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FOR JUSTICE

# ELECTED OFFICIALS, SECRET CASH

HOW POLITICIANS USE NONPROFITS  
TO CLOAK SPENDING AFTER ELECTION DAY

*By Chisun Lee, Douglas Keith, and Ava Mehta*

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## FOREWORD

*By Michael Waldman*

Rick Gates was deputy manager of the Trump campaign in critical months of 2016. He worked with Paul Manafort, following years as Manafort's protégé in their lobbying and political consulting firm. After Manafort was fired from the campaign due to alleged ties to Russia, Gates continued in senior campaign roles.<sup>1</sup> He traveled with the candidate on his campaign plane.<sup>2</sup> During the transition, Gates served as deputy chair of the presidential inaugural committee.<sup>3</sup> Yet after the inauguration, Rick Gates did not move in to a senior White House job.

Instead, with five other former campaign aides he formed America First Policies, a shadowy nonprofit meant to promote the new president's agenda.<sup>4</sup>

The activity of America First Policies passed largely unnoticed for the first year of the Trump administration. It raised \$26 million, mostly from secret sources.<sup>5</sup> A 501(c)(4) social welfare organization, it supported the president's health care reforms and tax code rewrite with TV ads appealing to Americans to "stand with President Trump."<sup>6</sup> As recently reported by CNBC, the nonprofit also took control of expensive polling often carried out by the Republican National Committee, which unlike America First Policies must make its donors public.<sup>7</sup> It left that data publicly visible in an obscure corner of its website — possibly a mistake, or possibly a way to make it available to Trump's re-election campaign.

The low profile of America First Policies is a thing of the past. In March 2017, Gates resigned from the nonprofit after press reports focused on Manafort's work for a Russian businessman that served Moscow's interests.<sup>8</sup> Later that year, Gates was indicted on charges of money laundering and defrauding the United States.<sup>9</sup> In February 2018, he pleaded guilty to federal conspiracy and false-statement charges stemming from the special counsel's investigation into Russian meddling in the 2016 election, and agreed to cooperate with the inquiry.<sup>10</sup>

Robert Mueller's investigative team has asked America First Policies to retain documents, suggesting the organization's finances will come under intense scrutiny.<sup>11</sup> The startling, spy-novel twists of the Rick Gates saga have exposed what is becoming a troubling development for our democracy: Elected officials, such as President Trump (and before him President Barack Obama), who use nonprofits to raise unlimited amounts in secret donations to spend on promoting their policies and themselves.

In this report, we examine the growing use of what we are labeling officeholder-controlled nonprofits. As the Gates story makes plain, they pose a serious risk to our democracy, allowing secretive donors — and potentially foreign actors — to influence our politics well after Election Day is over. We also propose a series of reforms meant to regulate these nonprofits and prevent their corruptive influence.<sup>12</sup>

## INTRODUCTION

The White House has a secret weapon. It's an army of donors, able to pour unlimited dollars into ad campaigns promoting the president and his agenda without having to publicly disclose who they are or how much they gave. For elected officials, whose political success is closely tied to policy success, donors who fund these ads can be especially valuable.

Last fall, donors fueled a blitz of TV and radio spots by America First Policies — a 501(c)(4) social welfare nonprofit helmed by former Trump campaign and administration officials — to get the sweeping tax bill passed in December.<sup>13</sup> “Americans need to get behind President Trump’s plan to get our economy moving again,” former campaign manager Corey Lewandowski urged in one ad, between shots of President Donald J. Trump working in the Oval Office and waving to the crowd at a rally.<sup>14</sup> “Call your congressmen. Go to our website. Stand with President Trump to cut taxes, now,” he said.<sup>15</sup> As *The New York Times* reported, on the day Congress passed the tax bill, Lewandowski and others working for America First Policies met with top staffers at the White House to strategize about upcoming issues.<sup>16</sup> The nonprofit also took over the expensive polling that informs messaging strategies — traditionally a task of campaigns and parties that have to disclose their donors — a CNBC investigation revealed.<sup>17</sup>

But it was the Trump administration’s predecessor that wrote the playbook for turning tens of millions of outside dollars into a publicity juggernaut. The Obama White House worked closely with Organizing for Action (OFA), a 501(c)(4) nonprofit that President Obama’s closest former campaign and government advisors created and led.<sup>18</sup> The nonprofit raised nearly \$50 million to promote what OFA’s own ads embraced as “Obamacare” and other signature policies of the then-president.<sup>19</sup> Officials at OFA decided early on to voluntarily disclose its donors, because, former Obama Campaign Manager and OFA Chair Jim Messina said, they wanted to be “open and transparent.”<sup>20</sup> But there was no legal requirement that they do so.

It is well documented that in the years since the *Citizens United* decision in 2010, election spending by groups backed by high-spending donors has skyrocketed.<sup>21</sup> The risks that wealthy sponsors will corrupt or co-opt the candidates they support and undermine the democratic process has drawn extensive attention.<sup>22</sup> But during this same period, a less noticed yet potentially more pernicious trend, not directly tied to *Citizens United*, has emerged.

Similar groups have cropped up across the country to boost politicians and their agendas *after* Election Day — once a candidate has attained government power. Yet these post-election vehicles operate with far less oversight than groups do during elections, without the requirements of transparency and independence from politicians that help deter corruption in the campaign context.

Typically, a key advisor to an elected official will create such a group in the form of a charitable or social welfare nonprofit. With the advantage of nonprofit status, these groups can collect donations of unlimited size without having to disclose their donors.

Though a few elected officials in the past have used nonprofits to raise money for causes — notably President Franklin D. Roosevelt and the March of Dimes foundation to fund creation of the polio vaccine — the officeholder-controlled nonprofits of today more often focus on promotional activity that

would qualify as campaign advertising during an election cycle.<sup>23</sup> And there are many more of these nonprofits doing it. Even the limited records of these groups' activity show they have raised at least \$150 million since 2010.<sup>24</sup>

The lack of oversight of officeholder-controlled nonprofits may have to do with the fact that they have only recently flourished to directly promote their affiliated officeholders. By contrast, in the context of election spending, many states and cities have increased transparency requirements and strengthened limits for outside groups that coordinate with candidates, even after the deregulatory *Citizens United* decision.<sup>25</sup>

Another reason for the inattention to officeholder-controlled nonprofits may be that it's tougher to address spending that could span many years rather than one election cycle. But with every indication that post-election spending to benefit elected officials will only grow, the need for a legislative response is clear. This paper offers a roadmap for creating a law to limit the corruptive potential of officeholder-controlled nonprofits.<sup>26</sup>

The problem likely will spread. Just as buddy PACs (unlimited spending groups that support a single candidate) eventually became a must-have accessory for political candidates, officeholder-controlled nonprofits have proliferated in recent years at every level of government. Our review found that no fewer than two presidents, seven governors, several prominent mayors, and other elected officials, hailing from both major parties, have in the past few years partnered with promotional outfits that are able to take unlimited amounts from wealthy donors who may remain anonymous to the public.<sup>27</sup> Often these donors hold economic interests that the officeholder they support has the power to affect.

Permitting elected officials to solicit support from secret donors, including those with actual business before them, creates a serious risk of conflicted loyalties and corruption, and undermines the integrity of public service. The recent guilty plea by Rick Gates, a founder of America First Policies and deputy manager of President Trump's 2016 campaign, in the special counsel's investigation of Russian interference in that election raised the possibility of an unusually acute risk: secret foreign influence over U.S. politics.<sup>28</sup> Gates, a longtime political consultant to pro-Russia businesses, faces up to six years in prison for financial fraud and lying to the FBI, and has agreed to cooperate in the investigation.<sup>29</sup>

The risks to ethical governance are no less urgent in more routine contexts. The public should be confident that official decisions about who will build a bridge, treat drinking water, or be trusted with government data are based on who is best qualified, not who gives the most to support the official. This is why campaign contributions are closely regulated. With the increasing reliance of elected officials on private donors, even outside of campaign season, constituents need additional safeguards to protect their government from the hidden influence of wealthy sponsors.

Yet addressing these dangers involves special challenges. For one, officeholder-controlled nonprofits may operate for much longer periods than political action committees and other groups that traditionally spend in elections. The anti-coordination and transparency laws that apply to election spenders — as interpreted by the perennially gridlocked Federal Election Commission — are mostly time-limited, kicking in for a relatively short stretch before Election Day.<sup>30</sup> That makes compliance with rules seem less burdensome. What's more, political advocacy rightfully enjoys a robust tradition of expression free from government regulation unless an urgent public concern demands otherwise. Thus, any answer to



the problem of officeholder-controlled nonprofits needs to strike a careful balance between the critical public interest in deterring government corruption and the constitutional mandate not to overburden private advocacy.

This paper proposes a solution that strikes this balance, identifying those entities that pose the most serious risk of corruption and narrowly tailoring a legal solution to address them. Our approach begins with a straightforward threshold test for identifying the highest-risk entities. The test involves two factors. First, it asks whether the elected official or a close associate created and/or controls the group. Second, it asks whether the group spends more than a certain, significant sum on public communications that carry the elected official's name or image. Borrowed from longstanding campaign finance law, this last factor ensures that oversight will be content-neutral, not leaving it to regulators to decide whether to apply anti-corruption rules based on their judgments about an officeholder-controlled nonprofit's social value or political benefit to the officeholder. In reality, policy advocacy and self-promotion overlap when it comes to elected officials. The best approach is to apply the same anti-corruption rules to all structurally similar groups operating in partnership with an elected official that are able to take unlimited money from private donors.

Under this threshold test, only those groups posing the greatest risk of corruption would be subject to new regulation. For these groups, we propose two key safeguards that are well-established components of anti-corruption law: donor transparency and, for donors with a concrete business interest before the elected official in question, donation limits. (We discuss the elements of our solution in detail in Section Two.)

These safeguards are an important starting point. If the risks of corruption and conflicts of interest turn out to exceed the protections that donor transparency and limits for donors with business before the elected officials in question can provide — or as the use of officeholder-controlled nonprofits continues to spread — additional responses may prove necessary. For now, implementing the proposal in this paper would constitute an important and straightforward step to promote ethical and merit-based government in a time of unlimited political spending.

# **I. THE PROBLEM: OFFICEHOLDER-CONTROLLED NONPROFITS CREATE RISKS OF CORRUPTION IN GOVERNANCE AND UNDERMINE DEMOCRATIC ACCOUNTABILITY**

## **A. Political Partnerships Without Limit**

If a group wants to raise and spend unlimited amounts to promote a candidate for election, it generally can't share strategic resources such as operatives and advertising materials with the candidate. That's because a spender who coordinates strategy with a candidate essentially serves as an arm of the campaign, bringing the spender under rules that regulate campaign activities. Those rules include donor transparency and contribution limits — laws created to prevent wealthy donors from corrupting candidates.<sup>31</sup>

Not so after Election Day. When President Trump's first attempt at overhauling healthcare failed in March 2017, he promptly dispatched senior White House staffer Katie Walsh to take the helm of America First Policies.<sup>32</sup> Campaign operatives had created the organization as a 501(c)(4) social welfare nonprofit.<sup>33</sup> While the Trump campaign can legally accept only limited and disclosed donations, American First Policies can take unlimited amounts from secret donors as long as it steers clear of explicitly urging people to reelect President Trump.<sup>34</sup> The nonprofit employs Brad Parscale, the digital director for Trump's 2016 and 2020 campaigns.<sup>35</sup> At the group's launch, then-White House Chief Strategist Steve Bannon solicited donations for it.<sup>36</sup> The organization was a potentially powerful vehicle for promotion, but ineffective leadership prevented the ad campaign to repeal the Affordable Care Act from materializing.<sup>37</sup>

Within a month of Walsh's hiring, America First Policies had placed \$3 million in TV ads that invoked President Trump's name and image to push House Republicans to end Obamacare.<sup>38</sup> "Obamacare is a disaster," one ad began. It then urged viewers to call their representatives in Congress — whose photos appeared on-screen beside an image of President Trump speaking in an official setting — and "thank him for his courage, and for standing with President Trump to repeal Obamacare now."<sup>39</sup> In May nearly all the targeted representatives voted to do just that.<sup>40</sup> The nonprofit then trained its ad dollars on the Senate.<sup>41</sup> Though ad campaigns ultimately would not rescue the unpopular effort to repeal Obamacare, their role shows how central partnerships with officeholder-controlled nonprofits have become to elected officials seeking a political boost.<sup>42</sup> America First Policies became more effective when it turned to advertising President Trump's tax agenda. Beyond promoting specific legislation, America First Policies also created an ad generally touting the president's efficacy — a campaign-style message whose footage and language the Trump re-election campaign later reproduced, employing the same production agency.<sup>43</sup>

More than anyone, the Obama White House popularized the technique, seeing the enormous potential in using an outside entity that it in effect directed, but which was not subject to the delays of bureaucracy or the laws of campaign operations. Organizing for Action, created and led by President Barack Obama's closest former campaign and White House advisors, raised almost \$50 million during his presidency to build support for his agenda.<sup>44</sup>

The White House did not hide its cooperation with the nonprofit, which — as with organizations affiliated with President Trump — existing laws not only permitted but left almost entirely unregulated.

Besides the position of his former advisors at the organization's helm, President Obama headlined events and raised money for the group.<sup>45</sup> The nonprofit handled a broad portfolio of the president's public communications, including barackobama.com, his Facebook page, his campaigns' historically enormous email lists, and the @BarackObama Twitter account.<sup>46</sup>

To be sure, historically a few similar arrangements have existed. Trump's defenders point to a privately funded nonprofit that President Reagan's advisors launched to promote his policy agenda and pressure members of Congress.<sup>47</sup> And former Alabama governor Don Siegelman offers a notorious example. He went to prison for secretly accepting \$500,000 for his advocacy nonprofit from a healthcare executive in 1999 in exchange for appointing that executive to a regulatory board overseeing healthcare companies.<sup>48</sup>

But in the post-*Citizens United* era of deregulated big spending on politics, elected officials across the country are taking unprecedented advantage of the promotional possibilities of affiliating with an unrestricted outside entity. In the absence of laws setting boundaries for officials or donors, it may just be too easy a benefit to pass up.

Elected officials have been able to align strategy with affiliated groups and even campaigns simply by assigning overlapping staff — a move that could trigger donation limits and transparency rules in some states in the electoral context. Take Missouri Governor Eric Greitens. Last year his campaign treasurer founded a nonprofit called A New Missouri, intended to promote the governor and his agenda by funding ads, events, social media, and out-of-state junkets.<sup>49</sup> One senior advisor announced that he would simultaneously work for the governor's office, Greitens' re-election campaign, and A New Missouri, baldly stating that "there will be coordination" among the three operations.<sup>50</sup> A New Missouri also hired Greitens' campaign finance director and Greitens' sister-in-law.<sup>51</sup> It is headquartered in a building owned by a major campaign donor.<sup>52</sup>

At least six other governors and numerous city officials of all political parties have been connected to unrestricted promotional entities that their associates, and in some cases the officials themselves, established.<sup>53</sup> Among them, Governor Rick Snyder of Michigan has partnered with a web of groups staffed by campaign operatives that together have raised at least \$1.7 million, working in part to repair his image following the Flint water crisis via mailers, robocalls, and other public relations services.<sup>54</sup> Governor Andrew Cuomo of New York has also benefited from the work of several affiliated entities, including his appearance last year in an online ad campaign created by a nonprofit that his former senior aide founded.<sup>55</sup>

Even Senator Bernie Sanders, who has perhaps more than any other prominent politician denounced the influence of money in politics, launched his own unrestricted advocacy nonprofit, Our Revolution, in August 2016.<sup>56</sup> Its mission to take the "next step for Bernie's movement . . . and advance the progressive agenda that we believe in" would seem to appeal to his populist supporters.<sup>57</sup> Yet some senior aides protested his choice to use a nonprofit vehicle that legally can take unlimited donations without having to disclose their sources.<sup>58</sup> Our Revolution has said it will voluntarily disclose major donors and cap contributions at \$5,000 unless the Board votes to allow higher amounts.<sup>59</sup>

## B. Conduits for Conflicts of Interest and Corruption

What little is known about the funding of officeholder-controlled nonprofits shows that allowing secret, unlimited donations risks corrupting representatives who were elected to serve the public.<sup>60</sup> That's the major reason why transparency laws and other rules exist for similar groups during election season — to prevent circumvention of longstanding campaign contribution limits that serve to deter corruption. So-called pay to play laws at the state and local levels impose stricter rules when it comes to donors with specific business before an elected official, who have a particular incentive to use campaign contributions to gain influence.<sup>61</sup> Occasional news investigations or voluntary disclosures have revealed how officeholder-controlled nonprofits have come to serve as conduits for donors with distinct motives to try to curry favor with those in power. The problem is clearest when it comes to donors engaged in or seeking specific business deals that the elected official has the authority to shape. But broader conflicts of interest, well short of corrupt transactions, pose a long-recognized threat to both the integrity of American government and people's faith in it — a threat that lawmakers and the Supreme Court have acknowledged justifies preventive regulation.

Donors with business in Los Angeles could not have put their interest in supporting Mayor Eric Garcetti's nonprofit more plainly. Banned from donating to his campaign under a law to prevent corruption by city contractors, the CEO of an engineering firm in 2015 explained a \$10,000 donation to the nonprofit: "We can't support his campaign . . . . So this is something we could support."<sup>62</sup> A pipe manufacturing executive gave \$200,000 to the nonprofit and pledged \$1 million more over five years, after Garcetti's vice mayor — and board member of his nonprofit — asked.<sup>63</sup> The executive told the *Los Angeles Times*, "We want to influence the government leaders to make the right decisions so that we can be more competitive."<sup>64</sup> In 2015, the average donation to the Los Angeles mayor's nonprofit was \$111,000 — more than 85 times the \$1,300 per-person limit on contributions to mayoral candidates at the time.<sup>65</sup>

In New York, Governor Andrew Cuomo urged real estate developers, bankers, and other corporate executives to form a non-disclosing advocacy nonprofit to promote his pro-business agenda.<sup>66</sup> When revealed through news reporting, the group's makeup prompted widespread concerns that the governor would face serious conflicts in his official decisions, unduly influenced by major donors who had billions of dollars at stake in state policy decisions.<sup>67</sup> In three years, the Committee to Save New York spent \$16 million on ads featuring flattering footage of the governor.<sup>68</sup>

During that time Cuomo took a number of official actions that coincided with the interests of the group's donors. In one case, gambling companies gave the group \$2 million just before the governor declared his support for increasing gambling in a state of the state address.<sup>69</sup> That support had a "profound impact," *The New York Times* reported, pushing the legislature to approve a constitutional amendment to expand casinos that voters ultimately passed.<sup>70</sup> Another time, the group received \$500,000 from real estate developers whose firm was one of five to benefit from a multimillion-dollar tax break Cuomo would later approve.<sup>71</sup> Most of the developers who benefited have also contributed to Cuomo's campaign.<sup>72</sup>

Cuomo, like most elected officials associated with outside groups, has said that the advocacy group operated independent of him and that donations to the group did not influence his decisions. The con-

troversial Committee to Save New York eventually dissolved.<sup>73</sup> But other unrestricted groups formed to take its place, most recently a charity called New Yorkers United Together that was founded by Cuomo's former top aide and has produced an ad featuring the governor.<sup>74</sup> Numerous other elected officials have faced similar questions about the potential for conflicts between rewarding generous promoters of their political image and doing what is best for their constituents at large.<sup>75</sup>

The obvious potential for improper influence that unrestricted officeholder-controlled nonprofits present led President Obama's Organizing for Action to announce some self-imposed rules soon after it launched.<sup>76</sup> The group's leaders volunteered to publish the sources and amounts of donations on a quarterly basis.<sup>77</sup> They said that OFA would not take money from corporations, political action committees, lobbyists, or foreign donors.<sup>78</sup> The group was still able to raise at least \$48.2 million during Obama's presidency from donors including finance executives, lawyers, and real estate investors.<sup>79</sup> Those who contributed \$500,000 or more could join OFA's "national advisory board," with the opportunity to meet directly with the president.<sup>80</sup>

Much less is known about donors to groups affiliated with President Trump, as those entities have not made voluntary disclosures. America First Policies has pledged not to take money from federal lobbyists — a promise whose fulfillment, like OFA's, cannot be independently verified in the absence of mandatory disclosure.<sup>81</sup>

These concerns have led one jurisdiction to pass a law requiring donor disclosure and certain donation limits for officeholder-controlled nonprofits even between campaign seasons. New York City Mayor Bill de Blasio drew years of criticism — culminating in investigations by campaign finance and law enforcement authorities — for his partnership with a nonprofit his campaign manager launched after his election in 2013.<sup>82</sup> The mayor appeared at Campaign for One New York's fundraisers and sent several key advisors to work there.<sup>83</sup> The group raised at least \$4 million over two years and bought TV ads showcasing the mayor and his family, and promoting his signature issues.<sup>84</sup>

At one point in 2015, more than half of the group's 74 donors had or were seeking business deals with the city, according to an investigation by *Politico*.<sup>85</sup> In one case, a little-known inventor donated \$100,000 to the group and soon after landed a private meeting with de Blasio.<sup>86</sup> The inventor then received a \$15,000 no-bid contract with the city and a \$3 million purchase order from a city contractor.<sup>87</sup> Real estate developers seeking to extend a tax break and a municipal workers union seeking a raise were among others who gave the group substantial sums and won the mayor's support.<sup>88</sup> But the campaign finance and criminal investigations did not lead to charges that any mayoral favoritism toward donors had amounted to an illegal act.<sup>89</sup>

In fact, the controversy led city lawmakers to recognize that existing rules were inadequate to deal with the potential conflicts of interest posed by officeholder-controlled nonprofits.<sup>90</sup> In December of 2016, they passed a law requiring such groups to disclose their donors and to accept no more than \$400 from any donor with business before the city.<sup>91</sup>

New York City's response is a good start. Other jurisdictions should also shore up their anti-corruption laws. The use of officeholder-controlled nonprofits, and the potential influence of their funders on elected officials, seems poised to grow, just as buddy PACs have proliferated in the electoral context. Allowing these groups to continue to operate in secrecy and unchecked threatens the public's interest and

faith in democratic governance. Next, we propose a straightforward solution that lawmakers at any level can use to (1) identify when an entity is so closely affiliated with an elected official that it poses a serious risk of corruption, and (2) limit that entity's potential for corruption by requiring transparency about finances and by capping contributions by donors with business before the elected official in question.

## **II. THE SOLUTION: A LEGAL FRAMEWORK FOR LIMITING CORRUPTION ARISING FROM OFFICEHOLDER-CONTROLLED NONPROFITS AND INCREASING GOVERNMENT ACCOUNTABILITY**

### **A. The Need for a New Legal Framework**

Problems posed by the increasingly popular officeholder-controlled nonprofit clearly require a new legal solution. Potential conflicts arising from these entities have tended to come to light by happenstance or investigative reporting, not because of existing public safeguards. The Alabama governor who went to prison for rewarding a donor to his nonprofit with a beneficial appointment got caught only because his aide exposed him.<sup>92</sup> Some groups affiliated with elected officials have acted voluntarily, disclosing their donors out of sensitivity to accusations of secret favors, but voluntary action by a few cannot take the place of mandatory rules. Moreover, for donors engaged in specific business before the affiliated official, the conflicts of interest are obvious enough to warrant not just transparency rules but also donation limits.

Ample basis for a new solution already exists. From the beginning, American law has recognized the need for rules to ensure that public servants serve the public first, not themselves or their affiliates.<sup>93</sup> This is because “a democracy is effective only if the people have faith in those who govern,” as the Supreme Court explained in upholding a prohibition against government employees’ conducting official business that could also yield personal gains.<sup>94</sup> The Court wrote, “[T]hat faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.”<sup>95</sup>

The mere potential for conflicts of interest can justify regulating connections between public servants and private entities. In 1990 the Court upheld a law forbidding private entities from supplementing the salaries of federal employees, even if those employees showed only “good faith,” “full disclosure,” and “exemplary performance of public office.”<sup>96</sup> Avoiding potential conflicts of interest was important to “maintaining the public’s confidence in the integrity of the federal service,” the Court explained.<sup>97</sup> Later upholding a law barring government contractors from contributing to federal candidates, a federal appeals court stressed the need to protect the public’s interest in “merit-based public administration.”<sup>98</sup>

Many jurisdictions already regulate potential conflicts of interest to some extent. The federal government prohibits officials from soliciting gifts, even for charities, if circumstances suggest donors could be motivated by the officials’ status.<sup>99</sup> Many states and cities impose similar constraints.<sup>100</sup> New York City demands a sweeping “duty of undivided loyalty” of public servants and prohibits their use of an official position to advantage themselves or their associates.<sup>101</sup>

Yet enforcement of existing conflict of interest rules typically is incident-driven and sporadic, lacking routine detection and compliance mechanisms. Criminal laws prohibiting bribery and the like address only the most extreme violations, typically after the damage is already done and in the rare case of “smoking gun” evidence. Perhaps the closest analog to the regulatory safeguards needed for officeholder-controlled nonprofits lies in the electoral context. Campaign finance laws typically mandate strict disclosure requirements and donation limits. But campaign finance law applies only within

the relatively narrow confines of political campaigns. What constituents need is a systematic approach to keeping the persistent influences of officeholder-controlled nonprofits from compromising the integrity of government.

To be sure, addressing the corruption risks posed by officeholder-controlled nonprofits involves special challenges. Unlike electioneering during relatively short election seasons, the political advocacy of these groups may span entire terms in office. Compliance with new anti-corruption rules could create administrative burdens for these entities. Moreover, these groups may spend resources on some activities, such as community service or civic education, that do not directly benefit the affiliated elected official in the way that flattering ad campaigns do and, thus, may fall outside the scope of serious corruption concerns. A regulatory solution needs to strike a careful balance between serving the public's interest in deterring government corruption and protecting the ability of advocacy groups to operate without excessive burdens.

We propose a solution that strikes this balance. First, it provides a straightforward threshold test for identifying those entities whose affiliation with an elected official, and activity to promote that elected official, are sufficient to pose a serious risk of corruption. Then, for this narrow set of entities, we propose two standard requirements of anti-corruption law: donor transparency and, for donors with a concrete business interest before the affiliated elected official, donation limits. It is possible that additional requirements such as across-the-board donation limits, though more burdensome, will eventually prove necessary to more effectively reduce conflicts in governance. But the minimal safeguards of transparency and doing-business donor limits are an essential starting point.



## Proposal to Limit Corruption and Conflicts of Interest Arising from Officeholder-Controlled Nonprofits

### Threshold Test

An entity should fall under new anti-corruption rules for officeholder-controlled nonprofits if (1) it is structurally so closely affiliated with an elected official as to be subject to control by that official, *and* (2) it spends significant resources on public communications advertising that official's name or image — an especially valuable activity to politicians. These factors borrow from well-established concepts in campaign finance law. They serve to identify when a purportedly independent entity is actually acting as a vehicle for a politician's own agenda, giving donations to that entity a value similar to that of a direct donation to the politician. This threshold test is designed to be content-neutral, not leaving it to regulators to decide whether to apply anti-corruption rules depending on their judgments about an officeholder-controlled nonprofit's social value or political benefit to the officeholder.

1. *Structural affiliation:* Under any of the following circumstances, an entity is structurally affiliated with an elected official sufficient to be considered for regulation:
  - The elected official — or current or recent employee or advisor, or family member of the elected official — established the organization.<sup>102</sup>
  - Any of the above individuals participates in directing the work of the organization.
  - Any of the above individuals solicits donations for the organization.
  - The organization shares resources, including non-public information or strategy, personnel, or a consultant, with the elected official.
2. *Activity of affiliation:* If an entity that is structurally affiliated with an elected official also spends a significant portion of its resources (exact amounts would vary by jurisdiction) on public communications containing the name or image of that elected official, then it should be subject to officeholder-controlled nonprofit anti-corruption rules.

### Key Safeguards

An entity that meets the threshold test for officeholder-controlled nonprofits will then face two rules that are standard components of anti-corruption regimes:

1. *Transparency:* Mandatory public disclosure about who is donating how much to an officeholder-controlled nonprofit will serve to deter improper behavior in the first place, enable detection of improper official favors for donors, and inform constituents about their elected representatives' allegiances. Disclosure rules could exempt small donations (exact amounts would vary by jurisdiction), which are less likely to pose a corruption risk.
2. *Limits for doing-business donors:* Even large contributions to officeholder-controlled nonprofits may be a small price to pay for donors with business before the elected officials in question. Official action to grant government contracts, tax relief, eased regulations, or other advantages could result in profits many times greater than the cost of trying to influence these outcomes by supporting an officeholder-controlled nonprofit. For similar reasons, many jurisdictions already restrict doing-business donors from contributing to political campaigns. Contribution limits should also apply to these donors when it comes to officeholder-controlled nonprofits.

## **B. Threshold Test for Identifying Officeholder-Controlled Nonprofits for Purposes of New Anti-Corruption Rules**

Lawmakers will first have to determine which entities require oversight. An entity should fall under new anti-corruption rules for officeholder-controlled nonprofits if (1) it is structurally so closely affiliated with an elected official as to be subject to control by that official, *and* (2) it devotes significant resources to publicly promoting that official. These factors borrow from well-established concepts in other areas of law, including campaign finance law. They serve to identify when a purportedly independent entity is really acting as a vehicle for a politician's agenda, giving donations to that entity a value similar to that of a direct donation to the politician.

### *1. Structural affiliation:*

Under any of the following circumstances,, an entity is structurally affiliated with an elected official sufficient to be considered for regulation:

- The elected official — or current or recent employee or advisor, or family member of the elected official — established the organization.
- Any of the above individuals participates in directing the work of the organization.
- Any of the above individuals solicits donations for the organization.
- The organization shares resources, including non-public information or strategy, personnel, or a consultant, with the elected official or the elected official's campaign.

### *2. Activity of affiliation:*

If an entity that is structurally affiliated with an elected official also spends a significant portion of its resources (exact amounts would vary by jurisdiction) on public communications containing the name or image of that elected official, then it should be subject to officeholder-controlled nonprofit anti-corruption rules.

## **Structural Factors of Affiliation**

The list of structural factors indicating close affiliation with an elected official draws on elements recognized in other areas of law as compromising the independence of privately-financed groups. In the campaign finance context, after *Citizens United*, groups may spend unlimited amounts on politics as long as they do so independently of candidates. A group that coordinates with a candidate, on the other hand, is so closely aligned with that candidate's interests that campaign contribution limits applicable to the candidate typically will apply to the group.

Many jurisdictions consider a group to be coordinating and not independent if a candidate or her current or recent associate helps create or control the group.<sup>103</sup> Congressional ethics rules also identify control or direction of a group as a marker of potential corruption. Members of the House and their staff, for example, generally may solicit donations to benefit nonprofits, but must seek special permission to fundraise for nonprofits that they established or control.<sup>104</sup>

The sharing of certain resources with a candidate can also undercut the independence of a group's

political spending in many jurisdictions. California presumes a group's spending is not independent if a candidate uses the same political consultant as the group, or shares campaign needs or plans with it.<sup>105</sup> In New York, sharing office space can serve as proof that a group is not operating independently of a candidate.<sup>106</sup> In the U.S. House of Representatives, ethics rules prohibit members from sharing resources such as staff time and mailing lists with outside entities, and from using outside funding to supplement official work and events.<sup>107</sup>

Fundraising by a candidate or her agent for an outside group also serves as proof, under the rules of many jurisdictions, that the group is not independent and must therefore abide by any transparency rules and contribution caps that the candidate's campaign must follow.<sup>108</sup> In Minnesota, a candidate's fundraising for, or even "promotion" of, an outside group "destroys the independence of any subsequent expenditure" by that group.<sup>109</sup> Under New York and California law, a candidate's mere appearance at a fundraiser for an outside group that supports the candidate leads to a presumption that the group is not independent from the candidate.<sup>110</sup>

Federal ethics rules also recognize the potentially corrupting relationship that arises when public servants solicit money from private donors, even if to benefit charities. They prohibit officials from fundraising for any nonprofit if there is reason to believe that donors are giving because of the official's government position.<sup>111</sup> In the executive branch the prohibition extends beyond actual fundraising to include "designation, recommendation or other specification by the employee."<sup>112</sup>

Thus, the structural factors we propose for identifying when an entity is closely affiliated with an elected official draw on a wealth of existing laws and ethical standards for flagging problematic ties between public servants and private interests.

### **Activity of Affiliation**

Some structurally-affiliated entities exist entirely to promote an elected official. Others spend some or most of their resources on activities that do not explicitly promote that official but benefit the official in other ways (for instance, attacking opponents) or on activities with significant benefit to the public alongside any benefit to the official (for instance, running a food pantry). At a minimum, jurisdictions should address the especially valuable activity of explicitly promoting an elected official, applying new anti-corruption rules to any entity that spends above a certain monetary threshold — an amount appropriate for the respective market — explicitly promoting an elected official with whom it is structurally affiliated. Further measures may prove necessary, depending on the growth and future evolution of officeholder-controlled nonprofits.

It's worth noting that some officeholder-controlled nonprofits have reported delivering important benefits to the public, such as boosting civic engagement. While Obama's OFA spent millions on TV and radio ads — sometimes targeting members of Congress, to promote his policy agenda — it also recruited volunteers in more than 250 local chapters to hold rallies, town halls with local elected officials, community activism trainings, and phone bank sessions.<sup>113</sup> Reagan's CFA also formed more than 260 local chapters and mobilized citizen activists.<sup>114</sup> It could be reasonable for jurisdictions to decide that the democratic good reflected in such activities justifies not classifying them as activities subject to

officeholder-controlled nonprofit regulations.

The special corruption risk attached to promotional spending in affiliation with a politician, on the other hand, is well established. Many jurisdictions require spenders to disclose contributions that enable public communications mentioning candidates during election season; if those communications are coordinated with a candidate, contribution limits apply just as they do for candidates' campaigns.<sup>115</sup> New York City's new law addressing officeholder-controlled nonprofits defines regulated "elected official communications" as radio, television, print, internet, or telephone advertisements that contain the "name, voice or likeness" of the affiliated officeholder — a sensible definition for other jurisdictions to adopt — and imposes certain contribution caps on entities that spend 10 percent or more of their budgets on such communications.<sup>116</sup>

Jurisdictions should also consider permitting entities to maintain a separate segregated fund, as is permitted in the electoral advocacy context, from which they may exclusively fund communications promoting the affiliated elected official. Only contributions to, and spending from, the segregated fund need be subject to new anti-corruption rules.<sup>117</sup> Also, as in the electoral advocacy context, an entity should be able to rebut a presumption that it is an officeholder-controlled nonprofit for purposes of regulation by making an adequate showing that it is not sufficiently affiliated — for instance, demonstrating that the elected official and associates are not actually involved in directing the entity's work.<sup>118</sup>

### **C. Key Safeguards to Lessen Corruption Risks Posed by Officeholder-Controlled Nonprofits and Increase Democratic Accountability**

#### **Transparency**

Entities that meet the twin tests of structural affiliation and promotional activity, thereby meeting the threshold for anti-corruption regulation, should have to disclose their major donors to the public. Transparency has long played an essential role in effective anti-corruption law. While the *Citizens United* Court split 5-to-4 in deciding whether independent entities should be able to spend unlimited amounts to influence elections, it agreed 8-to-1 that public disclosure by those entities of the sources of their money was important to an informed and accountable democracy.<sup>119</sup>

As the Supreme Court has noted in the campaign context, "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes."<sup>120</sup> A transparency requirement for officeholder-controlled nonprofits will serve to discourage donors from seeking favors, as officials will be less likely to grant them when public records of these donations could expose them to criticism.<sup>121</sup>

Transparency about the major supporters of an officeholder-controlled nonprofit also empowers the public to hold elected officials accountable for who is really funding their messages, and provides critical context for evaluating those messages. "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages," the Supreme Court has explained.<sup>122</sup> Research shows that information about who supports a candidate can influence voters' evaluation of that candidate.<sup>123</sup>

States and cities have already recognized that the values underlying disclosure can apply just as forcefully to elected officials' relationships with charities as they do to political campaigns. In California, elected officials must report charitable contributions made by others at their "behest."<sup>124</sup> The requirement applies to any gift above \$5,000 that a donor made "at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination or concern with the public official."<sup>125</sup> In 2016 alone, California officials reported \$7 million in donations made at the behest of elected officials.<sup>126</sup> New York City's new law requires that any group affiliated with an elected official disclose every donation from a person or entity doing business with the city, and all other donations of \$1,000 or more.<sup>127</sup>

Lawmakers should consider setting an appropriate donation amount below which disclosure is not required. This reasonable approach would shed light on donations that are large enough to be likely to unduly influence the affiliated elected official, but avoid burdening small donors.

### **Limits for Doing-Business Donors**

Even with transparency, permitting large contributions by donors with distinct business interests before an affiliated official would still risk creating actual or perceived conflicts for official decision-making.<sup>128</sup> The mayor of Los Angeles has drawn criticism for the large contributions to his affiliated nonprofit that have come from donors who have business interests with the city, as previously described. Mandatory disclosure rules brought those contributions to light. But they haven't stopped business sector donors from pledging donations as high as \$1 million, in a city where government contractors are banned from giving directly to candidates and campaign contributions in general are capped.<sup>129</sup>

Existing laws at different levels of government offer numerous examples of not just limits, but even outright bans on gifts and solicitation involving public officials and potential donors with business before them. Federal officials may not solicit anything of value — even if for a charity — from anyone seeking action from, or doing business with, the official's government office. These laws also apply to entities that have interests that may be substantially affected by the official's work.<sup>130</sup> Numerous states and cities impose similar bans where the potential donor to an outside entity is seeking administrative or legislative action from the official, faces regulation by the official, or has any transactional relationship with the official's agency.<sup>131</sup>

Restrictions on so-called doing-business donors to relevant officeholder-controlled nonprofits should apply even when the elected officials or their agents do not explicitly solicit the support. Solicitation bans can be too easily evaded with subtle but still clear signals to give.<sup>132</sup> Instead, contribution limits should apply to all those seeking to donate to an entity that is affiliated with an elected official before whom they have business.

Contribution limits should also extend to potential donors who are seeking business with the affiliated elected official, as the capacity to grant government business in the first place is a powerful official function that should be protected from corruption. Existing law offers different approaches to regulating people or entities seeking government business. The federal Securities and Exchange Commission approved a two-year ban on municipal bond underwriters who give more than \$250 to the campaign of a relevantly influential municipal official from doing business with that municipality.<sup>133</sup> This mora-

torium discourages underwriters from trying to influence officials empowered to grant them business and protects constituents from decisions driven not by their best interests but by officials' gratitude to donors.<sup>134</sup>

Similarly, New Jersey agencies may not award large contracts to any business that contributed more than \$300 to a campaign for governor or lieutenant governor, or to any state or county political party, in the previous 18 months, or at any point during the term of a gubernatorial contribution recipient.<sup>135</sup> Taking a different approach, New York City's new law requires officeholder-controlled nonprofits to return donations from anyone who is added to the city's database of doing-business entities within 180 days of making a donation.<sup>136</sup>

For any doing-business donations that predate new anti-corruption restrictions on officeholder-controlled nonprofits, jurisdictions should require affiliated officials to recuse themselves from decisions affecting donors.<sup>137</sup> Several jurisdictions already require recusal when it comes to campaign donors. Officials serving on the board of the Los Angeles County Metropolitan Transportation Authority, for example, must recuse themselves from decisions affecting persons who contributed just \$10 to their campaign in the previous four years.<sup>138</sup> Although \$10 is almost certainly too low a threshold, the principle of managing potential conflicts of interest is instructive. Five states similarly require that judges recuse themselves when they have received campaign contributions above a certain threshold from a litigant, and six recognize that contributions by litigants to outside groups benefiting the judge's campaign may also create conflicts of interest.<sup>139</sup>

At the federal level, government employees must already recuse themselves from certain decisions because of relationships with outside entities. Executive branch employees may not participate in matters that affect the financial interests of an organization where the employee serves as an officer, director, trustee, partner, or employee.<sup>140</sup> They may also need to recuse themselves from matters that may affect the financial interests of a family member, current or former employer, any organization the employee served in the prior year, or any organization in which the employee is an "active participant" if "a reasonable person with knowledge of the relevant facts [would] question his impartiality in the matter."<sup>141</sup> These recusal requirements should apply explicitly to decisions that could affect the interests of donors to an officeholder-controlled nonprofit.

## CONCLUSION

From city hall to the White House, elected officials are finding new ways to exploit the culture of massive political spending unleashed by *Citizens United*. They've discovered that they can continue to tap big donors long after their campaigns end and before their next ones begin, working with nominally separate promotional nonprofits to boost themselves and their agendas.

Their policy aims may sometimes be sincere and even laudable. Yet in the absence of public oversight, these officeholders are also in a position to reward secret sponsors with government action that may not serve the best interests of most constituents. Already, officeholder-controlled nonprofits have influenced who gets access to officeholders and triggered public skepticism about the integrity of certain government decisions. If this trend is anything like the surges in anonymous election spending and buddy PACs since *Citizens United*, then this may only be the beginning.

To address the increased risks of conflicts of interest posed by officeholder-controlled nonprofits, this paper proposes starting with a simple solution. If a group is closely affiliated with an elected official and devotes a sizeable amount of its resources to promoting that official, it should have to disclose its donors, and it should not be able to take unlimited contributions from sources with business at stake before that official. This proposal draws on well-established principles and practices of campaign finance and conflict of interest laws, but offers a new set of safeguards in an area where few now exist.

By tailoring our solution to such a narrow set of entities and donors, we affirm the general benefits to democracy when elected officials engage with civic groups and citizens who wish to help. Hidden sources of direct benefit to elected officials, on the other hand, threaten to undermine the integrity of the democratic process.

As officeholder-controlled nonprofits proliferate and mature, additional reforms may prove necessary to curb the conflicts of interest that may arise. For now, this set of solutions will help to ensure that the officeholders these entities promote do not govern in favor of their sponsors at cost to the public they were elected to serve.

## ENDNOTES

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Members to seek permission before soliciting contributions for charities established or controlled by the soliciting Member); U.S. Judicial Conference, Code of Conduct for United States Judges, Canon 4C (1973); 5 C.F.R. § 2635.808(c). See also 5 U.S.C. § 7353 (prohibiting executive, legislative and judicial branch employees from soliciting anything of value from a person seeking official action from or doing business with the government official's employing entity, or with interests that may be substantially affected by the performance of official duties).

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- 101 Charter of the City of New York, ch. 68, § 2604(b)(2); Christopher M. Hammer, *Misuse of City Office, New York City Conflict of Interest Board, 11-15*, last accessed December 26, 2017, [http://www1.nyc.gov/assets/coib/downloads/pdf2/mono/mono\\_misuse.pdf](http://www1.nyc.gov/assets/coib/downloads/pdf2/mono/mono_misuse.pdf) (explaining that the Conflict of Interest Board has interpreted 2604(b)(2) to include a “duty of undivided loyalty”).
- 102 In the campaign finance context, several states recognize that a candidate's former employees or advisors leading an ostensibly independent group suggests coordination between the group and the candidate the group supports. These states use different time frames and roles to identify circumstances most suggestive of coordination. See, e.g., 94-270 Me. Code R. Ch. 1 §6(9)(B)(1) (defining recent employees as any person who “has received any campaign-related compensation or reimbursement from the candidate” within the previous year); N.Y. Elec. Law § 14-107(1)(d)(iii) (“within two years of the general election, primary or special election in which the candidate is a candidate for nominating or election...”); Cal. Code. Regs. tit. 2, §18225.7(d)(6) (presuming coordination if the outside group is “established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff within the current campaign...”).
- 103 See, e.g., N.Y. Elec. Law § 14-107(1)(d) (defining coordination to include circumstances in which the candidate, her agent or her family member participated in the formation of the allegedly independent group, or the group employed an individual previously employed by the candidate's political committee or elected office); Cal. Code. Regs. tit. 2, § 18225.7(d) (presuming coordination when the group making the expenditure is established, run, or staffed by the candidate's family member or by an individual who previously worked in a senior position on the candidate's or officeholder's staff); Conn Gen. Stat. Ann. § 9-601c(b)(4)-(5) (creating a rebuttable presumption of coordination when the person making the expenditure recently worked for the candidate's campaign as an employee or consultant).
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- 105 Cal. Code. Regs. tit. 2, §18225.7(d)(1), (d)(3); See also Conn Gen. Stat. Ann. § 9-601c(b)(3) (expenditures “based on information about a candidate's...plans, projects or needs, provided by” the candidate, the candidate's committee, or a “consultant or other agent acting on behalf of” the candidate or committee).
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- 107 Committee on Standards of Official Conduct, 110th Cong., House Ethics Manual 335, 348 (2008).
- 108 See Philadelphia Board of Ethics, Regulation No. 1 §1.38. But see Michigan, where the Secretary of State has said that soliciting contributions alone will not destroy independence. Letter from Michael Senyko, Chief of Staff to Michigan Secretary of State Ruth Johnson, to Elliot S. Berke, July 10, 2013, [http://www.michigan.gov/documents/sos/Declaratory\\_Ruling\\_Response\\_2013-1\\_426842\\_7.pdf](http://www.michigan.gov/documents/sos/Declaratory_Ruling_Response_2013-1_426842_7.pdf).
- 109 State of Minnesota, Campaign Finance & Public Disclosure Board, Advisory Opinion 437, 5 (2014).
- 110 N.Y. Elec. Law § 14-107(1)(d)(ii); Cal. Code. Regs. tit. 2, §18225.7(d)(5).
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- 115 See 11 C.F.R. § 100.29 (defining electioneering communications as communications that “refer to a clearly identified candidate,” are publicly distributed within 60 days of a general election or 30 days of a primary election for the office the candidate is seeking, and is targeted to the relevant electorate); § 104.20 (establishing reporting requirements for electioneering communications); § 109.21 (defining “coordinated communication” and outlining the circumstances in which such communications constitute in-kind contributions). See also, e.g., W. Va. Code Ann. § 3-8-2b(i); Ohio Rev. Code Ann. § 3517.1011(G); Wash. Rev. Code § 42.17A.300 et seq.; Philadelphia Board of Ethics, Regulation No. 1 §§ 1.1(k), 1.21 (2016).
- 116 New York City Admin. Code §§ 3-901, 903.
- 117 See, e.g., Conn. Gen. Stat. Ann. § 9-601d(g)(1) (allowing persons to establish a dedicated independent expenditure account and limit relevant disclosures to the funds in that dedicated account); N.Y. Exec. Law § 172-f(2)(c) (allowing social welfare nonprofits to establish a segregated account subject to donor disclosures for communications related to public officials or public policy).
- 118 See Conn. Gen. Stat. Ann. § 9-601c(b),(d) (listing the factors that create a rebuttable presumption of coordination, and providing that an effective rebuttal includes “the establishment...of a firewall policy designed and implemented to prohibit the flow of information between (1) employees, consultants or other individuals providing services to the person paying for the expenditure, and (2) the candidate or agents of the candidate.”); New York City Admin. Code § 3-904(c) (instructing the City’s conflicts of interest board to establish a procedure by which organizations affiliated with elected officials may rebut a presumption that the elected official exercises control over that organization); Committee on Standards of Official Conduct, 110th Cong., House Ethics Manual 348 (2008) (Members of the House and their staff generally may not solicit on behalf of organizations established or controlled by Members or staff, but exceptions may be granted if a beneficiary organization’s primary purpose is activities *unrelated* to the government employee’s official duties).
- 119 *Citizens United v. FEC*, 558 U.S. 310, 366-371 (2010).
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- 121 See Brent Ferguson, “Congressional Disclosure of Time Spent Fundraising,” *Cornell Journal of Law & Public Policy* 23, no.1 (2013): 9 (citing Anita Krishnakumar, “Towards a Madisonian, Interest-Group-Based, Approach to Lobbying Regulation,” *Alabama Law Review* 58, no. 3 (2007): 517, 541, 543, 545-548, as well as examples of Barack Obama and Mitt Romney returning or failing to return contributions from controversial donors).
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- 123 See Conor M. Dowling & Amber Wichowsky, “The Effects of Increased Campaign Finance Disclosure: Evaluating Reform Proposals” (unpublished manuscript, August 19, 2014): 22, <https://dx.doi.org/10.2139/ssrn.2483194> (finding a small effect resulting from the unmasking of donors, and an even larger effect when those donors are identified as out-of-state); see also Chisun Lee et al., *Secret Spending in the States*, Brennan Center for Justice, 2016, 20-22, [https://www.brennancenter.org/sites/default/files/analysis/Secret\\_Spending\\_in\\_the\\_States.pdf](https://www.brennancenter.org/sites/default/files/analysis/Secret_Spending_in_the_States.pdf) (recounting instances where voters’ preferences appeared to shift after the disclosure of previously undisclosed donors).
- 124 Cal. Code. Regs. tit. 2, §18215.3.
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- 127 New York City Admin. Code § 3-902.
- 128 See Buckley, 424 U.S. at 28 (“laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action..., Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.”).
- 129 Charter of the City of Los Angeles, vol. 1, art. IV, § 470(c)(12).
- 130 5 U.S.C. § 7353.
- 131 See, e.g., Md. Code Ann., General Provisions, § 5-505(a)(2) (prohibiting legislators from soliciting charitable contributions from lobbyists who lobby on legislative issues on behalf of business or interest groups); Municipal Code of Chicago §2-156-142(h) (“no city official or employee shall solicit any gift on behalf of a third party, if: (i) that official or employee knows that the prospective donor is seeking administrative or legislative action from the City, and (ii) the official or employee is in a position to directly affect the outcome of that action.”); see also N.Y. Pub. Off. Law § 73(5)(c); N.M. Stat. Ann. §10-16B-3; Wash. Rev. Code § 42.52.805.
- 132 See Sean Sullivan, “What it looks like when Jeb Bush and his super PAC backers meet in person,” *Washington Post*, October 26, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/10/26/what-it-looks-like-when-jeb-bush-and-his-super-pac-backers-meet-in-person/> (detailing how Jeb Bush’s super PAC choreographed events to allow Bush to participate without violating the prohibition on candidates soliciting contributions larger than \$5,000).
- 133 Self-Regulatory Organization; Municipal Securities Rulemaking Board Release No. 34-33868, 59 Fed. Reg. 17621-01 (April 13, 1994), <https://www.gpo.gov/fdsys/pkg/FR-1994-04-13/html/94-8838.htm>; Municipal Securities Rulemaking Board, Rule Book, Rule G-37, 269 (July 1, 2017), <http://www.msrb.org/msrb1/pdfs/MSRB-Rule-Book-July-2017.pdf>.
- 134 *Blount v. SEC*, 61 F.3d 938, 942 (D.C. Cir. 1995).
- 135 N.J. Stat. Ann. § 19:44a-20.14; *In re Earle Asphalt Co.*, 198 N.J. 143 (2009) (upholding the law).
- 136 New York City Admin. Code § 3-903(b).
- 137 For ongoing and future affiliations, recusal alone is not an adequate substitute for a routine reporting and compliance system. Among other reasons, recusal would be impractical to administer effectively on a widespread basis for elected offices that enjoy broad mandates and may achieve outcomes through incremental actions or actions of omission rather than by discrete, declared decisions.
- 138 Cal. Pub. Util. Code § 130051.20(a)(4). See also Cal Gov. Code § 84308 (recusal requirements for officials from other agencies).
- 139 *Judicial Disqualification Based on Campaign Contributions*, National Center for State Courts (2016) <http://www.ncsc.org/-/media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Disqualificationcontributions.ashx>; Scott Greytak et al., *Bankrolling the Bench: The New Politics of Judicial Elections 2013-14*, ed. Laurie Kinney, Justice at Stake, Brennan Center for Justice & National Institute for Money in State Politics, 2015, 41, [https://www.brennancenter.org/sites/default/files/publications/The\\_New\\_Politics\\_of\\_Judicial\\_Election\\_2013\\_2014.pdf](https://www.brennancenter.org/sites/default/files/publications/The_New_Politics_of_Judicial_Election_2013_2014.pdf).
- 140 5 C.F.R. §§ 2635.402(a), (b)(2)(iv); 18 U.S.C. § 208(a).
- 141 5 C.F.R. §§ 2635.502(a)-(b)(1).



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