

Support and Co-sponsor the DISCLOSE Act of 2015 (S.229)

March 18, 2015

Dear Senator,

This week is Sunshine Week, an annual event held to promote transparency in government.

Our organizations strongly support transparency for campaign finance activities.

Accordingly, we strongly urge you to support and co-sponsor the DISCLOSE Act of 2015 (S. 229), introduced by Senator Sheldon Whitehouse (D-RI). The DISCLOSE Act would close the gaping disclosure loopholes that are allowing outside groups to spend hundreds of millions of dollars in secret contributions in federal elections. We urge you to join with the 42 Senators already co-sponsoring the Act.

In the Senate, similar legislation, the DISCLOSE 2015 Act (H.R.430), has been introduced by Representative Chris Van Hollen (D-MD) and has 89 co-sponsors.

Our groups include the Brennan Center for Justice, the Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, Democracy 21, Demos, Issue One, League of Women Voters, People For the American Way, Public Citizen and the Sunlight Foundation.

In the aftermath of the Supreme Court decision in *Citizens United v. Federal Election Commission*, a flood of dark money in federal elections has seriously undermined the integrity of our elections and created opportunities for influence-buying and corruption. The absence of disclosure of these secret funds is also denying American citizens information they have a right to know about who is providing the money that is being used to influence their votes.

According to the Center for Responsive Politics, almost \$500 million in secret contributions were spent in the last two national elections. National polls have shown that citizens overwhelmingly favor disclosure of campaign spending by outside groups and of the donors financing these expenditures.

Campaign finance disclosure laws have been consistently upheld as constitutional by the Supreme Court for decades – starting with the Court’s landmark decision in 1976 in *Buckley v. Valeo* and as recently as 2010 in the Court’s *Citizens United* decision.

In *Buckley*, the Supreme Court held that the federal campaign finance disclosure laws were constitutional because they provide “the electorate with information ‘as to where political campaign money comes from and how it is spent by the candidate’ in order to aid the voters in evaluating those who seek federal office.”

The Court in *Buckley* also upheld the disclosure laws on the grounds that “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”

The Court in *Citizens United*, by an 8 to 1 vote, upheld the constitutionality of disclosure requirements for outside spending groups. The Court stated:

The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

Justice Kennedy wrote in *Citizens United* that with disclosure, “Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests.”

Notwithstanding the Supreme Court’s consistent support for disclosure, opponents of the DISCLOSE Act have made fallacious constitutional arguments, rejected by the Court, to support the flow of secret money into our elections.

For example, in upholding the constitutionality of disclosure requirements for outside spending groups, the Court in *Citizens United* specifically rejected the argument by opponents that disclosure requirements can apply only to ads which contain express advocacy. The campaign finance disclosure provisions upheld in *Citizens United* did not require the electioneering communications covered to contain express advocacy.

The Supreme Court also has rejected the argument that disclosure requirements are unconstitutional because of theoretical concerns about harassment.

The Court in *Buckley* found that disclosure would only be unconstitutional if there was “a reasonable probability” that the disclosure will subject the group “to threats, harassment, or reprisals from either Government officials or private parties.” And even in these circumstances the Court has said that if a group could show such a “reasonable probability,” the remedy would be to exempt that group from disclosure and not to strike down the disclosure requirements for all groups.

Justice Scalia, a strong supporter of disclosure, wrote in a concurring opinion in *Doe v. Reed* that upheld disclosure requirements for ballot petition signers:

Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.

The Court has also flatly rejected the argument made by disclosure opponents that its decision in 1958 in *NAACP v. Alabama* is a precedent for striking down campaign finance disclosure requirements.

The *NAACP* case involved an attempt by the State of Alabama to subpoena the NAACP’s membership lists at a time when the organization was fighting for civil rights and when its members were the targets of murders, violence and serious physical harassment. Under those circumstances, the Court held that the NAACP was entitled to anonymity for its members.

The Supreme Court was fully aware of its *NAACP* decision when it upheld campaign finance

disclosure laws in its 1976 *Buckley* decision. In fact, the Court in *Buckley* noted the *NAACP* decision and rejected the argument that the campaign finance disclosure laws were unconstitutional.

The Supreme Court in 2003 in *McConnell v. Federal Election Commission* again rejected the argument that the campaign finance disclosure laws were similar to the disclosure of membership lists struck down in the *NAACP* case. The Court said in *McConnell*, “In *Buckley*, unlike *NAACP*, we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosures.”

Secret money in our elections breeds corruption and scandal.

We strongly urge you to support and cosponsor the DISCLOSE Act of 2015 (S.229).

Brennan Center for Justice
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington
Common Cause
Democracy 21
Demos
Issue One
League of Women Voters
People For the American Way
Public Citizen
Sunlight Foundation