

Shadow Politics

By Chris Bell

In January 2010, the Supreme Court decision in *Citizens United* removed restrictions on political spending by groups that are not officially affiliated with a political party or candidate. *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). Because of this decision, outside organizations, including corporations, unions and non-profits, are now unlimited in spending to influence elections.

In the wake of the decision, several political organizations were created to take advantage of reduced regulations. Newcomers included American Crossroads, the Congressional Leadership Fund, and Priorities USA. Under the new rules, these organizations solicit unlimited money from corporate and private donors without disclosing the donors' information. The organizations exist to support one political party, and, unlike historically dominant party committees, there are virtually no restrictions on who can give to these outside organizations and how much. Increasingly they are run by top political talent, including George W. Bush's former top political advisor and the former head of the National Republican Congressional Committee.

American Crossroads alone plans to spend \$240 million in political advertising before November 2012, rivaling the expected total spending by the Republican Party. American Crossroads, the Leadership Fund, and other groups recently agreed to use and maintain the Republican voter database. Democrat-affiliated groups on the other hand have been slower to start. Priorities USA, however, plans to spend \$100 million in the next election, and several others hope to make impacts as well.

The chief problem is that these groups perform the functions of political parties, without traditional democratic safeguards. Our society has long recognized that individual contribution limits to candidates and parties, as well as disclosure requirements, are reasonable restrictions to place upon campaign financing so that individuals and groups don't have outsized influence over election outcomes, nor over the candidates should they take office. To date there are numerous examples of multi-million dollar gifts by individuals and corporations to these "shadow political parties," while countless other donations go undocumented. What is occurring is a kind of money laundering to support political campaigns that violates the express intent of the Federal Elections Campaign Act. 2 U.S.C. § 431 (2002). The results are predictable: when organizations are accountable to only a few large, anonymous donors, they have every incentive to run negative and exaggerated campaign ads. The candidate and his party benefit from the message without being in any way accountable to it.

The good news is that the Supreme Court indicated in its opinion that requiring donor disclosure was permissible (even vital) under the law for politically active groups. *Citizens United*, 130 S. Ct. 876 at 916. In the nearly two years since the ruling, however, the Federal Elections Commission (FEC) has failed to amend election rules ensuring this disclosure. The FEC should rectify this situation immediately, under pressure from the Obama administration if necessary to ensure this disclosure takes place.

Nevertheless, fully reining in these new political organizations to comply with the intent of federal election laws and the general expectations of the public will require direct action from Congress. Our elected officials must definitively decide whether these organizations are compatible with the principles of an open and responsive democratic government.