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## The \$7 Billion Election

### *Emerging Campaign Finance Trends and Their Impact on the 2016 Presidential Race and Beyond*

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Donald J. Trump's election as the forty-fifth president of the United States was as improbable and historic as any election in the modern era, and Trump and his presidential campaign likewise made history in the campaign finance arena as well—namely, by becoming the first candidate to be elected president in decades while being substantially outspent by his opponent, Hillary Rodham Clinton. In so doing, Trump and his campaign committee shattered many long-standing assumptions about the American campaign finance system and what candidates and campaigns must do to win the presidency. The Clinton campaign and its allies collectively raised and spent twice as much money during the 2016 presidential race as did the Trump campaign and its allies.<sup>1</sup> Yet despite facing a significant campaign resource disadvantage, Trump, relying on a shrewd earned and social media strategy, won a comfortable Electoral College majority and may have helped pave a new way for candidates to pursue the Oval Office in the future.

With the dust still settling on the 2016 election, total spending on the election is estimated at nearly \$7 billion, which made the 2016 presidential race the most expensive in American history.<sup>2</sup> To put that spending tally in context, a total of \$6 billion was expended on the 2012 election, which was an unprecedented amount at that time.<sup>3</sup> The record amounts of money

expended on the 2016 election were fueled primarily by a significant increase in spending by Super PACs and other outside groups, which collectively spent 32 percent more funds than they did during the 2012 election.<sup>4</sup> However, political party expenditures declined in 2016 and constituted a smaller share of total electoral spending, which is a trend that has emerged during the last ten to fifteen years. Increasingly, we are witnessing a tale of two fund-raising stories—a robust story for Super PACs and other outside groups, which can accept unlimited contributions and which comprise an ever-larger share of total campaign spending, and a more challenging story for political parties and many candidates, which labor under strict contribution limits and prohibitions. The result is an increasingly fragmented and less politically accountable campaign finance system which, absent new legislation or judicial action, could become even more pronounced in the future.

### **MAJOR PRESIDENTIAL PARTY NOMINEE FUND-RAISING DROPPED IN 2016 FOR THE FIRST TIME IN MANY YEARS**

To properly understand contemporary presidential campaign fund-raising trends, it is necessary to briefly discuss the creation of the presidential public financing system in the 1970s and the gradual abandonment of that system by leading presidential candidates during the last two decades.

The presidential public financing system was established after the Water-gate scandal and first went into effect for the 1976 presidential election. Under the system, presidential candidates have the option of accepting public funds for their primary election or general election campaigns, or both. For the primaries, presidential candidates can receive matching funds from the government of up to \$250 for each individual contribution they receive. For the 2016 primaries, each presidential candidate could receive a maximum of approximately \$48 million in matching funds.<sup>5</sup> However, candidates electing to receive matching funds for the 2016 presidential race were subject to a nationwide spending limit during the primaries of approximately \$48 million, as well as state-by-state spending limits based upon the population of each state. Under the federal election laws, the primary season runs from the time a person legally becomes a presidential candidate through the national nominating conventions, which can last eighteen months or even longer. The national and state-by-state spending limits apply throughout this period of time. By contrast, candidates who decline to take matching funds are not subject to any spending limits for the primaries and are free to raise as much money as they can, subject to the contribution limits.<sup>6</sup> For the general elec-

tion, presidential candidates have the option of accepting a public grant to finance all of their political activities and be subject to a nationwide spending limit, or candidates can turn down public funds and raise private contributions subject to the contribution limits and operate without any spending restriction. The public grant for the general election in 2016 was approximately \$96 million.<sup>7</sup>

The presidential public financing system gradually became obsolete during the last twenty years as more and more presidential candidates operated their campaigns outside of the system in order to free themselves of the spending limits that come with the acceptance of public funds. In the 2000 presidential race, George W. Bush raised \$100 million for his primary campaign and became the first candidate to turn down matching funds for the primaries and be elected president when he defeated Al Gore. In 2004, both major party nominees for the first time turned down matching funds for the primaries, as George W. Bush raised \$270 million and John Kerry raised \$235 million for the primary season. Significantly, both Bush and Kerry in 2004 accepted the \$75 million public grant for the general election and joined every major party nominee since 1976 in doing so. However, the historical practice of accepting public funds for the general election was shattered in 2008 when President Obama became the first presidential candidate to be elected president who turned down public funds for both the primaries and the general election, which helped clear the way for Obama to raise an astounding \$750 million for his campaign, including \$414 million for the primaries alone. By contrast, Senator John McCain in 2008 raised \$221 million for the primaries but opted to accept the \$85 million public grant for the general election, which provided McCain with a total of only \$306 million for his entire campaign, which was barely 40 percent of the total funds that the Obama campaign had at its disposal.<sup>8</sup> In 2012, both Obama and Mitt Romney opted out of the public financing system for both the primaries and the general. In total, their campaigns raised \$1.22 billion, a 16 percent increase over the \$1.05 billion raised by the major party nominees in 2008.<sup>9</sup>

As table 12.1 indicates below, fund-raising by major party nominees for president generally increased during each election cycle since the 2000 Bush-Gore election. However, in 2016 total fund-raising by the major party nominees (including contributions and loans from Trump to his campaign) totaled only 73 percent of the total amount raised by the major party nominees in 2012. Senator Bernie Sanders' campaign, which raised approximately \$232 million for the 2016 primary, far outraised and outspent the Trump campaign during the same time period.<sup>10</sup> The \$499 million raised by the Clinton and Sanders campaigns collectively for the 2016 primary did not come close to

**Table 12.1. Summary of Major Party Nominee Fund-raising Totals (2000–2016)**

<i>Candidate</i>	<i>Primary Fund-raising Total</i>	<i>General Fund-raising Total</i>	<i>Total Campaign Funds</i>
2016			
Trump	\$89 million	\$240 million	\$329 million*
Clinton	\$267 million	\$302 million	\$569 million
2012			
Obama	\$442 million	\$296 million	\$738 million
Romney	\$253 million	\$230 million	\$483 million
2008			
Obama	\$414 million	\$336 million	\$750 million
McCain	\$221 million	\$85 million**	\$306 million
2004			
Bush	\$270 million	\$80 million**	\$350 million
Kerry	\$235 million	\$80 million**	\$315 million
2000			
Bush	\$100 million	\$75 million**	\$175 million
Gore	\$50 million**	\$75 million**	\$125 million

Source: Federal Election Commission data. 2016 primary and general totals are estimates based on total fund-raising as of June 30, 2016.

Notes: \*\$66 million of this amount represents contributions or loans made by Trump to his campaign. \*\*Candidate Accepted Public Funds.

matching the record-breaking \$651 million raised by the Clinton and Obama campaigns combined for the 2008 primary.<sup>11</sup>

Neither the Trump nor the Clinton campaign came close to breaking Obama's record-setting 2008 fund-raising total of \$750 million for his campaign. Trump won the presidency in 2016 with \$329 million raised, which was only half of what Obama had raised eight years earlier and was less than what the winning presidential candidates raised in 2004, 2008, and 2012.<sup>12</sup> Trump was also the first candidate this century to raise and spend less campaign funds than his general election opponent and go on to win the election.

As table 12.1 shows, the Clinton campaign raised over 70 percent more than the Trump campaign during the course of the 2016 presidential race. In total, the Clinton campaign and other political committees supporting her (including the DNC) raised \$1.2 billion, twice the amount raised by Trump's campaign and other political committees supporting him (including the RNC).<sup>13</sup> The Trump campaign, however, had a significant advantage in earned media—including news media coverage and communications dissem-

inated for free on social media platforms such as Twitter and Facebook—that helped make up for its fund-raising deficit. As of March 2016, studies estimate that earned media referencing Trump had a value of nearly \$2 billion, compared to only \$746 million for Clinton, and Trump enjoyed \$400 million of earned media in February 2016 alone.<sup>14</sup> By the day after the election, Trump’s earned media for the election cycle had increased to about \$5 billion in value, which was double the amount for Clinton.<sup>15</sup>

The Trump campaign also spent significantly less than the Clinton campaign. Studies estimate that the Trump campaign spent less than \$5 per vote in total, while the Clinton campaign spent double that amount.<sup>16</sup> By contrast, in six battleground states, paid advertisements supporting Clinton outnumbered commercials supporting Trump by three to one. However, despite a clear campaign resource advantage, Clinton ended up losing five of those six states.<sup>17</sup>

### **OUTSIDE GROUP EXPENDITURES BROKE RECORDS IN 2016, FUELED PRIMARILY BY INCREASED SUPER PAC SPENDING**

The passage of the McCain-Feingold campaign finance law, combined with court decisions permitting unlimited corporate, union, and individual contributions to finance independent expenditures sponsored by outside organizations such as Super PACs and 501(c) organizations, has led to a proliferation of outside groups in recent years that are having a growing impact on federal elections. These outside groups, which have flourished on both the right and the left, are increasingly engaged in political activities that were once the province of political parties, such as voter registration drives, absentee ballot programs, GOTV, voter identification, and political advertising and issue advocacy efforts.

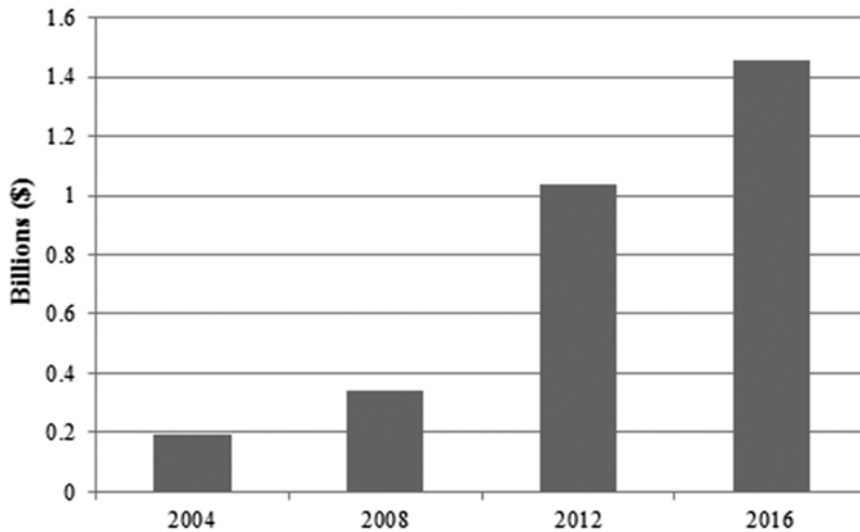
The McCain-Feingold law, which took effect during the 2004 presidential election cycle, prohibits the RNC and the DNC and the other national political party committees from raising or spending soft-money funds for any purpose. “Soft money” is defined as funds raised outside of the prohibitions and limitations of federal law, including corporate and labor union general treasury funds and individual contributions in excess of federal limits. Funds raised in accordance with federal law come from individuals and from federally registered PACs and are harder to raise; hence, these funds are commonly referred to in campaign finance parlance as “hard money.” Prior to McCain-Feingold, the national political parties were legally permitted to accept unlimited corporate, union and individual soft-money contributions and could use

these funds to help underwrite a wide variety of political and electoral activities, including voter registration efforts, absentee ballot drives, GOTV activities, slate cards, and similar ticket-wide political activities. The national political parties prior to McCain-Feingold were also able to use soft-money contributions to help finance issue advertisements supporting and opposing federal candidates. “Issue advertisements” are public communications that frequently attack or promote federal candidates and their records, but which refrain from expressly advocating the election or defeat of any candidate (which is referred to as “express advocacy”).

In *Citizens United v. FEC*, the U.S. Supreme Court in 2010 struck down the long-standing prohibition on corporate independent expenditures in connection with federal elections. That same year, in *SpeechNow v. FEC*, a federal appeals court invalidated limits on contributions from individuals to political committees that fund only independent expenditures for or against federal candidates. In advisory opinions issued after the *SpeechNow* decision, the FEC concluded that political committees formed strictly to make independent expenditures supporting or opposing federal candidates could accept unlimited contributions from individuals, corporations, and labor organizations.<sup>18</sup> These new kinds of political committees, which are prohibited from making contributions to federal candidates and to other federal political committees, are commonly referred to as “Super PACs.”

501(c) entities are organized and operate under Section 501(c) of the Internal Revenue Code and include social welfare organizations established under Section 501(c)(4) and trade associations and business leagues organized under Section 501(c)(6). Section 501(c)(4) and 501(c)(6) entities are permitted to accept unlimited corporate, union, and individual contributions and may engage in partisan political activities, provided such political activities are not their primary purpose. By contrast, Super PACs, as political committees registered with the FEC, are by definition partisan entities and may spend all of their funds on partisan political activities. Super PACs are required to publicly disclose their donors, whereas 501(c) organizations are generally not.

Super PACs and 501(c) organizations spent approximately \$1.5 billion in connection with the 2016 election. As figure 12.1 illustrates, this amount outstrips the \$1 billion spent by such outside groups in connection with the 2012 election and is over four times more than the \$338 million spent by outside groups in connection with the 2008 election. Super PAC and 501(c) entity spending in connection with the 2016 presidential race heavily favored Clinton, as outside groups spent nearly three times more in support of Clinton than they did in support of Trump.<sup>19</sup>



**Figure 12.1. Outside spending by election cycle (excluding political party committees).** *Source:* Center for Responsive Politics, [https://www.opensecrets.org/outsidespending/cycle\\_tots.php?cycle=2016&view=A&chart=N](https://www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2016&view=A&chart=N). Figure created by Michael E. Toner and Karen E. Trainer.

The largest Super PAC of the 2016 election cycle, Priorities USA Action, spent over \$130 million in support of Clinton. This amount comprised 76 percent of outside spending in support of Clinton during the election cycle.<sup>20</sup> Priorities USA Action aired 77,000 advertisements during the general election period, nearly as many as the Trump campaign’s 85,000.<sup>21</sup> Table 12.2 lists the largest nonparty outside spenders for the 2016 election cycle, almost all of which are Super PACs.

2016 also saw the proliferation of Super PACs geared toward electing a particular presidential candidate. Single-candidate Super PACs funded most outside group advertising during the primary phase of the presidential race.<sup>22</sup> A total of 188 single-candidate Super PACs registered with the FEC for the 2015–2016 election cycle, compared with only 103 during the 2011–2012 cycle. The 2016 presidential single-candidate Super PACs also raised and spent well over double the amount raised and spent by single-candidate Super PACs in the 2012 cycle.<sup>23</sup> Interestingly, the largest single-candidate Super PACs in the 2012, 2014, and 2016 cycles all supported candidates that ultimately lost.<sup>24</sup>

Campaigns are legally prohibited from coordinating their activities with Super PACs, but a number of candidates engaged in activities that neverthe-

**Table 12.2. Largest Nonparty Outside Spenders (2016 Election Cycle)**

<i>Name</i>	<i>Entity Type</i>	<i>2015–2016 Disclosed Spending</i>
Priorities USA Action ( <i>Pro-Clinton</i> )	Super PAC	\$132,438,801
Right to Rise USA ( <i>Pro-Jeb Bush</i> )	Super PAC	\$86,817,138
Senate Leadership Fund	Super PAC	\$85,096,402
Senate Majority PAC	Super PAC	\$79,593,191
Conservative Solutions PAC ( <i>Pro-Marco Rubio</i> )	Super PAC	\$55,443,483
National Rifle Assn	PAC/501C	\$52,906,796
Get Our Jobs Back	Super PAC	\$50,010,166
Congressional Leadership Fund	Super PAC	\$39,071,249
Women Vote!	Super PAC	\$33,574,994

Source: Center for Responsive Politics, <https://www.opensecrets.org/outsidespending/summ.php?disp=O>.

less benefited the Super PACs supporting them. Some presidential candidates adopted a strategy of working with a single-candidate Super PAC before formally entering the race. In some cases, a candidate's campaign committee provided public information or video footage that was later used by a Super PAC supporting that same candidate.<sup>25</sup> For example, after Marco Rubio's campaign tweeted a link to a website criticizing Senator Ted Cruz's tax plan, Rubio's Super PAC aired an advertisement making similar criticisms.<sup>26</sup> In total, the Super PACs supporting Jeb Bush, Rand Paul, Lindsey Graham, Mike Huckabee, George Pataki, Rick Perry, and Scott Walker raised \$181 million in 2015.<sup>27</sup> However, some of these candidates struggled to raise funds for their own campaigns and were forced to exit the race before the first presidential primaries and caucuses were even held.

Single-candidate Super PACs have become increasingly common in down-ballot races as well. For example, the largest single-candidate Super PAC in 2016 for a U.S. Senate race, Granite State Solutions, spent \$21 million in support of New Hampshire Senator Kelly Ayotte. The largest single-candidate Super PAC at the U.S. House level, Maryland USA, spent \$3.2 million to support Amie Hoeber in the Sixth Congressional District of Mary-



land.<sup>28</sup> On the whole, outside groups spent \$282 million on ten top Senate races, which amounted to 51 percent of total spending in connection with those races.<sup>29</sup>

Contributions to Super PACs in the 2015–2016 election cycle were made primarily by wealthy individuals. Despite concerns by some campaign finance observers about the potential for corporately funded Super PACs to emerge in the wake of the *Citizens United* ruling, corporate contributions to Super PACs during the 2016 election cycle comprised only 8 percent of total Super PAC donations (through July 31, 2016) and labor union contributions to Super PACs comprised less than 2 percent of the total.<sup>30</sup>

Remarkably, contributions from sixty of the largest donors accounted for 57 percent of overall Super PAC spending on the presidential race through the middle of October 2016.<sup>31</sup> Contributions to Super PACs by donors contributing over \$500,000 totaled over \$1 billion as of a week before the 2016 election, and this figure constituted nearly 15 percent of the total amount of money spent on the election.<sup>32</sup> Table 12.3 identifies the top ten Super PAC donors of the 2016 election cycle, several of which were individuals.

Labor unions also spent a significant amount of funds on the 2016 election. As of late August 2016, labor union spending in connection with the election (including contributions to Super PACs) totaled \$108 million, an increase of 38 percent compared to spending for the same time frame during the 2012 election.<sup>33</sup> By Election Day, the total increased to \$167 million. Although this amount represented record spending by labor unions, it paled in comparison to election-related contributions and expenditures made by individuals

**Table 12.3. Top Super PAC Donors, 2015–2016 Election Cycle**

<i>Donor Name</i>	<i>Total Amount</i>	<i>Ideology</i>
Thomas Steyer	\$66,044,744	100% Dem
Sheldon and Miriam Adelson	\$52,700,000	100% Rep
S. Donald Sussman	\$36,645,000	100% Dem
Fred Eychaner	\$32,000,000	100% Dem
National Education Assn	\$26,300,299	100% Dem
Carpenters & Joiners Union	\$23,548,194	98% Dem
Robert Mercer	\$22,451,000	100% Rep
Paul Singer	\$21,506,464	100% Rep
Michael R. Bloomberg	\$21,090,864	100% Dem
James & Marilyn Simons	\$18,025,000	100% Dem

Source: Center for Responsive Politics, <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&disp=D&type=V&superonly=S>, <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&disp=D&type=O&superonly=S>. Super PACs that made significant contributions to other Super PACs are excluded from the list.

**Table 12.4. Largest Traditional PACs by Total Contributions Made (2016 Election Cycle)**

<i>PAC Name</i>	<i>2015–2016 Total Contributions</i>
National Assn of Realtors PAC	\$3,912,000
National Beer Wholesalers Assn PAC	\$3,515,700
AT&T Inc PAC	\$3,100,750
Honeywell International PAC	\$2,785,864
National Auto Dealers Assn PAC	\$2,747,250
Lockheed Martin PAC	\$2,600,750
Blue Cross/Blue Shield PAC	\$2,585,898
American Bankers Assn PAC	\$2,524,507
Credit Union National Assn PAC	\$2,462,350
Intl Brotherhood of Electrical Workers PAC	\$2,413,200
National Assn of Insurance & Financial Advisors PAC	\$2,312,400

Source: Center for Responsive Politics, <https://www.opensecrets.org/pacs/>.

and was less than the total amount contributed by the top five Super PAC donors noted above.<sup>34</sup>

Despite the increase in labor union spending, 501(c) entities as a whole spent significantly less on the 2016 election than they did on the 2012 election. In 2016, 501(c) groups spent approximately \$181 million, compared to over \$308 million in 2012.<sup>35</sup> The number of 501(c) groups active in the election also decreased in 2016 as compared to 2012. In 2012, 266 501(c) groups spent funds in connection with the election as compared to only 87 in 2016.<sup>36</sup>

Because Super PACs and 501(c) organizations may not make contributions to federal campaign committees, traditional PACs—which can only accept hard-dollar contributions subject to federal contribution limits and source prohibitions—remain an important vehicle for supporting federal candidates.<sup>37</sup> Table 12.4 lists the ten largest PACs based upon the total amounts contributed to candidates during the 2016 election cycle. Each of these PACs are “connected” PACs associated with corporations, trade associations, labor organizations, and membership organizations. A number of connected PACs also sponsored advertisements supporting or opposing federal candidates in addition to making direct contributions to candidates.

**POLITICAL PARTY FUND-RAISING DECLINED IN  
2016 AND PARTY EXPENDITURES REPRESENTED  
A SMALLER SHARE OF TOTAL SPENDING  
ON THE ELECTION**

There are growing indications that national political party committees are becoming less relevant in federal elections as spending increasingly shifts to

Super PACs and other outside groups that are not subject to the hard-dollar fundraising requirements that apply to the national political party committees.

In late 2014, Congress passed an appropriations bill that included provisions allowing national political party committees to establish separate subaccounts with additional contribution limits. Contributions made to these accounts may be used to pay for office building expenditures, expenses incurred in recounts and other legal proceedings, and national convention expenses. Individuals and PACs may make contributions to these separate subaccounts in addition to making contributions to a national political party’s main political account. For example, an individual may contribute up to \$33,400 per year to the DNC’s main political account, plus up to \$33,400 per year to each of the DNC’s office building, recount, and convention subaccounts. Accordingly, an individual may contribute up to \$133,600 per year to the DNC or RNC. Between January 1, 2015, and June 30, 2016, national political party committees raised a total of \$86.7 million into these new subaccounts.<sup>38</sup>

Despite the ability to raise funds into newly established national party subaccounts, fund-raising totals for the RNC and DNC continued to decline in 2016 as compared with previous election cycles. In fact, when fund-raising figures are adjusted for inflation, the RNC and DNC raised less money collectively during the 2016 election cycle than they did in any previous election cycle dating back to 2004. Figure 12.2 lists fund raising totals (adjusted for

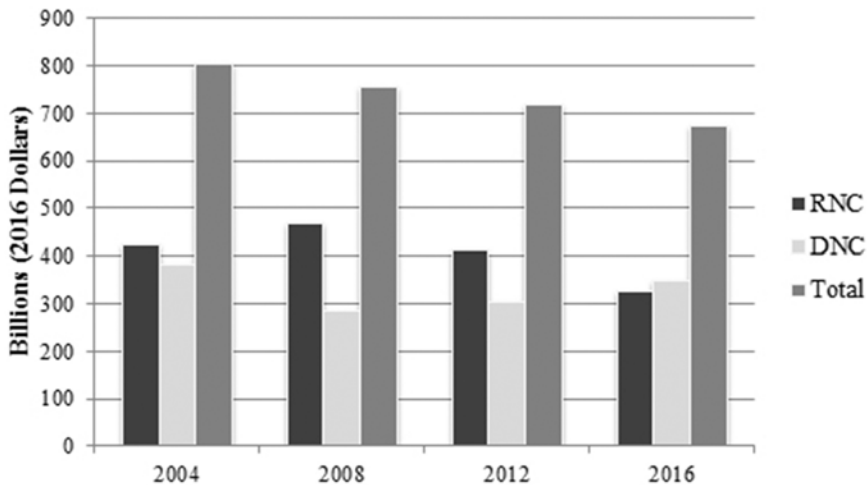


Figure 12.2. Political party fund-raising in presidential election cycles. Source: Federal Election Commission data.

inflation to 2016 dollars) for the RNC and DNC in presidential election cycles since 2004.

On the spending side, the RNC and DNC each spent far less during the 2016 election than in previous election cycles on independent expenditures in support of their presidential nominees. As of mid-October 2016, the RNC had spent \$321,000 on advertisements opposing Clinton, and none on advertisements supporting Trump. By comparison, the RNC spent \$18.2 million on independent expenditures in support of Bush in 2004, \$53.5 million on independent expenditures in support of McCain in 2008, and \$42.4 million on independent expenditures supporting Romney or opposing Obama in 2012.<sup>39</sup> The DNC spent over \$120 million on independent expenditures in connection with the 2004 presidential election, but only \$1.1 million on independent expenditures in connection with the 2008 presidential election. Revealingly, the DNC did not make any independent expenditures in connection with any races in the 2012 or 2016 election cycles.<sup>40</sup>

Because outside groups do not labor under the hard-dollar fund-raising restrictions that apply to the national political parties, outside groups can raise large amounts of money from a small group of donors in a very short period of time. As a result, Super PACs, 501(c) organizations, and other types of outside groups are now spending more on independent expenditures and other election-related communications than are political party committees. Outside spending, particularly by Super PACs, continued to grow in 2016. Spending by Super PACs comprised 47 percent of outside spending in the 2012 election, compared to 65 percent during the 2016 election cycle.<sup>41</sup> Overall outside spending jumped from \$1.3 billion in 2012 to \$1.7 billion in 2016, with Super PAC spending comprising \$1.1 billion of that total.<sup>42</sup>

Spending by political parties comprised only 15 percent of total outside group spending in connection with the 2016 election, compared to 20 percent for the 2012 election cycle. Figure 12.3 illustrates the breakdown of spending between different types of entities during the 2012 and 2016 election cycles.

Given the fund-raising advantages that outside groups currently enjoy over national political party committees, this spending imbalance may become even more pronounced in the future unless the campaign finance laws are changed to allow the national political parties to raise and spend the same kinds of funds as outside groups are legally able to do.

Political party committees continued to engage in extensive joint fund-raising activities in 2016. Under FEC regulations, candidates and political parties may simultaneously raise hard-dollar funds through joint fund-raising committees (“JFCs,”) which permit candidates and political parties to combine the per-recipient contribution limits and thereby solicit greater amounts of money from donors at any one time.<sup>43</sup>

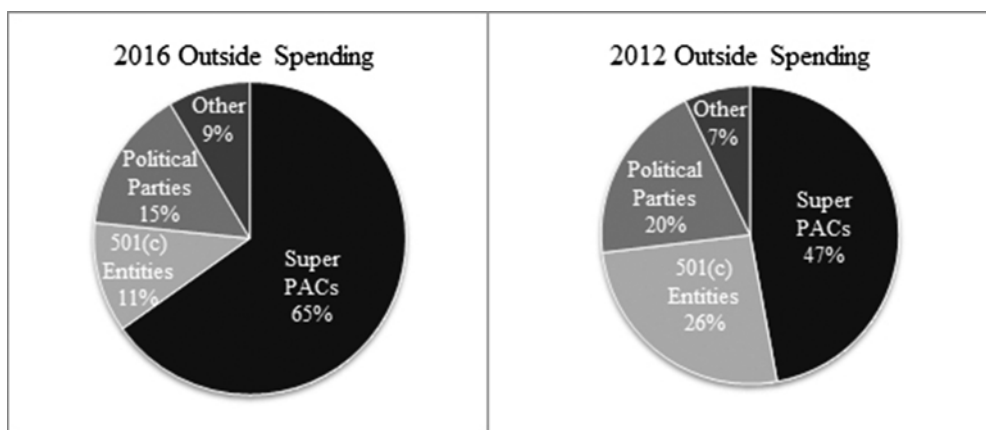


Figure 12.3. Comparison of 2012 and 2016 outside group spending by entity type. Source: Center for Responsive Politics, [https://www.opensecrets.org/outsidespending/fes\\_summ.php](https://www.opensecrets.org/outsidespending/fes_summ.php), [https://www.opensecrets.org/outsidespending/fes\\_summ.php?cycle=2012](https://www.opensecrets.org/outsidespending/fes_summ.php?cycle=2012). Figures created by Michael E. Toner and Karen E. Trainer.

The Hillary Victory Committee, which was comprised of the Clinton campaign committee, the DNC, and forty state Democratic Party committees, raised \$529.5 million and was the largest JFC of the 2016 election cycle.<sup>44</sup> By comparison, the Trump Victory Committee, which was comprised of the Trump campaign committee, the RNC, and twenty-one state Republican Party committees, raised \$108.2 million.<sup>45</sup>

The Hillary Victory Committee engaged in aggressive general political advertising, which is unusual for a JFC. Through the end of June 2016, the Hillary Victory Committee paid \$38 million to advertising and marketing vendors,<sup>46</sup> which covered the cost of disseminating advertisements that closely resembled commercials aired by the Clinton campaign, but which included a fund-raising appeal for the Hillary Victory Committee at the end of the advertisement.<sup>47</sup> However, since the advertisements were paid for by the Hillary Victory Committee, the advertising cost was ultimately shared among multiple entities rather than being paid for entirely by the Clinton campaign. Some campaign finance critics voiced concern over this advertising activity since the Hillary Victory Committee operated with a much higher contribution limit than the Clinton campaign.<sup>48</sup> As of this writing, it remains to be seen whether the FEC will take any adverse action against the Hillary Victory Committee or the Clinton campaign as a result of this novel political activity.

In April 2014, the Supreme Court in *McCutcheon v. FEC* invalidated the individual biennial aggregate limit on federal campaign contributions as

unconstitutional under the First Amendment. Prior to *McCutcheon*, federal law had capped the total amount of money that individuals could contribute to federal candidates and other federal political committees collectively during each two-year election cycle. Before the biennial aggregate contribution limit was struck down, individuals were prohibited from contributing more than \$123,200 to all federal candidates and political committees combined during the 2014 election cycle. The aggregate contribution limit existed in addition to the per-recipient “base limit” that applies to particular campaign committees, political party committees, and other federal political committees.<sup>49</sup> With the aggregate contribution limit gone, individual donors now only need to adhere to the base contribution limits and are free to contribute to an unlimited number of candidate committees and other political committees.

As of mid-October 2016, 1,174 individuals had contributed amounts to political committees other than Super PACs for the 2016 election in excess of the \$123,200 aggregate limit that existed prior to the *McCutcheon* ruling.<sup>50</sup> On average, each of these individuals contributed a total of \$281,568 to federal campaigns, PACs, and political party committees.<sup>51</sup> Moreover, many of these individuals also contributed to Super PACs and other outside groups.<sup>52</sup> By contrast, during the 2014 election cycle, only 727 individuals exceeded the pre-existing aggregate contribution limit.<sup>53</sup>

### THE TRUMP CAMPAIGN MADE EXTENSIVE USE OF ONLINE ADVERTISING AND SOCIAL MEDIA

The Internet came of age politically in 2008 as then-Senator Barack Obama’s campaign developed an unprecedented web-based strategy that involved millions of Americans in the presidential race through sophisticated and cutting-edge online technologies. During the 2012 and 2016 presidential elections, candidates, PACs, and outside interest groups once again developed and implemented new Internet technologies to disseminate political information in real time to millions of voters and raised increasing amounts of campaign funds online.

One key factor that has contributed to the rapid growth of the Internet in American politics during the last decade has been the FEC’s deregulatory approach to online activities. In 2006, the FEC adopted regulations, which remain in place today, concerning use of the Internet in federal elections. The FEC’s regulations exempt the Internet from the various prohibitions and restrictions of the McCain-Feingold law with only one exception: paid advertising placed on another person’s website.<sup>54</sup> The practical effect of the FEC’s

regulations has been that individuals, volunteers, and anyone else with access to a computer can conduct a wide range of Internet activities on behalf of federal candidates—such as setting up and maintaining websites, blogging, tweeting, emailing, linking, and posting videos on YouTube—without fear that the FEC will monitor or restrict their activities. Although it is difficult to measure or gauge precisely, there is no question that the FEC’s hands-off regulatory approach to online political activities has helped the Internet play a growing and vital role in American politics in the last decade.

The Obama campaign had a significant online advantage over the McCain campaign during the 2008 presidential race.<sup>55</sup> In somewhat of a surprise, Republican candidates made major strides during the 2010 midterm election in using the Internet to advance their candidacies, and some Republican candidates even surpassed their Democratic opponents in several important online metrics.<sup>56</sup> Given the Internet gains that some prominent Republican candidates achieved in 2010, it was unclear at the outset of the 2012 presidential race whether the Obama campaign would have as pronounced an online advantage over the Republican nominee as was the case in 2008. However, by any plausible metric, the Obama campaign dominated the Romney campaign online in 2012, and this may have contributed to the Obama campaign’s voter turnout advantage in the battleground states on Election Day.<sup>57</sup>

During the final months of the 2016 presidential race, the Trump campaign’s spending focused on online advertising rather than on more traditional types of advertising. In August 2016, the Trump campaign’s largest vendor was a digital advertising firm, which was paid \$11.1 million.<sup>58</sup> The digital advertising firm was also the Trump campaign’s largest vendor in July 2016, receiving \$8.4 million, which was nearly half of the campaign’s total fund-raising for the month.<sup>59</sup> In August, the Trump campaign funded five online advertisements for every three online advertisements funded by the Clinton campaign.<sup>60</sup> The Clinton campaign, on the other hand, spent approximately \$200 million on TV advertisements in the final months of the election, more than twice the amount spent by the Trump campaign.<sup>61</sup>

The Trump campaign also relied heavily on social media throughout the campaign. During the Republican National Convention, the Trump campaign paid for the “promoted hashtag of the day” on Twitter.<sup>62</sup> Overall online interest in Trump, measured by Google searches and mentions on Twitter and Facebook, among other social media platforms, was three times higher than online interest in Clinton.<sup>63</sup>

Table 12.5 compares social media metrics for the Trump and Clinton campaigns and illustrates Trump’s sizeable advantage in a number of key areas.

The Trump campaign credited Facebook with helping the campaign raise \$250 million online during the 2016 race, and there is no question that

**Table 12.5. Comparison of Campaign Online Activity**

<i>Metric</i>	<i>Trump</i>	<i>Clinton</i>
Number of Twitter Followers	10.7 Million	8.1 Million
Number of Facebook Page Likes	10.2 Million	5.4 Million
Number of “People Talking About This” on Facebook	3.1 Million	3.3 Million
*Number of YouTube Videos	14.9 Million	10.6 Million
Instagram Followers	2.2 Million	1.8 Million

Source: William Arruda, “Donald Trump vs. Hillary Clinton—The Social Media Report,” *Forbes*, August 7, 2016, <http://www.forbes.com/sites/williamarruda/2016/08/07/donald-trump-vs-hillary-clinton-the-social-media-report/2/#2fc58d27160a>. Data as of August 5, 2016.

Note: \*Neither candidate had an official YouTube channel. These numbers represent the number of videos on YouTube referencing the candidate.

Trump’s adroit use of social media was a key factor in his winning the presidency.<sup>64</sup>

### LOOKING AHEAD TO 2020

Donald Trump’s remarkable win in the 2016 presidential election will be studied by political scientists and campaign operatives alike for many years. Trump’s path to victory also must be assessed by campaign finance scholars because Trump won the White House while being significantly outspent by multiple candidates in the Republican primary and by Hillary Clinton in the general election. No candidate in the modern era has ever overcome such a campaign resource disadvantage and been elected president, but then again no candidate in recent memory was as adept as Trump in communicating directly with voters, mastering social media, and attracting copious amounts of earned media. In many ways, Trump’s election calls into question the continued vitality of many assumptions in campaign finance literature that a presidential candidate can never raise enough money and that those candidates who can afford to pay for huge campaign staffs and paid advertising programs have an overwhelming advantage in capturing the White House.

Assuming Trump seeks reelection in 2020, it is hard to imagine that any viable Republican primary challenger could emerge with all the strengths of incumbency in modern presidential politics. On the Democratic side, assuming Joseph Biden, the outgoing vice president, and 2016 vice presidential nominee Tim Kaine decline to run, all the ingredients will exist for a wide-open primary with a large number of next-generation candidates. Although there may not be a clear frontrunner for the 2020 presidential race, Bernie Sanders’ ability to come out of nowhere in the 2016 race and raise over \$200



million for what was seen as a long-shot primary battle against Clinton is powerful evidence that multiple Democratic presidential candidates will likely be able to amass substantial campaign war chests for the primaries and the general election alike. The stage will then be set for the 2020 presidential contest to be as highly competitive as 2016 and feature unexpected campaign finance innovations and developments.

## NOTES

1. The Clinton campaign and its allies (including the Democratic National Committee [“DNC”] and Super PACs supporting Clinton) collectively spent approximately \$1.2 billion on the 2016 election while the Trump campaign and its allies (including the Republican National Committee [“RNC”] and supportive Super PACs) collectively spent approximately \$600 million. Isaac Arnsdorf, “Trump Won with Half as Much Money as Clinton Raised,” *Politico*, December 8, 2016, <http://www.politico.com/story/2016/12/trump-clinton-campaign-fundraising-totals-232400>.

2. Ashley Balcerzak, “UPDATE: Federal Elections to Cost Just under \$7 Billion, CRP Predicts,” November 2, 2016, <https://www.opensecrets.org/news/2016/11/update-federal-elections-to-cost-just-under-7-billion-crp-forecasts/>.

3. *Ibid.*

4. “Outside Spending,” OpenSecrets.org, <https://www.opensecrets.org/outsidespending/index.php?type=Y>.

5. Federal Election Commission, “Federal Election Commission Certifies Federal Matching Funds for Stein,” August 2, 2016, [http://fec.gov/press/press2016/news\\_releases/20160802\\_2release.shtml](http://fec.gov/press/press2016/news_releases/20160802_2release.shtml).

6. Individuals could contribute up to \$2,700 per election to presidential candidates for the 2016 election and federal multi-candidate PACs could contribute up to \$5,000 per election, with the primary and general elections considered separate elections. The individual contribution limits are adjusted for inflation each election cycle.

7. The public grant for the general election and the corresponding national spending limit are adjusted for inflation each election cycle. See Federal Election Commission Brochure, “Presidential Spending Limits for 2016,” [http://www.fec.gov/pages/brochures/pubfund\\_limits\\_2016.shtml](http://www.fec.gov/pages/brochures/pubfund_limits_2016.shtml).

8. The Obama campaign had a remarkable resource advantage over the McCain campaign in 2008, including a nearly 4-to-1 edge during the general election phase of the campaign. The Obama campaign’s broad resource advantage was particularly pronounced in the final weeks of the 2008 campaign. In September 2008 alone the Obama campaign raised over \$150 million, and between October 15 and November 24 the Obama campaign raised an additional \$104 million and spent \$136 million. To put these Obama campaign fund-raising and spending figures in perspective, the McCain campaign received only \$85 million of public funds to finance all of its political activities during the entire general election campaign.

9. Federal Election Commission data.

10. *Ibid.*

11. Ibid.

12. As of May 30, 2016, days after clinching the Republican nomination, the Trump campaign had only raised a total of \$63 million to date. Of this amount, \$46 million was loaned or contributed by Trump himself, while only \$17 million came from other donors. The last time a major party candidate raised and spent so little to become the party's nominee was in 2000, when Gore spent \$50 million in connection with the Democratic primary. However, Gore accepted public funds for the 2000 race, while Trump did not. Christopher Good, "Donald Trump on Pace to Raise Less Money Than Almost Any Other Presidential Candidate in Modern Era." ABC News, June 21, 2016, <http://abcnews.go.com/Politics/donald-trump-pace-raise-money-presidential-candidate-modern/story?id=40007132>.

13. Arnsdorf, "Trump Won with Half as Much Money as Clinton Raised."

14. Nicholas Confessore and Karen Yourish, "\$2 Billion Worth of Free Media for Donald Trump," *New York Times*, March 15, 2016, <http://www.nytimes.com/2016/03/16/upshot/measuring-donald-trumps-mammoth-advantage-in-free-media.html>.

15. Ginger Gibson and Grant Smith, "At Under \$5 Each, Trump's Votes Came Cheap," *Reuters*, November 9, 2016, <http://www.reuters.com/article/us-usa-election-spending-idUSKBN1341JR>.

16. Ibid.

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18. FEC Advisory Opinions 2010–09 and 2010–11.

19. Blackburn, "Money Doesn't Buy Elections: 2016 Presidential Election Edition."

20. Soo Rin Kim, "Mine, All Mine: Single Candidate Super PACs, Creeping Down-Ballot," Center for Responsive Politics, November 10, 2016, <https://www.opensecrets.org/news/2016/11/mine-all-mine-single-candidate-super-pacs-creeping-down-ballot/>.

21. Michael Beckel, "Team Clinton Sponsored 75 Percent of TV Ads in 2016 Presidential Race," Center for Public Integrity, November 8, 2016, <https://www.publicintegrity.org/2016/11/08/20452/team-clinton-sponsored-75-percent-tv-ads-2016-presidential-race>.

22. Wesleyan Media Project, "Clinton and Sanders Even in Ad War, Cruz and Rubio Gain on Bush in S. Carolina," February 18, 2016, [http://mediaproject.wesleyan.edu/wp-content/uploads/2016/02/2016Release2\\_FINAL-3.pdf](http://mediaproject.wesleyan.edu/wp-content/uploads/2016/02/2016Release2_FINAL-3.pdf).

23. Center for Responsive Politics, "2016 Outside Spending by Single-Candidate Super PACs," <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&chrt=V&disp=O&type=C>.

24. Center for Responsive Politics, "2012 Outside Spending by Single-Candidate Super PACs," <http://opensecrets.org/outsidespending/summ.php?cycle=2012&chrt=V&disp=O&type=C>. The largest single-candidate Super PAC in 2012, Restore our Future, supported Romney in the presidential race. The largest single-candidate Super PAC in 2014, Put Alaska First PAC, supported Senator Mark Begich's re-election in Alaska. The largest single-candidate Super PAC in 2016, Priorities USA Action, supported Clinton's presidential campaign.

25. Under FEC regulations, information that campaigns publicly disseminate that is subsequently used by a Super PAC or other entity generally cannot result in unlawful coordination.

26. Matea Gold, “The Rubio Campaign Tweets—and the Super PAC Airs an Ad,” *Washington Post*, February 4, 2016, [https://www.washingtonpost.com/politics/rubio-super-pac-ads-follow-playbook-of-campaigns-rapid-response-site/2016/02/04/448a8120-cb5a-11e5-a7b2-5a2f824b02c9\\_story.html](https://www.washingtonpost.com/politics/rubio-super-pac-ads-follow-playbook-of-campaigns-rapid-response-site/2016/02/04/448a8120-cb5a-11e5-a7b2-5a2f824b02c9_story.html).

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30. Theo Francis, “Despite Citizens United, Corporate Super PAC Contributions Trail Individuals, Study Finds,” *The Wall Street Journal*, November 2, 2016, <http://www.wsj.com/articles/despite-citizens-united-corporate-super-pac-contributions-trail-individuals-study-finds-1478059201>.

31. Rebecca Ballhaus, “Wealthy Donors Played Outsize Role This Election,” *The Wall Street Journal*, November 7, 2016, <http://www.wsj.com/articles/wealthy-donors-played-outsize-role-this-election-1478561726>.

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33. Brody Mullins, Rebecca Ballhaus, and Michelle Hackman, “Labor Unions Step Up Presidential-Election Spending,” *The Wall Street Journal*, October 18, 2016, <http://www.wsj.com/articles/big-labor-unions-step-up-presidential-election-spending-1476783002>.

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35. Robert Maguire, “\$1.4 Billion and Counting in Spending by Super PACs, Dark Money Groups,” Center for Responsive Politics, November 9, 2016, <https://www.opensecrets.org/news/2016/11/1-4-billion-and-counting-in-spending-by-super-pacs-dark-money-groups/>.

36. Soo Rin Kim, “Super PAC Spending Hits \$500 Million, While 501(c)s Hit the Brakes,” Center for Responsive Politics, September 1, 2016, <https://www.opensecrets.org/news/2016/09/super-pac-spending-reaches-500m/>.

37. Traditional PACs, unlike Super PACs, may make contributions to federal candidates and other federal political committees. Traditional PACs are prohibited from accepting corporate and labor union contributions and may accept contributions from individuals up to \$5,000 per calendar year. Traditional PACs are referred to herein as “PACs.”

38. Federal Election Commission, Contributions to Accounts of National Party Committees, September 9, 2016, [http://www.fec.gov/press/summaries/2016/tables/party/Prty10\\_2016\\_18m.pdf](http://www.fec.gov/press/summaries/2016/tables/party/Prty10_2016_18m.pdf).

39. Kenneth P. Vogel and Alex Isenstadt, “RNC TV Ad Spending for Trump: \$0,” *Politico*, October 13, 2016, <http://www.politico.com/story/2016/10/rnc-donald-trump-ad-spending-229711>.

40. Federal Election Commission data.

41. “Outside Spending,” OpenSecrets.org, [https://www.opensecrets.org/outsidespending/fes\\_summ.php](https://www.opensecrets.org/outsidespending/fes_summ.php)? These figures include party spending.

42. Ibid.

43. For example, if a JFC included a presidential campaign, a national political party committee, and two state political party committees, individual donors could contribute up to \$48,400 to the JFC—up to \$5,400 to the presidential campaign (\$2,700 for the primary and \$2,700 for the general election), \$33,400 to the national political party, and \$10,000 each to the two state political parties. Any prior contributions that individual donors made to any of the entities participating in the JFC would count against what could be contributed to the JFC.

44. “Joint Fundraising Committees,” OpenSecrets.org, <http://opensecrets.org/jfc/index.php>.

45. Federal Election Commission data.

46. Kenneth P. Vogel and Isaac Arnsdorf, “DNC Sought to Hide Details of Clinton Funding Deal,” *Politico*, July 26, 2016, <http://www.politico.com/story/2016/07/dnc-leak-clinton-team-deflected-state-cash-concerns-226191>.

47. Michael Beckel, “Clinton’s Super-Sized Fundraising Machine Pushes Legal Boundaries,” Center for Public Integrity, November 7, 2016, <https://www.publicintegrity.org/2016/11/07/20437/clinton-s-super-sized-fundraising-machine-pushes-legal-boundaries>.

48. Individuals could contribute up to \$436,100 to the Hillary Victory Committee, but only \$5,400 (\$2,700 for the primary and \$2,700 for the general) to the Clinton campaign.

49. These “base limits” include a \$2,700 per election limit on individual contributions to federal campaign committees and a \$5,000 annual limit on individual contributions to PACs.

50. Jack Noland, “In First Post-McCutcheon Presidential Election, More Big Donors, Giving More,” Center for Responsive Politics, November 10, 2016, <https://www.opensecrets.org/news/2016/11/in-first-post-mccutcheon-presidential-election-more-big-donors-giving-more/>.

51. Ibid.

52. Ibid.

53. Ibid.

54. For example, if an individual spends money to take out an advertisement for a federal candidate that appears on the home page of CNN.com or as a sponsored result in a Google search, the transaction will be subject to regulation in a fashion similar to television, radio, and other mass-media advertising. However, messages that individuals create on their own websites or post without charge on other websites such as Twitter, Facebook, or YouTube are not subject to FEC regulation.

55. The Obama campaign far surpassed the McCain campaign in a number of key online indicators in 2008, particularly in the volume of Obama political activity that occurred on popular social networking websites such as Facebook, YouTube, and Twitter. For example, the Obama campaign had nearly 2.4 million Facebook friends, while the McCain campaign had under 625,000. Andres Rasiej and Micah Sifry, “The Web: 2008’s Winning Ticket,” *Politico*, November 12, 2008, <http://www.politico.com/story/2008/11/the-web-2008s-winning-ticket-015520>. Similarly, the Obama campaign had more than 125,000 Twitter followers as compared with only 5,319 for the McCain campaign, and the Obama campaign posted more than 1,800 videos on YouTube, whereas the McCain campaign posted only 330 such videos; Ibid.

56. See HeadCount, "GOP Winning Social Media battle by Wide Margin," <http://www.headcount.org/wp-content/uploads/2010/09/VIEW-REPORT1.pdf>.

57. For example, as of November 6, 2012, Obama had 21.8 million followers on Twitter compared to 1.7 million followers for Romney. The Obama campaign posted 931 YouTube videos between January 1, 2011 and November 6, 2012, compared to 320 videos posted by the Romney campaign. CampaignPop Social Analytics for the 2012 Campaign, <http://www.campaignpop.com>.

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