

# Campaign Finance 2010

## Justices, 5-4, Reject Corporate Spending Limit

By [ADAM LIPTAK](#)

Published: January 21, 2010

WASHINGTON — Overruling two important precedents about the First Amendment rights of corporations, a bitterly divided [Supreme Court](#) on Thursday [ruled](#) that the government may not ban political spending by corporations in candidate elections.



Reuters, left; Bloomberg

Justices Anthony M. Kennedy and John Paul Stevens, right.

The 5-to-4 decision was a vindication, the majority said, of the First Amendment’s most basic free speech principle — that the government has no business regulating political speech. The dissenters said that allowing corporate money to flood the political marketplace would corrupt democracy.

The ruling represented a sharp doctrinal shift, and it will have major political and practical consequences. Specialists in campaign finance law said they expected the decision to reshape the way elections were conducted. Though the decision does not directly address them, its logic also applies to the labor unions that are often at political odds with big business.

The decision will be felt most immediately in the coming midterm elections, given that it comes just two days after Democrats lost a [filibuster](#)-proof majority in the Senate and as popular discontent over government bailouts and corporate bonuses continues to boil.

[President Obama](#) called it “a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.”

The justices in the majority brushed aside warnings about what might follow from their ruling in favor of a formal but fervent embrace of a broad interpretation of free speech rights.

“If the First Amendment has any force,” Justice [Anthony M. Kennedy](#) wrote for the majority, which included the four members of the court’s conservative wing, “it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.”

The ruling, *Citizens United v. [Federal Election Commission](#)*, No. 08-205, overruled two precedents: *[Austin v. Michigan Chamber of Commerce](#)*, a 1990 decision that upheld restrictions on corporate spending to support or oppose political candidates, and *[McConnell v. Federal Election Commission](#)*, a 2003 decision that upheld the part of the [Bipartisan Campaign Reform Act of 2002](#) that restricted campaign spending by corporations and unions.

The 2002 law, usually called McCain-Feingold, banned the broadcast, cable or satellite transmission of “electioneering communications” paid for by corporations or labor unions from their general funds in the 30 days before a presidential primary and in the 60 days before the general elections.

The law, as narrowed by a [2007 Supreme Court decision](#), applied to communications “susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

The five opinions in Thursday’s decision ran to more than 180 pages, with Justice [John Paul Stevens](#) contributing a passionate 90-page dissent. In sometimes halting fashion, he summarized it for some 20 minutes from the bench on Thursday morning.

Joined by the other three members of the court’s liberal wing, Justice Stevens said the majority had committed a grave error in treating corporate speech the same as that of human beings.

Eight of the justices did agree that Congress can require corporations to disclose their spending and to run disclaimers with their advertisements, at least in the absence of proof of threats or reprisals. “Disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way,” Justice Kennedy wrote. Justice [Clarence Thomas](#) dissented on this point.

The majority opinion did not disturb bans on direct contributions to candidates, but the two sides disagreed about whether independent expenditures came close to amounting to the same thing.

“The difference between selling a vote and selling access is a matter of degree, not kind,” Justice Stevens wrote. “And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf.”

Justice Kennedy responded that “by definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.”

The case had unlikely origins. It involved a documentary called “Hillary: The Movie,” a 90-minute stew of caustic political commentary and advocacy journalism. It was produced by Citizens United, a conservative nonprofit corporation, and was released during the Democratic presidential primaries in 2008.

Citizens United lost a suit that year against the Federal Election Commission, and scuttled plans to show the film on a cable video-on-demand service and to broadcast television advertisements for it. But the film was shown in theaters in six cities, and it remains available on DVD and the Internet.

The majority cited a score of decisions recognizing the First Amendment rights of corporations, and Justice Stevens acknowledged that “we have long since held that corporations are covered by the First Amendment.”

But Justice Stevens defended the restrictions struck down on Thursday as modest and sensible. Even before the decision, he said, corporations could act through their political action committees or outside the specified time windows.

The McCain-Feingold law contains an exception for broadcast news reports, commentaries and editorials. But that is, Chief Justice [John G. Roberts Jr.](#) wrote in a concurrence joined by Justice [Samuel A. Alito Jr.](#), “simply a matter of legislative grace.”

Justice Kennedy’s majority opinion said that there was no principled way to distinguish between media corporations and other corporations and that the dissent’s theory would allow Congress to suppress political speech in newspapers, on television news programs, in books and on blogs.

Justice Stevens responded that people who invest in media corporations know “that media outlets may seek to influence elections.” He added in a footnote that lawmakers might now want to consider requiring corporations to disclose how they intended to spend shareholders’ money or to put such spending to a shareholder vote.

On its central point, Justice Kennedy’s majority opinion was joined by Chief Justice Roberts and Justices Alito, Thomas and [Antonin Scalia](#). Justice Stevens’s dissent was joined by Justices [Stephen G. Breyer](#), [Ruth Bader Ginsburg](#) and [Sonia Sotomayor](#).

When the case was first argued last March, it seemed a curiosity likely to be decided on narrow grounds. The court could have ruled that Citizens United was not the sort of group to which the McCain-Feingold law was meant to apply, or that the law did not mean to address 90-minute documentaries, or that video-on-demand technologies were not regulated by the law. Thursday’s decision rejected those alternatives.

Instead, it addressed the questions it proposed to the parties in June when it set down the case for an unusual second argument in September, those of whether Austin and McConnell should be overruled. The answer, the court ruled Thursday, was yes.

“When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought,” Justice Kennedy wrote. “This is unlawful. The First Amendment confirms the freedom to think for ourselves.”

# Lobbyists Get Potent Weapon in Campaign Ruling

By [DAVID D. KIRKPATRICK](#)

Published: January 21, 2010

WASHINGTON — The [Supreme Court](#) has handed lobbyists a new weapon. A lobbyist can now tell any elected official: if you vote wrong, my company, labor union or interest group will spend unlimited sums explicitly advertising against your re-election.

“We have got a million we can spend advertising for you or against you — whichever one you want,” a lobbyist can tell lawmakers, said Lawrence M. Noble, a lawyer at Skadden Arps in Washington and former general counsel of the [Federal Election Commission](#).

The decision seeks to let voters choose for themselves among a multitude of voices and ideas when they go to the polls, but it will also increase the power of organized interest groups at the expense of candidates and political parties.

It is expected to unleash a torrent of attack advertisements from outside groups aiming to sway voters, without any candidate having to take the criticism for dirty campaigning. The biggest beneficiaries might be well-placed incumbents whose favor companies and interests groups are eager to court. It could also have a big impact on state and local governments, where a few million dollars can have more influence on elections.

The ruling comes at a time when influence-seekers of all kinds have special incentives to open their wallets. Amid the economic crisis, the Obama administration and Congressional Democrats are trying to rewrite the rules for broad swaths of the economy, from Detroit to Wall Street. Republicans, meanwhile, see a chance for major gains in November.

Democrats predicted that Republicans would benefit most from the decision, because they are the traditional allies of big corporations, who have more money to spend than unions.

In a statement shortly after the decision, [President Obama](#) called it “a green light to a new stampede of special interest money in our politics.”

As Democrats vowed to push legislation to install new spending limits in time for the fall campaign, Republicans disputed the partisan impact of the decision. They argued that Democrats had proven effective at cultivating their own business allies — drug companies are spending millions of dollars to promote the administration’s health care proposals, for example — while friendly interest groups tap sympathetic billionaires and Hollywood money.

After new restrictions on party fund-raising took effect in 2003, many predicted that the Democrats would suffer. But they took Congress in 2006 and the White House two years later.

While Democrats pledged new limits, some Republicans argued for bolstering parties and candidates by getting rid of the limits on their fund-raising as well. Several cases before lower courts, including a suit filed by the [Republican National Committee](#) against the Federal Election Commission, seek to challenge those limits.

Thursday's decision, in [Citizens United vs. the Federal Election Commission](#), "is going to flip the existing campaign order on its head," said Benjamin L. Ginsberg, a Republican campaign lawyer at the law-and-lobbying firm Patton Boggs who has represented both candidates and outside groups, including [Swift Boat Veterans for Truth](#), a group formed to oppose Senator [John Kerry](#)'s 2004 presidential campaign.

"It will put on steroids the trend that outside groups are increasingly dominating campaigns," Mr. Ginsberg said. "Candidates lose control of their message. Some of these guys lose control of their whole personalities."

"Parties will sort of shrink in the relative importance of things," he added, "and outside groups will take over more of the functions — advertising support, get out the vote — that parties do now."

In practice, major publicly held corporations like Microsoft or General Electric are unlikely to spend large sums money on campaign commercials, for fear of alienating investors, customers and other public officials.

Instead, wealthy individuals and companies might contribute to trade associations, groups like the Chamber of Commerce or the National Rifle Association, or other third parties that could run commercials.

Previously, Mr. Noble of Skadden Arps said, his firm had advised companies to be wary about giving money to groups that might run so-called advocacy commercials, because such activity could trigger disclosure requirements that would identify the corporate financiers.

"It could be traced back to you," he said. "That is no longer a concern."

Some disclosure rules remain intact. An outside group paying for a campaign commercial would still have to include a statement and file forms taking responsibility. If an organization solicits money specifically to pay for such political activities, it could fall under regulations that require disclosure of its donors.

And the disclosure requirements would moderate the harshness of the third-party advertisements, because established trade associations or other groups are too concerned with their reputations to wage the contentious campaigns that ad hoc groups like [MoveOn.org](#) or Swift Boat Veterans for Truth might do.

Two leading Democrats, Senator [Charles E. Schumer](#) of New York and Representative Chris Van Hollen of Maryland, said that they had been working for months to draft legislation in response to the anticipated decision.

One possibility would be to ban political advertising by corporations that hire lobbyists, receive government money, or collect most of their revenue abroad.

Another would be to tighten rules against coordination between campaigns and outside groups so that, for example, they could not hire the same advertising firms or consultants.

A third would be to require shareholder approval of political expenditures, or even to force chief executives to appear as sponsors of commercials their companies pay for.

The two sponsors of the 2002 law tightening the party-fundraising rules each criticized the ruling.

Senator [Russ Feingold](#), Democrat of Wisconsin, called it “a terrible mistake.” Senator [John McCain](#) of Arizona, the Republican presidential nominee in 2008, said in a television interview on CNN that he was “disappointed.”

Fred Wertheimer, a longtime advocate of campaign finance laws, said the decision “wipes out a hundred years of history” during which American laws have sought to tamp down corporate power to influence elections.

But David Bossie, the conservative activist who brought the case to defend his campaign-season promotion of the documentary “Hillary: The Movie,” said he was looking forward to rolling out his next film in time for the midterm elections.

Titled “Generation Zero,” the movie features the television host [Lou Dobbs](#) and lays much of the blame for the recent financial collapse on the Democrats.

“Now we have a free hand to let people know it exists,” Mr. Bossie said.

Posted: October 8, 2010, The New York Times

## CAMPAIGN FINANCE

Money and politics have been troublesome bedfellows at least since the time of Caesar. In modern American politics, since the Watergate scandals Congress and the courts have engaged in a long wrestling match over what limits can be set on contributions. The latest round in the debate was opened in January 2010, when a bitterly divided Supreme Court ruled in [\*Citizens United v. Federal Election Commission\*](#) that the government may not ban political spending by corporations in candidate elections.

The 5-to-4 decision was a doctrinal earthquake but also a political and practical one. Specialists in campaign finance law said they expected the decision, which also applies to labor unions and other organizations, to reshape the way elections are conducted.

The Supreme Court ruling was a vindication, the majority said, of the First Amendment's most basic free speech principle — that the government has no business regulating political speech. The dissenters said allowing corporate money to flood the political marketplace will corrupt democracy.

With the 2010 midterm election season, some Democratic officials have become alarmed by a yawning gap in independent interest group spending. They argue that it amounts to an effort on the part of wealthy Republican donors, as well as corporate interests, newly emboldened by regulatory changes, to buy the election. Torrents of money, much of it anonymous, has been gushing into House and Senate races across the country.

In September, Senate Democrats lacked the votes to advance campaign finance legislation that would force businesses, unions and others to disclose how they were spending money in political campaigns and where they were getting it.

Skirmishing between Democrats and Republicans over the spending reached a fever pitch in the weeks before the election, with charges and countercharges, calls for investigations and calls to block them. Suddenly, complex campaign finance regulations have been elevated to crucial political talking points, propelled by a wave of political attack advertising financed by unknown donors.

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## **BACKGROUND**

The case that landed in the Supreme Court had unlikely origins. It involved a documentary called "Hillary: The Movie," a 90-minute stew of caustic political commentary and advocacy journalism. It was produced by Citizens United, a conservative nonprofit corporation, and was released during the Democratic presidential primaries in 2008.

Even before the landmark Supreme Court ruling, a series of other court decisions was reshaping the political battlefield by freeing corporations, unions and other interest groups from many of the restrictions on their advertising about issues and candidates.

After the Watergate scandal drove President Richard M. Nixon from office, Congress enacted a comprehensive system of limits on contributions. But they ran up first against the court's 1976 Buckley v. Valeo ruling that set limits to those limits, holding that campaign contributions should be protected as free speech. When an advisory opinion by the elections commission opened the door to soft money in 1978, the parties swiftly exploited it. By the 1990s, they were routinely raising the six-figure contributions that the law had sought to bar.

Congress fortified those rules by eliminating soft money with the 2002 campaign finance law known as McCain-Feingold, and since then activists and operatives have played cat-and-mouse with regulators in the search for other loopholes.

The Supreme Court began to poke new holes in the system in a 2007 ruling that outside groups could pay for critical commercials attacking individual candidates on specific issues up to the day of the election, as long as the ad did not explicitly urge a "vote for" or "vote against."



Still, the 2010 Supreme Court decision remains the touchstone. The legal changes directly wrought by the case have turned out to be quite subtle, according to campaign finance lawyers and political operatives. Instead, they said, the case has been more important for the psychological impact it had on the biggest donors.

Corporations now can be more direct. But many heads of corporations and superwealthy individual donors who were not even part of the court case have taken away a much more simplified, overarching message, according to lawyers who advise corporations on election law and to political power-players soliciting giant checks.

## **CONGRESS RESPONDS**

In the aftermath of the January 2010 decision, Congressional Democrats pushed hard for legislation that would subject corporations, unions and other nonprofit groups that engage in political activity to significant new disclosure rules. But as they struggled to find the necessary votes, they carved out loopholes for, yes, special interests.

In a deal that left even architects of the legislation squirming with unease, authors of a bill intended to counter the Supreme Court ruling provided an exception for the [National Rifle Association](#), the [Sierra Club](#) and other powerful lobbying groups in Washington.

The resulting uproar led Democrats to expand the exception to cover even more interest groups as they tried to secure votes for the measure, which was opposed by most Republicans.

Still, supporters of the bill said it would discourage corporations and special interest groups from pouring money into political campaigns, including the 2010 midterm races, by requiring them to disclose their spending, and would prevent foreign interests from influencing the selection of American elected officials.

The leaders of entities covered by the law, including the chief executives of corporations that engage in campaign advertising, would have to appear at the end of the advertisements and make the now familiar statement that they approve the message. In addition, when the advertisements come from advocacy groups, the top five contributors to the cost of the ads covered under the new rules would have to be listed.

The House approved the legislation by a vote of 219 to 206, with just two Republicans joining Democrats in favor. But Republican leaders assailed the bill as an infringement on free speech. Among those to make that point was the Senate Republican leader, [Mitch McConnell](#) of Kentucky, who has made opposition to restrictions on campaign financing one of the signature priorities of his career in Congress.

Democrat-supported legislation failed in the Senate in September. The vote was a defeat for Mr. Obama on one of his top legislative priorities. The president and Democratic leaders had been seeking to use the Republicans' opposition to portray them as beholden to corporate interests. But Republicans would not budge, blocking the bill from even coming to a vote and accusing Democrats of ignoring bigger problems.

## **IMPACT ON 2010 ELECTIONS**

The nightmare situation envisioned by some campaign finance watchdogs — droves of commercial corporations vying for voters' attention through a Super Bowl-style frenzy of advertising bearing their company logos — has not materialized. Instead, corporate money is being funneled through third-party groups, many of them organized under Section 501(c) of the tax code, which can accept donations of unlimited size and generally do not have to disclose their donors under [Internal Revenue Service](#) rules.

The third-party groups had already been growing in popularity on both the left and the right in recent elections, in large part because of the anonymity afforded donors. With the 2010 midterms, the biggest players have been on the Republican side.

Such nonprofit advocacy groups are permitted by the I.R.S. to engage in political activity, so long as it is not their “primary purpose.” They are allowed to do an unlimited amount of lobbying on issues related to their core purpose. Stopping short of what would clearly be considered “express advocacy” in most of their ads enables them to better make the case to the I.R.S. they are merely doing issue advocacy. It is often hard, however, for the casual observer to tell the difference between the issue advocacy and express advocacy.

As long as most of a group's advertisements are not explicit calls to vote for or against candidates, the Republican election commissioners are likely to leave them alone, ruling their “major purpose” is not political, campaign finance lawyers said. That would effectively block any action against them because the commission is divided evenly along party lines and a majority vote is needed for it to take any action.

# Money Talks Louder Than Ever in Midterms

By [MICHAEL LUO](#)

Published: October 7, 2010

The dominant story line of this year's midterm elections is increasingly becoming the torrents of money, much of it anonymous, gushing into House and Senate races across the country.

Television spending by outside interest groups has more than doubled what was spent at this point in the 2006 midterms, according to data from the Campaign Media Analysis Group, which tracks political advertising.

And skirmishing between Democrats and Republicans over the spending, which has overwhelmingly favored Republicans, reached a fever pitch this week, with charges and countercharges, calls for investigations and calls to block them. Suddenly, complex campaign finance regulations have been elevated to crucial political talking points.

The explanation for how these interest groups have become such powerful players this year includes not just the [Supreme Court](#)'s ruling in January in the [Citizens United](#) case that struck down restrictions on corporate spending on elections, but also a constellation of other legal developments since 2007 that have gradually loosened strictures governing campaign financing and the regulation of third-party groups.

Add in the competitive political environment, with Republicans ascendant, the Obama administration struggling to break the perception that it is hostile to business, and the resulting stew is potent.

In the end, though, it is the decision in *Citizens United v. [Federal Election Commission](#)* that remains the touchstone. Interestingly, the legal changes directly wrought by the case have turned out to be quite subtle, according to campaign finance lawyers and political operatives. Instead, they said, the case has been more important for the psychological impact it had on the biggest donors.

“The difference between the law pre- and post-Citizens United is subtle to the expert observer,” said Trevor Potter, a former chairman of the Federal Election Commission and a critic of the ruling. “To the casual observer, what they have heard is the court has gone from a world that prohibited corporate political speech and activity, even though that isn't actually the case, to suddenly for the first time that it's allowed. It's that change in psychology that has made a difference in terms of the amount of money now being spent.”

Even before the decision, corporations had significant latitude to sponsor what appeared to many voters to be political advertisements, as long as they fell under the guise of “issue” ads. Now, they can simply be more direct. But many heads of corporations and superwealthy individual donors who were not even part of the court case have taken away a much more simplified,

overarching message, according to lawyers who advise corporations on election law and to political power-players soliciting giant checks.

“The principal impact of the Citizens United decision was to give prospective donors a general sense that it was within their constitutional rights to support independent political activity,” said Steven Law, head of the Republican-leaning group [American Crossroads](#) and its affiliate [Crossroads GPS](#), which have emerged as major players in this election. “That right existed before, but this Supreme Court decision essentially gave a Good Housekeeping seal of approval.”

Benjamin L. Ginsberg, a campaign finance lawyer at the Washington firm Patton Boggs who has advised a long list of Republican-leaning groups over the years, described the ruling as a kind of “psychological green light” for donors.

The ruling lifted restrictions on corporations, including nonprofit ones like labor unions, created by the 2002 McCain-Feingold campaign finance law, when it comes to the financing of “electioneering communications” — radio and television commercials that focus on voters and identify a political candidate, broadcast in the 30 days before a primary and 60 days before a general election.

A 2007 Supreme Court decision, however, [Federal Election Commission v. Wisconsin Right to Life Inc.](#), had already significantly weakened the restrictions. The court ruled that corporations could pay for issue-based advertisements, even ones that pointedly criticized or praised a candidate in the weeks leading up to an election, unless there was no other “reasonable” way to interpret the commercial other than as “an appeal to vote for or against a specific candidate.”

The Wisconsin Right to Life decision, in other words, already gave corporations wide berth to buy advertisements attacking or supporting candidates, as long as they were cloaked in the appearance of “issue advocacy” and stopped short of “express advocacy” — an explicit appeal for the election or defeat of a candidate. It is often hard, however, for the casual observer to tell the difference between the two.

What Citizens United did was to ostensibly remove that remaining shackle of “issue advocacy,” enabling corporations and labor unions to sponsor advertisements explicitly calling for the election or defeat of particular candidates. The change is nuanced, but it gives heads of corporations a greater comfort level, campaign finance lawyers said.

“The risk factor for corporations to give is less,” said Lawrence M. Noble, a lawyer at Skadden, Arps, Slate, Meagher & Flom and a former general counsel for the Federal Election Commission.

Nevertheless, Fred Malek, a longtime Republican operative who is helping to lead fund-raising for the Republican Governors Association and is chairman of a new nonprofit advocacy group, [American Action Network](#), said the ruling had seldom come up in his conversations with donors.

“I don’t find anybody who is contributing based on that ruling,” he said. “People are contributing because they have deep reservations about the policies and direction of this Congress and this administration. That’s what’s bringing them in.”

So far, however, the nightmare situation envisioned by some campaign finance watchdogs — droves of commercial corporations vying for voters’ attention through a [Super Bowl](#)-style frenzy of advertising bearing their company logos — has not materialized. Instead, corporate money is being funneled through third-party groups, many of them organized under Section 501(c) of the tax code, which can accept donations of unlimited size and generally do not have to disclose their donors under [Internal Revenue Service](#) rules. Rulemaking by the election commission after the Wisconsin Right to Life case further enabled this.

These groups had already been growing in popularity on both the left and the right in recent elections, in large part because of the anonymity afforded donors. This time, the biggest players have been on the Republican side.

Despite their newfound freedom under Citizens United, however, many of these groups had until relatively recently in the election cycle continued mostly to put out so-called issue ads, the same kinds of commercials they could have done before the ruling. The reasons many of the groups had generally sought to steer clear of more explicit appeals were most likely rooted in a desire to avoid jeopardizing their status before the I.R.S. and the election commission, which is important to being able to preserve the anonymity of their donors, campaign finance lawyers said.

Nonprofit advocacy groups are permitted by the I.R.S. to engage in political activity, so long as it is not their “primary purpose.” They are allowed to do an unlimited amount of lobbying on issues related to their core purpose. Stopping short of what would clearly be considered “express advocacy” in most of their ads enables them to better make the case to the I.R.S. they are merely doing issue advocacy.

Meanwhile, with the election commission, there is always the possibility that certain nonprofit groups will be required to register as political committees, which would force them to disclose their donors. But as long as most of a group’s advertisements are not explicit calls to vote for or against candidates, the Republican commissioners are likely to leave them alone, ruling their “major purpose” is not political, campaign finance lawyers said.

That would effectively block any action against them because the commission is divided evenly along party lines and a majority vote is needed for it to take any action.

Nevertheless, several Republican-leaning nonprofit advocacy organizations, in particular, have begun over the last month to be more aggressive in their approach, explicitly asking for voters to cast their ballots for or against candidates. It remains to be seen whether the I.R.S. or the elections commission will scrutinize their actions more closely.

# Offering Donors Secrecy, and Going on Attack

Published: October 12, 2010; The New York Times

By JIM RUTENBERG, DON VAN NATTA Jr. and MIKE McINTIRE

The American Future Fund, a conservative organization based in Iowa, has been one of the more active players in this fall's campaigns, spending millions of dollars on ads attacking Democrats across the country. It has not hesitated to take credit for its attacks, issuing press releases with headlines like "AFF Launches TV Ads in 13 States Targeting Liberal Politicians."



The American Future Fund has spent millions on campaign advertising, taking on Democratic candidates like Rep. Bruce Braley.

[Behind Attack Ads, Hints of a Pattern](#)

Like many of the other groups with anodyne names engaged in the battle to control Congress, it does not have to identify its donors, keeping them — and their possible motivations — shrouded from the public.

But interviews found that the group was started with seed money from at least one influential Iowa businessman: Bruce Rastetter, a co-founder and the chief executive of one of the nation's larger ethanol companies, Hawkeye Energy Holdings, and a rising force in state Republican politics. And hints of a possible agenda emerge from a look at the politicians on the American Future Fund's hit list. Most have seats on a handful of legislative committees with a direct say in the ethanol industry.

Mr. Rastetter had long been mentioned as a likely backer of the group, and he has now acknowledged through his lawyer that he indeed provided financial support at its inception

roughly two years ago. The lawyer, Daniel L. Stockdale, said Mr. Rastetter had not given since, adding, “He does not feel that he should reveal the size of prior contributions.”

The American Future Fund, organized under a tax code provision that lets donors remain anonymous, is one of dozens of groups awash in money from hidden sources and spending it at an unprecedented rate, largely on behalf of Republicans. The breadth and impact of these privately financed groups have made them, and the mystery of their backers, a campaign issue in their own right.

Through interviews with top Republican contributors and strategists, as well as a review of public records, some contours of this financing effort — including how donors are lured with the promise of anonymity — are starting to come into view.

In part, political operatives have reconstituted the vanguard of reliable Republican contributors who helped elect [George W. Bush](#) and support [Swift Boat Veterans for Truth](#), which attacked the Vietnam record of his opponent in 2004, Senator [John Kerry](#). But as with the American Future Fund, the effort also appears to include business interests focused on specific races.

Bradley A. Blakeman, a longtime Republican operative and a senior aide in the Bush White House, said, “Donors are the usual suspects that have helped Bush, as well as some fresh faces.”

### **No Names Attached**

Stoking the flow of dollars has been the guarantee of secrecy afforded by certain nonprofit groups. Mel Sembler, a shopping mall magnate in St. Petersburg, Fla., who is close to the Republican strategist [Karl Rove](#), said wealthy donors had written six- and seven-figure checks to Crossroads GPS, a Rove-backed group that is the most active of the nonprofits started this year. Republicans close to the group said that last week, the group received a check for several million dollars from a single donor, whom they declined to identify.

“I think most people are very comfortable giving anonymously,” Mr. Sembler said. “They want to be able to be helpful but not be seen by the public as taking sides.”

Republicans involved in Crossroads say the groups owe their fund-raising success to a hope that a Republican Congress would undo some of the Obama administration agenda. But they also credit their fund-raising strategy.

When Mr. Rove and Ed Gillespie, the former Republican chairman, began their efforts last spring, they first helped set up a group called American Crossroads under a tax-code provision that requires the disclosure of donors. It took in several seven-figure contributions from high-profile donors, including Trevor Rees-Jones, president and chief executive of Chief Oil and Gas, and Robert Rowling, chief executive of TRT Holdings.

Then in June, Mr. Rove and Mr. Gillespie helped organize Crossroads GPS under the provision that allows donors to give anonymously. A Republican operative who speaks frequently with Mr.



Rove said the public donations, revealed over the summer, were used as “a way to energize others to give large amounts anonymously.”

The operative added, “It has worked like a charm.”

The surge of anonymous money is the latest development in corporate America’s efforts to influence the agenda in Washington, following rules enacted several years ago banning large, unregulated gifts to political parties. Democrats first established so-called third-party groups that could legally accept unlimited money from business and unions, though most had to disclose donors. Now, as new laws and a major [Supreme Court](#) decision have removed barriers to corporate giving, Republican operatives have embraced the use of nonprofit issue groups that can keep donors’ identities secret.

At Crossroads, some large contributors are motivated to give in part because appeals are coming directly from Mr. Rove, a senior Republican fund-raiser said. Republicans close to American Crossroads and Crossroads GPS, which are focusing on 11 Senate races, say they met their fund-raising goal of \$52 million last week and could raise as much as \$70 million before Election Day.

The U.S. Chamber of Commerce, which does not identify its corporate members, spent \$10 million over the last week on advertisements, mostly against Democrats, records show. The chamber will most likely meet its fund-raising goal of \$75 million, more than double what it spent on the 2008 campaign, Republican operatives say.

### **Advocate for Ethanol**

The American Future Fund has not spent quite as much. But Democrats say that at \$6 million and counting, it has advertised enough to make a difference in crucial states.

Almost since the organization’s inception, Democrats in Iowa have suspected the involvement of Mr. Rastetter. Now confirmed, his role offers a glimpse of what is probably just one of many undisclosed interests to have been involved in the American Future Fund.

Mr. Rastetter began his corn-based ethanol company, Hawkeye, in 2003, after making his fortune with a pork production company, Heartland Pork. Hawkeye quickly became one of the nation’s largest ethanol producers, and Mr. Rastetter became an outspoken advocate for ethanol, helping to start a new trade group, Growth Energy, that supports its increased use at fuel pumps and tariffs on foreign producers. As his stature grew, so did his position as a Republican donor, and potentially as a candidate himself.

Speculation of a candidacy increased in 2007, when Nick Ryan, who managed former Representative [Jim Nussle](#)’s losing 2006 campaign for Iowa governor, registered with the state as a lobbyist for four Rastetter businesses, including Hawkeye.



After Mr. Ryan helped establish a political committee called Team Iowa, Mr. Rastetter was the largest donor in federal tax records, listed as giving \$100,000. After Mr. Rastetter started his family foundation, Mr. Ryan became one of four board members.

And when Mr. Ryan started the American Future Fund, Mr. Rastetter provided “seed money,” but nothing more, said Mr. Rastetter’s lawyer, Mr. Stockdale. He declined to name an exact figure but put the amount at less than 5 percent — or less than \$374,025 — of the nearly \$7.5 million the group collected in 2008.

He added that “Mr. Rastetter has never exercised any decision-making authority” or held any official role with the group. (Records show that Mr. Rastetter did, however, give the maximum \$5,000 to the fund’s related political action committee in December 2009.)

Chuck Larson, a former ambassador to Latvia who lives in Iowa and is friendly with Mr. Rastetter, said Mr. Rastetter kept his political giving separate from his business or personal interests. “This is an individual who has been very successful in life and is not motivated by financial gain but by making a difference in Iowa and making a difference in the country,” Mr. Larson said.

Mr. Rastetter and Mr. Ryan did not respond to numerous telephone messages.

At its formation, the American Future Fund proclaimed a broad mission “to provide Americans with a conservative and free market viewpoint.”

At times, its activities also seemed to dovetail with the interests of the ethanol industry.

Among the first politicians it supported with advertising was Senator [Norm Coleman](#), Republican of Minnesota and a co-chairman of the Senate Biofuels Caucus, during his losing 2008 re-election campaign.

Later that November, it focused on an unexpected target: the Indy Racing League.

In a radio advertisement, the fund attacked a deal the racing association struck to power Indy cars with sugar-based ethanol from Brazil, portraying it as a slight to American producers.

The campaign may have seemed odd for a group promoting free-market principles. But days earlier, ethanol executives, including Mr. Rastetter, had met with racing officials to unsuccessfully demand that they abandon the Brazilian deal.

Mr. Stockdale said Mr. Rastetter had no role in the radio ad. Mr. Ryan had been along for the Indy Racing meeting as well, Mr. Stockdale said, “and the decision by the fund to sponsor the radio campaign was made after Mr. Ryan attended the meeting.”

Mr. Stockdale said Mr. Ryan had not received any compensation from Mr. Rastetter since the first quarter of 2009, though they remain “good friends.”

## Signs of an Energy Focus

Certainly in the last two years the American Future Fund has broadened its activities, along with its donor base, raising millions more as it held a conservative lecture series and ran ads against the Democratic health care bill.

Most of its advertisements this year have focused on generic fare like stimulus spending and health care. But suggestions of an energy-related agenda have peeked through.

Of the 14 “liberal” politicians singled out in a list it released last month, nearly every incumbent sits on a panel with a say over energy or agriculture policy. Five sit on the Agriculture Committee; four others are on related committees with say. One candidate was a staff member on a related panel.

Sorting out the Future Fund’s possible motivations is hardly straightforward, given how complicated the politics of the heavily subsidized ethanol industry have grown in recent years.

For instance, the industry has had its own differences over what form subsidies should take. Growth Energy, the trade group that includes Mr. Rastetter’s company, recently created waves by calling for subsidies to be eventually phased out — but only after some are diverted toward projects like the construction of gas pumps that would let consumers choose how much ethanol they want in their fuel.

While many of the Democrats that the fund has gone after explicitly support extending the subsidies in one form or another, the industry over all has expressed frustration that, with a December expiration looming, the Democratic Congress has not moved to do so yet.

Mandy Fletcher Fraher, a spokeswoman for the fund, dismissed ethanol and agriculture policy as a motive behind its advertising. “We’re targeting liberal spending policies,” she said, noting that the fund was equally focused on competitive races.

Democrats expressed frustration that there was no way to know why they were on the receiving end of the fund’s barrage.

Officials at the Democratic Congressional Campaign Committee said they had been trying to figure out whether the fund had an eye on the coming deliberations over the next [farm bill](#), with its implications for alternative energy.

One target, Representative Bruce Braley, Democrat of Iowa, a member of the Energy and Commerce Committee, noted the pattern of the attacks and said, “Iowans and the American people are pretty smart, and I think they can put things like that together.”

Yet Mr. Braley said he was at a loss over his place on the list. For instance, he views himself as having a strong record with the ethanol industry.



## Independent Spending Mounts

In the growing trend of third-party campaigning in Congressional elections, the new Republican groups that raise money in unlimited quantities and often from secret donors have overwhelmed traditional political participants like unions and the National Rifle Association.

### SPENDING BY OUTSIDE GROUPS

In federal races reported from Jan. 2009 through Friday, on behalf of:



#### U.S. Chamber of Commerce

**\$32 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

The chamber is the biggest outside spender, with a huge investment in defeating Sen. Barbara Boxer in California; other G.O.P. groups have stayed out of this race. The chamber has entered dozens of House races.

HOUSE



SENATE

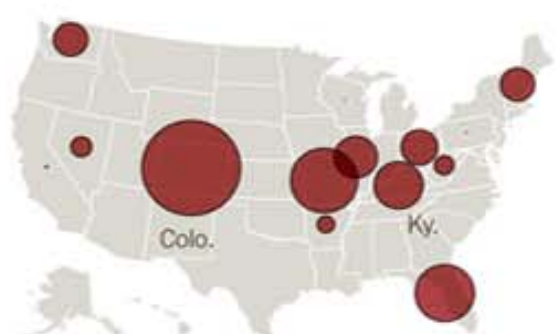


#### American Crossroads

**\$21 million**

DONOR LIMITS? **No**  
SECRET DONORS? **No**

Karl Rove-connected group that has gotten at least \$7 million from the builder Bob J. Perry, and millions more from corporations. More than \$5 million has been spent in Colorado's Senate race so far.

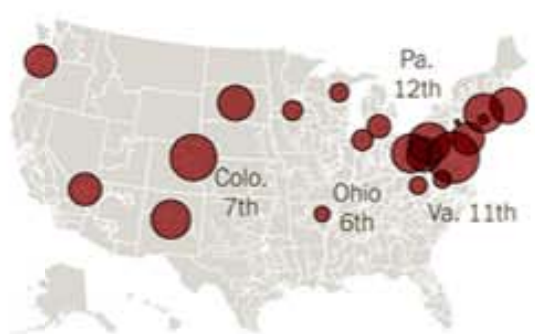


#### American Action Network

**\$17 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

Headed by a former Republican senator, Norm Coleman, this group shares office space with Rove-connected Crossroads groups in Virginia.

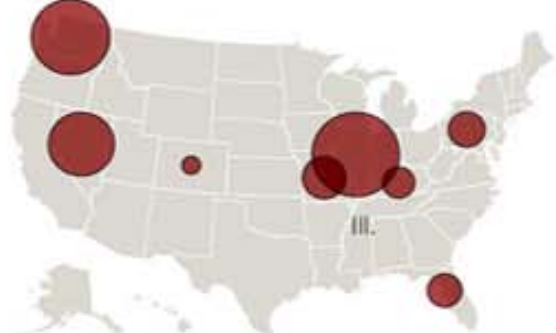


#### Crossroads Grassroots Policy Strategies

**\$15 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

Sister to American Crossroads formed to take advantage of secret donations, it has injected huge sums into the Illinois, Washington and Nevada Senate races.

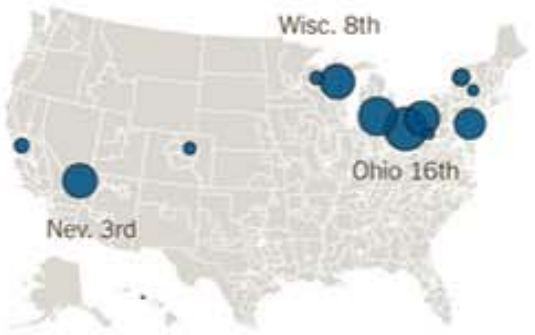


#### American Fed. of State, County, Municipal Empl.

**\$11 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

The independent-expenditure arm of the big public employees union has been supporting endangered Midwestern Democrats, among others.

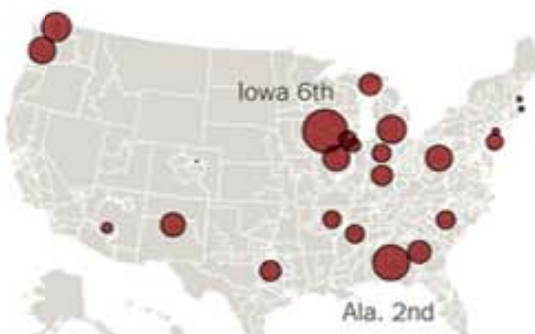


#### American Future Fund

**\$10 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

Started with money from Bruce Rastetter, an ethanol company executive, this fund has spent more than \$1 million to defeat the Iowa Democrat Bruce Braley.



#### Service Empl. Int'l Union

**\$10 million**

DONOR LIMITS? **Yes**  
SECRET DONORS? **No**

The union spent the lion's share of its independent expenditures in failed bids to elect Senate candidates in Massachusetts and Arkansas. Otherwise, it has focused on some tough Midwestern House races.

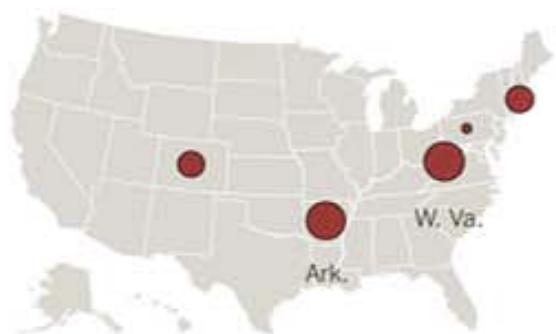


#### Americans for Job Security

**\$8 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

This group has ties to G.O.P. operatives and has been criticized by state investigators in Alaska for having "no other purpose than to cover various money trails...." It has spent much of its money in the South.

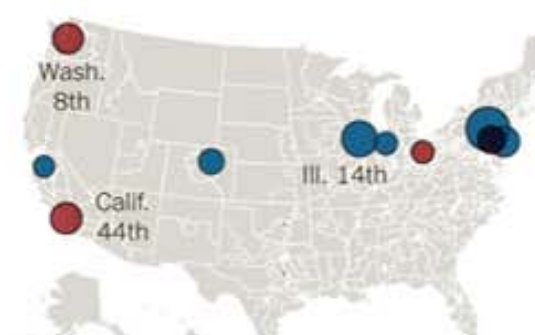


#### National Association of Realtors

**\$6 million**

DONOR LIMITS? **Yes**  
SECRET DONORS? **No**

One of the few large outside spenders that has supported candidates from both parties, this is a traditional political action committee, or P.A.C., raising money in small donations.

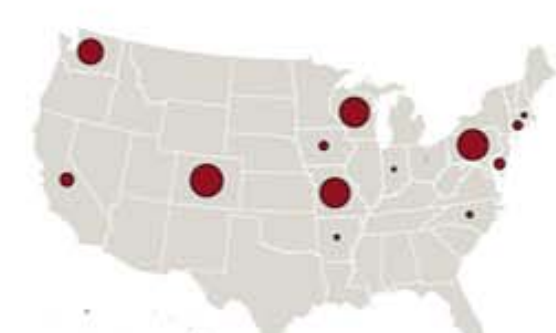


#### National Rifle Association

**\$6 million**

DONOR LIMITS? **Yes**  
SECRET DONORS? **No**

The powerful Second Amendment lobby, also a traditional P.A.C., gives mostly to Republicans. It is one of the few outside groups spending for Delaware Tea Party favorite Christine O'Donnell.



#### The 60 Plus Association

**\$6 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

Billing itself as an alternative advocate for the elderly, this group is spending in some places where other Republican unlimited-money groups have not, like Arizona.



#### America's Families First Action Fund

**\$6 million**

DONOR LIMITS? **No**  
SECRET DONORS? **Yes**

A new Democratic group formed to take unlimited contributions, it has recently put a small chink in the Republican independent advantage.

