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Disclosure Eclipse

**Nearly Half of Outside Groups Kept Donors
Secret in 2010; Top 10 Groups Revealed
Sources of Only One in Four Dollars Spent**

November 18, 2010

Acknowledgments

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Before the Supreme Court reversed its positions in two landmark campaign finance reform cases, the public was able to learn the identities of the major funders behind nearly all political advertisements broadcast near federal elections.

These assurances did not apply in 2010, the first election cycle since the court's opinion in *Citizens United v. Federal Election Commission* permitted unlimited corporate and union spending in federal elections.

Of 308 outside groups, excluding party committees, that reported spending money on this year's elections, just 166 (53.9 percent) provided any information about the sources of their funding, according to Public Citizen's analysis of Federal Election Commission (FEC) data.

Of the 10 top spending groups, only three provided information about their funders. These top 10 groups -- which collectively spent \$138.5 million, equal to 52 percent of the \$266.4 million spent by all outside groups in 2010 to influence this year's elections -- disclosed the sources of only 27.1 percent, of the money they spent.

Groups not disclosing any information about their funders collectively spent \$135.6 million to influence this year's elections. That was almost exactly double the \$68.9 million grand total spent by outside groups in 2006, the most recent mid-term election cycle.¹

Although the Supreme Court's opinion in *Citizens United* lauded the virtues of disclosure, the effect of that decision and the court's earlier retrenchment of campaign finance regulation in 2007 has been less disclosure.

There are two chief forms of federally regulated electioneering activities by outside groups: electioneering communications and independent expenditures. An electioneering communication is an advertisement broadcast in the run-up to an election that mentions a federal candidate but stops short of advocating a vote for or against the candidate. Independent expenditures expressly advocate for the victory or defeat of a candidate.

In the years between the passage of The Bipartisan Campaign Reform Act of 2002 (BCRA) and the Supreme Court's 2007 opinion in *Federal Election Commission v. Wisconsin Right to Life*,² the public received almost complete disclosure of the major funders behind electioneering communications and could be assured that such messages were financed solely by individuals. But after the court in *Wisconsin Right to Life* poked a major loophole in BCRA's prohibition on using corporate or union money for electioneering communications, the share of groups revealing the funders of their electioneering ads sunk to less than half in the 2008 election cycle and to just over one-third in the recently completed 2010 cycle.

Disclosure by Groups Making Electioneering Communications, 2004-2010

Year	# of Groups Reporting ECs	#of Groups Reporting the Donors Funding ECs	Pct. of Groups Reporting the Donors Funding ECs
2004	47	46	97.9
2006	31	30	96.8
2008	79	39	49.3
2010	53	18 ³	34.0

Source: Public Citizen analysis of FEC data

Before *Citizens United*, nearly all outside groups making independent expenditures were required by law to disclose the sources of their money. The most common exception

¹ Public Citizen analysis of data provided by the Center for Responsive Politics.
www.opensecrets.org/outsidespending/index.php

² *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007)

³ Americans for Prosperity and Focus on the Family affiliate CitizenLink each disclosed contributions accounting for less than 1 percent of the amount they spent on the elections, are not included among the groups disclosing their donors.

was for certain expenditures by “qualified non-profit” groups, which can only accept money from individuals and are prohibited from engaging primarily in influencing elections.

Although disclosure among groups making independent expenditures was higher in 2010 than for those making electioneering communications, it was much lower than in past election cycles. Among the 30 groups spending the most on independent expenditures from the 2004 through 2008 election cycles,⁴ between 83.3 and 96.7 percent disclosed their funders. In 2010, just 70 percent disclosed.

Disclosure by Top 30 Groups Making Independent Expenditures, 2004-2010

Year	Groups Disclosing Funders	Groups Not Disclosing Funders	Pct.
2004*	26	3	89.7%
2006	29	1	96.7%
2008	25	5	83.3%
2010	21	9	70.0%

Source of top independent expenditure groups, Center for Responsive Politics:

www.opensecrets.org/outsidespending/index.php

* Once case is ambiguous and was not included

Electioneering Communications

BCRA was best known for banning political parties from accepting “soft money,” unlimited contributions that often came from corporations and unions. Political parties evaded the prohibition against using such money for electioneering purposes by crafting ads that avoided using the “magic words” -- such as “vote for” or “vote against” -- that federal courts had interpreted as a threshold for express advocacy.

⁴ Because the number of groups making independent expenditures is far more numerous than those making electioneering communications, analysis for this study was limited to the 30 top spending independent expenditure groups per cycle. The top 30 groups accounted for about 76 percent of independent expenditure spending in 2010 and from between 88 and 94 percent in the 2004 through 2008 election cycles, according to Public Citizen’s analysis of data provided by the Center for Responsive Politics. CRP’s data on outside groups is available at <http://www.opensecrets.org/outsidespending/index.php>.

BCRA also barred outside groups from using corporate or union money to finance broadcast messages in the 60 days preceding a general election or 30 days before primary that mentioned a federal candidate but stopped short of express advocacy. This provision required outside groups to disclose their spending to the FEC within 24 hours of broadcasting electioneering communications and to document that the messages were financed by individuals by disclosing their sources of money.

In December 2003, the Supreme Court upheld BCRA’s soft money ban and its prohibition against corporate and union-sponsored political issue ads in the run-up to elections.

But in June 2007, in the first major campaign finance opinion handed down by the court of Chief Justice John Roberts, the Supreme Court reversed the earlier decision in part by allowing corporate and union money to finance electioneering communications if the ads were “issue oriented.” The FEC responded later that year by watering down disclosure rules to require groups making electioneering communications only to disclose contributions specifically earmarked for that purpose.⁵ This rule enabled trade associations and other outside groups to keep the sources secret.

As mentioned above, the percentage of groups disclosing the financiers of their ads fell from nearly 100 percent before *Wisconsin Right to Life* to less than 50 percent in 2008, and to just over a third in the recently completed election cycle.

Collectively, in 2010, groups making electioneering communications disclosed the sources of only \$17.3 million, or 23.3 percent, of their \$74.3 million in electioneering communication spending.

Only two of the top 10 groups reporting the most electioneering communications spend-

⁵ 11 C.F.R. § 104.20(c)(9)

ing disclosed substantial information about their funders.⁶ The top 10 groups disclosed just 10.8 percent of the money they spend on electioneering communications.

Disclosure by Top Spending Electioneering Communications Groups 2010 Election Cycle

Group	Electioneering Communications Expenses	Contributions Reported
U.S. Chamber of Commerce	\$31,207,114	\$0
American Action Network Inc.	\$16,364,625	\$0
Americans For Job Security (AJS)	\$4,598,520	\$0
Center for Individual Freedom	\$2,500,617	\$0
American Future Fund	\$2,219,776	\$0
Citizens For Strength And Security	\$1,403,110	\$5,752,000
CSS Action Fund Inc.	\$1,391,880	\$0
Arkansans For Change	\$1,335,073	\$0
Americans for Prosperity	\$1,311,631	\$1,000
Campaign Money Watch	\$1,174,718	\$1,125,000
Total	\$63,507,064	\$6,878,000

Independent Expenditures

Before *Citizens United*, corporations and unions were prohibited from making independent expenditures. Such expenditures could primarily be made only by registered political committees, which could only accept contributions from individuals and within established limits (typically \$5,000 a year).

An exception was carved out by the Supreme Court in its 1986 *FEC v. Massachusetts Citizens for Life* opinion⁷ to permit “qualified non-profits” to use contributions in excess of statutory limits to finance independent expenditures. These groups may not accept money from corporations and must not be primarily engaged in electioneering. The law

⁶ Americans for Prosperity, a group co-founded by billionaire David Koch that spent more than \$1.3 million in electioneering communications, disclosed only a \$1,000 contribution from Chicago Tea Patriots LTD.

⁷ *FEC v. Mass. Cit. for Life*, 479 U.S. 238 (1986).

has been interpreted to excuse these groups from disclosing the identities of their contributors, except those who earmarked contributions for electioneering activities.

But, as reported above, the vast majority of groups making independent expenditures use to disclose their funders. About 89 percent of the 30 biggest independent expenditure groups from the 2004 to 2008 election cycles disclosed their funders. These groups, in turn, accounted for 90 percent of all non-party independent expenditures.

While striking down the limitation on corporate-funded independent expenditures in the *Citizens United* opinion, the Roberts Court upheld the constitutionality of BCRA’s disclosure requirements relating to the funders of electioneering communications.

In addition, Justice Kennedy, who wrote the opinion, appeared to rely on the existence of strict disclosure laws as a rationale for lifting the ban on corporate-funded independent expenditures.

A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress’ findings in passing BCRA were premised on a system without adequate disclosure. With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.⁸

Such disclosure, Kennedy wrote, would enable citizens to “see whether elected officials are ‘in the pocket’ of so-called moneyed interests.”⁹

⁸ *Citizens United v. Federal Election Comm’n*, 130 S. Ct. 876, 916 (2010) (internal citations omitted).

⁹ *Id.*

But, even for independent expenditures, no provision requires the type of disclosure that Kennedy discussed. The plain rules of BCRA require such disclosures, but the FEC has gutted them.¹⁰

In 2010, as mentioned above, only 70 percent of 30 top spending groups provided any information about their funding sources. These groups disclosed the sources of only 55.4 percent of their independent expenditures.

Collectively, the groups that did not disclose reported spending \$68 million, more than 1.5 times as much as the total independent expenditures in the 2006 election cycle.

Of the ten groups that spent the most on independent expenditures, four disclosed nothing about their funders. The ten groups spending the most on independent expenditures spent about \$90.4 million, accounting for 47 percent of the total. These groups reported the sources of \$46.7 million of their spending, equal to slightly less than half of their independent expenditures.

Disclosure by Top Spending Independent Expenditure Groups 2010 Election Cycle

Group	Independent Expenditures	Contributions Reported
American Crossroads	\$21,553,277	\$22,696,055
Crossroads Grassroots Policy Strategies	\$15,556,204	\$0
SEIU COPE	\$8,340,028	\$8,605,949
American Future Fund	\$7,387,918	\$0
American Fed. of State County And Municipal Employees AFL-CIO	\$7,309,581	\$0
National Rifle Association Of America Political Victory Fund	\$6,702,664	\$6,175,350
60 Plus Association	\$6,698,287	\$0
National Association Of Realtors Political Action Committee	\$6,027,982	\$2,615,989
America's Families First Action Fund	\$5,878,743	\$2,925,000
Club For Growth Action	\$4,946,980	\$3,667,742
Total	\$90,401,664	\$46,686,085

¹⁰ See Public Citizen, *Fading Disclosure 4(2010)*, available at <http://www.citizen.org/documents/Disclosure-report-final.pdf>.