Summary of Testimony of Bradley A. Smith
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The current federal disclosure regime is the most extensive in U.S. history. Data from the Federal Election Commission and the Center for Responsive Politics show that groups who do not disclose information on individual donors accounted for just over 4 percent of spending in the 2012 elections. Any policy produces diminishing marginal returns and rising costs as it aims for 100 percent achievement of its goal, and compulsory disclosure appears to have reached that point of diminished returns.

If enacted, S. 2516, the "DISCLOSE Act of 2014," will discourage both small and large donors from contributing, expose them to the risk of harassment, burden volunteer-run campaigns, and ultimately produce "junk disclosure" data that is not only not useful to voters, but in many cases misleading. Placed in the context of existing disclosure requirements, which are already thorough and over inclusive, this bill is a regulatory overreach that will do mostly harm and little good to public knowledge and trust in government.

S. 2516 suffers from several flaws. These include:

1) The bill would force nonprofits to radically alter their fundraising and public advocacy efforts.
2) The bill's new definition of "functional equivalent of express advocacy" is vague and raises constitutional concerns.
3) The bill is a solution in search of a problem. Current law already requires disclosure of all spending on independent expenditures and electioneering communications and all contributions to further such communications.
4) The bill's rule regarding covered transfers is likely unenforceable and will be a compliance nightmare for many nonprofits.

Ironically, this bill comes at a time when there is growing recognition that our existing disclosure requirements are regulatory overkill, and increasingly unhelpful. Excessive disclosure may actually be fueling the money chase, even as it discourages some donors from giving.

Ultimately, the purpose of disclosure is to allow citizens to monitor government, not to allow government to monitor citizens. The IRS Harassment Scandal and subsequent proposed rulemaking governing the permissible activities of 501(c)(4) social welfare organizations illustrates how partisan pressure for disclosure can decrease, rather than increase, public confidence in government. Tinkering with the First Amendment and the speech rights of American citizens to score political points in an election year is an idea fraught with peril.

Testimony of

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Before the Committee on Rules and Administration
United States Senate
July 23, 2014

Mr. Chairman and members of the Committee, thank you for the opportunity to present my view at this hearing on, "The DISCLOSE Act (S. 2516) and the Need for Expanded Public Disclosure of Funds Raised and Spent to Influence Federal Elections."

The Committee has expressed some interest in using this hearing to explore new disclosure requirements for spending on politics and public affairs through the DISCLOSE Act, ostensibly due to recent Supreme Court decisions, including the Court's ruling striking down the federal aggregate limit on overall political contributions in *McCutcheon v. FEC.* With that in mind, it is worth noting that the *McCutcheon* ruling is disclosure's friend. By freeing donors to contribute more aggregate funds directly to candidates and party committees, one likely effect of *McCutcheon* will be to encourage donors to give directly to those candidates and party committees, where their contributions are subject to the most rigorous compulsory disclosure rules, rather than to organizations that may have fewer disclosure requirements. So, *McCutcheon* is good for disclosure advocates.

Compulsory disclosure seeks to improve politics through transparency, but poorly designed or excessive disclosure requirements can damage politics by discouraging small and large donors from contributing, exposing them to the risk of harassment, burdening volunteer-run campaigns, and producing "junk disclosure" data that is not only not useful to voters, but in many cases misleading. To truly improve transparency, disclosure requirements should be narrowly tailored to avoid these common pitfalls and constitutional controversies.

The bill being considered today is not narrowly tailored. While the stated goal of the DISCLOSE Act is to increase disclosure of spending to elect or defeat candidates, this radical bill would chill speech, force nonprofits to fundamentally alter their fundraising and public advocacy efforts, and implement several vague and unenforceable requirements on citizen groups attempting to speak out on issues of public importance. Placed in the context of existing disclosure requirements, this bill is a clear overreach that will do mostly harm and little good to public knowledge and trust in government.

The alleged disclosure "problem" itself, as I will outline below, is routinely overstated. Data from the Federal Election Commission and the Center for Responsive Politics show that *just over four percent* of political expenditures in 2012 were financed by groups that did not itemize their donors. And in all cases, the name of the group making the expenditures was disclosed (at least if they were operating legally under already existing disclosure rules).

Legislation regulating the discussion of public affairs should be grounded in a realistic understanding of what the law actually is; it must be based on a realistic assessment of the effects it has in practice; and it must take into account the actual costs, as well as alleged benefits, of added compulsory disclosure. Discussion of disclosure should eschew loaded terms like "dark money," that to do little to enlighten and much to obscure those costs and benefits.

The Scope of the Issue

Information about political donors, it is believed, can help guard against officeholders becoming too compliant with the wishes of large spenders, and provide information that might be valuable to voters in deciding for whom to vote and how to evaluate political messages.

In the wake of this year's Supreme Court decision in *McCutcheon*, those who wish to further regulate political speech have renewed calls for even more mandatory disclosure, continuing a pattern established after the decisions of the United States Supreme Court in *Citizens United v. Federal Election Commission*,[1] and of the United States Court of Appeals in *SpeechNow.org v. Federal Election Commission*.[2]

The claim by those demanding more regulation has been that the public lacks information on the sources of vast amounts of political independent spending. This concern, while serious if true, has been artificially ramped up by many mistaken comments in the media about "secret" contributions to campaigns, as well as a widely held, but mistaken belief that under *Citizens United*, corporations and unions may now contribute directly to candidate campaigns. (Both types of entities are prohibited from contributing directly to candidates under federal law; states may choose to ban such contributions for state candidates and several have done so). In particular, there have been concerns that nonprofit organizations formed under Section 501(c)(4) of the Internal Revenue Code have been engaging in extensive political campaigns using what critics have rather unhelpfully dubbed "dark money."

Politically-related spending by 501(c)(4) organizations is not new, and long predates the decision in *Citizens United*. Express advocacy in favor of or against candidates was allowed for certain types of 501(c)(4) organizations even before *Citizens United*, as a result of the Supreme Court's 1986 ruling in *Federal Election Commission v. Massachusetts Citizens For Life ("MCFL")*.[3] That decision allowed qualified nonprofit corporations to conduct express advocacy through independent expenditures. These groups were significant and growing before the

[1] 558 U.S. 310 (2010) (allowing corporations and unions to make independent expenditures in political campaigns from general treasury funds).
[2] 599 F.3d 686 (en banc, 2010) (allowing independent expenditures to be made from pooled funds not subject to PAC contribution limits).
[3] 479 U.S. 238 (1986).

Citizens United decision and included groups such as the League of Conservation Voters and NARAL Pro-Choice America.

In addition, even groups that did not qualify for the exemption pursuant to *MCFL* could and did run hard-hitting issue campaigns against candidates. For example, in 2000, the NAACP Voter Action Fund, a nonprofit social welfare group organized under Section 501(c)(4) of the tax code, ran the following ad:

> *Renee Mullins (voice over):* I'm Renee Mullins, James Byrd's daughter. On June 7, 1998 in Texas my father was killed. He was beaten, chained, and then dragged miles to his death, all because he was black. So when Governor George W. Bush refused to support hate-crime legislation, it was like my father was killed all over again. Call Governor George W. Bush and tell him to support hate-crime legislation. We won't be dragged away from our future.

This thirty-second TV spot, featuring graphic reenactment footage, began running on October 25, 2000, just a few days before the 2000 presidential election.[4]

This ad was perfectly legal to run at any time prior to 2003, with no donor disclosure, and remained legal to run under current disclosure laws more than 30 days before a primary or 60 days before a general election between 2003 and 2007. It probably also could have been run, with no donor disclosure, at any time after the Supreme Court's 2007 decision in *Wisconsin Right to Life v. Federal Election Commission*.[5] In short, political spending by 501(c) organizations is nothing new, and those organizations have never been required to disclose the names of their donors and members unless donors gave specifically to support a particular independent expenditure.

It should also be noted that neither the *Citizens United* nor *SpeechNow.org* decisions struck down any disclosure laws; nor has Congress or the FEC loosened any disclosure rules in place at the time those two decisions were issued in the spring of 2010. There has been no change in the laws governing disclosure of political spenders and contributors.

Despite heavy media focus in 2012 on so-called "dark money," "secret money," and "undisclosed spending," in fact, the United States currently mandates more disclosure of political spending and contributions than any time in its history. Candidates, political parties, PACs, and Super PACs disclose all of their donors beyond the most *de minimis* amounts. This disclosure includes the name of the group, individual, or other entity that is contributing, the date on which it occurred, and the amount given, and recipients are also required to seek information and report on donors' occupation and employment.[6] These entities also report all of their expenditures.

[4] Bradley A. Smith, "Disclosure in a Post-*Citizens United* Real World," 6 St. Thomas J. L. & Pol'y 257 (2012). Draft available at: http://www.ncsl.org/documents/summit/summit2013/online-resources/2013_smith_disclosure.pdf (March 26, 2013).
[5] 551 U.S. 449 (2007).
[6] *See* 2 U.S.C. § 434(b) and (c).

Current federal law also requires reporting of all independent expenditures over $250, and of all "electioneering communications" (as defined in 2 U.S.C. § 434(f)) over $10,000, by any individual, corporation, union, or organization. Like individuals, for-profit corporations, and unions, 501(c)(4) organizations, such as the National Rifle Association and the Sierra Club, must disclose their independent expenditures, electioneering communications, and the individual information on donors who give money earmarked for political activity. All of this information is freely available on the FEC's website.

Current law also requires disclosure of the spender on all campaign advertising itself. All broadcast political ads (like, in fact, all broadcast ads, political or not) must include, within the ad, the identity of the person or organization paying for the ad. Finally, organizations operating under § 527 of the tax code, but not required to file with the FEC or state campaign finance regulators, must disclose their donors to the IRS, where they are made public.

Given this extensive disclosure regime, which is more extensive than that existing in the U.S. at any time prior to 2003, and more extensive than that in most democracies, it is a misnomer to speak of "undisclosed spending." Rather, more accurately, some ads are run with less information about the spender, and contributors to the spender, than some might think desirable. Recognizing the reality of this extensive disclosure regime, rather than railing about the meaningless slogan "dark money," is the first step to understanding the nature of the issue and possible legislative action.

The FEC reports that approximately $7.3 billion was spent on federal races in 2012. Approximately $2 billion, or less than 30 percent, was spent by "outside groups" (that is, citizens and organizations other than candidate campaign committees and national political parties).[7] According to figures from the Center for Responsive Politics, approximately $311 million was spent by organizations that did not provide itemized disclosure of their donors.[8] That is just under 4.3 percent of the total. $311 million sounds like a lot of money – four percent of total spending on federal races doesn't sound like much money at all.

Moreover, that four percent tends to overstate the issue because many of the largest 501(c) spenders are well-known public groups. Only 28 organizations that did not publicly disclose all of their donors spent more than $1 million on all independent expenditures in 2012. Most of these were well-known entities, including the U.S. Chamber of Commerce, the Humane Society, the League of Conservation Voters, NARAL Pro-Choice America, the National Association of Realtors, the National Federation of Independent Business, the National Rifle Association, and Planned Parenthood. Several of these groups also spent substantial funds on issue ads or express advocacy under the *MCFL* exemption, or on candidate-related issue ads, even before *Citizens United*, suggesting that the growth in "undisclosed" spending is even less than many who favor more regulation lead the public to believe.

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[7] Jake Harper, "Total 2012 election spending: $7 Billion," Sunlight Foundation. Retrieved on July 18, 2014. Available at: http://sunlightfoundation.com/blog/2013/01/31/total-2012-election-spending-7-billion/ (January 31, 2013); Jonathan Salant, 2012 Elections Cost Will Hit $7 Billion, FEC Chair Weintraub Says," *Bloomberg*. Retrieved on July 18, 2014. Available at: http://go.bloomberg.com/political-capital/2013-01-31/fec-head-weintraub-says-2012-elections-cost-will-hit-7-billion/ (January 31, 2013).

[8] "Outside Spending by Disclosure, Excluding Party Committees," Center for Responsive Politics. Retrieved on July 18, 2014. Available at: http://www.opensecrets.org/outsidespending/disclosure.php.

Even many spenders that are not historically well-known organizations on this list are quite familiar to anyone who remotely follows the news, such as Crossroads GPS and Americans for Prosperity. Indeed, many of these organizations' funders are well-known, even as the organizations themselves do not formally disclose their names. Does anyone on this Committee not know that Tom Steyer provided substantial funding to NextGen Climate Action, a 501(c)(4)? If not, a Google search of the organization's name will provide that information in a matter of seconds.[9]

Furthermore, data from the Center for Responsive Politics shows that the percentage of independent spending by organizations that do not disclose their donors appears to have declined substantially (by approximately 25 percent) in 2012 from 2010. This is not surprising. Because 501(c) organizations may not have political activity as their primary purpose, they must conduct their activities to stay within the IRS guidelines to maintain their exempt status. In effect, then, a donor whose main objective is political activity faces the effective equivalent of a 50 percent or higher tax on his or her political donations by giving to a 501(c) organization rather than to a "Super PAC," which fully discloses its donors. This is because the group must primarily spend its funds on programs other than political activity, as defined in Section 527 of the tax code. As a result of this inefficiency, it is doubtful that spending by 501(c) organizations will increase substantially as a percentage of independent or total spending. Furthermore, if the group does not conduct its activities in a manner consistent with IRS regulations, it could possibly be reclassified as a Section 527 organization by the Agency and be forced to publically disclose its donors on nearly the same schedule as a political committee, except that the reports are on IRS Form 8872 and listed on the IRS's website.

Lastly, it bears repeating that, contrary to claims by many, the Supreme Court's ruling in *Citizens United* did not change the prohibition on political activity by non-resident aliens and foreign corporations. Specifically, according to 2 U.S.C. § 441(e), any "partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country" is prohibited from contributing in elections. Indeed, despite the President's expressed fear that the decision would allow "foreign corporations"[10] to make expenditures in elections, not only did *Citizens United* specifically not address that longstanding prohibition, but the Supreme Court has summarily reaffirmed that ban since.[11]

In summary, candidates, parties, PACs, and Super PACs already disclose all of their donors. Other groups that spend in elections – primarily 501(c)(4) social welfare organizations, 501(c)(5) labor unions, and 501(c)(6) trade associations – disclose their spending and the names of donors who have contributed specifically for that spending, but not the names of other members and donors. Spending that falls into this latter category is a very small fraction of total

[9] Nicholas Confessore, "Financier Plans Big Ad Campaign on Climate Change," *The New York Times*. Retrieved on July 18, 2014. Available at: http://www.nytimes.com/2014/02/18/us/politics/financier-plans-big-ad-campaign-on-environment.html?_r=0 (February 17, 2014).

[10] President Barack Obama, "Remarks by the President in State of the Union Address," The White House, Office of the Press Secretary. Retrieved on July 18, 2014. Available at: http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address (January 27, 2010).

[11] *See Bluman v. Federal Election Commission*, 132 S. Ct. 1087 (2012).

political spending (just over four percent), is not new, and declined as a percentage of total spending in 2012. In considering legislation that expands or retracts disclosure requirements, members of Congress should first understand the extent of the current federal disclosure regime. Viewed through this lens, the rhetoric of "secret money" in American politics is far overblown.

Policy Issues with Disclosure

Given that non-itemized donor expenditures are such a small part of the whole, why not require disclosure of that four percent of spending? The answer is that disclosure does impose costs, and efforts to squeeze the final four percent of non-itemized expenditures may simply mislead the public.

Any public policy finds its costs increasing and its benefits decreasing as it aims for 100 percent achievement of its goal. To take one example, some increase in spending on police, prisons, and courts is likely to reduce crime, but eliminating all crime – with police on every corner and prisons stuffed with petty offenders – is not worth the cost.

Studies have confirmed that the costs of mandated disclosure disproportionately harm grassroots organizations and campaigns run by volunteers.[12] Complying with disclosure laws often requires expensive legal counsel, an accountant, and other record-keeping staff. Ordinary citizens volunteering for a candidate or issue campaign may unknowingly violate the law if disclosure requirements are overbroad or overly complex. Equally worrisome, powerful political interests may seek to use disclosure requirements to raise the cost of doing business for their grassroots competition. One study of the costs of various state disclosure regulations concluded that "regulation of grassroots political activity puts ordinary citizens at risk of legal entrapment, leaves disfavored groups open to abuse from partisan regulators and robs unpopular speakers of the protective benefits of anonymous speech."[13]

In addition to the logistical challenges faced by organizations, increased disclosure requirements often create "junk disclosure" that misleads the public by associating contributions with communications they have no link to or, as is often the case, knowledge of. When individuals donate to a political committee or political party, they know the funds will be used to support or oppose candidates. The same is not at all true of donors to 501(c) membership organizations, unions, and trade associations. As a result, if a group decides to make political expenditures as a small part of the organization's multiple activities, many of its donors could potentially be made public, regardless of whether their donations were earmarked for a political expenditure. People give to membership organizations and trade associations not because they agree with everything the organization does, or particular political positions it takes, but because on balance they think it provides a voice for their views or otherwise advances their interests with benefits or public education. To publicly identify contributing individuals with expenditures of which they had no advance knowledge and may even oppose is both unfair to members and donors, and misleads the public. It is "junk disclosure" – disclosure that serves little purpose

[12] *See e.g.* Jeffrey Milyo, Ph. D., "Mowing Down the Grassroots: How Grassroots Lobbying Disclosure Suppresses Political Participation," Institute for Justice. Retrieved on July 18, 2014. Available at: http://www.campaignfreedom.org/doclib/20100419_Milyo2010GrassrootsLobbying.pdf (April 2010).
[13] *Ibid*., p. 24.

other than to provide a basis for official or private harassment, and that may actually misinform the public.

There are also serious practical problems. As I have recently explained in the St. Thomas University Journal of Law & Policy:

> Disclosure of general financial donors to groups sounds easier in theory than it is in practice. Consider this scenario: Acme Industries makes a $100,000 dues payment to the National Business Chamber ("NBC") in December of an election year, say 2014, and then again in 2015. NBC, in order to encourage political activity by local and state chambers of commerce, agrees to match what the State Chamber of Commerce raises for election activity in the 2016 elections. State Chamber raises $350,000 specifically for political activity over several months, and the National Chamber matches it by sending a check to State Chamber in March 2016. In June of 2016, State Chamber transfers $1 million – the $350,000 it raised specifically for political activity, the $350,000 from the NBC, and another $300,000 from general dues – to the Committee for a Better State ("CBS"), a 501(c)(4) organization that the State Chamber uses for its political activity. CBS reserves $200,000 for its own direct spending, and then transfers $800,000 to the State Jobs Alliance, a coalition formed to promote pro-business issues and candidates, which raises and spends $3 million in the state, about two-thirds for advertising on a ballot initiative. When NBC, the State Chamber, CBS, and the State Jobs Alliance file their spending reports, what donors are to be disclosed, and for how much?
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> What should be immediately obvious to any observer is that the question of "disclosure" is not so easy. Is Acme Industries responsible for spending by NBC, CBS, or the State Chamber? Is there some point at which Acme becomes cut off from political spending made by entities to which it neither directly gave money nor directed money, over which it has no control, and which is made eighteen months or more after Acme's initial payment to NBC?... By the time we reach Acme Industries, is the information useful – or even truthful? Would it be truthful to say that Acme Industries is "responsible" or "endorses" messages on a state ballot initiative made by the State Jobs Alliance far down the road?[14]

This Russian Nesting Doll problem, named after the small Russian dolls of decreasing size, placed one inside the other, exemplifies the serious issues with attempts to require disclosure of general members and donors to 501(c) membership organizations. Disclosure requirements like those that would be instituted by the DISCLOSE Act will result in "junk" disclosure that serves to misinform the public, a result that is antithetical to the rationale underlying disclosure laws.

[14] Bradley A. Smith, "Disclosure in a Post-*Citizens United* Real World," 6 St. Thomas J. L. & Pol'y 257 (2012). Draft available at: http://www.ncsl.org/documents/summit/summit2013/online-resources/2013_smith_disclosure.pdf (March 26, 2013).

Ironically, this bill comes at a time when there is growing recognition that our existing disclosure rules are overkill, and increasingly unhelpful. Excessive disclosure may actually be fueling the money chase,[15] even as it discourages some donors from giving.

Finally, the IRS Harassment Scandal and subsequent proposed rulemaking governing the permissible activities of 501(c)(4) organizations[16] illustrates the dangers of calls for increased disclosure.

This concern over so-called "dark money" and push for increased disclosure requirements comes at a time when Americans' confidence in government has been rocked by information that the IRS systematically targeted groups based on their political beliefs. A number of Senators specifically urged the IRS to investigate conservative nonprofit groups.[17] Such pressure on the Agency appears to have been a major factor in creating the current IRS scandal, which will have longstanding repercussions for the Agency's reputation and the voluntary compliance of citizens with the tax system.

These demands of the IRS by members of Congress are reminiscent of the provisions contained in this DISCLOSE Act, by mandating the disclosure of donations not related to the election or defeat of political candidates. The DISCLOSE Act is sometimes said to be necessary to restore public trust in government. In fact, the partisanship, and apparent quest for partisan advantage behind the bill, make it as likely that the bill will decrease confidence in the fairness and integrity of Congress. This bill is about politics and silence as much as "disclosure." As the lead Senate sponsor said when the first iteration of the bill was introduced in 2010, "the deterrent effect [on citizens' speaking out] should not be underestimated."[18] Not surprisingly, it appears to many that the ultimate aim of this bill is to force trade associations and nonprofits to publicly list all their members along with their dues and contributions, so that such lists can be used by

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[15] Lindsay Mark Lewis, "The Easiest Fix for Dark Money: Disclose Less Often," *The Atlantic*. Retrieved on July 18, 2014. Available at: http://www.theatlantic.com/politics/archive/2014/07/easiest-Fix-for-Dark-Money-Disclose-Less-Often/374500/ (July 16, 2014).

[16] "Proposed IRS Rules on 501(c)(4) Social Welfare Groups," Center for Competitive Politics. Retrieved on July 18, 2014. Available at: http://www.campaignfreedom.org/irs/ (2014).

[17] On October 11, 2010, Senator Durbin wrote the IRS, asking the Agency to "quickly examine the tax status of Crossroads GPS and other (c)(4) organizations that are directing millions of dollars into political advertising." (U.S. Senator Richard J. Durbin, "DURBIN URGES IRS TO INVESTIGATE SPENDING BY CROSSROADS GPS," Office of Senator Richard J. Durbin. Retrieved on July 18, 2014. Available at: http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=833d8f1e-bbdb-4a5b-93ec-706f0cb9cb99 (October 12, 2010).) Several months later, on February 16, 2012, Senators Schumer and Udall (NM), along with Senators Bennet, Franken, Merkley, Shaheen, and Whitehouse wrote the IRS, asking the Agency to investigate tax-exempt organizations' political activities. In an accompanying press release by Senator Bennet, he opined that "operations such as Mr. [Karl] Rove's [Crossroads GPS] should not be allowed to masquerade as charities." (U.S. Senator Michael Bennet, "Senators Call for IRS Investigations into Potential Abuse of Tax-Exempt Status by Groups Engaged in Campaign Activity," Office of Senator Michael F. Bennet. Retrieved on July 18, 2014. Available at: http://www.bennet.senate.gov/newsroom/press/release/senators-call-for-irs-investigations-into-potential-abuse-of-tax-exempt-status-by-groups-engaged-in-campaign-activity (February 16, 2012).) Nearly two years later, on February 13, 2014, echoing the prior calls of Democratic Senators before the IRS scandal revelations in May 2013, Senator Pryor publicly prodded the IRS to regulate 501(c)(4) organizations more aggressively: "That whole 501(c)(3), 501(c)(4) [issue], those are IRS numbers. It is inherently an internal revenue matter. There are two things you don't want in political money, in the fundraising world and expenditure world. You don't want secret money, and you don't want unlimited money, and that's what we have now." (Alexander Bolton, "Vulnerable Dems want IRS to step up," *The Hill*. Retrieved on July 18, 2014. Available at: http://thehill.com/homenews/senate/198298-vulnerable-dems-want-irs-to-step-up (February 13, 2014)).

[18] Jess Bravin and Brody Mullins, "New Rules Proposed On Campaign Donors," *The Wall Street Journal*. Retrieved on July 18, 2014. Available at: http://online.wsj.com/article/SB10001424052748703382904575059941933737002.html (February 12, 2010).

competing groups to poach members and, more ominously, to gin up boycotts and threats to the individuals and corporate members of the groups – indeed, this has already occurred. Further in the background lies the thinly veiled threat of official government retaliation.

Constitutional Issues with Disclosure

The purpose of disclosure is to allow citizens to monitor government, not to allow government to monitor citizens. Of course, this distinction can dissolve in practice. For example, if we demand public disclosure of who gave money to a public official, in order to monitor that official, we will necessarily give the government the tools to monitor us. But as a first principle for thinking about what type of disclosure is proper, this distinction provides a good starting point for analyzing the costs and benefits of compulsory disclosure.

Indeed, the Supreme Court has recognized the careful balance between allowing citizens the tools to monitor the government and balancing that consideration with the realization this publicly available personal information can be used by individuals and organizations to threaten and intimidate those that they disagree with.

This evidence is seen particularly in the Court's decision in *NAACP v. Alabama*, in which the Court recognized that the government may not compel disclosure of a private organization's general membership or donor list.[19] In recognizing the sanctity of anonymous free speech and association, the Court asserted that "it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."[20]

Much as the Supreme Court sought to protect those citizens who financially supported the cause of civil rights from retribution, donors and members of groups supporting unpopular candidates and causes still need protection today. Events in the state of California over the past few years lend credence to this phenomenon. Many supporters of California's Proposition 8 faced harassment from opposing activists, simply because these donors' information was made publicly available through government-mandated disclosure. Indeed, in Justice Thomas' opinion in *Citizens United*, he dissented in part, noting harassment issues stemming from the disclosure of political information. In his dissent, Justice Thomas made specific reference to the experience of Proposition 8 supporters: "Some opponents of Proposition 8 compiled this [disclosure] information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result."[21] Similarly, it is hardly impossible to imagine a scenario in 2014 in which donors to controversial candidates and causes that make independent expenditures – for or against another same-sex marriage initiative; for or against abortion rights; or even persons associated with others who have been publicly vilified, such as the Koch family, Sheldon Adelson, or George Soros, might be subjected to similar threats.

[19] 357 U.S. 449 (1958).
[20] *Id.* at 462.
[21] *Citizens United*, 130 S. Ct. 876, 980-981 (Thomas, J., concurring in part and dissenting in part).

Indeed, very recently, Mozilla CEO Brendan Eich was ousted from his position due to a pressure campaign orchestrated by those who support same-sex marriage over a $1,000 donation by Eich to the campaign for California Proposition 8 in 2008. As Eich's longtime business partner and defender of the need for his resignation, Mozilla Executive Chairwoman Mitchell Baker, noted when discovering that he gave money to the Proposition 8 campaign: "I never saw any kind of behavior or attitude from him that was not in line with Mozilla's values of inclusiveness."[22] In other words, Eich was forced out not for his actions, but for his opinions. As one legal news site pointed out, "Brendan Eich's situation shows how donor disclosure laws can lead to reprisals that may change the legal analysis. Eich didn't purposefully publicize his views on Prop 8. California law required the disclosure of his identity as a contributor – donating the princely sum of $1,000."[23] Ultimately, Eich was forced to resign.[24]

Worse still, as the Eich example shows, little can be done once individual contributor information – a donor's full name, street address, occupation, and employer – is made public under government compulsion. It can immediately be used by non-governmental entities and individuals to harass, threaten, or financially harm a speaker or contributor to an unpopular cause. This problem is best addressed by limiting the opportunities for harassment by crafting reporting thresholds that capture just those donors who are truly contributing large sums to *political candidates,* and those who give to organizations whose *major purpose* is political advocacy – and not to organizations engaging in issue advocacy about a particular issue relevant to the voters, especially when that advocacy is but a part of the organization's overall mission.

The 1995 decision in the case *McIntyre v. Ohio Elections Commission,* in which the U.S. Supreme Court upheld the claim of a right to anonymously publish and distribute pamphlets opposing a school tax that was on the ballot, further illustrates how disclosure can impact First Amendment freedoms.[25] Justice John Paul Stevens, writing for the majority in *McIntyre*, noted that "Anonymity is a shield from the tyranny of the majority…. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular."[26]

Justice Stevens went on to explain, for the Court majority, several of the many benefits to free speech from anonymity:

> "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." *Talley v. California*, 362 U.S., at 64. Great works of literature have frequently been produced by authors writing under assumed names. [footnote omitted] Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by

[22] Conor Friedersdorf, "Mozilla's Gay-Marriage Litmus Test Violates Liberal Values," *The Atlantic*. Retrieved on July 18, 2014. Available at: http://www.theatlantic.com/politics/archive/2014/04/mozillas-gay-marriage-litmus-test-violates-liberal-values/360156/ (April 4, 2014).
[23] Tamara Tabo, "Cupid's Arrow Strikes Eich: OkCupid, Mozilla's CEO, And Campaign Finance Laws," *Above The Law*. Retrieved on July 18, 2014. Available at: http://abovethelaw.com/2014/04/cupids-arrow-strikes-eich-okcupid-mozillas-ceo-and-campaign-finance-laws/ (April 3, 2014).
[24] *Id.*
[25] 514 U.S. 334 (1995).
[26] *Id.* at 357.

> fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. [footnote omitted] Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.[27]
>
> The freedom to publish anonymously extends beyond the literary realm. In *Talley*, the Court held that the First Amendment protects the distribution of unsigned handbills urging readers to boycott certain Los Angeles merchants who were allegedly engaging in discriminatory employment practices. 362 U.S. 60. Writing for the Court, Justice Black noted that "[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." *Id*., at 64. Justice Black recalled England's abusive press licensing laws and seditious libel prosecutions, and he reminded us that even the arguments favoring the ratification of the Constitution advanced in the Federalist Papers were published under fictitious names. *Id*., at 64-65. On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where "the identity of the speaker is an important component of many attempts to persuade," *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) (footnote omitted), the most effective advocates have sometimes opted for anonymity. The specific holding in Talley related to advocacy of an economic boycott, but the Court's reasoning embraced a respected tradition of anonymity in the advocacy of political causes. [footnote omitted] This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation.[28]

Ultimately, the Court has made clear that this concern over harassment exists, whether the threats or intimidation come from the government or from private citizens,[29] who receive their information because of the forced disclosure. In short, mandatory disclosure of political activity should require a strong justification and must be carefully tailored to address issues of public corruption and to provide information of particular importance to voters.

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[27] *Id.* at 341-342.
[28] *Id.* at 342-343.
[29] *Brown v. Socialist Workers' '74 Campaign Comm.*, 458 U.S. 87 (1982).

Almost two decades after *NAACP v. Alabama*, in the landmark Supreme Court case, *Buckley v. Valeo*, the Court ruled that disclosure must be related to express advocacy or controlled by a candidate, party, or political committee, narrowly defined. The Court held that donor or membership disclosure can be compelled "only… [for] organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate," or "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."[30] Footnote 52 of the ruling defined "expressly advocate" to mean "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"[31]

In *Buckley*, the Court struck down disclosure for issue speech because the standard that triggered disclosure requirements was unclear or overbroad. Vague laws are unconstitutional if they provide insufficient notice of what is regulated and what is not. If the law does not make clear what speech is allowed and what speech is not, speakers will curtail their speech more than they otherwise would to avoid violating the law. The security of free speech breaks down when citizens are left to guess how regulations apply. The *Buckley* Court put this danger into context:

> "No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. … Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim."[32]

In striking much of the disclosure requirements in the Federal Election Campaign Act, the *Buckley* Court ruled that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment … significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest."[33] As a result, disclosure laws are subject to "exacting scrutiny."

Advocates for greater regulation of political speech often cite the Supreme Court's *Citizens United* decision as an endorsement of expansive disclosure regimes, but that contention is not supported by the actual opinion or holding. The *Citizens United* Court upheld the disclosure of an electioneering communication report, which discloses only the *entity making the expenditure*, the purpose of the expenditure, and the names of contributors giving over $1,000 *for the purpose of furthering the expenditure*.[34] "For the purpose of furthering the expenditure" has been interpreted by the Federal Election Commission to mean contributions earmarked for particular communications, an interpretation recently supported by the U.S. Court of Appeals for

[30] *Buckley v. Valeo*, 424 U.S. 1, 79-80 (1976).
[31] *Id*. at 44 n. 52.
[32] *Id.* at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)).
[33] *Id.* at 64.
[34] 2 U.S.C. § 434 (2013); *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 913-914 (2010).

the D.C. Circuit in a case involving analogous electioneering communication reporting requirements.[35] *Citizens United* did not endorse the general disclosure of members and donors to groups that did not qualify as political parties, and that did not have the objectively determined primary purpose of supporting or defeating candidates, unless the donations were affirmatively earmarked for that purpose.

In contrast, broader disclosure regimes have been treated with skepticism by the Court. Importantly, the *Citizens United* Court specifically held that the limited disclosure of an electioneering communication report is a "less restrictive alternative to more comprehensive regulations of speech," such as broader disclosure requirements.[36] The *Citizens United* Court specifically invoked *Massachusetts Citizens for Life v. FEC* (*MCFL*), where both the plurality and the concurrence were troubled by the burdens placed upon nonprofit corporations by certain disclosure requirements.[37] The plurality was concerned with the detailed record keeping, reporting schedules, and limitations on solicitation of funds to only "members" rather than the general public.[38] Likewise, in her concurrent opinion, Justice O'Connor was concerned with the "organizational restraints" imposed by disclosure requirements, including "a more formalized organizational form" and a significant loss of funding availability.[39]

The Court has recognized that the burdens of disclosure may be used to discourage speech in an unconstitutional manner, by forcing organizations to change their organizational structure, spend significant amounts on compliance with regulations, or opt out of making political contributions or independent expenditures altogether due to the burdens imposed by such laws. *MCFL* noted that these sorts of "incentives" serve to "necessarily produce a result which the State [can]…not command directly. It only result[s] in a deterrence of speech which the Constitution ma[de] free."[40]

Four Key Flaws in the DISCLOSE Act of 2014

1) *The bill would force nonprofits to radically alter their fundraising and public advocacy efforts.*

Current law defines a so-called "electioneering communication" as a broadcast ad that mentions the name of a candidate within 60 days prior to a general election or 30 days before a primary. The bill would significantly expand that definition. The new time period would be from January 1 to the Election Day of each election year for congressional candidates.

Therefore, if this bill became law, the following ad by the imaginary group American Action for the Environment (AAFE) would be considered an electioneering communication subject to burdensome restrictions, if aired on January 2 of an even numbered year in the district of a hypothetical congressman, John Doe, who is running for re-election and facing a September primary:

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[35] *Ctr. for Individual Freedom v. Van Hollen*, 694 F.3d 108 (D.C. Cir. 2012).
[36] *Citizens United*, 130 S. Ct. at 915 (contrasting independent expenditure reports with the burdens discussed in *MCFL*).
[37] *Massachusetts Citizens for Life* (MCFL) *v. Federal Election Commission*, 479 U.S. 238 (1986).
[38] *MCFL*, 479 U.S. at 253 (plurality opinion).
[39] *Id.* at 266 (O'Connor, J. concurring).
[40] *MCFL*, 479 U.S. at 256 (plurality opinion).

> [Pelosi]: Hi. I'm Nancy Pelosi, lifelong Democrat, and former Speaker of the House.
> [Gingrich]: And, I'm Newt Gingrich, lifelong Republican, and I used to be Speaker too.
> [Pelosi]: We don't always see eye-to-eye, do we, Newt?
> [Gingrich]: No, but we do agree that our country must take action to address climate change.
> [Pelosi]: We need cleaner forms of energy, and we need them fast.
> [Gingrich]: If enough of us demand action from our leaders, we can spark the innovation we need.
> On screen: Call Congressman John Doe and urge him to vote for H.R. 10000. 202-224-3121
> Paid for by American Action for the Environment.

There is scant justification for forcing any additional disclosure on such an ad by this hypothetical group. Yet, S. 2516 would do just that.

AAFE would face several bad choices in funding such an ad. It might have to disclose its donors to the public, as required by this bill, some of whom might be individuals who work for utilities or coal industries. Those donors might have supported the group's clean water efforts in response to an appeal for funds on that specific basis, but had not thought to earmark their checks.

Under this bill, AAFE would report these donors to the Federal Election Commission (FEC), where they would be publicly listed, and may find it difficult to keep their jobs. Worse yet, a donor may not even agree with the ad, but could be listed as a donor because he or she gave to the group for entirely non-political reasons.

Under the Act, AAFE could set up a special bank account and deposit into it only funds from donors who want to support ads that might run in even-numbered years. But that would massively complicate their fundraising efforts, which are already difficult in this economy.

On this issue, the Supreme Court has previously ruled in *Citizens United v. FEC* that the existence of an alternative way of engaging in speech – in that case PACs – did not save a prohibition on the use of general-treasury funds to pay for political advertisements.

A near certain result of this new mandate would be that AAFE and other organizations would witness a dramatic increase in their fundraising costs, their donations would decline, or some combination of the two would occur. Alternatively, many groups would avoid lobbying ads during even numbered years, when many important bills become law.

And what of their donors? The Act's segregated funds provisions require donors to choose between their rights under *NAACP v. Alabama*, the seminal case that allows advocacy groups to shield their membership lists, and their rights under *Citizens United*. Under this law,

they cannot exercise both by keeping membership payments and donations private while still contributing to a group's general fund.

Similarly, donors – many of whom are unfamiliar with campaign finance laws – would have to affirmatively request that their funds not be used on campaign activity in order to remain anonymous. Current law mandating disclosure only when funds are given to further independent expenditures or electioneering communications is sufficient to provide transparency. As written, current law also avoids the misleading possibility that contributors to a group, whether the NRA or the Sierra Club, who do not specifically earmark their contributions, may be associated with advertisements they had no part in developing, and with which they may disagree.

2) *The new definition of the "functional equivalent of express advocacy" is vague.*

Despite claiming to be a "pure disclosure" proposal, S. 2516 adds a new and indecipherable definition to a core element of campaign finance law. The bill would expand the standard for express advocacy where the law defines independent expenditures if an ad:

> "Expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because, when taken as a whole, it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved mentions a candidacy, a political party, or a challenger to a candidate, or takes a position on a candidate's character, qualifications, or fitness for office."

Similar definitions for regulating speech have repeatedly been struck down by federal courts as unconstitutionally vague. Doubtless, one could show 50 ad scripts to a randomly-selected group of U.S. Senators and Representatives, and its members would disagree as to which are issue advocacy and which are "the functional equivalent of express advocacy." If individuals who have gone through federal elections cannot agree, how can grassroots organizers, many of whom may be new to politics, be sure of how regulators will evaluate the content of their ad? How is a group to know, in advance, that it has not run afoul of this vague provision? Ultimately, this definition is nothing more than an invitation to burdensome and costly investigations and litigation by federal officials.

The provision is also harmful because the Federal Election Campaign Act uses "expenditures" to define which organizations become forced to register with the FEC as Political Action Committees. Were such a broad definition upheld by a court and actually applied, it would instantly convert large numbers of nonprofit organizations into PACs. This would include numerous organizations that never specifically advocated for the election or defeat of candidates for office, and would run directly counter to *Buckley.*

3) *The Act is a solution in search of a problem. Current law already requires disclosure of all spending on independent expenditures and electioneering communications and all contributions to further such communications.*

2 U.S.C. 434(c) requires that groups report independent expenditures greater than $250.

Current law already provides for disclosure of independent expenditures. This includes the name of the group, individual, or other entity that is doing the spending, the date on which it occurred, the amount spent, the candidate who benefits from the independent expenditure, the purpose of the expenditure, and a statement certifying the expenditure was made without coordination between the party authorizing the communication and the candidate to whom it promotes. This existing regulation requires that the expenditure reporting follow the money – both who gives and who receives. For example, in the 2010 Massachusetts Senate race, TeaPartyExpress.org spent hundreds of thousands of dollars on independent expenditures. However, its political action committee, called Our Country Deserves Better PAC, was the source of the funds. A simple search of the FEC website shows that both of these names are listed on the filing papers, along with the names of any person who donated money that furthered the production of the communication.

Reporting also follows where the money in independent spending goes. A separate tab on the FEC report shows the disbursements by the group – to whom each payment was made and for what purpose.

2 U.S.C. 434(f) requires groups to report "electioneering communications" when they exceed $10,000.

Current law also requires reporting of "electioneering communications." This mandates the disclosure of the identity of the person making the disbursement, any person sharing or exercising direction or control over the activities of such person, the custodian of the books and accounts of the person making the disbursement, the principal place of business of the person making the disbursement (if not an individual), each amount exceeding $200 that is disbursed, the person to whom the expenditure was made, and the election to which the communication pertains. Contributions made by individuals that exceed $1,000 are disclosed and accompanied by the individual's name and address.

As with independent expenditures, the reporting of electioneering communications also tracks the money. Looking again at the Massachusetts Senate race in January 2010, a quick search of the FEC database shows that the ambiguous-sounding group "Citizens for Strength and Security" spent $265,876.96 for a communication on January 13, 2010. While the name of the group may not reveal much, the list of donors who funded the electioneering communication do. The eight donations listed came from two labor unions: the Service Employees International Union and Communications Workers of America. Concerns that corporations like Exxon Mobil could set up "shadow groups" to funnel money for political advertisements are unfounded. That spending would be tracked just as the disbursements by Citizens for Strength and Security were.

Existing law requires other disclosures as well.

In addition to the above reporting requirements, existing law requires that any organization organized under Section 527 of the tax code must also disclose donors who contribute more than $200 in the calendar year with the IRS. In turn, that information is publicly

listed. Moreover, any group whose "major purpose" is the funding of express advocacy expenditures – whether organized under Section 527 or some other provision – would also become a PAC, subject to additional, ongoing reporting to the FEC, including the names of all donors of more than $200 to the group. Finally, all independent expenditures and electioneering communications already must include "disclaimers" clearly stating who is paying for the ad.

4) *The rule regarding covered transfers is likely unenforceable and will be a nightmare for many nonprofits.*

The bill requires any entity transferring $10,000 or more in funds to a "covered organization" to disclose its donors if a donor knew or "had reason to know" that the "covered organization" – a definition that includes corporations, labor unions, trade associations, 527s, and nonprofit 501(c)(4) organizations – would make expenditures or electioneering communications of $50,000 or more in the coming two years, or had made such expenditures in the prior two years.

The look-back requirement is bad enough; a donor may not know of those expenditures by another, unrelated organization, and has no safe-harbor even if it inquires of the receiving organization and receives an innocent but incorrect answer. The look-forward requirement, however, is worse. If the donating organization does not "designate[], request[], or suggest[]" that the donation be used for "campaign-related disbursements," and does not make the donation in request to a "solicitation or other request" for "campaign-related disbursements," and does not "engage[] in discussions ... regarding ... campaign-related disbursements" – all separate liability triggers – how is it supposed to know that the organization will spend $50,000 on "campaign-related disbursements"?

The provision seems designed to trip up the unwary and provide a means for post-hoc investigations of unsuspecting organizations.

* * *

Considering that just over 4 percent of election spending in 2012 came from groups who do not itemize their individual donors and members, members of this Committee must think carefully about whether it is worth it to expand our already intrusive disclosure requirements even further. Doing so will impose significant costs with dubious public benefit and disproportionately harm those who can afford it least. The proposed bill suffers from many practical flaws – from provisions that are vague to ones that are likely unenforceable. Much of the "disclosure" that the ironically-named DISCLOSE Act would produce is junk that would not accurately reflect the sources of support for candidates and causes, and would not improve transparency or public knowledge.

Notably, at the same time as we discuss this bill to discourage political speech, some members of this body are also pushing for a vaguely worded constitutional amendment that appears to grant unlimited and frightening powers to Congress to regulate speech if lawmakers

can assert any connection to an election.[41] S.J. Res. 19 would revoke nearly four decades of campaign finance jurisprudence from the Supreme Court and greatly reduce the quantity (and likely quality) of debate in this country. If adopted, this constitutional amendment would help entrench those in Congress by insulating incumbent politicians from criticism and granting members of Congress unprecedented power to regulate the speech of those they serve.

Whether with the DISCLOSE Act, or a constitutional amendment, Congress does more damage to the public's trust in government by meddling with political speech and association rights in the waning months before the 2014 midterm elections than it would by permitting an insignificant portion of otherwise disclosed election spending to remain unitemized by donor. Tinkering with the First Amendment and the speech rights of American citizens to score political points in an election year is an idea fraught with peril.

Thank you.

[41] Zac Morgan, "Amending the First Amendment: The Udall Proposal is Poorly Drafted, Intellectually Unserious, and Extremely Dangerous to Free Speech," Center for Competitive Politics. Retrieved on July 18, 2014. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/05/2014-05-29_Text-Analysis_US_Senate_SJ-Res-19_Amending-The-First-Amendment-The-Udall-Proposal-Is-Poorly-Drafted-Intellectually-Unserious-And-Extremely-Dangerous-To-Free-Speech.pdf (May 29, 2014).

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Professor Smith served on the Federal Election Commission (FEC) from 2000 through 2005, including as the Commission's Vice-Chairman in 2003 and Chairman during the presidential election year of 2004. During his tenure, *The Wall Street Journal* dubbed Smith "the only honest man in this bordello."

Professor Smith's writings have appeared in such academic journals as the *Yale Law Journal*, *Georgetown Law Journal*, and *Pennsylvania Law Review*, and in popular publications such as the *Wall Street Journal*, *New York Times*, *Washington Post*, and *National Review*. His 2001 book, "Unfree Speech: The Folly of Campaign Finance Reform," (Princeton University Press) was praised by columnist George Will as "the year's most important book on governance." He is also the co-author of a leading casebook in the field of voting rights and election law.

In 2010, Professor Smith was awarded the Bradley Prize by the Bradley Foundation of Milwaukee, Wisconsin, as an "innovative thinker" whose work has "strengthened American democratic capitalism and the institutions, principles, and values that sustain and nurture it."

His work was cited in the majority opinion in *Citizens United v. FEC*, and he was co-counsel in *SpeechNow.org*, the case that gave constitutional protection to "Super PACs."

He is Chairman of the Board of the 1851 Center for Constitutional Law, a member of the Board of Trustees of the Buckeye Institute for Public Policy Studies, and a member of the Editorial Board of the Election Law Journal, the Board of Advisors of the Harvard Journal of Law & Public Policy, the Executive Committee of the Election Law and Free Speech Practice Group of the Federalist Society, and the Board of Advisors of the Institute for Politics at the University of Minnesota.

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