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By Electronic Mail (kford@lso.idaho.gov)

2017 Campaign Finance Reform Legislative Work Group
Idaho Legislature
Boise, ID 83720

Re: Overview of Campaign Finance Disclosure Law

Dear Cochairs Lodge and Wood and members of the Work Group:

Thank you for the opportunity to submit this letter to the Campaign Finance Reform Legislative Work Group as it studies campaign finance issues, including reporting and disclosure of campaign receipts and expenditures. The Campaign Legal Center ("CLC") is a nonprofit, nonpartisan organization that works to draft, implement, and defend effective campaign finance, lobbying, and ethics laws. Since the organization's founding in 2002, CLC has participated in every major U.S. Supreme Court campaign finance case as well as numerous other federal and state court cases. Our work promotes every voter's right to participate in our democratic process and to know the true sources of money spent to influence our elections.

As the Work Group considers campaign finance reform measures for Idaho, we hope that the history and development of campaign finance disclosure laws for U.S. elections detailed in this letter provides some useful context. Part I covers major legislative developments, relevant court decisions on disclosure, and the contemporary surge in "dark money" in federal and state elections. Part II highlights different state efforts to address undisclosed campaign-related spending. We are happy to provide additional background on any of the information covered in this letter or on any other campaign finance laws the Work Group is considering.

I. Development of disclosure law & U.S. Supreme Court precedent

a. Early legislation, FECA, and *Buckley*

The disclosure of funds spent to influence elections is a cornerstone of campaign finance law. With origins in the Progressive era, political disclosure laws principally operate as a mechanism to shine light on the real sources of money spent to affect our democratic processes. Historically, such laws have enjoyed bipartisan support as a means of combating corruption and informing voters about the financial interests supporting or opposing candidates and elected officials.

Concerns over political corruption prompted passage of the first disclosure laws in the U.S. at the close of the 19th century, and, by the late 1920s, nearly every state had adopted some measure of campaign finance disclosure.[1] Congress enacted the first federal disclosure legislation, the Publicity of Political Contributions Act ("Publicity Act"), in 1910.[2] As amended in 1911, the Publicity Act required political committees active in congressional elections in more than one state to disclose the name and address of each contributor of $100 or more as well as the name and address of each recipient of expenditures of $10 or more.[3]

The Federal Election Campaign Act of 1971 ("FECA"),[4] as amended in 1974,[5] sets out much of the statutory framework that governs federal election disclosure today. Among its requirements, FECA obligated federal candidates and political committees ("PACs") to file quarterly reports of contributions and expenditures; extended application of federal disclosure law to presidential candidates and primary elections; and generally improved the public accessibility of disclosure filings.[6] Another key provision of the amended FECA required an individual or group, other than a federal candidate or political committee, making expenditures over $100 in a calendar year to file a disclosure report with the newly created Federal Election Commission ("FEC").[7]

In *Buckley v. Valeo*, the Supreme Court upheld the constitutionality of FECA's disclosure regime against First Amendment challenge.[8] The Court explained that disclosure, unlike contribution and expenditure limits, "impose[s] no ceiling on campaign-related activities" and does not inhibit political speech.[9] Accordingly, FECA's reporting provisions were assessed under a less rigorous standard of review than the scrutiny applied to campaign spending and fundraising restrictions: Disclosure provisions are constitutional if they bear a "substantial relation" to a "sufficiently important" governmental interest.[10]

The Court identified three distinct government interests advanced by disclosure. Primarily, disclosure "provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office" and "allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches."[11] Second, the Court recognized disclosure "deter[s] actual corruption and avoid[s] the appearance of corruption by exposing large contributions and expenditures to the light of

[1] Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections and How 2012 Became the "Dark Money" Election*, 27 NOTRE DAME J.L. ETHICS & PUB. POL'Y 383, 400 (2014)
[2] *Id*. at 403; 36 Stat. 822 (1910) (amended in 1911 and in 1925; repealed in 1972).
[3] 36 Stat. at 822-24.
[4] Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 52 U.S.C. §§ 30101 et seq.).
[5] Pub. L. No. 93-443, 88 Stat. 1263 (1974).
[6] Potter & Morgan, *supra* note 1, at 412-13.
[7] *Buckley v. Valeo*, 424 U.S. 1, 63-64 (1976).
[8] 424 U.S. 1 (1976) (per curiam).
[9] *Id*. at 64.
[10] *Id*. at 64, 66.
[11] *Id*. at 66-67 (internal quotations omitted).

publicity."[12] Finally, disclosure serves to ensure enforcement of other campaign finance rules, like contribution limits, through the documentation of campaign receipts and disbursements.[13]

Although *Buckley* upheld FECA's reporting requirement for individuals and groups that were not candidates or PACs, the Court adopted a narrowing construction of the provision due to apprehension about the potential breadth of the term "expenditure." In relevant part, FECA defined an "expenditure" as "any purchase, payment, distribution . . . or anything of value, made by any person *for the purpose of influencing* any election for Federal office." [14] The Court was concerned the phrase "for the purpose of influencing any election" could result in regulation of a substantial amount of issue advocacy that was not "unambiguously related to the campaign of a particular federal candidate."[15] Thus, the Court interpreted the provision to apply only to "communications that expressly advocate the election or defeat of a clearly identified candidate."[16] "Express words of advocacy", the Court clarified, included language such as "'vote for,' 'elect' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'reject,' 'defeat.'"[17]

b. Post-*Buckley* through *McConnell*: 1976-2010

The decades following *Buckley* revealed serious deficiencies in FECA's independent spending disclosure rules as narrowly construed by the Court. Because *Buckley* limited reporting by non-PAC organizations to expenditures for *express advocacy* communications, these groups recognized that they could fund candidate-centric advertisements under the guise of issue advocacy and shirk disclosure if the ads did not overtly call on the public to vote for or against a federal candidate. Nonprofit organizations—often with anodyne names like Citizens for Reform—eagerly exploited this gap in coverage to spend significant sums on "sham" issue ads, which were clearly intended to influence voters' views on federal candidates, without having to disclose their sources of funding.[18]

In 2002, Congress attempted to remedy FECA's shortcomings with passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA").[19] One of the issues Congress specifically sought to address was sham issue advertising. To that end, BCRA imposed disclosure requirements on any person sponsoring an "electioneering communication." BCRA defined an "electioneering communication" as any broadcast, cable, or satellite advertisement that (1) referenced a specific

[12] *Id.* at 67.
[13] *Id.* at 67-68.
[14] § 301(f), 86 Stat. at 9 (1972) (emphasis added). Federal election statutes still utilize this definition of "expenditure." *See* 52 U.S.C. § 30101(9)(A)(i).
[15] 424 U.S. at 80.
[16] *Id.*
[17] *Id*. at 44 n. 52.
[18] *See McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 126-29 (2003). As much as $500 million reportedly was spent by corporations and unions on sham issue advertising during the 2000 federal election cycle. *Id.* at n. 20.
[19] Pub. L. No. 107-155, 116 Stat. 81 (2002).

federal candidate, (2) aired within thirty days of a primary or sixty days of a general election, and (3) was targeted to the relevant electorate for the office sought by the candidate.[20]

Under BCRA, any "person"[21] spending over $10,000 in a calendar year on electioneering communications must file a report disclosing, among other information, the name and address of certain contributors of $1,000 or more.[22] In addition, BCRA prohibited corporations and labor unions from making electioneering communications [23]

Shortly after BCRA was enacted, the Supreme Court affirmed the constitutionality of the Act's reporting requirements for electioneering communications. In *McConnell v. FEC*, the Court "rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy."[24] *Buckley*'s reading of FECA's independent expenditure disclosure provision to cover only express advocacy communications, the Court explained, "was the product of statutory interpretation rather than a constitutional command."[25] For the Court, the public's right to know the sources behind candidate-related speech before an election—including speech that did not amount to express advocacy—outweighed any burden stemming from disclosure:

> [The plaintiffs] never satisfactorily answer the question of how "uninhibited, robust, and wide-open" speech can occur when organizations hide themselves from the scrutiny of the voting public. … Plaintiffs' argument for striking down BCRA's disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.[26]

The Court proceeded to uphold BCRA's electioneering communication disclosure regime by an eight-to-one majority.[27]

The effectiveness of BCRA's disclosure mandates was evident in the election cycles following *McConnell*. During the 2004 federal election cycle, an estimated 96.5% of outside spending (i.e, spending by individuals and organizations other than candidate committees and political party

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[20] § 201(a), 116 Stat. at 88. *See also McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 194 (2003) ("The term 'electioneering communication' applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners.").

[21] "The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government." 52 U.S.C. § 30101(11).

[22] *Id*. § 30104(f)(2)(E)-(F).

[23] § 203, 116 Stat. at 91.

[24] 540 U.S. 93, 194 (2003).

[25] *McConnell*, 540 U.S. at 191-92.

[26] *Id*. at 197 (quoting *McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 237 (D.D.C. 2003)).

[27] *Id.* at 196; *see also id.* at 321 (Kennedy, J., joined by Rehnquist, C.J. and Scalia, J.) (voting with majority to uphold electioneering communication disclosure provision).

committees) was disclosed; for the 2006 cycle, an estimated 92.9% of outside spending on federal elections was fully disclosed.[28] Unfortunately, this high water mark was short-lived.

c. *Citizens United* & *SpeechNow.org v. FEC*

In *Citizens United v. FEC*, eight of the nine Justices of the Supreme Court again upheld BCRA's electioneering communication reporting as constitutional under the First Amendment.[29] As in *McConnell*, the Court extolled disclosure's capacity to "'insure that the voters are fully informed' about the person or group who is speaking" about a candidate in the run-up to an election.[30] The Court had little difficulty concluding BCRA's mandates had a "substantial relation" to the government's "sufficiently important" interest in an informed electorate, even as applied to a video-on-demand documentary and commercial advertisements for the film.

While *Citizens United* reaffirmed the constitutionality of election-related disclosure, the decision also opened a new channel for secret spending in federal and state elections. In a separate part of the decision, the Court voided the longstanding federal prohibition on corporate and union independent expenditures on the grounds that "the First Amendment does not allow political speech restrictions based on a speaker's corporate identity."[31] The Court was satisfied that the "absence of prearrangement and coordination of an [independent] expenditure with the candidate" negated the government's interest in the prevention of corruption in connection to independent spending.[32]

Citizens United thus enabled corporations and unions to spend unlimited sums from their general treasuries on political advertisements expressly advocating the election or defeat of candidates, and corporate independent spending in both federal and state elections has surged as a result.[33] Because corporate entities typically do not qualify as a PAC under FECA and analogous laws in many states,[34] these groups generally are not required to disclose their sources of funding when they make independent expenditures for political advertisements.[35] Prior to *Citizens United*, the lack of disclosure for corporate independent spending was largely a non-issue since corporations were barred from directly spending their general treasury funds on express advocacy and

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[28] Potter & Morgan, *supra* note 1, at 442.
[29] 558 U.S. 310 (2010).
[30] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 369 (2010) (quoting *Buckley v. Valeo*, 424 U.S. 1, 76 (1976)).
[31] *Id*. at 348.
[32] *Id*. at 357.
[33] In addition to its direct invalidation of the federal prohibition on corporate independent expenditures, *Citizens United* indirectly annulled over twenty state laws forbidding independent expenditures by corporate entities in non-federal elections. *Id.*at 367.
[34] In general, political committees must disclose information about any significant contributors at regular intervals. A federal PAC, for instance, must disclose the name and address of any person who made a contribution over $200 to the PAC on reports filed regularly with the FEC. 52 U.S.C. § 30104(b)(3).
[35] For example, the FEC only requires an organization making an independent expenditure to disclose donors of over $200 who gave funds specifically "for the purpose of furthering the reported independent expenditure." 11 C.F.R. § 109.10(e)(1)(vi); *see also* 52 U.S.C. § 30104(c)(2)(C). Accordingly, unless a donor earmarked the donated funds to pay for a particular advertisement, no donor disclosure is necessary.

electioneering communications. However, by invalidating prohibitions on corporate and union independent spending, *Citizens United* precipitated a substantial influx in "dark money"—i.e., political spending by an organization that does not have to disclose its underlying sources of funding.

Shortly after the Supreme Court decided *Citizens United*, the U.S. Court of Appeals for the D.C. Circuit held that FECA's contribution limits were unconstitutional as applied to a political committee that exclusively made independent expenditures.[36] This conclusion was an extension of *Citizens United*'s holding that independent expenditures cannot corrupt or create the appearance of corruption: "In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption."[37] Consequently, the D.C. Circuit reasoned that limits on contributions to independent expenditure-only groups could not serve the government's interest in preventing corruption.[38]

The D.C. Circuit's decision in *SpeechNow.org* prompted the rise of so-called "super PACs": independent expenditure-only political committees capable of accepting unlimited contributions, including corporate and union funds, as long as they maintain legal independence from and make no contributions to candidates and political parties. As political committees, super PACs still must register and file ongoing reports of contributions and expenditures under federal law. Similarly, super PACs spending in non-federal elections generally have to report as political committees under state law.[39] However, many disclosure statutes do not require political committees, including super PACs, to report the original source of a contribution if the contributed funds were passed through multiple organizations before reaching the PAC.[40] Since contribution limits are inapplicable to super PACs, these entities offer a prime channel for donors wishing to remain anonymous to funnel six- and seven-figure contributions through intermediary organizations without having to face public disclosure.

d. Dark Money Spending in Federal & State Elections

In the post-*Citizens United* landscape, various strategies are available to circumvent disclosure requirements. Nonprofit corporations, often organized as 501(c)(4) "social welfare" groups and 501(c)(6) trade associations under the federal tax code, have been major sources of dark money in recent elections.[41] As already discussed, these groups typically do not qualify as political

[36] *SpeechNow.org v. FEC*, 599 F. 3d 686 (D.C. Cir. 2010).
[37] *Id.* at 694 (emphasis in original); *see also Citizens United*, 558 U.S. at 357 ("We now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.").
[38] *SpeechNow.org*, 599 F. 3d. at 695.
[39] *See, e.g.*, Colorado Stat. Ann. § 1-45-107.5; 10 Ill. Comp. Stat. 5/9-10; N.Y. Elec. Law § 14-107.
[40] *See* 11 C.F.R. § 102.9 ("Accounting for contributions and expenditures)"; 52 U.S.C. § 30102(c)).
[41] For-profit corporations largely have shunned directly making independent expenditures on campaign advertising as public identification of the company's political preferences can lead to backlash from customers, shareholders, and employees. *See, e.g.*, Brian Montopoli, *Target Boycott Movement Grows Following Donation to Support "Antigay" Candidate*, CBS NEWS (July 28, 2010, 4:10 P.M.),

committees under federal or state law since they lack the "major" or "primary" purpose of influencing elections and are not bound by contribution limits or source restrictions applicable to PACs.[42] When these non-PAC groups make expenditures to influence elections, they are subject to minimal reporting obligations and generally do not have to disclose information about their donors or other funding sources.[43] Both for-profit corporations and wealthy individuals thus make large donations to these dark money organizations with "a wink and a nod" expectation that the money will go toward independent spending to influence elections.

Another common tactic utilized to circumvent disclosure entails organization-to-organization transfers. Through "daisy chain" or "Russian doll" schemes, a large donation originating from a for-profit corporation or wealthy citizen is intentionally funneled through multiple shell corporations or LLCs before the funds are used for independent expenditures.[44] Although the ultimate spender of the donated funds—often a super PAC or a 501(c)(4) group—may have to file a report of the independent expenditure, the spender usually has no legal responsibility to trace the money back to its original source.

Data from recent election cycles readily demonstrates the marked escalation in dark money since *Citizens United*. During the 2012 federal election cycle, an estimated $308 million was spent by groups that do not publicly disclose their donors.[45] For the 2014 federal midterm elections, non-disclosing groups spent over $177 million.[46] In 2016, at least $182 million—and possibly tens or hundreds of millions more—in dark money went into federal races.[47] As a point of reference, in

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http://www.cbsnews.com/news/target-boycott-movement-grows-following-donation-to-support-antigay-candidate/. Instead, nonprofit corporations have emerged as the primary corporate vehicle for dark money spending. However, for-profits do channel money intended for campaign advertising through other entities in order to avoid disclosure. *See* Michael Beckel, *Top U.S. corporations funneled $173 million to political nonprofits*, CTR. FOR PUB. INTEGRITY, https://www.publicintegrity.org/2014/01/16/14107/top-us-corporations-funneled-173-million-political-nonprofits (last updated Jan. 12, 2017).

[42] *See, e.g.*, *Buckley*, 424 U.S. at 79; Ariz. Rev. Stat. § 16-905(B) (construing registration requirements to reach political action committee only if it is controlled by candidate or party or has the "primary purpose of influencing the results of an election."); Minn. Stat. § 10A.01 subd. 27 ("'Political committee' means an association whose major purpose is to influence the nomination or election of one or more candidates or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit."); Va. Code Ann. § 24.2-945.1 ("'Political action committee' means any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.").

[43] *See, e.g.*, 11 C.F.R. § 109.20(e) (limiting disclosure on independent expenditure reports to "each person who made a contribution in excess of $200 to the person filing the report, which contribution was *made for the purpose* of furthering the reported independent expenditure") (emphasis added).

[44] *See* Michael Beckel, *Top U.S. corporations funneled $173 million to political nonprofits*, CTR. FOR PUB. INTEGRITY, https://www.publicintegrity.org/2014/01/16/14107/top-us-corporations-funneled-173-million-political-nonprofits (last updated Jan. 12, 2017).

[45] CTR. FOR RESPONSIVE POLITICS, *Outside Spending by Nondisclosing Groups, Cycle Totals, Excluding Party Committee*s, https://www.opensecrets.org/outsidespending/nonprof_summ.php.

[46] *Id*.

[47] *Id*. Calculating the exact quantity of dark money spending is, by definition, difficult. The $182 million figure represents the amount of federally reported spending for which the sources of funds were not disclosed, but a great deal more likely was never reported in the first place.

2006, the last federal election cycle in which BCRA's disclosure provisions applied in full force, just over $5 million was spent by groups that do not disclose their donors publicly.[48]

Dark money has pervaded recent state and local elections as well; in some jurisdictions, dark money has increased at rates exceeding undisclosed spending at the federal level. For example, the rate increase of undisclosed campaign spending in Arizona far surpassed the uptick at the federal level in 2014. As detailed in a report by the Brennan Center for Justice, over $10.3 million in undisclosed money was spent on Arizona elections in 2014.[49] That figure is 295 times greater than the $35,005 in undisclosed spending on state elections in 2006.[50] Other states likewise have experienced substantial surges in undisclosed campaign spending in recent election cycles.[51]

II. State efforts to address dark money

Some states have responded to the influx of dark money with innovative disclosure laws designed to reach independent expenditures and electioneering communications by corporations and nonprofit entities. These efforts range from expanding the legal meaning of "political committee" to establishing special reporting obligations for non-PAC groups making independent expenditures.

In California, a "multipurpose organization"[52] that makes independent expenditures or contributions in excess of $50,000 within a 12-month period must register and report like a PAC for the remainder of the calendar year.[53] On its disclosure filings, the organization must itemize any contribution of $100 or more that was solicited or otherwise earmarked for the purpose of making campaign contributions or expenditures.[54] If such contributions do not match the total amount of campaign spending by the organization in the reporting period, then the organization must account for the balance by reporting any donors of at least $1,000 within the calendar year using a last in, first out accounting method.[55]

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[48] *Id.*

[49] CHISUN LEE, KATHERINE VALDE, BENJAMIN T. BRICKNER, & DOUGLAS KEITH, SECRET SPENDING IN THE STATES, BRENNAN CTR. FOR JUSTICE 7 (2016), available at https://www.brennancenter.org/publication/secret-spending-states.

[50] By comparison, dark money spending in the 2014 federal elections was about 34 times greater than in 2006. *Id.*

[51] The Brennan Center Report concluded that dark-money spending in state elections in 2014 was, on average across the six states surveyed, 38 times greater than in 2006. *Id.*

[52] "'[M]ultipurpose organization' means an organization described in Sections 501(c)(3) to 501(c)(10), inclusive, of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code, a federal or out-of-state political organization, a trade association, a professional association, a civic organization, a religious organization, a fraternal society, an educational institution, or any other association or group of persons acting in concert, that is operating for purposes other than making contributions or expenditures." Cal. Gov't Code § 84222(a).

[53] Cal. Gov't Code § 84222(c)(5).

[54] *Id.* § 84222(e)(1)(C).

[55] *Id.* § 84222(e)(2).

Other states require non-PAC organizations to file event-driven reports when they spend above a threshold amount on independent expenditures; such reports often must include specific information about the spending group's large donors, even if the donors did not give expressly for political purposes.[56] Rhode Island requires event-driven reports whenever a group spends $1,000 or more in a year on independent expenditures or electioneering communications.[57] If the group uses its general treasury funds to make independent expenditures, it must disclose the identity of any donor who has given $1,000 or more to the group within the election cycle.[58] This requirement applies even if the donor did not give to the organization for political purposes, unless the donor and the organization mutually agreed at the time of the donation that the money would not go toward campaign spending.[59] Alternatively, Rhode Island permits a group to establish a separate campaign-related account to make independent expenditures, in which case the group is only required to disclose contributors to that account.[60]

Even when successful, however, these approaches do not solve the "Russian doll" problem of donations being routed to spenders through shell entities. However, a third, complementary approach to disclosure targets organization-to-organization transfers through the disclosure of "covered transfers." While the particulars of enacted covered transfer laws vary,[61] the concept of a covered transfer essentially encompasses a transfer of funds from one organization to another if the transferring organization: (i) Designates, requests, or suggests the funds either be used for independent expenditures or transferred to another organization in order to make independent expenditures; (ii) Made the transfer in response to a solicitation for funds either to make independent expenditures or to make a subsequent transfer to another organization for making independent expenditures; (iii) Engaged in discussions with the recipient organization about either making independent expenditures or subsequently transferring funds to another organization in order to make independent expenditures; (iv) Made independent expenditures above a threshold amount within a specified timeframe or knew the recipient organization had made independent expenditures above a threshold amount within the specified timeframe; or (v) Knew or had reason to know that the recipient organization would make independent expenditures over a threshold amount during a specified timeframe beginning on the date of the transfer.[62]

To date, only a handful of jurisdictions have implemented reporting requirements for covered transfers.[63] These laws generally oblige an organization that makes a covered transfer to file an

[56] Event-driven reporting is not ongoing, but instead mandates reports whenever an entity's campaign spending exceeds a given monetary threshold.
[57] R.I. Gen. Laws § 17-25.3-1.
[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] Rhode Island requires a person making a covered transfer to another person to file a report, thus tasking the *donor* of the funds with disclosure. R.I. Gen. Laws § 17-25-3.1(b). Connecticut, on the other hand, requires the *recipient* of a covered transfer to report it. Conn. Gen. Stat. § 9-601d(f).
[62] For one example of a comprehensive statutory definition of "covered transfer," see the DISCLOSE Act of 2015, H.R. 430, 114th Cong. § 324(f) (2015), available at https://www.congress.gov/bill/114th-congress/house-bill/430/text.
[63] *See* Conn. Gen. Stat. § 9-601d; R.I. Gen. Laws § 17-25.3-1; Austin, Tex., Code § 2-2-34. There have been multiple legislative attempts to require reporting of covered transfers for federal elections, but these

event-driven report, comparable to an independent expenditure report, disclosing the name and address of donors above a specified amount. In Rhode Island, a person making covered transfers of $1,000 or more in a calendar year must file a report of the transfer with the Board of Elections.[64] The report must disclose the name, address, and place of employment of any donor who contributed an aggregate of $1,000 or more within the election cycle.[65] If an organization is making covered transfers exclusively from a segregated account established for campaign-related spending, it only has to identify donors to that account.[66]

Covered transfer reporting is a comprehensive means of introducing transparency into group-to-group transfers intended to influence elections. Few jurisdictions have implemented covered transfer disclosure requirements, and courts have not directly addressed the constitutionality of these laws. However, courts generally are supportive of broad disclosure laws since they are not unduly burdensome and advance an interest in informing voters about the true sources behind political spending. In particular, *Citizens United* lends strong support to the constitutionality of thorough disclosure rules like a covered transfer law.

III. Conclusion

Thank you for the opportunity to submit this letter to the Campaign Finance Reform Legislative Work Group. Please let us know if you would like any additional information on the subjects covered in this letter or if we can provide information on any other reform being considered by the Work Group.

Sincerely,

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efforts have floundered in Congress. *See* Tarini Parti, *DISCLOSE Act fails again in Senate*, POLITICO (July 16, 2012), http://www.politico.com/story/2012/07/disclose-act-fails-again-in-senate-078576.
[64] R.I. Gen. Laws § 17-25-3.1.
[65] *Id.* § 17-25.3-1(h).
[66] *Id.*