

# STRENGTHENING AMERICA'S ELECTION LAWS

*H.R. 679: The Political Accountability and Transparency Act*

## Modernizing the Law to Close Loopholes

Our Founders envisioned a government of, by, and for the people. But a lack of accountability and transparency caused by outdated and outmoded campaign laws undermines these core constitutional values and the public's faith in our democratic republic. An astonishing 96% of Americans think that money in politics contributes to political dysfunction and just 20% are satisfied with federal laws about political donations.<sup>1</sup>

The Political Accountability and Transparency Act (PATA) — introduced as H.R. 679 by Reps. Kathleen Rice (D-NY), Mike Gallagher (R-WI), and Derek Kilmer (D-WA) — seeks to strengthen current law by preventing coordination between candidates and super PACs, increasing transparency about who funds ads to influence elections, and prohibiting politicians from using political contributions for their personal benefit.

## Problems with the Current Law

A cornerstone of campaign law is that spending that is coordinated with a candidate is the functional equivalent of a contribution to that candidate. Super PACs are only allowed to raise and spend money without limit because their spending is supposed to be independent of candidates. However, in reality they work all but hand-in-hand, stopping just short of the current, narrow definition of coordination.

- ▶ Correct the Record, a super PAC supporting Hillary Clinton, openly admitted to coordinating with her presidential campaign. The super PAC argued that since posting on their website and social media was free, it couldn't be coordination under the current legal definition.<sup>2</sup>
- ▶ In the months before Jeb Bush formally announced that he was running for president, he helped the Right to Rise super PAC raise over \$100 million. After he announced his candidacy, the group spent that money supporting his campaign. Right to Rise argued that there was no coordination because Bush technically wasn't a candidate while he worked for the super PAC.<sup>3</sup>

## Right to Know

Transparency is a bedrock value of our political system. In *Citizens United v. FEC*, the Supreme Court upheld the importance of transparency in an eight to one vote.<sup>4</sup> In *Doe v. Reed*, Justice Scalia argued that transparency “fosters civic courage”, going so far as to say that without it, “democracy is doomed.”<sup>5</sup> However, our current election laws subvert this principle. In the aftermath of the *Citizens United* decision, dark money groups — groups that do not have to disclose their donors — burst onto the political stage. The laws governing transparency have their origins in the 1970s and they are simply outdated. As a result, these groups have spent nearly \$1 billion in our elections with very little disclosure.<sup>6</sup>

- ▶ In 2012, a group called Freedom Path aired ads supporting Senator Orrin Hatch and criticizing his opponent. Months after the election, a document revealed that a pharmaceutical drug lobby provided nearly 90 percent of Freedom Path's initial funding.<sup>7</sup>

***“The Political Accountability and Transparency Act will close some of the most gaping loopholes in our campaign finance laws by increasing restrictions and reporting requirements for outside groups. This bipartisan bill will help restore integrity and trust in our nation's political process.”***

Rep. Kathleen Rice (D-NY)<sup>8</sup>

- ▶ In 2017, a super PAC called Highway 31 spent more than \$4 million to boost the Democratic candidate in an Alabama special election for the U.S. Senate. However, by using loopholes, it did not disclose its donors until a month after the election.<sup>9</sup>

## Personal Use

For decades, the law has prohibited politicians from spending campaign funds for their own personal use, such as paying for a mortgage or family vacation. However, the law does not extend to leadership PACs — committees that members of Congress set up purportedly to make campaign contributions to other members.

- ▶ Only 45% of leadership PAC money is actually given to other candidates or political committees. Instead, in the last five years, politicians have used their leadership PACs to spend at least \$871,000 on golf-related dues and expenses, \$614,000 in the Virgin Islands and Puerto Rico, and \$469,000 at Disney properties — among other questionable expenses.<sup>10</sup>

*“The American people deserve to know who is spending hundreds of millions of dollars every election cycle to influence their vote and muddy our politics. This bipartisan bill is critical to injecting more transparency into our campaign finance system and helping reduce the corrosive influence of dark money in our elections.”*

Rep. Mike Gallagher (R-WI)<sup>11</sup>

## The Political Accountability and Transparency Act

PATA (H.R. 679) addresses each of the above problems:

- ▶ **Strengthens the coordination standard.** Defines coordination by super PACs and outside spenders as political activity, in general (more than just TV ads), that is not conducted entirely independently of a candidate. It would not require that the candidate and PAC explicitly communicate about the expenditure.
- ▶ **Reflects the realities of today’s campaigns.** Applies coordination rules to political activity that happens before an individual officially runs for office, regardless of when the spending occurs, subject to reasonable time limitations.
- ▶ **Limits staff switching from campaigns to super PACs.** Restricts senior campaign and official office staff from moving to an outside spending group that spends money on that campaign, unless the group has an explicit and robust firewall to prevent inappropriate information sharing.
- ▶ **Creates user-friendly disclosure.** Requires super PACs and dark money groups to list their three biggest donors on election ads. This would only apply to donors of \$50,000 or more and would allow donors to opt-out of having their money used for such ads.
- ▶ **Updates personal use rules.** Extends the prohibition on using funds for personal use to all political committees, including leadership PACs.

America’s campaign laws need to be modernized. The Political Accountability and Transparency Act is a bipartisan measure that updates the law to fit current jurisprudence and address the reality of modern day campaigning.

1 Gallup, <https://bit.ly/2G6Pp0I>; Washington Post, <https://wapo.st/2G15VlQ>

2 Bloomberg, <https://bloom.bg/2QbQGsz>

3 Politico, <https://politi.co/2HoJsyC>

4 Citizens United v. FEC, 558 U.S. 310 (2010)

5 Doe v. Reed, 130 S. Ct. 2811, 2837 (2010) (Scalia, J. concurring)

6 Issue One, <https://bit.ly/2VzB5nz>

7 ProPublica, <https://bit.ly/2JS2JKI>

8 Rice.House.Gov, <https://bit.ly/2W9dCxY>

9 The Daily Beast, <https://bit.ly/2BIaHiR>

10 Issue One, <https://bit.ly/2uX6jK8>

11 Rice.House.Gov, <https://bit.ly/2W9dCxY>