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Billions Unchained: America is a Democracy of the Wealthy

By Andy Kroll

May 21, 2013

Billionaires with an axe to grind, now is your time. Not since the days before a bumbling crew of would-be break-in artists set into motion the fabled Watergate scandal, leading to the first far-reaching restrictions on money in American politics, have you been so free to meddle. There is no limit to the amount of money you can give to elect your friends and allies to political office, to defeat those with whom you disagree, to shape or stunt or kill policy, and above all to influence the tone and content of political discussion in this country.

Today, politics is a rich man's game. Look no further than the 2012 elections and that season's biggest donor, 79-year-old casino mogul Sheldon Adelson. He and his wife, Miriam, shocked the political class by first giving \$16.5 million in an effort to make Newt Gingrich the Republican presidential nominee. Once Gingrich exited the race, the Adelsons invested more than \$30 million in electing Mitt Romney. They donated millions more to support GOP candidates running for the House and Senate, to block a pro-union measure in Michigan, and to bankroll the U.S. Chamber of Commerce and other conservative stalwarts (which waged their own campaigns mostly to help Republican candidates for Congress). All told, the Adelsons donated \$94 million during the 2012 cycle — nearly four times the previous record. And that's only the money we know about. When you add in so-called dark money, one estimate puts their total giving at closer to \$150 million.

It was not one of Adelson's better bets. Romney went down in flames; the Republicans failed to retake the Senate and conceded seats in the House; and the majority of candidates backed by

Adelson-funded groups lost, too. But Adelson, who oozes chutzpah as only a gambling tycoon worth \$26.5 billion could, is undeterred. Politics, he told the Wall Street Journal in his first post-election interview, is like poker: “I don’t cry when I lose. There’s always a new hand coming up.” He said he could double his 2012 giving in future elections. “I’ll spend that much and more,” he said. “Let’s cut any ambiguity.”

But simply tallying Adelson’s wins and losses — or the Koch brothers’, or any other mega-donors’ — misses the bigger point. What matters is that these wealthy funders were able to give so much money in the first place.

With the advent of super PACs and a growing reliance on secretly funded nonprofits, the very wealthy can pour their money into the political system with an ease that didn’t exist as recently as this moment in Barack Obama’s first term in office. For now at least, Sheldon Adelson is an extreme example, but he portends a future in which 1-percenters can flood the system with money in ways beyond the dreams of ordinary Americans. In the meantime, the traditional political parties, barred from taking all that limitless cash, seem to be sliding toward irrelevance. They are losing their grip on the political process, political observers say, leaving motivated millionaires and billionaires to handpick the candidates and the issues. “It’ll be wealthy people getting together and picking horses and riding those horses through a primary process and maybe upending the consensus of the party,” a Democratic strategist recently told me. “We’re in a whole new world.”

The Rise of the Super PAC

She needed something sexy, memorable. In all fairness, anything was an improvement on “independent expenditure-only political action committee.” Eliza Newlin Carney, one of D.C.’s trustiest scribes on the campaign money beat, didn’t want to type out that clunker day after day. She knew this was big news — the name mattered. Then it came to her:

Super PAC.

The Supreme Court’s 2010 Citizens United decision is often blamed — or hailed — for creating super PACs. In fact, it was a lesser-known case, *SpeechNow.org vs. Federal Election Commission*, decided by the D.C. Circuit Court of Appeals two months later, that did the trick. At the heart of *SpeechNow* was the central tension in all campaign money fights: the balance between stopping corruption or the appearance of corruption, and protecting the right to free speech. In this instance, the D.C. appeals court, influenced by the Citizens United decision, landed on the side of free speech, ruling that limits to giving and spending when it came to any group — and here’s the kicker — acting independently of candidates and campaigns violated the First Amendment.

Wonky as that may sound, *SpeechNow* reconfigured the political landscape and unchained big donors after decades of restrictions. The lawyers who argued the case, the academics and legal eagles whose expertise is campaign finance, and the beat reporters like Carney Newlin soon grasped what *SpeechNow* had wrought: a new, turbocharged political outfit that had no precedent in American politics.

Super PACs can raise unlimited amounts of money from pretty much anyone — individuals, corporations, labor unions — and there is no limit on how much they can spend. Every so often, they must reveal their donors and show how they spent their money. And they can’t directly

coordinate with candidates or their campaigns. For instance, Restore Our Future, the super PAC that spent \$142 million to elect Mitt Romney, couldn't tell his campaign when or where it was running TV ads, couldn't share scripts, couldn't trade messaging ideas. Nor could Restore Our Future — yes, even its founders wince at the name — sit down with Romney and tape an interview for a TV ad.

It's far easier, in other words, for a super PAC to attack the other guy, which helps explain all the hostility on the airwaves in 2012. Sixty-four percent of all ads aired during the presidential race were negative, up from 51% in 2008, 44% in 2004, and 29% in 2000. Much of that negativity can be blamed on super PACs and their arsenal of attack ads, according to a recent analysis by Wesleyan University's Erika Franklin Fowler and Washington State University's Travis Ridout. They found that a staggering 85% of all ads aired by "outside groups" were negative, while only 5% were positive.

And it will only get worse. "It's going to be the case that the more super PACs invest in elections, the more negative those elections will be," Michael Franz, a co-director of the Wesleyan Media Project, told me. "They're the ones doing the dirty work." Think of them as the attack dogs of a candidate's campaign — and the growling packs of super PACs are growing fast.

The savviest political operatives quickly realized how potentially powerful such outfits could be when it came to setting agendas and influencing the political system. In March 2010, Karl Rove, George W. Bush's erstwhile political guru, launched American Crossroads, a super PAC aimed at influencing the 2010 midterms. As consultants like Rove and the wealthy donors they courted saw the advantages of having their own super PACs — no legal headaches, no giving or spending limits — the groups grew in popularity.

By November 2010, 83 of them had spent \$63 million on the midterm elections. Nearly \$6 of every \$10 they put out supported conservative candidates, and it showed: buoyed by the Tea Party, Republicans ran roughshod over the Democrats, retaking control of the House and winnowing their majority in the Senate. It was a "shellacking," as President Obama put it, powered by rich donors and the new organizations that went with them.

In 2012, no one, it seemed, could afford to sit on the sidelines. Having decried super PACs as "a threat to democracy," Obama and his advisers flip-flopped and blessed the creation of one devoted specifically to reelecting the president. Soon, they were everywhere, at the local, state, and federal levels. A mom started one to back her daughter's congressional campaign in Washington State. Aunts and uncles bankrolled their nephew's super PAC in North Carolina. Super PACs spent big on abortion, same-sex marriage, and other major issues.

In all, the number of super PACs shot up to 1,310 during the 2012 campaign, a 15-fold increase from two years earlier. Fundraising and spending similarly exploded: these outfits raised \$828 million and spent \$609 million.

But what's most striking about these groups is who funds them. An analysis by the liberal think tank Demos found that out of every \$10 raised by super PACs in 2012, \$9 came from just 3,318 people giving \$10,000 or more. That small club of donors is equivalent to 0.0011% of the U.S. population.

Into the Shadows

In late April, roughly 100 donors gathered at a resort in Laguna Beach, California. They were all members of the Democracy Alliance, a private group of wealthy liberals. Over five days, they swapped ideas on how best to promote a progressive agenda and took in pitches from leaders of the most powerful liberal and left-leaning groups in America, including Organizing for Action, the rebooted version of Obama's 2012 presidential campaign. Since the Democracy Alliance's founding in 2005, its members have given \$500 million to various causes and organizations. At the Laguna Beach event alone, its members pledged a reported \$50 million.

At the same time, about 100 miles to the east, a similar scene was playing out. A few hundred conservative and libertarian donors descended on the Renaissance Esmeralda Resort and Spa in Palm Springs for the latest donor conference convened by billionaire Charles Koch, one-half of the mighty "Koch brothers." Over two days, donors mingled with politicians, heard presentations by leading activists, and pledged serious money to bankroll groups promoting the free-market agenda in Washington and around the country.

The philosophies of these two groups couldn't be more different. But they have this in common: the money raised by the Democracy Alliance and the Kochs' political network is secret. The public will never know its true source. Call it "dark money."

So what is dark money? How does it wind up in our elections? Say you're a billionaire and you want to give \$1 million to anonymously influence an election. You're in luck: you can give that money, as many donors have, to a nonprofit organized under the 501(c)(4) section of the tax code. That nonprofit, in turn, can spend your money on election-related TV ads or mailers or online videos. But there's a catch: unlike super PACs, the majority of a 501(c)(4) nonprofit's work can't be political. Note, though, that where the IRS draws the line on how much politicking is too much, and even what the taxman defines as political, is very murky. And until Congress and the IRS straighten all of that out, donors wanting to influence elections have a mostly scrutiny-free way to unload their money.

This type of nonprofit has a long history in U.S. politics. The Sierra Club, for instance, has a 501(c)(4) affiliate, as does the National Rifle Association. But in recent years, political operatives and wealthy donors have seized on this breed of nonprofit as a new way to shovel secret money into campaigns. Between 2010 and 2012, the number of applications for 501(c)(4) status spiked from 1,500 to 3,400, according to IRS official Lois Lerner.

During the 2010 campaign, politically active nonprofits — "super secret spooky PACs," as Stephen Colbert calls them — outspent super PACs by a three to two margin, according to a Center for Public Integrity analysis. Take the American Action Network (AAN), run by former Senator Norm Coleman of Minnesota. The group purports to be an "issue-based" nonprofit that only dabbles in politics, but its tax records suggest otherwise. From July 2009 through June 2011, as Citizens for Ethics and Responsibility in Washington noted, 60% of AAN's money went toward politics. (An AAN spokesman called the complaint "baseless.")

Because they're so lacking in transparency, some nonprofits have been emboldened to bend — if not break — the tax law. One of the more egregious examples was benignly named the Commission on Hope, Growth, and Opportunity (CHGO). Created in the summer of 2010, it informed the IRS that it wouldn't spend a penny on politics. During the 2010 elections, however, it put \$2.3 million into ads attacking 11 Democratic congressional candidates. Then, sometime in 2011, CHGO simply closed up shop and disappeared — a classic case of political hit-and-run.

And it wouldn't have happened without a secretive wealthy bankroller: of the \$4.8 million raised by CHGO, tax records show that \$4 million came from a single donor (though we don't know his or her name).

Transparency advocates and reformers supporting more limits on spending have pushed back against the new wave of dark money. They have filed numerous complaints with the IRS and the Federal Election Commission alleging that politically active nonprofits are flouting the law and demanding a crackdown. Marcus Owens, the former head of the IRS's exempt organizations division, which oversees politically active nonprofits, agrees that the agency needs to take action. "The government's going to have to investigate them and prosecute them," Owens, who is now in private practice, told me in January. "In order to maintain the integrity of the process, they're going to be forced to take action."

Don't hold your breath for that. This week, a report by a Treasury Department inspector general revealed that IRS staffers singled out tea partiers and other conservative groups which had applied for tax-exempt status for special scrutiny. Now, Republicans and Democrats are howling with outrage and demanding that heads roll. One result of this debacle, ex-IRS director Marcus Owens told me, is that the IRS will certainly shy away from cracking down on those nonprofits that do abuse the tax code.

At least one politician is upset enough by the steady flow of dark money into our politics to do something about it. Senator Carl Levin of Michigan, who is retiring in 2014, has made the issue of dark money one of the priorities of his time left in office. He plans to "look into the failure of the IRS to enforce our tax laws and stem the flood of hundreds of millions of secret dollars flowing into our elections, eroding public confidence in our democracy."

Do millionaires and billionaires dominate the donor rolls of nonprofits, too? Without disclosure, it's near impossible to know who funds what. But not surprisingly, the limited data we have suggest that, as with super PACs, rich people keep politically active nonprofits flush with cash. The American Action Network, for instance, raised \$27.5 million from July 2010 to June 2011; of that haul, 90% of the money came from eight donors, with one giving \$7 million. The story is the same with Karl Rove's Crossroads GPS. It raised \$77 million from June 2010 to December 2011, and nearly 90% of that came from donors giving at least \$1 million. And while Priorities USA, the pro-Obama nonprofit, raised a comparatively tiny \$2.3 million in 2011, 80% of it came from a single, anonymous donor.

Big Money Civil War

A few days after the 2012 elections, a handful of Republican politicians including Governor John Kasich of Ohio and Governor Bobby Jindal of Louisiana met privately with Sheldon Adelson. They were officially in Las Vegas for a gathering of the Republican Governors Association, but it was never too early to court the man who, with a stroke of his pen, could underwrite a presidential hopeful's bid for his or her party's nomination.

Democratic candidates are no different. House and Senate hopefuls are flocking to Hollywood studio boss Jeffrey Katzenberg, one of their party's biggest donors and fundraisers. And why wouldn't they? Barack Obama might not be where he is today without Katzenberg. Days after Obama launched his presidential campaign in 2007, the DreamWorks Animation mogul gave the junior senator his imprimatur and prodded Hollywood into raising \$1.3 million for him. Years

later, Katzenberg provided \$2 million in seed money for the pro-Obama super PAC that played a pivotal role in his reelection.

As 2016 nears, don't be surprised to see the next set of Democrats clambering over each other to win Katzenberg's endorsement and money. Paul Begala, the Democratic consultant and TV pundit, is already predicting what he calls the "Katzenberg primary."

More than ever, a serious Senate or White House bid is dependent not on climbing the party ranks, but on winning the support of a few wealthy bankrollers. In fact, it's no longer an exaggeration to say that while the political parties still officially pick the candidates for office, the power increasingly lies with the elites of the political donor class.

Super PACs, just three years old, are now a fixture, not a novelty. They've become de rigueur for candidates running at the federal, state, and even local level. Want to scare off potential primary challengers? A super PAC with millions in the bank will help. Need to blast away at your opponent with negative ads without tarnishing your own reputation? Let a super PAC do the dirty work. Any candidate running for office begins with a to-do list, and with each month, getting a super PAC and making friends in the dark money universe rises higher on those lists.

Super PACs and their wealthy donors are also stoking civil wars within the parties. At the moment, they have been springing up to offer cover to politicians who vote a certain way, or stake out traditionally unpopular positions. For instance, Republicans for Immigration Reform, a relatively new super PAC, says it will spend millions to defend GOP politicians who take a moderate stance on immigration reform. And another super PAC, bankrolled by hedge fund investor Paul Singer, intends to spend big money to push more Republicans toward the middle on same-sex marriage. But there are also vigorous tea-party-style super PACs pushing their politicians toward the fringes. Each faction of the GOP is getting its own set of super PACs, and that means an already contentious fight for the future of the party could get far bloodier.

Democrats could find themselves in a money-fueled internal struggle, too. Tom Steyer, a former hedge fund investor worth \$1.3 billion, says he's sick of seeing climate change neglected in campaigns. He now plans to use his vast wealth to elevate it into a banner issue. In a recent primary in Massachusetts, he spent hundreds of thousands of dollars attacking Democratic Congressman Stephen Lynch for supporting the controversial Keystone XL pipeline. Lynch's opponent, Congressman Ed Markey, a leading House environmentalist, went on to win the primary, but Steyer's intervention raised plenty of eyebrows about possible Democrat-on-Democrat combat in 2014.

Meanwhile, as the recent Democracy Alliance and Koch retreats show, millionaires and billionaires are revving up to take ever-greater control of the political process via secretive nonprofits. In April, Facebook co-founder Mark Zuckerberg unveiled FWD.us, a quasi-dark-money outfit created to give Silicon Valley a greater political presence in Washington. It has already raised \$25 million.

Right now, the best avenues for fired-up billionaires exist outside the traditional political parties. The Supreme Court could change that. In a case called *McCutcheon vs. Federal Election Commission*, the court is considering whether to demolish the overall aggregate limit on how much a donor can give to candidates and parties. If the court rules in favor of Republican donor Shaun McCutcheon, and perhaps goes on to eliminate contribution limits to candidates and

parties altogether, super PACs could go out of style faster than Crocs. Donors won't need them. They'll give their millions straight to the Democrats or the Republicans and that will be that.

There is an important backdrop to all of these changes, and that's the increase in income inequality in this country. Just as the incredibly wealthy are given the freedom to flood the political system with money, they've got more and more money to spend. Our lopsided economic recovery affords a glimpse of that growing inequality gap: from 2009 to 2011, the average wealth of the richest 7% of American households climbed by almost 30%, while the wealth of the remaining 93% of households actually declined by 4%. (So much for that "recovery.")

Can there be any question that this democracy of ours is nearing dangerous territory, if we're not already there? Picture the 2016 or 2020 election campaigns and, barring a new wave of campaign reforms, it's not hard to see a tiny minority of people exerting a massive influence on our politics simply by virtue of bank accounts. There is nothing small-d democratic about that. It flies in the face of one of the central premises of this country of ours, equality, including political equality — the concept that all citizens stand on an equal footing with one another when it comes to having their say on who represents them and how government should work.

Increasingly, it looks like before the rest of us even have our say, before you enter the voting booth, issues, politics, and the politicians will have been winnowed, vetted, and predetermined by the wealthiest Americans. Think of it as a new definition of politics: the democracy of the wealthy, who can fight it out with each other inside and outside the political parties with little reference to you.

In the meantime, the more those of modest means feel drowned out by the money of a tiny minority, the less connected they will feel to the work of government, and the less they will trust elected officials and government as an institution. It's a formula for tuning out, staying home, and starving whatever's left of our democracy.

I caught a glimpse of this last November, when I spoke to a class of students at Radford University in Virginia, a state blanketed with super PAC attack ads and dark money in 2012. Over and over, students told me how disgusted they were by all the vitriol they heard when they turned on the TV or the radio. Most said that they ended up ignoring the campaigns; a few were so put off they didn't bother to vote. "They're all bought and sold anyway," one student told me in front of the entire class. "Why would my vote make any difference?"