

Corporate Donations and the 2012 Presidential Elections

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The 2012 presidential election promises to have the most anonymous campaign donations in U.S. history. Unless the Obama administration acts, unknown corporate and wealthy interests will fund massive advertising campaigns against and for candidates but the voters will not know who they are or their real agenda. The Obama administration can prevent this further corruption of U.S. democracy by taking two steps, neither of which requires action by Congress.

Step One: Enforce Existing Laws

In the 2010 mid-term elections we saw the evolution of a new form of campaign funding that violated the disclosure requirements of the Federal Election Campaign Law (FECA) by illegally using non-profit organizations to hide campaign donations.

The new approach was masterminded by Karl Rove and former Republican Party leaders through American Crossroads GPS. They created a non-profit organization under 501(c)(4) of the Internal Revenue Code – organizations that are not supposed to be primarily involved in elections – and used it to raise tens of millions in anonymous donations. In total, [nearly \\$150 million was spent by these \(c\)\(4\) groups](#) leaving voters in the dark as to the personal interests of the donors. We can expect that amount to more than double in 2012 if existing laws are not enforced. Indeed Rove has announced his group alone intends to raise [\\$120 million](#) for 2012.

While the *Citizen's United* decision allowed unlimited donations by corporations and individuals, it did not allow anonymous donations. The federal election law requires that donors be identified. In order to do an end-around this requirement some political operatives have set up non-profit organizations to hide donor identities. This not only [violates FECA but IRS regulations](#) as well. The Department of Justice [has the authority to enforce criminal violations of FECA](#) even without action by the Federal Election Commission.

The Obama administration can end these illegal secret donations by announcing an investigation of organizations that took this approach in 2010. The DOJ should appoint a special prosecutor to remove the issue from partisan politics, subpoena documents and witnesses before a grand jury. Such an investigation should also put donors on notice: if a donor knows that the purpose of the non-profit is to avoid campaign finance disclosure requirements than they can also face criminal prosecution. Donors who wanted to keep their names out of campaign finance reports will want to keep their names off of grand jury subpoenas and certainly out of an indictment.

A coalition of advocacy groups have come together as [CampaignAccountabilityWatch.org](#), to

fight back against Rove and others, such as the Chamber of Commerce, American Crossroads GPS and American Future Fund, to make sure that they do not violate campaign finance laws in the upcoming election as they have done in the past. Last week [Campaign Accountability Watch sent letters to 40 U.S. Attorneys along](#) with more than 12 thousand signatures of citizens urging prosecution of these organizations for illegally using non-profit front groups to violate FECA during the 2010 elections. Our simple request to U.S. Attorneys, the Department of Justice and the Obama administration: enforce existing law.

Last November I got a telephone call “Hello this is Special Agent . . . of the FBI.” They were responding to complaints we filed against the Chamber of Commerce and American Crossroads GPS. We had a lengthy meeting with the FBI shortly after that when we reviewed the public information available that made a prima facie case against the electoral practices of these organizations. Campaign Accountability Watch has been communicating with FBI investigators on using the criminal provisions of FECA to prosecute these wrongdoers since then and as recently as a month ago the investigation was continuing. The campaign has also [filed complaints with the Department of Justice](#), the Internal Revenue Service and organizations have [filed an FEC complaint](#) last October. To stem the coming flood of anonymous campaign spending it is time to enforce the law.

Step Two: Require Contractors to Disclose Political Contributions

President Obama is [considering an executive order](#) that would require companies bidding for federal contracts to disclose all of its federal political spending over \$5,000 for the previous two years which they now keep secret, including money spent indirectly through third party organizations like the Chamber of Commerce. The [proposed transparency order](#) would create one central database on the website [data.gov](#) that would list the political activities of government contractors and their affiliates and officers.

The reaction to the executive order highlights the need for it. The [Chamber of Commerce has been apoplectic](#) over the executive order, making arguments that are absurd on their face. They have been [lobbying former Chamber board member, William Daley](#), who is Obama’s chief of staff. They claim transparency will lead to corruption in government contracting when just the opposite is true. Politics and procurement are already linked as politicians already know who their donors are; this transparency order will make money less powerful, not more powerful. If the public knows which corporations donated to which candidates or other electoral efforts it levels the playing field. Favoritism to donors will be seen as corruption of the process. Rather than creating a spoils system for government contractors, transparency will expose it and end it.

The real issue for the Chamber is personal - their corporate donors who get federal contracts will be exposed and they will lose millions in donations for their electoral efforts. The public will learn how many of the Chamber of Commerce’s 300,000 corporate members are government contractors; watchdog groups will be able to discover whether the Chamber has lobbied for laws that benefit their donors. Is the Chamber a public interest group advocating for laws that are good for business; or really an organization for hire by corporations who want the Chamber to do their bidding and get them government contracts? The fact that the Chamber is so aggressively fighting disclosure of donors’ identities emphasizes the importance of Obama signing the transparency order.

More than two dozen Republican senators including House Majority Whip Kevin McCarthy

and the chairmen of 19 House committees signed letters to the president arguing that the order would inject political favoritism into the contracting process. When I used to practice law, when the other side hid information, I knew I was on the right track. If corporations and their allies in Congress oppose this executive order it shows they have something to hide, making it even more important for Obama to put the order in place.

Good government groups and the media have been very supportive of the proposal:

- [The New York Times](#) editorialized: “The U.S. Chamber of Commerce, an accomplished conduit for secret donors, is crying foul about the proposed executive order. But clearly the measure is needed to combat pay-to-play campaign abuses. . . Now is not the time for him to flinch before noisy threats from the chamber and other deep-pocketed players.”

- [The New Republic](#) wrote: “The key now is for the White House and the regulatory agencies to ignore the threats from Congress and elsewhere, and move ahead with their efforts. After all, the sentiments of the 92 percent of the public that favors transparency, and the eight justices on the Supreme Court that have endorsed it, should outweigh the objections of the reborn anti-disclosure cabal.”

- And, [the MetroWest Daily News](#) pointed to Republican hypocrisy and common sense writing: “Not long ago, Republicans argued that campaign contributions shouldn’t be limited but, instead, should be publicly disclosed, leaving it up to voters to decide if a candidate had been unduly influenced. Now they not only demand that special interests be allowed to make unlimited contributions to get their favorite candidates elected, but they also want those contributions to be kept secret. . . People who sell goods and services to the government shouldn’t be able to influence government decisions through secret donations of large piles of cash to elect favored politicians.”

Both unions and business would be subject to the law if they seek federal government contracts. Federal agencies spent about [\\$535 billion in fiscal 2010 on government contracts](#). In fact more than 138,000 corporations would fall under the order including many Fortune 500 companies, military contractors, unions and others who do business with the federal government.

President Obama has it in his power to bring significant transparency to federal elections. Congressional opposition is irrelevant to the signing of executive orders and the enforcement of existing laws. People have the right to know who is funding campaign activities so voters know their business before the government. People also have the right to know whether corporations are being favored for government contracts because of their political donations. And, campaign disclosure laws need to be enforced to be effective. Transparency is essential to reducing the corruption of politics. It is time for the Obama administration to act.

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