



**Statement of
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Democracy for Sale: How Our Broken Campaign Finance System Allows Foreign Governments to Buy
Influence in Our Elections and What We Can Do About It
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Over 40 years ago, the Supreme Court in *Buckley v. Valeo*, declared that disclosure of the sources of political contributions and expenditures involved no less than “the free functioning of our national institutions,” identifying three interests served by disclosure:¹

- First, providing information about the sources of political money allows the electorate to make informed decisions;
- Second, disclosure deters actual corruption by exposing political expenditures to “the light of publicity,” and
- Third, disclosure is essential to detect violations of the law.

These principles were reaffirmed in 2010, in *Citizens United v. FEC*. There, the Supreme Court ruled that corporations have a constitutional right to make unlimited independent expenditures in elections. It did so, however, not comprehending the very real dangers such spending poses to our democracy. This was due, in part, because it naïvely believed there would be full disclosure of the

¹ 424 U.S. 1, 66 (1976)

sources of the spending and “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”²

Unfortunately, as many predicted, it was quickly proven that the reality is quite different from what the Supreme Court assumed. Often, corporations and individuals fund political ads not under their own names, but through an entity with a generic name, such Americans for Freedom, which does not report its sources of funding. And even when the ad is paid for by a super PAC, which is required to disclose its contributors, it may report the source of its contributions as being another entity which does not disclose its contributors.

The reality is that what is being disclosed is too often not the true contributor in any meaningful sense. Rather, it is another organization or front group using a legal fiction as a cloak of invisibility behind which the true donors are hiding. The real contributors may be individuals, corporations or other organizations who can legally contribute, but who do not want their names disclosed, depriving the public of the information to which it is entitled. Even more troubling is that these front organizations can be used to hide the source of illegal donations, including money coming from foreign nationals or foreign governments.

Nonprofit 501(c)(4) organizations are one of the favored vehicles for hiding the true source of funding for political activity. We are all familiar with (c)(4) organizations that make direct expenditures for political ads or fund super PACS without disclosing who is providing their funding. While there are legal limitations on a (c)(4)’s political activities, the lack of enforcement of these restrictions has

² 558 U.S. 310, 371 (2010).

allowed many of these groups to serve as a political cloak of invisibility for special interests and wealthy donors.

While 501(c)(4) organizations remain popular, we have also seen increased use of Limited Liability Companies (LLCs) to hide the true source of political contributions. An LLC is a business entity that has the advantage of the limited liability of a corporation, and the tax advantages of an individual or partnership. They are widely used for business purposes and, like corporations, are creatures of state law, which determines how they are formed and whether they have to publicly disclose their managers or members, or even the person or persons who set up the LLC. This has allowed the creation of what is sometimes called the Anonymous LLC. (For what it's worth, if you Google anonymous LLC you'll get over 15 million results, including instructions on how to set up an anonymous LLC for your cat.)

It is this lack of transparency that makes a LLC an attractive vehicle for certain types of political activity where an individual or corporation wants to contribute to a super PAC while remaining anonymous. In fact, between 2011 and 2015, the Campaign Legal Center (CLC) and Democracy 21 (D21) filed five separate complaints with the FEC regarding the use of LLCs as conduits to make contributions to super PACs so that the true sources of the contributions were not disclosed. These included LLCs that were set up for the sole purpose of hiding the source of millions of dollars in contributions. In 2016, the FEC finally dismissed all five complaints after the Commissioners split on whether there was reason to believe a violation had occurred. Even though there has been a longstanding prohibition on using a conduit to hide the source of a contribution, the Republican

commissioners did not believe the law was clear that using an LLC to hide the source of the contribution was illegal. CLC and D 21 are currently challenging the dismissal of three of those complaints by the FEC in court. However, this is also a clear example of why Congress must enact laws that even the FEC cannot twist to undermine the purpose of disclosure.

Setting up a LLC to hide the true sources of political contributions is quick and easy. First, you pick a state that requires a minimal amount of disclosure, adopt standard boiler-plate organizational documents, name officers and/or directors as required by the state, identify a registered agent, open a bank account, get a tax employee identification number (EIN), fill out some forms and pay a fee. If you pick the right state, you do not have to publicly disclose who is behind the LLC. If you're in a rush, many states have a fee structure that will let you pay a higher fee for a quicker processing of your application.

And, even where an LLC has been in existence for many years and is a legitimate ongoing business, the lack of transparency still prevents the public from knowing the source of the funding its using for its political contributions or even whether the owner or partners are foreign nationals or even foreign governments.

Finally, there is the longstanding issue involving foreign national involvement in U.S. elections through U.S. corporations which are either wholly or partly owned by foreign national individuals, corporations or governments. The law currently prohibits a foreign national from being involved in a corporation's decision-making regarding the making of contributions in U.S. elections, and requires that any political contributions or expenditures be made out of money earned by the U.S.

subsidiary. However, it is naïve to believe that the U.S. managers of a domestic corporation with substantial foreign ownership are not going to cognizant of that ownership when they make political expenditures or that domestic corporations cannot be used to funnel foreign money into U.S. election. The fact is that the public generally has no way of readily determining whether a corporation is American or foreign owned or whether the money it puts into our elections comes from U.S. or foreign sources.

These concerns are not theoretical. In 2016, based on a report by *The Intercept*,³ CLC and D21 filed a complaint with the FEC alleging that American Pacific International Capital, Inc., which was controlled by Chinese citizens living in Singapore, gave \$1.3 million to Right to Rise, a Jeb Bush super PAC.

Last year, CLC also filed a complaint against Great America PAC, a Donald Trump super PAC, after undercover reporters recorded individuals representing the super PAC explaining how they could help a Chinese donor contribute to \$2 million to help elect Mr. Trump by funneling the money through a non-profit organization, despite laws prohibiting donations from foreigners.⁴

One of the bedrock principles of our campaign finance laws is that the sources of funding of political activity should be disclosed. This transparency provides the public with the information necessary to judge merits of the message and determine to whom elected officials may feel behold, as well as makes possible

³ <https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/>

⁴ <http://www.telegraph.co.uk/news/2016/10/27/pro-trump-super-pac-reported-to-elections-watchdog-after-telegra/>

the enforcement of other laws, such as those prohibiting foreign involvement in our elections.

However, our current laws provide too many easy avenues for hiding the true sources of money being used to influence our elections. This should be of concern to anyone who cares about the integrity of our elections.