



**Testimony of Ellen S. Miller, Executive Director**

**The Sunlight Foundation**

**Before the Committee Rules**

**United States Senate**

Mr. Chairman, Senator Bennett, members of the Committee, thank you very much for the opportunity to submit testimony on behalf of the Sunlight Foundation. My name is Ellen Miller and I am the co-founder and executive director of the Sunlight Foundation. The mission of the Sunlight Foundation is to use cutting-edge technology to make government transparent and accountable.

Before founding Sunlight, I was deep in the campaign finance trenches. First, as a founder of the Center for Responsive Politics, the nation's premiere money and politics data crunching organization. Later, I created Public Campaign, a nonprofit that pioneered the concept of a system of full public financing.

Given my background, you can imagine my interest as I read the Supreme Court's decision in *Citizens United v. the Federal Election Commission*. There is no doubt in my mind that this case opened the floodgates for corporate and union spending in elections.

In dismantling 100 years of prohibitions against corporate treasury funds being used to elect candidates, the Court put a great deal of faith in the idea that disclosure will remove the taint of corruption from the new influx of cash. The majority opinion observed that the Internet is becoming the best way to hold politicians and influencers accountable. And I agree that robust disclosure is a first step in addressing the multitude of problems the decision created.

But for online transparency to perform the functions ascribed to it by the *Citizens United* ruling, Congress has to create new laws that reflect both the new reality of expanded independent spending, as well as the existing array of money-driven influences on public officials.

Reliance on the status quo will doom disclosure to fail. The current disclosure system relies on a hodgepodge of reporting requirements that result in some information filed on paper, some online. Relevant data about money in politics is scattered across many government bodies and incompatible databases so that it can't be combined in meaningful way. Where it is required to be disclosed, information about money, access and influence is not available in real time and is often delayed until well after it is meaningful to the public. And much information is simply not disclosed at all.

Without an immediate update to the disclosure laws, the public will be unable to see this new spending as it occurs and won't be able to understand the new kind of leverage lobbyists and top corporate and union officials will have over politicians.

The only deterrent to widespread arm-twisting of public representatives by private interests may well be timely disclosure. Now more than ever, our entire system of public disclosure for election-related contributions and expenditures needs to be upgraded to keep pace with the influences it is designed to track. And in the 21st century this

means that everything must be filed online, in real time.

Sunlight has developed a multi-point disclosure regime that takes full advantage of technology to create robust, rapid transparency. An effective disclosure regime will include the following:

- Congress must create a powerful independent expenditure reporting system
- Shareholders must have timely data about corporate political expenditures
- Lobbyists must be required to file more substantive, timely reports
- There must be more disclosure about who is paying for independent political ads
- Reporting by political candidates must be strengthened
- Enforcement of all disclosure rules must be strengthened to ensure compliance
- Once information is reported, the databases into which the information goes must be interoperable

These recommendations play an important role in giving the public insight into the ecosystem of money and politics. Moreover, each contributes to revealing coordination or undue influence. The remainder of my testimony will detail the recommendations outlined above.

### **Congress must create a powerful independent expenditure reporting system**

It should go without saying that in light of Citizen's United, Congress needs to quickly create a robust system by which corporations and unions disclose their independent expenditures. New disclosures are necessary both because the American people have the right to know how much money corporations and labor unions spend to influence elections, and to reveal whether corporate and union contributions are being channeled through straw organizations or middlemen.

An effective system will ensure that independent expenditure reports are filed electronically, within 48 hours of making the expenditure. If an expenditure is made 60 days before an election, those electronic reports should be filed within 24 hours.

The independent expenditure report must include the name and address of the entity making the independent expenditure as well as the date and amount of the expenditure. The report must describe the purpose of the expenditure, the medium, (whether it is a radio ad, direct mail, etc.) and it must name the candidate supported or opposed by the expenditure. It must also identify the office for which he or she is running.

In addition, any organization making an independent expenditure must identify the name and address of any entity that provided contributions to that organization over \$200 that were used to fund the independent expenditure. The report must also certify, under penalty of perjury, that there was no coordination between the organization and the candidate.

The FEC shall ensure that all independent expenditure reports are online immediately upon receipt and shall create a searchable, sortable database of independent expenditures.

### **Shareholders must have timely data about corporate political expenditures**

Our second recommendation, providing shareholders with timely data about corporate political expenditures, addresses the fact that after Citizens United, corporate CEOs can spend general treasury funds—in essence, money belonging to shareholders—on political activities. Shareholders are entitled to know immediately how their money is being spent.

The current “8-K” reporting system of the Securities and Exchange Commission (SEC), by which

corporations are required to file a separate report to announce major events about which shareholders should be aware, should be updated so that spending on political activities, including in-kind contributions as well as contributions, membership dues or other payments to organizations that engage in political activities, is reported each time aggregate spending totals \$10,000. These reports should be filed electronically, within 48 hours.

Corporations should file reports with the SEC identifying all senior management responsible for approving political expenditures, and the company must promulgate and disclose its guidelines for political spending. The SEC must make this information publicly available through its disclosure database.

In addition, In addition to filing the above information with the FEC, all of this information should be immediately included on the home page of the company's Web site, in a manner that draws shareholders' attention to it.

The Department of Labor must require unions to similarly disclose their political activities in a searchable, sortable, downloadable database, and the information must be made available on the unions' home pages.

### **Lobbyists must be required to file more substantive, timely reports**

Lobbyist reporting, already riddled with loopholes, becomes even more important in the wake of Citizens United, because it will be a key component to demonstrate that corporate or union independent expenditures are not made in coordination with candidates. The current 20 percent exemption for lobbyist reporting must be eliminated so that, with very limited exception, anyone who lobbies reports all significant contacts—by phone, in person or electronic—in which a request is made for a government action. Corporate and union heads, anyone who bundles campaign contributions or other influential insiders must be subject to the Lobbying Disclosure Act (LDA) rules for disclosure.

Meaningless rules that require lobbyists to report only whether they have lobbied the House, Senate or executive branch must be replaced so that the name of the official being lobbied is reported.

Lobbyist disclosure reports must also include a summary of the action requested and the name of the lobbyist's client or employer. Only individuals who are able to make a good faith estimate that their income or expenditures related to lobbying fall below a certain threshold would be exempt from disclosure requirements.

Lobbyist disclosure reports must be filed electronically within 24 hours. To facilitate filing and disclosure, the House Clerk and the Senate Office of Public Records shall develop an online and mobile tool for collecting lobbying disclosure reports. Lobbyists should be required to use unique identifier for themselves and their clients or employer to streamline filing and disclosure.

All reported lobbying contacts must be made available to the public in a searchable, sortable, machine-readable format.

Disclosure of contacts by executive branch officials – currently limited to requests for Troubled Asset Relief Program (TARP) or stimulus funds – should be reworked so that all significant contacts in which a specific government action is requested are reported in real time and online.

### **There must be more disclosure about who is paying for independent political ads**

When the public is exposed to an independent expenditure campaign, they should know who paid for it. Just as candidates are required to “stand by their ads,” disclaimers on independent expenditures should require a corporate or union spokesperson to state the name of the entity that paid for the ad, as well as the organization's approval of the message. In addition, the entity's address or Web site must be included in the advertisement.

An online database of paid political advertisements should be created, and should include the text or video of the ad. It should identify where and when the ad was placed, the cost to run the ad and the name of the organization that paid for it.

### **Reporting by political candidates must be strengthened**

To foster greater trust in government, it is imperative to demonstrate that there is no coordination between the corporation and the candidate. Timelier electronic reporting of campaign disclosure statements, including better reporting of bundled contributions, will aid in demonstrating independence. Campaign finance reports should be filed monthly instead of quarterly, and all campaign finance reports— candidate, PAC and party – should be filed electronically with the FEC so that contribution information is available online, in a searchable, sortable, machine-readable format immediately after the reports are filed.

It is also crucial that the FEC be directed to rewrite its regulations regarding bundled contributions. A recent investigation by the Associated Press found that as of September 2009, only about two-dozen lawmakers had reported lobbyists bundling contributions. This is starkly at odds with a finding by Sunlight's own Party Time project, which identified lobbyists as hosts on at least 195 congressional fundraising invitations. Bundlers who have significant contacts with members of Congress or executive branch officials should be required to register and report under the LDA.

### **Strengthen Enforcement of All Disclosure Rules**

To ensure compliance with the new disclosure regime, the Justice Department, the FEC and the SEC must be armed with strong civil and criminal sanctions that can be imposed upon any organization or individual who knowingly breaks or recklessly disregards these disclosure rules.

To fund the new disclosure and enforcement mechanisms, filing fees for corporations making independent expenditures must be imposed on a sliding scale: The greater the independent expenditure, the larger the filing fee.

### **Ensure Interoperability of the Data**

All information to be reported under this regime must be reported electronically and available online in real time, in a searchable, sortable, downloadable and machine-readable format. The FEC, SEC, Secretary of the Senate, Clerk of the House and any other agency charged with collecting and disseminating campaign finance data must be required to develop a system to create a common data format standard. The format should be open and nonproprietary.

All of these pieces are critical to effective disclosure. Tinkering around the edges of the disclosure current system will fail to address the real impact of massive amounts of money that will soon flood our political system. Only significant improvements to the substance, timeliness and accessibility of our disclosure laws will begin to address what the Citizens United case has wrought.