Testimony of Jay Heck – Executive Director
Common Cause in Wisconsin

2015 Assembly Bill 387 & 2015 Senate Bill 292
Campaign Finance Deform

October 13, 2015

State Senators & State Representatives,

We oppose this legislation, which has been available for public inspection for less than a week, because it almost completely deregulates campaign finance law in Wisconsin. It will lead to an even far greater flood of special interest money from within and outside of Wisconsin, render even the doubled campaign contribution limits contained in this legislation virtually meaningless because of the way it legalizes and codifies into law, formerly prohibited campaign coordination, and will bring about far less transparency and disclosure of this money and further prevent the citizens of Wisconsin from knowing who is trying to influence the outcome of their elections and how much they are spending.

Even more so than they are now, Wisconsin voters will be relegated to being mere bystanders when it comes to establishing the issues that candidates debate, the information they receive about the candidates and the issues, and in having any say over the type and tone of campaigns they will be forced to endure. Organized, big, special interest money and very wealthy individuals from both within and outside of Wisconsin will have an even much greater say than normal Wisconsin citizens about what will happen in our elections. This is increasingly the case now. This measure will hyper-accelerate this deplorable trend.

The doubling of campaign contributions in this measure was expected, even though I have yet to ever hear a single person outside of this Capitol ever say to me, “Gosh I wish I could give more money to political candidates. The current contribution limits are far too low and we are overdue for an increase.” This isn’t what normal people say or how they think.

But even the doubled campaign contribution limits are effectively rendered meaningless by the far greater sin this legislation commits. This measure seeks to
codify into law a highly controversial, compromised, and, I would add, corrupted majority decision by the Wisconsin Supreme Court last July that declared, without any solid or even reasonable legal basis, that candidates can coordinate with outside spending groups as long as the communications made by those groups do not contain any of the so-called “magic words” such as “vote for” or “defeat” or “support.” Issue advocacy, or more accurately and honestly described, “phony” issue advocacy has long been the basis, together with express advocacy, to bar campaign coordination between the outside groups, with candidate campaigns. For good reason. To voters, there is no discernible difference between express advocacy and campaign communications masquerading as issue advocacy before an election. They have the same effect in the minds of voters in how they influence the perception of a candidate in the period before an election.

Under this legislation, an individual could give up to $20,000 to a candidate. That would be disclosed. But the same person could give unlimited money to an outside special interest group to be used to help the candidate or attack his or her opponent and if that group ran phony issue ads, there would be no disclosure of the contribution to the outside group. Why bother making the disclosed $20,000 contribution at all when you can give as much as you wish to the special interest group coordinating with the candidate of your choice and remain secret. That’s what John Menard did to the tune of $1.5 million during the 2011-2012. We know that only because of secret documents released during the John Doe II legal wrangling.

So the effect of this measure is the unlimited flow of secret money into our elections campaigns. The decision of the majority of the Wisconsin Supreme Court is an outlier. No other court in the nation – state or federal – has ever gone so far as to strike down a law prohibiting campaign coordination between a candidate committee with an issue ad group. Even the 2010 Citizens United vs. F.E.C. U.S. Supreme Court decision, which opened up the flood of money from corporate and union general treasuries to be used to influence federal and state elections, kept intact the prohibition on coordination between candidates and issue advocacy organizations. Expert legal opinion nationally is overwhelmingly against the outlier Wisconsin Supreme Court decision. And yet this measure would codify it into law.

An appeal of the Wisconsin Supreme Court decision is expected to be filed, soon. At the very least, the Legislature ought to hold off on rushing this through until the legal process plays out on this matter. Of course, there is another agenda at work here. That is the retroactive decriminalization of the alleged illegal campaign coordination between Scott Walker’s 2011-2012 recall campaign with phony issue advocacy organizations such as Wisconsin Club for Growth and others. It is the same rationale that is really behind the drive to destroy the non-partisan Government Accountability Board because of their unanimous 2012 decision to authorize the investigation into that alleged coordination, which was indisputably against the law at that time, even if it is no longer. Revenge and “pay back” and
seeking greater partisan advantage is what is driving both of these measures. At the very least, proponents ought to admit what the real motivation behind them are.

There are many other things to dislike about this measure but time here today doesn’t permit my discussing all of them. But one element jumps out and bears mentioning. This measure would permit the four legislative campaign committees, which are controlled by the four legislative leaders of both chambers and of both political parties, to collect unlimited contributions, other than from political action committees, which are capped at $12,000 for any calendar year.

What that will mean is that Wisconsin legislative leaders, who already possess as much or more power over their rank and file members than any legislative leaders in the country, will have their power and influence enhanced. Much more money will flow to the legislative campaign committees that they control and that money is likely to play an even greater role in their decision-making about policy, as well as in their ability to dictate what rank and file members can and cannot do. More political money is a powerful tool with which to control and persuade. No wonder Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald are the only named sponsors of this legislation.

Remember that it was the flow of money, controlled by the legislative leadership in the Capitol that ultimately led to the criminal charging, 13 years ago this month, for felony misconduct in public office, and even for extortion for one leader, ending their careers in public office and bringing disgrace and shame upon the Wisconsin Legislature. Ironically, one of those legislative leaders at the time, Assembly Speaker Scott Jensen, had made a proposal in 2001, that we supported, that would have eliminated the four legislative campaign committees and gotten much of the political money out of the Capitol. It went nowhere and there is some question about how serious Jensen really was about the proposal at the time. But it would have been an excellent beginning toward the separation of public policy from political money in Wisconsin.

This measure goes in the opposite direction. And the concentration of even more money in the hands of the legislative leadership increases the likelihood of another damaging political scandal in Wisconsin rather than diminishes it.

Do not rush this legislation through with so little public inspection. By doing so, you are ill-serving not only this institution, but far more importantly, the citizens of Wisconsin.