

# THE AMERICAN PROSPECT

## The Democracy Prospect: How Big Money Has Hurt the GOP

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The GOP's pro-deregulation platform backfires, the FEC hears complaints about Ted Cruz, and why *Citizens United* is far from the only problem.

One of the ironies of the rules-free campaign system ushered in by the Supreme Court's *Citizens United v. FEC* ruling six years ago is that the Republican Party, which has championed and encouraged political money deregulation, has in some ways paid the highest price for it. Senate Majority Leader Mitch McConnell, of Kentucky, threw his full support behind the *Citizens United* challenge at the time, even joining in oral arguments via constitutional lawyer Floyd Abrams before the Supreme Court. GOP leaders and their allies, including the U.S. Chamber of Commerce, have mounted multiple legal challenges to campaign finance restrictions and even disclosure rules, which they argue violate the First Amendment.

On the surface, the brawling GOP presidential primary that has thrust the controversial Donald Trump to the front of the Republican pack has nothing to do with *Citizens United*—and may even argue against its importance. After all, Trump has largely funded his own campaign until now, and **recently boasted** that big spending by the trailing ex-Florida Governor Jeb Bush proves that “you can’t buy elections any more.”

But Trump’s success illustrates on two fronts how the Republican Party’s pro-deregulation platform has backfired. First, big-spending super PACs have helped fracture the GOP field, making it difficult for any one of the four candidates competing for the right to represent the party’s more mainstream wing—Bush, New Jersey Governor Chris Christie, Ohio Governor John Kasich, and Florida Senator Marco Rubio—to rise to the surface.

The super PACs backing these four candidates have collectively **spent close to \$100 million** so far in this election, according to a new web tool unveiled this week by the nonpartisan Campaign Finance Institute. That’s four times more than super PACs had spent at this point in the 2012 race, CFI found.

Had weaker GOP primary hopefuls not been propped up by these unregulated outside allies, Trump would arguably have faced a single mainstream GOP adversary, not four—giving one of them a better shot at gaining traction. As it is, Trump **appears within shooting distance** of

actually becoming the GOP nominee—a development that horrifies many Republicans, who predict fallout for GOP congressional candidates and for the party itself.

Republicans' embrace of deregulation has also helped alienate activists in the GOP's Tea Party wing, who have voiced growing anger over Wall Street special interests and "crony capitalism." Conservative outrage over big money and its role propping up the so-called party establishment **surfaced during last year's debate** over a McConnell-authored rider to relax political party fundraising rules. By failing to craft a campaign-finance platform that answers to populist concerns, the GOP has created a vacuum that has been all too easily filled by Trump.

## **Cruz Cash**

Once reports surfaced that Texas Senator and GOP presidential hopeful Ted Cruz had received unreported campaign loans from both **Citibank** and **Goldman Sachs** to help finance his 2012 election to the Senate, it was only a matter of time before someone lodged a formal complaint. Now Democracy 21 and the Campaign Legal Center have **asked the FEC** to look into the Cruz loans, arguing that "the failure to report these loans caused an informational injury by depriving complainants, voters and members of the public of information that they were entitled by law to have." The Cruz campaign has cited inadvertent omissions, and is working with the FEC to update its disclosures.

In the end, Cruz's 2012 Senate loans may turn out to be less interesting than the elaborate and complicated **campaign-finance apparatus** now backing his presidential bid. Cruz supporters pioneered a new model of campaign spending when they set up **no fewer than four** super PACs, all named with variations on the moniker "Keep the Promise," to give individual big donors maximum say-so on how their money was spent.

One of those donors, New York hedge fund manager Robert Mercer, has given no less than \$11 million to one of the Keep the Promise super PACs, according to *Bloomberg*, which published a **lengthy profile** of Mercer and his influential and often stealthy campaign activities this week. Another mysterious super PAC backing Cruz, known as Stand for Truth, **has launched** a multi-million dollar ad campaign on his behalf, according to the Center for Public Integrity—but because of a quirk in FEC regulations, the group won't have to file any disclosures until January 31, just one day before the Iowa caucuses.

## **Beyond *Citizens United***

The *Citizens United* ruling has drawn so much public attention, including a popular campaign to amend the Constitution to overturn the 2010 ruling, that the Supreme Court's other political money rulings often get short shrift. But as the Brennan Center for Justice at New York University's School of Law **reported this week**, *Citizens United* is just one of five major high court rulings under Chief Justice John Roberts that have substantially narrowed the constitutionality of political money limits.

These include the 2010 *SpeechNow.org v. FEC* ruling that legalized super PACs, and the *McCutcheon v. FEC* ruling that in 2014 overturned the per-election cap on aggregate contributions to parties and candidates. The *McCutcheon* ruling concluded, among other findings, that only restrictions on explicit quid pro quo corruption pass constitutional muster. The granddaddy of all campaign-finance rulings—the high court’s landmark 1976 decision in *Buckley v. Valeo* to uphold the post-Watergate contribution caps and disclosure rules—turns 40 on January 30. The *Buckley* anniversary will be the topic of two major campaign-finance conferences, **one hosted** by the Cato Institute and the Center for Competitive Politics on January 26, the **other hosted** by Demos on January 28 at the National Press Club. It’s all part of what **I argue** is an increasingly urgent campaign-finance conversation that the *Citizens United* ruling and its aftermath have moved to the front burner.