

THE CASE FOR REQUIRING FEDERAL CONTRACTORS TO DISCLOSE THEIR SECRET POLITICAL CONTRIBUTIONS

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May 26, 2022



ACKNOWLEDGMENTS

This study was written by Taylor Lincoln, a research director of Public Citizen's Congress Watch division. Mike Tanglis, also a Congress Watch research director, provided data analysis.

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Key Findings

Data on Federal Contractors

Most federal contractors seek to influence federal elections. A majority of large U.S. companies, in turn, are federal contractors.

- The top 10 federal contractors received \$213.8 billion in federal revenue in 2020. These companies' political action committees (PACs) made \$24.8 million in expenditures in that election cycle.
- 52 percent of Fortune 100 corporations received federal contracts in excess of \$1 million in 2020.
- Twelve of the 15 largest federal contractors belonging to the S&P 500 disclose some information regarding their contributions to dark money political groups, but only five claim to fully disclose these activities.

Background on the History of Pay-to-Play Corruption

Government contracting malfeasance has figured into many of the most prominent government corruption scandals of the past half-century.

- **Watergate.** In 1972, President Richard Nixon's administration adopted a policy of using contracting decisions, along with other powers of the federal government, to further the president's reelection prospects.
- **Cunningham.** A defense contractor convicted for bribing former Rep. Duke Cunningham (R-Calif.) confessed to using campaign contributions to bribe other members of Congress.
- **Abramoff.** In the sweeping scandal involving lobbyist Jack Abramoff during the 2000s, then-Rep. Bob Ney (R-Ohio) pleaded guilty to steering contracts to an Abramoff client in exchange for favors.
- **Blago.** Gov. Rod Blagojevich (D) responded to the passage of a state law prohibiting public officials from accepting contributions from contractors by enhancing his efforts to collect such contributions before the law took effect. Blagojevich was later convicted for attempting to extort campaign contributions from the chief executive of a hospital in exchange for raising Medicaid reimbursement rates, among other offenses.

Selected Case Studies of Contractors Using Dark Money to Hide Corruption or the Appearance of Corruption

Dark money spending at the federal level did not begin occurring in high volumes until after the *Citizens United* decision was issued in 2010. These examples show the appeal of dark money for businesses seeking favors from state and local officials:

- An executive at an Ohio utility, subsidiaries of which contract with the federal government, explicitly championed a “dark money” strategy in 2017 to pursue political objectives. Three years later, the U.S. Department of Justice accused the company of using dark money to perpetrate one of the biggest bribery and money laundering schemes in the entire history of the state of Ohio.
- The manager of a dark money group in New Jersey collected checks from law firms to influence elections involving a school board for which the law firms worked as contractors. This information only came to light after the manager of the dark money group confessed to hiring assailants to murder an associate who worked for his political consulting firm.

Rationale for a Contractor Disclosure Requirement

Contractors are not permitted to make contributions from their corporate treasuries to influence federal elections. The Federal Election Commission has taken several enforcement actions against contractors that have contributed to super PACs. But, under current law, the FEC and the public have little way of learning about contributions to dark money groups. Contributing to them enables contractors to evade the intent of the contribution ban while keeping their political activities secret. These political activities, meanwhile, are the ones that the public has the greatest interest in learning about because they involve companies seeking taxpayer dollars.

Introduction

For more than 80 years, those negotiating or performing federal contracts have been prohibited from contributing to federal candidates or parties and from giving to other entities for political purposes.¹

The prohibition was passed in 1940. The bill's sponsor, Sen. Harry Byrd of Virginia, said during debate on the bill, "The greatest source of corruption in American politics today is the use of money obtained from those who make profit out of contracts with the government."²

Since then, the federal government's reliance on federal contractors has increased enormously. In 1940, the total outlays of the federal government were about \$165 billion, if adjusted to 2020 dollars. In 2020, the federal government paid contractors, alone, \$665 billion.³

For much of the time since the contractor ban was passed, it was mostly redundant. Federal law already prohibited corporations from making federal electioneering expenditures of any sort. While the ban also covered people who contracted individually with the federal government, their share of contracts was dwarfed by the ballooning dollar value of contracts held by corporations.

The Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*⁴ made the contractor contribution ban relevant again. The decision permitted corporations to spend money to influence elections – in unlimited sums – as long as they did not coordinate with federal candidates or parties.

Although many expected that the decision would spawn political expenditures directly by corporations, most of the new political spending resulting from it has been by third-party entities, such as super PACs and 501(c) nonprofit groups. These entities fund their political work primarily with contributions from corporations and extremely wealthy individuals. Meanwhile, overwhelming evidence indicates that many super PACs and

¹ *Contributions by Government contractors*, 52 U.S. Code § 30119, <https://bit.ly/3PnnPOa> and Wendy E. Wagner, et al., v. Federal Election Commission, United States Court of Appeals for the District Of Columbia Circuit (July 7, 2015), <https://bit.ly/3PvZAiM>.

² *Federal Register* (March 18, 1940), p. 2982, <https://bit.ly/3G53Kdd>.

³ *A Snapshot of Government-Wide Contracting For FY 2020* (infographic), U.S. GOVERNMENT OF ACCOUNTABILITY OFFICE (June 22, 2021), <https://bit.ly/3lo0HDm> and Table 1.3 – *Summary of Receipts, Outlays, and Surpluses or Deficits (-) in Current Dollars, Constant (FY 2012) Dollars, and as Percentages of GDP: 1940–2027*, OFFICE OF MANAGEMENT AND BUDGET, <https://bit.ly/3sPdp2h>. (The OMB table reports constant 2012 dollars; they are updated here to reflect inflation-adjusted value at the end of 2020.)

⁴ *Citizens United v. Federal Election Commission*, 558 U.S. 310 2010, <http://bit.ly/30ramxI>.

501(c) groups do – if one applies a common sense definition of the word – coordinate with candidates and parties.⁵

Contributions to super PACs must be publicly disclosed. But 501(c) groups are not required to disclose their donors. This gap in disclosure requirements has resulted in hundreds of millions of dollars in “dark money” political spending.⁶

The Federal Election Commission (FEC) has generally interpreted the contractor contribution ban as applying to gifts to super PACs, and it has taken several enforcement actions against contractors for giving to super PACs. But the FEC has not deemed the contribution ban to apply to gifts to politically active 501(c) groups. This is arguably inconsistent because some 501(c) groups spend money to influence elections in the same manner as super PACs. Further, some 501(c) groups even transfer their money directly to super PACs that they work in concert with.

The FEC's inaction on federal contractors' contributions to politically active nonprofit groups might be due in part to the simple fact that the commission has no way of knowing about those contributions because they are mostly kept secret.

Granted, if the FEC were aware of these contributions, it might decline to take action under the rationale that 501(c) groups cannot, by definition, be political organizations. Therefore, the FEC might determine that a contribution to one of these groups could not legally be considered a political contribution, even if the work of the group is plainly political in nature.

Even if the FEC lacks the ability to prohibit contractors' contributions to politically active 501(c) groups, the public deserves, at least, to know that the contributions occurred.

President Biden has spoken in favor of mandatory disclosure of political spending. His presidential campaign promised that Biden would “propose legislation codifying what should be a simple tenet of campaign finance law: any group that advocates for or against candidates for federal office in its ads or communications must disclose its contributors.”⁷

Winning approval for such legislation in the U.S. Senate at present would be challenging. But Biden could achieve an incremental step toward increased disclosure by implementing a requirement through an executive order requiring that contractors disclose expenditures that could potentially be used to influence elections. Doing so would also help improve the contracting process by reducing both realities and appearances of corruption within it.

⁵ See, e.g., Taylor Lincoln, *Super Connected*, PUBLIC CITIZEN (March 2013), <http://bit.ly/3aa2Ziy>.

⁶ See, *Dark Money Basics*, OPENSECRETS (viewed on May 12, 2022), <https://bit.ly/3yXiLfs>.

⁷ *The Biden Plan to Guarantee Government Works for the People*, Biden-Harris presidential campaign, archived pages, <https://bit.ly/3NltYdL>.

The public has a particularly profound interest in learning of cases in which businesses seeking taxpayer funds are spending money to influence their votes. A requirement that federal contractors disclose their electioneering efforts would help shine a light on these companies' payments to shape the playing field on which they play and, in the process, might flush out bad actors seeking refuge in the shadows.

I. Most Large Federal Contractors Are Involved in Politics and Most Large Companies Are Federal Contractors

A review of available data shows that most of the largest federal contractors do, in fact, direct large sums of money toward influencing federal elections and that many of them voluntarily disclose some details of their political spending. Meanwhile, a majority of the largest companies in the United States are federal contractors.

Federal Contractors Are Heavily Involved in Politics

Federal contractors receive enormous sums of public money, and from what is publicly disclosed, we know they also direct substantial amounts toward influencing elections. In 2020, the 10 largest contractors received \$213.8 billion in federal money. Their PACs spent \$24.8 million in the 2020 election cycle.⁸

The portion of their spending that we are most aware of is made by political action committees (PACs), which aggregate contributions from employees. These expenditures are not illegal under the ban on contractor political expenditures because they are financed by corporations' employees rather than money from their treasuries. [Table 1]

Table 1: Federal Contracting Revenue and Political Expenditures of Top 10 Contractors

Rank by Contract Revenue	Contractor	Contracting Revenue FY 2020	PAC Expenditures 2020 Election Cycle
1	Lockheed Martin	\$75.8B	\$4,193,795
2	Raytheon Technologies	\$28.2B	\$3,464,563
3	General Dynamics	\$25.4B	\$2,757,605
4	Boeing	\$23.3B	\$6,305,819
5	Northrup Grumman	\$14.6B	\$5,098,596
6	Analytic Services	\$10.7B	\$0
7	McKesson Corp.	\$10.1B	\$878,374
8	TriWest Healthcare Alliance Corp.	\$8.9B	\$4,500
9	Leidos Holdings Inc.	\$8.7B	\$1,015,677
10	Huntington Ingalls Industries	\$8.1B	\$1,075,376
	Total	\$214.6B	\$24.8M

Source: Federal Procurement Data System and OpenSecrets.

⁸ Public Citizen analysis of data from Bloomberg and OpenSecrets (www.opensecrets.org).

Receipt of Federal Contracts Is Associated with Lobbying and Political Contributions

The data above regards the largest contractors. But political activity is common across the spectrum. In 2021, Public Citizen and OpenSecrets studied the lobbying activities of those contractors that received federal money in exchange for products and services to combat the coronavirus pandemic.⁹ We found that engaging in lobbying activities was closely correlated with receiving COVID contracts.

In 2020, the federal government awarded more than \$36 billion in contracts to more than 6,300 companies for work to combat the pandemic. Just 2 percent of these companies lobbied on COVID issues. The contractors who lobbied received 37 percent of all the contract money awarded.¹⁰

Here, we are supplementing that research by assessing the correlation between a corporation possessing a PAC and that corporation receiving a COVID contract. Out of more than 6,300 companies that received COVID-contracts in 2020, our analysis found, only 2 percent made PAC expenditures in 2020. These contractors received 32 percent of all federal COVID-contracts.¹¹ [Table 2]

Table 2: Political Contributions by COVID Contract Recipients That Lobbied White House or Awarding Agency on COVID Issues in 2020

Type	Number of Companies	Total COVID Contract Money Awarded	2020 PAC Contributions*
Companies that reported PAC spending in 2020	131 (2% of all contract recipients)	\$11.8 billion (32% of all money awarded)	\$73 million
Companies that did not report PAC spending in 2020	6,234 (98% of all contract recipients)	\$24.6 billion (68% of all money awarded)	\$0

Source: Federal Procurement Data System and OpenSecrets.

* Includes contributions made to members of Congress, the president, the major party committees, or the major party super PACs.

A Majority of Fortune 100 Companies Are Federal Contractors

Writing for the majority in the *Citizens United* decision, Justice Anthony Kennedy envisioned campaign finance disclosure that would allow citizens to “see whether elected officials are ‘in the pocket’ of so-called moneyed interests.” Years later, Kennedy conceded that disclosure was “not working the way it should.”¹²

⁹ *The Covid Lobbyists*, PUBLIC CITIZEN and OPENSECRETS (April 2021), <https://bit.ly/3L3T0fX>.

¹⁰ *Id.*

¹¹ Federal Procurement Data System, www.fpds.gov and Public Citizen analysis of data provided by OpenSecrets.

¹² Paul Blumenthal, *Anthony Kennedy’s Citizens United Disclosure Salvo ‘Not Working,’* HUFFINGTON POST (Nov. 2, 2015), <https://bit.ly/3PqZHw6>.

An executive order requiring disclosure of political spending by contractors receiving high dollar contracts would serve as a creative way to help fulfill the Supreme Court's intent in its *Citizens United* decision.

Review of federal data showed that 52 of the corporations in the Fortune 100 for 2020 received federal contracting revenue of at least \$1 million that year, including 16 of the top 20.¹³ [Table 3 and Appendix]

Table 3: 100 Largest Companies Assessed by Federal Contracting Status in 2020

Rank	Company	Received Federal Contracts of at Least \$1 Million in Previous Year?
1	Walmart	N
2	Amazon	Y
3	Exxon Mobil	Y
4	Apple	N
5	CVS Health	Y
6	Berkshire Hathaway	Y
7	UnitedHealth Group	Y
8	McKesson	Y
9	AT&T	Y
10	AmerisourceBergen	Y
11	Alphabet	N
12	Ford Motor	Y
13	Cigna	N
14	Costco Wholesale	N
15	Chevron	Y
16	Cardinal Health	Y
17	JPMorgan Chase	Y
18	General Motors	Y
19	Walgreens Boots Alliance	Y
20	Verizon Communications	Y
	See Appendix for full list.	

Source: Fortune, USASpending.gov and Federal Procurement Data System.

Many Federal Contractors Disclose Their Political Activities, But to Varying Degrees, and Many Do Not Disclose at All

For more than a decade, the Center for Political Accountability has tracked political spending and disclosure policies of companies in the S&P 500. The organization monitors whether these companies make contributions to dark money groups that spend money on elections and, if they do, whether they voluntarily disclose the details of those contributions.

The table below summarizes the disclosure policies of the top 15 federal contractors in fiscal year 2020 that are in the S&P 500. (*i.e.*, the companies for which the Center for

¹³ Public Citizen analysis of data provided [USASpending.gov](https://www.usaspending.gov) and Federal Procurement Data System, www.fpds.gov, cross-referenced with *Fortune 500*, FORTUNE (2020) <https://bit.ly/3NvLpsp>.

Political Accountability has assessed dark money disclosure policies.) It shows that all but three of the largest contractors disclose details of their dark money contributions to some extent but that only five of the top 15 fully disclose.¹⁴ [Table 5]

Table 4: Political Disclosure Policies by Largest Federal Contractors in 2020

Vendor Name	FY 2020 Contracting Revenue	Discloses Contributions to Dark Money Groups Used for Electioneering Purposes*
Lockheed Martin Corporation	\$76,832,656,027	Partial
Raytheon Technologies Corporation	\$28,168,487,235	Partial
General Dynamics Corporation	\$25,366,547,325	Partial
Boeing Company	\$23,256,276,235	Yes
Northrop Grumman Corporation	\$14,562,808,495	Yes
McKesson Corporation	\$10,079,371,588	Yes
Leidos Holdings Inc.	\$8,666,338,892	Partial
Huntington Ingalls Industries Inc.	\$8,081,025,875	No
L3 Harris Technologies Inc.	\$7,085,552,960	No
Humana Inc.	\$6,999,410,696	Partial
Honeywell International Inc.	\$6,635,298,319	Partial
General Electric Company	\$5,018,356,468	Yes
Jacobs Engineering Group Inc.	\$3,551,326,731	No
Centene Corporation	\$3,091,728,424	Partial
AmerisourceBergen Corporation	\$2,195,393,251	Yes

Source: Center for Political Accountability and Federal Procurement Data System.

* Regards contributions given to 501(c)(4) and 501(c)(6) organizations. Some corporations state that they do not make contributions to such groups or, if they do, they prohibit their contributions from being used to influence elections. Such examples are treated in the table above as synonymous with full disclosure.

II. A Rich History of Contractor Scandals

The constitutionality of the contractor ban was challenged in court last decade. Judges on the U.S. Court of Appeals for the District of Columbia Circuit voted unanimously in 2015 to uphold the law.¹⁵ The author of the court's opinion, Judge Merrick Garland, noted that there has been an abundance of scandals involving government contractors in recent

¹⁴ Data provided to Public Citizen by the Center for Political Accountability cross-referenced with data from the Federal Procurement Data System www.fpds.gov.

¹⁵ *Wendy E. Wagner, et al., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (July 7, 2015), <https://bit.ly/3PvZAiM>. Public Citizen joined an amicus brief in support of the Federal Election Commission.

decades. The lead Garland to conclude that “human nature has not changed since corrupt *quid pro quos*” prompted Congress to pass the contractor contribution ban.¹⁶

Garland presented a summary showing that contracting *quid pro quos* have played a role in many of the most prominent government scandals of the past half-century, including the most famous of them all: Watergate.¹⁷

“As the [Senate] Watergate Committee recognized, much of the conduct that it exposed squarely implicated the contractor contribution statute,” Garland wrote. “The Committee reported that the 1972 election gave rise to the first indictments of contributors under that statute, resulting in guilty pleas and then-maximum fines.”¹⁸

Discussion of contracts and grants being used for political purposes permeates the Senate Watergate Committee’s report. From that report, Garland cited examples where “a contract was awarded to a Nixon fundraiser ‘based solely on political motivations’ and ‘rammed down the throats’ of Department officials.”¹⁹ Garland also referenced “a consultant who told the Watergate Committee that ‘he was made to feel that his continued success in obtaining Government contracts would, in significant degree, be dependent on his contributing to the President’s reelection.’”²⁰

Use of contracts for political purposes was a key component of the “Responsiveness Program.” The Responsiveness Program, which was outlined in a memo approved by the Nixon White House’s chief of staff, called for sweeping use of the power of the federal government to assist in the reelection of President Nixon.²¹

Under the category of “activities” to be taken by government departments to pursue the president’s political goals, the Responsiveness Program memo said, “the major ones” would involve “project grants, contracts, loans, subsidies, procurement and construction projects.”²²

In addition to those noted by Garland, the Senate Watergate Committee report described many instances and allegations of contracts being used by the Nixon White House for political purposes. Here are three:

¹⁶ *Wendy E. Wagner, et al., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (July 7, 2015), p. 23, <https://bit.ly/3PvZAiM>*Id.*

¹⁷ *Wendy E. Wagner, et al., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (July 7, 2015), <https://bit.ly/3PvZAiM>.

¹⁸ *Id.*, p. 21.

¹⁹ *Id.*, p. 20.

²⁰ *Id.*, p. 34.

²¹ *The Final Report of the Select Committee on Presidential Campaign Activities United States Senate*, June 1974, p. 367-368, <https://bit.ly/3wyYPOK>.

²² *Id.*, p. 369.

- A July 1972 White House memo noted that a company whose leader had an association with Frank Mankiewicz and Sargent Shriver had received \$1 million to \$2 million in contracts issued “by our Administration.”²³ Mankiewicz, at the time, was a top campaign adviser to George McGovern,²⁴ who was expected to receive the Democratic nomination for president the following month. Shriver, a member of the Democratic Kennedy family, unexpectedly ended up becoming McGovern’s running mate.²⁵

“This is a classic example of a firm, not necessarily on our team, which is making a comfortable living off of us,” the memo said. “I would recommend if it’s not too late, we stop the proposals at DOL and HUD.”²⁶

- A White House staffer described a process of advising the General Services Administration on preferred recipients of architectural contracts based on input from an official at Nixon’s reelection committee.²⁷
- Another White House memo described an internal process of reviewing “proposals and grants” at the Office of Minority Business Enterprise “to make sure that the right people are being considered and receiving grants from OMBE.”²⁸

Contracting *quid-pro-quo*s also figured into more recent scandals involving Duke Cunningham (R-Calif.), Jack Abramoff and Rod Blagojevich.

Cunningham pleaded guilty in 2005 to accepting \$2.4 million from federal contractors in exchange for steering contracts to them.²⁹ While the bribes involving Cunningham largely involved gifts made directly to him, campaign contributions figured into the broader scandal. The defense contractor “who pled guilty to bribing Cunningham, admitted to making illegal ‘straw’ contributions to two other Members of Congress as well,” Judge Garland wrote in his opinion upholding the contractor contribution ban.³⁰

²³ *Id.*, p. 387.

²⁴ Adam Bernstein, *Frank Mankiewicz, political and media insider, dies at 90*, WASHINGTON POST, Oct. 23, 2014, <https://wapo.st/382ZFtp>.

²⁵ James B. Naughton, *Shriver is Named for Second Place by the Democrats*, THE NEW YORK TIMES (Aug. 9, 1972), <https://nyti.ms/382ZZbB>.

²⁶ *The Final Report of the Select Committee on Presidential Campaign Activities United States Senate*, June 1974, p. 387, <https://bit.ly/3wyYPOK>.

²⁷ *Id.*, p. 412.

²⁸ *Id.*, p. 384.

²⁹ John M. Broder, *Lawmaker Quits After He Pleads Guilty to Bribes*, THE NEW YORK TIMES (Nov. 29, 2005), <https://nyti.ms/3PyW86Z>.

³⁰ *Wendy E. Wagner, et al., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (July 7, 2015), p. 24, <https://bit.ly/3PvZAiM>.

Rep. Bob Ney (R-Ohio) was caught up in the wide-ranging scandal involving lobbyist Jack Abramoff in the mid-2000s. Ney, Garland wrote, “pled guilty to a series of *quid pro quos* with the lobbyist Jack Abramoff, including steering a ‘multi-million dollar’ contract for a House of Representatives infrastructure project to one of Abramoff’s clients.”³¹

The state of Illinois has a colorful history of scandals involving government contracting. In 2006, former Illinois Gov. George Ryan (R) was convicted of racketeering charges relating to his trading government contracts for cash and presents.³² The state’s legislature then passed a law restricting the ability of contractors to make contributions to some public officials. Ryan’s successor, Gov. Rod Blagojevich (D) attempted to block the legislation by vetoing it but had his veto overridden by a unanimous vote in the state Senate.³³

Blagojevich responded by intensifying his efforts to collect money from contractors before the ban took effect. But that strategy did not work out, either. “Those efforts in turn drew the interest of federal prosecutors,” Garland wrote. “Blagojevich was ultimately convicted of various forms of pay-to-play corruption, including attempting to extort campaign contributions from the chief executive of a hospital in exchange for raising Medicaid reimbursement rates.”³⁴

III. Contractors With Questionable Intentions Are Drawn to Dark Money Groups

Just as “sunlight is said to be the best of disinfectants,” as Louis Brandeis famously noted in 1913, it might also be said that darkness attracts those with ill-intent.³⁵ As the examples in this section illustrate, those seeking to influence elections sometimes make concerted efforts to keep their fingerprints off their handiwork.

Most of the examples in the section above involve favors in exchange for disclosed campaign contributions rather than undisclosed payments. This is likely for two reasons: 1. The use of dark money groups to influence elections did not blossom until after the *Citizens United* decision of 2010. 2. Detecting *quid pro quo* corruption involving secret political payments is likely much more difficult precisely because those payments are not disclosed.

³¹ *Id.*, p. 25.

³² Monica Davey and John O’Neil, *Ex-Governor of Illinois Is Convicted on All Charges*, THE NEW YORK TIMES (April 17, 2006), <https://nyti.ms/3wBYI3H>.

³³ Susan Saulny, *Lawmakers in Illinois Make Ethics Top Priority*, THE NEW YORK TIMES (Sept. 24, 2008), <https://nyti.ms/3G4e98V>.

³⁴ *Wendy E. Wagner, et al., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (July 7, 2015), p. 28, <https://bit.ly/3PvZaiM>

³⁵ Louis D. Brandeis, *What Publicity Can Do*, HARPER’S WEEKLY (Dec. 20, 1913), <https://bit.ly/3wo6dMK>.

This section outlines three episodes in which entities went out of their way to hide the sources of political expenditures. We know about one case because the FBI was surreptitiously listening to phone calls and other communications. Details from another dark money scheme emerged only after one of its chief protagonists pleaded guilty to hiring assailants to murder his business associate. The third case, involving the billionaire Koch family, has been pieced together through untold numbers hours of work by investigative reporters and other watchdogs.

Dark Money Spending by FirstEnergy, Which Is a Federal Contractor, Was at the Center of One of Biggest Bribery Scandals in Ohio History

In 2019, the Ohio state legislature passed HB 6, a bill that would provide a \$1.3 billion bailout for nuclear power plants owned by utility FirstEnergy, eliminate the state's renewable energy portfolio standards and gut its energy efficiency standards.³⁶

The bill was opposed by practically everyone except for FirstEnergy and people with direct ties to power plants that would benefit from the legislation.³⁷

When the bill was signed, it was known that FirstEnergy's PAC had been a generous contributor to Ohio House Speaker Larry Householder, who guided the bill to passage. The company had given Householder \$12,500 in campaign contributions in recent election cycles.³⁸

But those amounts were just rounding errors compared to FirstEnergy's under-the-radar political spending, which included massive gifts to Householder.

The U.S. Department of Justice later revealed in a prosecution of the company that FirstEnergy funneled about \$60 million in "dark money" political contributions through a web of nonprofit groups that essentially acted as a slush fund for Householder. Householder deployed a significant portion of this money to assist in the election of candidates who supported his candidacy for speaker and, ultimately, voted for HB 6.³⁹

FirstEnergy also paid a \$4.3 million bribe to the chairman of the state's Public Utilities Commission in return for the chairman's assistance in passing HB 6 and other help,

³⁶ Laurel Wamsley, *Ohio House Speaker Arrested In Connection With \$60 Million Bribery Scheme*, NPR (July 21, 2020), <https://n.pr/3yLE8QQ>.

³⁷ David Roberts, *Ohio just passed the worst energy bill of the 21st century*, Vox (July 27, 2019), <https://bit.ly/3z1Jmsb>.

³⁸ *Id.*

³⁹ *United States of America v. FirstEnergy Corp., Deferred Prosecution Agreement*, United States District Court Southern District of Ohio Western Division (July 20, 2021), <https://bit.ly/3FVAhSQ>, p. 17.

according to a deferred prosecution agreement in which FirstEnergy agreed to pay a \$230 million penalty.⁴⁰

The U.S. attorney for the Southern District of Ohio called this FirstEnergy dark money episode “likely the largest bribery, money-laundering scheme ever perpetrated against the people of the state of Ohio.”⁴¹

Documents published by the DOJ – which include details from secretly recorded phone conversations, text messages, bank records and other materials – show that FirstEnergy, the House speaker and the speaker’s allies chose as a matter of strategy to conduct their political operations through nonprofit groups that do not have to reveal their donors.

A 2017 presentation by FirstEnergy’s senior vice president of external affairs explained that FirstEnergy’s “preferred manner of giving is through section 501(c) groups, as these are considered ‘dark money’ because they are not required to disclose where the donations come from.”⁴²

A lobbyist who coordinated the HB 6 campaign on behalf of the Ohio speaker said of the dark money strategy: “It’s a secret, a (c)(4) is secret. Nobody knows the money goes into the speaker’s account — it is controlled by his people, one of his people, and it’s not recorded.”⁴³ (The lobbyist, who called himself “the prince of darkness,” committed suicide in 2021 while facing a likely a prison sentence.)⁴⁴

The day that HB 6 passed, FirstEnergy’s external affairs vice president texted the firm’s CEO in celebration.⁴⁵

FirstEnergy External Affairs VP: Boom! Congrats. This doesn’t happen without ceo leadership.

FirstEnergy CEO: We made a biiiiiiiiig bet and it paid off. Actually, 2 big bets. Congrats to you and the entire team! See if [name] has any Pappy and we’ll all head to Columbus tonight.

External Affairs VP: Huge bet and we played it all right on the budget and HB 6 – so we can go back for more!

⁴⁰ *Id.*, p. 4, 18, <https://bit.ly/3FVAhSQ>.

⁴¹ Giulia McDonnell Nieto del Rio, *Powerful Ohio Republican Is Arrested in \$60 Million Corruption Scheme*, THE NEW YORK TIMES (July 21, 2020), <https://nyti.ms/3lon0Zz>

⁴² *United States of America v. FirstEnergy Corp., Deferred Prosecution Agreement*, United States District Court Southern District of Ohio Western Division (July 20, 2021), p. 22, <https://bit.ly/3FVAhSQ>.

⁴³ *United States v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes and Generation Now*, U.S. District Court for the Southern District of Ohio (July 17, 2020), p. 15, <https://bit.ly/3Msb2KB>.

⁴⁴ Nathanael Johnson, *How a \$60 million bribery scandal helped Ohio pass the ‘worst energy policy in the country’*, CRIST (Jan. 26, 2022), <https://bit.ly/3sJuhHA>.

⁴⁵ *United States of America v. FirstEnergy Corp., Deferred Prosecution Agreement*, United States District Court Southern District of Ohio Western Division (July 20, 2021), p. 32, <https://bit.ly/3FVAhSQ>.

External Affairs VP: No party tonight. We are going to plan one with the Speaker later.

External Affairs VP: You should call the Speaker today.

First Energy CEO: Already texted him...

But FirstEnergy had more work to do. The law was deeply unpopular, and citizens groups quickly began organizing a petition drive to put the measure up for a public referendum. FirstEnergy then pumped up to \$38 million more dark money into a campaign to stop the measure from reaching the ballot.⁴⁶ Its efforts included bribing signature collectors to stop working and even paying petition-drive management companies tens of thousands of dollars to stay out of the campaign.⁴⁷

FirstEnergy's dark money also paid for millions of dollars of advertisements claiming, preposterously, that China was behind the effort to repeal HB 6. "The Chinese government is quietly invading the American electric grid, intertwining them financially in our energy infrastructure," one ad said. "Now a special interest group boosting Chinese financial interests is targeting Ohio energy, taking Ohio money, exporting Ohio jobs, even risking our national security."⁴⁸

A mailer bearing the symbol of the Chinese flag said, "Don't give the Chinese government your personal information, email, cell phone or sign your name on their petition." Another mailer said, "foreign entities have infiltrated our energy grid," claiming the petition drive was being conducted by "their front group."⁴⁹

The lobbyist who later committed suicide celebrated one of these fear-mongering direct mail pieces at a dinner party with the House speaker that was secretly recorded by federal officials. Through laughter, the lobbyist described the mailer as "so [expletive] cold-blooded." The lobbyist and the speaker, according to the DOJ's account, both found the mailer to be hilarious.⁵⁰

The Ohio campaign was not FirstEnergy's only use of dark money in recent years. The company also used dark money to involve itself in federal politics.

In 2017, a FirstEnergy subsidiary made a \$163,000 payment to America First Policies, a dark money group supporting President Donald Trump.⁵¹ This contribution was made while FirstEnergy was pressing the Trump administration for assistance for coal and

⁴⁶ *United States v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes and Generation Now*, U.S. District Court for the Southern District of Ohio (July 17, 2020), p. 65, <https://bit.ly/3Msb2KB>.

⁴⁷ *Id.*, p. 69.

⁴⁸ *Id.*, p. 67.

⁴⁹ *Id.*, p. 65-66.

⁵⁰ *Id.*, p. 66.

⁵¹ Jeffrey Tomich, *FirstEnergy utility gave to pro-Trump dark money group*, ENERGYWIRE (March 28, 2022), <https://bit.ly/3PyA50y>.

nuclear plants. FirstEnergy also has acknowledged making a \$5 million payment in 2017 to an undisclosed dark money group supporting a federal official. Evidence suggests that the recipient of that contribution may have been America First Policies, as well. That is because America First Policies received only one contribution of \$5 million in 2017, according to records that do not identify the donor's identity. That was the largest contribution America First Policies received that year.

A lobbyist sat at the nexus of FirstEnergy, America First Policies and Donald Trump. In 2017, FirstEnergy hired Trump fundraiser Jeffrey Miller as a lobbyist and began paying him \$110,000 a quarter.⁵² Miller dined with Trump and reportedly lobbied him for a bailout for coal and nuclear power plants.⁵³ Miller also was a "volunteer" fundraiser for Trump-endorsed super PAC America First Action, according to the super PAC's president, Brian Walsh.⁵⁴ Walsh also was president of America First Policies, which was allied with America First Action.⁵⁵

Multiple subsidiaries of FirstEnergy are [federal contractors](#).⁵⁶ Collectively, they received at least \$28 million a year in federal payments from 2017 to 2019, when FirstEnergy's dark money scheme was at its height.

Had better disclosure rules been in place, Ohio's residents might have learned of FirstEnergy's use of dark money groups in its quest for passage of HB 6. FirstEnergy's contribution (or contributions) to America First Policies likely would have been revealed because America First Policies did make expenditures to influence a federal election that year.⁵⁷

[A New Jersey Dark Money Scheme Was Financed by Contractors; A State Senator Said, "That's What Politics Is All About"](#)

The co-counsel of the Elizabeth, N.J., board of education collected checks in 2016 from at least five law firms (including his own) that acted as contractors for the board. He then

⁵² Lobbying disclosure forms filed with the secretary of the Senate, <https://bit.ly/3FW1XHt>.

⁵³ Matthew Daly and Richard Lardner, *New swamp: Ex-Perry adviser lobbies for energy firm bailout*, ASSOCIATED PRESS (May 29, 2018), <https://bit.ly/3sIrIJP>.

⁵⁴ Michelle Ye Hee Lee, *Trump slammed opponents for being in 'cahoots' with super PACs. Now, he's endorsed a group supporting him*, WASHINGTON POST (May 8, 2019),

⁵⁵ Alyana Alfaro, *NJ Native Leading Pro-Trump Group*, OBSERVER (April 24, 2017), <https://bit.ly/3wxwQ1J> and Caitlin Quinn, *America First Policies/America First Action*, FACTCHECK.ORG (June 18, 2020; updated Oct. 20, 2020), <https://bit.ly/3NjLFEn>.

⁵⁶ Federal Procurement Data System, <https://bit.ly/3y3aoi0>.

⁵⁷ America First Policies, *Independent Expenditures in 2017*, reported to the Federal Election Commission, <https://bit.ly/3sGaxVq>.

forwarded the checks to a dark money group that sought to influence that fall's school board elections, according to recently revealed e-mails.⁵⁸

The dark money group was run by an operative, Sean Caddle, whose political activities have been the subject of state and federal law enforcement interest for years. In 2019, state investigators sought information on the contracting activities of the Elizabeth school board and those of a city government where dark money groups run by Caddle were involved in a mayoral race.⁵⁹ Separately, the FBI raided Caddle's house in about 2019 seeking information on more than 50 politically involved organizations to which he was connected, according to a recently published article.⁶⁰

Interest in these revelations is especially acute right now because Caddle pleaded guilty earlier this year to hiring two people in 2014 to murder an associate who worked for his political consulting firm.⁶¹

The same year that Caddle paid to have his associate killed, Caddle operated a super PAC on behalf of Democratic New Jersey state Sen. Raymond Lesniak. This super PAC focused on influencing elections for the Elizabeth school board. The largest donor to the super PAC, ironically given Caddle's other activities that year, was the American Bail Coalition.⁶²

The super PAC operated on behalf of Lesniak was controversial. That may be why Caddle chose to use a dark money group as an intermediary in efforts to influence elections for the Elizabeth school board in 2016.

In the 2016 scheme, e-mails describe law firms providing the bulk of contributions to one of Caddle's dark money groups, the "National Progressive Organization." The dark money group then forwarded 80 percent of those contributions to a super PAC called "A Better Elizabeth," which spent the money on mailers to support school board candidates backed by the city's Democratic leadership.⁶³

⁵⁸ Matt Friedman, *E-mails reveal prominent law firms were among donors to Caddle's dark money groups*, POLITICO (April 6, 2022), <https://politi.co/3LqSd9c>.

⁵⁹ Matt Friedman, *Elizabeth Board of Education, Perth Amboy government hit with state subpoenas*, POLITICO (Dec. 11, 2019), <https://politi.co/38wn4nx>.

⁶⁰ Matt Friedman, *More Details on Caddle* (March 3, 2014), POLITICO, <https://politi.co/3PxbGbC>.

⁶¹ Matt Friedman, *New Jersey political consultant Sean Caddle pleads guilty in murder-for-hire plot*, POLITICO (Jan. 25, 2022), <https://politi.co/3NpWNpo>.

⁶² Michael Tanglis, *The Foundation of Citizens United Is in Ruins*, PUBLIC CITIZEN (March 17, 2017), <http://bit.ly/2uQwcPB>.

⁶³ Matt Friedman, *E-mails reveal prominent law firms were among donors to Caddle's dark money groups*, POLITICO (April 6, 2022), <https://politi.co/3LqSd9c> and *A Better Elizabeth, 2016 Receipts*, Federal Election Commission, <https://bit.ly/3LrGyqw>.

In the month after e-mails describing those political contributions were written, the school board authorized payments in excess of \$100,000 to the law firms that made the contributions.⁶⁴

Lesniak, who is no longer in the state senate, was recently asked what he thought about contractors for the Elizabeth, N.J., school board paying money to a dark money group that sought to influence school board elections. Lesniak suggested that was business as usual.

“That happens all the time. Where are you supposed to raise money from? People who don’t support you?” Lesniak said. “That’s what politics is all about. There’s no way to deny that. This isn’t an unusual occurrence. This has happened every day for centuries.”

Koch Industries Received \$50 Million from the Federal Government While Flooding the 2012 Elections with Dark Money

Sleuthing the hundreds of millions of dollars that have flowed from – or at the direction of – the billionaire owners of petrochemical giant Koch Industries into the political sphere is truly a full-time job. Those who take on the challenge are often stymied by the Koch network’s use of dark money groups and passthrough entities to mask the original sources of contributions.

The network of entities the Koch family funds to influence politics in the United States is so vast and complicated that libertarian allies of the family dubbed it the “Kochtopus” – and that was way back in the 1970s. In the most recent decade, the family did all it could to prove it was still deserving of that moniker.⁶⁵

In the 2012 election cycle, for example, three Koch-coordinated dark money entities made \$274 million in contributions to at least nine dark money entities – such as “Americans for Responsible Leadership” – that, in turn, spent \$170 million directly on federal elections, according to the Center for Responsive Politics.⁶⁶

Two of those recipient groups were eventually fined a combined \$190,000 by the Federal Election Commission for failing to properly report their electioneering spending – also coordinated by Koch network entities – in the previous election cycle.⁶⁷ But those fines only a tiny fraction of the amounts that the groups spent on elections.⁶⁸

⁶⁴ Matt Friedman, *E-mails reveal prominent law firms were among donors to Caddle’s dark money groups*, POLITICO (April 6, 2022), <https://politi.co/3LqSd9c>.

⁶⁵ Daniel Schulman, *The Making of the Kochtopus: How the billionaire brothers built a political network that rivals the GOP itself*, MOTHER JONES (Nov. 2, 2014), <https://bit.ly/39yPdKt>.

⁶⁶ *The Dark Money Machine*, OPENSECRETS, <https://bit.ly/3No2dRX>.

⁶⁷ *Koch brothers groups hit with massive fines from CREW complaint*, CREW (July 13, 2016), <https://bit.ly/3wEq6hi>.

⁶⁸ Libby Watson, *FEC fines Koch groups for illegal dark money*, SUNLIGHT FOUNDATION (July 13, 2016), <https://bit.ly/3FVDQZe>.

A share of Koch Industries' revenue comes from the federal government. In 2011 and 2012, when the Koch family's dark money spending may have been at its height, Koch Industries subsidiary Georgia Pacific received more than \$50 million in federal contracting revenues. All of this money was dispensed by the Department of Defense for "toiletry paper products."⁶⁹

IV. Federal Contractors Could Use Dark Money Groups to Hide Activities that Evade the Federal Ban on Political Activities

There are many documented examples of federal contractors giving money to super PACs and other electioneering groups. In some cases, the FEC has taken action, and in other cases it has not. But the existence of these contributions and at least some enforcement action by the FEC points toward a conclusion that contractors that do seek to influence elections have an incentive to do so through the use of dark money contributions.

In recent years, the FEC has fined several federal contractors for making contributions to super PACs. The most recent of these occurred in April 2022, when the FEC fined Hamilton Company \$56,000 in connection with its \$300,000 contribution to the super PAC "Americas for Prosperity Action" during the 2020 campaign.⁷⁰

AshBritt Inc., a defense contractor, made a \$500,000 contribution to a super PAC supporting Trump's 2016 candidacy. The company at the time was fulfilling a \$40 million federal contract. To settle an investigation by the FEC, AshBritt's chairman agreed to pay a \$125,000 fine. The contribution was returned by the super PAC.⁷¹

The GEO Group, a for-profit prison company, supported Trump's 2016 campaign by making a \$225,000 contribution to a super PAC supporting Trump. By mid-2018, the GEO Group had received more than \$700 million in contracts from the Trump administration.⁷² The GEO Group argued that the contribution to Trump's super PAC was legal in spite of the prohibition on contractors making political contributions because it was made by a

⁶⁹ Koch Industries contracts, FEDERAL PROCUREMENT DATA SYSTEM, <https://bit.ly/3sMZ4mP>.

⁷⁰ Madison Hall, *Federal government contractor fined \$56,000 for making an illegal contribution to a prominent conservative super PAC*, INSIDER (April 21, 2022), <https://bit.ly/38zMW1G>.

⁷¹ Zach Everson, *Government Contractor Pays FEC \$125,000 Penalty After Donating To Pro-Trump Super PAC*, FORBES (Aug. 24, 2021), <https://bit.ly/3wj9Jqm>.

⁷² Rick Claypool, *Trump's Prison Profiteers*, PUBLIC CITIZEN (June 11, 2018), <https://bit.ly/3syRZq2>

subsidiary of the company.⁷³ The FEC deadlocked on the question, preventing it from taking enforcement action.⁷⁴

Southern Company, a large energy company, revealed that it contributed \$1 million to One Nation, a dark money group, in 2020.⁷⁵ One Nation is operated by a former chief of staff to Senate Minority Leader Mitch McConnell.⁷⁶ McConnell's former chief of staff also operates the Senate Leadership Fund, a super PAC dedicated to electing Republicans to the Senate. The primary donor to the Senate Leadership Fund in 2020 was One Nation, which funneled \$85 million into it.⁷⁷ Thus, Southern Company's contribution to One Nation may have been, essentially, an indirect contribution to the Senate Leadership Fund.

Southern Company's disclosure of its contribution to One Nation was an exception to the norm, as most companies do not reveal their giving to dark money electioneering groups. We do not know how many similar contributions are occurring.

Conclusion

It is emblematic of the shortcomings of the United States' campaign finance system that it prohibits federal contractors from spending money to influence elections but does not include a corresponding requirement that contractors disclose payments to organizations that make electioneering expenditures.

This state of affairs provides contractors with a pathway to violate the law (or at least the spirit of the law) with impunity and, at the same time, encourages increased dark money spending, while simultaneously creating public doubt in the contracting process.

Instituting a disclosure requirement would offer the public a lens into cases where federal contractors are potentially spending money to influence elections while imposing minimal burdens on contractors, themselves.

⁷³ Keegan Hamilton, *A big private prison operator may have illegally funded a Trump super PAC*, VICE (Dec. 20, 2016), <https://bit.ly/3NlxuVv>

⁷⁴ Lachlan Markay, *FEC tosses illegal donation case against private prison firm*, AXIOS (Sept. 17, 2021), <https://bit.ly/3wqxblG>.

⁷⁵ Southern Company political disclosures for 2020, <https://bit.ly/3NjBdmE>.

⁷⁶ Walker Davis, *Southern Company gave McConnell dark money group \$1 million last year*, CREW (Sept. 23, 2021), <https://bit.ly/3MvX760>.

⁷⁷ *Top Organizations Disclosing Donations to Senate Leadership Fund*, 2020, OPENSECRETS, <https://bit.ly/3yHJYTz>.

Appendix: Fortune 100 Largest Companies Assessed by Federal Contracting Status in 2020

Rank	Company	Received Federal Contracts of at Least \$1 Million in Previous Year?
1	Walmart	N
2	Amazon	Y
3	Exxon Mobil	Y
4	Apple	N
5	CVS Health	Y
6	Berkshire Hathaway	Y
7	UnitedHealth Group	Y
8	McKesson	Y
9	AT&T	Y
10	AmerisourceBergen	Y
11	Alphabet	N
12	Ford Motor	Y
13	Cigna	N
14	Costco Wholesale	N
15	Chevron	Y
16	Cardinal Health	Y
17	JPMorgan Chase	Y
18	General Motors	Y
19	Walgreens Boots Alliance	Y
20	Verizon Communications	Y
21	Microsoft	Y
22	Marathon Petroleum	N
23	Kroger	N
24	Fannie Mae	N
25	Bank of America	Y
26	Home Depot	N
27	Phillips 66	N
28	Comcast	Y
29	Anthem	Y
30	Wells Fargo	Y
31	Citigroup	N
32	Valero Energy	Y
33	General Electric	Y
34	Dell Technologies	Y
35	Johnson & Johnson	Y
36	State Farm Insurance	N
37	Target	N
38	IBM	Y
39	Raytheon Technologies	Y
40	Boeing	Y
41	Freddie Mac	N
42	Centene	Y
43	UPS	Y
44	Lowe's	N
45	Intel	Y
46	Meta Platforms	N
47	FedEx	Y
48	MetLife	Y
49	Walt Disney	N
50	Procter & Gamble	Y
51	PepsiCo	N
52	Humana	Y
53	Prudential Financial (U.S.)	Y
54	Archer Daniels Midland	Y
55	Albertsons	N
56	Sysco	Y

Rank	Company	Received Federal Contracts of at Least \$1 Million in Previous Year?
57	Lockheed Martin	Y
58	HP	Y
59	Energy Transfer	Y
60	Goldman Sachs Group	N
61	Morgan Stanley	N
62	Caterpillar	Y
63	Cisco Systems	Y
64	Pfizer	Y
65	HCA Healthcare	N
66	American International Group	N
67	American Express	N
68	Delta Air Lines	N
69	Merck	Y
70	American Airlines Group	N
71	Charter Communications	N
72	Allstate	N
73	New York Life Insurance	N
74	Nationwide	N
75	Best Buy	N
76	United Airlines Holdings	Y
77	Liberty Mutual Insurance Group	N
78	Dow	Y
79	Tyson Foods	N
80	TJX	N
81	TIAA	N
82	Oracle	Y
83	General Dynamics	Y
84	Deere	Y
85	Nike	N
86	Progressive	N
87	Publix Super Markets	N
88	Coca-Cola	N
89	Massachusetts Mutual Life	N
90	Tech Data	N
91	World Fuel Services	N
92	Honeywell International	Y
93	ConocoPhillips	N
94	USAA	N
95	Exelon	Y
96	Northrop Grumman	Y
97	Capital One Financial	N
98	Plains GP Holdings	N
99	AbbVie	N
100	StoneX	N

Source: [Fortune](#), USASpending.gov and Federal Procurement Data System.