



# MONEY IN POLITICS PROJECT

## REPORT #11

### The Shell Game:

How Independent  
Expenditures Have  
Invaded Maine Since  
*Citizens United*



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The *Money in Politics Project* is a program of **Maine Citizens for Clean Elections**, a nonpartisan organization that has been working in the public interest to advocate for, increase public support for, defend and improve the Maine Clean Election Act and related campaign finance law since 1995. MCCE is a 501(c)(3) organization. [www.MaineCleanElections.org](http://www.MaineCleanElections.org)

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### Executive Summary

Independent expenditures occupy a unique place in our system of campaign finance. This type of spending is subject to far less regulation than contributions given directly to candidates on the reasoning that truly “independent” spending does not have the same potential to secure favoritism and therefore create corruption or the appearance of corruption.

Many people inside and outside of the political system, however, dismiss that distinction, insisting that independent expenditures can be every bit as effective in gaining access and influence for the spenders as direct contributions. Though direct coordination on specific expenditures is prohibited – at least for now – candidates are often well aware who is be-

hind the spending. Independent expenditures generate favoritism in the same way as direct contributions.

Moreover, independent expenditures are large and growing larger. Due to court decisions from *Buckley v. Valeo* in 1976 through *Citizens United* in 2010, the state or federal government cannot restrict independent expenditures. The sky is the limit, and in Maine races, independent expenditures have risen much more rapidly than candidate spending. Between 2006 and 2010, gubernatorial independent expenditures increased by 650%, and between 2008 and 2012 legislative independent expenditures increased by 574%.

Not only are independent expenditures subject to no limits, they may be funded by incorporated entities. For-profit corporations donating huge sums in political campaigns represent



one kind of threat to democracy. But at the same time, a vast array of “shell corporations”—nonprofits that do not have to disclose their donors – has arisen in the years since *Citizens United*, making it easy to evade effective reporting and disclosure. The true sources remain completely anonymous, and secret funders may spend without limit. This shadow money is a separate threat.

In the election cycles from 2000 to 2010, candidates participating in the Maine Clean Election Act public funding system were eligible to receive matching funds to respond to independent expenditures made against them. In 2011 the system of matching funds was effectively struck down by the Supreme Court in *McComish v. Bennett*, and legislation to replace it with an alternative source of supplemental funding has been carried over until the Second Session of the 126th Legislature. With the absence of matching funds, independent expenditures have played an increasing role, dominating some races.

For all these reasons, the total amount spent on independent expenditures to influence campaigns in Maine and across the country is on the rise, with speculation that Maine’s 2014 legislative and gubernatorial races will easily break previous records.

Independent expenditures have a profound effect on our democracy. MCCE is publishing this report because we believe the public benefits from information about independent expenditures, how much money is involved, the need

for better disclosure, and who is ultimately paying to influence our elections using this indirect but increasingly powerful mechanism.

### Highlights

- The amount of independent expenditures in Maine elections has increased dramatically since *Citizens United*.
- *Citizens United* has reduced transparency and accountability by increasing the amount of money moving through entities that are not subject to effective reporting requirements.
- It is impossible to track the money behind independent expenditures with precision, but the entities making independent expenditures usually act as pass-throughs, raising most of their money from other groups or organizations.
- Large out-of-state entities provide funding that directly or indirectly enables a substantial amount of the independent expenditures in Maine.
- For example, money spent in the Senate District 32 race can be traced indirectly back to sources tied to George Soros on the Democratic side and the Koch brothers on the Republican side.
- Total independent expenditures in that race were eleven times average campaign budgets.
- The original source of some of the money fueling the independent expenditure system is not subject to effective disclosure because it is channeled through 501(c) groups and other entities that do not have to reveal their contributors.

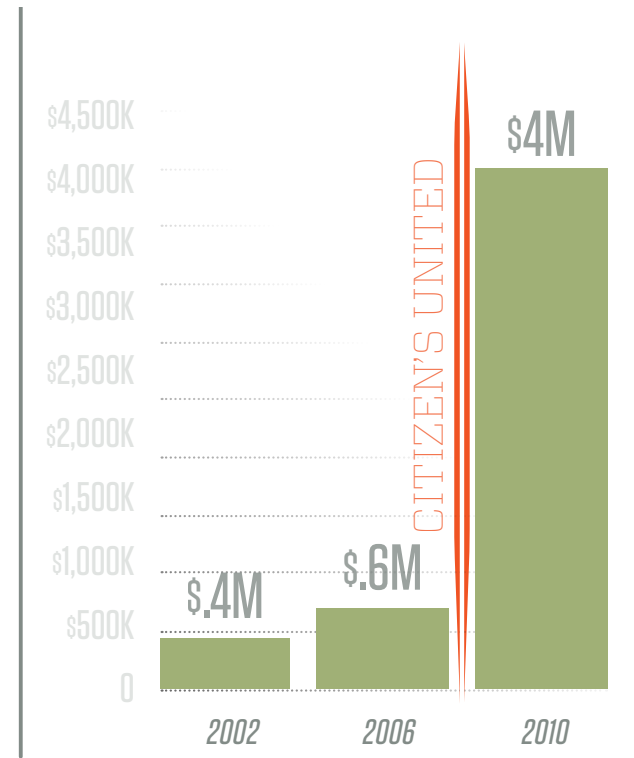
# PART I: INDEPENDENT EXPENDITURES IN RECENT MAINE RACES

In the past, total independent expenditures amounted to a fraction of the funds raised and spent by the candidates themselves. Since *Citizens United*, it is now common for independent expenditures to match or exceed typical candidate campaign budgets, especially in highly contested legislative races.

## Gubernatorial Elections

FIGURE II-1 illustrates the trend of independent expenditures reported in Maine's most recent gubernatorial elections. The election in 2010 was the first after *Citizens United*.

FIGURE II-1  
Gubernatorial Independent Expenditures Surge Following *Citizens United*



Gubernatorial independent expenditures approached the level of spending by the candidates themselves in the 2010 gubernatorial election. General Election spending by the three major candidates totaled about \$4.6 million—\$600,000 more than the independent expenditures reported.

FIGURE II-2  
2010 Gubernatorial Independent Expenditures (Major Candidates Only)

Candidate		Amount
Paul R. LePage	Opposition IE's	\$1,023,858
Paul R. LePage	Supportive IE's	\$847,459
Eliot R. Cutler	Opposition IE's	\$809,033
Elizabeth H. Mitchell	Opposition IE's	\$541,765
Eliot R. Cutler	Supportive IE's	\$432,485
Elizabeth H. Mitchell	Supportive IE's	\$376,095
		<b>\$4,030,695</b>

This three-way race featured a complicated dynamic, with some observers suggesting that political operatives used independent expenditures in unusual ways to achieve strategic campaign objectives. In any event, independent expenditures may have made a difference. Although Paul LePage raised less money for his own campaign than either Elizabeth Mitchell or Eliot Cutler, he won with 38% of the vote.

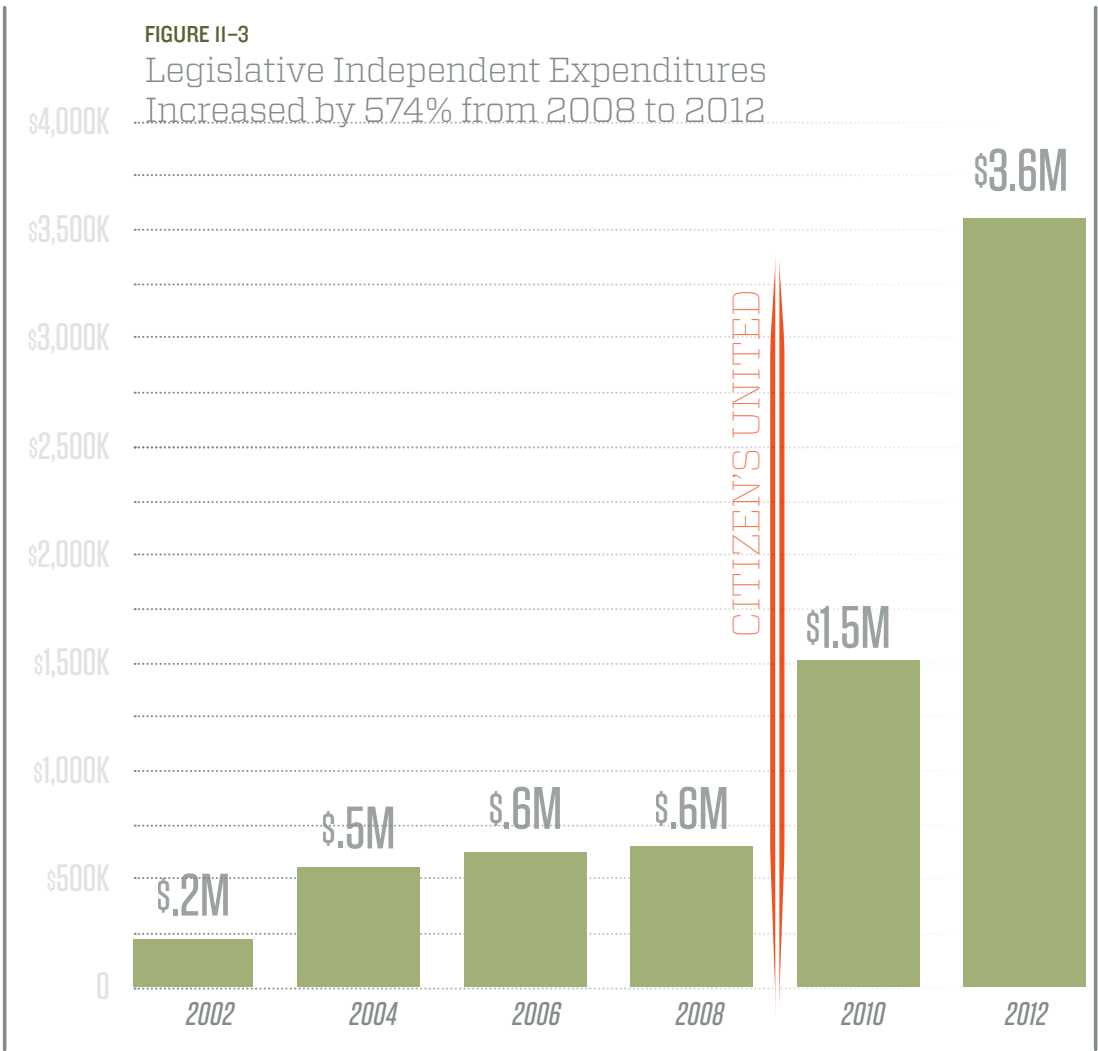
## Legislative Elections

The role of independent expenditures in recent legislative races has been equally dramatic. The overall upward trend was similar to that in gubernatorial races, with an increase of 574% from 2008 to 2012. FIGURE II-3.

Due to reporting limitations, even the large amounts detailed in FIGURES II-1 TO II-3 might understate this significant trend.<sup>1</sup>

But the increased prominence of independent expenditures in individual legislative races

was even more pronounced, in some cases dwarfing the money raised by the candidates. FIGURE II-4 For example, the total independent expenditures in the 2012 Senate District 32 race were more than eleven times the average campaign budget for two Senate candidates.



<sup>1</sup> Maine law has a narrow definition of "independent expenditure," and therefore some communications do not have to be reported. 21-A M.R.S.A. 1019-B (only "express advocacy" and certain communications made during the final weeks of an election cycle must be reported).

The Senate special election on August 27, 2013, provides the latest evidence of the significant impact of independent expenditures in legislative races. A total of \$155,752 was spent on independent expenditures during that short campaign. Independent expendi-

tures of \$96,110 were reported for the benefit of the winning candidate, Democrat Eloise Vitelli, while \$59,642 were reported on behalf of the Republican, Paula Benoit.

FIGURE II-4  
The Ten 2012 Senate and House Races with the Most Independent Expenditures

Rank	District	Senate Candidates	Total Independent Expenditures
1	32	Geoffrey M. Gratwick, Nichi S. Farnham	\$452,835
2	6	James A. Boyle, Ruth A. Summers	\$288,652
3	17	Colleen J. Quint, Garrett Paul Mason	\$246,335
4	15	John J. Cleveland, Lois A. Snowe-Mello	\$241,170
5	25	Colleen M. Lachowicz, Thomas H. Martin Jr.	\$184,072
6	22	Christopher W. Rector, Edward J. Mazurek	\$171,325
7	20	Christopher K. Johnson, Leslie T. Fossel	\$169,401
8	11	Christopher Michael Tyll, Richard Woodbury	\$116,680
9	28	Brian D. Langley, David A. White	\$81,852
10	27	Douglas Andrew Thomas, Herbert E. Clark	\$64,336
Average candidate campaign budget			<b>\$19,724</b>

	District	House Candidates	Total Independent Expenditures
1	5	Michael J. Willette, Robert Joseph Saucier	\$69,240
2	128	Heather W. Sirocki, Jean-Marie Caterina	\$66,663
3	52	Deborah J. Sanderson, Elizabeth S. Miller	\$42,581
4	18	Aaron M. Frey, James W. Parker	\$41,247
5	148	Robertta B. Beavers, Sarah O. Lewin	\$39,870
6	139	Aaron F. Libby, Joseph A. Wagner	\$38,953
7	54	Catherine M. Nadeau, Susan Ellen Morissette	\$37,748
8	16	Douglas K. Damon, John C. Schneck	\$35,017
9	64	Jeremy G. Saxton, Kimberly N. Olsen	\$34,883
10	80	Melvin L. Newendyke, Rachel Lynne Sukeforth	\$34,275
Average candidate campaign budget			<b>\$4,870</b>

How much do we really know about the true sources fueling the explosion in independent expenditures? Disclosure requirements in this area range from incomplete to non-existent. We do know that much of this hard-to-track money comes from outside of Maine, and organizations involved in campaigns at the federal level may be required to report some of their activities to either the Federal Election Commission or the IRS. But when a person or corporation wishes to spend a great deal of money anonymously by making independent expenditures or transferring money for that purpose, that person has several options for concealing his or her identity from the general public. Here are some of the entities involved in what often looks like a campaign finance shell game:

**501(c)(4) Organizations.** The Center for Responsive Politics (CRP) calls 501(c)(4) organizations “dark money mailboxes.” A 501(c)(4) organization may engage in political activities so long as those activities are not the “primary purpose” of the organization. The bare bones reports filed by these non-profit “social welfare” organizations with the IRS are not legally required to include information about their funding sources. Some 501(c)(4) funding sources can occasionally be identified by researchers, such as when a corporation releases information about its political contributions to 501(c)(4) organizations pursuant to a corporate accountability policy. According to CRP, whatever information is released is not only difficult to uncover, it may be delayed for between 5 and 23 months beyond the relevant election. 501(c)(4) donor information is not available through Maine’s Commission on Governmental Ethics and Election Practices. Similar rules apply to 501(c)(5) labor unions and 501(c)(6) trade associations like the Chamber of Commerce.

**527’S.** Section 527 of the Internal Revenue Code provides another popular option for big-

money fundraising. 527 Committees must file with the state in which they are located, the FEC, or the IRS. If the 527 does not engage in express advocacy, no donor information is required; and even when information is required, it is often filed long after the election is over. Even this limited disclosure can be avoided by creating 501(c)(4) organization instead, and political operatives have recently been moving away from 527’s.

**Super PACs.** The FEC does require monthly or quarterly reporting from independent-expenditure-only PACs, also known as “Super PACs.” The reports must include the donors, but there is a potential loophole: In many cases a Super PAC lists a 501(c) organization as a donor. Since a 501(c) organization does not have to disclose its funders, the ultimate sources of funding for the Super PAC may be effectively concealed from public view.

**National Party Committees.** The Democratic Party and the Republican Party each have four major national fundraising committees – a party committee, a national committee, a Senate committee, and a Congressional committee. In 2012, the parties each raised over \$1.5 billion through those committees. This money is in addition to the funds raised directly by the presidential campaigns and their affiliated Super PACs.

**Labor Organizations.** Most funding for political activity by unions ultimately derives from contributions from union members, although unions may also accept contributions from non-members. Labor organizations are not required to provide additional details about their fundraising, although a labor PAC must report any transfers made from the union’s general treasury to the PAC fund. Under some circumstances, money received by unions may be covered by disclosure regulations if it is earmarked for specific campaign purposes.

FIGURE II-5

Tracking the Money: Over \$450,000 of Independent Expenditures in One Maine State Legislative Race.



Geoff Gratwick,  
Senate District  
32 Election<sup>2</sup>  
November 6, 2012

Soros Management  
Fund donates  
\$1,000,000 to ↓

American Bridge 21st  
Century Foundation  
donates \$245,662 to ↓

American  
Bridge 21st  
Century  
2012, exact date unknown

American Bridge 21st  
Century Super PAC  
donates \$425,000 to ↓

America  
Votes  
date unknown

America  
Votes<sup>3</sup> donates  
\$15,000 to the ↓

The Committee to Rebuild  
Maine's Middle Class Maine  
PAC spends \$46,114 to support ↓

Committee  
to Rebuild  
Maine's  
Middle Class  
October 16, 2012

Geoff  
Gratwick  
On or after 10/28/2012

<sup>3</sup> The contributor is actually listed as "America Votes - Built to Win." American Votes - Built to Win shares an address and suite number with a national 527 organization with the name "America Votes." There is little public information about an entity with the full name "America Votes—Built to Win." For purposes of this report we assume that these two names refer to the same organization or two affiliates with financial connections.

<sup>2</sup> Although these transactions can be linked to the large pool of money used for independent expenditures in the 2012 Senate District 32 race, these illustrations do not prove that any contributions were specifically earmarked for that race.

Center to Protect  
Patient Rights gives  
\$11.6 million to the ↓

American  
Future Fund  
on 10/4/2012

Republican  
State Leadership  
Committee<sup>4</sup> gives  
\$190,000 to the ↓

American Future  
Fund gives \$1  
million to the ←

Republican  
State  
Leadership  
Committee  
10/9/2012

Republican  
Speakers' Fund  
Maine PAC gives  
\$90,000 to the ↓

Republican  
Speakers'  
Fund  
10/9/2012

Maine  
Republican  
Party  
10/17/2012

Maine Republican Party makes  
independent expenditures of \$6,940 for ↓

Nichi  
Farnham  
10/31/2012

<sup>4</sup> Through the RSLC  
MainePAC

## CPPR

According to OpenSecrets.org, "The donors to the Center to Protect Patient Rights are almost entirely unknown." The Los Angeles Times has researched CPPR and concluded that it is "closely tied to the Koch brothers." Many other organizations have come to the same conclusion.

## RACE



Nichi Farnham,  
Senate District  
32 Election  
November 6, 2012

## Part 2: Entities Making Independent Expenditures in Maine and Their Sources of Funding

In order to more fully understand the sources that are funding independent expenditures, MCCE examined the records of millions of dollars of independent expenditures reported in the 2012 election cycle. The five entities that reported spending the most on independent expenditures are listed in **FIGURE II-6**.

**FIGURE II-6**  
Top Five Entities Making Independent Expenditures in Maine 2012

Entity	Expenditure
Maine Republican Party	\$919,430
Maine Democratic Party/ State Committee	\$885,256
The Committee to Rebuild Maine's Middle Class	\$764,852
Maine Senate Republican Majority	\$304,000
Citizens Who Support Maine's Public Schools	\$172,271
	<b>\$3,045,809</b>

This list reflects over \$3 million in expenditures by state party committees, advocacy groups, and a caucus PAC. Each of these entities is itself an organization that receives funds from other sources, so this list alone reveals very little about the true source of the money for independent expenditures. To some extent, each of these entities functions as a pass-through for funding from other sources.

To dig deeper, we analyzed how the five entities in **FIGURE II-6** raised their funds during the 2012 cycle. **FIGURE II-7** shows the ten groups, individuals, and organizations that contributed

the most funding to the five entities listed in **FIGURE II-6** and the amount each contributed—a total of over \$4 million.

**FIGURE II-7**  
Top Ten Contributors Supporting the Top Five Independent Spenders in Maine 2012 Election<sup>5</sup>

1	House Democratic Campaign Fund	\$737,000
2	Senate Democratic Campaign Committee	\$654,675
3	Republican State Leadership Committee—Maine PAC	\$495,000
4	Sussman, Donald	\$457,000
5	National Education Association	\$373,995
6	Republican Speakers Fund	\$364,470
7	Bosarge, Ed	\$354,800
8	Maine Senate Republican Majority	\$234,555
9	MSEA SEIU	\$224,917
10	Maine Education Association	\$184,165
		<b>\$4,080,577</b>

Campaign finance reports do not elaborate on how this \$4 million was used by the entities in **FIGURE II-6**. Some likely went toward expenses other than independent expenditures, such as candidate contributions, operating expenses, or transfers to other entities. But much of the \$4 million was plainly spent on independent expenditures. With current campaign finance reporting, the money can't be traced to specific advertisements or mailings, but the overall surge of funds certainly helped fuel those record-setting expenditures.

From where, in turn, do the entities in **FIGURE II-7** get their funding? Further tracking is not necessary in the case of an individual contributor such as Donald Sussman or Ed Borsage.

<sup>5</sup> Totals include general treasury, political funds, and affiliated entities where applicable.

For unions, further tracking may be possible depending on whether the union made the contribution from its general treasury or its PAC. **FIGURE II-8** shows the breakdown for three unions between contributions from their general treasury funds and their PAC.<sup>6</sup>

**FIGURE II-8**  
Unions and their Treasuries

	General Treasury	PAC	Total
Maine Education Assoc.	\$169,665	\$14,500	\$184,165
National Education Assoc.	\$14,025	\$359,970	\$373,995
MSEA SEIU	\$193,917	\$31,000	\$224,917

**FIGURE II-8** shows that a large majority of the funds given by the Maine Education Association and MSEA SEIU to the entities listed in **FIGURE II-6** were paid out of their general treasury funds. The National Education Association is the only one of the three unions to give largely from its PAC, but federal reports show that the National Education Association PAC receives all of its funds from the National Education Association general treasury. So there is little additional tracking possible or necessary for the union contributors.

The other five entities listed in **FIGURE II-7** are PACs that file reports under state or federal law. Therefor further tracking for those funds is possible. **FIGURE II-9** shows the top five contributors to each of these entities during 2012. The funds in **FIGURE II-9** provided indirect support for the surge in independent expenditures.

<sup>6</sup> We assume that money from an entity with "PAC," "Action Fund," "Education Fund," "Advocacy Fund," or similar terms in the name as reported in the campaign finance reports is not a general treasury contribution.

FIGURE 11-9  
Fundraising Indirectly Supporting  
Independent Expenditures in 2012

Source entity. No further tracking is possible.

House Democratic Campaign Committee	
DLCC <sup>7</sup>	\$255,000
Sussman, Donald	\$75,000
Cain for Maine	\$35,300
Carey for Maine	\$20,222
Hayes for ME PAC	\$18,500

Senate Democratic Campaign Committee	
DLCC	\$220,000
Sussman, Donald	\$75,000
ABCD PAC	\$54,000
Empowering Maine PAC	\$28,000
Int. Association of Fire Fighters	\$17,500

Republican State Leadership Committee <sup>8</sup>	
U.S. Chamber of Commerce	\$4,025,889
Blue Cross/BlueShield	\$2,657,707
American Justice Partnership	\$1,350,000
American Future Fund	\$1,185,000
Altria Group	\$1,017,280

Republican Speakers Fund	
RSLC-Maine PAC	\$400,000
House Republican Majority Fund	\$60,000
StudentsFirst	\$10,000
Maine Truck PAC	\$7,500
Wal-Mart	\$7,000

<sup>7</sup> Democratic Legislative Campaign Committee, a national party committee.  
<sup>8</sup> RSLC - ME PAC received funds only from the RSLC parent PAC, so the fundraising of the parent PAC is shown here. Data from Opensecrets.org.

Maine Senate Republican Majority	
RSLC-Maine PAC	\$495,000
Capital Leadership PAC	\$82,000
Paving the Way to a Prosperous Maine	\$34,500
Imagine Maine PAC	\$26,500
Leading to a Balanced Maine	\$26,000

Many of the entities listed in **FIGURE 11-9** also engage in their own fundraising. Although tracking the money can be a never-ending endeavor, the lists above begin to show some well-known corporations, associations, and individuals who are providing funds that directly or indirectly support independent expenditures influencing Maine campaigns. Yet because of weak reporting requirements and the influence of *Citizens United*, much remains unclear about the ultimate sources of funding.

## Conclusion

The national surge of independent expenditures that followed *Citizens United* has hit Maine.

Maine campaigns—once local affairs—are increasingly dominated by messages paid for directly or indirectly by deep-pocketed, out-of-state groups. In the din of a campaign’s final weeks, candidates can barely be heard above the unprecedented surge of communications funded by new, unaccountable money.

Congress and the Federal Election Commission have it within their power to require disclosure of secret money, but so far they have done little.

Maine and the other states may have to institute greater disclosure to shine a bright light on the secret funds now beginning to dominate democracy at the state level.

## Notes

Information for this report is taken from campaign finance reports filed with the Commission on Governmental Ethics and Election Practices. Although reporting has improved over the years, that information is not uniformly accurate and consistent. Analyzing the sources of funding sometimes requires certain assumptions about the identity of a funder where the name is not reported consistently from one report to the next. For example, this report assumes that contributions reported from “Republican National” and “National Republican” are the same entity—the Republican National Committee. In this report we also assume that “Democratic Governor’s Association” includes “Democratic Governor’s Association—Maine” as well as “Democratic Governor’s Association—Maine PAC.” “House Republican Committee” includes “House Republicans,” “House Republican Fund,” and “House Republican Majority.” “House Democratic Campaign Fund” includes “House Democratic Campaign Committee,” “House Democratic Committee,” “House Legislative Campaign Fund,” and “House Democratic Campaign.”

MCCE gratefully acknowledges OpenSecrets.org and Followthemoney.org for data on national organizations.

## PREVIOUS REPORTS

**REPORT #1**  
PACs Unlimited: How Legislator PACs Distort Maine Politics

**REPORT #2**  
Profiles in Fundraising — The Leader Board: Maine’s Top Legislative Fundraisers and How They Earned Their Spots

**REPORT #3**  
Money, Insurance, and Health Care Policy: How Health Insurance Companies’ Campaign Contributions Helped Them Win Major Legislation

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Preliminary Report on 2012 Campaign Money: Private Money Making A Comeback In Maine Elections

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2012 Legislative Elections: An Analysis of Clean Election Participation and Outcomes

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Tracking the Money: Private Money Surges in Maine’s 2012 Legislative Races

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