally, Super PACs have created the appearance of corruption and seriously undermined public confidence in elections and democracy, as shown by media coverage and public opinion polls. There has been thunderous opposition to the opportunities for corruption created by unlimited Super PAC money in elections.[25] Public opinion polls reveal wide agreement with the news media's concerns about super PACs and corruption. Americans strongly disapprove of Super PACs and independent spending in elections:

• One poll found that 69% of all Americans agree that Super PACs should be made illegal; the poll found majority support for banning Super PACs across political parties and the political spectrum.[26]

Names, Bloomberg.Com (Mar. 21, 2012, 8:00 PM), http://www.bloomberg.com/news/2012–0322/payday-lender-political-donors-hidden-in-corporate-names.html (describing businesses' use of limited liability corporations to secretly donate to super PAC supporting Romney).

[18] 18 Nicholas Confessore et al., *In G.O.P. Race, a New Breed of Superdonor,* N.Y. Times, Feb. 22, 2012, at A1.

[19] 19 Lee Drutman, *The Presidential Super PACs: Five Takeaways,* Sunlight Foundation Blog (Feb. 1, 2012, 3:35 PM), http://sunlightfoundation.com/blog/2012/02/01/ superpac-takeaways.

[20] 20 Fredreka Schouten et al., *Big-bucks Donations to Super PACs Keep the GOP Race Going,* USA Today, Mar. 21, 2012.

[21] 21 *Id.*

[22] *Id.*

[23] Wyatt Andrews & Phil Hirschkorn, *Billionaire Super PAC Donor Julian Robertson Speaks Out*, CBS News (Apr. 6, 2012), http://www.cbsnews.com/8301-503544__162-57410709-503544/billionaire-super-pac-donor-julian-robertson-speaks-out.

[24] Mike McIntyre & Michael Luo, *White House Opens Door to Big Donors, and Lobbyists Slip In*, NY Times, April 14, 2012, at A1.

[25] *See, e.g.*, Editorial, *The Power of Super PACs*, Wash. Post, Jan. 9, 2012 ("The risk of corruption in candidate-specific super PACs is as great as the size of supporters' checkbooks."); Editorial, *The Broken System of Campaign Finance*, San Diego Union-Tribune, Dec. 5, 2011 (arguing that super PACs collaborate with campaigns and expressing concern about "the corrupting influence of money, or the appearance of such influence"); Editorial, *The Campaign Jungle*, N.Y. Times, Nov. 13, 2011, at SR10 (arguing that super PACs coordinate with candidates and concluding, "Limits on spending used to prevent donations from becoming outright bribes, but now the limits are gone, and the path to corruption is clear."); Editorial, *Not So Super*, Raleigh News & Observer, Oct. 14, 2011 (arguing that interest groups that donate to super PACs are "betting on dividends" once candidates are elected); Editorial, *Our View: Presidential Race Not the Place for Secret Donors*, USA Today, Aug. 21, 2011 (comparing use of super PACs and nonprofit corporations in election spending to organized crime).

[26] Damla Ergun, *Seven in 10 Would Send Super PACs Packing*, ABC News (Mar. 13, 2012), http://abcnews.go.com/blogs/politics/2012/03/seven-in-10-would-send-super-pacs-packing.

• Sixty-seven percent of Americans—again including majorities of Republicans, Democrats, and independents—said that there should be legal limits on the amount independent groups can spend on advertisements during a presidential campaign.[27]
• Of those who are aware of the post-Citizens United rules allowing unlimited independent expenditures on political advertisements, 65% say the regime is having a negative effect on the 2012 presidential campaign.[28]
• And a majority of Americans believe the nation needs new campaign finance laws, "a marked increase from three years ago."[29]

These polling results demonstrate the fallacy of Justice Kennedy's prediction in Citizens United that "the appearance of influence or access will not cause the electorate to lose faith in this democracy."[30] But this crisis of confidence opens up new opportunities for reform.

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The 2012 general election is barely underway, yet already the corrosive effects of Super PACs and similar failures of disclosure, coordination, and enforcement policy threaten to undermine the integrity of our electoral officials and the citizens' faith in our electoral system. We strongly urge the Committee to hold hearings and take further action to prevent further erosion of the foundations of our democracy.

Mr. GONZALEZ. Thank you very much. Excuse me.

The next witness will be Zephyr Teachout, associate professor of law, Fordham University School of Law. Received her education, her B.A. from Yale University, her Master's in political science from Duke, and her J.D. from Duke.

She is a talented and very creative scholar. Professor Teachout brings a rich background in laws governing political behavior, both domestically and abroad, as well as the insights of her original work on corruption and its constitutional history.

Her 2009 article, "The Anti-Corruption Principle," was cited by Justice Stevens in his Citizens United dissent for showing, among other things, that the Founders "discussed corruption more often in the Constitutional Convention than factions, violence, or instability."

Professor Teachout.

STATEMENT OF ZEPHYR TEACHOUT

Ms. TEACHOUT. Thank you so much. It is Zephyr.

Thank you so much for having me. I am going to do two things in my remarks. First, talk about history and then talk about the future.

I want to place Citizens—is that better?—I want to place Citizens United in a broader historical context. As a friend of mine, a Texas lawyer who taught at Duke, said about Buckley v. Valeo, "They went and got drunk on the First Amendment, didn't they?"

And since Buckley v. Valeo, the last 30-odd years of jurisprudence have been wildly outside the initial 180 years of thinking about the First Amendment and thinking about Congress's power to limit corruption through political regulation. Up until Buckley, it was not a sensible argument to claim that Congress couldn't do what it needed to do to prevent money overcoming political power.

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[27] Brian Montopoli, *Poll: Most Want Limits on Campaign Spending*, CBS News (Jan. 18, 2012), http://www.cbsnews.com/8301-503544__162-57361428-503544/poll-most-want-limits-on-campaign-spending.

[28] *Super PACs Having Negative Impact, Say Voters Aware of 'Citizens United' Ruling*, Pew Research Center. 1 (Jan. 17, 2012), http://www.people-press.org/files/legacy-pdf/1-17-12%20Campaign%20Finance.pdf.

[29] *58% Say U.S. Needs New Campaign Finance Laws,* Rasmussen Reports (Jan. 22, 2012), http://www.rasmussenreports.com/public__content/politics/general__politics/january__2012/58__say__u__s__needs__new__campaign__finance__laws.

[30] 130 S. Ct. at 884.

Just one of many examples: in 1874, the United States Supreme Court refused to enforce a contract between an old man and a lobbyist because they said lobbying was against the public policy of the United States. And if the great corporations of our day were to hire adventurers to lobby in the halls of Congress, that would corrupt and degrade the entire institution. Several states had laws criminalizing lobbying. And certainly, up until Buckley v. Valeo, the assumption was that one could limit campaign expenditures, as well as contributions.

Since Buckley, you know somewhat from what others have said about the eccentricity of the Court in the context of campaign contributions, but there has been a parallel eccentricity in interpreting federal bribery and extortion statutes. So, in 1991, the Supreme Court says even though many campaign contributions would otherwise count as extortion or violation of federal extortion laws, in this area alone we are going to require a specific promise on the part of the legislature in return for a donation.

So that we are going to carve out an exception within federal bribery laws and say, "Here, when it is campaign contributions, it is not bribery." So this creates this incredible bait and switch.

Because, in the context of bribery laws, we say, "Don't worry, campaign finance laws will cover it." And then, in Citizens United and other cases, Kennedy says, "Don't worry, bribery laws will cover it." And what you end up is this great cavity where what you and I and the rest of the country knows is corruption in the sense the Founders meant is allowed to go on.

So we are, as Monica suggested, in this terrible world where you spend all your time begging for people to give you $2,500 and to bring people together who can give you that much. And, at the same time, you need to be then scared of the company that might come in or might not and roil your local constituency and swarm it with ads.

If you don't change this, you know and I know and the country knows, it is a bad couple of years, but it is about to get much worse. The culture of corporations has not yet adopted the Citizens United law. They have not yet hired the best campaigners. They have not yet figured out all the loopholes. This is 2 years in. So it is so important to do something now.

Now with—I am former national director of the Sunlight Foundation, I am a former political campaigner, and I am a scholar. I think disclosure is extremely important. But I do not think you can X-ray a sick patient into health, and I do not think that X-rays alone are sufficient and disclosure alone is sufficient for the level of threat that we have right now in this country.

It is critical that this Congress focus on changing the structure of the way campaigns are funded. Low-dollar matching funds. I know. I was the director of online organizing for Howard Dean's presidential campaign. We figured out, and we have seen Barack Obama do extraordinary things with this. We know how to allow you to spend your time talking to 100 people who will give you $100 instead of the richest people in the world.

You may lose your jobs fighting for changing the structure of money in politics. But if you don't do this, you can't do anything else. You can't do anything about too-big-to-fail-companies if you

are scared about them coming into your district. You know that. You can't do anything about capital gains tax or the financial transactions tax with this kind of funding mechanism.

So thank you for having me, and I look forward to seeing what happens.

[The statement of Ms. Teachout follows:]

TESTIMONY OF ZEPHYR TEACHOUT, ASSOCIATE PROFESSOR, FORDHAM LAW SCHOOL, BEFORE THE CONGRESSIONAL FORUM ON CAMPAIGN FINANCE REFORM, APRIL 18, 2012

Our country was formed in reaction to corrupt British politics. The Declaration of Independence was, among other things, a declaration of separation from the politics of dependence which the Founders saw in Britain. They perceived a country with a basically good constitutional structure that had rotted from the inside out because of the king's power to make officers and parliamentarians dependent upon him. They saw the way that "rotten boroughs" could be bought, that allegiances could be shifted because of money. Corruption fears—fears of a "conspiracy against liberty . . . nourished by corruption" were "at the heart of the Revolutionary movement."[1] The fear of corruption was "near unanimous" as was the sense that corruption needed to be "avoided, that its presence in the political system produced a degenerative effect."[2] George Mason said as the Constitutional Convention got under way that "If we do not provide against corruption, our government will soon be at an end."[3] In the Federalist Papers, Hamilton explained that "[n]othing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption."[4]

They were right to be concerned about corruption and how money, allowed free rein in politics, can corrupt democracy. It is important to remember how rare self-government is in world history. Most governments are not representative; in most times and places, concentrated economic power rules, directly or indirectly. The founders were well aware of the tendency to oligarchy and monarchy. In John Dickinson's long speech on the value of mixed government, he argued that "If antient republics have been found to flourish for a moment only & then vanish for ever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases."[5] After the Philadelphia convention, a woman allegedly asked Benjamin Franklin, "what have we got, a republic or a monarchy?" Franklin is rumored to have replied, "A republic, Madame, if you can keep it."

It is now our challenge to keep it. We are now again facing a new politics of dependence. Citizens United and its precursors threaten to destroy the rare self-government that we are privileged enough to have inherited.

The Supreme Court in Citizens United showed a lack of understanding of how politics actually worked. But it was also radical—in a doctrinal sense. To get a sense of how radical the First Amendment interpretation is, consider that the first century-and-a-half of our country, no one seriously thought that the First Amendment should be used to prohibit legislation that built hurdles between economic and political power. In the 1870s, the Supreme Court refused to enforce a contract to lobby at all, because it was corrupt and against the public policy of the United States. The Court warned:

> If any of the great corporations of the country were to hire adventurers who make market of themselves in this way, to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and employed as steeped in corruption, and the employment as infamous.[6]

The First Amendment was not even raised as an issue in that case. Half a century later, the First Amendment became a valuable tool in protecting dissident speech but, starting with Buckley v. Valeo, also became a radical wedge used by ideologues

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[1] Bernard Bailyn, The Ideological Origins of the American Revolution, xiii (1992).

[2] James D. Savage, Virtue and Corruption at the Constitutional Convention, 56 The Journal of Politics 1 (1994).

[3] Notes of Yates, June 22, 1787, in 1 The Records of the Federal Convention of 1787 (Max Farrand ed.).

[4] Alexander Hamilton, Federalist 68.

[5] Notes of Madison, June 2, 1787 in The Records of the Federal Convention of 1787 (Max Farrand ed.).

[6] *Trist* v. *Child*, 88 U.S. at 451 (1874).

who proposed that there should be no levies raised between money and politics. The great corporations of the country are invited, because of Citizens United, not only to lobby, but to promote their private interests through unlimited expenditures. They are invited to threaten would-be representatives with swift and brutal campaigns if they oppose their corporate agendas. The Court's use of the First Amendment is bad history, bad law, and bad political theory.

Obviously, money will always have an influence on politics. But it is one thing to say that money and politics will always have some relationship, it is another altogether to give up on responsive self-government altogether. Structural rules matter. The shape of that influence is not inevitable. As Members of Congress, you know how laws shape incentives.

In the short term—and regardless of what happens with Constitutional interpretation—we need to restructure how campaigns are funded. I urge Congress to pass a small donor matching funds system that would grant federal matching funds for small-dollar donations. Such a law would shape incentives, forcing representatives to think about the public. Now, faced with millions of dollars in Super PAC attack ads, candidates' incentives are to raise as much money as they can from people who can afford $2,000 and more to give—basically, people in the top 1 to 4% of Americans. This means that their minds have to be oriented towards the concerns of the richest politically active people in the world. At the same time, they have to be afraid of the political activity of corporations. Right now, with Super PACs and the campaign funding system in place, Members of Congress are inside a system that corrupts each of them every day, and takes their talents and turns them towards the 1% instead of the 99%. With a matching funds system, where a $100 donation was matched 5 to 1, their incentives would be to raise as many $100 contributions as possible—their orientation would shift to the concerns of constituents. It wouldn't address all the problems with Super PACS, but would significantly change the way representatives think and represent. Similar systems have been very successful in the states, and have withstood court challenges.

Disclosure is essential, and any resistance to disclosure is very troubling. But disclosure is not a sufficient response to Citizens United. You cannot X-ray a sick man back to health.

We need to understand that the worst is yet to come. Much has been made of the involvement of Super PACs in the presidential election. These Super PACs are mere children compared to what Super PACs are likely to become. They are playing checkers now, and we will soon be playing chess; the power of Super PACs at the congressional district level and the local level is far greater than it can be in a presidential race, where substantial media attention can blunt some of the power. Moreover, the first banking Super PAC was formed just last week, after claims by many that corporations would never get directly involved in electioneering. Scholars and commentators argue that corporations don't "want" to get involved in politics, and that it will hurt their reputations; in short, that independent spending is tacky and graceless. We need to remember that the same arguments were made about lobbying, but—however tacky and graceless the largest corporations in the world now all lobby, and accept the criticism in exchange for the power it gives them. I expect the same with independent expenditures. We are less than three years since Citizens United gave corporations permission to act. It takes time to change culture and habits and internal structures, but I anticipate that every major corporation will participate directly or indirectly in trying to shape policy through elections if the status quo holds. They will not be able to resist the temptation, and they, too, will seize the power they are given, because it will be a rational business decision to do so. Because it is just at the beginning, it is important to act now, before the structures are in place that would make change impossible.

Until Congress deals with money and politics, it cannot deal with much else fairly. Just as one example, it cannot pass a financial transactions tax, even with enormous popular support, because of the fear of Wall Street's money; it cannot even fairly address the question about whether a financial transaction tax makes sense. It cannot, in short, be responsive—be democratic—and live up to the hope of the founders.

The fight against corruption follows in the path of Madison, Hamilton, Franklin, Mason, and the other drafters of the Constitution, who worked so carefully to craft structures such that representatives would be able to serve their constituents, not the wealthy and powerful.

It is my hope that this hearing will be the beginning of the federal government's effort to focus intensely on ways to restructure political campaigns within the radically limited framework allowed by Citizens United. I urge Congress to hold many hearings on this subject, and fully explore what is possible, and the potential dangers of not acting quickly. I believe that the country wants a full public debate

about the future of democracy after *Citizens United*, and it is the responsibility of the United States Congress to provide that, and to act as quickly and aggressively as possible to save our democracy.

Mr. GONZALEZ. Thank you.

Next witness is Paul S. Ryan of the Campaign Legal Center. Paul S. Ryan joined the Campaign Legal Center in October 2004. He has specialized in campaign finance, ethics, and election law for more than a decade. Mr. Ryan directs the Campaign Legal Center's Federal Election Commission program and regularly represents the Campaign Legal Center before the Commission.

Mr. Ryan also litigates campaign finance issues before federal and state courts throughout the United States and has published extensively on the subject of election law. Mr. Ryan has testified as an expert on election law before numerous legislative bodies and government ethics agencies including the FEC, the California state legislature, the California Fair Political Practices Commission, the New York City Council, the New York City Campaign Finance Board, the Los Angeles City Council, and the Los Angeles City Ethics Commission.

Mr. Ryan has also spoken on the topics of campaign finance and ethics laws at conferences around the Nation, has appeared as a campaign finance law expert on news programs of CNN, NBC, C–SPAN, and other media outlets, and has been quoted by the New York Times, Los Angeles Times, the Washington Post, Roll Call, and news publications. He received his education at the University of Montana, as well as the University of California, Los Angeles, School of Law's program in public interest law and policy in 2001.

Mr. Ryan.

STATEMENT OF PAUL S. RYAN

Mr. RYAN. Madam Leader, distinguished committee members, thank you for this opportunity to appear before you this afternoon. As you have already heard, the Citizens United decision was based on at least two faulty assumptions.

First, that this new flood of corporate money in politics would actually be disclosed. And, second, that this new flood of corporate money in politics would actually be spent in a truly independent manner with respect to candidates and parties.

I am going to address the nuts and bolts of existing statutes and regulations that undermine those two assumptions of the Court, and these assumptions were only made worse by the D.C. Circuit Court of Appeals in the SpeechNow case, which gave rise to the super PACs.

Notwithstanding the Supreme Court's promise that the corporate money it was unleashing would be spent independently of candidates, current laws have been interpreted by the FEC to allow very close relationships between Super PACs and candidates. Congress, in passing the McCain-Feingold law in 2002, ordered the FEC to rewrite its long-ineffective coordination rules. These coordination rules have twice been invalidated by federal courts over the past decade and remain ineffective today.

Many assume that the coordination rules restrict general interaction between candidates and outside groups but, instead, current

coordination rules regulate only discrete expenditures—discrete ad buys, for example—made by outside groups.

Current coordination rules accommodate close personal relationships between candidates and the individuals operating Super PACs and, in fact, many of the candidate-specific Super PACs active in this year's elections are being run by close associates and friends and former employees of these candidates.

The McCain-Feingold law prohibits candidates and office holders from soliciting unlimited funds, as well as corporate and union funds in any amount, so-called soft money, in connection with any elections. However, last year, the Federal Election Commission nonsensically issued an advisory opinion stating that candidates and their staff and office holders and their cabinet members can attend, speak, and be featured guests at these Super PAC fundraising events where unlimited funds are being raised so long as they do not make the actual pitch for the unlimited contributions. This is nonsense. The close relationships between Super PACs and candidates fall far short of the independence likely envisioned by the Supreme Court in Citizens United.

On top of this, we have 501(c)(4) organizations. The Citizens United court's second faulty assumption, that disclosure laws would provide voters with the information needed to make informed decisions on Election Day, has not come to pass.

Section 501(c)(4) organizations like Crossroads GPS will likely spend hundreds of millions of dollars on election ads in this year's elections without disclosing any of the sources of their funds. This is possible because, back in 2007, the FEC promulgated a rule gutting the McCain-Feingold law's donor disclosure requirement for electioneering communications.

Whereas the statute requires groups that spend more than $10,000 in a calendar year on electioneering communications to disclose the names of all contributors who contributed $1,000 or more to the group, the FEC's 2007 rule, by contrast, narrowly restricts that disclosure requirement. It only requires disclosure if the donor gave the funds "for the purpose of furthering electioneering communications." Under the FEC's rules, donors to 501(c)(4) groups simply refrain from designating their contributions to the groups for any particular purpose and, therefore, evade entirely these McCain-Feingold law donor disclosure requirements.

Last year, Representative Van Hollen sued the FEC, challenging this 2007 rule. And several weeks ago, he prevailed in his challenge with a favorable decision from the Federal District Court. However, an appeal is pending, and the FEC is unlikely to act on this court order any time soon. The Campaign Legal Center is very proud to be part of Representative Van Hollen's legal team, and we plan to continue fighting on his behalf in the courts.

The Campaign Legal Center urges Congress to pass the DISCLOSE Act of 2012 to close these disclosure loopholes, to address these problems that have been made possible by the FEC's regulations, as well as by holes in existing statutes. The IRS itself has a role to play in this as well. The IRS's faulty interpretation of the tax code has made 501(c)(4) organizations attractive vehicles for spending these millions of dollars in election ads while shielding their disclosures.

I am happy to talk further about the tax laws to the extent that it interests you, and I thank you for this opportunity again to testify before you today.

[The statement of Mr. Ryan follows:]

TESTIMONY OF PAUL S. RYAN, SENIOR COUNSEL, CAMPAIGN LEGAL CENTER. BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION CONGRESSIONAL FORUM ON CAMPAIGN FINANCE, APRIL 18, 2012

Distinguished committee members, thank you for this opportunity to provide my views on significant changes that have occurred in campaign finance law and practice over the past two years, since the Supreme Court's landmark decision in Citizens United v. Federal Election Commission (FEC) and the D.C. Circuit Court decision built upon it, SpeechNow v. FEC.

The Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization founded in 2002 that works in the areas of campaign finance, elections and government ethics. The Legal Center offers nonpartisan analyses of issues and represents the public interest in administrative, legislative and legal proceedings. The Legal Center also participates in generating and shaping our nation's policy debate about money in politics, disclosure, political advertising, and enforcement issues before the Congress, the FEC, the Federal Communications Commission (FCC) and the Internal Revenue Service (IRS). The Legal Center's President is Trevor Potter, former Chair of the FEC, and our Executive Director is Gerry Hebert, former acting head of the Voting Section of the Civil Rights Division at the Department of Justice. I serve as Senior Counsel at the Legal Center and have more than a decade of experience practicing election law.

CITIZENS UNITED AND SPEECH NOW

The Supreme Court in Citizens United based its decision to unleash a flood of corporate money into U.S. election on two faulty assumptions. First, the Court wrongly assumed that such funds would be spent "independently" of candidates and, therefore, could not give rise to corruption or the appearance of corruption. Second, the Court assumed that the source of such funds would be disclosed, permitting "citizens and shareholders to react to the speech of corporate entities in a proper way" and enabling the "electorate to make informed decisions and give proper weight to different speakers and messages."

Several months after the Citizens United decision, the Supreme Court's faulty assumptions were compounded by the D.C. Circuit Court of Appeals in SpeechNow, when it relied on Citizens United and held that if independent expenditures cannot give rise to corruption, then contributions to groups making such expenditures cannot be limited. The SpeechNow decision gave birth to "Super PACs."

I welcome the opportunity to discuss with you today the Citizens United Court's faulty assumptions and how they are playing out in the elections currently underway. Specifically, I will detail how current laws and regulations, combined with a dysfunctional FEC, have made this year's elections a "Wild West" of money in politics.

SUPER PACS

The ability of Super PACs to accept unlimited contributions, including contributions from corporations and labor unions that had for decades been off-limits for federal political committees, poses a serious threat of corruption in U.S. elections. Notwithstanding the Supreme Court's promise that the corporate money it was unleashing would be spent independently of candidates, current laws have been interpreted by the FEC to allow very close relationships between Super PACs and candidates.

Coordination Rules

Congress, in passing the McCain-Feingold law in 2002, ordered the FEC to rewrite its long-ineffective coordination rules. The FEC's coordination rules (11 C.F.R. 109.21) responding to the mandate of Congress were woefully, and some would argue intentionally, inadequate. They have twice been invalidated by federal courts in two separate lawsuits brought by former Representatives Shays and Meehan over the past decade and remain ineffective today.

Many assume that the coordination rules regulate and restrict general interaction between candidates and outside groups, but instead, current coordination rules regulate only discreet expenditures—discreet ad buys, for example—made by outside groups. Current coordination rules accommodate close personal relationships and

regular interaction between candidates and individuals operating Super PACs wholly dedicated to electing those candidates. Indeed, the most prominent Super PACs today are operated by friends and former employees of the candidates they support. And we have seen prominent funders of Super PACs closely involved with candidate campaigns.

Solicitation

The McCain-Feingold law prohibits candidates and officeholders from soliciting unlimited funds, as well as corporate and union funds in any amount—so-called "soft money"—in connection with any election.

However, last year the FEC nonsensically ruled in an advisory opinion (AO 2011–12, Majority PAC) that candidates and their staff may attend, speak and be featured guests at Super PAC fundraising events without violating the soft money solicitation ban—so long as they do not make the actual pitch for unlimited contributions.

Threat of Corruption

The FEC's failure to effectively regulate soft money solicitation and coordination between Super PACs and candidates has allowed the rise of candidate-specific Super PACs operating as shadow campaign committees fueled by soft money. The close relationships between Super PACs and candidates fall far short of the "independence" likely envisioned by the Citizens United Court. And unlimited contributions to candidate-specific Super PACs pose precisely the same threat of corruption posed by unlimited contributions directly to candidates.

501(C) ORGANIZATIONS

The Citizens United Court's second faulty assumption was that disclosure laws would provide voters with the information needed to hold corporate America accountable for its political activities and to make informed decisions on election day.

Section 501(c)(4) organizations like Crossroads GPS, as well as 501(c)(6) organizations like the U.S. Chamber of Commerce, will likely spend hundreds of millions of dollars on election ads this year without disclosing their donors. Indeed, such tax-exempt corporations will likely play an even bigger role in this year's elections than Super PACs—precisely because they offer donors anonymity.

This explosion in use of such tax-exempt entities to evade campaign finance disclosure laws was entirely predictable at the time of the Supreme Court's decision in Citizens United.

FEC-Created Disclosure Loopholes

Back in 2007, the FEC promulgated a rule (11 § C.F.R. § 104.20(c)(9)) gutting the McCain-Feingold law's donor disclosure requirement for "electioneering communication." Whereas the statute (2 U.S.C. § 434(f)) requires groups that spend more than $10,000 in a year on electioneering communication to disclose the names of "all contributors who contributed . . . a $1,000 or more" to the group, the FEC's rule only requires disclosure if the donor gave their funds "for the purpose of furthering electioneering communications." Under the FEC's rule, donors to 501(c)(4) groups have simply refrained from designating their contributions for the specific purpose of funding electioneering communications and, therefore, have evaded disclosure.

Last year Representative Van Hollen sued the FEC challenging this 2007 regulation and, several weeks ago, prevailed in his challenge before a federal district court. However, an appeal is pending and it is unlikely that the FEC will act anytime soon to comply with the court's order. The Campaign Legal Center is proud to be part of the legal team representing Representative Van Hollen.

A similar hole exists in the disclosure law and regulation pertaining to "independent expenditures" (2 U.S.C. § 434(c)(2)(C) and 11 C.F.R. § 109.10(e)(1)(vi)).

The Campaign Legal Center urges Congress to enact the DISCLOSE Act of 2012, which would close these loopholes and dramatically improve our federal campaign finance disclosure laws.

Tax Law Disclosure Loopholes

Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. . . ." (26 U.S.C. § 501(c)(4)). Internal Revenue Service (IRS) regulations make clear that spending to influence candidate campaigns does not constitute "promotion of social welfare." (26 § C.F.R. § 1.501(c)(4)–l(a)(2)(ii))

The courts, however, have held that section 501(c)(4) organizations are permitted to engage in an "insubstantial" amount of activities that do not further their exempt purposes—including candidate election intervention.

The IRS has interpreted these court decisions allowing "insubstantial" candidate election activities by 501(c)(4)s to allow such organizations to intervene in candidate elections as long as such campaign activities do not constitute the "primary" activity of the organization. (26 C.F.R. § 1.501(c)(4)–1(a)(2)(i))

These regulations are commonly interpreted by practitioners to allow section 501(c)(4) organizations to engage in substantial candidate election intervention—as much as 49 percent of the organization's activities—so long as such activity does not constitute the organization's "primary" purpose.

Importantly, section 501(c)(4) groups are not required by tax law to disclose their donors to the public. Consequently, 501(c)(4) groups have become attractive vehicles for spending millions of dollars on election ads without having to reveal the identities of donor who would rather stay hidden from public scrutiny.

Many newly-created 501(c)(4) groups—including Crossroads GPS, the American Action Network, Americans Elect and Priorities USA—clearly have the overriding purpose of influencing candidate elections and should be deemed ineligible for their claimed tax-exempt status under section 501(c)(4).

The Campaign Legal Center urges Congress to amend the federal tax code to make clear that 501(c)(4) groups may not engage in more than an "insubstantial" amount of candidate election spending, and defining "insubstantial" using a bright-line ceiling on campaign expenditures of no more than 10 percent of an organization's total annual expenditures.

CONCLUSION

Thank you for the opportunity to testify before you today.

Mr. GONZALEZ. Well, we thank the witnesses. We are going to proceed with 5 minutes of questioning from the Members that are up here right now, and I will start by recognizing my colleague, Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman, but I would have yielded my time to Leader Pelosi.

No, just real quickly—and this is for all of you. The DISCLOSE Act, do you think that is a good first-step that closes the information gap between unions and the membership organizations, as opposed to corporations?

And the reason why I make the distinction, I am a union member, and I am still a current union member of two unions. And every donation that I make, I vote on. I get a chance to vote when I have our meetings, and I submit the request of people or whoever it may be, the organization that asked for donations, and we get a chance to vote on it. And a membership organization is the same.

Corporations, they just do what they want to do with any money that they collect. And the problem I have with that is a pen is a company. TVs are companies. Water is companies. These guys, God knows, are companies—watches, jewelry, clothes. They are all companies that we all support, and we buy items from them, and they make a profit.

And then they can use that money, their profit or the money that we give them, they can now use that against me. They can use that against any one of my colleagues, and I have a problem with that. I have a problem with that lack of transparency.

Now talking about transparency, as our Speaker—our Majority Leader [sic]—just said, that they had asked us, and me as the Chairman of this Committee, for us to have hearings on the Citizens United and DISCLOSE Act. And you know, there are a lot of things above my pay range, and naturally, I had to go to my Speaker at the time, Speaker Pelosi, and ask her if we should do that. And she said, "Yes, give them as many as they want." They wanted three.

We have on our committee, myself, Mr. Gonzalez, Mrs. Lofgren, asked for a hearing in the same exact way they asked us for hearings when we were the majority, and they said no. And now the current chair won't put our pretty faces on TV and let us—so that the whole Congress, while we are sitting here waiting for a vote, that they could just watch and listen and form an opinion on what we are hearing here today from all of you.

So, you know, that does upset me and bother me a little bit because, again, it is probably above our chairman's pay-grade. But it is not above the leadership that sanctions it or not sanctions us to have these hearings.

So, do you think the DISCLOSE Act, back to my question, is a good first step into closing that gap between our union membership and membership organizations, as opposed to our corporations that are allowed to be in obscurity and do whatever they want nontransparent? Anyone who would like.

Ms. YOUN. I would be interested in addressing that. I am not prepared to talk about the DISCLOSE Act, but there is a very interesting asymmetry because the Supreme Court in Citizens United pretends it is treating corporations and unions the same. And I think Representative Brady is absolutely correct in pointing out that, in fact, they are not the same.

That the Supreme Court, among others, has been absolutely vigilant in making sure that every dollar of member—of union member funds that goes toward political spending was put there voluntarily and that members who are not interested in their money being used for political spending have an opt-out.

Whereas corporations, the money that they are using is not voluntary. When I give my money to my 401(k), I am not saying that whatever corporate manager has their hands on my money has the right to use that to support any political candidate that they like.

So, yes, unions and corporations can both spend out of their general treasury funds. But the asymmetry is in amassing those general treasury funds. Unions are required to use only voluntary contributions, whereas corporations are not.

Mr. RYAN. I would also like to respond. The Campaign Legal Center strongly supports the DISCLOSE Act of 2012. We think it would do great things to improve transparency in U.S. elections. When it comes to treatment of or spending by labor unions versus for-profit corporations, nonprofit corporations like these 501(c)(4) groups, it is the thresholds for disclosure that are intended to capture the information that matters: big donors.

In the DISCLOSE Act—I believe the donor disclosure thresholds in the DISCLOSE Act of 2012 are $10,000. So it is only when a person or an entity, a corporation, gives money to the spender in excess of that $10,000 threshold that they get disclosed by the spender as a donor to the group. I think that is a good thing.

I don't think disclosure thresholds should be so low as to capture every dollar coming into these groups. It may place an unreasonable burden on groups that are funded or driven principally by a huge number of small donors. They don't worry me in terms of democracy. Large numbers of small contributions aren't the problems here. It is small numbers of huge contributions swaying elections that are— that is what matters. That is what needs to be disclosed.

Mr. ORNSTEIN. Just one quick comment. And I also support the DISCLOSE Act, but I would take it further.

The campaign monies given by corporations are nondeductible business expenses. If I am a shareholder in a corporation, I ought to know when that company is spending money that is not for legitimate business purposes directly that would be deductible.

And it seems to me that two things ought to happen here that perhaps you could participate in. One is to urge the Securities and Exchange Commission to promulgate a regulation that requires in annual reports that all nondeductible business expenses are disclosed. And the second is to talk to major shareholders, and that includes big pension funds, and have them go to corporations and demand that it is in their interest as shareholders to know how they are spending their money that doesn't get a tax deduction.

Mr. BRADY. Thank you. And thank you all for being here today, and thank you, Mr. Chairman.

Mr. GONZALEZ. Thank you very much, Mr. Brady.

I would recognize Mr. Price for 5 minutes.

Mr. PRICE. Thank you, Mr. Chairman.

Thanks to all of you for outstanding testimony in every case. Very, very well done, and very helpful.

We all could multiply examples here of how far this has gone already and where it may well take us in the future. On March 30th, This American Life ran a show entitled "Take the Money and Run for Office." And, during the second segment, the show focused on a California race—actually, the race of the chairman of this committee.

Three weeks before the election, the Times ran a piece calling incumbent Dan Lungren "endangered." Guess what happened. The next week, Karl Rove's Super PAC, American Crossroads, dumped $680,000 into that race in the form of a media buy, and we all know the result.

I had a similar experience right next door in North Carolina, my colleague, Bob Etheridge, in the Second District. Hundreds of thousands of dollars parachuted into that race in the last 2 weeks, and he lost by a very few votes. And, needless to say, not one dime of that money was spent on anything but negative ads.

So the examples are multiplying. The future is before our eyes, I think, in what is happening this year, including the Republican presidential primary. So, I would like to ask a couple of questions, which, maybe, help us understand the gravity of this trend and some of the consequences.

All of you, in your own way, have spoken about corruption or the appearance of corruption and about the otherworldliness of the court's reasoning about it. I wonder about the effects on this institution and the effects on the functionality of American politics and American government.

Norm Ornstein, I want to ask you to start because I know you have thought about it, but I expect all of you have. How is this money spent, and in what ways is it spent differently from money spent by other kinds of political groups? Are these ads different? Are they more negative? Are they more personal? Is there any study of this? I mean, we all have our impressions. I wonder if those impressions are confirmed.

And what effect does this avalanche of negative ads from undisclosed sources—what effect is that likely to have on what we all know is an overly charged, overly polarized political environment that we're already dealing with, with the dysfunctionality of this institution, our inability, our failure, to come to grips with the major issues of the day?

We can't even pass a transportation bill! We can't pass an education reauthorization. And we now aren't even going to be able to pass appropriations bills because that has blown up. We are not functioning well, and the American people are not being well served.

And Norm, I know you have thought about the connection of campaign financing, the way campaigns are paid for, and I would like to have you elaborate on it.

Mr. ORNSTEIN. Thanks.

Let me start by saying that one of the most significant and commendable provisions of the Bipartisan Campaign Reform Act was the "stand by your ad" provision that David Price authored. I think it has now become familiar to most Americans, and it has changed the nature of campaigning. It has changed those commercials.

When a candidate has to stand up in a television commercial and say to the camera, "I am fill-in-the-blank, and I stand by this message," it makes a difference. And if you have watched any of the ads that have been out, the Super PAC and 501(c)(4) ads in the presidential campaign where the disclaimer at the end is, "This message paid for by Americans for a Better America, unaffiliated with any candidate or campaign", what you see—and we need more systematic research, but it is pretty evident on the surface—is scorched earth.

Lies have now become the coin of the realm. Viciousness, when you don't have to connect yourself to it. And of course, the perfect opportunity for a candidate who is intimately connected to the Super PACs to say, "Well, I had nothing to do with that." It makes it worse.

I think it is demeaning the discourse even more. We live in a rough and tumble world. Shock to cut through the cacophony is going to be there all the time. But the "stand by your ad" provision at least puts some broad boundaries around this, and those are going away.

And one of the things that I fear so much is these groups are coming in with so much money that they can go to television and radio stations and roadblock all the prime spots by saying, "I will give you retail or 25 percent over retail." And candidates are going to be relegated to the second tier. They are going to be in the AAA ballparks rather than in the best places.

And that is going to make it worse. What does all that do? It accentuates the tribal politics. This scorched earth campaign is going to make it that much harder to find bipartisan compromise when we come back. It is going to make voters view even less favorably all of those who are engaged in politics.

I don't know how much lower we can sink below the 9 percent where we are now in approval, or 9 to 11 percent, but we have got a little bit of running room there. And the harsh negative views

will increase, and that means the legitimacy of decisions that are made will come under challenge.

So this is not just a matter of some of the really serious elements that we made here, that we are back to the gilded age and you have got people coming in, swooping in and spending money and getting their way in policy. It also challenges, it seems to me, the fundamental legitimacy of the system. And how members of the court who made this misguided decision can't see some of what they have wrought is beyond me.

Mr. RYAN. I would love to add to Norm's comments because it is not—stand by your ad requirements are a great thing. But they are not enough. One of the central flaws in the Citizens United decision was this notion that corporations are just like humans. Corporations aren't just like humans.

And these (c)(4)s that are going to be spending tens or hundreds of millions of dollars in this year's elections on attack ads—and they will be doing the dirty work of candidates, they will be doing the attack ads—they can dissolve overnight. They can dissolve at the drop of a hat.

And those of us sitting in this room today, God willing, we will be here in December. We will be alive. We will be held accountable for the actions we take between now and then. That can't be said for these 501(c)(4) and other types of outside groups that, again, can dissolve with the filing of some paperwork with a secretary of state's office at the drop of a hat. That is a big problem.

Ms. YOUN. Representative Price, I also wanted to mention an example. There is visible negative campaigning, and I think the available social science research has shown that Super PACs overwhelmingly engage in these negative attack ads, but there is also invisible negative campaigning. And there is a terrific example from your home state of North Carolina that is mentioned in the dissenting opinion of a case called Duke v. Leake.

And in that case, there is a lobbying—there is organization called "Farmers for Fairness". This is in the North Carolina state legislature, which allowed these kinds of independent expenditures prior to Citizens United. And Farmers for Fairness supported a particular farm subsidy, and they knew that the legislature was going to consider this farm subsidy.

So what they did is they made up a whole campaign of attack ads against particular legislators they knew were the swing votes. They then took these ads to the legislators and screened them behind closed doors and said, "These are the ads we will run against you if you do not support our position on this legislation." And some of these legislators changed their votes.

Now that is not going to show up on any disclosure. That is not—you know, but that is just an example of the sort of a broader kind of corruption that is a threat to our system that I don't think the Supreme Court ever envisioned.

Ms. TEACHOUT. I am honored to answer. You were my Representative for 7 years. We are playing checkers now, and it is about to be chess. I mean, this hasn't begun yet.

So, right now, we are thinking about ads, but we are in a technology and data era. So it is not just television ads. It is using the

massive databases and access to data that some of the largest companies in the world have.

It is not just going to come out in the form that we recognize of the last 30 years of campaigning. We don't know exactly what it is going to look like. But we know that we are just beginning, and the level of sophistication in both threat and promise at every level of campaigns will be different.

Who is going to run? Maybe we need somebody in this district because of the nuclear energy industry. Why don't we just plop down a promised several million dollars and get our candidate in the primary? This kind of money in primaries in local races is extraordinary.

The conversations have been at the presidential level, but that is the least concerning. It is certainly much—small amounts of money have a much larger impact. And it is happening at the same time you see this radical concentration in economic power.

So when Senator Kennedy proposed that no company be allowed to merge larger than $2 billion in 1978, we are talking about a much more decentralized economic scene. Right now, it is much more concentrated, and we know the most concentrated industries spend the most on politics.

So you see a combination of concentrated economic power, unlimited potential for use in the political sphere, and you know, I am a deep patriot. I love this institution, and I love the promise of it. But it is very rare in human history to have a truly representative government. It is not the default state.

The default state is, as you know from your own political science work, the default state is something much more like a kind of combination of oligarchic power, where there is concentrated financial power really dominating politics. And there is this window here before the full threat of Citizens United is realized, and it is so important to act quickly.

Mr. PRICE. Thank you.

Mr. GONZALEZ. Thank you very much. Mr. Van Hollen for 5 minutes.

Mr. VAN HOLLEN. Well, thank you. Let me start by thanking you, Mr. Gonzalez and Mr. Brady, for organizing this forum on a central issue to the integrity of our democratic process.

I also want to thank Leader Pelosi and my colleagues here on the panel and others who have focused on this issue, and all of you who just gave wonderful testimony about the urgency and importance of this issue. And I do think it is an absolute travesty that Republicans have refused to hold a hearing on this very important issue that is fundamental to the future of our democracy.

I think, as everybody knows, we were able to pass the DISCLOSE Act several years ago. It went over to the Senate, got 59 votes. [sic] In fact, in one of the terrible sort of unfortunate ironies of history, had Senator Kennedy not passed away, the DISCLOSE Act might well be the law of the land today, would have provided the 60th vote. But apparently, our Republican colleagues want to keep people in the dark when it comes to hearings, just as they want to keep them in the dark when it comes to disclosing the sources of a lot of the expenditures in these campaigns.

Now you have all made very keen observations about Citizens United. As Mr. Ornstein said, some of the conclusions that were reached there could only be made by people who had no clue as to how the American political system was operating in the 20th and 21st centuries, and it is going to come back to haunt us unless we act quickly to fix it.

I support a multi-pronged strategy. I think we have to proceed on all fronts. I also believe we have to engage in some political triage. We have to focus on where we are likely to be most successful in the short term as we also proceed immediately on other fronts.

I do think disclosure is essential, and I think the testimony today indicates that there is lots of money pouring into the system today that would not come into the system if those individuals and corporations and entities knew that their identities would become public. We have seen an awful lot of money laundering going on. And the DISCLOSE Act is intended to get at exactly that. Trace the money laundering, require disclosure at all different sources and all different levels.

And I think that we have a very sort of solid argument to take to the American people that, number one, voters have a right to know who is trying to influence the outcome of these elections. And therefore, we should end the secret money in politics, and that is what we are attempting to do.

Now one of the cases, as you know, that may be taken up by the Supreme Court is the Montana case. I am interested in your views on what opportunities there may be there or not to make our case.

Mr. RYAN, let me thank you and the center for your activity and efforts not only on behalf of DISCLOSE. And Mr. Ornstein, thank you for your support for DISCLOSE and others, but also for your efforts in the FEC case. I share your view. It was an important measure, important step.

But we all know how long the processes can be dragged out in the FEC and through the court system, and it just goes to my earlier point that we need to proceed on all fronts and we need to do it in an urgent manner. And I am interested in all of your views on whether or not the Montana case provides any additional opportunity for us to revisit these issues?

Mr. RYAN. I am happy to respond to that. Happy to respond to that. First, the Campaign Legal Center, my colleagues and I are right now working on a brief to be filed in that case on behalf of a bunch of transparency, pro-transparency, pro-campaign finance reform organizations from around the country.

Justice Ginsburg included a statement in a stay order that the court issued a couple of months ago, indicating that at least some members of the court are perfectly ready and willing to revisit the court's decision in Citizens United. I won't predict whether or not there will be five or six votes on the court or more to change direction on Citizens United. But the door is open a crack, and we are going to take our best shot at it.

There are a bunch of other very skilled attorneys and advocates from around the country, including the AG's office in Montana, that are working hard on that case. So I am hopeful, but obviously, no guarantees.

Mr. ORNSTEIN. Mr. Van Hollen, let me step back for a second and say that when we were deep in discussions over BCRA and putting it together, there was a great deal of consideration made to making sure that this was evidence based.

We had a lot of work done on electioneering communications that were transparent campaign ads, on ads financed by soft money that was supposed to be for party-building activities that never mentioned the party, that were just aimed at attacking candidates. There was reasoning that went into that decision by Congress, and that was, I think, taken seriously by the court when it upheld the Bipartisan Campaign Reform Act.

Reading Justice Kennedy in the Citizens United decision with a not only redefining corruption in the narrowest way, which is dangerous and unconnected to reality but, with no evidence at all, saying that independent money would have no connection to corruption or the appearance of corruption or it wouldn't matter. And seeing what Richard Posner, a very well-respected conservative jurist, has written now suggesting that that really doesn't make a lot of sense, and then looking at a Montana law that uses evidence from Montana to say we don't want corporations doing this because it corrupts us, I hope that there are four justices who will bring this up, bring it forward, and then force the court at least to acknowledge that evidence doesn't matter to them.

Ms. TEACHOUT. Thank you for all your work on this, and I am delighted about the multi-pronged approach. I am always going to be pushing for prong two. But, you know, there is a, you know, "What is the 1 percent hiding?" There is a real sense of both privilege and secrecy together it is important to fight.

I do think it is important to demonstrate to the public that this Congress knows that transparency isn't enough. Montana is a great question. It is a really tricky one. And you know, I wrote an article called "Facts in Exile" about the Supreme Court sort of treating facts as this extra, you know, a luxury.

And whether or not, in court or out of court, the Montana case provides an opportunity to talk in a really public way about the water cooler sense of corruption that we all understand and what we mean when we say your minds are oriented not towards the public. Your minds are oriented towards the 1 percent.

Ms. YOUN. I think the Montana case is going to be, I think, absolutely fascinating because, as some of you may know, it takes four justices to grant cert to hear a case in its entirety, and I think many of us—the Brennan Center is also working on a brief in the Montana case—and I think many of us would welcome the chance to put on the record, you know, exactly the sort of factual evidence that Justice Kennedy disregarded when he blithely stated, "Oh, independent expenditures pose no risk of corruption."

On the other hand, the flip side of that is it generally takes five justices to—which could be the same majority as in Citizens United—to grant a summary reversal of a lower court decision. And I think we are—you know, we are very much in a state of Supreme Court practice mystery as to whether the four justice rule is going to trump the five justice rule or exactly how this is going to work out.

But in any case, as was referenced earlier, in the McConnell decision, the court considered hundreds of thousands of pages, including depositions taken by some of my colleagues at the Brennan Center, talking about what corporate CEOs expected when they gave soft money contributions and the way in which contribution—the way in which corruption can function below the surface.

The Supreme Court did not take any of that evidence into account. I know that lots of the record in McConnell v. FEC was sealed for privacy purposes at the time of that decision. As far as I know, that has never been unsealed.

There is a lot of existing evidence and there is a lot of new evidence from this new super PAC phenomenon that we certainly deserve—believe deserves a public hearing.

Mr. GONZALEZ. Thank you very much, Mr. Van Hollen.

Mr. Ellison for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman.

Also thanks to the leader and all of our witnesses today.

I just want to say for the record that earlier today we had a press event that involved over 20 community organizations that came together with several Members of the U.S. Senate, double digits of House Members, all coming together around the idea of an amendment strategy.

On June 11th, there is going to be a Resolution Week in which municipal leaders all over this country are going to introduce resolutions to say that we have got to flip Citizens United. So there is a grassroots movement going on here, and it is very exciting, which leads me to my question.

I can't—I have got to believe that no matter what side of the political spectrum you may come from—liberal, conservative—the idea that your little microphone that all of us are issued as a citizen is going to be drowned out by speakers that could, you know, Mr. Ornstein put it better than I can. But they could, you said, "shake the seats in Nationals Stadium" because somebody has so many more dollars than another person. This must be something that there is broad cross section of support across the country.

What are the people saying about the need for disclosure, and what are the people saying about the need for amendment? And also what are they saying on the various sides of the political spectrum? I mean, what are conservative groups saying about this stuff? I am sure they have got to be concerned about it.

Mr. RYAN. Our impression, from reading public opinion polls, is that the public overwhelmingly supports disclosure of money in politics, overwhelmingly supports it. And I think that support spans the political spectrum.

When you come to the actual organizations, the actual Members of the House of Representatives, for example, Members of the Senate, we have seen flip-flopping, unfortunately, in my view, from some Republican members who for years and years, for decades, told the story of "All we need is disclosure. Let us get rid of all these limits. All we need is disclosure."

I was never sold on that because as soon as you allow incorporated entities into the system, disclosure becomes very difficult to achieve and sustain. But these same individuals who—Senator McConnell, for example, appeared on Meet The Press and went on

and on about—and this was fighting against the McCain-Feingold law—"All we need is disclosure. Let us get rid of all these limits. Let us not pass this McCain-Feingold law."

Fast forward a decade. Many of the substantive limits, unfortunately, have been struck down, and they are changing their tune. And I believe that some of the Republican-oriented organizations here in Washington and nationally are following suit and changing their tune and realizing dumping secret influence-buying money into the system is much to their liking.

So, again, that is why we have seen trouble with the DISCLOSE Act in 2010, why we are seeing trouble with the DISCLOSE Act now in 2012. We need to hold folks accountable for their historical positions on these issues. Nothing has changed except their ability now to get away with legalized money laundering.

Ms. YOUN. I think one of the great things about Super PACs is they are such an easy phrase to remember that people now know what you are talking about when you are talking about campaign finance reform. I think, thanks to Stephen Colbert, but thanks to a lot of, you know, media coverage of this.

And so, in my written testimony, I reference some of the more recent polling that says that 67—no, 69 percent of all Americans now support banning Super PACs, and that support ranges across the political spectrum. We are talking about majorities of Republican voters. We are talking about majorities of Democratic voters and independent voters.

So I think that what the people want and what the leadership want may tend to diverge here. But I think that we can only take advantage of the momentum that is caused by this very high-profile unraveling of our campaign finance system.

Ms. TEACHOUT. Yes, I want to echo that. I mean, there is extraordinary support for a public funding system now, even when the alternate arguments are presented. Extraordinary support for disclosure. But there is also extraordinary room for leadership.

But, if Members of Congress do not themselves use their platform to make a fight out of this and make the fight clear, there is a softness in the support. People are looking for how to understand the post-Citizens United, post-financial collapse world. You saw the shifting numbers of support for Occupy Wall Street with the initial extraordinary, high levels of support and then an absence of national leadership on defining what this new economic and political system is going to look like.

So there is both high levels, but there is also a lot of movement, which is why public clear expression of what government should look like, who people should be responsible to, what is possible in Congress is important because, otherwise, you are going to lose people. You can name an act anything you want, and people aren't going to believe it anymore.

So this kind of leadership is really key. Otherwise, I think you are not going to see the support without—without making a strong case.

Mr. ORNSTEIN. Let me just make a few points. First, you can't underestimate the impact that tribal politics have now. I mean, I watched as the DISCLOSE Act came up in the Senate, and I had worked with Olympia Snowe on what was the Snowe-Jeffords

amendment that really was the provision singled out by the court in Citizens United.

And to watch Senator Snowe, Senator Collins, Senator McCain, and others who had supported reform, all join together with the rest of their colleagues to vote against this was stunning. But it is a reflection of Mitch McConnell's ability to keep his tribe together and to make it a top priority and, of course, to get everybody to reverse course and now say that disclosure doesn't matter. So that is one important point to make.

The second point is that public opinion does support disclosure and change, but there are a lot of things that overwhelming majorities of Americans support and never go anywhere. I think we are going to see a change in this coming couple of months. If you were in a state where it is competitive in the presidential contest, you have got a competitive Senate race, and maybe something else going on, the months of September and October, there will not be a commercial on television that will not be a vicious attack ad.

And for an awful lot of Americans, you won't be able to escape it. And it is going to be a little bit like a goose being force-fed to get the fois gras. You are going to be sitting there, and this stuff is just going to come down your throat whether you like it or not. And I think we are going to see a very substantial reaction. We will have to seize on it.

And finally, I would say, we are not going to get it from leadership of conservative organizations. But I actually think on this issue and on many others, including some of the ethics questions, that some of these Tea Party colleagues of yours have no reason to be supportive of the huge money coming in that is going to sometimes drown them out when you get a different establishment setting.

They are populists in a different way. And it is worth talking to them, maybe individually, and perhaps building some grassroots support for some changes here. It is not going to come easy, but it is going to be easier to get than it will coming from the usual suspects on that side.

Mr. ELLISON. Any time for a quick follow-up, Mr. Chairman?

So now I want to ask you about shareholders. I think this is an interesting group to understand how they see this because I think this was pointed out several times, you know, when you send your money to your 401(k), somebody is using that money to say something that you have no interest in them saying. Yet if you were in a union, as Representative Brady pointed out, you would at least have some say on that.

They are fighting us on "say on pay" and golden parachutes, and yet shareholders at Citi[group] rejected a compensation package. So I guess my question to you is, is there any energy, anything going on among shareholders saying, "Wait a minute, you spend my money on stuff. You are supposed to be trying to make me some money to take care of my retirement. Why in the world are you beating up on this person and that person and the other? It is not helping me out."

Care to address this issue?

Mr. RYAN. There is some work being done, some important work being done on behalf of shareholders. The SEC was presented with

a rulemaking petition that was open for public comment, received widespread public comment that—urging the SEC to promulgate rules requiring improved disclosure of corporate political spending.

Representative Capuano has introduced the Shareholder Protection Act, which has a national coalition of organizations advocating its adoption, its enactment, and that would provide—would require corporations to obtain affirmative approval from shareholders before making big corporate political expenditures.

So work is being done. National coalition is working on it. Very important issue that you have highlighted.

Ms. TEACHOUT. I suspect this is where I am going to differ from some people on this panel. I do not happen to think that pursing the shareholder strategy is a good idea at this point. I do not think that—I think of it a little bit like Dodd-Frank.

The country is responding to Dodd-Frank, saying, "You didn't do anything about too big to fail." I don't know if you have seen the recent polling around this. And at the time, there was a sense, "Okay, no, we can manage our way. We don't have to—we can manage our way, and we can figure out something, and we will get credit for having figured out something."

This is bigger than shareholder protection. We actually have to restructure the way campaigns are funded. If you don't do that, everything else is a little bit baroque on the sides.

At the same time, I also think that if you perfect the agency relationship between the shareholders and companies, that doesn't necessarily mean you see less funding. In fact, the rational company might spend a lot more money on campaigns than they do now, once they have really figured out this chess game.

So I admire the creativity here, but I actually think that we should be focusing on the real game, which is how campaigns are funded and returning to pre-Buckley.

Mr. ORNSTEIN. I am not sure that that is—it is not the top priority, but I would disagree a little bit with Zephyr here. I actually think most companies, most public companies, don't want to do this. They did not react with anger at BCRA. They don't want to get caught in a couple of terrible dynamics.

One is where you have a party shaking you down and basically saying, "Whose side are you on?" And, "If you don't pony up the money, we are going to make you pay."

The second is the situation that we saw with Target and we are seeing now with ALEC, the American Legislative Exchange Council, you know, this group that basically has—talk about corruption—you know, come in with ready-made laws that lawmakers are perfectly happy to just channel right through and get something in return that a lot of companies gave to. And now it is when that is being disclosed and all of a sudden they realize that they paid for the "stand your ground" laws, they are saying, "Whoa, I don't want to be a part of that."

So I believe that disclosure will change the role of a lot of public corporations. It is not enough, and the fact is that even with billionaires and individual money, it was very different before Citizens United when you, as an individual, had to go out there if you wanted to put large sums of money in, and do it all yourself. Where

now, you can just give it to Karl Rove or give it to some other group, and they do all the work for you.

So we need a lot more than that. We need a short-term strategy that isn't going to involve overturning Citizens United. We need a medium-term strategy that can be ready with the next product when that happens.

Maybe we need the long-term strategy of looking at a constitutional amendment, although I would prefer to work in other ways. But you can't abandon any of those, and you can't abandon every avenue, whether it is the FCC, the FEC, the SEC, or the IRS, or legislation, or some of these other vehicles.

Ms. YOUN. I would just briefly like to address that. I agree that this is only a partial solution. For one thing, publicly traded corporations are only a very small part of the problem that we are talking about. But I do think that we do need to look at creative avenues to encourage corporate disclosure, you know, just for the sake of my 401(k) fund.

And I think we are used to thinking of corporations as monoliths. Like, "Oh, the corporation is spending money in politics, and they know about it all the way down." They often don't know about it. Often—there is no requirement that political spending be disclosed to corporate boards.

There is a multinational pharmaceutical corporation that has become a leader on the shareholder disclosure front because they found out that one of its mid-level managers was spending corporate funds to support an openly racist candidate in Mississippi, and he was doing that without the knowledge of upper management. It is that sort of—you know, shareholder disclosure makes sense for a lot of reasons. It is not a solution to our current problems of money in politics, but it is something that is important to do in its own right.

Mr. GONZALEZ. Well, thank you very much. And the chair is going to recognize himself for 5 minutes, and thank you for your patience.

But quickly, and I want to follow up on something that Dr. Ornstein pointed out is that some people may figure that there may be individuals on the other side of the aisle, they may not relate to the fears that we feel. Citizens United has truly diminished the role of the individual in the election of their elected officials.

No one is really recognizing that. And here in Washington we are so caught in the middle of this thing and I am not real sure that we have ever gotten that message out.

Now, I understand that an individual can work on my campaign, knock on doors, put up a sign, have the bumper sticker. They can also contribute because the way you communicate today, obviously, is an expensive thing. But there are limits as to what the individual can contribute to Charlie Gonzalez, if I were to be seeking reelection.

Yet how—and it also impacts what happens in the future when candidates are thinking of running for office. And this is what I mean. Let us just say my good friend Keith Ellison—I am now a private citizen. I want to help Keith. I love Keith. So I want to contribute.

So I am going to be limited to contribute X amount for the primary, X amount for the general election, maybe $5,000, as an individual. But if I have a whole lot of money, a lot of money, and I want to help Keith, what would you suggest would be the best way for me to do it, should this exact circumstance we find ourselves today on shell corporations, the Super PACs, the 501(c)(4)s, what is the best way for Charlie Gonzalez, private citizen, to make all his money really felt because I want to help Keith Ellison?

He is not going to coordinate anything with me. Maybe his former campaign manager may be running that Super PAC, but please don't draw any conclusions. What is the best way for me to get lots of money to support Keith in his reelection?

Mr. RYAN. I would ask you whether or not you are willing to be disclosed publicly, whether or not you are willing to stand by this support. If you are willing to stand by the support, you can write an unlimited-sized check to a Super PAC, and that Super PAC can spend every penny that you give to that Super PAC to advocate Representative Ellison's election to office.

You could, of course, go down to local TV or radio station or to the stations in Representative Ellison's district and make those ad buys yourself. You have been free as an individual for decades, forever essentially, to do that.

But if you don't want to be disclosed for this support, then you identify a 501(c)(4) group. If one doesn't exist, you encourage some friends to create it, and you write your unlimited check to that (c)(4) group. You refrain from writing on the memo line of that check, "Use this money to air ads for the reelection of Representative Ellison." You refrain from specifically designating your donation to the (c)(4) for any particular purpose, and you will remain undisclosed.

The (c)(4), in turn, can spend your money, 49 cents out of every dollar you give it, on hard-hitting express advocacy ads urging the election of Representative Ellison. And will spend the other 51 cents on ads that are nearly as hard-hitting, sham issue ads that either attack an opponent on the basis of some issue, but certainly identify the candidates in the race, yet don't contain words of express advocacy and, therefore, don't fall under the rubric of "candidate election intervention" for tax law purposes.

That is the way to do it. And it is your decision whether you want to remain anonymous or be disclosed.

Mr. GONZALEZ. Anyone else?

Ms. YOUN. What I find kind of touching about both your question and Paul's response is we are talking about this as if it is a hypothetical. But we already know—I mean, like, so the poster child of this campaign season so far has been Sheldon Adelson, who, as we all know, has given upwards of $10 million to support Newt Gingrich.

But there are, you know—but there are two $10 million checks that were both written to Crossroads GPS, and we don't know the name of the person that was on those checks. There were two separate checks written for $10 million apiece. We have no idea who that person is or if it is even a person or if it is a major corporation behind this.

I mean, this is already happening. This is an avenue that sophisticates have figured out. And Adelson, at least he is spending his own money. At least we know his name. I think the biggest problem is when they are not spending their own money, and we don't know their names.

Mr. GONZALEZ. Anyone else?

Ms. TEACHOUT. So I am going to—you know I am a law professor. So I am going to fight the hypothetical. These are wonderful answers, and I hope nobody hears them because they are good advice.

But I just want to respond to something also that Norm suggested earlier. I think, at first, corporations—I would love it if we just stuck with the wealthiest individuals trying to figure this out. It is a terrible situation, but it doesn't deal with the real threat of concentrated power used strategically.

We are 2 years in. I think it was Texas Home Builders who used—it was the first company that actually did itself as a company, using the ability to have independent expenditures. Two weeks ago, we had the first banking Super PAC because Congress doesn't know to be scared of the banks. It was in the press release, I believe.[]

We are just at the beginning of strategic corporate action. And if they are then following the same strategy, now we are talking real money, and we are also talking money that has a particular ideological bent. So that you no longer see the range of ideological views that Americans hold.

Mr. ORNSTEIN. Let me answer your question in a couple of ways, and it will get also at Representative Price's question.

If I am sitting there as a Member of Congress and I know that American Crossroads GPS, if the presidential contest doesn't turn out to be completely close, is going to turn all of its resources into House and Senate campaigns. And I also know there are going to be others out there, and I am worrying about somebody coming in at the end and spending $10 million against me, of course I am going to go out there and try and raise as much as I can in $2,500 increments. There are limits to that, especially because everybody else is going to be looking at the same individuals.

So I am going to try and find a sugar daddy. I am going to look for somebody who will do for me what the others would do against me. And to get those, maybe you know a billionaire who they are ready to be tapped, if necessary. If not, there will be something in return.

And so, we are going to see a whole lot of additional corruption as people are going to make side deals, just in case. And the money may never be spent. But once again, it will have an impact on the legislative process.

And then another element of what David asked. You know, it really used to be in the days when I first got here that you could see a lot of Members of Congress who were recruited to come here by people in their communities who went to them and said, "You have done wonderful things. You have built a great reputation. How about spending some time in public service?"

Now if I wanted to go to somebody like that now, I would say, "It is time to spend some time in public service. And here is what

is going to happen. The first thing is brace yourself for the $5 million that will come in by your opponent and other related groups, designed to strip the bark off you and destroy that reputation you have spent your career building. And they will know they have succeeded when your kids come home from school crying and say they can't go back anymore because of all the embarrassment that they face from their friends and fellow students.

"And you will do the same thing, and then you will get elected, and nothing is going to happen around here because the two parties are completely gridlocked. But you will spend every spare minute, that you aren't racing to get a plane to go back home, spending money, raising money for the next time around."

It is a miracle, under these circumstances, that we get good people like you who continue to do this. And I don't know how much longer. Because the ones who are incentivized to do this now are the ones who are driven totally by naked ambition or by an ideology that makes them certain that they have the right answers and that it is all black and white, and especially those people who pop up and say, "I am not like the rest of those bozos up there. I am not a politician."

So we are leeching out the people who are here to solve problems, and we are encouraging the worst sorts to come in. And that is—this is maybe as fundamental a problem in terms of the future of this institution as anything else, and it has been driven by a lot of things, including a debasement in the culture more generally where lying is no longer treated as a shameful thing and you double down on your lies to get around it, but also by what Citizens United itself and its progeny have wrought.

Mr. GONZALEZ. Thank you very much.

And I know we have gone over time, but if you will just indulge us for a couple of minutes, I am going to see if my colleagues have very short follow-up because we have had some great discussion since they were able to pose their questions.

I will recognize Mr. Price.

Mr. PRICE. Thank you.

I will ask a very pointed question, one on a narrow topic and the other somewhat broader. But I do appreciate especially what Professor Ornstein just said, getting at the broader corrosive effects of this system on this institution and on American politics generally. That isn't a strictly legal argument, but it sure is an important one. And that is also what I want to ask about.

First, a very narrow question. I like your quote, Ms. Teachout, about the limits of disclosure. "You can't X-ray a patient back to health." That is a good one. I want to remember that one. The limitations of mere disclosure.

However, as we've all said, we do believe that, at a minimum, we need to push for disclosure and that, of course, there is no question that that would pass legal muster. There is a problem. Stand by your ad. You know who is standing by his or her ad: the candidate. Or, with the party, the party leader. That is not so clear with "Americans For All Good Things."

So the device that we have come up with, I did this in my "stand by every ad," the latest iteration of "stand by your ad"—the Stand by Every Ad Act and its parallel provisions in the DISCLOSE Act.

We have said you have got to put on the screen those top five donors, one way or another. Flash up there the top five donors or have a trailer showing the top five donors.

Is that the best we can do? Is that the equivalent of what it would mean to saddle someone with personal responsibility for the ad?

The somewhat broader issue, you know, there is a difference here between the legal arguments and the broader political arguments, and Norm Ornstein just articulated one of them. But we talk time and time again about voices being drowned out, about the voices of ordinary people, of ordinary citizens, just coming to count for nothing.

It is not just about corruption. I mean, I guess the most powerful legal argument is about corruption. Is that true? I guess that's my question. But in legal terms, how do we translate this intuition we all have that this is a disaster for democracy?

The voice of these few wealthy people become so disproportionate, so overwhelming, drowning out everything else. There is surely no way that can be healthy for democracy. Yet, I think our legal arguments often go to the corruption issue and don't do much else.

I guess I'm just asking, the political argument, of course, is one thing, and the legal argument is another. But, is there a legal hook for this intuition we all have that you simply cannot have a few voices drowning out the others?

Ms. YOUN. I represented the Arizona Clean Elections Commission in the Supreme Court case McComish v. Bennett, which was about the Arizona public financing system. And I remember sitting up there and feeling my heart sink when Chief Justice Roberts said, you know, "I was looking on the Commission's Web site this morning, and I came up with a—I saw a reference to 'level the playing field,' and that makes this law unconstitutional."

So we are in a situation right now where the Chief Justice of the United States thinks that equality is somehow unconstitutional. And this is, I think, the distorted vision of the Constitution that has been promulgated in decisions like Citizens United, the idea that the First Amendment and ideas of equality in democracy are irrevocably at odds. The reason that so much legal argument has focused on corruption narrowly is because that is what the Supreme Court has defined the only legitimate interest in regulating campaign ads to be.

They have said, "No, we don't care about hearing other voices. We don't care about equality. God forbid we care about leveling the playing field. We don't care about saving candidates' time so that they are not constantly dialing for dollars. We don't care about the integrity of our electoral systems. All we care about is this very narrow version of corruption." And I think that that is what we need to push back really hard against.

Ms. TEACHOUT. So I like the five names. I would like it even more if they had to themselves say that they stood by the ad. But, no, I think it is a wonderful way to have, actually, the names up there. I think this is creative.

This actually also goes to Representative Van Hollen's question. A majority of the Supreme Court doesn't actually think corruption is an idea that makes any sense at all. They say two things.

One is, "Corruption is the only interest that can be used to outweigh this First Amendment interest." Not our Founder's First Amendment, this sort of nutty, outer space First Amendment. And then at a core level, they actually don't know what corruption is because in Kennedy's opinion, he expects and accepts, as does Scalia, that Members of Congress will be dependent and responsive to donors' interests, as opposed to the public interest.

They, at a core philosophical level, do not believe in the public good, and they are totally at odds with the country. The country still believes in the public good, a possibility of public interest. But for a whole bunch of reasons, there is an ideological position that doesn't support that.

I have been sort of interested in this question, too, about legal hooks, and I have been interested in possibly Congress coming back and redefining bribery. Because one of the things Kennedy says in Citizens United is, "Don't worry, our bribery laws will deal with that."

So what if Congress came back and said, "Your 1991 case where you said campaign donations aren't treated by the normal bribery laws, we are overturning that because that was just a matter of construction. We want to say that campaign contributions and independent expenditures should be treated by the normal wink and nod provisions of our federal bribery and extortion statutes."

There would be an interesting back and forth with the Supreme Court. But what I think that would show is that this Congress understands that we, as the public, do believe that there is a corrupt institutional problem here, and bribery might be the right word for it.

Mr. RYAN. I will respond to your question with respect to the stand by your ads. Is that type of provision enough to create accountability? I am a strong supporter of the "stand by your ad" provisions, the expanded version that you have advocated. But it is not enough.

Because one of the ways that voters get their information, one of the ways that people in our society get their information is through the press, through journalists analyzing data that is crunched through the hard work of nonprofits like the Center for Responsive Politics that attach and slice and dice this contributor data according to occupation and employer and interest groups.

Those stories reach voters and are just as important as seeing the name of five folks on the face of an ad at the tail end when they may or may not be paying attention. It is really important that all of you continue to support, to strongly advocate the improvement of collection and fine grain data, of contributor data, data that is missing now because disclosure on money going to (c)(4)s, for example, is not required.

That data is really vital to help the journalists who are working really hard to improve transparency and tell the stories, the bigger stories about who these interest groups are, why they are spending what they are spending. And your work can really help facilitate that.

Mr. ORNSTEIN. Let me say I am a strong supporter of your—of the "stand by every ad" provision, and part of the reason being that the disclosure regimen that affects Super PACs is such a farce now anyhow. You know, you get it every 6 months. It is delayed. It is not there for voters to be able to take into account when the decisions are actually made.

At the same time, I would come back to the Federal Communications Commission. They are in the process of putting together a regulation, which they have done very carefully and, I think, very conservatively so that small TV stations won't have a burden. But basically, all stations now are required to keep information on the funders of ads in a public file. That public file usually is in stacks of papers stuck in a back room.

The law says that citizens have access to it. Try and get access. Go to a local television station. Nine times out of 10, they will tell you, "No." But there is no reason why it should be in that setting. And for the kinds of data that Paul is talking about it, it would require entities like the Center for Responsive Politics or the Brennan Center to go to every single station and spend hours looking through files.

What the FCC wants to do is to require the larger stations now in the biggest markets to put all of that data online, and it will be accessible on the FCC website. It actually will cost those stations less. You won't have to get the data, walk it across a room, put it in a file. You just punch it in, and almost all of them already have websites, and they have Excel files in which to do this.

But they are facing huge pushback from television stations. Television stations will make billions of dollars in additional profits because of what has happened in this campaign system.

The idea that they won't disclose for the public the sources of those ads is outrageous. You need to fight against the broadcasters and provide backing, write letters, and do other things to tell the FCC that they are on the right track here.

Mr. GONZALEZ. Wrapping it up, Mr. Van Hollen, do you have a follow-up?

Mr. VAN HOLLEN. Thank you. Thank you, Mr. Chairman.

I just want to thank all of our witnesses. I think they have made excellent points.

You know, one of the problems with the numerous court decisions and the direction we are headed is not only has it provided a whole new source of unlimited amount of money flowing to these campaigns, it is putting a lot of pressure on the very fragile campaign finance system we had [sic] because, as many of you have said, when you look at the situation where you have got these limits on contributions to candidates and their campaigns versus the unlimited amounts that can be given to Super PACs, campaigns and candidates are like fighting with pea shooters against bazookas these days.

And it goes to the fundamental, one of the fundamental problems with the court decision. All of you mentioned it. Mr. Ornstein mentioned it right at the beginning of his comments, which is the idea that somehow if you give—if Sheldon Adelson gives more than $2,500 to Newt Gingrich in the primary and then more than $2,400 [sic] to him in the general, that that will somehow have a cor-

rupting influence or the appearance of corruption. But if Sheldon Adelson puts $5 million to the Newt Gingrich PAC, that that won't, even though he is meeting with him and has all his campaign guys are involved. I mean, it just defies common sense.

And how we could have had a Supreme Court that was so out of touch with reality on this issue just defies logic, and we are all going to have to work very hard. But I think this has been instructive.

With respect to the other point the Supreme Court made that defies logic, with equating corporations with individuals for these purposes, I would just say to our chairman, and since he is from the State of Texas, that one of our colleagues remarked that they would believe that corporations are individuals when your state of Texas executed a corporation.

So, you know, this is—it is just uncanny the sort of air of unreality that the court had on all these issues, and we are going to have to fight to make the changes necessary to preserve the integrity of our democracy.

So thank you, Mr. Chairman.

Mr. GONZALEZ. I want to thank the witnesses. Hopefully, we have provided you a very unique experience in your professional lives to say that you may have testified in court before as an expert, you may have testified before a hearing as an expert. But today, you testified before a forum. I am not really sure what that means. But hopefully, that it is going to be substance over form, and I think we have had a lot of substance today.

Thank you. I want to thank my colleagues and their staffs because they worked really hard. I want to thank especially my staff, but also the staff for the Committee on House Administration.

And with that, this forum will stand adjourned.

[Whereupon, at 3:43 p.m., the forum was adjourned.]

ROBERT A. BRADY.
ZOE LOFGREN.
CHARLES A. GONZALEZ.

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