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**Statement of the
Center for Media and Democracy
Lisa Graves, Executive Director and
Brendan Fischer, General Counsel**

**For the United States Senate Committee on the Judiciary
Examining a Constitutional Amendment to Restore Democracy to the American People
June 3, 2014**

Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

Thank you for holding this hearing on the need for a constitutional response to the crisis of systemic political corruption resulting from recent decisions of the U.S. Supreme Court that recklessly undermine the right of the people to regulate their elections in our representative democracy.

Due to the edicts of five members of the U.S. Supreme Court to try to rewrite the First Amendment to elevate and protect the influence of the wealthiest corporations and individuals through spending extraordinary and unlimited sums of money to affect who wins political office, our democracy is increasingly for sale.

It appears that only an amendment can take back the power in our democracy from the modern-day robber barons and return it to we, the people. Only an amendment can properly restore the First Amendment to the meaning that it had during most of America's existence, as protecting the actual speech of the people of this country, rather than protecting the power of money and the political influence of the few.

We are asking the Committee to include in this record the research of the Center for Media and Democracy provided in 2012 to the Committee on the increasing role of shadowy electoral front groups that hide the true identity of the wealthy interests bankrolling influential ads and other activities.

Since this testimony was submitted, CMD has tracked the rise in election spending by 501(c)(4) and 501(c)(6) nonprofits that sidestep what remains of campaign finance limits by engaging in unlimited fundraising and spending on elections while keeping their donors secret from the public but probably not from the beneficiaries of their largesse.

We've also monitored the rise of new vehicles to evade disclosure. A 501(c)(6) "trade association" tied to the billionaire Koch brothers called "Freedom Partners," for example, did little else in 2012 besides act as a conduit for secretly distributing \$250 million in funds to other nonprofits during that election year, a fact not disclosed until nearly a year after the election – but with the true source of the funds remaining undisclosed. CMD has documented the extensive ties of Freedom Partners' staff to various operations funded by the Koch fortune or directed by operatives of Charles or David Koch, or both.

In 2012, Freedom Partners funneled \$100 million to another group, the Center to Protect Patient Rights, which in turn distributed the funds to other nonprofits. CPPR was fined \$1 million by California's elections board for its role in "campaign money laundering," where \$11 million from CPPR was shuffled between three different groups to influence a ballot initiative while evading the state's donor disclosure laws. However, the true original donors of the money that flooded that initiative process remain unknown.

Another CPPR funding recipient, Wisconsin Club for Growth (which received \$225,000 in 2011) is one of the groups that has been subject to subpoenas in a criminal campaign finance investigation in Wisconsin for allegedly coordinating fundraising and expenditures with candidates during the state's 2011 and 2012 recall elections. WCFG spent an estimated \$9.1 million on electoral issue ads during those elections and kept its funding sources a secret (although the CPPR donation was later ascertained through tax filings).

Federal and state laws prohibit coordination between “independent” groups that run electoral issue ads and candidates as a means of preventing circumvention of candidate contribution rules and disclosure requirements. If such coordination were permitted, candidates can bypass those limits and even the disclosure required of candidates and PACs and directly solicit unlimited, secret donations for so-called “issue ads” timed to influence elections -- raising the same concerns about corruption and undue influence as a million-dollar check directly to the candidate.

Many of the groups outlined in CMD's attached testimony -- including Citizens for a Strong America, Coalition for American Values, and Americans for Prosperity Wisconsin – have also been subpoenaed in the Wisconsin “John Doe” investigation into illegal coordination.

Citizens for a Strong America was entirely funded by Wisconsin Club for Growth in 2011 and 2012, effectively making it an arm of the group.

Coalition for American Values was entirely funded by the Koch-tied CPPR in 2011, and spent \$400,080 in ads in just the final two weeks of the race.

Wisconsin Club for Growth has filed suit in federal court arguing that the enforcement of the state's campaign finance laws violates its “free speech” rights. It has convinced a federal judge, Judge Rudolph Randa – a member of the Milwaukee Federalist Society's Board of Advisors and a regular participant in all-expenses-paid “judicial seminars” funded by the Koch family foundations and the Bradley Foundation – to ignore state court precedent and preliminarily enjoin the state investigation. He even ordered that the evidence obtained in the criminal investigation be destroyed, a ruling summarily reversed by the Seventh Circuit.

Judge Randa's ruling stretches existing U.S. Supreme Court precedent to new lengths and could be overturned, but the fact that a federal judge could block a state's enforcement of its own election laws regarding money secretly flowing to aid candidates for office underscores the need for reform to ensure that our Constitution reflects the people's deep

interest in a democracy rather than the “dollarocracy” that the Court has tried to graft on our First Amendment, as coined by John Nichols and Bob McChesney in their book of the same name.

This is particularly the case since the people of Wisconsin, through their elected legislators, have expressed an unambiguous interest in clean and transparent elections.

"When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence," declares the preamble to Wisconsin's campaign finance statutes.

Despite the proliferation of secretly-funded nonprofit groups that undermine these goals, it is CMD's view that "increased disclosure -- although very important -- is simply not enough." CMD has noted that "even full disclosure to the government of the real identities of [a group's] top few funders may not alert the audience to the financial or other interests behind such ads."

As we have said, "We may never know the true identity of those attempting to buy our elections through such shadowy groups -- whether they are corporations or people, domestic or foreign -- but we do know American democracy is increasingly for sale."

This is why this Committee must intercede and allow the Senate as a whole to vote on amending our Constitution to overturn the Court's damage to our democracy.



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**Super PACs and Beyond:
How Shadowy Front Groups
Are Influencing Elections and Distorting Our Democracy**

Statement of the Center for Media and Democracy*

Lisa Graves and Brendan Fischer**

Before the United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights

July 21, 2012

Thank you for holding this hearing on the accelerating crisis of how extraordinary sums of money are being raised and spent by CEOs and corporations to affect who wins political office and thus who wields power over people and policy. Our democracy *is* increasingly for sale.

These elections will by far be the most expensive elections in the history of the United States and, indeed, in the history of the world. And, that's based only on the spending that's disclosed.

Millions and millions of dollars will be raised and spent without any meaningful disclosure to the American people of the true identity of wealthy interests bankrolling influential ads and other activities. We may never know if they are individuals or corporations -- domestic or foreign.

* The **Center for Media and Democracy** (CMD) is a non-profit investigative reporting group founded in Madison, Wisconsin. We publish **PRWatch.org**, **ALECexposed.org**, **SourceWatch.org**, **BanksterUSA.org**, and the **FoodRightsNetwork.org**. Our national reporting and analysis focus on exposing corporate influence on democracy and media. Recent awards include an Izzy (from the Park Center for Independent Media, named for investigative journalist I.F. Stone), a Sidney (from the Sidney Hillman Foundation, for investigative reporting), and an award for Excellence in Wisconsin Journalism (for a report written by CMD's executive director: "Group Called 'Citizens for a Strong America' Operates out of a UPS Mail Drop but Runs Expensive Ads in Supreme Court Race?"). We share our work on Facebook under "Center for Media and Democracy" and "tweet" via **PRWatch** and **#ALECexposed**.

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Brendan Fischer is the Staff Counsel for the Center for Media and Democracy and a Reporter for its publications. He graduated with honors from the University of Wisconsin Law School, was a Peace Corp volunteer, and he clerked for the Inter-American Foundation and the Texas Civil Rights Project. He tweets via **@prwatch_brendan**.

Background. To understand what has changed, here is a thumbnail sketch of federal law in 2010 prior to the infamous Supreme Court decision known as *Citizens United* and the follow-on case named *SpeechNow*. If you had the money to spare, you could give a maximum of \$2,500 to each candidate, \$5,000 per PAC (which theoretically makes independent expenditures not coordinated with the candidate), and \$30,800 to a political party, for a combined total limit of \$117,000 per cycle. Donations to, and spending by, these entities would be disclosed for anyone to examine.

But, since 2010, there are no limits on how much money you can give to a PAC -- although the donors and spending will be disclosed. These “Super PACs,” which are often run by friends of the candidates, are raising enormous sums via \$500,000 or \$1,000,000 checks. Most Americans couldn’t afford to “max-out” under the previous campaign contribution limits, which well exceed the income of most voters. However, now a super-minority of people is limited only by their bank accounts in how much they can give to a PAC to try to alter the course of American history.

As a result, one recent analysis found that 80% of the tens of millions raised by SuperPACs, so far, came from only 196 individuals. They “represent” .0000006 of the country’s population, and they will have an exponentially disproportionate impact on who wins and who loses this election. The other 99.9999994% of the population is basically out of the equation, except for the effort to manipulate the vote through attack ads or pro-candidate marketing pitches in feel-good TV ads.

Although substantial majorities of Americans (Democratic, Republican, Green, or Independent) believe the *Citizens United* decision was wrong, that corporations are not entitled to all the same rights as people, and that corporations already have too much power in our democracy, the PAC donations so far show that it is primarily people, not corporations, fueling these SuperPACs.

The reality is that some CEOs and their families have amassed such a massive “treasury” of money from their corporate investments that their personal capacity to put money into elections exceeds the treasuries of most companies -- and even some countries. The staggering amounts of their political donations may advance the corporate agenda and profits of these individuals (and their investments), but most of the SuperPAC donations so far are not directly *from* corporations. (That is one of the reasons why requiring shareholder approval of corporate election spending is the right thing to do in a democracy, but it is not sufficient; additionally, such rules will have not affect very powerful privately-controlled companies, like Koch Industries and Peabody Coal.)

But that’s only the part of the spending to influence voters (mainly through ads) that *is* disclosed. Special interest groups that do *not* register as PACs have been emboldened -- by a number of judicial rulings, by the political deadlock at the Federal Election Commission, and by IRS rules that have not kept pace with the times. Some activities are advocacy and public education well within the rules, while others walk, talk, and spend like a PAC to influence elections.

Some act under the rubric of “issue ads” or partisan movies that purport to fall under the tax-exempt missions of non-profit groups. But it is no coincidence the ads or movies happen to be aired mainly before elections and are targeted mainly to battleground states and districts. That is precisely what the non-profit corporation calculatingly named “Citizens United” does. With the way the laws have been distorted, if a group does not “primarily” spend on ads with the magic words of “express advocacy” (vote for, vote against, or elect) and spends 51% annually on thinly-disguised “issue” ads under loosely-interpreted IRS rules, it can spend millions influencing voters or attacking candidates while insulating their donors from the public scrutiny that is now focused on SuperPAC donors. That is one of their perverse selling points.

Sunshine versus the Lure of Dark Money. Today's hearing shines a light on some of the big names who are openly spending money on Super PACs to help the candidate and agenda they want to win. Some of these billionaires or millionaires have long been public supporters of a particular political party or candidate. Notably, at least part of their spending in elections occurs in the light of day, although many people are rightly distressed by the influence of this money.

Though they may be vilified for trying to buy this election, some may be motivated to try to prevent the "other side" from buying the election and so attempting to fight fire with fire, as comedians Bill Maher and Stephen Colbert have suggested. Some may be quiet philanthropists who want to help make the world a better place. Others want to remake it in their own image and greedily grab more wealth through controlling the levers of power to privatize (profit-ize) and kill programs they ideologically hate, like Social Security or Medicare that they will never need.

Some "Super Donors" may relish the aura and reality of power that making such big political donations brings them among friends, colleagues, campaign workers, and others. The brands their wealth is associated with may be sufficiently enormous or popular or long gone that there is little risk of significant consumer reaction to their political agenda and much to gain if the horse they are betting on in the election wins the race. (Or they may believe they have much to lose if for example a candidate wins who believes that regulating their industry is in the public interest.) Long before there were Super PACs, many were already politically influential or were big-time "bundlers" whose connections or glamorous parties could generate many checks for campaigns.

In addition to the desire to shape public policy, such contributions can have socially competitive elements, a keeping-up-with-the-Jones' or an arms-race approach. Yet, there may still be some upper limit or outlier amount where such donations would provoke widespread public revulsion.

"Fortunately" for Super Donors and corporations that want to spend money secretly, nonprofit groups like Karl Rove's Crossroads GPS come to the rescue. Although their financial gifts to such groups are hidden from the rest of us, they need not fear their political beneficiaries won't know who's who. Informally, they can make sure everyone "who counts" will know them.

Efforts to address this have been thwarted. In sum, under provisions of Bipartisan Campaign Reform Act (BCRA, known as McCain-Feingold) that were *not* struck down in the *Citizens United* case, Congress sought to shed light on sham issue ads that were really "electioneering communications" by requiring that "all contributors who contributed" to the group running the ads be disclosed – if the donor gives \$1,000 or more and the group spends more than \$10,000.

But a group called "Wisconsin Right to Life" -- an instrument of James Bopp's agenda -- got the U.S. Supreme Court to strike BCRA's bar on corporations and unions spending from their general treasuries on electioneering communications if the ads did not contain the magic words of express advocacy or their "virtual equivalent," whatever that is. The FEC then decided donors only had to be disclosed if they *intended* the money be used in that way, although Congress avoided such a loophole. Rep. Chris Van Hollen challenged the FEC and won in district court.

Requiring disclosure only of those donors who say they are giving "for the purpose of furthering an independent expenditure" has resulted in more money being spent by nonprofit groups and a diminishing percent of donors disclosed. The rules operate like a "Don't Ask/Don't Tell" policy to keep the public in the dark. Meanwhile Senator McConnell is trying to use the First Amendment like a sword to prevent *any* disclosure, claiming disclosure chills speech (money).

Nonprofits Are Now the “Swiss Bank Accounts” of Spending on Ads to Influence Elections.

Perhaps one of the grand ironies of the current partisan divide is that the same party that is demanding in many states that voters prove their identity to vote is fighting tooth and nail to prevent the disclosure of the identity of donors to special interest groups running ads to influence voters. The proponents of new restrictive laws to make it harder for Americans to vote have filled the airwaves with baseless claims of “voter fraud” to impose new identification restrictions -- that track the model bill of the American Legislative Exchange Council that has been outed by ALECexposed.org -- but they (like ALEC) simultaneously seek to keep the identity of donors to special interest groups influencing the elections and thereby public policy hidden from view.

Unlike for direct contributions to candidates, there are no bars on foreign national or foreign corporations contributing to nonprofit groups that are not PACs. There are also no limits on how much money can be given, as with Super PACs but without disclosure of donors, big or small.

Nonprofits really are becoming the Swiss bank accounts of spending to influence elections.

With nonprofit spending on ads, the donors are kept secret from the American people, basically forever. And, the spending is not counted in mandatory reports to the FEC that were designed to keep the press and public more aware of who is behind such advertising. Instead, nonprofit groups file an annual form with the IRS, usually months after an election is over, that summarizes their revenue and spending (often described as “educational” activities). The forms provide no details about what kind of ads were purchased, where they ran, or what they said.

The Federal Communications Commission, with three commissioners and a current Democratic majority, recently required TV stations -- in the 50 biggest media markets affiliated with the four major commercial broadcast networks (NBC, ABC, CBS, and FOX) -- to post information about political ads that are purchased. The rule -- more than a decade in the making -- leaves out many cities (for example, all of Wisconsin except Milwaukee) and some whole states (such as Maine, Vermont, and New Hampshire) as well as major broadcast outlets like Univision. But it is a step in the right direction and an important interim measure while comprehensive reforms are pushed.

Meanwhile, Politico recently reported that Karl Rove’s Crossroads operations (the PAC called “American Crossroads” and the nonprofit called “Crossroads GPS”) plan to spend about \$300,000,000 in the 2012 elections -- in combination with about \$400,000,000 from entities connected with the Koch Brothers and another couple hundred million, for a grand total of one billion dollars. Only a small part of Rove’s part of this spending and donors will be disclosed, through the American Crossroads PAC, whose funders have been almost exclusively billionaires and corporations. Crossroads GPS is not registered as a PAC and is instead a 501(c)(4) nonprofit.

Just doing the math, Rove’s PAC received nearly \$6 million in funds last month and had \$31.5 million in the bank. That leaves a couple hundred million of his \$300 million spending pledge unaccounted for. Under current law, the public will not know the revenue of his nonprofit, Crossroads GPS, until mid-2013, and even then the American people will not know the identities of the corporations or individuals that bankrolled it, unless something dramatically changes.

Rove’s public PAC and his dark money operations are enormously powerful and troubling. The IRS has reportedly begun scrutinizing such nonprofits and the New York Attorney General has opened an investigation about how much of his nonprofit’s work is genuinely for the benefit of the general public as required by its tax exemption, versus for narrow or partisan gain. With only about 100 days before the election, neither of these will be resolved before that money is spent.

Conclusion. As case studies of nonprofit spending detailed in the appendix show, there are many types of groups besides candidates and SuperPACs whose spending influences elections. Some such groups fully comply with weak existing laws; some appear to exploit the lack of disclosure required about the corporations or individuals that are bankrolling their operations or their spending on ads. Some obscure even basic address information about who or what the group really is. In this Wild West environment, and with the impediments to enforcement of the current rules, it appears to be extremely easy for a nonprofit group to basically launder money to influence elections that a corporation or individual does not want connected to themselves.

There is no limit on the receipt of money from foreign corporations or individuals that is spent on such ads by 501(c)(3), (4), and (6) organizations. Despite misleading assertions that the Court has leveled the playing field between corporations and unions, the most closely regulated entities appear to be the (c)(5) unions, which constitute the only one of these major 501(c) categories that definitively represents an association of individual Americans and that is not a corporate-funded front group or fronting for some other hidden interests. They are also required to report their overall political spending to the Department of Labor in a way no other nonprofit category is.

That's why we know so much more about their spending in elections than other entities, which leads to many distortions in reporting on election spending since groups like Americans for Prosperity and Crossroads GPS are not counted. The other groups involved in elections, whether their listed name is "Citizens" or "Americans" "Coalition" "League" or some other such identifier, unlike unions, might have very few donors or members and their financial backers could be a mere handful of extremely wealthy individuals or closely held corporations.

In the current environment, this information is hidden from public view unless the group files as a PAC or independent expenditure group. Moreover, the definitions of an "independent expenditure" and the amount of political activity that would disqualify a 501(c) from tax-exemption need real clarification to drive as much fundraising and spending that influences elections into the sunshine and out of the darkness.

But, to be quite blunt, increased disclosure -- although very important -- is simply not enough.

As an organization that investigates front groups and the activities of shadowy nonprofits, the Center for Media and Democracy can attest that even full disclosure to the government of the real identities of the top few funders may not alert the audience to the financial or other interests behind such ads. And, as the CAVA example in the appendix shows, the funder disclosed may just be another unknown or secretive entity.

And, then you have the situation demonstrated by the SuperPACs themselves. People can learn who funds them but depending on the effectiveness of the ad, an audience provided with the names of the main funders may not know who they are or have time or capacity to look further.

In sum, the activist judges, abetted by partisan politicians, who have changed the law to turn our elections into a "marketplace of ideas" have actually transformed it into just a marketplace. In that marketplace, voters are sold goods they cannot return (un-elect) for years at a time by groups whose financial interests or ideological agenda are secret and with no accountability for whether the ads are truthful or deeply misleading. A candidate's "independent" allies can run attack ads they can disavow if the ads go too far, and they usually know who the major donors are.

Meanwhile, elected officials can be threatened by corporations or their front groups with the potential that they will be subject to potentially overwhelming (and indeed unlimited) spending if they vote the wrong way. That has certainly been one of the ways the NRA has wielded its financial heft even before *Citizens United*. The NRA does not always have to spend in each election to win its results; through its financial reserves it has Cold War-style deterrence powers.

And beyond all this, there is simply no rational denying that extraordinarily wealthy corporations and individuals now have more potential power over who wins elections than at almost any time in a century, since dating back to the era of the “robber barons.” The system really is broken.

Given the short-time before the election and the political reality in Congress, there appears to be no time or power to do anything legislatively in response to the coming tsunami of ads. In some ways, the question is what happens next, *after* the first post-*Citizens United* presidential election.

Numerous public interest groups – such as Public Citizen, People for the American Way, Move to Amend, Free Speech for People, Common Cause, and the Center for Media and Democracy, several major labor unions, and other organizations, plus socially responsible businesses and several state officials – are on record calling for *Citizens United* and related decisions to be overturned.² We know the laws must be changed to restore the proper role of citizens (not unelected judges) in setting rules for our elections and the role of corporations in our democracy.

The movement that is being built in cities, counties, and states across the country to reject what *Citizens United* has come to symbolize grows stronger by the day. It will grow stronger still as Rove and his allies unleash their funds in this election, come what may on election day. The people know something’s got to give. They know the laws must change because too many politicians are already too captured by the status quo of how they themselves must raise money to fund their elections and retention in office. We know that many laws must be changed to restore the proper place of We the People in our democracy: the Constitution and election, communications, corporation, and tax laws. It may seem daunting, but what is the alternative?

² Here is the full list of endorsers of the statement of principles of the united4thepeople.org constellation of groups: 350.org, The Berkshire Environmental Action Team, California Church Impact, Campaign for America's Future, Campus Progress, Center for Biological Diversity, Center for Corporate Policy, Center for Environmental Health, Center for Health, Environment Justice, Center for Media and Democracy, Center for Science in the Public Interest, CivicSponsor, Clean Water Action, Clean Water Network, Coalition of Immokalee Workers, Code Pink, Coffee Party USA, Common Cause, Communications Workers of America, Consumer Action, Consumer Watchdog, CREDO Action, Corporate Accountability International, Democrats.com, Democracy Unlimited, Demos, Drinking Liberally, Des Moines Chapter, Earthworks, Earth Day Network, EnviroJustice, Ethical Markets, Food and Water Watch, Food Empowerment Project, Franciscan Action, Free Speech for People, Friends of the Earth, Generation Waking Up, Get the Dough Out, Global Alliance for Incinerator Alternatives (GAIA), Global Community Monitor, Grassroots Recycling Network, Greenpeace, Hip Hop Caucus, Indiana Alliance for Democracy, Institute for Agriculture and Trade Policy, Institute for Policy Studies Global Economy Project, International Forum on Globalization, International Labor Rights Forum, Liberty Tree Foundation for the Democratic Revolution, Main Street Alliance, Maryknoll Office for Global Concerns, Money Out of Politics, MoveOn.org, Move to Amend, National Alliance of Latin American and Caribbean Communities, National Congress of Black Women, National Council of Jewish Women, National Council of Women's Organizations, National Education Association, National Women's Health Network, The New Bottom Line, New Progressive Alliance, Oil Change International, OMB Watch, The Other 98%, Pachamama Alliance, Pax Christi USA, People for the American Way, Pesticide Action Network North America, Physicians For A National Health Program, Program on Corporations Law & Democracy, Progressive Democrats of America, Public Campaign, Public Citizen, Rainbow-PUSH Coalition, Rainforest Action Network, Rebuild the Dream, Renew Democracy, Responsible Wealth Project, RootsAction, Sacramento for Democracy, Sea Turtle Restoration Project, Service Employees International Union, Sierra Club, SisterSong Women of Color Reproductive Justice Collective, Story of Stuff, Sum of Us, The American Institute for Progressive Democracy, The New Bottom Line, The Other 98%, The Pachamama Alliance, UAW, Unitarian Universalist Association of Congregations, United for a Fair Economy, United Republic, U.S. PIRG, U.S. Youth for Sustainable Development, Veterans for Peace, VPIRG, We the People Campaign, Where's Our Money, Wisconsin Democracy Campaign, Wisconsin Wave, A project of the Liberty Tree Foundation, Wolf-PAC, Working Families Party, Working Families Win, and the World Constitution and Parliament Association.

As this conversation moves forward in the months ahead, we must be clear about what proposed solutions might fix which identified problems, such as those identified by in our case studies and other investigative reporting. We must be mindful of both intended and unintended consequences of constitutional amendments to solve the vexing problems that are undermining the integrity of our elections and even what it means to be represented in this democracy.

To help work through these issues, Greg Colvin, who is a partner at the law firm of Adler & Colvin, who has studied and counseled on nonprofit political tax law issues for many years, has devised twelve questions he recommends that drafters and reformers answer, in addition to ensuring that the language of any amendment is as brief and clear as it can be:

Twelve Questions for Drafting a Constitutional Amendment on *Citizens United* & Beyond:

1. What is the main purpose? Is it to drive the big money, from all sources, out of elections? Or is it to abolish corporate personhood?
2. If none of the rights extended to corporations are still protected by the Constitution, what would the consequences be -- outside of the realm of elections?
3. What would happen the day after the amendment was adopted? Would corporate and business spending in elections stop or would legislation and litigation be required?
4. What kinds of legal entities does the amendment apply to?
 - a. business corporations
 - b. nonprofit corporations
 - c. labor unions
 - d. other forms of organization (associations, trusts, LLCs, partnerships)
 - e. all of the above
5. How should the campaign spending of individuals (including candidates) be regulated?
 - a. no limits on personal spending
 - b. authorize Congress and the states to set limits
 - c. set dollar limits in the Constitution
 - d. prohibit completely
6. Should all campaign contributions and expenditures be publicly disclosed? Or should Congress and the states allow small donations to be anonymous? In view of all that secret money that flows through nonprofit groups for political "issue ads," how do we force them to disclose their sources?
7. Should public financing of campaigns be required, permitted, or prohibited?
8. Does the amendment cover both candidate elections and public votes on ballot measures?
9. Are all levels of government covered: federal, state, city, town, and county?
10. Is any special wording needed to protect freedom of the press?
11. Should other subjects be covered in the amendment, such as making election day a holiday, shortening the campaign season, simplifying voter registration, requiring paper ballots, addressing voter disenfranchisement?
12. Should there be two or more amendments on different issues, or one unified proposal?

We believe these important questions need to be answered as part of any amendment strategy. In the view of the Center for Media and Democracy, the Supreme Court decision in *Citizens United* must be overturned because it allows the voices of real people to be drowned out by ventriloquists who throw their "voices" through money. The Court claims our democratic charter commands that we allow untrammelled amplification of those who have the money to fund the purchase of commercial TV ads over the rest of us who don't. We the People know it does not.



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Beyond Super PACs

Appendix to the Testimony of the Center for Media and Democracy July 22, 2012

Case Studies of Nonprofit Spending that Influences Elections. The Center for Media and Democracy has been working to expose corporate front groups for almost twenty years. Although Congress has previously passed measures to address some of the most egregious ways money and virtually anonymous attack ads are undermining the integrity of American elections (as with the 527 rules adopted in the middle of the 2000 campaign and BCRA in 2002), some Senators have thwarted much needed disclosure.

In this climate, it should come as no surprise that groups that do not report their donors or their ad spending have flourished. Some of the groups, like the U.S. Chamber of Commerce and its Institute for Legal Reform, have been around for years and have been increasingly involved in activities that ordinary citizens perceive as political or electoral. Other groups have popped more recently, with little information about who they really represent, let alone who funds them.

Many groups running ads to influence elections are operating outside of the PAC rules as 501(c)(3), (4), (5), and (6) organizations. Concerns about them need to be part of the discussion of the problem and the search for solutions. The case studies below focus first on the most recent major post-*Citizens United* election (in Wisconsin) and on the dark money spent in the Iowa presidential primary.

Americans for Prosperity



Despite what AFP materials say, it claims this isn't about candidates...

David Koch's Americans for Prosperity (AFP) reportedly spent \$10 million on Wisconsin's election that was held last month in which a million citizens petitioned to recall controversial Governor Scott Walker but fell short on election day. It spent more than Walker's opponent, Tom Barrett, raised or spent, but it did not register with the state elections board, did not disclose who besides Koch was funding its operations, and did not report how it spent the \$10 million it bragged about spending.

AFP's activities provide a snapshot of the group's likely operations in the presidential race and other elections as part of the \$400 million David Koch and his brother Charles have reportedly pledged as part of the billion dollar club Rove is helping in order to win the White House and Congress.

In the weeks before the election, the director of AFP's Wisconsin arm, Luke Hilgemann, told reporters AFP's ads, bus tours, rallies, and mobile phone banks had nothing to do with the elections: "We're not dealing with any candidates, political parties or ongoing races." One of the thousands of door hangers distributed by AFP is photographed above and plainly contradicts AFP's claims. Hilgemann also said "We're just educating folks on the importance of the reforms" of Walker -- which AFP previously backed with a "Stand with Walker" ad and sign blitz in 2011 when protests of the governor's reforms rocked the state.

The AFP Foundation is a "charity" registered under Section 501(c)(3) of the Internal Revenue Code. It spent at least \$3 million on television ads that looked like clear appeals to re-elect Governor Walker. The

ads touted the alleged benefits of Walker's controversial changes to state law and reinforced similar themes of ads by the candidate. The AFP Foundation also organized a series of meetings across the state to "educate" voters on the importance of Walker's reforms. The ads and meetings were produced in collaboration with the Wisconsin-based MacIver Institute, which is also organized under Section 501(c)(3) of the Code.

As 501(c)(3)s, both the AFP Foundation and MacIver Institute are prohibited from intervening in political campaigns. This absolute prohibition on 501(c)(3) electoral activity has been justified because corporate or individual donations to groups like these can be written-off as tax-deductible charitable deductions. The policy and legal judgment is that American taxpayers should not forego tax revenue so a corporation or individual can influence elections – in other words, taxpayers should not be forced to subsidize a corporation's or person's political activity.

AFP organized rallies, canvassing, phone banks, and bus tours to promote Walker's reelection. Starting a week before the election, the group kicked-off the "A Better Wisconsin Bus Tour" and visited ten Wisconsin cities before concluding the tour three days before the election in Racine, where Walker's race and that of a state senator were particularly close. AFP's Illinois arm bused-in out-of-state residents to meet up with the rally and canvass Racine neighborhoods to "make our voices heard in support of the Wisconsin reforms." Attendees were charged only \$5 for a round-trip bus ticket with lunch and dinner provided. (By comparison, a round-trip commercial bus ticket from Racine to Chicago would cost \$47, lunch, dinner, and politics not included.)

AFP also boasted that it flew-in 70 paid staff members for the effort, and recruited students and others to call voters on AFP-provided cell phones (dubbed "Freedom Phones") and to canvass neighborhoods. Other AFP arms across the country organized "phone banks for patriots" to make phone calls to tell Wisconsin residents to "support the Wisconsin reforms" before the election. All these supposedly non-electoral activities stopped once Walker won the race.

AFP does have a (c)(4) wing which can engage in a limited amount of "independent expenditures," in the aftermath of the *Citizens United* decision, but based on Hilgemann's repeated denials that AFP was doing so, it is not clear if AFP actually classified the expenses for the canvassers, bus tours, and phone banks under the 501(c)(3), which gives a tax write-off to donors, or its 501(c)(4). What is clear is that it disclosed no independent or electioneering expenditures to the state, even though David Koch's right-hand man who manages AFP's daily activities, Tim Phillips, told CNN the group spent a total of \$10 million supporting Walker in Wisconsin. **AFP refused to disclose its donors or report expenditures.**

Citizens for a Strong America

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In addition to tracking AFP in Wisconsin and other states, the Center for Media and Democracy also identified another group spending to influence an election in the state that was linked to AFP staff.

That group, called "Citizens for a Strong America" (CSA), spent over \$200,000 on ads in Wisconsin's Supreme Court race, but as the

Center for Media and Democracy documented, its address of "834 Park Avenue #306" in Beaver Dam, Wisconsin, was nothing more than a drop box at a UPS Store. CSA ran attack ads about Joanne Kloppenburg in her race against David Prosser, a judge and former Republican state legislator.

When the ads were run, CSA listed no information about its leaders, employees, or funders on its website, citizensforastrongamerica.net. Its contact information was a free Google mail account: citizensforastrongamerica@gmail.com. Its website name was purchased by John W. Connors of Milwaukee, whose job at Koch's Americans for Prosperity was described as grassroots campaigns and marketing (his work email address routed to @afphq.org). CSA's website's domain registration listed Connors's own gmail account as the contact and the business address for the domain was 1126 S 70th Street, Suite S420, in Milwaukee, which is in the same building as AFP's Wisconsin arm, but a different

room number. There is no evidence that AFP orchestrated the group's operations. Connors, whose full-time job is with AFP, is the part-time "president" of CSA, operating in the same building.

But the plot thickens. CSA's address was the same as for another group named "Campaign Now." That group's web address was also registered to Connors. And Campaign Now used the same telephone number that AFP's Wisconsin arm used to register people for buses to support Walker. And yet another group, Watchdog.org, which is associated with the "Franklin Center for Government and Public Integrity" was also registered by Connors, who previously worked for Walker and also was listed as AFP's "Students for Prosperity Director." The Franklin Center is funding state-based "news" outlets that echo the Koch agenda and ideology. Its funders are not disclosed.

Connors has helped coordinate AFP's tea party summits in the state and also helped launch AFP's new "home headquarters kit," an update on AFP's "pyramid-type campaign" that was used by operative Mark Block and then-candidate George W. Bush in Wisconsin to identify voters and get them out to vote for his run for president in 2000.

At the time the ads were run in the Kloppenburg-Prosser race, it was very difficult for the press and citizens to find out who was behind hundreds of thousands reportedly being spent in ads during the election, although they were traced back to UPS mailbox and a staffer for AFP.

Several months after Prosser won the election, CSA filed its annual 990 as a 501(c)(4) organization for the year *before* these ads were purchased. Although CSA's expensive attack ads about Kloppenburg focused on a farming case it criticized her for and also falsely claimed she had attacked her opponent for not prosecuting a child molesting priest, CSA told the IRS its charitable mission was "to promote and conduct research on public policies that reduce tax burdens on families, increase public safety, and protect the rights of parents to make decisions about their children's medical, psychological, and educational well-being." In 2010, CSA did give over \$179,000 of its \$378,000 in revenue to the group "Wisconsin Right to Life" (which has been litigating against federal and state election disclosure rules) and it gave over \$50,000 to a group called "Wisconsin Family Action."

To date, there is no public information about who funded CSA in 2011 and who underwrote its ads in the state Supreme Court election. Due to the gap in time between CSA's activities last year and IRS filing deadlines, even the general revenue and expenses of the group for that year are not known. Since CSA ran ads in the Supreme Court race, its website has had no changes for over a year.

In the current regulatory environment, there is almost nothing to prevent a nonprofit group like this from being created and used to hide the identity of donors funding ads to influence elections. What little disclosure there is comes long after the election results are in, and unless watchdog groups are keeping a close eye on such groups, the IRS may never discover the dissonance between the stated mission for which the group received its nonprofit status and its actual activities.

Moreover, under the disarray caused by *Citizens United* in creating a permissive environment for all sorts of shadowy nonprofit groups to run such attack ads, CSA is merely one example of groups operating out of mail dropboxes. **CSA does not disclose its donors or ad expenditures.**

Coalition for American Values

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Another group that ran ads before the Wisconsin recall earlier this year was the "Coalition for American Values Action" (CAVA). Last year, CAVA registered as a corporation in Wisconsin under new rules requiring the registration of corporations making independent expenditures here. CAVA's state registration lists its address as 6650 W. State Street, Suite 271, in Wauwatosa on the edge of Milwaukee. It is the address of a UPS Store with mailboxes. CAVA disclosed one other business address to the state.

The name of CAVA's treasurer -- whose address is also listed at the UPS Store -- is Brent Downs. He is also listed as the treasurer a federal PAC linked to CAVA. (He was previously the contact person for the Marquette Chapter of Students for Prosperity, which is the student arm of Koch's Americans for Prosperity, and its address then was listed as the home of AFP's John W. Connors, mentioned above.)

In the PAC's Federal Election Commission filings from June for the prior month, it reported having spent only \$78.63, raising only \$4,265, and having \$16,588 on hand at the end of May.

However, in Wisconsin, CAVA reported spending \$400,080 on ads supporting Scott Walker's reelection during that same period. CAVA reported that all the funds for these ads came from itself in two donations, and made expenditures in the same amounts and on the same days: CAVA reported receiving \$385,300 on May 24 and spending \$385,300 on May 24 (on "Media-Videos"), and receiving and spending \$14,780 on May 30 (on "Media-TV").

The real source of these funds, though, remains secret. The individuals or organizations that gave money to CAVA was not disclosed to any state or federal authority, and the people of Wisconsin are left in the dark about who is really behind these ads.

CAVA told the FEC its address is 119 S Emerson St #231 in Mt Prospect, IL. This is also the address given for CAVA's attorney, James Skyles, in its Wisconsin registration. Skyles is the Director of Operations for the Franklin Center for Government and Public Integrity (which John W. Connors helped in the launch of its Watchdog.org site.) During the recall election, the Franklin Center's Wisconsin operation, the "Wisconsin Reporter," advanced a pro-Walker, anti-union message in its reports.

Further investigation revealed that although CAVA told Wisconsin's elections board that it was also located in Illinois, it is apparently incorporated in Virginia. It incorporated on November 21, 2011, just as circulators in Wisconsin began collecting signatures to trigger the recall of Governor Walker. In Virginia, its registered agent is Matthew Muggerridge, who is also a staff attorney at the anti-union National Right to Work Foundation.

CAVA's ads flooded the airwaves in the final weeks before the election and attracted significant attention by making a unique appeal -- instead of promoting Walker or attacking his opponent, the ads attacked the premise of the recall itself. The ads depict individuals saying they didn't vote for Walker in 2010, yet will vote for him in 2012 because they oppose the recall.

Spending \$400,000 in the Wisconsin media market, over a period of just two weeks, amounted to a lot of ads. These ads, coupled with similar messaging from Governor Walker, proved effective. Exit polls on June 5 showed that sixty percent of voters thought recalls were only appropriate for cases of official misconduct and ten percent thought recall elections should never be held. In contrast, a St. Norbert College/Wisconsin Public Radio poll of voters conducted in November 2011, just as the recall was launched and CAV was created, asked if voters supported using the recall to remove Walker from office. Fifty-eight percent of those surveyed said "yes" and 38 percent rejected the use of the recall to remove the governor. The secretly funded ads appear to have made a difference in the outcome of the election.

Wisconsin voters never knew who was really behind the ads, or that the ads, which talked about recall not being "the Wisconsin way," was funded by secretive out-of-state group. Without knowing who is really behind these ads, voters cannot know whether future legislative or governmental activity favors the funders. Whoever donated over \$400,000 to CAVA to influence the recall election may have viewed their contributions as an investment, and accordingly, could communicate their identity to the politician who benefitted from that investment. If the public does not know who is funding these ads, it cannot hold elected officials accountable if they provide their benefactors a return on their investment that is untraceable. **CAVA's income sources are secret.**

The Iowa Presidential Primary Spending by Nonprofit Groups

In the Iowa presidential primary, an array of nonprofit groups organized under Section 501(c) of the tax code spent millions influencing the outcome of that state's primary and influencing the issues discussed in the primary. None of these groups disclosed their funding or spending.

Although none of the groups active in the Iowa primaries were very transparent about their funding and spending, some information about their activities was available through a review of television ad buys in the Des Moines and Cedar Rapids media markets. Compiling that data involved a site named "IowaPolitics" actually going to the four network TV stations in those markets and physically picking up the records, which helped provide some data for this snapshot of 501(c) activity in this crucial primary.

Crossroads GPS

Karl Rove's Crossroads GPS (CGPS) is a 501(c)(4) that spent \$310,000 on ads in Des Moines and Cedar Rapids between June 28 and December 27, 2011. CGPS ran three so-called "issue" ads in summer of 2011 attacking President Obama, and two ads starting in October 2011 attacking both Obama and conservative Democrat Rep. Leonard Boswell for supposedly being too supportive of Obama. CGPS ran another ad in December attacking Obama about Solyndra.

Although this is a drop in the bucket compared with CGPS' anticipated spending in the general election, it spent more than any other non-candidate group. And, as noted earlier, its donors are not disclosed. So, for example, it is not known whether the ads attacking the President on solar energy are funded in part by corporations or CEOs with a financial interest in competition with solar energy, such as oil and gas companies that have long opposed federal investments in solar energy while zealously defending their own tax subsidies. **CGPS does not disclose its donors and did not disclose these expenditures.**

Citizens United

"Citizens United" is a 501(c)(4) that spent hundreds of thousands in Iowa in the run-up to the primary. Its president David Bossie is reportedly a friend of then-candidate Newt Gingrich.

According to ad buy records, Citizens United spent \$29,600 in Des Moines and Cedar Rapids on ads that ran between July 25 and July 30. The group reportedly had spent a total of \$75,000 on anti-Obama TV ads, as of December 2. The group also ran :30 ads in late December featuring Newt Gingrich and promoting a 2009 Ronald Reagan documentary Gingrich had produced. The ad does not mention the election or Gingrich's candidacy. In the ad, Gingrich says, "[Reagan's] rendezvous with destiny is a reminder that we all have a similar rendezvous, and that together, we can create a better future for America." According to Politico, the ad reportedly cost \$250,000.

It also promoted its latest movie, "The Gift of Life," which reportedly spurred then-candidate Rick Perry to announce that he was changing his position to oppose the option of abortion if a woman becomes pregnant from rape or incest. (Citizens United's prior election-time movies focused on candidates, like Hillary Clinton.) **Citizens United's donors and its total expenditures in Iowa are secret.**

Strong America Now

"Strong America Now" (SAN) is a 501(c)(4) organization that claims not to support any particular candidate and is focused on advocating that government adopt a particular approach to cutting waste. However, in November 2011 the group's founder created a Super PAC with the same name to support Gingrich's candidacy.

During the Ames straw poll in August, SAN bussed people to the straw polls and held parties, spending \$60,000 to buy tent space and the names of previous caucus-goers and straw poll voters. The group then sent 75,000 candidate "report cards" in December 2011 rating candidates and mailed caucus videos to likely caucus-goers. SAN also spent around \$73,400 in the Des Moines and Cedar Rapids markets for 190 ads it ran between February and June 2011. These ads did not name President Obama or any of the Republican candidates were called "Our Debt & Our Future and promoted its cutting government waste. **The SAN (c)(4) does not disclose its donors and did not report its spending to influence the primary.**

American Petroleum Institute

The American Petroleum Institute (API) is a 501(c)(6) trade association funded by oil and gas interests. Like nonprofit groups organized under Section 501 (c)(3) and (c)(4) of the tax code, it is not required to disclose its funding or spending. Unlike a (c)(3), however, donations to it are not tax-deductible.

API did not endorse any candidate in the Iowa primary or any other primary state, but it did invest significant amounts of money to influence opinion about oil and gas interests, which is a precursor to what is likely to be heavy advertising in the general election for the White House. For example, API commissioned a poll in November purporting to show Iowa voters want domestic energy development. It commissioned another poll in March claiming Iowa voters oppose new oil and natural gas taxes.

API also formed the “Iowa Energy Forum,” a corporate front group, some time before June, which according to Think Progress and the Des Moines Register, planted people in Iowa forums and candidate events to ask questions to candidates about domestic energy production. The IEF sponsored lectures at Iowa State University with API chief economist John Felty, who claimed that gas companies don't get oil subsidies (which was rebutted by the Iowa Renewable Fuels Association). Their lecture in May was attended by Gov. Terry Branstad. API/IEF also sponsored a lecture in November with API's John Felty called "Energizing America: Facts for Addressing Energy Policy.”

Another API front group “Energy Citizens,” which appears to be a 501(c)(4) nonprofit, also sent staffers to the Ames straw poll and provided an air-conditioned tent with music, food and entertainment, and provided free bus rides and free tickets to the straw poll.

According to ad data, API spent around \$93,000 on ads in Des Moines and Cedar Rapids between March and October 2011. It is not known whether they ran more ads after October. The group also gave \$100,000 directly to the Iowa Republican Party. **Although it is possible to discover which corporations are affiliated with API, it does not affirmatively disclose its member corporations or the amounts they generally provide.**

Coalition for American Jobs

Like API, the Coalition for American Jobs (CAJ) is a 501(c)(6) trade association, but it is not specific about what industries it represents. According to the group's website, it “represent(s) American businesses, industries and others concerned about the impact of potential EPA action on job creation.” CAJ is reportedly supported by chemical and oil lobbies.

Like API, CAJ appeared focused on shifting the terms of the debate rather than supporting any particular primary candidate. For example, CAJ spent \$56,650 on a :30 tv ad that ran near the Ames straw poll in mid-August on several stations in Des Moines, Cedar Rapids, and Waterloo. “In a rush to regulate, the EPA wants to impose unnecessary ozone rules – government regulations that will cost business up to \$90 billion a year and threaten manufacturing and construction jobs in nearly every county in the country. Call today, and tell President Obama America needs jobs, not more government regulation,” over an on-screen phone number. Other reports say CAJ spent around \$75,000 on ads in Iowa. **CAJ does not disclose its donors and did not disclose its ad expenditures.**

The U.S. Chamber of Commerce

The country's most politically active 501(c)(6) trade association, the U.S. Chamber of Commerce, spent \$59,700 on 121 TV ads that ran between late September and late November. One ad touts Rep. Tom Latham's stance against President Obama's policies of “bigger government and higher taxes.” Viewers are told to call Tom Latham and “tell him to keep fighting for Iowa jobs.” **It is anticipated that the Chamber will spend millions more in this year's general election and it does report some of its election spending to the FEC.**

Coalition to Protect Patient's Rights

The Coalition to Protect Patient's Rights (CPPR) is a 501(c)(4) nonprofit formed in 2009 to oppose federal health care reform. It is managed by the infamous astroturf lobbying firm DCI Group. Exactly which healthcare, insurance, or pharmaceutical interests fund it are unknown.

The group spent \$10,650 on ads that ran between August 16 and August 22 in Cedar Rapids and Waterloo. The ads say: "After cutting \$500 billion from Medicare, the president's health care law created a new board of 15 unelected bureaucrats. Unaccountable -- like a Medicare IRS, with the power to cut payments to doctors, and deny seniors care to pay for more wasteful Washington spending. Tell Washington: bureaucrats shouldn't have the power to deny seniors care" with a phone number on-screen. This was part of a reported seven-figure national ad buy. **CPPR does not disclose its donors or report expenditures on ads like these.**

Know Your Care/Protect Your Care

Know Your Care (KYC) is a 501(c)(3) and Protect Your Care (PYC) is a 501(c)(4), which are is a pro-health reform group that was also active in Iowa. KYC ran :30 ads called "Bagel" in mid-August, around the time of the Ames straw poll and GOP debates, touting the benefits of President Obama's health care plan. Politico reported that the ad cost five-figures to run in the Des Moines market, but the IowaPolitics analysis of ad buys found only \$16,636. The ad was reportedly accompanied by "saturation" level online ads in Des Moines and Ames. PYC reportedly had staffers on-the-ground in Iowa in advance of the Ames straw poll, and distributed a memo highlighting each of the GOP candidates' position on health care (and particularly the individual mandate). **KYC/PYC do not disclose their donors or report ad expenditures.**

Partnership to Protect Medicare

The 501(c)(4) Partnership to Protect Medicare (PPM) claims to fight purported cuts to Medicare, and ran a :30 tv ad asserting that "some in Congress want to come between seniors and their doctor, with more cuts to Medicare Part B" and asking viewers to call Rep. Tom Latham (R) and "thank him for protecting seniors at their greatest time of need." PPM spent \$42,440 on 67 ads in Iowa between Nov 5 and November 18. The Iowa ads were part of a multi-million dollar ad buy thanking several Members of Congress for opposing cuts to Medicare Part B. **PPC does not disclose its donors or report its ad expenditures.**