

Environmental Advocacy in a post- *Citizens United* World

Public Interest Environment Law Conference
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Public Citizen, Mar 5, 2011
www.citizen.org

- In January 2010, the Supreme Court overturned 2 prior decisions and established a new rule: For-profit corporations have a constitutional right to spend unlimited amounts of money to influence federal and state elections
- www.citizen.org/litigation/forms/cases/getlinkforcase.cfm?clD=559
- www.supremecourt.gov/opinions/09pdf/08-205.pdf

Public Citizen & “Story of Stuff” Team Up to Tell The Story of Citizens United

- <http://democracyisforpeople.org/>
- www.citizen.org/stealthpacs
- www.citizen.org/12-months-after

- The Watergate scandal that emerged from the 1972 presidential campaign resulted in comprehensive campaign finance reform. Amendments to the Federal Election Campaign Act (FECA) set a \$1,000 limit on campaign contributions and established a system of spending ceilings and a voluntary system of public financing for presidential candidates.
- In 1976, in *Buckley v. Valeo*, the Supreme Court struck down FECA's spending ceilings but upheld the constitutionality of limiting contributions to candidates, as well as the system of public financing for presidential candidates, deeming them to be reasonable steps to stem corruption:
- *“To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined.”*

- In 1982, the Court again addressed the restrictions on corporate financing of candidate elections in *FEC v. National Right to Work Committee*. This case challenged the law's requirement that corporations may finance candidate campaigns only through political action committees (PACs) that solicit contributions from individuals within the company, subject to contribution limits and disclosure. The Court agreed that government was justified in “ensur[ing] that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political ‘war chests’ which could be used to incur political debts from legislators who are aided by the contributions.”

- Although the ban on independent corporate spending to influence elections remained an accepted reality under FECA as construed in *Buckley v. Valeo* and subsequent decisions, interpretation of the prohibition was limited to express advocacy campaign ads, defined in a footnote in *Buckley v. Valeo* as messages using “words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’ ”
- Eventually, the national political parties took advantage of this narrow definition of express advocacy to aid their candidates by running corporate-funded advertisements that promoted or attacked candidates while assiduously avoiding using these “magic words.” Corporate money used to pay for these sham “issue ads” became known as “soft money.”
- In the 1996 reelection campaign of President Bill Clinton, the Democratic Party accepted unlimited corporate contributions and then transferred this “soft money” to state Democratic committees. These committees, in turn, spent soft money on television and radio advertisements that directly benefited the Clinton campaign and other Democratic candidates.
- **Use of soft money soared after that.**

Enron Led to Reform

- Congress responded in 2002 by passing the Bipartisan Campaign Reform Act (BCRA), known as McCain-Feingold. Two key pillars of the act dramatically curbed the use of corporate and union funds in federal elections.
- First, the act prohibited federal officeholders, candidates and the national parties from soliciting and spending soft money and restricted the use of soft money by state and local parties in relation to federal election activities.
- Second, BCRA made campaign advertisements that did not use the magic words subject to disclosure requirements, contributions limits and prohibitions on the use of corporate or union money. Broadcast advertisements that depict a candidate, target that candidate's election district, and air within 30 days of the candidate's primary election or 60 days of the general election were categorized as "electioneering communications," subject to regulation under federal campaign finance laws.
- In *McConnell v. Federal Election Commission*, the Court in 2003 upheld BCRA's key provisions.

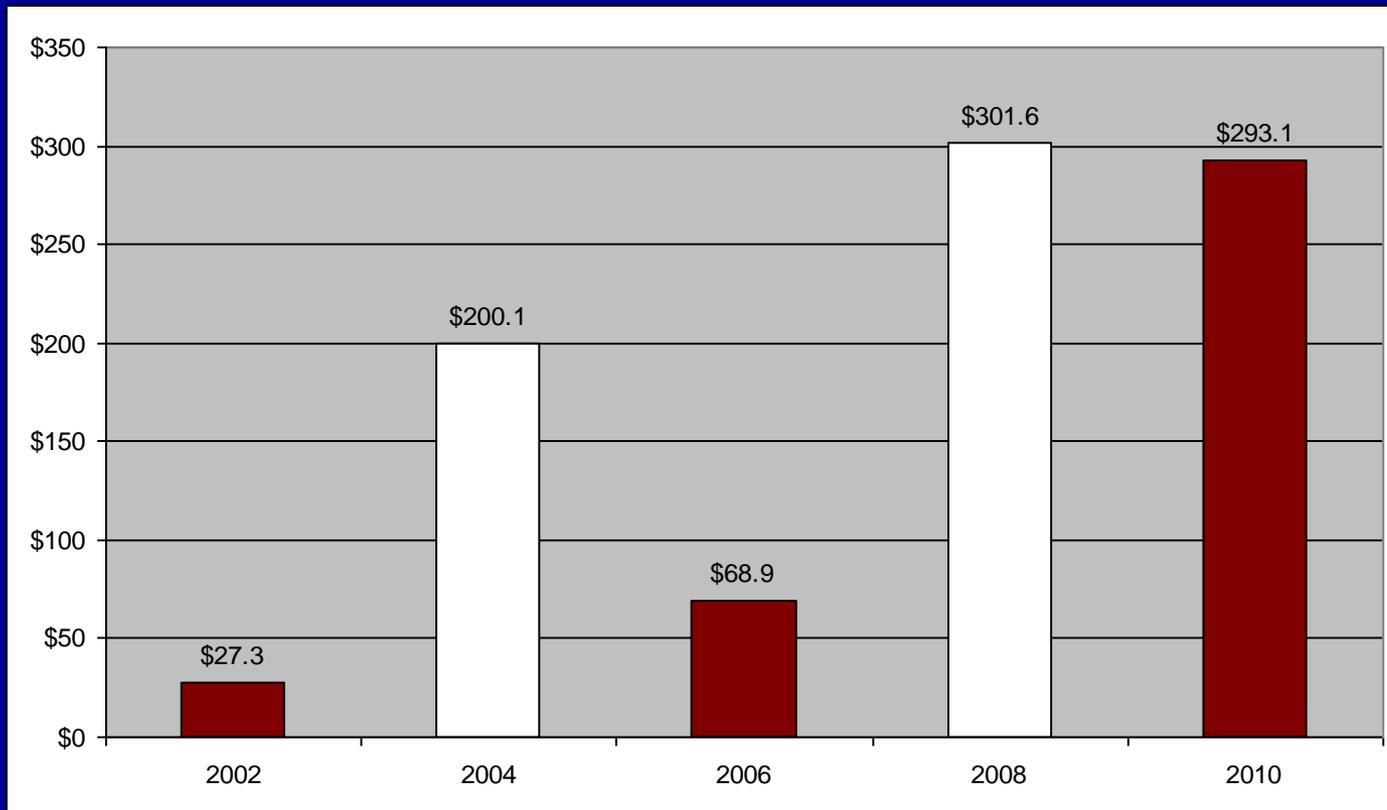
2007 SC Begins to Walk Away From Campaign Finance Reform

- In June 2007, the Supreme Court reversed the *McConnell* decision in part (*FEC v. Wisconsin Right to Life Right to Life*) by allowing corporate and union money to finance electioneering communications if the ads were “issue oriented.” The FEC, the agency responded later that year by exempting groups making electioneering communications from disclosing contributors’ identities except in special cases in which donors specifically earmarked money for that purpose. Thus, corporations, trade associations and corporate-funded front groups could spend money from their treasuries without disclosing the sources of those funds as long as the donors did not specifically give money to finance electioneering advertisements.
- Just before the 2010 elections, the three Republicans on the FEC issued a statement endorsing an even narrower interpretation of the disclosure rule. They opined that electioneering groups should only have to disclose those donors who specified that their money would be used for a specific ad, aired in a specific race.
- Because few donors are apt to attach such specific instructions to their contributions, the effect of the Court’s *FEC v. Wisconsin Right to Life Right to Life* opinion and subsequent FEC interpretations has been to gut the disclosure requirement enshrined in BCRA.

- *Citizens United* resulted from a separate challenge to BCRA's electioneering communications provision. At the center of the legal battle was a film, "Hillary: The Movie," by a group called Citizens United—a non-profit membership group that accepts money from business corporations—about 2008 Democratic presidential candidate Hillary Clinton. The film had been shown in theaters and circulated as a DVD. Those showings were not subject to BCRA's electioneering communications rules because they were not broadcast. However, Citizens United also planned to show the movie through on-demand satellite transmissions, which did fall under BCRA's definition of "electioneering communications." Because Citizens United used its general treasury funds (which included money from business corporations), its satellite transmission of the film would have violated BCRA. Citizens United also prepared three television ads to promote the movie. The ads also fell under the campaign finance law's definition of "electioneering communications" and were therefore subject to disclosure requirements under BCRA—requirements with which Citizens United did not wish to comply.

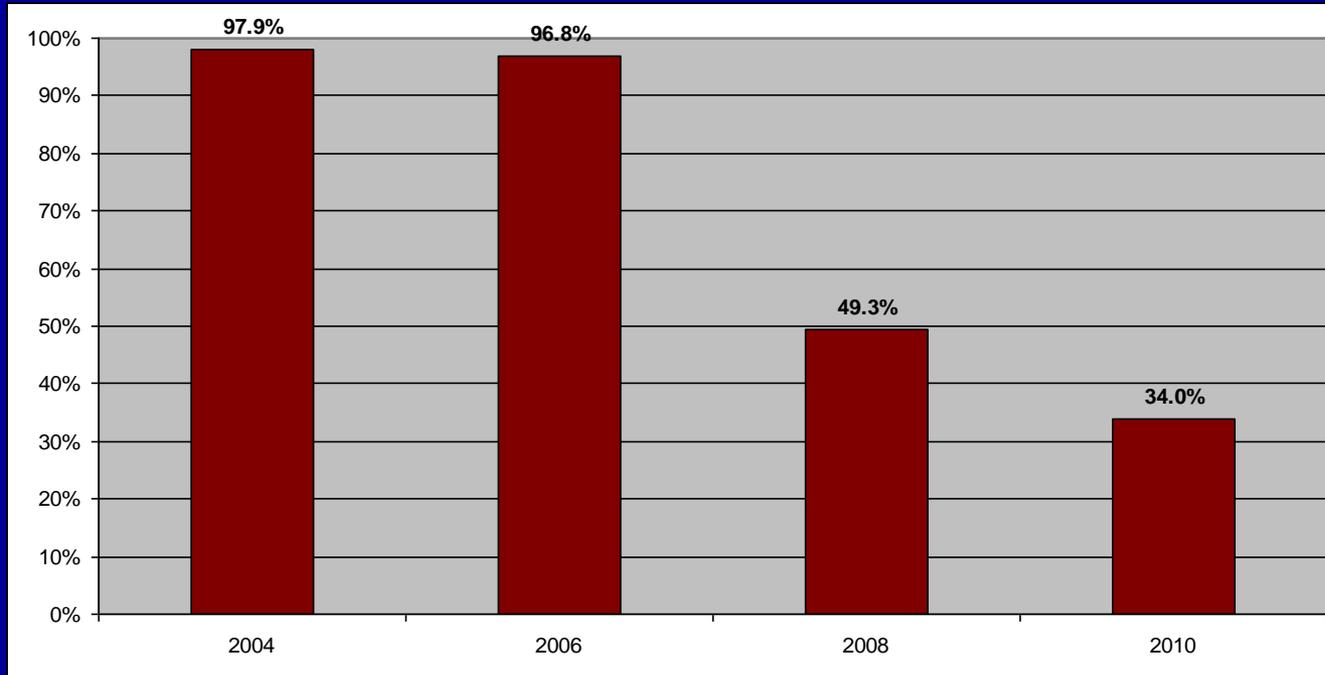
Spending By Outside Groups, 2002-2010 Election Cycles

(in millions of dollars)



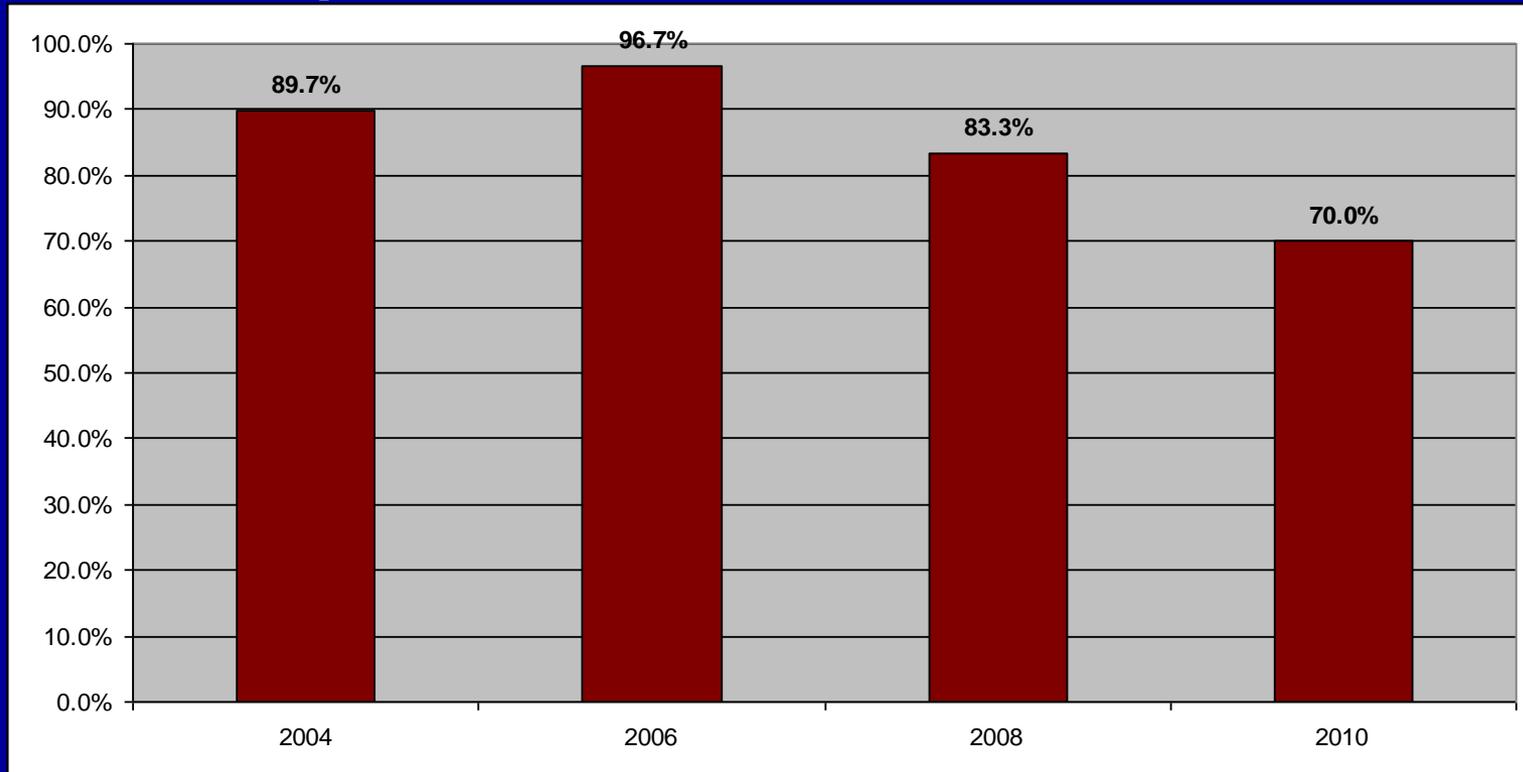
Source: Center for Responsive Politics (www.opensecrets.org).

Pct. Of Groups Disclosing Funders of “Issue Ads,” 2004-2010



Sources: Public Citizen, “Fading Disclosure,” September 2010 (www.citizen.org/documents/Disclosure-report-final.pdf) and Public Citizen, “Disclosure Eclipse,” November 2010 (www.citizen.org/documents/Eclipsed-Disclosure11182010.pdf).

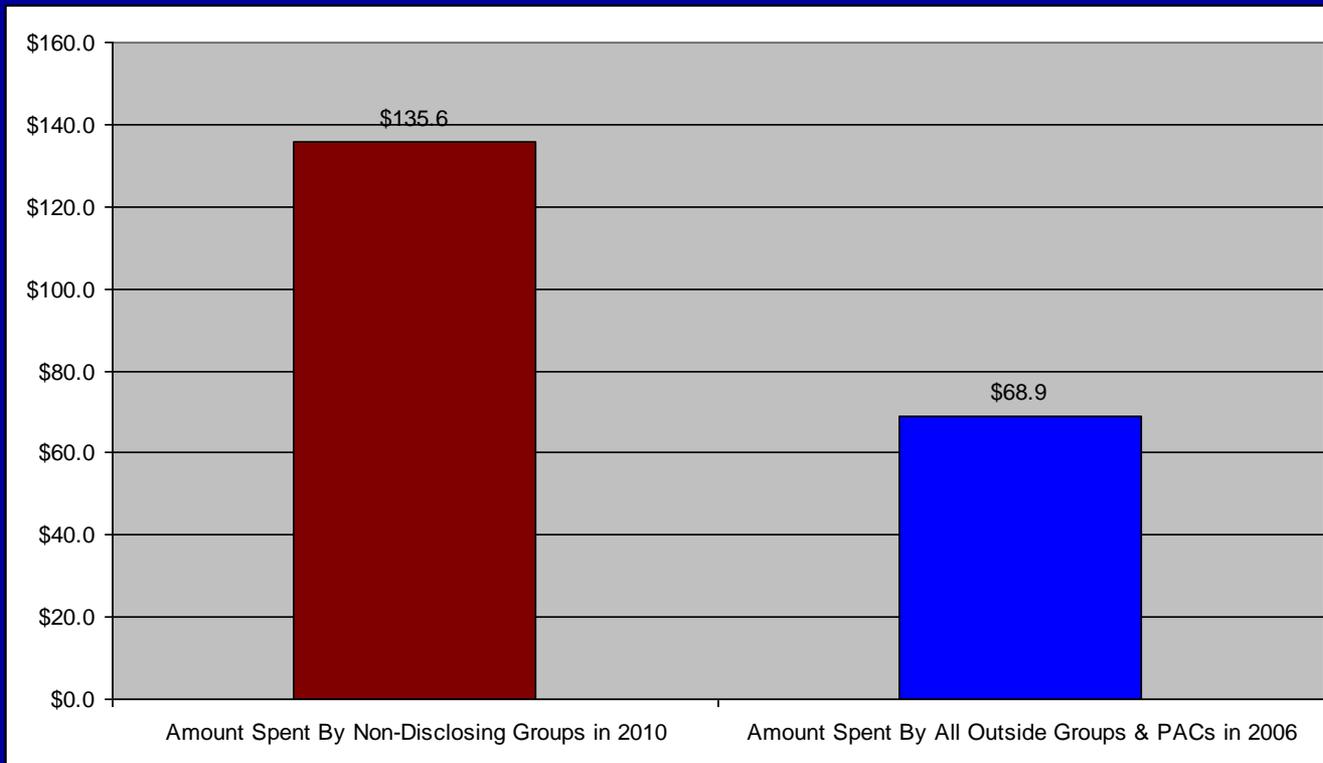
Pct. of Groups and PACs Disclosing Funders of Independent Expenditures, 2004-2010



Sources: Public Citizen, "Disclosure Eclipse," November 2010 (www.citizen.org/documents/Eclipsed-Disclosure11182010.pdf).

Amount Spent By Non-Disclosing Groups in 2010 vs. All 2006 Outside Spending

(in millions of dollars)



Sources: Center for Responsive Politics (www.opensecrets.org) and Public Citizen, "Disclosure Eclipse," November 2010 (www.citizen.org/documents/Eclipsed-Disclosure11182010.pdf).

Spending and Disclosure By Top 10 Spending Groups

Group	Party Favored	Total Spent	Total Disclosed
U.S. Chamber of Commerce	R	\$31,207,114	\$0
American Crossroads	R	\$21,553,277	\$22,696,055
American Action Network Inc.	R	\$20,935,958	\$0
Crossroads Grassroots Policy Strategies	R	\$16,660,986	\$0
American Future Fund	R	\$9,607,694	\$0
Americans For Job Security	R	\$9,005,422	\$0
SEIU COPE	D	\$8,340,028	\$8,605,949
AFL-CIO	D	\$7,378,120	\$0
60 Plus Association	R	\$7,096,125	\$0
NRA Political Victory Fund	R	\$6,702,664	\$6,175,350
Total		\$138,487,388	\$37,477,354

Source: Public Citizen analysis of FEC data.

\$140 Million (Corporate Polluters) to \$4.6 Million (Enviros)

• Anti-Climate

- U.S. Chamber of Commerce
- American Crossroads
- American Action Network Inc.
- Crossroads Grassroots Policy Strategies
- American Future Fund
- Americans For Job Security
- Club For Growth Action
- Americans For Tax Reform
- Center for Individual Freedom
- Our Country Deserves Better
- Revere America
- Club For Growth PAC
- Right Change.com
- Senate Conservatives Fund
- Super PAC For America
- New Prosperity Foundation
- First Amendment Alliance
- Americans for Prosperity (\$1.4 million)
- Americans for Limited Government
- National Association of Manufacturers
- West Virginia Conservative Foundation Inc.
- Citizens United Political Victory Fund
- Club for Growth
- Freedomworks Inc

Pro-Climate

- Defenders of Wildlife Action Fund
- League Of Conservation Voters Victory
- League of Conservation Voters Action
- Sierra Club Political Committee
- Bluegreen Alliance
- National Wildlife Federation
- Clean Water Action
- Sierra Club Independent Action
- Environment America
- Environmental Defense

- American Crossroads – spent \$60 million in 2010, pledges to double that for 2012 www.rollcall.com/news/-203720-1.html
- Saying that corporations deserve free-speech protection, one Georgia state senator has introduced "Senate Bill 160 [which] would end Georgia's 36-year ban on state political giving by monopoly utilities and other companies supervised by the state Public Service Commission. The bill would let utilities donate to all state campaigns except for the PSC, either directly or through employee-funded state political action committees."
www.ajc.com/news/georgia-politics-elections/bill-would-allow-utilities-852605.html
- Oregon lawmakers propose amending the state constitution to limit campaign contributions - but the measure's effectiveness is limited due to *Citizens United*
- www.registerguard.com/web/newslocalnews/25957235-41/oregon-contributions-political-spending-state.html.csp

Selected Energy Industry Donors

- Billionaire Trevor Rees-Jones, \$2 million to American Crossroads;
- Billionaire Robert Rowling, whose family made its fortune in oil exploration and who still has oil investments, \$4.8 million, combined to American Crossroads;
- Billionaire Harold Simmons gave \$1 million to American Crossroads.

Solutions - democracyisforpeople.org

1. Pass a Constitutional amendment

<http://democracyisforpeople.org/>

2. Pass Fair Elections Now Act (FENA) – public financing and strict limits on individual giving

www.citizen.org/Page.aspx?pid=3850

3. Pass the DISCLOSE Act – requires public disclosure of any contributor > \$1k, bans gov't contractors from making contributions, exemption for Sierra Club and NRA

www.citizen.org/Page.aspx?pid=3850

4. Shareholder Protection Act – would require shareholder approval of political spending