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Corporate Money in Politics: How to Trace it and How to Improve Disclosure

by Matilde Bombardini

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Executive Summary

Money in politics is here to stay. While some countries, in Europe for example, rely on public funding of elections, in the U.S. contributing to campaigns, spending money on TV ads and lobbying Congress are viewed as a form of constitutionally sanctioned freedom of speech that is increasingly protected. At the same time, some portions of the electorate equate money in politics with a potential for influence and corruption, a problem that is universally recognized.

In the U.S. this dilemma has been resolved by implementing the most comprehensive reporting requirements in the world. Yet, if disclosure is to be the primary counterweight to the increasingly protected freedoms sanctioned by the First Amendment, there is still a lot of work ahead of us.

This report collects, all in one place, the different paths through which corporate money enters politics, starting from the most studied and better understood, and concluding with the most recently unearthed and even the ones we really do not have a good grasp of. Throughout this overview and in an 8-point list at the end of the report, I highlight suggestions that would dramatically, and yet feasibly, improve disclosure.

I start with the best studied and measured source of money in politics: Political Action Committees (PAC). Company employees and managers contribute to PACs, which in turn contribute to politicians. This is a relatively small source of money in politics, but it is the subject of many academic studies because it allows us to see how much a firm gives to any of the candidates for office.

Corporate lobbying represents a phenomenon that is an order of magnitude bigger than PAC giving, measuring in the billions of dollars annually, rather than hundreds of millions like PAC. Lobbying reports allow us to know how much money a firm is spending on a given topic, but fail to disclose which members are target of the lobbying effort. Crucially, the threshold to register as a lobbyist makes it easy to avoid registration.

Moving to the less visible paths of money in politics, I then focus on the use of corporate charity as a political tool. Companies seem to systematically contribute to charities located in congressional districts that are of interest to the firm, because of the committee position of the local representative in Congress.

A second use of charitable giving is in the form of donations that target non-profits engaged in advocacy on rules and regulations promulgated by Federal agencies. Non-profits targeted by these donations turn out to comment on the same rules of interest to their donor and send more similar comments to the regulator after they receive a donation. A somewhat obvious, but important observation is that both uses of charitable giving as a tool of political influence are exempted from taxation.

Finally, I discuss the hard-to-measure "dark money" phenomenon. I detail the motivation that led the Supreme Court to extend the freedom of unlimited independent expenditure to associations of individuals, i.e. corporations in the broadest sense of the word. Whereas most independent expenditures come from SuperPACs, which disclose their donors, a substantial portion comes from 501c4 organizations that do not disclose their donors.

The basic failure of disclosure that makes the last path of money "dark" is, in principle, easy to fix with data already in possession of the IRS. In the last section of the brief, I discuss other specific suggestions to improve transparency and measurement, such as: (i) indicating the specific individual, within Congress and Federal agencies, who is the target of lobbying efforts; (ii) strengthening the definition of lobbyist and avoiding under-reporting by doing away with the "20% rule"; (iii) disclosing non-profits' donors in their communication with Federal agencies; and (iv) requiring corporations to report direct donations to non-profits (and not just those done through their foundations).

Importantly, this report does not answer the question of what all this money buys. While we have some valuable contributions that point to substantial distortions to the economic system introduced by lobbying, I view the answer to this fundamental question essentially incomplete at this stage and I explain the key reasons why in this report.

Introduction

In the U.S. money in politics is considered a form of free speech and, as such, will never be banned. Disclosure has been, and probably will always be, the main counterweight.

Policy making, from setting federal tax rates to deciding local school curricula, is the result of a complex social choice problem that seeks to aggregate the views and the information coming from all parts of society. The key balancing act in this view of policy making is to allow all voices to be heard, throughout an intricate path that originates from political campaigning and competition between different policy platforms, then to the election of representatives of the people, all the way to the actual formulation and implementation of statutes and regulations within legislative bodies.

For these very reasons, the United States affirms and stands out in its explicit recognition of the right not only of individuals, but also of organizations of individuals (such as, for example, business corporations), to participate in the political process. Decades of legislative developments along this perspective all stem from debate about the First Amendment to the U.S. Constitution, which sanctions:

> "Congress shall make no law...abridging the freedom of speech, ... or the right of the people peaceably ...to petition the Government for a redress of grievances."

The fundamental right to freedom of speech enshrined in this Amendment has been at the core of a long list of U.S. Supreme Court decisions, and the debate around this fundamental right has essentially ensured that burdens on free speech must be fully justified by appropriate and pressing welfare considerations.

An example is the Buckley v. Valeo (1976) Supreme Court decision, which came shortly after the Federal Election Campaign Act of 1971 and its 1974's amendments[1] instituted limits on campaign contributions. Buckley v. Valeo established that, in order to reduce to the minimum the burden to freedom of speech and expression, limits on money in politics can only be placed when money creates "corruption or [an] appearance of corruption".[2] This meant that, for instance, while direct contributions from private citizens to political candidates cannot surpass certain limits because they would induce an appearance of quid-pro-quo and corruption, independent expenditures by individuals or certain organizations (that is money spent to advocate expressly for or against a candidate or a policy) must be unconstrained.

This brings me to the main theme of this article: disclosure. Given the few limits imposed on money in politics due to its recognized nature as a form of freedom of speech, the focus of many of the reforms over the years has been on increasing the transparency of the influence activities that corporations, like individuals, can engage in. Disclosure has been seen and it is seen as a counterweight, which can, by making money in politics visible and potentially voters more informed, prevent the public from losing "faith in our democracy".[3] This simple guiding principle recurs time and again and it was succinctly expressed by President Bill Clinton when signing the Lobby Disclosure Act (LDA) of 1995:

> "All the people should know what is done by people who affect public decisions."

Besides enhancing the ability of media and voters to obtain information concerning the financing and spending in elections, disclosure, and the unique availability and accessibility of data on money in politics through the Federal Election Commission (FEC), has made it possible for many scholars across political science, economics, and law to study and unpack the functioning of the various channels of influence aimed at policy makers employed by special interests. This literature is truly vast, and I will not try to summarize it here, unless when instrumental to my policy discussion.

I will mainly focus on how data disclosure has made possible the measurement of money in politics up to the present day and how disclosure, the only real and practical counterweight to the "appearance of corruption", may be still very much work in progress within the U.S. federal system, with substantial room for improvement. In this sense, it is unsurprising, for instance, that U.S. voters may balk at the $14.4 billion dollar price tag of the 2020 Presidential Election.

This brief has two main goals: i) I will attempt to provide an overview of both disclosed and well-studied channels of influence and undisclosed and recently unearthed avenues through which corporations can convey and support their policy positions, and ii) I will try to summarize a number of proposals that I and other scholars believe would further promote transparency and enable inquiry. An important gap that remains to be filled in this area is research into the effects of disclosure itself on the public's confidence in institutions, on the behavior of politicians and on voters' choices.

Lastly, I will solely focus on corporations, even though individuals can of course both lobby and give campaign contributions and many of the considerations in this report will apply to them. This is not only to keep the report more succinct, but also because, historically, corporations have received a different legal treatment and the public seems relatively more favorable to placing limits on corporate entities than on individuals.

A Map of Corporate Money in Politics

I will begin my analysis by focusing on the multiple channels through which money in politics originating from corporations reaches or affects policy makers, and on the different degrees of information available about such paths. To anticipate the main takeaway here, we will see that these channels are much more numerous and harder to trace than commonly assumed.

When one thinks of corporate money in politics, typically two well-known instruments come to mind. The first instrument consists of Political Action Committees, the legal form under FECA through which the employees and stakeholders of corporations contribute to the election campaigns of politicians that they aim to support. As voters, we have information pertinent to these donations through the efforts of the FEC, which, since 1978 and under the requirements of FECA, compiles and disseminates this data. Another known instrument is lobbying. Indeed, companies hire lobbying firms or employ internal government relation specialists to advocate and promote certain policy positions among government officials. Similarly to FECA, the requirements under the LDA determine the lobbying activities' disclosure.

While these are in fact the two best measured forms of money in politics and have been the subject of follow-up legislative action aimed at making these distinct channels of influence more transparent, this is just the tip of the iceberg. In Figure 1, we group these two relatively well-measured forms of money in politics into what we label "Disclosed" paths of money in politics, yet multiple others are active and we will discuss them in order. Indeed, recent research, to some of which I have contributed, has highlighted other, more opaque, and often larger in their economic magnitude, ways in which corporations spend money that seems to be related to their political objectives. Figure 1 classifies these as "Non-Disclosed" paths of money in politics. We will explore this map now.

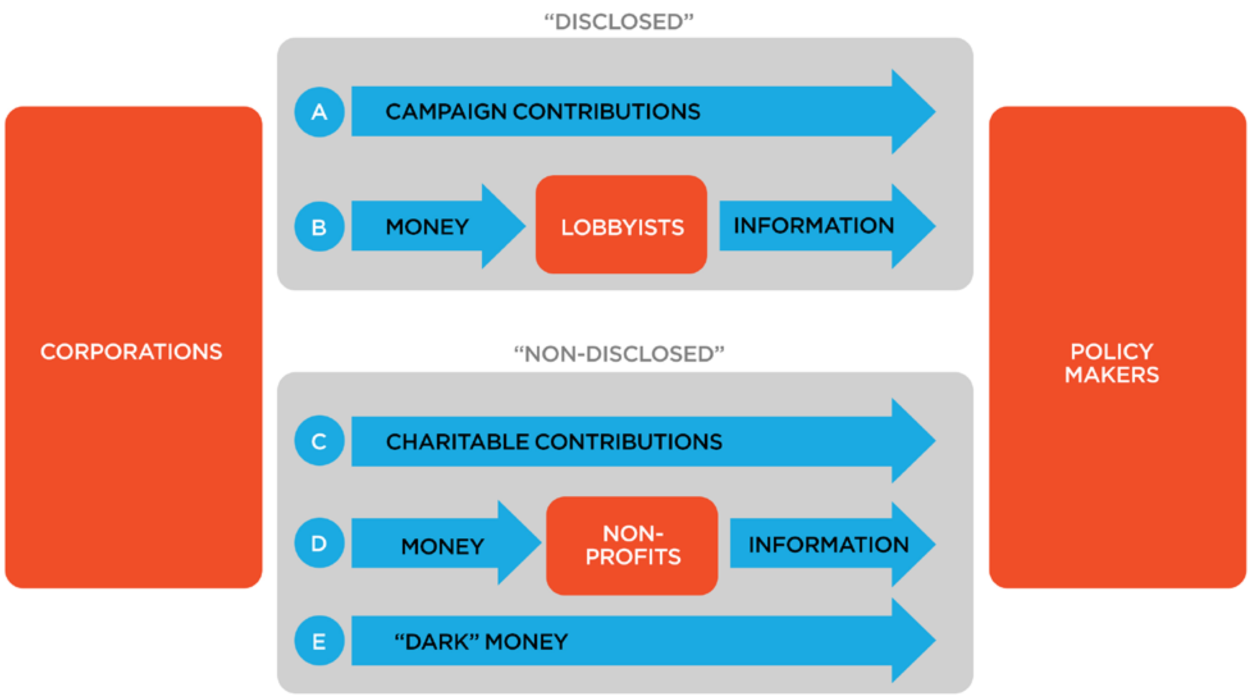
PATH A – CAMPAIGN CONTRIBUTIONS

Campaign contributions coming from Political Action Committees are the most regulated form of corporate money in politics, but are not very large. Recent research shows that individual contributions from employees and executives often target the same politicians as their companies, thus increasing their political footprint

The Tillman Act of 1907 prohibits corporations from directly contributing their own funds to the campaign of individual politicians. Maybe surprisingly to some, this is as true today as at the time of the trust-busting efforts of President Theodore Roosevelt. Indeed, when experts and journalists talk about corporate campaign contributions, they refer instead to two main categories which we briefly review:

1. PAC (Political Action Committees): these are entities managing "separate segregated funds" that corporations can set up under their name and can collect donations from the corporation's employees, managers, and others.[4] These "corporate PACs" have been around since FECA, which

Figure 1:
The Avenues of Corporate Money in Politics

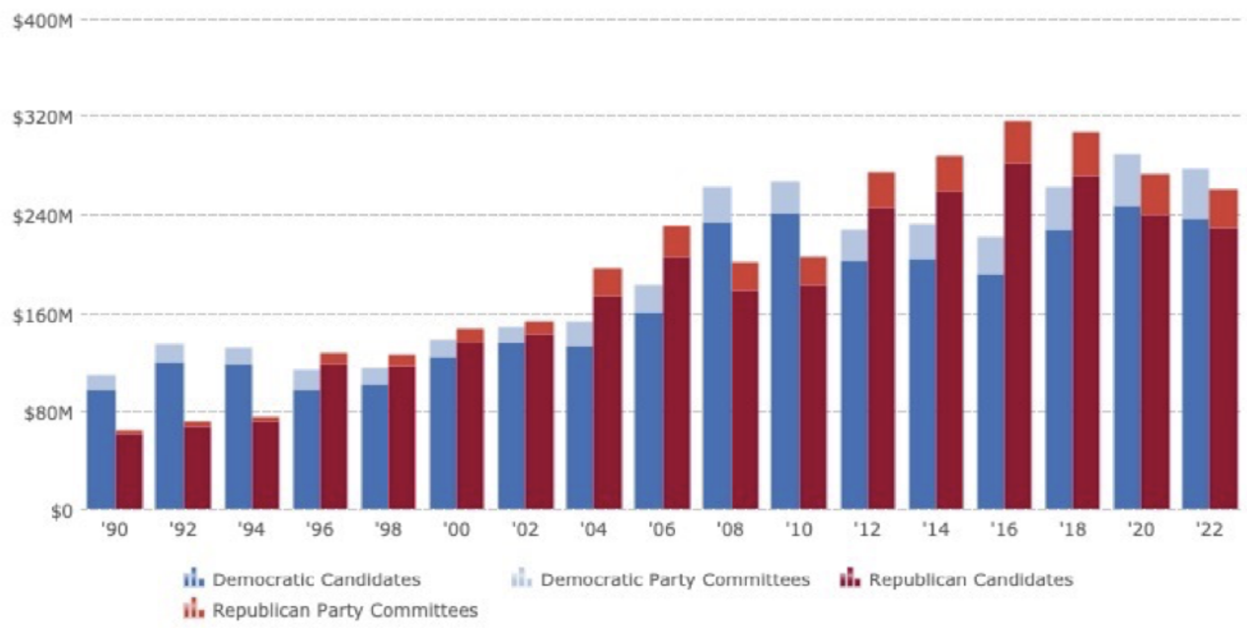


established limits to both how much each individual could contribute to the corporate PAC and how much the PAC could contribute to each candidate. These limits are still in effect today (although adjusted for inflation).

2. SuperPAC's: while corporations cannot contribute their own funds to individual politicians' campaigns, they can contribute, as of 2010,[5] unlimited amounts to independent-expenditure-only funds, also known as SuperPACs due to their size.[6] Although these SuperPACs are forbidden from coordinating with individual politicians and their electoral committees regarding strategy and the direction of expenditures, in practice these requirements have been proven hard to enforce. While SuperPACs have grown to represent the majority of campaign spending, with a total of $2.1 billion in the 2019-2020 cycle, there is very little direct engagement by business corporations[7] with the bulk of donations coming from wealthy individuals, a phenomenon that I non-systematically verified with more recent data.

Recent research has emphasized a third category potentially related to these first two: campaign contributions by corporations' executives and other employees.[8] The degree to which executives' contributions are driven by the donor's ideological alignment with a given politician or their firms' policy interests is not entirely settled, but two facts have clearly emerged. On the one hand, executives' donations appear more partisan than the PAC contributions from the corporations they lead, suggesting that they are perhaps more driven by ideology.[9] On the other hand, a sizable portion of the contributions of executives goes to politicians that occupy strategic positions relative to the executive's firm.[10] These contributions are large: they represent 56% of the total corporate PAC donations of the companies employing those executives. A very recent paper[11] shows regular employees' campaign contributions also closely follow their company's PAC donations.

Figure 2:
Total PAC Spending



NOTE: Histogram from OpenSecrets.org based on FEC data https://www.opensecrets.org/political-action-committees-pacs/2022.

Given the outsized importance of individual campaign contributions,[12] compared to PAC spending, these recent paths of money in politics, which seem to trace corporate motives, seem essential for the correct quantitative assessment of overall corporate influence.

PATH B - LOBBYING

Corporate lobbying represents a phenomenon that is an order of magnitude bigger than campaign contributions through corporate PACs, measuring in the billions of dollars annually, rather than hundreds of millions like PACs. Yet, we do not know which specific individuals in Congress are lobbied by corporations and probably much lobbying activity goes unreported.

Although the term "lobbyist" was first applied in a political context in the early 1800s to indicate anyone "employed to advocate" on behalf of special interests, it took more than a century to formalize registration requirements for domestic lobbying with the 1946 Regulation of Lobbying Act. The modern reporting and disclosure requirements are established by the Lobby Disclosure Act (LDA) of 1995 and updated in the Honest Leadership and Open Government Act (HLOGA) of 2007.

Differently from direct campaign contributions, and more similarly to independent expenditures, there are no limits to the amount a corporation can spend on hiring a lobbying firm or paying its own lobbyists.

The LDA requires that lobbying (i.e. communication on behalf of a client regarding the formulation or laws and rules) be subject to an initial registration and subsequent regular reporting. The LDA requirements for a lobbyist to register have three pillars.[13] Registration is triggered when:

1. The lobbyist is paid for their service

2. The lobbyist makes more than one lobbying contact

3. The lobbyist spends more than 20% of their time working for a given client on lobbying activities in a three-month period ("20% rule")

Reporting requirements that follow the initial registration impose that all lobbyists working for a client over a 3-month period are listed, together with the money paid by the client to the lobbying firm, the topics, and the specific bills at the center of the lobbying activity reported. All registrations and regular reports are available for download at the Senate Office of Public Records.

This is a unique level of detail, especially compared to the often-non-existing requirements in other countries.[14] However, two major shortcomings reduce the effectiveness and transparency of these rules. These disclosure shortcomings prevent researchers (and, a fortiori, voters) from properly assessing and measuring who lobbies and who is lobbied.

The first limitation is the fact that we cannot observe the specific individual who is on the receiving end of a lobbying contact. Lobbying reports only require to disclose which "House(s) of Congress and Federal agencies" are contacted, but not the specific individuals that are targeted by the effort and potentially persuaded. What a citizen knows is that lobbyist A contacted the House of Representatives, but they do not know with whom of the 435 Members they communicated. This major shortcoming of the reporting requirements has prevented researchers from investigating even basic correlations between lobbying contacts and, for example, how Members of Congress voted on specific roll calls pertinent to bills a given firm is lobbying for or against.

Fairly indirect approaches can be in principle applied to sidestep these limitations, but with obvious caveats due to measurement error. For example, we have used the Congressional committee assignment of a politician and the issue on which the firm lobbies to indirectly link a company to a given legislator.[15]

The second shortcoming is that, because of the "20% rule" requirement (and its lax enforcement), many lobbyists can claim to spend most of their time advising their clients and doing background work, rather than actually lobbying policy makers. The benefit of such claim is that it avoids the need to register as lobbyists altogether, making special interests' advocacy efforts anonymous and hard to trace by voters and the media. The ease of avoiding registration and the quite widespread adoption of this behavior in the aftermath of the 2007-08 tightening of disclosure rules by President Bush[16] have led many commentators and scholars to raise the possibility of a massive "shadow lobbying" industry, operating virtually undetected.

Some scholars[17] hold the belief that a substantial part of lobbying activity may be completely undetected in reporting data since 2008. Specifically, in 2008, several commentators started noticing first a slowdown and then a downright decline in lobbying registrations and reported expenses, a phenomenon that persisted through 2016 as seen in Figure 3. Some of these scholars[18] ascribe part of this decline to the financial crisis, but most highlight the higher costs of being a registered lobbyist, due to toughening "revolving door" restrictions and reporting duties following the HLOGA in 2007. This is when the term "shadow lobbying" first appeared. By definition, measuring the amount of lobbying going undetected is no straightforward task, but a preliminary look at the aggregate numbers gives a strong impression that something is amiss. Between 2012 and 2017 according to the Economic Census, total revenues and payroll in NAICS 541820 – Public Relations Agencies, which covers "Establishments providing lobbying, political consulting, or public relations consulting" increased by, respectively, 23.4% and 22.5%. By comparison, Figure 3 documents that total lobbying spending as reported to the Senate Office of Public Records slightly declined from $3.72 to $3.56 billion. One may object that the Public Relations Agencies industry, with total sales of $10.13 billion in 2012, certainly encompasses establishments that produce services other than lobbying. We can concur with this caveat, but the portion of the industry engaged in lobbying services subject to registration would have had to severely trail the rest of the NAICS industry for this enormous differential in growth rates (25% vs 0% over five years) to emerge.

Some scholars[19] thoroughly analyzed the work status of a subsample of individuals in the Lobbyist.info database and found a number of unregistered (active) policy advocates in the same order of magnitude as LDA-registered lobbyists, therefore implying that the true number of lobbyists is roughly twice as big as the formally registered ones.

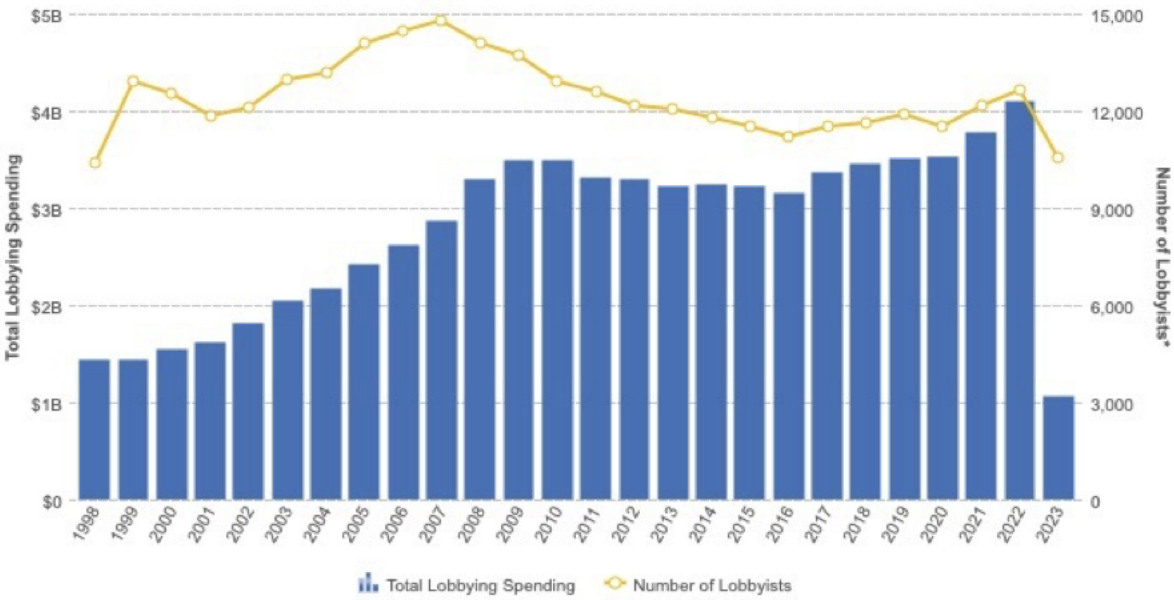
Others[20] have taken a careful forensic approach to detecting specific unregistered lobbyists. They for example focus on former Congressional employees that are hired by LDA-registered organizations and measures the extra revenues (as measured in lobbying reports) a K-Street lobbying firm receives after one of those potential "shadow lobbyists" joins. The main finding is that every time an ex congressional staffer joins, without registering, a lobbying firm revenues increase by as much as they would typically do when a full-fledged registered lobbyist joins. This happens despite the implicit claim (by the act of not registering) that these new employees are not spending more than 20% of their time in lobbying activity for paying clients of the firm. This appears clearly only plausible if registered lobbyists spend just above 20% of their time on lobbying or if these unregistered lobbyists are productivity superstars. While one may be tempted to conclude that the paper unveils a modest effect (the entry of shadow lobbyists counts for 6.4% of total annual revenues at these firms), it important to stress that their focus is only on ex-Congressional staffers and that therefore these are only the most visible cases.

In synthesis, it appears already clear from the discussion of Paths A and B, that broadening and refining reporting requirements may be advisable even for mechanism of political influence that already present disclosure architectures. While we will discuss such recommendations at the end of this article, we now move to even more opaque forms of influence.

Figure 2:
The "Daschle Loophole"

From 2005 to 2015 Tom Daschle, former Democratic Senator and Senate Minority Leader from South Dakota, was employed by top "government relations" firms Alston and Bird, DLA Piper and eventually founded his own firm Daschle Group. He advised clients on policy issues like healthcare and international trade, but did not register formally as a lobbyist until 2016. He could claim that he was not spending more than 20% of his time. Reporters and writers dubbed this the "Daschle Loophole".

Figure 3:
Lobbying Spending and Number of Lobbyists in the US



NOTE: Figures are calculations by OpenSecrets based on data from the Senate Office of Public Records. Data for the most recent year was downloaded on April 24, 2023 and includes spending from January 1 - March 31. Prior years include spending from January through December.

PATH C – Charitable Giving to Key Congressional Districts

Companies seem to systematically contribute to charities located in congressional districts that are of interest to the firm, because of the committee position of the local representative in Congress.

In the wake of the recent devastating earthquake in Turkey and Syria a New York Times article reported of a new apartment complex that, despite claims of its ability to withstand the area's powerful seismic events, failed inspections and partially collapsed the night of the earthquake. The article reports:

> "a developer won zoning approval for the project after donating more than $200,000 to a local soccer club, where the mayor is an honorary president"

This, according to the article, was not an isolated case, and that "contractors have known for years that a donation to the local soccer club can move a project along". As it turns out, politically-targeted charitable giving is an international phenomenon and one that is very much an active political channel of influence by corporations in the U.S.[21]

That corporate entities donate to charitable causes dear to influential politicians may not surprise anyone (at least among cynics), but we argue in our paper that this phenomenon is systematic and follows similar patterns as other, disclosed, sources of money in politics, like campaign contributions. We also show that in terms of magnitudes, when aggregated, political charitable giving amounts to much more than corporate PAC contributions.

A description of the data involved in detecting such patterns reveals how far the U.S. disclosure system is from channels of corporate money in politics being transparent and immediately observable to the public. Box A provides only a brief summary, which is however sufficient to highlight all the hoops one needs to pass in order to recover a clear picture of this corporate influence channel.

Quantitatively, we conservatively estimate that the portion of total corporate charitable giving that is politically motivated is $1.13 billion for the 2013-14 congressional cycle. This is about 2.5 times higher than annual PAC contributions (Path A) and about 35% of annual lobbying expenditures (Path B).

Box A – Follow the (charitable) money

How do we identify politically-motivated charitable giving? We start by identifying the corporate foundations linked to Fortune 500 and S&P500 companies. Specifically, we accessed IRS Tax Forms 990/990PF over the years to identify all the non-profits to which a large corporate charity gives and the geolocation of these recipients. This allows one to measure the amount of dollars donated to each congressional district in a given (two-year) Congressional cycle. The paper finds a strong correlation between a corporation's PAC giving to a politician and its foundation's charitable donations to the congressional district of that politician. Moreover, to be able to measure how much of charitable giving is politically motivated, we track how donations change from year to year, as politicians move across congressional committees. More concretely, suppose that one focuses on Bank A's charitable arm. What my coauthors and I find is that Bank A's charitable grants to non-profits located in Congressman B's district increase at the precise moment when Congressman B moves onto the Financial Services Committee (i.e. the one relevant to Bank A) from a less relevant one (say, Agriculture). It certainly seems surprising that the philanthropic merit of charities located in Congress member B's constituency may be so suddenly overlap of the policy interests of Bank A. The analysis carefully isolates other potential confounders that may drive this pattern, while credit claiming by Congress member B is the political gain that motivates the mechanism.

PATH D – Charitable Giving to Non-profits Engaged in Advocacy

Non-profits targeted by corporate donations turn out to comment on the same rules of interest to their donor and send more similar comments to the regulator after they receive a donation.

A corporation giving to local charities to the benefit of local representatives turns out to be not the only possible political use of philanthropic donations. There is another, perhaps even more opaque, path.

It is not infrequent for newspaper and policy articles to report anecdotes of non-profits advocating in favor of certain policies suddenly changing their stance after receiving grants from a corporation with a monetary interest in the issue under scrutiny. For example an analysis[22] of sponsorships by the two major soda companies between 2011 and 2015, reports how:

Save the Children, a group that promoted soda taxes, suddenly dropped this effort in 2010 after receiving more than $5 million from the Coca-Cola Company and PepsiCo in 2009.

Save the Children had previously campaigned for soda taxes in the District of Columbia, Mississippi, New Mexico, Philadelphia, and Washington State, and in 2010 abruptly changed course after receiving the grant.

In a paper[23] we set out to measure how systematic this channel might be, once again putting together information not readily available to the public. We consider the universe of comments that individuals, firms and non-profits send to Federal agencies on the various rules they implement. We find that the probability of non-profit A commenting on the same rule that corporation B also commented on increases by 76% the year after we observe a donation from B's foundation to non-profit A. Following the donation, the text similarity of the comments from A and B on the same rule is higher and the discussion surrounding the final version of the rule by the agency is more similar to corporation B's comments. A way to quantify the phenomenon is to observe that the average company in our study, covering all Fortune 500 and S&P500 firms as of 2014, contributes 16% of its annual charitable donations to non-profits that comment on rules from the same agency that corporations also send comments to. If this percentage applied to all corporations, which contribute roughly $20 billion annually in charitable giving, this would give us a total figure of roughly $3 billion, which nears annual total lobbying expenditures (Path B).

As it should appear clear from the complexity of the data merging involved, just like in the case of Path C of Figure 1, Path D's expenditures are completely untraceable for regular voters and tax subsidized.

PATH E – Dark Money

Whereas most independent expenditures come from SuperPACs, which disclose their donors, a substantial portion comes from 501c4 organizations that do not disclose their donors.

The year 2010, when both the Supreme Court case of Citizens United v. FEC and the related Appeal Court case Speechnow v. FEC were decided, is seen as a watershed moment in the history of money in politics in the United States. This is indeed an important moment, but, as already hinted earlier[24], it was not business corporations that saw the most action, but another type of "corporations", intended in the broader sense of associations of individuals, for example non-profits. Citizens United essentially overturned previous prohibition of corporations, again intended in a broad sense as opposed to individuals, to engage in independent expenditures (i.e. uncoordinated with the candidate) that expressly advocated for or against a candidate.[25]

Justice Kennedy, writing the Court's majority opinion on Citizens United, argued that associations of individuals were unfairly prevented from expressing their political opinion, while "wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures".

Crucially, Justice Kennedy envisioned disclosure, once again, to attenuate the potential downsides of such an expansion in independent expenditures:

> "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."

It is paradoxical that the phenomenon now known as "dark money" sprung precisely from this Supreme Court decision.

What is "dark money" then and how substantial is this path of corporate money in politics?

Figure 4 summarizes the main changes due to Citizens United/SpeechNow.org. The new regime allows all corporations, including non-profits, to engage in independent expenditures that expressly advocate in favor or against a candidate. Some specific types of entities, like 501(c)4 and 501(c)6, represent different, IRS-sanctioned, ways for associations of individuals to incorporate. Specifically, 501(c)4 are social welfare organizations that cannot spend the majority of their funds and time in political activity and, importantly, do not need to disclose who their donors are, hence the adjective "dark". Today, 501(c)4 organizations can channel 49% of their funds either directly to political activities (electoral ads, for example) (Dark Money 2 in Figure 4) or can contribute to SuperPACs, which in turn engage in efforts in favor or against candidates (Dark Money 1 in Figure 4).

Figure 4:
Main Changes in Independent Expenditures with Citizens United/SpeechNow.org

Before Citizens United/ SpeechNow.org

	PAC	"527 ADVOCACY GROUPS"	501(C)4+ 501(C)6
	Ex. AT&T PAC	*Ex. Swift Boat Veterans for Truth*	*Ex. Chamber of Commerce*
Unlimited Expenditures (Out)	✗	✓	✓
Unlimited Contributions (In)	✗	✗	✓
Undisclosed Donors	✗	✗	✓
Coordinate w/candidate	✓	✗	✗
Expressly advocate	✓	✗	✗
100% political	✓	✓	✗
Corporate Contriutions (In)	✓	✗	✓

After Citizens United/ SpeechNow.org

DARK MONEY

Ads, et

	PAC	SuperPAC Independent Expenditure Only Committees	501(C)4+ 501(C)6
	Ex. AT&T PAC	*Ex. American Crossroads*	*Ex. Chamber of Commerce*
Unlimited Expenditures (Out)	✗	✓	✓
Unlimited Contributions (In)	✗	✓	✓
Undisclosed Donors	✗	✗	✓
Coordinate w/candidate	✓	✗	✗
Expressly advocate	✓	✓	✓
100% political	✓	✓	✗
Corporate Contriutions (In)	✓	✓	✓

Changes relative to pre-2010 in orange

DARK MONEY 1

How much “dark money” is there? This is a question, like in our discussion of “shadow lobbying”, about an activity that is hard to measure due to strategic behavior of the reporting agents and looseness of the disclosure requirements. Given the inherent opacity and relative novelty of the topic, scholarly work and systematic empirical analysis are both rare.

A recent paper[26] begins by identifying among all independent expenditure groups filing with the FEC with campaign expenditures above $1 million, those that are affiliated with a 501c organization. For example, they find that Independent Expenditure group Women Vote! is affiliated with 501c Emily’s Choice. Figure 5 reports these 501c organizations’ spending grouped into political spending and grants to other related and unrelated organizations.

Figure 5:
Denes, Scanlon and Schultz (2022) Dark Money Aggregates

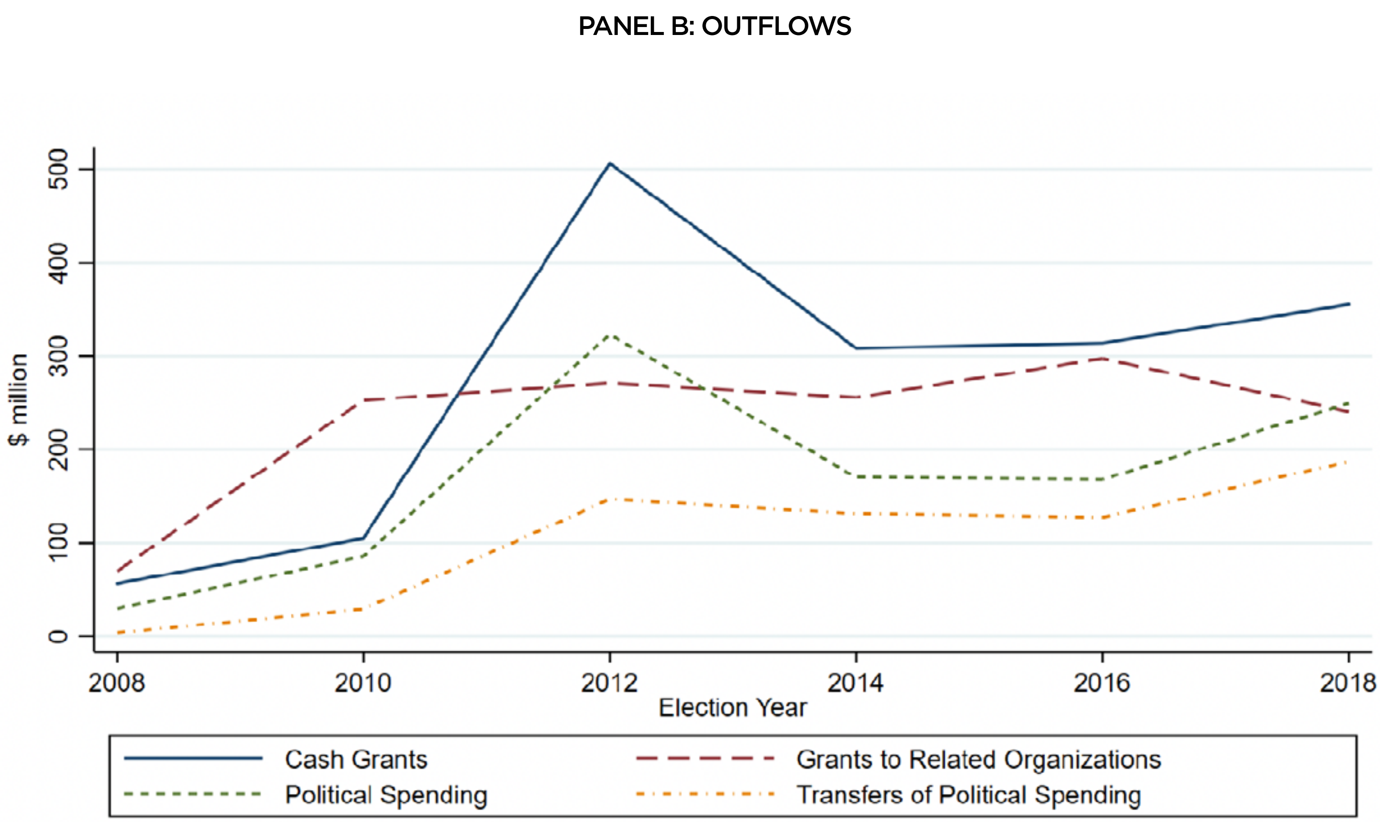
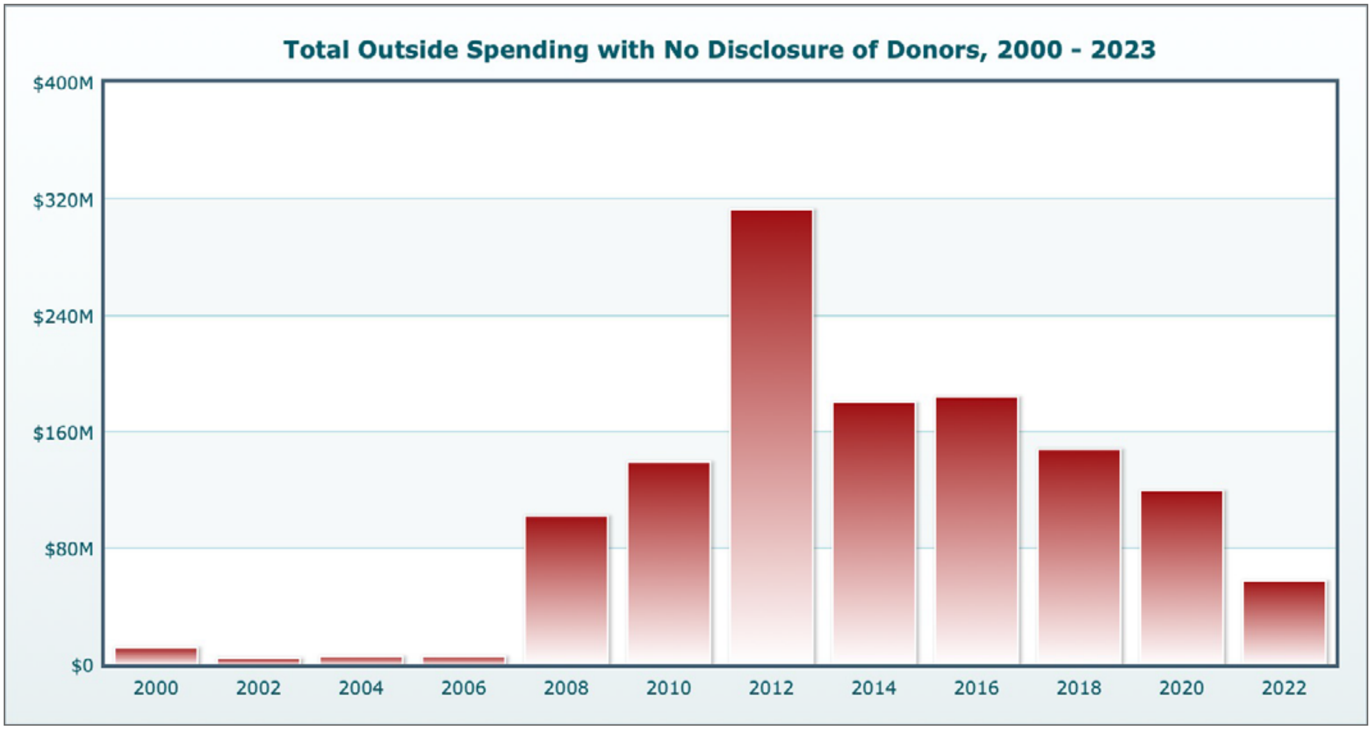
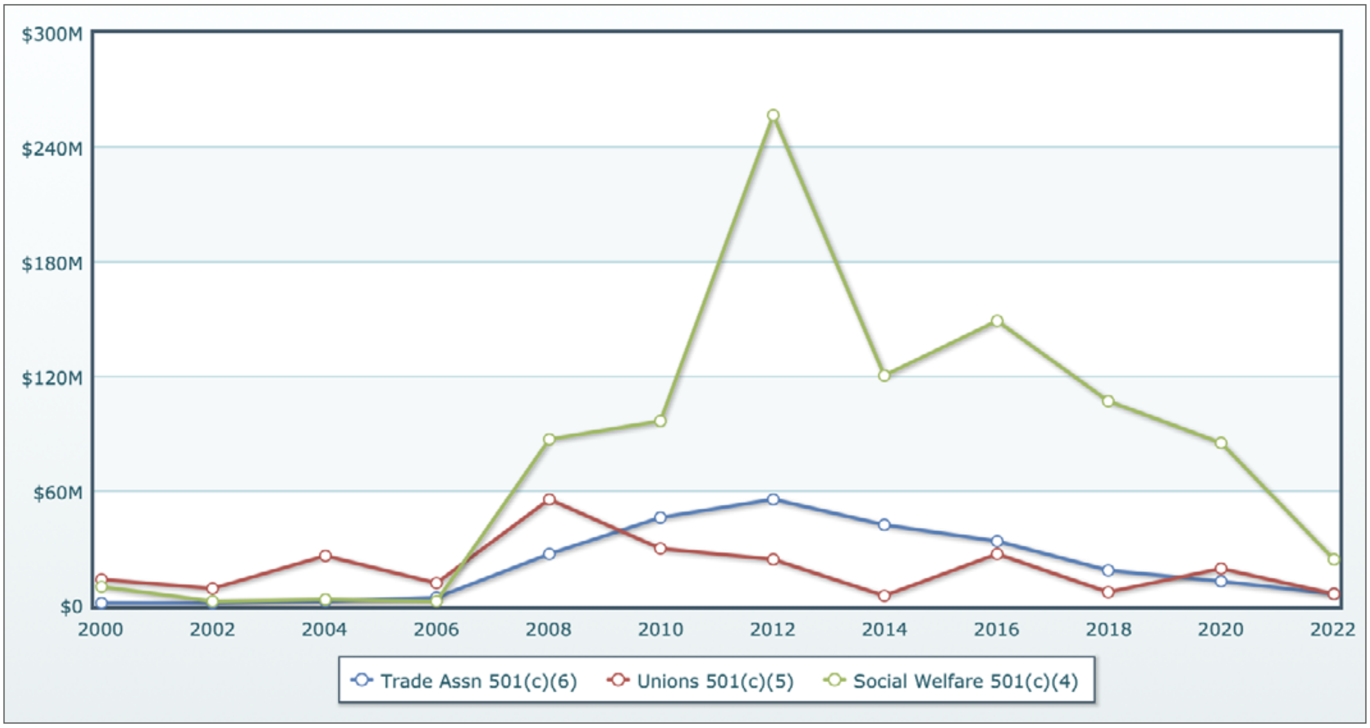


Figure 6:
OpenSecrets.org Dark Money Aggregates





The authors can also assess how much "dark money" comes from firms. Again, because 501c's are not required to disclose their donors, we cannot know for sure. They collect information from the set of 681 firms that were in the S$P500 over the period 2010-2018 and find that 129 of those firms contributed to one of the "dark money" entities they identified.

However, this is obviously a highly indirect and potentially imprecise method. As proof of this one can compare the evidence on the aggregates reported by Denes et al. with one of the few others attempts presented to assess Dark Money, one from the Center for Responsive Politics through its OpenSecrets.org website. The discord is immediately evident and hard to reconcile (I tried, unsuccessfully). Figure 6 presents downward sloping trends for 501(c)4's, while Denes et al. present mildly increasing dynamics over the period 2012-2018.

We truly do not have a clear assessment of how large Path E (Dark Money) may be.

Box B – What Does Money Buy?
In this brief, I have not discussed what corporate money flowing through all different paths in Figure 1 ultimately buys. This is a question that has polarized scholars in the fields of Political Economy and Political Science for a long time and the short answer is that it is hard to prove and quantify exactly. There are three main barriers to answering this question with adequate scientific rigor.

The first, and easier to remove, barrier is incomplete disclosure (more on this below), that is the fact that, as this report argues, there are many paths of money that are undisclosed and therefore their effects are virtually impossible to quantify. Having a complete picture of how much each corporation channels through its various influence activities allows us to build the appropriate measure of "input". Without such measure, it is hard to assess any "return on investment".

The second barrier is more substantial and has to do with the measurement of the objective of corporate influence efforts. While congressional roll call votes in favor or against a specific piece of legislation are easy to observe and have therefore been one of the most often utilized outcomes to test any effect of money in politics,[a] one may argue that, by the time legislation reaches the House or the Senate floor, it has already gone through such a number of changes, and exposed to such influence efforts, that assessing any further effect of lobbying may be a mute exercise, especially without a clear sense of the starting point of the bill. Measuring changes in statutes and rules has proven difficult at scale, because of the large amount of work needed to read and parse changes in large amounts of textual data. Thanks to the numerous developments in Natural Language Processing, detecting changes in complex text appears within reach in the near future.

The final, and harder to overcome, challenge is unambiguously establishing that it was a given lobbying contact or a given amount of campaign contributions that caused a roll call vote to turn in favor of a corporation. While the ideal thought experiment is to randomly induce a corporation, but not another, to contribute money to a given politician, and observe the effects of such "experiment" on the policy outcome,. Yet, implementing this through Randomized Control Trials is clearly not feasible.

One of the best estimates is from a paper[b] that evaluates the effect of aggregate lobbying spending by energy firms on the probability of passage of energy-related bills and finds

Box B (continued) the return to a dollar spent on lobbying to be 1.3 dollars. Another paper provides the best available macroeconomic estimates of the effect of interest groups activity on the overall efficiency of the economy. They employ the changes of politicians across committees,[c] combined with the fact that politicians tend to favor firms in their constituencies, to provide estimate what additional lobbying can generate for a firm. They report the example of a medical device company from Pennsylvania increasing its spending on a given lobbying issue after a Senator from the state joins the relevant committee. Using a model that ties misallocation of resources to lobbying efforts by firms, they find that eliminating lobbying would increase aggregate productivity by 6%. Notwithstanding these few examples, the research on the consequences of corporate spending on policy remains largely unsettled.

a See, among many, Baldwin and Magee (2000)
b Kang (2016)
c Kim and Huneeus (2021)

How to Improve Disclosure

To close on a more positive and constructive note, the United States stands out in its early and broad reporting requirements for lobbying activities and campaign contributions. This of course does not imply the system cannot be improved. We now discuss a series of feasible reforms, some of which have been raised by others, to the current system that would enhance the ability to trace all avenues of influence.

Based on the discussion of Figure 1 and the paths highlighted above, we can identify a few actionable policy directions.

LOBBYING - PATH B DISCLOSURE

1. **Remove The "20% Rule"** In light of the discussion of "shadow lobbying", many observers have suggested removing the condition that the lobbyist spends at least 20% of their time working for a specific client in activities defined as lobbying. If a single phone call is pivotal in shifting a representative's position on a bill, whether that phone call represented or not a small fraction of the lobbyist's billable hours seems less relevant. Of course, this begs the question of where to place the boundary instead. In an age where information gathering and recording is easier than ever, I believe it would not be excessively burdensome to report any lobbying contact and activity.

2. **List Individuals Contacted.** The current LDA periodic reporting requirements only impose that the registrant (usually the lobbying firm) include the agency or house of Congress (Senate or House of Representatives) that the lobbyists contacted on behalf of the client. This is too generic to be informative and it does not allow the

public to trace exactly which individual was the target of lobbying efforts. Some members of Congress and some agencies already voluntarily reveal this information and their schedule of meetings, but it is a small subset of the universe of possible targets of lobbyists and the decision to disclose should not be at the discretion of the agency or individual politician. FARA regulations for foreign agents already require similar disclosures as the one advocated here and, in a different context, doctors are required to disclose ties to pharmaceutical companies, so this is clearly feasible.

3. **Enforcement of Lobbying Registration and Compliance** At the moment, despite several cases of potential violation of the requirement to register as a lobbyist, only a handful of cases were ever reported for violating this rule. The only consistent effort seems to have been the random selection of lobbying reports and the analysis of those reports in terms of the expenses reported. Generally, speaking the laxity of enforcement de facto acts as relaxation of disclosure and should be interpreted as such.

CHARITABLE GIVING - PATHS C & D DISCLOSURE

4. **Disclose Recipients of Direct Corporate Charitable Giving** At the moment, the only systematic evidence about the targets of charitable giving by corporations comes from their foundations' reporting requirements. If corporations do not have an affiliated foundation and they donate directly to non-profits, these donations are not visible to voters or media or other interested parties. I argue that we should impose that corporations reveal the recipient of their direct charitable as well as their foundation's giving.

5. **Donor Disclosure of Non-Profits Participating in Lobbying** Given the documented active role of non-profits in the rulemaking process, we should impose new disclosure requirements to non-profits that comment on Proposed Rules, and more generally lobby on policy matters. If a non-profit C lobbies on topic of interest to corporation A, it should be easy for the policy maker and the public to observe whether corporation A has contributed to non-profit C.

6. **Consider Limiting Tax-Exemptions** Campaign contributions and political expenditures are not tax exempt for a good reason. It is not clear there is great societal value in subsidizing the expression of one's political views. Tax exemption of charitable giving is plausibly geared towards incentivizing actions that have positive spillovers to society and would, in the absence of subsidies, be underprovided. Given the patterns we have unearthed, there is room for discussing the tax-exempt status of corporate donations. We recognize that it is inherently hard to draw the line that separates politically-motivated donations from other donations. One idea may be to simply reduce the overall degree of tax exemption of charitable giving.

DARK MONEY - PATH E

7. **Remove From Under The Supervision of The Internal Revenue Services Any Activity Pertinent to Supervision and Enforcement of Electoral and Political Spending Legislation.** Currently a tax authority, the IRS, is in charge of verifying tax-exempt status and compliance of organizations essentially dedicated to political

and electoral activity such as 501(c)4s. The FEC should be given access to all data in possession of the IRS that pertains to activities by these organizations.

8. **At The Very Least, Require The IRS to Disclose Information on all Donors to 501c4 Organizations.** This information is already available in confidential form to the IRS, but it is not disclosed to the public, presumably due to privacy concerns.

9. **Closing Daisy Chain Loopholes on 50% Political Activity Rule.** Certain limitations on the utilization of 501(c)4 resources for political activity are unenforceable and deleterious. Consider the case of 501(c)4 "G" receiving $100 in dark money donations. Certainly, G can spend in negative political advertising $50. The remaining $50 however do not need to remain idle. What G could typically do is to disburse the $50 to a friendly 501(c)4 "F" that can then spend $25 for similar political advertising and further pass along the remaining $25. Then $12.5 will be further spent in political ads, and so on and so forth...

To conclude, certainly this is not a comprehensive list. It however provides the reader with a small sense of the main current deficiencies within the current disclosure system, especially with reference to instrument of political activity of corporations in the United States. If we believe that more informed voters make for a better democratic environment and more accountable policy makers, some of these policy directions may be worthwhile to explore.

About the Author

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Notes

[1] For example, a 1974 amendment to Federal Election Campaign Act of 1971 is the act of Congress that established the Federal Election Commission, a U.S. independent regulatory agency.

[2] Buckley v. Valeo 424 U.S. 1 (1976).

[3] Citizens United v. FEC 558 U.S. 310 (2010) (Kennedy - Opinion of the Court).

[4] For details, see the Federal Election Commission. Corporate PACs cannot solicit, but can raise funds from any individual.

[5] Following the Speechnow.org vs FEC Supreme Court ruling.

[6] The category includes other funds like Carey funds that are conceptually related.

[7] See Bonica (2016).

[8] See for example Fremeth, Richter and Schaufele (2013), Bonica (2016), Cohen, Hazan, Tallarita and Weiss (2019), and Teso (2023).

[9] See Bonica (2016).

[10] See Teso (2023).

[11] Stuckatz (2022).

[12] For example in the 2020 Senate and House of Representative races the ratio of PAC to individual contributions was 1 to 16.

[13] Examples include the European Union, where lobbying disclosure has been until recently on a voluntary basis for all intents and purposes, making the information available to European citizens highly selected and of limited informative value.

[14] Bertrand, Bombardini and Trebbi (2014) employs the generic "issues" lobbied as they appear in regular reports. These 80+ broad policy issues vary from trade (TRD) to budget (BDG). These policy areas need then to be connected to the Congressional committees that oversee them and, hence, to the members of these committees. This methodology allows us to impute

which politician is more likely to be relevant to individual firms lobbing on certain topics, but it is a fairly indirect approach (and certainly not one easily replicable by a regular citizen). A recently improved methodology by Kim and Huneeus (2021) employs the specific bill number reported on the lobbying report and linking that, instead of the generic lobbying "issue", to the Congressional committee to which the bill is assigned. The downside of this approach, however, is that a substantial number of reports omits specific bill numbers.

[15] In particular the Honest Leadership and Open Government Act (HOLGA) of 2007. See LaPira (2015) for a discussion.

[16] See for example LaPira and Thomas (2017).

[17] See for example LaPira (2015).

[18] Thomas and LaPira (2017).

[19] d'Este, Draca and Fons-Rosen (2023).

[20] Bertrand, Bombardini, Fisman, and Trebbi (2020).

[21] Aaron and Siegel (2017).

[22] Bertrand, Bombardini, Fisman, Hackinen and Trebbi (2021).

[23] Bonica (2016).

[24] The ban on independent expenditures was most recently upheld in Austin v. Michigan State Chamber of Commerce in 1990 and reinforced in the Bipartisan Campaign Reform Act of 2002.

[25] Denes, Scanlon and Schultz (2022).

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