



Outside Money Takes the Inside Track

In First Full Post-*Citizens United* Cycle, Unrestricted Groups Moved Closer to Eclipsing Candidates and National Parties in Election Spending

Acknowledgments

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By various measures, outside groups moved closer to becoming the dominant voices in the electoral process in 2012, the first full election cycle since the Supreme Court's decision in *Citizens United v. Federal Election Commission*. Outside groups enjoy a distinct advantage in fundraising because they are permitted to accept contributions of unlimited amount from individuals, corporations, and unions. They are less constrained in their messaging because they do not face the same level of accountability as candidates.

Outside spending in the 2012 election cycle was historic. At more than \$1 billion, outside groups' spending surpassed the total spent by such groups in the four previous election cycles combined. This cycle's spending came on the heels of near-record spending by outside groups in 2010, the year that the *Citizens United* decision and subsequent U.S. Appeals Court decision in *Speechnow.org v. Federal Election Commission* lifted restrictions on the contribution amounts that such groups could receive.¹ But in 2012, the top three outside spenders, alone, spent more than all outside groups combined in 2010.

Probably for the first time, 2012 saw outside spenders compete for supremacy with candidates in certain high-profile contests and with the national parties. Outside spending in the 10 most expensive Senate races of 2012 exceeded that of candidates in four races—something that had only occurred in one top 10 Senate contest in the previous three cycles. Also, national party committees, for years the national coordinators of election spending, found for the first time their spending rivaled by outside groups.

I. Outside Spending in Top Senate Races in 2012 Was 12 Times Greater in 2012 than in 2006, While Increases in Candidate Spending Remained Modest

Outside spending on top Senate races² has increased dramatically in the last four election cycles, while candidate and party spending has increased more modestly.³ In 2012, for instance, spending by outside groups on the top 10 most expensive Senate races was 12 times greater than on the 10 most expensive Senate races in 2006.

In comparison, candidate spending in the most expensive Senate races in 2012 was only 1.5 percent greater than in 2006.

¹ *Speechnow.org v. Federal Election Commission*, 599 F. 3d 686 (U.S. Court of Appeals, District of Columbia, 2010).

² Within each cycle, dating back to 2006, we selected races with the highest spending levels. This was calculated by adding up independent expenditures by outside groups (PACs, "527" groups, 501(c) groups, and Super PACs), party committees, and candidate committees. Because outside spending figures include spending in primaries, we also included primary spending by candidates to ensure an accurate comparison. The top ten races from each cycle were included in this analysis.

³ Historically, House and Senate candidates have raised more money during midterm elections when there are no presidential candidates competing for resources.

The comparison between 2006 and 2012 is apt because the rules on outside spending in 2006 were among the strictest in history. In 2006, pursuant to the Bipartisan Campaign Reform Act (BCRA), outside groups were forbidden from using corporate or union money to fund advertisements that were broadcast in the run up to elections. The Supreme Court opened up a significant loophole in the rules governing such “electioneering communications” in 2007,⁴ then threw out the rules out on outside groups’ activities altogether in its January 2010 *Citizens United* decision. Table 1 summarizes spending levels and how they have changed from year to year. A full listing of each “Top 10” Senate race and its relevant spending can be found in the Appendix.

Table 1: Spending on Top 10 Senate Races, 2006-2012, by Candidates and Outside Groups

Year	Total Outside Spending on Top Senate Races	Percent Change from Previous Cycle	Candidate Spending in Top Senate Races	Percent Change from Previous Cycle	Outside Spending as a Percent of Total Spending
2006	\$20,936,962	--	\$455,596,057	--	4.5%
2008	\$96,215,085	359.5%	\$303,518,612	-33.4%	21.0%
2010	\$133,971,934	39.2%	\$537,336,195	77.0%	18.8%
2012	\$258,086,365	92.6%	\$462,487,794	-13.9%	37.5%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

II. Outside Spending by Unrestricted Entities Is Beginning to Exceed Candidate Spending

Despite the fact that candidate spending has continued to increase, outside spending is catching up with candidates’ spending and, in some cases, exceeding it. In 2012, outside spending by unrestricted groups eclipsed spending by candidate committees in four of the 10 most expensive Senate contests: those in Virginia, Wisconsin, Indiana, and Nevada. (Note: these calculations exclude spending by party committee which, like candidates, are constrained by contribution limits.) By contrast, outside spenders did not exceed candidates in a single one of the top 10 most expensive races of the 2006 or 2008 cycles and did so in only one contest in 2010 (Colorado).

III. Spending by Unrestricted Entities Is Approaching Parity with National Party Committees

In 2004, national party committees⁵ spent five times more money on federal elections than outside groups which, at the time, mostly consisted of regulated PACs.⁶ Despite a dip in

⁴ See *Federal Election Commission v. Wisconsin Right to Life Inc.*, 551 U.S. 449 (2007).

⁵ Defined here as the Democratic National Committee, the Republican National Committee, the Democratic Congressional Campaign Committee, the National Republican Campaign Committee, the Democratic Senatorial Campaign Committee, and the National Republican Senatorial Committee.

⁶ The figures in this report include the cost of advertisements that must be reported to the FEC, but they do not count certain other types of expenditures, such as registration efforts, get out the vote, and so forth. Such spending was significant in 2004. For example, Americans Coming Together, a group funded in part by George Soros, spent nearly \$80 million on organizing efforts.

2006, outside groups have generally increased their spending significantly while party committee spending has remained nearly constant.⁷ The gap separating outside spending and national party spending has closed substantially and will likely disappear completely in the next presidential cycle. Table 2 highlights the unmistakable increase in outside spending relative to party spending.

Table 2: Outside vs. Party Spending, 2004-2012

	2004	2006	2008	2010	2012
National Party Committee Spending	\$1.23B	\$918.5M	\$1.15B	\$937.0M	\$1.26B
Outside Spending	\$200.1M	\$68.9M	\$301.7M	\$294.7M	\$1.06B
Percent Outside Spending	14.0%	7.0%	20.8%	23.9%	44.7%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org). Data as of December 18, 2012.

IV. Spending by Unrestricted Entities Remained Highly Concentrated in 2012

The top 10 outside spenders in 2012 accounted for more than 54 percent of all outside spending despite the fact that they represented only 3.9 percent of all groups that spent money in the election.⁸ Though this percentage is roughly consistent with previous cycles, this cycle's concentration packed more of a punch because the top 10 groups spent substantially more than the top 10 groups in the past three cycles combined. Drilling deeper, the top 20 groups accounted for 67 percent of all outside spending in 2012. Table 3 summarizes these findings.

Table 3: Total Spending by Top Outside Groups, 2006-2012

Year	Total Spent	Top 10 Total Spending	Pct. of Total by Top 10	Pct. of all Groups
2006	\$68,865,813	\$42,076,206	63.6%	18.9%
2008	\$301,680,429	\$163,333,700	54.8%	2.6%
2010	\$294,693,518	\$157,349,603	54.2%	3.2%
2012	\$1,056,024,501	\$573,616,887	54.5%	3.9%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

This cycle's spending suggests that as more and more unregulated dollars pour into the political process, the more electioneering spending becomes concentrated in hands of a few

⁷ Spending in presidential cycles has been nearly constant going back to 2004. Midterm election spending in 2006 and 2010 appeared to dip slightly from the presidential cycles preceding and following them, but this is expected, as midterms tend to exhibit lower levels of party spending due to the absence of a presidential candidate at the top of the ticket. The key point is that fundraising within cycle type has remained nearly constant.

⁸ This analysis included only groups that spent over \$100,000. This accounts for over 99 percent of all spending.

powerful organizations funded by a small group of very wealthy individuals. For example, casino magnate Sheldon Adelson and his wife donated between \$90 million and \$150 million to outside groups over the course of the 2012 election cycle. Their contributions can only be estimated within a wide range because the Adelsons likely made contributions to groups that do not disclose their donors.⁹

A recent Public Citizen analysis of Super PAC spending suggests that outside entities often act as shadow committees for candidates and parties, in contrast to the assumption employed by the Supreme Court in *Citizens United* that their spending would be independent.¹⁰ Two of the three top spending Super PACs, Restore Our Future and Priorities USA Action, were created with the sole purpose of aiding Mitt Romney and President Obama, respectively. Given the clear lack of independence exhibited by many outside groups, massive contributions to them are akin to unlimited contributions directly to candidates, which the Supreme Court has long recognized as posing an unacceptable threat of causing corruption.

Table 4: Spending by Top 20 Outside Groups, 2012 Election Cycle

Group Type	Group Name	Amount Spent	Group's Viewpoint
Super PAC	Restore Our Future	\$142,655,218	Conservative
Super PAC	American Crossroads	\$104,772,098	Conservative
501(c)	Crossroads GPS	\$70,940,377	Conservative
Super PAC	Priorities USA Action	\$66,182,126	Liberal
501(c)	Americans for Prosperity	\$39,448,456	Conservative
Super PAC	Majority PAC	\$37,536,489	Liberal
501(c)	US Chamber of Commerce	\$36,177,665	Conservative
Super PAC	House Majority PAC	\$30,749,687	Liberal
501(c)	American Future Fund	\$25,586,048	Conservative
Super PAC	Freedomworks for America	\$19,568,530	Conservative
Super PAC	Club for Growth Action	\$19,021,018	Conservative
Super PAC	Winning Our Future	\$17,007,762	Conservative
501(c)	Americans for Job Security	\$15,872,866	Conservative
501(c)	Americans for Tax Reform	\$15,794,581	Conservative
Super PAC	Ending Spending Fund	\$15,343,379	Conservative
Super PAC	SEIU	\$15,236,763	Liberal
501(c)	American Action Network	\$11,660,232	Conservative
501(c)	League of Conservation Voters	\$10,978,702	Liberal
Super PAC	Congressional Leadership Fund	\$9,450,236	Conservative
Super PAC	Independence USA PAC	\$8,173,458	Liberal
Total (Top 20)		\$712,155,884	
Total (All Groups over 100K)		\$1,056,024,501	

⁹ See Kenneth P. Vogel, Dave Levinthal, and Tarini Parti, *Barack Obama, Mitt Romney Both Topped \$1 Billion in 2012*, POLITICO (December 7, 2012), <http://politi.co/X5BInM> and Peter H Stone, *Sheldon Adelson Spent Far More on Campaign than Previously Known*, POLITICO (December 3, 2012), <http://huff.to/Z1NRXx>.

¹⁰ TAYLOR LINCOLN, PUBLIC CITIZEN, SUPER CONNECTED, 3 (2012), <http://bit.ly/URLc4y>.

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

Conclusion

Citizens United created a distinct advantage for outside groups over candidates and parties by permitting outsiders to accept unlimited contributions. The events of the 2012 election cycle show that outside entities are on track to become the dominant voices in close elections, threatening to drown out candidates outright. This is a problem.

The first and most effective solution would be to nullify the effects of the *Citizens United* decision, either by convincing the court to reverse itself or through a constitutional amendment. Such a solution would permit a reinstatement of rules that require contributions to groups spending money to influence federal elections to be made by individuals, and within limits that do not pose a significant risk of corrupting candidates who benefit from those contributions.

There are also a number of legislative and regulatory fixes that would help mitigate the effect of outside spending until *Citizens United* can be undone. These include passage of the DISCLOSE Act, which would require outside spending entities to reveal the sources of their money. The Shareholder Protection Act would give the owners of publicly traded companies the right to vote on their companies' political budgets and would ensure that such companies' political expenditures are disclosed. A proposed rule by the Securities and Exchange Commission would accomplish many of the goals of the Shareholder Protection Act.

Some might suggest that the answer to the warped reality of outside groups threatening to overtake candidates and parties would be to eliminate limits on the amounts of campaign contributions that candidates could receive.

Most Americans would doubtless recoil at such a step. And even those who have sought to weaken campaign finance laws would have a hard time defending a no-limits proposal. Eliminating contribution limits outright would run contrary to common sense, as well as the Supreme Court's long held view that unlimited direct contributions pose an unacceptable risk of causing corruption.¹¹

¹¹ See *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976). "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices [from large contributions] can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one."

Appendix: Spending in Most Expensive Senate Races, 2006-2012

Race (By State)	Year	Total, including Party Committees	Candidate Total	Outside Total, No Party Committees	Party Committee Spending
Virginia	2012	\$81,577,074	\$31,685,776	\$37,138,800	\$12,752,498
Massachusetts	2012	\$77,393,488	\$70,535,860	\$6,617,557	\$240,071
Wisconsin	2012	\$69,944,735	\$28,028,723	\$31,198,240	\$10,717,772
Ohio	2012	\$69,460,305	\$32,483,713	\$31,282,226	\$5,694,366
Texas	2012	\$67,823,298	\$52,486,225	\$15,336,981	\$92
Connecticut	2012	\$58,861,553	\$50,105,888	\$6,152,944	\$2,602,721
Indiana	2012	\$51,771,163	\$18,927,111	\$25,631,634	\$7,212,418
Florida	2012	\$45,730,622	\$23,501,053	\$18,531,005	\$3,698,564
Nevada	2012	\$44,974,934	\$18,666,319	\$19,635,567	\$6,673,048
Arizona	2012	\$42,249,538	\$19,272,522	\$15,623,383	\$7,353,633
Nevada	2010	\$81,940,813	\$61,927,991	\$16,762,504	\$3,250,318
California	2010	\$79,367,150	\$56,950,911	\$10,079,333	\$12,336,906
Florida	2010	\$78,659,936	\$69,082,310	\$6,938,551	\$2,639,075
Pennsylvania	2010	\$72,355,520	\$42,419,669	\$12,900,003	\$17,035,848
Connecticut	2010	\$70,871,489	\$67,906,420	\$771,034	\$2,194,035
Colorado	2010	\$58,707,593	\$21,840,526	\$22,494,232	\$14,372,835
Illinois	2010	\$54,985,542	\$29,001,084	\$11,014,209	\$14,970,249
Washington	2010	\$50,647,448	\$28,760,920	\$12,636,770	\$9,249,758
Wisconsin	2010	\$42,363,661	\$37,187,232	\$4,009,131	\$1,167,298
Massachusetts	2010	\$42,100,801	\$32,805,985	\$5,822,405	\$3,472,411
Minnesota	2008	\$71,584,221	\$46,077,150	\$9,044,698	\$16,462,373
North Carolina	2008	\$58,077,105	\$28,511,493	\$9,898,960	\$19,666,652
Oregon	2008	\$50,078,059	\$20,674,392	\$10,866,877	\$18,536,790
Georgia	2008	\$48,719,304	\$27,057,417	\$7,974,991	\$13,686,896
New Hampshire	2008	\$46,003,108	\$18,090,181	\$11,422,262	\$16,490,665
Kentucky	2008	\$43,661,929	\$33,957,124	\$4,295,158	\$5,409,647
Colorado	2008	\$41,123,485	\$20,073,534	\$12,171,053	\$8,878,898
Texas	2008	\$27,622,622	\$26,950,952	\$50,764	\$620,906
Louisiana	2008	\$24,336,883	\$16,111,862	\$2,957,300	\$5,267,721
Massachusetts	2008	\$20,944,011	\$20,657,242	\$96,339	\$190,430
Missouri	2006	\$59,979,118	\$34,922,510	\$4,750,994	\$20,305,614
Tennessee	2006	\$53,125,644	\$39,582,849	\$1,403,290	\$12,139,505
Pennsylvania	2006	\$52,740,947	\$46,995,381	\$2,679,825	\$3,065,741
New York	2006	\$52,032,956	\$51,682,153	\$348,332	\$2,471
Ohio	2006	\$46,105,583	\$28,168,782	\$2,380,439	\$15,556,362
Virginia	2006	\$40,743,716	\$27,131,694	\$1,372,899	\$12,239,123
Connecticut	2006	\$40,718,461	\$39,864,683	\$12,104	\$841,674
Arizona	2006	\$33,931,950	\$30,812,249	\$854,510	\$2,265,191
New Jersey	2006	\$33,915,722	\$20,881,059	\$1,334,502	\$11,700,161
Maryland	2006	\$32,621,577	\$25,966,749	\$1,162,009	\$5,492,819

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).