December 2015

The Role of Non-Profit Organizations in the Political Process

Hannah J. Greendyk

Follow this and additional works at: http://scholarship.shu.edu/pa

Part of the Political Science Commons

Recommended Citation
The Role of Non-Profit Organizations in the Political Process

Hannah J. Greendykh

Hannah J. Greendykh is studying Political Science at Seton Hall University. She will be attending Seton Hall University School of Law in the fall of 2013.

501(c)(4) organizations (also known as social welfare organizations) receive tax-exempt status under Section 501(c)(4) of the Internal Revenue Code (IRC) because they are not organized for profit but operate exclusively for the promotion of social welfare.84 These tax exempt organizations may only engage in political activity provided it is not their primary purpose. As a result of the Citizens United Supreme Court decision, all 501(c)(4) organizations may use independent expenditures with regard to support or oppose federal or state candidates.85 These increased allowances for 501(c)(4) political involvement have led to a dramatic increase in the influence of tax-exempt organizations.

The number of groups applying for tax-exempt status under IRC 501(c)(4) has grown

---

84 In their article entitled, “Political Organizations and IRC 501(c)(4),” Raymond Chick and Amy Henchey write that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community, i.e. primarily for the purpose of bringing about civic betterment and social improvements.

85 An independent expenditure is an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.
The Role of Non-Profit Organizations in the Political Process

significantly since 2010. According to Reuters, approximately two hundred groups applied for tax-exempt status under this section of the IRS code during 2010 and 2011, and about 50 were granted such status. The article states that Stephen Miller, a deputy IRS commissioner, admits that the IRS does not have a test for assessing in how much political activity these groups engage. Because it has no such test, the IRS is assigning tax-exempt status arbitrarily.

The IRS is also unable to detect 501(c)(4) misuse of their tax-exempt status because of their limited employees and resources. The IRS tax-exempt division has about 900 employees, and only about 400 to 500 of them conduct audits. According to John Avlon of the Daily Beast, the IRS conducted about 2,500 audits in 2011, but only a few of the audited groups were 501(c)(4) organizations. Approximately 100 of the 97,000 existing tax-exempt organizations are audited per year, meaning that there is a 0.1 percent chance that a group will be audited. When audits do occur, they take several years and are not completed until far after the election is over. Even when the IRS deems a 501(c)(4) has broken the law, they often recommend civil instead of criminal penalties. Such penalties include these penalties include an organization losing its tax exempt status and having to pay back taxes for all of its activities during an election. Avlon speculates that this might be a lot of money, but for wealthy groups it is a small price to pay for a year-long offensive to elect a particular candidate.

87 Ibid.

Political Analysis

Anonymity of Donor Contributions

Under the IRC, 501(c)(4) groups can only retain their tax-exempt status if they devote more than half of their resources towards social welfare goals. Accordingly, while 50.1 percent of 501(c)(4) resources must be spent in furtherance of their charitable endeavors, the other 49.9 percent can be used for other purposes, including independent political expenditures. The IRS does not currently require 501(c)(4) organizations to specifically disclose the identity of the donors who fund either type of spending.

Consumer groups and Democrats voiced great dissatisfaction over the non-disclosure requirements, prompting Representative Chris Van Hollen (D-Maryland) and Senator Charles Schumer (D-New York) to propose in the House and Senate the Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act. Under the DISCLOSE Act, groups spending unlimited amounts of money on independent expenditures would be required to disclose who was paying for the ads. Under current law, 501(c)(4) organizations can spend millions of dollars on attack ads without Americans ever knowing who is funding them. But under the DISCLOSE Act, a group spends more than $10,000 on political ads in an election cycle would have to identify the donors funding those efforts.89

In seeking increased disclosure, the Act sought to expose wealthy donors and the origins of non-profit organizations’ millions. The Act passed the House of Representatives, but was unable to break a Republican filibuster in the

Senate and failed in a 51-44 vote on July 16, 2012.\textsuperscript{90}

The Federal Election Commission (FEC) previously had some disclosure requirements, but they were very vague and often not followed. The FEC required that the identities of donors be disclosed only if the donors had earmarked their donations specifically for electioneering communications.\textsuperscript{91} However, very few donors specified a particular election expense when contributing and this provision failed to generate much information on donor identities.

The U.S. District Court for the District of Columbia ruled that this FEC requirement violated the McCain-Feingold Act, which requires groups running electioneering communications to disclosure the identity of all donors contributing $1,000 or more, not just earmarked donations. The FEC issued a press release on July 27, 2012, stating that "persons making disbursements for electioneering communications should report the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement."\textsuperscript{92} However, on September 18, 2012, the District of Columbia U.S. Court of Appeals overturned the lower court's ruling, leaving virtually no disclosure requirements in place.

The IRS also has disclosure requirements, but tax-exempt organizations easily skirt them. Under the Federal Election Campaign Act, all tax-exempt

\begin{footnotesize}
\footnotesize
\footnote{91}{Electioneering communications are broadcast advertisements that mention a federal candidate, are aired 30 days prior to a primary and 60 days prior to a general election, and are targeted to the relevant electorate.}
\end{footnotesize}
organizations must annually file Form 990, which discloses all funds raised and spent. Form 990 has a schedule for listing the identity of donors, which instructs the organizations to report its donors as “anonymous” only if they do not know the identity of the donor. If they misrepresent or fail to report the identity of known donors, they do so under penalty of perjury. An organization may not indicate a donor as “anonymous” simply because that donor wishes their identity to remain secret.

There are several loopholes that allow organizations to ignore this disclosure requirement. First, the IRC does not specify to what extent an organization must go to determine the identity of its donors, allowing organizations to claim ignorance and make no attempt to discover the identity of their donors. Second, businesses and firms can conceal individual identities by setting up client trust accounts. Clients give their donations to the firms, who then transmit the money to the requested organization. The firm’s name will then appear on Form 990, rather than the individual donor. The IRS has no way of knowing if the business truly made that donation or is covering for someone else. The third way to hide donations is via cashier’s checks or bank wire transfer. Neither of these methods specifies the source of the money, and the IRS is not inclined to trace the funds because it would take an enormous amount of investigative work.93

Limitless Donations

Non-profit organizations have no limits on the amounts of money they can take in through donations. Prior to Citizens United, the Bipartisan Campaign Reform Act (BCRA) prohibited any independent

expenditures by corporations, unions, and non-profit organizations.94 These restrictions prevented these groups from harnessing their full financial power for political purposes. However, *Citizens United* changed the face of politics drastically by allowing corporations, unions, and non-profit organizations to spend unlimited amounts of money on independent expenditures.95 The ability of these organizations to take in limitless donations is not significant in and of itself; however, in this post-*Citizens United* era, they are now able to increasingly influence elections by spending unlimited amounts of money on behalf of a particular candidate.96

Non-profit organizations now spend more money than any other type of independent group. According to estimates by Kantar Media’s Campaign Media Analysis Group, tax-exempt groups have spent more than $71 million on ads as of August 8, 2012, while Super PACS have spent an estimated $56 million.97 Organizations like Crossroads GPS and the Americans for Prosperity spent an estimated $41.7 million and $18.2 million on TV ads, respectively.98

The Relationship Between 527 and 501 (c)(4) Organizations

501 (c)(4) organizations have capitalized on an important loophole in the IRC that further increases their political power. These

---


95 Ibid.

http://www.neh.gov/about/chairman/sp


98 Ibid.
groups can create an affiliated 527 political organization called a "connected PAC" or a "separate segregated fund" to make contributions to federal candidates. Organizations whose political activities make them ineligible for IRC 501(c)(4) status may qualify as a political organization under IRC 527. Political action committees (PACs) are 527 organizations, which the IRC defines as, "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." Under this designation, 527 organizations can "attempt to influence the election, nomination, or appointment of any individual to any Federal, State, or local public office, or the election of Presidential or Vice-Presidential electors."

Non-profit organizations can avoid certain taxes by conducting all of their political activity through 527 organizations. If the 501(c)(4) conducts of all its partisan political activity through this separate fund, it will have no taxable expenses for election-related activity. The 501(c)(4) can take in unlimited donations without disclosing where the money is coming from, and funnel the money to its affiliated 527 organization. This 527 organization would therefore operate as the political arm - making independent expenditures and allowing the 501(c)(4) to claim zero tax liability for the money. 527 organizations are required to disclose their donors, but because the money will come from the 501(c)(4) (which has no disclosure requirements), the donors can remain anonymous. 527 groups can also make contributions directly


100 Ibid.
to candidates, where tax-exempt organizations cannot. The largest 501(c)(4) organizations, both Republican and Democratic, have adopted this model to enhance their political power. The ability of these organizations to work together and circumvent IRS rules underscores their importance in the 2012 election. The 527 organizations enable the 501(c)(4)s to be exempt from taxes on their political involvement and keep the 501(c)(4)s from direct engagement in political activity. 501(c)(4)s and 527 organizations have created a whirlwind of dark money because of how they funnel money from one to the other with little regulation or disclosure.

Case Studies

This section examines two non-profit organizations and their political role in the 2012 election. The first organization is the National Rifle Association (NRA), which endorsed Mitt Romney in the presidential race. The second is the American Federation of State, County and Municipal Employees (AFSCME), a Democratic-leaning organization that endorsed President Obama this past election cycle. Both of these groups operate as non-profit organizations but possess a separate 527 organization to conduct their political activities.

The National Rifle Association

The NRA is an American non-profit 501(c)(4) organization that advocates for the protection and promotion of the Second Amendment, firearm ownership rights, marksmanship, firearm safety, hunting and self-defense. According to a 1999 Fortune Survey, lawmakers and congressional staffers considered the NRA to be the most influential lobbying group.101

---

Established in 1975, the NRA now has over 4.3 million members and is still growing.\textsuperscript{102} The \textit{Citizens United} decision has augmented the NRA’s power by empowering them to use unlimited amounts of their revenue on independent expenditures to support pro-gun candidates. The NRA’s has made its presence felt in recent elections not only through campaign contributions, but also millions of dollars in off-the-books spending on issue ads. According to Center for Responsive Politics the NRA spent between $1.5 million and $2.7 million on federal-level lobbying efforts between 2001 and 2010.\textsuperscript{103} However, in 2010 elections alone (the first in the post-\textit{Citizens United} era), the NRA spent more than $7.2 million on independent expenditures at the federal level.\textsuperscript{104} These outlays primarily supported Republican candidates or opposed Democratic ones.

The NRA endorsed Republican presidential candidate Mitt Romney on October 4, 2012, officially throwing itself into the presidential race. Immediately following the endorsement, the NRA aired its first TV ad of the 2012 election cycle attacking President Obama. The ad’s narrator accused President Obama of “chipping away at your rights, chipping away at your freedom. And now, they’re attacking our Second Amendment rights, but you can stop them right now. Defend freedom, defeat Obama.”\textsuperscript{105} The ad was a

\begin{itemize}
\item \textsuperscript{102} “About NRA-ILA.” NRA-ILA. Accessed September 20, 2012.
\item \textsuperscript{103} “NRA.” Center for Responsive Politics. Accessed April 8, 2013.
\item \textsuperscript{104} Ibid.
\end{itemize}
response to a proposed United Nations (UN) arms treaty the NRA feared would impose unwanted reporting requirements on civilian sales and gifts of guns.

The NRA follows the model described earlier in this paper. Rather than risk losing its tax-exempt status by engaging in overt political activity, the NRA only directly conducts education and lobbying efforts. The NRA has created the Political Victory Fund (NRA PVF), which is a 527 PAC that carries out its political activities. The NRA PVF examines candidates’ voting records, public statements and their responses to an NRA PVF questionnaire to determine how much they, irrespective of party affiliation, support the NRA mission statement. The NRA then funnels substantial amounts of money to the NRA PVF to be used for expenditures supporting pro-gun candidates. This allows the donors to remain secret, keeps the NRA separate from this political activity and helps the organization retain its tax-exempt status.

The NRA PVF existed prior to Citizens United, although its activities were much more limited. In 2008, the NRA PVF was involved in 271 campaigns in the House and Senate, and won in 230 of those races.106 In 2012, according to the Virginia Public Access Project, the NRA PVF spent $651,360 on TV ads and independent expenditures as of September 30, 2012, although not all of its spending was reported.107 The Center for Responsive Politics indicated that total NRA spending on the 2012 elections was $17.6 million, with over $9 million of that

12/10/nra-jumps-into-2012-race-attacking-obama-in-tv-ads/.

Political Analysis

figure spent by the NRA PVF.\textsuperscript{108} Based on its large involvement in the 2012 election, it is likely that the NRA will spend even more money in coming elections.

The American Federation of State, County and Municipal Employees

The American Federation of State, County and Municipal Employees (AFSCME) is a Democrat-leaning labor union which operates as a 501(c)(4) organization. It is one of the most important labor unions and a key Democratic Party ally. AFSCME is the nation’s largest and fastest growing public service employees union with more than 1.6 million active and retired members, which include: nurses, corrections officers, child-care providers, EMTs, sanitation workers, and many other public service personnel.

The AFSCME strongly supported Democratic nominee John Kerry during the 2004 presidential election and actively opposed several of President Bush’s second term initiatives. This organization supported President Barack Obama during his 2008 election cycle, and also contributed to his reelection campaign in 2012.

Although the AFSCME has been in existence since 1932, its involvement in the 2010 and 2012 elections was significant due to the Citizens United decision. In 2010, AFSCME reported spending $13 million in independent expenditures on the elections, making it the sixth largest contributor of any outside group and the second largest of any labor union in that cycle.\textsuperscript{109} About 80 percent of the independent


expenditures were spent to oppose Republican candidates, while the other 20 percent supported Democrats. Similar to the NRA, the AFSCME also has a 527 PAC, which conducts its political activity. Indeed, in 2010, the first election after the *Citizens United* decision, PEOPLE PAC spent $18 million in independent expenditures.

PEOPLE PAC follows the same model as the NRA PVF. Contributions made to the AFSCME remain hidden because of its 501(c)(4) status, and the AFSCME then transfers the money to PEOPLE PAC, which can spend unlimited amounts of money on independent expenditures because of the *Citizens United* case. The PEOPLE PAC is required to disclose its donors, but will only that all the money came from its affiliated 501(c)(4), the AFSCME.

The Decreasing Role of Grassroots Donors

According to RenewAmerica, grassroots organizations are at the bottom of the political pyramid, with the political establishment at the top. The establishment traditionally concentrates power in relatively small number of people, which include party leaders, elected officials, appointed aides, or government bureaucrats. In comparison, the grassroots include virtually everyone who is not part of the establishment, including individuals who do not hold a political office or may be new to the political arena. Grassroots fundraising is one method political candidates can use to bypass the establishment, but an analysis of the funding compositions of the 2008 and 2012 elections indicates there is a shift towards a reliance on more wealthy donors.

110 Ibid.
111 Ibid.
During the 2008 election, John McCain raised 20 percent of his funds from donations of $200 or less. In preparation for the 2012 election, Romney raised only 17 percent of his funds from donations constituting $250 or less. Romney had far fewer small donors in 2012, despite McCain’s reliance on public financing. In contrast, Barack Obama succeeded in garnering unprecedented grassroots support during the 2008 election through his use of the web. Again, during the 2012 election, Obama was once again able to obtain more grassroots donations than the Romney campaign and was able to continue this trend in 2012, raising far more grassroots donations than Romney’s campaign.

The disparity between grassroots support in the two election cycles and for the candidates is due to two factors. The first factor influencing the grassroots support is the reliance on non-profit organizations for funds. The second factor which influenced the number of grassroots donations was Obama’s ability to reach small donors using the Internet.

Firstly, the disparity between McCain’s, Romney’s and Obama’s reliance on non-profit organizations is due to the fact that the Republican establishment embraced the Citizens United decision and its effects much earlier than the Democrats. In 2008, Obama utilized the Internet and social networking sites to reach a record number of small donors, which contributed to the nearly $750 million that he raised during that election cycle. Also in
2008, John McCain raised more money from grassroots donors than Romney in 2012, although not nearly as much as Obama was able to achieve. Among the Republican candidates, there was a decided shift away from the grassroots, which Republicans relied on in 2008, and toward large donors in 2012. This shift is clearly due to the *Citizens United* decision in 2010, which allowed the use of non-profit organizations for independent expenditures and fundraising. However, the fact that Obama’s grassroots fundraising actually increased in 2012 when compared to the 2008 election can be explained by Democrats’ initial hesitation to endorse *Citizens United*.

Political entrepreneurs were quick to realize that 501(c)(4) organizations could use independent expenditures to buy unlimited political ads denouncing opponents, without disclosing their donors. Democrats were initially unwilling to embrace the *Citizens United* decision because it signified to them another opportunity for large donors and corporations to monopolize the political process, while reducing the role of grassroots donors. The disparity in the Democrat and Republican use of non-profit organizations is due to this initial unwillingness on the part of Democrats to engage in this type of political activity. While Republicans began immediately forming non-profit groups and affiliated 527 organizations, the Democrats hesitated and did not form their own organizations until mid-2012, when they realized the potential benefits from such participation.

The large Republican non-profit organization, American Crossroads, and its affiliated 527 American Crossroads GPS, raised $111.4 million between 2011 and October 2012. It expended $104 million in independent expenditures
Political Analysis

during the 2012 election cycle. In contrast, because of its later formation date, the Democratic organization Priorities Action USA raised $79 million and had $66 million in independent expenditures. Two months prior to the election, Priorities Action USA was able to outraise American Crossroads GPS, showing that support for the organization was growing. The disparity in fundraising is not due to lack of support; rather, it is due to Priorities Action USA’s late formation date.

Secondly, the disparity in reliance on non-profit organizations was Obama’s ability to mobilize grassroots support. Of the nearly $400 million raised specifically by Barack Obama’s campaign, over 40 percent came from small donors. This is a reflection and continuation of the trend that started in 2008, where grassroots donors also comprised a large percentage of his fundraising. Obama’s ability to mobilize the grassroots and to collect small donations seemed to be a characteristic of his campaign in 2008. It is not entirely surprising, therefore, that this trend continued in 2012 and actually surpassed the statistics of the 2008 election.

Obama’s heavy reliance on grassroots donors does not indicate, however, that Democrats will continue to rely on small donations in the coming elections. Instead, according to Nicholas Confessore of the New York Times, Obama grew more reliant on big-money contributors during his reelection

---


117 Ibid.

campaign. Confessore’s article states that Obama’s most wealthy donors raised or gave at least $200 million for Obama’s campaign. The fundraising statistics reveal that despite Obama’s unrivaled grassroots fundraising machine, he still relied heavily on a handful of wealthy individuals who raised millions of dollars on his behalf. The article further states that 260 of the top “bundlers” in 2012 had not raised any money in 2008, showing yet again the extraordinary effort that Obama made to recruit new wealthy fundraisers for his reelection effort. Based on this article, although Obama raised unprecedented amounts of money through small donations, he also made a shift toward wealthier donors and non-profit organizations, following the post-Citizens United trend.

An article in The Atlantic, entitled, “Did Citizens United help the Democrats in 2012?” supports the premise that there is a heavier reliance on non-profit organizations by both Republicans and Democrats. According to this article, despite Democrats’ continued fretting over the Citizens United decision, liberal groups were actually among the most skilled exploiters of the decision. Prior to 1947, unions such as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) were only allowed to communicate politically with their own members, and could not campaign to the general public. The Citizens United decision overturned this regulation and the AFL-CIO formed its own 527 organization, called Workers’ Voice, in April 2012. Similarly, the nonprofit phone company Credo was subject to pre-Citizens United restrictions; in this election cycle, however, the company formed a 527 organization and targeted 10

120 Ibid.
Republican congressional incumbents with an intensive campaign in their districts. Five of the congressional incumbents were defeated.

The article also makes the point that despite being outraised and outspent by the GOP’s Crossroads GPS, the Democratic Priorities USA Action is credited with superior effectiveness. Its ads helped to cement the image of Romney as a corporate raider, which proved to be a massive liability in the general election. When Democrats finally embraced the Citizens United decision and realized the benefits to be reaped from it, they utilized the system far better than their Republican counterparts, who had started much earlier. According to this article, despite their opposition to the decision, Democrats benefited from it more than conservatives who supported the decision from the start.\footnote{Molly Ball. “Did Citizens United Help Democrats in 2012?” The Atlantic. December 1, 2012. \url{http://www.theatlantic.com/politics/archive/2012/12/did-citizens-united-help-democrats-in-2012/265800/}.}

**Analysis**

The ability of donors to remain anonymous has greatly increased the role of non-profit organizations in the political process. Because there are no donor disclosure requirements, the American public will never know the source of political money. Corporations can engage in anonymous political activity without the knowledge of their stockholders. Although they must disclose their expenditures, corporations can avoid detection by hiding them away in financial reports. The anonymity also allows corporations to avoid the backlash of donating to controversial groups or donations in support of unpopular issues. Wealthy individuals can also engage in
anonymous donations, without the risk of revealing their party affiliation or disclosing how much of their assets they are giving to political activities. The anonymity can protect the donors from potentially unwanted attention and can also keep the non-profit groups from being affiliated with dishonest individuals or corporations. Individuals and corporations can stay above the political mudslinging, while using their own dollars to fuel it.

The ability of individuals and corporations to donate unlimited amounts was also highly significant for the 2012 election and will continue to be significant for coming elections. According to the FEC, individuals may only give $2,500 to a candidate or campaign per election, and only $5,000 to a PAC.\textsuperscript{122} However, they may donate as much as they wish to a non-profit organization. Following the model described in the section entitled “The Relationship Between 527 Organizations and 501(c)(4)s,” the individual donates to the non-profit organization, anonymously and in unlimited amounts. The non-profit organization then funnels the money to its affiliated PAC, which spends the money in unlimited amounts on independent expenditures. The PAC, although required to disclose its donors, discloses only the money that came from the non-profit organization. Additionally, the individual has skirted the $5,000 contribution limit to PAC’s, while allowing the non-profit organization to maintain its tax-exempt status by sending the money to be spent by the PAC.

Non-profit organizations also provide a scapegoat for the candidates and their campaigns. Rather than the campaign having to

fund advertising, the non-profit groups can now run extensive negative advertising without fear of serious repercussions. If the ad is unnecessarily negative, untrue, or poorly received, the non-profit organization potentially takes the fall, rather than the candidate or the campaign itself. If an ad experiences serious backlash, the candidate can simply turn away and point to the allegedly unaffiliated non-profit organization that ran the ad. In this way, candidates can move the responsibility for badly received advertisements away from their own campaigns and toward the non-profits that funded the ads.

Anonymity has undoubtedly led to an increase in donations by wealthy individuals and corporations. As a result, the role of grassroots donors, who give $250 or less to a campaign, has been significantly reduced. As discussed in the section entitled “The Role of Grassroots Donors,” an analysis of the 2008 and 2012 election cycle figures indicates that there is a decided shift away from grassroots donors and toward a reliance on wealthier donors. Wealthy individuals and corporations are giving enormous amounts to non-profit groups, rather than small donors giving several hundred dollars directly to the candidates’ campaigns. In the public financing and pre-Citizens United era, campaigns stressed the importance of mobilizing the grassroots as a means to cultivate votes and raise money. Although Obama made this a large part of both his campaigns, the 2012 election showed that even his campaign moved toward reliance on wealthier donors. This trend indicates that the average citizen has become less important. The ability of big money donors to influence the election makes the role of the middle-class citizen less and less significant.

Yet another result of the Citizens United decision is the increasing privatization and
monopolization of the political process. Wealthy individuals and corporations now have even greater influence than prior to 2010, and small donors possess a decreasing ability to influence elections. American political power increasingly rests in the hands of the elite, rather than in the hands of average citizens. Non-profit organizations have also been able to monopolize a significant part of the political process. By spending unlimited amounts of money on negative advertising, they now comprise an essential part of a candidate's campaign, although they are allegedly unaffiliated. In return for the immense support they provide, candidates are expected to pass legislation supporting the issues of the non-profit organization, if elected. Non-profit organizations will grant candidates who have passed issue-friendly legislation with a dedicated voter base, leading to a symbiotic relationship between the two. As a result, the monopolization of the political process continues to increase.

Republicans immediately supported *Citizens United* because they saw money as a way to exercise freedom of speech. Through the purchase of advertisements, non-profit organizations could speak to particular issues and against candidates, with individuals and corporations having an influence as well by funding the advertisements. Although this is a positive benefit of the use of non-profit organizations in the political process, there are far more negative aspects. The lack of transparency is disturbing because it encourages the disappearance of the grassroots donor, and increases the monopolization of the political process. These problems cannot go overlooked, but must be dealt with immediately.

The IRS needs to rewrite the IRC so that the requirements and regulations concerning non-profit organizations are more specific. Tax-exempt status is
Political Analysis

currently assigned arbitrarily and at the will of IRS officials. To appropriately assign tax-exempt status, the IRS needs specific guidelines for measuring an organization's political involvement, rather than the current usage of a "facts and circumstances" test. The IRS must also enforce its preexisting regulations and must ensure that tax exempt organizations are not abusing their status by engaging in far more political activity than is permitted. A social welfare organization can receive tax-exempt status as long as 50.1 percent of its resources are spent in the alleged furtherance of its charitable endeavors, leaving the other 49.9 percent virtually unaccounted for. The IRS needs to increase its regulation of the percentage of an organization's assets that are not spent for social welfare purposes, to ensure that the organization is not overstepping the boundaries of political involvement.

Due to the vague requirements concerning donor disclosure, there are also no specific requirements for whose names must be disclosed. Non-profit organizations simply claim ignorance of the identity of their donors and hence have become harbingers of secret money. The IRS does not have sufficient abilities or evidence to enforce their vague regulations. The current anonymity is unacceptable because it leads to corruption and dishonesty. Disclosure requirements should be passed, similar to that of the attempted DISCLOSE Act, which required the disclosure of all donations $10,000 or larger. This would allow smaller donors to remain protected while making the motives of wealthier individuals and corporations transparent. Another potential outcome of this would be a

---

The Role of Non-Profit Organizations in the Political Process

decline in large donations because of the new transparency, thereby shifting away from the monopolization of the political process and somewhat towards the grassroots. If the public knew who was actually funding the ads ran by non-profit organizations, the political motives of these wealthy individuals would be exposed and they could be held accountable for negative or false advertising. The entire system would become more transparent, while eliminating the prevalence of non-profit organizations as scapegoats for bad political behavior.

The political process must place emphasis on the mobilization of the grassroots electorate. As the grassroots see their influence declining, they will potentially be less motivated to vote. Voter turnout is already low, and a further decline would only exacerbate the situation. If the grassroots are mobilized, they will be inclined to donate their time and money to a particular candidate. Higher mobilization of the grassroots will also lead to greater voter turnout, which is an important quality of a fair election. The grassroots will not only donate more money, but they will also come to the polls in greater numbers, reinforcing the idea of government by the people rather than government by the elite.

Conclusion

*Citizens United* has undoubtedly created a whirlwind of dark money. The current rules governing tax-exempt organizations allow significant leeway with regard to their involvement in the political process. 501 (c)(4) organizations are specifically required to disclose their

---


Political Analysis

donors, and these organizations are often able to avoid disclosure by claiming ignorance. 501(c)(4) organizations may also pay for unlimited independent expenditures to sway public support toward or against a candidate, thereby greatly increasing the organization’s political power.

Additionally, the IRC contains an important loophole that enables organizations to circumvent taxes and maximize political activity. According to the tax code, tax-exempt organizations can create affiliated 527 organizations, which enable the organization to remain exempt from certain taxes. The 527 organization engages in political activity, allowing the non-profit organization to retain its tax-exempt status and to keep its donors’ identities secret. Both the NRA and the AFSCME have employed the use of both types of organizations in an effort to maximize their political influence, and at the same time protecting the identities of their donors.

Grassroots donors are becoming increasingly irrelevant due to the Citizens United decision. Despite John McCain’s reliance on public financing during the 2008 election, he was still able to raise more grassroots donations than Romney did during 2012. This is undoubtedly due to the fact that Romney focused more heavily on the influx of money from large donors and non-profit organizations, rather than the mobilization of the grassroots.

Obama was able to garner record grassroots support in 2008, and actually surpassed his own record during the 2012 election. However, this is due to the fact that grassroots mobilization was a characteristic of his campaign and it is not surprising that the trend continued during 2012. Democrats were also more hesitant than Republicans to embrace the Citizens United decision, meaning that
Republicans were ready to explore the benefits of the decision and had their infrastructures in place for the 2012 election.

In order to deal with the problems relating to the anonymity and limitless donations of non-profit organizations, the IRC needs a complete overhaul to eliminate gray areas and loopholes, and the IRS needs to enforce the existing regulations more strictly. Although this may come at the expense of taxpayers, this is certainly better than the alternative. The lack of disclosure requirements, non-enforcement of current regulations, and the ability of individuals and corporations to donate to nonprofit organizations in unlimited amounts have contributed to countless problems in the political process. The current anonymity and limitless donations will increase the political role of non-profit organizations to such an extent that the role of grassroots donors will be eliminated completely. The current trend of anonymity and limitless donations will increase the political role of non-profit organizations to the extent that the role of grassroots donors will be eliminated completely.
The White House or the Poor House: New Financial Realities in Politics

Andrew J. Casais

Andrew Casais is studying Political Science at Seton Hall University. He currently serves as the First Ward Councilman of the Borough of Roselle Park in the State of New Jersey.

President Barack Obama made his first notable comments about the Supreme Court’s decision in the *Citizens United v. Federal Elections Commission* (FEC) case during his 2010 State of the Union address. The President expressed his concerns as he looked over both houses of the United States Congress, six robed members of the United States Supreme Court, dignitaries, and guests. "With all due deference to separation of powers," Obama began, "last week the Supreme Court reversed a century of law that, I believe, will open the floodgates for special interests...to spend without limit in our elections."126

Three years after the President’s 2010 comments, scholars, reporters and political scientists are still weighing how the *Citizens United* decision has impacted the electoral landscape. This paper will argue that the loose financial disclosure and receipt restrictions set by the Supreme Court created a new source of political money and gave Super PACs and 501(c)(4) non-profit organizations a powerful incentive to

work together to influence elections. Republicans are the primary beneficiaries of these new money flows because they were much more willing to adapt to the post-

*Citizens United* reality than Democrats. This has served Republicans well in 2010 and 2012 in terms of funding campaigns and associated advertising throughout the nation.

This paper will use a variety of materials to substantiate the financial impact of *Citizens United*, which includes the court decision, case merits, case studies, and web resources. These references will be essential for analyzing the operation of 501(c)(4) non-profit organizations and newly created “Super” Political Action Committees (Super PACs) in the post *Citizens United* era. Data from these sources will also illustrate the differences in effectiveness between liberal and conservative 501(c)(4)s and Super PACs during the 2012 Presidential campaign.

This paper will define several key terms as follows: The phrase “electioneering communications” will follow the Center for Responsive Politics’ definition as purchased media blocks (either television or radio) that refer to federal candidates but do not openly advocate for or against them. “Super PACs” are independent expenditure committees that do not directly associate themselves with a political candidate or campaign committee, but may expend funds to support or oppose candidates. An “independent expenditure” is political spending that is not coordinated or organized with a candidate or political party. The phrase “financial impact” describes how the decision changed financial disclosure requirements and receipt restrictions for Super PACs.

---

127 "Electioneering Communications." *OpenSecrets.org.* The Center for Responsive Politics

Political Analysis

and 501(c)(4) non-profit organizations.

There is an important distinction between 501(c)(3) and 501(c)(4) nonprofit organizations. Unlike 501(c)(3)s (which are not involved in the Citizens United case) 501(c)(4) institutions are explicitly identified as social welfare organizations by the IRS and are permitted to engage in political action. However, the proper extent of these actions was a matter of debate prior to the 2010 Citizens United decision. The Alliance for Justice notes that federal law allows 501(c)(4) organizations to intervene in politics so long as “supporting or opposing candidates is not their primary activity”. 129 Yet even with this “primary activity” test the government has not developed a consistent way of determining if a 501(c)(4) is abusing its ability to engage in political operations. Even the Alliance for Justice notes that,

"No clear test exists for determining when political activity becomes the organization’s primary purpose. To be cautious, a 501(c)(4)’s total expenditures for political activity generally should not exceed thirty to forty percent. When evaluating the organization’s primary purpose, the IRS may also consider the organization’s overall activities, including volunteer activities. 130 It is clear that even before the Citizens United decision, the IRS did not know how to accurately regulate the political involvement of 501(c)(4) organizations.

A lack of FEC oversight of 501(c)(4)s also compounds the IRS’s confusion on how to measure their political activity. One of the most prominent duties of the FEC is to govern campaign and political finance by recording any election-related donors, donations, and expenditures. Political committees are required to abide by these

129 Ibid.

130 Ibid.
guidelines and submit reports of donors and expenditures, but the FEC does not classify 501(c)(4)s as political committees and so they are not bound by FEC rules. These failures to regulate 501(c)(4) political activities are due to the fact that these organizations have expanded beyond their original goal of advancing a larger, meaningful social agenda into nearly stand-alone political operations. Emma Schwartz of PBS contends it is "because 501(c)(4)s say their primary purpose is social welfare, [that] they can keep their donors secret," but there is a significant difference between what the organizations say and what happens in practice.

The Citizens United decision exacerbated the extant problem of 501(c)(4)s and political engagement by removing any uncertainties and directly empowering these organizations to act in an overtly political manner. Robert Maguire outlined the new reality in a September 2012 Center for Responsive Politics article, stating, "the Supreme Court's 2010 Citizens United v. FEC ruling allows 501(c) organizations like...social welfare groups and trade associations to engage directly in express advocacy -- the sort of ads that explicitly urge viewers to vote one way or another, which the law refers to as 'independent expenditures'."\(^{132}\)

The ruling led to an explosion of applications for 501(c)(4) status and all of these new "social welfare" organizations needed funding for their political advocacy. This need is what makes the financial aspects of the Citizens United decision so noteworthy and impactful. Political strategists have developed a new appreciation for the potential power of 501(c)(4)s

\(^{131}\) Schwartz, Emma. "The Rules That Govern 501(c)(4)s." PBS.

because of their combination of sparse disclosure requirements and unlimited contributions. Schwartz comments that, "Seeing the advantages offered by groups that can engage in political activity while keeping their donors secret, both Democrats and Republicans have seized onto this opening in the tax code."\(^{133}\)

These lax disclosure requirements established by *Citizens United* shifted money from explicitly political organizations to social welfare non-profits. 501(c)(4) activity was limited before the 2008 election and most electioneering communication expenditures originated with expressly political organizations. These expenditures reached a record high of $28,105,113 in 2008\(^{134}\), but decreased dramatically to just over $11 million during the 2010 mid-term elections, and then to a low of $5,412,467\(^{135}\) during the 2012 Presidential Election. In contrast, Maguire writes that, "[c]xpress advocacy by 501(c) organizations skyrocketed since 2010. Measured at the same point in each cycle, spending on express advocacy by 501(c) organizations increased from $3.3 million in 2008 to $21.7 million in 2010 (after *Citizens United*) before tripling to a whopping total of $67.4 million as of September 13, 2012."\(^{136}\) There is a visible negative correlation between the two types of spending in the post-*Citizens United* era. When expressly political electioneering expenses decreased, independent expenditures from groups like 501(c)(4)s increased exponentially in just two years. Politicians have gravitated to 501(c)(4)s because of their low level of regulation, and legal designation as social welfare organizations.

\(^{133}\) Schwartz, Op. Cit.  
\(^{134}\) Maguire, op. cit.  
\(^{135}\) Ibid.  
\(^{136}\) Ibid.
The best example of the newfound power of these 501(c)(4) organizations is Crossroads GPS, which entered the political arena just two years ago. Crossroads GPS's mission statement is fairly simple, as their website explains, "[o]ur goal is to provide a clear road map for concerned Americans on the most consequential issues facing our country, empowering them to set the direction of policymaking in Washington rather than being the disenfranchised victims of it."\(^{137}\) Like many of these newly formed 501(c)(4) organizations, the expressed goal and political activity do not match.

Crossroads GPS is known for its support of Republican and conservative candidates across the country. Their funding of politically right-leaning individuals was one of the many reasons for the resounding success of Republican candidates during the 2010 mid-term election and illustrated the organization's influence in the new, post-Citizens United, era. According to a report from the Center for Public Integrity, "Crossroads GPS's $17 million outlay made it one of the biggest outside spenders in the 2010 midterm elections... [and] is poised to break its own spending records in 2012."\(^{139}\) Notably, this estimated $17 million figure from 2010 only includes funds spent against Democratic candidates and causes. Crossroads GPS spent an additional $4,287,454 in support of Republican candidates; making the organization's 2010 independent expenditure total $21,553,277.\(^{139}\)

Crossroads GPS, remarkably, was able to build on their 2010 success and raise more


money, expend more funds, and exert even more influence in 2012. The Center for Responsive Politics reported that Crossroads GPS reached $70,968,744\textsuperscript{140} in independent expenditures for the 2012 federal elections, breaking its own record by over three-hundred percent. Crossroads GPS used the majority of their expenditures to defeat President Obama and other Democrats, while spending on the promotion of Republican candidates, like Mitt Romney, remained minimal in comparison. Regardless of the merits or effectiveness of this strategy, it is clear that the Citizens United decision allows for largely unregulated new avenues of political funding by 501(c)(4)s like Crossroads GPS.

The remarkable success of Crossroads GPS in 2010 forced Democrats to ponder how they would be able to overcome the power and influence of conservative leaning 501(c)(4)s during the 2012 Presidential Election. This problem was especially difficult because many Democrats, including President Obama, vocally objected to the outcome of the Citizens United case and were reluctant to enter into this new atmosphere of political financial strategy. These rejections were very public, with the President’s 2010 State of the Union Address serving as the most notable example.

However, Obama and the Democrats had few places to turn after their incredible defeat in the 2010 mid-term elections. Republicans capitalized on the new financial requirements without much resistance, while embittered Democrats lost control of the House of Representatives as well as multiple seats in the United States Senate. Out of necessity, Democrats established Priorities USA in April 2011 to counter the rising influence

of Crossroads GPS. This liberal-leaning 501(c)(4) organization’s website lists its goals as the noble protection of the middle class, and of freedoms for future generations of Americans. But, only a few lines later, they also outline their opposition to, “right-wing attempts to harm the American middle class in order to bestow special treatment on the very wealthiest and special interests.”

Information (including specific financial figures from Priorities USA) is scarce, especially in comparison to Crossroads GPS. An August 6, 2012 article by FactCheck.org notes, “The IRS maintains records online for political organizations, but there is no record of Priorities USA”. Bill Burton, an ex-White House staffer and founder of Priorities USA, said, “the group did register with the IRS and has started to raise money,” but the exact amount remains unknown. The founders of the group set a lofty $100 million goal for the 2012 election, despite many Democrats and regular contributors to their cause remaining unsympathetic to 501(c)(4) political strategies in the wake of Citizens United.

While party operatives assert that Democrats must be able to further their message, others steadfastly place principles over politics. An editorial published by the New York Times states, “A political system built on secret, laundered money will inevitably lead toward an increased culture of influence and corruption. Democrats would attract more support as a principled party that refused to follow the Republicans down that


dark alley. This lack of enthusiasm amongst the base, to say the very least, led to the initial failure of liberals in this area. A Politico article by Glenn Thrush and Kenneth P. Vogel notes that in the first half of 2011 alone, Priorities USA and its affiliates raised less than half of what was raised by organizations supporting Republicans.

*Citizens United* has a profound financial impact on the American political landscape, but the almost universal initial rejection of the decision's implications proved to be problematic to liberals that wanted to beat conservatives and Republicans at their own game. They now know that they have ground to make up in terms of 501(c)(4) involvement, which will not be easy since *Citizens United* extends beyond 501(c)(4) organizations and also affects certain Political Action Committees (PACs) known as Super PACs.

Regular PACs existed well before the *Citizens United* ruling and are defined as expressly political organizations formed to advocate for a specific candidate or cause. In a 2012 article titled, “What Is a Super PAC?” Greg Houle noted that Super PACs are simply a new type of PAC established by the “rules” set forward by the *Citizens United* decision. Writing for the majority, Associate Justice Anthony Kennedy stated, “We now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” The court’s opinion made it possible for corporations and unions to make unlimited independent expenditures.

---


145 *Citizens United v. FEC*
for political purposes. To this end, Super PACs may overtly express support or disapproval of a candidate, but are not permitted to coordinate directly with them. Super PACs may also accept unlimited sums of money from individuals, corporations, and other organizations\textsuperscript{146}, but there are legal limits on donations to candidate committees as well as party committees. Super PAC's must also disclosure donors who make contributions greater than two hundred dollars, a restriction that is not imposed on 501(c)(4)s. There are also no prohibitions on 501(c)(4)s (who do not have to disclose their donors) donating to Super PACs, a loophole both political parties have used to great effect.

American Crossroads, one of the first conservative Super PACs, burst onto the political stage in mid-2010 shortly after the \textit{Citizens United} decision. Jessica Yellin explains that American Crossroads' immediate goal was to coordinate with 501(c)(4) nonprofit Crossroads GPS to "raise $300 million this year to defeat President Obama, elect Republicans to Congress, and block the Democrats' agenda."\textsuperscript{147} As of April 2013, the American Crossroads Super PAC reported expenditures totaling $104,746,670\textsuperscript{148} for use in the 2012 federal election cycle, while Crossroads GPS brought in over $70 million. The combined reported total missed their $300 million goal by just over $125 million. The lack of 501(c)(4) disclosure requirements for Crossroads GPS means that the total figure may never be fully known. While the two organizations did not reach their financial goals,


their fundraising activities demonstrate that Republicans and conservatives have been able to capitalize on the financial aspects of the *Citizens United* decision.

This alliance and the overwhelming success of Crossroads GPS during the 2010 mid-term elections inspired Democrats to create their own Super PAC. But thus far, liberals have not been able to replicate conservative success in the area of Super PAC-501(c)(4) cooperation. Priorities USA Action, one of the first liberal Super PACs, was founded in April 2011. Their goal was simple, namely to ensure "the re-election of President Obama and setting the record straight when there are misleading attacks against him and other progressive leaders." Following the same path set out by American Crossroads, Priorities USA Action paired itself with a 501(c)(4) non-profit social welfare organization, choosing to align with Priorities USA.

Near the end of the election cycle, Priorities USA Action reported that its independent expenditures in 2012 totaled $65,205,743 150. While this does not equal the amount collected and spent by its conservative counterpart, it does show that Democrats made up some ground and were able to begin taking advantage of the financial aspects of *Citizens United*. It is worthy to note that Priorities USA Action "received a total of $215,234 from its sister non-profit 151" Priorities USA. The lack of disclosure requirements means it is impossible to determine if this is the true amount of money

---


Priorities USA raised. Regardless, the figure is notably low in comparison to other donations given to the Super PAC. DreamWorks CEO Jeffrey Katzenberg donated $3 million to Priorities USA Action stating, “the stakes are too high for us to simply allow the extremism of a small but well-funded right-wing minority to go unchallenged.”

Katzenberg’s words reflect the feeling of most liberal donors, who are reluctant to act within a system they consider wrong on principle but donate anyway out of political necessity. The fundraising totals of American Crossroads and Crossroads GPS serve as a constant reminder that conservatives know how to navigate the new political landscape established by Citizens United. Even President Obama was forced to change his position, or at least publicly remain silent about the issue. While he could not legally coordinate with Super PACs, he chose to not denounce them either. According to an article in Newsweek Magazine by Daniel Stone and Michael Beckel, “Republicans accuse Obama of hypocrisy. Obama campaign manager Jim Messina counters that without their own super PAC, ‘we concede this election to a small group of powerful people.’ The influence and success of post-Citizens United organizations like Crossroads GPS and American Crossroads, became too overwhelming, and posed too much of a threat to the party’s political goals to ignore.

The Super PAC-501(c)(4) links in the post Citizens United-era also created new levels of political connections. Both conservative and liberal Super PACs and 501(c)(4)s share personnel, goals, and ideas. One of the most acclaimed

---

152 "PAC profile: Priorities USA Action." The Center for Public Integrity. The Center for Public Integrity, 14 Nov. 2012.

153 Op. Cit. Stone, Daniel
connections among conservative entities is the partnership between Crossroads GPS and American Crossroads. Karl Rove and Ed Gillespie founded Crossroads GPS, a 501(c)(4) organization in 2010. The same two men founded the American Crossroads Super PAC on July 9th of the same year, making it unsurprising that these two organizations share the “Crossroads” namesake. A March 2012 Newsweek Magazine article called the non-profit and Super PAC “Siblings” in reference to the organizational relationship between the two. This symbiotic relationship also extends into leadership positions. Steven Law, a Republican political operative, heads both American Crossroads and Crossroads GPS and is responsible for their day-to-day operations. The fact that both organizations have spent incredible amounts of money to defeat Democratic candidates (especially President Obama) is another indication of congruence between their goals. The difference between the two is simply a matter of legal designation - one is a non-profit formally dedicated to social welfare, and the other a PAC formally dedicated to political causes. Their relationship more closely resembles conjoined twins rather than “siblings.”

In the same vein, among liberal entities there is no relationship more immediately recognizable than the one between the non-profit Priorities USA and the Priorities USA Action Super PAC. However, information surrounding liberal institutions (especially Priorities USA) is sparse in comparison to their conservative counterparts. Priorities USA’s

website lacks substantive updates and only provides the most basic of information. The Center for Public Integrity states that Bill Burton and Sean Sweeney founded the Priorities USA Action Super PAC on April 29, 2011\textsuperscript{157} while FactCheck.org indicates that Burton and Sweeney also founded Priorities USA sometime in the same month\textsuperscript{158}. These details explain the common “Priorities USA” designation and call to mind the duo Crossroads GPS and American Crossroads. While there is no explicit evidence of a shared President and/or CEO, Priorities USA Action reportedly received over $200,000 from Priorities USA, further evidence that the two organizations are working together towards similar goals.

Estimates from the 2012 federal election cycle indicate that American Crossroads and Crossroads GPS spent a total of $175,928,610\textsuperscript{159} to support or oppose political candidates, with the majority of these funds ($158,692,447)\textsuperscript{160} going towards the effort to defeat Democrats, like Barack Obama. Priorities USA Action and its feeder organization Priorities USA raised and spent more than $77 million to combat the Republicans’ new post-	extit{Citizens United} financial tactics. The entire amount was reportedly spent in opposition to the election of Mitt Romney and none purportedly went toward the promotion or support of President Obama.

There is a substantial aggregate gap between the Republican and Democratic totals, with conservative groups as a whole, spending over $410 million to

\begin{flushright}
\textsuperscript{157} Op. Cit. "PAC profile: Priorities USA Action." \textit{The Center for Public Integrity}.\\
\textsuperscript{158} Op. Cit. “Priorities USA/ Priorities USA Action.” \textit{FactCheck.org}\\
\textsuperscript{159} Op. Cit. "American Crossroads/Crossroads GPS." OpenSecrets.org.\\
\end{flushright}
oppose President Obama’s reelection in comparison to a total of $114,704,925\textsuperscript{161} spent by liberal groups to prevent the election of Mitt Romney. Both parties need to remain vigilant of the exponential growth of 501(c)(4)s and SuperPACs in the post-	extit{Citizens United} era, but the massive disparity in spending between conservative and liberal groups shows that this issue is far more salient for the Democrats. In an October 30, 2012 article from the 	extit{Washington Post}, T.W. Farnam articulates the situation stating, "American Crossroads and Crossroads GPS, [has a] $300 million budget [that] has allowed them to outspend every other interest group in this election, as well as the Democratic National Committee."\textsuperscript{162}

Cash is not always equivalent to success and these groups must learn how to strategically utilize their monetary resources. This means that regardless of the ultimate outcome of the 2012 Presidential Election, one can project that growth and influence of 501(c)(4)s and Super PACs will continue to expand rapidly as they further refine their techniques and learn how to maximize their monetary impact. If the Democrats maintain their half-hearted support of these institutions they will see a repeat of the disastrous 2010 election cycle in 2014. Barring legislative revision by Congress or reconsideration by the Supreme Court, the 	extit{Citizens United} decision will provide endless possibilities to those hoping to use money to manipulate the political climate in the United States.

Political parties are already using the newfound 501(c)(4)-Super PAC relationship created by 	extit{Citizens United} to change the division of labor during a campaign cycle. Super PACs and their non-profit allies are

\textsuperscript{161} "Mitt Romney: Independent Expenditures." The Center for Responsive Politics.
\textsuperscript{162} Op. Cit. Farnam
The White House or the Poor House

barred from direct coordination with candidates, but much of their executive leadership secured their positions due to their ties with the Republican and Democratic Parties. Bill Burton and Sean Sweeney, co-founders of Priorities USA and Priorities USA Action, held high ranking positions within the Obama White House before working in the politics of independent expenditures. Karl Rove, co-founder of Crossroads GPS and American Crossroads, was a senior advisor to President George W. Bush. Ed Gillespie, co-founder of the same two organizations with Rove, once served as the Chairman of the Republican National Committee, and in April 2012 formally became an advisor to Mitt Romney’s Presidential campaign. The idea that an individual can somehow advise a candidate without necessarily coordinating with them (like Gillespie) is an inherent contradiction.

These cozy relationships between candidates, groups’ founders, and chief strategists enabled political parties to effectively divide campaign labor between themselves and outside organizations. In October 2012 the Washington Post reported on Crossroads GPS and American Crossroads stating, “Together, the two groups have matched the Romney campaign in running anti-Obama advertisements, and in the past two months, they have put $35 million into 10 Senate races around the country — more than the Republican Party itself.” By this estimation, the Republican Party only needed to do half the work to get twice the result and was able to direct its resources elsewhere.

The failure of liberal leaning independent expenditure

---


164 Op. Cit. Farnam
organizations means that Democrats still rely heavily on an organized candidate committee and party structure that contribute equally to the election cycle. Coordination between these entities and the Democratic Party does occur, but pales in comparison to conservatives and does not exert as significant of an impact on the division of labor in the electoral cycle. Unless the system is dramatically changed, or Democrats choose to embrace the post-Citizens United strategy of Republicans, they will be left relying more heavily on successful fundraising operations by candidates and the party infrastructure. Little help will come from the few liberal Super PACs and 501(c)(4)s and Democrats will cede this area to conservative organizations.

The Citizens United Supreme Court decision gave Super PACs and 501(c)(4) non-profit organizations wide latitude in terms of financial disclosure and receipt restrictions. This gave Republicans a substantial advantage in the arena of political fundraising. Republicans have firmly aligned themselves with this new era of political strategy, while Democrats (despite their reservations) are determined to catch up in the name of political necessity. The Supreme Court of the United States unquestionably dropped a money bomb on the American political landscape in January 2010. Barring any unforeseen alterations to the decision’s financial aspects, 501(c)(4)s and Super PACs will maintain unprecedented political power in the coming years.