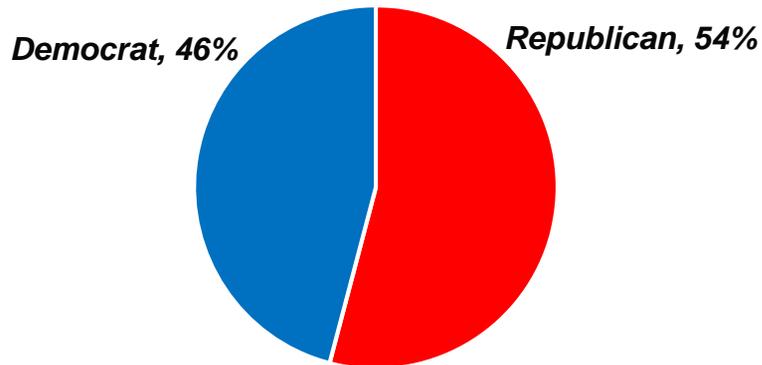
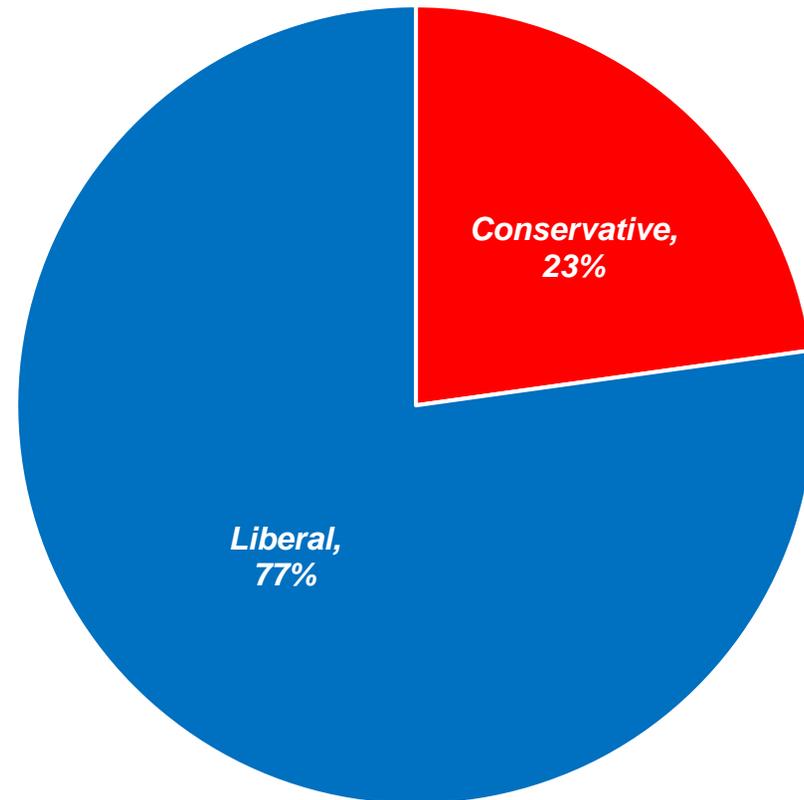


Center for Strategic Giving

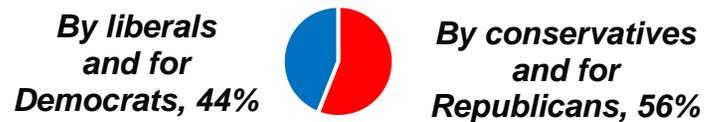
Federal, state, and local campaign receipts,
2013-14 (\$4.1 billion)



Receipts of selected traditional
public-policy nonprofits, 2014 (\$9.6 billion)



Independent spending on federal
elections, 2013-14
(\$538 million)



[Independent spending on state
elections, 2013-14: \$291 million]



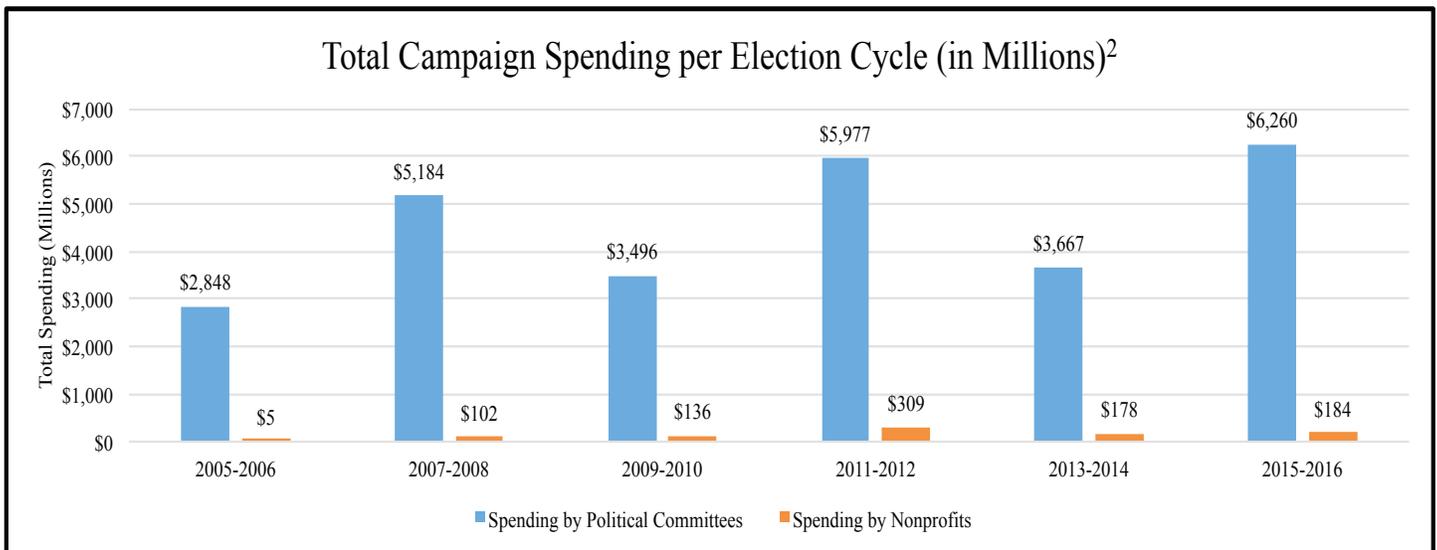
Putting “Dark Money” In Context: Total Campaign Spending by Political Committees and Nonprofits per Election Cycle

Luke Wachob

Not every group that spends money on campaigns or candidate-related speech is a political committee. If that were so, only politicians, parties, and PACs would have a voice in election campaigns. In addition to political committees, nonprofit groups are permitted to engage in a limited amount of campaign spending. These groups are typically 501(c)(4) social welfare organizations, such as the League of Conservation Voters and National Rifle Association Institute for Legislative Action, 501(c)(5) labor unions, such as the American Federation of Teachers, and 501(c)(6) trade associations, such as the National Association of Realtors and the U.S. Chamber of Commerce.

Because political campaign activity is not their primary purpose, these groups are not required to shoulder the same regulatory burdens as political committees. One of these burdens is disclosure. Whereas political committees are required to report the names, home addresses, employers, and occupations of their individual donors to the government, those who give to nonprofits can do so privately unless they earmark their contribution for campaign-related speech. In addition to keeping compliance burdens manageable, this ensures that donors who wish to support a nonprofit’s general mission are not wrongly associated with its campaign-related speech, which may be a very small part of its operations.

Proponents of greater restrictions on political speech often use the pejorative term “dark money” to describe campaign spending by nonprofits. The term evokes an emotional, fearful reaction, and many of the statistics published on the topic mislead rather than enlighten. But how much “dark money” is there? How big of a role does it play? To help answer these questions, it is useful to compare campaign spending by political committees to spending by nonprofits.¹



¹ Notably, political committees are considered nonprofits for tax purposes. However, they are distinct from 501(c) nonprofits because their primary purpose is political activity, and they are required to disclose the identities of donors who give over \$200.

Election Cycle	Percentage Spending by Political Committees ³	Percentage Spending by Nonprofits (“Dark Money”) ⁴
2005-2006	99.8%	0.2%
2007-2008	98.1%	1.9%
2009-2010	96.3%	3.7%
2011-2012	95.1%	4.9%
2013-2014	95.4%	4.6%
2015-2016	97.1%	2.9%

Taken together, the graph and table illustrate the extent to which political committees continue to dominate federal campaigns. Both in absolute terms and as a percentage of total spending on campaigns and candidate-related speech, 2012 was the peak cycle for election campaign spending by nonprofit groups that are not required to report the private information of their supporters to the government. Even then, the \$309 million in nonprofit spending accounted for less than 5% of total spending. As a percentage of total campaign spending, the 2016 election cycle witnessed the least amount of so-called “dark money” (2.9%) since 2007-2008. (Prior to the *Citizens United* decision in 2010, only a small subset of corporations – certain nonprofits formed to promote ideas and which did not accept any corporate funding or sell anything – were legally able to engage in campaign speech.)⁵

Spending by nonprofits is likely to remain a small portion of total political spending in the future. That’s because 501(c) organizations are prohibited by law from having political campaign activity as their primary purpose. As a result, donors who give to a 501(c) group know that most of their donations will be spent on non-political campaign activities. By contrast, a donor interested in election campaigns could guarantee 100% of her money would go to campaign advocacy if the funds were given to a super PAC.⁶

The sensational rhetoric common in discussions of “dark money” gives a false impression that nonprofits are a major source of campaign speech. In reality, nonprofits consistently account for less than 5% of political spending, and political committees (and media) continue to have the most prominent voices in elections. Allowing this small role for nonprofits doesn’t “drown out” candidates or undermine disclosure – it adds to the diversity of views necessary in a healthy democracy.

The Institute for Free Speech is a nonpartisan, nonprofit 501(c)(3) organization that promotes and defends the First Amendment rights to freely speak, assemble, publish, and petition the government. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. The Institute is the nation’s largest organization dedicated solely to protecting First Amendment political rights.

² This data was taken from the Center for Responsive Politics (CRP). In previous calculations of “dark money”, the Institute for Free Speech typically relied on campaign spending data from the Federal Election Commission (FEC). However, the FEC did not begin publishing summaries of total campaign spending until the 2011-2012 election cycle. For the sake of consistency, this graph uses CRP data for both political committee and nonprofit spending in each election cycle. As a result, it may understate total spending and overstate the percentage of “dark money,” compared to official data maintained by the FEC. 2005-2016 total political committee spending figures can be obtained via the Center for Responsive Politics at: <https://www.opensecrets.org/overview/cost.php>. 2005-2016 total nonprofit or “dark money” spending figures can be obtained via the Center for Responsive Politics at: https://www.opensecrets.org/outsidespending/nonprof_summ.php.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Massachusetts Citizens For Life (MCFL) v. Federal Election Commission*, 479 U.S. 238 (1986).

⁶ See Matt Nese, “Five Misconceptions about ‘Dark Money,’” Institute for Free Speech. Retrieved on May 3, 2017. Available at: http://www.ifs.org/wp-content/uploads/2015/04/2015-07-08_Two-Page_Nese_Five-Misconceptions-About-Dark-Money.pdf (July 2015).



Super PACs: Expanding Freedom of Speech

Luke Wachob

*“[T]he government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations”
– SpeechNow.org v. Federal Election Commission¹*

The product of a 2010 court ruling, “super PACs” have been a boon to citizens wishing to more effectively speak about elections. Legally, they have ensured that Americans do not lose their First Amendment rights when they join together in groups. In practice, they have challenged the monopoly on political speech held by powerful politicians and big media corporations.

Yet, despite their importance, super PACs are often misunderstood. What is the constitutional basis for super PACs, what role do they play, and what rules must they follow?

Three Key Facts about Super PACs

I. Super PACs allow people to join together to exercise their freedom of speech.

The First Amendment guarantees every American freedom of speech. That freedom includes the right to spend money on speech – otherwise, our message wouldn’t travel beyond the sound of our voice. Recognizing this relationship, the Supreme Court has long prohibited the government from limiting how much individuals can spend on political speech.²

However, until 2010, groups of like-minded individuals had no such freedom. The only people who could advertise a political opinion were those with enough money to pay for it themselves. Fortunately, a unanimous ruling by the U.S. Court of Appeals for the District of Columbia, *SpeechNow.org v. FEC*, rectified this state of affairs. The result was the legalization of independent expenditure-only committees, informally known as “super PACs.” These groups allow Americans of all means to join together and pool their resources to speak about elections.

And they have – since 2010, over \$2 billion has been spent by super PACs.³ This spending represents increased participation in political debates and results in voters hearing more perspectives on candidates. Both outcomes are essential to preserving a healthy democracy and Americans’ ability to exercise their freedom of speech.

II. Super PACs create a more open political system, which was previously controlled by politicians and the media.

Prior to the creation of super PACs, campaign speech was dominated by a small set of elite institutions: the media, the political parties, and the candidates themselves. Unless you were participating in one of these groups or were extremely wealthy, the law effectively prevented you from promoting your political opinion.



¹ *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc) (“[T]he government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations.”).

² *Buckley v. Valeo*, 424 U.S. 1 (1976).

³ See “Outside Spending, by Super PAC,” Center for Responsive Politics. Retrieved on October 17, 2017. Available at: <https://www.opensecrets.org/outsidespending/summ.php?chrt=V&type=S> (September 28, 2017). The over \$2 billion figure was obtained by summing the “total spent by super PACs” statistic from the 2010 through the 2018 cycles.

The creation of super PACs reduced the power of these “gatekeeper” institutions to filter political speech. Now any group of citizens has a chance to offer their views in competition with party leaders and the media.

Despite this, the largest sources of campaign spending are still the usual suspects. In both 2014 and 2016, over 75% of election-related spending came from candidates, parties, and traditional political action committees.⁴ That figure doesn’t include the value of media coverage, which is estimated to be worth billions of dollars.⁵ Super PACs, though significant, account for only a fraction of total political spending. Still, their presence affords Americans the opportunity to better compete with more privileged institutions and candidates.

III. Super PACs report their spending and donors, the vast majority of whom are individuals.



Super PACs are not subject to contribution limits and can accept donations from corporations and unions. They are free to do so because super PACs do not give money to candidates or parties, and do not coordinate their spending with these entities. However, super PACs are still heavily regulated by campaign finance laws.

Just like candidates and political parties, super PACs must report the names, addresses, occupations, and employers of all their donors who contribute over \$200. They must also register with the Federal Election Commission and report all of their donations and spending on a schedule set forth by the government. This information is then published online in a searchable database available to anyone.

These reports show that individuals are by far the largest source of super PAC funds. In the 2015-2016 election cycle, individuals accounted for 68% of the funds given to super PACs.⁶

Conclusion

Super PACs have been given a bad name by their competitors – politicians and big media companies accustomed to dominating the debate. In reality, super PACs allow Americans to more effectively exercise their First Amendment right to express opinions about candidates. They allow anyone who wishes to join together to advertise their opinion in greater competition with elite institutions. And although they are free from contribution limits, super PACs are still subject to campaign finance laws, must publicly report their donors, and ultimately account for only a fraction of total political spending.

Our democracy is better off when Americans can join together and speak as a group about the issues that unite them.

Our democracy is better off when Americans can join together and speak as a group about the issues that unite them. Voters are better off when they can hear opinions beyond those shared by politicians, political parties, and the media. Super PACs are here to stay, and that’s a welcome development for anyone who believes in free political speech.

The Institute for Free Speech is a nonpartisan, nonprofit 501(c)(3) organization that promotes and defends the First Amendment rights to freely speak, assemble, publish, and petition the government. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. The Institute is the nation’s largest organization dedicated solely to protecting First Amendment political rights.

⁴ “The Landscape of Campaign Contributions: Campaign Finance after *Citizens United*,” Committee for Economic Development. Retrieved on October 17, 2017. Available at: <https://www.ced.org/pdf/TCB-CED-The-Landscape-of-Campaign-Contributions.pdf> (July 2017), p. 2.

⁵ Scott Blackburn, “Five Lessons about Spending in the 2016 Campaign You Might Have Missed,” Institute for Free Speech. Retrieved on October 17, 2017. Available at: <http://www.ifs.org/2017/04/19/five-lessons-about-spending-in-the-2016-campaign-you-might-have-missed/> (April 19, 2017).

⁶ “The Landscape of Campaign Contributions: Campaign Finance after *Citizens United*,” Committee for Economic Development. Retrieved on October 17, 2017. Available at: <https://www.ced.org/pdf/TCB-CED-The-Landscape-of-Campaign-Contributions.pdf> (July 2017), p. 20.



Citizens United v. FEC: Facts and Falsehoods

Luke Wachob

“If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.”

– Citizens United v. Federal Election Commission, 558 U.S. 310, 349 (2010)

The U.S. Supreme Court’s 2010 ruling in *Citizens United v. Federal Election Commission* struck down a provision of the Bipartisan Campaign Reform Act of 2002, also known as McCain-Feingold, that prohibited nonprofits, businesses, and labor unions from independently voicing their support or opposition to federal candidates. The Court ruled that provision unconstitutional as a violation of the First Amendment.

In the years since, *Citizens United* has become a lightning rod for discussion about the state of campaign finance law and the First Amendment rights of corporations and unions. Supporters applaud the ruling as a landmark victory for free speech that creates new avenues for political outsiders to run competitive campaigns without the support of party leaders. Critics claim the decision increases the political power of corporations and the wealthy at the expense of average citizens.

With so much discussion about the impact of *Citizens United* – and frequent calls to reverse it by constitutional amendment¹ – it’s important to understand the facts of the case and how it came to be.

Three Key Facts about Citizens United

- I. Citizens United produced a documentary criticizing Hillary Clinton during her candidacy for the Democratic nomination for President in 2008 and planned to air it over video-on-demand. The Federal Election Commission said no.**

Citizens United is a small, conservative nonprofit corporation. In 2008, it produced the documentary film “Hillary: The Movie,” which sharply criticized then-Senator Hillary Clinton, a candidate for the Democratic nomination for President at that time. Citizens United planned to distribute its film via video-on-demand, DVDs, and in movie theaters. Four years earlier, liberal filmmaker Michael Moore executed a very similar plan with “Fahrenheit 9/11,” a documentary released during the 2004 election year criticizing then-President George W. Bush that Moore intended to function as an organizing tool for Bush’s opponents.

Unlike Moore’s company, Dog Eat Dog Films, Citizens United ran into problems with campaign finance laws that prohibited corporations and unions from funding speech supporting or opposing a candidate near an election. Threatened with legal action by the Federal Election Commission (FEC) if it aired the movie or advertisements for the movie – simply because it criticized a politician close to an election – Citizens United decided to sue to vindicate its First Amendment right to show the film.

- II. During oral argument, the government told the Supreme Court that it not only had the power to ban “Hillary: The Movie,” but also the authority to prohibit the publication of books that support or oppose candidates near an election.**

¹ Matt Nese, “The Udall Amendment: A Briefing Book,” Institute for Free Speech. Retrieved on October 17, 2017. Available at: http://www.ifs.org/wp-content/uploads/2014/05/2014-09-09_Center-For-Competitive-Politics_Udall-Amendment-Briefing-Book.pdf (September 9, 2014).

The Supreme Court initially explored narrow grounds on which to decide the case, such as by ruling that Citizens United's criticism of Senator Clinton did not equate to advocating against her in the election, or that video-on-demand was not covered by the statute. At oral argument, however, the government took such an extreme position that the Court decided to address the constitutional question of whether Citizens United could be prevented from distributing "Hillary: The Movie" simply because it was a corporation.

The turning point came when the Justices asked then-Deputy Solicitor General Malcom Stewart, the lawyer arguing the government's case, if the government also believed it could prohibit corporations from publishing books that advocate for or against candidates – even if the advocacy was limited to a single line in a 500-page book. Stewart's response: "Well, if it says vote for X, it would be express advocacy and it would be covered by the pre-existing Federal Election Campaign Act provision."² In other words: yes, the government argued it had the power to ban such books.

Taken aback by the government's position, the Court scheduled a reargument of the case to further explore the issue. Once again, the government refused to disavow its power to ban books under the law. The Court's majority then did the only reasonable thing it could do: it struck down the law as unconstitutional and ruled in favor of Citizens United.

III. The Supreme Court's ruling in *Citizens United* allowed nonprofits, businesses, and labor unions to independently voice their support or opposition to candidates, but did not remove the prohibition on corporate or union contributions to candidates' campaign committees, and did not affect campaign finance disclosure laws in any way.

The *Citizens United* ruling sparked an immediate uproar among groups and activists opposed to corporations having a voice in politics. In the media, the decision was commonly misconstrued as having eliminated limits on corporate money in politics. In reality, *Citizens United* left intact the prohibition on direct contributions to federal candidates by corporations and unions. As a result, they still cannot participate in campaigns to the extent that individuals and political action committees can. And, in roughly half the states, the *Citizens United* ruling had no effect on state law because no prohibition on corporate and union political speech existed in the first place.³

In later years, critics of *Citizens United* have associated the ruling with super PACs and so-called "dark money." But super PACs were created through a subsequent 2010 case, *SpeechNow.org v. FEC*, which may well have succeeded regardless of the *Citizens United* ruling. And "dark money," a pejorative term for nonprofit groups that can engage in limited political speech without reporting the names and home addresses of their supporters to the government, concerns campaign finance disclosure laws that were not affected by *Citizens United* in any way. The Justices actually voted 8-1 in favor of existing disclosure requirements – although this does not mean that other, more extensive disclosure laws would pass constitutional muster in the future. Despite this fact, in the years since the ruling, opponents of *Citizens United* have pushed for more expansive disclosure laws in an effort to discourage or prevent nonprofits, businesses, and labor unions from exercising their newfound freedom.

Conclusion

In pop culture, *Citizens United* has become a symbol of corporate speech rights and the ubiquity of "money in politics." In reality, it was a straightforward case about whether the government can ban movies and books that criticize candidates near elections. Advocates for free speech and limited government must push back against the myths and misconceptions surrounding *Citizens United* by making sure the facts don't get lost in the fray.

The Institute for Free Speech is a nonpartisan, nonprofit 501(c)(3) organization that promotes and defends the First Amendment rights to freely speak, assemble, publish, and petition the government. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. The Institute is the nation's largest organization dedicated solely to protecting First Amendment political rights.

² Transcript of Oral Argument at 29, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (No. 08-205) ("MR. STEWART: Well, if it says vote for X, it would be express advocacy and it would be covered by the pre-existing Federal Election Campaign Act provision."). Retrieved on October 17, 2017. Available at: https://www.supremecourt.gov/oral_arguments/argument_transcripts/2008/08-205.pdf (March 24, 2009).

³ Sean Parnell, "Citizens United, Citizens' Lives: A comparison of states with and without prohibitions on corporate independent expenditures," Institute for Free Speech. Retrieved on October 17, 2017. Available at: <http://www.ifs.org/wp-content/uploads/2012/11/Parnell-2010-CU-States.pdf> (July 14, 2010).

The Atlantic

Is Philanthropy Bad for Democracy?

Progressives are hypersensitive to way the big money in politics perpetuates advantage and inequality, but seem blind to the dangers posed by largely unaccountable donors.



Tiksa Negeri/Reuters

GARA LAMARCHE

OCT 30, 2014 | POLITICS

Though this is not the way I would usually describe my career, one way of looking at it is that I spent my first 20 working years trying to raise money, and the next 15 trying to give it away. The transition, which took place when I left Human Rights Watch in 1996 to found the United States Programs of George Soros's Open Society Institute, was a challenging one.

On the one hand, having dealt with foundations over the years as a supplicant, I felt I knew their ways—and in particular, ways of behaving that I was eager to avoid. On the other hand, suddenly becoming the gatekeeper to many millions of philanthropic dollars altered most of my collegial relationships, and many of my personal ones, infecting all but a few of them with a new power dynamic. I found myself—as various

wags have observed about philanthropy staff over the years—a great deal smarter, wiser, funnier, and probably handsomer than I had been only months before.

I managed that personal transition as well as I could. I vowed not to internalize the importance others now ascribed to me. What power I held was derivative and temporary, and I tried not to forget that. I think I was mostly successful in remembering, so my recent transition out of philanthropy, with the accompanying loss of certain kinds of power and capital, has been that much easier as a result.

MORE FROM

DEMOCRACY

A JOURNAL OF IDEAS

David France: Stonewalled

Joy-Ann Reid: Race and the Reformicons

Karen Ho: The Pups of Wall Street

For the better part of those 15 years, I oversaw grants made by two of the world's largest foundations, both with engaged and active donors, probably to the tune of about \$3 billion in all. So I've had more experience helping to direct the largesse of the living rich than almost anyone, aside from Patty Stonesifer, Jeff Raikes, and Sue Desmond-Hellmann, the former and current CEOs of the Bill and Melinda Gates Foundation. Through that experience, I've been a vocal and persistent advocate for a certain kind of philanthropy, one that eschews simple charity—worthy but palliative measures like supporting a soup kitchen or personal gestures like providing a scholarship—for attention to policy, to the root causes and structural conditions that result in hunger or lack of access to education in the first place. I've preached to my philanthropic brethren the virtues of support for advocacy on the leading social-justice issues of the day, and tried in the positions I've held to model that in the hopes that others would follow, or in any case find it safer territory to explore. The grant made by Atlantic Philanthropies during my tenure to Health Care for America Now, the grassroots organizing campaign for universal health coverage—at \$27 million, the largest advocacy grant ever made by a foundation—was perhaps the most prominent of many such examples.

And yet it was during that campaign, ironically, that I began to have my first real doubts about the legitimacy of philanthropy in its engagement with the democratic process. You'll recall that one of the many attacks on President Obama's health-care bill was that it would bust the budget, and the President was careful to state from the outset that this major social-welfare advance would be revenue-neutral, not adding to the deficit, and indeed saving money over time.

That meant finding a combination of savings and new revenue to finance the bill. One proposal from the administration would have capped the income-tax deduction for charitable contributions at the level it was during the Reagan administration, 28 percent. Almost without exception, the organizations that purport to speak for foundations and the nonprofits they fund rose up in opposition to the proposal.

* * *

There are credible arguments on both sides about how much effect a change in the deduction would have on charitable giving in the United States. I tend to believe the studies—such as those by the Center on Philanthropy at Indiana University—that assert that there would be a modest effect, if any. But let's assume for the sake of discussion that the effect would be more than modest—that wealthy Americans in particular would open their checkbooks for causes dear to them a bit less often without the incentive of a tax break. Is that a price worth paying?

The leadership of American philanthropy jeopardized health-care reform in order to let rich people shield their money from taxation.

I think so. We had a once-in-a-generation opportunity to advance universal health care, benefitting many millions of uninsured Americans, saving lives, staving off bankruptcies, and indeed saving public dollars that would otherwise be devoted to emergency-room care. We had a means of helping to pay for it by a slight alteration in a tax break used by the most well-off—and, undoubtedly, the most generously insured—members of society. Yet the collective leadership of American philanthropy—a leadership, by the way, that had been with few exceptions silent about the redistribution of wealth upward through the Bush tax cuts, silent about cuts in social programs, silent about the billions of dollars spent on the wars of the last decade—found its voice only when its tax exemption was threatened, and preferred to let the government go begging for revenue elsewhere, jeopardizing the prospects for health-care reform, in order to let rich, well-insured people go on shielding as much of their money as possible from taxation.

As you can tell, this steamed me up a lot, and it did again later when the same script played out during the fiscal cliff crisis. What that situation made plain to me was not just that philanthropy is quite capable of acting like agribusiness, oil, banks, or any other special-interest pleader when it thinks its interests are jeopardized. It helped me to see that however many well-intentioned and high-minded impulses animate philanthropy, the favorable tax treatment that supports it is a form of privatization. Money that would otherwise be available for tax revenue that could be democratically directed is shielded from public control for private use.

As Rob Reich, co-director of the Stanford University Center on Philanthropy and Civil Society, wrote in a 2013 cover article in *Boston Review*, “What Are Foundations For?”:

Philanthropy in the United States is not just the voluntary activity of a donor. Philanthropy in general, including the work of foundations, is generously tax-subsidized. The assets transferred to a foundation by a donor are left untaxed in two respects: the donor makes the donation more or less tax-free, diminishing the tax burden she would face in the absence of the donation; and the assets that constitute a foundation's endowment, invested in the marketplace, are also mostly tax-free. ...[F]oundations are partly the product of public subsidies. They are created voluntarily, but they result in a loss of funds that would otherwise be tax revenue. In 2011 tax subsidies for charitable giving cost the U.S. Treasury an estimated \$53.7 billion. So foundations do not simply express the individual liberty of wealthy people. We all pay, in lost tax revenue, for foundations, and, by extension, for giving public expression to the preferences of rich people.

I can already hear the arguments that will be made against this view on the political right. They don't believe in a strong government role in the economy and social welfare, and certainly not the taxes that support it. They prefer to let the private market deal with health and income security. They don't view wealth as presumptively subject to taxation, and they think the idea that favorable tax treatment constitutes a subsidy turns the world on its head. I don't agree with them, but I understand their worldview, and they have credible arguments that flow from it.

I do wonder, though, about my progressive friends. They believe in a strong government, in a fair tax system, in a robust social-welfare system, and in a vibrant democracy where all voices count equally. Why are they not more concerned about the undemocratic and largely unaccountable nature of philanthropy? Why are *we*—since I too have failed, for years, to ask these big questions—hypersensitive to the dangers of big money in politics, and the way it perpetuates advantage and inequality, but blind, it seems, to the dangers of big philanthropy in the public sphere?

It wasn't always so in our history. When the titans of their day, Andrew Carnegie and John D. Rockefeller, sought to set up trusts to spend some of their vast wealth for charitable purposes, Frank P. Walsh, a progressive lawyer who chaired a congressional inquiry into industrial relations, called the new Rockefeller Foundation and Carnegie Corporation “a menace to the future political and economic welfare of the nation.” In that period, 100 years ago, the foundations' endowments surpassed what the federal government, in the pre-New Deal era, spent on education and public health. Walsh called for the “democratization of private benevolence” through more progressive taxation.

When Carnegie and Rockefeller set up charitable trusts, one progressive called them “a menace to the future political and economic welfare of the nation.”

In testimony before the Walsh Commission, Morris Hillquit, the labor lawyer and Socialist Party leader, said that large foundations like Rockefeller, Carnegie, and Russell Sage “represent in the domain of philanthropy just what trusts represent in the industrial field.” Edward P. Costigan, who would later represent Colorado in the Senate, called the Rockefeller Foundation “a supreme example of the philanthropy which deadens, by its large benefactions, a public criticism which otherwise would be as formidable as inevitable.” Even feudalism and slavery, Costigan went on, “boasted of their occasional generosity.” The Reverend John Haynes Holmes of the New York Church of the Messiah, who would serve for two decades as chair of the board of the American Civil Liberties Union, called foundations “essentially repugnant to the whole idea of a democratic society.”

In 2013 you’d be hard-pressed to find anyone close to the mainstream of American civic life and political thought raising those kinds of fundamental concerns. Is it because 100 years of practice has erased them? Or because philanthropy has deadened criticism, as Costigan warned, with its “large benefactions”?

The closest we come today is the emerging critique of the Gates Foundation, with its \$3 billion-a-year spend rate that is at least four times as big as the next largest philanthropy. Gates is in a class by itself when it comes to size, but its influence in the few areas it has identified for strategic investment is even greater than it might be precisely because it is not scattered, but quite focused on particular approaches to education reform in the United States and public health abroad. When Dean Rusk was running the Rockefeller Foundation, he reportedly said he kept an eye on the Ford Foundation because what the “fat boy in the canoe does makes a difference to everybody else.” If Ford, then the largest foundation, was the fat boy in the canoe, then Gates is the blue whale in the toy sailboat. Not only does what it does make a difference to others in the fields it engages in—it can virtually define the fields and set the policy agenda for government as well as philanthropy.

Laurie Garrett of the Council on Foreign Relations has argued that in focusing on a few big diseases in the developing world, Gates has drawn dollars away from more basic and vital investments in health systems and primary care. A 2007 *Los Angeles Times* article raised similar concerns, asserting that “the focus on a few diseases has shortchanged basic needs such as nutrition and transportation” and that “Gates-funded vaccination programs have instructed caregivers to ignore—even discourage patients from discussing—ailments that the vaccinations cannot prevent.”

Ed Skloot, the president of the Surdna Foundation until 2007, tells the story in his *Alliance* magazine article, “The Gated Community,” of Gates’s six-year, \$2 billion initiative to break up large public high schools into smaller ones:

Despite the paucity of hard evidence to support this assertion, with foundation support the small-schools programme became a cornerstone of thinking in the minds of many educational reformers, planners and administrators. The foundation became a market-maker. In six years, it funded the establishment of more than 2,600 schools in 45 states and the District of Columbia, reaching well over 750,000 students. However, despite some success in New York

City, where the program was more complex and robust than in other places, in 2008 the small schools program was all but dropped.

While Skloot claims the foundation never gave much of an explanation, Bill Gates in his 2009 annual letter acknowledged, “Many of the small schools we invested in did not improve students’ achievement in any significant way.” After a while, Skloot writes, “The new silver bullets of choice appeared to be...charter schools, standardized testing, national curricula, merit pay for teachers, reorganizing or closing underperforming schools, developing accurate data in and across funding sites, and improved management.” In these areas, Gates worked closely with the Broad and Walton family foundations. Skloot concludes:

It can certainly be argued that education reform is so complex that only consortia of large, well-positioned change agents can make significant systems change in the public policy and schooling environment, but it is also legitimate to point out that when “irresistible forces meet immovable objects” in the educational and political arena, more students may be hurt than helped. Nor did students and their families ask to be subjects in philanthropically driven educational experiments.

I don’t single out Gates—though it’s hard to avoid doing so in this context—because I think the foundation is ill-intentioned or reckless about its engagements. I know the people who run the place; they are trying to make a better world and, of late, they’ve listened more to their critics and tried to adjust. I don’t personally know Gates, who forthrightly defended the advantages of size to Matthew Bishop and Michael Green, authors of the 2008 book *Philanthrocapitalism*, by asking: “When it comes down to me sitting down with a pharma company and saying, ‘Hey, here is the thing that would be great to do,’ do you think that our size hurts us? Do you think a bunch of tiny foundations could do that?” But of late, Gates has shown some capacity to change—softening, for instance, the demonization of teachers’ unions that the foundation’s allies have made a central theme of their reform efforts.

So the rise of very large philanthropies that are not shy about playing for big stakes in the public sphere raises crucial questions about philanthropic power and to whom it is accountable. You might suggest, after reading for the last few minutes, that I raise these issues because I am not a fan of the particular policies being espoused. Indeed, in these cases, I’m not. The dominant wave of education reform is much too top-down for me, generally heedless of the voices and perspectives of teachers, parents, and students and the communities in which they live. But in fairness, I should say that the same big questions apply to large foundation interventions for policies that I favor, like George Soros’s on drug-policy reform, or Atlantic Philanthropies’ on health care, to name two in which I had a personal role. If we are to raise questions about the role of foundations in a democracy, these have to be on the table, too.

You might then argue—indeed, I often have—that it makes a very big difference what the money is being used for: whether it promotes a privatization agenda; whether it disempowers communities or stands in support of them. And I certainly that agree those issues must come into play. The way I justified to myself the work I was doing at Open Society and Atlantic, despite my growing discomfort over these questions of accountability, was that we were using our funds to ameliorate inequality, not to perpetuate it.

Here, though, I think it is important to broaden the frame beyond the arguably good works of a few foundations. In their *Kentucky Law Journal* article, “[Beyond Public/Private: Understanding Excessive Corporate Prerogative](#),” John A. Powell and Stephen Menendian, speaking about corporations, write:

Some will argue that on the issue of civil rights and racial equality the modern corporation has been a force for good. This is questionable, but the record is probably mixed. Our point is not that corporations will always use their excessive prerogative for harmful ends, but that excessive prerogative itself is a structural distortion.... [Claims of] civil rights, claims of workers, women’s rights, and environmental concerns all limit corporate prerogative. As Rawls and Franklin D. Roosevelt suggest, a healthy democracy and a fair economy require this limitation. We cannot achieve racial justice, economic justice, protect our environment, or enjoy a strong democracy unless we have a realignment of corporations. The structure of corporate prerogative has been undergoing realignment, but one in which their power is becoming ever greater. It is an alignment in the wrong direction.

What I am trying to do here is to substitute the word “foundation” for corporation and prompt us to ask ourselves the same questions.

* * *

In 2011, I was asked—such is my reputation as one who is prone to bite the hand that feeds me—by the Council on Foundations, philanthropy’s trade association, to play the role of prosecutor in a mock trial of philanthropy at the council’s annual meeting in Philadelphia, before a gathering of about 2,000 foundation staff and trustees. It seemed at the time like a fool’s errand, but I accepted the challenge, and in my case for the prosecution, I made four arguments that seem even more relevant today.

First, I said that the favored tax status that philanthropy enjoys in the United States makes sense only when it serves an unalloyed public good and only when it does so with integrity, transparency, fairness, inclusion, and effectiveness. Philanthropy has accomplished many good things for society in the last 100 years, and its favored tax treatment might be justified by an argument that it encourages foundations to take risks that corporations and the public sector, for different reasons, don’t usually take. Foundations don’t have to run for office, or satisfy shareholders, or attract customers, or win popularity contests. They can take the long view, and undertake bold initiatives that make it safer for government and other private capital to come in later on.

That's a plausible argument, and certainly one foundations and their advocates make for themselves all the time, citing, for instance, Carnegie's role in laying the groundwork for public television, or the Rockefeller Foundation's support for the Green Revolution.

But few bother to examine these claims about the agency of foundations with much rigor, and the same list of philanthropy's "greatest hits" appears again and again. Courageous risk-taking is not what most people associate with foundations, whose boards and senior leadership are often dominated by establishment types. If tax preference is meant primarily to encourage boldness, it doesn't seem to be working. The question is not whether many good things are accomplished with the money excluded from taxation for philanthropy. The standard is whether the record of philanthropy justifies the foregone tax revenue that in our current dire fiscal state could be used to keep senior centers and libraries and after-school programs open, hold tuition within reach at public colleges and universities, expand Internet access in rural communities, and on and on.

The question is not whether many good things are accomplished with the money excluded from taxation for philanthropy.

The precise level of the charitable deduction (like the fact of the deduction itself) did not come down on tablets from Mount Sinai. It is a choice that a democratic society makes, weighing competing interests and values. One of these is donor independence and philanthropic pluralism. These are not fleeting values. But neither is the responsibility of citizens in a democracy, acting together through government, to strengthen social protections.

Second, I argued that the philanthropic sector has eroded its moral authority by an excessive focus on self-interest. I started out by talking about the battle over the charitable deduction, and have little more to say about it here, except to lament that when the Obama administration went looking for revenue from wasteful Pentagon spending, unnecessary agricultural subsidies, or monopolies enjoyed by firms that offer student loans, there were loud wails and armies of lobbyists mobilized. We expect such a predictable outcry from special interests. But we expect more from philanthropy.

You may think, and I sometimes worry myself, that the equation of foundations with these unsavory interests is not playing fair, is a bit over the top, because, of course, they are serving their notion of the public interest, not trying to fatten their profit margins. But it's useful to take a look at the response of leading foundations in California and nationally to AB 624, the effort a few years ago by some state legislators to prompt philanthropic organizations to be more responsive to communities of color by requiring them to report on the demographics of their staffs, boards, and grant recipients. The Foundation Coalition, speaking for the California philanthropic community, expressed concern that "AB 624 serves to divide people and organizations who historically have worked well together. We recognize the value in collaborative problem-solving among the public, nonprofit, and philanthropic sectors. By working together, we can do more to help these nonprofit organizations that will ultimately help our diverse communities."

There were threats to take organizations out of state, charges of burdensome paperwork diverting resources from the main business, and of dividing, not uniting. If that doesn't sound like Chamber of Commerce talking points on a tax bill or bit of environmental regulation, I don't know what does.

AB 624, I hasten to say, was probably poorly crafted. There may have been good reasons to resist its specific form. But the foundation community in California treated it as Armageddon. In the end, all the while railing about the bill and fiercely resisting the notion that California foundations were not doing enough for communities of color, the "big 10" foundations in effect settled out of court, announcing a multimillion-dollar initiative over several years to provide capacity-building support and technical assistance to grassroots and community-based groups serving minority and low-income people, as well as a variety of diversity, leadership, and program initiatives. Third, I noted that philanthropy remains too focused on charity and lacks a strategy for systemic change. As in so many areas, the Reverend Martin Luther King Jr. set the moral standard: "Philanthropy," he said, "is commendable, but it must not cause the philanthropist to overlook the circumstances of economic injustice that make philanthropy necessary."

Too much of what philanthropy does is a sideshow to the most pressing issues of our time. Global warming threatens the planet, and pseudo-scientific denialism of it threatens democracy, yet the handful of foundations engaged on the issue of climate change are vastly outgunned, and even they hoard their foundation assets as if there was no tomorrow—which in fact, there won't be, before long, if we don't reverse the warming of the planet. The National Committee for Responsive Philanthropy, of which I am a board member, has determined that only 7 percent of foundations spend as much as 25 percent on social-justice grant-making. The Foundation Center, taking a broad and generous view, estimates it at 15 percent. That leaves the vast bulk of American philanthropy focused on safer things that do little to affect the titanic issues of inequality, poverty, human rights, and environmental degradation. Few of the large, ostensibly progressive foundations in America make any significant grants for lesbian and gay people, 40 years after Stonewall and in a country where now more than half the populace, numerous Republican leaders, and much of corporate America favors same-sex marriage; for native peoples, still reeling from the ravages of American expansionism, the percentage is even lower. When will this change? How long is too long?

Fourth and last, to continue in this vein, I lamented the fact that the sector is not sufficiently reflective of the rich diversity of this country and globe, and in particular does not reflect the voices of the most marginalized. Fully 85 percent of foundation board members are white, while just 7 percent are African American and only 4 percent are Hispanic, in a country where 92 percent of the population growth in the last decade, according to *The Economist*, came from people of color. Nearly three-quarters of foundations have no written policy on board diversity, and fewer than 10 percent of board members are under 40.

I've spent a lot of time in the last 15 years moving the foundations I've led to invest in social movements, from immigration to LGBT issues to economic justice, and I've also exhorted the larger field to do more. In the previous decade, there was a noticeable increase in foundation investments along those lines. But with a few significant exceptions—the Ford Foundation's early support for women's rights (former Ms. Foundation for Women President Marie Wilson used to joke that the women's movement was one foundation—the Ford Foundation—away from welfare); the relatively small amounts of money from progressive foundations like Field, Taconic, and New World for civil rights in the 1950s and '60s—foundations have always been lagging indicators where social movements are concerned, on the whole

preferring to support other worthy things like scholarships, research, and demonstration projects. As members of INCITE! Women of Color Against Violence wrote in the group's 2007 examination of the "non-profit/industrial complex," the revolution will not be funded.

And to the extent that in more recent years a few larger foundations have become stronger supporters of community organizing efforts, that's also had its price, since it's made those organizations increasingly as accountable to rich donors as to their own historically broad base. And while foundations talk about sustainability all the time—and the more liberal ones often treat their grantees like the right wing would treat single mothers on welfare, imposing strict time limits and cutoffs—the fact is that most sustainability strategies are aimed at helping grantees move from dependency on one foundation to another. Very few foundations use their funding to help grantees build a more democratic base of support of the kind that has helped the great organizations formed in the Progressive Era—the ACLU, the Sierra Club, the NAACP, Planned Parenthood—survive and thrive over many decades.

* * *

That observation, I suppose, is a good segue into a few final thoughts that might be put under the heading, "What is to be done?" I have no 10-point plan for foundation reform. I think criticism of foundations is rare enough, and raising questions about the role of foundations in a democracy rarer still, that the very fact of asking the questions, of stimulating more reflection, is enough for the moment. If others with my vantage point on philanthropy think we have some self-examination to do, and respond and pick up the thread, I'll be quite happy.

A few thoughts. First, the tax incentives for philanthropy are not going away, in the near term or probably ever. As we have seen, even tinkering with the levels of the deduction is unlikely.

As philanthropy's power has grown, independent scrutiny of it has waned.

Some have argued there is too much clutter in the proliferation of small foundations, and wonder if there ought to be a minimum asset size. This suggestion is usually offered in the spirit of encouraging innovation and risk-taking with greater possible impact, but it seems misplaced to me. True, a lot of smaller foundations are not very bold, and often are somewhat self-serving and idiosyncratic. But they do promote a kind of pluralism. I'd be more interested in policy ideas aimed at the *maximum* size of foundations, which would boost pluralism while ensuring that no foundation has disproportionate power. Limiting the lifespan of foundations, or perhaps mandating governance measures such as community representation or even AB 624-style data reporting requirements, might also enhance public accountability and responsibility.

When foundation critics explore the ways philanthropy might be held accountable, they often forget to think about the press. It's an easy oversight to make, since so little media scrutiny is applied to foundations. I wonder, for example, how many California newspapers have bothered to follow up on what happened to the pledges that the state's big foundations made several years ago to settle the AB 624 controversy. But as

it happens, the period of tremendous growth in the philanthropic sector—particularly the rise of a mega-foundation like Gates, which can by itself steer policy on education reform or global health—has coincided with a significant decline in the resources devoted to investigative journalism. When I started at Atlantic Philanthropies seven years ago, *The New York Times*, *The Wall Street Journal*, and the *Financial Times* had journalists covering the beat of philanthropy and the nonprofit sector. No more. As philanthropy's power has grown, independent scrutiny of it has waned. Ford, Knight, and other foundations, alarmed at the decline in investigative reporting, have provided support for nonprofit news organizations like Pro Publica (full disclosure: I was on its board, too), or even for-profit ones like the *Los Angeles Times* and *The Washington Post*, but for obvious reasons, these foundation-supported initiatives are not likely to cast their gaze upon their own benefactors.

I have left one very loose thread hanging out here, and it is what happened in the mock trial in which I prosecuted philanthropy in a room of a few thousand philanthropists. You could be forgiven for assuming, as I did, that I would have been wiped out, lucky to emerge in one piece—for, as Upton Sinclair famously said, “It is difficult to get a man to understand something when his salary depends on his not understanding it.” But you would be wrong. The Council on Foundations randomly picked a 12-person jury from the audience, and after hearing the arguments from me and from my opposing counsel, Ralph Smith of the Annie E. Casey Foundation, they retired for deliberations. When they came back a short while later, the presiding judge polled them. Ten voted to convict their own profession, two held out, and the trial ended in a hung jury.

So maybe there's some hope for reform after all.

This article originally appeared in *Democracy: A Journal of Ideas*.

ABOUT THE AUTHOR

GARA LAMARCHE is the president of the Democracy Alliance.



(AP Photo/Bill Clark/CQ Roll Call)

Democracy Spring protesters calling for the end of big money in politics march to the Capitol steps on April 13, 2016.

On May 10, 2013, Lois Lerner, then a senior IRS official, took a planted question from the audience at a meeting of the American Bar Association. Lerner, who managed the office of tax-exempt organizations, revealed that an audit of IRS practices showed that since 2010, some nonprofit organizations applying for tax-exempt status had been singled out for deeper scrutiny simply based on the name of the organization and what that indicated about its political orientation.

The revelation set off a firestorm of controversy in the media, Congress, and conservative organizations, especially since news reports indicated that Tea Party–linked groups were the main targets of the probes. Lerner’s bombshell subjected the IRS to intense criticism, but her revelations also spotlighted the broader issue of the legitimacy and behavior of nonprofit groups known as “social welfare” organizations, or 501(c)(4)s, shorthand for the section of the tax code that defines these groups.

For progressives, the media frenzy around Lerner's disclosure also confirmed fears of an enormous "dark money" threat from the right, and opposition to "dark money" groups became a rallying cry on the left. The number of social-welfare organizations exploded after the Supreme Court's 2010 *Citizens United* decision paving the way for those groups to spend more on political activity. Conservative organizations eagerly jumped on the (c)(4) bandwagon, recognizing the 501(c)(4) structure and the benefits that framework confers. Since these groups are not legally required to disclose their donors to the public, their names became synonymous with the concept of political "dark money" and all the nefarious activities that the term implies.

Fast-forward to 2017, and opinions about 501(c)(4)s have shifted as groups on the left look to use every weapon in their arsenal to combat Donald Trump's policies. They are embracing social-welfare organizations as a platform for resistance to the administration's most damaging initiatives. It's a head-spinning development for some—and comes with no shortage of angst for committed progressives who are strongly allergic to the "dark money" notion and all that it implies. A recent piece by *The American Prospect's* Eliza Newlin Carney covered this dilemma well and noted that the optics for progressive groups such as the Indivisible Project, which has been forced to defend its decision to form a 501(c)(4), are not always good.

That's worrisome, because there is a very real risk that if donors on the left become squeamish about supporting new 501(c)(4)s, the progressive community will lose the huge advantages of social-welfare organizations in the era of Trump, the worst possible time to sacrifice any tool in the toolbox.

The 501(c)(4) model offers advocates more opportunities to champion certain causes than its more well-known cousin—the 501(c)(3)—does. 501(c)(4)s do all the advocacy that (c)(3)s do—and more. They are allowed to do an unlimited amount of lobbying (including supporting or opposing ballot measures) and can support or oppose candidates as a secondary activity (although the *primary* purpose of a (c)(4) cannot be to support or oppose individual candidates). For decades, social-welfare nonprofits have been used responsibly by the AARP, the National Organization for Women, the American Civil Liberties Union, the Sierra Club, the Human Rights Campaign, and thousands of others.

The 501(c)(4)'s value lies in its almost unlimited ability to use a variety of advocacy strategies, mixing public education with lobbying and, sometimes, partisan electoral work. While many 501(c)(4)s never get involved in politics at all, it is the combination of two components—lobbying and the ability to hold politicians accountable at the ballot box—that bolsters these organizations' influence, particularly in policymaking.

A variety of strategies by both types of nonprofits advanced marriage equality. The Civil Marriage Collaborative, a national consortium of grant-making foundations, has noted that it "recognized that moving forward on marriage would require multiple strategies, including litigation, public education, research and grassroots organizing, lobbying and electoral work."

On the local level, the “Yes on Proposition 47” campaign in California relied on both a 501(c)(3) and 501(c)(4) to promote sentencing reform. Vote Safe, a 501(c)(4), formed the group Californians for Safe Neighborhoods and Schools to push the initiative forward, unconstrained by the lobbying limits that apply to (c)(3)s. Californians for Safety and Justice, a 501(c)(3), provided research, training, and education pieces. This type of combined effort helped advocates get one of the most extensive sentencing reforms in California’s history to “yes” at the ballot box.

But the nagging question for many progressives is whether keeping the identities of 501(c)(4)s’ donors private is still appropriate in the current political climate. Many of the demands for increased disclosure of 501(c)(4) contributions have stemmed from the behavior of very wealthy, conservative donors who can disproportionately affect the political process. The ultraconservative 501(c)(4) Judicial Crisis Network (JCN) has been a major player for years, spending millions to encourage the selection of right-wing judges at both the state and federal levels. In state supreme court elections, the group uses its preferred tactic, parachuting in with hundreds of thousands of dollars to buy local television advertising.

During the 2016 Arkansas election campaign for state supreme court chief justice, JCN vastly outspent the individual candidates themselves and produced attack ads that helped defeat one candidate, Courtney Goodson, who was pitted against another judge for the top supreme court seat. The group surfaced again at the national level in the public relations campaign to get Supreme Court Justice Neil Gorsuch confirmed, spending about \$10 million, according to news reports. It is currently bankrolling a six-figure ad campaign urging the confirmation of Joan Larsen, a Trump nominee to the Sixth Circuit Court of Appeals.

JCN takes advantage of a type of financial shell game: It is apparently heavily dependent on financial support from the Wellspring Committee, another 501(c)(4) entity that does not disclose its donors. According to the Center for Responsive Politics’ OpenSecrets , there is a cozy relationship between the two organizations: JCN Treasurer Neil Corkery is the spouse of Wellspring President Ann Corkery. The Daily Beast reported that Wellspring began life with help from the Koch brothers’ network and a few other very rich individuals.

The JCN-Wellspring axis amplifies the power of a small segment of society over composition of the nation’s courts, and pro-democracy activists have repeatedly called for more transparency. But most social-welfare organization donors don’t fit the Wellspring-JCN mold. Publicly supported organizations can have thousands or even millions of individual members and supporters. Disclosing the identities of these everyday people would do little for the cause of transparency, but it would have a chilling effect on citizen participation.

There are ways to satisfy the public’s interest in knowing who is spending to influence politics and policy, while protecting the privacy of smaller donors and continuing to encourage the formation and support of 501(c)(4)s. Minnesota requires 501(c)(4) organizations to disclose only contributions in an amount equal to the funds spent on political activity. The North Star State also requires organizations to disclose donors who make contributions specifically for political purposes.

Alliance for Justice supports an approach that would distinguish between organizations that are funded by a small group of big donors and those that receive broad support from many people. Under this scenario, Congress could require that groups disclose the identity of 501(c)(4) donors whose total annual contributions equal or exceed a certain percentage of the group's budget. This approach permits groups to identify only donors who control or influence organizational decisions, rather than publishing names of its grassroots supporters. Large donors on the left and right would be subject to this type of disclosure.

Well-run and transparent 501(c)(4) organizations can serve the American democratic process well. They provide a forum for individuals to come together and speak out collectively on the issues that matter to them most. While sometimes that may mean taking a political stance on the issues of the day, 501(c)(4)s focus on social welfare, not political activities. These organizations got a bad rap after the IRS scandal, but many of these groups have also come together to further social welfare and to take steps to prevent future abuses. A vibrant 501(c)(4) nonprofit sector is indispensable, and anyone concerned with bolstering the progressive movement should consider devoting more resources to these organizations.

Now Is the Time for Donors to Support Maximum Advocacy: Here's How

 pj.news.chass.ncsu.edu/algo.html



January 17, 2017 | [Sandra Cyr](#)
Special to the Philanthropy Journal

By Abby Levine

This post-election period brings a whirlwind of activity as new administrations and legislatures get ready to take office. It also brings a wealth of opportunities for donor organizations that care deeply about policy issues and want their contributions to make a real difference in legislation and policymaking. For these donors, there are two main avenues for maximizing their support of advocacy during this critical window: supporting 501(c)(4) nonprofits and making sure 501(c)(3) grantees take full advantage of their advocacy capacity.



It's true that nonprofits organized as 501(c)(4) social welfare organizations took a beating in media a few years back. But their value in promoting social good is real. Organizations set up as 501(c)(4)s can engage in all the activities the more common 501(c)(3) public charities can, and more. And because they can do as much lobbying as they want (*and* can even support or oppose candidates), they can be critical to policy success. 501(c)(4)s provide the lasting

organizational infrastructure for a social-good agenda, both within the election cycle and outside of it. By donating to c4s, you can build an enduring framework for long-term policy and electoral success.

Meanwhile, as a general rule funders should always seek to maximize the power of their funding, including empowering c3s as much as possible. And what better time than right now – when your grantees are doing their best to promote their priorities to incoming officials?



The c4 secret: Public policy change is rarely achieved with c3 funding alone

As one advocate said, c4s are “where the rubber hits the road.” 501(c)(4)s may lobby to an unlimited extent, and during the election cycle itself can encourage the election or defeat of candidates based on their policy positions and ideology. Unlike their charitable counterparts, 501(c)(4)s also provide “maximum cover” to the organization and staff: groups may speak forcefully about controversial issues without fear of losing their tax-exempt status.

As the director of West Virginia Free Action, Margaret Pomponio, explained, a c4 “can much more strongly endorse policies instead of providing a balanced picture...For things like social media and for reporters, it’s easier to have a side when you are working from the c4 on these issues.” Even those c4s that don’t expressly endorse candidates can find it easier to talk about contentious issues, such as immigration reform, gun control, and abortion, close to an election. The flexibility of a 501(c)(4) gives organizations and constituents the freedom necessary to build power in their communities.

This freedom stands in contrast to the limits imposed on 501(c)(3)s, and makes a strong 501(c)(4) infrastructure a key complement to the work of 501(c)(3)s. 501(c)(3)public charities—and the c3 dollars they raise—are critically important to the building of an equitable, just, and free society. But c3s face legal limits on how much lobbying (including supporting or opposing ballot measures) they can do, and cannot support or oppose candidates for public office. These rules impose barriers that make it risky, if not impossible, for c3s alone to push for policy outcomes and policymakers.

In short, even if a funder doesn’t want to—or cannot—fund electoral activities, the unlimited lobbying ability of c4s cannot be minimized. According to Kevin Werner, the Executive Director of Ohioans to Stop Executions and OTSE Action Fund, “When we need to lobby, we really need to do it. If we don’t have c4 available resources [funds that can be used for lobbying], then c3 work doesn’t go anywhere. The c4 work helps ensure that the c3 investment in education isn’t just left to chance.

This sentiment is echoed by many others, including one funder who stated decisively that a group “could take it home to the finish line with c4 dollars.”

C4s provide a platform for constituencies that are otherwise disenfranchised politically

501(c)(4) social welfare organizations like the American Cancer Society Cancer Action Fund, Save the Children Action Fund, and OTSE Action Fund don't speak on behalf of candidates, but on behalf of issues and communities. They provide a vital platform for communities that might otherwise lack political clout. And right now, thousands of 501(c)(4) groups of all sizes around the country are busy speaking out for their members and causes. They may be gathering signatures to support or oppose a ballot measure to raise the minimum wage, or knocking on doors and making phone calls to influence a bill in the state legislature.

This kind of work can make a real difference: think of recent key social-justice victories such as marriage equality, passage of the Affordable Care Act, raises in the minimum wage, pushback against anti-immigrant rhetoric, and even the election of the first African-American president. None of these would have happened without aggressive advocacy by c4 organizations.

That's because increasingly, c3s are struggling with whether and how to speak out on issues and candidates during election season. Even seemingly innocuous activities such as correcting an inaccurate comment made during a campaign debate, or tweeting about a candidate, may get a c3 into trouble. A c4 avoids this risk, and allows groups to speak more directly and aggressively about the issues that matter to them. Donors who feel strongly about giving voice to communities who might not otherwise be heard can make major strides toward this goal by giving to 501(c)(4)s.

Not ready to dive into c4 funding? There's still a lot you can do

Not ready to take the plunge with an investment in 501(c)(4)s? Even some funders that are c4s themselves choose not to support other c4s for a variety of reasons. But there are still steps you can take to ensure your c3 grantees make the most of this post-election moment. In fact, to maximize the value of their giving, funders should work to strengthen the advocacy capacity of *all* their grantees—whether c3 or c4. Too often, c3s fail to realize *how much* advocacy they can do.

Funders, including private foundations, can take some easy—and low-cost (or even cost-free)—steps to enhance the advocacy capacity of their grantees or prospective grantees:

- Do not prohibit public charities from using grant funds for lobbying. Private foundations only need to specify that grant funds are not *earmarked* for lobbying.
- Make general support grants whenever possible. Investing in organizations rather than specific projects allows an organization to hire good staff, develop and implement compliance systems, lobby and conduct voter registration, and be flexible and opportunistic.
- Provide long-term grants.
- Encourage reporting on the grantee's work in general, rather than on how your grant funds were spent.
- Offer training on the legal rules that apply to lobbying.

- Ask whether grantees have made the 501(h) election.
- If you require grantees to conduct evaluations of their work, give additional funding to cover the costs of doing so.

Another key role that funders—even private foundations—can play is to provide tools, templates, and guidance to c3s as they establish affiliated c4s. Even if funders cannot or choose not to fund c4s directly, they can and should provide resources to protect the legal status of an affiliated c3.

One experienced funder we interviewed suggested that there is tremendous value in providing funds to hire a lawyer or other experienced compliance professionals to set up systems, including cost sharing agreements, time sheets, and social media channels, so compliance is “done right” from the beginning. Having secure compliance systems in place allows the c4 to be more aggressive and bold, since it knows the c3’s tax status is not at risk. And this “done right” assurance may make other funders more willing to fund both groups.

A final note to funders: you can go a long way toward helping your grantees comply with grants when you’re clear about what you mean by providing “c4 funding.” To some funders, “c4 funds” mean funds for lobbying, even if they’re being given to a c3! To others, it means providing funds to c4s that can be used for lobbying, organizing, or research; and to others, it means allowing the c4 grantee to use the funds for any permissible purpose, including hard-hitting political advocacy.

For More Information

Visit these user-friendly online resources:

Abby Levine serves as Director of the Bolder Advocacy program at Alliance for Justice. She provides legal guidance that encourages grantmakers to support advocacy and other nonprofit organizations to participate in policymaking decisions through an understanding of federal tax and election law. Abby’s work includes creating curriculum, teaching workshops, providing technical assistance, writing plain-language legal guides, and describing federal legislative and regulatory developments that impact nonprofits.