

# WHAT IS DARK MONEY?

*How Money From Hidden Sources Influences Elections*



Since the Supreme Court's *Citizens United* decision in 2010, opaque organizations have spent nearly \$1 billion on ads that urge people to support or oppose federal candidates.<sup>1</sup> Because these organizations typically do not reveal their funders, they are known as “dark money” groups. Today, dark money groups and super PACs (which must disclose their donors) run identical ads that praise or attack political candidates. More often than not, these expenditures are attack ads.

## HOW DARK MONEY FLOWS INTO ELECTIONS

The term dark money typically refers to spending by one of three types of organizations: social welfare nonprofit groups, trade associations, and limited liability corporations (LLCs).

*Congress must work to “reduce the corrosive influence of dark money in our elections.”*

*-Rep. Mike Gallagher (R-WI)<sup>4</sup>*

The names of dark money groups are often chosen to be obtuse and may be intentionally misleading. According to political science professor Johanna Dunaway, these groups want to sound “benign and credible.”<sup>2</sup> Her research has shown that “ads sponsored by unknown interest groups are more persuasive than those sponsored by candidates or known interest groups.”<sup>3</sup>

Dark money groups are usually active in elections in one of two ways: They buy ads themselves, or they give money to another group, such as a super PAC, that buys the ads. These ads may be legally known as “independent expenditures,” which directly call for the election or defeat of a candidate, or “electioneering communications,” which mention a federal candidate, and are broadcast in the immediate run-up to an election, but fall short of explicitly calling for the candidate’s election or defeat. Because attack ads are unpopular with voters, dark money groups frequently run them knowing that their anonymous donors are shielded from criticism.

The major concern about dark money is that secrecy allows for the concealment of those seeking to influence the outcomes of elections. The Supreme Court has repeatedly recognized disclosure as an important component of anti-corruption laws. Yet voters cannot hold politicians accountable for doling out favors to their benefactors if the identities of dark money benefactors are kept secret. Moreover, dark money groups make it easier than ever for foreign money to be funnelled into elections. Despite long-standing prohibitions on foreign nationals making campaign contributions or expenditures, foreign money has made its way into American elections in the past, and political spending by dark money groups means the public cannot be sure it is not happening again.

### When social welfare groups and trade associations act like political committees

Thanks to the *Citizens United* decision, social welfare organizations and trade associations are allowed to spend unlimited sums on political advertisements that overtly call for the election or defeat of federal candidates without disclosing their donors. Here’s how these groups are defined:

- ▶ Political committees are established for “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office.”
- ▶ Nonprofits organized under Sec. 501(c)(4) of the tax code must be “operated exclusively for the promotion of social welfare.”
- ▶ Sec. 501(c)(6) of the tax code encompasses business leagues, chambers of commerce, and trade associations.

Under federal law, if a group’s primary purpose is election-related spending, it should register as a political committee and disclose its donors. However, a handful of social welfare organizations and trade associations on both sides of the aisle have been pushing the legal boundaries.

<sup>1</sup> Issue One, [bit.ly/DarkMoneyStudy](https://bit.ly/DarkMoneyStudy)

<sup>2</sup> Center for Public Integrity, [bit.ly/2WuvNvk](https://bit.ly/2WuvNvk)

<sup>3</sup> Political Behavior, [bit.ly/AllintheName](https://bit.ly/AllintheName)

<sup>4</sup> House. gov, [bit.ly/2FXEVnm](https://bit.ly/2FXEVnm)

<sup>5</sup> Center for Responsive Politics, [bit.ly/CRP2010](https://bit.ly/CRP2010)

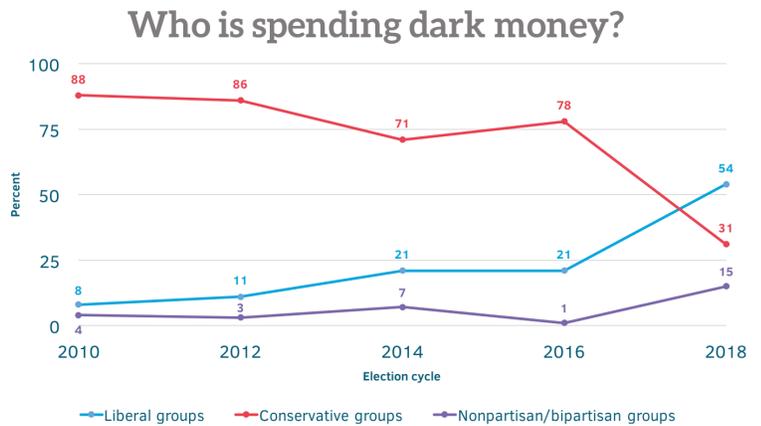
<sup>6</sup> Center for Responsive Politics, [bit.ly/2018CRP](https://bit.ly/2018CRP)

<sup>7</sup> Issue One, [bit.ly/DarkMoneyStudy](https://bit.ly/DarkMoneyStudy)

<sup>8</sup> House.gov, [bit.ly/2CTRuWw](https://bit.ly/2CTRuWw)

## A BIPARTISAN PROBLEM

In recent years, dark money groups have been embraced by political operatives on both the left and the right. Conservatives accounted for nearly 90 percent of all dark money spending in 2010.<sup>5</sup> But in subsequent years, Democrats, too, have fully embraced dark money.<sup>6</sup> The 2018 midterms marked the first election cycle in which liberal dark money groups — led by Majority Forward, which spent \$46 million — outspent conservative ones, accounting for 54 percent of all dark money spending.<sup>7</sup>



Source: Center for Responsive Politics

Federal disclosure rules are woefully out of date, written at a time when these organizations were generally prohibited from making campaign expenditures. While the Federal Election Commission arguably has the statutory authority to require disclosure of some dark money donors, it has chosen to write poor disclosure regulations that have been easily evaded. Given the gridlock at the agency, congressional action is needed to find a meaningful fix. Meanwhile, IRS rules are concerned with tax issues and do not require the disclosure of donors to politically active social welfare groups or trade associations. And LLCs are creatures of state law, not created for the purpose of conducting election activity, and there are often not even any public records about the living, breathing people controlling these companies.

## BIPARTISAN SOLUTIONS

Democrats, Republicans, and independents are increasingly becoming willing to tackle dark money. Some potential solutions include:

- ▶ If an organization spends money on a political ad, it could be required to disclose the names of its recent, major donors on the ad itself, or it could create a separate political fund to pay for the ad that discloses its donors. These two policies are part of the ***Political Accountability and Transparency Act (H.R. 679)***, introduced in January 2019, by Reps. Kathleen Rice (D-NY), Mike Gallagher (R-WI), and Derek Kilmer (D-WA).

*“Americans deserve to know who is paying for the political ads they see.”*

-Rep. Derek Kilmer (D-WA)<sup>8</sup>

- ▶ To stop groups from using transfers to hide the true sources of funding for political ads, groups that transfer large sums of money to other groups that engage in political activity could be required to maintain information about their donors. Then, if the recipient group engages in political activity, it could be required to publicly disclose both the organization that made the transfer as well as the names of the original donors.
- ▶ Under current federal communications law, when groups spend money on political ads broadcast on television and radio, they are required to disclose certain information, such as their officers, the amount of the ad buy, and what candidates the ads concern. The current rules could be changed so that this political file would additionally require the names of any large donors to the organization purchasing the political ads.
- ▶ Since much dark money is from politically active nonprofits, Congress could pass a law limiting how much money these groups may spend on political activity. Already, social welfare nonprofits are prohibited from spending more than half of their money on political activity, and charities are totally prohibited from engaging in political activity.