



*Massachusetts*  
**COMMON CAUSE**

*Holding Power Accountable*

# A PLEA FOR A PLEDGE



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OUTSIDE SPENDING  
IN COMPETITIVE  
2012 US SENATE  
RACES

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## COMMON CAUSE MASSACHUSETTS

Common Cause is a nonpartisan, nonprofit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Through policy research and grassroots organizing and lobbying Common Cause advocates for free and fair elections and honest, open and accountable government.

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# EXECUTIVE SUMMARY

Since the Supreme Court's ruling in *Citizens United v. FEC (2010)* paved the way for unlimited fundraising by independent political groups, outside spending in elections has skyrocketed.<sup>1</sup> In the 2012 federal election cycle, outside groups spent a staggering \$1.3 billion, an over 400% increase from both 2008 and 2010.

In an attempt to curtail this rapid influx of outside money in their 2012 race for U.S. Senate, U.S. Senator Scott Brown and challenger Elizabeth Warren reached a groundbreaking agreement, dubbed the "People's Pledge," which instituted a fine to be paid out from a candidate's campaign funds should an outside group purchase radio, cable, or online advertisements that would benefit that candidate. The fine applied equally to negative and positive advertisements. Many were rightfully dubious that this voluntary pact would hold up given the election's high national stakes. But it did.

Using data from the Center for Responsive Politics, the Center for Media Analysis Group, the Atlas Project, and the Wesleyan Media Project, Common Cause Massachusetts analyzed the impact of the People's Pledge on campaign finance in Massachusetts, the most expensive congressional election in 2012, as compared to that in other competitive Senate races in Virginia, Ohio, and Wisconsin, the second, third, and fifth most expensive congressional elections respectively. Our analysis found that by greatly curtailing outside spending, the People's Pledge increased disclosure of donors, decreased wealthy donor influence on the electoral process, and reduced the amount of negative advertising. In short, it produced many desirable outcomes and deserves to be repeated in future races.

## Key Findings

*The People's Pledge drastically reduced outside spending.*

- Outside groups were outspent by the candidates in Massachusetts by 10 to 1. Outside group spending made up just 9% of total spending in Massachusetts. By comparison, outside groups outspent the candidates in Virginia, Wisconsin, and Ohio by 34% on average. Outside group spending in Virginia, Wisconsin, and Ohio made up 62%, 64%, and 47% of total spending respectively.
- Outside spending in the Massachusetts Senate race constituted 2% of total outside spending in all 2012 U.S. Senate races. In contrast, Senate races in Virginia, Wisconsin, and Ohio combined for 40% of total outside spending in senatorial elections – \$135 million. That's more than the combined outside spending in 34 of the remaining 37 Senate races.

*The People's Pledge resulted in substantially greater public disclosure of political donors.*

- There was 5 times more “dark”, completely undisclosed, money on average in Virginia, Wisconsin, and Ohio than in Massachusetts—\$19.8, \$13.6, and \$14.1 million in Virginia, Wisconsin, and Ohio respectively versus \$3.3 million in Massachusetts.
- Dark money made up just 4% of total spending in Massachusetts, compared to 23%, 20%, and 17% of total spending on average in Virginia, Wisconsin, and Ohio respectively.
- One group, Crossroads GPS, spent more dark money in each Senate race in Virginia, Wisconsin, and Ohio than all outside sources in Massachusetts.

*The People's Pledge increased the influence of small donor donations relative to big dollar donations.*

- The top 15 Super PAC donors, giving an average of \$7.6 million each, to Super PACs in Virginia, Wisconsin, and Ohio matched the \$114 million raised from 175,000 individual donors by all of the candidates in those states combined.
- Small donations (less than \$200) to the candidates outmatched outside groups by 3 to 1 (\$23.5 vs. \$8 million) in Massachusetts. On the other hand, outside groups in Virginia, Wisconsin, and Ohio outspent small donors to the candidates by more than 5 to 1 (\$135 vs. \$23.8 million).
- One donor to American Crossroads/Crossroads GPS matched the \$23 million in small dollar donations raised by the candidates in Virginia, Wisconsin, and Ohio—that's at least 119,000 people giving less than \$200. The groups raised \$55 million from just three donors. The duo spent an average of \$9.2 million in each Virginia, Wisconsin, and Ohio. It spent \$600,000 in Massachusetts.

*The People's Pledge resulted in significantly less negative advertising.*

- Television advertisements in Virginia, Wisconsin, and Ohio were more than twice as likely to be negative compared to Massachusetts – 84% vs. 36% negative on average.
- 97% of television advertising paid for by outside groups in Virginia, Wisconsin, and Ohio was negative. Outside groups did not air a television advertisement in Massachusetts.

# INTRODUCTION

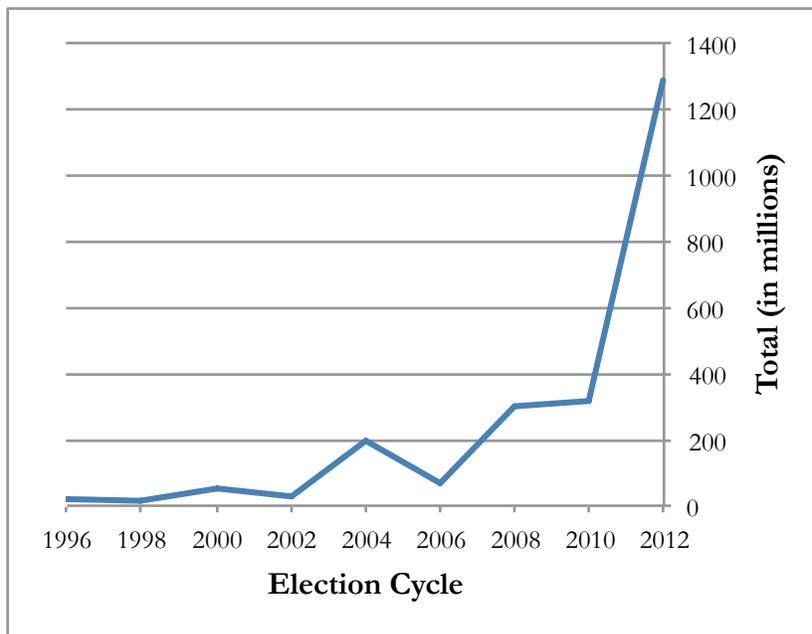
## The National Picture

In its *Citizens United v. FEC* (2010) ruling the Supreme Court emphatically declared that unlimited sums of money spent by interest groups to influence the outcome of an election are not corrupting. Corporations, unions, and wealthy individuals have since used this ruling to increase their already overwhelming influence on elections and public policy by dumping millions into political electioneering in races throughout the country.

The 2012 federal election, the first presidential election since *Citizens United*, cost a staggering \$7.1 billion, a 34% increase from 2008.<sup>2</sup> That is the equivalent of one dollar per every person on the planet or \$30 dollars per every American voter. The rising cost of elections in 2012 was driven largely by outside groups able to raise and spend unlimited sums. In 2012, these outside groups increased their spending by over 400% from the last presidential race, doubling their share of total spending (See Figure 1).<sup>3</sup> Outside spending made up 27%, 23%, and 32% of total spending in the presidential, House, and Senate elections respectively.

**“We now conclude independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption”**  
—Justice Kennedy,  
writing for the majority opinion in  
*Citizens United*

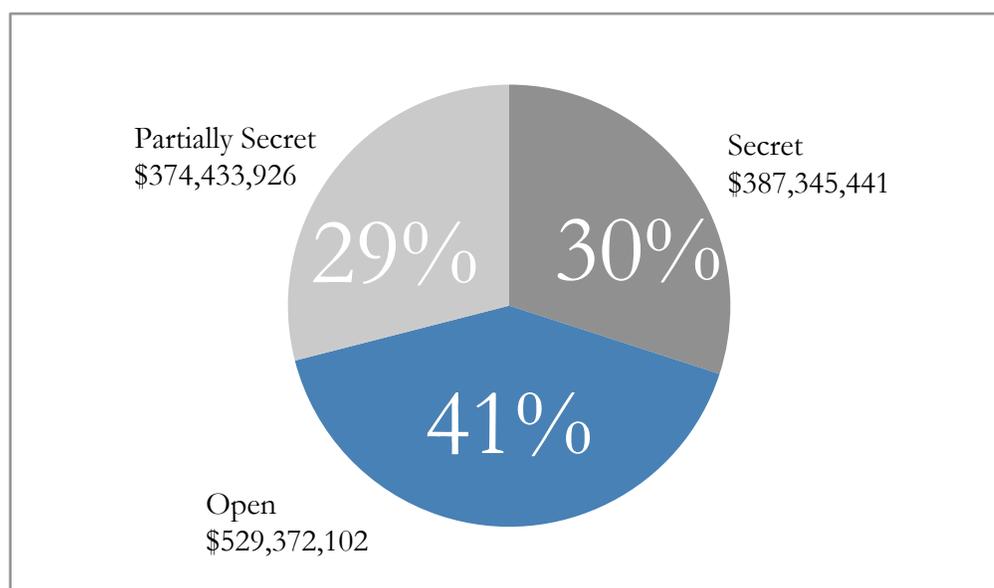
FIGURE 1: TOTAL OUTSIDE SPENDING (1996 to 2012 FEDERAL ELECTIONS)



Unlike the candidates, these groups are not subject to strict donor disclosure requirements and fundraising limits and are often not publicly recognizable, and therefore, less concerned with their public image or reputation. The dramatic increase in outside spending translated into large amounts of undisclosed political money, even greater disproportionate funding from an elite class of wealthy individuals and corporations, and a barrage of negative television advertisements. In short, their increased influence and role in the electoral process meant less transparency, fairness, and accountability.

*A veil of secrecy* — Of the nearly \$1.3 billion in outside spending, a mere 41% was fully disclosed. Nearly \$400 million was completely dark (See Figure 2). By comparison, between 1990 and 2006 when total outside spending was a fraction of what it is today, an average of 93.6% of outside money was fully disclosed.<sup>4</sup>

**FIGURE 2: REPORTED OUTSIDE SECRET SPENDING  
(2012 FEDERAL ELECTIONS)**



*Wealthy donor concentration* — According to a Demos and U.S. PIRG report, the top 32 Super PAC donors, giving an average of \$9.9 million each, matched the \$313 million that President Obama and Mitt Romney raised from all of their small donors combined. In fact, according to the same report, more than 93% of Super PAC money came from just 3,318 donors, or the equivalent of 0.0011% of the U.S. population.<sup>5</sup>

*A flurry of negativity* — In the 2012 presidential election, 85% of the over 400,000 political ads sponsored by outside groups were negative.<sup>6</sup> The concentration of negative advertising among the biggest outside spenders was particularly acute. The top ten outside groups in the presidential election spent a combined \$315 million on advertising; 93% of their purchased ads were negative.<sup>7</sup>

# The People's Pledge

In contrast to the deluge of outside spending experienced in the presidential and congressional elections throughout the country, the race for U.S. Senate in Massachusetts witnessed a relatively minimal amount of outside spending, despite its high overall cost and high national stakes. Low outside spending in Massachusetts is wholly attributable to the People's Pledge, a candidate brokered agreement that established a fine to be paid by a candidate's campaign committee when an outside group purchased radio, cable, or online advertisements to the candidate's benefit.<sup>8</sup>

In response to the Pledge, outside groups did not run a single television advertisement for or against either candidate after the Pledge was signed in late January. In the few cases of print and radio advertisements financed by outside groups, candidates paid the agreed upon fine and the advertisements promptly ceased.<sup>9</sup> Third party groups still influenced the election by other means permitted by the agreement including robocalls, direct mail, and door-to-door canvassing<sup>10</sup>, but their cumulative electioneering expenditures paled in comparison to those of outside groups in other similarly competitive Congressional elections in 2012.

The Pledge's success in limiting the degree of outside spending had huge impacts on secret money, big money, and negative advertising.

## THE PLEDGE CURBED OUTSIDE MONEY

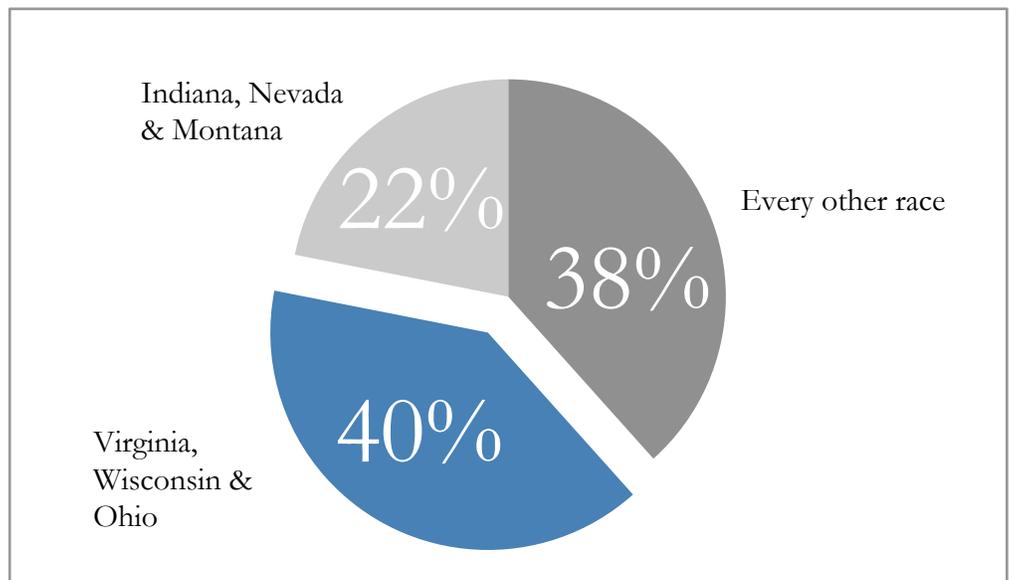
Outside spending made up just 9% of total election spending in the Massachusetts Senate race. By comparison, outside group spending in the Virginia, Wisconsin, and Ohio Senate races made up 57% of total spending on average (See Figure 3).<sup>11</sup> In fact, outside groups outspent the candidates in Virginia, Wisconsin, and Ohio by 34% on average. The candidates in Massachusetts, on the other hand, outspent outside groups by over 10 to 1.

FIGURE 3: TOTAL OUTSIDE SPENDING

	Massachusetts Senate	Virginia Senate	Wisconsin Senate	Ohio Senate
Total Spending	\$85,354,387	\$84,751,213	\$68,457,663	\$82,354,389
Outside Spending	\$8,084,356	\$52,410,795	\$43,669,835	\$38,902,955
Share of Total	9%	62%	64%	47%

The Massachusetts Senate race constituted only 2% of total outside spending in 2012 senatorial elections. In contrast, outside spending in Virginia, Wisconsin, and Ohio combined for 40% of total outside spending in all U.S. Senate races – \$135 million. That’s more than the combined outside spending in 34 other Senate races and almost twice that in the three Senate elections with the most outside spending after Virginia, Wisconsin, and Ohio (See Figure 4).<sup>12</sup>

FIGURE 4: PERCENTAGE OF TOTAL OUTSIDE SPENDING IN 2012 SENATE ELECTIONS



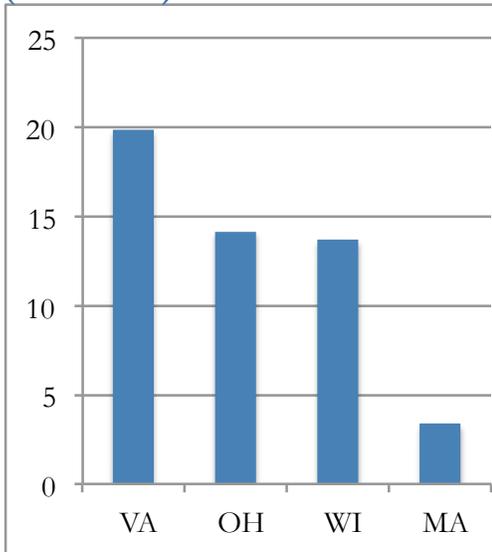
The stark difference in the distribution of expenditures by candidates and outside groups had far-reaching impacts on the breadth of donor information available to the public, the type and number of donors, and campaign advertising.

# THE PLEDGE LIMITED SECRET MONEY

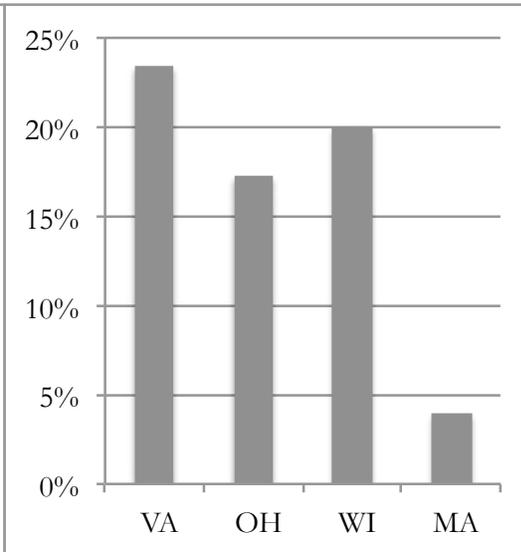
When the Supreme Court struck down limits on political spending by corporations and unions in *Citizens United*, the five concurring justices acknowledged the importance of donor transparency. Writing for the majority, Justice Kennedy noted that “prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”<sup>13</sup> Yet the Court’s ruling has resulted in just the opposite.

The People’s Pledge largely spared the voters of Massachusetts the nationwide increase of undisclosed political funds. The amount of dark money was on average five times greater in Virginia, Ohio, and Wisconsin than in Massachusetts. Undisclosed outside money made up a mere 4% of total spending — \$3.3 million — in the Massachusetts race, compared to 20% — \$47 million — on average in Virginia, Wisconsin, and Ohio (See Figure 5 & 6). In fact, the latter attracted the first, second, and fourth most dark money out of all Congressional races in 2012 respectively.<sup>14</sup> One group, Crossroads GPS, spent more dark money in each of the Senate races in Virginia, Wisconsin, and Ohio than all outside sources in Massachusetts.

**FIGURE 5: TOTAL DARK MONEY (in millions)**



**FIGURE 6: PERCENTAGE OF DARK MONEY RELATIVE TO TOTAL SPENDING**



## *Skirting Disclosure Requirements*

Since 2010, Super PACs, non-profit “social welfare” organizations, and trade associations have been the primary drivers of the dramatic increase in outside spending. Of these groups Super PACs are the only ones subject to the same relatively stringent donor disclosure rules as coordinated PACs, parties, and political candidates. The others are under no legal obligation to disclose any information about their donors.

In the 2012 federal election cycle, 70% of outside spenders were subject to disclosure.<sup>15</sup> Nevertheless, donor information for a mere 41% of total outside spending was actually fully transparent. Of the remaining money, 30% was spent with absolutely no donor disclosure and the other 29% had only minimal disclosure (*See Figure 2, p. 7*). The reason for the disclosure gap is a series of loopholes and practices that allow donors to legally skirt disclosure.

In one common strategy, corporations and wealthy individuals charter a “shell” corporation, a fictitious business that exists on paper only, with the sole purpose of making political donations in secret. The actual corporation or individual can then deposit money into the account of the shell corporation, which then immediately donates the money to a Super PAC. The resulting donation is later disclosed by the Super PAC, but the identity of the donor is only traceable to a non-existent company, not to the actual originator of the donation.

**Of all Super PAC donations from business corporations, nearly seventeen percent came from shell corporations that were formed for the purpose of hiding the source of money in elections.**<sup>16</sup> For example in April 2012, W Spann LLC made a \$1 million donation to Mitt Romney’s Super PAC just two months before its incorporation certificate was cancelled.<sup>17</sup> Ed Conrad, a colleague of Romney, later came forward as the individual responsible for the creation of W Spann and the \$1 million contribution.<sup>18</sup> Similarly, FreedomWorks for America received \$10.5 million, more than half of its total donations, from Specialty, Inc.<sup>19</sup> Specialty had no staff or office and was gone immediately after making its contribution.<sup>20</sup> FreedomWorks shelled out \$3 million in the Virginia, Wisconsin, and Ohio Senate races, but did not spend in the Massachusetts race.

Non-profit organizations can play the same role in hiding donor information. When non-profits like the National Education Association or the National Rifle Association transfer funds to their own Super PACs, the FEC filings from these Super PACs reveal only the name of the non-profit affiliates, not the original individual donors. So for example, the National Association of Realtors Super PAC has only one registered donation of \$3.1 million from the National Association of Realtors. In other cases, non-profits grow as mere appendages of Super PACs with the primary goal of hiding donors from public disclosure, as is the case with Crossroads GPS, a 501(c)4 owned and operated by the same team managing American Crossroads, a Super PAC.

As a result of these efforts to thwart transparency rules, a mere 50% of Super PAC money is considered fully disclosed. The other 50% was either fully or partially dark because of the involvement of non-disclosing political groups and fictitious shell corporations.<sup>21</sup>

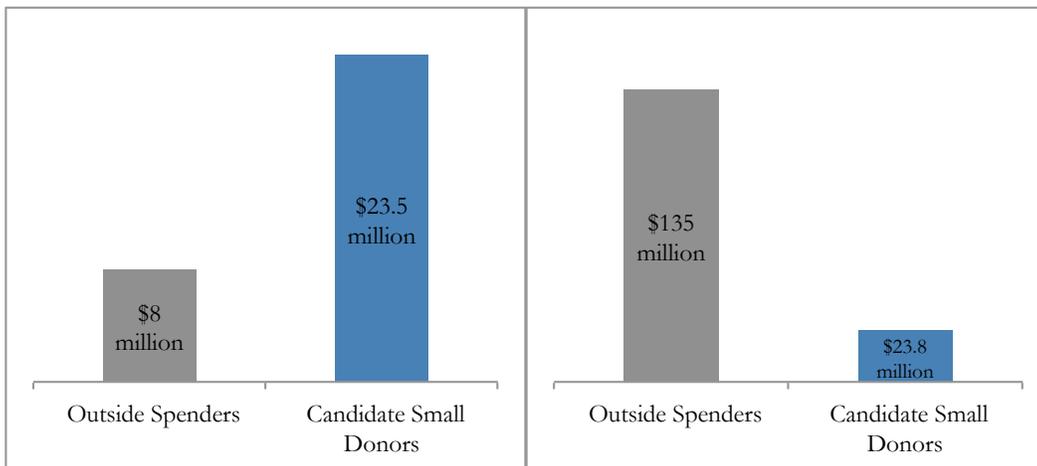
## THE PLEDGE REDUCED BIG MONEY

According to Americans for Campaign reform, just 4% of the United States population made a contribution of any size to a political campaign in 2008.<sup>22</sup> Since *Citizens United* and other Court decisions have cleared the way for unlimited fundraising by outside groups, political donations have become even more heavily concentrated among a small group of wealthy individuals and corporations.

The Senate races in Virginia, Wisconsin, and Ohio followed this trend. The Massachusetts race did not. The candidates' small donors in Massachusetts outmatched outside groups by 3 to 1 – \$23.5 versus \$8 million. By contrast, outside groups in Virginia, Wisconsin, and Ohio outspent all of the candidates' small donors combined by more than 5 to 1 - \$135.7 versus \$23.8 million (See Figure 7). And as evidenced by both the national data (See *National Picture*, p. 6) and data from these specific races outside money is for the most part big money.

The top 15 donors, giving an average of \$7.6 million each, to Super PACs in Virginia, Wisconsin, and Ohio matched the \$114 million from 175,000 people raised by all of the candidates combined. In fact, one donor to American Crossroads/Crossroads GPS matched the \$23 million in small dollar donations raised by the candidates in Virginia, Wisconsin, and Ohio—that's at least 119,000 people giving less than \$200. The top three donors more than doubled that of all small donors to the candidates. The duo spent an average of \$9.2 million in Virginia, Wisconsin, and Ohio. It spent \$600,000 in Massachusetts.

**FIGURE 7: OUTSIDE SPENDING VERSUS CANDIDATE SMALL DONORS IN MASSACHUSETTS (left) AND IN VIRGINIA, WISCONSIN, AND OHIO (right)**



**“It is highly improbable that the question of campaign funds would ever have been raised in American politics if party contributions were habitually made by a large number of persons each giving a relatively small amount.”**

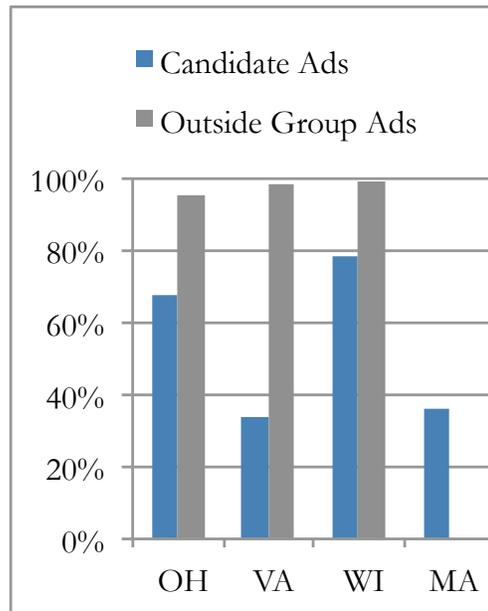
— Robert Brooks

## THE PLEDGE DECREASED NEGATIVE ADVERTISING

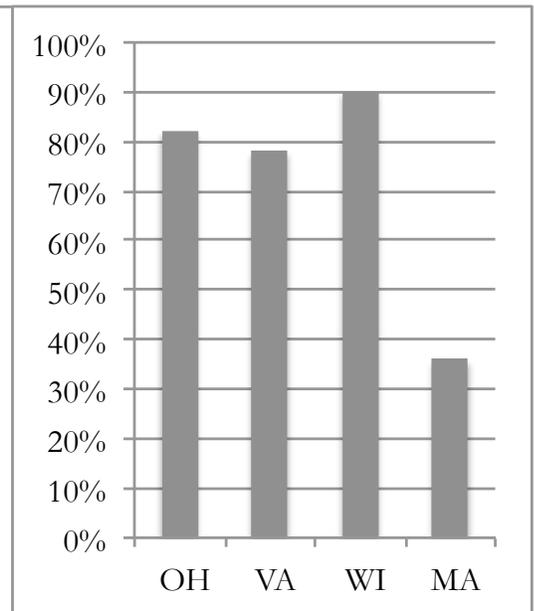
Due to the People’s Pledge, the Massachusetts Senate race also bucked the growing trend of negative advertising in political campaigns. The Senate races in Virginia, Wisconsin, and Ohio followed this trend; campaign advertising was overwhelmingly negative.

Television advertising in Virginia, Wisconsin, and Ohio was more than twice as likely to be negative when compared to Massachusetts (See Figure 9). 97% of outside group advertisements in Virginia, Wisconsin, and Ohio were negative. Outside groups did not air a television advertisement in Massachusetts. Even in Virginia, where the candidates managed to maintain a fairly positive tone, the massive amount of negative advertising from outside spending dragged down the overall tone (See Figure 8).

**FIGURE 8: PERCENTAGE OF NEGATIVE ADVERTISING OF CANDIDATES VERSUS OUTSIDE GROUPS**



**FIGURE 9: PERCENTAGE OF NEGATIVE ADVERTISING OVERALL**



This isn’t surprising. When outside groups run negative ads, candidates whom they benefit have the luxury of enjoying all of the benefits and none of the drawbacks. They can quickly disavow the ads even while the ads continue to air and attack their opponents. On the other hand, when candidates launch negative ads, they must stand by their ad. They may succeed in lowering their opponents’ favorability, but they must also suffer any public backlash against their own.

# CONCLUSION

The People's Pledge was remarkably successful. It did not keep overall spending in the election down, but that was never its goal. However, it accomplished other important goals. It fostered greater transparency by limiting undisclosed political donations. Relatively free from outside spenders exploiting loopholes in current disclosure legislation, voters were able to track the interests funding each side and make an informed vote. It fostered greater political equality by forcing the vast majority of donations to abide by strict contribution limits. The nation's wealthiest individuals and corporations were limited in their ability to drown out the voices of average voters with multi-million dollar political expenditures. And it fostered greater accountability by forcing the candidates to stand by political advertising, both positive and negative. With neither candidate able to rely on a relentless attack of their opponent by outside groups, campaign advertising was mostly positive.

Limiting the impact of outside groups in elections is a fundamental first step to an electoral process that is more transparent, fair, and accountable. While legislative and constitutional measures are the only effective, long-term means to achieving this end, an agreement between candidates to discourage outside spending is a proven short-term, immediate solution. It should be replicated in elections going forward.

# ENDNOTES

<sup>1</sup> Outside spending in this report is defined as spending intended to influence a federal election that is not conducted by or coordinated with a candidate for federal office or a political party. Prior to Citizens United, individuals were allowed to make unlimited expenditures, but rarely did so.

<sup>2</sup> [http://www.fec.gov/press/press2013/20130419\\_2012-24m-Summary.shtml](http://www.fec.gov/press/press2013/20130419_2012-24m-Summary.shtml)

<sup>3</sup> <http://www.opensecrets.org/outsidespending/>

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

<sup>5</sup> [http://www.demos.org/sites/default/files/publications/BillionDollarDemocracy\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/BillionDollarDemocracy_Demos.pdf)

<sup>6</sup> Fowler, Erika Franklin, and Travis N. Ridout. 2013. "Negative, Angry, and Ubiquitous: Political Advertising in 2012." *The Forum: A Journal of Applied Research in Contemporary Politics* 10 (4): 51.

<sup>7</sup> <http://www.washingtonpost.com/wp-srv/special/politics/track-presidential-campaign-ads-2012/>

<sup>8</sup> [http://www.rollcall.com/news/scott\\_brown\\_elizabeth\\_warren\\_try\\_limit\\_third\\_party\\_spending\\_senate\\_race-211610-1.html](http://www.rollcall.com/news/scott_brown_elizabeth_warren_try_limit_third_party_spending_senate_race-211610-1.html)

<sup>9</sup> [http://www.masslive.com/politics/index.ssf/2012/03/scott\\_brown\\_to\\_pay\\_for\\_broken.html](http://www.masslive.com/politics/index.ssf/2012/03/scott_brown_to_pay_for_broken.html)

<sup>10</sup> <http://www.boston.com/politicalintelligence/2012/09/27/karl-rove-political-group-making-robocalls-targeting-elizabeth-warren-senate-race/K0Bp9T11vtP9fca1EizewJ/story.html>

<sup>11</sup> <http://www.opensecrets.org/overview/topraces.php?cycle=2012&display=currcandidatesout>

<sup>12</sup> <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=R&pty=A&type=S>

<sup>13</sup> <http://www.law.cornell.edu/supct/html/08-205.ZO.html>

<sup>14</sup> <http://www.opensecrets.org/news/2012/10/shadow-moneys-top-10-candidates.html>

<sup>15</sup> <http://www.opensecrets.org/outsidespending/index.php>

<sup>16</sup> <http://www.prwatch.org/news/2013/01/11944/%E2%80%9CElections-confidential%E2%80%9D-report-reveals-role-dark-money-nonprofits-and-shell-corp>

<sup>17</sup> <http://www.marketplace.org/topics/elections/campaign-trail/required-super-pac-disclosures-dont-reveal-all>

<sup>18</sup> [http://www.huffingtonpost.com/2011/08/06/romney-super-pac-mystery-donor-bain\\_n\\_920151.html](http://www.huffingtonpost.com/2011/08/06/romney-super-pac-mystery-donor-bain_n_920151.html)

<sup>19</sup> <http://www.opensecrets.org/outsidespending/contrib.php?cmte=C00499020&cycle=2012>

<sup>20</sup> <http://www.publicintegrity.org/2012/10/30/11661/nonprofits-shell-corporations-help-shield-identity-ad-backers>

<sup>21</sup> <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=O&type=S&chrt=D>

<sup>22</sup> <http://www.acrreform.org/research/money-in-politics-who-gives/>