

Dark Money

League Position

League of Women Voters of the United States (LWVUS) position statement: The League of Women Voters of the United States believes that the methods of financing political campaigns should:

- Enhance political equality for all citizens; ensure maximum participation by citizens in the political process;
- Protect representative democracy from being distorted by big spending in election campaigns; provide voters sufficient information about candidates and campaign issues to make informed choices;
- Ensure transparency and the public's right to know who is using money to influence elections;
- Enable candidates to compete equitably for public office; ensure that candidates have sufficient funds to communicate their messages to the public; and
- Combat corruption and undue influence in government.

What is Dark Money?

"Dark money" refers to spending meant to influence political outcomes where the source of the money is not disclosed. The 2010 Citizens United Supreme Court ruling expanded the amount of money in politics. It prohibited the government from restricting independent expenditures for political campaigns by corporations, nonprofits, labor unions and other associations. This ruling led to a huge increase in dark money and dark money groups. Dark money groups have spent roughly \$1 billion — mainly on television and online ads and mailers — to influence elections in the decade following the Citizens United ruling.

Dark Money History and Background

There has always been money in politics from the beginning of the debates surrounding the forming of our Constitution. In recent years, the amount of money flowing into the political system has shaped politics more than most realize.

Beginning in the 1960's and 70's, strategic actions by some wealthy families in the U.S. escalated the rise of money into our system. Many of these wealthy individuals started looking for ways they could use their fortunes to affect the political system. David Koch, Koch Industries, ran for Vice President on the Libertarian ticket. After his unsuccessful bid, he and his brother, Charles, decided that running for office was not the answer to changing the system. Policy was the key. They wanted minimal social services and less oversight of industry, especially in the environmental areas.

From the 1960's forward, money has been flowing into 501(c)4s, private foundations and think tanks to promote not a candidate but a policy. Oil and gas magnates started using the organizations to counter the regulations of the environment, taxes, immigration, individual freedom, individual health care, free speech, and education.

Various means were used to influence public opinion and to change the view of the voting public. Money was given to universities to establish chairs to be held by a professor of similar views to the donor. Think tanks were developed, funded by wealthy benefactors, and staffed by individuals who viewed political policy in the same vein as the founding member(s). Many political advocacy groups were formed either as a charity (501(c)3) or a social welfare group (501(c)4). Americans for Prosperity, founded in 2004 by Charles and David Koch, was one of the first influential advocacy groups. Since its founding, other advocacy groups have flourished, and today Americans for Prosperity alone boasts of over 4 million members in all 50 states.

Private foundations have few restrictions other than having to donate a minimum of 5% of their assets every year to charities or nonprofits. The donors then receive generous tax benefits. In 2013, there were over a hundred thousand private foundations with assets of over \$800 billion.

In addition to university chairs, think tanks, and foundation influencers, dark money in politics goes to non-profit organizations, social welfare organizations under 501(c)(4), labor unions under 501(c)(5), and trade associations under 501(c)(6)). These non-profits can spend money in elections because they are not technically political organizations. Because they cannot coordinate spending with political parties or candidates, they are allowed to raise unlimited sums of money from individuals, organizations, and corporations without disclosing their donors.

In traditional political spending, donors must be disclosed, contribution limits apply, and organizations are allowed to coordinate their efforts to help elect a candidate. These groups include candidate committees, political parties, and traditional political action committees (PACs). In today's world, dark money groups have thrived under the umbrella of independent or non-coordinated spending. As long as they do not coordinate their spending with political candidates or parties and aren't themselves political parties, they may engage in a number of direct political activities, including buying advertising that advocates for or against a candidate, going door to door, or running phone banks.

Along with nonprofits, other dark money groups have benefitted. Pop-up super PACs form shortly before an election and spend unlimited sums influencing races without disclosing their funding sources until after voters go to the polls. Super PACs are required to disclose their sources except when the donor is a shell corporation or a nonprofit that doesn't disclose its donors. Shell companies make major contributions to super PACs each election cycle. In politics, limited liability companies (LLC) are sometimes established to help disguise the identity of a donor or source of money spent on behalf of a political candidate. This lack of accountability and transparency has helped disguise the source of millions of dollars in political spending.

Renée Irvin, a professor at the University of Oregon, proposes an index that ranks the financial transparency of social advocacy nonprofits to give people more awareness of organizations that are funneling anonymous donations, or dark money, into politics. The higher the ranking, the less transparent. In her view not all nonprofits are created equal. Many 501(c)(4) organizations serve the community beyond political lobbying — well-known examples include Planned Parenthood and the Sierra Club — and are clear about their objectives, if not the source of their funds. Organizations such as these would have a relatively low index ranking. According to Irvin, other 501(c)(4) groups have vague names like Majority Forward and Freedom Frontier. These groups funnel tens of millions of dollars into political advocacy, yet their websites are often sparse of real details. They often have very small boards with only a couple of members and do not engage in any fundraising. All of these are red flags for dark money and earn a high ranking.

Impact on State and Local Elections

Dark money groups have access and influence. They pose a special danger at the state and local level. For candidates used to modest budgets and low-key campaigning, dark money can pose an unfair and expensive obstacle. When local and state candidates realize that more money is likely to be infused in the campaign by outside dark money groups than by their fundraising efforts, it may deter potential candidates from competing. Also, in lower-cost elections it is easier for special interests to greatly influence the political discourse. Dark money groups can outspend candidates with amounts in the low \$100,000s or even \$10,000s — a modest business expense for special interests but a major hurdle for many candidates and community groups. At the federal level, that degree of domination can easily cost in the tens of millions.

Most legislators reveal that the mere threat of spending for the other candidate changes their behavior in the legislature and affects the legislative agenda. By failing to act on legislation that is opposed by influential corporations or specific large donors, legislative leaders cater to the wishes of those with the most money. "In my 33 years in Arizona politics and government, dark money is the most corrupting influence I have seen," stated Chris Herstam, currently a lobbyist and formerly majority whip in the Arizona state house and chief of staff for a Republican governor. He said that secretive, special interest spending is making

campaigning more costly, including in down-ticket contests, intimidating lawmakers from taking policy positions that might draw dark money attacks and robbing voters of essential information.

Unlike many spenders at the national level who pursue broader or longer-term agendas, secretive special interests at the state and local levels often seek more immediate, direct benefits. Statewide offices such as attorney general, secretary of state, and treasurer and seats on local utility boards, public hospital boards, courts, and school boards have a great deal of power over economic matters, environment, employment, business related issues, regulations, etc. Who holds those offices is of key importance. In Louisiana, for example, several localities have sued oil and gas companies seeking money for coastal restoration. The fate of such litigation often hinges on the decisions of parish councils or commissions, local judges, or even a sheriff. These local officials are in positions that directly affect oil and gas companies. The elections for these positions are most vulnerable to dark money groups as they seek to put the most cooperative candidate in office.

Of equal importance to elections for these groups are state and local ballot measures. These ballot measures ask voters to decide specific policies regarding taxes, business oversight, collective bargaining, etc. Recently, in Oregon, through ballot measures, citizens have decided issues regarding gun control, health care, and drug legalization. Controversial ballot measures tend to draw heavy anonymous spending. Motivated special interests can spend millions to either oppose a ballot measure or to get a measure on the ballot with precisely the policies they want. Once on the ballot, they promote the measures through ads, flyers, phone banks, etc., a more effective and direct route to achieving their goals than lobbying lawmakers. The challenge of competing with deep-pocketed anonymous spenders may also be discouraging smaller groups from pursuing policy change through a type of ballot measure initiated by gathering voter signatures. Citizens' initiatives can be costly and complex to get on the ballot, let alone sustain against opponents with far greater resources. In Florida, proponents of a renewable-energy initiative got cold feet once the opposition received millions of dollars from non-disclosing nonprofits as well as power companies. Steven Smith, chair of the Floridians for Solar Choice ballot committee, told Bloomberg News, "The fact that the utility companies spent \$7 million to stop the initiative scared some of our donors. They may spend \$30 million to block it if we got on the ballot."

County and municipal level elections are frequently nonpartisan, and voters depend heavily on information about candidates from election ads. Citizens, barraged with political messages paid for with money from undisclosed sources, may not be able to consider the credibility and possible motives of the wealthy corporate or individual funders behind those messages. The lack of ad-sponsor disclosure deprives voters of key information for evaluating messages. Dark money has served specific interests in many state and local elections, unbeknownst to voters at the time. The power of dark money to mislead voters, intimidate or malign candidates, and even discourage would-be candidates and ballot measure advocates, has had a negative impact at the state and local levels of government.

Oregon Campaign Finance Laws and Legislation

Oregon is one of five states without any limits on political donations. As an example, \$70 million was spent by wealthy donors and others on the governor's race in 2022.

In 2023 Oregon state legislators ended the session without tightening Oregon's loose campaign finance laws. The Oregon legislature has never in its history adopted limits on campaign contribution amounts. Legislative measures proposed in 2023 would have limited individuals' contributions, but failed to limit small donor political action committees, allowing them to raise virtually unlimited amounts. The six-week walkout by ten senators ended up canceling any chance of passing finance reforms.

The Center for Public Integrity and Public Radio International conducted an integrity investigation in November 2015 and graded Oregon an overall "F" in systems to avoid corruption by public officials. Oregon

ranked second worst of the 50 states in control of political financing, better than only Mississippi. Oregon's political financing system has not improved.

The Oregonian reported that candidates for the Oregon Legislature raise and spend more in their campaigns, per capita, than in any other state except New Jersey. The average spent in 2020 by the top ten Oregon Senate candidates rose to over \$953,000 each and by the top ten Oregon House candidates rose to over \$925,000 each. Some candidates spent over \$1 million, amounting to over \$80 per vote received. The bigger spending candidate in races for the Oregon Legislature has won 94% of the time.

Oregon's campaign finance laws, compared with those of other states, do not rank well. The Coalition for Integrity, a non-profit, non-partisan 501(c)(3) organization that works to combat corruption and promote integrity in the public and private sectors, has developed a system which ranks the states on campaign finance laws using the following ten principles:

- Principle 1: All states should have an independent agency with jurisdiction over campaign finance with wide powers to investigate and sanction violations of campaign finance laws.
- Principle 2: Sanctions should be meaningful in order to deter violations of campaign finance laws and not be left to criminal proceedings.
- Principle 3: Members of the agency should be statutorily protected from removal without cause.
- Principle 4: States should limit contributions to political candidates by individuals and PACS to the federal limit of \$2900 per election and prohibit corporations and unions from making contributions.
- Principle 5: States should limit contributions to political parties by individuals and PACS to the federal limit of \$36,500 and \$15,000 per year respectively and prohibit corporations and unions from making such contributions.
- Principle 6: States should clearly delineate conduct and types of spending that constitute coordination between campaigns and independent spenders and require the establishment of firewalls between campaigns and independent spenders to ensure that such spending is truly independent.
- Principle 7: States should mandate comprehensive disclosure about donors to independent political spenders as well as information about the beneficial owners of LLCs and donors to 501(c) organizations which contribute to those independent spenders.
- Principle 8: Political advertisements across all forms of media – print, television/radio, internet – should be transparent about their underlying funding.
- Principle 9: States should require candidates and independent spenders to report contributions received and expenditures made within the last 30 days before an election in a timely manner so that voters can judge candidates and independent spenders more accurately.
- Principle 10: All campaign finance information should be filed electronically and should be easily accessible and sortable on the agency's website.

Using these principles, the Coalition for Integrity has ranked each state's campaign finance laws (a perfect score is 100). Washington ranked first with a score of 83.99; California second with a score of 80.95; the two bottom states are South Dakota (45.06) and Indiana (38.33). Oregon ranked 44th, with a score of 52.74.

Although Oregon's campaign finance laws do not rank high nationally, there are reporting and disclosure requirements on committees and candidates for contributions that they receive. The system developed by the Secretary of State to disclose campaign finance activity is called the Oregon Elections System for Tracking and Reporting (ORESTAR). Committees and candidates must file campaign finance transactions electronically in ORESTAR, which are available electronically to the public. Generally, communications supporting or opposing a candidate must state the name of the persons who paid for the communication and their top contributors.

Actions to Improve Financial Transparency

Two organizations, the Center for Media and Democracy (CMD) and Common Cause, are keeping close track of groups with nontransparent practices. CMD is a nationally recognized watchdog that leads investigations into the corruption that undermines our democracy, environment, and economic prosperity. CMD believes in the public's right to know how the government operates and how corporations influence our democracy and the true motivation for their actions. When necessary, CMD litigates to defend that right and ensure those in power follow the law. Common Cause works to create open and accountable government.

CMD and Common Cause are looking at the American Legislative Exchange Council (ALEC). ALEC, founded in 1973, describes itself as a 501(c)(3) non-profit think tank that also functions as a voluntary membership association for state legislators, corporations, and think tanks. Through ALEC, corporations hand legislators their wish list to benefit their bottom line. Ninety-eight percent of the funding for ALEC comes from corporations; each member pays an annual fee of \$7,000 to \$25,000. The remaining two percent comes from legislators' dues, which are \$50 per year.

How does ALEC work? State lawmakers get paid trips to meet with corporate CEOs and lobbyists at ALEC-sponsored conferences that are closed to the public and the press. In secret, corporate representatives and elected officials write model bills that more often than not benefit the corporation's bottom line. They are then introduced in state legislatures where ALEC-backed legislators push them through. Over 1,000 of these bills are introduced every year, with one in five being enacted into law. Who are the corporations? A partial list includes State Farm, Koch Industries, UPS, FedEx, Duke Energy, Anheuser-Busch, Bayer, GlaxoSmithKline, Johnson and Johnson, Humana, United Healthcare, and Reynolds Tobacco.

Common Cause and CMD exposed ALEC and its secret sources of corporate money. They campaigned for corporate accountability and used public pressure. They filed a whistleblower complaint with the IRS charging the organization with tax fraud because it operated as a lobby while registered as a 501(c)(3) charity. It included thousands of pages of ALEC records as exhibits detailing abuses of charity laws, massively underreporting lobbying and obtaining improper tax breaks for corporate funders at taxpayers' expense. They documented ExxonMobil's use of ALEC for nearly two decades to lobby state legislators and promote the company's climate change denial politics.

Since ALEC was first exposed in 2011, more than 100 corporations have dropped ALEC, including Verizon, Ford, Coca-Cola, Walmart, GE, Google, AT&T, Comcast, and Takeda Pharmaceuticals.

Oregon Proposed Initiatives for the November 2024 Ballot.

Initiative Petition 9, "Contribution Limits in Honest Elections" (IP9), sponsored by Honest Elections Oregon and the League of Women Voters of Oregon (LWVOR), pushes for more restricted campaign contributions, including preventing corporations, unions, and limited liability companies from directly contributing to campaigns and incentivizing candidates to rely on small donations. The initiative seeks 120,413 voter signatures to qualify for the ballot in 2024.

The major provisions of IP9 include:

1. Contribution limits

- Limits contributions to candidates, political committees (PACS) and political parties to support or oppose any candidate for state or local government office.
- Bans such contributions by for-profit corporations.
- Individuals and PACS may contribute: \$2000 to candidate for statewide office, \$1000 to candidate for any other state office, and \$500 to candidate for local office.
- Small Donor Committees, funded only by contributions of \$250 per year or less from individuals, may contribute: \$20,000 to candidate for statewide office, \$10,000 to candidate for any other state office, and \$5,000 to candidate for local government office.

- Prohibits any person or entity from creating or controlling multiple entities for purposes of increasing allowable contributions.

2. Shining a light on Dark Money

- Requires campaigns, including dark money groups, to name their largest four funders in their ads.
- Makes large campaign spenders and contributors reveal the true original sources of the funds.
- Requires faster public disclosure of large contributions and independent expenditures.

Looking toward 2024, Our Oregon, a pact dominated by labor groups, especially public employee unions, advocates Initiative Petition 42 (IP42) and Initiative Petition 43 (IP43), both titled “Oregon Campaign Finance Amendment 2024.” The two measures compete with IP9 and include provisions to:

- Allow membership organizations to fund the equivalent of three full-time staff on every statewide candidate’s campaign,
- Establish a state-level public match for campaigns that meet thresholds for small donor fundraising including up to \$8 million per candidate for governor, and
- Allow labor unions, etc. with designation as a small donor committee to give millions by setting its limit at \$50 multiplied by the number of people who donated. So, a small donor committee that received donations from 10,000 people could give \$500,000 to a candidate.

In the event that two competing measures pass, the measure with more votes negates the other measure. So, if either IP42 or IP43 passes with more votes than IP9, the result is that IP9 is negated.

Campaign Reform Efforts in Lane County

There are currently two ongoing efforts to reform campaign finance in Lane County:

1. City of Eugene Voluntary Campaign Finance Program

In April 2002, the city council adopted Resolution Number 4709, creating a voluntary campaign finance program for city elections. The city council was concerned about the escalating costs of running for city office and the appearance of impropriety when an individual or corporation contributes significant funds to a candidate’s campaign.

The program seeks to improve the city election process by encouraging candidates for city offices to limit campaign expenditures and contributions. The program is voluntary and for candidates who pledge that they will comply with all the expenditure and contribution limits. For city council elections, the voluntary expenditure limit is \$7,500; for the mayoral election, \$30,000. Contribution limits for council elections are \$100 per person and \$500 from the candidate; for the mayoral election they are \$500 per person and \$500 from the candidate.

Unless all candidates agree to limit campaign contributions, a single candidate following the voluntary contribution limits would be at a disadvantage.

2. Lane County Commissioners’ Campaign

Data from ORESTAR show large sums of contributions in some county commissioner candidates’ campaign funds. Candidates on the ballot for county commissioner fall into two categories: those who receive significant contributions from a few well-funded sources and those who don’t.

Five candidates campaigned in 2017 and 2018 for the East Lane County Commission position. Gary Williams, who had been appointed to his position in 2017, raised \$253,678 for his campaign, with approximately \$60,000 from timber and construction firms. Heather Buck’s campaign raised \$212,683, of which approximately \$35,000 was contributed by trade unions. The other three candidates received much less, Tim Laue, \$86,318; Kevin Matthews, \$43,284; and James Barber, \$20,921.

From early 2017 to May 2018, West Lane County Commissioner Jay Bozeviech received \$96,175 in campaign contributions. Of that sum, \$80,500 came from timber and development firms. His opponent, Nora Kent, received \$60,365.

Former South Eugene Commissioner Pete Sorenson stated that money in politics is not new, but the magnitude of the contribution amounts was increasing and done to influence public policy.

Oregon election law requires complete, accurate, and timely disclosure of contributions and expenditures by campaign committees. Measure 107, the Campaign Finance Limits Amendment, was approved by voters November 3, 2020. The amendment authorizes the state legislature and local governments to enact laws or ordinances that limit campaign contributions and expenditures and require disclosure of contributions and expenditures.

The November 2024 election results may have a dramatic impact on campaign finance law in Oregon with the passage of the proposed measures.

Discussion Questions

1. Should there be limits on the amount of campaign contributions a candidate should receive? If so, how should it be accomplished?
 - a) A ceiling amount
 - b) Public financing
 - c) No dark money- full disclosure of donors.
2. Which of the principles established by the Coalition for Integrity, page 4, would you say would be most effective?
3. Do you think IP9, Contribution Limits in Honest Elections, will be effective in curbing campaign finance abuses?

Resources:

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- “Dark Money legislative efforts 2023” and “Initiatives for 2024”, *The Oregonian* 6-22-2023 and 8-21-23
- <https://oregoncapitalchronicle.com/2022/10/18/candidates-raise-big-sums-in-oregons-competitive-congressional-races/> (accessed 8-16-2023)
- <https://www.opensecrets.org/races/contributors?cycle=2022&id=OR04&spec=N> (accessed 8-16-2023)
- https://www.opensecrets.org/dark-money/basics_2023 (accessed 8-31-23)
- <https://around.uoregon.edu/content/financial-transparency-index-helps-track-dark-money-politics> (accessed 9-11-2023)
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- Lee, Chisun, et al., “Secret Spending in the States,” Brennan Center for Justice, 2016
- Irvin, Renee, “How Dark Is It? An Investigation of Dark Money Operations in US Nonprofit Political Advocacy Organizations,” Nonprofit Policy Forum, 2023, <https://around.uoregon.edu/content/financial-transparency-index-helps-track-dark-money-politics> (accessed 9-11-2023)
- “The State Campaign Finance Index 2022” and “The State Campaign Finance Index 2022 Scoring Index,” <https://www.coalitionforintegrity.org/> (accessed 9-1-2023, 9-13-2023, and 9-14-2023)
- <https://www.prwatch.org/cmd/index.html> (accessed 9-6-2023)
- https://www.sourcewatch.org/index.php/ALEC_Corporations (accessed 9-6-2023)
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- eugene-or.gov/DocumentCenter/View/5309/Voluntary-Campaign-Finance-Program-Pledges-and-Resolution (accessed 8-30-23)
- “Buying Votes,” *Eugene Weekly*, 2-24-2012
- <https://americansforprosperity.org/>
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- “Lane County Races See Large Contributions,” *Eugene Weekly*, 5-10-2018 (accessed 8-30-2023)
- “County to Vote on Rejoining Timber Group,” *Eugene Weekly*, 6-5-2023
- <https://secure.sos.state.or.us/orestar/GotoSearchByNamr.do> (accessed 10-12-2023)
- https://ballotpedia.org/Oregon_Measure_107_Campaign_Finance_Limit_Amendment_%282020 (accessed 10-12-2023)

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