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'Dark' Money Casts Shadow Over Top Senate Races

Nearly Half of Unrestricted Spending Permitted by *Citizens United* Was by Groups That Are Not Required to Disclose Their Donors

Acknowledgments

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Nearly half of all spending by unrestricted outside groups seeking to influence this year's top Senate races was by 501(c) non-profit groups that do not typically disclose their donors.¹ The Supreme Court's 2010 *Citizens United* decision opened the door to unlimited outside spending by individuals, labor unions, corporations, and other sources. In 10 of 2012's most competitive Senate races, outside spending by entities that may accept unlimited contributions totaled more than \$190 million, according to Public Citizen's analysis of data provided by the Center for Responsible Politics.² [See Table 1]

Of this outside spending, more than \$90 million was spent by 501(c)s. The remainder was spent by Super PACs, which may also accept unlimited donations, but must disclose their donors to the Federal Election Commission, much like traditional political action committees.

Table 1: Total Unrestricted Spending, Top 10 Senate Races

Organization Type	Total Spent on Top Senate Races	Percentage
501c	\$91,871,734	48.3%
Super PAC	\$98,474,906	51.7%
Total	\$190,346,640	--

Source: Center for Responsive Politics (www.opensecrets.org), Top Outside Spenders.

Dark money groups, defined here as 501(c)s, injected substantial money into the Senate races we examined. The top 20 dark money groups alone spent more than \$87 million in these races, accounting for more than 95 percent of all 501(c) spending in the 10 contests. [See Table 2] Crossroads GPS and the U.S. Chamber of Commerce, which occupy the top two spots, accounted for three-fifths (60.5 percent) of spending by the 501(c) groups.

Dark money groups tend more often to support Republicans than Democrats, as 15 of the top 20 spenders aided Republican candidates. Only four of the top 20 groups supported any Democrats, and one, Center Forward, had an unknown ideology, according to the Center for Responsive Politics. Table 2 lists dark money spending by group and accompanying group ideology.

¹ Public Citizen identified the top 10 Senate races by evaluating total outside spending, as detailed by the Center for Responsive Politics (www.opensecrets.org). Public Citizen chose to exclude the Texas Senate race as its spending was driven up by a highly competitive primary; the general election was not expected to be competitive and would not generate significant outside spending. We profiled Senate races in Arizona, Florida, Indiana, Missouri, Montana, North Dakota, Nevada, Ohio, Virginia, and Wisconsin.

² Note: "Spending" here is defined as independent expenditures, electioneering communications, and election communications by Super PACs and 501(c) groups. This analysis does not include spending by party or candidate committees, or by traditional political action committees. This spending includes spending on both the primary and general elections. Outside spending data downloaded from the Center for Responsive Politics (www.opensecrets.org) on Nov. 7 at 9:30 a.m.

Table 2: Top 20 Dark Money Spenders, Top 10 Senate Races

501(c) Group	Total Spent on Top Senate Races	Ideology
Crossroads GPS	\$36,709,211	Pro-GOP
U.S. Chamber of Commerce	\$18,828,651	Pro-GOP
Patriot Majority	\$5,543,162	Pro-Dem
League of Conservation Voters	\$5,188,457	Pro-Dem
NRA Institute for Legislative Action	\$2,347,658	Pro-GOP
VoteVets.org	\$2,136,401	Pro-Dem
Ending Spending	\$2,060,000	Pro-GOP
American Future Fund	\$1,951,497	Pro-GOP
Americans for Prosperity	\$1,933,349	Pro-GOP
American Commitment	\$1,747,139	Pro-GOP
NFIB The Voice of Free Enterprise	\$1,632,279	Pro-GOP
American Federation of State/County/Municipal Employees	\$1,042,794	Pro-Dem
Focus on the Family Action	\$1,038,627	Pro-GOP
Americans for Tax Reform	\$1,036,182	Pro-GOP
Emergency Committee for Israel	\$822,740	Pro-GOP
Center Forward	\$699,657	Unknown
Americans for Job Security	\$649,800	Pro-GOP
American Chemistry Council	\$648,600	Pro-GOP
American Action Network	\$645,153	Pro-GOP
Club for Growth	\$611,069	Pro-GOP
Total	\$87,272,426	--

Source: Center for Responsive Politics (www.opensecrets.org), Top Outside Spenders.

We also examined total outside spending, including Super PAC spending. Republican and Democratic-aligned Super PACs spent roughly the same amount as 501(c) groups to influence these competitive Senate races. However, Republican-aligned 501(c) groups spent nearly five times more than their Democrat-supporting counterparts, while Super PAC spending was nearly equal along ideological lines. [See Table 3]

**Table 3: Unrestricted Spending in the Top 10 Senate Races,
By Ideology and Group Type**

Ideology	2012 Spending	Percentage of Total*
Pro-Dem 501(c)s	\$15,246,827	8.0%
Pro-Dem Super-PACs	\$47,629,880	25.0%
Pro-GOP 501(c)s	\$75,394,214	39.6%
Pro-GOP Super-PACs	\$49,989,875	26.3%

Source: Center for Responsive Politics (www.opensecrets.org), Top Outside Spenders.

*Excludes a handful of groups to which the Center for Responsive Politics does not assign an ideology.

The court's *Citizens United* decision was based in large part on the promise that the funders behind the newly permitted spending would be revealed.

"... [M]odern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today," Justice Anthony Kennedy wrote in *Citizens United*.³ "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions."⁴

Kennedy apparently envisioned that corporations and other entities that availed themselves of new permissions laid out in *Citizens United* would spend money under their own names, or that there was a disclosure regime to discern the original sources of funding if they did not. This vision does not align with reality.

Instead, the vast majority of the new, unregulated spending has been either by Super PACs or 501(c) groups. Donors who wish to remain anonymous may do so by contributing to 501(c)s, which are not required to disclose their funding sources.

The effect of this has been to deny the public the opportunity to learn the sponsors behind a large percentage of spending that has been used to buy political advertisements.

It is quite possible, perhaps likely, that the donors that have been kept in the dark are those that would be the most controversial, such as corporations seeking favorable treatment. Until Congress passes legislation mandating comprehensive disclosure or, at a minimum, the SEC requires publicly held companies to disclose their electioneering expenditures, we will not know.

³ *Citizens United v. Federal Election Commission*, 558 U.S. (2010).

⁴ *Id.*

**Appendix: Total Unrestricted Spending in the Top 10 Senate Races,
By State and by Donor Type**

State	Contest	Entity Type	Total Race Spending by Entity Type	Percent Spent by 501(c)s
Arizona	Carmona (D) Flake(R)	SuperPAC	\$9,006,171	28.2%
		501c	\$3,542,523	
Florida	Nelson (D) Mack (R)	SuperPAC	\$12,451,576	27.7%
		501c	\$4,767,884	
Indiana	Donnelly (D) Mourdock (R)	SuperPAC	\$13,929,993	37.9%
		501c	\$8,498,587	
Missouri	McCaskill (D) Akin (R)	SuperPAC	\$6,543,225	19.5%
		501c	\$1,588,229	
Montana	Tester (D) Rehberg (R)	SuperPAC	\$6,641,897	56.3%
		501c	\$8,559,381	
Nevada	Berkley (D) Heller (R)	SuperPAC	\$3,816,986	77.3%
		501c	\$13,003,230	
North Dakota	Heitkamp (D) Berg (R)	SuperPAC	\$4,598,709	45.6%
		501c	\$3,857,416	
Ohio	Brown (D) Mandel (R)	SuperPAC	\$12,828,260	52.0%
		501c	\$13,889,004	
Virginia	Kaine (D) Allen (R)	SuperPAC	\$14,140,105	58.4%
		501c	\$19,868,241	
Wisconsin	Baldwin (D) Thompson (R)	SuperPAC	\$14,517,984	49.6%
		501c	\$14,297,239	
Total	--	--	\$190,346,640	48.3%

Source: Center for Responsive Politics (www.opensecrets.org), Top Outside Spenders.