



## How Local Transparency Laws Can Bring "Dark Money" Spending in U.S. Politics Out of the Shadows

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The barrage of political ads encountered by anyone who watches television during election season is not new. What is new is how little anyone can find out about the money behind those ads. According to a recent report by the Wesleyan Media Project, an overwhelming majority of all outside spending on ads for House and Senate races in 2018 comes from groups that do not fully disclose their donors. Less than a quarter of ads in House races and just over a quarter of ads in Senate races indicate financial backers that voters or journalists can find in public sources. The rise of secretive "dark money" has meant that as people in the United States see far more political advertising, they are less able to learn who pushes the ads they see. Voters would be better informed if they could see the sources. Policymakers and advocacy groups must identify effective interventions to bring greater transparency to election donors and spending.

### How We Got Here

The U.S. Supreme Court's 2010 decision in *Citizens United v. FEC* dramatically upended campaign finance law. That decision not only increased the amount of money that could flow into American elections, but it also accelerated the use of nonprofit corporations that do not have to report their donors as vehicles for transmitting political money.

This spurred an explosion of dark money, which has contributed to a sea-change in campaign finance. Free from having to place their names behind and be held accountable for the public positions they take, donors taking advantage of nonprofit secrecy provisions can now channel money into politics in ways they might not try if the system were more transparent. In my research, I examined an inadvertently leaked donor list from a dark money group that contributed \$11 million to two conservative supported ballot initiatives in California's 2012 elections. Tellingly, I learned that the donors were, on average, far more liberal than those who supported the ballot positions transparently.

The anonymity of dark money groups is not limited to hiding the names of donors. The groups themselves deliberately use inoffensive names like the "American Action Network" or the "American Future Fund," making it nearly impossible for voters to connect these groups with either a larger ideological affiliation or their past records. Some dark money organizations are actually constituent parts of a larger network that presents itself as a "grassroots" effort. Take, for example, the **constellation of dark money groups** funded in large part by Koch-brothers-controlled nonprofits in their maze of tax-exempt groups and limited-liability companies designed to obscure the sources of at least \$407 million raised for the 2012 elections.

My research shows that dark money networks – "dark parties" as I call them – promote far more extreme candidates than the traditional political parties and their allies, especially in the primary elections. Dark parties are also involved in far more races than traditional party organizations. Consequently, extremist primary candidates who otherwise lack resources to mount a serious bid for office now have secret money to build their standing among voters and tear down opponents.

Reformers hoping to combat the influence of dark money in American elections face dismal prospects at the federal level. Amid massive conservative criticism since 2013, the Internal Revenue Service has been reluctant to police these nonprofits – even though their legal terms of incorporation expressly prohibit them from spending more than half of their funds on political ads. Meanwhile in Congress, the DISCLOSE Act aiming to expand transparency rules to cover dark money organizations has already failed on multiple occasions. In the

administration of President Donald Trump, the Treasury Department recently announced that it would no longer require dark money groups to disclose their donors to the Internal Revenue Service – a move that will reduce the agency's already weak powers to police fraudulent activity.

## Ways Forward for Reform

As national reforms stall, several states have demonstrated that subnational reforms can indeed force secretive groups to abide by the same transparency standards that apply to all other political donors. California recently passed legislation that requires political ads to list their largest contributors; and Arizonans are currently in a legal fight to get a disclosure measure onto the ballot. Several cities, such as Denver, Santa Fe and Tempe, Arizona have passed laws that limit the ability of dark money groups to intervene in city politics.

A dream on the left, overturning the Citizens United decision would probably have to surmount the nearly impossible hurdle of amending the U.S. Constitution. Furthermore, there are a number of reasons why a restoration of the pre-2010 regulatory regime may not be worth the effort, because prior to Citizens United other private channels for funding of elections and policy campaigns allowed the affluent disproportionate political influence.

Improving disclosure rules is one clear, attainable avenue by which reformers might see their efforts pay off. Even former Justice Anthony Kennedy, who authored the Citizens United opinion, championed disclosure as an effective reform that would allow citizens to weigh the message against the messenger. As he explained, the "First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Advocacy organizations and state and local policymakers should push for laws that force independent-expenditure organizations to provide an accounting of their donors and limit their ability to operate across jurisdictional boundaries. Aside from providing more information to voters, stricter disclosure rules in states and localities would make it more difficult and costly for dark money organizations to operate. Such rules might even deter dark groups from getting into many races at all. Given bipartisan popular support for transparency in campaign finance, real progress can happen as reformers begin to think and act locally.

**Read more in Stan Oklobdzija, "Public Positions, Private Giving: Dark Money and Political Donors in the Digital Age" (2018) and Stan Oklobdzija "Dark Parties: Citizens United, Independent-Expenditure Networks and the Evolution of Political Parties" (2018).**