



September 20, 2022

Dear Senator:

On behalf of Campaign Legal Center (CLC), I write to urge you to support the *Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act* (S. 4822),ⁱ which will be voted upon by the full Senate this week. CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels, fighting for every American's right to responsive government and a fair opportunity to participate in and affect the democratic process. Among our mission areas, CLC advocates for reforms to strengthen and ensure the consistent and robust enforcement of campaign finance laws in the United States.

Voters have a fundamental right to know who is spending money to influence our elections. Indeed, transparency about the true sources of election spending is essential to the right of self-government and necessary to hold officeholders accountable to the public, both of which are core First Amendment values. Untraced political spending undermines these values, and voters' right to meaningfully participate in the democratic process is impeded without information about who financially supports which candidates and positions. Disclosure of the true sources of election spending is also essential to securing elections against corruption and the increasing threat of foreign interference.

Unfortunately, since the Supreme Court's 2010 decision in *Citizens United v. FEC*, a growing shroud of "dark money" has spread across our electoral system. To make matters worse, dark money is often only "dark" when it comes to the public's knowledge, as elected officials who benefit from this secret political spending frequently know which wealthy special interests footed the bill and to whom they owe a debt of gratitude. Dark money thereby enables these special interests to buy political access and influence without accountability or transparency. It can also allow foreign nationals to influence U.S. elections without detection.

Citizens United opened the floodgate to dark money by allowing for corporate independent expenditures and paving the way for super PACs that can spend unlimited amounts on campaigns.ⁱⁱ As a result of this decision, outside groups who do not disclose their donors—including mysterious LLC corporations and opaque nonprofits operating under section 501(c) of the tax code—can contribute unlimited amounts to super PACs, in addition to spending directly on elections. These special interest groups have since used their unlimited, secret spending to rig the political system in their favor.

Since 2010, 501(c) nonprofits have spent and contributed more than \$2 billion to influence federal elections—the majority of which was financed by undisclosed donors.ⁱⁱⁱ The growth of such activity is now accelerating, with dark money groups spending more than \$1 billion to influence the 2020 election alone.^{iv} This figure includes an estimated \$660 million in contributions from secretive nonprofits and shell companies to other outside entities like super PACs,^v a practice that creates a chain of obfuscation to hide the true sources of election spending. Even when these recipient super PACs are required to disclose their contributors, their reports often only reveal the names of dark money intermediaries that conceal the real, original donors. Existing transparency laws are increasingly undermined by these tactics.

The *DISCLOSE Act* presents a commonsense and comprehensive solution to these growing problems.

First, this vital legislation requires all entities that spend \$10,000 or more on campaign-related ads in an election cycle to disclose each donor who has given \$10,000 or more during the cycle.

Second, to prevent the evasion of disclosure requirements by running contributions through intermediary dark money groups, the *DISCLOSE Act* creates a trace-back requirement. If over \$10,000 is passed from one entity to another before it is spent on campaign activity, each entity must track and report these transfers.

Third, the bill makes it harder for dark money groups to evade reporting and disclosure with carefully worded or timed ads by requiring reporting and disclosure when groups spend over \$10,000 running ads at any time that promote, attack, support, or oppose a candidate.

Fourth, the *DISCLOSE Act* also shines a spotlight on secretive donations from LLCs and shell corporations, by requiring that companies publicly disclose their beneficial owners if they spend money in elections.

Finally, the *DISCLOSE Act* enhances protections against foreign interference by strengthening prohibitions against foreign nationals' participation in domestic election-related activities, including spending on ballot initiatives and referenda. It would also prohibit the establishment of corporations to conceal election contributions and donations by foreign nationals, as well as expand the existing foreign money ban to include disbursements for paid web-based or digital communications.

Proposals like the *DISCLOSE Act* have historically had strong bipartisan support. For example, a 2019 poll by CLC found that more than four out of five voters (83%) support the public disclosure of donations to politically active groups.^{vi} At the state level, bills analogous to the *DISCLOSE Act* have been introduced on a bipartisan basis and passed with large bipartisan majorities.^{vii} Similarly, the Supreme Court's support for political disclosure has been strong across the ideological spectrum, and it has repeatedly rejected First Amendment challenges to laws requiring disclosure of the sources of election-related spending. In fact, the Court has explicitly acknowledged that political transparency is

essential for meaningful participation in our system of democratic self-governance,^{viii} and it envisioned that robust disclosure would be used to prevent corruption stemming from unlimited political spending after *Citizens United*.^{ix}

For these reasons, **CLC strongly urges you to vote to advance the *DISCLOSE Act* when the opportunity arises on the Senate floor this week.** Real transparency about political spending will mean more government accountability and public trust, as well as less corruption and influence for wealthy special interests. Prompt enactment of this legislation would protect voters' right to know ahead of the next election, as well as represent a significant step toward the promise of a democracy that works for us all.

Respectfully submitted,

/s/ Trevor Potter

Trevor Potter
Founder and President
Campaign Legal Center

ⁱ *Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act*, S. 4822, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4822>.

ⁱⁱ *Citizens United v. FEC*, 558 U.S. 310 (2010).

ⁱⁱⁱ Anna Massoglia, *Dark money gets darker with less disclosure in the 2022 election*, OpenSecrets.org (May 19, 2022), <https://www.opensecrets.org/news/2022/05/dark-money-gets-darker-with-less-disclosure-in-the-2022-election>.

^{iv} Anna Massoglia and Karl Evers-Hillstrom, *'Dark money' topped \$1 billion in 2020, largely boosting Democrats*, OpenSecrets.org (March 17, 2021), <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle>.

^v *Id.*

^{vi} *CLC Disclosure Polling Memo*, CampaignLegal.org (Nov. 18, 2019), <https://campaignlegal.org/document/clc-disclosure-polling-memo>.

^{vii} See e.g., Paul Blumenthal, *Montana Republicans and Democrats Unite to Ban Dark Money*, Huff. Post (April 16, 2015), https://www.huffpost.com/entry/montana-dark-money_n_7074084.

^{viii} See *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976). (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.”)

^{ix} See *Citizens United*, 558 U.S. at 352 (“With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”).