STATEMENT OF SENATOR ANGUS S. KING, JR.
SENATE RULES COMMITTEE
APRIL 30, 2014

I am deeply worried about the future of our democracy. For over one hundred years, we have struggled with the issue of money in politics, always seeking to find the right balance between freedom of political expression and the corrosive influence of the unchecked flow of money to public officials. We have had periodic scandals and periodic corrections; new laws and new ways to evade those laws. But we have never before seen anything like what is happening today.

As we will learn this morning, a perfect storm of new forces – court opinions, clever political operatives, and the high-stakes inherent in governmental decisions – have created a qualitatively new political landscape, where candidates are compelled to raise more and more money and yet, at the same time contend with virtually unlimited spending by shadowy entities representing nameless donors.

What has occurred in the past five years represents revolutionary, not evolutionary, change in the way the financing of political campaigns has been regulated in this country for over a hundred years, changes that threaten to undermine a fundamental principle of American democracy: one person, one vote.

There are well-intentioned people, people I respect, who believe that restrictions on who can give to campaigns and how much they can give trespass on cherished first amendment freedom of speech protections. Others, and I am among them, are worried that the recent decisions' elimination of even modest limits on campaign contributions, combined with a Byzantine system that, in too many cases, masks disclosure of who is giving and allows a flood

of so-called "dark money" into the political process that has the very real potential to corrode the integrity of the system itself.

Historically, the flow of money into and out of political campaigns has rested on a regulatory scheme that has three pillars: First: sources of money; second: limits on giving; and, third: disclosure of who is giving.

The first pillar is a question of who can give—and we have, historically, upheld the right of individuals to give over that of corporations. We continue to prohibit corporations, for example, from making direct campaign contributions, though we have, following the 2010 *Citizens United* decision, allowed them to spend money on elections in other ways—most notably, through contributions to "independent expenditure-only committees," or "Super PACs," that are purportedly not coordinating with the political campaigns they support.

The second pillar is a question of how much you can give. And while there remain "base limits" on how much a person can give to a particular campaign, the Court has recently decided in its *McCutcheon* decision—that it is unconstitutional to set "aggregate limits" on how much a person can give altogether to a range of candidates or committees.

The third pillar is a question of whether you have to disclose who is giving—a question of transparency.

As the two decisions I just cited make clear, the current Supreme Court has severely restricted our ability to regulate who can give—that's *Citizens United*—and how much they can give—that's *McCutcheon*. In doing so, the Court's narrow 5 to 4 majority in both decisions has rationalized that disclosure – transparency of who is giving what – negates the possible corrosive or corrupting effect of eliminating the historical sources and limits restrictions.

Here's how Justice Kennedy put it in the majority opinion in *Citizens United*:

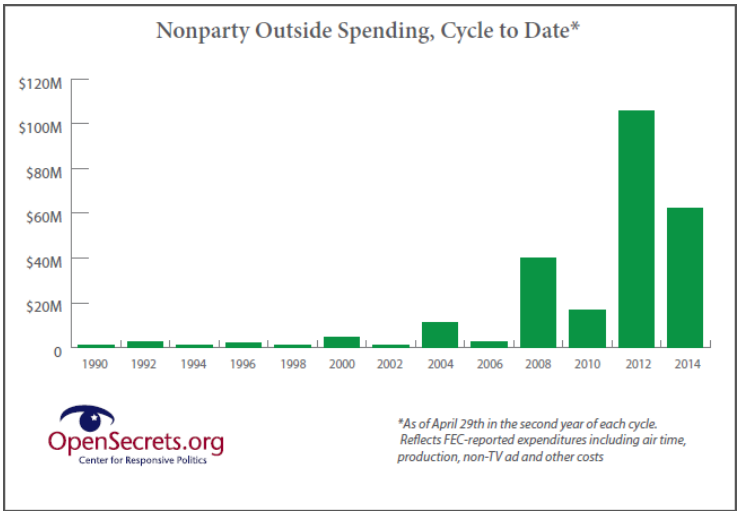
> "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

In *McCutcheon*, Chief Justice Roberts struck a similar note. "Disclosure of contributions," he wrote:

> "minimizes the potential for abuse of the campaign finance system. Disclosure requirements are in part 'justified based on a governmental interest in "provid[ing] the electorate with information" about the sources of election-related spending.' They 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."

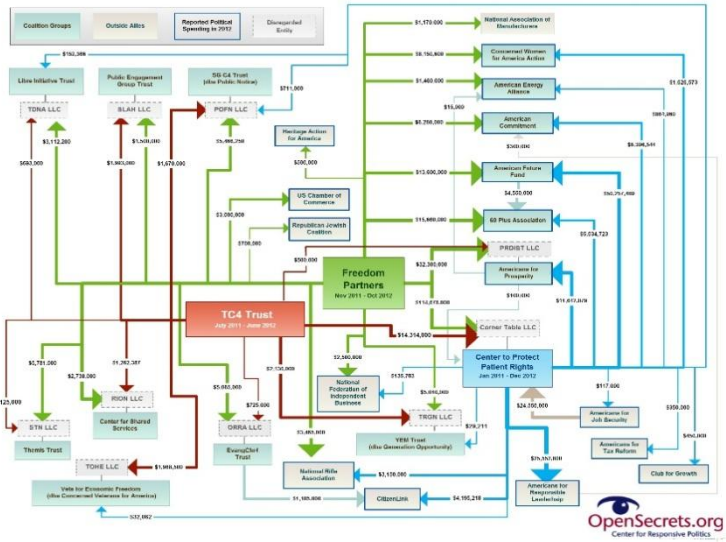
Unfortunately, those disclosure requirements mentioned by Justices Roberts and Kennedy as being the bulwark against abuse and corruption simply do not exist.

For example, according to a new study by the non-partisan Center for Responsive Politics (CRP), total independent expenditures reported to the Federal Election Commission by outside groups totals about $70 million to this point in 2014 – nearly <u>three times</u> more than was spent by this point in 2010, the last midterm election cycle.



The growth of outside spending (spending by “independent groups”) in our campaign finance system is staggering. “Independent” outside groups have spent more than candidates on TV advertising (air time) in 10 of 12 competitive Senate races in the current campaign cycle -- according to a new Wesleyan Media Project/CRP survey.

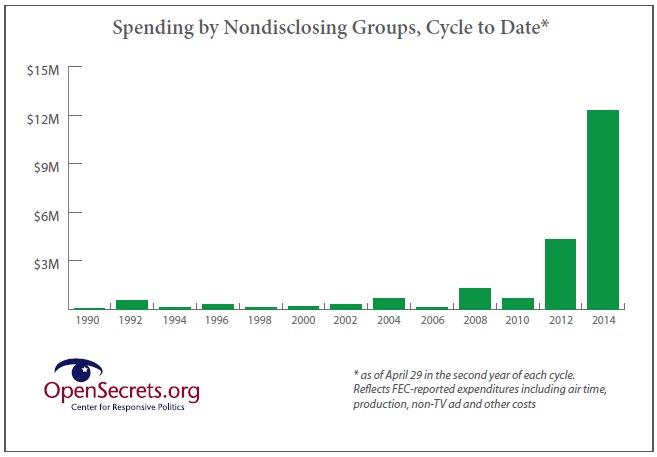
We have created a kind of parallel universe of campaign finance – the traditional candidate-based system with clear limits on sources and amounts and strict disclosure requirements, on the one hand, and the “independent” system with no control of sources, no limits, no disclosure on the other.



Within this $70 million total I just mentioned, spending by groups that do not disclose **their donors ("dark money") is nearly four times higher than it was at this time in 2012** -- totaling $12.2 million compared to $3.4 million at the same point in 2012.

Part of this new world is the rise of a system of undisclosed contributions—so-called “dark money”—and the Byzantine structure that frustrates (if not defeats) transparency.

The $12.2 million spent by nondisclosing groups in 2014 is the equivalent of more than 75 percent of all independent expenditures by PACs, super PACs, 527s, and 501(c) organizations at this point in the 2010 midterms, according to the same CRP survey.

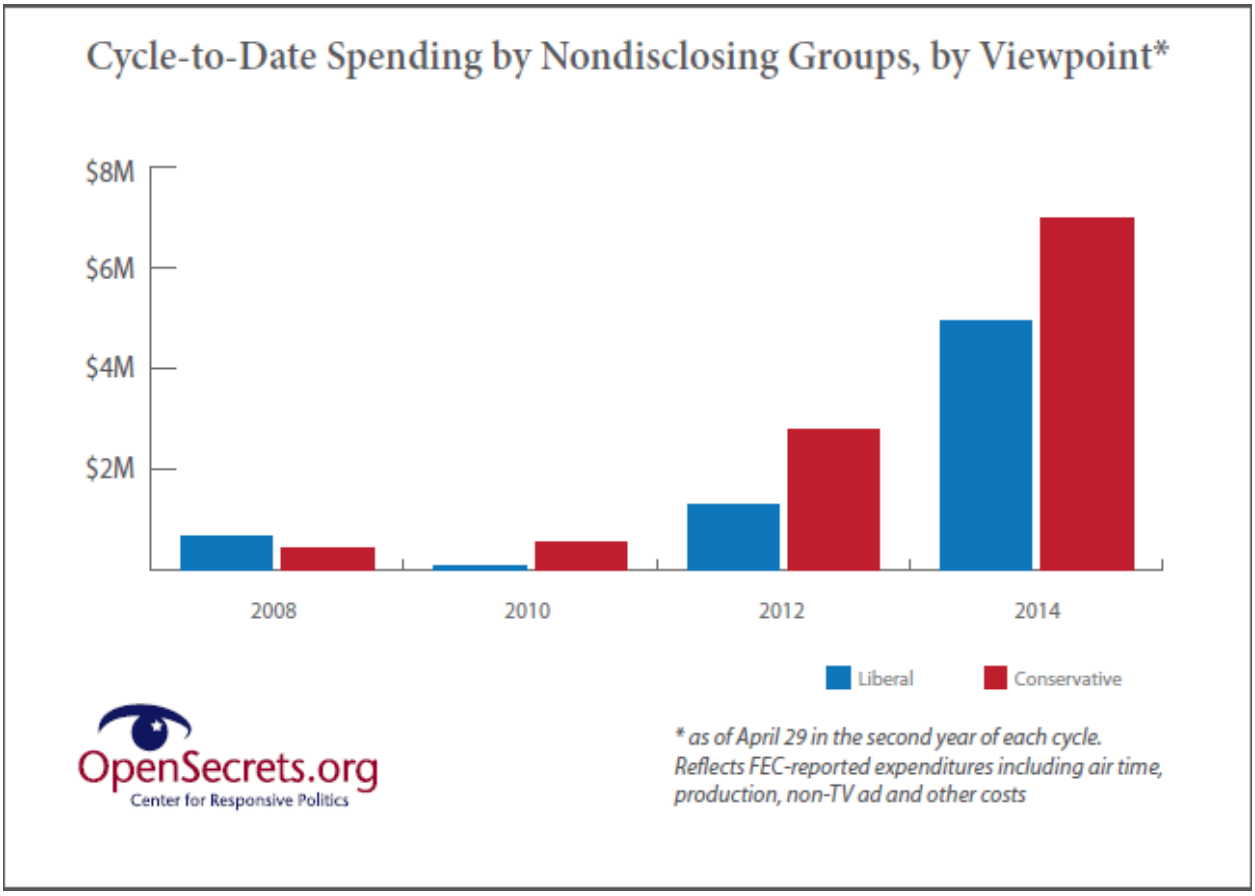


Naturally, this troubling new world of campaign finance impacts how we, as elected officials, interact with the fundraising process: quantitatively in the amounts of money elected officials need to raise – the average senator has to raise an estimated $5,200 a day — and qualitatively in terms of how we fundraise, how much time we spend on it, and the potential all this has to distort the political process.

So we have come together this morning, first, to shine light on the qualitative changes in campaign fundraising and its interaction with the broader political process, and, second, to identify some possible fixes, particularly in the areas of disclosure and transparency.

This is not a partisan issue; it is a systemic issue that threatens all of us and our very democracy. What one party may now view as an advantage could overnight turn the other way. As the Old Testament warns, "those who sow the wind shall reap the whirlwind." And spending by nondisclosing groups in 2014 is not only accelerating it is becoming more bipartisan.

In previous campaign cycles, according to the Wesleyan Media Project/CRP survey, the



nondisclosing groups that engaged in heavy political activity were overwhelmingly conservative, making up 88 percent of the nondisclosed spending in 2010 and 85 percent in 2012. In the current cycle to date, more than 40 percent of the spending by nondisclosing groups is from left-leaning organizations.

Neither this hearing nor any proposal for reform that may come out of it should be viewed as an attack on any party, any citizen, or any group. The concern here is the system, and neither the Democrat nor the Republicans, or, most importantly, the country, stands to

benefit from an arms race in undisclosed contributions, with both sides funneling millions from the shadows, hidden from the public's eyes.

And disclosure in this context is not an infringement on the First Amendment; indeed, and 8-1 majority of the Supreme Court in both *Citizens United* and McCutcheon, explicitly invited us to strengthen our disclosure regime. My former law school colleague Justice Nino Scalia put it succinctly:

> Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.[1]

What we are allowing to happen before our eyes is already having its inevitable effect – the erosion of confidence in our system and in us as stewards of our country's future.

More and more Americans feel disenfranchised and believe that the wealthy disproportionately influence our elected officials. And they're right. Recent polls show that the American public thinks that 75 percent of all politicians are corrupted by campaign contributions and lobbyists and more than 90 percent – 90 percent - of Americans believe that it is important to reduce the influence of money in politics.

The challenge here is to find the balance between competing goods—freedom to exercise our political voice on the one hand, and the public's interest in safeguarding the integrity of the political process on the other—and to restore that balance to what feels like an increasingly unbalanced system of campaign finance.

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[11] *Doe v. Reed*, 130 U.S. 2811, 2837 (2010) *(Scalia Concurrence)*

I welcome our witnesses today and look forward to their contributions to our deliberations.

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