



ADVANCING
DEMOCRACY
THROUGH LAW

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Campaign Legal Center**

**Senate Rules and Administration Committee
Hearing on S. 1, the For the People Act**

March 24, 2021

Thank you for the honor of appearing before you today in support of S. 1, the For the People Act. I am the founder and president of the Campaign Legal Center, a nonpartisan 501(c)(3) organization dedicated to advancing American democracy through law. I am also a Republican former Commissioner and Chair of the Federal Election Commission (FEC), and served as General Counsel to John McCain's 2000 and 2008 presidential campaigns and Deputy General Counsel to President George H. W. Bush's 1988 Presidential campaign.

S. 1 is a landmark bill that will make our government more accessible, transparent and responsive. This comprehensive bill would limit the undue influence of special interests in our political system, shine a spotlight on dark money, strengthen ethics and lobbying laws, improve access to the ballot, and end partisan gerrymandering. These changes are needed to make our democracy work for all Americans.

I will first briefly describe the For the People Act's bipartisan origins, and then discuss three critical components of the bill in greater detail.

Many of S. 1's provisions have bipartisan origins,¹ and the For the People Act has broad bipartisan public support, with large majorities of likely voters from both parties backing the legislation.² This bill does not give power to any particular party over another; it gives power back to the voters, protecting their constitutional rights to participate meaningfully in the democratic process.

¹ Campaign Legal Center, *The Bipartisan Origins & Impact of the For the People Act (H.R. 1 / S. 1)*, (Jan. 2021), <https://campaignlegal.org/sites/default/files/2021-01/01-25-21%20HR%201%20Bipartisan%20Memo%20330pm.pdf>.

² See, e.g., Alexandra Hutzler, *As GOP Opposes H.R. 1, Poll Finds Majority of Republicans Support Election Reform Bill*, Newsweek (Feb. 25, 2021), <https://www.newsweek.com/gop-opposes-hr-1-poll-finds-majority-republicans-support-election-reform-bill-1572166>.

For example:

- S. 1’s FEC reform provisions are drawn from the bipartisan “Restoring Integrity to America’s Elections Act,” which was introduced with Republican and Democratic co-sponsors in the 114th,³ 115th,⁴ and 116th Congresses;⁵
- S.1’s disclosure provisions reflect the broad bipartisan public support for ending dark money,⁶ and track analogous disclosure bills passed on the state level on a bipartisan basis;⁷
- S. 1’s digital disclosure provisions are drawn from the bipartisan “Honest Ads Act,” a bill introduced with Republican and Democratic co-sponsors in the 115th⁸ and 116th Congresses;⁹
- S. 1’s super PAC coordination provisions echo those included in bills like the bipartisan Political Accountability and Transparency Act,¹⁰ and are similar to bipartisan state measures, such as a bill introduced in West Virginia by a Republican state senator that passed in 2019 with bipartisan support and was signed into law by the state’s Republican governor.¹¹

S.1’s bipartisan roots are not limited to its campaign finance provisions. For example, S. 1 implements a bipartisan American Bar Association recommendation to prevent so-called “shadow lobbying,” and to treat the provision of strategic advice in support of lobbyists as lobbying.¹² Existing lobbying disclosure laws contain a loophole, through which individuals may avoid registering as lobbyists themselves if they minimize their own direct lobbying contacts, and instead offer others “strategic advice” on how to influence governmental action.¹³ Shadow lobbying allows special interests to avoid disclosing the total amount they actually spend influencing public policy, and additionally allows former members of the legislative and executive branches to evade post-employment revolving door restrictions.¹⁴ Former President

³ H.R. 2931, 114th Congress (2015).

⁴ H.R. 2034, 115th Congress (2017).

⁵ H.R. 1272, 116th Congress (2019).

⁶ ALG Research & GS Strategy Group, *Memorandum re: Poll Finds Overwhelming Support for Public Disclosure of Political Contributions to Organizations* (Nov. 13, 2019), <https://campaignlegal.org/sites/default/files/2019-11/CLC%20DISCLOSURE%20MEMO.pdf>.

⁷ See, e.g., Paul Blumenthal, *Montana Republicans and Democrats Unite to Ban Dark Money*, HUFFINGTON POST (Apr. 15, 2015), https://www.huffpost.com/entry/montana-dark-money_n_7074084.

⁸ S. 1989/H.R. 4077, 115th Congress (2017).

⁹ S. 1356/H.R. 2592, 116th Congress (2019).

¹⁰ H.R. 679, 116th Congress (2019).

¹¹ See West Virginia Senate Bill 622, 2019 Regular Session, OPENSTATES, <https://openstates.org/wv/bills/2019/SB622/>.

¹² See S. 1, Title VII, Subtitle C; Am. Bar Ass’n Task Force on Fed. Lobbying Laws, *Lobbying Law in the Spotlight: Challenges and Proposed Improvements* 17 (Jan. 3, 2011), http://www.campaignlegalcenter.org/sites/default/files/ABA_Task_Force_Report_-_Lobbying_Law_in_the_Spotlight_-_Challenges_and_Proposed_Improvements.pdf (reporting bipartisan ABA Task Force’s findings and recommendations, including recommendation to define provision of strategic advice as “lobbying support”).

¹³ See Lee Fang, *Michael Cohen and the Felony Taking Over Washington*, N.Y. TIMES (June 18, 2018), <https://www.nytimes.com/2018/06/18/opinion/michael-cohen-shadow-lobbyingtrump.html>.

¹⁴ See, e.g., Michael Hiltzik, *The Revolving Door Spins Faster: Ex-Congressmen Become ‘Stealth Lobbyists’*, L.A. TIMES (Jan. 06, 2015), <https://www.latimes.com/business/hiltzik/la-fi-mh-the-revolving->

Trump called for an end to shadow lobbying as part of his “drain the swamp” plan in the 2016 presidential election,¹⁵ and S. 1’s shadow lobbying provisions are drawn from bipartisan legislation like the Lobbyist Loophole Closure Act.¹⁶

S. 1’s reforms to the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 et seq., also reflect broad support for strengthening FARA. (Indeed, multiple bipartisan bills have been introduced that would go even further than S. 1’s FARA reform provisions.¹⁷) FARA requires that agents of foreign principals disclose their relationships with, payments from, and activities on behalf of those foreign interests. FARA is a crucially important law that shines a spotlight on foreign influence efforts in the United States, but has historically been rarely enforced.¹⁸ S. 1 would enhance FARA enforcement by creating a dedicated home and appropriation for FARA investigation and enforcement within the Justice Department, and additionally allow the agency to pursue civil penalties for FARA violations.

The For the People Act also includes several provisions to secure our elections and protect the voting rights of all Americans—regardless of political party. The provisions are similarly drawn from well-established practices in both “red” and “blue” states, and mirror bipartisan congressional proposals. For example:

- S. 1 provides for Automatic Voter Registration (AVR), where eligible citizens would be automatically registered to vote when they interact with government agencies like the DMV. AVR has been successfully adopted and implemented in 16 states— including West Virginia,¹⁹ Alaska,²⁰ and Georgia²¹—often with bipartisan support.²² Republican-sponsored federal

[door-20150106-column.html](https://www.thenation.com/article/shadow-lobbying-complex); Lee Fang, *Where Have All the Lobbyists Gone?*, NATION (Feb. 19, 2014), <https://www.thenation.com/article/shadow-lobbying-complex>.

¹⁵ Donald J. Trump’s Five Point Plan for Ethics Reform, Donald J. Trump for President (Oct. 17, 2016), <https://web.archive.org/web/20170428033515/https://www.donaldjtrump.com/press-releases/donald-j.-trumps-five-point-plan-for-ethics-reform>.

¹⁶ H.R. 783, 116th Congress (2019).

¹⁷ See, e.g., the Foreign Agents Registration Modernization and Enforcement Act, S. 625/H.R. 2811, 115th Congress (2018); Disclosing Foreign Influence Act S. 2039/H.R. 4170, 115th Congress (2018).

¹⁸ See, e.g., Office of the Inspector Gen., U.S. Dep’t of Justice, Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act 21-22 (Sept. 2016), <https://oig.justice.gov/reports/2016/a1624.pdf> (finding rampant noncompliance with FARA registration requirements and little enforcement).

¹⁹ Sophie Schuit & Jonathan Brater, *West Virginia Third State to Pass Automatic Voter Registration*, BRENNAN CTR. FOR JUSTICE (Apr. 4, 2016) <https://www.brennancenter.org/our-work/analysis-opinion/west-virginia-third-state-pass-automatic-voter-registration>.

²⁰ Gabrielle LeDoux & Jonathan Kreiss-Tomkins, *My Turn: Both Sides Agree: Ballot Measure 1 is a Good Idea*, JUNEAU EMPIRE (Nov. 7, 2016), <https://www.juneauempire.com/opinion/my-turn-both-sides-agree-ballot-measure-1-is-a-good-idea/>.

²¹ Georgia Secretary of State, *Georgia Easy Voter Registration Options Break New Records* (Oct. 2020), https://sos.ga.gov/index.php/elections/georgia_easy_voter_registration_options_break_new_records.

²² In Illinois, for example, AVR passed unanimously across party lines, and was signed into law by the state’s Republican governor. Sophia Tareen, *Rauner Signs Automatic Voter Registration Bill*, Illinois Public Radio (Aug. 28, 2017), <https://will.illinois.edu/news/story/rauner-signs-automatic-voter-registration-bill>.

bills like the “Restoring Faith in Elections Act” would also adopt national AVR standards.²³

- S. 1 provides for online and same-day registration, which reflects practices already in place in dozens of states across the political spectrum. Forty-one states and the District of Columbia offer or are implementing online voter registration,²⁴ and 21 states plus the District of Columbia allow voters to register at the polls,²⁵ a policy supported by Republican and Democratic election officials alike.²⁶
- S. 1 would codify the growing bipartisan consensus that formerly incarcerated individuals should be allowed to fully re-enter the political community. States like Arizona²⁷ and Louisiana²⁸ have enacted legislation to restore voting rights for the formerly incarcerated, and in Florida, conservatives and progressives worked together to pass Amendment 4 and restore the voting rights of formerly incarcerated Floridians.²⁹ Rights restoration has also been supported by established nonpartisan groups like the American Probation and Parole Association,³⁰ as well as conservative and libertarian groups like the Cato Institute and R Street Institute.³¹
- S. 1 ensures that the vote-by-mail practices that have long been securely available in a majority of states, from Alaska to Florida, are accessible to all Americans.³² Under the legislation, all eligible voters may request a mail

²³ H.R. 102, 117th Congress (2021).

²⁴ See National Conference on State Legislatures, *Online Voter Registration* (Oct. 22, 2020), <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

²⁵ See National Conference on State Legislatures, *Same Day Voter Registration* (Oct. 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

²⁶ See, e.g., Ben Yursa & Matthew Dunlap, *Never Too Late to Vote*, N.Y. Times (May 11, 2007), <https://www.nytimes.com/2007/05/11/opinion/11dunlap.html>.

²⁷ Campaign Legal Center, *Felony Voting Rights Restoration in Arizona*, <https://campaignlegal.org/cases-actions/felony-voting-rights-restoration-arizona> (last visited Mar. 22, 2021).

²⁸ Mo Pasternak, *Louisiana—With Bipartisan Support—Takes Steps to Restore Voting Rights for Citizens with Past Convictions*, CAMPAIGN LEGAL CTR. (May 22, 2018), <https://campaignlegal.org/update/louisiana-bipartisan-support-takes-steps-restore-voting-rights-citizens-past-convictions>.

²⁹ German Lopez, *Florida Votes to Restore Ex-Felon Voting Rights with Amendment 4*, Vox (Nov. 7 2018), <https://www.vox.com/policy-and-politics/2018/11/6/18052374/florida-amendment-4-felon-voting-rights-results>.

³⁰ See, e.g., *Support for the DRA*, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/our-work/policy-solutions/democracy-restoration-act#Support> (last updated Mar. 16, 2021).

³¹ See, e.g., Brief of the Cato Institute and R Street Institute as Amici Curiae in Support of Plaintiffs-Appellees, *Jones v. DeSantis* (No. 19-14551), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/01/Jones-DeSantis-Amicus-Brief.pdf>.

³² National Conference of State Legislatures, *VOPP: Table 1: States with No-Excuse Absentee Voting* (May 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>. Utah and four other states go further and conduct all elections by mail. National Conference of State Legislatures, *VOPP: Table 18: States with All-Mail Elections* (Apr. 21, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-18-states-with-all-mail-elections.aspx>.

ballot, the same way that voters in states like Idaho and Kansas have been able to do for many years.³³

- S. 1 draws from the lessons of both Republican- and Democratic-leaning states to ensure that voters across the country, of any political party, can access at least 14 days of early voting. Thirty-nine states provide for early voting, with the average early voting period running 19 days.³⁴ Consistent and predictable early voting access helps shorten lines on election day and makes it easier for election officials to identify and resolve problems early in the process.
- S. 1 addresses self-interested efforts by partisan state legislators, both Democratic and Republican alike, to manipulate the redistricting process and consolidate their own political power. S. 1 would require that each state establish an independent redistricting commission responsible for developing and enacting congressional redistricting plans—a reform broadly supported by voters across the political spectrum.³⁵ The first IRC was adopted in Arizona via ballot referendum with 56% support, in the same year that George W. Bush won the state’s presidential electors.³⁶ S.1’s redistricting reforms reflect proposals in bipartisan bills like the “Citizen Legislature Anti-Corruption Reform of Elections Act.”³⁷

Historically, when the country has confronted challenges to our democracy, Republicans and Democrats have come together to craft solutions. Congress responded to the civil rights movement’s demands by passing the Voting Rights Act in 1965 with bipartisan support. It responded to the Watergate corruption scandal by enacting and amending the Federal Election Campaign Act on a bipartisan basis in the 1970s. It closed campaign finance loopholes with the Bipartisan Campaign Reform Act in 2002. It passed the Help America Vote Act with bipartisan support after the 2000 elections revealed flaws in our election systems. And after corruption scandals exposed flaws in federal lobbying laws, Congress passed the bipartisan Honest Leadership and Open Government Act in 2007.

³³ Benjamin Swasey, *Map: Mail-In voting Rules by State—And the Deadlines You Need*, NPR (Oct. 14, 2020), <https://www.npr.org/2020/09/14/909338758/map-mail-in-voting-rules-by-state>.

³⁴ National Conference of State Legislatures, *State Laws Governing Early Voting* (Oct. 22, 2020) <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>.

³⁵ Kylee Groft, *The Results are in: Most Americans Want Limits on Gerrymandering*, CAMPAIGN LEGAL CTR. (Sept. 11, 2017), <https://campaignlegal.org/update/results-are-most-americans-want-limits-gerrymandering>.

³⁶ BallotPedia, *Arizona Creation of a Redistricting Commission, Proposition 106 (2000)*, [https://ballotpedia.org/Arizona_Creation_of_a_Redistricting_Commission,_Proposition_106_\(2000\)](https://ballotpedia.org/Arizona_Creation_of_a_Redistricting_Commission,_Proposition_106_(2000)) (last visited Mar. 22, 2021).

³⁷ H.R. 100, 117th Congress (2021).

American democracy is again in need of repair, and I would hope that lawmakers from both parties can come together to enact needed reforms right now. The consequences of inaction are too great. Our democracy cannot wait—what is most important is that the Senate act swiftly to pass this much-needed legislation.

I will now focus in more detail on three critical components of the For the People Act: overhauling the Federal Election Commission; ending dark money; and advancing ordinary Americans' First Amendment rights to have their voices heard in political campaigns.

I. FEC Reform: Restoring Integrity to America's Elections

The FEC plays a vital role in enforcing and administering the campaign finance laws that protect the voices of voters in our democracy. For the first three decades of its existence, the FEC performed its functions at least reasonably well. But since then, the agency has grown deeply dysfunctional and our democracy is suffering as a result.

Over roughly the past decade, the FEC has routinely failed to enforce the law, even when presented with overwhelming evidence of likely legal violations.³⁸ And it has failed to meaningfully update its regulations, even as Supreme Court decisions and rapidly evolving technological practices have transformed the electoral landscape.³⁹ This inaction has resulted in an explosion in secret spending and our politics increasingly rigged in favor of wealthy special interests.

Under current law, the FEC is led by six Commissioners nominated by the President, no more than three of whom can be from the same political party.⁴⁰ The political custom is that nominees are recommended by party leaders in Congress. To pursue investigations or take other substantive actions, at least four Commissioners need to agree.⁴¹

³⁸ See, e.g., Karl Evers-Hillstrom, *Republican Commissioners Let the Clinton Campaign Off the Hook for Super PAC Coordination*, CTR. FOR RESPONSIVE POLITICS (Jul. 22, 2019), <https://www.opensecrets.org/news/2019/07/republican-fec-commissioners-let-clinton-campaign-off/>.

³⁹ Since 2012, the FEC has issued just one substantive regulation, regarding the technical question of how to report multistate independent expenditures and electioneering communications. See REG 2014-02 (Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications); see also FEC, Responses to Questions from the Committee on House Administration, at 26-28, 30-37 (May 1, 2019), https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin.pdf (FEC identifying just one substantive rule in response to a question about rulemakings completed since January 1, 2012).

⁴⁰ 52 U.S.C. § 30106(a)(1).

⁴¹ See *id.* § 30106(c).

This structure allows just three Commissioners to paralyze the agency by withholding affirmative votes. When that occurs, the Commission “deadlocks,” meaning it fails to achieve the four votes required to proceed and cannot act.

For the first thirty years of its existence, the Commission deadlocked relatively infrequently; during my tenure on the FEC, between 1991 and 1995, I can recall only once that the agency deadlocked on an enforcement matter.

That changed in the mid-2000s. Around that time, congressional opponents of campaign finance regulation began to prioritize the recommendation and confirmation of FEC Commissioners who are ideologically opposed to campaign finance laws and their enforcement.⁴² Ever since, a rotating bloc of three Commissioners has routinely voted to prevent the FEC from taking action on important issues like disclosure of secret money, super PAC coordination, transparency for digital political advertising, and more. As a result, deadlocks have become the norm.

For example, every election cycle reveals new instances of super PACs and candidates working hand-in-glove, and yet the FEC has never fined a super PAC for coordinating with a campaign.⁴³

Dark money grows dramatically each election cycle—reaching over \$1 billion in 2020⁴⁴—yet the FEC refuses to enforce the disclosure laws on the books. This is despite the Supreme Court in decisions like *Citizens United* endorsing “effective disclosure” as a constitutional means of “insur[ing] that the voters are fully informed.”⁴⁵

⁴² See, e.g., Charles Homans, *Mitch McConnell Got Everything He Wanted. But at What Cost?*, N.Y. Times (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/magazine/mcconnell-senate-trump.html> (noting that, following McConnell’s failed legal challenge to the Bipartisan Campaign Reform Act in 2002, “his attention shifted to the Federal Election Commission,” and with his former chief of staff stating that, of all the government agencies for which McConnell, as the Senate Republican leader, selected and vetted potential appointees, “the one that I know of where McConnell himself interviewed every single person was the F.E.C.”); see also Nancy Cook, *He’s Going to Be an Enabler*, POLITICO (Feb. 21, 2017), <https://www.politico.com/magazine/story/2017/02/trump-mcgahn-white-house-lawyer-214801/> (describing how former FEC Commissioner Don McGahn’s “tenure seemed like part of a broader Republican-sanctioned strategy to defang the agency. That could be why Senate Majority Leader Mitch McConnell handpicked him for the job.”)

⁴³ Ellen L. Weintraub, *Chair Ellen L. Weintraub’s Supplementary Responses to Questions from the Committee on House Administration* at 4, 5 (May 1, 2019), https://www.fec.gov/resources/cms-content/documents/FEC_Response_to_House_Admin_Attachment_A_Weintraub.pdf.

⁴⁴ 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/>.

⁴⁵ *Citizens United v. FEC*, 558 U.S. 310, 368-70 (2010) (quoting *Buckley v. Valeo*, 424 U.S. 1, 76 (1976)).

The problem is not that the Republican Commissioners only vote to enforce the law against Democrats, and vice-versa; it is that the Republican Commissioners largely refuse to enforce the law against anybody, Democrat or Republican.⁴⁶

Those seeking to defend a broken status quo have attempted to downplay the Commission's dysfunction by skewing the numbers—for example, by including figures from the Commission's entire existence (thereby obscuring the stark differences between the FEC's relatively successful first thirty years, and its largely dysfunctional last ten), or by including vote results on noncontroversial, non-substantive matters (such as routine votes to approve meeting minutes, to sign-off on essentially automatic administrative fines, or to close a file after the Commission deadlocks).⁴⁷ Such efforts are misleading and disingenuous.⁴⁸

Indeed, the FEC itself admitted to the Committee on House Administration in 2019 that it has had at least one deadlocked vote in the majority (50.6%) of the enforcement matters it has considered since 2012.⁴⁹ Other recent analyses of deadlock rates have reached similar conclusions.⁵⁰

⁴⁶ See, e.g., MUR 6940 (Correct the Record) (FEC deadlocked and dismissed complaint alleging coordination between 2016 Democratic presidential candidate Hillary Clinton's campaign and a supportive super PAC, with the Democratic Commissioners voting to pursue the matter and Republican Commissioners voting to dismiss it); MUR 7183 (Thornton Law Firm) (FEC deadlocked and dismissed complaint involving alleged straw donations to Democratic candidates and committees, with Democratic Commissioners voting to pursue the matter and Republican Commissioners voting to dismiss); MUR 6932 (FEC deadlocked and dismissed complaint alleging that the 2016 Clinton campaign accepted in-kind contributions from a supportive super PAC, with the Democratic Commissioners voting to pursue the matter and Republican Commissioners voting to dismiss).

⁴⁷ Letter from 9 Former FEC Commissioners to Congressional Leadership, (Feb. 9, 2021), https://www.ifs.org/wp-content/uploads/2021/02/2021-02-09_Former-FEC-Commissioners-Letter_Concerns-With-HR-1-And-S-1.pdf (citing Bradley A. Smith, Feckless: A Critique of Critiques of the Federal Election Commission, 27 GEO. MASON L. REV. 503, 528-530 (2020), http://georgemasonlawreview.org/wpcontent/uploads/2020/07/Smith_Final_Web.pdf).

⁴⁸ For a fuller response to these misleading deadlock calculations, see Trevor Potter, A Dereliction of Duty: How the FEC Commissioners' Deadlocks Result in a Failed Agency and What Can Be Done, 27 GEO. MASON L. REV. 483, 487-89 (2020), http://georgemasonlawreview.org/wp-content/uploads/2020/07/Potter_Final_Web.pdf.

⁴⁹ FEC, Responses, *supra* note 40 at 20; see also Weintraub, *supra* note 44, at 4 (noting that "a slim majority of 51% have at least one split vote along the way").

⁵⁰ A Congressional Research Service ("CRS") report found that the Commission deadlocked in 24.4% of enforcement matters closed in 2014, compared to 13% in 2008 and 2009. R. Sam Garrett, CONG. RESEARCH SERV., R44319, The Federal Election Commission: Enforcement Process and Selected Issues for Congress, at 9–10 (Dec. 22, 2015), <https://crsreports.congress.gov/product/pdf/R/R44319/3>. Garrett's "analysis defined a deadlock as any matter including a vote without a majority of at least four members." *Id.* at 10 n.44.

An analysis conducted by former Commissioner Ann Ravel in 2017, following the same methodology as the CRS report, found that in 2006, only 2.9% of all substantive votes in closed enforcement matters were deadlocked votes. Office of Comm'r Ann M. Ravel, FEC, Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp at 9 (February 2017), https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf. In 2013, it was 26.2%, and by 2016, the rate had exceeded 30%. *Id.* Other findings included that, in 2016, 12.5% of enforcement matters closed because of a deadlock, while none had ten years previously, and 37.5% of enforcement matters closed with at least one deadlocked vote on a substantive matter in 2016, up from 4.2% in 2006. *Id.* at 10.

Efforts to downplay the FEC’s dysfunction are also belied by the widespread understanding in the campaign finance field that the FEC simply does not enforce the law. As one leading Republican campaign finance lawyer told the Washington Post in 2016, “we are in an environment in which there has been virtually no enforcement of the campaign finance laws.”⁵¹ Matters have only deteriorated since then.

In short, the FEC is in dire need of reform.

Title VI, Subtitle A of S. 1, the “Restoring Integrity to America’s Elections Act”—drawn from bipartisan legislation of that same name—would restructure the FEC to address these well-documented problems and allow it to function as an effective watchdog.

First, S. 1 changes the number of FEC Commissioners from six to five to avoid deadlocks, and requires that no more than two Commissioners be members of the same political party.⁵² This means that major agency actions—such as adopting regulations or hiring the General Counsel—require three votes, including at least one vote from either an independent or a member of a different party.⁵³ In other words, Commissioners must cross party lines to reach the requisite number of votes. Changing the number of FEC Commissioners to an odd number, and allowing the President to nominate one of those Commissioners as a chair with broad powers to manage the agency,⁵⁴ would bring the FEC’s structure more closely in line with other independent regulatory agencies, like the Federal Communications Commission.⁵⁵

Second, S. 1 reforms the Commissioner selection process to increase the likelihood that FEC Commissioners will be committed to the mission of the agency. While Commissioner nominations are ultimately up to the President, S. 1 creates a diverse nonpartisan “blue-ribbon” advisory panel to identify and recommend qualified

⁵¹ Matea Gold, *Trump’s Deal With the RNC Shows How the Money Is Flowing Back to the Parties*, WASH. POST (May 18, 2016), https://www.washingtonpost.com/politics/trumps-deal-with-the-rnc-shows-how-big-money-is-flowing-back-to-the-parties/2016/05/18/4d84e14a-1d11-11e6-b6e0-c53b7ef63b45_story.html.

⁵² S. 1 § 6002.

⁵³ *Id.*, § 6002-03.

⁵⁴ *Id.* § 6003.

⁵⁵ See Patricia Moloney Figliola, *The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape* at 1, CONG. RESEARCH SERV. (Apr. 18, 2019) https://www.everycrsreport.com/files/20190418_RL32589_8ba17da6c717de4c60f12a03c2e79071ad5d2824.pdf (“The FCC is directed by five commissioners appointed by the President and confirmed by the Senate for five-year terms. The President designates one of the commissioners as chairperson.”)

nominees.⁵⁶ This would limit the ability of political insiders to stack the FEC with ideologues.⁵⁷

Third, S. 1 strengthens the enforcement process to prevent Commissioners from shutting down investigations at an early stage. When the FEC receives a complaint or other evidence suggesting violations of campaign finance law, the FEC's nonpartisan attorneys first review the evidence and recommend whether there is "reason to believe" a violation has occurred, which is the threshold to open a formal investigation. Currently, just three out of six Commissioners can—and often do—override that recommendation and thwart any inquiry into an alleged violation. S. 1 would change the process to instead require a majority vote to overrule the FEC attorneys' recommendation.⁵⁸ So if FEC attorneys recommend "reason to believe" a violation has occurred, and the recommendation is not overruled, an investigation will take place.⁵⁹ Similarly, after an investigation, FEC attorneys make a recommendation as to whether to find "probable cause" that a violation occurred, the Commissioners have 30 days to approve or disapprove the recommendation by majority vote.⁶⁰

Fourth, S. 1 removes obstacles to meaningful judicial review of FEC action or inaction. Current law allows for courts to review the FEC's dismissal or delay on an administrative complaint, yet a series of court decisions have established barriers to meaningful judicial oversight.⁶¹ For example, when reviewing deadlocked decisions, courts have tended to grant deference to the three Commissioners who declined to enforce the law, rather than the three Commissioners who supported enforcing it. Moreover, some courts have further deferred to the anti-enforcement Commissioners by declining to review dismissals based in part on "prosecutorial discretion." This deference to the anti-enforcement bloc has insulated the FEC from accountability for making decisions contrary to law. S. 1 provides that a court would review a dismissal *de novo* to determine whether it was contrary to law,⁶² and

⁵⁶ S. 1 § 6002.

⁵⁷ S. 1 also defines what it means to be affiliated with a political party to prevent politicians from stacking the agency with closet partisans. Under current law, no more than three Commissioners can be from the same political party, but the law does not define what it means to be affiliated with a political party; this means that current law would allow a president to nominate three Democrats and an "independent socialist," or three Republicans and an "independent libertarian," creating four votes to enforce or not enforce the law. S. 1 protects against such gamesmanship by creating a nonpartisan commission to recommend nominees and strictly defining what it means to be affiliated with a political party.

⁵⁸ S. 1 § 6004.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *See, e.g.,* Potter, *supra* note 49, at 496-98.

⁶² *Id.* ("In any matter in which the penalty for the alleged violation is greater than \$50,000, the court should disregard any claim or defense by the Commission of prosecutorial discretion as a basis for dismissing the complaint.").

provides that courts would not defer to the FEC's assertion of "prosecutorial discretion" in important matters involving high-dollar violations.⁶³

On the final point, consider a decision last week from the D.C. District Court.⁶⁴ That case involved a challenge to the FEC's dismissal of a matter involving the dark money group Crossroads GPS, which spent \$20.8 million in the 2010 election cycle but kept its contributors a secret.⁶⁵ Because \$20.8 million was well over half of the group's overall spending in 2010, the FEC's nonpartisan lawyers concluded that Crossroads GPS had a "major purpose" of influencing elections, and therefore should have registered as a political committee and disclosed its donors.⁶⁶ The FEC's attorneys recommended the Commission find "reason to believe" Crossroads GPS violated the law and open a formal investigation.⁶⁷ The Commission nonetheless deadlocked 3-3, with the Republican Commissioners citing "prosecutorial discretion" in a footnote when dismissing the matter.⁶⁸ Private groups harmed by this inaction then challenged the dismissal in D.C. District Court.

Yet despite Crossroads GPS having clearly violated the disclosure laws passed by Congress, and despite the staggering amount of secret money spent by Crossroads GPS, the D.C. District Court treated the views of less than a majority of the Commissioners as a decision of the agency, and held that the dismissal "is not subject to judicial review because the Commission exercised its prosecutorial discretion to dismiss this matter."⁶⁹ In other words, the court would not even consider whether the FEC erred in dismissing the case because half of the FEC's commissioners mentioned "prosecutorial discretion" in a footnote.

Under S. 1's FEC reforms, a dark money group like Crossroads GPS would no longer get a free pass.⁷⁰ S. 1 would have likely changed the outcome of this matter in at least two ways.

⁶³ S. 1 § 6004 ("In any matter in which the penalty for the alleged violation is greater than \$50,000, the court should disregard any claim or defense by the Commission of prosecutorial discretion as a basis for dismissing the complaint.").

⁶⁴ Public Citizen et al. v. FEC, No. 14-CV-00148, (D.D.C. Mar. 17, 2021), https://www.fec.gov/resources/cms-content/documents/public_dc_opinion.pdf.

⁶⁵ See First General Counsel's Report at 26-27, MUR 6396 (Crossroads GPS) (Nov. 21, 2012), <https://www.fec.gov/files/legal/murs/6396/14044350839.pdf>. Crossroads GPS spent approximately \$15.5 million on independent expenditures, and \$5.4 million on ads run shortly before the election that criticized or opposed clearly identified candidates, and that would count towards the "major purpose" calculation under FEC precedent. *Id.* at 17-22.

⁶⁶ *Id.* at 26-27.

⁶⁷ *Id.*

⁶⁸ Public Citizen at 6; see also Statement of Reasons of Chairman Lee Goodman, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter, n. 117, MUR 6396 (Crossroads GPS) (Jan. 8, 2014), <https://www.fec.gov/files/legal/murs/6396/14044350970.pdf>.

⁶⁹ Public Citizen at 2.

⁷⁰ To be clear, S. 1 would retain the procedural protections currently in place for enforcement matters. For example, accused parties would have opportunities to respond to the allegations and present evidence. Moreover, the FEC cannot penalize anyone without their consent. If the accused party admits the violation and agrees to a negotiated penalty, the FEC will issue fines; otherwise, the FEC must file suit

For one, under S. 1, the FEC would have been able to investigate Crossroads GPS at an early stage. The FEC's staff attorneys recommended an investigation into Crossroads GPS, but current law allowed just three out of six Commissioners to thwart the probe. Under S. 1, it would require a majority vote of Commissioners to override the FEC staff attorney's recommendation.⁷¹

For another, if the FEC did dismiss the matter, a court would no longer be limited in its ability to meaningfully review the decision. Rather than deferring to the views of only those Commissioners who voted to dismiss the Crossroads GPS matter (despite those Commissioners representing less than a majority of the Commission), S. 1 provides that a court would review the dismissal *de novo* to determine whether it was contrary to law.⁷² Moreover, under S. 1, courts would no longer defer to the FEC's assertion of "prosecutorial discretion" in important matters involving high-dollar violations.⁷³

To reduce political corruption and protect the voices of voters in our democracy, we need an FEC that is willing and able to enforce campaign finance laws.

II. Bringing Dark Money Into the Sunlight

Over eleven years ago, the U.S. Supreme Court ushered in a new era of unregulated money in politics with the decision *Citizens United v. FEC*. By allowing corporations to spend unlimited money in elections, the Court—perhaps inadvertently, but certainly unwisely—opened the door to the secretly funded election spending known as "dark money."

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" to the public. Very often, the public officials who benefit from dark money political spending know which wealthy special interests footed the bill.⁷⁴

in federal court, where the accused would enjoy the judicial system's due process protections, and convince a judge of the violation.

⁷¹ S. 1 § 6004.

⁷² *Id.* ("In any proceeding under this subparagraph, the court shall determine by *de novo* review whether the agency's dismissal of the complaint is contrary to law.")

⁷³ *Id.* ("In any matter in which the penalty for the alleged violation is greater than \$50,000, the court should disregard any claim or defense by the Commission of prosecutorial discretion as a basis for dismissing the complaint.")

⁷⁴ *See, e.g.*, Utah House of Representatives, Report of the Special Investigative Committee (Mar. 11, 2014), https://le.utah.gov/investigative/Final_Report_simple.pdf (bipartisan legislative report describing how Utah's Attorney General raised at least \$450,000 for a dark money group associated with his campaign, with at least one of his goals being to "hide the [payday lending] industry's support from Utah voters"); Ed Pilkington, *Because Scott Walker Asked*, THE GUARDIAN (Sept. 15, 2016),

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

Yet under existing law, as interpreted by the FEC, wealthy political donors can remain anonymous 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.

In the 2020 election cycle, dark money groups themselves spent \$390 million on political advertising or other expenditures.⁷⁵ Dark money groups also contributed \$660 million to super PACs; the recipient super PAC discloses the dark money group as a donor, but whoever originally provided the money remains anonymous.⁷⁶

Although the Supreme Court helped create this “dark money” phenomenon, the Court has also forcefully reiterated the need for transparency requirements. Eight Justices on the *Citizens United* Court joined that portion of Justice Kennedy’s 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.”⁷⁷ The majority opinion also made clear that it is generally constitutional to require disclosure of the sources of funding for spending in federal elections, whether or not that spending “expressly advocates” the election or defeat of a federal candidate. The Court flatly “reject[ed the] contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.”⁷⁸

The Supreme Court has affirmed the constitutionality of disclosure requirements in subsequent cases. In *McCutcheon v. FEC*, for example, a 2014 decision authored by Chief Justice John Roberts, the Court emphasized that disclosure can “deter actual

<https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-cash-american-politics> (leaked documents showing Wisconsin’s governor raising millions for a dark money group run by his campaign manager, with the memo line for one check to the dark money group stating “Because Scott Walker asked”); 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/> (showing how Ohio House Speaker Larry Householder raised tens of millions for a dark money group that he controlled from energy company seeking a taxpayer-funded bailout).

⁷⁵ Massoglia & Evers-Hillstrom, *supra* note 45.

⁷⁶ *Id.*

⁷⁷ *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2010) (internal citations omitted).

⁷⁸ *Id.* at 369.

corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”⁷⁹ Federal courts of appeals have overwhelmingly upheld disclosure requirements as well.⁸⁰

This background is important to the Senate’s consideration of S. 1’s transparency provisions, not only because it makes clear that the bill’s disclosure requirements are constitutional, but because S. 1 would make the transparency predicted by the Supreme Court in *Citizens United* a reality.

Moreover, as described in the attached report, H.R. 1 / S. 1 Disclosure Provisions: How the For the People Act Would Fix American Democracy’s Dark Money Problem, S. 1’s disclosure provisions are carefully crafted to address real-world practices that special interests have used to keep their political donations hidden from the public. I won’t repeat the report’s detailed analysis in this written testimony, but I will emphasize a few points.

First, we should not underestimate the scope and scale of the dark money problem. 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. Dark money groups only report spending on ads that expressly advocate for or against candidates,⁸¹ or spending on broadcast ads (but not digital ads) that name candidates and are run shortly before an election.⁸² As a result, dark money groups routinely avoid FEC reporting by running election ads that are carefully worded or strategically timed to evade existing law. In other words, FEC-reported spending represents only a small subset of dark money activity in federal elections.

Indeed, in the 2020 election cycle, dark money groups reported only \$88 million in direct election spending to the FEC,⁸³ yet according to the Center for Responsive Politics, dark money groups spent at least \$390 million on election-related ads in the 2020 cycle.⁸⁴ And that’s on top of the \$660 million that dark money groups gave to super PACs.⁸⁵

⁷⁹ *McCutcheon v. FEC*, 572 U.S. 185, 223 (2014) (quoting *Buckley v. Valeo*, 424 U.S. 1, 67 (1976)).

⁸⁰ 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).

⁸¹ 52 U.S.C. §§ 30101(17), 30104(c).

⁸² 52 U.S.C. § 30104(f).

⁸³ *Massoglia & Evers-Hillstrom*, supra note 45.

⁸⁴ *Id.*

⁸⁵ *Id.*

When non-FEC reported ad spending is taken into account, dark money groups make up major proportions of election spending. In 2020, for example, a Wesleyan Media Project analysis estimated that dark money groups accounted for approximately half of ad spending in House and Senate races from mid-July to mid-August 2020.⁸⁶ This included millions of dollars by the top two dark money spenders, American Action Network and House Majority Forward—but neither American Action Network⁸⁷ nor House Majority Forward⁸⁸ reported any spending to the FEC in 2020.

S. 1 broadens the categories of political expenditures that trigger FEC reporting requirements by requiring disclosure when groups spend over \$10,000 on advertising run at any time that “promotes or supports . . . or attacks or opposes the election” of a named candidate.⁸⁹ The Supreme Court has expressed approval of the “promote or attack” standard,⁹⁰ and lower courts have also upheld its constitutionality.⁹¹ S. 1 additionally closes digital loopholes, and creates parity between broadcast and digital disclosure requirements.⁹²

Second, S. 1’s comprehensive disclosure requirements are tailored to close the loopholes that wealthy donors have exploited to buy influence in secret. In addition to carefully broadening the categories of political spending that trigger FEC reporting, S. 1 ensures that large contributors cannot evade disclosure by claiming that none of their donations were “earmarked” for a particular ad, or by passing money through an intermediary.

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

⁸⁶ Wesleyan Media Project, *Presidential General Election Ad Spending Tops \$1.5 Billion* (Oct. 29, 2020), <https://mediaproject.wesleyan.edu/releases-102920/>.

⁸⁷ 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 (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 (last visited Mar. 17, 2021) (showing no reported independent expenditures in the 2020 election cycle).

⁸⁸ House Majority Forward, *Independent Expenditures, 2019-20*, FEC.gov, <https://www.fec.gov/data/committee/C90018763/?tab=filings> (last visited Mar. 17, 2021) (showing no reported independent expenditures in 2020; its only independent expenditures pertained to the 2019 NC-09 special election).

⁸⁹ S. 1 § 4111.

⁹⁰ See, e.g., *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 170 n.64 (2010).

⁹¹ 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).

⁹² S. 1 § 4206.

contributions “for the purpose of furthering” a dark money group’s specific independent expenditures or electioneering communications.⁹³ This standard is incredibly easy to evade: wealthy donors avoid disclosure by claiming that they are not expressly earmarking their check for a particular ad, or a particular race.

S. 1 closes this loophole. Under the bill, a group that spends over \$10,000 on political ads must disclose its donors over \$10,000.⁹⁴ However, that does not mean non-political donors will be indiscriminately or unwittingly named on an FEC report. S. 1 provides that 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.⁹⁵ Additionally, donors who don’t want their names publicly disclosed may specify that their donation not be used for campaign-related ads.⁹⁶

S. 1 also prevents wealthy special interests from hiding their identities by funneling donations through intermediary groups. For example, dark money groups gave at least \$660 million to super PACs in the 2020 election cycle, and although the recipient super PACs disclosed the dark money groups as donors, whomever provided the money in the first place remains anonymous.⁹⁷

S. 1 addresses this “Russian nesting doll” problem by requiring funds passed between multiple entities be traced back to their original source. Organizations spending substantial amounts on political activity would be required to track and publicly report all large political contributions over \$10,000.⁹⁸ Therefore, 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.

⁹³ 11 C.F.R. §§ 109.10(e)(1)(vi), 104.20(c)(9) (emphasis added). In 2018, the D.C. District Court struck down the FEC’s independent expenditure disclosure rule as contrary to the law’s transparency requirements, and in August of 2020, the D.C. Circuit upheld that decision. *Citizens for Responsibility and Ethics in Washington v. FEC*, 971 F.3d 340 (D.C. Cir. 2020), *aff’g* 316 F. Supp. 3d 349 (D.D.C. 2018). However, the FEC has failed to adopt new regulations providing clarity about which donors must be reported, and there has been minimal additional disclosure since. *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 CTR. (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).

⁹⁴ S. 1 § 4111.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Massoglia & Evers-Hillstrom, *supra* note 45.

⁹⁸ S. 1 § 4111.

Third, S. 1's disclosure provisions only apply to donations of \$10,000 and above from corporations and wealthy individual contributors: smaller amounts given by Americans will not be made public. Donors who give over \$10,000 to dark money groups are not average citizens. Instead, they are CEOs, lobbyists, and the wealthy few who are often trying to buy access and influence—just what our disclosure laws are supposed to reveal.

Indeed, there is substantial evidence that some of the most politically active dark money groups are financed by a very small number of wealthy interests. Although dark money groups do not publicly disclose their donors, they must file annual Form 990 returns with the IRS, and those returns list the amounts of the group's large donations (with the donor names redacted). Such 990 filings from major dark money groups show overwhelming proportions of revenue coming from very large contributions. For example:

- America First Policies, the dark money group run by close allies for former President Trump, reported raising \$15.58 million on its 2018 990, \$15.125 million of which (97%) came from donations of at least \$100,000 each;⁹⁹
- Sixteen Thirty Fund, the Democratic dark money clearinghouse, reported raising \$143.31 million on its 2018 990, with \$140.84 million of that total (98%) coming from donations of at least \$100,000 each;¹⁰⁰
- 45Committee, a pro-Trump dark money group active in the 2016 election, reported raising \$46.363 million on its 2016-2017 990, \$46.355 million of that (99.98%) coming from donations of at least \$100,000 each, including four donations of \$7.5 million apiece.¹⁰¹
- Majority Forward, the major Democratic dark money group, reported raising \$34.177 million on its 2016-2017 990, with \$33.11 million of that total (97%) raised via donations of at least \$100,000 each.¹⁰²

Donations of this massive size pose a substantial risk of corruption and undue influence. Such a risk is greatly amplified when the donations are made in secret, with the public unable to scrutinize transactions between politicians and their wealthy patrons.

⁹⁹ America First Policies Inc., 2018 Return of Organization Exempt from Income Tax, IRS Form 990 at 14-21 (filed Nov. 15, 2019), <https://www.documentcloud.org/documents/6550511-America-First-Policies-2018-990.html>.

¹⁰⁰ Sixteen Thirty Fund, 2018 Return of Organization Exempt from Income Tax, IRS Form 990 at 14-26 <https://static.politico.com/4b/32/19c3670b41dfa1f8c1b3e0972138/2018-1630-form990.pdf>.

¹⁰¹ 45Committee, Inc., 2016 Return of Organization Exempt from Income Tax, IRS Form 990 at 14-17 (filed Feb. 15, 2018) <https://www.documentcloud.org/documents/4390422-45Committee-2017-Form-990.html>

¹⁰² Majority Forward, 2016 Return of Organization Exempt from Income Tax, IRS Form 990 at 14-28 <https://assets.documentcloud.org/documents/4782580/Majority-Forward-IRS-Form-990-FY-June-2016-May.pdf>

Indeed, those rare instances where dark money has been drawn into the sunlight have revealed a troubling pattern of behind-the-scenes influence peddling. These examples are described in the attached CLC disclosure report, but they are important enough to repeat again here:

- 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.¹⁰³ 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."¹⁰⁴
- 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.¹⁰⁵ 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 into law.¹⁰⁶ The company then secretly bankrolled an inflammatory negative

¹⁰³ 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 Pilkington, *supra* note 75.

¹⁰⁴ 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>.

¹⁰⁵ Utah House of Representatives, *Report of the Special Investigative Committee* (Mar. 11, 2014), https://le.utah.gov/investigative/Final_Report_simple.pdf.

¹⁰⁶ 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/>.

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.¹⁰⁷

There is every reason to believe that similarly troubling stories lurk behind the potentially billions in secretly funded election spending over the past decade. The consequences of the Senate failing to strengthen transparency laws now will almost certainly guarantee similar tragedies in the future.

As a final note, it must be emphasized that disclosure is not a new phenomenon. Since the advent of donor disclosure laws in the 1970s, all donations over \$200 to candidates, PACs, and political parties have been required to be publicly disclosed. Despite the publication of over 100 million individual donor records over several decades,, there are virtually no credible instances of individual donors facing serious harassment or threats.¹⁰⁸ Yet there are far too many examples of wealthy special interests managing to buy influence in secret, with significant consequences for average Americans.

As Justice Antonin Scalia wrote in a 2010 disclosure case, "There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."¹⁰⁹

III. Small Donor Matching

Strengthening transparency and improving enforcement of federal campaign finance laws are critical measures to prevent the undue influence of wealthy special interests. S. 1's small donor matching program, however, would protect the voices of average Americans, and go a long way towards creating a government that is more responsive to Americans as a whole.

¹⁰⁷ 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/>.

¹⁰⁸ The For the People Act does provide an exception for any donor who can demonstrate that disclosure would subject them "to serious threats, harassment, or reprisals." S. 1 § 4111.

¹⁰⁹ *Doe v. Reed*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring).

S. 1's small donor matching system is financed by a small surcharge on fines for corporate wrongdoing — it is not funded by taxpayers.¹¹⁰

Public financing is not a new idea. For many years, presidential candidates from both major parties took advantage of an earlier presidential public financing program. Every Republican presidential nominee from 1976 to 2008 used the presidential public financing system for their general election campaigns, until it became outmoded as practices changed and the costs of campaigns outstripped the funds available, and Congress failed to update the program. This included Republican nominees President Gerald Ford, President Ronald Reagan (twice), President George H.W. Bush, Senator Bob Dole, President George W. Bush (twice), and Senator John McCain. Senator McCain was the last major party nominee to participate in the program—he agreed to do so in reliance on Sen. Obama's promise to do so if he became the Democratic nominee, but then the Obama campaign discovered it could raise far more money if it did not agree to the public funding limits. At the time, Senator Obama urged Congress to update the public funding system to take account of changes in campaign finance.

Moreover, states have enacted successful public financing programs, often with bipartisan support, and with both Republicans and Democrats taking advantage of the programs.

- In 1996, voters in Maine approved a public financing program in that state, and in the years since, both Republican and Democratic candidates have successfully run for office under the program.¹¹¹
- In 1998, Arizona voters across the political spectrum approved the Arizona Citizens Clean Elections Act, and candidates from both parties have used the public financing program. In 2020, Republican and Democratic candidates participated in the program at nearly equal rates.
- Minnesota has had a public financing program since 1974, which today offers partial grants and a tax refund for small contributions; the vast majority of Minnesota candidates use the program, both Republican and Democrat.¹¹² Between 2002 and 2018, the state's Republican Party received more than

¹¹⁰ S. 1 § 5111 (“no taxpayer funds should be used in funding this title”).

¹¹¹ See, e.g., Maine Citizens for Clean Elections, Clean Election Participation Rates and Outcomes: 2016 Legislative Elections, https://www.maineclanelections.org/sites/default/files/web/Proof02%202016%20Legislative%20MCCE%20Report%2014%20Candidate%20MCEA%20Participation%20Analysis_0.pdf.

¹¹² Lawrence M. Noble, *Blueprints for Democracy: Actionable Reforms to Solve Our Governing Crisis* at 22-23, ISSUE ONE and CAMPAIGN LEGAL CTR., <https://www.issueone.org/wp-content/uploads/2015/11/blueprints-for-democracy-report.pdf>.

twice the amount of contributions through the political contribution refund program as the state's Democratic Party.¹¹³

- In 2005, in the wake of a corruption scandal, Connecticut's Republican governor called a special session and worked with the legislature to craft that state's public financing program, which she signed into law.¹¹⁴ Since then, the program has been used by candidates from both parties. Even Republican legislators who did not support the legislation at the time have come to appreciate its benefits. Former Republican Senate Minority Leader John McKinney and former House Minority Leader Larry Cafero both credit the program with helping Republicans compete more effectively in largely blue Connecticut.¹¹⁵

The For The People Act creates a small donor matching program for Senate and Presidential candidates, with an approach that is distinct from the old presidential program and some state programs. Rather than giving qualifying candidates cash grants, S. 1 offers a 6-to-1 match on small dollar contributions up to \$200.¹¹⁶ This means that a donor who gives \$20 to a participating candidate would have their contribution matched with \$120 in public funds, for a total contribution of \$140. Similarly, a \$200 contribution would be matched with \$1200, bringing the total to \$1400.

The program is voluntary, so candidates would choose whether to opt in. In exchange for receiving public matching funds for small donations, candidates agree to not accept contributions over \$1,000 (compared with the current \$2,800 individual contribution limit)¹¹⁷ and Senate candidates agree not to accept money from PACs (unless the PAC only accepts small donations).¹¹⁸ Participating candidates also agree that they won't establish a joint fundraising committee¹¹⁹ and to limit the amount of personal funds they will spend on their campaign.¹²⁰

¹¹³ Minnesota Campaign Finance and Public Disclosure Board, *Review of the Political Contribution Refund Program During the Years 2002-2018* (Sept. 25, 2019), https://cfb.mn.gov/pdf/publications/public_subsidy/historical/report_on_pcr_use_2002_2018.pdf?t=1611321455.

¹¹⁴ *The Good-Government State*, HARTFORD COURANT (Dec. 2, 2005), https://cfb.mn.gov/pdf/publications/public_subsidy/historical/report_on_pcr_use_2002_2018.pdf?t=1611321455; see also Noble, *supra* note 113 at 18-19.

¹¹⁵ Beth A. Rotman & Lisa Nightingale, *Amplifying Small-Dollar Donors in the Citizens' United Era* at 13-14, COMMON CAUSE, https://www.commoncause.org/wp-content/uploads/2020/09/CT_SmallDonorDollar_Report_WEB.pdf.

¹¹⁶ S. 1 §§ 5111 (Senate candidates), 5201 (presidential primary candidates), 5213 (presidential general election candidates).

¹¹⁷ *Id.* §§ 5111 (Senate candidates), 5202 (presidential primary candidates), 5212-13 (presidential general election candidates).

¹¹⁸ *Id.* § 5111.

¹¹⁹ *Id.* §§ 5112, 5202, 5211.

¹²⁰ *Id.* §§ 5111 (Senate candidates), 5203 (presidential primary candidates); see also I.R.C. § 9004(d) (presidential general election candidates).

Candidates can participate by first raising enough small donations under \$200 to qualify.¹²¹

S. 1's public financing program would not benefit one party or the other. Both parties have developed robust networks of small dollar donors,¹²² and H.R. 1/S. 1's public financing program would amplify the voices of those grassroots supporters.

* * *

The For the People Act would bring much-needed improvements to our democratic process and governance. Enacting S.1 would mark a major step toward achieving a democracy that is transparent, responsive, accountable, and worthy of our great nation. S. 1, drawn from bills with long bipartisan support and with the broad support of the American people across the political spectrum, would address the critical challenges facing our democratic system. I urge your support of this important bill.

Thank you again for allowing me to testify today. I would be happy to answer any questions you may have.

¹²¹ *Id.* §§ 5111 (Senate candidates become eligible by raising a number of small donations calculated based in part on the size of the state), 5202 (presidential primary candidates become eligible by raising \$25,000 in small donations from donors spread across 20 states).

¹²² Ollie Gratzinger, *Small Donors Give Big Money in 2020 Election Cycle*, CTR. FOR RESPONSIVE POLITICS (Oct. 30, 2020), <https://www.opensecrets.org/news/2020/10/small-donors-give-big-2020-thanks-to-technology/>. In fact, in the 2020 election cycle, former President Trump raised a higher proportion of his campaign funds from small donors than did President Biden. *Id.*



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.¹ The fifteen highest-spending dark money groups accounted for nearly \$645 million of that total.² 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.

¹ 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/>.

² *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.³ 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.”⁴
- 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.⁵ 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

³ 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>.

⁴ 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>.

⁵ Utah House of Representatives, *Report of the Special Investigative Committee* (Mar. 11, 2014), https://le.utah.gov/investigative/Final_Report_simple.pdf.

into law.⁶ 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.⁷

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.⁸

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.⁹ 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

⁶ 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/>.

⁷ 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/>.

⁸ 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.

⁹ 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.¹⁰

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.”¹¹ Federal courts of appeals have overwhelmingly upheld such disclosure requirements as well.¹²

Despite the *Citizens United* majority predicting “prompt disclosure” of political spending following the decision,¹³ 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.¹⁴ 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.¹⁵

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.

¹⁰ *Id.*

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

¹² 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).

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

¹⁴ 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.

¹⁵ 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.

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.¹⁶ 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”),¹⁷ 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.¹⁸ 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,¹⁹ all of which were run prior to the 60-day

¹⁶ Massoglia & Evers-Hillstrom, *supra* note 1.

¹⁷ 52 U.S.C. §§ 30101(17), 30104(c).

¹⁸ 52 U.S.C. § 30104(f).

¹⁹ 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.²⁰

For example, in July of 2020, AAN ran ads that praised three Republican House incumbents,²¹ all of whom were running for re-election in House districts rated “toss-up” races by the Cook Political Report.²² The ads attacked Nancy Pelosi’s “extreme agenda” and praised the three candidates for “taking decisive action to reduce prescription drug costs.”²³ 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.²⁴ The group similarly did not report any of that spending to the FEC.²⁵

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.²⁶ The ad ended by asking viewers to “[t]ell Thom Tillis: Stop cutting healthcare and put our families first.”²⁷

- 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.²⁸ It did not report any spending to the FEC in that period or at any other time in the 2020 cycle.²⁹

²⁰ 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 (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 (last visited Mar. 17, 2021)(showing no reported independent expenditures in the 2020 election cycle).

²¹ 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/>.

²² 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”).

²³ Press Release, American Action Network, *supra* note 21.

²⁴ Wesleyan Media Project, *supra* note 19.

²⁵ 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 (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 (last visited Mar. 17, 2021)(disclosing additional independent expenditures beginning on October 1, 2020).

²⁶ 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/>.

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

²⁸ Wesleyan Media Project, *supra* note 19.

²⁹ 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 (last

For example, Duty and Honor ran 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."³⁰ Another ad, run in Maine, attacked Senator Susan Collins, claiming that her husband "profited off the opioid crisis."³¹

- 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.³² One Nation did not report that spending to the FEC.³³

Those ads included a \$27 million ad buy in the summer of 2020 in six states with competitive Senate races,³⁴ and an additional \$4.5 million broadcast ad buy in August in Michigan, another state with a competitive Senate race.³⁵ 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."³⁶ 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."³⁷

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

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 (last visited Mar. 17, 2021) (showing no reported independent expenditures in the 2020 election cycle).

³⁰ 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>.

³¹ 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.

³² Wesleyan Media Project, *supra* note 19.

³³ 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 (last visited Mar. 17, 2021)(showing no reported independent expenditures in the 2020 election cycle).

³⁴ 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/>.

³⁵ 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/>.

³⁶ 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/>.

³⁷ 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.³⁸ (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.³⁹) 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).⁴⁰ The Supreme Court has expressed approval of the “promote or attack” standard,⁴¹ and lower courts have also upheld its constitutionality.⁴²

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.⁴³

Yet the current definition of “electioneering communication” omits digital ads completely.⁴⁴ 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

³⁸ 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/>.

³⁹ 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>.

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

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

⁴² 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).

⁴³ 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).

⁴⁴ 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.⁴⁵

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.⁴⁶

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.⁴⁷

- 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.”⁴⁸

⁴⁵ 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).

⁴⁶ 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 (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).

⁴⁷ 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.

⁴⁸ 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_page_id=916623425064173

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.⁴⁹

- 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.”⁵⁰

H.R. 1 / S. 1 closes this transparency loophole by extending the definition of “electioneering communication” to digital ads.⁵¹ 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.⁵² 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*.

[_page_id=459890014763287&sort_data\[direction\]=desc&sort_data\[model\]=relevancy_monthly_grouped](#) (last visited Mar. 17, 2021).

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

⁵⁰ 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 (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).

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

⁵² 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.⁵³ 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.⁵⁴
- 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.⁵⁵
- 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.⁵⁶
- 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.⁵⁷
- 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.⁵⁸

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

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

⁵⁴ 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>.

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

⁵⁶ 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).

⁵⁷ 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).

⁵⁸ 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,⁵⁹ and in August of 2020, the D.C. Circuit upheld that decision.⁶⁰ However, the FEC has failed to adopt new regulations providing clarity about which donors must be reported, and there has been minimal disclosure since.⁶¹

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.**⁶²

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.**⁶³

Additionally, donors who don’t want their names publicly disclosed may specify that their donation not be used for campaign-related ads.⁶⁴

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.⁶⁵ For example:

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

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

⁶¹ 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).

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

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

⁶⁴ *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)).

⁶⁵ 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.⁶⁶ One Nation was the super PAC's top funder,⁶⁷ 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.⁶⁸
- The Congressional Leadership Fund super PAC received nearly \$30 million during the 2020 cycle from American Action Network, which keeps its donors secret;⁶⁹ that dark money group accounted for nearly one-fifth of the super PACs total 2020 cycle receipts.⁷⁰ 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.⁷¹ 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 2020,⁷² but more than \$1.4 million of the \$2.4 million raised came from an associated dark money group, "Iowa Values."⁷³ The true source of the money

⁶⁶ 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 (last visited Mar. 17, 2021).

⁶⁷ 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 (last visited Mar. 17, 2021).

⁶⁸ 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 (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).

⁶⁹ 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 (last visited Mar. 17, 2021).

⁷⁰ Congressional Leadership Fund, Financial Summary, 2019-20, FEC.gov,

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

⁷¹ 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 (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 (last visited Mar. 17, 2021).

⁷² 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 (last visited Mar. 17, 2021).

⁷³ 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+

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 \$10,000.⁷⁴ 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.⁷⁵ 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.⁷⁶ 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;⁷⁷ Huron, LLC, which in September gave \$25,000 to the super PAC DefendArizona;⁷⁸ Pelican Funds LLC, which in November 2020 gave \$100,000 to the

[values&two_year_transaction_period=2020](https://www.fec.gov/data/committee/C00751768/) (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).

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

⁷⁵ 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>.

⁷⁶ 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 (last visited Mar. 17, 2021).

⁷⁷ 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 (last visited Mar. 17, 2021).

⁷⁸ 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;⁷⁹ or Norgate LLC, which gave \$500,000 to Senate Leadership Fund in 2020.⁸⁰

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.⁸¹ 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.**⁸² 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.⁸³ 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.⁸⁴

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.

⁷⁹ 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>.

⁸⁰ 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 (last visited Mar. 17, 2021).

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

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

⁸³ 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; Wash. Rev. Code § 42.17A.350.

⁸⁴ 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.⁸⁵ 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.⁸⁶
- 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.⁸⁷
- 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.⁸⁸ On the conservative side, JCN promised to spend as much as \$10 million to support Kavanaugh's confirmation.⁸⁹
- JCN and Demand Justice each pledged to spend \$10 million supporting or

⁸⁵ 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>.

⁸⁶ 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>.

⁸⁷ 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/>.

⁸⁸ 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>.

⁸⁹ 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.⁹⁰

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.⁹¹ 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.⁹² Donor tracing and disclaimer requirements would also apply to spending on judicial ads.⁹³

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

⁹⁰ 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).

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

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

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

behind lobbying pressures.⁹⁴ 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.⁹⁵

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.”⁹⁶ 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.⁹⁷ As the court observed, “Transparency in government, no less than transparency in choosing our government, remains a vital national interest in a democracy.”⁹⁸

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.⁹⁹ 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.”¹⁰⁰ Likewise, such disclosure promotes the citizen “informational interest” identified by

⁹⁴ *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.

⁹⁵ *Id.* at 625.

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

⁹⁷ *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.”))

⁹⁸ *Id.*

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

¹⁰⁰ *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.¹⁰¹ 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.”¹⁰²

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.

¹⁰¹ *Taylor*, 582 F.3d at 14.

¹⁰² *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).



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