Since its inception in 1942, the Committee for Economic Development (CED) has addressed national priorities that promote sustained economic growth and development to benefit all Americans. These activities have helped shape the future on issues ranging from the Marshall Plan in the late 1940s, to education reform in the past three decades, and campaign finance reform since 2000. CED’s research findings are coupled with outreach efforts throughout the country and abroad, achieving meaningful impact at the local, state, and national levels.

CED’s Trustees understand that business, government, and individuals together are responsible for our mutual security and prosperity. CED is deeply concerned about recent trends in political finance. In the decades following the Federal Election Campaign Act (FECA), disclosure of political contributions was widely accepted – from both political parties – as necessary to fair elections. This consensus has been eroded as partisan groups attempted to keep their political spending secret.

We are pleased to present this issue brief, *Hiding in Plain Sight: The Problem of Transparency in Political Finance*, to provide an update on political financing of the 2012 elections and restate the recommendations outlined by CED’s Money in Politics Subcommittee in our 2011 report, *Hidden Money: The Need for Transparency in Political Finance*. These reports do not seek to hinder the free speech of individuals, labor unions, or corporations, but rather to urge transparency in political finance. CED Trustees believe that transparency is an essential ingredient of free and competitive markets, and that it is equally important to free and competitive elections.

CED would like to thank Anthony Corrado, Project Director of CED’s Money in Politics Subcommittee, who wrote this report.
Introduction

Congress and the courts have long recognized the value of transparency in the political process and the importance of providing citizens with information about the monies raised and spent to influence their votes. Yet, in the 2012 presidential and congressional elections, hundreds of millions of dollars were spent by organized groups that kept their contributors hidden from public view. Tax-exempt organizations, including nonprofit social welfare groups, labor unions, and trade associations, reported spending substantial sums in support of federal candidates, and did so without revealing the sources of their funding. Consequently, the American public will never know the origins of much of the money used to finance the electioneering activities and unprecedented advertising in the 2012 elections. This is not the way a democratic electoral system should work.

Transparency is an essential principle of free and competitive markets; it is equally important in a system of free and competitive elections. Public disclosure of campaign contributions and expenditures is a core requisite of any effective system of campaign finance, and its value has been noted repeatedly by Congress and the courts. In the landmark 1976 decision in Buckley v. Valeo, the Supreme Court upheld the constitutionality and necessity of disclosure requirements stating that “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.” The Court further noted that disclosure provides valuable information to voters, since it “helps voters define more of the candidates’ constituencies” and allows them to better evaluate candidates “by identifying the interest to which a candidate is most likely to be responsive.”

In 2010, in its historic decision in Citizens United v. Federal Election Commission, the Court reaffirmed the importance of disclosure requirements. In this ruling, which determined that corporations have the same right as others to spend money independently in support of federal candidates, the Court assumed that any monies spent to advocate the election or defeat of candidates would be subject to public disclosure. In an 8-1 vote upholding disclosure requirements for independent expenditures, the Court noted that disclosure would help to deter and expose violations of law, and would help citizens “make informed choices in the political marketplace.”

The Court summarized its view by declaring: “The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”

However, due to the inadequacy of current disclosure laws and the Federal Election Commission’s narrow interpretation of these statutes, the Court’s assumption has proven to be faulty. Political donors and spenders are finding it increasingly easy to avoid public scrutiny, as a growing number of organizations take advantage of porous rules to finance campaign activity without revealing the sources of their funding. The financial activity within the political process is thus becoming more opaque and the amount of undisclosed money flowing into federal elections is increasing.

CED believes that the money raised and spent to influence voting decisions and election outcomes should be publicly disclosed. The use of hidden money in elections undermines First Amendment guarantees and is contrary to the basic values of our democracy. Reform is needed to ensure that the funds used to finance election activities are brought to light.
The Inefficacy of Current Regulations

The 2012 elections were defined by the unprecedented sums of money organized groups spent independently advocating federal candidates. In all, Super PACs, political committees, tax-exempt organizations and other non-party entities reported $1.04 billion in spending on independent expenditures and electioneering communications advocating federal candidates, or three times the $338 million reported by groups in the 2008 elections and five times the amount reported in 2004. Of this $1 billion total, $336 million was reported by tax-exempt organizations, including social welfare groups, labor unions and business associations, including $311 million in spending by organizations that did not disclose their donors to the Federal Election Commission (FEC). To put this sum in perspective, the reported spending financed with money from undisclosed sources in 2012 was equivalent to the total spending reported by all groups in 2008. What is more, this total represented only a portion of the political spending by tax-exempt organizations. Because these groups are only required to disclose certain types of expenditures to the FEC, untold tens of millions of dollars in election-related expenditures were never reported.

The financing of the 2012 elections thus highlighted the limited efficacy of current disclosure laws, particularly as applied to the growing political activity of tax-exempt organizations. Under current statutes, federal candidates, parties, and PACs are required to disclose contributions and expenditures of $200 or more to the FEC. Super PACs, which first emerged in 2010 and may spend unlimited amounts independently of candidates and receive unlimited contributions so long as they do not make direct contributions to candidates, are also required to report their contributions and expenditures to the FEC. Section 527 committees, which are political committees that do not qualify as federal PACs and are therefore not required to register with the FEC, disclose their contributions and expenditures, but they report to the Internal Revenue Service rather than the FEC.

Tax-exempt organizations established under Section 501(c) of the tax code, including nonprofit 501(c)4 “social welfare” organizations, 501(c)5 labor unions, and 501(c)6 trade or business associations, are not formed for the primary purpose of engaging in political activity and are not required to publicly disclose their finances. Those that do decide to participate in federal election campaigns are required to report only two types of political activity to the FEC under current campaign finance law. First, these committees are subject to the rules that require disclosure of independent expenditures, which are expenditures that directly advocate the election or defeat of a federal candidate. Any group that spends money in this way must disclose any expenditure of $250 or more, as well as the sources of funding to the FEC. Second, they are required to report monies raised and spent on “electioneering communications,” which are broadcast advertisements featuring a federal candidate that are aired within thirty days of a primary or sixty days of a general election and are subject to no other reasonable interpretation than as an appeal to vote for or against a candidate. Such ads are considered to be the functional equivalent of express candidate advocacy. Any organization that spends $10,000 or more in a calendar year on advertisements that qualify as electioneering communications must disclose the amounts spent, as well as any donors of $1,000 or more who provided funding for the ads.

Otherwise, tax-exempt organizations are not required to disclose their election spending to the public. So, for example, these organizations do not have to publicly disclose any funds used to finance election-related advertisements that do not advocate a candidate. Nor do they have to reveal the monies used to pay for direct mail, telephone canvassing efforts, Internet communications, or voter registration and turnout programs, so long as they do not expressly urge a vote for a particular candidate. The principal restriction on political spending by 501(c) organizations is the Internal Revenue Code requirement that a group’s “principal purpose” may not be to influence elections or engage in political activity. But this
requirement does not prohibit tax-exempt entities from engaging in political activity; in practice, it simply means that a group may not spend a major share of its budget on political activities.

Current law does not require comprehensive disclosure of the election activities of tax-exempt groups, but Congress did seek to ensure that the public would have information about the monies used to advocate candidates. Yet even this limited objective has been undermined by the FEC’s recent implementation of the law. In 2007, the agency adopted regulations that eviscerated the disclosure requirements applied to electioneering communications. Prior to the adoption of these regulations, a group or organization was required to disclose contributions received “for the purpose of furthering electioneering communications” in one of two ways: an organization could either report all donors who gave $1,000 or more in a calendar year or establish a separate account to be used for such ads and disclose only donors who gave $1,000 or more to this account. The new rules require donor disclosure only if a donor specifically designates a contribution “for the purpose of furthering electioneering communications.”

The FEC’s three Republican commissioners have further interpreted this rule to require donor disclosure only if a contributor specifies that a contribution be used to pay for the airing of a particular ad. The rules for reporting independent expenditures include similar language, requiring spenders to disclose donors who make a contribution “for the purposes of furthering an independent expenditure.”8 Given that most groups raise money before creating ads and donors typically do not specify the purpose for which their donations should be used, the FEC’s actions have had the effect of essentially eliminating the requirement that groups disclose their sources of funding. The commission’s narrow application of the law has opened a wide path for the use of secret contributions in federal campaigns.

Tax-exempt organizations (most of which are incorporated entities) are allowed to make independent expenditures directly advocating the election of a candidate as a result of the 

Citizens United decision, and may use unlimited contributions in doing so. Politically active tax-exempt groups, primarily 501(c)4 organizations, are now spending substantial sums on independent expenditures or electioneering communications without revealing the sources of their funding. More notably, a growing number of political organizations are establishing affiliated 501(c)4s so that they that can offer their donors anonymity and shield at least some of their funding from public scrutiny.

The Rise of Hidden Money

CED’s 2011 report, Hidden Money: The Need for Transparency in Political Finance, noted the effect the FEC’s regulatory decisions have had on the transparency of political funding.9 In the 2010 elections, most of the groups that reported electioneering communication expenditures did not reveal their donors. As a result, close to half of the $295 million in spending reported by non-organized groups did not include information about their sources of funding.

Since then, the use of secret political contributions has grown and the sums of money involved have increased. In all, organized groups, excluding party committees, reported $1.04 billion in election spending in 2012, or more than the total sum reported in the previous three federal elections. About thirty percent of the election spending reported by nonparty organizations in 2012 was the result of electioneering by groups that did not disclose their donors. The total amount spent by these groups, $311 million, represented a steep increase as compared to previous elections.

The dramatic growth in overall spending can largely be attributed to the rise of Super PACs, which were fueled by contributions of $1 million or more and thus able to amass sizeable warchests. These committees, which disclose their contributions and expenditures to the FEC, spent $609 million on election activity, as compared to $63 million in 2010, the first year in which these groups were sanctioned by the courts and
recognized by the FEC. Other political committees and organizations spent more than $420 million in all, including $311 million from tax-exempt entities that did not disclose donors. Thus, excluding Super PACs, three out of every four dollars of spending reported by nonparty organizations was financed with contributions that were not publicly disclosed.

While tax-exempt groups reported unprecedented expenditures in support of candidates, the extent to which this increase represented an actual increase in resources devoted to political activity as opposed to a shift to activities that must be reported is difficult to discern given the current state of disclosure rules. For example, some organizations that were prohibited from spending money in support of candidates prior to Citizens United may have simply changed their practices, deciding to finance independent expenditures or electioneering communications, which are disclosed, rather than advertisements broadcast before the thirty-day or sixty-day windows that trigger reporting or other activities that are not subject to disclosure laws. What is certain is that the number of tax-exempt organizations that report spending money to directly advocate candidates has increased, the amounts of money they report spending on these activities has risen sharply, and the sources of this funding are not being revealed to the public.

### Undisclosed Contributions

Since the FEC adopted its new regulations in 2007, the amount of spending reported by non-disclosing groups has risen dramatically in each election cycle, and the number of politically active tax-exempt groups has grown. According to the summary of FEC filings reported by the nonpartisan Center for Responsive Politics,

### Table 1: Reported Election Spending by Organized Groups

<table>
<thead>
<tr>
<th>Election</th>
<th>Total Reported ($ millions)</th>
<th>Total Without Donor Disclosure ($ millions)</th>
<th>% of Total Without Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>68.9</td>
<td>0.7</td>
<td>1.1</td>
</tr>
<tr>
<td>2008</td>
<td>301.7</td>
<td>78.8</td>
<td>26.1</td>
</tr>
<tr>
<td>2010</td>
<td>294.7</td>
<td>126.8</td>
<td>43.0</td>
</tr>
<tr>
<td>2012</td>
<td>1,037.80</td>
<td>310.8</td>
<td>29.9</td>
</tr>
</tbody>
</table>

Source: Based on Federal Election Commission data as reported by the Center for Responsive Politics. Amounts include all independent expenditures, electioneering communications, and communication costs reported by organizations, excluding party committees, as of June 2013.

### Table 2: Reported Election Spending by Top Non-Disclosing Groups

<table>
<thead>
<tr>
<th>Election</th>
<th>No. of Groups Without Donor Disclosure</th>
<th>Groups Spending $1 Million or More</th>
<th>Amount Spent by $1 Million or More Groups ($ millions)</th>
<th>% of Total $ Spent by Non-Disclosing Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>52</td>
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<td>2010</td>
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<td>89</td>
</tr>
<tr>
<td>2012</td>
<td>140</td>
<td>28</td>
<td>294.2</td>
<td>95</td>
</tr>
</tbody>
</table>

Source: Based on Federal Election Commission data as reported by the Center for Responsive Politics as of June 2013.
between 2006 and 2012, the number of tax-exempt groups reporting election expenditures has grown from 13 to 140, while their reported expenditures soared from less than $1 million to $311 million (see Table 1). This surge in spending is primarily due to the activities of a relatively small number of politically active organizations—twenty-eight in all—that reported expenditures of $1 million or more (see Table 2).

A few high-spending groups intent on keeping their donors secret have been responsible for most of the funding. In 2012, the eight groups ranked highest in spending, each of which spent at least $10 million, disbursed a total of $223 million, which constituted about 72 percent of the total amount reported by non-disclosing groups.

Similarly, in 2010, the top five non-disclosing organizations reported $87 million in election spending, which constituted 69 percent of the total amount reported by such groups in the midterm elections.

**Veiled Contributions**

Even in the case of organizations that do report their donors, effective disclosure is not always ensured. A donor may give unlimited amounts to a nonprofit social welfare organization or a business association. These organizations, as well as labor unions, can in turn contribute funds to a Super PAC, which is allowed to receive unlimited contributions from tax-exempt organizations and other entities and use them to pay for their independent expenditures. A Super PAC is required to disclose only the amount and source of an organizational gift; it is not required to disclose the donors who provided the funding to the organization in the first place. In this way, intermediary groups can serve as vehicles for masking the actual donors funding campaign-related expenditures. They can function as pass-throughs to veil contributions from public view.

According to one analysis of FEC filings, Super PACs active in the 2012 elections received at least $14.8 million in contributions from 501(c)4 social welfare organizations and $3 million from 501(c)6 business associations, as well as $35 million from labor unions. While the labor union funding might be assumed to come from labor union treasury funds, the original sources of the $17.8 million in organizational contributions are unknown. For example, Freedomworks for America, a conservative Super PAC founded by former House majority leader Dick Armey, received $2.5 million from its affiliated 501(c)4 entity, FreedomWorks. A group called Working for Working Americans gave $2.25 million to Majority PAC, a Super PAC established to support Democratic candidates for the U.S. Senate; $1.1 million to House Majority PAC, a Super PAC established to support Democratic candidates for the House of Representatives; and $500,000 to Priorities USA Action, a Super PAC established to support the reelection of President Obama. The original sources of the monies contributed by FreedomWorks and Working for Working Americans remain shrouded in mystery.

**The Need for Transparency**

In the post- *Citizens United* world, Super PACs and tax-exempt organizations can receive multi-million-dollar contributions from individuals, political committees, labor unions, corporations, and other entities to finance election activities that directly advocate the election or defeat of candidates. As argued by the Supreme Court above, it is thus imperative that the funding of these organizations be transparent and available for public scrutiny. Undisclosed money creates the opportunity for unknown and unaccountable influence buying and abuse. It violates the basic principles of our free and open elections. And it denies citizens information that can help them assess the messages that seek to influence their votes.

The Supreme Court has held that disclosure requirements do not prevent anyone from speaking, and they serve the interests of transparency, accountability, and a more...
informed electorate. Chief Justice Roberts recently highlighted these benefits of disclosure, noting in *Doe v. Reed* that public disclosure “promotes transparency and accountability in the electoral process to an extent other measures cannot.”13 These objectives, however, are not fulfilled by current disclosure rules, which can be easily evaded and fail to encompass all of the financial transactions involved in election spending.

CED strongly believes that disclosure and transparency are essential to the proper functioning of a democracy, just as they are essential to the proper functioning of a free and competitive economy. CED agrees with Justice Roberts’ conclusion that disclosure promotes transparency and accountability to a greater extent than any other approach. In CED’s view, any group or organization that spends money to advocate candidates or finance election campaign activities should be required to disclose their expenditures and sources of funding to the public.

CED recognizes that some of the organizations now involved in political campaigns have broader purposes as their primary concern. Most of the money these organizations raise and spend is used for purposes wholly unrelated to electoral politics. CED believes disclosure should apply to the monies raised and spent to advocate candidates and influence elections. Any organization that spends money advocating candidates or paying for other electioneering activities—whether a political committee, tax-exempt 501(c) organization, or for-profit corporation—should publicly disclose the sources of the funding used to finance these expenditures. As CED has previously noted, such an approach “treats all of those who raise and spend money on election activity in the same manner. It provides an across-the-board corrective equally applicable to any actor in the electoral process.”14

CED urges members of the business and labor communities, civic leaders and public officials to join in the efforts to promote full and effective campaign finance disclosure. Without an improvement in current disclosure practices, the financing of political activity will continue to move into the shadows, and the deepening role of undisclosed money will further erode public confidence in the electoral process and the integrity of our political system.

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**Notes**

2. Ibid., 67 and 81.
4. Ibid., 916.
5. The totals include the independent expenditures, electioneering communications, and labor union communication costs reported to the FEC, as compiled by the nonpartisan Center for Responsive Politics as of June 30, 2013. All financial data included herein are based on the compilations of FEC disclosure filings made available to the public by the Center for Responsive Politics.
6. 11 C.F.R. Sec. 104.20(c)(9).
11. Based on an analysis of contributions reported by this Super PAC in its FEC disclosure reports.
12. Based on an analysis of contributions reported by these Super PACs in their FEC disclosure reports.