



Testimony of Matthew Rothschild, Executive Director, Wisconsin Democracy Campaign, before the Joint Informational Hearing of the Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government

March 24, 2015

Thank you, Senator LeMahieu and Representative Bernier, for inviting me to testify today. And thank you to all the distinguished Senators and Assembly members here.

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign, now celebrating our 20th year as an advocate for clean, fair, open, and transparent government.

I'd like to begin by reaffirming two basic principles, which are spelled out clearly in the "Declaration of Policy" of Chapter 11 on campaign finance. And it's constructive to have this legislative intent right up front in black and white. We sure hope you preserve it.

The first principle that we believe strongly in is that, and I'm quoting from the statute, "excessive spending on campaigns for public office jeopardizes the integrity of elections." We now have "excessive spending."

Candidates and outside electioneering groups spent a record \$81.8 million in the 2014 gubernatorial election. This was more than double what was spent in the 2010 governor's race. And legislative candidates and outside groups spent almost \$17 million in the 2014 elections.

When this volume of money is being thrown around, the average citizen understandably wonders whether elective offices are being sold to the highest bidder.

The second basic principle is that full disclosure is vital to our democracy. As the statute reads, disclosure (and now I'm quoting again) "aids the public in fully

understanding the public positions taken by a candidate or political organization.” Here’s the kicker, and I’m quoting again: “When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence.”

We have both of those problems today. There is a sea of dark money that is inundating our campaigns, which raises the specter of corruption.

And we have candidates and elected officials in Wisconsin “overly dependent on large private contributors,” which is subjecting our democratic process to a potential corrupting influence.

Let me cite a few examples.

1. When Rep. Joel Kleefisch introduced a bill last session that would have helped reduce the child support that one of his largest campaign contributors had to pay, a reasonable person could conclude that there was, indeed, a corrupting influence.
2. When Gogebic Taconite gave \$700,000 to Wisconsin Club for Growth in 2011, which then spent lots of money on the recalls to keep Republicans in power, who then rewrote the mining bill largely along the specs provided by the company, a reasonable person could conclude that there was, indeed, a corrupting influence.
3. When Justice Prosser was running for reelection, Wisconsin Manufacturers & Commerce spent about \$1,100,000 in election-related activities that supported him. Wisconsin Club for Growth spent \$500,000. And Citizens for a Strong America spent about \$1 million. Justice Prosser won by a mere 7,000 votes. His victory was largely dependent on these expenditures. And now he is about to hear the John Doe case in which these three groups are a party. A reasonable person could conclude that there has been a corrupting influence and he can’t be impartial.
4. In the 2013-2015 budget, a provision was inserted that required the DNR to provide a \$500,000 grant to a nonprofit that was tailor-made for one group only, the United Sportsmen of Wisconsin Foundation. That group had teamed up with Americans for Prosperity to sponsor a mailing to support Republican candidates in the recall elections, and it had sponsored a rally for Republican candidates in 2012. Only when embarrassing facts surfaced about United Sportsmen was the grant rescinded. A reasonable person could conclude that there was a corrupting influence at play.

5. In Gov. Doyle's 2002 reelection race, the DNC raised \$725,000 from the Ho-Chunk, Potawatomi and Oneida tribes in late October. The DNC then transferred more than \$1 million to the Democratic Party of Wisconsin, which spent lots of money on issue ads for Doyle. Three months later, Doyle negotiated sweetheart deals with these tribes for the expansion of casinos. Again, a reasonable person might conclude that there was a corrupting influence.

Given the extent of corruption already jeopardizing the integrity of our elections, now is no time to allow more potentially corrupting money to flow into the system.

In upholding the two basic principles outlined in the statute – limiting the size of contributions and providing full disclosure – we have nine policy recommendations for you.

First, we strongly favor full disclosure of all expenditures in excess of \$5,000 by PACs, political parties, 527s, corporations, unions, associations, nonprofits, so-called independent groups, and other groups within 60 days of an election for election-related communications that clearly identify a candidate by name and whose purpose, to any reasonable observer, is to help elect or defeat that candidate. That disclosure must come within 48 hours of the expenditure.

Even in the infamous Supreme Court case of *Citizens United* in 2010, the justices, by a vote of 8-1, favored full disclosure. Justice Kennedy wrote about the need to pair “corporate independent expenditures with effective disclosure.” He noted that disclosure is necessary so “citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests ... and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions.”

And this next point is important: In the *Citizens United* case, the Supreme Court went out of its way *not* to limit disclosure to express advocacy or its functional equivalent, as the plaintiffs had urged it to do. “We reject *Citizens United*’s contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy,” the Court ruled.

In a case that same term, Justice Antonin Scalia was even more outspoken in favor of disclosure.

“Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed,” Justice Scalia wrote in *John Doe v. Sam*

Reed, 2010, a case where anti-gay rights advocates in Washington State were attempting to prevent disclosure of the names of the people who signed their petitions to get a referendum on the ballot on the grounds that compelling them to do so violated their First Amendment rights. Scalia said the disclosure did not violate their First Amendment rights. He added: “For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.”

Our second policy recommendation is to put a low ceiling on individual donations to candidates.

The \$10,000 limit on individual contributions to statewide candidates is already way too high. The median income in Wisconsin is about \$27,500. No regular person can contemplate giving \$10,000, and a gift of this magnitude itself raises the potential of a corrupting influence.

We believe that no one should be able to give more than 10 percent of the median annual individual income in Wisconsin to any candidate for statewide races, and not more than 5 percent of the median annual individual income to any state senate race, and not more than 2.5 percent of the median annual individual income to any state assembly race.

Third, these limits also must apply during any recall election. There is no valid reason to maintain the loophole that allows candidates in a recall election to receive unlimited amounts from individual donors, which raises the specter of corruption that the statute rightly warns us about.

Fourth, put a low ceiling on contributions to political parties and PACs. This should be no more than the limit that people can give to any statewide candidate. There used to be, in effect, a \$10,000 limit since that was the total that any individual could give to any candidate, party, PAC, or group combined. But when Judge Randa tore down the \$10,000 ceiling on aggregate individual contributions, in line with the Supreme Court’s *McCutcheon* ruling, that left Wisconsin with no limit whatsoever on donations to parties or PACs. As a result, we had one person

making a \$1 million donation to the Republican Party of Wisconsin last fall, and another one making a \$1 million donation to the Democratic Party of Wisconsin. Amounts of that magnitude carry a “potential corrupting influence.” For instance, the person who gave \$1 million to the Republican Party, Diane Hendricks, desperately wanted “right to work” legislation, and she got her wish.

Fifth, we believe strongly that the Legislature should maintain the language in the statute—11.06(7)—requiring an oath for independent expenditures. This is the prohibition against coordination, and it’s crucial to uphold it. The public has a vital right to know whether groups are working independently of the candidate, or colluding with the candidate. And without this ban on coordination, the limits on contributions to candidates could be effectively wiped out, as the groups could gather huge contributions, far in excess of what the candidate could raise, and then essentially funnel that money to the candidate.

Please note: The Seventh Circuit in its “Barland II” decision ruled against Wisconsin Right to Life precisely on this point. It upheld the oath about noncoordination, calling it “a minimally burdensome regulatory requirement, and it’s reasonably tailored to the public’s informational interest in knowing the sources of independent election-related spending.”

Our sixth proposal is that the legislature amplify the voice of small donors with public matching funds, as happens in New York City. Anyone who gives up to \$175 to a candidate will have his or her contribution matched at 5 times that amount by the public treasury. To be eligible for matching funds, candidates must collect twice the number of signatures of qualified electors on nomination papers required under state law for each office.

Seven, given that one of the major expenses, at least in statewide races, is TV time, and given that the airwaves belong to the people, we propose that candidates be given free air time in the last 30 days of an election to make their case to the public. To be eligible for matching funds, candidates must collect twice the number of signatures of qualified electors on nomination papers required under state law for each office. Each candidate who clears this hurdle must be given a half hour of free air time in the last 30 days during prime time, or 10 thirty-second commercials of free air time in the last 30 days during prime time.

Eight, we believe in shareholder rights, and so we propose that the Legislature pass a law that says any publicly held company must receive the votes of a majority of its shareholders before it can make any political contribution or expenditure that any reasonable individual would recognize as being designed to influence the outcome of an election.

Lastly, but crucially, we endorse Representative Subeck's and Senator Hansen's resolution on overturning *Citizens United*. Their resolution would bring a referendum to the people of Wisconsin in November 2016, asking:

“Shall Wisconsin's congressional delegation support, and the Wisconsin legislature ratify, an amendment to the U.S. Constitution stating:

1. Only human beings—not corporations, unions, nonprofit organizations, or similar associations—are endowed with constitutional rights, and
2. Money is not speech, and therefore limiting political contributions and spending is not equivalent to restricting political speech.”

Already, 54 villages, towns, cities, and counties all across Wisconsin have passed, by overwhelming margins, resolutions or referendums in favor of such an amendment to our U.S. Constitution. And former Supreme Court Justice John Paul Stevens has endorsed such an amendment.

Because of *Citizens United* and other unfortunate rulings by the Supreme Court, we've arrived at an absurd and treacherous place for our system of democracy.

Only super-wealthy individuals, or well-heeled corporations, unions, associations, PACS, or so-called independent groups have the wherewithal to contribute or spend sufficient amounts of money to make any difference in the outcome of campaigns. **Increasingly, the vast majority of citizens are relegated to the role of spectators in this crucial arena of our democracy.** As Justice Ruth Bader Ginsburg recently observed, “Our system is being polluted by money.”

We believe that elections should not be the private playground of the ultra-rich. According to U.S. Senator Bernie Sanders, “The top 0.01 percent of income

earners are responsible for more than 40 percent of campaign contributions.” That makes a mockery of our democracy.

Today, we are heading full speed toward plutocracy.

I urge you not to further undermine our democracy by allowing more money to pollute our system even worse than it is now. **Do not hustle us further down the dangerous road to plutocracy.**

Wisconsin’s legendary political figure Fighting Bob La Follette once said, “The cure for the ills of democracy is more democracy.”

We need more democracy in Wisconsin.

We need more transparency in Wisconsin.

We need more clean government in Wisconsin, and it is in that spirit that I submit this testimony.

Thank you.

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Addendum: We at the Wisconsin Democracy Campaign are also concerned about a budgetary and technology matter concerning the Government Accountability Board. In the budget, all IT services would be taken over by DOA. The GAB has strongly objected to this, as do we. We are concerned that if the DOA takes over the technical fixes on the CFIS, that it might create problems. Also, we are concerned that the DOA might not prioritize answering questions from the public about the database as promptly as GAB does. Plus, it would be a waste of taxpayer money to bring in a new IT team when a perfectly good one is already in place.