

October 2018

## **CLC ANALYSIS: FEC RULE KEPT AS MUCH AS \$769 MILLION IN POLITICAL SPENDING IN THE DARK**

Recently, in a victory for transparency in elections, a D.C. District Court struck down a Federal Election Commission (FEC) rule that had allowed as much as **\$769 million** in dark money to flow into our elections since the 2010 election cycle, according to a new Campaign Legal Center analysis.

Laws passed by Congress require disclosure of donors who give to support a group's "independent expenditures," which are ads that expressly advocate for or against federal candidates. But the FEC wrote a rule (at 11 C.F.R. 109.10(e)(1)(vi)) that narrowed the requirement and defeated the law's transparency requirements. Under the FEC's rule, dark money groups only reported donors who gave for the *specific* purpose of funding a *specific* ad—an easily-evaded standard which meant dark money donors were never publicly reported.

In 2011, the Campaign Legal Center (CLC) and Democracy 21 asked the FEC to fix the rule, but the agency deadlocked 3-3 and kept it in place. In a more recent lawsuit filed by Citizens for Responsibility and Ethics in Washington (CREW), the D.C. District Court struck down this rule as contrary to the law it was meant to implement, and the D.C. Circuit Court and the U.S. Supreme Court rejected a plea from a dark money group to stay that decision.

Since the 2010 election cycle, the FEC's now-vacated rule **allowed as much as \$769 million** in dark money to flow into federal elections via independent expenditures alone, according to the Campaign Legal Center's analysis of FEC data.<sup>1</sup>

- In the 2009-10 election cycle, groups other than political committees spent **\$78.3 million** on independent expenditures—and thanks to that weak FEC rule and inadequate enforcement, those groups kept their donors hidden from the public.
- In the 2011-12 election cycle, groups other than political committees spent **\$300.1 million** on independent expenditures.
- In the 2013-14 election cycle, groups other than political committees spent **\$168.0 million** on independent expenditures.

- In the 2015-16 cycle, groups other than political committees spent **\$195.1 million** on independent expenditures.
- And according to the most recent available data from the 2017-18 cycle (through the end of June 2018), groups other than political committees have spent **\$27.3 million** on independent expenditures so far this election cycle.

The explosion in dark money is often attributed to the Supreme Court's decision in *Citizens United*. But as these figures show, the FEC must also shoulder the blame.

After the D.C. District Court's order took effect on September 18, 2018, a handful of groups making independent expenditures have disclosed their donors. For example, the 501(c)(4) group "Working America" [reported](#) on September 20 that it received funding from a super PAC and a union.

But more than a dozen 501(c) groups have continued to engage in business as usual, as the attached table shows. Groups other than political committees have reported **more than \$15 million** in independent expenditures between September 19 and October 3.

For example, on September 19 and October 3, Heritage Action for America reported spending a total of \$664,826 on independent expenditures supporting Republicans. It issued a [press release](#) on August 8 announcing its plans to "to spend \$2.5 million and back 12 candidates this November," and its executive director [told McClatchy](#), "What we're telling donors is, every dollar we raise over our budget we can effectively pour more into these races." But even though Heritage Action was raising contributions for independent expenditures, it failed to report the identity of any donors.

On October 4, 2018, the FEC [issued new guidance](#) on independent expenditure reporting. Contributions received on or after August 4 are subject to disclosure for independent expenditures disseminated on or after September 18. However, the agency won't require dark money groups to disclose donors on the periodic reports filed 24 or 48 hours after independent expenditures are run; it will only require disclosure on quarterly reports.

Moreover, the FEC signaled it will "exercise its prosecutorial discretion" for the next quarterly reports, due October 15. This could be a signal to dark money groups that they can ignore their disclosure obligations for this next quarterly report and the FEC will let them get away with it.

Donors should be reported on fourth quarter reports, for independent expenditures disseminated between October 1 and December 31. But those reports aren't due until January 31 of next year. This means that the public may not see many donors reported until months after Election Day, if at all.

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<sup>1</sup>To calculate these numbers, CLC used FEC records tabulating independent expenditures by cycle from persons other than political committees, and subtracted independent expenditures made by individuals and state committees that reported donors. See *Campaign Finance Statistics: Independent Expenditure Data Summary Tables*, Federal Election Commission, [https://transition.fec.gov/press/campaign\\_finance\\_statistics.shtml](https://transition.fec.gov/press/campaign_finance_statistics.shtml) (last visited Oct. 3, 2018).

**Non-Political Committees Reporting Independent Expenditures (IEs)  
Sept. 19, 2018 – Oct. 3, 2018**

<i>Organization</i>	<i>Any Donor Disclosure Sept. 19, 2018 – Oct. 3, 2018?</i>	<i>Total IEs Sept. 19, 2018 – Oct. 3, 2018</i>
AFL-CIO	No	\$140,544.39
Americans for Prosperity	No	\$179,412.82
Arizona Wins	No	\$14,600.34
Case Action Fund	No	\$24,075.37
Environmental Defense Action Fund	No	\$696,317.83
Floridians for a Fair Shake	No	\$23,436.82
Heritage Action for America	No	\$664,826.47
Humane Society Legislative Fund	No	\$107,482.49
Majority Forward	No	\$12,224,940.19
Mi Familia Vota	Yes	\$5,210.48
National Association of Homebuilders	No	\$131,000.00
Patriot Majority USA	No	\$329,350.61
Susan B. Anthony List, Inc.	No	\$193,984.00
Taking Texas to the Top	No	\$19,983.55
Texas Organizing Project	No	\$99,960.01
Unite Here Arizona	Yes	\$27,973.67
WMC Jobs Fund	No	\$202,315.44
Working America	Yes	\$2,611.78
Working People Rising	No	\$203,952.31