

A PLEA FOR A PLEDGE: OUTSIDE SPENDING IN THE 2013 MASSACHUSETTS SENATE ELECTION

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INTRODUCTION

In April 2013, Common Cause Massachusetts' *Plea for a Pledge: Outside Spending in Competitive 2012 U.S. Senate Races* report documented the positive effects of the People's Pledge in the 2012 Warren-Brown U.S. Senate race. The candidate brokered agreement instituted a fine whenever outside groups ran ads on either candidate's behalf. By reducing outside spending, the People's Pledge fostered greater electoral transparency, accountability and fairness.

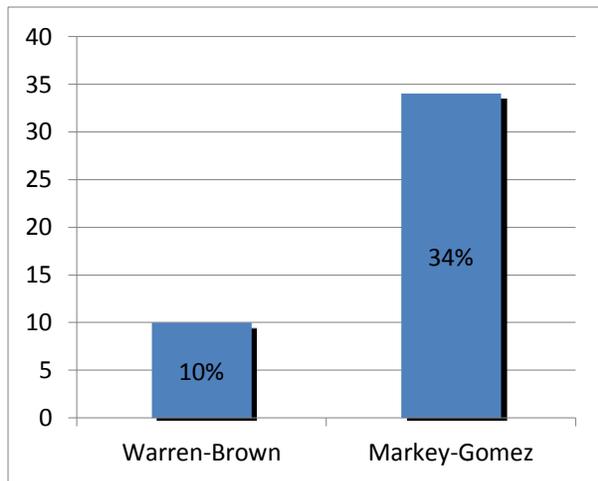
The Pledge was an overwhelming success. Negative advertising dropped dramatically, since candidates were directly accountable for their messages. The amount of secret, undisclosed money in the race was considerably less than the average in other 2012 Senatorial elections. The People's Pledge also curtailed the undue political influence of big donors who are allowed to contribute unregulated sums of money to outside groups.

Unfortunately, the People's Pledge turned out to be a fleeting if significant precedent. In the 2013 Massachusetts special election for John Kerry's vacated U.S. Senate seat, the Pledge was sorely missed. Things looked hopeful when, in the Democratic primary, candidates Edward Markey and Stephen Lynch signed their own People's Pledge.¹ But in the general election, candidates Ed Markey and Gabriel Gomez failed to reach an agreement. The election followed the pattern of so many races since the Supreme Court's 2010 decision in *Citizens United v. FEC* as a result. The percentage of outside spending more than tripled from the 2012 race, and big donors once again dominated the scene. The progress that Massachusetts experienced in 2012 all but disappeared in 2013.

OUTSIDE SPENDING COMES BACK

Without a candidate pact to keep it in check, outside spending came roaring back in the 2013 U.S. Senate special election. As a total share of the money raised for the election, outside spending rose more than threefold from its 2012 total, accounting for nearly 36% of all money raised in the 2013 contest.² This is far more representative of the post-*Citizens United* era of campaign finance than the 10% total posted in the 2012 election.

FIGURE 1: OUTSIDE SPENDING IN 2012 AND 2013 SENATE ELECTIONS AS A SHARE OF TOTAL MONEY RAISED



In fact, the outside spending in the 2013 race was nearly on par with the national average for U.S. Senate races in 2012 (32%).³ With that leap in spending comes a decrease in transparency. Outside groups often have ways of skirting disclosure requirements, especially 501(c) organizations, which are not even required to disclose their donors at all. In 2012, only 41% of outside spending in federal elections was fully disclosed.⁴

In addition to promoting secrecy, unlimited outside spending is an obstacle to fairness in campaign finance because, unlike candidates, outside groups are not subject to contribution limits. In the Markey-Gomez race, the eight top spending outside groups combined for \$7,082,672—or the equivalent of at least 35,413 small candidate donations.⁵ Two of the most active groups, Americans for Progressive Action and CE Action Committee, were funded entirely by two individuals whose combined contributions of over \$2 million made up more than a quarter of all outside spending.

FIGURE 2: EIGHT TOP SPENDING PACS IN 2013 ELECTION

NAME	\$ SPENT	TYPE
Majority PAC	\$1,364,380	SuperPAC
Americans for Progressive Action	\$1,326,826	SuperPAC
Massachusetts Republican Party	\$1,072,708	Party
League of Conservation Voters	\$809,732	501c
CE Action Cmte	\$699,703	SuperPAC
Democratic Senatorial Campaign Cmte	\$695,848	PAC
Service Employees International Union	\$577,194	PAC
League of Conservation Voters	\$543,944	SuperPAC

Without a means of keeping outside groups at bay, future elections will look more like the 2013 contest and less like the one in 2012, meaning less transparency, accountability, and fairness.

More outside spending, more big money

Last year, the People's Pledge greatly amplified the power of smaller candidate contributions in relation to six and seven figure checks to outside groups. In the Warren-Brown race, a strong coalition of at least 117,500 small donors outmatched outside spenders by 3 to 1, spreading electoral influence among a much broader group of voices and actual voters.

Without the People's Pledge, however, this year's Senate race saw a reversal of that positive trend. Outside spenders were able to spend unlimited sums, and outspent small candidate contributors 3 to 1.⁶ Small candidate donations, which comprised more than a quarter of all money raised in the Warren-Brown race, fell to 12% in the Markey-Gomez contest.

FIGURE 4: OUTSIDE SPENDING V. SMALL CANDIDATE CONTRIBUTIONS (2012)

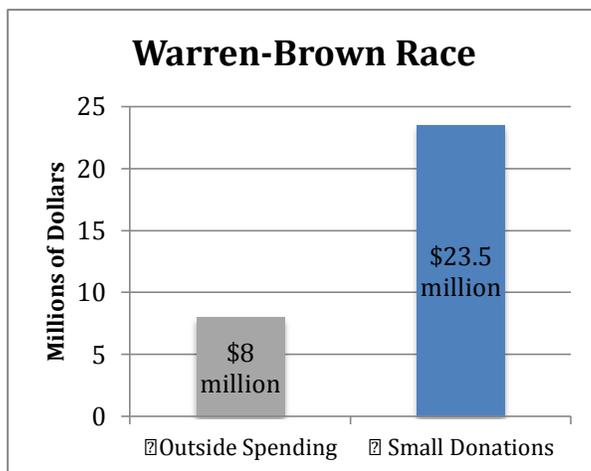
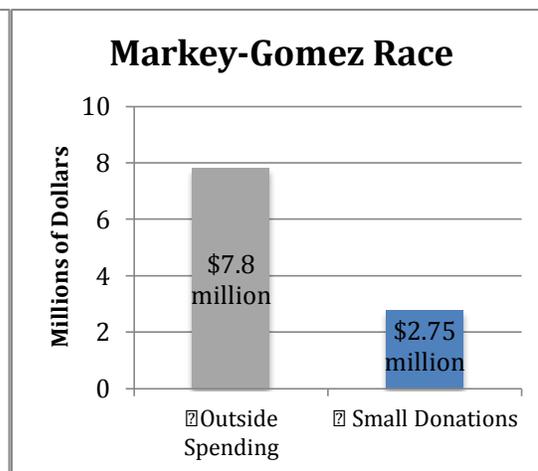


FIGURE 5: OUTSIDE SPENDING V. SMALL CANDIDATE CONTRIBUTIONS (2013)

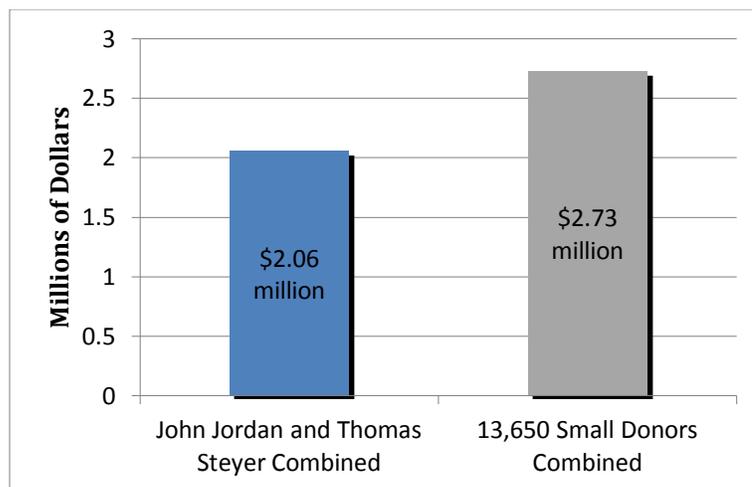


In 2013, California billionaire Tom Steyer contributed \$1.75 million to his own super PAC, CE Action Committee. CE Action alone spent over \$1 million on the Massachusetts Markey-Gomez contest (\$700,000 on the general election) and received its funding nearly exclusively from Steyer.⁷

Big individual contributions did not end there. John Jordan, another California businessman, assembled his own competing super PAC called Americans for Progressive Action in early June. This one-man operation spent \$1.3 million in the Massachusetts U.S. Senate general election, allowing one man to match the contributions of at least 6,600 small candidate donors.⁸

Two of the three top outside spending groups (combining for \$2.7 million) were super PACs, which can accept unlimited funding from individual donors. The highest spending group was Senate Majority PAC, which contributed to several elections and last year received eight seven-figure donations and this year has received fourteen six-figure gifts.⁹

FIGURE 6: INFLUENCE OF TOP TWO OUTSIDE SPENDERS V. ALL SMALL DONORS



More outside spending, more secret money

Some outside groups, primarily 501(c) organizations, are not required to disclose their donors. Even groups that are required to disclose donor information completely (such as PACs and Super PACs) often receive donations from 501(c) organizations for which donor information is unavailable, making it impossible to trace the money back to its roots.

In the 2013 Massachusetts Senate race, 22% of outside spending was not fully disclosed,¹⁰ and this undisclosed outside money comprised 8% of all funds raised in the race. This figure is twice that of the Warren-Brown race (4%)—and yet it could easily have been worse. By happenstance, seven out of the eight top spending outside groups in the race were PACs and Super PACs, which are subject to more stringent disclosure regulations than 501(c) organizations, and this likely kept secret money down.

But what if they hadn't been? In 2010, the national average for incomplete disclosure of outside money was 51%, and in 2012, an astounding 59%—nearly three times what it was for the Markey-Gomez contest.¹¹ Without a People's Pledge, there is nothing to stop outside spending in Massachusetts from reaching those disturbing rates for secret money.

CONCLUSION

The Markey-Gomez U.S. Senate contest revealed an ugly truth. Despite the encouraging statistics in the earlier 2012 Warren-Brown race, Massachusetts is not immune to big outside spending. Although a short election cycle and 'election fatigue' among Massachusetts voters may have kept overall spending down, outside groups once again dominated the campaign finance landscape. They drowned out the less-funded voices of small donors with enormous checks written by a small number of people.

The difference-maker in 2012 was the People's Pledge. Future candidates in Massachusetts should seek to adopt similar agreements. Yet already, candidates in the Boston mayoral race have

eschewed the People's Pledge, calling it a "political gimmick." Massachusetts voters deserve better and should be encouraged to show strong and vocal support for a pledge which keeps elections transparent and accountable.

While progress is made to pass legislation to increase disclosure of outside group spending and to pass a constitutional amendment that would once again allow Congress, the states, and municipalities to put limits on outside spending, a candidate pledge remains an immediate step towards creating an electoral process that is more transparent, fair, and accountable.

ENDNOTES

¹ <http://www.wbur.org/2013/02/13/markey-lynch-peoples-pledge>

² www.opensecrets.org/races/index.php?cycle=2014&id=MAS2&spec=y

³ <http://www.commoncause.org/atf/cf/{FB3C17E2-CDD1-4DF6-92BE-BD4429893665}/Plea%20for%20a%20Pledge%20Final.pdf>, p. 6

⁴ <http://www.opensecrets.org/outsidespending/index.php>

⁵ *Supra*, 1 (equivalent number of small donors calculated by taking the sum and dividing it by \$200, which is the largest gift that qualifies as "small")

⁶ **Markey:** <http://www.opensecrets.org/politicians/summary.php?cid=N00000270&cycle=2014>.
Gomez: Federal Elections Commission, "Gomez, Gabriel: Report of Receipts and Disbursements." Accessed August 19, 2013. <http://images.nictusa.com/pdf/783/13020363783/13020363783.pdf>

⁷ <http://reporting.sunlightfoundation.com/outside-spenders/2014/committee/nextgen-committee/C00542779/>

⁸ <http://reporting.sunlightfoundation.com/outside-spenders/2014/committee/americans-for-progressive-action/C00545590/>

⁹ reporting.sunlightfoundation.com/outside-spending-2012/committee/majority-pac/C00484642/

¹⁰ *Supra*, 1.

¹¹ *Supra*, 3.