



# H.R.1/S.1 Disclosure Provisions:

How the For the People Act  
Would Fix American Democracy's  
Dark Money Problem

Campaign Legal Center  
March 2021

## Introduction

In the 2020 election alone, more than \$1 billion was spent by so-called “dark money” entities that kept their donors hidden from the public.<sup>1</sup> The fifteen highest-spending dark money groups accounted for nearly \$645 million of that total.<sup>2</sup> Because these dark money groups do not publicly disclose their donors, voters cannot know what those secret donors might be getting in return from elected officials.

As described in this report, the solution is H.R. 1 / S. 1, the For the People Act, which shines a spotlight on dark money, and which is carefully crafted to address the real-world practices that wealthy special interests have used to keep their political donations hidden from the public.

First, H.R. 1 / S. 1 makes clear *what* political spending is subject to disclosure. In 2020, major dark money groups, both Democrat and Republican, spent tens of millions of dollars on TV and digital ads that were carefully worded or timed to evade existing law. The bill addresses these practices by requiring disclosure when a group spends over \$10,000 on ads that promote, support, attack, or oppose a candidate’s election.

Second, the bill clarifies *who* must be disclosed when that spending is reported. Wealthy donors have anonymously poured hundreds of millions of dollars into elections by claiming none of their donations were “earmarked” for a particular ad, or by passing money through an intermediary. H.R. 1 / S. 1 closes these transparency loopholes, and traces big political donations back to their true sources.

Third, even though recent Supreme Court confirmation battles have attracted tens of millions of dollars in secret spending, dark money groups that spend on judicial nominations are not subject to any reporting or disclosure laws. H.R. 1 / S. 1 ensures transparency for dark money spending on judicial nominations.

For too long, wealthy special interests have used unlimited, secret money to rig the political system in their favor. By bringing dark money into the light, H.R. 1 / S. 1 creates more transparency and accountability in Washington and protects our right to self-governance.

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<sup>1</sup> Anna Massoglia & Karl Evers-Hillstrom, ‘Dark Money’ Topped \$1 Billion in 2020, Largely Boosting Democrats, CTR. FOR RESPONSIVE POLITICS (Mar. 17, 2021), <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>

<sup>2</sup> *Id.*

## The Dark Money Problem

Generally speaking, “dark money” refers to money spent to influence elections or judicial nominations where the source of the money is not publicly disclosed. However, dark money is only “dark” when it comes to the public’s knowledge: very often, the public officials who benefit from dark money political spending know which wealthy special interests footed the bill.

The problems with dark money are significant and can have real consequences for people’s lives.

Those rare instances where dark money has been drawn into the sunlight have revealed a troubling pattern of closed-door influence peddling, hidden away from the view of the public. For example:

- In Wisconsin, leaked documents revealed that the billionaire Texas CEO of a lead paint manufacturer secretly gave \$750,000 to a dark money group working with Wisconsin Governor Scott Walker, right around the same time that Walker signed a bill retroactively immunizing the CEO’s company and other lead paint manufacturers from liability for poisoning children in Milwaukee.<sup>3</sup> As an attorney for the lead-poisoned children later told Congress, “It is indeed a sad day for our democracy when a rich and powerful corporate CEO can deprive innocent victims of lead poisoning their day in court just because he could afford to secretly donate huge amounts of money to greedy and ruthless politicians.”<sup>4</sup>
- In Utah, a bipartisan state legislative committee documented how Attorney General John Swallow raised at least \$450,000 in dark money for his race, much of it from payday lenders whom Swallow had secretly promised protection from consumer rights rules.<sup>5</sup> According to the bipartisan committee, Swallow “made a secret promise to support the payday lending industry in exchange for campaign support, and then hid the industry’s support from Utah’s voters.”
- In Ohio, an energy company secretly poured \$60 million in dark money into state political groups in exchange for a \$1 billion taxpayer-funded bailout for two of its nuclear power plants. The energy company pumped money into a dark money group controlled by the speaker of the Ohio House of Representatives, Larry Householder, who pushed the nuclear energy bailout

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<sup>3</sup> Pawan Naidu, *How Dark Money Almost Derailed a Wisconsin Lead-Poisoning Lawsuit*, WISCONSIN CTR. FOR INVESTIGATIVE JOURNALISM (Sept. 4, 2018), <https://www.wiscontext.org/how-dark-money-almost-derailed-wisconsin-lead-poisoning-lawsuit>; see also, Ed Pilkington, *Because Scott Walker Asked*, *The Guardian* (Sept. 14, 2016), <https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-cash-american-politics>.

<sup>4</sup> Before the H. Comm. on H. Admin., 116th Cong. 3 (2019) (written testimony of Peter G. Earle, Feb. 14, 2019), <https://www.congress.gov/116/meeting/house/108899/witnesses/HHRG-116-HA00-Wstate-EarleP-20190214.pdf>.

<sup>5</sup> Utah House of Representatives, *Report of the Special Investigative Committee* (Mar. 11, 2014), [https://le.utah.gov/investigative/Final\\_Report\\_simple.pdf](https://le.utah.gov/investigative/Final_Report_simple.pdf).

into law.<sup>6</sup> The company then secretly bankrolled an inflammatory negative ad campaign to thwart a citizen-led effort to repeal the measure. Until a criminal investigation brought the dark money into the light, voters in Ohio never knew about the company's millions in political spending.<sup>7</sup>

Wisconsin, Utah, and Ohio offered rare glimpses behind the dark money curtain at the state level. But there is every reason to believe that similar stories lurk behind the potentially billions in secretly-funded election spending over the past decade.<sup>8</sup>

Under current federal law, candidates, PACs, and political parties file regular reports with the Federal Election Commission (FEC) publicly disclosing all donors and expenditures over \$200. This includes super PACs, which can raise unlimited amounts of money from individuals and corporations.

Yet in the wake of court decisions like *Citizens United*, wealthy special interests have found loopholes to evade transparency laws and buy influence in secret.

The primary way that wealthy donors remain anonymous in the post-*Citizens United* world is by funneling their political money through dark money groups—usually nonprofits organized under Section 501(c)(4) of the tax code—that keep their donors hidden from the public.

The dark money group then might directly spend that money on elections; in the 2020 election cycle, dark money groups themselves spent \$390 million on political advertising or other expenditures.<sup>9</sup> Or, the dark money group might contribute to a super PAC; the PAC lists the dark money group as a donor, but whoever gave the money in the first place remains anonymous. Dark money groups gave \$660 million to

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<sup>6</sup> Amanda Garrett, *Householder's Secret Enterprise Wins Speakership, Secures Bailout*, AKRON BEACON JOURNAL (Aug. 3, 2020), <https://www.dispatch.com/story/news/politics/2020/08/03/householders-secret-enterprise-wins-speakership-secures-bailout/42139589/>; Sharon Coolidge & Dan Horn, 'Dark Money' Group Admits Involvement in Householder Bribery Scandal, CINCINNATI ENQUIRER (Feb. 5, 2021), <https://www.cincinnati.com/story/news/2021/02/05/ohio-former-house-speaker-larry-householder-dark-money-generation-now-guilty-plea-racketeering/4401901001/>.

<sup>7</sup> Jessie Balmert, *Householder Case: Dark Money Has Shaped Ohio Politics for Some Time*, CINCINNATI ENQUIRER (Aug. 12, 2020), <https://www.dispatch.com/story/news/politics/2020/08/12/householder-case-dark-money-has-shaped-ohio-politics-for-some-time/113047456/>; Amanda Garrett, *Householder Directs Dirty Campaign to Save Bailout as Millions Flow*, AKRON BEACON JOURNAL (Aug. 5, 2020), <https://www.dispatch.com/story/news/politics/2020/08/05/householder-directs-dirty-campaign-to-save-bailout-as-millions-flow/112804670/>.

<sup>8</sup> Dark money groups have reported over \$1 billion in independent expenditures and electioneering communications to the FEC since the 2010 *Citizens United* decision. See Zach Montellaro, *A Looming Milestone: \$1B in Dark Money Spending*, POLITICO (Sept. 14, 2020), <https://www.politico.com/newsletters/weekly-score/2020/09/14/a-looming-milestone-1b-in-dark-money-spending-790383>. But as described in more detail in this report, current law's narrow reporting requirements mean that a sizable portion of dark money political spending is never reported to the FEC at all. For example, the Center for Responsive Politics and the Wesleyan Media Project estimated that dark money groups spent more than \$1 billion in the 2020 election, yet only \$88 million of that amount was reported to the FEC as direct outside spending. Massoglia & Evers-Hillstrom, *supra* note 1.

<sup>9</sup> Massoglia & Evers-Hillstrom, *supra* note 1 (showing more than \$1 billion in spending by dark money groups in the 2020 election cycle, \$390 million of which was spent directly by dark money groups, and \$660 million of which was given to super PACs).

super PACs in the 2020 election cycle.<sup>10</sup>

Although the Supreme Court helped create this phenomenon by allowing corporations—including dark money nonprofits, as well as mysterious LLC corporations—to spend unlimited money in elections, the Court has consistently upheld the constitutionality of transparency requirements. Eight Justices on the *Citizens United* Court endorsed disclosure of the donors behind corporate political spending, and joined that portion of the majority opinion which held that “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages,” and allows citizens to “see whether elected officials are ‘in the pocket’ of so-called moneyed interests.”<sup>11</sup> Federal courts of appeals have overwhelmingly upheld such disclosure requirements as well.<sup>12</sup>

Despite the *Citizens United* majority predicting “prompt disclosure” of political spending following the decision,<sup>13</sup> in reality, outdated transparency laws and limited FEC enforcement have given rise to significant disclosure loopholes that are routinely exploited by wealthy special interests seeking to buy influence in secret.<sup>14</sup> Dark money groups often calibrate their political spending to avoid reporting most of it to the FEC, and when dark money groups do file FEC reports, they almost universally fail to disclose the identities of any contributors.

H.R. 1/S. 1 draws from bipartisan solutions to close these avenues for secret funding in three main ways.<sup>15</sup>

First, because dark money groups routinely avoid reporting by running election ads that are carefully worded or strategically timed to evade existing law, the bill broadens the categories of political expenditures that trigger reporting requirements—specifically, by requiring disclosure of significant spending on ads that promote, support, attack, or oppose a candidate’s election, and by creating parity between broadcast and digital disclosure requirements.

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<sup>10</sup> *Id.*

<sup>11</sup> *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2010) (internal citations omitted).

<sup>12</sup> See, e.g., *Indep. Inst. v. Williams*, 812 F. 3d 787, 795 (10th Cir. 2016); *Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118 (2d Cir. 2014); *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014); *Worley v. Fla. Sec’y of State*, 717 F.3d 1244 (11th Cir. 2013); *Free Speech v. FEC*, 720 F. 3d 788 (10th Cir. 2013); *Real Truth About Abortion Inc. v. FEC*, 681 F. 3d 544 (4th Cir. 2012); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

<sup>13</sup> *Citizens United v. FEC*, 558 U.S. 310, 370 (2010).

<sup>14</sup> The Justice who authored the *Citizens United* majority opinion, Justice Anthony Kennedy, later acknowledged that disclosure “is not working the way it should.” Paul Blumenthal, *Anthony Kennedy’s Citizens United Disclosure Salve ‘Not Working,’* HUFFINGTON POST (Nov. 2, 2015), [https://www.huffpost.com/entry/citizens-united-anthony-kennedy\\_n\\_5637c481e4b0631799134b92](https://www.huffpost.com/entry/citizens-united-anthony-kennedy_n_5637c481e4b0631799134b92).

<sup>15</sup> Disclosure bills with provisions analogous to those in H.R. 1/S. 1 have been introduced and passed at the state level on a bipartisan basis. For example, Montana’s dark money disclosure bill was introduced in 2015 by a Republican state senator and passed with bipartisan majorities in each chamber. See, e.g., Paul Blumenthal, *Montana Republicans and Democrats Unite to Ban Dark Money*, HUFFINGTON POST (Apr. 16, 2015), [https://www.huffpost.com/entry/montana-dark-money\\_n\\_7074084](https://www.huffpost.com/entry/montana-dark-money_n_7074084).

Second, in order to address practices that wealthy donors have used to hide their political donations—for example, by claiming that donations were not “earmarked” for a particular ad or by passing money through an intermediary—the bill clarifies who must be disclosed, including by tracing big political donations back to their true sources and requiring greater disclosure for donations from LLC corporations.

Third, in light of the rise of dark money spending supporting or opposing judicial nominees, the bill ensures that judicial nomination spending is also subject to transparency.

This report discusses each component in turn.

## [Part One: Which Ads Trigger Reporting Requirements?](#)

Because existing law narrowly defines the types of election-related spending that trigger FEC reporting requirements, most dark money political spending is never reported to the FEC at all.<sup>16</sup> In the 2020 election cycle, dark money groups reported only \$88 million in direct election spending to the FEC, yet the true activity by these groups was much more significant than that sum reflects: according to the Center for Responsive Politics, dark money groups spent at least \$390 million on election-related ads in the 2020 cycle.

## Closing Broadcast Reporting Loopholes

Under current law, a dark money group need only report its spending to the FEC when it pays for ads that (1) expressly advocate for or against the election of candidates (known as “independent expenditures”),<sup>17</sup> or (2) qualify as “electioneering communications,” meaning TV or radio ads that mention a candidate, are run 30 days before a primary election or 60 days before a general, and that target that candidate’s electorate.<sup>18</sup> Dark money groups and their wealthy backers have learned how to avoid triggering these reporting requirements by running election-related ads that are carefully worded and/or strategically timed.

In 2020, major dark-money groups spent tens of millions of dollars on TV ads that promoted or attacked candidates without expressly telling viewers to “vote for” or “vote against” the candidate, and that ran prior to the 30-day or 60-day reporting windows.

For example:

- The Republican dark-money group American Action Network (AAN) spent \$7.7 million on TV ads in the 2020 cycle,<sup>19</sup> all of which were run prior to the 60-day

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<sup>16</sup> Massoglia & Evers-Hillstrom, *supra* note 1.

<sup>17</sup> 52 U.S.C. §§ 30101(17), 30104(c).

<sup>18</sup> 52 U.S.C. § 30104(f).

<sup>19</sup> Wesleyan Media Project, *Presidential General Election Ad Spending Tops \$1.5 Billion* (Oct. 29, 2020), <https://mediaproject.wesleyan.edu/releases-102920/>

reporting window and were therefore never reported to the FEC.<sup>20</sup>

The AAN spending included ads run in July of 2020 that praised three Republican House incumbents,<sup>21</sup> all of whom were running for re-election in House districts rated “toss-up” races by the Cook Political Report.<sup>22</sup> The ads attacked Nancy Pelosi’s “extreme agenda” and praised the three candidates for “taking decisive action to reduce prescription drug costs.”<sup>23</sup> Yet because AAN’s ads stopped short of telling viewers to “vote for” those candidates, and because the ads ran in July rather than in September or October, AAN avoided reporting requirements.

- The Democratic dark-money group Majority Forward spent \$21.9 million on TV ads that ran prior to the 60-day reporting window.<sup>24</sup> The group similarly did not report any of that spending to the FEC.<sup>25</sup>

The Majority Forward ads included a seven-figure ad buy in North Carolina in the summer of 2020 that attacked Sen. Thom Tillis, who polls showed was facing a close reelection race.<sup>26</sup> The ad ended by asking viewers to “[t]ell Thom Tillis: Stop cutting healthcare and put our families first.”<sup>27</sup>

- The Democratic dark-money group Duty and Honor spent \$19.7 million on 2020 TV ads outside of the 60-day window, and then stopped running TV ads altogether.<sup>28</sup> It did not report any spending to the FEC in that period or at any other time in the 2020 cycle.<sup>29</sup>

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<sup>20</sup> American Action Network Inc., Electioneering Communications, 2019-20, FEC.gov, [https://www.fec.gov/data/electioneering-communications/?committee\\_id=C90011230&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/electioneering-communications/?committee_id=C90011230&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021)(showing no reported electioneering communications in the 2020 election cycle); American Action Network Inc., Independent Expenditures, 2019-20, FEC.gov, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90011230&is\\_notice=true&most\\_recent=true&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90011230&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021)(showing no reported independent expenditures in the 2020 election cycle).

<sup>21</sup> Press Release, American Action Network, AAN Releases 3 New Ads Continuing \$4 Million Advocacy Effort to Pass H.R. 19 (July 30, 2020), <https://americanactionnetwork.org/press/aan-releases-3-new-ads-continuing-4-million-advocacy-effort-to-pass-h-r-19/>.

<sup>22</sup> 2020 House Race Ratings, COOK POLITICAL REPORT (Nov. 2, 2020), <https://cookpolitical.com/ratings/house-race-ratings> (showing House races in IL-13, NE-02, and NY-24 each rated as a “Republican Toss Up”).

<sup>23</sup> Press Release, American Action Network, *supra* note 21.

<sup>24</sup> Wesleyan Media Project, *supra* note 19.

<sup>25</sup> Majority Forward, Electioneering Communications, 2019-20, FEC.gov [https://www.fec.gov/data/electioneering-communications/?committee\\_id=C30002802&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/electioneering-communications/?committee_id=C30002802&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021)(disclosing no electioneering communications in the 2020 election cycle); see also Majority Forward, Independent Expenditures, 2019-20, FEC.gov, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90016098&is\\_notice=true&most\\_recent=true&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90016098&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021)(disclosing additional independent expenditures beginning on October 1, 2020).

<sup>26</sup> Kate Ackley, *Outside Group Hits Tillis on Health Care Record in New Ad*, ROLL CALL (June 15, 2020), <https://www.rollcall.com/2020/06/15/outside-group-hits-tillis-on-health-care-record-in-new-ad/>.

<sup>27</sup> Majority Forward, *Bragged*, YouTube (June 15, 2020), <https://www.youtube.com/watch?v=ivfZZm2OzoQ>.

<sup>28</sup> Wesleyan Media Project, *supra* note 19.

<sup>29</sup> Duty and Honor, Electioneering Communications, 2019-20, FEC.gov, [https://www.fec.gov/data/electioneering-communications/?committee\\_id=C90017708&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/electioneering-communications/?committee_id=C90017708&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last

The Duty and Honor spending included TV ads in the summer of 2020 praising Alabama Senator Doug Jones' record on healthcare and his work during the pandemic "to protect people with pre-existing conditions, ensure seniors are protected and rural hospitals are funded."<sup>30</sup> Another ad, run in Maine, attacked Senator Susan Collins, claiming that her husband "profited off the opioid crisis."<sup>31</sup>

- The Republican dark-money group One Nation spent \$36.8 million on TV ads outside the 60-day window, and stopped running TV ads in the final 60 days before the election.<sup>32</sup> One Nation did not report that spending to the FEC.<sup>33</sup>

Those ads included a \$27 million ad buy in the summer of 2020 in six states with competitive Senate races,<sup>34</sup> and an additional \$4.5 million broadcast ad buy in August in Michigan, another state with a competitive Senate race.<sup>35</sup> One of the ads attacked Michigan's incumbent Senator, Gary Peters, claiming he "turned his back" on small businesses during the pandemic, among other criticisms, and ended by telling viewers to "Tell Senator Peters: vote for tax relief for small businesses and put Michigan jobs first."<sup>36</sup> An ad aired in Colorado praising the incumbent Senator, Cory Gardner, for "getting Colorado jobs that will drive our recovery" and "working to deliver more relief," and ended with the message: "Tell Senator Gardner to keep fighting for Colorado jobs."<sup>37</sup>

To any reasonable voter, ads like these were clearly election-related: they solely focused on candidates in competitive federal races; they were targeted to those candidates' voters; they attacked or praised those candidates on central political issues of 2020 like healthcare; and they ran before a major general election that by the summer was

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visited Mar. 17, 2021)(showing no reported electioneering communications in the 2020 cycle); Duty and Honor, Independent Expenditures, 2019-20, FEC.gov, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90017708&is\\_notice=true&most\\_recent=true&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90017708&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021) (showing no reported independent expenditures in the 2020 election cycle).

<sup>30</sup> David Wright, *Vulnerable Democratic Senator Gets First Outside Spending Support in Alabama*, CNN (Aug. 20, 2020), <https://www.cnn.com/2020/08/20/politics/doug-jones-senate-race-alabama-outside-spending/index.html>.

<sup>31</sup> Kevin Robillard, *Democrats Take Aim At Susan Collins' Lobbyist Husband As Maine Race Heats Up*, HUFFINGTON POST (Sept. 1, 2020), [https://www.huffpost.com/entry/democrats-susan-collins-lobbyist-husband-maine-senate-race\\_n\\_5f4da0b8c5b697186e3a2a5c](https://www.huffpost.com/entry/democrats-susan-collins-lobbyist-husband-maine-senate-race_n_5f4da0b8c5b697186e3a2a5c).

<sup>32</sup> Wesleyan Media Project, *supra* note 19.

<sup>33</sup> One Nation, Independent Expenditures, 2019-20, FEC.gov, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90016262&is\\_notice=true&most\\_recent=true&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90016262&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021)(showing no reported independent expenditures in the 2020 election cycle).

<sup>34</sup> Ryan Lovelace, *One Nation, Senate-GOP Aligned Group, to Spend \$27 Million in 6 States to Keep the Majority*, WASH. TIMES (June 2, 2020), <https://www.washingtontimes.com/news/2020/jun/2/one-nation-senate-gop-aligned-group-spend-27-milli/>.

<sup>35</sup> Kate Ackley, *GOP-Aligned Group to Spend \$4.5 Million in Michigan Senate Race*, ROLL CALL (Aug. 18, 2020), <https://www.rollcall.com/2020/08/18/gop-aligned-group-to-spend-4-5-million-in-michigan-senate-race/>.

<sup>36</sup> Press Release, One Nation, *One Nation Launches Advocacy Effort Calling on Senator Peters to Put Michigan Jobs Ahead of Party Politics* (Aug. 19, 2020), <https://www.onenationamerica.org/one-nation-launches-advocacy-effort-calling-on-senator-peters-to-put-michigan-jobs-ahead-of-party-politics/>.

<sup>37</sup> Press Release, One Nation, *One Nation Launches Advocacy Effort Urging Senator Gardner to Keep Fighting for Colorado Jobs* (Aug. 4, 2020), <https://www.onenationamerica.org/one-nation-launches-advocacy-effort-urging-senator-gardner-to-keep-fighting-for-colorado-jobs/>.



already well underway.<sup>38</sup> (Some of the ads from these dark money groups were launched in tandem with ads from an affiliated super PAC, which further underscores their election-related purpose.<sup>39</sup>) But because the ads avoided phrases like “vote for” or “vote against,” and stopped running just before the 60-day reporting window, the ads could evade current law’s reporting requirements.

H.R. 1 / S. 1 would close these loopholes by requiring reporting and disclosure when groups spend over \$10,000 on paid advertising run at *any time* that “promotes or supports . . . or attacks or opposes the election” of a named candidate (regardless of whether the ad *expressly advocates* for the election or defeat of that candidate).<sup>40</sup> The Supreme Court has expressed approval of the “promote or attack” standard,<sup>41</sup> and lower courts have also upheld its constitutionality.<sup>42</sup>

Therefore, if H.R. 1 / S. 1 were law, groups like American Action Network, Majority Forward, Duty and Honor, and One Nation would be required to report to the FEC their spending on election-related ads like those described above.

## Closing Digital Reporting Loopholes

Current law’s reporting rules are even narrower for digital ads.

As described above, for TV and radio ads, FEC reporting is triggered when an ad expressly advocates for or against a candidate, or when an ad qualifies as an “electioneering communication”—meaning the ad names a candidate and is run 30 days before a primary election or 60 days before the general.<sup>43</sup>

Yet the current definition of “electioneering communication” omits digital ads completely.<sup>44</sup> This means that ads subject to disclosure when run on TV can evade transparency when run online. Therefore, under current law, dark money groups need only report their spending on digital ads that expressly advocate for or against

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<sup>38</sup> This legal loophole has widened as U.S. election cycles—particularly presidential campaigns—have become longer and longer in recent years. See, e.g., Danielle Kurtzleben, *Why Are U.S. Elections So Much Longer Than Other Countries?*, NPR (Oct. 21, 2015), <https://www.npr.org/sections/itsallpolitics/2015/10/21/450238156/canadas-11-week-campaign-reminds-us-that-american-elections-are-much-longer>; Alicia Parlapiano, *How Presidential Campaigns Became Two-Year Marathons*, N.Y. TIMES (Apr. 16, 2015), <https://www.nytimes.com/2015/04/17/upshot/how-presidential-campaigns-became-two-year-marathons.html>; Uri Friedman, *American Elections: How Long Is Too Long?*, THE ATLANTIC (Oct. 5, 2016), <https://www.theatlantic.com/international/archive/2016/10/us-election-longest-world/501680/>.

<sup>39</sup> Ben Kamisar, *Republican Outside Groups Book Millions in Ad Time to Defend Georgia, Kentucky Senate Seats*, NBC NEWS (July 8, 2020), <https://www.nbcnews.com/politics/meet-the-press/blog/meet-press-blog-latest-news-analysis-data-driving-political-discussion-n988541/ncrd1233231#blogHeader>.

<sup>40</sup> H.R. 1 § 4111, S. 1 § 4111 (to be codified at 52 U.S.C. § 30126(a)(1)-(2), (d)(1)(B)).

<sup>41</sup> See, e.g., *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 170 n.64 (2010).

<sup>42</sup> See, e.g., *Yamada v. Snipes*, 786 F.3d 1182, 1192–93 (9th Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 128–30 (2d Cir. 2014); *Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 280–87 (4th Cir. 2013); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 485–87, 495 (7th Cir. 2012); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 64 (1st Cir. 2011).

<sup>43</sup> Under current law, spending on independent expenditures is subject to reporting after more than \$250 is spent, 52 U.S.C. § 30104(c), and for electioneering communications, after more than \$10,000 is spent, *id.* § 30104(f).

<sup>44</sup> 52 U.S.C. § 30104(f).

candidates.

Dark money groups routinely exploit these digital loopholes to evade disclosure. For example, in the 2020 election:

- The Republican dark money group One Nation spent approximately \$1.3 million on Facebook and Google ads naming and/or picturing Senate candidates in the 60 days before the 2020 general election, and in the weeks before the Georgia runoff elections, according to the Center for Responsive Politics and the Wesleyan Media Project.<sup>45</sup>

These included ads that attacked Senator Gary Peters for “vot[ing] with radical liberals to protect [sanctuary cities] funding” in the final days before the competitive Michigan Senate race; ads that praised Senator Susan Collins for “fighting for children with pre-existing conditions” in the final days before the competitive Maine Senate race; and ads that praised Senators Kelly Loeffler and David Perdue on their healthcare positions in the final days before the competitive Georgia run-off election.<sup>46</sup>

All of those Facebook and Google ads would have qualified as electioneering communications if run on TV, because they all mentioned a federal candidate and were targeted to the candidates’ voters within 60 days of the election. Yet because current law’s “electioneering communications” definition does not apply to digital, none of One Nation’s spending was reported to the FEC.<sup>47</sup>

- In the weeks immediately preceding both the 2020 primary and general elections in Colorado, the Democratic dark-money group Rocky Mountain Values spent more than \$150,000 on Facebook ads attacking Senator Cory Gardner, who was running for re-election; the ads criticized Gardner on environmental issues, the Supreme Court, and the Affordable Care Act, and contained messages like “Tell Gardner: Stand up to Mitch McConnell and stop attacking our health care.”<sup>48</sup>

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<sup>45</sup> Ctr. for Responsive Politics, *Online Political Advertiser Profile for One Nation: Platform Spending Over Time*, OPENSECRETS.ORG, <https://www.opensecrets.org/online-ads/advertiser/one-nation/15156> (last visited Mar. 17, 2021).

<sup>46</sup> See Ads by One Nation, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=916623425064173](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=916623425064173) (last visited Mar. 17, 2021). Ads available in the Google archive show similar themes and messages. See Ads by One Nation, Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR312665922567405568> (last visited Mar. 17, 2021).

<sup>47</sup> One Nation, Independent Expenditures, *supra* note 33. In several cases, dark money groups have exploited intersecting transparency loopholes. One Nation, for example, spent \$36.8 million on TV ads in the 2020 cycle, but stopped running TV ads altogether in the 60 days before the general election, when “electioneering communication” broadcast disclosure requirements kicked in. Yet One Nation’s digital political spending ramped up in that final period, spending at least \$1.3 million on digital ads that would qualify as electioneering communications if run on TV. As a 2020 report from Wesleyan Media Project/Center for Responsive Politics noted, “In many instances, the groups that spent heavily before the [electioneering communications] window . . . ceased their spending on TV when the 60-day window arrived but did continue to spend on digital.” Wesleyan Media Project, *supra* note 19.

<sup>48</sup> Ads by Rocky Mountain Values, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all)

Notably, Rocky Mountain Values did report electioneering communications to the FEC in the fall of 2020 for TV ads it was running that named Gardner, too—but the gaps in the law allowed to avoid reporting its parallel anti-Gardner spending online.<sup>49</sup>

- The Republican dark-money group Iowa Values, run by allies of Senator Joni Ernst, ran pro-Ernst Facebook and Google ads worth tens of thousands of dollars in the 30 days before the 2020 Iowa primary as well as in the 60 days before the general election, and did not report any spending to the FEC. One set of ads, which ran starting in mid-September and cost at least \$50,000, told viewers that “Joni Ernst has consistently stood up for our Iowa Values during these uncertain times” and featured a video asking viewers to “click to thank Joni Ernst for supporting us.”<sup>50</sup>

H.R. 1 / S. 1 closes this transparency loophole by extending the definition of “electioneering communication” to digital ads.<sup>51</sup> If H.R. 1 / S. 1 were law, millions in digital political spending by dark money groups like One Nation, Rocky Mountain Values, and Iowa Values would be reported to the FEC, the same way that analogous TV ads are currently subject to reporting.

Ordinary Americans will face no new reporting obligations, since the reporting requirements only kick in when a group spends over \$10,000 on electioneering communications.<sup>52</sup> The new standards would simply create long-overdue parity between digital and broadcast ads.

## [Part Two: Who Is Disclosed?](#)

Broadening the categories of political spending that trigger FEC reporting is only half the transparency battle. The other half is defining which donors must be disclosed.

## [Ensuring Meaningful Donor Disclosure](#)

As described above, under current law, a substantial portion of dark money political spending is simply not subject to FEC reporting at all. But when dark money groups do run ads that trigger FEC reporting requirements, the resulting reports generally only disclose the group’s spending—that is, information about the amount spent and the candidate supported or opposed—but not the group’s donors.

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[L\\_page\\_id=459890014763287&sort\\_data\[direction\]=desc&sort\\_data\[model\]=relevancy\\_monthly\\_grouped](#) (last visited Mar. 17, 2021).

<sup>49</sup> Rocky Mountain Values: Committee Filings for Electioneering Communications, FEC.gov <https://www.fec.gov/data/committee/C30003131/?tab=filings> (last visited Mar. 17, 2021).

<sup>50</sup> See Ads by Iowa Values, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=785144711668660](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=785144711668660) (last visited Mar. 17, 2021). Ads available in the Google archive showed similar messages and themes. See Ads by Iowa Values, Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR237965927210024960> (last visited Mar. 17, 2021).

<sup>51</sup> H.R. 1 § 4206, S. 1 § 4206 (to be codified at 52 U.S.C. § 30104(f)(3)(A), (D)).

<sup>52</sup> 52 U.S.C. § 30104(f).

That is largely because the FEC has narrowly interpreted existing disclosure law. Under the FEC's longstanding interpretation of the law, a corporation that spends money on reportable political ads need only disclose donors who earmarked their contributions "for the purpose of furthering" a dark money group's specific independent expenditures or electioneering communications.<sup>53</sup> This is a comically easy standard to evade: wealthy donors can avoid disclosure by claiming that they are not expressly earmarking their check for a *particular* ad, or a *particular* race. For example:

- In the third quarter of 2020, the Democratic dark money group Defending Democracy Together reported nearly \$10 million in independent expenditures, but claimed that *none* of its donors earmarked their funds, and disclosed \$0 in contributions.<sup>54</sup>
- The Democratic dark money group Majority Forward reported spending more than \$40 million on independent expenditures in the 2018 election, but told the FEC it received \$0 in contributions.<sup>55</sup>
- The dark money group Americans for Prosperity reported spending \$23.3 million on independent expenditures in the 2016 and 2018 election cycles, but reported no contributions to the FEC in either of those cycles.<sup>56</sup>
- The U.S. Chamber of Commerce reported spending nearly \$7.5 million on independent expenditures in the 2018 elections, and additionally reported \$3.45 million on electioneering communications, but claimed it received \$0 in contributions.<sup>57</sup>
- The National Rifle Association (NRA)'s dark money arm, the NRA-ILA, reported spending over \$33 million on independent expenditures in the 2016 election, but told the FEC it did not raise a penny in reportable contributions.<sup>58</sup>

In 2018, the D.C. District Court struck down the FEC's independent expenditure

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<sup>53</sup> 11 C.F.R. §§ 109.10(e)(1)(vi), 104.20(c)(9) (emphasis added).

<sup>54</sup> Defending Democracy Together, 2020 October Quarterly Report of Independent Expenditures Made and Contributions Received, FEC Form 5 at 1 (filed Oct. 15, 2020), <https://docquery.fec.gov/pdf/499/202010159294154499/202010159294154499.pdf>.

<sup>55</sup> Majority Forward, Financial Summary, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C90016098/?cycle=2018> (last visited Mar. 17, 2021).

<sup>56</sup> Americans for Prosperity, Financial Summary, 2015-16, FEC.gov, <https://www.fec.gov/data/committee/C90013285/?cycle=2016> (last visited Mar. 17, 2021); Americans for Prosperity, Financial Summary, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C90013285/?cycle=2018> (last visited Mar. 17, 2021).

<sup>57</sup> U.S. Chamber of Commerce, Financial Summary, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C90013145/> (last visited Mar. 17, 2021); U.S. Chamber of Commerce, Spending on Electioneering Communications, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C30001101/?cycle=2018&tab=spending> (last visited Mar. 17, 2021); U.S. Chamber of Commerce, Filings for Electioneering Communications, <https://www.fec.gov/data/committee/C30001101/?cycle=2018&tab=filings> (last visited Mar. 17, 2021) (showing no contributions disclosed on any electioneering communications reports).

<sup>58</sup> National Rifle Association Institute for Legislative Action, Financial Summary, 2015-16, FEC.gov <https://www.fec.gov/data/committee/C90013301/?cycle=2016> (last visited Mar. 17, 2021).

disclosure rule as contrary to the law's transparency requirements,<sup>59</sup> and in August of 2020, the D.C. Circuit upheld that decision.<sup>60</sup> However, the FEC has failed to adopt new regulations providing clarity about which donors must be reported, and there has been minimal disclosure since.<sup>61</sup>

H.R. 1 / S. 1 closes this loophole. **Under the bill, a group that spends over \$10,000 on political ads must disclose its donors over \$10,000—preventing wealthy special interests from using tricks to hide their political donations from the public.**<sup>62</sup>

That does not mean that non-political donors will be indiscriminately or unwittingly named on an FEC report. **Under H.R. 1 / S. 1, a nonprofit may create a separate bank account to pay for its political ads, and only disclose donors of \$10,000 or more to that separate account.**<sup>63</sup>

**Additionally, donors who don't want their names publicly disclosed may specify that their donation not be used for campaign-related ads.**<sup>64</sup>

Moreover, the H.R. 1 / S. 1 dark money disclosure requirements only apply to donations of \$10,000 and above: moderate amounts given by regular Americans won't be made public. Donors who give over \$10,000 to dark money groups are not librarians or firefighters. Instead, they are CEOs, lobbyists, and the wealthy few who are often trying to buy access and influence to rig the political system in their favor.

## Tracing Donations Back to the True Source

H.R. 1 / S. 1 also prevents wealthy special interests from hiding their identities by funneling donations through intermediary groups.

Dark money groups gave at least \$660 million to super PACs in the 2020 election cycle; the recipient super PACs disclosed the dark money groups as donors, but whomever gave the money in the first place remains anonymous.<sup>65</sup> For example:

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<sup>59</sup> *Citizens for Responsibility and Ethics in Washington v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018).

<sup>60</sup> *Citizens for Responsibility and Ethics in Washington v. FEC*, 971 F.3d 340 (D.C. Cir. 2020).

<sup>61</sup> See, e.g., Brendan Fischer & Maggie Christ, *New Reports Show Why the FEC Needs to Clarify Disclosure Requirements for Dark Money Groups—and Why Congress Should Go Even Further*, CAMPAIGN LEGAL CENTER (Feb. 6, 2019), <https://campaignlegal.org/update/new-reports-show-why-fec-needs-clarify-disclosure-requirements-dark-money-groups-and-why> (describing how, of the \$50.7 million in non-political committee independent expenditures run in the final weeks of the 2018 election, just eight percent could be accounted for with any meaningful disclosure); see also Letter from Campaign Legal Center to FEC Regarding Pending Rulemakings at 4-6 (Jan. 13, 2021), <https://campaignlegal.org/sites/default/files/2021-01/01-13-21%20CLC%20rulemaking%20letter%20to%20FEC.pdf> (describing a more narrow review of reports by non-political committees that spent at least \$100,000 on independent expenditures in the third quarter of 2020; of the \$23.7 million spent by such groups, less than a quarter could be accounted for with any meaningful disclosure of contributions).

<sup>62</sup> H.R. 1 § 4111, S. 1 § 4111 (to be codified at 52 U.S.C. § 30126(a)(1)-(3)).

<sup>63</sup> *Id.* (to be codified at 52 U.S.C. § 30126(a)(2)(E)).

<sup>64</sup> *Id.* (to be codified at 52 U.S.C. § 30126(a)(3)(B)). A donor's name and address also will not be disclosed if the publication would subject the person "to serious threats, harassment, or reprisals." *Id.* (to be codified at 52 U.S.C. § 30126(a)(3)(C)).

<sup>65</sup> Massoglia & Evers-Hillstrom, *supra* note 1.

- The dark money group One Nation gave more than \$85 million to Senate Leadership Fund, a super PAC associated with Senate Majority Leader Mitch McConnell.<sup>66</sup> One Nation was the super PAC's top funder,<sup>67</sup> but the actual funding sources behind its \$85 million remain a secret.
- Nearly half of the more than \$151 million raised by the Democratic super PAC Future Forward came from dark money groups Future Forward USA Action and Sixteen Thirty Fund—meaning that voters don't know where more than \$70 million ultimately came from.<sup>68</sup>
- The Congressional Leadership Fund super PAC received nearly \$30 million during the 2020 cycle from American Action Network, which keeps its donors secret;<sup>69</sup> that dark money group accounted for nearly one-fifth of the super PACs total 2020 cycle receipts.<sup>70</sup> The donors responsible for the \$30 million remain secret.
- Majority Forward, a dark money group associated with Democrats, gave at least \$62 million to multiple Democratic super PACs.<sup>71</sup> Voters still don't know where its money ultimately came from.
- The super PAC Iowa Values Action spent more than \$2.2 million on the Iowa Senate race in 2020,<sup>72</sup> but more than \$1.4 million of the \$2.4 million raised came from an associated dark money group, "Iowa Values."<sup>73</sup> The true source of the money

<sup>66</sup> Senate Leadership Fund, Receipts from "One Nation," 2019-20, FEC.gov,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00571703&contributor\\_name=One+Nation&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00571703&contributor_name=One+Nation&two_year_transaction_period=2020) (last visited Mar. 17, 2021).

<sup>67</sup> Senate Leadership Fund, Receipts, 2019-20, FEC.gov,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00571703&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00571703&two_year_transaction_period=2020) (last visited Mar. 17, 2021).

<sup>68</sup> FF PAC, Receipts from "Future Forward Action" and "Sixteen Thirty Fund," 2019-20, FEC.gov,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00669259&contributor\\_name=Future+Forward+Action&contributor\\_name=Sixteen+Thirty+Fund&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00669259&contributor_name=Future+Forward+Action&contributor_name=Sixteen+Thirty+Fund&two_year_transaction_period=2020) (last visited Mar. 17, 2021); FF PAC, Financial Summary, 2019-20, FEC.gov, <https://www.fec.gov/data/committee/C00669259/> (last visited Mar. 17, 2021).

<sup>69</sup> Congressional Leadership Fund, Receipts from "American Action Network," 2019-20,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00504530&contributor\\_name=American+Action+Network&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00504530&contributor_name=American+Action+Network&two_year_transaction_period=2020) (last visited Mar. 17, 2021).

<sup>70</sup> Congressional Leadership Fund, Financial Summary, 2019-20, FEC.gov,

<https://www.fec.gov/data/committee/C00504530/> (last visited Mar. 17, 2021).

<sup>71</sup> Receipts from "Majority Forward" to "SMP," "Swing Left," "Let's Turn Colorado Blue," "Our Future United," and "North Star," 2019-20, FEC.gov,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00484642&committee\\_id=C0063213&committee\\_id=C00748756&committee\\_id=C00752378&committee\\_id=C00760330&contributor\\_name=Majority+Forward&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00484642&committee_id=C0063213&committee_id=C00748756&committee_id=C00752378&committee_id=C00760330&contributor_name=Majority+Forward&two_year_transaction_period=2020) (last visited Mar. 17, 2021). Majority Forward additionally contributed \$1.35 million to anti-Trump Republican super PAC The Lincoln Project. The Lincoln Project, Receipts from "Majority Forward," 2019-20, FEC.gov, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00725820&contributor\\_name=Majority+Forward&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00725820&contributor_name=Majority+Forward&two_year_transaction_period=2020) (last visited Mar. 17, 2021).

<sup>72</sup> Iowa Values Action, Independent Expenditures (24- and 48- hour reports), 2019-20, FEC.gov,

[https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C00751768&is\\_notice=true&most\\_recent=true](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00751768&is_notice=true&most_recent=true) (last visited Mar. 17, 2021).

<sup>73</sup> Iowa Values Action, Receipts from "Iowa Values," 2019-20, FEC.gov,

[https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00751768&contributor\\_name=iowa+](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00751768&contributor_name=iowa+)

remains unknown.

H.R. 1 / S. 1 addresses the dark money daisy chain problem by requiring funds passed between multiple entities to be traced back to their original source. Specifically, organizations spending substantial amounts on political activity would be required to track and publicly report all large political contributions over \$10,000.<sup>74</sup> So if a dark money group makes a large contribution to a super PAC, the group would be required to report information about where it obtained the funds to make that contribution.

For example, rather than Senate Leadership Fund disclosing merely that it received \$85 million from the secretly-funded One Nation in 2020, under H.R. 1 / S. 1, One Nation's major donors would be disclosed as well. Likewise, when a dark money group like Majority Forward directly spends big money on campaign-related ads, it too would be required to report its spending and disclose donors over \$10,000. And even if Majority Forward were financed by another dark money group, the tracing requirements would still apply, and that dark money group's donors would be disclosed, too.

## Beneficial Ownership Disclosure for LLC Contributors

Another way that voters are kept in the dark about the true sources of political donations comes via LLC contributions.<sup>75</sup> When a super PAC or other political group only reports receiving a contribution from a corporate LLC that lacks a public footprint, it is difficult or impossible to uncover who directed or provided the funds, and to know what interests those true funders might represent.

For example, there is little public record of a Lodi, New Jersey company called "East Coast Plumbing LLC," but it gave \$500,000 to Senate Leadership Fund in the 2020 cycle.<sup>76</sup> Similarly, little public information exists about "Tomfoolery LLC," which in February 2020 gave \$75,000 to a super PAC supporting a Democratic Congressional candidate in Texas;<sup>77</sup> Huron, LLC, which in September gave \$25,000 to the super PAC DefendArizona;<sup>78</sup> Pelican Funds LLC, which in November 2020 gave \$100,000 to the

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[values&two\\_year\\_transaction\\_period=2020](#) (last visited Mar. 17, 2021); Iowa Values Action, Financial Summary, 2019-20, FEC.gov, <https://www.fec.gov/data/committee/C00751768/> (last visited Mar. 17, 2021).

<sup>74</sup> H.R. 1 § 4111, S. 1 § 4111 (to be codified at 52 U.S.C. § 30126(a)-(f)).

<sup>75</sup> See, e.g., Ashley Balcerzak, *Surge in LLC Contributions Brings More Mystery About True Donors*, CTR. FOR RESPONSIVE POLITICS (Apr. 27, 2017), <https://www.opensecrets.org/news/2017/04/surge-in-llc-contributions-more-mystery/>; Michael Beckel & Amisa Ratcliff, *Mystery Money*, ISSUE ONE (July 2020), <https://www.issueone.org/wp-content/uploads/2020/07/Mystery-Money-Report-Tipsheet.pdf>.

<sup>76</sup> Senate Leadership Fund, Receipts from "East Coast Plumbing," 2019-20, FEC.gov, [https://www.fec.gov/data/receipts/?data\\_type=processed&contributor\\_name=east+coast+plumbing&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/receipts/?data_type=processed&contributor_name=east+coast+plumbing&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021).

<sup>77</sup> Lone Star Forward, Receipts from "Tomfoolery LLC," 2019-20, FEC.gov, [https://www.fec.gov/data/receipts/?data\\_type=processed&contributor\\_name=Tomfoolery+LLC&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/receipts/?data_type=processed&contributor_name=Tomfoolery+LLC&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021).

<sup>78</sup> DefendArizona, 2020 October Quarterly Report, FEC Form 3X at 7 (filed Oct. 15, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202010159294832482>.

super PAC Americans for Prosperity Action;<sup>79</sup> or Norgate LLC, which gave \$500,000 to Senate Leadership Fund in 2020.<sup>80</sup>

H.R. 1 / S. 1 addresses this problem by requiring that LLCs or other corporations publicly disclose their beneficial owners if they spend money in elections.<sup>81</sup> So rather than Senate Leadership Fund merely reporting \$500,000 from a mysterious entity called “East Coast Plumbing LLC,” the LLC would be required to publicly report the individuals that control the entity, allowing election officials and the public to know who is behind the spending.

## On-Ad Donor Disclosure

To bring further transparency to political ads run by outside groups, H.R. 1 / S. 1 would require ads to provide information about the top donors to the group behind the ad. **For TV and online ads, H.R. 1 / S. 1 would require the group’s top five donors to be disclosed, either on the ad itself or via a link to a website; for audio ads, it requires only the top two donors.**<sup>82</sup> The ads would also need to disclose the name and title of the group’s highest ranking official.

Similar top-donor disclaimer rules have already been in effect in states like California and Washington for years.<sup>83</sup> Bringing such rules to federal elections, too, would help voters understand who is spending to influence their votes—information that, for most voters, would not be apparent from names like “One Nation” or “Duty and Honor.” It also reflects research suggesting that voters respond to political ads from unknown groups differently when they are told, such as via on-ad disclaimers, how they are funded.<sup>84</sup>

## Part Three: Judicial Dark Money Disclosure

Federal judges are not elected, but their confirmation battles increasingly feel like elections, with huge amounts of dark money spent to influence the public and lawmakers.

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<sup>79</sup> Americans for Prosperity Action, Inc., 2020 Year-End Report, FEC Form 3X at 81 (amended Feb. 20, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202102209428798161>.

<sup>80</sup> Senate Leadership Fund, Receipts from “Norgate LLC,” 2019-20, FEC.gov, [https://www.fec.gov/data/receipts/?data\\_type=processed&contributor\\_name=norgate+llc&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/receipts/?data_type=processed&contributor_name=norgate+llc&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Mar. 17, 2021).

<sup>81</sup> H.R. 1 § 4111, S.1 § 4111 (to be codified at 52 U.S.C. § 30126(a)(2)(A), (4)(A)).

<sup>82</sup> H.R. 1 § 4302, § 4302 (to be codified at 52 U.S.C. § 30120(e)(1)(B)-(C), (5)).

<sup>83</sup> California Fair Political Practices Commission, Political Advertising Disclosures (2020), [https://www.fppc.ca.gov/content/dam/fppc/NS/Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/2020\\_Disclaimers\\_2\\_Final\\_V.3.pdf](https://www.fppc.ca.gov/content/dam/fppc/NS/Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/2020_Disclaimers_2_Final_V.3.pdf); Wash. Rev. Code § 42.17A.350.

<sup>84</sup> See, e.g., Travis N. Ridout, Michael M. Franz & Erika Franklin Fowler, *Sponsorship, Disclosure, and Donors: Limiting the Impact of Outside Group Ads*, 68 POLITICAL RES. Q. 154 (Mar. 2015), <https://www.istat.org/stable/24371979>; Conor M. Dowling & Amber Wichowsky, *Does It Matter Who’s Behind the Curtain? Anonymity in Political Advertising and the Effects of Campaign Finance Disclosure*, 41 AM. POLITICS RES. 965 (Apr. 22, 2013), <https://journals.sagepub.com/doi/full/10.1177/1532673X13480828>.



Supreme Court confirmation battles in recent years have attracted tens of millions of dollars in dark money supporting or opposing judicial nominees. Under current law, dark money groups that spend millions on judicial nominations not only do not disclose their donors, they also do not even report their *spending* to the FEC.

This means that the public and lawmakers cannot know who is trying to influence them, or whether the donors spending money to influence judicial nominations are the same interests that will appear before the Supreme Court, or that stand to benefit from the Court's opinions.

For example:

- Dark money groups 45Committee, American Action Network, Judicial Crisis Network (JCN), and the Great America Alliance together spent more than \$14 million in support of Justice Gorsuch's nomination to the Supreme Court. JCN alone spent more than \$10 million, after spending \$7 million to block President Obama's nomination of Merrick Garland.<sup>85</sup> For their part, a coalition of progressive non-profits spent at least six figures on ads opposing Gorsuch and urging Senators to vote against his confirmation.<sup>86</sup>
- Sometime between July 2017 and June 2018, Judicial Crisis Network, devoted to putting conservatives on the federal judiciary, received a one-time contribution of \$17 million from an anonymous donor, which constituted more than three-quarters of the group's funding that year. All of the ten contributions the dark money group received from anonymous individual sources that year were six figures and above.<sup>87</sup>
- Demand Justice, a progressive dark money group formed in 2018, pledged to spend \$5 million opposing Justice Kavanaugh's 2018 nomination to the Supreme Court.<sup>88</sup> On the conservative side, JCN promised to spend as much as \$10 million to support Kavanaugh's confirmation.<sup>89</sup>
- JCN and Demand Justice each pledged to spend \$10 million supporting or

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<sup>85</sup> Margaret Sessa-Hawkins & Andrew Perez, *White House Relied Upon Dark Money Lobbyist to 'Quarterback' Gorsuch Nomination*, MAPLIGHT (July 7, 2017), <https://maplight.org/story/white-house-relied-upon-dark-money-lobbyist-to-quarterback-gorsuch-confirmation/>; Kevin Roose, *Facebook Ads Offer Peek at Looming Supreme Court Fight*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/technology/supreme-court-nominee-political-ads-on-facebook.html>.

<sup>86</sup> Seung Min Kim, *Liberal Groups Increase Pressure over Gorsuch Nomination*, POLITICO (Mar. 21, 2017), <https://www.politico.com/story/2017/03/gorsuch-ad-campaign-236289>.

<sup>87</sup> Anna Massoglia & Andrew Perez, *Secret Conservative Legal Group Funded by \$17 Million Mystery Donor Before Kavanaugh Fight*, CTR. FOR. RESPONSIVE POLITICS (May 17, 2019), <https://www.opensecrets.org/news/2019/05/dark-money-group-funded-by-17million-mystery-donor-before-kavanaugh/>.

<sup>88</sup> Burgess Everett, *Conservative Group Drops Another \$1.4 million to Confirm Kavanaugh*, POLITICO (July 16, 2018), <https://www.politico.com/story/2018/07/16/brett-kavanaugh-judicial-crisis-network-ads-724067>.

<sup>89</sup> Richard Lardner, *Pro-Kavanaugh Group Received Millions From Anonymous Donors*, A.P. NEWS (Nov. 27, 2018), <https://apnews.com/article/91c58df540884d698ceb35a529c34b08>.

opposing Justice Coney Barrett's late 2020 confirmation.<sup>90</sup>

**H.R. 1 / S. 1's disclosure provisions apply equally to spending on judicial nomination ads, meaning ads that are "susceptible to no reasonable interpretation other than promoting, supporting, attacking, or opposing the nomination or Senate confirmation" of a judicial nominee.**<sup>91</sup> H.R. 1 / S. 1 requires entities that spend \$10,000 or more on campaign-related or judicial nomination ads in an election cycle to report the spending to the FEC, and to disclose each donor who has given \$10,000 or more during the cycle.<sup>92</sup> Donor tracing and disclaimer requirements would also apply to spending on judicial ads.<sup>93</sup>

The federal judiciary is charged with upholding the Constitution and administering justice. Lawmakers and the American public have a right to know which special interests are spending mass sums of money to influence who sits on the bench for a lifetime appointment. The Supreme Court and lower federal courts have long upheld statutes requiring lobbying disclosure, including disclosure of spending on efforts to influence lawmakers via the public (i.e. "grassroots lobbying").

Moreover, judges have tremendous power over the laws that govern every facet of our lives, and the increasing role of money in judicial nominations creates the appearance that judges will be beholden to the secret interests that spent millions supporting their confirmation. Transparency for judicial nomination spending implicates many of the same anti-corruption and informational interests implicated in campaign finance law, as well as the governmental transparency interests that underscore lobbying disclosure laws.

In *U.S. v. Harriss*, the Supreme Court reasoned that public disclosure of "who is being hired, who is putting up the money, and how much" they are spending to influence lawmakers is "a vital national interest" that enables legislators to evaluate the money

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<sup>90</sup> Alex Gangitano, *Barret Ad War Exceeds Kavanaugh Fight*, THE HILL (Sept. 30, 2020), <https://thehill.com/business-a-lobbying/business-a-lobbying/518850-advocacy-groups-spend-big-on-barrett-fight>; Marianne Levine, *Demand Justice Launches Seven-Figure Ad Buy for SCOTUS Fight*, POLITICO (Sept. 29, 2020), <https://www.politico.com/news/2020/09/29/demand-justice-seven-figure-ad-buy-scotus-fight-422886>. The Barrett nomination was unique because her nomination was made and confirmation hearings held shortly before the 2020 election; therefore, broadcast ads that named Senators facing reelection, and that urged voters to contact them regarding Barrett's confirmation, would be subject to FEC reporting as electioneering communications. However, many pro- or anti-Barrett ads did not specifically mention federal candidates and thus were not reported to the FEC—but would have been subject to FEC reporting under H.R. 1 / S. 1. For example, JCN pledged to spend \$10 million supporting Barrett's confirmation, *id.*, but did not report any electioneering communications to the FEC. See Judicial Crisis Network, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C30001689/> (last visited Mar. 17, 2021) (showing no electioneering communications in the 2019-20 election cycle); see *also, e.g.*, Judicial Crisis Network, *Opening Day*, YOUTUBE (Oct. 13, 2020) <https://www.youtube.com/watch?v=qIBsV8frDIU> (example ad urging viewers to "tell your Senator: confirm Judge Barrett" without naming a senator).

<sup>91</sup> H.R. 1 § 4111, S. 1 § 4111 (to be codified at 52 U.S.C. § 30126(d)(2)).

<sup>92</sup> *Id.* (to be codified at 52 U.S.C. § 30126(a)(1)-(2), (d)(1)(D), (d)(2)).

<sup>93</sup> *Id.* § 4111 (to be codified at 52 U.S.C. § 30126(a)-(f)).

behind lobbying pressures.<sup>94</sup> The Court noted that:

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad [lobbying] pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.<sup>95</sup>

The D.C. Circuit has relied on *Harriss* to uphold more recent lobbying disclosure laws, holding that “information about efforts to influence the political system is not only important to government officials . . . but is also important for the public at large.”<sup>96</sup> In *National Ass’n of Mfrs. v. Taylor*, the D.C. Circuit held that the public informational interests that justified campaign finance disclosure laws in cases like *Buckley v. Valeo* also applied to lobbying disclosure requirements.<sup>97</sup> As the court observed, “Transparency in government, no less than transparency in choosing our government, remains a vital national interest in a democracy.”<sup>98</sup>

H.R. 1 / S. 1’s requirements for transparency around “who is putting up the money, and how much” for judicial nominations is justified by the same “vital national interest[s]” articulated in these cases.<sup>99</sup> Disclosure gives lawmakers the information necessary to evaluate the pressures brought to bear on them, and enhances their “ability to properly evaluate [lobbying] pressures” and identify “the voice of special interest groups.”<sup>100</sup> Likewise, such disclosure promotes the citizen “informational interest” identified by

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<sup>94</sup> *U.S. v. Harriss*, 347 U.S. 612, 625-26 (1954). *Harriss* considered the Federal Regulation of Lobbying Act, which required “every person ‘receiving any contributions or expending any money’ for the purpose of influencing the passage or defeat of any legislation by Congress” to report information about their clients and their contributions and expenditures. *Id.* at 614-15. The Supreme Court narrowed the law’s broadly-drafted definition of lobbying so as to avoid finding it unconstitutionally vague, but the Court’s narrowed definition not only included lobbyists’ direct communications with legislators, but also their “artificially stimulated” public “letter campaign[s]” to Congress (what we would understand today as grassroots lobbying). *Id.* at 620; see also *id.* at 621, n.10 (noting that the Act covered lobbyists’ “initiat[ion] of propaganda from all over the country in the form of letters and telegrams,” to influence the acts of legislators).

The Court weighed the Act’s possible infringement of First Amendment rights against the government’s interests in disclosure, and found that disclosure of the money behind “lobbying” does not violate the First Amendment—specifically, that the public disclosure of “who is being hired, who is putting up the money, and how much” they are spending to influence lawmakers is “a vital national interest” that can justify such a transparency law. *Id.* at 625-26.

<sup>95</sup> *Id.* at 625.

<sup>96</sup> *National Ass’n of Mfrs. v. Taylor*, 582 F.3d 1, 14 (D.C. Cir. 2009).

<sup>97</sup> *Id.* at 13-15 (citing *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (“There is nothing to suggest that the public interest in [disclosure] information is diminished once the candidate has attained office and is exposed to the pressures of lobbying. Indeed, just as disclosure serves the important ‘informational interest’ of ‘help[ing] voters to define more of the candidates’ constituencies,’ it likewise helps the public to understand the constituencies behind legislative or regulatory proposals.”))

<sup>98</sup> *Id.*

<sup>99</sup> *Harriss*, 347 U.S. at 625-26; *Taylor*, 582 F.3d at 1.

<sup>100</sup> *Harriss*, 347 U.S. at 625.

*Buckley* and endorsed by *Taylor*, since it “helps the public to understand the constituencies behind” efforts to influence the public decision-making process.<sup>101</sup> And, disclosure of the money behind judicial nomination spending serves to “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”<sup>102</sup>

## Conclusion

Voters have a right to know which wealthy special interests are spending big money to secretly influence our vote and our government to rig the political system in their favor. H.R. 1/S. 1 would close transparency loopholes to ensure that dark money political spending is reported, and to ensure that wealthy donors cannot secretly buy influence; moreover, the bill promotes transparency for dark money spending on judicial nominations. The For the People Act’s solutions would create more transparency and accountability in Washington. It is time to pass the For the People Act.

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<sup>101</sup> *Taylor*, 582 F.3d at 14.

<sup>102</sup> *Buckley*, 424 U.S. at 67; see also *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 356 n.20 (1995) (noting that lobbying disclosure laws serve the governmental interest in preventing actual or apparent corruption).



## ABOUT CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. CLC holds candidates and government officials accountable regardless of political affiliation.

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