



Outside Spenders, Local Elections

Koch Brothers' Americans for Prosperity Sinks Its Undisclosed, Unregulated Money Into Local Affairs

Acknowledgments

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Introduction

The Supreme Court's 2010 *Citizens United* decision gave individuals, labor unions, and corporations the unfettered right to spend unlimited sums to influence elections.¹ In the wake of *Citizens United* and other court decisions, two of the primary sources of outside spending are super PACs and 501(c) non-profit groups, both of which may raise and spend unlimited amounts of money from individuals, labor unions, and corporations. Super PACs must disclose their donors while 501(c) groups are shielded from disclosure requirements by Internal Revenue Service regulations.

Most of the attention that has been given to outside groups' spending has concerned their impact on federal elections. In the 2012 cycle, the 10 biggest spending outside groups, (including both super PACs and 501(c) groups) reported spending more than \$560 million to influence the outcomes of federal elections.²

Among those top spenders was Americans for Prosperity³ (herein "AFP"), a 501(c)(4) group that spent more than \$33 million. AFP was founded and initially funded by Koch Industries' owners Charles and David Koch, who reportedly have a collective net worth of about \$100 billion.⁴ While AFP is maintaining a significant role in 2014's federal elections (some estimates suggest it will spend as much as \$125 million⁵), it also is using its massive resources to influence seemingly obscure local elections, such as small-town mayoral

¹ *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), <http://1.usa.gov/9Hn7y5>. *Citizens United* outlawed restrictions on the ability of outside entities, including corporations and unions, to spend money from their treasuries to make independent expenditures (expenditures expressly intended to influence the outcomes of elections). A subsequent decision by the U.S. Court of Appeals for the District of Columbia Circuit determined that limitations on the amounts of contributions to groups engaging in independent expenditures could not be justified in the wake of *Citizens United*. See *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), <http://1.usa.gov/sPC9tI>. The Federal Election Commission then ruled that independent expenditure groups may accept unlimited contributions from corporations and unions, as well as individuals. See Federal Election Commission, Advisory Opinion 2010-11 (July 22, 2010), <http://bit.ly/IK6LUX>. The cumulative effect of these decisions was to permit outside entities to use unlimited contributions from corporations, unions and individuals to influence the outcomes of elections. Entities that acknowledge a primary purpose of using unlimited contributions to influence elections are known as independent expenditure-only committees, or super PACs.

² *Outside Spending, 2012 Cycle*, CENTER FOR RESPONSIVE POLITICS (viewed June 4, 2014), <http://bit.ly/1iYaRBw>. Note: These figures exclude spending by national party committees.

³ Americans for Prosperity is made up of two distinct, but related groups: a 501(c) (4) group called Americans for Prosperity and a 501(c) (3) group called Americans for Prosperity Foundation. By law, Americans for Prosperity Foundation cannot engage in electioneering activity. In 2012, Americans for Prosperity reported revenue of \$115 million and Americans for Prosperity Foundation reported revenue of \$22 million. This report will primarily focus on the activities of the 501(c) (4) group, Americans for Prosperity.

⁴ David de Jong, *Koch Brothers Net Worth Tops \$100 Billion as TV Warfare Escalate*, BLOOMBERG (April 17, 2014), <http://bloom.bg/P63cbl>. See also Peter Overby, *Who's Raising Money for the Tea Party Movement*, NPR (February 19, 2010), <http://n.pr/1uxEP4I>.

⁵ Kenneth P. Vogel, *Koch Brothers' Americans for Prosperity Plans \$125 Million Spending Spree*, POLITICO (May 9, 2014), <http://politi.co/1nnUOU7>.

contests, school board races and ballot initiatives. (Americans for Prosperity is part of the broader Koch-related network, which itself is expected to spend as much as \$300 million on the 2014 election and in preparation for the 2016 presidential race.⁶) Because of its comparatively massive resources, AFP has the ability to drown out the voices of the residents whom the elections primarily affect.

Americans for Prosperity has state affiliates. In theory, the work conducted by these affiliates could represent legitimate grassroots work by concerned citizens aiming to affect policy issues that are important to them. According to its website, Americans for Prosperity works on several broad policy and issues areas, including lowering taxes and government spending, loosening regulations, and restoring fairness to the judicial system.⁷

But although there is no question AFP is investing heavily in creating a grassroots presence, the activities of AFP's local affiliates appear to be largely funded by the national group. As of June 2014, AFP had chapters in 31 different states.⁸ However, none of these chapters filed their own 990 forms with the IRS, according to the most recently available data. Moreover, AFP and its related organization, Americans for Prosperity Foundation, reported spending more than \$14 million to support their state affiliates.⁹ And several directors of state affiliates were among the highest paid employees of AFP's 501(c)(3) and 501(c)(4) national groups, further suggesting that the state groups are indistinguishable from the national groups.¹⁰ These individuals include Steve Lonegan (who was paid \$180,321 by the national groups in 2012, while he was state director of AFP's New Jersey affiliate); Teresa Oelke (paid \$131,576 by the national groups in 2012, while serving as state director of AFP's Arkansas affiliate); and Derrick Sontag (who was paid \$124,711 by the national groups in 2012, while serving as the state director of AFP's Kansas affiliate). Both Oelke and Sontag took positions with the national groups after serving as state directors.

AFP itself is heavily dependent on only a handful of donors. Although the groups are not required to disclose the identities of their donors to the public, they must itemize contributions of \$5,000 or more on the 990 tax form they submit to the IRS.

⁶ Matea Gold, *An Expanding Koch Network Aims to Spend \$300 Million to Shape Senate Fight and 2016*, WASHINGTON POST (June 18, 2014), <http://wapo.st/1ynpqJ0>.

⁷ *About Americans for Prosperity*, AMERICANS FOR PROSPERITY (viewed June 17, 2014), <http://bit.ly/1vFMYXj>.

⁸ *State Chapters*, AMERICANS FOR PROSPERITY (viewed June 4, 2014), <http://bit.ly/1kDdJs0>.

⁹ Americans for Prosperity Foundation, IRS Form 990 2012 at 2 (viewed June 4, 2014), <http://bit.ly/1kMpN5S> and Americans for Prosperity, IRS Form 990 2012 at 7 (viewed June 4, 2014), <http://bit.ly/1p7lu9Y>.

¹⁰ Americans for Prosperity, IRS Form 990 2012 at 2 (viewed June 4, 2014), <http://bit.ly/1p7lu9Y>.

Americans for Prosperity's tax forms reveal that the group's top five donors in 2012 gave \$26 million, \$21 million, \$11 million, \$10 million and \$7.3 million.¹¹ It cannot be determined from the information provided if the donors were corporations or individuals. In total, nearly 78 percent of Americans for Prosperity's \$115 million in revenue for 2012 came from entities that gave \$1 million or more.¹² The remainder of this report will highlight several races in which AFP has injected itself into local affairs.

Kenosha, Wis., School Board Race

On April 1, 2014, Kenosha, Wis., held elections to fill many local offices. Among them: two seats on the Kenosha Unified School District school board.¹³ Americans for Prosperity reportedly became involved in the race because members of the previous school board negotiated a labor contract with the local teacher's union.¹⁴ (In 2011, Wisconsin had passed a law, Act 10, that banned collective bargaining.¹⁵) When asked, AFP representative David Fladeboe declined to say how much money AFP had committed to the school board race, only saying that AFP was paying for canvassing and phone banks.¹⁶ Concerned about the involvement of Americans for Prosperity, state senator Bob Wirch said, "Local races are the last bastion of unspoiled democracy, with friends and neighbors working for a candidate."¹⁷

Gary Kunich and Dan Wade, who were both highly critical of the school board's decision to negotiate a labor contract won the two available seats on the school board.¹⁸

Douglas County, Colo., School Board Race

In 2013, Americans for Prosperity reportedly spent more than \$350,000 in an effort to elect four of its preferred candidates to the Douglas County, Colo., school board. At stake was whether several significant policy changes that had been made by the board—which included weakening the local teachers union, implementing a voucher program and paying teachers based on the subjects they teach—would be retained. AFP sought to maintain the existing composition of the board, which was being challenged by teachers unions.

¹¹ Americans for Prosperity, IRS Form 990 2012 at Schedule B (viewed June 4, 2014), <http://bit.ly/1p7lu9Y>.

¹² *Dark Money Disclosure: 990 Tax Returns*, CITIZENS FOR ETHICS AND RESPONSIBILITY IN WASHINGTON (viewed June 11, 2014), <http://bit.ly/1n6usCe>.

¹³ *2014 Spring Election Results*, KENOSHA COUNTY GOVERNMENT (viewed June 4, 2014), <http://bit.ly/1nPwNqe>.

¹⁴ Deneen Smith, *Americans for Prosperity Throws Its Weight Into Kenosha Unified School Board Race*, KENOSHA NEWS (March 24, 2014), <http://bit.ly/1omRdqH>.

¹⁵ Todd Richmond and Scott Bauer, *Scott Walker's Collective Bargaining Law Upheld by Federal Appeals Court*, ASSOCIATED PRESS (January 18, 2013), <http://huff.to/1uxGabR>.

¹⁶ Shamane Mills, *Americans for Prosperity Gets Involved in Kenosha School Board Election*, WISCONSIN PUBLIC RADIO (March 27, 2014), <http://bit.ly/1ngeCXr>.

¹⁷ *Id.*

¹⁸ *2014 Spring Election Results*, KENOSHA COUNTY GOVERNMENT (viewed June 4, 2014), <http://bit.ly/1nPwNqe>.

However, the Nov. 5, 2013, election was a success for AFP; each of its chosen candidates won.¹⁹

Lakeview, Minn., Mayor's Race

In 2012, Lakeville, Minn., city council member Matt Little decide to run for mayor of the roughly 50,000 person city. His entrance into the race drew the attention of AFP, which distributed mailers attacking Little.²⁰ Little, during his tenure on the city council voted against hiring an outside electrical contractor at the expense of unionized position for a part-time city employee.²¹ Despite the entrance of AFP into a distinctly local race, Little won election with 44 percent of the vote.²²

Coralville, Iowa, City Elections

Coralville, Iowa, is a town of 19,000 people. But its 2013 mayoral election attracted Americans for Prosperity, which denounced the city's mounting debt. In the run up to the election, even residents who agreed with AFP's stance on the city's debt issue were reluctant to embrace the organization's intrusion into local issues.²³ In fact, residents noted that many issues that are important to locals were largely ignored because of AFP's heavy-handedness on the debt issue.²⁴ Laurie Goodrich, who ran for city council, was distressed that many issues, such as painting the water tower and cleaning the parks, were not getting their due, noting, "We have not discussed any of that. The sad part is, is that that's really what concerns people who live here."²⁵ On Nov. 5, 2013, AFP-backed candidates lost elections for mayor and every city council race, prompting a congratulatory phone call from Vice President Joe Biden to Coralville Mayor John Lundell.²⁶

¹⁹ Stephanie Simon, *Koch Group, Unions Battle over Colorado Schools Race*, POLITICO (November 2, 2013), <http://politi.co/TexdZA>.

²⁰ Jim Adams, *At 27 Mayor Is Lakeville's Youngest*, MINNEAPOLIS STAR TRIBUNE (November 10, 2012), <http://strib.mn/1obSJts>.

²¹ Aaron Klemz, *Koch Brother's Local Election Spending Reaches Absurd Apogee*, LEFT MN (November 5, 2012), <http://bit.ly/1hbre2p>.

²² Jim Adams, *At 27 Mayor Is Lakeville's Youngest*, MINNEAPOLIS STAR TRIBUNE (November 10, 2012), <http://strib.mn/1obSJts>.

²³ John Eligon, *Koch Group has Ambitions in Small Races*, NEW YORK TIMES (November 3, 2013), <http://nyti.ms/1hbrZbK>.

²⁴ *Id.*

²⁵ John Eligon, *Koch Group has Ambitions in Small Races*, NEW YORK TIMES (November 3, 2013), <http://nyti.ms/1hbrZbK>.

²⁶ Dave Weigel, *David Koch's Americans for Prosperity Loses an Election in Iowa*, SLATE (November 6, 2013), <http://slate.me/1obTSRL>.

Columbus, Ohio, Zoo Tax

In May 2014, residents of Columbus, Ohio, voted on a proposed new levy that would help fund the local zoo and aquarium.²⁷ The old zoo and aquarium levy cost homeowners approximately \$21 per \$100,000 in home value, while the new levy would increase the amount dedicated to the zoo and aquarium to \$44 per \$100,000 in home value. AFP reportedly spent more than \$20,000 to send a mailing in opposition to the levy, which was rejected by voters on May 6.²⁸

Iron County, Wis., Iron Mine

In April 2014, 6,000 person, Iron County, Wis., held elections for its County Board of Supervisors. Historically, candidates for the county's 15 board seats have run unopposed. But in 2014, 10 of the 15 races were contested.²⁹ The reason: controversy over a proposed open pit iron mine that would be developed inside the county's borders. Americans for Prosperity sent out mailers to about 1,000 homes denouncing several candidates as "anti-mining radicals."³⁰ Of the candidates backed by AFP, five won their races and four lost. AFP did not express a preference in the tenth contested race.³¹ Americans for Prosperity did not disclose how much they spent on the election.

Conclusion

The relaxation of campaign finance regulations has left local jurisdictions with no ability to stem the tide of outside money to influence elections, even though the results of those elections principally affect local residents, not the outside spenders.

AFP is the stereotype of an outside group funded primarily by millionaires—and likely billionaires—inserting itself into local affairs. Elections that were previously focused on their own unique, locally driven set of issues have been hijacked by AFP and its own set of priorities. With AFP intensifying its election-related activities, there's every reason to expect this burgeoning trend to grow far more prevalent.

²⁷ Kathy Lynn Gray, *Columbus Zoo Levy Slammed by Americans for Prosperity*, COLUMBUS DISPATCH (April 25, 2014), <http://bit.ly/1k1aEhZ>.

²⁸ Kathy Lynn Gray, *Columbus Zoo Levy Slammed by Americans for Prosperity*, COLUMBUS DISPATCH (April 25, 2014), <http://bit.ly/1k1aEhZ>.

²⁹ Steven Verberg, *Divisive Mine Plan Draw Challengers to Usually Uncontested Iron County Board Races*, WISCONSIN STATE JOURNAL (February 9, 2014), <http://bit.ly/1ovRKCE>.

³⁰ Lee Bergquist, *Koch Brother-Backed Group Enters Iron County*, MILWAUKEE JOURNAL SENTINEL (March 23, 2014), <http://bit.ly/1oPpNpY>.

³¹ Steven Verburg, *Five Backed by Koch Brothers Group Win Seats, 4 Lose in County Split by Plan for Huge Mine*, WISCONSIN STATE JOURNAL (April 3, 2014), <http://bit.ly/1kDdCwl>.