



A Rising Tide

Citizens United-Enabled Election Spending Floods State and Local Elections

Acknowledgments

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Introduction

The 2012 election ushered in unprecedented spending by outside groups on federal races. The reason for the influx of outside spending: the Supreme Court's 2010 *Citizens United* decision, which opened the door to unlimited outside spending by individuals, labor unions, and corporations.¹ The impact on federal elections was substantial. In 2008, all outside groups spent only \$338 million, and just 4 years later in 2012, the top 10 outside groups spent more than \$560 million, with total outside spending exceeding \$1 billion.²³ To date in the 2014 election cycle, super PAC spending has already exceeded all super PAC spending during the 2010 midterms, with total 2014 outside spending predicted to rival 2012, a presidential year when spending is typically at its highest.⁴ However, the impact has not been limited to the federal level. Instead, the *Citizens United* decision also has fueled an increase in spending by outside groups on state and local elections, particularly by super PACs and 501(c) nonprofit groups.

Of particular interest are those states that had laws in place that would have banned the spending that *Citizens United* now permits. In 2010, 20 states had laws that placed restrictions on independent expenditures by corporations and/or unions.⁵ Following *Citizens United*, many of these states have seen outside groups spend significant amounts on state and local elections, particularly by independent expenditure only groups (super PACs) and other groups that are subject to less regulation, particularly 501(c)(4) groups.

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/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.

² *Outside Spending, 2012 Cycle*, CENTER FOR RESPONSIVE POLITICS (viewed June 4, 2014), <http://bit.ly/1lXPxg4>. Note: These figures exclude spending by national party committees. See also *Outside Spending by Cycle*, CENTER FOR RESPONSIVE POLITICS (viewed July 8, 2014), <http://bit.ly/1vXm1vf>.

³ *Outside Spending, 2008 Cycle*, CENTER FOR RESPONSIVE POLITICS (viewed June 4, 2014), <http://bit.ly/1lXPxg4>. Note: These figures exclude spending by national party committees.

⁴ Jamie Fuller, *Who Needs a Presidential Campaign? Outside Spending in 2014 Could Rival 2012's*, WASHINGTON POST (July 10, 2014), <http://wapo.st/1lvgh8c>.

⁵ Douglas M. Spencer and Abby K. Wood, *Citizens United, States Divided: An Empirical Analysis of Independent Political Spending*, 89 INDIANA LAW JOURNAL 337, 316-372 (2014).

Prior to *Citizens United*, jurisdictions could prohibit nonprofit groups from using corporate and union contributions to finance electioneering ads.⁶

Particularly concerning is the degree to which certain state and local races that were previously off-limits to unrestricted outside spending are now susceptible to outside influence by groups spending relatively small sums of money.

The remainder of this report will profile several state or local elections that occurred in states with campaign finance regulations that were invalidated by *Citizens United*. These races also occurred in states with good disclosure laws, which allow for the tracking of outside spending. These elections all occurred in 2013 or 2014. Public Citizen will continue to analyze this phenomenon as the 2014 cycle unfolds.

Table 1: Cases Highlighted in this Report of Outside Spending Enabled by *Citizens United*

State	Pre- <i>Citizens United</i> Restriction on Spending	Race	Year
Massachusetts	PACs that made contributions to candidates or made independent expenditures to support or oppose candidates could only accept donations of \$500 or less from individuals.	Mayor, Boston	2013
North Carolina	Corporations and unions prohibited from making independent expenditures. Also prohibited from contributing to groups that use those funds to fund independent expenditures.	State Supreme Court	2014
Wisconsin	Corporations prohibited from making independent expenditures funded through their general treasury. Also prohibited from contributing to groups that then use those funds for independent expenditures.	State Supreme Court	2013
New Jersey	“Pay to Play” laws prohibit corporations that are pursuing state contracts from making contributions to candidates and political parties. ⁷	School Board, Elizabeth, N.J.	2013
Texas	Corporations and unions banned from contributing to candidates. Also prohibited from making independent expenditures on behalf of candidates.	State Senate Races	2014

Massachusetts

In 2013, outside groups spent a significant amount of money on the Boston mayoral race, which featured two Democrats running in the general election. (Boston mayoral elections are officially nonpartisan.) Under Massachusetts state law, prior to *Citizens United*, political action committees that raised money in order to 1) make contributions to candidates or 2) make independent expenditures to support or oppose candidates could only accept donations of \$500 or less from individuals.⁸ However, due to *Citizens United* and the subsequent ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *SpeechNow.org v. Federal Election Commission*, independent expenditure only committees

⁶ Chris Good, *Don't Blame Citizens United*, THE ATLANTIC (October 20, 2010), <http://theatlantic.com/1mCbB5H>.

⁷ These restrictions remain in place post-*Citizens United*. However, the laws is undermined because *Citizens United* allows for the creation of super PACs, which can accept corporate contributions and spend unlimitedly on behalf of a candidate.

⁸ MASSACHUSETTS OFFICE OF CAMPAIGN AND POLITICAL FINANCE, INTERPRETIVE BULLETIN 10-13 1 (2013), <http://bit.ly/1sosal5>.

that wished to influence state and local races now could accept unlimited amounts of money from individuals, corporations, and labor unions. Because of *Citizens United* and *SpeechNow*, Massachusetts campaign finance regulations were amended to allow for the creation of independent expenditure only political action committees.⁹

In 2013, outside groups spent more money on the Boston mayoral race than in any other mayoral election in the city's history, a total of \$3.8 million.¹⁰ A super PAC, One Boston, spent \$480,000 during the last week of the race.¹¹ The money came from the Washington, D.C.-based American Federation of Teachers, which first gave the money to the super PAC One New Jersey, which then funneled the money to One Boston.¹² American Working Families, an Alexandria, Va.,-based super PAC, also spent more than \$1 million.¹³ American Working Families received 11 contributions of at least \$50,000, each of which would have exceeded the amount permitted by Massachusetts state law prior to *Citizens United*.¹⁴ Martin Walsh, who won the race, received twice as much support from outside groups as his opponent, John Connolly.¹⁵ The 2013 mayoral race is considered a precursor to the state's 2014 governor's race, in which super PACs are also expected to spend significant amounts of money on independent expenditures.¹⁶

North Carolina

North Carolina's judicial races have already seen large sums of outside spending post-*Citizens United*. A 2012 race for the state supreme court attracted \$2.3 million of outside spending. They continue to play a substantial role in 2014's races, particularly for Associate Justice Robin E. Hudson's seat. In addition to her November race against Eric L Levinson, Justice Hudson also faced a May 6 primary, which was subject to significant outside spending.¹⁷

Prior to *Citizens United*, North Carolina law prohibited corporations, labor unions, insurance companies, professional associations, and other business entities ("covered entities") from making independent expenditures. These covered entities also were

⁹ *Id.*

¹⁰ Wesley Lowery, *Outside Spending on Mayoral Finalists Hit \$3.8 Million*, BOSTON GLOBE (December 17, 2013), <http://bit.ly/1bOXD5i>.

¹¹ *Id.*

¹² Wesley Lowery, *Teachers Union Revealed as Funder Behind Pro-Walsh PAC*, BOSTON GLOBE (December 28, 2013), <http://bit.ly/TE2NzL>.

¹³ Wesley Lowery, *Outside Spending on Mayoral Finalists Hit \$3.8 Million*, BOSTON GLOBE (December 17, 2013), <http://bit.ly/1bOXD5i>.

¹⁴ *American Working Families: Donors*, OPENSECRETS.ORG (viewed June 27, 2014), <http://bit.ly/1lw486R>.

¹⁵ Wesley Lowery, *Outside Spending on Mayoral Finalists Hit \$3.8 Million*, BOSTON GLOBE (December 17, 2013), <http://bit.ly/1bOXD5i>.

¹⁶ Frank Philips, *Bill Would Increase PAC Disclosures*, BOSTON GLOBE (June 18, 2014), <http://bit.ly/UarQuQ>.

¹⁷ *2014 Primary Election Results*, NORTH CAROLINA STATE BOARD OF ELECTIONS (viewed July 7, 2014), <http://bit.ly/1iohlsd>.

prohibited from indirectly funding independent expenditures. Additionally, no individual, political committee, or organization that has received payments from a covered entity could make a disbursement for the costs of an electioneering communication. However, if a 501(c)(4) nonprofit group or a 527 political committee that had accepted money from a covered entity wanted to produce an electioneering communication, it could only do so with money contributed by individuals to a separate, segregated account.¹⁸

As of July 21, 2014, total outside spending on the primary election was nearly \$1.3 million.¹⁹ The vast majority of this \$1.3 million was spent by two groups: Justice for All NC and NC Chamber IE. Justice for All NC is registered in North Carolina as an independent expenditure only political action committee (these are colloquially known as super PACs, but not given this distinction under North Carolina state law). These types of groups are required to disclose their donors. One of the largest donors to Justice for All NC is the Republican State Leadership Committee (“RSLC”), which has contributed at least \$900,000 to Justice for All NC. During the 2014 cycle, the RSLC has received contributions from several major corporations, including Blue Cross/Blue Shield (\$935,713), Reynolds American Inc. (\$788,982), Las Vegas Sands Corp. (\$450,000), Wal-Mart Stores, Inc., and Koch Industries Inc. (\$359,940).²⁰ The U.S. Chamber of Commerce has also contributed nearly \$500,000 to the RSLC.²¹ Additionally, many corporations, including Reynolds American and Medical Mutual Insurance Company of North Carolina, have contributed directly to Justice for All NC.²² In total, Justice for All NC has spent almost \$900,000 on the election.²³

NC Chamber IE is also an independent expenditure-only political action committee that operates as the independent expenditure arm of the North Carolina Chamber of Commerce. North Carolina IE has received corporate contributions as well, including from Koch Industries Public Sector, Blue Cross/Blue Shield of North Carolina, Reynolds American, and

¹⁸ *Life After Citizens United*, NATIONAL CONFERENCE OF STATE LEGISLATURES (viewed July 7, 2014), <http://bit.ly/1xI0xq6>.

¹⁹ Chris Kromm, *Outside Groups Pumped \$2.6 Million into North Carolina's Primaries*, INSTITUTE FOR SOUTHERN STUDIES (July 17, 2014), <http://bit.ly/WeXusi>.

²⁰ *Donors to Republican State Leadership Committee*, CENTER FOR RESPONSIVE POLITICS (viewed July 7, 2014), <http://bit.ly/1tg00ew>.

²¹ *Id.*

²² *Donors to Justice for All NC*, FOLLOWNCMONEY.ORG (viewed July 9, 2014), <http://bit.ly/1nedqVB>.

²³ Chris Kromm, *Outside Groups Pumped \$2.6 Million into North Carolina's Primaries*, INSTITUTE FOR SOUTHERN STUDIES (July 17, 2014), <http://bit.ly/WeXusi>.

Medical Mutual Insurance Co. of North Carolina.²⁴ NC Chamber IE already has spent nearly \$350,000 on the race and will likely spend even more before the November election.²⁵

Wisconsin

Prior to *Citizens United*, Wisconsin state law prohibited certain types of for-profit corporations from making independent expenditures funded through their general treasuries. Specifically, the law stated that corporations were prohibited from making “any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.”²⁶ (Unions were never prohibited from funding independent expenditures from their general treasuries.) Corporations were also prohibited from contributing to an intermediary that would then fund independent expenditures with those corporate funds. Subsequent to the *Citizens United* decision, corporations could start making independent expenditures directly from their treasuries, with looser regulations than are applied to other types of political committees.²⁷

In 2013, Edward Fallone tried to unseat Patience Roggensack on the Wisconsin Supreme Court. Roggensack and Fallone spent \$652,000 and \$394,000, respectively.²⁸ Two 501(c)(4) groups, WMC Issues Mobilization Council and Club for Growth Wisconsin, spent \$470,000 and \$300,000, respectively, supporting Roggensack, who ultimately kept her seat.²⁹ These two groups made up more than 40 percent of all spending on the race and Club for Growth Wisconsin itself outspent Fallone’s campaign.

The WMC Issues Mobilization Council is the government and policy division of the Wisconsin Manufacturers and Commerce, which emerged from the merger of the Wisconsin Manufacturers Association, the Wisconsin State Chamber of Commerce, and the Wisconsin Council of Safety.³⁰ WMC Issues and Club for Growth Wisconsin did not disclose the contributors of the money they used to finance their electioneering expenditures. If

²⁴ *Donors to North Carolina Chamber IE*, FOLLOWNCMONEY.ORG (viewed July 8, 2014), <http://bit.ly/VGfMST>.

²⁵ *Expenditures on NC Supreme Court Associate Justice Race*, FOLLOWNCMONEY.ORG (viewed July 22, 2014), <http://bit.ly/1tvXgrE>.

²⁶ Wisconsin Legislative Statutes, Chapter 11, Section 38(1)(a)1, <http://1.usa.gov/1mFC1ni>.

²⁷ *Memorandum on GAB 1.91—Corporate Independent Expenditures in Wisconsin*, GODFREY & KAHN (viewed July 8, 2014), <http://bit.ly/1vXigal>.

²⁸ *Wisconsin Supreme Court Finance Summaries*, WISCONSIN DEMOCRACY CAMPAIGN (viewed July 23, 2014), <http://bit.ly/UsScrw>.

²⁹ Press Release, Brennan Center for Justice, *TV Spending in Wisconsin Supreme Court Race Tops \$1.1 Million, Outside Groups Dominate* (April 4, 2013), <http://bit.ly/TOKvAj>.

³⁰ *About Wisconsin Manufacturers and Commerce*, WISCONSIN MANUFACTURERS AND COMMERCE (viewed July 8, 2014), <http://bit.ly/1vXigal>.

those contributors were labor unions or corporations, however, they would not have been permitted prior to *Citizens United*.³¹

As previously reported by Public Citizen, Americans for Prosperity, the 501(c)(4) nonprofit group founded by Koch Industries' owners Charles and David Koch, spent on a 2014 school board race in Kenosha, Wis. However, a spokesperson for Americans for Prosperity declined to state how much the organization spent on the election.³² Nearly 78 percent of Americans for Prosperity's \$115 million in revenue for 2012 came from entities that gave \$1 million or more.³³

New Jersey

New Jersey has a "pay-to-play" law that restricts some corporations and their employees from making direct campaign contributions to candidates and political parties if that corporation is attempting to or has obtained state contracts.³⁴ But by allowing corporations to contribute to super PACs that can then spend on behalf of those same elected officials, New Jersey's ban on certain corporate contributions has been significantly undermined. Additionally, the rise of super PACs that exist to benefit only one candidate or political party make it even easier for corporations to dodge New Jersey's restrictions on corporate election spending.³⁵

On Nov. 5, 2013, Elizabeth, N.J., held elections for three seats for its board of education. Though the positions are unpaid, the election surprisingly attracted \$150,000 of super PAC spending from the Committee for Economic Growth and Social Justice.³⁶ Prior to the November election, the super PAC received contributions from sources that included the bail bond industry, the real estate industry, and the campaign and personal accounts of state senator Raymond Lesniak.³⁷ Lesniak was engaged in a battle with the Elizabeth Board

³¹ Press Release, Brennan Center for Justice, *TV Spending in Wisconsin Supreme Court Race Tops \$1.1 Million, Outside Groups Dominate* (April 4, 2013), <http://bit.ly/TOKvAj>.

³² Deneen Smith, *Americans for Prosperity Throws Its Weight Into Kenosha Unified School Board Race*, KENOSHA NEWS (March 24, 2014), <http://bit.ly/1omRdqH>. See also ADAM CROWTHER, PUBLIC CITIZEN, OUTSIDE SPENDERS, LOCAL ELECTIONS 5 (June 2014), <http://bit.ly/WFG9ck>.

³³ *Dark Money Disclosure: 990 Tax Returns*, CITIZENS FOR ETHICS AND RESPONSIBILITY IN WASHINGTON, (viewed June 11, 2014), <http://bit.ly/1n6usCe>.

³⁴ *Political Contributions Compliance*, NEW JERSEY STATE DEPARTMENT OF THE TREASURY (viewed July 8, 2014), <http://bit.ly/1qHypRZ>.

³⁵ See, e.g., TAYLOR LINCOLN, PUBLIC CITIZEN, SUPER CONNECTED: OUTSIDE GROUPS' DEVOTION TO INDIVIDUAL CANDIDATES AND POLITICAL PARTIES DISPROVE THE SUPREME COURT'S KEY ASSUMPTION IN *CITIZENS UNITED* THAT UNREGULATED OUTSIDE SPENDERS WOULD BE 'INDEPENDENT' (March 2013), <http://bit.ly/1bhTZR1>.

³⁶ Fredreka Schouten, *Federal Super PACs Spend Big on Local Elections*, USA TODAY (February 25, 2014), <http://usat.ly/1qcHVKA>.

³⁷ *Donors to Committee for Economic Growth and Social Justice*, CENTER FOR RESPONSIVE POLITICS (viewed July 7, 2014), <http://bit.ly/1mszdIt>.

of Education over allegations that board members and staff of the board falsified school lunch program applications.³⁸

Texas

Prior to *Citizens United*, corporations and labor unions were prohibited from making both contributions to and independent expenditures on behalf of candidates running for state and local office in Texas. However, H.B. No. 2359, passed in 2011, eliminated the prohibition on political expenditures by corporations and unions while maintaining a ban on direct corporate and union contributions to candidates. The Texas legislature passed legislation that would have required 501(c)(4) groups to disclose their donors, but the legislation was vetoed by Governor Rick Perry.³⁹

In 2014, one 501(c)(4) group, Education Reform Now Advocacy, spent about \$115,000 on several races for the Texas state legislature.⁴⁰ Prior to Texas' March 4, 2014, primary, Empower Texans, another 501(c)(4), reported spending \$480,000 in support of 30 Texas House and Senate candidates.⁴¹ Additionally, Empower Texans spent more than \$1 million on a special election for a Texas state senate seat.⁴² The candidate benefitting from that expenditure, Steve Toth, finished second and will compete in a runoff to fill the seat.⁴³ If any of these expenditures were financed by contributions from labor unions or corporations, they would have been illegal prior to *Citizens United*.

Conclusion

The loosening of campaign finance regulations following *Citizens United* has permitted substantial amounts of spending that states previously had the power to ban. The rise of super PACs and their ability to influence local elections is the direct result of *Citizens United*. And 501(c)(4) groups can now accept unlimited corporate contributions and use those funds to influence elections. Large amounts of spending in local races has a disproportionate impact on those races, where it takes much less money to have a significant influence.

³⁸ MaryAnn Spoto, *Elizabeth School Board Wants Super PACs Out of Local Elections*, THE STAR-LEDGER (March 27, 2014), <http://bit.ly/1soEUs0>.

³⁹ David Saleh Rauf, *Nonprofit Groups Using Law to Anonymously Back Candidates*, HOUSTON CHRONICLE (April 27, 2014), <http://bit.ly/1msGEPV>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Correction Affidavit for Political Committee*, TEXAS ETHICS COMMISSION (May 1, 2014), <http://bit.ly/1xYD981>.

⁴³ Ross Ramsey, *Special Election to Fill Empty Senate Seat*, TEXAS TRIBUNE (May 10, 2014), <http://bit.ly/1nBGO9N>.