



Undefeated

“People’s Pledge” Maintains Near Perfect Record at
Deterring Unregulated Outside Spending

Acknowledgments

This report was written by Congress Watch Research Director Taylor Lincoln. Aquene Freechild, co-director of Public Citizen's Democracy for People Campaign, provided much of the data used in this report. Congress Watch Deputy Director Susan Harley edited the report. We also thank Common Cause, our chief partner and collaborator on the People's Pledge Campaign, for its input on the report.

About Public Citizen

Public Citizen is a national non-profit organization with more than 350,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



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The number of candidates proposing variations on the “People’s Pledge” to deter outside groups from spending large sums to influence elections increased dramatically in 2014. Only a handful of those candidates proposing the pledge was successful in convincing their opponents to enter into agreements. Despite hurdles, 2014 provided a number of reasons for optimism that use of the pledge will increase in coming elections.

The People’s Pledge, inaugurated by then-U.S. Sen. Scott Brown (R-Mass.) and challenger Elizabeth Warren (D-Mass.) in their 2012 Senate contest, involves candidates agreeing to pay a financial penalty (usually a donation to charity) if outside groups spend money to praise them or attack their opponent. Variations on the pledge – the terms of which are negotiated by candidates on a race-by-race basis – differ in the comprehensiveness of expenditure-types covered, such as radio and television ads, Internet expenditures and direct mail. They may also vary in the definition of outside spenders covered by the agreements.

Public Citizen conducted extensive outreach with Common Cause in 2014 to convince candidates to take the pledge. For instance, the two groups sent letters to general election candidates in more than 100 of the most contested races throughout the country. The letters encouraged all candidates to enter in agreements similar to those used by Brown and Warren.

The People’s Pledge may be the only means at present by which candidates can reliably prevent their message being drowned out by outside groups or avoid an arms race in which they must orchestrate quasi-independent unregulated groups spending enormous sums on their behalf to keep pace with their opponent. This is because the U.S. Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission* (*Citizens United*) and subsequent rulings flowing from that decision have freed outside groups to use unlimited contributions from corporations, unions and individuals to influence elections.¹ The

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.

cumulative effect of these rulings has been the negation of many federal campaign finance laws, as well as state and local ones.

Candidates frequently decry outside spending, which often manifests itself in the form of particularly deceptive and vicious attack ads because these ads are not issued by the candidates' own campaigns. Officially, candidates must be entirely independent of outside groups, although an abundance of evidence indicates that the independence of many outside groups from the candidates they aid is a legal fiction.²

Despite their widespread dislike of outside spending, there are significant challenges to convincing candidates to unite to block it. History has repeatedly shown that candidates' desire to win tends to outweigh other considerations on campaign finance issues. Political observers have frequently attributed candidates' motivations to propose, accept or decline the pledge to the level of outside spending they expect on their behalf. Trust between opposing candidates to negotiate and honor an agreement in good faith is also a barrier.

Such realpolitik considerations likely depressed the number of 2014 contests in which candidates agreed to enter into pledge agreements. In 2014, counting congressional, gubernatorial and attorney general contests, the pledge was mutually accepted and signed in only two races, involving a total of five candidates.

Prospects for pledge agreements also are hindered because outside groups may have already entered the fray in primary campaigns before pledge proposals are made. Also, the fact that pledges must be individually negotiated on a race-by-race basis can be a challenge.

Despite these challenges and the small number of candidates signing the pledge in 2014, there were several positive signs for critics of outside spending who believe in the use of the pledge.

1. Significantly More Candidates Proposed the Pledge in 2014 Than in 2012

Counting congressional, gubernatorial and attorney general contests, Public Citizen is aware of 18 different races in which the pledge was proposed in 2014. (See Appendix.) This contrasts with just two instances that Public Citizen is aware of from 2012: the aforementioned Brown-Warren race and the Maine U.S. Senate contest, in which Angus King (I) proposed the pledge to his opponents. (King's opponents did not accept.)

² See, e.g., TAYLOR LINCOLN AND ADAM CROWTHER, SUPERCONNECTED (2014): GROWING TREND OF UNREGULATED ELECTIONEERING GROUPS SERVING CANDIDATES AND PARTIES FURTHER DISPROVES SUPREME COURT'S ASSUMPTION THAT SUCH GROUPS ARE "INDEPENDENT" (October 14, 2014), <http://bit.ly/10an5DZ>.

Public Citizen engaged in follow-up discussions with the campaigns of several dozen major candidates who expressed potential interest, leading to several pledge proposals.³ Common Cause state leadership was able to successfully engage the media and campaign staff in major races in Connecticut, Hawaii and Kentucky, in addition to Rhode Island where the pledge was negotiated.

2. At Least Four Republicans Proposed the Pledge

Public Citizen is aware of at least four instances in 2014 in which Republican candidates proposed the pledge to Democratic candidates. This figure might not seem large but is significant in the landscape of campaign finance reform issues. Republicans have not generally embraced proposals to mitigate the effects of *Citizens United*.

Of the four Republicans proposing the pledge in 2014, two were victorious:

- In 2014, challenger Evan Jenkins (R-W.V.) issued a pledge proposal to longtime incumbent Nick Rahall (D-W.V.). Rahall did not accept. Jenkins was victorious.
- Challenger Dan Sullivan (R-Alaska) issued the pledge to Sen. Mark Begich (D-Alaska). Begich did not accept. Sullivan won.

3. A Republican Candidate Invoked the Pledge as a Campaign Issue

U.S. Sen. Mitch McConnell, a Republican from Kentucky and an inveterate opponent of campaign finance reform, once said that “no one in the history of American politics has ever won or lost a campaign on the subject of campaign finance reform.”⁴ But in 2014, a Republican U.S. Senate candidate challenged his Democratic opponent to take the pledge and then ran an advertisement criticizing his opponent’s for refusing to do so. That candidate, Dan Sullivan (R-Alaska), won his election over incumbent U.S. Sen., Mark Begich (D-Alaska). Sullivan’s victory will help elevate McConnell to the post of Senate majority leader in January.

“I proposed a plan to stop all the mud-slinging from outsiders, so we can keep this election focused on the issues,” Sullivan said in his ad. “Unfortunately, Mark Begich said no. I’m Dan Sullivan and I approved this message, because Mark Begich should tell his D.C. friends to stay out of Alaska.”⁵

³ Press Release, Public Citizen, *Poll Shows Strong Bipartisan Support for Agreement by Candidates to Curb Avalanche of Outside Spending: Voters Support Candidate Agreements to Make Politicians More Accountable* (Aug. 13, 2014), <http://bit.ly/1zl4CAL>.

⁴ Eliza Newlin Carney, *Republicans Join Attacks on Big Money*, ROLL CALL (Oct. 28, 2014).

⁵ Susan Davis, *Ad Watch: Sullivan Challenges Begich on 'Alaska Agreement'*, USA TODAY (Aug. 26, 2014).

Though this marked an instance of a candidate campaigning on the topic of campaign finance reform, Sullivan's advocacy for the pledge was not without complications. While Sullivan decried the "unprecedented" amount of money flowing in from out of state, he opposed proposals that would prevent such spending from happening in the future, such as a constitutional amendment to repeal the *Citizens United* decision, which is the primary cause of the deluge of outside spending.⁶ In fact, Sullivan Tweeted an endorsement of *Citizens United*. Sullivan even opposed the DISCLOSE Act, which would require disclosure of outside electioneering groups' financiers.⁷

Nonetheless, Sullivan's campaigning on the subject of outside spending suggests that candidates see opportunities to get on the voters' good side by campaigning against it.

Ultimately, spending in the Alaska Senate contest suggested that candidates would have been well served to strike a deal if they wanted to control the message in their own contest. Outside groups outspent the candidates \$39.2 million to \$16.5 million. About \$9.2 million of outside groups' expenditures was by party committees, which remain subject to contribution limits. But even if one subtracts that type of spending, outside groups outspent the candidates by a nearly two-to-one margin in the Begich-Sullivan matchup.⁸

4. The Pledge Helps Elevate the Debate

Evidence suggests that the pledge results in an elevated debate during campaigns. For instance, in 2012, 97 percent of television advertisements in three states in which outside spending was rampant (Virginia, Wisconsin, and Ohio) was negative. In the 2012 Brown-Warner race in Massachusetts, just 36 percent of ads were negative.⁹ There is nothing inherently wrong with a negative ad, such as one in which a candidate criticizes his or her opponent's stance on an issue. But a high level of negative ads is an indicator of a mud-slinging race. Ads by outside groups tend to make particularly outrageous and irresponsible claims, in part because the contents of the ads cannot easily be blamed on the candidate the ads seek to assist.

Furthermore, many outside groups do not reveal their donors. In the most egregious cases, an outside "group" may amount to nothing more than a name, a post office box and a bank

⁶ Andrea Drusch, *Alaska Senate Candidate Wants to Ban Outside Money—But Only in Alaska*, NATIONAL JOURNAL ONLINE (June 10, 2014).

⁷ Nathaniel Herz, *Begich Dismisses GOP Senate Candidate Sullivan's Proposal to Curb Ad Spending*, ANCHORAGE DAILY NEWS (June 10, 2014) and Nathaniel Herz, *Senate Candidates Disagree on Solution to Outside Spending "Problem"*, ALASKA DISPATCH (Aug. 31, 2014).

⁸ Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org) (viewed on Dec. 3, 2014).

⁹ TYLER CREIGHTON, COMMON CAUSE, A PLEA FOR A PLEDGE: OUTSIDE SPENDING IN COMPETITIVE 2012 US SENATE RACES (April 2013), <http://bit.ly/1vRuHs0>.

account. No human being or institution is publicly accountable for the ads run by these entities. In contrast, donors directly contributing more than \$200 to federal candidates are publicly disclosed. Most states have similar rules.

5. The Pledge Has Worked When Tried

Although the pledge has rarely been put into service since Brown and Warren first used it in 2012, it has worked when tried.

In Brown and Warren's case, outside spenders contravened the goals of the pledge just twice, in the form of Web and print ads.¹⁰ Those messages supported Brown, who honored the terms of the deal by making the charitable donations called for.¹¹ Not a single television ad pertaining to the race was run by an outside group after the pledge was signed.¹² That success was extraordinary because the Brown-Warren race was expected to be a magnet for extraordinary sums of outside spending.

In 2014, the pledge also was accepted by each of the candidates in the Rhode Island Democratic gubernatorial primary after a concerted campaign and negotiation process organized by Common Cause Rhode Island. As Public Citizen reported in September, the pledge was nearly completely successful in preventing the forms of outside spending it covered.¹³ This success in combatting outside money came in spite of the fact that the Rhode Island primary involved record spending by the candidates themselves.¹⁴

Also in 2014, Warren Tolman and Maura Healey, the candidates in the Democratic primary for attorney general in Massachusetts, entered into a pledge. None of the television advertisements intended to influence that contest was purchased by an outside group, according to the Center for Public Integrity.¹⁵

The pledge also was accepted by the candidates for the Democratic nomination in the 2013 special election to replace outgoing U.S. Sen. John Kerry (D-Mass.). The agreement held for

¹⁰ Will Dooling, *In Massachusetts, even the "People's Pledge" Can't Keep Out the Outside Money*, PR Web (Oct. 17, 2012), <http://bit.ly/1vobQA0>.

¹¹ Shira Schoenberg, *Scott Brown-Elizabeth Warren "People's Pledge" Could Become National Model*, MASSLIVE (November 16, 2014), <http://bit.ly/VO600k>.

¹² TYLER CREIGHTON, COMMON CAUSE, *A PLEA FOR A PLEDGE: OUTSIDE SPENDING IN COMPETITIVE 2012 US SENATE RACES* (April 2013), <http://bit.ly/1vRuHs0>.

¹³ ADAM CROWTHER, PUBLIC CITIZEN, *ROLLING BACK THE TIDE* (September 9, 2014), <http://bit.ly/1p2saDx>.

¹⁴ *Raimondo Elected 1st Female Rhode Island Governor*, NBC NEWS 10 PROVIDENCE (Nov. 4, 2014), <http://bit.ly/1vlofV9>.

¹⁵ *Who's Calling the Shots? State Ad Wars Tracker: TV Ads in 2014 State Races, Massachusetts, Attorney General*, THE CENTER FOR PUBLIC INTEGRITY (Dec. 3, 2014), <http://bit.ly/1yhErZM>.

that contest, between Ed Markey and Stephen Lynch. However, no such agreement was reached in the general election contest between Markey and Gabriel Gomez (R).¹⁶

6. Pledge Proposals Received Media Coverage

Where the pledge has been proposed, it has generally received press coverage. Discussion of whether candidates will take the pledge has become a regular feature in high-profile contests in Massachusetts, where the Brown-Warner contest set a popular precedent.¹⁷ Perhaps buttressed by Brown's participation in the pledge in 2012, Brown's refusal to take the pledge in his 2014 U.S. Senate race against Sen. Jeanne Shaheen (D-N.H.) received significant press attention.¹⁸ Common Cause called on candidates to take the pledge through opinion pieces in prominent papers in Pennsylvania and Kentucky.

Overall, at least 25 op-eds on the pledge were placed in newspapers including the *Miami Herald*, *Dayton Daily News* and *Charlotte Observer* during the 2014 elections.¹⁹

7. The Pledge Is Popular With the Public

The pledge is popular while election spending by unregulated outside groups is not. A poll commissioned by Public Citizen and jointly conducted by a Democratic and Republican polling firm found that 68 percent of voters felt favorably toward agreements like the People's Pledge. Perhaps more significant to future candidates, 53 percent of voters said that a candidate's support for the People's Pledge would affect their likelihood of voting for that candidate. Of these respondents, five times as many said they would be more likely to vote for a candidate who supports the pledge than said they would be less likely to do so.²⁰ Meanwhile, 83 percent of respondents to a 2012 poll commissioned by the Associated

¹⁶ JAMIE BILLINGS, COMMON CAUSE MASSACHUSETTS, A PLEA FOR A PLEDGE: OUTSIDE SPENDING IN THE 2013 MASSACHUSETTS SENATE ELECTION (April 3, 2013), <http://bit.ly/1GwAl6l>.

¹⁷ See, e.g., Joanna Weiss, *Enough With the People's Pledge*, BOSTON GLOBE (June 22, 2014), <http://cbsloc.al/1BSd9N9>.

¹⁸ See, e.g., Michael Rosenfield, *NH Sen. Jeanne Shaheen Urges Brown To Sign 'People's Pledge'*, WBZ-TV (March 18, 2014); Amanda Terkel, *Scott Brown Criticized For Rejecting 'People's Pledge' In New Ad*, HUFFINGTON POST (March 24, 2014), <http://huff.to/1yZHb3s>; and Sean Sullivan, *Everything You Need to Know About the Brown-Shaheen 'People's Pledge' Ruckus*, THE WASHINGTON POST (March 21, 2014), <http://wapo.st/1BSeiUX>.

¹⁹ See, e.g., Robert Weissman, *Attacks Ads Are Killing Our Democracy*, MIAMI-HERALD (Aug. 24, 2014), <http://hrlid.us/1vcE07S>; Robert Weissman, *Candidates Should Regain Control of Ad Spending*, DAYTON DAILY NEWS (Aug. 26, 2014), <http://hrlid.us/1qpTR0r>; and Robert Weissman, *Candidates Should Regain Control of Ad Spending*, ATLANTA JOURNAL-CONSTITUTION (Aug. 26, 2014).

²⁰ Press Release, Public Citizen *Poll Shows Strong Bipartisan Support for Agreement by Candidates to Curb Avalanche of Outside Spending: Voters Support Candidate Agreements To Make Politicians More Accountable* (Aug. 13, 2014), <http://bit.ly/1zl4CAL>.

Press said they favored limits on the amounts that corporations, unions and other organizations can contribute to outside groups seeking to influence federal elections.²¹

Conclusion

The People's Pledge may be the only way amid the current legal terrain for candidates to quell unregulated outside expenditures. Given the innate challenges of deterring the entire universe of potential outside spenders from getting involved in a race, the success that the pledge has enjoyed when tried is striking.

There are at least three significant challenges to convincing more candidates to take the pledge. The first is simply realpolitik. In most competitive races, one candidate is likely to have a stronger position in terms of likely outside expenditures aiding him or her. Even candidates who might outwardly tout campaign finance reform are loath to cede such an advantage.

A second challenge is that some outside expenditures often occur before pledge proposals are made. These expenditures often complicate negotiations because candidates who have already been attacked by outside groups do not want to give up the chance to retaliate. A solution to this is for candidates to propose the pledge earlier in campaign, which is complicated by the greater number of candidates in typical primaries. This strategy, however, proved successful in the Rhode Island gubernatorial primary, in which John Marion, executive director of Common Cause Rhode Island, successfully facilitated negotiations.

A third challenge rests in the difficulty at arriving at mutually agreed upon terms. Each pledge must be individually negotiated, and there are many variables that may provide advantages to one candidate or another. The pledge is best suited for the most contested races. Due to the fact that it must be negotiated on a case-by-case basis, it is unlikely that use of the pledge will grow to such an extent that it will significantly curtail overall outside spending. However, the pledge has been shown to be a useful tool edifying the races in which candidates have embraced it.

Ultimately, demonstrations of success in "Pledge" contests might assist—in combination with the public's growing disgust with the landscape wrought by *Citizens United*—in building a critical mass of support for improved disclosure, public funding of elections, a constitutional amendment to repeal *Citizens United*, or to compel the Supreme Court to reverse itself.

²¹ *The AP-National Constitution Center Poll*, GFK ROPER PUBLIC AFFAIRS & CORPORATE COMMUNICATIONS (August, 2012), <http://bit.ly/1uXPdSQ>.

Appendix: Contests in Which "People's Pledge" Was Proposed in 2014

| State | Contest | P/G | Candidate Initiating Pledge Proposal | Opponent(s) to Whom Pledge Proposal Sent | Pledge Accepted | Winner* |
|--------|--------------------------------|------|--------------------------------------|--|-----------------|-----------------|
| Alaska | U.S. Senate | G | Dan Sullivan (R) | Mark Begich (D) | N | Sullivan |
| Ariz. | Governor | Both | Fred DuVal (D) | All candidates, both parties | N | Doug Ducey |
| Calif. | U.S. House District 17 | G | Ro Khanna (D) | Mike Honda (D) | N | Honda |
| Ct. | U.S. House District 5 | G | Mark Greenberg (R) | Elizabeth Esty (D) | N | Esty |
| Ga. | U.S. Senate | G | Michelle Nunn (D) | David Perdue (R) | N | Perdue |
| Hawaii | U.S. House District 1 | G | Charles Djou (R) | Mark Takai (D) | N | Takai |
| Ky. | U.S. Senate | G | Alison Grimes (D) | Mitch McConnell (R) | N | McConnell |
| Mass. | Governor | G | Martha Coakley (D) | Other Democratic candidates | N | Coakley |
| Mass. | Governor | P | Martha Coakley (D) | Charlie Baker (R) | N | Baker |
| Mass. | Attorney General (Democratic) | P | Maura Healey (D) | Warren Tolman (D) | Y | Healey |
| Md. | Governor (Democratic) | P | Douglas Gansler (D) | Other Democratic candidates | N | Anthony Brown |
| N.H. | U.S. House District 1 | P | Carol Shea-Porter (D) | All other candidates | N | Guinta |
| N.H. | U.S. Senate | G | Jeanne Shaheen (D) | Scott Brown (R) | N | Shaheen |
| N.Y. | U.S. House District 24 | G | Dan Maffei (D) | John Katko (R) | N | Katko |
| Ohio | U.S. House District 14 | G | Michael Wager (D) | David Joyce (R) | N | Joyce |
| R.I. | Governor | P | Democratic candidates | Democratic candidates | Y | Gina Raimondo |
| Va. | U.S. Senate | G | Mark Warner (D) | Ed Gillespie (R) | N | Warner |
| W.V. | U.S. House District 3 | G | Evan Jenkins (R) | Nick Rahall (D) | N | Jenkins |

Source: Public Citizen data collection

* Names of candidates who proposed the pledge and won are in bold.