

The *SpeechNow* Case and the Real World of Campaign Finance

Part II: Undermining Federal Limits on Contributions to Political Parties

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INTRODUCTION

In its influential *SpeechNow.org v. FEC* opinion, the U.S. Court of Appeals for the District of Columbia Circuit ruled that contributions to a group making independent expenditures supporting a candidate pose no danger of quid pro quo corruption or its appearance, and therefore may not constitutionally be limited by the government. The Court reasoned that since an independent expenditure is, by definition, not prearranged or coordinated with a candidate, “the danger that the expenditures will be given as a *quid pro quo* for improper commitments from the candidate” is alleviated, and the same logically follows for contributions to make such expenditures. Since independent spenders and their donors inhabit one side of the street and candidates and their donors the other, the constitutional rationale for limiting political contributions does not apply to donations to independent groups.

However, as I argued in my October 2016 study, “The *SpeechNow* Case and the Real World of Campaign Finance,”¹ this opinion ignored an essential component of political reality. It discussed the distance between independent spending groups and beneficiary candidates but said nothing about any relationship between their respective donors. In the real world, the distance the Court presumed to exist between candidates and independent groups is bridged by the fact that they often share common large donors. Federal campaign finance data from the 2012 and 2014 election cycles show that the vast majority of top individual and organizational donors to Super PACs and other disclosing independent spenders contributed *simultaneously* to candidates and to independent groups supporting the very same candidates. The average such donor provided thousands of legally limited dollars to each of multiple candidates while also giving millions of dollars to independent groups that spent millions advocating for the donor’s same favored candidates. Such strategic giving enabled big donors to independent groups to circumvent the legal limits for contributions to candidates, established to prevent corruption. The Court therefore erred in finding that “the government has no anti-corruption interest in limiting contributions to an independent expenditure group.”

In the present study, I examine the same universe of top outside money donors to the 2012 and 2014 elections. The analysis focuses on donors who contributed to national party committees in a particular cycle while simultaneously donating to independent, party-linked Super PACs in the same elections. It turns out that a considerable proportion of top individual and organizational donors to independent groups – approximately 40 to nearly 50% – followed a two-track policy of making legally limited

¹ Available for download from <https://freespeechforpeople.org/research-reports/>.

contributions to party committees while also providing massive funds to party-linked Super PACs for the same elections.

METHODOLOGY OF STUDY

On behalf of Free Speech For People, I asked the Center for Responsive Politics (CRP), the highly respected source for federal campaign finance data, to provide information on the top 100 individual donors (not including family members) and 50 organizational donors to Super PACs and other independent groups supporting candidates during the 2012 and 2014 election cycles. I requested that CRP identify those donors who contributed directly to a national party committee active in a House, Senate or Presidential election and also donated to a Super PAC linked to the same party in the same election. I did not request information on other party-linked independent groups because they disclose little information about their donors.

The data refer to the six official national party committees (Democratic Congressional Campaign Committee, National Republican Congressional Committee, Democratic Senate Campaign Committee, National Republican Senatorial Committee, Democratic National Committee and Republican National Committee) and the six party-linked Super PACs (Senate Majority PAC – previously called Majority PAC, House Majority PAC, and American Bridge 21st Century on the Democratic side, and YG Action Fund, Congressional Leadership Fund and American Crossroads on the Republican side) active in the 2012 and 2014 elections.

The concept of a party-linked Super PAC is based on thorough studies of the phenomenon in the 2012 and 2014 elections by Public Citizen, a nonprofit consumer advocacy group with a rich tradition of campaign finance analysis.² These studies identified 10 independent, “party-allied” groups active in the elections, including the six Super PACs listed above.³ Public Citizen found that these groups “existed to aid either the official Democratic or Republican parties” based on their mission statements, key staff’s backgrounds with party institutions and leaders, types of political expenditures, and involvement of party leaders in fundraising events. I have substituted the term “party-linked” for “party-allied” to emphasize that the law does not permit these groups to coordinate with political parties. CRP confirmed that Public Citizen correctly identified the six party-linked Super PACs active in the two cycles: six in 2012

² Public Citizen, *Super Connected*, March 5, 2013 and *Super Connected*, January 14, 2015
<http://www.citizen.org/superconnected>.

³ The other four organizations on Public Citizen’s list are 501(c)(4) organizations that do not disclose, or fully disclose, their donors.

and four in 2014. The box below lists which groups participated in what types of elections during these periods.

PARTY-LINKED SUPERPACS IN FEDERAL ELECTIONS: 2012 AND 2014 CYCLES	
<u>CYCLE</u>	<u>HOUSE ELECTIONS</u>
2012	American Crossroads
2012	American Bridge 21st Century
2012	House Majority PAC
2012	Congressional Leadership Fund
2012	YG Action Fund
2014	American Crossroads
2014	House Majority PAC
2014	Congressional Leadership Fund
<u>CYCLE</u>	<u>SENATE ELECTIONS</u>
2012	Majority PAC
2012	American Crossroads
2012	American Bridge 21st Century
2012	House Majority PAC
2014	Senate Majority PAC
2014	American Crossroads
<u>CYCLE</u>	<u>PRESIDENTIAL ELECTIONS</u>
2012	Majority PAC
2012	American Crossroads
2012	American Bridge 21st Century
2012	House Majority PAC

After analyzing the data, I asked CRP to provide summary tables for individual and organizational contributions to party committees and party-linked Super PACs in the same elections (House, Senate and Presidential) in each cycle. In titling these tables, I adopted CRP’s characterization of contributions to independent groups as “outside money” since these take place outside the contribution limits imposed by campaign finance law.

FINDINGS

Tables 1 and 2 below display, by rank, 42 of the 103 largest individual donors to independent spending groups in the 2014 election cycle and 48 of the top 100 in the 2012 one (the 103 figure includes those tied for the last rank). These individuals are those from the larger grouping who contributed to both party committees and party-linked Super PACs in the very same elections.

To illustrate, the first row of Table 1 describes Paul Singer, the #3 individual donor to independent spending groups in the 2014 cycle, and his giving to *both* party committees *and* party-linked Super PACs in the same elections. Column 3 indicates Singer contributed to three party committees during the cycle and Column 4 shows he gave the committees a total of \$194,400, an average of \$64,800 per committee. Column 5 notes that Singer also donated \$3,100,000 to party-linked Super PACs spending in the very same elections as those three party committees.

TABLE 1

TOP INDIVIDUAL DONORS OF OUTSIDE MONEY WHO CONTRIBUTED TO NATIONAL PARTY COMMITTEES AND PARTY-LINKED SUPER PACS SPENDING IN THE SAME ELECTION (2014 ELECTION CYCLE)

Donor	Rank	Number of Party Committees Funded	Total Contributions to Party Committees	Contributions to Party-Linked Super PACs
SINGER, PAUL MR	3	3	\$194,400	\$3,100,000
EYCHANER, FRED	5	3	\$97,200	\$8,000,000
SIMONS, JAMES H	6	2	\$97,200	\$2,000,000
RICKETTS, J JOE	7	1	\$2,000	\$500,000
ADELSON, SHELDON	8	2	\$160,400	\$5,000,000
MCNAIR, RON	10	1	\$32,400	\$500,000
SOROS, GEORGE	11	2	\$72,400	\$1,000,000
GRIFFIN, KENNETH MR	13	3	\$131,050	\$950,000
KLARMAN, SETH A	14	3	\$97,040	\$450,000
MARCUS, GEORGE M	16	2	\$122,000	\$2,750,000

MCPMAHON, LINDA MS	17	2	\$117,000	\$1,175,000
STEPHENS, WARREN A	19	3	\$187,000	\$2,000,000
CHILDS, JOHN W MR	21	3	\$224,100	\$575,000
SUSSMAN, S DONALD	22	3	\$107,700	\$1,850,000
PERENCHIO, A JERROLD	24	2	\$107,000	\$2,000,000
GOLDMAN, AMY DR	25	3	\$165,200	\$749,759
SANDLER, HERBERT M	27	1	\$64,800	\$200,000
STRYKER, JON L	30	2	\$60,000	\$1,200,000
EARHART, ANNE G	31	2	\$97,200	\$200,000
SCHWARTZ, BERNARD L	38	2	\$97,200	\$956,879
MICHAELS, LAURIE F	39	1	\$32,000	\$640,000
LEE, BARBARA F	40	2	\$68,600	\$35,000
STRICKLER, ELIZABETH	41	3	\$63,400	\$125,000
CUMMING, IAN M	42	2	\$74,600	\$1,000,000
ROBERTSON, JULIAN H JR	44	2	\$129,600	\$512,000
SILBERSTEIN, STEPHEN M	55	2	\$97,200	\$450,000
BONDERMAN, DAVID	56	2	\$35,750	\$385,000
MUNGER, JR, CHARLES	59	2	\$49,450	\$650,000
EGERMAN, PAUL	62	3	\$100,700	\$125,000
RYAN, VINCENT J	63	1	\$63,200	\$125,000
NAU, JOHN L III	64	1	\$44,600	\$125,000
OBERNDORF, WILLIAM E	65	3	\$97,200	\$350,000
BOIES, DAVID	66	1	\$32,400	\$250,000
SHAW, DAVID E	71	2	\$77,897	\$200,000
MARCUS, MARVIN	81	1	\$20,000	\$500,000
BASS, ANNE T	85	1	\$64,400	\$490,000
HIATT, ARNOLD S	86	3	\$104,800	\$157,000
MCCORMACK, WINTHROP L	87	3	\$70,150	\$250,000
BERGMAN, JAY	92	1	\$10,000	\$500,000
JOBS, LAURENE POWELL	93	2	\$50,400	\$500,000
SILLERMAN, ROBERT F X	93	1	\$32,400	\$500,000
WATKINS, EDWARD G	93	1	\$9,900	\$500,000
<i>Average</i>		2	\$84,808	\$1,036,325
<i>Median</i>		2	\$76,249	\$500,000

Source: Tables Provided by the Center for Responsive Politics 1/30/2017

TABLE 2**TOP INDIVIDUAL DONORS OF OUTSIDE MONEY WHO CONTRIBUTED TO NATIONAL PARTY COMMITTEES AND PARTY-LINKED SUPER PACS SPENDING IN THE SAME ELECTION (2012 ELECTION CYCLE)**

Donor	Rank	Number of Party Committees Funded	Total Contributions to Party Committees	Contributions to Party-Linked Super PACS
ADELSON, SHELDON	1	2	\$123,200	\$16,500,000
ADELSON, MIRIAM DR	2	2	\$123,200	\$16,500,000
SIMMONS, HAROLD MR	3	1	\$30,800	\$20,500,000
PERRY, BOB MR	4	1	\$70,800	\$8,500,000
EYCHANER, FRED MR	5	3	\$101,600	\$8,550,000
SIMONS, JAMES H	8	1	\$56,600	\$1,500,000
MERCER, ROBERT MR	9	3	\$102,400	\$2,000,000
CHILDS, JOHN W MR	11	3	\$86,200	\$2,000,000
ROWLING, ROBERT B	12	2	\$70,800	\$3,500,000
GOLDMAN, AMY P DR	13	3	\$108,400	\$950,000
MCNAIR, ROBERT MR	15	1	\$30,800	\$1,000,000
KATZENBERG, JEFFREY	17	2	\$75,100	\$125,000
SOROS, GEORGE	20	2	\$40,000	\$1,775,000
GRIFFIN, KENNETH C	22	3	\$74,300	\$1,000,000
STRYKER, JON	24	1	\$25,000	\$500,000
CRAFT, JOSEPH W III	25	3	\$117,400	\$1,250,000
JACOBS, IRWIN MARK	28	2	\$22,900	\$200,000
COX CHAMBERS, ANNE	29	3	\$70,025	\$100,000
PERENCHIO, JERRY	29	2	\$50,400	\$500,000
ROBERTS, RICHARD H DR	31	2	\$75,000	\$250,000
HANEY, FRANKLIN L	32	1	\$61,600	\$1,000,000
HIATT, ARNOLD S	34	3	\$64,000	\$1,825,000
SHAW, DAVID E	35	3	\$69,800	\$450,000
EARHART, ANNE GETTY	36	2	\$69,800	\$1,100,000
ABRAHAM, S DANIEL	37	3	\$70,800	\$475,000
KOVNER, BRUCE	38	2	\$55,800	\$625,000
LAUFER, HENRY	39	2	\$61,600	\$110,000
ANGELOS, PETER G	40	2	\$41,600	\$1,025,000
STIEFEL, BARBARA A	40	3	\$67,044	\$300,000
MCCORMACK, WINTHROP LAFLIN	47	1	\$30,800	\$775,000
GEIER, PHILIP H JR	48	3	\$122,000	\$1,000,000
SUSSMAN, S DONALD MR	48	2	\$61,600	\$1,150,000
MOSTYN, AMBER A	50	2	\$35,800	\$1,050,000

BOSARGE, WE	52	3	\$129,650	\$999,900
AHMED, KAREEM	53	1	\$30,800	\$200,000
SABAN, HAIM (MEMO)	55	2	\$61,600	\$651,040
RYAN, VINCENT J	56	2	\$50,800	\$350,000
EGERMAN, PAUL	62	3	\$70,300	\$750,000
PICKENS, T BOONE	63	1	\$30,800	\$1,000,000
GILLIAM, RICHARD BAXTER	65	2	\$45,800	\$750,000
BERGMAN, JAY	71	1	\$30,800	\$1,000,000
FAISON, HENRY	71	2	\$61,600	\$1,000,000
HEAVIN, GARY	71	2	\$61,600	\$1,000,000
RAGON, PHILLIP T	71	3	\$65,800	\$500,000
TROUTT, KENNY MR	71	3	\$148,200	\$500,000
SCHWARTZ, BERNARD L	94	3	\$96,600	\$683,884
SILBERSTEIN, STEPHEN M	96	2	\$89,100	\$800,000
DESJARDINS, DAVID LAWRENCE	97	2	\$61,600	\$350,000
HERRO, DAVID G	97	2	\$104,340	\$300,000
<i>Average</i>		2	\$69,522	\$2,222,854
<i>Median</i>		2	\$65,800	\$999,900

Source: Tables Provided by the Center for Responsive Politics 1/30/2017

The last two rows in Tables 1 and 2 provide summary information on individual donors' contributions. They show that, on average, each donor contributed to two party committees per election cycle. The amount each provided averaged \$84,808 (\$42,404 per committee) in the 2014 cycle and \$69,522 (\$34,761 per committee) in the 2012 one. In comparison, the maximum amount an individual or organization could have given to two national party committees in the two-year 2014 cycle was \$129,600 (\$32,400 per committee per year) and in the 2012 one, \$123,200 (\$30,800 per committee per year).

The Tables also show that each of these donors supplemented his party giving by contributing to party-linked Super PACs spending in the same elections as the party committees. In 2014, they contributed an average of \$1,036,325 to such groups; in 2012, they furnished an average of \$2,222,854.

Adding together the average donor's contributions to party committees and party-linked ones, we arrive at a total of \$1,121,133 for the 2014 cycle and \$2,292,376 for the 2012 one. These amounts are, respectively, nine times the maximum the donor could have legally contributed to two party committees in the 2014 cycle (\$129,600)

and 19 times the limit in the 2012 one (\$123,200). This pattern, wherein a large donor funds what might be called real and shadow parties in the same elections, constitutes a circumvention of contribution limits.

Tables 3 and 4 below follow the same format as the previous ones. They display, by rank, 21 of the 50 largest organizational donors to independent spending groups in the 2014 election cycle and 22 of the top 50 in the 2012 cycle. These organizations are those that made contributions to both party committees and party-linked Super PACs in the same elections.

TABLE 3

TOP ORGANIZATIONAL DONORS OF OUTSIDE MONEY THAT CONTRIBUTED TO NATIONAL PARTY COMMITTEES AND PARTY-LINKED SUPER PACS SPENDING IN THE SAME ELECTION (2014 ELECTION CYCLE)

Donor	Rank	Number of Party Committees Funded	Total Contributions to Party Committees	Contributions to Party-Linked Super PACS
National Education Assn	1	4	\$135,000	\$1,005,000
Carpenters & Joiners Union	3	2	\$60,000	\$3,125,000
American Fedn of St/Cnty/Munic Employees	6	2	\$75,000	\$2,550,000
AFL-CIO	7	2	\$45,000	\$25,000
American Federation of Teachers	9	2	\$75,000	\$2,450,000
United Food & Commercial Workers Union	10	2	\$60,000	\$1,372,000
United Steelworkers	11	2	\$45,000	\$550,000
Laborers Union	12	2	\$60,000	\$2,333,000
American Federation of Govt Employees	13	2	\$60,000	\$850,000
Plumbers/Pipefitters Union	18	4	\$105,000	\$1,390,000
Office & Professional Employees Union	19	2	\$60,000	\$100,000
Service Employees International Union	21	2	\$60,000	\$1,170,671
National Assn of Letter Carriers	23	2	\$60,000	\$1,200,000
Intl Brotherhood of Electrical Workers	24	2	\$60,000	\$1,985,500
Operating Engineers Union	26	3	\$95,000	\$1,555,000
Communications Workers of America	27	2	\$45,000	\$152,000
American Assn for Justice	33	2	\$60,000	\$1,105,000

National Air Traffic Controllers Assn	35	4	\$120,000	\$950,000
United Auto Workers	37	2	\$20,000	\$950,000
Teamsters Union	39	2	\$65,000	\$704,000
EMILY's List	45	2	\$60,000	\$500,000
International Assn of Fire Fighters	46	4	\$120,000	\$750,000
<i>Average</i>		2	\$70,227	\$1,216,917
<i>Median</i>		2	\$60,000	\$1,055,000

Source: Tables Provided by the Center for Responsive Politics 1/30/2017

TABLE 4

TOP ORGANIZATIONAL DONORS OF OUTSIDE MONEY THAT CONTRIBUTED TO NATIONAL PARTY COMMITTEES AND PARTY-LINKED SUPER PACS SPENDING IN THE SAME ELECTION (2012 ELECTION CYCLE)

Donor	Rank	Number of Party Committees Funded	Total Contributions to Party Committees	Contributions to Party-Linked Super PACS
United Auto Workers	1	2	\$15,000	\$1,055,000
Service Employees International Union	2	2	\$60,000	\$1,253,549
National Education Assn	3	4	\$120,000	\$200,000
American Fedn of St/Cnty/Munic Employees	6	2	\$75,000	\$2,140,000
AFL-CIO	7	2	\$50,000	\$265,000
Carpenters & Joiners Union	9	3	\$61,000	\$3,425,000
American Federation of Teachers	10	2	\$75,000	\$2,700,000
United Food & Commercial Workers Union	11	2	\$75,000	\$1,166,000
Communications Workers of America	12	1	\$30,000	\$150,000
Laborers Union	14	2	\$60,000	\$2,117,000
National Assn of Letter Carriers	16	2	\$60,000	\$1,414,000
Plumbers/Pipefitters Union	17	2	\$50,000	\$748,000
National Assn of Realtors	19	5	\$149,573	\$10,000
Intl Brotherhood of Electrical Workers	20	2	\$44,000	\$1,930,000
National Air Traffic Controllers Assn	29	4	\$120,000	\$800,000
Operating Engineers Union	30	3	\$20,500	\$1,265,000
American Postal Workers Union	32	2	\$75,000	\$1,005,000

American Assn for Justice	36	3	\$91,000	\$1,434,000
Teamsters Union	38	2	\$60,000	\$745,100
United Steelworkers	40	1	\$45,000	\$570,000
Painters & Allied Trades Union	45	3	\$30,000	\$50,000
Office & Professional Employees Union	48	2	\$60,000	\$50,000
International Assn of Fire Fighters	49	4	\$120,000	\$670,000
<i>Average</i>		2	\$67,221	\$1,094,028
<i>Median</i>		2	\$60,000	\$1,005,000

Source: Tables Provided by the Center for Responsive Politics 1/30/2017

Again, the last two rows of the Tables provide summary information. They show that each organizational donor on average contributed to two party committees per cycle. The amount each donor contributed averaged \$70,227 (\$35,114 per committee) in 2014 and \$67,221 (\$33,611 per committee) in 2012. As noted earlier, they could have contributed as much as \$129,600 and \$123,200 respectively to two committees over the respective two year cycles.

The Tables also show that each of these donors supplemented its party giving by contributing to party-linked Super PACs spending in the same elections. In 2014, they contributed an average of \$1,216,917 to such groups; in 2012, they furnished an average of \$1,094,028.

Adding together the average organizational donor's contributions to party committees and party-linked ones, we arrive at a total of \$1,287,144 for the 2014 cycle and \$1,161,249 for the 2012 one. These amounts are, respectively, ten times the maximum the donor could have legally contributed to two national party committees in the 2014 cycle (\$129,600) and nine times the limit in the 2012 one (\$123,200). Again, this pattern of donors funding what might be called real and shadow parties in the same elections constitutes a circumvention of contribution limits.

CONCLUSION

Nearly half (from 40% to nearly 50%) of the top individual and organizational outside money donors during the 2012 and 2014 federal elections contributed to both national party committees and party-linked Super PACs active in the same elections. These contributions amounted to, on average, about \$70,000-\$85,000 to national party committees and \$1,000,000 to \$2,000,000 to party-linked Super PACs. Undoubtedly, many more outside money donors who did not make the top individual and organizational lists also practiced such strategic giving.

The large donors surveyed in this study made very substantial contributions to their preferred party committees. The size of these contributions, while within legal limits, assured that these donors would be noticed by party fundraisers, many of whom were themselves candidates and elected officials. When these donors simultaneously embellished their financing by massively subsidizing independent Super PACs linked to the same parties in the same elections, they *intensified* the danger of corruption and its appearance.

By ignoring such political realities, the *SpeechNow* decision has helped undermine federal contribution limits, the primary means of federal regulation of campaign financing.

ABOUT THE AUTHOR

Stephen R. Weissman is a political scientist specializing in American Government who has taught at Fordham University, the University of Texas at Dallas and Howard University. He is a nationally recognized expert on campaign finance issues. As Legislative Representative for Public Citizen on Campaign Finance Reform (1998-2002) and Associate Director for Policy with the Campaign Finance Institute (2002-2009), he conducted many studies and published reports, articles and book chapters concerning the campaign finance system. Among these were "BCRA and the 527 Groups," in Michael Malbin ed., *The Election After Reform* (Lanham, M.D.: Rowman and Littlefield, 2006) 79-111 (with Ruth Hassan), "Nonprofit Interest Groups' Election Activities and Federal Campaign Finance Policy," *The Exempt Organizations Tax Review* (October 2006) 21-38 (with Kara Ryan) and "Public Attitudes Towards Publicly Financed Elections 1972-2008," in Costas Panagopoulos, *Public Financing in American Elections* (Philadelphia: Temple University Press, 2011), 124-46 (with Ruth Hassan). More recently, he has written articles on the *Citizens United* case and John Edwards' campaign finance violations trial for the *Los Angeles Times*. Weissman has had first-hand experience with Congress as Staff Associate and Staff Director of the House Foreign Affairs Committee's Subcommittee on Africa from 1979-1991.

ABOUT FREE SPEECH FOR PEOPLE

Free Speech For People works to renew our democracy and our United States Constitution for we the people. Founded on the day of the Supreme Court's *Citizens United* ruling, Free Speech For People envisions a democratic process in which all people have an equal voice and an equal vote. We educate, we organize, we fight in the courts, and we press for a constitutional amendment to reclaim our democracy. To learn more, please visit our website: www.freespeechforpeople.org