Seven Myths (and Realities) about Disclosure

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For more information on achievable reforms, please visit BlueprintsForDemocracy.org, which describes actions states and localities are taking to provide citizen funding for elections, political spending disclosure, and other reforms.

Myth #1: The Supreme Court’s ruling in Citizens United v. FEC weakened political donor disclosure requirements.

Reality: Far from striking down disclosure laws, the Court’s decision in Citizens United was predicated on the idea that the corporate money the Court was allowing in federal elections would be fully disclosed. Justice Kennedy wrote for the majority that a “campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today.” Although the Court was sharply divided on other issues in the case, not so with disclosure: the Justices voted 8-1 to uphold the disclosure and advertising disclaimer provisions being challenged, with only Justice Thomas dissenting. The Court’s opinion in Citizens United states, in no uncertain terms: “The First Amendment protects political speech; and disclosure 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.”

Myth #2: Under existing law, groups can legally organize for the purpose of spending money in federal elections without having to disclose where their funding comes from or how they spend it.

Reality: Dark money groups – organizations that take advantage of laws meant to govern social welfare organizations and charities – are required under campaign finance laws to disclose the funders of their political advertising in many circumstances. This is so in two ways: First, federal law requires “political committees,” that is, any group that has the major purpose of electing or defeating federal candidates and that receives or spends $1,000 or more in a year, to register with the Federal Election Commission and publicly disclose its contributors and expenditures. Second, under a McCain-Feingold provision upheld by the Supreme Court, even groups whose major purpose is not political activity (and which thus don’t qualify as “political committees”) must disclose their donors if, in a single calendar year, they spend at least $250 on independent expenditures (any uncoordinated activity “expressly advocating the election or defeat of a clearly
identified candidate”) or at least $10,000 on
electioneering communications (TV and
radio ads that are run within 30 days of a
primary or 60 days of a general election,
mention any “clearly identified candidate”
and are targeted to the relevant electorate).

In short: regardless of what dark money
groups call themselves on paper, the law
requires that they file public disclosure
reports detailing their major donors with
the FEC if they undertake election
advocacy. However, instead of enforcing
the law, the FEC has deadlocked on major
enforcement votes, failing to hold dark
money groups accountable even when its
own general counsel believed the law had
been broken.

Myth #3:
Corporate shareholders know if and how
corporate funds are being spent in elections.

Reality:
The Supreme Court assumed that
shareholders would know how their money
was being used to influence elections; the
majority in Citizens United claimed there
was “little evidence of abuse that cannot be
corrected by shareholders through the
procedures of corporate democracy.” The
Court also stated that “shareholders can
determine whether their corporation's
political speech advances the corporation's
interest . . .” However, this has not proved
to be the reality – corporations claim their
political activity is “nonmaterial” to their
financial reports and many do not disclose it
to their shareholders. The Securities and
Exchange Commission does not currently
require such disclosure. The SEC has had a
pending petition since 2011 to require
corporate officers to inform shareholders if
their money is used for political ends; the
SEC has not even placed this matter on the
agenda in the four years since, let alone
enacted a shareholder disclosure rule.

Myth #4:
Records of all money spent in elections are
publicly available via the internet.

Reality:
The Supreme Court appeared to believe this
myth when it wrote in Citizens United:
“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.” However, in
truth, the internet can only enable citizens
to access information that exists in the
public realm: FEC reports, SEC filings, TV
station advertising forms, etc. If the
information is not publicly reported in some
way, then it is not going to appear in an
internet search. In fact, Justice Kennedy
recently admitted as much in a talk at
Harvard Law School, saying “You live in this
‘cyber age.’ You don’t need to wait for three
months after the election for a report on who
gave money; it can be done in 24 hours . . .
But that’s not working the way it should.”

"You don’t need to wait for three months after the
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But that’s not working the way it should.”

-Justice Anthony Kennedy

Visit BlueprintsForDemocracy.org
to learn more.
**Myth #5:**
Super PACs, dark money groups, and their donors are guaranteed anonymity by Supreme Court’s decisions such as NAACP v. Alabama.

**Reality:**
While super PACs, dark money groups, and their ultra-wealthy donors claim they are constitutionally entitled to anonymity, the Supreme Court has repeatedly rejected comparisons between PACs/dark money groups and the NAACP’s situation in *NAACP v. Alabama*. The groups in *Citizens United* aren’t facing the sort of “threats, harassment, or reprisals” that the NAACP was in 1950s Alabama – super PACs are afraid that their donors will garner bad publicity if they disclose their names, while the NAACP feared imminent, credible, physical threats to the lives of its members. Justice Scalia noted, in support of disclosure requirements, that laws already exist to protect speakers from threats to their safety and property, stating: “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.”

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-Justice Antonin Scalia

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