

**Testimony of Stephen R. Weissman on S.394 and H.642**  
**Joint Committee on Election Laws**  
**Massachusetts Legislature**  
**May 15, 2019**

Chairmen Finegold and Lawn, Jr., I am writing in support of two important bills, S.394 and H.642, that would limit contributions by individuals to independent expenditure committees to no more than \$5,000 per year.

In particular, I would like to bring to your attention my research on donors to independent spending groups in federal elections. It challenges the core assumption of *SpeechNow.org v. Federal Election Commission*, the influential 2010 U.S. Appeals Court for the District of Columbia case that overturned federal law limiting individual contributions to independent political spenders to \$5,000 per year. That Court *deduced* from the Supreme Court's opinion in *Citizens United* that since independent *spending* is, by definition, not coordinated with candidates, and therefore could not corrupt or appear to corrupt them, the same was logically true of *contributions* to independent spenders. The Court came to its conclusion without any real-world information about \$5,000 plus donors to independent spenders because such contributions were then legally prohibited or undisclosed.

By the 2016 cycle, spending by independent political committees that collected contributions greater than \$5,000 -- so-called Super PACs -- had reached \$1.1 billion. More than three quarters of the funds were provided by just 1% of the groups' donors.

My study tests the Court's assumption that unlimited donations to such Super PACs cannot corrupt or appear to corrupt against political reality. I analyzed data on the top individual and organizational donors to Super PACs and other independent groups in the first two full federal election cycles following *SpeechNow*, 2011-12 and 2013-14. I learned that while independent spending groups maintain some distance from their preferred candidates -- in order not to illegally coordinate with them -- the largest donors to these groups have close ties with those candidates. *That is because they are directly financing the very same candidates they are simultaneously assisting indirectly through contributions to independent groups spending in their behalf.* These donors effectively circumvent the legal limits for contributions directly to candidates, which the Supreme Court has consistently upheld to prevent corruption or its appearance, by aiding them *both directly and indirectly*. This intensifies the danger of corruption and its appearance that the legal limit was supposed to address.

Before detailing my research, let me briefly introduce my qualifications on this subject. I am an independent political scientist specializing in American Government and U.S. Foreign Policy. I have taught at Fordham University, the University of Texas at Dallas and Howard University. From 1998-2002, I was Legislative Representative for Public Citizen -- a nonpartisan national

citizens group – where I concentrated on campaign finance reform legislation. From 2002-09 I was Associate Director for Policy at the Campaign Finance Institute, a nonpartisan research institution with a broad audience among federal, state and local policy makers, advocacy groups and scholars.

I have published many reports, articles and book chapters on campaign finance issues. One of my principal interests has been the explosion of independent group spending in elections, including Section 527, 501 (c) (4), 501 (c) (5) and 501 (c) (6) groups and, most recently, Super PACs. Among my publications on this subject are: “BCRA and the 527 Groups,” in Michael Malbin ed., *The Election After Reform* (Lanham, MD: Rowman and Littlefield, 2006), 79-111 (with Ruth Hassan), “Nonprofit Interest Groups’ Election Activities and Federal Campaign Policy,” *The Exempt Organization Tax Review* (October 2006), 21-38 (with Kara Ryan), “Soft Money in the 2006 Election and the Outlook for 2008: The Changing Nonprofits Landscape,” *Campaign Finance Institute 2007*, “Robert Menendez and the Dangers of Unlimited Campaign Contributions,” *Los Angeles Times*, April 7, 2015, “Courting Corruption,” *The American Interest*, August 25, 2017 and “Kavanaugh’s Campaign Finance Record Shows an Atrocious Disregard for Precedent,” *Slate*, September 5, 2018.

The attached two-part study, “The Speech Now Case and the Real World of Campaign Finance,” published by Free Speech for People, was undertaken upon my initiative with FSFP cooperating by purchasing campaign finance data from the respected Center for Responsive Politics. It shows that the great majority of the top 100 individual and 50 organizational donors to Super PACs and other independent groups supporting candidates in the federal 2012 and 2014 election cycles simultaneously gave large campaign contributions directly to the same candidates. These donors were effectively pursuing a coordinated strategy that combined direct assistance to candidates within legal contribution limits and indirect support to them through unlimited donations to independent spenders. These federal findings are applicable to state elections where one also finds many of the same actors and issues.

Let me briefly convey to you my most striking findings:

- Of the 100 top individual donors to Super PACs and other independent spenders in each of the 2012 and 2014 cycles, 81 contributed both directly to candidates and to independent groups benefiting the same candidates. The average number of candidates receiving such assistance per donor was eight in 2014 and five in 2012. Donors’ direct contributions to candidates averaged \$30,970 (\$3,999 per candidate) and \$15,979 (\$3,318 per candidate) in the respective cycles. Donors’ contributions to independent spenders supporting the same candidates averaged \$2.5 million in 2014 and \$3 million in 2012.
- Of the top 50 organizational donors in each cycle, 31 contributed both directly and indirectly to the same candidates. The average number of candidates receiving such assistance in 2014 and 2012 was high: 33 and 37 per donor respectively. Direct contributions to preferred candidates averaged \$265,827 (\$8,071 per candidate) and

\$293,057 (\$7,914 per candidate). Contributions to independent spenders supporting the same candidates averaged \$3.2 million per donor in 2014 and \$3 million in 2012.

- Of these top individual and organizational donors, approximately 40-50% contributed to both political party committees and party-linked Super PACs active in the same elections. In the 2014 and 2012 cycles, 42 and 48 of the 100 top individual donors respectively contributed in this way to their party's fortunes. On average, each donor contributed to two party committees per cycle, donating an average of \$84,808 and \$69,522 respectively in 2014 and 2012, while giving \$1 million and \$2.2 million to party-linked Super PACs working in the same election as the party committees; and
- Of the top 50 organizational donors, 21 and 22 respectively contributed to both party and party-linked groups for the same elections in 2014 and 2012. On average, they gave \$70,227 and \$67,221 respectively to two party committees in the two cycles. At the same time, each contributed an average of \$1.2 million and \$1 million to party-linked Super PACs.

Is it possible that candidates and party committees were unaware of who is contributing both directly to them and to Super PACs supporting them? No, all these donations were publicly disclosed. Nor should we assume that large donors who are often close to candidates or parties and who also help them through donations to Super PACs never discuss the latter with them. Such "see no evil," "hear no evil" hypotheticals do not pass the smell test.

I very much hope that the Massachusetts legislature passes S. 394 and H.642, thereby assuming a leadership role in the fight to preserve American democracy.

