NOTE

Enhancing Responsiveness and Alleviating Gridlock: Pragmatic Steps to Balance Campaign Finance Law in Light of the Supreme Court's Jurisprudence

*Paul J. Weeks**

ABSTRACT

Over forty years ago, Congress first enacted a comprehensive scheme to regulate money in federal elections. This scheme included disclosure requirements and tight monetary limitations on the various political actors who sought to influence elections. The Supreme Court's initial response to the comprehensive scheme upheld the tight contribution limits placed on primary political actors—candidates and parties—but prohibited on First Amendment grounds the limits on election expenditures made by independent actors. Over the ensuing years, the Court's jurisprudence has trended toward greater constitutional protection of independent political money, increasingly fortifying it from regulation through ordinary legislative means. At the same time, while candidates and parties remain subject to stringent disclosure requirements, Congress has failed to close loopholes in the disclosure requirements that allow independent political groups to conceal the source of their money. The increasingly divergent regulatory structure for political money has led to an outsized influence of independent political groups relative to the candidates and parties. This outsized influence hamstrings the mediating role played by candidates and parties, which decreases the ability of elected officials to be

* J.D., expected May 2015, The George Washington University Law School; B.A., Economics, 2009, Clemson University.

responsive to their constituents and exacerbates gridlock in Congress. This Note proposes that Congress amend the Federal Election Campaign Act to require the disclosure of donors to independent political groups that spend to influence elections and to relax the tight contribution limits in place on candidates and parties. Both prongs of the proposal remain available to Congress under the Court's decisions and together will cause the flow of political money from independent groups to candidates and parties. With greater parity in the campaign finance rules, candidate and party autonomy will increase. Increased autonomy allows them to more closely tailor their positions to their constituents, reducing gridlock and increasing accountability.

Table of Contents

Introduction

Recently, *The Daily Show*, the satirical nightly news program, "investigated" the participation of an independent political group, Americans for Prosperity ("AFP"), in a small town election.[1] In the election, negative campaign fliers paid for by AFP swamped the candidates for city counsel and mayor in Coralville, Iowa, a town of approximately 20,000 people.[2] The fliers used scurrilous campaign tactics and ad hominem attacks.[3] James Jones, a correspondent for *The Daily Show*, spoke with both sides of the struggle—to the candidates who were *meant* to benefit as well as those who were *meant* to suffer from AFP's tactics.[4] The interviewees made clear that a majority of the candidates and townspeople wanted no part of this outside independent group's meddling in their elections.[5] The candidate that appeared to be hurt most by the fliers, Chris Turner, was actually the candidate that AFP intended to support.[6] Mr. Turner was a challenger for a city council seat.[7] He was a good guy who simply thought the town government should be smaller.[8] As he said in his interview, he thought the candidates on the other side of the issues from him were also good people who wanted the best for Coralville—they just had a different vision for the role of town government.[9] Fortunately, the residents of Coralville were attuned to the outside attempt to influence their elections.[10] Unfortunately for Mr. Turner, he was the candidate associated with the outside ads, and he felt the backlash.[11] Mr.

1 *The Daily Show with John Stewart: George Clooney* (Comedy Central television broadcast Feb. 5, 2014).
2 *Id.*
3 *See id.*
4 *Id.*
5 *See id.*
6 *See id.*
7 *Id.*
8 *See id.*
9 *Id.*
10 *Id.*
11 *Id.*

Turner was chastised for his unwitting association with AFP and its tactics,[12] and he humorously noted in the interview that he "tied for last" in his race.[13] Coralville ultimately rejected the attempt to co-opt its elections. Nevertheless, much distraction and unnecessary personal attacks were seen along the way.

A successful satire, *The Daily Show*'s investigation mocked a Super PAC's unwanted meddling in a small town and through it illustrated some of the numerous negative consequences of independent groups' outsized influence over political campaigns. First, the campaign for mayor took a negative tone, focusing not on the issues but on ad hominem attacks of questionable validity. Second, it angered the electorate and distracted them from the substantive issues. The voters did not want an outside group's interests drowning out the voices of the candidates. But in doing so, the elections effectively turned into a referendum on AFP's involvement rather than an election on the issues that will affect the town. The outcome may have been unchanged, but outside involvement changed the game. The result—had the candidates been given the chance to present their substantive positions directly in a manner chosen by them—will never be known. Finally, it actually harmed the candidate it was ostensibly aimed to help.

Further, one can imagine additional insidious consequences if the independent group's involvement was not as stark. Coralville stamped out the independent group's influence.[14] If the electorate were less attuned to who was pulling the strings in the election, though, perhaps the overwhelming independent group effort would have been successful. Assume that the scenario was a U.S. Senate election. If the election was close, a candidate might find herself in a situation where she must shift her position to induce the support of an independent group that has positions more extreme than those of her and her constituents. Alternatively, a candidate might have to shift attention to combat an opposing independent group that entered the election conversation. Independent groups are able to raise unlimited funds from a single donor.[15] The senatorial candidate, by contrast, is limited to raising roughly $5,000 per donor.[16] The candidate is con-

---

12 *See id.* Mr. Turner described being associated with AFP: "It'd be kind of like getting endorsed by Charles Manson. Their tactics were just reprehensible." *Id.*

13 *Id.*

14 *See id.*

15 *See infra* Part I.C.1.

16 *See infra* Part I.C.1.

strained by an artificially limited supply of money.[17] The independent group is not.[18] The fate of a campaign can essentially rest on the decisions of a single large-moneyed interest. In this situation, the independent group has an outsized influence relative to the candidate.[19] The candidate therefore has diminished autonomy and is less responsive to her supporters and constituents—those to whom she is ultimately accountable.[20] Moreover, this moneyed interest has the ability to conceal from the public the source of the money run through an independent group.[21] When this occurs, the voters' ability to serve as a check on the influence of moneyed interests is weakened.[22]

These situations are all lawful under the current statutory and regulatory scheme for campaign finance and under the Supreme Court's jurisprudence on the subject.[23] This system is predicated on the idea that a firewall (that is, the absence of coordination) between campaigns and independent groups[24] limits corruption, or the appearance of corruption, in legislative efforts.[25] To effectuate this, the current state of the law, which has been constitutionalized, regulates the campaign activities of candidates and the parties differently than those of independent groups.[26] This bifurcated system fails to prevent actual and apparent corruption between electoral support and favorable legislative action.[27] The current system might achieve its aims at a superficial level, but this disjointed system more likely creates an atmosphere in which corruption, and the appearance of it, is able to thrive.[28]

---

17 *See* Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1710–11 (1999).

18 *See infra* Part I.C.1.

19 *See infra* Part II.

20 *See infra* notes 132–35 and accompanying text.

21 *See* Joseph M. Birkenstock, *Three Can Keep a Secret, If Two of Them Are Dead: A Thought Experiment Around Compelled Public Disclosure of "Anonymous" Political Expenditures*, 27 J.L. & POL. 609, 618 (2012). Yet the identity of those with the money backing the independent group can still be made known to the elected official (or candidate). *See id.* at 610.

22 *See id.*

23 *See* McCutcheon v. FEC, 134 S. Ct. 1434, 1454 & n.9 (2014) (plurality opinion).

24 In this Note, the term "independent group" is used to mean any group outside of candidates' campaigns, political parties, and connected political action committees. This includes both political groups organized under section 527 of the Internal Revenue Code that are not affiliated with a candidate's campaign or a political party and social welfare groups organized under section 501(c)(4) of the Internal Revenue Code that nonetheless engage in electoral advocacy on behalf of or against a candidate. *See* 26 U.S.C. §§ 501(c)(4), 527 (2012).

25 *See McCutcheon*, 134 S. Ct. at 1452.

26 *See, e.g.*, *id.* at 1444 (citing Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam)).

27 *See* Birkenstock, *supra* note 21, at 610.

28 *See id.* at 615.

Further, the campaign finance system is ostensibly set up to be one of tight monetary limits and disclosure requirements, but the system in fact leaves the opportunity for limitless donations and is full of disclosure loopholes.[29] Such a system erodes the foundation on which it is built and fosters distrust in the regime.[30] Ideally, elected officials are responsive to their best judgment and to their constituents.[31] Unfortunately, they are constrained to raising money in small increments and spending large amounts of time doing it.[32] Independent groups, by contrast, are not so constrained. At a moment's notice, a candidate could be confronting a limitless amount of money being wielded against him by a faceless outside group.[33] Candidates and parties serve as a moderating mechanism in our electoral system and tailor their positions to those of the voters.[34] When independent groups hold a limitless monetary advantage over the candidates and parties, too much attention is given to the interests of independent groups and combating their electoral force.[35] Hence, the ability of candidates to tailor positions to those of their constituents is diminished.[36] This Note proposes pragmatic legislative reforms that could be enacted in concert to help balance the campaign finance system by raising transparency and accountability.[37] The statutory reforms proposed would drive disclosure-adverse monetary sources out of the system and create incentives for political money to flow from untempered, independent political groups to the political actors that are most responsive and accountable to the electorate.

Part I of this Note tracks the development of modern campaign finance law, starting with the paradigmatic framework established through the collective—although not harmonious—action of Congress

---

29 *See id.* at 610–12.

30 *See infra* notes 122–25 and accompanying text.

31 *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1462 ("Representatives are not to follow constituent orders, but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials.").

32 *See, e.g.*, Issacharoff & Karlan, *supra* note 17, at 1711; Al Franken, *If You Ever Wonder Whether We Really Need Public Financing of Elections in This Country*, HUFFPOST POL., http://www.huffingtonpost.com/al-franken/if-you-ever-wonder-whethe_b_50344.html (last updated May 25, 2011).

33 *See infra* Part I.C.1.

34 *See* Michael S. Kang, *The Year of the Super PAC*, 81 GEO. WASH. L. REV. 1902, 1926 (2013).

35 *See id.* at 1926–27.

36 *See id.*; *see also* Issacharoff & Karlan, *supra* note 17, at 1707 (noting that politics are less accountable to democratic control when the capacity of candidates and political parties to shape electoral agenda is undermined).

37 *See infra* Part III.

and the Supreme Court. Currently, independent political groups are unconstrained by monetary limitations and are subject to limited disclosure requirements. Because of the Supreme Court's decisions, monetary limitations on independent groups are constitutionally impermissible. As such, increased disclosure requirements are the only tool that remains available to regulate these groups. Conversely, candidates and political parties are subject to a campaign finance scheme of tight monetary limits and stringent disclosure requirements.

Part II explains why this truncated, partially-constitutionalized system for regulating political money fails to prevent undue influence and foster trust in the political system. Independent groups exist for specific interests; candidates and political parties mediate the positions of the electorate. The latter's ability to tailor positions to the constituencies they represent is diminished when their electoral fortunes are increasingly outsourced to the rising power of independent groups that are unconstrained by monetary limits and afforded ample opportunity to skirt disclosure requirements.

Part III proposes a statutory scheme to increase the disclosure requirements upon independent groups and to significantly relax the contribution limits imposed on federal candidates and the parties. Together, these statutory changes will equilibrate the campaign finance system, placing greater knowledge in the hands of the voting public and greater autonomy in the hands of the primary, responsive political actors. This statutory scheme will incentivize the flow of campaign money from unaccountable independent groups to actual candidates and the political parties. It will also drive some amount of disclosure-adverse campaign money out of the system.

Finally, Part IV addresses potential counterarguments to the statutory proposal and, accepting the limitations put in place by the Court, addresses why these counterarguments are futile.

I. Development of the Modern Campaign Finance Framework: A Muddled Mixture of Legislative Reforms and the Judicial Decisions Limiting Those Laws

To fully understand the current state of campaign finance law, and the limitations of ordinary legislative means to shape it, the development of the law over the last four decades must be understood. The law has been developed largely on a similar pattern over the years: Congress passes a regulatory scheme, it is challenged through litigation, the Court overturns certain parts of the law on First Amendment

grounds, and the Federal Election Commission ("FEC") puts forth new rules attempting to effectuate the Court's decisions. The major developments in this cycle that led to the current state of the law are outlined below. As shown below, the recent trend has been toward greater First Amendment protection of campaign finance activity, and hence a decreased ability for Congress to regulate the field.

A. Federal Election Campaign Act and the Court's Imprudent Distinctions

The current system of campaign finance can be traced to the Federal Election Campaign Act of 1971 ("FECA"),[38] which was signed into law by President Richard Nixon in 1972.[39] FECA required that all federal candidates and political committees active in federal elections file quarterly disclosure reports.[40] In the aftermath of the Watergate Scandal, including the associated campaign finance abuses revealed by President Nixon's 1972 Reelection Campaign, Congress amended FECA in 1974 to place tighter restrictions on campaign finance.[41] In the 1974 amendments, Congress put in place, among other provisions, low contribution and spending limits to regulate its members' elections in lieu of public financing.[42] The first major constitutional challenge to FECA and the 1974 amendments came in the 1976 case *Buckley v. Valeo*.[43]

Buckley is the seminal case in the Supreme Court's campaign finance jurisprudence and laid the groundwork for the current framework.[44] The case created the current bifurcated system of campaign finance regulation, which addresses expenditure limitations and campaign contribution limitations from a different constitutional perspective.[45] The Court upheld the constitutionality of the contribution limits to candidates for federal office, at the time limited to $1,000

---

38 Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972).

39 *Id.*; *see also* Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the "Dark Money" Election*, 27 NOTRE DAME J.L. ETHICS & PUB. POL'Y 383, 412 (2013).

40 Potter & Morgan, *supra* note 39, at 412.

41 Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263; Julian E. Zelizer, *Seeds of Cynicism: The Struggle over Campaign Finance, 1956–1974*, 14 J. POL'Y HIST. 73, 101–02 (2002).

42 Zelizer, *supra* note 41, at 102–03.

43 Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

44 *See* Issacharoff & Karlan, *supra* note 17, at 1706.

45 *See* McCutcheon v. FEC, 134 S. Ct. 1434, 1462 (2014) (Thomas, J., concurring) (citing *Buckley*, 424 U.S. at 25).

from individuals and $5,000 from political committees.[46] In regards to campaign contributions, the Court found that the government had a "weighty" interest in preventing actual and apparent corruption—specifically the danger of quid pro quo corruption.[47] The Court noted that contribution limits still provided substantial opportunities to engage in politically expressive activity and to associate with candidates and political committees.[48] Viewing these on balance, the Court allowed the contribution limitation provisions to stand.[49]

In contrast, the Court struck down the $1,000 limit on independent expenditures by individuals or groups supporting or opposing a candidate.[50] The Court found that the government lacks a substantial interest in limiting independent expenditures because they are made in the absence of coordination with the candidate and the campaign, which, according to the Court, decreases the potential for, and the appearance of, quid pro quo corruption.[51] The Court held that independent expenditure limits were unconstitutional based on this lack of governmental interest coupled with the increased interference with the First Amendment right to political expression that limitations on independent expenditures pose.[52] Notably, the decision upheld all the FECA disclosure requirements, including the disclosure requirements imposed on individuals and independent organizations that expressly advocate for the election or defeat of a particular candidate.[53]

As commentators have noted, by striking down a select provision of the amendments, the Court altered FECA in a manner that undermined the overall regulatory scheme.[54] This was the first of many Su-

---

46 *Buckley*, 424 U.S. at 58. The Court also upheld aggregate limits on the contributions individuals could make in a single year, at the time $25,000 per calendar year, based on the same rationale used to uphold the contribution limits to an individual campaign. *Id.* at 38. The Court recently overruled this holding when it struck down the aggregate limits. *McCutcheon*, 134 S. Ct. at 1442 (plurality opinion).

47 *Buckley*, 424 U.S. at 26–27, 29.

48 *Id.* at 28–29.

49 *Id.* at 35–36, 38.

50 *Id.* at 39, 51. To avoid unconstitutional vagueness in the statute, the Court narrowly construed the term "independent expenditure" in the statute to mean only those expenditures by groups not affiliated with the parties or campaigns that *expressly* call for the election or defeat of a clearly identified candidate. *Id.* at 43–44. This definition of independent expenditure has persisted in campaign finance law. *See* 2 U.S.C § 431(17) (2012).

51 *Buckley*, 424 U.S. at 45–47.

52 *Id.* at 45–48, 51.

53 *Id.* at 80–82, 84.

54 *See, e.g.*, Issacharoff & Karlan, *supra* note 17, at 1706 n.7.

preme Court decisions that would have this effect.[55] Although many Supreme Court decisions have had the effect of altering a congressional scheme, the statutory reforms as limited by the Court resulted in particularly undesirable consequences over the ensuing years in the area of campaign finance.[56] For example, the public fails to recognize the Court's abstract distinction between campaign contributions and independent expenditures, creating a palpable public sense that the system favors special interests.[57] This trend continues—a poll in recent years revealed that eight in ten people think Congress is primarily concerned with serving special interest, not the people they represent.[58]

B. The Next Large Legislative Reform Effort and the Court's Initial Approval

Congress's first major overhaul of campaign finance in more than a quarter century came in 2002 when it enacted the Bipartisan Campaign Reform Act ("BCRA"),[59] which substantially amended FECA.[60] Among other provisions, BCRA responded to the trend of utilizing political ads that ostensibly supported or opposed a candidate but did not expressly advocate for the candidate's election or defeat—i.e., saying vote for or against candidate X—by creating a newly regulated category, "electioneering communication."[61] BCRA's electioneering communication regulations prohibited ads by independent groups that identified a candidate, including those that did not expressly advocate for the candidate's election or defeat, within thirty days of a primary election and sixty days of a general election; categorically prohibited corporations and unions from engaging in the newly defined electioneering communications; and enacted broad disclosure requirements for groups engaged in it.[62] The major provisions

---

55 *See, e.g.*, McCutcheon v. FEC, 134 S. Ct. 1434 (2014); Citizens United v. FEC, 558 U.S. 310 (2010); FEC v. Wis. Right to Life, Inc., 551 U.S. 449 (2007).

56 *See* Issacharoff & Karlan, *supra* note 17, at 1706 (noting that more than twenty years after the Court's decision, the American political system was viewed as broken).

57 Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119, 138 (2004).

58 *See* Brian Montopoli, *Alienated Nation: Americans Complain of Government Disconnect*, CBS NEWS (June 28, 2011, 10:14 AM), http://www.cbsnews.com/news/alienated-nation-americans-complain-of-government-disconnect/.

59 Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat 81.

60 *See id.*

61 *Id.* §§ 201–203, 211–214, 116 Stat. at 88–95.

62 *Id.*

of BCRA were first challenged in the 2003 case *McConnell v. FEC*.[63] For the most part, the Court upheld the statute, including the electioneering communications provision and the corporate and union ban on engaging in those ads.[64] The victory for reformers, however, was short lived as the Court largely reversed course only a few years later in *FEC v. Wisconsin Right to Life, Inc.* ("*WRTL II*").[65]

C. The Court's Shift Back Towards Constitutionalized Deregulation of Campaign Finance

In 2007, after the makeup of the Court had shifted,[66] the Supreme Court revisited the BCRA prohibition on electioneering communications in *WRTL II*.[67] The Court boxed in its decision in *McConnell*, holding that corporations and unions could not be prohibited from engaging in electioneering communications so long as the ads did not engage in the express advocacy of a candidate.[68] In *WRTL II*, Chief Justice Roberts found that the ads at issue, unlike those in *McConnell*, did not *expressly* advocate for the election or defeat of a candidate.[69] Although the ads identified the candidate, the Court found them to be true issue ads,[70] which could not be prohibited under the First Amendment absent a sufficiently compelling governmental interest.[71] For the time being, corporations and unions were still prohibited from making independent expenditures that expressly advocated for the election or defeat of candidates (although express advocacy was now narrowly defined and easily circumvented), and those expenditures remained subject to the disclosure requirements.[72]

---

63 McConnell v. FEC, 540 U.S. 93 (2003).

64 *Id.* at 104–05, 207.

65 FEC v. Wis. Right to Life, Inc., 551 U.S. 449 (2007).

66 Adam Liptak, *Justices Strike Down Law That Aids Campaign Rivals of Rich Candidates*, N.Y. TIMES, June 27, 2008, at A11, *available at* http://www.nytimes.com/2008/06/27/washington/27money.html# (quoting Professor Richard Briffault, who emphasized importance of Justice Alito's replacing Justice O'Connor in Court's campaign finance jurisprudential shift).

67 *Wis. Right to Life, Inc.*, 551 U.S. at 455–56.

68 *Id.* at 476 & n.8. Chief Justice Roberts' controlling opinion, joined by Justice Alito, reasoned that *McConnell* was an as-applied challenge, which did not preclude the Court from striking down the prohibition of the advertisements in the present case. *Id.* at 476 n.8. Justice Scalia, writing for the others in the majority, found the prohibition was facially unconstitutional. *Id.* at 504 (Scalia, J., concurring).

69 *Id.* at 470 (opinion of Roberts, C.J.).

70 *Id.* Ads "about public issues more generally," as opposed to those that are for the purpose of supporting or opposing a candidate for federal office, were considered issue ads. *See id.* at 456.

71 *See id.* at 481.

72 *See* Potter & Morgan, *supra* note 39, at 445–46.

In response to the Court's decision in *WRTL II*, the FEC put forth a new rule to clarify what disclosure requirements arose when outside organizations engaged in electioneering communications.[73] Similar to independent expenditure disclosure requirements, the FEC's new rule required organizations, including corporations and unions, to disclose only those contributions over $1000 made to them "*for the purpose of* furthering electioneering communications."[74] Basically, unless a donor contributes funds in response to a solicitation for funds for an electioneering communication or independent expenditure purpose, or specifically designates funds for that purpose, the contribution need not be disclosed.[75]

In 2010, in *Citizens United v. FEC*,[76] the Court further restricted regulations on independent expenditures. The Court held that the First Amendment requires that individuals and organizations be able to engage in independent expenditures that expressly advocate the election or defeat of a candidate, as long as the expenditures are not in coordination with candidates or political parties.[77] After *Citizens United*, all organizations are able to produce ads that say "vote for or against this candidate" and pay for it directly out of their coffers. For example, if Wal-Mart deemed it in its best interest, it could now spend millions of dollars directly out of its profits to defeat any member of Congress.

This result was broadly criticized.[78] The predominant public concern was that corporations (and unions) were able to pay for explicit election advertisements out of their coffers.[79] There are practical constraints, however, that prevent most publicly held corporations from engaging in political activities in this manner.[80] The criticism of this effect of *Citizens United*, though onto the right scent, largely chased a

---

73 *See id.* at 453. These rules remain in force. *See* 11 C.F.R. § 104.20(c)(9) (2014).

74 *Id.* (emphasis added).

75 Potter & Morgan, *supra* note 39, at 453–54 (citing 72 Fed. Reg. 72,899, 72,911 (Dec. 26, 2007)).

76 Citizens United v. FEC, 558 U.S. 310 (2010).

77 *Id.* at 365–66.

78 Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1, 2–3 (2012).

79 *See Citizens United*, 558 U.S. at 412 (Stevens, J., concurring in part and dissenting in part).

80 Corporations are constrained by various stakeholders (customers, shareholders, etc.) and thus face potential backlash from these groups when engaging in political activities. *See, e.g.*, Emily Friedman, *Target, Best Buy Angers Gay Customers by Making Contribution to GOP Candidate*, ABC NEWS (July 28, 2010), http://abcnews.go.com/Business/target-best-buy-fire-campaign-contributions-minnesota-candidate/story?id=11270194.

red herring.[81] The major impact of *Citizens United* derives from its narrowed interpretation of what corruption the government has an interest in protecting against—*only* that of quid pro quo corruption.[82] The decision led the way to permit unlimited contributions to independent political groups.[83] The result from this rationale over the next few years revealed itself to be the near complete deregulation of independent expenditures.[84]

Continuing its march towards the constitutional deregulation of political money, the Court recently applied its narrowed sense of governmental interest in regulating campaign finance in the case of *McCutcheon v. FEC*.[85] In a five-to-four decision with no majority opinion, the Court struck down the aggregate limits that an individual can contribute to candidates, parties, and connected political committees.[86] The plurality opinion explicitly reaffirmed that the *only* interest Congress has in regulating campaign finance is that of preventing actual or apparent quid pro quo corruption.[87] The Court left in place the contribution limits on individual candidates, parties, and political committees for the present, noting that these limitations were not directly challenged in the case.[88] The decision brought a small degree of balance to the unequal rules governing campaign finance for different political actors, but the predominant structural disparities remain.[89]

1. The Disconnect Between Strict Limits on Contributions to Campaigns and Political Parties and Limitless Contributions to Independent Political Groups

FECA continues to limit the amount individuals are permitted to contribute directly to candidates for federal office, political parties,

---

81 *See* Kang, *supra* note 78, at 3.

82 *Citizens United*, 558 U.S. at 359 (majority opinion) (emphasis added); *see also* Kang, *supra* note 78, at 21.

83 *See, e.g.*, Ezra Klein, *The DISCLOSE Act Won't Fix Campaign Finance*, WASH. POST WONKBLOG (July 27, 2012), http://www.washingtonpost.com/blogs/wonkblog/wp/2012/07/27/the-disclose-act-wont-fix-campaign-finance/.

84 Kang, *supra* note 78, at 21.

85 McCutcheon v. FEC, 134 S. Ct. 1434 (2014).

86 *Id.* at 1442 (plurality opinion). Justice Thomas, who provided the fifth vote, thought *Buckley* should be overruled and indicated that all contribution limits are unconstitutional. *Id.* at 1464 (Thomas, J., concurring).

87 *Id.* at 1441–42 (plurality opinion).

88 *Id.* at 1442.

89 *See* Nathaniel Persily, Op-Ed., *Bringing Big Money Out of the Shadows*, N.Y. TIMES (Apr. 2, 2014), http://www.nytimes.com/2014/04/03/opinion/bringing-big-money-out-of-the-shadows.html.

and political committees.[90] For the 2013–2014 election cycle, an individual may give a candidate for federal office a total of $5,200 per election cycle, $2,600 for each the primary and general election; a political committee $5,000 per calendar year; and a national political party $32,400 per calendar year.[91] Similarly, political parties and political committees are constrained in the amount they are permitted to contribute to a candidate for federal office. Political parties and committees can give a maximum of $10,000 per election cycle, $5,000 each for the primary and general election.[92] Candidates, parties, and political committees are all required to disclose contributions above $200 in quarterly reports to the FEC.[93]

Independent groups that engage in elections, however, are not subject to any contribution limits. Specifically, "independent expenditure only" political committees—commonly known as "Super PACs"—are free to receive unlimited contributions from individuals, corporations, unions, and political committees.[94] So long as these political committees make their expenditures without coordinating with candidates or political parties, they are free from FECA's contribution limits.[95] For an expenditure to be coordinated, as defined by the FEC, it must: have been paid for by a person other than the candidate; have content supporting the candidate or opposing her opponent; and be requested or produced with the help of the candidate's campaign.[96] This was made clear in advisory opinions issued by the FEC[97] in the wake of the Supreme Court's decision in *Citizens United*, and two D.C. Circuit opinions, *SpeechNow.org v. FEC*,[98] and *EMILY's List v.*

---

90 2 U.S.C. § 441a (2012). The limits are pegged to inflation. *See id.* § 441a(c).

91 *Id.* § 441a; *see also Contribution Limits 2013–14*, FEC, http://www.fec.gov/pages/brochures/contriblimits.shtml#fn (last visited May 13, 2015).

92 2 U.S.C. § 441a; *see also Contribution Limits 2013–14*, *supra* note 91.

93 *See* 2 U.S.C. § 434.

94 Potter & Morgan, *supra* note 39, at 460.

95 *See* 2 U.S.C § 431(17) ("The term 'independent expenditure' means an expenditure by a person—(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.").

96 *See* 11 C.F.R. § 109.21 (2014); *see also* Joseph M. Birkenstock, *supra* note 21, at 613 n.14 ("For example, provided that a federal candidate did not request or suggest that the advertisement be aired or become materially involved in its production, an advertisement is likely [not coordinated].").

97 *See, e.g.*, FEC Advisory Opinion 2010-11, slip op. at 2–3 (July 22, 2010), *available at* http://saos.nictusa.com/aodocs/AO%202010-11.pdf.

98 SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010).

FEC.[99] The consequence of the FEC's advisory opinions is that while a candidate's campaign remains subject to tight contribution limitations,[100] independent groups that do not coordinate with a candidate's campaign are unconstrained by contribution limits, although they are engaged in identical types of advocacy on behalf of or against candidates.[101]

As one might expect, Super PACs played a major role in the 2012 elections—the first full election cycle with limitless contributions to outside groups. In the crucial early stages of the Republican presidential primary, Super PACs outspent the Republican candidates they supported on television advertising.[102] This result is not surprising. Whereas candidates' campaigns are limited to raising funds in approximately $5,000 increments, Super PACs supporting—but not "coordinating" with—the campaigns are able to get a single contribution of $1 million or $1 billion, the only constraint being to find an individual or entity to pony up the money.[103] Candidates whose campaigns are struggling for air financially can get an (in)direct shot in the arm from a single individual.[104] Because a Super PAC has the ability to engage in the same activities as that of a candidate's campaign,[105] the distinction between a candidate's campaign and a Super PAC supporting the candidate seems trivial. The distinction makes even less sense in light of the FEC's confirmation that a candidate is able to attend fundraisers for a Super PAC, where unlimited contributions will be solicited, and can even encourage contributions so long as the candidate or

---

99 EMILY's List v. FEC, 581 F.3d 1 (D.C. Cir. 2009).

100 Political committees acting in concert with a candidate's campaign and political parties also remain subject to tight contribution limits. *See* 2 U.S.C. § 441a.

101 *See* Potter & Morgan, *supra* note 39, at 460–61; *see also* FEC Advisory Opinion 2010-11, *supra* note 97, slip op. at 2–3 (noting that the disclosure requirements of FECA, however, are constitutional as applied to these groups).

102 *See* Brody Mullins, *Outside Groups Outspend Candidates on Ads*, WALL ST. J., Feb. 1, 2012, at A5, *available at* http://online.wsj.com/news/articles/SB10001424052970203920204577195381781745336.

103 *See* Anthony J. Gaughan, *The Futility of Contribution Limits in the Age of Super PACs*, 60 DRAKE L. REV. 755, 761 (2012).

104 As was widely reported, billionaire Sheldon Adelson was credited with keeping Newt Gingrich's ultimately futile presidential campaign alive by indirectly contributing to the Super PAC supporting Gingrich's candidacy. *See* Naureen Khan & Alex Roarty, *Super PAC Lifelines Keep Weakened Candidates in the Game*, NATIONALJOURNAL (Feb. 28, 2012), http://www.nationaljournal.com/2012-presidential-campaign/super-pac-lifelines-keep-weakened-candidates-in-the-game-20120228; Cynthia McFadden & Melinda Arons, *Billionaire Expects 'Nothing' for His Millions to Gingrich Super PAC, Source Says*, ABCNEWS (Jan. 24, 2012), http://abcnews.go.com/Politics/OTUS/billionaire-expects-millions-gingrich-super-pac-source/story?id=15433505.

105 *See* Citizens United v. FEC, 558 U.S. 310, 365–66 (2010).

her campaign does not *solicit* the unlimited contribution.[106] As such, the firewall between campaign-proper and Super PAC is permeable, if not largely illusory, at least in the way that the FEC has chosen to enforce it.[107]

2. *Disclosure Loopholes for Independent Groups*

Although Super PACs are no longer subject to contribution limits, they are still required to disclose all contributions.[108] Other independent political groups are not.[109] Included in independent groups that are not required to disclose their donors are social welfare groups, sometimes referred to as 501(c)(4) organizations for the Internal Revenue Code section under which they are formed, which are not restrained by contribution limits or requirements for public disclosure of contributions.[110] Social welfare groups are permitted to engage in elections, but their primary activity must be the promotion of social welfare, which does not include participation in political campaigns.[111] Organizations of this type have been increasingly active in elections in response to the desire of individuals and entities to participate without public disclosure of their contributions.[112] These groups also are able to contribute to Super PACs.[113] Although a Super PAC still must disclose contributions made to it, if the donor is another organization, that group will be listed as the contributor on the disclosure forms the Super PAC submits to the FEC.[114] Hence, an individual is able to donate a limitless amount of money to a social welfare

106 *See* FEC Advisory Opinion 2011-12, slip op. at 4–5 (June 30, 2011) (citing 11 C.F.R. 300.64 (2011)), *available at* http://saos.fec.gov/aodocs/AO%202011-12.pdf.

107 *See* Potter & Morgan, *supra* note 39, at 475.

108 *See* 2 U.S.C. § 434(a)(4) (2012).

109 Contributions to groups that participate in elections but are not political committees only need to be disclosed to the FEC if the contribution is specifically earmarked for election activity. *Id.* § 434(b)(3)(A); 11 C.F.R. §§ 104.20(c)(9), 109.10 (2014); *see also Why Does the IRS Regulate Political Groups? A Look at the Complex World of Campaign Finance*, SUNLIGHT FOUND. (May 17, 2013, 12:30 PM), http://sunlightfoundation.com/feature/why-does-the-irs-regulate-political-groups-a-look-at-the-complex-world-of-campaign-finance/.

110 *See* 26 U.S.C. § 501(c)(4) (2012); *see also* 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. §§ 104.20(c)(9), 109.10.

111 Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (as amended in 1990) ("An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community."); Rev. Rul. 81-95, 1981-1 C.B. 332; IRM 7.25.4.7 (Feb. 8, 1999).

112 *See* Potter & Morgan, *supra* note 39, at 475.

113 *See* Kang, *supra* note 78, at 34–35.

114 *See id.* at 49.

group that in turn contributes the donation to a Super PAC.[115] The original source of the money need not be disclosed.[116]

In sum, candidates and parties remain subject to tight contribution limits and stringent disclosure requirements, whereas independent groups are unconstrained by monetary limitations and are provided ample opportunity to spend their unlimited political money with public anonymity.

II. The Harms of Contradictory Rules in Campaign Finance

A comprehensively regulated system of monetary limitations in campaign finance may have increased the accountability of elected officials to the voters who employ them. Such a system may have succeeded in elevating political discourse, instilling public trust in the political system, and liberating elected officials to serve the interest of their constituents. The effect of a comprehensive regulatory system, however, will never be known. The comprehensive regulatory scheme in campaign finance put forth nearly four decades ago was aborted in its infancy,[117] and a satisfactory legislative response never materialized. The Supreme Court has limited many laws without striking them down in their entirety.[118] Sometimes, though, if a part of the legislation is struck down, the rest of the law will not work.[119] What remains from the Court's jurisprudence in campaign finance is a porous framework with disparate rules for similar activity.[120] Although it might not have been apparent in 1976 when the Court fortified certain types of political money from regulation (except disclosure),[121] time has exhibited that the limited regime has failed to engender confidence in the campaign finance system.[122] Instead, over the last forty years, the system has been eroded, and public confidence in the federal political

115 *See id.*

116 *See id.*

117 *See* Buckley v. Valeo, 424 U.S. 1, 19–23 (1976) (per curiam).

118 *See, e.g.*, Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2607 (2012) (opinion of Roberts, C.J.).

119 *See* Kent Hoover, *Supreme Court Debates: Wrecking Ball or Salvage Job for Obamacare?*, Bus. Journals (Mar. 28, 2012, 4:24 PM), http://www.bizjournals.com/bizjournals/washingtonbureau/2012/03/28/how-much-of-obamacare-will-supreme.html?page=all (describing arguments that the Affordable Care Act would not work if the Court struck down the individual mandate to buy insurance).

120 *See* Kang, *supra* note 78, at 13–14.

121 *Buckley*, 424 U.S. at 20–23.

122 *See* Zelizer, *supra* note 41, at 75–76.

system remains anemically low.[123] With the current state of campaign finance laws, this result is unsurprising—the laws purportedly are in place to restrict the amount of monetary influence individuals and groups can have in the electoral process, but the laws do not shield the public from understanding how the system actually operates.[124] The Supreme Court has constitutionalized unlimited money in politics.[125] Portraying the system as one that limits money in politics fosters distrust—the principles of the system should be candid, and accepting the constitutional constraints, the rules should treat similar actors similarly.

Within these constraints, sunlight is the best disinfectant.[126] The current campaign finance system complicates and obscures. As outlined above, there are ways to spend money to influence elections with public anonymity.[127] For example, under the current system, if the dairy industry donated large amounts of the money to an elected official's campaign, and the official in turn supports increased subsidies to the dairy industry, those donations would be disclosed.[128] The public, with the assistance of the media, could make the connection in a streamlined manner, and the voters could respond at the ballot box as they see fit. If the dairy industry routed its donations through independent political groups, however, disclosure would not be required,[129] and the public could not make an informed decision whether to respond at the ballot box. If full disclosure were required

123 *See, e.g.*, Montopoli, *supra* note 58 (polls show that, among other statistics, eight in ten people think Congress is primarily concerned with serving special interest, not the people they represent); *Public Trust in Government: 1958–2014*, PEWRESEARCHCENTER (Nov. 13, 2014), http://www.people-press.org/2014/11/13/public-trust-in-government/ (polls tracking the decline in public trust over the last fifty years indicate that trust in the federal government remains near the all-time low). *But see* Persily & Lammie, *supra* note 57, at 173–74 (purporting that there is no correlation between public trust in government and campaign finance law).

124 Admittedly, public trust in government rests on complex dynamics, but the perception of moneyed interest holding outsized influence in the system is a contributory factor. *See* LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT 7–9 (2011).

125 *See, e.g.*, Note, *Restoring Electoral Equilibrium in the Wake of Constitutionalized Campaign Finance*, 124 HARV. L. REV. 1528, 1528 (2011).

126 LOUIS D. BRANDEIS, *What Publicity Can Do*, *in* OTHER PEOPLE'S MONEY: AND HOW THE BANKERS USE IT 92, 92 (2d prtg. 1914) ("Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.").

127 *See supra* Part I.C.2.

128 This would also be true if the large donations were made to the party and the party overwhelmingly supported the beneficial legislation. The voters could also use this knowledge to inform their decision of whether or not to vote for a candidate of this party.

129 *See supra* Part I.C.2.

for independent political groups, more connecting the dots may be required, but public knowledge of the monetary support would still be available. Currently, voters may know that moneyed interests are influencing elections, but the connection of specific monetary support to legislative outcomes may be impossible.[130]

Working within constitutional limits, the campaign finance system should provide a level playing field for all electoral participants. The current system, however, is disjointed and full of different designations and opportunities to skirt regulation.[131] Political warfare is increasingly outsourced in the current system, and candidates are too often forced to conform their positions to outside groups that have the upper hand in the process.[132] The increased power of independent groups leads to decreased autonomy for elected officials and leaves them less responsive to their constituents.[133] The state of political paralysis is widely lamented,[134] and the current campaign finance system exacerbates this paralysis—the regulatory equilibrium favors independent groups, which drives primary candidates to the fringes of the political spectrum.[135]

In addition to a movement away from the center of public sentiment and a workable government, the tone of political discourse is harmed when regulation incentivizes political money to flow to independent groups.[136] A candidate might suffer reputational harms when his or her campaign is associated with negative attacks.[137] An outside group, however, has no such disincentive and is driven away from substantive issues and towards attack ads.[138] The current system harms

---

130 *See* Birkenstock, *supra* note 21, at 615–16.

131 *See supra* Part I.C.

132 *See, e.g.*, Steven Hill, McCutcheon*'s Silver Lining: How It Could Undermine Super PACs*, ATLANTIC (Apr. 3, 2014), http://www.theatlantic.com/politics/archive/2014/04/-em-mccutcheon-em-s-silver-lining-how-it-could-undermine-super-pacs/360070/.

133 *See* Issacharoff & Karlan, *supra* note 17, at 1714–15.

134 *See, e.g.*, Neil King Jr., *Legislative Paralysis May Be the New Normal*, WALL ST. J. WASH. WIRE (Dec. 27, 2012, 4:22 PM), http://blogs.wsj.com/washwire/2012/12/27/legislative-paralysis-may-be-the-new-normal/.

135 *See* Samuel Issacharoff & Jeremy Peterman, *Special Interests After* Citizens United*: Access, Replacement, and Interest Group Response to Legal Change*, 9 ANN. REV. L. & SOC. SCI. 185, 201 (2013).

136 *See The Hands That Prod, the Wallets That Feed*, ECONOMIST, Feb. 25, 2012, at 35, *available at* http://www.economist.com/node/21548244.

137 *See* Robert Weissman, Citizens United *Impact Worse Than Anticipated*, WICHITA EAGLE BLOG (Jan. 26, 2011, 12:05 AM), http://www.kansas.com/2011/01/26/1689893/citizens-united-impact-worse-than.html.

138 *See id.* This assertion was evident in the data from the 2012 election. *See* Kevin Quealy & Derek Willis, *Election 2012: Independent Spending Totals*, N.Y. TIMES POL., http://elec-

the ability of voters to use information regarding how a candidate's campaign is funded to draw inferences—good or bad—about that candidate.[139] Reputational associations also afford candidates an opportunity to self-regulate the sources of funding for their elections by putting pressure on their opponents to do the same.[140] These reputational constraints, however, only go so far: when campaign contribution limits could put a candidate (often a challenger) at such a monetary disadvantage, the need for unlimited cash from outside sources outweigh the reputational pressures, and the opportunity is lost.[141] For example, in the recent Senate special election in Massachusetts, Republican candidate Gabriel Gomez rejected then-Congressman Ed Markey's calls to sign a pledge to turn down outside group spending, emphasizing that Markey spent more than a decade in Congress building up his campaign war chest with money from interest groups.[142] Ironically, but not surprisingly, now-Senator Ed Markey once made a similar pledge regarding PAC contributions earlier in his political career as a congressman, but abandoned that commitment after Congress tightened campaign finance laws.[143] The paramount importance of money in campaigns simply trumps any reputational benefits associated with a more desirably financed campaign.[144] If more balance existed in the system, incentives would be in place at the margins to allow candidates to go beyond statutory requirements to

---

tions.nytimes.com/2012/campaign-finance/independent-expenditures/totals (last updated May 13, 2015) (collecting data and showing that top six independent groups, who together spent over $350 million, expended the majority of their efforts attacking opposition candidates).

139 Adam M. Samaha, *Regulation for the Sake of Appearance*, 125 HARV. L. REV. 1563, 1605 (2012).

140 *See* Paul Blumenthal, *Ed Markey, Stephen Lynch Sign Pledge to Restrict Outside Money in Mass. Special Election*, HUFFPOST POL., http://www.huffingtonpost.com/2013/02/14/ed-markey-stephen-lynch_n_2685980.html (last updated Feb. 14, 2013, 2:24 PM).

141 *See, e.g.*, *Gabriel Gomez, GOP Candidate for Sen., Rejects 'People's Pledge*,' CHRISTIAN SCI. MONITOR, May 1, 2013, http://www.csmonitor.com/USA/Latest-News-Wires/2013/0501/Gabriel-Gomez-GOP-candidate-for-Sen.-rejects-people-s-pledge.

142 *Id.*

143 Jim O'Sullivan & Matt Carroll, *PACs Key Source of Markey Funds; Vow to Refuse Such Donations Ended in 2003*, BOSTON GLOBE, May 9, 2013, at A1, *available at* http://www.bostonglobe.com/news/politics/2013/05/09/markeymoney/EAdeUiSu92BG8E09lmRtZI/story.html.

144 *See* Ewen MacAskill, *Obama Tarnished by Rejecting Public Funds for Election Fight*, GUARDIAN, June 21, 2008, at 27, *available at* http://www.theguardian.com/world/2008/jun/21/barackobama.uselections2008. This was evidenced when President Obama went back on his commitment to abide by the election-funding scheme set up after the 1974 Watergate scandal and instead decided to rely on more lucrative private funding in the 2008 election. *Id.*

act on their own to root out special interests and undisclosed political money.[145]

III. Proposed Statutory Reforms to Balance the Rules for Campaign Finance

Congress should amend FECA to increase direct contribution limits to candidates and parties and to include disclosure requirements for independent groups engaging in campaign-related activity.[146] This statutory reform builds on attempted legislative responses to *Citizens United* at the federal level and successful legislative responses at the state level that have occurred since the Court's decision.[147] The proposal combines two things—increased disclosure and increased contribution limits—that are not typically supported by the same political side.[148]

---

145 *See supra* note 141 and accompanying text.

146 For an example of how these proposed statutory reforms might be written, see *infra*, Appendix. It should be noted that, in campaign finance, the general approach of "deregulate and disclose" is well established in the legal academic community. *See, e.g.*, Issacharoff & Karlan, *supra* note 17, at 1736–38; Kathleen M. Sullivan, *Political Money and Freedom of Speech*, 30 U.C. Davis L. Rev. 663, 690 (1997); *see also* Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 Election L.J. 273, 286 (2010) (listing various proponents of the position over the years). Many of these prescient pieces have become more attractive as the Court's jurisprudence has moved in that direction. *See, e.g.*, Sarah C. Haan, Online Essay, *The CEO and the Hydraulics of Campaign Finance Deregulation*, 109 Nw. U. L. Rev. 269, 270–72 (2014); Anthony Johnstone, *Recalibrating Campaign Finance Law*, 32 Yale L. & Pol'y Rev. 217, 230–37 (2013). None, however, have proposed a specific statutory reform to be enacted in concert to effectuate the concept in response to the Court's jurisprudence over the last ten years, which has exacerbated the need for a disclose and deregulate regime.

147 *See, e.g.*, Democracy Is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act of 2012, S. 3369, 112th Cong. (2012); Fair Campaign Practices Act, Ala. Code §§ 17-5-1–17-5-20 (2014) (removing campaign contribution limits).

148 *See, e.g.*, Dan Froomkin, *Disclose Act's Latest Incarnation Would Force Vote on Secret Political Slush Funds*, HuffPost Pol., http://www.huffingtonpost.com/2012/03/21/disclose-act-senate-sheldon-whitehouse-secret-slush-funds_n_1370378.html (last updated Mar. 21, 2012, 3:00 PM); Nina Totenberg, *Supreme Court Weighs Easing Limits on Campaign Contributions*, NPR (Oct. 8, 2013, 4:20 PM), http://www.npr.org/2013/10/08/230519762/scotus-re-enters-debate-over-money-and-politics. The political feasibility of the proposed reform deserves mention, although it is not the focus of this Note. Chief Justice Roberts' recent opinion in *McCutcheon* arguably reads like a warning shot to Congress. *See* McCutcheon v. FEC, 134 S. Ct. 1434, 1459–60 (2014) (plurality opinion). The message is in line with this Note: disclosure is your option. *See id.* After noting that the aggregate limits were unconstitutional in part because there were less restrictive alternatives, the plurality went on to say:

> [Disclosure requirements] may also deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. Disclosure requirements burden speech, but—unlike the aggregate limits—they do not impose a ceiling on speech. For that reason, disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech.

A. Shutting Down Disclosure Loopholes for Independent Groups

Congress should amend FECA to apply disclosure requirements to any independent group that engages in campaign-related advertising or donates money to another independent group that in turn engages in campaign-related advertising. The disclosure prong of this Note's proposed statutory framework draws from the DISCLOSE Act of 2012, Congress's second unsuccessful attempt to impose some disclosure requirements upon the donations to third-party organizations engaged in campaign-related activity.[149] First, the proposed amendments require any organization that spends more than $10,000 per election cycle in campaign-related advertisements to disclose its donors who donate more than $1,000 during the election cycle. Second, the amendments impose the same disclosure requirements on any organization that transfers more than $10,000 to another organization that in turn spends more than $10,000 per election cycle on campaign-related advertisements. The amendments follow this to the logical end—if a transfer of funds greater than $10,000 is run through multiple organizations to a final organization that eventually executes the campaign-related advertisement, the disclosure is traced back to the original donors of the money.

The proposed amendments afford independent groups playing in specific elections an option: (1) separate funds used for campaign-related disbursements or (2) continue to commingle money that the organization uses for a vast array of purposes with the money it spends on campaign-related disbursements. If it chooses the former, then only those donors giving in excess of $1,000 during the election cycle

---

Id. (internal quotation marks and citations omitted). Hopefully, even those who believe strongly in the old campaign finance regulatory structure will read the tealeaves. Instead of clinging to an umbrella to protect against a waterfall, it may be prudent to engage in some political logrolling to achieve full disclosure of political money before the Court has the final word. If not, the opportunity for a more comprehensive disclosure system may be lost. Regardless, as this Note argues, the reforms are necessary to balance the system even if the Court should go no further than it already has in protecting against monetary limits.

149 *See* S. 3369. Both the DISCLOSE Act of 2012 and Congress' first attempt to pass the law two years earlier would have been a substantial step towards ridding dark money from federal elections. *See, e.g.*, Lisa Rosenberg, *What You Should Know About the DISCLOSE Act Part 1: What Is the DISCLOSE Act?*, SUNLIGHT FOUND. BLOG (July 12, 2012, 10:13 AM), https://sunlightfoundation.com/blog/2012/07/12/what-you-should-know-about-the-disclose-act-part-1-what-is-the-disclose-act/. Both attempts, however, failed, at least in part because of the special carve outs in the bills. *See* Mitch McConnell, Op-Ed., *It's Intimidation, Not Reform*, USA TODAY, July 6, 2012, at 10A, *available at* http://usatoday30.usatoday.com/news/opinion/editorials/story/2012-07-05/Disclose-Act-Mitch-McConnell/56046300/1.

specifically to the organization's separate fund must be disclosed.[150] If the organization chooses the latter, then all donors giving in excess of $1,000 must be disclosed. If the organization chooses a separate fund, it cannot transfer money from its general funds to the separate account. This difference in disclosure requirements will incentivize organizations to separate their funds. Further, organizations will only be able to raise funds to influence elections by getting donors to explicitly allocate their contributions to the organization for this purpose with the knowledge that any contribution over $1,000 will be publicly disclosed.

Finally, the proposed amendments discard distinctions between electioneering communications and independent expenditures. The distinction is no longer relevant in practice, as the Court has effectively held that regulation of either—outside of disclosure requirements—is unconstitutional.[151] Therefore, the proposed amendments simplify the definition of a campaign-related disbursement that requires disclosure. "Campaign-related disbursement" will mean any advertisement through print, broadcast, cable, satellite, or Internet communication that (1) refers to a candidate for federal office and (2) is made within one year of a primary or general election.

B. Increased Contribution Limits to Candidates, Parties, and Connected Political Committees

In regards to the raising of the limits on contributions directly to candidates, parties, and connected political committees, the proposed amendments increase the statutory limit of each by a factor of twenty-five.[152] The amendments leave in place that these contribution limitations are pegged to inflation and are adjusted each year accordingly.[153]

---

150 This could be relatively easily achieved through a donation form that requires the donor to check the box if the donor wants the funds to only be used for non-election related activities.

151 *See* Citizens United v. FEC, 558 U.S. 310, 319 (2010); FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 494 (2007) (Scalia, J., concurring) ("The fact that the line between electoral advocacy and issue advocacy dissolves in practice is an indictment of the statute, not a justification of it.").

152 Since this Note went into the publication process, Congress added a provision to an omnibus spending bill greatly increasing the contribution limitation to the national parties for particular purposes. *See* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014). The provision shows that Congress is aware that the influence of outside groups is growing at the expense of candidates and the national parties. It does not change the thrust of the proposal in this Note—it is a small but limited step in the direction urged by this Note to recalibrate the balance between primary political actors and outside groups.

153 *See* 2 U.S.C. § 441a(c) (2012).

Under the current statute (ignoring inflation adjustments), the contribution limit to a candidate per election is $2,000.[154] Therefore, the statutory contribution limit per election cycle—consisting of a primary and general election—is $4,000.[155] Therefore, the proposed amendments make the contribution limits to candidates $50,000 per election and $100,000 per election cycle. The contribution limit to the national political parties increases to $625,000 per calendar year.[156] For political committees that coordinate with campaigns and candidates, the contribution limit would be $125,000 per calendar year.[157] The inflation accounting will start over, and these limitations will be adjusted for inflation beginning in the first calendar year following enactment.[158] Also, to further harmonize the regulations imposed on independent organizations with those of official political actors, the amendments raise the disclosure requirement threshold for contributions to candidates, parties, and coordinating political committees from $200 to $500.[159]

There is validity to the argument that campaign contribution limits should be ended altogether in light of the unlimited ability of independent groups to raise money.[160] However, the proposal outlined above increases all contribution categories by a factor of twenty-five (instead of simply eliminating them) because this increase is large enough to effectuate real movement in campaign dollars while not being as susceptible to the shock factor of removing monetary limits altogether. Removing all limits has a greater potential for individuals to further lose faith in the system in the short-term because of how it will likely be portrayed in the media and by pundits. This approach also maintains the balance struck between the political actors subject to contribution limitations—i.e., it increases all limits by the same factor.

---

154 *Id.* § 441a(a)(1)(A).

155 *See id.*

156 *See id.* § 441a(a)(1)(B).

157 *See id.* § 441a(a)(1)(C).

158 *See id.* § 441a(c).

159 *See id.* § 434. This approach has been advocated as a means to further increase participation in campaign finance by potentially broadening the base of contributors by relaxing regulations for publicity-adverse small donors. *See* Spencer Overton, *The Participation Interest*, 100 GEO. L.J. 1259, 1300–01 (2012).

160 *See, e.g.*, Gaughan, *supra* note 103.

C. Effects of the Proposed Statutory Reforms: A More Desirable Allocation of Political Money

The net effect of increasing disclosure requirements on independent groups and increasing campaign contribution limits will be for money to flow away from independent groups and towards candidates' campaigns and political parties.[161] It is not possible to predict the exact numbers, and indeed the exact magnitude of the shift will change as the political climate and its necessities change.[162] Coupled together, however, these two provisions will increase the flow of political money toward candidates and parties more than either provision would on its own. The increased disclosure requirements will also likely drive a certain amount of money out of the system altogether due to publicity-averse donors.[163]

1. The Statutory Reforms Will Cause the Flow of Political Money from Independent Groups to Candidates and Parties, Where It Is More Accountable to Democratic Pressures

When new regulation is implemented in a particular sector of campaign spending, all other things being equal, money will flow away from that sector towards other sectors.[164] The proposed statutory scheme increases regulation, through disclosure requirements, upon independent political groups while leaving the disclosure requirements placed upon candidate campaigns unchanged. Further, political donations directly to candidates' campaigns are more efficient than other forms of political spending, and donors give money because they want to change outcomes in elections.[165] Therefore, the effect of the increased disclosure requirements will be for money to flow from independent groups towards candidates and the parties, where donors get the most bang for their buck.

---

161 *See* Kang, *supra* note 78, at 40 (citing Issacharoff & Karlan, *supra* note 17) (highlighting that campaign money follows a hydraulic process and flows in response to new regulations away from newly regulated channels but toward the same political ends).

162 *See id.* at 55–56.

163 *See, e.g.*, John Samples, *The Costs of Mandating Disclosure*, CATO UNBOUND (Nov. 10, 2010), http://www.cato-unbound.org/2010/11/10/john-samples/costs-mandating-disclosure (noting that increased disclosure requirements lead to greater non-participation and recounting billionaire democratic fundraiser George Soros's comment that, in 2004, some big contributors stayed on the sidelines in 2004 because of disclosure requirements).

164 *See* Kang, *supra* note 78, at 40 (citing Issacharoff & Karlan, *supra* note 17).

165 *See* McCutcheon v. FEC, 134 S. Ct. 1434, 1454 (2014) (plurality opinion); Kang, *supra* note 78, at 44 (citing FEC v. Nat'l Conservative PAC, 470 U.S. 480, 498 (1985)).

A corollary to political money flowing away from new regulations is that political money also flows towards areas in which regulations have been relaxed.[166] Empirical evidence of this was shown in the wake of *Citizens United*, when independent expenditures increased significantly after the Court's decision further relaxed regulations on this form of spending.[167] The same is true for the deregulation of direct contributions to campaigns and parties through increased limits. In fact, the shift would likely be of an even greater proportion than the shift towards greater independent expenditures after *Citizens United* because of donors' preferences for direct campaign contributions, noted above.[168] Therefore, the relaxation of campaign contribution limits would further cause the flow of political money away from independent organizations and towards the candidates and parties—the political actors who have the greatest control over shaping the electoral agenda and who are more responsive to democratic controls.[169]

2. *Increased Disclosure Requirements Will Also Drive Some Political Money out of the System Altogether*

In addition to causing the flow of money from independent groups to candidates and parties, the increased disclosure requirements (if implemented and policed effectively) will drive a certain amount of political money out of the system altogether.[170] Publicity-

166 Kang, *supra* note 78, at 40–42 (noting "reverse-hydraulic" effect of political money flowing to areas in which regulations are relaxed, emphasizing that independent expenditures by outside groups increased by more than 300% after *Citizens United*). Professor Kang also cites the ability to avoid disclosure requirements as one of the deregulations that supports this reverse-hydraulic effect and causes money to flow toward deregulation. *Id.* at 5. The corollary to disclosure avoidance's demonstrated reverse-hydraulic effect is that the increased disclosure requirements will have the "hydraulic" effect of causing political money to flow away from the increased disclosure.

167 *See* Ctr. for Responsive Politics, *Outside Spending*, OpenSecrets.org, http://www.opensecrets.org/outsidespending/ (last visited May 13, 2015) (illustrating that outside spending increased from under $75 million in 2006 midterm elections to over $300 million in 2010 midterm elections, and from under $350 million in 2008 to over $1 billion in 2012, the next presidential election year).

168 *See supra* note 165 and accompanying text.

169 *See* Issacharoff & Karlan, *supra* note 17, at 1714 (noting that candidates and political parties have a mediating effect on positions and that political money's ability to push candidates and parties away from being responsive to democratic pressures is thus greatest when that money is spent by independent groups).

170 William McGeveran, *Mrs. McIntyre's Persona: Bringing Privacy Theory to Election Law*, 19 Wm. & Mary Bill Rts. J. 859, 877 (2011); *see also* S.V. Dáte, *NPR Analysis: Crossroads GPS Funded Heavily by $1 Million-Plus Donations*, NPR (June 1, 2012, 7:06 PM), http://www.npr.org/blogs/itsallpolitics/2012/06/01/154168293/npr-analysis-crossroads-gps-funded-heav-

averse large contributors may allow their money to remain on the sidelines rather than have their contributions and expenditures on behalf of candidates made known to the public.[171] This would be a welcomed consequence for those reformers who think there is too much money in the system.[172] It is possible that the amount of big-money contributors who fit this profile is relatively small, but their presence in campaign finance is nonetheless palpable, as demonstrated by the emergence of 501(c)(4) groups in response to apparent demand to influence elections with anonymity.[173] Overall, the increased regulation of independent groups (through disclosure, the only means still available to Congress) and the decreased regulation of candidates and political parties will redirect more of the political money to candidates and parties at the expense of independent groups. With greater parity in campaign finance rules, candidates and parties will be more responsive to their constituents, and by mediating the positions of their electorates, will create a more workable representative government.

IV. Clingers and Limit Pushers: Counterarguments to the Proposal

This proposal is not without legitimate objection. The thrust of the counterarguments against the proposed statutory reforms of this Note address the increased contribution limits.[174] Many reformers still hold on to the remaining parts of original regulatory scheme despite the fact that the Court has undercut the comprehensive foundation on which the reform attempts were built.[175] In this view, discarding what remains of the monetary limitations by relaxing contribution limits in-

---

ily-by-1-million-plus-donations (highlighting that the 501(c)(4), disclosure exempt, Crossroad GPS was increasingly out-fundraising its 527, disclosure required, counterpart organization, American Crossroads, as large contributors wanted to participate in a major way but did not want to do so when they would be revealed as the source of the donations).

171 *See* Issacharoff & Peterman, *supra* note 135, at 193–94.

172 *See, e.g.*, Hill, *supra* note 132 (noting Senator John McCain's comment: "There's too much money washing around politics, and it's making the campaigns irrelevant." (internal quotation marks omitted)).

173 As these groups must spend political money less efficiently than other political actors, it seems apparent that there is some significant market for those who value anonymity. *See The Ads Take Aim*, Economist, Oct. 27, 2012, at 29, *available at* http://www.economist.com/news/united-states/21565245-vast-sums-have-been-spent-tv-advertising-mostly-cancelling-each-other-out-ads-take.

174 *See, e.g.*, Paul Blumenthal, *Next* Citizens United*?* McCutcheon *Supreme Court Case Targets Campaign Contribution Limits*, HuffPost Pol., http://www.huffingtonpost.com/2013/07/31/mccutcheon-supreme-court_n_3678555.html (last updated July 31, 2013, 2:50 PM).

175 *See, e.g.*, McCutcheon v. FEC, 134 S. Ct. 1434 (2014) (plurality opinion); Citizens United v. FEC, 558 U.S. 310 (2010); Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

vites increased corruption.[176] These reformers argue that the whole house must not be torn down just because some of the foundation has been eroded: the additional relaxation of contribution limits will further provide outsized influence to moneyed interests,[177] create more money in the system,[178] and drown out the small donor and average voter.[179]

However, the house is not just on shaky ground; it is partially in the ocean. First, the potential for moneyed interest to have undue influence is actually heightened when selective disclosure—monetary support revealed to the elected official, but not to the public—is available, as it is in the current system.[180] Bribes do not happen in the open. If moneyed interest actually wanted to engage in quid pro quo corruption, presumably it would be executed outside of public view.[181] Supporters of strict contribution limits, though, view the malignance of larger contributions as broader than the Supreme Court's concern with actual bribes.[182] Yet the answer is the same. Influence over, and access to, elected officials are also subject to the check of the voting public, which is particularly effective in the Internet age when there is public disclosure.[183] For example, if the voters are able to see that the CEO of a dairy company gave a large contribution to a congressman (likely with assistance from the media or the opposition), who in turn voted for increased subsidies for the dairy industry, the voters would be able to respond accordingly at the voting booth.[184] By contrast,

---

176 *See, e.g.*, Richard L. Hasen, *How 'the Next* Citizens United*' Could Bring More Corruption—but Less Gridlock*, WASH. POST OPINIONS (Feb. 21, 2014), http://www.washingtonpost.com/opinions/how-the-next-citizens-united-could-bring-more-corruption—but-less-gridlock/2014/02/21/a190d1c6-95ab-11e3-afce-3e7c922ef31e_story.html. Professor Hasen's piece is representative of many pro-contribution-limit writings surrounding the Court's *McCutcheon* ruling. It decries the decision but welcomes the effects of relaxing contribution limits upon candidates and parties described in this Note as a silver lining. *See id.*

177 *See, e.g.*, Meredith McGehee, *Donation Limits Help Keep Politics Honest*, CNN OPINIONS, http://www.cnn.com/2013/10/02/opinion/mcgehee-campaign-finance-case/ (last updated Oct. 2, 2013, 8:28 AM).

178 *See, e.g.*, Bill Mears & Tom Cohen, *Supreme Court Allows More Private Money in Election Campaigns*, CNN POL., http://www.cnn.com/2014/04/02/politics/scotus-political-donor-limits/ (last updated Apr. 2, 2014, 5:29 PM).

179 *See, e.g.*, Overton, *supra* note 159, at 1262–63.

180 *See* Birkenstock, *supra* note 21, at 615–16.

181 *Id.* at 616. The scandals involving bribery in this country often occur when money was exchanged in a clandestine manner. *See, e.g.*, Bruce Alpert, *Jefferson Reports to Texas Prison Today*, TIMES-PICAYUNE, May 4, 2012, at A-1 (discussing Congressman William Jefferson's conviction after authorities found $90,000 in bribery money hidden in his freezer).

182 *See, e.g.*, McGehee, *supra* note 177.

183 *See* McCutcheon v. FEC, 134 S. Ct. 1434, 1460 (2014) (plurality opinion).

184 *See* Zelizer, *supra* note 41, at 95 (explaining that large part of the Watergate Scandal

with the selective disclosure available in the current system, the check of voting out of office the elected official who benefited from the moneyed interest at the expense of his or her constituents is weakened.[185] The dots cannot be connected. Contributions to candidates will increase at the expense of independent groups under this Note's proposal. A contribution to a candidate rather than an independent group is more direct, as is the public connection of the elected official to that contribution. As such, the voters have greater ability to respond to monetary influence that they find undue.

Additionally, with no monetary limitations on independent groups that engage in the same activities as parties and candidates, the only current limit on money in the system in the aggregate is the willingness of donors.[186] If there is a desire to spend large amounts of money to influence elections, there is a way.[187] *Citizens United* and subsequent FEC actions have removed the artificial limit on the supply of political money.[188] Large-moneyed interests responded accordingly, utilizing independent groups to fund electoral actions after monetary limits upon these groups were struck down.[189] Increased contribution limits will affect the allocation of money in the system but are not likely to induce new large sources of money into the system.[190] There is already an outlet.

As to another potential counterargument,[191] the evidence does not support the fears that the small donor will be drowned out by higher value contribution sizes.[192] The result follows naturally when it is accepted that the demand for more political money persists. Once the infrastructure is built (e.g., lists of supporters who have historically given contributions to campaigns and political parties), small-contribution "asks" are easy to make, through blast emails and the like.[193]

---

was Nixon's acceptance of $5,000,000 in donations from the milk industry in return for reversing the Department of Agriculture decision that lowered milk prices).

185 *See* Birkenstock, *supra* note 21, at 618.

186 *See supra* Part I.C.1.

187 *See, e.g.*, Issacharoff & Karlan, *supra* note 17, at 1713 (noting that money removed from one area will simply be rerouted into the political process another way).

188 *See supra* Part I.C.1.

189 *See supra* notes 166–67 and accompanying text.

190 *See supra* Part III.

191 *See supra* note 179 and accompanying text.

192 *See* Paul Blumenthal, *Barack Obama Reelection Raising More from Small Donors Than in 2008*, HUFFPOST POL., http://www.huffingtonpost.com/2012/02/13/barack-obama-reelection-campaign_n_1274112.html (last updated Feb. 14, 2012, 2:17 PM).

193 This should not come as a surprise to anyone who has found him or herself on the email distribution list of a campaign.

Candidates are not discriminatory about campaign funds. Just because a single contributor may give $100,000 to a congressional candidate per election cycle does not mean that the candidate's campaign will be anymore adverse to sending a blast email and raising $100,000 from 1,000 contributors.[194] Candidates employ professionals for the sole purpose of raising money for their campaigns. The campaigns will pursue both small donations and large donations, albeit by different means (e.g., through generic mail and email solicitations for small donations versus personalized solicitations for large donations).[195] Relaxing campaign contribution limits will not cause candidates to ignore small sources of political money.[196] Instead, it will only cause candidates to also pursue large campaign donations that previously went to independent groups.

Another potential counterargument is that disclosure requirements on all politically active independent groups will infringe on First Amendment rights.[197] The resistance to increased disclosure requirements likely derives in part from those on the deregulation side smelling blood in the water after recent victories and pushing the limits of a perceived advantage.[198] As a matter of constitutional law, this argument is not persuasive. The Supreme Court has limited regulation in many areas in campaign finance over the last forty years, the Court has consistently and overwhelmingly supported broad disclosure requirements.[199] In fact, those currently opposing disclosure have actually attempted to require such disclosure in the past.[200] If the fear is that disclosing the donor of an independent group will chill political speech by causing threats of harm against the donors for their political beliefs, the groups are free to challenge the disclosure through an as-applied challenge, as the Court noted in *Citizens United*.[201] In reality,

194 *See* David Eldridge, *Gingrich Kicks Off 'Money-Bomb' Effort*, WASH. TIMES INSIDE POL. BLOG (Jan. 21, 2012, 10:14 PM), http://www.washingtontimes.com/blog/inside-politics/2012/jan/21/gingrich-kicks-money-bomb-effort/. Note this effort was simultaneous with billionaire Sheldon Adelson's multimillion dollar Super PAC support of Gingrich's candidacy. *See supra* note 104.

195 *See supra* note 194 and accompanying text.

196 *See supra* note 194 and accompanying text.

197 *See* McConnell, *supra* note 149.

198 *See* Zaid A. Jilani, *Mitch McConnell's Disclosure Flip-Flop*, MSNBC, http://www.msnbc.com/the-ed-show/mitch-mcconnells-disclosure-flip-flop (last updated Sept. 6, 2013, 7:02 AM).

199 *See, e.g.*, Citizens United v. FEC, 558 U.S. 310, 366–67 (2010) (eight of nine Justices voting to uphold disclosure).

200 *See, e.g.*, Justin Elliott, *When the GOP Tried to Ban Dark Money*, PROPUBLICA (Mar. 8, 2012, 3:15 PM), http://www.propublica.org/article/when-the-gop-tried-to-ban-dark-money.

201 *Citizens United*, 558 U.S. at 367.

however, this occurrence will not be common. Out of numerous cases over more than a half-century, the Court has only found this to be a legitimate concern a few times.[202]

Moreover, there are indications that resistance to transparency may be dissipating.[203] Likewise for resistance to eliminating what is left of the tight monetary limits.[204] For example, *Meet the Press* recently hosted the plaintiff and namesake, Shaun McCutcheon, and contribution limit advocate, Robert Weissman, for reactions to the Court's decision in *McCutcheon*.[205] Mr. McCutcheon said that he is for total transparency.[206] Mr. Weismann, when pushed to say if disclose and deregulate is the best option left, conceded and said that what we really need is a constitutional amendment.[207] Perhaps in the meantime, the two sides can come together to agree on a more cohesive campaign finance structure.

Conclusion

For better or worse, the Supreme Court has, for the time being, constitutionalized unlimited money in politics. Barring a significant shift in the Court, the only current way to limit the amount of money in politics is through a constitutional amendment. The result is a regulatory scheme that purports to limit to money and its influence in the federal electoral system. The scheme is disingenuous in practice, undermines public trust in the system, and skews autonomy away from political actors who are actually held accountable by the voters, which lessens their responsiveness to constituents and exacerbates gridlock. While not creating a perfect system, pragmatic steps should be taken legislatively to work within the Supreme Court's jurisprudence to make the constitutionalized system work better. Congress should take steps to increase disclosure requirements on independent organizations that spend significant amounts of money to influence specific elections. Congress should also significantly relax contribution limits

---

202 *See* McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 355 (1995); Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 100–02 (1982); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 460–63 (1958); *see also McIntyre*, 514 U.S. at 356 (distinguishing Ohio disclosure provisions held to be unconstitutional from *Buckley* by noting "the similar requirements for independent expenditures [in FECA] serve to ensure that a campaign organization will not seek to evade disclosure by routing its expenditures through individual supporters").

203 *See Meet the Press: 4062014* (NBC television broadcast Apr. 6, 2014), *available at* http://www.nbcnews.com/meet-the-press/meet-press-transcript-april-6-2014-n79226.

204 *See, e.g.*, *id.*

205 *Id.*

206 *Id.*

207 *Id.*

on candidates and parties. These pragmatic steps will shift political money away from independent groups towards candidates and parties, which will help moderate in policy and tone, create more transparency in the system, and provide the public with more responsive representatives.

Appendix

In general. Section 324 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441k) is amended to read as follows:

DISCLOSURE OF CAMPAIGN-RELATED DISBURSEMENTS BY INDEPENDENT GROUPS.

(a) Disclosure Statement.

(1) In general. Any independent group that makes campaign-related disbursements aggregating more than $10,000 in an election reporting cycle shall, not later than 24 hours after each disclosure date, file a statement with the Commission made under penalty of perjury that contains the following information:

(A) The name of the independent group and the principal place of business of such group.

(B) The amount of each campaign-related disbursement made by such organization during the period covered by the statement of more than $1,000, and the name and address of the person to whom the disbursement was made.

(C) In the case of a campaign-related disbursement that is not a covered transfer, the election to which the campaign-related disbursement pertains and if the disbursement is made for a public communication, the name of any candidate identified in such communication and whether such communication is in support of or in opposition to a candidate.

(D) A certification by the chief executive officer or person who is the head of the independent group that the campaign-related disbursement is not made in cooperation, consultation, or concert with or at the request or suggestion of a candidate, authorized committee, or agent of a candidate, political party, or agent of a political party.

(E) If the independent group makes campaign-related disbursements using exclusively funds in a segregated bank account consisting of funds that were paid directly to such account by persons in an aggregate amount of $1,000 or more to date during election reporting cycle, for each such payment to the account:

(i) the name and address of each person who made such payment during the period covered by the statement;

(ii) the date and amount of such payment; and

(iii) the aggregate amount of all such payments made by the person to date during the election reporting cycle;

(F) If the independent group makes campaign-related disbursements using funds other than funds in a segregated bank account described in subparagraph (E), for each payment to the independent group by persons in an aggregate amount of $1,000 or more to date during election reporting cycle:

(i) the name and address of each person who made such payment during the period covered by the statement;

(ii) the date and amount of such payment; and

(iii) the aggregate amount of all such payments made by the person during the election reporting cycle.

(G) Such other information as required in rules established by the Commission to promote the purposes of this section.

(2) Exceptions. The requirement to include the information described in paragraph (1) shall not apply to:

(A) amounts received by the independent group in commercial transactions or investments in the ordinary course of any trade or business conducted by the independent group; or

(B) where the donor in writing prohibited the funds from being used for campaign-related disbursements.

(3) Other definitions. For purposes of this section:

(A) Disclosure date. The term 'disclosure date' means-

(i) the first date during any election reporting cycle which the independent group makes campaign-related disbursements aggregating more than $10,000; and

(ii) any other date during such election reporting cycle which the independent group makes campaign-related disbursements aggregating more than $10,000 since the most recent disclosure date for such election reporting cycle.

(B) Election reporting cycle. The term 'election reporting cycle' means the 2-year period beginning on the date of the most recent general election for Federal office.

(C) Payment. The term 'payment' includes any contribution, donation, transfer, payment of dues, or other payment.

(b) Campaign-Related Disbursement Defined. In this section, the term 'campaign-related disbursement' means a disbursement by an independent group for any of the following:

(1) any advertisement through print, broadcast, cable, satellite, or Internet communication that:

(A) refers to a candidate for federal office; and

(B) is made within one year of a primary or general election; and

(2) any covered transfer.

(c) Independent Group Defined. In this section, the term 'independent group' means any of the following:

(1) A corporation.

(2) A labor organization.

(3) An organization described in section 501(c) of the Internal Revenue Code and exempt from taxation under section 501(a) of such Code.

(4) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act that complies with the contribution limits and source prohibitions of this Act.

(d) Covered Transfer Defined.

(1) In general. In this section, the term 'covered transfer' means any transfer or payment of funds by an independent group to another person if the independent group:

(A) indicates in any way that the amounts be used for:

(i) campaign-related disbursements; or

(ii) making a transfer to another person for the purpose of making or paying for such campaign-related disbursements;

(B) made such transfer or payment in response to a solicitation or other request for a donation or payment for:

(i) the making of or paying for campaign-related disbursements; or

(ii) making a transfer to another person for the purpose of making or paying for such campaign-related disbursements;

(C) engaged in discussions with the recipient of the transfer or payment regarding:

(i) the making of or paying for campaign-related disbursements; or

(ii) donating or transferring any amount of such transfer or payment to another person for the purpose of making or paying for such campaign-related disbursements;

(D) knew or had reason to know that the person receiving the transfer or payment made campaign-related disbursements in an aggregate amount of $50,000 or more during the 2-year period ending on the date of the transfer or payment, or that the person receiving the transfer or payment would make campaign-related disbursements in

such aggregate amount or more during the 2-year period beginning on the date of the transfer or payment.

(2) Exclusions. The term 'covered transfer' does not include any of the following:

(A) Any amounts disbursed by the independent group in commercial transactions or investments in the ordinary course of any trade or business conducted by the independent group; or

(B) Where the independent group in writing prohibited the funds from being used for campaign-related disbursements.

INCREASE CONTRIBUTION LIMITS TO CANDIDATES, PARTIES, AND COORDINATING POLITICAL COMMITTEES

2 U.S.C. § 441a(a)(1) is amended to read as follows:

(a) Dollar limits on contributions.

(1) Except as provided in subsection (i) of this section and section 441a–1 of this title, no person shall make contributions:

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $50,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $625,000;

(C) to any other political committee (other than a committee described in subparagraph (D) of this section) in any calendar year which, in the aggregate, exceed $125,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $250,000.

RELAXED CAMPAIGN CONTRIBUTION DISCLSOURE REQUIREMENTS

2 U.S.C. § 434 shall be amended to replace "$200" with "$500" for every instance in this section of the statute.