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**HEARING ON
“AMERICAN CONFIDENCE IN ELECTIONS: PROTECTING POLITICAL SPEECH”**

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON HOUSE ADMINISTRATION**

MAY 11, 2023

Good morning Chairman Steil, Ranking Member Morelle, and distinguished members of this Committee.

Thank you for the opportunity to speak with you about American confidence in elections and protecting political speech. Common Cause is a nonpartisan, grassroots organization dedicated to strengthening the values of American democracy. We work to create an open, honest, and accountable government that serves the public interest and empowers all people to make their voices heard in the political process. Common Cause's 30 state chapters and 1.5 million members have helped to pass hundreds of pro-democracy reforms at the national, state, and local levels to help elevate the voices of everyday Americans.

Together, across party, our north star must be a democracy that lives up to its promise - one where everyone participates; where every voice is heard; where everyone knows who is trying to influence their votes; where everyone plays by fair common-sense rules; and where everyone is held accountable.

Our country has a long way to go to make this a reality. The key to achieving the promise of our democracy is the freedom to vote. The late great American hero and distinguished Member of this body, Representative John Lewis, said it best: "The vote is precious. It is almost sacred. It is the most powerful nonviolent tool we have in a democratic society."¹

At its core, the freedom to vote that he dedicated his life to vindicate is political speech - the power to set the direction of our country and to have a voice in the halls of government from the city council to the Congress of the United States. It is, in the words of the Supreme Court more than 135 years ago, "preservative of all rights."²

But political speech - the subject of this hearing - has been under attack: voter suppression, gerrymandering, and the undue influence of big money in politics form a trifecta that silences the voices of voters and undermines their ability to participate fully and be heard in the electoral process.

Fueled by rampant disinformation, voter suppression tactics like cutbacks on early voting and restrictions on vote by mail disproportionately affect communities of color, young voters, and older voters and make it harder for them to exercise their freedom to vote.³

¹ Felicia Sonmez, *House Dems Urge Secretaries of State to Protect Voting Rights*, WASH. POST, Nov. 3, 2011, https://www.washingtonpost.com/blogs/2chambers/post/house-dems-urge-secretaries-of-state-to-protect-voting-rights/2011/11/03/gIQAPzsWjM_blog.html.

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ See Voting Laws Roundup: February 2023, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>.

Gerrymandering distorts representation by allowing politicians to choose their voters rather than the other way around, perpetuating political inequality.⁴

Finally, the influence of big money in politics from wealthy individuals and corporate special interests drowns out the voices and priorities of everyday Americans.⁵

Together, these factors erode the public's confidence and trust in the democratic system itself, which has been at record lows for the last two decades.⁶

This morning, I will focus on the corrosive influence of money in the political process and offer several solutions for this Committee to consider that enjoy broad bipartisan support in the rest of the country.

The Supreme Court's 5-4 decisions in *Citizens United* and *McCutcheon* ripped a massive tear in the fabric of crucial federal campaign finance laws, which were passed in response to scandal to prevent corruption and enable Americans to see who is trying to influence our elections.

The 2022 elections were the most expensive midterms on record at \$8.9 billion.⁷ In 2022, only 0.54% of Americans contributed more than two hundred dollars to federal candidates, PACs, and political parties, which accounted for 74.55% of all contributions.⁸ Just 100 donors - enough to fit into this hearing room - contributed 72.9% of the \$1.2 billion that individuals contributed to super PACs.⁹ Put another way, these 100 people pumped 60% more money into our elections than millions of small donors combined.¹⁰

This money is coming from a tiny and highly unrepresentative segment of the public.¹¹ Our campaign finance system is dominated by the super wealthy, and Americans have good reason to think that their voices are being silenced as campaign funders purchase access and influence over

⁴ *Common Cause v. Rucho*, 139 S. Ct. 2484, 2509 (2019) (Kagan, J., dissenting).

⁵ See generally BENJAMIN I. PAGE AND MARTIN GILENS, *DEMOCRACY IN AMERICA?* (2020).

⁶ See *Public Trust in Government: 1958-2022*, Pew Research Center, <https://www.pewresearch.org/politics/2022/06/06/public-trust-in-government-1958-2022>.

⁷ Tyler Giorno, *Midterm Spending Spree: Cost of 2022 Federal Elections Tops \$8.9 Billion, a New Midterm Record*, OpenSecrets, Feb. 7, 2023, <https://www.opensecrets.org/news/2023/02/midterms-spending-spree-cost-of-2022-federal-elections-tops-8-9-billion-a-new-midterm-record/>.

⁸ Donor Demographics, 2022 Cycle, OpenSecrets, <https://www.opensecrets.org/elections-overview/donor-demographics?cycle=2022&display=A>.

⁹ Super PACs: How Many Donors Give, 2022 Cycle, OpenSecrets, <https://www.opensecrets.org/outside-spending/donor-stats/2022?type=I>.

¹⁰ Ian Vandewalker and Mariana Paez, *Four Takeaways About Money in the Midterms*, Brennan Center for Justice, Nov. 16, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/4-takeaways-about-money-midterms>.

¹¹ SEAN MCELWEE ET AL., *WHOSE VOICE, WHOSE CHOICE?: THE DISTORTING INFLUENCE OF THE DONOR CLASS IN OUR BIG MONEY ELECTIONS*, Dēmos, 2016, <https://www.demos.org/research/whose-voice-whose-choice-distorting-influence-political-donor-class-our-big-money>.

the priorities and decisions of government. They have stood in the way to block or slow down progress on fixing the problems most Americans are facing, whether it be lowering prescription drug costs, protecting our families from gun violence, tackling the climate crisis, or making the economy work better for regular people.

This is compounded by the fact that so much of this campaign money is undisclosed. Since the Supreme Court’s *Citizens United* decision in 2010 held that a corporation has a First Amendment right to spend unlimited amounts of money on elections, more than \$2.6 billion in spending has come from unknown sources, including money laundered through shell groups and others.¹² That means that “at least \$3 out of every \$10 dollars in outside spending to the [Federal Election Commission] since *Citizens United* can be traced to dark money groups,” according to the nonpartisan OpenSecrets.¹³

Transparency in political spending is important for at least three reasons. First, disclosure protects voters’ right to know who is trying to influence their decision on Election Day. Voters can evaluate the merits of an appeal for their vote if they know who is speaking to them. Second, disclosure curbs corruption and its appearance, including the specter of undue influence over public policy. Third, disclosure is critical to the enforcement of our campaign finance laws.

Disclosure is also consistent with the Supreme Court’s jurisprudence that justified some of its most recent campaign finance cases. In a portion of *Citizens United* that had the support of eight members of the Court, Justice Kennedy wrote that “disclosure ... enables the electorate to make informed decisions and give proper weight to different speakers and messages.”¹⁴ The same eight justices agreed that disclosure allows “[s]hareholders [to] determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests.”¹⁵ Importantly, the Court held that disclosure furthers First Amendment interests because it “permits citizens and shareholders to react to the speech of corporate entities in a proper way.”¹⁶ It lets voters “make informed choices in the political marketplace.”¹⁷ Several years later, in *McCutcheon*, Chief Justice Roberts wrote that “[t]oday, given the Internet, disclosure offers much more robust protections against corruption. ... Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the time *Buckley*, or even

¹² Anna Massoglia, ‘Dark Money’ Groups Have Poured Billions into Federal Elections Since the Supreme Court’s 2010 *Citizens United* Decision, OpenSecrets, Jan. 24, 2023, <https://www.opensecrets.org/news/2023/01/dark-money-groups-have-poured-billions-into-federal-elections-since-the-supreme-courts-2010-citizens-united-decision/>.

¹³ *Id.*

¹⁴ *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

¹⁵ *Id.* at 370.

¹⁶ *Id.*

¹⁷ *Id.* at 367.

McConnell, was decided.”¹⁸ The Chief Justice also affirmed that disclosure requirements “do not impose a ceiling on speech.”¹⁹

A recent scandal in Ohio shows how secret, dark money spending in elections is a major problem.

Imagine that you are a power company executive. Your company is on the verge of bankruptcy, but if you can spend the company’s money backing some candidates that you want elected to the statehouse - including the Speaker of the Ohio House - you have a good chance of securing an eye-popping return on your investment, like a billion dollar “ratepayer” bailout of two of your power plants. One of your lobbyists slips a \$400,000 check across the table to further the scheme, made out to the dark money group controlled by the future speaker. You conceal your political spending through dark money groups like this, funneling it to other spenders, electing allies of the future speaker, and keeping source of the money away from the scrutiny of the public, the press, and especially the voters.

This is not far off from reality. Just two months ago, a former Speaker of the Ohio House of Representatives was convicted, along with a former Chairman of the Ohio Republican Party, in a federal racketeering trial that involved \$60 million in bribes, including secret campaign spending by a power company to obtain part of a \$1.3 billion nuclear power plant bailout.²⁰ Shielded from public scrutiny, the conspirators steered the power company’s money through a complex web of 501(c)(4) social welfare organizations, a PAC, and consulting firms, including one controlled secretly by the former Ohio speaker. The energy company admitted in a deferred prosecution agreement that it used these dark money groups “to conceal payments for the benefit of public officials and in return for official action.”²¹ The money was spent in part to elect the Speaker and allies in the Ohio House who, once elected, would then support the power plant bailout.²² But because of the anonymity and secrecy of the spending, Ohioans could not “follow the money” and root out the corruption at the root of this scandal.

It does not have to be this way. Voters have a right to know who is spending money to influence their votes, and disclosure laws provide the path to make it happen.

¹⁸ *McCutcheon v. FEC*, 572 U.S. 185, 224 (2014).

¹⁹ *Id.* at 223.

²⁰ April Rubin, *Former Ohio Legislator Found Guilty of Racketeering in \$60 Million Scheme*, N.Y. TIMES, Mar. 9, 2023, <https://www.nytimes.com/2023/03/09/us/politics/ohio-householder-borges-bribery.html>.

²¹ Julie Bykowicz, *Supreme Court’s ‘Dark Money’ Rulings Anchor Defense in Ohio Political Corruption Trial*, WALL ST. J., Mar. 7, 2023, <https://www.wsj.com/articles/supreme-courts-dark-money-rulings-anchor-defense-in-ohio-corruption-trial-d0f2f045>.

²² Rick Roan et al, *How Dark Money Fueled Larry Householder’s Campaign for Ohio House Speaker*, COLUMBUS DISPATCH, July 29, 2020, <https://www.dispatch.com/story/news/politics/2020/07/29/how-dark-money-fueled-larry-householders-campaign-for-ohio-house-speaker/112566460/>.

At least at the federal level, a system of disclosure and transparency that the Supreme Court assumed in *Citizens United* would provide people with information to root out corruption and that Chief Justice Roberts assumed in *McCutcheon* would be available at the “click of a mouse” does not exist. It is up to Congress, and statehouses across the country, to fix the problem.

There is momentum at the state level. California, Colorado, Connecticut, Delaware, Hawaii, Massachusetts, Montana, and Hawaii (among other places) have all passed laws to improve transparency in campaign spending in recent years. Last fall, voters in Arizona overwhelmingly approved Proposition 211, the Voters’ Right to Know Act, a law that will require groups spending significant sums on elections to disclose their major donors of \$5,000 or more, with important features in place to get to the original source of the funding, and to allow donors to opt out from disclosure if they indicate that they do not want their contributions to be used for campaign purposes.

The U.S. House has repeatedly passed legislation to address this head on at the federal level.²³ The DISCLOSE Act (H.R. 1118) is carefully crafted legislation that would require major campaign spenders to promptly disclose donors who contribute \$10,000 or more in an election cycle. Groups would have the choice to set up a separate bank account for all of their campaign-related spending, in which case only donors of \$10,000 or more to that account would be disclosed.

The House has also repeatedly passed legislation to increase the transparency of digital campaign ads with the bipartisan Honest Ads Act (H.R. 2599).²⁴ This is long overdue and would ensure that digital ads are treated similarly to television and radio ads, with other innovative solutions built-in to ensure that voters know who is behind the political advertisements that they see on the internet.

Disclosure alone, as essential as it is to a healthy democracy, is inadequate to ensure that everyone has the chance to participate and make their voices heard. We must also work for an alternative way to pay for political campaigns that amplifies the voices of ordinary Americans without relying on the super wealthy to fund campaigns. Voluntary small donor-based systems empower more people to participate in the political process by giving them a voice where under the current status quo they are cut-out and believe their views are drowned out by big money funders. These systems break down barriers to participation and open up new pathways for people to seek office, including people of color and women who are significantly

²³ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021); For the People Act, H.R. 1, 117th Cong. (2021); For the People Act, H.R. 1, 116th Cong. (2019); DISCLOSE Act, H.R. 5175, 111th Cong. (2010).

²⁴ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021); Protecting Our Democracy Act, H.R. 5314, 117th Cong. (2021); For the People Act, H.R. 1, 117th Cong. (2021); SHIELD Act, H.R. 4617, 116th Cong. (2019); For the People Act, H.R. 1, 116th Cong. (2019).

underrepresented in the halls of power.²⁵ They also give officeholders more time to work on their policy priorities and frees them from the perception that they are beholden to major donors and the constant pressure to raise money.

These voluntary systems have been successful in states and cities and towns across the country and worked well at the federal level, too. I will remind this Committee that when the presidential public financing system was at full strength, President Reagan did not attend a single campaign fundraiser when he was re-elected in 1984, because like other presidents before and after him, he ran a publicly-financed campaign.²⁶

The House passed all of these solutions at various times over the last decade, most recently in the Freedom to Vote Act, which was incorporated into the Freedom to Vote: John R. Lewis Act. The bill is full of bipartisan reforms that have worked well at the state and local level, in red, purple, and blue states alike to set basic federal standards for voting and to install solutions to end corruption - real and perceived - in our campaign finance system. The voluntary alternative system it proposes for candidates to run for Congress by amplifying small-dollar donors does so without costing taxpayers a dime. This bill puts people first.

These solutions stand in sharp contrast to the American Confidence in Elections (“ACE”) Act as introduced last Congress. The ACE Act would open the door to more secret money in our elections and further empower the wealthy few to spend even more money purchasing access and influence. Were it to become law, it would invite corruption and undermine confidence in elections. For example, Section 325 of the bill repeals in its entirety Section 304(c)(2) of the Federal Election Campaign Act, which requires spenders making independent expenditures - those who spend money expressly advocating for the election and defeat of candidates - to disclose donors who contributed to the spender. Rather than offering a narrower substitute, the bill just repeals the provision in its entirety. Eliminating this disclosure requirement would be a major step backwards. The ACE Act would even restrict the Securities and Exchange Commission from finalizing a rule that would bring more transparency to corporate political spending, in direct contravention to what Justice Kennedy wrote in *Citizens United* about the

²⁵ BETH ROTMAN AND LISA NIGHTINGALE, AMPLIFYING SMALL DOLLAR DONORS IN THE *CITIZENS UNITED* ERA, COMMON CAUSE EDUCATION FUND AND COMMON CAUSE CONNECTICUT (2020), https://www.commoncause.org/wp-content/uploads/2020/09/CT_SmallDonorDollar_Report_WEB.pdf; Chisun Lee and Gregory Clark, Small Donor Public Financing Could Advance Race and Gender Equity in Congress, Brennan Center for Justice (2010), <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-could-advance-race-and-gender-equity>.

²⁶ Trevor Potter, The Money in Politics Disaster, Remarks at the “Red, White, and On the Brink” Plenary Session of the Independent Sector National Conference (Oct. 28, 2015), <https://campaignlegal.org/sites/default/files/The%20Money%20in%20Politics%20Disaster%20-%20Trevor%20Potter%20Independent%20Sector%20for%20Distribution.pdf>.

need for shareholders to evaluate whether corporations are advancing their interest in making profits when engaging in political spending.²⁷

Last week, the Census Bureau released its analysis of who voted in the 2022 midterms.²⁸ About half of eligible voters sat out the election. In 2020, a high-water mark for turnout, roughly a third of eligible voters chose not to participate.²⁹ Their political speech went unspoken at the ballot box.

As we hold ourselves out as the golden standard for democracy, we must do more to ensure that everyone can participate and everyone can be heard - where our government is representative, reflective, and responsive to the people it serves.

That is what will strengthen confidence in elections and vindicate the most fundamental freedom that we have: the power of one person, one vote.

Thank you for the opportunity to testify today.

²⁷ ACE Act, Section. 341, H.R. 8528, 117th Cong. (2022); Citizens United v. FEC, 558 U.S. 310, 371 (2010).

²⁸ High Registration and Early Voting in 2022 Midterm Elections, U.S. Census Bureau, May 2, 2023, <https://www.census.gov/library/stories/2023/05/high-registration-and-early-voting-in-2022-midterm-elections.html>.

²⁹ Record High Turnout in 2020 Election, U.S. Census Bureau, April 29, 2022, <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html>.