

Big Money, Big Risks
A Summary of SuperPAC and Independent Expenditures
in Illinois' 2012 General Election

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*A report by the Illinois Campaign for Political Reform,
with assistance from the Sunshine Project*

I. Introduction

Recent changes to Illinois' election code have affected how certain expenditures are reported. Prior to the 2009 changes¹, all spending in connection with a candidate was to be reported to the candidate as an in-kind contribution. The 2009 law, effective in 2011, directed that spending that is not coordinated with a candidate should instead be reported as an independent expenditure. Spending which is coordinated with a candidate is reported as a contribution, subject to limits. Several groups engaged in independent expenditures in the 2011 municipal elections and the 2012 General Primary.

In May of this year, the General Assembly again amended the Election Code to provide for committees that are dedicated to Independent Expenditures, and so are not subject to contribution limits. This bill was signed into law in July and was in effect for the 2012 General Election.

This summary looks at committees that reported Independent Expenditures in relation to legislative races in the 2012 General Election, whether they were made by Independent Expenditure Committees or committees subject to contribution limits. The vast majority of Independent Expenditures reported in the fall of 2012 were with regard to legislative races, but there were a small number of reports filed with regard to other (mostly county) races, which are not part of this summary.

Independent expenditures are a category of campaign activity defined in the Illinois Election Code². The term was codified in 2009 at the same time that contribution limits became law, and was used to distinguish certain electoral spending from activity that was coordinated with a candidate. Spending that was actively coordinated with a candidate was to be treated as akin to in-kind contributions: it was to be reported to a candidate and then by the candidate to the State Board of Elections, and it would be subject to contribution limits. Activity that was not reported to the candidate and subject to contribution limits was labeled "independent," in the sense that it could not be characterized as a contribution to the candidate. In this area, Illinois law drew on federal election laws, which had instituted similar definitions and practices years earlier.

In 2010, the US Supreme Court issued its *Citizens United v. FEC*³ ruling, which greatly expanded the meaning of the term "independent." The high court ruled that a small non-profit that was airing an ad about its pay-per-view movie about a federal candidate was not only exempt from disclosure requirements and from contribution limits, but was also unlikely to raise concerns about corrupting a candidate through its activities. Later that year, the DC Court of Appeals issued a ruling in *SpeechNow v. FEC*⁴, which further asserted that activities that could be called "independent" ran no risk of corruption, such that contribution limits could not be applied to fundraising by groups devoted to

¹ P.A. 96-832

² 10 ILCS 5/9-8.6

³ 558 U.S. 310 (2010)

⁴ 599 F.3d 691 (2010)

“independent” activities. Through these two decisions, SuperPACs were ushered into federal elections. A federal district court ruling brought SuperPACs to Illinois' state and local elections in March, 2012, and the General Assembly codified changes in May.

All told, political committees reported a total of \$1.7 million in Independent Expenditures in the 2012 General Election period, including \$1.6 million in relation to legislative candidates. While there were roughly equal numbers of Independent Expenditure Committees and other committees that reported making Independent Expenditures, the bulk of spending came from the former – those committees devoted to spending that is not coordinated with candidates. Independent Expenditure Committees reported \$1.5 million compared with \$219,000 in such spending by other committees.

Most independent expenditures were negative, opposing candidates rather than supporting them. It also appears that, in this election cycle at least, most independent expenditures either opposed Democratic candidates or supported Republican candidates.

Committees Reporting the Most Independent Expenditures*

24592	The JOBS PAC	\$412,932
24296	Personal PAC Independent Committee	\$334,392
24607	National Association of REALTORS® Fund	\$232,500
24614	Liberty Principles PAC	\$215,168
24598	GOPAC Illinois Legislative Fund	\$186,524
22783	For the Good of Illinois PAC	\$78,430
24589	Republican State Leadership Committee- IE Com	\$74,799
22721	Citizens for a Better Quincy	\$60,000
24671	Illinois Immigrant Action PAC	\$22,378
21844	Adam for IL Committee (Adam Andrzejewski)	\$20,000

** Excludes independent expenditures reported by Democratic Party of Illinois of \$27,486 and Democratic Majority of \$28,500 in support of Democratic candidate Scott Drury in House District 58. These expenditures would usually be reported as in-kind contributions, but there appears to have been a conflict between the House Democrats and their candidate over the content of the ads.*

By way of context, note that candidates reported raising a total \$29.47 million in targeted legislative races in the General Election period (7/1/2012 through 11/6/2012, as of December 31, 2012). A total of \$13.55 million of the \$29.47 million came from legislative leaders. The independent expenditures of \$1.62 million in targeted legislative races is equal to 5.5% of total raised by candidates from all sources in those races.

Candidates and voters experienced these expenditures in a variety of contexts. Fifteen House races and 14 Senate races saw at least some independent, uncoordinated spending. This involvement ranges from a single \$636 expenditure by one group in an uncontested Chicago Senate race to \$252,141 total spent by six different groups in a hotly contested Quad Cities Senate race.

The 2012 changes to the Election Code that created Independent Expenditure Committees also provided that contribution limits would be removed from all candidate committees in a race once any committee spent more than \$100,000 in Independent Expenditures in that race. (A higher threshold – \$250,000 – applies in statewide office races.) The \$100,000 independent expenditure trigger from single source was reached in one General Election race: Senate District 31, where Personal PAC reported spending \$159,600 against Republican Joe Neal. No direct contributions have been made by any individual, entity or group to either candidate in the 31 Senate race during the General Election period to date that exceed the statutory limits.

II. Groups Making Uncoordinated Expenditures

State law outlines three entities that might make independent expenditures: natural persons who do not coordinate with any other person or entity; political committees that may coordinate with candidates or other committees but choose to make some expenditures without consulting with others; and Independent Expenditure Committees, which never coordinate with others and so are exempt from contribution limits. The 2012 General Election campaign saw instances of the last two of these. No flesh-and-blood individuals reported making independent expenditures.

Most entities making Independent Expenditures were based in Illinois, but several had national affiliates. Entities with national affiliates present a particular challenge to Illinois' voters, because it becomes difficult to tell who is funding their work in Illinois. Whether their funds are washed through a non-profit organization, which may not reveal donors at all, or to the extent required of PACs by the Illinois Election Code, or whether they are organized as a federal PAC, which do not file disclosure reports on the same schedule prior to elections, national entities engaged in Independent Expenditures present a threat to Illinois' disclosure system.

Independent Expenditure Committees

GOPAC Illinois Legislative Fund reported raising \$194,500. All of that money came from GOPAC, a national non-profit organization organized under Section 527 of the federal Internal Revenue Code. The national GOPAC files annual reports with the IRS; showing top contributions in 2012 including \$200,000 from Contran Corp, \$147,500 from Reynolds American (tobacco); \$100,000 from the American Beverage Assn and Devon Energy, and \$75,000 from Cancer Treatment Centers of America. The Illinois PAC reported spending \$178,144.18 in five legislative races, two of which returned the desired result.

GOPAC Illinois Legislative Fund			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-052	\$20,000.00	Supported Dave McSweeney	Dave McSweeney won with 59.2% of the vote.
H-055	\$17,004.57	Supported Susan Sweeney	Marty Moylan won with 53.2% of the vote.
	\$16,760.52	Opposed Marty Moylan	
H-079	\$20,000.00	Supported Kate Cloonen	Kate Cloonen won with 50.2% of the vote.
	\$20,000.00	Opposed Glenn Nixon	
S-036	\$27,927.97	Supported Bill Albracht	Mike Jacobs won with 54.7% of the vote
	\$17,117.00	Opposed Mike Jacobs	
S-047	\$20,781.46	Opposed John Sullivan	John Sullivan won with 56.3% of the vote
	\$26,932.92	Supported Randy Freese	

Illinois Immigrant Action PAC was formed about one week before the election. It reported raising \$31,935 in a matter of days. Top contributors included the Campaign for Community Change at \$15,000 and SEIU Illinois Council at \$7,500. Illinois Immigrant Action PAC reported spending \$22,378.25 on five Races. All but one race resulted in the outcome that the PAC intended. Except for the \$15,000 contribution from the Campaign for Community Change, all of the receipts and all of the expenditures reported by the PAC could have been made under current contribution limits, coordinated with the candidates.

Illinois Immigrant Action PAC			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-052	\$9,811.59	Supported Dee Beaubien	Dave McSweeney won with 59.2% of the vote.
H-057	\$5,269.92	Supported Elaine Nekritz.	Elaine Nekritz won with 55.5% of the vote.
H-062	\$262.20	Supported Sam Yingling	Sam Yingling won with 55.3% of the vote.
S-023	\$512.60	Supported Tom Cullerton	Tom Cullerton won with 51.2% of the vote.
S-028	\$6,521.94	Supported Dan Kotowski	Dan Kotowski won with 57.3% of the vote.

Liberty Principles PAC was formed under state law in October 2012 and reported \$273,000 in contributions, all from an organization also called Liberty Principles. Liberty Principles PAC reported spending \$215,168.18 on seven Races, none of which resulted in the election outcome that the PAC intended. Some of its spending was reported as supporting or opposing multiple candidates in disparate races; these appear to be fees paid to a media buyer or for mailings that identified multiple candidates. Because we cannot break out how much of the fee was for which races (whether, for instance, it was based on the number or cost of ads bought), the total shared amount is listed in each race below, but shared expenses are factored only once in the total for the PAC.

In some respects, it appears that the Liberty Principles that gave to the Illinois PAC was itself a SuperPAC organized through the Federal Elections Commission. Former Republican gubernatorial candidate Dan Proft filed the Statement of Organization for Liberty Principles with the State Board of Elections and also filed a statement of organization with the Federal Elections Commission. Both the federal and state filings claim the same officers and business address, and both keep their funds at the same bank. But in other respects, they appear to be different. The federal PAC filed organization papers on February 27, 2012, while the state PAC claimed an October 9 creation date, and their disclosure reports do not line up. The federal PAC acknowledged \$179,131.35 in expenditures, nearly all of them categorized as "nonfederal disbursements," while the state PAC claims \$215,168.18 in expenditures over the same time period. While the expenditures are similar, not one them matches exactly, sometimes because the federal filing claimed a different expenditure date or dollar amount than the state filing,

sometimes because there is no comparable expenditure on both reports. The federal filings list no transfers to the State PAC, though the state filings claim receipts from another entity with the name and address of the federal PAC.

Most of the receipts reported by the federal Liberty Principles PAC came from two donors: Richard Uihlein at \$125,000 (of Uline Industries, his giving includes \$50,000 received on March 20 and disclosed on April 12, \$50,000 received on August 24 and disclosed on October 15, and \$25,000 received on October 29 and disclosed on December 6) and real estate developer John Buck at \$100,000 (received on June 29 and disclosed on July 12). All told, the federal PAC received \$65,500 prior to Election Day that was not reported to the public until one month afterwards.

Liberty Principles PAC				
Race	Amount Reported Spent	Candidate Supported or Opposed	Amount Likely Spent	Outcome of Election
H-046	\$44,209.27	Opposed Deborah Conroy, and others	\$23,042.60 opposed to Deborah Conroy	Deborah O'Keefe Conroy won with 57.7% of the vote.
H-055	\$36,927.25	Opposed Marty Moylan, and others	\$17,298.81 opposed to Marty Moylan	Marty Moylan won with 53.2% of the vote.
H-057	\$71,387.15	Opposed Elaine Nekritz, and others	\$33,899.94 opposed to Elaine Nekritz	Elaine Nekritz won with 55.5% of the vote.
H-072	\$78,537.72	Opposed Patrick Verschoore, and others	\$31,768.86 opposed to Patrick Verschoore	Patrick Verschoore won with 64.3% of the vote.
H-098	\$47,357.02	Opposed Natalie Manley, and others	\$26,190.35 opposed to Natalie Manley	Natalie Manley won with 61.5% of the vote.
S-028	\$52,230.96	Opposed Dan Kotowski, and others	\$17,298.81 opposed to Dan Kotowski	Dan Kotowski won with 57.3% of the vote
S-029	\$85,733.21	Opposed to Julie Morrison and others	\$33,899.94 opposed to Julie Morrison	Julie Morrison won with 54.4% of the vote
S-036	\$78,537.72	Opposed Mike Jacobs	\$31,768.86 opposed to Mike Jacobs	Mike Jacobs won with 54.7% of the vote

National Association of Realtors reported \$233,000 in total contributions. All of its receipts were reported as coming from "NAR Members," but it is not clear if this money was raised by NAR as a conduit for members' intentional giving to the PAC, if the funds

derived from dues or other funds paid by some or all members but controlled by the association, or if the funds came from a subset of members giving intentionally to the association for broadly political uses. They reported spending \$232,500.00 on 5 Races; two of which showed the intended result.

National Association of Realtors			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-062	\$35,699.06	Supported Sam Yingling	Sam Yingling won with 55.3% of the vote.
H-068	\$35,199.20	Supported Carl Wasco	John Cabello won with 53.3% of the vote.
H-077	\$86,200.00	Supported Angelo Saviano	Kathleen Willis won with 52.6% of the vote.
S-034	\$27,927.97	Supported Frank Gambino	Steve Stadelman won with 62.8% of the vote
S-056	\$40,202.00	Supported Bill Haine	Bill Haine won with 58.8% of the vote

Personal PAC won a federal lawsuit demanding the right to raise money without limits for activities that would not be coordinated with candidates. Personal PAC Independent Expenditure Committee was the first Independent Expenditure Committee to form. Personal PAC also has a separate and distinct Political Action Committee which is subject to contribution limits and which had \$935,371 cash on hand as of July 1, and raised another \$478,670 during the fall campaign season. The Personal PAC Independent Expenditure Committee reported raising \$738,788.26. Top donors include Cari & Michael Sacks at \$290,000 and Fred Eychaner at \$215,000. In the fall campaign season, the fund reported spending \$334,392.00 on five legislative races; four of which resulted in Personal PAC's intended outcome.

Personal PAC Independent Expenditure Committee			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-068	\$24,276.00	Opposed John Cabello	John Cabello won with 53.3% of the vote.
H-071	\$24,276.00	Opposed Richard Morthland	Mike Smiddy won with 51.7% of the vote.
S-023	\$51,240.00	Opposed Carole Pankau	Tom Cullerton won with 51.2% of the vote
S-031	\$159,600	Opposed Joe Neal	Melinda Bush won with 51.3% of the vote.
S-036	\$75,000	Opposed Bill Albracht	Mike Jacobs won with 54.7% of the vote.

Republican State Leadership Committee reported raising \$357,186.17. All of the funds came from an entity also called Republican State Leadership Committee, apparently a

national organization created under Section 527 of the Internal Revenue Code and which files annual disclosure reports with the IRS. The national RSLC reported top contributions in 2012 including \$2.4 million from Blue Cross/Blue Shield, \$1.4 million from the US Chamber of Commerce, \$705,323 from Reynolds American (tobacco), \$600,000 from Devon Energy and \$489,620 from Altria Group (the former Philip Morris Tobacco company). In its D-1 Statement of Organization, the state PAC said it was formed for the purpose of engaging in two House races, but reported expenditures in only one. It spent \$63,299.31 but their one race did not return their intended result.

Republican State Leadership Committee			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-111	\$4,410.57	Supported Kathy Smith	Dan Beiser won with 58.5% of the vote
	\$70,388.74	Opposed Dan Beiser	

The JOBS PAC reported total receipts of \$373,500. Top donors include the Illinois Manufacturers Association at \$200,000 and MacLean-Fogg at \$80,000. JOBS PAC reported spending \$272,935.75 on nine races; four of which returned their intended outcome. The PAC's spending supported Republicans or opposed Democrats in six races, and supported Democrats in three races. One race in support of a Republican won; all races supporting a Democrat won, and no races opposing Democrats won.

The JOBS PAC			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-052	\$26,000.00	Supported Dave McSweeney	Dave McSweeney won with 59.2% of the vote
H-057	\$16,000.00	Supported Elaine Nekritz	Elaine Nekritz won with 55.5% of the vote
S-028	\$90,989.75	Opposed Dan Kotowski	Dan Kotowski won with 57.3% of the vote
S-029	\$81,980.75	Supported Arie Friedman	Julie Morrison won with 54.4% of the vote
S-036	\$61,975.00	Supported Mike Jacobs	Mike Jacobs won with 54.7% of the vote.
S-046	\$15,000.00	Supported Pat Sullivan	Dave Koehler won with 54.2% of the vote
S-048	\$94,986.20	Supported Mike McElroy	Andy Manar won with 55.3% of the vote
S-049	\$15,000.00	Supported Garrett Peck	Jennifer Bertino-Tarrant won with 52.7% of the vote
S-056	\$11,000.00	Supported Bill Haine	Bill Haine won with 58.8% of the vote

Other Political Committees that Reported Independent Expenditures

Throughout the 2012 General Election season, Adam for Illinois shared leadership and funders with For the Good of Illinois. Adam for Illinois was formed in support of Adam Andrzejewski’s 2010 Republican primary race for the gubernatorial nomination, which he lost. Andrzejewski also chaired For the Good of Illinois until resigning on November 26, 2012. Adam for Illinois reported spending \$20,000 in one race, which did not return the intended outcome.

Adam for Illinois Committee (Adam Andrzejewski)			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-047	\$20,000.00	Opposed John Sullivan	John Sullivan won with 56.3% of the vote

Brady PAC of Illinois reported spending \$636.37 on one race which, being uncontested, returned the desired outcome.

Brady PAC of Illinois Spent \$636.37 on 1 Race; Got Intended Outcome 1 time			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-005	\$636.37	Supported Patricia Van Pelt Watkins	Patricia Van Pelt Watkins won with 100.0% of the vote

Citizens for a Better Quincy formed in 2010 as a political action committee. The PAC reported \$60,000 in receipts during October of 2012. Top contributors include Otto Engineering and Bruce Rauner. Citizens for a Better Quincy spent \$60,000 in independent expenditures, all in the 47th Senate District, but did not get the desired outcome.

Citizens for a Better Quincy Spent \$60,000.00 on 1 Race; Got Intended Outcome 0 times			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-047	\$60,000.00	Opposed John Sullivan	John Sullivan won with 56.3% of the vote

Democratic Majority is the House Democratic caucus PAC. Democratic candidates have reported just over \$1 million in direct contributions from the PAC in the General Election period. The PAC itself reported \$28,500 in independent expenditures, all of it in the 58th House District, where they achieved their desired outcome.

Democratic Majority			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-058	\$28,500.00	Supported Scott Drury	Scott Drury won with 55.8% of the vote

The Democratic Party of Illinois is an established state party. Democratic candidates reported over \$5.9 million in direct contributions in the 2012 General Election period. The PAC itself reported \$27,485.85 in independent expenditures, all of it in the 58th House District, where it received its desired outcome.

Democratic Party of Illinois: Spent \$27,485.85 on 1 Race; Got Intended Outcome 1 time			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-058	\$27,485.85	Supported Scott Drury	Scott Drury won with 55.8% of the vote

The Illinois Association of Mortgage Brokers is an established political action committee. Candidates reported no direct contributions from it in the General Election period. The PAC itself reported \$415.27 in independent expenditures, all of it in the 40th Senate District, which did not return their desired outcome.

Il Assn of Mortgage Brokers: Spent \$415.27 on 1 Race; Got Intended Outcome 0 time			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-040	\$415.27	Supported Tuck Marshall	Toi Hutchinson won with 59.6% of the vote

For the Good of Illinois reported raising \$205,000 since July 1, 2012, when it had \$794.14 cash on hand. It reported spending \$78,430.00 on four Races. Not one of these four races ended the way it intended.

For the Good of Illinois			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-036	\$20,000.00	Opposed Mike Jacobs	Mike Jacobs won with 54.7% of the vote
S-047	\$53,045.00	Opposed John Sullivan	John Sullivan won with 56.3% of the vote
S-049	\$2,385.00	Supported Garrett Peck	Jennifer Bertino-Tarrant won with 52.7% of the vote
S-052	\$3,000	Opposed Mike Frerichs	Mike Frerichs won with 64.9% of the vote

Naperville Area Chamber of Commerce is an established political action committee. Candidates reported no direct contributions from it in the fall campaign. The PAC itself reported \$3,769.40 in independent expenditures, divided evenly between two house districts, only one of which did returned its desired outcome.

Naperville Area Chamber of Commerce			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-042	\$1,884.47	Supported Jeanne Ives (and others)	Jeanne Ives won with 61.7% of the vote
H-084	\$1,884.47	Supported Pat Fee (and others)	Stephanie Kifowit won with 61.6% of the vote

The Pro-Life Victory Fund is an established political action committee. Candidates reported \$2,500 in direct contributions from the Pro-Life Victory Fund in the fall campaign. The PAC itself reported \$1,938.58 in independent expenditures, mostly in the 36th Senate District, which did not returned their desired outcome. The 56th Senate District, which saw less than a fifth of the Pro-Life Victory Fund's independent expenditures, returned its desired outcome.

Pro-Life Victory Fund: Spent \$1,938.58 on 2 Races; Got Intended Outcome 1 time			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
S-036	\$1,583.83	Supported Bill Albracht	Mike Jacobs won with 54.7% of the vote
S-056	\$354.75	Supported Bill Haine	Bill Haine won with 58.8% of the vote

The State Council of Sheet Metal Workers is an established political action committee. Candidates reported \$5,600 in direct contributions from the PAC. The PAC reported \$1,000.00 in independent expenditures, all in the 68th House District, which did not return its desired outcome.

State Council of Illinois Sheet Metal Workers: Spent \$1,000.00 on 1 Race; Got Intended Outcome 0 time			
Race	Amount Spent	Candidate Supported or Opposed	Outcome of Election
H-068	\$1,000.00	Supported Carl Wasco	John Cabello won with 53.3% of the vote

III. Candidates' and Voters' Experience of Uncoordinated Spending

Candidates and voters in 29 legislative contests in 2012, including 15 House races and 14 Senate races, experienced uncoordinated spending, including mailings, phone calls, and broadcast advertisements. Most races and most parts of the state did not see this kind of election-related activity. As a share of candidate fundraising, uncoordinated spending ranged from less than 1% up to nearly 13%.

State law removes contribution limits on candidates in races where a single organization spends more than \$100,000 uncoordinated with candidates. Five races saw total uncoordinated spending exceed \$100,000. In all but one of these, though, multiple groups made uncoordinated expenditures, so contribution limits were not removed. Only one race saw a single group pass the threshold. But in that race, neither candidate raised money in excess of the limits.

Effectiveness of Independent Expenditures

Independent expenditures were slightly more likely to be in opposition to a candidate (40 times) than in support of a candidate (37 times), though there was much more money behind opposing messages (\$941,642.61) than behind supporting messages (\$760,609.70). More often than not, these expenditures failed to deliver the desired result (58 times) than did the election returns match the intent of the ads (19 times).

The Role of Independent Expenditures in Particular Races

In no district did uncoordinated spending top 13% of total fundraising reported by both candidates, but for some candidates, uncoordinated spending equaled a sizeable share of what their own campaigns reported raising. At the top of the list is Republican Randy Freese, who raised \$426,000 (largely from political parties and legislative caucuses, which are not limited in how much they can give to candidates in general elections) in his challenge to incumbent 47th District Sen. John Sullivan. Uncoordinated groups spent another \$180,800 to support his candidacy or oppose Sen. Sullivan. That uncoordinated spending was like a 42% shot in the arm for his campaign. Next is Democrat Carl Wasco, who reported raising \$162,000 for his race against Republican John Cabello in the open 68th House District. Uncoordinated spending supporting his candidacy or opposing Cabello totaled \$60,500, or 37% of his fundraising. Despite this substantial outside assistance, neither Freese nor Wasco won election.

36th Senate Race

Voters in the Quad Cities saw more uncoordinated spending than any other area in the state, between the 36th Senate District and the 72nd House District (which makes up half of the 36th Senate District) both attracted significant independent expenditures. The 36th Senate contest between incumbent Mike Jacobs and challenger Bill Albracht drew \$252,141, the most uncoordinated spending of any race. Reported uncoordinated

spending in the race includes \$75,000 opposing Bill Albracht, all by Personal PAC; \$115,654 opposing Jacobs, spent by For the Good of Illinois, Liberty Principles, and GOPAC; \$29,510 supporting Albracht, spent by GOPAC and the Pro-Life Victory Fund; and \$61,975 supporting Jacobs, spent by The JOBS PAC.

Several groups reported making single expenditures that affected multiple races, making it difficult to determine how much was actually spent in each race. Of the \$284,000 spent in the 36th Senate race, \$147,000 opposed Jacobs or supported Albracht (there were only two candidates on the ballot), while \$137,000 opposed Albracht or supported Jacobs.

Complicating the math is the way Liberty Principles reported expenditures. Liberty Principles reported \$58,537 against Jacobs and Rep. Pat Verschoore, whose House district constitutes half of the 36th Senate seat. Liberty Principles also reported \$20,000 against Jacobs and seven other candidates, some of whom were nowhere near the Quad Cities: Senate candidates Julie Morrison and Dan Kotowski; and House Candidates Elaine Nekritz, Marty Moylan, Natalie Manley, and Deborah Conroy, all of whom were in Cook County, along with State Rep. Pat Verschoore. How that \$78,537 was allocated among the contests is impossible to determine precisely from the disclosure record, though it seems reasonable to assume that the spending be allocated equally among all of the named candidates. In that case total spending aligned with Albracht (that is, in support of Albracht or opposed to Jacobs) would be \$98,398.

Candidates in the 36th Senate District reported raising significantly more resources in direct contributions than the uncoordinated expenditures reported for the race -- Jacobs reported raising \$1,144,400 while Albracht showed \$655,900. The uncoordinated spending intended to advantage Albracht's campaign using the greater number of \$137,000 provided an uncoordinated supplement equal to 22% of the amount he reported raising. Allocating expenditures directed at multiple candidates to each candidate would reduce the size of the supplement to 15%. The uncoordinated spending intended to advantage Jacobs' campaign provided an uncoordinated supplement equal to 12% of the amount he reported raising. While the amount of uncoordinated spending was not insignificant, the great majority of advertisements that voters experienced came from the candidates themselves.

Uncoordinated spending here was roughly equal on both sides. Voters returned Mike Jacobs to office with 54% of the vote.

47th Senate Race

The Quincy-based 47th Senate District saw \$180,759 in independent spending. All of that spending was intended to advantage the campaign of Randy Freese, the Republican challenger. A total of \$153,872 was spent in opposition to Democratic incumbent Sen. John Sullivan while the balance, \$26,932, was spent in support of Freese. Candidates in the race reported a combined \$1,406,500 in resources, including \$980,500 by Sullivan and \$426,000 by Freese.

Adam for Illinois, which is a candidate political committee formed in support of 2010 Republican gubernatorial hopeful Adam Andrzejewski, reported spending \$20,000. The money was reported in August for television production expenses. Adam for Illinois did not report spending money to broadcast television ads. For the Good of Illinois, another committee associated with Andrzejewski, reported spending \$53,045, reported in over three similar amounts from late September through the end of October for television advertising, media production and radio advertising. Both of these committees are subject to contribution limits; neither is organized as an independent expenditure only committee. As such they are not covered by statutory prohibitions on independent expenditure committees coordinating with other political committees.

Citizens for a Better Quincy reported \$60,000 in independent expenditure spending, all of it for television advertisements in October. The committee formed in April of 2010 as a political action committee, subject to limits and allowed to coordinate with other committees, and raised less than \$5,000 in its first two years, most of it in small, non-itemized contributions. In April 2012, the committee transferred \$1,000 to Friends for Randy Freese, but reported no other transfers. As of September 30, 2012, the committee had a balance of \$1,616.92 and was filing reports on paper, meaning that it raised less than \$10,000. But in October 2012, the committee reported raising \$60,000 from four donors: two \$20,000 contributions (one from Otto Engineering, a Carpentersville company associated with Jack Roeser, and the other from Bruce Rauner of Chicago) and two \$10,000 contributions (one from Patricia Foglia of North Barrington and one from Richard Uihlein of Lake Forest). None of the donors live near Quincy. Rauner also gave \$10,000 to For the Good of Illinois, which was reported one day after the Citizens for a Better Quincy contribution was disclosed. Like For the Good of Illinois, Citizens for a Better Quincy is not an independent expenditure committee and so is allowed to coordinate with other committees up to the \$50,000 contribution limit.

All of the uncoordinated spending in this race was intended to advantage Freese. It provide an uncoordinated supplement equal to 42% of Freese's fundraising, and 18% of Sullivan's. Voters returned Sullivan to another term in office with 56% of the vote.

29th Senate Race

This open-seat race, straddling Cook and Lake counties, pitted Republican Arie Friedman against Democrat Julie Morrison. The two candidates reported raising almost \$1 million in total. Morrison had the resource advantage with \$561,100 to Friedman's \$350,600.

The race saw \$167,714 in uncoordinated spending, all of it intended to advantage Friedman's campaign. Spending includes \$81,980 by The JOBS PAC, supporting Friedman, and \$85,733 opposing Morrison spent by Liberty Principles PAC. The three expenditures reported by Liberty Principles PAC were directed at multiple candidates. Allocating these expenditures among the candidates listed would reduce their spending focused at Morrison to \$34,899, and would also reduce the total uncoordinated spending

to \$116,879. Using the larger total (\$167,714), the uncoordinated spending in the race intended to advantage Friedman's campaign provided an uncoordinated supplement to Friedman's campaign equal to 48% of the amount he reported raising. Using the smaller (but likely more accurate) number would reduce the size of the supplement to 33%.

Voters elected Morrison to the seat with 54.4% of the vote

31st Senate Race

This open seat contest between Republican Joe Neal and Democrat Melinda Bush reported \$1.2 million in total candidate resources. Bush reported the greater share of fundraising, at \$750,400, while Neal reported \$453,400 in receipts.

The contest drew \$156,000 in uncoordinated spending, all of it opposing Neal and by Personal PAC. This was the only Senate race where one group spent more than \$100,000 in independent expenditures, thereby triggering the removal of limits on all candidates. Neither candidate took advantage of the removal of limits, possibly because contribution limits in Illinois are so high to begin with. The Personal PAC spending provided an uncoordinated supplement to Bush's campaign equal to 21% of the amount she reported raising.

Voters elected Bush to the seat with 51% of the vote.

77th House District

In the 77th House District, long-time incumbent Republican Angelo "Skip" Saviano faced a challenge from Democrat Kathleen Willis. Candidates reported raising a combined \$1.3 million for the race, including \$770,000 by Saviano and \$556,000 by Willis. On top of that, the National Realtors Association reported independent expenditures totaling \$86,200 in support of Saviano's candidacy.

Independent expenditures in the race provided an uncoordinated supplement to the Saviano campaign equal to 11% of what Saviano's campaign reported raising.

When the ballots were counted, Democratic challenger Willis won the election with 52.6% of the vote.

28th Senate District

One of the more expensive races in 2012 was in the 28th Senate District, between incumbent Democrat Dan Kotowski and Republican Challenger Jim O'Donnell. Candidates combined to raise more than \$1.6 million, though most of the money was on Kotowski's side (\$1.3 million to O'Donnell's \$350,600).

Total reported independent expenditures in the race reached \$149,952, although over \$52,000 of that total came from Liberty Principles PAC, which reported expenditures addressing multiple candidates in different races as a lump sum. A fairer allocation would suggest that only \$17,298 was actually spent in Kotowski's race. The JOBS PAC spent \$90,990 in opposition to Kotowski. Only \$6,521 was spent to advantage Kotowski's campaign, all by the Illinois Immigrant Action PAC. Depending on how one assigns the value of the reported independent expenditures intended to advantage O'Donnell's campaign, those independent expenditures provided an uncoordinated supplement of either 41% or 31% of the amount he reported raising.

Kotowski was returned to office with 57.3% of the vote.

111th House District

The race between incumbent Democrat Dan Beiser and challenger Republican Kathy Smith was among the most expensive House races, reporting \$1.3 million in combined candidate resources. Beiser had the lion's share of the candidate funds, \$869,200 to \$387,200 for Smith.

All of the independent expenditures reported in the race were intended to advantage Smith's campaign. The Republican State Leadership Committee reported spending \$4,411 in support of Smith and \$70,369 opposing Beiser. These independent expenditures provided an uncoordinated supplement to the Smith campaign equal to 19% of the amount the campaign reported raising.

Beiser was returned to Springfield with 58.5% of the vote.

68th House District

This open-seat House race was in the middle quintile of House races when measured by candidate resources, but nearer to the top when measured by outside group involvement. The two candidates, Democrat Carl Wasco and Republican John Cabello, combined for \$491,500 in total reported resources; Cabello had the cash advantage at \$329,500 compared with Wasco's \$162,000.

Outside groups reported spending \$60,475 in the race, all of it intended to advantage Democrat Wasco. Most of this money came from the National Association of Realtors (\$35,200, in support of Wasco) and Personal PAC (\$24,300, in opposition to Cabello), although the State Council of Sheet Metal Workers reported some small activity (\$1,000). The uncoordinated spending provided an uncoordinated supplement to the Wasco campaign equal to 37% of the amount the campaign reported raising.

Republican John Cabello won the seat with 53.3% of the vote.

58th House District

This open seat House contest saw \$701,500 in total combined resources, with the fundraising favoring Democrat Scot Drury (\$476,400) over Republican Mark Shaw (\$225,100).

This race saw some unusual independent expenditures, in that the Democratic Party of Illinois (\$27,500) and the Democratic Majority (the legislative caucus committee of the House Democrats; spent \$28,500) combined to spend \$56,000 in support of Drury. This is unusual because there are no contribution limits on giving by parties and caucuses to candidates in general elections. Despite the committees' ability to coordinate their spending with Drury, the two committees decided to make these expenditures (which consisted of mailings sent to voters in the final two weeks of the election) without coordinating. The uncoordinated spending intended to advantage Drury provided an uncoordinated supplement to his campaign equal to 12% of the amount the campaign reported raising.

Drury won the election with 55.8% of the vote.

52nd House District

The 52nd House District was an open seat contest between Republican nominee David McSweeney and independent Dee Beaubien. The seat was open due to the death of incumbent Republican Mark Beaubien. When McSweeney defeated appointed incumbent Kent Gaffney in the Republican primary, Mark Beaubien's widow announced her candidacy as an independent. Both candidates reported raising nearly \$1 million each for the general election: \$979,700 by Beaubien and \$890,800 by McSweeney. Both candidates also self-financed to an extent such that contribution limits were removed. Both took advantage of the lack of limits by accepting contributions in excess of contribution limits.

Outside groups spent \$55,800 in the race. Most of this uncoordinated spending was intended to advantage McSweeney (\$46,000) with the remainder (\$9,800) intended to advantage Beaubien. The JOBS PAC spent \$26,000 and GOPAC Illinois spent \$20,000, all to advantage McSweeney, while Illinois Immigrant Action PAC spent \$9,812 to advantage Beaubien. With significant candidate fundraising, the uncoordinated spending was a minor element in the race. Expenditures intended to advantage Beaubien amounted to 1% of the amount her campaign reported raising, while expenditures on the McSweeney side of the ledge amounted to 5% of the amount his campaign reported raising.

McSweeney won the election with 59.2% of the vote.

23rd Senate District

This race featured long-time incumbent Republican Carole Pankau against Democrat Thomas Cullerton. The candidates reported a combined \$719,800 in resources, and were fairly evenly matched: challenger Cullerton reported \$376,200 to incumbent Pankau's \$343,600.

Outside groups reported independent expenditures \$51,700 in the race, all of it intended to advantage Cullerton. Personal PAC spent \$51,240 in opposition to Pankau, while Illinois Immigrant Action PAC spent \$513 in support of Cullerton. The independent expenditures intended to advantage the Cullerton campaign provided an uncoordinated supplement equal to 14% of the amount the campaign reported raising.

Voters elected Cullerton to the seat with 51.2% of the vote.

56th Senate District

Among the most expensive races in 2012, this Metro East contest between incumbent Democrat William Haine and Republican challenger Mike Babcock reported \$1.5 million in total candidate resources. The incumbent had the fundraising advantage with \$1.2 million in contributions, while Babcock reported raising \$305,000.

Outside groups reported independent expenditures of \$51,557 in the contest. All of these expenditures were intended to advantage Haine. The National Association of Realtors spent \$40,202 in support of Haine, while The JOBS PAC spent \$11,000 and the Pro-Life Victory Fund \$355. These expenditures provided an uncoordinated supplement to the Haine campaign equal to 4% of the amount Haine's campaign reported raising.

Voters returned Haine to another term in office with 58.8% of the vote.

57th House District

This north suburban district featured incumbent Democrat Elaine Nekritz against Republican Jonathan Greenberg. Nekritz reported about \$1 million in total fundraising, while Greenberg disclosed \$382,000.

Outside groups reported independent expenditures of \$107,003 in the race. The JOBS PAC spent \$16,000 and Illinois Immigrant Action PAC spent \$5,270 in support of Nekritz. Liberty Principles PAC reported three independent expenditures with a value of \$85,733 in opposition to a group of candidates in several races, including Nekritz'. If those expenditures are allocated per candidate, the value of expenditures in opposition to Nekritz would decrease to \$56,233 and the total independent expenditures in the race would decrease to \$77,503. Independent expenditures intended to advantage Nekritz provided an uncoordinated supplement to the campaign equal to 2% of the amount her

campaign reported raising. Independent expenditures intended to advantage Greenburg provided an uncoordinated supplement to the campaign equal to 22% of the amount his campaign reported raising if taken a full reported value, or 15% if calculated per candidate.

Voters returned Nekritz to the legislature with 55.5% support.

79th House District

This central Illinois open seat district saw Democrat Kate Cloonen and Republican Glenn Nixon raise a combined \$904,300. Nixon had the fundraising advantage by more than two-to-one, at \$659,200 compared with \$245,100 for Cloonen.

GOPAC reported the only independent expenditures in this race: \$40,000 intended to advantage Nixon. This spending provided an uncoordinated supplement to the Nixon campaign with a value equal to 6% of what the campaign itself reported raising.

Despite being outspent both by Nixon and among independent expenditures, Cloonen won with 50.2% support.

62nd House District

This DuPage County seat saw incumbent Republican Sandy Cole against Democrat Sam Yingling. Candidates reported a combined \$408,100 in fundraising. Challenger Yingling had a clear advantage: \$238,900 to \$169,200 for the incumbent Cole.

Outside groups reported independent expenditures of \$36,000, all of it intended to advantage Yingling. The National Association of Realtors accounted for the bulk of the spending, with \$35,699 in expenditures. The Illinois Immigrant Action PAC spent \$262. These expenditures provided an uncoordinated supplement to the Yingling campaign with a value equal to 15% of the amount Yingling's campaign reported raising.

Yingling won the seat with 55.3% of the vote.

34th Senate District

This open seat Rockford district saw two candidates raise a combined \$642,100. Democrat Steve Stadelman had two-thirds of that at \$419,400, while Republican Frank Gambino reported \$222,800.

The National Association of Realtors spent \$35,200, in support of the Republican, Gambino. This expenditure provided an uncoordinated supplement to the Gambino campaign with a value equal to 16% of the amount Gambino's campaign reported raising.

Stadelman won the election with 62.8% of the vote.

48th Senate District

This central Illinois open seat contest was the most expensive in the state when measured by total candidate resources. Democrat Andy Manar reported raising \$1.5 million; Republican Mike McElroy reported \$934,300. Political parties and legislative caucuses played a central role in this race.

The JOBS PAC reported \$94,986 in independent expenditures in support of McElroy. These expenditures provided an uncoordinated supplement to the McElroy campaign with a value equal to 10% of the amount the campaign itself reported raising.

Democrat Manar was elected to the State Senate with 55.3% of the vote.

55th House District

This north-suburban, open-seat contest between Democrat Marty Moylan and Republican Susan Sweeney reported \$1.4 million in candidate resources and was the second most expensive House contest in 2012. Both candidates reported significant support from state parties and legislative caucuses. Moylan reported \$816,900 to Sweeney's \$631,900.

Independent expenditure groups reported spending \$86,355 in the race. All of the uncoordinated spending was intended to advantage Sweeney's campaign. GOPAC spent \$16,761 opposing Moylan, and another \$17,004 supporting Sweeney. Liberty Principles PAC reported spending a total of \$52,571 in three expenditures in opposition to multiple candidates in several geographic areas, including Moylan. Allocating these expenditures would decrease the value of spending by Liberty Principles PAC in the 55th House District to \$17,299 and the overall amount of independent expenditures by all groups to \$51,063. At full reported value, the independent expenditures in this race provided an uncoordinated supplement to the Sweeney campaign with a value equal to 14% of the amount her campaign reported raising. At the more accurate allocation, the supplement would be equal to 8% of the amount her campaign reported raising.

Voters sent Moylan to office with 53.2% of the vote.

72nd House District

This Quad Cities district saw incumbent Democrat Patrick Verschoore against Republican Neal Anderson. Candidates combined for \$727,000 in total reported fundraising, including \$509,100 by the incumbent and \$217,900 by the challenger.

Liberty Principles reported \$78,500 in spending intended to advantage Anderson. That spending involved two expenditures attributed to multiple candidates in several districts. Distributing those expenditures to the candidates listed would decrease the value of expenditures made in the 72nd House District to \$31,768. At full reported value the independent expenditures in this race provided an uncoordinated supplement with a value equal to 36% of the amount Anderson's campaign reported raising. At the more accurate accounting, the supplement would be equal to 15% of Anderson's campaign resources.

Voters returned Verschoore to the House with 64.3% of the vote.

98th House District

This open seat in a south suburban district featured Republican Bob Kalnicky and Democrat Natalie Manley. Candidates combined for \$1.2 million in contributions, including significant party and caucus support. Manley had the fundraising advantage with \$787,800 in resources compared with \$389,800 for Kalnicky.

Liberty Principles PAC reported \$47,357 intended to advantage Kalnicky. One was a stand alone expenditure of \$22,975 opposing Manley. The other two expenditures totaling \$24,400 opposed multiple candidates in several districts; a fair allocation of shared expenditures would show that the PAC spent \$33,708 in the district. At the full reported value, the independent expenditures in this race provided an uncoordinated supplement to the Kalnicky campaign with a value equal to 12% of Kalnicky's reported resources. At the more accurate level, the supplement would be equal to 9% of Kalnicky's resources.

Voters sent Manley to Springfield with 60.8% support.

71st House District

This Quad Cities district saw incumbent Republican Richard Morthland against Democrat Mike Smiddy. Both candidates reported a combined \$415,900 in resources -- \$146,900 for the incumbent and \$269,000 for the challenger.

Personal PAC reported \$24,300 in uncoordinated spending, intended to advantage challenger Smiddy by opposing Morthland. This House seat is within the 36th Senate District, which saw substantial outside spending. The other House seat in the district, the 72nd, saw some reported outside spending that overlapped with the Senate seat, but none of the outside groups that were active in the 36th Senate and 72nd House seats reported any activity in the 71st District. The Personal PAC expenditures provided an uncoordinated supplement to the Smiddy campaign with a value equal to 9% of the amount his campaign reported raising.

Voters elected Smiddy with 51.7% support.

46th House District

This open seat contest saw \$913,100 in combined fundraising reported by Democrat Deborah O'Keefe Conroy (\$686,500) and Republican Daniel Kordik (\$226,600).

Liberty Principles PAC reported independent expenditures of \$44,200, intended to advantage Kordik. One as a stand-alone expenditure of \$19,908 opposing Conroy. The other two, which totaled \$24,400, opposed multiple candidates including Conroy. A more accurate count would likely attribute \$3,233 of the shared expenditures to this district, putting the total at \$23,042. At full reported value, independent expenditures provided Kordik with an uncoordinated supplement equal to 19% of his campaign's resources. At the more accurate valuation, the supplement would be equal to 10% of the Kordik's campaign resources

Voters chose Conroy to represent them in the legislature with 57.7% of the vote.

49th Senate District

This south suburban open seat contest saw \$1.4 million in total fundraising reported by the two candidates, Republican Garrett Peck (\$575,800) and Democrat Jennifer Bertino-Tarrant (\$801,900). Both parties played a significant role in fundraising in this contest.

Outside groups reported \$17,385 in uncoordinated activity in this district, all of it intended to advantage Peck, including \$15,000 by The JOBS PAC for "voter outreach and calls" on October 25. Peck's campaign reported the \$15,000 as an in-kind contribution, which Peck's campaign later explained was because it were aware of the B-1 filing with the State Board of Elections. Peck's committee has denied any active coordination and has said the filing was in error. All uncoordinated spending in the race provided Peck with an uncoordinated supplement worth 3% of his campaign resources.

Voters elected Bertino-Tarrant to the seat with 52.7% of the vote.

46th Senate District

This Peoria-based district saw incumbent Democrat Dave Koehler against Republican Pat Sullivan. Candidates reported a combined \$1.7 million with significant party and caucus support, including \$916,500 by Koehler and \$801,800 by Sullivan.

The JOBS PAC reported \$15,000, in support of Sullivan. This uncoordinated activity could be viewed as a supplement to Sullivan's campaign of less than 2% of his campaign's reported fundraising.

Koehler was returned to another term in the State Senate with 54.2% of the vote.

52nd Senate District

This Champaign/Urbana-based district saw incumbent Democrat Mike Frerichs against Republican challenger John Bambanek. Both candidates reported a combined \$582,000, nearly all of it by Frerichs (\$523,600, as compared to Bambanek's \$58,400).

For the Good of Illinois reported spending \$3,000 in the race, aligned with Bambanek. This provide an uncoordinated supplement to Bambanek's campaign equal to 5% of his campaign's resources.

Frerichs was returned to office with 64.9% of the vote.

IV. Recommendations

Require Disaggregation of Expenditures Made in Respect to Multiple Races or Candidates

Persons or committees engaging in independent expenditures are required to file disclosure reports whenever they spend \$1,000 or more during the last 30 days before an election:

A political committee that makes independent expenditures of \$1,000 or more during the period 30 days or fewer before an election shall electronically file a report with the Board within 5 business days after making the independent expenditure. (10 ILCS 5/9-10(e))

Independent expenditures are defined in relation to "a clearly identifiable public official or candidate." It seems clear from statute that expenditures should be reported in relation to a single candidate.

It is also apparent from recent filings that some expenditures were made with regard to multiple candidates: for example, mailings or radio, TV or print advertisements that name two or more candidates (as in a postcard that criticizes candidates for House and Senate, both of whom will be on the same voter's ballot).

Common sense rules exist for the allocation of expenses in shared expenditures in other situations. At the federal level, for instance, party activity that benefits federal and state candidates must be allocated evenly among all of the candidates that benefit. For example, a mailer that mentions a federal candidate and a state candidate must be paid for with a proportionate share of federal PAC funds (so-called "hard money"), while the portion benefiting the state candidate may be paid for with funds from a state PAC.

Entities making independent, uncoordinated expenditures that benefit multiple candidates should be required to report the share of the cost related to each candidate covered in the expenditure. This could be calculated as a simple proportion of the number of candidates involved in each expenditure: a single mailing that names three would be reported as one-third of the total cost for each of the three candidates; a professional service fee related to several advertisements relating to several candidates would be calculated first based on the proportionate cost of each advertisement and then by the number of candidates in each advertisement.

The ultimate goal of disclosure is to facilitate the informed participation of citizens in the political process. To that end, disclosure requirements should provide the maximum transparency of receipts and expenditures by political committees in a meaningful timeframe prior to elections while minimizing the administrative burden on the campaigns themselves. Rules promulgated by the State Board of Elections that prohibit committees from reporting multiple expenditures for items on a credit card as one lump sum amount are a clear example of the application of this principle. The same logic

should be applied to the reporting of independent expenditures, either through statutory language (if changes are necessary) or agency rules or enforcement actions.

Redefine "Coordination" and "Independence" in the context of the Risk of Corruption

Illinois law defines independent expenditures as:

“any payment, gift, donation, or expenditure of funds (i) by a natural person or political committee for the purpose of making electioneering communications or of expressly advocating for or against the nomination for election, election, retention, or defeat of a clearly identifiable public official or candidate or for or against any question of public policy to be submitted to the voters and (ii) that is not made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official's or candidate's designated political committee or campaign, or the agent or agents of the public official, candidate, or political committee or campaign.” (10 ILCS 5/9-1.15)

At the time this definition was enacted the intention was to distinguish between activities that should be reported by a candidate as well as by the spender, from activities that did not need to be reported by the candidate. The definition did not anticipate the need for including the concept of corruption risk because Court rulings prior to *Citizens United* and *SpeechNow*, allowed for limits on giving to all political committees. All contributions or expenditures made to influence elections raised the possibility of corruption or the appearance of corruption through a quid pro quo between the source of the funds and the candidate benefiting. As such, this activity was subject to statutory contribution limits. The Court altered this logic by holding that expenditures that were not coordinated with a candidate (“independent”) could not result in a quid pro quo and could not be subject to contribution limits, prior reasoning notwithstanding.

The distinction between a contribution to a candidate, which is subject to disclosure and limits, and an independent expenditure is that the independent expenditure is “is not made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate... or the[ir] agent or agents.” If an expenditure is made in connection, consultation or concert, then it must be reported to the candidate; if it is not made in connection, consultation, or concert, then it need not be reported to the candidate.

Illinois’ current statutory definition is not a test for real or apparent corruption. Even the *Citizens United* ruling concluded that it was appropriate to regulate campaign finance when spending presented a risk of real or apparent corruption. But the current definition does not consider ways that spending that is not actively “in connection, consultation, or concert” with a candidate can still present risks of real or apparent corruption. Consider: these examples from federal elections:

- 1) Particularly in the presidential contest, SuperPACs are identified in the press as being closely associated with particular candidates. Priorities USA was closely associated with President Obama⁵, Restore Our Future was widely recognized as the Romney SuperPAC⁶, and other presidential candidates each had their own SuperPACs⁷.
- 2) Contributors to SuperPACs have avowed their support not just for the SuperPAC and its ostensible goals but also for the particular candidate the SuperPAC supports⁸.
- 3) SuperPACs are often founded, staffed, and run by people with long personal and professional connections to the candidate they purport to be separate from⁹.

⁵ http://www.chicagotribune.com/news/la-pn-obama-super-pac-decision-20120215_0,327692.story

http://www.chicagotribune.com/news/la-pn-obama-campaign-super-pac-decision-20120207_0,1082004.story

http://www.nytimes.com/2012/02/07/us/politics/with-a-signal-to-donors-obama-yields-on-super-pacs.html?_r=1&exprod=myyahoo&pagewanted=all

⁶ http://www.latimes.com/news/nationworld/nation/la-na-money-election-20120101_0,4157616.full.story

⁷ Gingrich, Perry, and Huntsman SuperPACs:
http://www.washingtonpost.com/politics/super-pacs-helping-republican-candidates-close-in-on-obama/2012/01/31/gIQA0lcKgQ_print.html

http://www.nytimes.com/2012/02/02/us/politics/super-pac-filings-show-power-and-secrecy.html?_r=1&exprod=myyahoo&pagewanted=all

⁸ Sheldon Adelson & Newt Gingrich:
<http://www.dailyfinance.com/2012/01/31/whos-buying-your-next-president-sheldon-adelson-makes-his-bid/?ncid=webmail2>

http://www.nytimes.com/2012/02/01/us/politics/campaign-finance-reports-show-super-pac-donors.html?_r=1&pagewanted=all

Foster Friess & Rick Santorum:

<http://www.npr.org/2012/01/19/145473357/billionaire-foster-friess-discusses-campaign-finance>

⁹ Adelson & Gingrich:
<http://www.nytimes.com/2012/01/10/us/politics/sheldon-adelson-a-billionaire-gives-gingrich-a-big-lift.html?hp=&pagewanted=all>

- 4) SuperPACs have hosted the candidates they are supporting at the SuperPAC's own "independent" fundraising events¹⁰.
- 5) SuperPACs have announced their intention to seek funding from a candidate's supporters who have given the legal maximum directly to the candidate, with a clear understanding that the money will be used to support that candidate in the next election¹¹.

For all of these reasons, there is an obvious risk of real or apparent corruption from some "independent" activities. Whether the entity does or does not actively plan expenditures in concert with the candidate, it remains apparent that the candidate is intimately involved in raising funds from donors to support the activities, is aware of the donor's actions that make possible the expenditures, and might well feel grateful or indebted to the donors once in public office.

Romney: http://www.washingtonpost.com/politics/super-pacs-alter-the-dynamics-of-fundraising/2012/01/05/gIOAH3dzjP_story.html?hpid=z10

<http://news.yahoo.com/mysterious-donor-pro-romney-pac-identified-160307460.html>

Huntsman: <http://www.nytimes.com/2011/12/04/us/politics/jon-huntsmans-cash-poor-campaign-gets-help-from-father.html?hpw=&pagewanted=all>

Perry: <http://www.nytimes.com/2011/11/02/us/politics/super-pac-begins-ads-for-rick-perrys-campaign.html?src=recg>

Herman Cain: http://www.nytimes.com/2011/10/20/us/politics/herman-cains-allies-form-a-super-pac.html?_r=1&src=rechp

Obama: <http://www.bloomberg.com/news/2011-04-29/democrats-start-two-campaign-fundraising-groups-for-obama-re-election-bid.html>

In General: <http://www.suntimes.com/news/marin/9792439-452/newts-right-on-superpac-lie.html>

<http://www.thedailybeast.com/articles/2011/08/06/super-pacs-raise-millions-but-distort-political-process.html>

¹⁰ <http://www.nytimes.com/2011/08/28/us/politics/28donate.html?hpw=&pagewanted=all>

http://www.politico.com/news/stories/0212/72948_Page2.html

¹¹http://tpmmuckraker.talkingpointsmemo.com/2012/02/lawyer_behind_citizens_united_case_just_because_i_brought_america_super_pacs_doesnt_mean_i_like_them.php?ref=fpnewsfeed

Indeed, other states have already modified their definitions of “independent” activities in order to address this risk of corruption. Several states, including California and Connecticut, have clarified their definitions of “independent” to account for the risk of corruption rather than just disclosure standards. Legislation now pending in Congress would likewise change the federal definition to reduce the risk that an unlimited contribution to a PAC will raise serious concerns about the integrity of government after the election. All of these are instructive as to how Illinois might clarify the statutory definition of “independent” so as to reduce the risk of actual or apparent corruption.

Connecticut, for instance, has amended its statute to clarify activities that are not “independent expenditures,” including:

- “An expenditure made ...for the production...of any broadcast or any written, graphic, or other form of political advertising ... prepared by (A) a candidate... or (B) a consultant or ... agent ... of a candidate.” [Sec. 9-601c(b)(2)]
- “An expenditure ... based on information about a candidate’s... plans, projects or needs, provided by (A) a candidate... or (B) a consultant or agent ... of a candidate.” [Sec. 9-601c(b)(3) and (7)]
- “An expenditure... for fundraising activities (A) with or for a candidate... or (B) for the solicitation or receipt of contributions on behalf of a candidate.” [Sec. 9-601c(b)(6)]
- “An expenditure ... for consultant or creative services... related to ... a candidate’s election... if the provider of such services is also providing consultant or creative services to such candidate...” [Sec. 9-601c(b)(9)]

Statutory language approved by the Connecticut General Assembly but vetoed for other reasons included these additional restrictions on “independent expenditures:”

- “An expenditure made by a person or an entity ... in the year of election in which a candidate is seeking office that benefits such candidate when such person or entity has hired an individual as an employee or consultant and such individual was an employee or consultant to such candidate during any part of the eighteen-month period preceding such expenditure.” [Proposed new Sec. 9-601c(b)(10)]
- “An expenditure made by a person or an entity... in the year of an election in which a candidate is seeking office that benefits such candidate when such person or entity making the expenditure has hired a campaign-related vendor that has been hired by such candidate during the same election cycle. For the purposes of this subdivision, campaign-related vendors includes, but is not limited to, vendors that provide the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.” [Proposed new Sec. 9-601c(b)(11)]

Recent federal legislation built on these two approaches. On the topic of coordination, the Empowering Citizens Act (HR 6448) would broaden the sense of “cooperation” thusly:

(1) IN GENERAL.—For purposes of this section, a payment is made ‘in cooperation, consultation, or concert with, or at the request or suggestion of,’ a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, if the payment is not made entirely independently of the candidate, committee, or agents, including a payment which is made pursuant to any general or particular understanding, or more than incidental communication with, the candidate, committee, or agents about the payment.”

Communications are not excluded if the shared information is the candidate’s “legislative or policy position.”

The Empowering Citizens Act would also exclude from the realm of “independence” any expenditure by a person or entity

- “directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of, the candidate or committee or agents of the candidate or committee, including with the express or tacit approval of the candidate or committee or agents of the candidate or committee.” (2)(A)
- where the “candidate or committee or agents of the candidate or committee solicit funds or engage in other fundraising activity on the person’s behalf during the election cycle involved, including by providing the person with names of potential donors or other lists to be used by the person in engaging in fundraising activity.” (2)(B)
- Who shared staff, employees, consultants or vendors with the candidate. (2)(C) and (2)(E).
- “the person has had more than incidental communications with the candidate or committee or agents of the candidate or committee about the candidate’s campaign needs or activities, or about the person’s possible or actual campaign activities with respect to the candidate or committee.” (2)(D)

Both the federal experience in 2012 and an examination funding for the two candidates for Governor in the 2010 general election in Illinois strongly suggest the dynamic in 2014 will create pressure for fraudulent coordination between candidates and independent expenditure committees (both multi-candidate and single candidate) in state-wide elections.

In the 2010 general election one national committee contributed \$7.9 million to Senator Brady’s campaign (44% of the \$17.9 million raised by Brady for the general election) while another national committee contributed \$1.8 million to Governor Quinn’s campaign (12% of the \$15.2 million raised by Quinn for the general election). The Quinn campaign raised more than \$9 million in contribution of \$50,000 or more. The Brady campaign raised more than \$10.9 million in contributions of \$50,000 or more. If Illinois’ contribution limits had been in effect in 2010 that money would have shifted to independent expenditures in order to legally influence the election. Adopting a more rigorous set of standards and definitions of “coordination” and “independent” in 2013

will help insure that the integrity and the appearance of the integrity of the political process is maintained as the system adapts to the post-Citizens United election framework.

Require disclosure from politically active non-profits

Part of the 1998 law that instituted electronic filing and banned personal use of campaign funds was a provision requiring disclosure from non-profit organizations that make political expenditures. As originally enacted, the former Sec. 5/9-7.5 required a non-profit "that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding \$5,000" with regard to a candidate to register with the State Board of Elections and file disclosure reports.

The provision was designed to ensure that the public could learn the source of funds used to communicate with voters about candidates. It was also viewed as onerous by non-profits that made incidental expenditures that triggered registration and disclosure.

The 2009 law that instituted contribution limits repealed Sec. 9/7.5, on the thinking that non-profits could not give more than \$10,000 to any candidate, and so any risk of corruption would be contained. Subsequent changes to the law, however, removed contribution limits from committees engaged in independent expenditures, meaning that once again unlimited money made anonymous by passing through a non-profit can once again steer political discourse.

Since it is again possible for entities to shroud the true source of funds used to communicate with voters about candidates through superPACs and independent expenditures? , Illinois should reinstate a registration and disclosure system for non-profit entities that funnel money to independent expenditure committees.

Models exist for approaching this question. For example:

* California statutes require that non-profits engaged in political activity reveal the amount of their spending, and list donors to account for the source of those funds. Per regulation § 18412, disclosure is to include first donations made expressly for political purposes, and then to include donations that are not expressly restricted in ways that foreclose political uses. Funds that are restricted to foreclose political uses do not need to be disclosed.

* Connecticut's proposal also addressed funds raised by non-profit entities that claimed to be exempt from political committee disclosure. New Sec. 9-612(6) added disclosure requirements. The new proposal would have required that any entity that:

“(i) is able to accept donations into its general treasury, (ii) engages in an independent expenditure [during the year in] which there will be an election for the office that a candidate who was the subject of such

expenditure is seeking, and (iii) makes such campaign-related disbursement out of its general treasury, then such entity shall disclose the source and the amount of all donations to the general treasury, including dues payments, if any, [above a threshold].”

The proposal would have exempted from disclosure giving by any donor that was expressly restricted in a way that prevented the entity from spending the money on independent expenditures.

The ultimate goal of disclosure is to facilitate the informed participation of citizens in the political process. To that end, disclosure requirement should provide maximum transparency of receipts and expenditures by political committees. The existence of anonymous “dark” money threatens both the integrity of the process and the willingness of citizens to accept the political process and the outcome of the process as legitimate.

Require Federal PACs Making Expenditures in the Days Before an Election Should Be Required to File Disclosure Reports on Par with State and Local PACs

For decades, the Illinois State Board of Elections has allowed federal PACs engaging in Illinois elections to do so by filing a D-1 Statement of Organization and no other disclosure reports. The basis for this policy was that federal PACs faced more frequent disclosure (quarterly or monthly, at a time when state PACs disclosed semi-annually) and federal PACs faced more restrictions on their fundraising than state PACs (federal PACs could accept funds only from natural persons, and in limited amounts).

SuperPACs present a challenge to the assumptions that undergirded Illinois’ policy. SuperPACs, at the state and federal levels, face the same wide-open rules for fundraising (they may accept as much as they can get from whatever entity will give it to them), but federal SuperPACs disclose the source of their funds on a more lax schedule (monthly or quarterly, with no supplemental reports for large contributions). Moreover, disclosure reports filed by federal SuperPACs are not as widely available as are reports filed with the State Board of Elections.

In the fall of 2012, Liberty Principles PAC, a state PAC organized on in early October, reported receiving funds from Liberty Principles, apparently a federal PAC organized last February. (It is also possible that these two entities, which share officers and an address, are in practice and in fact the same entity). The Illinois-organized Liberty Principles PAC reported spending \$215,168.18 with regard to seven races all over the state, but listed the sole source of all of its funds as the “Liberty Principles.” It was not immediately clear what that “Liberty Principles” was – it was not described as a PAC, and it was not clear from state filings where the source of the funds could be found. The federal Liberty Principles PAC filed disclosure reports with the Federal Elections Commission noting the source of their funds, but some of these were not disclosed until after the election. Had Liberty Principles PAC been organized under state law, they would have been required to report the true source of their funds in supplemental reports filed before the election.

The State Board of Elections currently allows federal PACs to participate in Illinois state and local elections by filing a D-1 Statement of Organization but then making no other disclosures to state or local authorities. Rule 110.60(b) declares:

Any "person" or "whoever", as defined by Section 9-1.6 of the Election Code, qualifying as a political committee under Article 9 of the Election Code and filing Federal Election Commission reports may choose to comply with the provisions of Article 9 of the Election Code by so indicating on a Statement of Organization (Form D-1) filed with the State Board of Elections.

The rule was adopted at a time when federal PACs faces contribution limits (state and local PACs did not) and when federal PACs filed quarterly or monthly reports and state PACs filed semi-annual reports. With regard to both fundraising and disclosure, federal rules were more strict than Illinois' rules. Now that there are some federal PACs that operate under looser rules than some state PACs, there is a need to change the rule so that Illinois voters are afforded sufficient information before the cast ballots.

The Board should modify Rule 110.60 at a minimum to make clear that federal PACs that operate under fundraising and disclosure rules that are not comparable with Illinois rules for Political Action Committees (if, for example, they raise funds without regard to limits or that file disclosure reports that will not reveal the source of all of the funds used before an election must also file supplemental reports with the State Board) are not eligible for this filing option. It would also be appropriate to repeal the rule entirely, so that all PACs operating in Illinois elections do so on an equal footing

V. Methodology

Data for this report comes from several sources:

- Information on candidate resources is derived from campaign disclosure forms filed with the State Board of Elections, looking at the quarterly report for the period ending September 30 and supplemental reports filed after September 30. Candidate resources are measured by adding cash on hand, including investments, on July 1 with all reported cash and in-kind receipts since then, including itemized and non-itemized receipts between July 1 and September 30, and contributions of \$1,000 or more reported on A-1 forms after September 30. Fuller information about candidate spending should be available on the Quarterly Report for the period ending December 31, 2012, due to be filed with the State Board of Elections by Tuesday, January 15, 2013, but these were not filed prior to this report's publication date.
- Fundraising by groups engaging in Independent Expenditures, including expenditures by both Independent Expenditure Committees, Political Action Committees, and Political Party Committees, are derived in the same method as were totals for candidate committees. Independent Expenditure totals are derived from the quarterly reports filed by committees and supplemental B-1 reports filed after September 30. Fuller information may be available in the Quarterly Reports filed by groups engaged in Independent Expenditures, though we assume that entities organized to make Independent Expenditures, such that they are except from contribution limits, would tend to raise money in large increments, subject to supplemental A-1 disclosure reports.
- Vote percentages are derived from totals in the official results, certified by the State Board of Elections on Sunday, December 2, 2012.