ELECTIONS CONFIDENTIAL

How Shady Operators Used Sham Non-profits and Fake Corporations to Funnel Mystery Money into the 2012 Elections

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The Center for Media and Democracy (CMD) is a nonpartisan, non-profit watchdog and investigative reporting group based in Madison, Wisconsin, which publishes PRwatch.org, ALECexposed.org, SourceWatch.org, and BanksterUSA.org.

CMD has received numerous awards for its investigations into corporate influence on democracy, policy or media, including the "Izzy" I.F. Stone Award for outstanding achievement in independent media, the Sidney Award for investigative journalism (shared jointly with The Nation magazine), and the Professional Freedom and Responsibility Award from the Association for Education in Journalism and Mass Communication, Culture and Critical Studies Division.

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EXECUTIVE SUMMARY

Elections Confidential describes how secret donors poured hundreds of millions into the 2012 election through "social welfare" non-profits that are really political vehicles and via shell corporations formed as conduits to hide a funder's identity.

The first post-*Citizens United* presidential election cycle was bought and paid for by a handful of wealthy donors, but the corrosive influence of money in politics was amplified by the fact that we don't know who—or what—actually provided much of the funding.

Despite widespread public support for disclosure and decades of legal precedent supporting the public's right to know the sources of election-related spending, voters were bombarded with messages from secretly-funded, innocuously-named "dark money" non-profits that do not disclose their funding sources. Even those groups that do disclose their donors received millions from fake corporations that covered the money trail.

Key findings include:

- Shell corporations that do not disclose the sources of their funding funneled at least $17 million to Super PACs in the 2012 elections.

- Nearly seventeen percent of all business contributions to Super PACs came from identified shell corporations.

- Dark money non-profits reported spending over $299 million in the 2012 election; however, because these groups ran "issue ads" that need only be reported when aired just before primaries or election day, the total spending by these non-profits is certainly much higher than was reported to the FEC. Crossroads GPS, for example, told the FEC that it spent just under $71 million in the 2012 election cycle, but it actually spent more than twice as much as was reported, topping at least $165 million.

- Dark money non-profits, which are not supposed to have electoral intervention as a primary activity, will justify their tax-exempt status in the post-election period by engaging in activities like lobbying. Incredibly, this qualifies as advancing the "social welfare."

- A dark money group's lobbying clout is amplified by the fact that, come election time, they can back an uncooperative lawmaker's primary challenger.

- With both "dark money" non-profits and shell corporations, it is almost impossible to identify violations of election or tax law, such as the infiltration of foreign funds.

INTRODUCTION

"There is not a crime, there is not a dodge, there is not a trick, there is not a swindle, there is not a vice which does not live by secrecy…Publicity may not be the only thing that is needed, but it is the one thing without which all other agencies will fail."

—Joseph Pulitzer

The 2012 elections were marked by a nearly unprecedented level of secrecy, with entirely anonymous donors pouring hundreds of millions of dollars into efforts to influence our vote. Sunshine might be the best disinfectant but since the *Citizens United* ruling America has been living in the dark.

Thanks to hundreds of millions spent by "dark money" non-profits that do not disclose their donors and "shell corporations" that allow funders to disguise their identity while contributing to Super PACs, voters did not know the source of nearly a third of all reported dollars spent by outside groups in the 2012 elections.

Thanks to the U.S. Supreme Court's 2010 decision in *Citizens United v. FEC* and related court decisions, the vast wealth of for-profit corporate treasuries and CEO bank accounts can now be released into an election and wealthy individuals can give to nominally independent Super PACs and non-profit groups without limit, threatening to drown out the voice of ordinary citizens who could not dream of giving at such levels.[1]

But one of the most striking aspects of the 2012 elections is that average Americans cannot even estimate the level of corporate or special interest influence thanks to the amount of secret, undisclosed money flowing through our election system. Although there has been wide public opposition to the U.S. Supreme Court striking down Congress' power to regulate election-related spending, the majority of justices in the *Citizens United* case affirmed the long-standing notion that the identity of donors who seek to influence elections should not be kept secret. Ironically, in that very opinion which helped open the door for secret spending in elections, Justice Kennedy laid out the three main virtues of transparency in elections, which are undermined by secret money.

First, "[c]itizens can see whether elected officials are 'in the pocket' of so-called moneyed interests," he wrote.

Second, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages . . . [which provides] citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters;"[2]

Finally, "[r]ecordkeeping, reporting, and disclosure requirements are an essential means

of gathering the data necessary to detect violations" of campaign finance law, he noted. And as the D.C. Circuit wrote in *SpeechNow.org v FEC*, a case that followed *Citizens United* and gave rise to Super PACs, "requiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals."[3]

Justice Kennedy and four other justices got a lot wrong in *Citizens United*, and as a result helped unleash a torrent of money into our elections that has diminished the voices of average voters.

But, *Citizens United* accurately described why transparency in election spending is so vital demonstrating that reforms to mandate disclosure of the sources of money in politics are constitutionally sound and providing a framework for understanding how secrecy tainted the 2012 elections:

Are elected officials 'in the pocket' of so-called moneyed interests?

The secrecy that tainted the 2012 elections makes it nearly impossible to assess whether a donor's secret "investment" in support of a candidate pays off through favorable policy, thereby shielding both elected officials and donors from public accountability. It creates an environment where backroom deals and pay-to-play politics could become the norm—but without the public ever knowing. Even though the American public is unaware of the sources of a dark money group's funding, there is nothing keeping donors from making their identities clear to the politicians benefiting from their largesse. And big donors almost certainly want something in return for the millions they invest getting a candidate elected.

Justice Kennedy is correct that transparency allows voters to discern "whether elected officials are 'in the pocket' of so-called moneyed interests." But unfortunately the Court's understanding of 'in the pocket' is too narrow a descriptor for the distortion of our democracy by Big Money. There is a deeper, more systemic corruption that the Supreme Court failed to recognize: how democracy is undermined when an elite set of wealthy donors and interests dominate campaign financing, thereby having a much larger influence over who can take office—and what that officeholder's priorities will be—than the average donor.

Although campaign financing has long been dominated by the very wealthy, *Citizens United* exaggerated this problem to a new level, concentrating the influential donor class to just a handful of individuals who can give donations that are $1 million or larger. This truth is best embodied by this statistic: only 32 large donors to Super PACs, giving an average of $9.9 million each, matched the $313 million in grassroots contributions from more than 3.7 million small donors to the major party presidential candidates.[4] The secret funding sources of dark money groups are almost certainly even more elite. For example, the dark money group Crossroads GPS does not disclose the identity of its donors, but must disclose the amounts of its largest donations in its year-end IRS filings—and nearly 90 percent of the $77 million it collected in its first year-and-a-half in existence came from no more than 24 individuals or corporations giving more than $1 million each. Two of the donations were $10 million each.[5]

In addition to it being inherently anti-democratic that an elite class of donors is able to directly translate their economic success into political power, the values of that class of donors have become the reality of what lawmakers focus their efforts on. Whether this is a result of the donor class elevating candidates who value what they value, or of elected officials bending to the will of the powerful interests funding politics, a growing body of work suggests that policy making and debate more closely resembles the opinions and needs of the donor class than that of the average voter.[5]

Allowing business corporations to spend directly on elections—or indirectly and secretly through dark money groups—also creates this broader type of corruption. The vast wealth of corporate treasuries that can now be released into an election threatens to drown out the voice of ordinary citizens who could not dream of giving at such levels. Many U.S. corporations have revenues larger than the GDP of entire world nations. In an election system where money is often in higher demand than votes, should these juggernauts release even a fraction of a percentage of their value into the political arena, how could the average donor make her voice heard?

In this way, transparency is necessary not just to allow citizens to connect the dots between quid pro quo exchanges of campaign contributions and policy making and hold culprits accountable, but is necessary so that Americans can fully understand the way big money is distorting our democracy, hold accountable the interests seeking to benefit, and take steps to correct that imbalance.

"Transparency enables the electorate to make informed decisions"

For voters, not knowing which interests are backing or opposing specific candidates or raising issues about those candidates limits our ability to make informed decisions about those individuals. This is what Justice Kennedy was referring to when he noted that transparency allows "the electorate to make informed decisions and give proper weight to different speakers and messages."

Having an accurate understanding of the true interests that support or oppose a given candidate helps us better understand the policy positions of that candidate. If a candidate touts herself as an environmental champion but an environmental group backs her opponent, it may say to voters that the candidate has distorted her environmental record and that she would not be a champion at all. On the other hand, in a post-*Citizens United* world, a group with a green-sounding name may jump into the race to convince voters that the candidate they support has the strongest environmental record, yet the voters may never know that in reality, the group may actually be funded by a coal corporation seeking to elect the candidate most likely to back their interests.

This was the case when a seemingly conservative non-profit jumped into the Senate race in Montana to convince voters that the libertarian candidate was the "true conservative," but it turned out that this dark money group was actually led by Democratic interests seeking to siphon conservative votes away from the Republican, helping the Democrat's margin of votes.[7]

The second reason transparency is so important to helping voters make informed decisions is to allow them properly weigh the credibility of communications meant to influence their vote. Part of this is about understanding the motivations of the messenger, as in the example described above. But it requires speakers to stand behind their messages. Studies have shown that dark money groups are far more likely to air misleading ads, presumably because the funds behind those ads are hidden—allowing funders to avoid being held responsible for distorting the truth or flat out lying. A study by the Annenberg Public Policy Center found that, as of June 1, 2012, "85% of the dollars spent on presidential ads by four top-spending third-party groups known as 501(c)(4)s were spent on ads containing at least one claim ruled deceptive by fact-checkers at FactCheck.org, PolitiFact.com, the Fact Checker at the Washington Post or the Associated Press."[8]

Disclosure can deter and detect campaign finance law violations

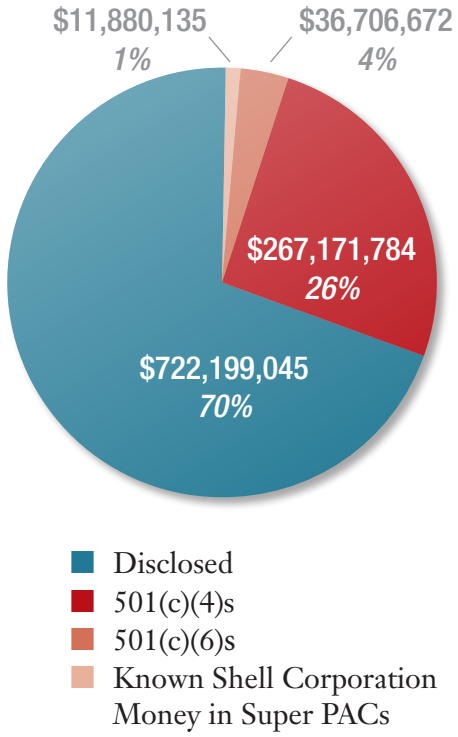
The Supreme Court has additionally held that transparency in election spending allows the public and government agencies to detect and deter campaign finance violations. It is true that the rules have been so loosened by *Citizens United* and *Speechnow* that the traditional rule-breaking which might occur under the veil of secrecy—such as exceeding contribution limits or corporate donations—are practically moot points. However, the 2012 elections saw donors playing shell games for the direct purpose of disguising their identity in election reporting, which remains illegal. Non-profits got around even the modest disclosure rules on the books by exploiting a loophole allowing funders to remain secret if a donation was not specified for ads, even if that was actually a donor's intent or the recipient's request. Additionally, we saw non-profits openly playing games with the content of their advertising to get around a court decision intended to correct this loophole and force disclosure of donors.

Perhaps the most threatening of the violations of campaign finance law enabled by the veil of secrecy is the possibility of foreign money entering American elections either through dark money non-profits, shell corporations, or some combination thereof.

SECRET MONEY IN THE 2012 ELECTIONS

Despite strong public support for disclosure and decades of legal precedent declaring the public's constitutional interests in transparency, secret money nonetheless played a bigger role in the 2012 elections than in any other presidential campaign since Richard Nixon's.

Outside spending in 2012



DARK MONEY IN THE 2012 ELECTIONS

Much of this secret spending came via non-profits organized under Sections 501(c)(4) and (6) of the tax code, which collected unlimited contributions and spent hundreds of millions influencing elections, but kept their donors secret and did not register as political committees—thus becoming known as "dark money" groups. Dark money non-profits that hid the source of their funding reported spending over $299 million in the 2012 elections, but the actual total likely exceeds $400 million.[9]

The 2010 U.S. Supreme Court decision in *Citizens United* and its earlier 2007 decision in *Wisconsin Right to Life* opened the door for non-profits funded by for-profit corporations to buy political ads and contribute to Super PACs. Unlike PACs and Super PACs, which are formed exclusively for electoral purposes and disclose all of their donors and expenditures to the Federal Elections Commission, these non-profits are entirely secret about their sources of funding and only report a limited amount of their election spending.

A few of these non-profits are legitimate, long-standing advocacy organizations with a reputation that allows citizens to potentially recognize the motivations of their donors and thus better understand the values of the candidate support-

ed by those funds. However, many of the other non-profit organizations active in the 2012 elections appear to have been set up for the sole purpose of electioneering and spending by these sham non-profits became a common phenomenon in the 2012 election. Ostensibly formed and granted tax-exempt status to advance some sort of "social welfare," these non-profits instead spent hundreds of millions in 2012 doing nothing else besides influencing elections.

Hiding donors and deceiving voters

A loophole in FEC rules only requires that non-profits disclose donations made for the purpose of funding specific ads.[10] And basically every non-profit active in the 2012 elections avoided disclosing their funders by claiming none of the donations were earmarked for particular activities. The rule operates like a "Don't Ask/Don't Tell" policy to keep the public in the dark. At least as applied to issue ads that run in the months before an election, this loophole was briefly closed by a federal court in March—during which time dark money groups declared that they would shift to express advocacy to continue hiding their donors—but that decision was reversed on appeal.[11]

Secrecy not only makes it nearly impossible to ascertain whether a large donation resulted in favorable policy or treatment after a candidate takes office, but during the election, it becomes difficult for voters to assess a dark money group's message or, in the words of the *Citizens United* majority, to "make informed choices in the political marketplace." An innocuous name and uninformative website does not give voters sufficient information about what really motivates a dark money group.

Those rare disclosures that have occurred demonstrate this point. For example, the 501(c)(4) American Action Network (AAN) spent $11 million on ads attacking Democrats in the run-up to the 2012 elections, but the content of those ads would likely not indicate to the average viewer they were bankrolled by the insurance and pharmaceutical industries. But those industries really were behind the generic-sounding American Action Network: insurance giant AETNA accidentally disclosed in year-end filings they gave $3 million to AAN in 2011, and the pharmaceutical trade association PhRMA reported a $4 million contribution in 2010 in its mandatory tax filings.

AAN's ads attacked Democratic candidates on a variety of issues[12]—from personal ethics, to their support for mining, to their position on taxes—but AAN's messages about a candidate's support for single-payer healthcare,[13] or its $1.2 million campaign in July urging Republicans to overturn the federal health care law,[14] would surely be viewed by voters in a different light when provided with the knowledge that the ads may have been funded by the insurance and pharmaceutical industries. Given that many of the ads funded and aired by AAN have been found to be misleading by nonpartisan fact-checkers,[15] the innocuously-named American Action Network, like many other dark money groups, acts as a front for these corporations and industries, allowing them to influence elections and policy without having to publicly stand behind their message.

In Montana, a dark money group seeking to influence that state's U.S. Senate race further showed how voters can be kept in the dark about an organization's true motivations when its funders are kept secret. A non-profit called Montana Hunters and Anglers Action bought ads supporting the third-party candidate in the

state's U.S. Senate race, libertarian Dan Cox, describing him as the "real conservative" or the "true conservative." Montana voters never knew who was behind the Montana Hunters and Anglers group or who was bankrolling their ads—but an investigation by ProPublica found that the group has ties to Democrats, suggesting the group's true motivation was to siphon votes away from the Republican candidate rather than to support Cox.[16] The Democratic candidate, Jon Tester, won a narrow victory in that state and Cox received more votes than any other libertarian on the ballot.

Other instances where donors to a dark money group have been uncovered only revealed more obfuscation. For example, an enforcement action by California's election board in 2012 uncovered a dark money shell game where secret dollars were shuffled between non-profits to influence 2012 ballot initiatives in that state, thereby guaranteeing the funders' identities would be kept secret. California's elections board sought to uncover who was really behind an $11 million donation from an Arizona-based dark money group called Americans for Responsible Leadership to a registered California PAC called Small Business Action Committee, which spent $11 million on ads to influence two California ballot initiatives. But the source of the Arizona group's funds was only revealed to be another dark money group, the Center to Protect Patient Rights, whose money came in turn from a *third* dark money group, Americans for Job Security (which in previous years had received money *from* the Center to Protect Patient Rights.) Despite the California election board's best efforts to mandate disclosure, in this case it only found another layer of the dark-money onion.

The dark money shell game was also played on the national level. The Center to Protect Patient Rights is a 501(c)(4) whose name gives the impression it is concerned about healthcare, but it actually appears to do little else besides operate as a conduit for funding conservative electoral operations. As a non-profit, CPPR is not required to report its funders, but it must disclose its grant recipients—and through those disclosures, the Center for Responsive Politics found that CPPR gave $55 million in 2010 to a variety of non-profit groups, such as Americans for Job Security, the 60 Plus Association, and American Future Fund, which in turn spent at least $46 million attacking Democrats in the 2010 elections.[17] In 2011, a non-election year, CPPR gave at least $14 million to some of those same dark money groups and others, all of which spent millions influencing the 2012 elections. The amount CPPR doled out in 2012 is not yet known; non-profits do not file their IRS forms and grant recipients until late the following year. It is not known from where CPPR received its funding, but investigations have revealed ties to the billionaire conservative activist Koch brothers.[18]

These dark money shell games reveal another major problem with secrecy: it becomes almost impossible to identify violations of election or tax law. For example, foreign corporations and citizens are prohibited from influencing U.S. elections, but absent disclosure, neither the public nor regulatory agencies can know whether a foreign national is intervening in U.S. elections—either indirectly by giving to a shell non-profit like the Center to Protect Patient Rights or even directly by giving to a dark money group that does not disclose its donors.

And this secrecy makes it nearly impossible to assess whether a donor's secret "investment" in support for a candidate pays off through favorable policy, thereby shielding both elected officials and donors from public accountability.

Minimal expenditure reporting

Because dark money groups are officially organized as social welfare non-profits under section 501(c)(4) of the tax code or as trade associations under section 501(c)(6), they are supposed to primarily advance some sort of social welfare, or in the case of a 501(c)(6) the interests of a particular industry—and thus need only report their *electoral* expenditures to the FEC, rather than all of their spending.

But electoral activities have been narrowly construed to only require reporting of expenditures on ads that explicitly call for the election or defeat of a candidate or that mention a candidate and air during a particular window of time before the election, allowing dark money groups to avoid disclosure by running "issue ads" that criticize a candidate on issues like taxes or healthcare but stop short of explicitly telling viewers to vote for or against. The omission of an explicit call for a candidate's defeat or victory allows the groups to claim with a wink-and-a-nod the ads were about "issues," despite clearly being intended to influence the election. This helps the groups escape some FEC reporting requirements and can help them protect their non-profit status.

Crossroads GPS, for example, spent $9.7 million running an ad titled "Basketball" attacking President Obama with a long list of criticisms, and saying he "promised change—but things changed for the worse." But because the ad ended with the message "tell Obama to cut the job-killing debt" rather than "vote against Obama," it qualifies as an issue ad under current legal interpretations. And the amount spent on "issue ads" (but not the source of those funds) must only be reported during the electioneering communications window—that is, if the ads run within 60 days of a general election or 30 days of a primary or party convention. Because the Crossroads GPS "Basketball" ad aired in May of 2012, outside of the reporting window, it was never reported to the FEC.

Given that Americans are now subjected to a permanent campaign, this narrow 30 day/60 day reporting period does not capture many of the on-going year round efforts to influence voters.

This is why the nearly $300 million in election spending reported to the FEC by dark money groups is an underestimate of their actual spending to influence the elections. Overall, Crossroads GPS told the FEC that it spent just under $71 million in the 2012 election cycle,[19] but because it only reported those "issue ads" that ran near the primaries or election day, it actually spent almost twice as much as was reported, topping at least $165 million, according to a review of Crossroads GPS press releases since mid-2011.[20] The total spent by dark money groups could be equally as high. A U.S. PIRG / Demos report from July found that the top five spending 501(c)(4) groups had reported less than 1% of their actual election spending through June 30th, 2012.[21]

How is this legal?

Despite dark money groups spending at least $299 million on the 2012 elections, as non-profits, these groups are offered tax-exempt status because they are ostensibly advancing some sort of "social welfare," and are therefore limited in how much they can participate in electoral or partisan politics.

According to the IRS, "political intervention" cannot be a non-profit's "primary activity," which has been construed to mean

that no more than half of their staff time or financial resources can be directed towards electoral endeavors. But the IRS rules on what constitutes "political intervention" are relatively murky, and more importantly, are rarely enforced.

One way dark money non-profits have claimed they are primarily advancing social welfare is by classifying some of their electoral expenditures—particularly those they call issue ads—as "education," "issue advocacy," or "lobbying," rather than political intervention.[22] While the FEC has specific rules for what constitutes a political ad, the IRS takes a more vague, case-by-case approach that some non-profits have construed very broadly.

Americans for Prosperity, for example, reported to the FEC that it spent $1.3 million on electioneering communications in the 2010 elections[23] but told the IRS that it did not spend a penny on political expenditures.[24] Another 501(c)(4), the American Action Network, reported spending $15.4 million on federal electioneering communications in 2010, but based on its IRS filings appeared to classify this as "lobbying" rather than political expenditures, despite the ads running near the elections and clearly being intended to tell people how to vote.[25] Neither of these groups disclosed the identity of those funding the ads.

But for those groups that do accurately describe their electoral expenditures as political intervention, they still must be able to show that it accounts for less than half of their overall activities to retain their tax-exempt status.

One way they can do this is by running ads during policy debates that they can classify as "public education" in their tax filings. Although influencing policy through issue ads can be a legitimate advocacy tool, many dark money non-profits appear to be using the ads as an accounting trick—a way to balance their books between electoral and non-electoral spending. And some groups appear to be using their "issue ads" to soften up candidates for their next election. Crossroads GPS, for example, ran a series of radio ads in December 2012 during the "fiscal cliff" debate encouraging lawmakers to reject President Obama's "massive tax increases and even more debt" and urging "bipartisan solutions to strengthen Medicare and Social Security and tax reforms that raise more revenue without killing jobs."[26] Even though these issue ads will likely be classified as "public education" in GPS' IRS filings, they appear to be more about politics than anything else—rather than targeting legislators who might be swing votes in a debt deal, the ads targeted Democratic legislators in vulnerable districts. Incredibly, this means that one way dark money groups can claim their primary purpose is "social welfare" is by engaging in permanent political campaigns.

Dark money groups will also direct more of their non-election-season resources towards lobbying.[27] Few Americans would say that lobbying is advancing social welfare, but resources spent on lobbying do allow dark money groups to tip their overall balance towards electoral intervention not being considered their primary purpose.[28] Organizations that spent tens of millions in the 2012 elections, like Club for Growth and FreedomWorks, have already begun lobbying legislators, and Crossroads GPS has also indicated it will begin lobbying. These groups, which in 2012 became increasingly involved in primaries, have a powerful weapon in their lobbying arsenal to hold legislators' feet to the fire: the threat, come election time, that they will back an uncooperative lawmaker's primary challenger.

Some dark money groups have also claimed that political intervention is not their primary purpose by making grants to other dark money groups, which in turn spend millions on elections—essentially making the absurd claim they are advancing "social welfare" by acting as a conduit for laundering dark money to other dark money groups. Crossroads GPS, for example, in 2010 transferred millions of dollars to other non-profit organizations, many of which then spent millions on that year's elections.[29] Calling the reason for the donation "social welfare," GPS gave Americans for Tax Reform $4 million in 2010, and ATR spent $4.14 million on the 2010 elections. GPS also gave $2.75 million to the Center for Individual Freedom (which spent $2.5 million on political ads) and $500,000 to the American Action Network (which spent $26 million on ads), among other groups.[30]

SHELL CORPORATIONS IN THE 2012 ELECTIONS

Abuse of the corporate form in the 2012 elections was not limited to non-profit corporations. Clandestine donors made use of straw for-profit corporations to funnel money into elections as well. Over the course of the 2012 cycle reporters and advocates uncovered several instances of inactive businesses contributing large sums to Super PACs. In a few cases, the original donors came forward, lifting the veil of secrecy, but in several others, the money could only be traced back to a third party rather than the true source of the funds.

All of this demonstrated that in a post-*Citizens United* world, those concerned with transparency in our elections should pay considerable attention to the abuse of the corporate form. In fact, of all business contributions to Super PACs, nearly 17%(over $17 million) came from *identified* shell corporations.

There are serious concerns in the post-*Citizens United* world about the outsized influence of real businesses—companies that provide goods and services, employ workers, and have an obvious interest in policy-making. However, some corporations exist only as pieces of paper, a P.O. Box, or an electronic file. These shell corporations undermine the integrity of our elections with their opacity, which at best circumvents campaign finance law to shield donors trying to evade reporting requirements, and at worst may launder foreign, criminal, even terrorist funds into U.S. elections.

Shell corporations

A shell corporation is defined as a company that engages in minimal or no business activity. Sometimes these corporations serve a legitimate business purpose, such as creating a legal structure at the start of a genuine business or, slightly more questionably, hiding intellectual property from competitors. However, these entities are also used to evade taxes, launder criminal profits, illicitly transfer foreign funds into the United States, and, in some cases, finance terrorist activities.[31] *Citizens United* opened the door for a new use as well: anonymously funneling millions of dollars into our elections.

Regardless of the end goal, a shell corporation's main attraction for attention-shy donors is the same as the attraction for criminals: the anonymity it provides. Setting up a clandestine company is easy enough - one need simply hire a surrogate, typically an attorney or holdings corporation, to file the paperwork for you. According to the Government Accountability Office, most states do not require the filer to report, or even to retain proof of, the identity of the true owner of the new company, also known as the "beneficial owner."[32]

In fact, the paper trail is sometimes so conveniently evanescent that all the investigative expertise of the federal government can't even follow it—much less the average voter. This was the case when Immigration and Customs Enforcement discovered that a Nevada-based shell corporation had received $81 million in 2 years from almost 4,000 suspicious wire transfers, but could not pursue the case as they were never able to identify the beneficial owner.[33]

Identified shell corporations in the 2012 elections

The media uncovered several examples of shell corporations funneling money to super PACs in 2012, which are described below, totaling nearly $17 million, or 16.5% of all business contributions to super PACs.

Shell Corporation	Amount Donated	% Of Total Business Contributions To Super Pacs
Specialty Group Inc.	$10,600,000	10.4%
Kingston Pike Development	$1,500,000	1.5%
W SPANN LLC	$1,000,000	1.0%
Eli Publishing	$1,000,000	1.0%
F8	$1,000,000	1.0%
SeaSpray Partners	$400,000	0.4%
Waterbury Properties	$666,666	0.7%
Fairbanks Properties	$666,666	0.7%
Total	**$16,833,332**	**16.5%**

The bulk of all identified shell corporation contributions went to two SuperPACs: FreedomWorks for America and Restore Our Future, suggesting that the committees themselves may have been facilitating the schemes. Restore Our Future has said of such encouragment, "it's not something we normally ask".[34] Over 97% of the funds given from businesses to FreedomWorks were from shell corporations, accounting for over half of all the money it raised for the 2012 cycle.

Specialty Group Inc., Kingston Pike Development - $12.1 million

The single largest business donor by far in 2012 turned out to be a shell corporation called Specialty Group, Inc., which made gifts totaling $10.6 million to the Tea-Party affiliated Super PAC FreedomWorks for America. About half of that was given less than two weeks before Election Day, providing an additional layer of secrecy because that spending would not be disclosed to the public until the post-election reporting date of December 5.

The corporation itself was formed in September 2012 by Knoxville-based attorney William Rose, who likely acted as a third party surrogate to create the corporation on behalf of the true donor. Rose, who is active in the Republican party, formed a similar corporation called Kingston Pike Development in October, which gave an additional $1.5 million to that same Super PAC.

An investigation by the Washington Post revealed evidence suggesting that the scheme to create shell corporations was orchestrated by Richard J. Stephenson, the suspected original donor, and Adam Brandon the Vice President of FreedomWorks.[35] It is unclear why Stephenson, who is a well-known conservative, and Brandon would go to such lengths to hide the source of

Super PAC	Total Known Donations From Shell Corporations	Total Donations From Businesses	% Of Business Donations From Shell Corporations	Total Donations	% Of Total Funds From Shell Corporations
Restore Our Future	$4,066,666	$30,478,545	13.3%	$169,143,666	2.4%
FreedomWorks for America	$12,100,000	$12,392,830	97.6%	$23,499,983	51.0%

donations but it is clear that both the creation of the shell corporations and the timing of the contributions indicate intent to circumvent Super PAC reporting requirements. The Campaign Legal Center and Democracy 21 have sent letters to both the FEC and the Department of Justice asking them to investigate whether both Stephenson and FreedomWorks violated federal law prohibiting political contributions from being made in the name of another person.[36]

W SPANN LLC - $1 million

The first reported incident of the shell-corporation-to-Super PAC-phenomenon came from an NBC investigation of "W SPANN LLC," a group that made a million dollar contribution to the Pro-Romney Super PAC Restore Our Future. W SPANN LLC caused suspicion when the NBC reporter noticed that the corporation had formed, made the $1 million contribution, then disbanded all in the course of about three months. It appeared to never have done any business other than making the gift to Restore Our Future.[37]

Again, the corporation was formed by a third-party surrogate, Boston-based attorney Cameron Casey, but this time, just hours after Campaign Legal Center and Democracy 21 filed a complaint with the DOJ, former Bain Capital executive Ed Conard came forward as the original source of the funds. Conard claimed that he did not believe that he was violating any laws but gave no reason for creating a shell corporation to make the donation to Restore Our Future, leaving a number of unanswered questions and no real proof that he was, in fact, the original donor.[38]

Eli Publishing and F8- $2 million

W SPANN LLC was just the first in what appears to be a series of shell corporation donations to Restore Our Future, including two $1 million gifts made by apparent shells Eli Publishing and F8 corporations which share the same address in Provo, Utah.[39] The address is associated with NuSkin owner and Romney supporter Steve Lund, but as with all shell corporations, there is no way to confirm that Lund or any of his businesses were indeed the original source of the funds.

SeaSpray Partners - $400,000

Yet another apparent shell corporation contribution to Restore Our Future came from SeaSpray Partners. The $400,000 gift raised eyebrows when the owner of the business at the address where SeaSpray was reportedly based claimed he had nothing to do with the contribution. Restore Our Future chalked up the discrepancy in their reporting to a clerical error which they said they intended to fix.[40]

It is still unknown who or what was the original source of these funds.

Waterbury Properties and Fairbanks Properties - $1,333,332

Mother Jones reported that Restore Our Future's June campaign filings included contributions from three corporate donors: "CRC Information Systems, Inc.; Fairbanks Properties, LLC; and Waterbury Properties, LLC. Although the latter two companies don't even have websites, they all ponied up nearly identical sums—$333,333, give or take a dollar—and listed the same address: PO Box 2608, Dayton, Ohio 45401."[41] All three companies are owned by Robert Brockman but he declined to comment on the contributions. His company, Reynolds and Reynolds, claimed CRC as a subsidiary but said it had no knowledge of the other two corporations.

The three companies employed the same tactic to make gifts of the same size to Crossroads GPS, as well.[42]

It is unclear why Brockman would use a division scheme to make these $999,999 contributions or if he or his companies are even the original source of the funds, for that matter. These donations are again a good example of the games being played with the corporate form and the key information hidden from voters in the process.

Behind the veil of secrecy

As is the case with "dark money" non-profits, the secrecy inherent in donations via shell corporations makes it almost impossible to identify violations of election or tax law, such as the infiltration of foreign funds.

In spite of the means opened by *Citizens United* for foreign money to enter elections undetected, the Supreme Court has since reaffirmed the ban on foreign nationals and corporations spending in elections.

The GAO report on "Company Formations" noted several known instances of shell corporations illegally bringing millions in foreign funds into the U.S. from countries such as Iran[43], Libya, and states in the former Soviet Union.[44] It would be simple enough for this strategy to be repeated to funnel that money into elections. A foreign donor would set up a corporation in Delaware or Nevada, say, fill it with cash, and then have it spend to support the desired candidate.

Thus far, none of the electoral funds from known shell corporations have been *proven* to have originated in foreign countries; but the many instances of shell corporations secretly funneling money into elections should be cause for concern and suspicion.

While it is not a shell corporation, the Connecticut based firm OdysseyRe, a "wholly owned" subsidiary of Canadian corporation Fairfax Financial Holdings Limited, caused a stir this cycle when it donated $1 million to the Restore Our Future Super PAC. Because OdysseyRe does in fact do business in the U.S., the funds were ascribed to American commerce and the America based board members; however, the contribution raised concerns about indirect foreign spending in elections.[45] Given the ambiguity of this donation even with a functioning business claiming responsibility, this example does raise flags about the fluidity of the corporate form's ability to hide foreign donations.

Using legal loopholes for illegal purposes

While intrepid reporters and activists identified a handful of shell corporations donating to Super PACs in the 2012 elections, there may be others that are not legitimate business entities, and still more that are making use of other legal loopholes to further cloak their identities.

Another way a donor may funnel money into the election without being found out is by forming a shell corporation, then having that shell corporation donate to a dark money nonprofit, in a sort of Russian Doll-like scheme resembling the $11 million shuffled between three non-profits and a PAC to influence California ballot initiatives (described above). Because those dark money non-profits do not have to publicly disclose their donors, this tactic would keep the shell from appearing on any sort of list of politically active businesses and sparking scrutiny. Although the dark money groups do have to report their income to the Internal Revenue Service, the agency almost never looks into the integrity of donors unless there is a request for investigation from a watchdog group. And watchdogs can only identify a discrepancy if there is public reporting. It has been noted that if foreign money were entering our elections, this would be the safest route to hide it.[46]

As with campaigns, donations to Super PACs under $200 do not have to be separately listed when reported to the Federal Election Commission. Another way a donor could cover their tracks is to divide a donation up among various shell corporations and have each donate an unitemized sum to the same Super PAC. If a donor wanted to give $1 million to a Super PAC undetected, she could form 5026 corporations with unique names and have each donate $199. On the FEC report, this would simply look like $1,000,174 in unitemized contributions. To the Super PAC, assuming the donor made all the companies give the same amount on the same day, it might raise suspicion. But without rules requiring the recipient of private corporate funds to collect information on the beneficial owners of the corporation, even in such a blatantly suspicious scenario it would be difficult to prove that a crime—using a false identity to donate election funds or the facilitation of such by the receiving group, for example—was committed by either party.

CONCLUSION

We may never know the true identity of those who literally spent hundreds of millions of dollars attempting to buy the 2012 elections through these shadowy groups—whether the funders were corporations or people, domestic or foreign—and we really cannot know what influence those donors will have over the 113th Congress or, for that matter, over the Executive Branch during President Barack Obama's second term. But we do know that American democracy is increasingly for sale, and that the transactions are increasingly happening in secret.

Luckily there is much that can be done at every level of government to let in some sunlight.

Recommendations:

- **Create More Transparency**

The Internal Revenue Service should create bright-line rules for what constitutes political intervention, as well as descriptions of protected tax-exempt speech, to help resolve ambiguities that have been exploited by dark money non-profits in the post-*Citizens United* world. This would make it clear to groups like Americans for Prosperity that their political activities cannot be classified as "education." In a July letter to Democracy 21 and the Campaign Legal Center, the IRS indicated it is indeed considering changes to rules that govern 501(c)(4) non-profits—and we look forward to the IRS following through.[47]

The Securities and Exchange Commission should require that publicly traded corporations disclose their political spending to their shareholders and the general public. Such a rule would create transparency on the front end, allowing the public to know when a business corporation is funneling money into the elections either through a Super PAC or through a dark money non-profit. Although it would not touch privately-traded companies, it would help shine some much-needed light onto corporate political spending. The SEC recently added this rulemaking to their agenda and should follow through on enacting it before the 2014 elections.

The Federal Communications Commission should improve its online database of broadcasters' political ad files to make the information easily accessible to the general public. In 2012, the FCC finally adopted a rule requiring broadcasters in the top 50 media markets to post information about their political ad sales in an online FCC database, potentially providing a means to track expenditures by dark money groups that do not report to the FEC. But the website is not searchable by group and excludes hundreds of important media markets. Making the database more user-friendly and expanding the number of media markets would allow citi-

zens and reporters to better track the dollars being spent to influence elections.

The Federal Election Commission should require that Super PACs collect information on the beneficial owner—which must be a natural person or publicly listed corporation—of all private companies from which they collect contributions. This information should be reported on their monthly and quarterly filings to the agency.

Congress should tighten limits on how much a non-profit can participate in political activity. Ambiguity under current law has led many non-profits to assert they can spend up to half of their total activities or expenditures on politics, which the Internal Revenue Service has neither refuted nor clearly supported. Attorney Greg Colvin has proposed an addition to the Internal Revenue Code clarifying that a non-profit hoping to intervene in a political campaign is limited to spending a certain dollar amount or less than a certain percentage of their total expenditures in a given year, with the exact amounts set by Congress.[48] If the organization wants to spend more on politics, it must do so through a separate, registered political committee that reports all donors giving above the already-established thresholds laid out in election law. Providing clarity in this area of the law could help curb some of the worst abuses of the tax-exempt non-profit form.

Action from **Congress** to update disclosure rules in a post-*Citizens United* world is long overdue. Our federal legislators must require that non-profit corporations account for every dollar spent on elections, reporting, at minimum, donors over $200 whose contributions add up to their total spent. To ensure that this includes all issue ads meant to influence the election, Congress must also expand the electioneering communications window to account for the actual length of modern campaigns. One strong proposal would be to expand that window to Jan 1 in non-Presidential election years and one year before the election in Presidential years.

Furthermore, to ensure that secretive donors don't shift their funding to shell corporations in response to transparency requirements for dark money non-profits, **Congress** should require that Super PACs and dark money groups that intend to spend on the election collect and report information on the beneficial owner of all private corporate donors.

The States should require all private corporations to list their beneficial owners upon incorporation and make that information readily available on the public record. A GAO report found that, as of 2006, "none of the 50 states routinely requires applicants who want to form a new corporation to disclose who will own the corporation; most states do not require ownership information for LLCs."[49] This common sense reform would ensure that the public can follow the money and it would help prevent the possibility of foreign and criminal money entering our elections.

If states fail to implement such a rule, **Congress** should require that states enact a uniform standard.

■ Overturn *Citizens United*

Although all of these measures are vital to reintroduce a level of accountability and transparency into America's political system, increased disclosure is not enough. It appears the only way to truly limit the outsized influence of private donors over our political and electoral

systems is a constitutional amendment declaring, at minimum, that money is not speech, that Congress and the States have the power to regulate election spending, and that only natural persons should be allowed to spend money on elections. Corporations are neither people nor citizens: they are organizations of people. Those individuals certainly have the right to espouse and make contributions or expenditures (within reasonable limits) on behalf of the corporation, but not *as* the corporation or using the corporation's funds. A government of, by, and for the people should not tolerate the outsized influence of artificial entities on the political process.

Municipalities, **cities**, and **states** across the country should follow the lead of 300 cities and towns and 11 states and pass resolutions to join the growing call to overturn the Court's wrongheaded and dangerous interpretation of the First Amendment.

METHODOLOGY

To calculate total secret outside spending figures, we added money spent by 501(c)(4)s and 501(c)(6)s. To calculate the total secret funds from shell corporations spent by Super PACs we multiplied the total that all super PACs spent by the percentage of all Super PAC fundraising for which shell corporations account.

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