

Pass or Fail

Mid-term Grades for the Colorado Congressional Delegation's Response to Amendment 65

Danny Katz, CoPIRG
Katie Fleming Dahl, Colorado Common Cause
October 2013



Special interest money has long had a corrosive effect on our politics, giving powerful special interests undue influence in the democratic process and drowning out the voices of ordinary citizens. In 2010, the United States Supreme Court's *Citizens United* decision made the problem worse by removing election spending limits for corporations and wealthy individuals and starting a new era of unprecedented spending on our elections.

As anticipated, the first major election after *Citizens United* shattered spending records, with over \$7 billion in the 2012 cycle. This included an extraordinary \$1 billion in outside spending, i.e. spending not coordinated with candidate committees. Outside spending ballooned after another 2010 ruling, *SpeechNow.org v. FEC* that struck contribution limits to committees spending independently of candidate committees.

The biggest problem was not the amount of money, but that much of it came from just a handful of individuals and special interests giving them the ability to drown out the voices of everyday citizens. **In 2012, it took just 32 donors to super PACs to match the combined donations that 3.7 million Americans gave to Obama and Romneyⁱ.** In addition:

- Corporate donations accounted for a large portion of the funds for two of the 10 most active Super PACs, making up 18% of Restore Our Future and 52.6% of FreedomWorks for America's total contributionsⁱⁱ.
- "Dark money" groups paid for nearly half of all television advertising in the presidential race. These groups do not disclose the source of their funds, hiding critical information from voters about who is behind the advertising and what interests are backing which candidatesⁱⁱⁱ.
- Nearly 60% of Super PAC funding came from just 159 donors contributing at least \$1 million. More than 93% of the money Super PACs raised came in contributions of at least \$10,000. That is 3,318 donors, or the equivalent of 0.0011% of the U.S. population^{iv}.
- It would take 322,000 average-earning American families giving an equivalent share of their net worth to match the Sheldon Adelson family's, \$91.8 million in Super PAC contributions^v.
- Super PACs raised 86% of funds from an elite set of ultra-wealthy donors and businesses giving \$100,000 or more^{vi}.

Coloradans experienced the deluge first hand as outside groups spent \$5.5 million on federal House races across the state. 56% of this money, or \$3.3 million, was spent by Super PACs. 33% came from dark money groups^{vii}. A whopping 98.92% of all outside spending in Colorado House races came from groups registered outside of Colorado^{viii}. Out-of-state spenders are likely to put their own priorities ahead of the needs and interests of Coloradans, thus skewing the relationships that Representatives have with their constituencies.

In the face of this deluge, Coloradans overwhelmingly voted in favor of Amendment 65, which directs Colorado's members of Congress and State Legislature to approve a constitutional amendment to allow for campaign contribution and spending limits, one of the few ways

Coloradans have to push back against unlimited outside spending. The measure passed statewide with 74% of the vote, and passed in every single county in Colorado^{ix}.

Amendment 65 County by County Breakdown^x

County	Percent yes
Adams	77%
Alamosa	77%
Arapahoe	72%
Archuleta	78%
Baca	63%
Bent	69%
Boulder	80%
Broomfield	73%
Chaffee	76%
Cheyenne	63%
Clear Creek	76%
Conejos	67%
Costilla	76%
Crowley	67%
Custer	67%
Delta	71%
Denver	77%
Dolores	67%
Douglas	69%
Eagle	80%
El Paso	71%
Elbert	67%
Fremont	72%
Garfield	77%
Gilpin	76%
Grand	74%
Gunnison	82%
Hinsdale	72%
Huerfano	77%
Jackson	66%
Jefferson	73%
Kiowa	59%

County	Percent yes
Kit Carson	68%
La Plata	76%
Lake	77%
Larimer	76%
Las Animas	76%
Lincoln	68%
Logan	69%
Mesa	72%
Mineral	80%
Moffat	72%
Montezuma	74%
Montrose	70%
Morgan	71%
Otero	71%
Ouray	76%
Park	74%
Phillips	67%
Pitkin	84%
Prowers	66%
Pueblo	71%
Rio Blanco	68%
Rio Grande	73%
Routt	77%
Sagauche	80%
San Juan	75%
San Miguel	86%
Sedgwick	76%
Summit	80%
Teller	73%
Washington	66%
Weld	74%
Yuma	67%

Nearly a year later and almost half-way through the term of the 113th Congress, it is past time for the Colorado delegation to act. To measure which Congress members are taking their voters seriously and which ones are not, we graded them on whether they had taken a simple yet important step to follow the wishes of Colorado voters. **Did they introduce or cosponsor a constitutional amendment that would fulfill the call to action of Amendment 65?**

Any Congress member who has not taken this simple action receives a failing grade. Any that have sponsored or co-sponsored one of the 14 that currently exist received a passing grade.^{xi}

Senator Bennet	PASS
Senator Udall	PASS
Representative Coffman	FAIL
Representative DeGette	FAIL
Representative Gardner	FAIL
Representative Lamborn	FAIL
Representative Perlmutter	PASS
Representative Polis	FAIL
Representative Tipton	FAIL

For those Congress members who have failing grades, the time is now to begin fulfilling the will of their constituents. Those Congress members with passing grades should not rest on their laurels. Endorsing a constitutional amendment is not the same as passing one. Over the next few months, they need to move beyond simple endorsements and start working with Congress members from other states, especially the 16 states that have passed resolutions or passed ballot measures supporting sensible limits to campaign spending by urging the passage of a constitutional amendment through Congress and to the states.^{xii}

In the coming year, the Supreme Court is not expected to stop the flood, and may pave the way for even more money to come into our elections. Large donor Shaun McCutcheon and the RNC are suing the Federal Election Commission to lift the overall contribution limit, that is, the limit on what an individual can give to all candidates and parties in an election cycle. That limit right now is \$123,000 – or about 250% of the average household income in the U.S. Without the limit, donors who want to give to every candidate and committee in one party could contribute up to \$3.5 million.

The Supreme Court has previously upheld contribution limits, but the Court has been creating new campaign finance precedent in recent years. If overturned, campaign fundraising directly to candidates and parties will look a lot like super PAC fundraising. While even now most candidates raise a majority of their funds from a subset of wealthy donors and corporate PACs,

McCutcheon could make “joint fundraising committees” more attractive. These are where donations to several candidates are concentrated into one committee, which means the money goes into the hands of even fewer individuals. Without an aggregate limit, these joint fundraising committees will go from being able to collect \$123,200 to \$7.2 million dollars per donor, creating a new class of mega-campaign-donors^{xiii}. This would be an increase of 5,744%.^{xiv} Consider that only 1,399 people gave over \$100,000 to federal candidates in 2012. If just 170, or 12% of those donors had given \$3.5 million, they could have matched the small contributions of ordinary Americans to *every single federal candidate*, including Obama and Romney.

To make sure Colorado has the tools to close the floodgates, Colorado’s Congress members should to fulfill the will of the people and work aggressively to pass a constitutional amendment to allow for campaign spending limits.

APPENDIX A
Current Congressional Resolutions Related to Amendment 65

- [S.J.RES.19](#) introduced on June 18, 2013 by **Sen. Tom Udall**. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.
- [S.J.RES.18](#) introduced on June 18, 2013 by **Sen. Jon Tester**. A joint resolution proposing an amendment to the Constitution of the United States to clarify the authority of Congress and the States to regulate corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state.
- [S.J.RES.11](#) introduced on March 13, 2013 by **Sen. Bernie Sanders**. A joint resolution proposing an amendment to the Constitution of the United States to restore the rights of the American people that were taken away by the Supreme Court's decision in the Citizens United case and related decisions, to protect the integrity of our elections, and to limit the corrosive influence of money in our democratic process.
- [H.J.RES.34](#) introduced on March 12, 2013 by **Rep. Ted Deutch**. Proposing an amendment to the Constitution of the United States to restore the rights of the American people that were taken away by the Supreme Court's decision in the Citizens United case and related decisions, to protect the integrity of our elections, and to limit the corrosive influence of money in our democratic process.
- [H.J.RES.32](#) introduced on February 26, 2013 by **Rep. Kurt Schrader**. Proposing an amendment to the Constitution of the United States giving Congress power to regulate campaign contributions for Federal elections.
- [H.J.RES.29](#) introduced on February 15, 2013 by **Rep. Richard M. Nolan**. Proposing an amendment to the Constitution of the United States providing that the rights extended by the Constitution are the rights of natural persons only.
- [H.J.RES.31](#) introduced on February 14, 2013 by **Rep. Adam Schiff**. Proposing an amendment to the Constitution of the United States relating to the authority of Congress and the States to regulate contributions and expenditures in political campaigns and to enact public financing systems for such campaigns.
- [H.J.RES.25](#) introduced on February 6, 2013 by **Rep. Donna Edwards**. Proposing an amendment to the Constitution of the United States to clarify the authority of Congress and the States to regulate the expenditure of funds for political activity by corporations.
- [S.J.RES.5](#) introduced on January 28, 2013 by **Sen. Max Baucus**. A joint resolution proposing an amendment to the Constitution of the United States relative to authorizing regulation of

contributions to candidates for State public office and Federal office by corporations, entities organized and operated for profit, and labor organization, and expenditures by such entities and labor organizations in support of, or opposition to such candidates.

- [H.J.RES.21](#) introduced on January 22, 2013 by **Rep. James P. McGovern**. Proposing an amendment to the Constitution of the United States to clarify the authority of Congress and the States to regulate corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state.
- [H.J.RES.20](#) introduced on January 22, 2013 by **Rep. James P. McGovern**. Proposing an amendment to the Constitution of the United States relating to contributions and expenditures with respect to elections.
- [H.J.RES.14](#) introduced on January 4, 2013 by **Rep. Marcy Kaptur**. Proposing an amendment to the Constitution of the United States waiving the application of the first article of amendment to the political speech of corporations and other business organizations with respect to the disbursement of funds in connection with public elections and granting Congress and the States the power to establish limits on contributions and expenditures in elections for public office.
- [H.J.RES.13](#) introduced on January 4, 2013 by **Rep. Marcy Kaptur**. Proposing an amendment to the Constitution of the United States waiving the application of the first article of amendment to the political speech of corporations and other business organizations with respect to the disbursement of funds in connection with public elections.
- [H.J.RES.12](#) introduced on January 4, 2013 by **Rep. Marcy Kaptur**. Proposing an amendment to the Constitution of the United States relating to limitations on the amounts of contributions and expenditures that may be made in connection with campaigns for election to public office.

APPENDIX B
Colorado Delegation Sponsor/Cosponsor List

Senator Bennet	Cosponsor SJ Res 19
Senator Udall	Cosponsor SJ Res 19
Representative Coffman	None
Representative DeGette	None
Representative Gardner	None
Representative Lamborn	None
Representative Perlmutter	Cosponsor HJ Res 34, Cosponsor HJ Res 21
Representative Polis	None
Representative Tipton	None

ⁱ CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

ⁱⁱ CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

ⁱⁱⁱ CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

^{iv} CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

^v CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

^{vi} CoPIRG, Billion-Dollar Democracy, <http://www.copirg.org/reports/cop/billion-dollar-democracy>

^{vii} CoPIRG, Outsize Spending, <http://www.copirg.org/reports/cop/outsize-spending-colorado>

^{viii} CoPIRG, Outsize Spending, <http://www.copirg.org/reports/cop/outsize-spending-colorado>

^{ix} Data from Secretary of State 2012 election report

^x Data from Secretary of State 2012 election report

^{xi} Grades based on who had cosponsored as of October 7th, 2013 using the Thomas search engine

<http://thomas.loc.gov/home/thomas.php>

^{xii} United for the People, <http://www.united4thepeople.org/local.html#Other>

^{xiii} Democracy 21 factsheet, <http://www.democracy21.org/wp-content/uploads/2013/09/McCutcheon-Democracy-21-Fact-Sheet.pdf>

^{xiv} $(7.2 \text{ million} - 123,000) / 123,000 * 100$