



# Rolling Back the Tide

'People's Pledge' Stems Tide of Outside Campaign Spending in Rhode Island Gubernatorial Primary

## **Acknowledgments**

This report was written by Adam Crowther, Researcher for Public Citizen’s Congress Watch division, and edited by Congress Watch Deputy Direct Susan Harley and Congress Watch Research Director Taylor Lincoln.

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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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The Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* ushered in a new era of unfettered electioneering spending by groups that officially operate independent of candidates.<sup>1</sup> Now, these groups are free to accept unlimited contributions from corporations and unions to influence elections. The decision not only struck down federal campaign finance laws but left state and local jurisdictions powerless to stem the influence of third-party groups, which may be funded by out-of-state contributors with little personal stake in the election in question.

These outside groups, which include super PACs and 501(c) nonprofit groups, have availed themselves of permissions flowing from *Citizens United* to influence local school board elections, state senate races, and state judicial elections in ways that previously would have been prohibited.<sup>2</sup>

The only existing option to ensure that candidates' messages are not drowned out by outside spenders appears to rest with the candidates themselves. This solution, known as the People's Pledge, was successful in the 2012 U.S. Senate contest between Sen. Scott Brown (R-Mass.) and challenger Elizabeth Warren (D), and now appears to have succeeded in the Rhode Island governor's Democratic primary race, which was held Tuesday, September 9.

Brown and Warren signed a pledge to discourage outside groups from spending on their behalf during their race for U.S. Senate.<sup>3</sup> In January 2012, the two agreed that if any outside group made an independent expenditure on their behalf, the campaign intended to benefit from the expenditure would donate 50 percent of the cost of the expenditure to charity. This applied to radio, television, and online advertising but excluded direct mail, canvassing,

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<sup>1</sup> *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/sPC9tI>. 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.

<sup>2</sup> Chris Kromm, *Outside Groups Pumped \$2.6 Million into North Carolina's Primaries*, INSTITUTE FOR SOUTHERN STUDIES (July 17, 2014), <http://bit.ly/WeXusi>. See also Fredreka Schouten, *Federal Super PACs Spend Big on Local Elections*, USA TODAY (February 25, 2014), <http://usat.ly/1qcHVKA> and *Correction Affidavit for Political Committee*, TEXAS ETHICS COMMISSION (May 1, 2014), <http://bit.ly/1xYD981>.

<sup>3</sup> Dan Eggen, *Scott Brown, Elizabeth Warren Pledge to Curb Outside Campaign Spending*, WASHINGTON POST (January 23, 2012), <http://wapo.st/XS65SB>.

and other forms of organizing. The Massachusetts pledge was violated only twice, both times by groups supporting Brown, who honored the terms of the deal.<sup>4</sup>

In April 2014, Rhode Island State Treasurer Gina Raimondo, Providence Mayor Angel Taveras, and former Obama administration official Clay Pell, the leading candidates running in the Democratic primary for governor, entered into a similar agreement. As in the case of the agreement between Brown and Warren, there have been few expenditures that violated the Rhode Island pledge. The only known violation as of Sept. 8, 2014, was a \$1,200 advertisement published in the *Providence Journal* on Sept. 4 and Sept. 5 attacking Taveras that was paid for by the Providence Fraternal Order of Police.<sup>5</sup> This expenditure was tiny in the scope of the overall race, in which \$12 million has been spent.<sup>6</sup> The candidates who stood to benefit from the anti-Taveras ad both agreed to make a contribution to charity, per the agreement.<sup>7</sup>

The Rhode Island pledge represented a case in which candidates were able to block the expected torrent of television ads on their race.

### History of the Rhode Island Pledge

In September 2013, incumbent Rhode Island Gov. Lincoln Chafee (D-R.I.) decided not to run for a second term.<sup>8</sup> In August 2013, the American LeadHERship super PAC was formed to support a potential gubernatorial campaign by Raimondo.<sup>9</sup> Taveras, who had not yet announced his candidacy for governor but was expected to run, responded to the formation of American LeadHERship by calling on potential candidates for governor to sign the People's Pledge.<sup>10</sup>

In January 2014, shortly after Raimondo announced her candidacy for governor, a story broke that American LeadHERship received a \$100,000 contribution from John and Laura Arnold, a Houston, Texas, couple who had previously supported Raimondo's attempts to

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<sup>4</sup> Shira Schoenberg, *Scott Brown-Elizabeth Warren 'People's Pledge' Could Become National Model*, MASSLIVE (November 16, 2014), <http://bit.ly/VO600k>.

<sup>5</sup> Katherine Gregg, Pell, *Raimondo Campaigns Agree to Donate to Taveras Charity for Alleged Violation of 'People's Pledge'*, PROVIDENCE JOURNAL (September 5, 2014), <http://bit.ly/1w7BSx2>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Katherine Gregg and Philip Marcelo, *Governor Chafee Will Not Seek Re-Election*, PROVIDENCE JOURNAL (September 4, 2013), <http://bit.ly/1thwHb1>.

<sup>9</sup> Ian Donnis, *It's On: Coyne-McCoty Super PAC Boosts Raimondo, Hammers Taveras and Chafee*, RHODE ISLAND PUBLIC RADIO (August 30, 2013), <http://bit.ly/Yzzi8Y>.

<sup>10</sup> *Taveras v. Raimondo – Battle of the Super PACs*, WPRO (October 23, 2013), <http://bit.ly/1uG8IFg>.

change Rhode Island's public pension system.<sup>11</sup> Rhode Island campaign finance law places strict limits on the amount an individual can contribute to a state or local campaign. In 2014, individuals can contribute a total of \$1,000 to a single candidate or political action committee, with an aggregate limit of \$10,000 to all state and local candidates and political action committees.<sup>12</sup> But because American LeadHERship is technically independent of Raimondo, the contribution was not regulated by state campaign finance laws. If it were, it would have exceeded state limits by 100 times. The revelation of the Arnolds' contribution to American LeadHERship prompted Taveras' to intensify his call for candidates to agree to a pledge.

In April 2014, after a negotiation facilitated by Common Cause Rhode Island, Taveras, Raimondo, and Pell signed an agreement in which each candidate agreed to discourage outside spending on the race. Inspired by Brown's and Warren's 2012 agreement, each candidate pledged to make a contribution to charity equal to 50 percent of the amount spent on their behalf by an outside group.<sup>13</sup> The pledge defined outside groups as corporations, unions, 527 organizations, 501(c) organizations, and super PACs.<sup>14</sup> The pledge covered spending by outside groups on radio, television, and internet advertising, but not direct mail and canvassing.

American LeadHERship, the super PAC formed to support Raimondo, has abided by the terms of the pledge. As of September 9, 2014, American LeadHERship had reported spending \$75,000 in support of Raimondo, but the expenditure did not violate the pledge because it was on direct mail.

The American Federation of State, County, and Municipal Employees reported spending \$100,000 to produce a YouTube video that it posted online. However, because it did not pay to distribute the video, that expenditure did not violate the terms of the pledge.<sup>15</sup>

Each candidate has expressed support for the pledge. In an email to her supporters, Raimondo characterized the pledge as "an important first step to ensuring that our elections aren't hijacked by outside spending." Taveras commented that the pledge enabled Rhode Islanders to participate in an election in which their voices are the ones that matter

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<sup>11</sup> *Raimondo Officially Announces Run for Governor*, ASSOCIATED PRESS (January 13, 2014), <http://bit.ly/XAmGud>. See also Ted Tesi, *Ex-Enron Trader Gave \$100K to Pro-Raimondo Super PAC*, WPRI (January 31, 2014), <http://bit.ly/VEREjj>.

<sup>12</sup> Rhode Island Campaign Contributions and Expenditures Reporting, Section 17-25-10.1 (2014).

<sup>13</sup> Thomas J. Morgan, *3 Democratic Candidates for R.I. Governor Sign 'People's Pledge' Deal on Outside Money*, PROVIDENCE JOURNAL (April 28, 2014), <http://bit.ly/1tmf1dx>.

<sup>14</sup> Rhode Island Gubernatorial Democratic Primary People's Pledge, <http://bit.ly/1tm6AxA>.

<sup>15</sup> Arielle Confino, *In Final Weeks, Outside Money Pours into Democratic Primary*, GOLOCAL (August 25, 2014), <http://bit.ly/1CqWDFo>.

most. Finally, Pell described the pledge as an historic agreement that will limit the influence of unaccountable outside spending and decrease the likelihood of negative advertising.<sup>16</sup>

### **Conclusion**

The success of the People's Pledge in Rhode Island demonstrates that excessive expenditure of outside money does not have to be the norm in elections. Instead, candidates can take steps to curb the influence of outside groups and their funders. By agreeing to the pledge, each candidate has chosen to elevate the voices of Rhode Island voters over those of outside interests.

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<sup>16</sup> Thomas J. Morgan, *3 Democratic Candidates for R.I. Governor Sign 'People's Pledge' Deal on Outside Money*, PROVIDENCE JOURNAL (April 28, 2014), <http://bit.ly/1tmf1dx>.