OUTSIDE SPENDING IN ELECTIONS

Candidates are the ones whose names appear on the ballot, but they aren't the only ones spending money in federal elections. The reality today is that donors seeking to influence the political debate — and, at times, curry favor with politicians — may cut large checks to supportive outside groups without legally running afoul of campaign contribution limits.

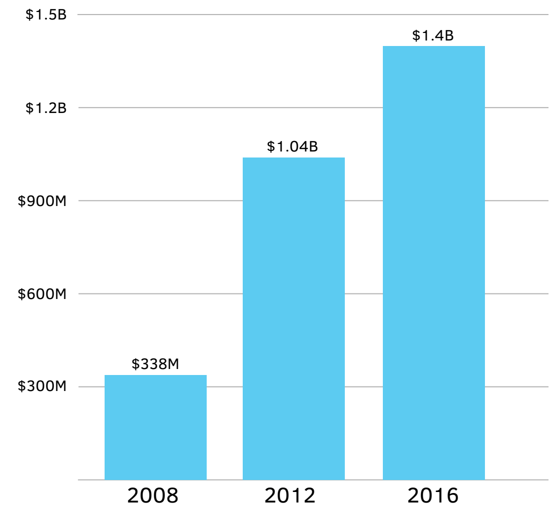
The primary vehicles of this "outside spending" are so-called "super PACs," which must disclose their donors. However, those who don't want the public to know about their largesse may choose to give to politically active nonprofits — often organized under section 501(c)(4) or 501(c)(6) of the U.S. tax code. Because donors' identities to these groups remain hidden from the public, such political spending is often called "dark money." Under current IRS practices, these nonprofits may spend as much as half of their funds on overt election-related advertising. Increasingly, "dark money" groups are also transferring money to super PACs, effectively obscuring the true identities of donors and rendering super PACs' legally required transparency obsolete.

Moreover, the rules governing super PACs and "dark money" groups are much more lax than those for candidates. The main restriction on these groups is that they cannot legally coordinate their spending with candidates — a line that was drawn by the U.S. Supreme Court in the 1970s. Yet these groups often find ways to work together in violation of the spirit of the law, pushing the envelope to work hand-in-hand with politicians without technically running afoul of the legal definition of "coordination." And even if they do, the Federal Election Commission (FEC) is gridlocked and rarely takes action.

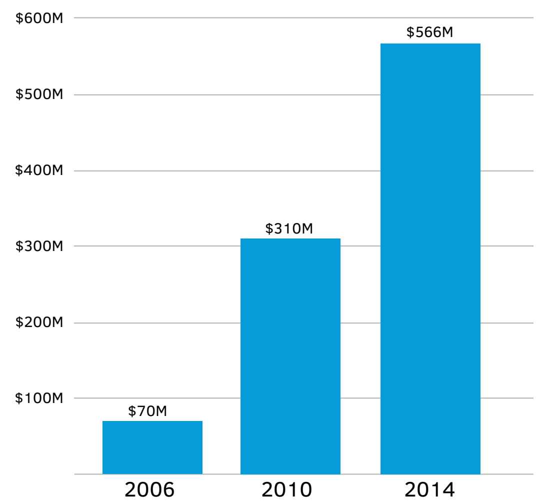
While candidates are limited in how much money they can accept from any single individual donor, super PACs and "dark money" groups have no limits on how much they can accept or how much they can spend. This has led to an outpouring of six- and seven-figure contributions from wealthy individuals, corporations and labor unions.

According to the nonpartisan Center for Responsive Politics, the 2016 presidential and congressional elections cost $6.4 billion. Outside groups — that is, super PACs and "dark money" groups — accounted for $1.4 billion of that. That means roughly 22 percent of each dollar spent came from outside groups. A decade earlier, outside groups accounted for about 2 percent of the $2.9 billion spent during the 2006 midterm elections.

Total Outside Spending in Presidential Election Cycles, 2008-2016



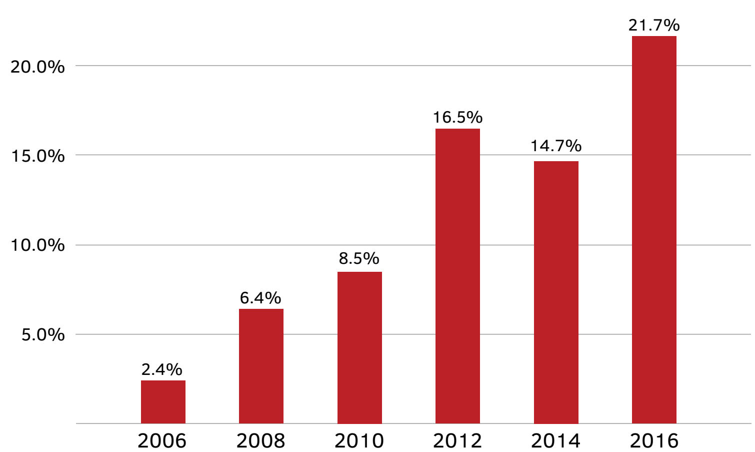
Total Outside Spending in Midterm Election Cycles, 2006-2014



Source: Center for Responsive Politics.

Note: Outside group spending includes money spent by groups such as super PACs and "dark money" organizations, but not political parties.

Portion of Total Election Spending Accounted for by Outside Groups



Source: Issue One analysis of data from the Center for Responsive Politics.

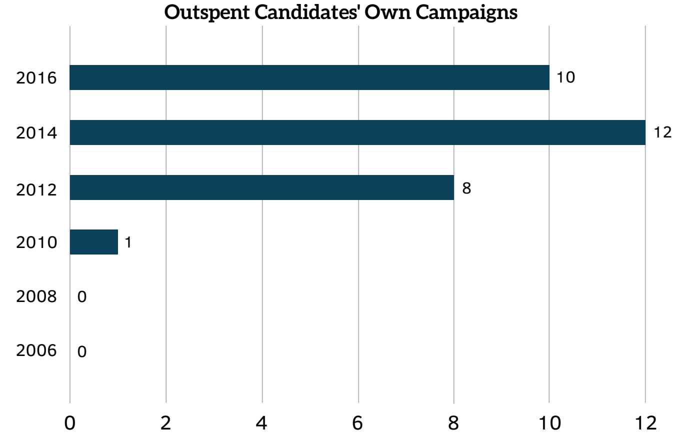
Why has spending by non-candidate groups been on the rise? In short, outside spending has increased because of changes to the legal landscape after three major court cases that struck down portions of the McCain-Feingold Bipartisan Campaign Reform Act of 2002, which had attempted to bring more accountability to political advertising.

- *FEC v. Wisconsin Right to Life*: In this 2007 case, the U.S. Supreme Court ruled that corporations, including certain nonprofit corporations, could use their general treasury funds to bankroll issue-focused advertisements ahead of an election that mention candidates but fall short of explicitly calling for their election or defeat.

- *Citizens United v. FEC*: In this 2010 case, the U.S. Supreme Court ruled that corporations, including certain nonprofit corporations, could use their general treasury funds for political advertisements that overtly call for the election or defeat of candidates.

- *SpeechNow.org v. FEC*: In this 2010 case in the wake of *Citizens United*, a federal court ushered in the creation of super PACs by allowing donors to give unlimited amounts of money to groups that spent money on political ads but did not donate to candidates.

Number of Races in Which Outside Groups Collectively Outspent Candidates' Own Campaigns



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In 2010, the race in Nevada's 3rd Congressional District became the first federal election in which outside groups collectively outspent the candidates. Democrat Dina Titus and Republican Joe Heck combined to spend about $4 million, while super PACs and "dark money" groups active in the race combined to spend about $4.7 million.

Since then, candidates in U.S. House or U.S. Senate races have been outspent by super PACs and "dark money" groups in 30 races, including 10 during the 2016 election cycle, according to the Center for Responsive Politics.

Due to gerrymandering and a polarized electorate, fewer and fewer races are truly competitive, but the ones that are see a surge of spending by outside groups.

In the landmark 1976 case *Buckley v. Valeo*, the U.S. Supreme Court rejected limitations on outside spending, based on the idea that spending that is "wholly" and "totally" independent from candidates is not corrupting. Yet the reality is that independent expenditures such as TV ads are often anything but independent. Instead of a host of diverse, independent outside groups, we've seen a proliferation of super PACs and "dark money" groups that are often focused on a single candidate or that operate, in essence, as shadow political parties — run by political operatives with extensive knowledge and experience working for the politicians they are now trying to "independently" support.

That's why Issue One is calling for the rules that govern coordination between candidates and outside groups to be strengthened and for additional disclosure of the funders of political ads. Citizens are entitled to know who is actually behind efforts to influence their votes — and if candidates are skirting the rules to receive support from purportedly independent groups that want to see those politicians elected.