The Shell Game: How Independent Expenditures Have Invaded Maine Since Citizens United
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

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The Shell Game:
How Independent Expenditures Have Invaded Maine Since Citizens United

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 behind 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 2008 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 McCormick 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.

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.

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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 11–1* illustrates the trend of independent expenditures reported in Maine’s most recent gubernatorial elections. The election in 2010 was the first after *Citizens United*.

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 11–3*.

Due to reporting limitations, even the large amounts detailed in *FIGURES 11–1 TO 11–3* might understate this significant trend.

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 11–4* 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.

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1 Maine law has a narrower 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).

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**2010 Gubernatorial Independent Expenditures (Major Candidates Only)**

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paul R. LePage</td>
<td>Opposition IE's $1,023,858</td>
</tr>
<tr>
<td>Paul R. LePage</td>
<td>Supportive IE's $847,459</td>
</tr>
<tr>
<td>Eliot R. Cutler</td>
<td>Opposition IE's $809,033</td>
</tr>
<tr>
<td>Elizabeth H. Mitchell</td>
<td>Opposition IE's $541,765</td>
</tr>
<tr>
<td>Eliot R. Cutler</td>
<td>Supportive IE's $432,485</td>
</tr>
<tr>
<td>Elizabeth H. Mitchell</td>
<td>Supportive IE's $376,095</td>
</tr>
</tbody>
</table>

\$4,030,695

**Legislative Independent Expenditures Increased by 574% from 2008 to 2012**

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$2M</td>
</tr>
<tr>
<td>2004</td>
<td>$5M</td>
</tr>
<tr>
<td>2006</td>
<td>$6M</td>
</tr>
<tr>
<td>2008</td>
<td>$6M</td>
</tr>
<tr>
<td>2010</td>
<td>$1.5M</td>
</tr>
<tr>
<td>2012</td>
<td>$3.6M</td>
</tr>
</tbody>
</table>
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 $195,762 was spent on independent expenditures during that short campaign. Independent expenditures of $96,110 were reported for the benefit of the winning candidate, Democrat Eloise Vitelli, while $50,642 were reported on behalf of the Republican, Paula Benoit.

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) organizations have chosen to release fund-raising information so that researchers, such as when a corporation delineating sources can occasionally be identified by researchers, such as when a corporation delineating sources. The permanent nonprofit, non-profit organization that is in addition to the funds raised directly by political committees 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—the party committee, a national committee, a Senate committee, and a Congressional committee. In addition to the funds raised directly by the national committees, many super PACs may also accept 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 11–5
Tracking the Money: Over $450,000 of Independent Expenditures in One Maine State Legislative Race.

2 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.

3 The contributor is actually listed as “America Votes: Built to Win.” America 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.

4 Through the RSLC MainePAC.

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

<table>
<thead>
<tr>
<th>Entry</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine Republican Party</td>
<td>$919,430</td>
</tr>
<tr>
<td>Maine Democratic Party/State Committee</td>
<td>$885,256</td>
</tr>
<tr>
<td>The Committee to Rebuild Maine’s Middle Class</td>
<td>$764,852</td>
</tr>
<tr>
<td>Maine Senate</td>
<td>$304,000</td>
</tr>
<tr>
<td>Citizens Who Support Maine’s Public Schools</td>
<td>$172,271</td>
</tr>
</tbody>
</table>

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 top 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 *

1. House Democratic Campaign Fund $737,000
2. Senate Democratic Campaign Committee $664,675
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. Borsage, Ed $354,800
8. Maine Senate Republican Majority $334,555
9. MSEA SEIU $324,917
10. Maine Education Association $184,185

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.

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.

FIGURE II-8
Unions and their Treasuries

<table>
<thead>
<tr>
<th></th>
<th>General Treasury</th>
<th>PAC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine Education Assoc.</td>
<td>$193,917</td>
<td>$31,000</td>
<td>$224,917</td>
</tr>
<tr>
<td>National Education Assoc.</td>
<td>$14,025</td>
<td>$359,970</td>
<td>$373,995</td>
</tr>
<tr>
<td>MSEA SEIU</td>
<td>$193,917</td>
<td>$654,675</td>
<td>$848,652</td>
</tr>
</tbody>
</table>

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. Therefore 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.

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*We assume that money from an entity with “PAC,” “Action Fund,” “Education Fund,” “Advocacy Fund,” or similar terms in its name as reported in the campaign finance reports is not a general treasury contribution.

**Numbers in FIGURE II-8 are rounded.**
### Independent Expenditures in 2012

Fundraising Indirectly Supporting

<table>
<thead>
<tr>
<th>Source entity</th>
<th>No further tracking is possible</th>
</tr>
</thead>
<tbody>
<tr>
<td>House Democratic Campaign Committee</td>
<td></td>
</tr>
<tr>
<td>DLC7</td>
<td>$255,000</td>
</tr>
<tr>
<td>Busseyman, Donald</td>
<td>$75,000</td>
</tr>
<tr>
<td>Cain for Maine</td>
<td>$35,300</td>
</tr>
<tr>
<td>Carey for Maine</td>
<td>$30,222</td>
</tr>
<tr>
<td>Hayes for ME PAC</td>
<td>$18,500</td>
</tr>
</tbody>
</table>

| Senate Democratic Campaign Committee |
| DLC7 | $220,000 |
| Busseyman, Donald | $75,000 |
| ABCPAC | $54,000 |
| Empowering Maine PAC | $30,900 |
| Int. Association of Fire Fighters | $17,500 |

Many of the entities listed in FIGURE II-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.