

**Testimony of  
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**On S. 2219, The Democracy Is Strengthened by Casting Light On Spending in  
Elections Act (“DISCLOSE”) Act of 2012**

**Submitted to the Committee on Rules and Administration  
U.S. Senate**

**March 28, 2012**

Since *Citizens United v. FEC*<sup>2</sup> lifted restrictions on independent spending in U.S. elections, outside parties—including business corporations, unions, wealthy individuals, nonprofits, and Super PACs—have spent astronomical sums on campaign advertisements. Because of numerous loopholes in federal disclosure law, these spenders have essentially been able to choose whether, and when, to publicly reveal the details of their spending, including the source of their funds. As a result, lawmakers, the media, and shareholders of politically-active corporations have been left with incomplete information about this spending. Even worse, American voters have been left in the dark about the individuals and groups spending millions of dollars to influence our votes.

The Brennan Center commends Senator Sheldon Whitehouse and the dozens of co-sponsors of the DISCLOSE Act of 2012, and urges the Rules Committee to approve the Act without delay. This important legislation would fix three of the most serious flaws in our porous federal disclosure scheme. Specifically, the Act would:

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center’s Money in Politics project works to reduce the real and perceived influence of special interest money on our democratic values. Our counsel defend campaign finance, public funding, and disclosure laws in courts around the country, and provide legal guidance to state and local reformers through counseling, testimony, and public education. The Brennan Center thanks NYU School of Law students Mary Kate Hogan and Alina Mejer, who work with the Center’s Money in Politics project, for their invaluable assistance with today’s testimony. We also thank Sari Bernstein, a student at Brooklyn Law School, and Sophia Ghiandoni, a student at Northeastern Law School, for their careful review of this testimony’s citations.

<sup>2</sup> 130 S. Ct. 876 (2010).

- (1) expand current reporting requirements to capture any outside person or organization that spends substantial amounts of money on campaign advertising, either directly or by transferring money to another;
- (2) accelerate the timetable for reporting such spending; and
- (3) enhance current disclaimer requirements to provide more information on the face of campaign advertisements.

As detailed below, each of these provisions would address specific—and serious—problems that currently plague our elections process. They would safeguard the integrity of our elections and shore up public confidence in our democracy.

Moreover, as Supreme Court case law, including *Citizens United*, makes abundantly clear, these crucial reforms stand on unquestionably firm constitutional ground. When information about the individuals and groups spending millions of dollars to influence elections is concealed, voters lack the information they need to make informed choices at the polling place. The Supreme Court has recognized that one cannot “satisfactorily answer the question of how ‘uninhibited, robust, and wide-open’ speech can occur when organizations hide themselves from the scrutiny of the voting public,” and has made clear that transparency in political spending furthers the “First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.”<sup>3</sup>

For all of these reasons, the Rules Committee should approve the Act as quickly as possible, so that it may be promptly considered by the full Senate. This is a crucial first step and one that, in conjunction with the more sweeping reforms highlighted below, will create an election process that is fair, trustworthy, and invites robust participation from the American people.

## **THE DISCLOSE ACT OF 2012 ADDRESSES GAPING LOOPHOLES IN FEDERAL DISCLOSURE LAW**

### ***A. Expanded Reporting***

The Disclose Act of 2012 would bring vastly increased transparency to U.S. elections by eliminating major loopholes in the existing disclosure regime. Although federal law requires political advertisers to file a disclosure report once they spend more than \$10,000 on “independent expenditures” or “electioneering communications,” existing regulations severely undermine this scheme. The FEC rules intended to implement this statutory mandate in fact allow political spenders to withhold all information about the underlying source of funds unless contributors expressly indicate that their donations were given to further a particular ad. Not surprisingly, donations are rarely earmarked in this manner, and savvy donors understand that it is not difficult to contribute major support for electioneering while keeping their identities, and the amount of their support, shielded from public knowledge.

Politically active nonprofits that are under no other obligation to disclose their supporters—such as social welfare nonprofits organized under section 501(c)(4) of the tax code and trade

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<sup>3</sup> *McCormell v. FEC*, 540 U.S. 93, 197 (2003) (citation omitted).

organizations organized under section 501(c)(6)—can thus permanently shield the sources of their funding from public scrutiny.<sup>4</sup> Indeed, just a few weeks after *Citizens United* was decided, one of the country’s largest law firms advised its corporate clients that trade organizations could provide “sufficient cover” from campaign finance disclosure.<sup>5</sup> Now, trade organizations and 501(c)(4) groups are enthusiastically taking advantage of political donors’ desire for secrecy, and playing a larger role in federal elections than ever before.

In the 2010 federal elections, the first after *Citizens United*, outside groups spent \$294 million on political advertising—an increase of more than 400 percent compared with the previous midterm cycle.<sup>6</sup> Forty-six percent of these expenditures—\$135 million worth—was spent by groups that did not provide any information about their sources of money.<sup>7</sup> And, of the ten highest spending outside groups that year, seven disclosed nothing about their contributors—even though they collectively accounted for nearly half of all outside spending.<sup>8</sup>

These trends are continuing. While the final totals cannot yet be known, nonprofits that do not disclose any of their donors have already spent substantial money in the 2012 election cycle on campaign advertisements. For instance, as of March 23, 2012:

- The U.S. Chamber of Commerce, a trade association for business interests, has spent over \$3.4 million dollars.
- Freedom Path, a conservative advocacy group, has spent over \$300,000.
- NARAL Pro-Choice America, an abortion rights group, has spent over \$284,000.
- The National Organization for Marriage, which supports “traditional marriage,” has spent over \$50,000.<sup>9</sup>

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<sup>4</sup> See, e.g., BRUCE F. FREED & JAMIE CARROLL, HIDDEN RIVERS: HOW TRADE ASSOCIATIONS CONCEAL CORPORATE POLITICAL SPENDING 1 (2006), *available at* <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/932> (“Trade associations are now significant channels for company political money that runs into the tens if not hundreds of millions of dollars. In 2004, more than \$100 million was spent by just six trade associations on political and lobbying activities, including contributions to political committees and candidates. None of this spending is required to be disclosed by the contributing corporations.”).

<sup>5</sup> Tim L. Peckinpugh & Stephen P. Roberts, *Citizens United: Questions and Answers*, K&L Gates Client Alert, (Feb. 12, 2010), <http://www.klgates.com/icitizens-unitedi-questions-and-answers-02-12-2010/>.

<sup>6</sup> PUBLIC CITIZEN, 12 MONTHS AFTER: THE EFFECTS OF CITIZENS UNITED ON ELECTIONS AND THE INTEGRITY OF THE LEGISLATIVE PROCESS 9 (2011) [hereinafter 12 MONTHS AFTER]; see generally Cory G. Kalanick, *Blowing Up the Pipes: The Use of (c)(4) to Dismantle Campaign Finance Reform*, 95 MINN. L. REV. 2254, (June 2011).

<sup>7</sup> 12 MONTHS AFTER, *supra* note 6, at 10.

<sup>8</sup> *Id.*

<sup>9</sup> Running totals are compiled by the Center for Responsive Politics. Center for Reproductive Politics, *2012 Outside Spending, By Groups*, OPENSECRET.ORG, <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=O&type=A&chrt=D> (last visited Mar. 26, 2012).

Through the first five presidential primaries this year—in Iowa, New Hampshire, South Carolina, Florida, and Nevada—about 40 percent of TV advertising (more than \$24 million worth) was funded by nonprofit groups that will never reveal their contributors.<sup>10</sup>

The ability of politically active nonprofits to conceal the identities of donors who refrain from earmarking donations for specific advertisements is not the only way that these groups thwart transparency in our elections. They also contribute to the so-called “Russian doll problem,” another issue for which current reporting requirements offer no solution. Substantial media attention has been dedicated to election spending by Super PACs—groups that can raise and spend unlimited sums for electioneering, so long as they do not coordinate their expenditures with candidates. While Super PACs must disclose their donors, they can and do accept unlimited donations from nonprofit groups that never reveal their donors. As a result, underlying donors can remain anonymous simply by routing their money through an intermediary non-profit. Super PACs and affiliated nonprofits have become so brazen in their efforts to exploit the Russian doll loophole that comedian Stephen Colbert has lampooned current law as essentially legalizing money laundering.<sup>11</sup> The problem is so severe that the *New York Times* enlisted the help of its readers in attempts to discern the true sources of Super PAC funders.<sup>12</sup>

Many—if not most—Super PACs now operate with an affiliated 501(c)(4) to give camera-shy donors a means to contribute large sums of money without public scrutiny. For instance:

- In the 2010 midterm elections, American Crossroads Super PAC and its affiliated 501(c)(4)—Crossroads GPS—spent a total of \$39 million on campaign ads.<sup>13</sup> Of that total, Crossroads GPS provided \$17 million, all from undisclosed sources.<sup>14</sup> More recently, American Crossroads’ 2011 end-of-year filings underscored the important role played by Crossroads GPS: Nearly two-thirds of the more than \$50 million raised by the Super PAC came through this dark nonprofit.<sup>15</sup>
- In 2011, Priorities USA Action, the Super PAC supporting President Obama, received one of its biggest donations, \$1 million, from the Service Employees International Union whose members

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<sup>10</sup> Dan Eggen, *Secret Money Is Funding More Election Ads*, WASH. POST, Feb. 6, 2012, [http://www.washingtonpost.com/politics/secret-money-is-funding-more-election-ads/2012/02/03/gIQAfTxEuQ\\_story.html](http://www.washingtonpost.com/politics/secret-money-is-funding-more-election-ads/2012/02/03/gIQAfTxEuQ_story.html).

<sup>11</sup> See Interview by Terry Gross with Trevor Potter, attorney to comedian Stephen Colbert, *Fresh Air*, National Public Radio (Feb. 23, 2012), available at <http://www.npr.org/2012/02/23/147294509/examining-the-superpac-with-colberts-trevor-potter>.

<sup>12</sup> See Michael Luo, *Readers: Help Us Discover a Secret Donor*, N.Y. TIMES, THE CAUCUS BLOG, (Feb. 3, 2012, 10:35 AM), <http://thecaucus.blogs.nytimes.com/2012/02/03/a-crowdsourcing-experiment-help-us-discover-a-secret-donor/?src=tp>.

<sup>13</sup> Kalanick, *supra* note 6, at 2265.

<sup>14</sup> *Id.* at 2266.

<sup>15</sup> Danny Yadron, *Crossroads Groups Raise \$51 Million in 2011*, WALL ST. J. WASH. WIRE BLOG (Jan. 31, 2012, 6:33 PM), <http://blogs.wsj.com/washwire/2012/01/31/crossroads-groups-raise-51-million-in-2011/>.

are anonymous.<sup>16</sup> And, in 2011, Priorities USA Action's affiliated 501(c)4 contributed over \$200,000 of dark money.<sup>17</sup>

- The Center for Responsive Politics found that, during the 2012 election cycle, at least five Super PACs received “all or nearly all” of their funding from affiliated dark nonprofits:
  - New Power PAC received 88% of its funding from Kentuckians for the Commonwealth, a 501(c)(4) organization;
  - Environment Colorado Action Fund received roughly 99% of its funding from Environment Colorado, a 501(c)(4) organization;
  - ProgressOhio received essentially all of its funding from ProgressOhio.org, a 501(c)(4) organization;
  - Protecting America's Retirees received essentially all of its funding from Alliance for Retired Americans, a 501(c)(4) organization;
  - National Association of Realtors Congressional Fund received all of its funding from the 501(c)(6) trade association that shares its name.<sup>18</sup>

The DISCLOSE Act of 2012 would substantially advance voters' interest in making informed voting choices by ending the anonymous donor problem described above. The Act would require that all major donors—specifically, those who have contributed more than \$10,000 to a group spending money on campaign ads during an election cycle—be named in public reports to the FEC. Moreover, the Act expands reporting requirements to cover indirect campaign spending—deemed “covered transfers”—in order to curtail Russian doll concerns. Thus, if a group or person gives funds to another for the express purpose of electioneering, in response to requests for campaign ad funding, or with reason to know that such money would be used for such purposes, that donation is subject to the same reporting requirements as a direct expenditure.

Furthermore, the Act would enhance disclosure while still protecting personal privacy. Under the Act, donors can anonymously support a politically-active organization by specifying that their contribution not be used for electioneering, in which case the donation is not subject to disclosure. Similarly, the Act gives nonprofits the choice to set up a separate account for their political fundraising and spending, thereby allowing them to keep the sources of their other funds private.

### ***B. Accelerated Timetable***

The DISCLOSE Act of 2012 would also close loopholes in existing disclosure rules that allow major election spenders to delay revealing details of their spending until well after voters have

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<sup>16</sup> Priorities USA Action, JULY 31 MID-YEAR REPORT (FEC FORM 3X) 14 (Sep. 22, 2011), *available at* <http://images.nictusa.com/pdf/294/11932493294/11932493294.pdf#navpanes=0>; Priorities USA Action, JANUARY 31 YEAR-END REPORT (FEC FORM 3X) 20 (Jan. 31, 2012), *available at* <http://images.nictusa.com/pdf/969/12970340969/12970340969.pdf#navpanes=0>.

<sup>17</sup> Priorities USA Action, JANUARY 31 YEAR-END REPORT (FEC FORM 3X) 21 (Jan. 31, 2012), *available at* <http://images.nictusa.com/pdf/969/12970340969/12970340969.pdf#navpanes=0>.

<sup>18</sup> Kathleen Ronayne, Center for Responsive Politics, *Some Super PACs Reveal Barest of Details About Funders*, OPENSECRETS.ORG (June 17, 2011, 8:00 AM), <http://www.opensecrets.org/news/2011/06/some-super-pacs-reveal-barest.html>.

already cast their ballots. Existing disclosure provisions are inadequate because, under certain circumstances, they permit significant delays between campaign spending and reporting. For instance, under the regular general reporting deadlines for political action committees, some contributions to Super PACs can be made up to seven months before they are disclosed, leaving voters in the dark about campaign ad funders until after they have already voted. This precise scenario unfolded earlier this year with respect to four early primary states—Iowa, New Hampshire, South Carolina and Florida. Voters in those states were bombarded with political ads in the lead-up to the primaries, yet most of the Super PACs funding those ads did not have to disclose the names of donors (some of whom had contributed as early as July 2011) until January 31, 2012, after the relevant elections.<sup>19</sup>

Even worse, the January disclosure statements only accounted for contributions through December 2011—money contributed in January was not disclosed until the end of February. This monthly lag in reporting will continue throughout the primary season. If, for example, a deep-pocketed supporter of Rick Santorum or Mitt Romney gives a million dollars to a friendly Super PAC three weeks before Pennsylvania’s April 24th primary, the details of that contribution—and the ads it funds—will not be revealed until more than a month after votes are counted in the Keystone State.

In the Digital Age, there is no reason for disclosure to be delayed for this long. The Act would fix this problem by requiring *all* outside spending groups, including Super PACs, to report their major donors within 24 hours of each \$10,000 expenditure.

### *C. Enhanced Disclaimers*

Currently federal disclaimers only identify the funding organization. Too often, the name on the face of an ad is that of a benign-sounding group that obscures who is running the organization and how it obtains its funding. As a result, the voter viewing the ad on his or her TV receives little to no helpful information about the forces seeking to influence election results. Examples abound:

- During the 2010 election cycle, a group named “Coalition to Protect Seniors” spent \$464,347 on independent expenditures targeting Democratic candidates.<sup>20</sup> A *New York Times* reporter, intrigued by television advertisements that featured a snarky talking baby, sought to learn more about the group’s leadership and funders, but could find nothing more than an address at a Mail Boxes Etc. store in Wilmington, Delaware.<sup>21</sup>

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<sup>19</sup> Eliza Newlin Carney, *Deadline Arrives for Super PACs to Reveal Their Donors*, ROLL CALL, Jan. 31, 2012, [http://www.rollcall.com/news/deadline\\_arrives\\_for\\_super\\_pacs\\_to\\_reveal\\_their\\_donors-211989-1.html](http://www.rollcall.com/news/deadline_arrives_for_super_pacs_to_reveal_their_donors-211989-1.html).

<sup>20</sup> Center for Responsive Politics, *Coalition to Protect Seniors*, OPENSECRETS.ORG, <http://www.opensecrets.org/outsidespending/detail.php?cycle=2010&cmte=Coalition%20to%20Protect%20Seniors> (last visited Mar. 26, 2012).

<sup>21</sup> Mike McIntire, *The Secret Sponsors*, N.Y. TIMES, Oct. 2, 2010, at WK1, *available at* <http://www.nytimes.com/2010/10/03/weekinreview/03mcintire.html>.

- “Citizens for Strength and Security” spent over \$2.794 million on independent campaigning through October 2010 to benefit Democratic candidates in federal elections.<sup>22</sup> The organization—a Super PAC and affiliated nonprofit—provides no public information about its leadership or funders, although the Pharmaceutical Research and Manufacturers of America apparently gave the group \$2.5 million in 2010.<sup>23</sup> The only available addresses lead to a UPS store on M Street in Washington—an address that is shared by several other politically-active nonprofits—and a D.C. law firm.<sup>24</sup>

Recent examples from state elections further illustrate this problem:

- During the 2011 Wisconsin Supreme Court race, a group named “Citizens for a Strong America” funded an advertising blitz against candidate JoAnne Kloppenburg, but provided no public information about its organization, leadership, or funders. The address listed for the group led to a mailbox at a local UPS store and its phone number led to a full voicemail box. Eventually, the Center for Media and Democracy discovered that “Citizens for a Strong America” was controlled by a leader of Americans for Prosperity, a national organization largely funded by billionaire David Koch.<sup>25</sup>
- In a 2010 Colorado ballot measure election, a group called “Littleton Neighbors Voting No,” spent \$170,000 to defeat a restriction that would have prevented Wal-Mart from coming to town. When the disclosure reports for these groups were filed, however, it was revealed that “Littleton Neighbors” was exclusively funded by Wal-Mart; it was not a grassroots campaign at all.<sup>26</sup>

The Act imposes enhanced disclaimer requirements on political advertisements that are broadcast via radio or television. Specifically, the Act imposes a new “stand-by-your-ad” rule that requires the highest ranking official of the spending organization to expressly approve of the message. And, an organization must list the top funders whose donations paid for the advertisement. These new requirements will prevent parties from hiding behind front groups to run political ads, and will instantly inform the voting public of major financial players.

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<sup>22</sup> T.W. Farnam and Nathaniel Vaughn Kelso, *Campaign Cash: Citizens for Strength and Security*, WASH. POST, <http://www.washingtonpost.com/wp-srv/politics/campaign/2010/spending/Citizens-for-Strength-and-Security.html> (last visited Mar. 27, 2012).

<sup>23</sup> Michael Beckel, *Drug Lobby Gave \$9.4 Million to Nonprofits that Spent Big on 2010 Election*, HUFFINGTON POST (Feb. 27, 2012, 6:47), [http://www.huffingtonpost.com/the-center-for-public-integrity/drug-lobby-gave-94-millio\\_b\\_1305390.html](http://www.huffingtonpost.com/the-center-for-public-integrity/drug-lobby-gave-94-millio_b_1305390.html).

<sup>24</sup> Ryan Sibley, *‘Grassroots’ Group Grows Mainly in Offices of D.C. Law and PR Firms*, SUNLIGHT FOUNDATION REPORTING GROUP (Oct. 7, 2010, 11:54 AM), <http://reporting.sunlightfoundation.com/2010/grassroots-group/>.

<sup>25</sup> Lisa Graves, *Group Called “Citizens for a Strong America” Operates out of a UPS Mail Drop but Runs Expensive Ads in Supreme Court Race?*, THE CENTER FOR MEDIA AND DEMOCRACY’S PRWATCH (Apr. 2, 2011, 6:37 PM), <http://www.prwatch.org/news/2011/04/10534/group-called-citizens-strong-america-operates-out-ups-mail-drop-runs-expensive-ad>.

<sup>26</sup> See Def.’s Response Br. to Pls.’ Motion for Summary Judgment, *Sampson v. Coffman*, 06-cv-01858 at 43-44 (D. Co. 2007) (Dkt. #34).

## THE DISCLOSE ACT OF 2012 STANDS ON FIRM CONSTITUTIONAL GROUND

For more than three decades—from *Buckley v. Valeo*,<sup>27</sup> upholding the post-Watergate regulation of money and politics in 1976, through *McConnell v. FEC*,<sup>28</sup> upholding the Bipartisan Campaign Reform Act’s disclosure requirements for electioneering communications in 2003, to *Citizens United* and beyond—the Supreme Court has consistently and repeatedly held disclosure of the source of campaign funds to be constitutional. This consistent and unbroken chain of Supreme Court precedent leaves no doubt that the DISCLOSE Act of 2012 is constitutional.

In *Buckley*, the seminal case on money in politics, the Court explained that campaign finance disclosure serves three key governmental interests: (1) “disclosure provides the electorate with information as to where political campaign money comes from and how it is spent;” (2) “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity;” and (3) “disclosure requirements are an essential means of gathering the data necessary to detect violations” of other campaign finance regulations.<sup>29</sup> The *Buckley* court went on to find these interests important enough to justify any incidental burdens on political speech that federal disclosure requirements could cause. In 2003, the Court reaffirmed this triumvirate of governmental interests by upholding the disclosure requirements for electioneering communications in the Bipartisan Campaign Reform Act.

More recently, in *Citizens United*, eight justices voted to uphold challenged disclosure requirements. In doing so, they explained that even if “[d]isclaimer and disclosure requirements may burden the ability to speak, . . . they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking.”<sup>30</sup> And, the Court made clear that disclosure of money in politics furthers important First Amendment values, and is a necessary component of our electoral process:

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.<sup>31</sup>

Since *Citizens United*, lower federal courts—from Washington to Florida and from Maine to Hawaii—have consistently and repeatedly upheld campaign finance disclosure laws.<sup>32</sup> Over and

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<sup>27</sup> 424 U.S. 1 (1976).

<sup>28</sup> 540 U.S. at 95-107.

<sup>29</sup> *Buckley*, 424 U.S. at 66-68.

<sup>30</sup> *Citizens United*, 130 S. Ct. at 914.

<sup>31</sup> *Id.* at 916; *see also Doe v. Reed*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring) (“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 (*McIntyre*) 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.”).

<sup>32</sup> *See, e.g., Family PAC v. McKenna*, Nos. 10–35832, 10–35893, 2012 WL 266111, at \*6 (9th Cir. Jan. 31, 2012) (upholding \$25 and \$100 disclosure thresholds for reporting information about contributors to political committees that support ballot measures); *Nat’l Org. for Marriage v. Daluz*, 654 F.3d 115, 118 (1st Cir.



over, these courts have stressed the importance of robust disclosure.<sup>33</sup> As the Ninth Circuit Court of Appeals recently observed:

Campaign finance disclosure requirements . . . advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas. An appeal to cast one's vote a particular way might prove persuasive

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2011) (finding that “relatively small imposition” for disclosing information about independent expenditures is related to government interest in providing electorate with key information); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 41 (1st Cir. 2011) (upholding Maine's political committee financial disclosure requirements and finding that provisions “neither erect a barrier to political speech nor limit its quantity”), *aff'd* No. 11-1196, 40 (1st Cir. Jan. 31, 2012) (finding that “ballot question committee” law, like PAC laws, are constitutional and that “transparency is a compelling objective”), *cert. denied*, No. 11-559 (U.S. Feb. 27, 2012); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1013 (9th Cir. 2010) (upholding Washington's political committee financial disclosure requirements and noting, “[i]ndeed, it is the Supreme Court's decision in *Citizens United* . . . that provides the best guidance regarding the constitutionality of the Disclosure Law's requirements.”); *SpeechNow.org v. FEC*, 599 F.3d 686, 696–97 (D.C. Cir. 2010) (upholding ongoing disclosure requirements for organizations making independent expenditures; finding “*Citizens United* upheld disclaimer and disclosure requirements for electioneering communications as applied to Citizens United, again citing the government's interest in providing the electorate with information”); *Justice v. Hosemann*, No. 3:11-CV-138-SA-SAA, 2011 WL 5326057, at \*14 (N.D. Miss. Nov. 3, 2011) (holding that Mississippi's disclosure forms are not “overly intrusive” and that \$200 threshold amount is rational and substantially related to government's important informational interest); *ProtectMarriage.com v. Bowen*, No. 2:09-CV-00058-MCE-DAD, 2011 WL 5507204, at \*18 (E.D. Cal. Nov. 4, 2011) (finding that alleged harassment related to financial support of Proposition 8 did not warrant exception from general disclosure laws); *Nat'l Org. for Marriage, Inc. v. Roberts*, 753 F.Supp.2d 1217, 1222 (N.D. Fla. 2010) (finding that Florida disclosure requirements connected to “electioneering communications organizations” “would not prohibit [plaintiff] from engaging in its proposed speech”); *Yamada v. Kuramoto*, No. 10-00497 JMS/LEK, 2010 WL 4603936, at \*1 (D. Haw. Oct. 29, 2010) (finding that “*Citizens United* also endorsed disclosure”); *Iowa Right to Life Comm., Inc. v. Smithson*, 750 F.Supp.2d 1020, 1026 (S.D. Iowa 2010) (finding “under *Citizens United*, [t]he Government may regulate corporate political speech through disclaimer and disclosure requirements” (alteration in original)); *Wis. Club for Growth, Inc. v. Myse*, No. 10-cv-427-wmc, 2010 WL 4024932, at \*5 (W.D. Wis. Oct. 13, 2010) (refusing to enjoin Wisconsin's disclosure regulations; noting “[P]laintiffs' reliance on *FEC v. WRTL* ignores the Supreme Court's later treatment of disclosure and disclaimer regulations in *Citizens United*”); *Ctr. for Individual Freedom v. Madigan*, 735 F. Supp. 2d 994, 1000 (N.D. Ill. 2010) (upholding Illinois' registration, disclosure, and reporting provisions; noting “in *Citizens United*, the Supreme Court expressly rejected the contention that election-law disclosure requirements are limited to express advocacy or its functional equivalent”).

<sup>33</sup> See, e.g., *Nat'l Org. for Marriage v. McKee*, 649 F.3d at 41 (“ . . . [Disclosure provisions] promote the dissemination of information about those who deliver and finance political speech, thereby encouraging efficient operation of the marketplace of ideas. As the Supreme Court recently observed, such compulsory “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” (citation omitted)); *SpeechNow.org*, 599 F.3d at 698 (“But the public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenses or independent expenditures. Further, requiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals.”).

when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another.<sup>34</sup>

The DISCLOSE Act of 2012 would advance the same goals of transparency as the scores of state and federal disclosure laws that federal courts have repeatedly upheld. The Act's constitutionality cannot be doubted.

### **THE DISCLOSE ACT 2012 IS A NECESSARY FIRST STEP**

The public anger surrounding *Citizens United* provides Congress with a ripe opportunity to strengthen federal disclosure and disclaimer provisions to ensure that voters are fully aware of who is trying to sway their vote in national elections. In addition, we urge several additional “fixes” to repair the damage wrought by *Citizens United*.

First, the Rules Committee should amend the Senate version of the Act to include a provision parallel to that in the House version, which would require unions and corporations engaged in political spending to disclose that spending to their members or shareholders. Such an amendment would buttress the already strong transparency provisions of the Senate version, shedding additional light on election spending. Furthermore, with respect to corporate political spending, Congress has the authority to modify the securities law to address managers' use of shareholder resources to influence elections—and Congress should do so. The Shareholder Protection Act of 2011 (H.R. 2517) would require corporations to provide shareholders in publicly traded companies with the right to vote on corporate political expenditures or would require corporate boards to authorize such spending.

Second, in order to fundamentally address the role of money in politics, Congress must embrace public funding for congressional elections. Small donor public funding, like New York City's successful program, would provide federal money to candidates who collect small donations from their constituents.<sup>35</sup> By matching these small donation at a multiple rate—such as four-to-one or six-to-one—small donor public financing would leverage the power of small donors and incentivize candidates to focus on low dollar donations from their constituents instead of large contributors from lobbyists and others advancing narrow goals. Such a systemic reform would ultimately enhance voter participation and reduce the influence of special interests.

Finally, one critical way to counter the flood of new money into our electoral process is to add millions of new voters to the voter rolls by modernizing our voter registration system. Under the system proposed by the Brennan Center, as many as 65 million eligible Americans could join the electoral system permanently—while curbing potential for fraud and abuse.<sup>36</sup> Such an approach

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<sup>34</sup> *Brumsickle*, 624 F.3d at 1008.

<sup>35</sup> See, e.g., ANGELA MIGALLY, SUSAN LISS ET AL., BRENNAN CTR. FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC EXPERIENCE (2010), [http://brennan.3cdn.net/8116be236784cc923f\\_iam6benvw.pdf](http://brennan.3cdn.net/8116be236784cc923f_iam6benvw.pdf).

<sup>36</sup> See WENDY WEISER ET AL., BRENNAN CTR. FOR JUSTICE, COMPONENTS OF A BILL TO MODERNIZE THE VOTER REGISTRATION SYSTEM (2010), [http://brennan.3cdn.net/1c55262dffddd1f04f\\_xpm6bhja5.pdf](http://brennan.3cdn.net/1c55262dffddd1f04f_xpm6bhja5.pdf); see generally VOTER REGISTRATION

would automatically and permanently register all eligible citizens who wish to be registered, and provide failsafe mechanisms to give voters the chance to correct their registrations before and on Election Day. We urge the Committee to move forward with voter registration modernization legislation as soon as possible.

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The DISCLOSE Act of 2012 closes longstanding loopholes that have permitted veiled actors to fund political ads without full transparency. Congress should pass this legislation promptly to ensure that disinfecting sunlight illuminates our elections in 2012 and beyond.