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Legalizing Corporate Political Speech: How Citizens United Laid the Groundwork for Corporations' Right to Political Speech

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LEGALIZING CORPORATE
POLITICAL SPEECH:
HOW CITIZENS UNITED
LAID THE GROUNDWORK
FOR CORPORATIONS'
RIGHTS TO POLITICAL
SPEECH

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Political Speech and Democracy

- Political speech made possible the rights of labor, women, children, minorities, and so many others.
- But does this right also belong to corporations?





The Supreme Court says “YES”, as long as...

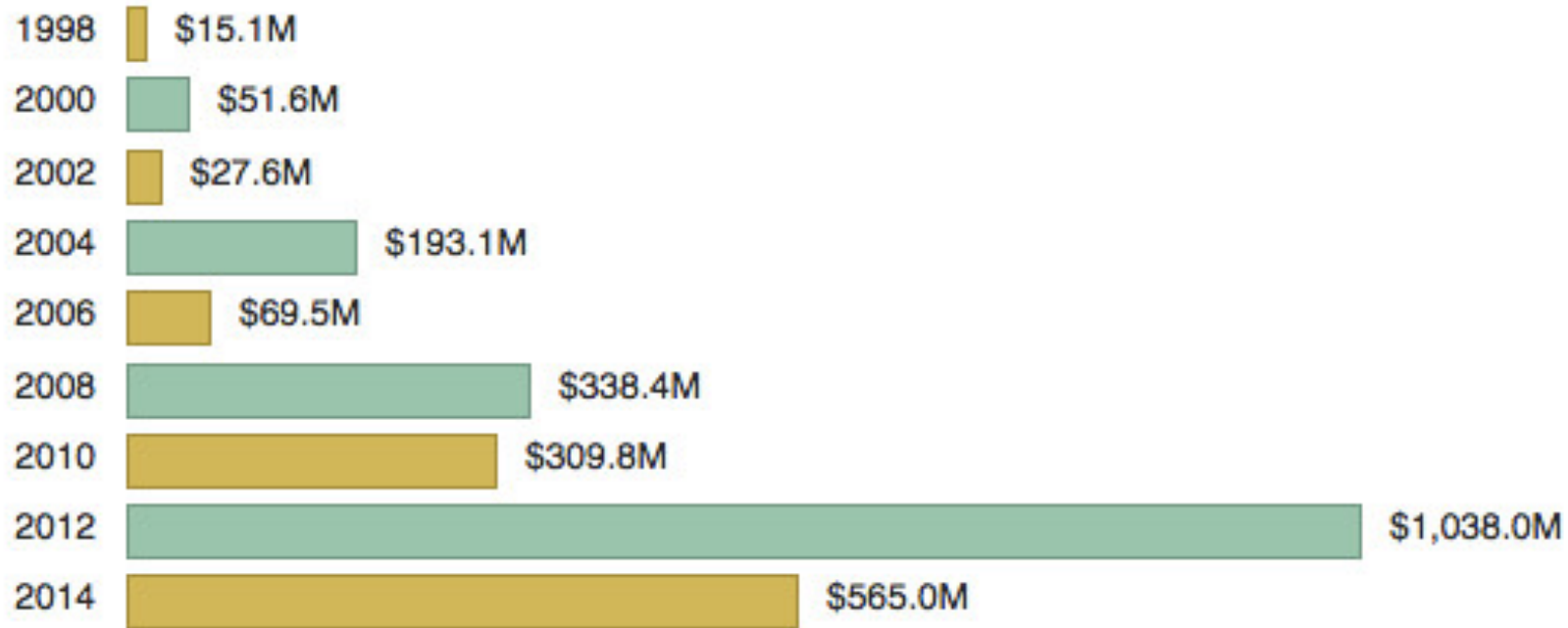
- They remain independent of an electoral candidate or campaign..
- They don't contribute directly to a candidate nor coordinate with them on their political activity.
- This was the basis of the Citizen United decision and it laid the groundwork for further deregulation of spending by outside groups.

Rise of Corporate Election Spending

- Corporate funded “outside groups” have become a dominant force in American politics.
- This is largely a result of the Supreme Court case *Citizens United v. FEC, (2010)*.
<https://www.youtube.com/watch?v=k92SerxLWtc>
- The capacity of wealthy donors to channel their money to interest groups to spend in elections has vastly expanded.



Outside groups' spending on federal elections, 1998-2014



Excludes party committees

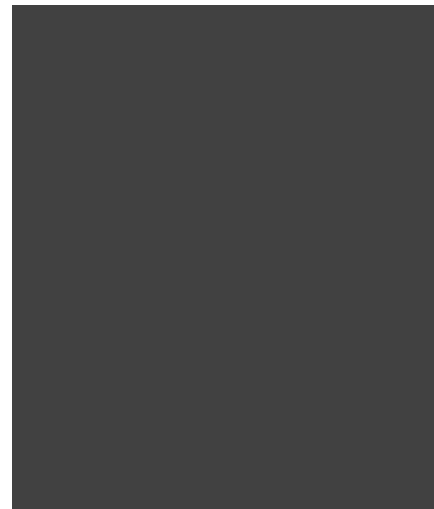
Source: Center for Responsive Politics / OpenSecrets.org



POST-
CITIZENS
UNITED
WORLD

Pre-Citizens United World

- Corporations were always active in electoral politics via PACs.
- Keep separate segregated accounts to collect voluntary donations from anyone connected to the company.
- Only **non-connected PACs** could solicit donations from the public.
- Banned from engaging in **express advocacy** if they did then they had to follow the rules restricting PAC fundraising and spending.



FEC v. Wisconsin Right to Life (2007)

- Can ban corporate funded **electioneering communications** for **express advocacy** but only if sole purpose is to express support for/against a candidate.
- But you can not stop them from airing **issue ads** in the months preceding an election.



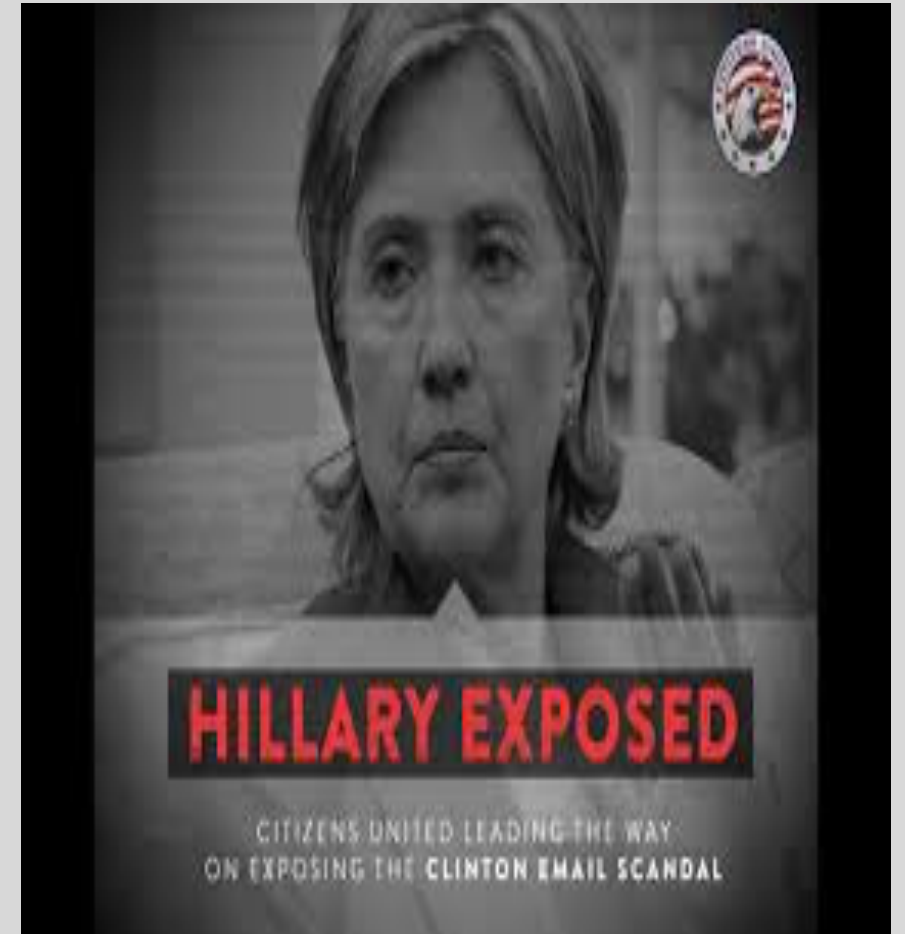
Citizens United Political Victory Fund



- They make Hillary: The Movie
<https://www.youtube.com/watch?v=BOYcM1z5fTs>
- In 2007 they sued the FEC in DC District Court because McCain-Feingold restrictions were impeding their right to market their anti-Hillary movie.
- Then they appeal to the Supreme Court.

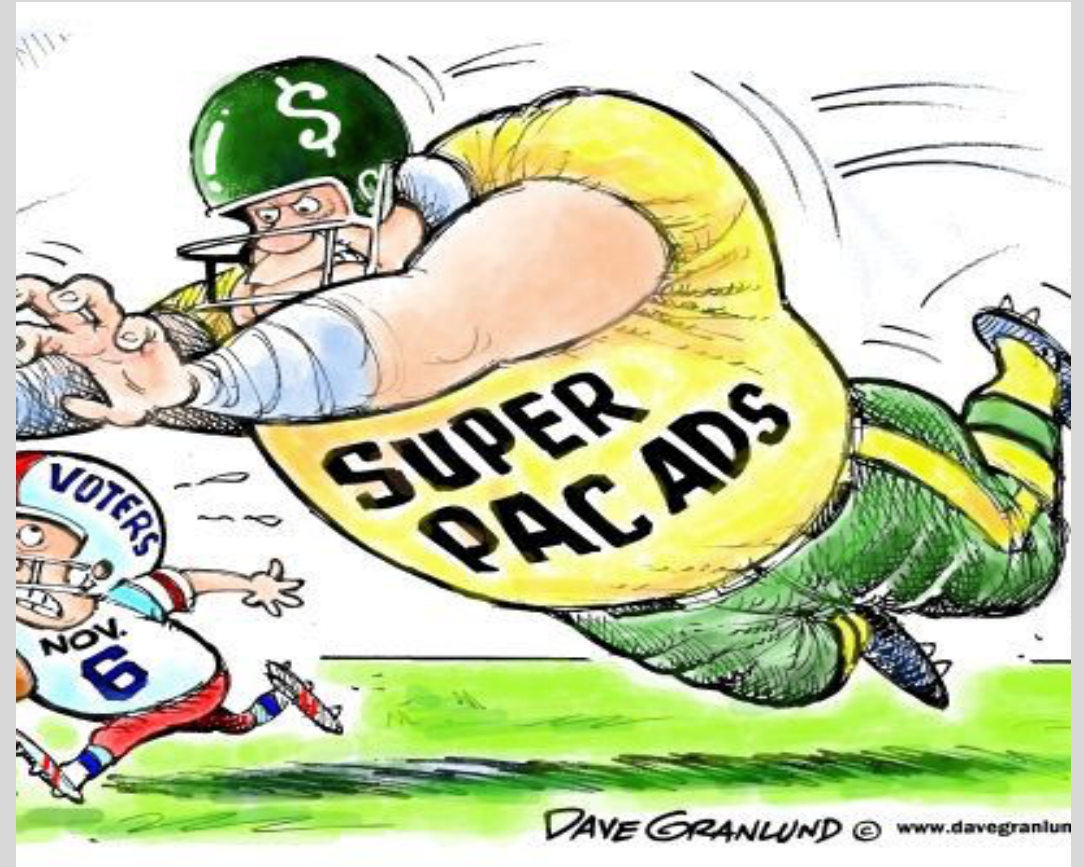
Citizens United v. FEC, (2010)

- Initial questions: 1) Was *Hillary : The Movie* **express advocacy** or **issue advocacy**? And 2) Was the *On Demand* format subject to the **McCain-Feingold** restrictions?
- Court calls back the parties to consider a broader focus – Can corporations spend freely in elections if they don't give directly to candidates?
- The Court focuses on the broad question and decide that corporate funding of independent political broadcasts in candidate elections cannot be limited, because doing so would violate the First Amendment.



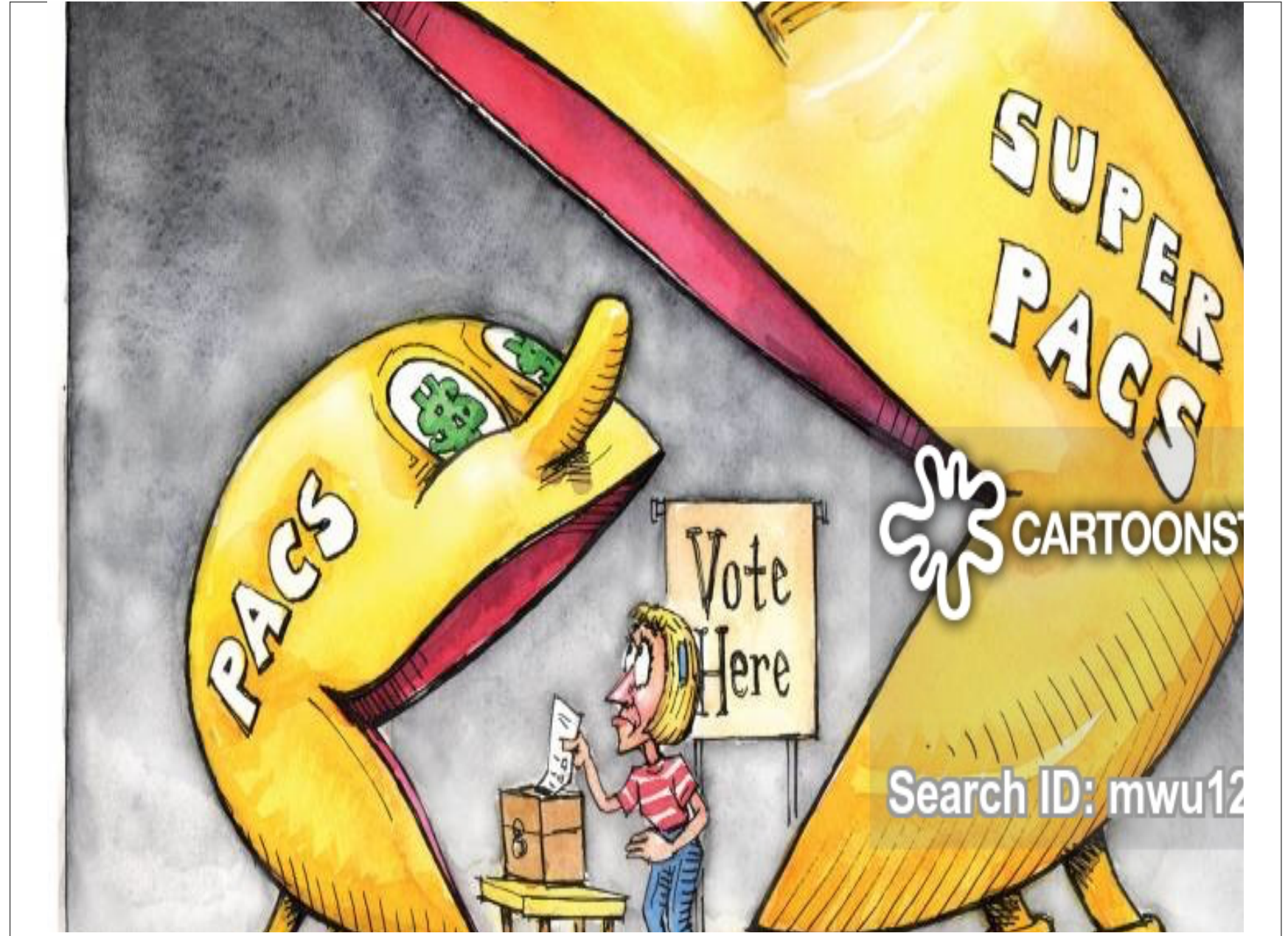
SpeechNow.Org v. FEC, (2010)

- A PAC advocating for free speech sued for the right to also raise unlimited donations for purpose of express advocacy.
- Are contribution limits on standard PACs constitutional?
- Are donor reporting requirements on PACs constitutional?



Birth of the Super PAC

- FEC advisory opinion in 2010 allowing corporations to form IE-only committees.
- These groups can now raise unlimited amounts of money from anyone and spend freely in express advocacy.



Carey v. FEC, (2011)

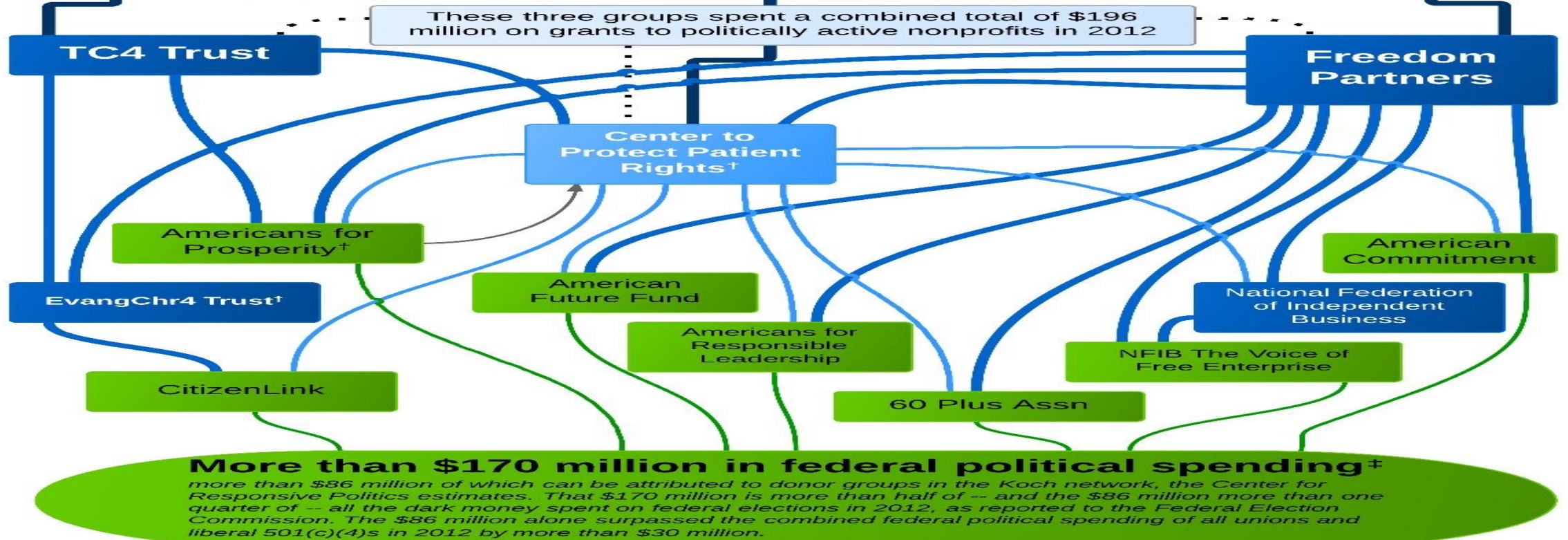


- A DC District Court case that allows traditional PACs to begin raising unlimited funds for IEs as long as they maintain a separate bank account.
- These groups will now act like “hybrid” PACs.
- These groups can engage in “express advocacy”.
- These are “super-duper PACs”.
- In 2012, The FEC issues another advisory opinion allowing these groups to also keep keep donors private if they are a 501(C) group.
- This is where we get the term “dark money”.

The Dark Money Machine

\$274 Million

in anonymous contributions spent in 2012*



* For the sake of space, not all recipients are shown below in this chart. This is only a selection of the groups receiving the most money or with the closest links to the Kochs.

† Some or all of the money granted to these groups was given through a wholly owned "disregarded entity" that goes by a different name and is, thus, harder to track.

‡ Does not include political spending made outside of FEC reporting windows or political spending in judicial and legislative elections or on ballot initiatives at the state level.

Lingering questions and concerns



Will elections be hijacked by people with the deepest pockets?

Will this money continue to affect the outcome of elections?

Will it continue to eclipse candidate spending or average citizens' or parties' influence?

Does it matter?

Attempts to pass reform in Congress gain little steam.

Public seems disconnected from the topic.

In the meantime, groups are adapting robustly to the new rules.



Conclusion

- If you are interested in this topic and want to learn more, I teach PLSC4343 Money and Politics (tentative for Fall 2021).
- If you have any questions or comments you would like to share with me- please email me at ksebold@uark.edu
- Thank You 😊