



The Foundation of *Citizens United* Is in Ruins

How Outside Groups' Interference in State and Local Elections Has Disproved the Supreme Court's Assumption of Independence

Acknowledgments

This report was written by Michael Tanglis, Senior Researcher for Public Citizen's Congress Watch division and edited by Congress Watch Research Director Taylor Lincoln.

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PUBLICCITIZEN

Public Citizen's Congress Watch

215 Pennsylvania Ave. S.E

Washington, D.C. 20003

P: 202-546-4996

F: 202-547-7392

<http://www.citizen.org>

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Introduction

“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.”¹

- Supreme Court Justice Anthony Kennedy

The Supreme Court’s 2010 decision *Citizens United v. Federal Election Commission* opened the door for outside entities to collect and spend an unlimited amount of money to influence elections.

The decision was based on an assumption that campaign spending by outside groups is truly independent of candidates and, therefore, cannot buy favors or otherwise corrupt lawmakers. If one were to describe the *Citizens United* decision as a house, it would be reasonable to describe the notion of independence of these third-party groups as the foundation on which the house was built.

The Court’s majority opinion, written by Justice Anthony Kennedy, relies on the 1976 Supreme Court Decision, *Buckley v. Valeo*, to assume that outside groups inherently act independently. The *Buckley* opinion states: “The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.”² *Buckley* also found that limiting the size direct contributions to candidates was constitutional because such contributions had the potential to cause corruption.

In *Citizen United*, the Court determined that limiting the campaign expenditures of third-party entities was not justified because those entities’ expenditures did not pose a sufficient risk of provoking corruption. Using the same rationale, a subsequent Court decision also invalidated limits on donations to these outside groups as long as the funds are not used to make direct contributions to candidates or parties.³

¹ *Citizens United v. FEC*, 130 S.Ct. 44 (2010), <http://1.usa.gov/9Hn7y5>.

² *Buckley v. Valeo*, 424 U.S. 1, 47 (1976), <http://bit.ly/2fX07xF>.

³ *Citizens United v. FEC*, 130 S.Ct. 876 (2010), <http://1.usa.gov/9Hn7y5>. [Hereinafter *Citizens United*] *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 determined that limitations on the size 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/sPC9tl>. 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/lK6LUX>. 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.

The *Buckley* court was circumspect in reaching its conclusion. As Public Citizen's Scott Nelson and former U.S. Solicitor General Seth Waxman, *et al.*, wrote in an amicus brief filed in a case related to *Citizens United*, "*Buckley* was considerably more cautious and equivocal than *Citizens United* appears to suggest."⁴ *Buckley*, as Nelson and Waxman note, held that "independent advocacy ... does **not presently** appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."⁵ [emphasis added]

Kennedy's description of *Buckley* in the *Citizens United* decision, however, was far more absolute than the words in *Buckley* itself. Kennedy, citing *Buckley*, wrote: "By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate."⁶

Even if the *Buckley* Court was dead certain in 1976 that outside expenditures were truly independent of candidates, it would have been problematic for the *Citizens United* Court to rely on that 1976 conclusion in 2010 given how much the independent expenditure landscape had changed by then.

Because there was dramatically less outside spending in elections,⁷ the sample size to test the independence of the expenditures was relatively small in 1976. Within a year of the *Buckley*'s announcement, however, evidence of blurred lines and possible coordination appeared.

In 1977, the Federal Election Commission (FEC) "began a full-scale investigation into the legality of more than \$150,000 in expenditures"⁸ made in support of Ronald Reagan by an outside group during the Republican primary in 1976, the same year *Buckley* was announced. According to research at the time, "several [American Conservative Union] staff members worked for and were paid by the Reagan committee at the same time that the ACU was engaged in a vigorous, supposedly independent public campaign supporting the Reagan candidacy."⁹

Ultimately, the FEC closed the investigation without action by a 5-1 vote. The lone dissenter, Neil Staebler, stated: "I fear the impression left [by the 5-1 vote] may be that if a committee is brazen

⁴ Brief Of Amici Curiae Former Federal Election Commission Officials and Former State and Local Election And Campaign Finance Officials in Opposition to Petition for a Writ of Certiorari, at 25-26, *American Tradition Partnership Inc., et al. v. Bullock.*, in the Supreme Court of the United States, at 5-6 (May 2012), <http://bit.ly/QFTuta>. [Hereinafter Amicus Brief]

⁵ *Buckley v. Valeo*, 424 U.S. 1, 46 (1976), <http://bit.ly/2fX07xF>.

⁶ *Citizens United v. FEC*, 130 S.Ct. 44 (2010), <http://1.usa.gov/9Hn7y5>.

⁷ Independent expenditures (a legal term for expenditures made by entities not officially connected to candidates) during the 1976 presidential campaign, the first presidential election after the *Buckley* decision, totalled \$454,128. Adjusted for inflation, that would have amounted to \$1.7 million in 2008, the last presidential election before *Citizens United*. But in the 2008 presidential election, there were \$233.6 million in total independent expenditures, an increase of 13,497 percent from 1976. See, HERBERT E. ALEXANDER, FINANCING THE 1976 ELECTION, 186 (CONGRESSIONAL QUARTERLY PRESS, 1976) and Open Secrets, *2008 Presidential Race: Presidential Independent Expenditures*, CENTER FOR RESPONSIVE POLITICS, <http://bit.ly/2gVsgEO>.

⁸ HERBERT E. ALEXANDER, FINANCING THE 1976 ELECTION, 519 (CONGRESSIONAL QUARTERLY PRESS, 1976).

⁹ *Id.*

enough and massive enough in its violations and sophisticated enough in its operations, the law will somehow not be applied.”¹⁰

In the time since *Citizens United*, candidates have commonly used purportedly “independent” groups as an accessory of their campaigns. For instance, in 2012, both major party presidential nominees endorsed and raised money for super PACs dedicated to supporting them.¹¹

The 2016 presidential campaign was no different. After working for Donald Trump, “two of the candidate’s senior staffers formed the Rebuilding America Now super PAC almost immediately after leaving the campaign,” the Campaign Legal Center reported.¹² Rebuilding America Now supported Donald Trump.¹³

Meanwhile, the leader of a super PAC called Correct the Record openly acknowledged his group’s intentions. “Going forward, Correct the Record will work in support of Hillary Clinton’s candidacy for president, aggressively responding to false attacks and misstatements of the secretary’s exemplary record,” said David Brock, the group’s founder.¹⁴ A spokeswoman for the group claimed that Correct the Record could legally coordinate with the Clinton campaign as long as it avoided purchasing television ads and confined itself to certain activities. “The FEC rules specifically permit some activity – in particular, activity on an organization’s website, in email, and on social media – to be legally coordinated with candidates and political parties,” the spokeswoman said.¹⁵ Regardless of whether they were legal, the group’s activities plainly were not “independent.”

Much attention has been paid to the use of super PACs to evade campaign finance laws at the federal level. But the massive amounts of spending by outside groups, as well as “brazen” and “sophisticated” evasions of laws aimed at preventing coordination, have also occurred at the state and local levels. A 2014 Brennan Center report, for instance, found that “since 2010, candidate behavior in elections at all levels often has blurred the difference beyond recognition. Many candidates, in raising massive sums for the outside groups that exist often exclusively to support them, appear to be as closely involved as in their own campaign fundraising.”¹⁶

As this report will discuss, purportedly “independent” groups at the state and local levels often are run by candidates’ close allies. Prior to *Citizens United*, jurisdictions were permitted to restrict the

¹⁰ HERBERT E. ALEXANDER, *FINANCING THE 1976 ELECTION*, 520 (CONGRESSIONAL QUARTERLY PRESS, 1976).

¹¹ TAYLOR LINCOLN, PUBLIC CITIZEN, *SUPER CONNECTED: OUTSIDE GROUPS’ DEVOTION TO INDIVIDUAL CANDIDATES AND POLITICAL PARTIES DISPROVES THE SUPREME COURT’S KEY ASSUMPTION IN CITIZENS UNITED THAT UNREGULATED OUTSIDE SPENDERS WOULD BE ‘INDEPENDENT’* (March 2013), <http://bit.ly/2iIF6H6>.

¹² Brendan Fischer, *How Both Hillary Clinton and Donald Trump Are Flouting Campaign Finance Rules*, MOYERS & COMPANY (Oct. 28, 2016), <http://bit.ly/2fjb16J>.

¹³ *Id.*

¹⁴ Maggie Haberman, *Hillary Clinton-Aligned Group Gets Closer to Her Campaign*, THE NEW YORK TIMES (May 12, 2015), <http://nyti.ms/2iPUXkx>.

¹⁵ Matea Gold, *How a Super PAC Plans to Coordinate Directly With Hillary Clinton’s Campaign*, THE WASHINGTON POST (May 12, 2015), <http://wapo.st/2iElWQh>.

¹⁶ CHISUN LEE, BRENT FERGUSON, AND DAVID EARLY, BRENNAN CENTER FOR JUSTICE, *AFTER CITIZENS UNITED: THE STORY IN THE STATES*, (2014), 10, <http://bit.ly/2dZoZDI>.

size of contributions to outside groups that spend the money to influence elections. Such limits are no longer permitted. Consequently, it is possible for wealthy supporters of candidates to make unlimited contributions to outside groups that effectively serve as unregulated campaign arms for the candidates.

In mayoral races and even elections for unpaid school board seats, *Citizens United* has given rise to a shadow campaign finance system. In many cases, little differentiates a candidate's campaign – other than the existence of contribution limits – from closely aligned third-party groups.

Outside groups raising unlimited amounts of money – all while operating as an arm of the candidate campaigns – has warped state and local politics to a point where even the smallest, most local races may be flooded with outrageous sums of outside money. Dedicated would-be public servants, who are in no way polished politicians and fundraisers, now have to ask themselves: Is it really worth facing hundreds of thousands of dollars in negative advertisements just to win an unpaid school board seat?

Chicago Mayor's Race: Donors Use Super PAC as a Pit Stop Until They Can Donate Unlimited Amounts Directly to the Candidate

*"They're the shiny new object in campaigns today, and they provide new flexibility – especially in municipalities and states where there's far more stringent control."*¹⁷

- Rebecca Carroll, Chairman and CEO of Chicago Forward Super PAC

In March 2014, Rebecca Carroll left her position as the chief communications officer for the Chicago Public Schools in the administration of Chicago Mayor Rahm Emanuel. Within one month, she founded and became chairman and CEO of Chicago Forward, "the city's first-ever municipal Super PAC," according to her LinkedIn page.¹⁸ An abundance of evidence suggests that Chicago Forward was not truly independent of Emanuel.

According to Carroll's LinkedIn page, Chicago Forward "raised \$5 million to fund the development and implementation of paid media campaigns in support of Mayor Rahm Emanuel's reelection and 35 aldermanic elections. More than 70% of its supported candidates won election or reelection to the Chicago City Council."¹⁹

Carroll is a veteran of Illinois politics and campaigns. In 2002 she worked as communications director for Rahm Emanuel's congressional campaign. She also has held positions with the Illinois governor's office and Obama for America.²⁰

While working for the Chicago Public Schools, Carroll's close relationship with Emanuel and City Hall bothered the person who should have been her boss, Jean-Claude Brizard, who was the CEO of the Chicago Public Schools. "It was clear that Becky did not work for me. I regarded her as part of the communications team at City Hall. That was the way in which we operated, frankly," Brizard said.²¹

The identities of donors to Chicago Forward and the timing of their contributions provide additional evidence that the super PAC was part of Emanuel's political operation. When wealthy donors reached their contribution limit to Rahm Emanuel's official campaign committee, many began contributing large sums of money to the Super PAC, campaign contribution records show. But when (due to a quirk in Illinois campaign finance law) the limit on conventional campaign contributions to candidates was lifted – therefore greatly diminishing the value of using a super

¹⁷ Theodore Schleifer, *Super PACs coming to a city near you*, CNN POLITICS (May 19, 2015), <http://cnn.it/2fldDUF>.

¹⁸ Becky Carroll, *LinkedIn* [Profile Page]. (Retrieved November 11, 2016), <http://bit.ly/2fIIT1T>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Michael Miner, *CPS's bizarre communication triangle*, CHICAGO READER (Nov. 14, 2012), <http://bit.ly/2eWoc2v>.

PAC to evade the contribution limits – the same donors changed course again, and began to contribute large sums of money directly to Emanuel’s committee.

Carroll “defended the [Super PACs] as giving donors another choice when confronted by city laws that rule out big checks,” according to a *CNN Politics* report.²² “They’re the shiny new object in campaigns today, and they provide new flexibility – especially in municipalities and states where there’s far more stringent control,”²³ Carroll reportedly said.

As the Brennan Center for Justice pointed out in a 2014 report: “With candidates’ former associates leading these outside groups, donors can, in turn, have confidence that their contributions will carry as much weight as if they were contributing directly to the candidates’ campaigns.”²⁴

According to Illinois election documents, Rebecca Carroll formally created the independent expenditure political action committee (a legal term for groups informally known as super PACs) Chicago Forward on June 24, 2014.²⁵ At the time of its founding, Chicago Forward indicated it had zero dollars of available funds.²⁶ In the absence of contribution limits, it did not take long for several large individual contributions to flow into the newly created super PAC.

By the end of its first day in existence, Chicago Forward had received \$950,000 from just seven people – an average of \$135,714 each. Each donor gave \$100,000 or more. Prior to contributing to the super PAC, each of these donors had contributed the maximum amount allowed under law to Rahm Emanuel’s committee. [See Table 1]

Table 1 - Contributions to Chicago Forward on the First Day of Existence

NAME	Date Received	Amount	Occupation	Employer	Maxed out to Emanuel	Contribution to Emanuel
John Canning	6/24/2014	\$100,000	Chairman	Madison Dearborn Partners	Yes	\$5,300 6/7/2013
Paul Finnegan	6/24/2014	\$100,000	CEO/Private Equity	Madison Dearborn Partners	Yes	\$5,300 6/7/2013
Kenneth Griffin	6/24/2014	\$150,000	CEO	Citadel Investment Group	Yes	\$5,300 9/30/2013
Eric Lefkofsky	6/24/2014	\$150,000	CEO	Groupon	Yes	\$5,300 2/19/2014
Barry Malkin	6/24/2014	\$150,000	Real Estate	GEM Investors	Yes	\$5,300 8/6/2013
Samuel Mencoff	6/24/2014	\$150,000	Co-CEO	Madison Dearborn Partners	Yes	\$5,300 6/7/2013
Michael Sacks	6/24/2014	\$150,000	CEO	Grosvenor Capital Mgmt.	Yes	\$5,300 9/23/2013

Source: Illinois State Board of Elections

According to Illinois contribution data, 73 percent of Chicago Forward’s eventual donors also gave to Emanuel’s Committee directly.

²² Theodore Schleifer, *Super PACs Coming to a City Near You*, CNN POLITICS (May 19, 2015), <http://cnn.it/2fldDUF>.

²³ *Id.*

²⁴ CHISUN LEE, BRENT FERGUSON, AND DAVID EARLY, BRENNAN CENTER FOR JUSTICE, *AFTER CITIZENS UNITED: THE STORY IN THE STATES*, (2014), 10, <http://bit.ly/2dZoZDI>.

²⁵ Chicago Forward, *Statement of Organization*, ILLINOIS STATE BOARD OF ELECTIONS, <http://bit.ly/2fFYsHQ>.

²⁶ *Id.*

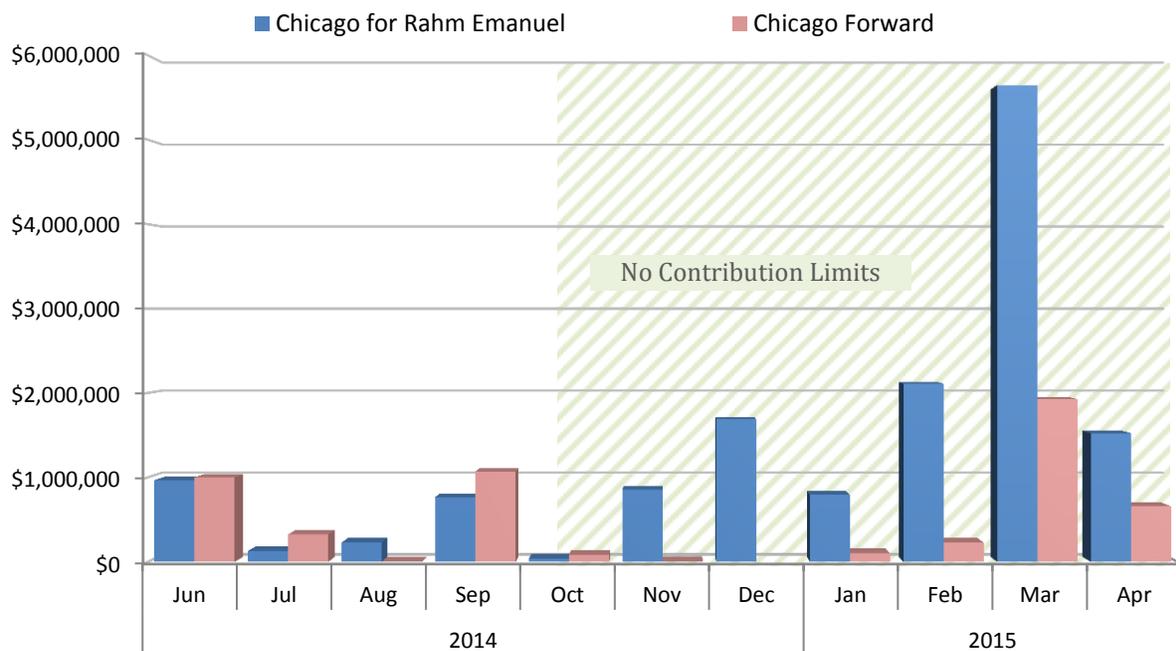
In the first four months of Chicago Forward’s existence, it outraised Rahm Emanuel’s committee in three of the four months – by a total of almost \$350,000 overall.

But on October 13, 2014, the dynamics of the race changed when William J. Kelly, a TV producer and businessman, loaned \$100,000 to his own long-shot campaign for mayor.²⁷

According to Illinois election law,²⁸ when any candidate self-funds in an amount of at least \$100,000, contribution limits to all candidates’ official committees are lifted for the rest of the campaign. So with his loan, Kelly paved the way for unlimited contributions to the mayoral candidates’ official committees. In explaining his reasoning behind the donation, Kelly claimed: “By busting the campaign caps, I have now leveled the playing field in this race.”²⁹ In reality, it allowed wealthy friends of Emanuel who had already contributed the maximum amount to his committee to supplement those contributions.

After the limit on contributions to candidates was lifted in October, money began to flow more heavily to Rahm Emanuel’s committee than to the super PAC. Emanuel’s committee outraised Chicago Forward in each month from November 2014 through April 2015 – by almost \$10 million overall during that time period. [See Figure 1]

Figure 1 – Chicago Forward & Chicago for Rahm Emanuel Contributions Jun. 2014 – Apr. 2015



²⁷ Loan Detail, *Friends of William J Kelly*, ILLINOIS STATE BOARD OF ELECTIONS (Oct. 13, 2014), <http://bit.ly/2fFr4Cz>.

²⁸ See *Contribution Limits off Search*, ILLINOIS STATE BOARD OF ELECTIONS, <http://bit.ly/2fryB74>.

²⁹ Release, *William J. Kelly's \$100K Contribution Lifts Caps in Chicago Mayoral Race*, WILLIAM J. KELLY FOR MAYOR, <http://bit.ly/2g2W13s>. (Website now down, author has PDF version viewed Aug. 13, 2016.)

The total number of individual contributions received by Chicago Forward also drastically fell after contribution limits were lifted in October.

The month before the contribution limits were lifted by Kelly's loan, September 2014, Chicago Forward received 26 donations, totaling more than \$1 million dollars. After that, donations began to plummet. In October, when limits existed for roughly half the month, Chicago forward received only four contributions. In November, it received two contributions, and in December, it received zero.

Kelly's loan was not the only time the contribution limits were lifted during the mayoral race. On Election Day, Feb. 24, 2015, no mayoral candidate received a majority of the vote. That triggered a runoff election between the two top finishers, Emanuel and fellow Democrat Jesus "Chuy" Garcia on April 7. Contribution limits would have been reinstated for the runoff election (Feb. 25 through April 7). But, on Feb. 27, 2015, Chicago Forward spent \$110,000³⁰ on "political communications" that were "supporting" Rahm Emanuel. The expenditure, like Kelly's loan, automatically lifted contribution limits again.³¹

During the runoff election, Chicago for Rahm Emanuel raised more than \$7 million, compared to \$5.6 million for Garcia's Committee. Emanuel's fundraising lead during that time was due in large part to giving by the original seven contributors to Chicago Forward [See Table 1], who donated more than \$1.2 million to Emanuel's official committee in the 43 days between the initial election and the runoff election.

The contribution patterns during the mayoral race indicate that once limits on contributions to Emanuel were gone, the super PAC lost its value. To use Carroll's terms, the "flexibility" was no longer needed because there was no more "stringent control."³²

³⁰ John Byrne, *As in First Round, No Limits on Fundraising in Mayoral Runoff*, CHICAGO TRIBUNE (March 2, 2015), <http://trib.in/2fFlp0l>.

³¹ See *Contribution Limits Off Search*, ILLINOIS STATE BOARD OF ELECTIONS, <http://bit.ly/2fryB74>.

³² Theodore Schleifer, *Super PACs Coming to a City Near You*, CNN POLITICS (May 19, 2015), <http://cnn.it/2fldDUF>.

Washington, D.C.: Donors Use PAC to “Ingratiate” Themselves with Mayor

“Seemed like a lot of money, and why are we doing it? ... If you want to continue to have good favor with the mayor, it is something you do.”³³

- FreshPAC Donor

In Washington, D.C., political action committees (PACs) are normally bound by contribution limits, which allow for a maximum individual contribution of \$5,000 per cycle.³⁴ But D.C. campaign finance law eliminates contribution limits to PACs during *non-election* years, stating: “limitations on contributions shall not apply to contributions made to ... political action committees during any calendar year in which the committee is not supporting candidates in either a primary or general election.”³⁵ Therefore, in non-election years, PACs in D.C. raise money like super PACs.

In 2015, a non-election year, Mayor Muriel Bowser’s former principal campaign committee treasurer,³⁶ Ben Soto, became treasurer for the new political action committee FreshPAC.³⁷ The name FreshPAC was a play on Bowser’s own campaign slogan the year before – a “fresh start.”³⁸

Soto contributed \$5,000 to FreshPAC on Oct. 1, 2015. In 2013, he gave the maximum \$2,000 to Bowser’s official campaign committee.³⁹ Premium Title & Escrow, where Soto serves as president and CEO,⁴⁰ was the first to contribute to FreshPAC, giving \$500 in April 2015. It had also previously contributed the maximum of \$2,000 to Bowser’s mayoral campaign committee in 2013.

Along with Soto, according to campaign finance data, 74 percent of the eventual contributors to FreshPAC had also contributed to Bowser’s official campaign committee.

According to filings with the D.C. Office of Campaign Finance, FreshPAC is registered at the address 1625 K Street, NW #700⁴¹ – an address that belongs to Goldblatt Martin Pozen (GMP) LLP,⁴² a

³³ Editorial Board, *D.C. Mayor’s Allies Wisely Shut Down FreshPAC*, THE WASHINGTON POST (Nov. 10, 2015), <http://wapo.st/2dZ5Hyb>.

³⁴ DC OFFICE OF CAMPAIGN FINANCE, CAMPAIGN FINANCE GUIDE 2015, GOVERNMENT OF THE DISTRICT OF COLUMBIA, 13, <http://bit.ly/2fV5NrP>.

³⁵ *Id.*

³⁶ Muriel Bowser for Mayor, *Report of Receipts and Expenditures for Candidate/Principal Campaign Committee*, DC OFFICE OF CAMPAIGN FINANCE (Feb. 1, 2014), <http://bit.ly/2fXrG9X>.

³⁷ Editorial Board, *Big Money Flows in the District*, THE WASHINGTON POST (Oct. 18, 2015), <http://wapo.st/2ejzP5V>.

³⁸ Aaron C. Davis, *Divided D.C. Council takes aim at Mayor Bowser’s super PAC*, THE WASHINGTON POST (Oct. 20, 2015), <http://wapo.st/2fLLzyX>.

³⁹ DC Office of Campaign Finance, *Campaign Finance Guide 2015*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, 12-13, <http://bit.ly/2fV5NrP>.

⁴⁰ Ben Soto. (n.d.) *LinkedIn* [Profile Page]. (Retrieved Nov. 11, 2016), <http://bit.ly/2frMKB8>.

⁴¹ FreshPAC, *Report of Receipts and Expenditures for Candidates, Principal Campaign Committee*, DC OFFICE OF CAMPAIGN FINANCE (July 7, 2015), <http://bit.ly/2fXADAh>.

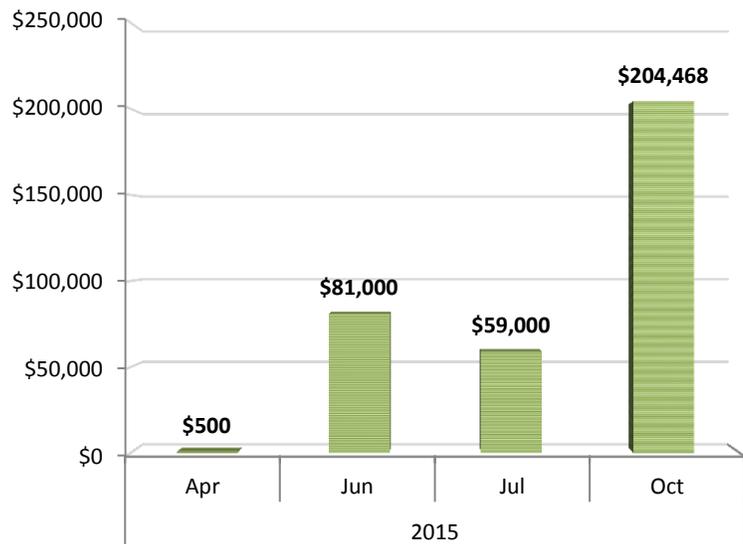
powerful D.C. law firm. Goldblatt deems itself as “skilled at helping clients navigate the areas of local government,” including “election law, campaign finance, government ethics and Freedom of Information issues.”⁴³ FreshPAC paid GMP more than \$11,000 for consulting between September 2015 and March 2016, according to D.C. campaign expenditure data.⁴⁴ Prior to that, Bowser’s official committee had paid GMP just under \$5,000 for consulting services between October 2013 and November 2014. GMP’s website prominently features a photo of Mayor Bowser.⁴⁵

Thorn Pozen, a GMP partner, donated the maximum \$2,000 to Bowser’s official committee in May 2013.⁴⁶ Pozen was appointed to the Metropolitan Washington Airports Authority Board of Directors by Bowser on July 15, 2015.⁴⁷

After it was created, FreshPAC raised money quickly. By October 2015, it had raised almost \$350,000, well on its way to its stated goal of \$1 million.⁴⁸ [See Figure 2]

But after heavy criticism from the public and some D.C. Council members, as well as relentless investigative reporting by WAMU’s Patrick Madden and *The Washington Post*, FreshPAC announced in November 2015 that it would shut down and return all its remaining money.⁴⁹ Soto acknowledged that FreshPAC had become “a really big distraction for the mayor.”⁵⁰

Figure 2 – FreshPAC Contributions



Much of the criticism focused on the fact that many of the FreshPAC donors were currently doing business, or seeking to do business, with the city. DC Council member Mary Cheh, described FreshPAC as “basically a kind of shakedown of those who are doing business or who want to do

⁴² See *Contact Us*, <http://gmpllp.com/contact/>.

⁴³ See Goldblatt Martin Pozen LLP web site (viewed on Jan. 5, 2017), <http://gmpllp.com/>.

⁴⁴ See DC Office of Campaign Finance, <http://bit.ly/2eFS6XV>.

⁴⁵ See Goldblatt Martin Pozen LLP web site (viewed on Jan. 5, 2017), <http://gmpllp.com/>.

⁴⁶ See DC Office of Campaign Finance, <http://bit.ly/2eFS6XV>.

⁴⁷ Release, *Thorn Pozen Joins the Metropolitan Washington Airports Authority Board of Directors*, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (July 15, 2015), <http://bit.ly/2g1sWYQ>.

⁴⁸ Patrick Madden, *Who's The Biggest Donor to the FreshPAC? Not Who You'd Expect*, WAMU (Nov. 2, 2015), <http://bit.ly/2frSn2j>.

⁴⁹ Patrick Madden, *Pro-Bowser Group FreshPAC Is Shutting Down, Treasurer Says*, WAMU (Nov. 11, 2015), <http://bit.ly/2eQ7Fjh>.

⁵⁰ Aaron C. Davis, *D.C. Mayor's Allies Reluctantly Shut Down Controversial PAC*, THE WASHINGTON POST (Nov. 11, 2015), <http://wapo.st/2fB5L7N>.

business in the District of Columbia.”⁵¹ According to an analysis by WAMU, FreshPAC contributors “are connected to more than \$70 million in contracts from the District government.”⁵²

When news broke about FreshPAC’s closure, Bowser was on a week-long trip to China. Bowser was joined on the trip by “two business owners who each contributed \$10,000 to FreshPAC.”⁵³ Along with a third businessman who was “seeking investment in China for a project that has a silent investor who made the largest contribution, \$20,000, to FreshPAC.”⁵⁴

The China trip was just one of the many issues that spurred allegations of “pay to play” with FreshPAC. According to *The Washington Post*, at least “three of Bowser’s nominees to boards and commissions contributed to the PAC within weeks of their confirmations.”⁵⁵ A real estate developer, Buwa Binitie, donated \$10,000 to FreshPAC after being nominated to serve on the Housing Finance Agency Board, which “oversees nearly a billion dollars in city assets and projects.”⁵⁶ When pressed about who asked him to donate to FreshPAC, Binitie responded “I do not recall.”⁵⁷

Earl “Chico” Horton III, the chairman of FreshPAC, was paid by the power company “Exelon to lobby city officials,”⁵⁸ on its controversial⁵⁹ purchase of the electric utility company Pepco. According to reports, Horton had never been hired as a lobbyist before.⁶⁰ He was hired the same week “the Bowser administration announced it would work with Exelon to reach a ‘settlement agreement’ ... allowing the purchase to move forward.”⁶¹ Cheh said Exelon’s hiring of Horton “feels sleazy and it erodes confidence in sense of good government.”⁶²

A company called First Veitch Street Corp. donated \$20,000 to FreshPAC. First Veitch Street had “the same address and directors as Fort Myer Construction,”⁶³ a company that has been paid more

⁵¹ Aaron C. Davis, *Divided D.C. Council takes aim at Mayor Bowser’s super PAC*, THE WASHINGTON POST (Oct. 20, 2015), <http://wapo.st/2fLLzyX>.

⁵² Patrick Madden, *Fresh PAC’s Biggest Donors Do Big Business With D.C. Government*, WAMU (Oct. 28, 2015), <http://bit.ly/2fEv2e9>.

⁵³ Editorial Board, *D.C. Mayor’s Allies Wisely Shut Down FreshPAC*, THE WASHINGTON POST (Nov. 10, 2015), <http://wapo.st/2dZ5Hyb>.

⁵⁴ *Id.*

⁵⁵ Aaron C. Davis, *D.C. Mayor’s Allies Reluctantly Shut Down Controversial PAC*, THE WASHINGTON POST (Nov. 11, 2015), <http://wapo.st/2fB5L7N>.

⁵⁶ Patrick Madden, *D.C. Developer Faces Questions Over Contribution to Bowser-Affiliated PAC*, WAMU (Nov. 6, 2015), <http://bit.ly/2fI2VmP>.

⁵⁷ *Id.*

⁵⁸ Patrick Madden, *Exelon Paid FreshPAC Chairman to Lobby D.C. Government About Merger*, WAMU (Dec. 16, 2015), <http://bit.ly/2eWsUgK>.

⁵⁹ Press Release, *Public Citizen and DC SUN Challenge Exelon’s Takeover of Pepco*, PUBLIC CITIZEN (April 22, 2016), <http://bit.ly/2fLwxcx>.

⁶⁰ Patrick Madden, *Exelon Paid FreshPAC Chairman to Lobby D.C. Government About Merger*, WAMU (Dec. 16, 2015), <http://bit.ly/2eWsUgK>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Patrick Madden, *Fresh PAC’s Biggest Donors Do Big Business With D.C. Government*, WAMU (Oct. 28, 2015), <http://bit.ly/2fEv2e9>.

than \$40 million by the Washington, D.C., government.⁶⁴ In 2003, Fort Myer paid a \$900,000 fine and pleaded guilty “to conspiracy to commit bribery in its role in distributing cash bribes”⁶⁵ to D.C. Department of Public Works officials.

The contributions to FreshPAC from First Veitch led to a scandal within the Department of General Services (DGS) after Fort Myer “lost out on two major city construction contracts.”⁶⁶ According to reporting by WAMU, City Administrator Rashad Young allegedly “asked DGS Director Christopher Weaver to fire two staff members involved in the contracting process” after the contracts were issued.⁶⁷ Weaver refused and resigned.⁶⁸ But the two staff members were allegedly still “forced out.”⁶⁹

While Soto said “there are clearly boundaries,”⁷⁰ between the PAC and Bowser, and “who we raise money from is completely independent from them,”⁷¹ the mayor attended two fundraisers for FreshPAC.⁷² And as noted above, 74 percent of the contributors to FreshPAC also contributed to Bowser’s campaign committee.

“I dispute the notion that contributors gave because they expected something in return or that the mayor would ever even entertain such thought,” Soto said.⁷³ But at least one donor interviewed by the *Washington Post*, who insisted on anonymity, felt pressure to donate to FreshPAC, saying: “Seemed like a lot of money, and why are we doing it? ... If you want to continue to have good favor with the mayor, it is something you do.”⁷⁴

⁶⁴ *Id.*

⁶⁵ *Fort Myer’s Friends*, THE WASHINGTON POST (Oct. 13, 2003), <http://wapo.st/2ewwDnk>.

⁶⁶ Patrick Madden, *Turmoil at D.C. Agency After Disputes With Prominent Contractor, Campaign Contributor*, WAMU (Aug. 25, 2016), <http://bit.ly/2f28ztv>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Patrick Madden, *New Bowser-Related PAC Is Raising Unlimited Funds, Thanks To Legal Quirk*, WAMU (Sept. 30, 2015), <http://bit.ly/2fXNQZU>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Aaron C. Davis, *D.C. Mayor’s Allies Reluctantly Shut Down Controversial PAC*, THE WASHINGTON POST (Nov. 11, 2015), <http://wapo.st/2fB5L7N>.

⁷⁴ Editorial Board, *D.C. Mayor’s Allies Wisely Shut Down FreshPAC*, THE WASHINGTON POST (Nov. 10, 2015), <http://wapo.st/2dZ5Hyb>.

New Jersey: Super PAC Spends an Estimated \$350,000 on Unpaid School Board Seats While Super PAC-Supported Candidates Barely Raise Money

*"My decision was to fight fire with fire."*⁷⁵

- Democrat State Senator Ray Lesniak

New Jersey Democratic state senator Raymond Lesniak has maintained a super PAC to advance his agenda. Headlines such as: "N.J. senator extends his influence through 'super PAC'," are common.⁷⁶

Lesniak's super PAC, the Committee for Economic Growth and Social Justice, was registered with the Federal Election Commission on Aug. 7, 2013.⁷⁷ It originally listed Diane Evans of Evans & Katz, a Washington, D.C., firm that specializes in campaign compliance,⁷⁸ as treasurer.⁷⁹ But the main person in charge of the super PAC is Sean Caddle, Lesniak's close ally and former campaign consultant.⁸⁰

In an interview Caddle explained that he and Lesniak came up with the idea together and "were ahead of the curve," saying: "When I first met Ray, one of our first conversations was about the formation of a super PAC."⁸¹

Lesniak has never been shy about his involvement with the super PAC. The law firm Wiener Lesniak LLP, which Lesniak founded,⁸² was the first to contribute to the super PAC, giving \$3,500 on July 31, 2013.⁸³ Lesniak's election fund contributed \$12,000 on October 24, 2013. A week later, Lesniak

⁷⁵ Fredreka Schouten, *Federal Super PACs Spend Big on Local Elections*, USA TODAY (Feb. 25, 2014), <http://usat.ly/2fWZEW>.

⁷⁶ Matt Friedman, *N.J. Senator Extends His Influence Through 'Super PAC'*, NJ.COM (Dec. 8, 2013), <http://bit.ly/2eYyiAh>.

⁷⁷ Committee for Economic Growth and Social Justice, *Statement of Organization*, FEDERAL ELECTION COMMISSION (Aug. 7, 2013), <http://bit.ly/2eL0ghX>.

⁷⁸ See <http://www.evanskatz.com/the-team>

⁷⁹ Committee for Economic Growth and Social Justice, *Statement of Organization*, FEDERAL ELECTION COMMISSION (Aug. 7, 2013), <http://bit.ly/2eL0ghX>.

⁸⁰ Max Pizarro, *The PAC at the Top of the Steps: Caddle Says 'It's a Legal Entity'*, THE OBSERVER (Nov. 4, 2014), <http://bit.ly/2fJa8t4>.

⁸¹ *Id.*

⁸² Matt Friedman, *Lesniak Leaves Law Firm he Co-Founded to 'Pursue Other Interests'*, POLITICO, (Jan 4, 2014), <http://politi.co/2ibtQzr>.

⁸³ Open Secrets, *Committee for Economic Growth & Social Justice: Contributors, 2014 Cycle*, CENTER FOR RESPONSIVE POLITICS, <http://bit.ly/2fECy95>.

himself contributed \$15,000.⁸⁴ When asked why he created the super PAC, Lesniak explained: "My decision was to fight fire with fire."⁸⁵

In 2013, Lesniak's "fire" was aimed at Elizabeth Board of Education in Elizabeth, N.J., a school district of just 25,000 students,⁸⁶ where school board seats are unpaid positions.⁸⁷ The Committee for Economic Growth and Social Justice spent more than \$150,000 to help elect two Lesniak allies, according to reports.⁸⁸

After gaining two seats in 2013, Lesniak allies were still in the minority on the board. Not satisfied, Lesniak set his sights on the next election, telling *USA Today* that the super PAC would "finish the job"⁸⁹ in 2014.

According to Caddle, part of the reason the super PAC was getting involved in the education board elections was because the mayor of Elizabeth City, Christian Bollwage – a Lesniak ally – did not have enough control over the education board. "I've worked all around the country. This dynamic of a school board that the mayor doesn't control is rare," Caddle said.⁹⁰

In 2014, there were two official joint committees supporting candidates in the race: 1) The "Jackson Carvalho & Amin Unity for Education 2014" committee, which included Lesniak allies and candidates Ana Maria Amin, Malik Jackson and Maria Carvalho, and 2) The "Perrerira Fajardo & Calella Continue the Progress" committee, which included Rafael Fajardo, Paul Perreira and Stefano Calella – Lesniak's enemies. New Jersey campaign finance reports indicate that as of Election Day 2014, Continue the Progress raised over \$48,000 (88 percent of which came from leftover funds of the two previous campaigns, 2012 and 2013), while Unity for Education raised just under \$16,000 by Election Day.⁹¹ [See Figure 3]

⁸⁴ *Id.*

⁸⁵ Fredreka Schouten, *Federal Super PACs Spend Big on Local Elections*, USA TODAY (Feb. 25, 2014), <http://usat.ly/2fFWZEW>.

⁸⁶ *Id.*

⁸⁷ *Id.*

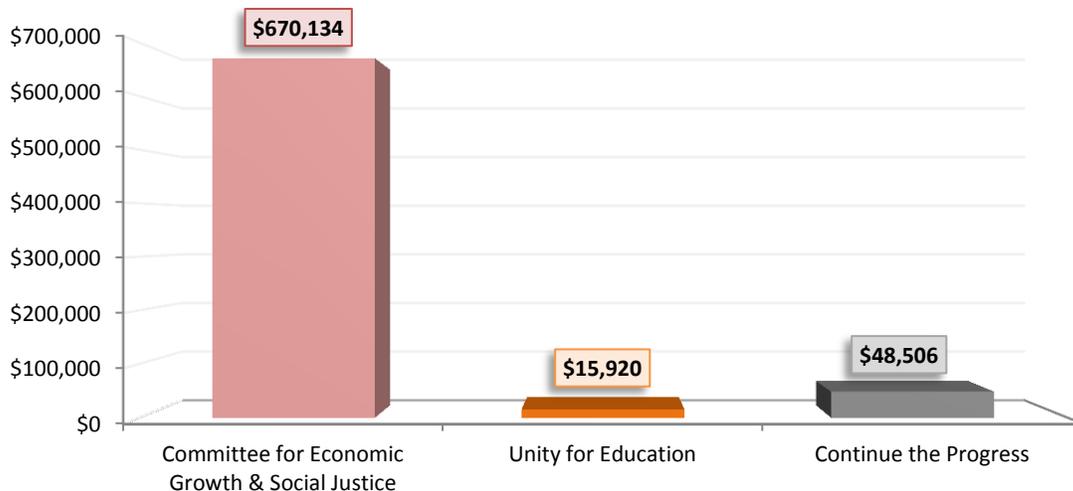
⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Max Pizarro, *The PAC at the Top of the Steps: Caddle Says 'It's a Legal Entity'*, THE OBSERVER (Nov. 4, 2014), <http://bit.ly/2fja8t4>.

⁹¹ See <http://bit.ly/2fXR3bM>.

Figure 3 – Elizabeth N.J. Board of Education Contribution Totals as of Election Day (11/4/2014)



But Lesniak’s super PAC, the Committee for Economic Growth & Social Justice, raised \$670,134 by Election Day – including more than \$106,000 in October 2014 alone, the month before the Education Board election.

Lesniak’s opponents, Continue the Progress, argued in a lawsuit weeks before Election Day that the super PAC was essentially the campaign arm of the Lesniak-backed candidates saying: “The super PAC’s activities have become the alter-ego of the Unity Committee campaign which, having raised less than \$300, does not even pretend to be running a campaign of its own,” and “it is absolutely clear” the super PACs expenditures “were coordinated with the Unity campaign.”⁹²

As of Sept. 30, 2014, a little over a month before Election Day, the Lesniak allies in the Unity for Education Committee had only raised \$857.76. All of which came from a single donation by Mayor Christian Bollwage, whom Caddle lamented “doesn’t control” the school board.

While the Committee for Economic Growth & Social Justice was not required by law to indicate exactly how it spent its money, Caddle estimated that the super PAC would spend more than \$200,000 on the race.⁹³ Two of the three candidates whom Lesniak’s super PAC supported won in 2014.

⁹² Matt Friedman, *Lesniak Super PAC Sued by Elizabeth Board of Education Candidates*, NJ.COM (Oct. 29, 2014), <http://bit.ly/2eWBHiK>.

⁹³ Max Pizarro, *The PAC at the Top of the Steps: Caddle Says ‘It’s a Legal Entity’*, THE OBSERVER (Nov. 4, 2014), <http://bit.ly/2fja8t4>.

According to Open Secrets, the Committee for Economic Growth & Social Justice spent \$655,986 during the 2013-2014 election cycle.⁹⁴ Ninety percent of its expenditures, \$591,559, were paid to Arkady LLC,⁹⁵ an entity founded by Sean Caddle on March 27, 2013.⁹⁶

The two largest contributors to the super PAC were the American Bail Coalition (ABC), which contributed \$75,000, and the New York Shipping Association, which contributed \$50,000.⁹⁷

According to a 2012 Justice Policy Institute report, ABC is “a national organization committed to lobbying for the for-profit bail industry.”⁹⁸ ABC got involved in the election “after several bail agents who operate in Lesniak's legislative district encouraged the national group to get involved,” according to *USA Today*.⁹⁹

While defending the super PAC, Lesniak said: “I’m not going to stand by while the Koch brothers and Sheldon Adelson pour money into campaigns I don’t agree with.”¹⁰⁰

But this defense falls flat. First, there is no evidence the Koch brothers were involved in the school board race. And second, the super PAC’s biggest funder, ABC, is deeply involved with the American Legislative Exchange Council (ALEC), a Koch brother funded¹⁰¹ group known for helping “launch the push for voter ID laws and ‘stand your ground’ statutes.”¹⁰² ABC went as far as to describe ALEC as its “Life Preserver” in a 2010 newsletter.¹⁰³

When legislation affecting the American Bail Coalition¹⁰⁴ and the New York Shipping Association¹⁰⁵ came before the New Jersey legislature, the groups’ donations to the Committee for Economic Growth & Social Justice, and its connection to Lesniak, were scrutinized by New Jersey media.

⁹⁴ Open Secrets, *Committee for Economic Growth & Social Justice: PAC Summary Data, 2014 Cycle*, CENTER FOR RESPONSIVE POLITICS, <http://bit.ly/2j6ZHkt>.

⁹⁵ Open Secrets, *Committee for Economic Growth & Social Justice: Expenditures, 2014 Cycle*, CENTER FOR RESPONSIVE POLITICS, <http://bit.ly/2kkSl1K>.

⁹⁶ On file with author.

⁹⁷ Committee for Economic Growth and Social Justice, *Schedule A Itemized Receipts*, FEDERAL ELECTION COMMISSION, (Year-End 2013) <http://bit.ly/2kk95qa> and (Post-General 2014) <http://bit.ly/2kkwC64>.

⁹⁸ Spike Bradford, *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice*, JUSTICE POLICY INSTITUTE (Sept. 2012), <http://bit.ly/2fkmcnZ>.

⁹⁹ Fredreka Schouten, *Federal Super PACs Spend Big on Local Elections*, USA TODAY (Feb. 25, 2014), <http://usat.ly/2fFWZEW>.

¹⁰⁰ Matt Friedman, *N.J. Senator Extends His Influence Through 'Super PAC'*, NJ.COM (Dec. 8, 2013), <http://bit.ly/2eYyiAh>.

¹⁰¹ Lisa Graves, *ALEC Exposed: The Koch Connection*, THE NATION (July 12, 2011), <http://bit.ly/2fB3vu8>.

¹⁰² Tarini Parti, *'Dark Money': ALEC Wants Image Makeover*, POLITICO (Jul. 30, 2015), <http://politi.co/2eWD15e>.

¹⁰³ *Newsletter October 2010*, AMERICAN BAIL COALITION (Oct. 2010), <http://bit.ly/2fG02uN>.

¹⁰⁴ Matt Friedman, *Tensions Erupt Over Last-Minute Push to Overhaul Bail System*, NJ.COM (July 24, 2014), <http://bit.ly/2fGdm0G>.

¹⁰⁵ The Auditor, *Group fighting Waterfront Commission Gave Big to Lesniak's Super PAC*, NJ.COM (March 13, 2015), <http://bit.ly/2eWD5BY>.

Oklahoma: School Superintendent Candidate Prearranges the Creation of Independent Campaign

*"This independent campaign would do be [sic] negative ads and allow me to take the high road with my own campaign."*¹⁰⁶

- School Superintendent Joy Hofmeister

Republican Janet Barresi was first elected Oklahoma State Superintendent of Public Instruction in 2010.¹⁰⁷ When running for reelection in 2014, she was challenged in the primary by former State Board of Education member, Joy Hofmeister.

On June 20, 2014, just four days before the primary election, the non-profit group Oklahomans for Public School Excellence (OPSE) spent \$195,500 on TV advertising opposing Barresi.¹⁰⁸

Hofmeister won the Republican primary by a large margin, finishing with 58 percent of the vote, while Barresi finished with only 21 percent of the vote (a third candidate received the remainder).¹⁰⁹ Hofmeister would go on to defeat her Democratic opponent in the general election in November.

But Hofmeister's win was not without controversy. Before the primary election, Barresi obtained, through an Open Records Act request, an email sent by Hofmeister to Jenks Public Schools Superintendent Kirby Lehman dated April 22, 2013. In the email, Hofmeister wrote: "I am meeting this morning in [Oklahoma City] with Fount Holland (AH Strategies) at 11am and Chad Alexander (probably better fit for the independent campaign) at 1pm."¹¹⁰

Fount Holland was the founder of AH Strategies,¹¹¹ a political consulting firm in Oklahoma. While Chad Alexander was a lobbyist, consultant, former chairman of the Oklahoma Republican Party,¹¹² and a former partner at AH Strategies.¹¹³

¹⁰⁶ Indictment and Affidavit of Probable Cause, *State of Oklahoma v. Hofmeister, et al.*, CF-16-108799, Page 6 (Nov. 3, 2016, Oklahoma County District Court), <http://bit.ly/2fLtB1o>.

¹⁰⁷ *General Election Summary Results*, OKLAHOMA STATE ELECTIONS BOARD (Nov. 2, 2010), <http://bit.ly/2glPMKg>.

¹⁰⁸ Oklahomans for Public School Excellence, *Independent Expenditures Report C5-R*, OKLAHOMA ETHICS COMMISSION (Jul. 25, 2014), <http://bit.ly/2eGdrjO>.

¹⁰⁹ *Federal, State, Legislative and Judicial Races Primary Election – June 24, 2014*, OKLAHOMA STATE ELECTION BOARD (Results as of Jul. 7, 2014), <http://bit.ly/2eL7D8Q>.

¹¹⁰ Chief Investigator, *Affidavit for Search Warrant*, OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE, Page 4 (Aug. 21, 2014), <http://bit.ly/2f0GiR1>.

¹¹¹ See *Who We Are: Font Holland*, AH STRATEGIES (viewed on Jan. 7, 2017), <http://bit.ly/2iWeeBc>.

¹¹² Rick Green, Prominent Lobbyist, *Former Head of Oklahoma Republican Party Arrested on Drug Complaints*, THE OKLAHOMAN (May 15, 2014), <http://bit.ly/2fXZwvw>.

¹¹³ See *What We Do – Winning Political Campaigns*, AH STRATEGIES (viewed on Jan. 7, 2017), <http://bit.ly/2iNkqha>.

A little more than a year later, on May 13, 2014, Chad Alexander “was arrested on complaints of possession of 3.35 grams of cocaine and possession of a controlled substance without a prescription.”¹¹⁴ While looking for evidence in the drug investigation, an Oklahoma police officer “observed several text messages and other information relating to Alexander’s interaction with various political candidates and organizations.”¹¹⁵ According to the affidavit for a search warrant of Alexander’s phones submitted by the chief investigator for the Oklahoma County District Attorney’s office, the “political candidates and organizations” included Joy Hofmeister and Oklahomans for Public School Excellence.

A search of Alexander’s phone showed a text message exchange between Alexander and Fount Holland dated April 24, 2013. They discussed doing an “IE [Independent Expenditure] against Baressi.” Alexander wrote that he “will use a different 527” to avoid any issues.¹¹⁶ [See Image, Right] (The term “527” typically refers to a political group that acts outside of the conventional campaign finance system.)

4-24-2013

Text string recovered from Chad Alexanders Iphone.

Fount Holland: “Will boren get pissed if you do an IE against Baressi!”
 Chad Alexander: “I will use a different 527.”
 Fount Holland: “Money in it”
 Fount Holland: “I hear the oea and the Kaisers might put mega m”
 Fount Holland: “k”
 Chad Alexander: “I know the oea will”
 Fount Holland: “Kaiser might play both sides”

To recap: On April 22 Hofmeister met with Fount Holland of AH Strategies and Chad Alexander, whom she thought would “probably be a better fit for the independent campaign.” Two days later, April 24, Holland and Alexander exchanged text messages discussing an independent expenditure group to be used “against Baressi,”¹¹⁷ Hofmeister’s primary opponent.

An independent expenditure report for Oklahomans for Public School Excellence filed with the Oklahoma Ethics Commission listed Stephanie Milligan, vice president of Alexander’s consulting firm,¹¹⁸ as the “custodian of the records” of Oklahomans for Public School Excellence.¹¹⁹

The Oklahoma County district attorney launched a criminal investigation into Hofmeister’s activities in 2014.¹²⁰ Almost two years later, on November 3, 2016, the investigation concluded with

¹¹⁴ Rick Green, Prominent Lobbyist, *Former Head of Oklahoma Republican Party Arrested on Drug Complaints*, THE OKLAHOMAN (May 15, 2014), <http://bit.ly/2fXZwww>.

¹¹⁵ Chief Investigator, *Affidavit for Search Warrant*, OKLAHOMA COUNTY DISTRICT ATTORNEY’S OFFICE, Page 3 (Aug. 21, 2014), <http://bit.ly/2f0GiR1>.

¹¹⁶ *Id.* at Page 4

¹¹⁷ *Id.*

¹¹⁸ Clifton Adcock, *Information Scarce on ‘Dark Money’ Group in Superintendent Campaign*, OKLAHOMA WATCH (Jul. 23, 2014), <http://bit.ly/2fj7zvi>.

¹¹⁹ Documents on file with author and can be found by searching <http://bit.ly/2jc3nly>.

¹²⁰ Nolan Clay, *Criminal Investigation is Underway Into Possible Public Corruption, Campaign Violations*, NEWSOK (Aug. 21, 2014), <http://bit.ly/2iRBjqT>.

an indictment of Joy Hofmeister for campaign violations and conspiracy.¹²¹ According to the indictment and the accompanying affidavit of probable cause (affidavit), in which Hofmeister was charged on five counts, she and others were accused of “illegal coordination.”¹²²

Robert [Fount] Holland of AH Strategies, Lela Odom, the Executive Director of Oklahoma Education Association, Steven Crawford, Executive Director of the Cooperative Council for Oklahoma, and campaign consultant Stephanie Milligan, were each indicted on three counts.¹²³

Count two against Hofmeister, titled “Contributions by Corporation Prohibited,” provides insight into who provided the funds that were eventually spent on negative campaign ads against Barresi. The money, in part, came from an Oklahoma City-based insurance company, American Fidelity.¹²⁴

American Fidelity donated \$50,000 to two nonprofits, the Cooperative Council for Oklahoma,¹²⁵ and Oklahoma Education Association.¹²⁶ The nonprofits then each “added \$100,000 of their own funds and donated the whole amount to Oklahomans for Public School Excellence,”¹²⁷ which resulted in Oklahomans for Public School Excellence receiving \$300,000 in total.

According to the affidavit, American Fidelity executives were “offered a position as board members” on Oklahomans for Public School Excellence. The affidavit said that “the executives of American Fidelity declined to be involved, however they agreed to provide funding for the group to do with as they saw fit.”¹²⁸



American Fidelity has long standing business ties with the Oklahoma Education Association, the group to which it gave the \$50,000 that would later be used against Janet Barresi by Oklahomans for Public School Excellence. American Fidelity has provided products and services to Oklahoma Education Association members since 1960, including: “cancer insurance, life insurance, disability income insurance, accident only insurance, tax-deferred annuities,” and “section 125 plans,” according to a recent membership brochure.¹²⁹ [See Image, Left]

¹²¹ Indictment and Affidavit of Probable Cause, *State of Oklahoma v. Hofmeister, et al.*, CF-16-108799, Page 1 (Nov. 3, 2016, Oklahoma County District Court), <http://bit.ly/2fLtb1o>.

¹²² *Id.* at Page 4

¹²³ *Id.* at Page 2

¹²⁴ Search “American Fidelity,” OKLAHOMA SECRETARY OF STATE, <http://bit.ly/2eQpe2y>.

¹²⁵ Search “Cooperative Council for Oklahoma,” OKLAHOMA SECRETARY OF STATE, <http://bit.ly/2eQpe2y>.

¹²⁶ Search “Oklahoma Education Association,” OKLAHOMA SECRETARY OF STATE, <http://bit.ly/2eQpe2y>.

¹²⁷ Indictment and Affidavit of Probable Cause, *State of Oklahoma v. Hofmeister, et al.*, CF-16-108799, Page 4 (Nov. 3, 2016, Oklahoma County District Court), <http://bit.ly/2fLtb1o>.

¹²⁸ *Id.*

¹²⁹ *The Education Focus*, OKLAHOMA EDUCATION ASSOCIATION (Aug./Sept. 2015), <http://bit.ly/2eLkS9E>.

American Fidelity has a long history of doing business in Oklahoma. It provides Health Savings Accounts for the state.¹³⁰ It also is the “Flexible Spending Account Administrator,” and provides many benefit options to the Oklahoma City Public Schools as an “approved vendor.”¹³¹

In May 2014, American Fidelity donated \$35,000 worth of furniture to Oklahoma City Public Schools.¹³²

The affidavit accuses Hofmeister of receiving corporate contributions via Oklahomans for Public School Excellence, and provides far more evidence of coordination between the Hofmeister campaign and the outside group than was previously publicly available. As early as April 2013, long before Oklahomans for Public School Excellence was actually incorporated, Hofmeister was aware of, and regularly discussed, her “independent campaign,” the affidavit reports.

In an April 2013 email, Hofmeister discussed a meeting she had with Glenn Coffee, an “Oklahoma City attorney and political strategist,”¹³³ after which she wrote to the Superintendent of Jenks Public Schools, Kirby Lehman: “He [Coffee] likes Chad Alexander for the independent campaign which would be where he would put the CCOSA, OSSBA, OEA money, plus amounts from corporations as it would all be anonymous.”¹³⁴ OSSBA (the Oklahoma State School Boards Association) ultimately did not contribute, according to the affidavit.¹³⁵ [See Image, Below]

On 4-17/18-2013

Hofmeister emails Kirby Lehman (Superintendent of Jenks Public Schools): “Had very, very good meeting 1hour 40 mins with Glenn today. Then strategy with Crawford, Mills and Ryan for couple more hours. Coffee thinks I should look at AH Strategies, Neva Hill or Chad Alexander for campaign management. He likes Chad Alexander for the independent campaign which would be where he would put CCOSA, OSSBA, OEA money, plus amounts from corporations as it would all be anonymous. This independent campaign would do be negative ads and allow me to take the high road with my own campaign.”: “Coffee is willing to consider being retained as campaigns political strategist. Ryan thinks its better to retain him as legal council formally, which would ensure attorney client privilege.” (emphasis added)

Hofmeister indicated that the “independent” group, which would include money “from corporations,” will run the negative ads so she would not have to. “This independent campaign

¹³⁰ Office of Management and Enterprise Services, *Employee Benefit Options Guide*, OKLAHOMA STATE GOVERNMENT (Plan Year 2014), <http://bit.ly/2eLbUZx>. See also <http://bit.ly/2ewB4vn>.

¹³¹ Human Resources Department, *Central Office – Professional & Technical Staff Benefits*, OKLAHOMA CITY PUBLIC SCHOOLS (viewed on Jan. 5, 2017), <http://bit.ly/2eARLpB>.

¹³² Press Release, *Oklahoma City Public Schools Receives \$35,000 Furniture Donation from American Fidelity Assurance Company*, OKLAHOMA CITY PUBLIC SCHOOLS (May 9, 2014), <http://bit.ly/2eLFBPp>.

¹³³ Indictment and Affidavit of Probable Cause, *State of Oklahoma v. Hofmeister, et al.*, CF-16-108799, Page 6 (Nov. 3, 2016, Oklahoma County District Court), <http://bit.ly/2fLtB1o>.

¹³⁴ *Id.*

¹³⁵ *Id.*

would do be [sic] negative ads and allow me to take the high road with my own campaign.”¹³⁶ This email was sent a full year before Oklahomans for Public School Excellence was registered.

The affidavit portrays Hofmeister and those working on unregulated outside groups as working as a unified team with little concern about trampling campaign finance laws.

Perhaps the most egregious evidence of coordination involves the consistent communication and information sharing between Hofmeister and Ryan Owens, general counsel for the nonprofit Cooperative Council for Oklahoma School Administration, an eventual funder of the super PAC.

The affidavit describes Owens as “instrumental in Hofmeister’s campaign assisting with strategy, guidance, and speechwriting,” as well as “instrumental in the formation and operation of [Oklahomans for Public School Excellence].”¹³⁷ Owens was the main conduit between the Hofmeister campaign and Oklahomans for Public School Excellence from early 2013 through Election Day, with one foot firmly planted on both sides of the line, according to the affidavit.¹³⁸

Owens was one of the first people Hofmeister informed she was running. One April 3, 2013, she texted Owens: “I’m ready to make this commitment, but need guidance and strategy.”¹³⁹ After the April 3 text to Owens, and throughout 2013, Hofmeister worked to move forward with her campaign.

In June 2013, after incorporating her candidate committee, Hofmeister texted Owens saying “we need to get together soon and spend some time prepping on speeches, issue statements...”¹⁴⁰ In July, Owens texted Hofmeister saying: “We need to form a cabinet and be able to generate press releases, respond to breaking news, form platform statements, etc. ... I’m very excited to be a part of your team!”¹⁴¹

Toward the end of 2013, while still in constant communication with candidate Hofmeister, Owens and others began to focus on getting Oklahomans for Public School Excellence up and running. In August, Owens texted political consultant Chad Alexander, asking “when might you have time to talk about running an independent expenditure campaign for the 2014 cycle” and “I assume you know who we seek to disparage.”¹⁴² In September, Owens texted Steven Crawford of Cooperative Council for Oklahoma School Administration, a group that would largely fund Oklahomans for Public School Excellence, saying: “We have to talk about the anti-Barresi campaign in the morning.”¹⁴³

¹³⁶ *Id.*

¹³⁷ *Id.* at Page 5

¹³⁸ *Id.*

¹³⁹ *Id.* at Page 6

¹⁴⁰ *Id.* at Page 8

¹⁴¹ *Id.*

¹⁴² *Id.* at Page 9

¹⁴³ *Id.*

On Jan. 27, 2014, Hofmeister announced her candidacy for Superintendent of Public Instruction on Facebook.¹⁴⁴ A few days later on Feb. 2, 2014, Hofmeister wrote to Owens, the person working to set up Oklahomans for Public School Excellence: "I'm counting on you and Crawford and others to guide me. I trust you 100% ... I will work my heart out to successfully and effectively lead, but will need great people, like you to build the team. I can't wait!"¹⁴⁵

On March 3, 2014, Owens texted Chad Alexander about setting up a call to: "talk about the formation of the independent expenditure campaign, structure, decision making, viability, etc."¹⁴⁶

After announcing her campaign on Facebook, Hofmeister began a fundraising push, which often included fundraising for both her committee and the soon-to-be incorporated Oklahomans for Public School Excellence.

On March 28, 2014, after receiving a donation to her campaign Hofmeister texted: "\$5,000 check in hand, plus he will likely give to Ryan's too."¹⁴⁷ The same day, she texted again about fundraising for both, saying "Bud Vance just have [sic] me \$5000, plus Margaret Ann Morris said he will want to give more to IE, too."¹⁴⁸ "Ryan's" and "IE" are references to Oklahomans for Public School Excellence.

Hofmeister refers to the "IE" numerous times in email and texts with campaign staff and allies. At one point, she appears to relish in the existence of the group, incorporating a smiley face emoticon, writing the "wind turbine lobbyist interested in my IE :)."¹⁴⁹ [See Image, Below]

Hofmeister texts Holland and Worthen: "Lt. Gov, John Doak, Joe Dorman, me and others here. Head of Texas Co republicans is doing a lift letter for me. Wind turbine lobbyist interested in *my IE* :)." (Emphasis added)

On April 24, 2014, Owens emailed Chad Alexander and said in regards to setting up Oklahomans for Public School Excellence, "I will be the registered agent."¹⁵⁰ On May 2, 2014, Oklahomans for Public School Excellence filed its certificate of incorporation with the Oklahoma Secretary of State, with Ryan Owens as the registered agent.¹⁵¹ Just two days later, Owens was included on emails with Hofmeister and others as they strategized and discussed "the negatives on Janet," Hofmeister's opponent.¹⁵²

¹⁴⁴ *Id.* at Page 10

¹⁴⁵ *Id.* at Page 10-11

¹⁴⁶ *Id.* at Page 11

¹⁴⁷ *Id.* at Page 12

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at Page 15

¹⁵⁰ *Id.* at Page 14

¹⁵¹ *Id.* at Page 15

¹⁵² *Id.*

Roughly two weeks later, Owen's received a "frantic" call from Phyllis Hudecki, the Oklahoma secretary of education, saying that Fount Holland, Hofmeister's campaign consultant, was "upset because he had seen Owens name associated with the IE."¹⁵³ Owens' then emailed Chad Alexander and Stephanie Milligan – the custodian of records on the Oklahomans for Public School Excellence filing – to see if his name could be removed from Oklahomans for Public School Excellence's filing, because, he wrote: "Joy and crew are freaking out!" about his name being listed as the registered agent.¹⁵⁴ [See Image, Below]

Owens emails Alexander and Milligan: "Chad, If it isn't too late can we change the registered agent info for the IE? Please respond ASAP - Joy and crew are freaking out! Thanks!"

But just days later, and before Owens was actually removed from Oklahomans for Public School Excellence's filing, he continued to have one foot on both sides - advising Hofmesiter and working on behalf of the outside group. According to the affidavit, "Hofmeister knew that Owens was the registered agent on the IE as evidenced by the emails."¹⁵⁵ But "even after Hofmesiter and the campaign realized that it was public knowledge that Ryan Owens was integral to the campaign and the independent expenditure, Owens role with the campaign was left intact."¹⁵⁶ The affidavit continues: "While Hofmeister and Owens deny that Owens had a role on Hofmeister's campaign team the communications show otherwise."¹⁵⁷

The campaign and Oklahomans for Public School Excellence worked together throughout the election cycle. According to the affidavit, Hofmeister's campaign shared its polling information with the outside group to inform its media strategy,¹⁵⁸ as well as editing ads and discussing media buys together.¹⁵⁹ Hofmeister's campaign was also aware of Oklahomans for Public School Excellence ads before they aired.¹⁶⁰

When interviewed by investigators, Ryan Owens "advised that Hofmeister campaign consultant, Fount Holland pressured him monthly for details about what the IE was doing. He wanted to know how much money the IE had, when the IE was going to run and [sic] ad and who was producing the ad."¹⁶¹ Owens admitted "he shared this information with Holland."¹⁶²

¹⁵³ *Id.* at Page 16

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at Page 26-27

¹⁵⁶ *Id.* at Page 27

¹⁵⁷ *Id.* at Page 26

¹⁵⁸ *Id.* at Page 20

¹⁵⁹ *Id.* at Page 21

¹⁶⁰ *Id.* at Page 22, 24

¹⁶¹ *Id.* at Page 24

¹⁶² *Id.*

Hofmeister was interviewed by investigators, according to the affidavit, and stated “she had no specific knowledge of the Independent Expenditure.”¹⁶³ But “when pressed to explain the communications where she referred to her IE and the communications that appeared to show knowledge of its operation” including “using the emoticon for a smiley face,” Hofmeister’s attorney “halted the interview.”¹⁶⁴

After the indictment, Hofmeister said she “will vigorously defend my integrity and reputation against any suggestion of wrongdoing and I will fight these allegations that have been made against me.”¹⁶⁵

¹⁶³ *Id.* at Page 27

¹⁶⁴ *Id.*

¹⁶⁵ Jen Billings, *State Superintendent Joy Hofmeister Charged With Campaign Violations*, NEWS ON 6 (Nov. 3, 2016), <http://bit.ly/2fsf06X>.

Conclusion

*“The Court’s ruling threatens to undermine the integrity of elected institutions across the Nation.”*¹⁶⁶
- Supreme Court John Paul Stevens

According to the rationale the Supreme Court adopted in *Citizens United* and the ensuing *Speech Now* decision paving the way for super PACs, it was constitutionally permissible to limit individual contributions to Rahm Emanuel from Michael Sacks and his wife to \$5,300 each because larger contributions could cause corruption.

But it would have been unconstitutional to limit the Sacks’ contributions – which totaled \$1.9 million – to the super PAC Chicago Forward, which was run by a close Emanuel ally, who said on her LinkedIn page that the super PAC was dedicated to “Mayor Rahm Emanuel’s reelection.”¹⁶⁷ This is simply because, according to the rationale employed by the *Citizens United* decision author Justice Kennedy, Chicago Forward was independent “by definition.” In post *Citizens United* America, \$5,301 is treated as more potentially corrupting than \$1,900,000.

It is hard to argue that the assumption of independence – “by definition” – in the 2010 *Citizens United* decision has not been undermined by experience since the ruling.

This experience includes a for profit bail bond lobbying group buying unpaid school board seats. This example, and the countless others recorded since *Citizens United*, will be of no surprise to the now retired Justice Stevens, who predicted as much in his *Citizens United* dissent: “The Court’s ruling threatens to undermine the integrity of elected institutions across the Nation.”¹⁶⁸

Occasionally, those who commit “brazen” violations are caught. But arguing that Joy Hofmeister’s indictment indicates the system is working would be missing a crucial point: with the rare exceptions of smoking gun evidence appearing, very little is done to investigate.

Hofmeister was only caught through unrelated arrests¹⁶⁹ and very careless mistakes – like emailing public officials (whose emails can be obtained through public information requests), and having a campaign consultant register the “dark money group” used to attack her opponent.¹⁷⁰

The campaign of Joy Hofmeister is just one example of the blurred, and often non-existent, line between candidates and outside “independent” groups during state and local elections since *Citizens United*.

¹⁶⁶ *Citizens United v. FEC*, 130 S.Ct. 91 (Stevens Dissent 4) (2010), <http://1.usa.gov/9Hn7y5>.

¹⁶⁷ Becky Carroll, *LinkedIn* [Profile Page]. (Retrieved November 11, 2016), <http://bit.ly/2fIIT1T>.

¹⁶⁸ *Citizens United v. FEC*, 130 S.Ct. 91 (Stevens Dissent 4) (2010), <http://1.usa.gov/9Hn7y5>.

¹⁶⁹ Rick Green, *Prominent lobbyist, former head of Oklahoma Republican Party arrested on drug complaints*, THE OKLAHOMAN (May 15, 2014), <http://bit.ly/2fXZwvw>.

¹⁷⁰ Indictment and Affidavit of Probable Cause, *State of Oklahoma v. Hofmeister, et al.*, CF-16-108799, Page 22 (Nov. 3, 2016, Oklahoma County District Court), <http://bit.ly/2fLtB1o>.

In another example, Western Tradition Partnership (WTP), an “independent” group that was allowed to raise large sums of corporate money due to *Citizens United*,¹⁷¹ was exposed to have been “pulling the candidates’ strings,”¹⁷² only after a box “holding files on 23 conservative candidates in state races in Montana” was “found in a meth house in Colorado.”¹⁷³ In terms of the group’s independence, a Montana investigator said “for what it's worth ... WTP was running a lot of these campaigns.”¹⁷⁴

Relying on drug arrests or boxes found in meth houses to ensure the integrity of our elections is no way for a democracy to function.

Further, it is unreasonable to believe that localities are capable in investing the time and resources necessary to police every local election, including unpaid school board elections.

As long as the *Citizens United* decision stands and contributions to outside groups cannot be restricted, outside groups and candidates will continue to make a mockery of campaign finance laws, and there’s no plausible way to stop it.

The truth is if Joy Hofmeister and her associates were a little more careful (i.e., avoided drug arrests etc.), her campaign would look no different than the thousands of campaigns around the country that involve outside groups. The public would wonder how “independent” the outside group run by a close associate of the candidate was, but without these careless mistakes, wondering is where the public inquiry would stop.

In 2017, seven years after *Citizens United*, candidates, donors, and the press, view these outside groups that spend massive sums of money in state and local elections for what they are: arms of the candidate’s campaign – unbound by contribution limits. They are independent in name only. And as Justice Kennedy wrote in *Citizens United*: “Rhetoric ought not obscure reality.”¹⁷⁵

Their independence is the foundation upon which the *Citizens United* house was built, and if the foundation is shot, it’s time for the house to come down too.

¹⁷¹ *American Tradition Partnership Inc., et al. v. Bullock* (Jun. 25, 2012), *On Petition for Writ of Certiorari to the Supreme Court of Montana*, <http://bit.ly/2fupgxV>.

¹⁷² Kim Barker, *Documents Found in Meth House Bare Inner Workings of Dark Money Group*, PROPUBLICA (Oct. 28, 2012), <http://bit.ly/2k9B7R0>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Citizens United v. FEC*, 130 S.Ct. 40 (2010), <http://1.usa.gov/9Hn7y5>.