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AFTER *CITIZENS UNITED*:
THE STORY IN THE STATES

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INTRODUCTION

Citizens United gave the green light to unfettered money in our elections. But the ruling's logic rested on a crucial assumption: that unlimited spending would happen *independent* of candidates. The Court continued to recognize that coordinated spending can be corrupting and therefore is subject to reasonable limits.

Four years later, outside spending has skyrocketed, and the Supreme Court's assumptions have bumped up against the reality of American politics. Unlimited outside spenders are working "hand in glove" with candidates who have every incentive to look after their interests if elected.¹

This assessment comes not from a Washington watchdog, but from a state election regulator, Montana's Jonathan Motl, and it captures a national trend.² While federal developments in outside spending — involving famous billionaires and candidate-specific super PACs — have received wide attention, that focus has obscured a remarkable shift at the state and local levels.

At this scale, it turns out, you don't have to be a Koch brother to be a kingmaker. In the past four years, outside spending at the state and local levels has surged, often generated by far more obscure names. Much of that spending has occurred with questionable independence from the candidates who stand to benefit. And, across the states, a wide range of approaches to regulating coordination — from dated and myopic to new and imaginative — have shown the current limits and potential future for deterring coordination between outside spenders and candidates throughout the country.

This report offers a close examination of these developments and — based on a comprehensive review of widely varying coordination laws and enforcement records in 15 states — distills a number of generally applicable recommendations for the best way forward. Section One, using government records and an extensive catalog of news reports from across the country, paints a picture of big spenders and bigger spending in the states. Since 2010, outside spending in state elections has surged. In Connecticut, Maine, Michigan, and Wisconsin — the only four states that track outside spending and held competitive gubernatorial contests in 2010, as they are doing this year — outside spending through the end of this summer had shot up to 20 (Connecticut), 4 (Maine), 4 (Michigan), and 5 (Wisconsin) times its 2010 levels, the Brennan Center has found.³ Relatively unknown names with big ambitions have financed outside groups that spent heavily on races for statehouse, mayor, and even school board. At the state level, it is possible for a single funder to dominate the discourse and machinery of politics in a way not seen at the federal level.

Yet in contests for state or local office, the separation between outside spenders and those who would take power has been sometimes even more porous than has been reported about federal elections, as Section Two of this study will describe. Candidates' trusted associates organize super PACs to amass unlimited funds. Candidates fundraise for these affiliated, yet unrestricted, groups. Campaigns and outside groups find numerous ways to collaborate in their messaging, and to tap a common roster of strategists and other providers. Some alliances have led to legal and political scandals, while others prompted only criticism — they may have flunked the smell test but did not seem to violate any law.

Section Three of this report looks at these laws and how states have enforced them. Since *Citizens United* unleashed outside spending in 2010, the inadequacy of federal regulation to stop coordination in congressional and presidential elections has drawn wide notice.⁴ In search of other models — or cautionary tales — the Brennan Center decided to study how other jurisdictions have been grappling with the problem. We picked 15 states that seemed likely to yield the most interesting findings — most of them are hosting close top-ticket contests this year, and a few have already implemented new policies designed to better stop coordination in the super PAC age.⁵

Our review of the states' coordination rules and enforcement histories revealed a wealth of essential, practical pointers for any policymaker, regulator, or advocate contending with the challenges of coordination. We summarize our research state by state, in order of regulatory strength, in Section Three. In most of the states, we found, laws meant to deter coordinated spending are too ambiguous, narrow, or weakly enforced. These states offer important lessons about the minimal components required for effective regulation. Even in states without the strongest rules, however, our review showed that a robust enforcement approach can catch violations. In fact, whether in strong regulation states or weak, a close read of cases — where regulators sought to prosecute actual wrongdoing or offered candidates and spenders compliance advice — reveals important insights into the daily realities of regulation. This report offers dozens of summaries of such cases.

So far, our research found, a few states — Connecticut, Minnesota, and Vermont — have embraced promising new policies to enforce the actual independence of unlimited spending. They have thought expansively about what political advertising and collaboration really entail in today's elections, encompassing the issue of candidate fundraising for supportive outside groups and other subsidiary aspects in their inquiries. The reforms reflect perceptions of major developments in the past several years.

The state law analyses in Section Three provide details about these newly implemented policies. In Section Four, the report provides a glimpse of the way forward, previewing some reforms that are pending in other localities. Philadelphia and San Diego, for instance, are considering changes to strengthen local coordination rules, and New Mexico legislators plan to push next year for passage of the state's first ever coordination law.

To be sure, as with any regulatory regime, determined players likely will find new ways to evade both the letter and the spirit of even strengthened coordination rules. Just as political tactics evolve, even the best-designed system will have to evolve, too.

On a deeper level, it is important to acknowledge that stronger coordination regulation is far from a cure-all for the profound structural problems caused by the outsize influence of wealthy interests in American elections. The ability of the few super-rich to dominate politics, even if not in coordination with campaigns and not by bribing officials outright, is a crisis for a nation that seeks to conduct truly fair elections in which all citizens have an equal opportunity to participate.

But the Supreme Court's current jurisprudence — its theory of when governments may regulate money in politics — permits only limits that target *quid pro quo* corruption. Until that changes,⁶ our review shows that strengthening coordination rules and/or enforcement should make a meaningful difference in protecting the integrity of our existing campaign finance systems.

A tougher approach catches violations, which can deter other potentially corruptive arrangements. This deterrence is essential to making existing reforms and rules even moderately effective. Coordination regulation prevents end runs around direct contribution limits, which are meant to minimize the opportunity for *quid pro quo* corruption. It identifies connected spending that should be subject to disclosure, reinforcing laws intended to make influence transparent. And it helps candidates opt into public financing without fear of unfair competition, a reform meant to ensure more of a political voice for everyday citizens.

This report's review of increased outside spending in the high-stakes state and local arenas, recent collaboration tactics, and states' laws and enforcement approaches, provides the basis for a number of clear recommendations — some minimal, others more ambitious — for regulating coordinated spending more effectively, while preserving the constitutional freedom of speech. Generally laws treat outside spending to promote a candidate's election as coordinated — and therefore subject to campaign contribution limits — if it is based on “substantial discussion” between the spender and the candidate. But that standard does not adequately capture the many ways collaboration occurs in the current era. Recommendations for a modern and more effective approach are discussed in greater detail at the conclusion of this report, and include:

- **Make laws apply to a realistic universe of spending.** The weakest laws exclude huge swaths of outside spending from coordination regulation. They cover only so-called express advocacy — communications that explicitly ask voters to elect or defeat a particular candidate — rather than including the more common form of election-season advertisement that promotes or attacks candidates' stances on issues.
- **If a candidate raised money for a group, treat all spending by that group on behalf of the candidate as coordinated.**
- **Provide sensible “cooling off” periods before a candidate's former adviser may staff a group that is permitted to make unlimited expenditures to promote her election.** Otherwise, any spending in support of that candidate by a group with such staffing should be viewed as coordinated.
- **Treat as coordinated any spending to promote the election of a candidate that reproduces material produced by the candidate's campaign.**
- **Treat as coordinated any spending to promote the election of a candidate, when the spender uses a consultant who has also served the candidate in a position privy to related campaign information.**

- **Publish scenario-based examples of what constitutes prohibited coordination and what does not.** Many jurisdictions provide only a basic, statutory definition of coordination, leaving candidates and spenders on their own to figure out what it means, for instance, to “consult or cooperate” and thus trigger penalties. It is useful to publish examples of prohibited activity, in realistic contexts.
- **Ensure adequate enforcement and deterrence.** Even the most comprehensive coordination law will not deter violations without adequate and sensible enforcement.
- **Allow use of firewalls under appropriate circumstances as evidence that an outside group’s spending was truly independent.** Under some circumstances — such as when a vendor provides services to both a candidate and an outside group — it may be possible to mitigate the risk of coordination through the vendor’s use of an adequate firewall to separate the two streams of work. In such cases, states should allow proof of a formal, written policy, prohibiting the exchange of relevant information, to be used as evidence that no coordination occurred.

I. THE RISE OF OUTSIDE SPENDING AND BIG SPENDERS IN THE STATES

“If you get involved at the local level with the route I described, you will be amazed at how much influence you can have,” one investment firm founder told fellow business school alumni in a speech this year.⁷

The speaker, Rex Sinquefield, has attracted news coverage for becoming “Missouri’s largest political donor,”⁸ “perhaps the most influential private citizen in the state,”⁹ and, according to Bloomberg News, “a new American oligarch.”¹⁰ The Missouri native made his fortune after helping in the 1970s to launch some of the first index funds, a now popular vehicle for investing broadly in the stock market.¹¹ In recent years he has poured vast sums into his home state’s politics, with a vision of gutting the income tax and teacher tenure.¹²

Sinquefield’s political investing takes advantage of both the newly constitutionalized freedom to spend from outside, and also the state’s elimination in 2008 of campaign contribution limits.¹³ He gave \$28 million to political committees between 2008 and 2013 and more than \$3 million this year.¹⁴ This year he has also bankrolled two tax-reduction advocacy groups active in Missouri elections, Missouri Club for Growth and Grow Missouri, giving more than \$5 million.¹⁵ His giving to outside groups has spilled into neighboring Kansas, according to news reports that identified him as a funder of the advocacy group Kansans for No Income Tax.¹⁶ Sinquefield told Bloomberg News in a 2012 interview that he contributed to the group.¹⁷

Since the Supreme Court in 2010 struck down all limits on independent election spending by corporations and unions, outside money has flooded elections at all levels in unprecedented amounts.¹⁸ *Citizens United* transformed the legal landscape of elections up and down the ticket. Half the states had, like the federal government, banned corporate spending on election ads.¹⁹ In just a few years the transformation of these longstanding laws has also transformed the culture of special interest spending. Today the phrase “super PAC” and the names of billionaire political donors are household terms.²⁰

In the states, this year outside spending is 4 to 20 times higher for governor’s races that were similarly competitive in 2010, the Brennan Center found.²¹ Across 30 states outside spenders this year have increased their share of political advertising compared to 2010, according to a new study by the Center for Public Integrity, and in six states are buying the majority of the ads.²² The lion’s share of spending is likely still to come. In 2010 more than half of all overall spending occurred in the final two months of the election.²³ One recent study found an 80 percent increase in outside spending by the end of the 2010 elections, compared to 2006, in states where the January 2010 *Citizens United* decision erased existing corporate and union election spending bans.²⁴ In that same period outside spending increased by 34 percent in states that had already allowed corporate and union spending.²⁵ Poor disclosure laws in more than half the states make accurate tracking of outside spending simply impossible.²⁶

The surge in outside spending reflects greater investment by wealthy actors. Nearly 60 percent of the money raised by federal super PACs in 2012 came from 159 donors giving \$1 million or more.²⁷ In state and local races, big outside spending reflects an increasing awareness that more consequential and affordable influence is to be found there than at the federal level. An outside spender can be kingmaker for far less than millions.

Along with spending on the obvious gubernatorial and legislative races, super PACs are funneling unprecedented amounts into secretary of state races in key states, where oversight of voter ID laws and other crucial election rules is at stake.²⁸ Outside groups are also spending on races for the top law enforcer, attorney general, in many states.²⁹ They have intervened in mayoral, city council, and district attorney races across the country.³⁰

Frequently these outside interests are backed by individuals who possess tremendous business wealth and seek political power. The club includes some famous billionaires, such as Michael Bloomberg, David and Charles Koch, and Tom Steyer, who have flooded local elections across the country — for county sheriff, for county board, for school board — with six-figure spending, in efforts to achieve gun control, low taxes, and environmental protection, respectively.³¹

But it also includes lesser-known spenders, such as Ron Conway in San Francisco's 2011 mayoral election. Conway, one of the few early-stage investors in Google and other prominent tech ventures, wanted Ed Lee — a city official appointed in January 2011 to finish out the term of departing mayor Gavin Newsom — to win the heated race.³² Lee supported payroll and other tax breaks for tech giants, such as Twitter, that Conway had invested in and argued would bring prosperity to the city.³³

Local law limited Conway's direct support, in campaign donations, to \$500.³⁴ So Conway launched a super PAC, giving or raising more than \$600,000 total in support of Lee — greatly boosting the candidate, whose campaign reported raising about \$1.6 million.³⁵ In the “unusual” effort, as *The Wall Street Journal* reported it, “the highest-profile tech firms based in San Francisco are uniformly rallying around [Lee].”³⁶ Conway's group generated over half of all outside spending supporting Lee, according to public records and the city's election regulator.³⁷

The price of influence can be far lower in, as regulator Motl affectionately called it, “a backwater state like Montana.” There, he told the Brennan Center, “\$20,000 would be a lot of money for a legislative seat.”³⁸

“We've had tremendous amounts of outside money come in, in a way that the citizens don't want it to come in,” Motl said. Montana's rich natural resources have drawn industry interests, “barely disguised” as populist groups, to spend lavishly in close alignment with their favored candidates, he said. “They've run the campaigns, printed mailings, created images for the candidates. And many of these candidates won.”³⁹ His office has cranked up its number of coordination investigations this year.

In Vermont, Lenore Broughton, heir to an industrialist's fortune, has been the prime backer of Vermonters First, a super PAC led by the former head of the state Republican Party.⁴⁰ In 2012, the super PAC spent nearly \$1 million, nearly all from Broughton, supporting state candidates through

television advertisements and mailings.⁴¹ The onslaught of candidate-specific outside money in that election prompted legislators to enact one of the most stringent laws in the country governing outside groups, requiring them to keep all activities independent if they wish to take in unlimited funds for spending.⁴²

“It was important to draw a clear line between those [outside spender] groups and any particular candidate,” Jim Condos, Vermont’s secretary of state overseeing elections, told the Brennan Center. “Citizens need to feel confident that their elected officials are acting on their behalf and not on the behalf of those groups.”⁴³

Outside influence preceded the ultimate insider influence for one North Carolina business executive whose family and company recently poured millions into transforming the makeup of the state’s elected offices. Art Pope, the chief executive of Variety Wholesalers, a discount stores conglomerate, saw an investment of \$2.2 million in 2010 pay off in wins by 18 of his 22 favored legislative candidates, bringing Republican majorities to both legislative chambers for the first time since 1870.⁴⁴ His family and corporate funds accounted for nearly 75 percent of all outside spending — through a multitude of groups — in the 2010 state legislative races, according to news reports.⁴⁵ In 2012 those sources helped a Republican win the governor’s race for the first time in more than two decades.⁴⁶

That victor, Gov. Pat McCrory, immediately appointed Pope to be his budget director.⁴⁷ One veteran Republican state legislator told *The Washington Post* that Pope “has been working all of his life to get in a position of influence in North Carolina,” adding, “my buddy Art is in position.”⁴⁸ McCrory and Pope, a Duke University-trained lawyer, said the appointment was about Pope’s qualifications as a policy wonk and not political gratitude.⁴⁹ Pope told McCrory he would serve one year.⁵⁰ During his longer than promised tenure, Pope pushed through cuts to taxes and social services and other changes severe enough to rankle even conservatives he had supported.⁵¹ McCrory announced Pope’s resignation effective this September.⁵²

In perhaps the most dramatic effect of the rush of political money into states after *Citizens United*, *The New York Times* reported this year, unlimited outside spenders helped orchestrate one-party takeovers of government in 36 states.⁵³ By 2012, Republicans controlled both the legislature and governor’s office in 23 states, and Democrats controlled both branches in 13 states.⁵⁴ These political monopolies enabled elected officials to enact sweeping policy changes in short order, on critical issues such as same-sex marriage, taxes, guns, and labor rights.⁵⁵

II. UNLIMITED SPENDERS AND CANDIDATES FOR STATE AND LOCAL OFFICE COLLABORATE IN NUMEROUS WAYS

As outside spending explodes at all levels, candidates and outside spenders have developed numerous ways to align their efforts. Many of the methods do not quite violate existing coordination laws, giving candidates an easy way to profess blamelessness. Yet as the availability of outside funding and opportunities for candidate-spender collaboration grow ever greater, the need to minimize the corruption of those elected and the public perception of corruption also grows more urgent. The recent proliferation of collaboration techniques and trends suggests that many existing laws and enforcement approaches are now inadequate to ensure the actual independence of unlimited spending and need reform.

A. Candidate-Specific Outside Groups Are the Quintessential Collaboration Vehicle

Much of the growth in outside spending since 2010 has come from groups dedicated to the election of one candidate and often helmed by the candidate's former advisers and associates.⁵⁶ Such candidate-specific outside spending enjoys a special degree of synchronicity with candidates, as former associates possess intimate knowledge of a candidate's strategies, goals, and support network, and candidates can have confidence in the work of the outside group.

Though candidate-specific outside groups have commonly come in the shape of super PACs — a form of political nonprofit that under federal and many states' laws must publicly report donor information — so-called “dark money” groups recently have taken on the role.⁵⁷ Formed as issue advocacy nonprofits, rather than chiefly political groups, they typically are exempt from disclosure requirements.⁵⁸ The combination of closeness with candidates and secrecy that candidate-specific dark money groups enjoy raises special concerns about corruption.

In a scandal that one news report called a “nightmare scenario” of such corruption, former Utah Attorney General John Swallow used nominally independent groups to conceal generous support for his 2012 campaign from payday loan companies, which he had promised in exchange to regulate lightly, according to a special investigation by the state's legislature.⁵⁹ Investigators reported that Swallow's campaign staff had created a web of benignly-named groups, such as the Proper Role of Government Education Association, to collect more than \$450,000 from the lenders.⁶⁰ Those groups fronted television advertisements attacking Swallow's opponent's ethics and temperament.⁶¹ Swallow's reported use of dark money groups shielded the identity of the original donors and permitted him to distance himself from the unpopular loan industry.⁶²

Indeed, as one reporter observed, “the most remarkable thing about the evidence may be that it was uncovered at all.”⁶³ The government's probe began only after *The Salt Lake Tribune* published a scoop based on a secret tape recording of Swallow and a donor.⁶⁴ Investigators alleged that Swallow had gone to great lengths to try to destroy potentially incriminating emails, which eventually were recovered at considerable expense.⁶⁵ “It cost Utah's taxpayers millions of dollars to get at the truth of what happened here,” the legislature's special counsel told *Bloomberg Businessweek*.⁶⁶ “The facts were hidden and not in plain view. Without the committee's subpoena power and commitment of resources, we never would

have uncovered the true story.”⁶⁷ The debacle has prompted Utah legislators to consider overhauling campaign finance laws.⁶⁸

Swallow’s attorney told the legislature in a letter that Swallow, who had resigned, was innocent, and that “the suggestion the AG Office was for sale is absolutely false.”⁶⁹ Swallow was later arrested on bribery and other charges arising from deals not related to the campaign finance improprieties the legislature had alleged, and currently awaits a trial after proclaiming his innocence.⁷⁰

In some apparently less sensational cases the overlaps between candidates and outside groups nevertheless have raised concerns. Last year California’s election regulator fined state Assembly Member Luis Alejo \$21,092, after the agency determined that his 2010 campaign manager had coordinated the publication of three mailers supporting Alejo with a super PAC where the same campaign manager held a leadership role.⁷¹ The group, whose coordinated spending exceeded its legal limit for contributing to Alejo by nearly \$25,000, also received a fine.⁷² The overlapping roles of Alejo’s campaign manager destroyed the necessary independence of the super PAC’s mailer spending, the state agency concluded. “Such coordination has long been suspected in legislative races but has been difficult to prove,” *The Sacramento Bee* wrote, reporting that the case “is believed to be the first time the [state agency] has been able to levy a fine for a violation.”⁷³

Though Wisconsin State Sen. Mike Ellis incurred no official penalty, the veteran incumbent did drop his re-election bid this year amid controversy over hidden-camera footage of him describing his idea to create and raise money for a super PAC that would launch seemingly independent ads attacking his opponent.⁷⁴ “I’m raising the money. She will manufacture the crap,” Ellis said in the footage, which was released by activist group Project Veritas, referring to an associate he envisioned as leading the super PAC.⁷⁵ In a statement responding to reporters, Ellis explained that he merely had been brainstorming about how he might maximize support from “personal friends” rather than have to turn to other sources and risk “being tainted by special interest money.”⁷⁶ He said, “Shortly after the video was recorded, I was informed that the described scenario would be illegal, and the idea went no further.”⁷⁷ Explaining his decision to withdraw to reporters, Ellis blamed a hyperpartisan culture in the legislature and the strain of living a public life where his private conversations were recorded.⁷⁸

No one has alleged illegal coordination — just strategic closeness — about an outside issue group formed this year by a former communications director for Rahm Emanuel to support Emanuel’s bid for re-election as Chicago’s mayor.⁷⁹ The group, Chicago Forward, raised nearly \$1 million in one day this June, the *Chicago Tribune* reported based on official filings, all from seven business executives including longtime supporters of Emanuel.⁸⁰ The donations of as much as \$150,000 apiece to the issue group far exceeded state candidate campaign contribution caps of \$5,300 for individuals and \$10,500 for corporations.⁸¹

Though the amounts were much lower, an outside group promoting the ultimate winner this spring of a seat on the Gainesville, Florida, city commission also served as an outlet for the candidate’s associates and direct donors to increase their support.⁸² News reports connected candidate Helen Warren’s campaign manager with a group called South Forward, which made professedly independent expenditures worth about \$3,000 in advertisements and mailers to support Warren.⁸³ The reports said

the group's official paperwork listed Warren's campaign manager as its registered agent.⁸⁴ The group raised funds from donors who had already given \$250, the maximum to Warren's campaign allowed under local law, according to *The Gainesville Sun*, which reviewed records filed with the state.⁸⁵ In the tight runoff election between Warren and another Democrat, South Forward sent a mailer into a predominantly black neighborhood that linked Warren's opponent's name with the movement that questioned President Barack Obama's birth records.⁸⁶ A month after Warren's victory, her campaign manager told the press she no longer served as the group's agent and would not work with an outside group that was benefitting a campaign she was running.⁸⁷ Warren said she had heard about a supportive outside group from her supporters, but did no work with the group.⁸⁸

Of course in federal elections, support from candidate-specific super PACs has become a must-have. Already a number of such groups, led by longtime advisers, have formed to support as-yet unannounced 2016 presidential candidates.⁸⁹ In 2012, Mitt Romney and Barack Obama famously enjoyed the support of dedicated super PACs — Restore our Future and Priorities USA Action, respectively — with each group led by the candidate's former adviser or staffer.⁹⁰ As of this month, 76 candidate-specific super PACs had spent more than \$30 million on 41 U.S. Senate and House races in the 2014 cycle.⁹¹ Former campaign and government staffers have moved over to these groups to help their candidates tap unlimited support from the outside.⁹² On the federal level, most of the wealthiest super PACs — 60 percent of super PACs that spent more than \$100,000 in 2012 — have supported a single candidate.⁹³

A recent Brennan Center analysis of outside spending in the most competitive U.S. Senate races this year found that candidate-specific, dark money groups are becoming more common and spending millions. These groups “make it impossible to know whether candidate contributors are attempting to curry favor by also making large donations to candidate-specific spenders,” the report explained.⁹⁴

B. Candidates Solicit Huge Sums for Outside Groups that Support Them

The Supreme Court in *Citizens United* commanded entirely different regulation of campaign contributions to a candidate — which governments may limit to prevent corruption of candidates — and of ostensibly independent spending in favor of a candidate, which the Court said may not be limited.⁹⁵ Yet since 2010, candidate behavior in elections at all levels often has blurred the difference beyond recognition. Many candidates, in raising massive sums for the outside groups that exist often exclusively to support them, appear to be as closely involved as in their own campaign fundraising. With candidates' former associates leading these outside groups, donors can, in turn, have confidence that their contributions will carry as much weight as if they were contributing directly to the candidates' campaigns. These dynamics closely enough resemble those of a candidate's raising money for her own campaign to justify tighter regulation than currently applies in most jurisdictions.

Perhaps the most prominent allegations about a state candidate's fundraising relationship with outside groups concern Wisconsin Gov. Scott Walker. This summer, documents emerged, in the course of litigation, indicating that the governor personally solicited high six-figure donations from well-known mega-donors to a nonprofit advocacy group that then advertised to support him.⁹⁶ For nearly two years state prosecutors investigated dealings between Walker's 2012 campaign to fend off recall and nonprofit advocacy groups, including the powerful Wisconsin Club for Growth, for illegal coordination.⁹⁷ They

alleged that two of Walker's campaign consultants had helped raise money for and directed the political spending of the supportive outside groups, compromising the independence and thus unrestricted status of that spending.⁹⁸ Counted as coordinated, rather than independent, expenditures, the spending by outside groups to support Walker would far exceed the state contribution cap.⁹⁹ The investigation went on hold after a federal judge in May 2014 ordered a halt, saying that the outside groups' spending was constitutionally protected from regulation.¹⁰⁰ Prosecutors appealed, and in September the U.S. Court of Appeals for the Seventh Circuit reversed the lower court's order, instructing the federal judge to leave the investigation's fate to the state's courts.¹⁰¹ The Brennan Center filed a friend-of-the-court brief in the appeal, arguing generally that it is constitutional to regulate the type of spending in question, though not addressing the merits or lack thereof of the prosecutors' probe.¹⁰²

After Walker telephoned or met with wealthy potential donors, they contributed generously to the Wisconsin Club for Growth "sometimes within just hours," according to *The New York Times'* review of documents in the investigation.¹⁰³ The group argues that its advertisements discussing candidates' stances on issues, rather than explicitly calling for people to elect or defeat candidates, cannot be subjected to coordination regulations under the Constitution.¹⁰⁴ Walker has called the allegations of legal violations "categorically false,"¹⁰⁵ and attacked reporting by national newspapers for reflecting possible "bias or . . . incompetence, or is it just being lazy."¹⁰⁶

David Vitter, the U.S. senator from Louisiana who has entered the 2015 gubernatorial contest and whose federal term would be up in 2016, last year headlined an alligator hunt organized for potential donors to a super PAC that is prominently supporting him for state office as well as potentially for re-election as senator.¹⁰⁷ The same key consultants have raised funds for his Senate campaign and for the super PAC.¹⁰⁸ The Campaign Legal Center, a nonprofit election watchdog group, filed a complaint with federal regulators alleging that Vitter violated the law by soliciting contributions to the super PAC that exceeded federal solicitation limits.¹⁰⁹

This spring in Connecticut, the Democratic Governors Association (DGA), a national political nonprofit, announced that incumbent gubernatorial candidate Dan Malloy would raise funds for the DGA, and that the DGA would spend on purportedly independent advertising in support of his reelection.¹¹⁰ In his 2010, race Malloy had benefitted from \$1.7 million in spending by the DGA.¹¹¹ The group filed a court challenge to strike a new state law that would count collaborative fundraising as possible evidence of illegal coordination, but in June the court rejected the argument.¹¹²

Indicating just how closely candidate fundraising for outside groups can align with campaign fundraising, some of the biggest donors to candidate-specific outside groups are also the top donors to the candidates' campaigns. Those donors "max out" their direct support of a candidate by hitting legal contribution limits, then funnel further support to the candidate-affiliated outside group. This overlap raises concerns that some nominally independent outside groups in effect serve as vehicles to circumvent campaign contribution limits, even if there is no actual violation of law.

After New York billionaire John Catsimatidis this year maxed out his direct contributions to U.S. Sen. Lindsey Graham's re-election campaign, for instance, Graham traveled to New York to meet privately with him. An hour later, representatives of a super PAC that exclusively supports Graham's re-election

also met with the billionaire.¹¹³ Three days later, one of the billionaire’s businesses, the United Refining Company, donated \$25,000 to the candidate-specific super PAC.¹¹⁴ Similarly, a maxed-out donor to U.S. Sen. Lamar Alexander’s 2014 primary rival, Joe Carr, also was the top donor to two candidate-specific super PACs supporting Carr.¹¹⁵ Maxed-out campaign supporters have also backed outside groups supporting candidates for local offices.¹¹⁶

Federal elections since 2010 have seen numerous reports of candidates who helped raise funds for supportive outside groups.¹¹⁷ Analyses by the Brennan Center of outside spending in this year’s most competitive federal races — nine U.S. Senate races and 13 House districts — showed at least eight instances of maxed-out direct donors also donating to outside groups that support their favored candidate.¹¹⁸ Statistics also support one common-sense conclusion: Only the wealthiest few will be able to support candidates by maxing out campaign donations then giving significantly to candidate-specific outside groups.¹¹⁹ In 2012, just 159 donors accounted for nearly 60 percent of all contributions to federal super PACs, according to Demos.¹²⁰

Concern about the involvement of candidates in outside-group fundraising has generated some movement to regulate it. In response to one candidate’s request for legal advice in navigating that relationship, for instance, Minnesota’s campaign finance regulator this year announced that any spending by a professedly independent group in support of a candidate who raised funds for the group would be considered coordinated with the candidate. The candidate’s solicitation of funds, or even mere appearance as a speaker at a group fundraiser, would “destroy the independence of an expenditure later made by the” group supporting the candidate.¹²¹

C. Candidates Collaborate with Supportive Outside Groups on Messaging

Coordination laws typically bar candidates from getting too closely involved with purportedly independent advertising in support of their election. Significant candidate involvement destroys the “independence” of the outside spending, and should trigger limits that count such spending as indirect campaign contributions. Yet since the 2010 *Citizens United* decision, campaigns and the ostensibly independent groups that support them have advanced numerous, often bold, techniques for collaborating on the groups’ messaging, with apparently no ramifications for the groups’ unlimited spending power.

Outside advertising in this year’s most competitive gubernatorial races cribs from one of the earliest and brashest ideas for such collaborative messaging. In 2011, the flush super PAC American Crossroads told federal regulators it would produce a series of television and radio advertisements that would be “fully coordinated” in every practical sense with members of Congress seeking re-election.¹²² The ads would feature the candidates promoting their platforms and drawing contrasts with opponents — seeming, to the everyday audience, a lot like campaign spots.¹²³ But the super PAC claimed that it would not be coordinating in the legal sense, because the messages would not clearly call for the members’ re-election or air too close to Election Day — key factors under the law — and that its spending therefore should not be capped at contribution limits.¹²⁴ Commentators, including the Brennan Center, argued that the advertisements obviously would add value to the candidates’ campaigns, and so should be subject to in-kind contribution limits.¹²⁵ The bipartisan Federal Election Commission’s (FEC) review ended in a deadlock and no ruling one way or the other, prompting public ridicule and emboldening future outside group-candidate partnerships.¹²⁶

This year in Michigan's close gubernatorial contest, candidate Mark Schauer has appeared in at least four advertisements paid for by the Democratic Governors Association, a political committee that may raise and spend funds from any source without limit, according to the Center for Public Integrity.¹²⁷ In one ad, discussing his commitment to growing the economy, Schauer says of his opponent, "Tell Gov. [Rick] Snyder his economic policies work for the wealthy, but not for the rest of Michigan."¹²⁸ Schauer opted to participate in the state's public campaign financing program and thus faces caps on his own fundraising, but the DGA does not.¹²⁹ The DGA reportedly has reserved \$6 million in television time in Michigan between September and the November election.¹³⁰

Similarly, Florida Gov. Rick Scott has appeared in multiple television ads paid for by the organization Let's Get to Work, an outside group whose name is also a Scott re-election campaign slogan.¹³¹ In a state that caps direct contributions to candidates at \$3,000,¹³² Let's Get to Work has raised more than \$28 million; and the outside group supporting Scott's rival in the 2014 race, Charlie Crist, has raised more than \$14.6 million.¹³³

The issue of candidates appearing in outside advertising has prompted a strict response in Minnesota. Last year the state's oversight agency fined a committee of the state's Democratic-Farmer-Labor Party (DFL) for wrongly reporting as independent more than \$315,000 worth of 2012 election literature that had actually been coordinated with 13 legislative candidates.¹³⁴ The literature featured photographs of the candidates that the committee had obtained not from public sources, but rather through private photo shoots organized by the party committee.¹³⁵ The candidates' sitting for the photos, the agency ruled, was participation enough to destroy the independence of the party committee's advertisements in support of those candidates.¹³⁶ The coordinated spending had exceeded limits by more than \$250,000.¹³⁷

Eleven of the 13 DFL candidates in the post-election investigation had won their races, shifting control of the state senate to their party.¹³⁸ Accepting testimony that the various participants did not know they were breaking the law, the agency chose not to penalize the candidates and fined the party committee only one-third of the excess, \$100,000.¹³⁹ Republican leaders told reporters the outcome was too little, too late: "The question really needs to be asked," Senate Minority Leader David Hann said to the *Star Tribune*, "Would they have won the majority if they hadn't cheated?"¹⁴⁰

In another form of collaboration, campaigns publish online flattering footage of candidates — smiling, visiting with senior citizens, signing bills, wearing a hard hat, walking farm fields — for outside groups to use in advertisements supporting the candidates' election.¹⁴¹ The tactic of providing free "B-roll" for supporters' use famously took on the label, "McConnelling," after a foray by U.S. Sen. Mitch McConnell's campaign inspired late-night television parodies and an internet meme.¹⁴² His campaign released a video containing no words — just various scenarios showing the typically grim-faced candidate holding a smile for extended moments.¹⁴³ The Daily Show's Jon Stewart gleefully posited that the footage would fit with an almost infinite range of songs, and set out to prove his theory by overdubbing it with everything from Simon and Garfunkel's "The Sound of Silence" to Sir Mix-a-Lot's "Baby Got Back."¹⁴⁴ McConnell perhaps had the last laugh, when the move netted him a \$1.8 million ad campaign by a supportive outside group, using images to his campaign's liking.¹⁴⁵ This method also lives on, unrestricted at the federal level in spite of charges of illegality, because the FEC could not agree on an opinion.¹⁴⁶

Outside groups supporting state and local candidates are also mining campaign B-roll for material. In the 2013 Detroit mayoral elections, the super PAC supporting eventual victor Mike Duggan produced a series of television commercials that featured footage identical to footage appearing in his campaign video of 10 months earlier.¹⁴⁷ In this year's heated gubernatorial campaign in Maine, the Republican Governors Association's (RGA) television spots supporting Gov. Paul LePage's re-election campaign also use footage identical to footage provided on the LePage campaign's website.¹⁴⁸

Among other techniques for aligning the messaging strategy of candidates and supportive outside groups, campaigns have posted online their talking points for criticizing opponents, which may appear in outside groups' ads.¹⁴⁹ In another method, which gained wide attention when a committee of Republicans in Congress debuted it shortly after the *Citizens United* decision came down, a campaign will release publicly its ad-buying strategy. Because it is public, this move does not violate current federal and many states' coordination laws. But, as the former political director of the U.S. Chamber of Commerce explained to *Politico*, it allows outside groups to "see where the holes are" in an advertising strategy and work to fill them.¹⁵⁰

Last year, 2010 Vermont gubernatorial candidate Brian Dubie agreed to pay a \$20,000 penalty after his campaign gave confidential polling data to an outside group, the RGA, that then spent \$242,000 on what it claimed were independent advertisements in support of his candidacy.¹⁵¹ Attorney General Bill Sorrell, who prosecuted the case, told reporters at the time that, if the parties had not agreed to settle, fines "could have been in the stratosphere."¹⁵²

The RGA had asked for the data to use in deciding "the content, timing, frequency, audience, and/or media outlets for its radio and television advertisements" promoting Dubie, according to a court judgment that all parties agreed to.¹⁵³ The court ruled that Dubie's campaign "knew, or should have known and failed to ascertain" that the RGA might use the polling data in this way, though it allowed that Dubie and the RGA had "at all times . . . attempted in good faith to comply" with the law.¹⁵⁴ Dubie had said that he did not know that his campaign staff had passed along the data.¹⁵⁵ But in the settlement Dubie and the RGA agreed that the scenario where a candidate's campaign shares confidential polling data with an outside group, and then allows that group to fund advertising on the candidate's behalf based on that data, constitutes coordination.¹⁵⁶ Counted as coordinated — not as independent and therefore unlimited — expenditures, the \$242,000 in RGA advertisements far exceeded the \$6,000 contribution limit, according to the attorney general.¹⁵⁷ The RGA agreed to pay a \$30,000 fine while Dubie agreed to pay a \$10,000 fine and donate an additional \$10,000 to the Vermont Food Bank.¹⁵⁸

D. Candidates and Supportive Outside Spenders Use the Same Consultants

In addition to ties in staffing, fundraising, and messaging, candidates and the nominally independent groups that support them often use the same political, media, or legal consultants.¹⁵⁹ The consultants typically help their clients avoid coordination charges by implementing so-called "firewalls" — written protocols to keep important information on the candidate's side separate from the outside spender's side. As one 2012 presidential campaign consultant said, the extent of overlap in key services between candidates and outside groups, even if in compliance with existing law, can seem "ridiculous."¹⁶⁰

The overlap in that case concerned Mitt Romney's 2012 presidential bid. His campaign and the main super PAC supporting his election, Restore Our Future, both hired the same political consulting firm for similar services. The founder of that firm, Alexander Gage, had served as a senior strategist for Romney's 2008 campaign. Gage's wife helped to manage Romney's 2012 campaign and co-founded her own consulting firm, which worked for the campaign out of the same office space as her husband's firm. Yet a third consulting group, founded by another 2008 Romney campaign veteran, worked for Restore Our Future out of the same office space.¹⁶¹

The issue of overlapping consultants lies at the heart of coordination allegations pending over Wisconsin Gov. Scott Walker's 2012 recall campaign. In that case, his campaign consultants, R.J. Johnson and Deborah Jordahl, are alleged to have directed outside spending favorable to him for a prominent issue advocacy group.¹⁶² The group has argued in court that it is unconstitutional to subject the advertisements it produced — which mentioned candidates in connection with issues, but did not explicitly call for their election or defeat — to coordination restrictions.¹⁶³

This fall, the *Alaska Dispatch News* turned a spotlight on the overlapping use of vendors by incumbent U.S. Sen. candidate Mark Begich's campaign, the local super PAC that supports his election, Put Alaska First, and the local PAC's main funder, the national Senate Majority PAC.¹⁶⁴ The campaign and the national PAC use the same Washington-based media and political consulting firm, while the two PACs share the same legal counsel.¹⁶⁵ All parties denied engaging in prohibited coordination, stating that strict firewall policies and legal review ensured their compliance with federal law.¹⁶⁶ The news report detailed similar practices by Begich's challenger, Dan Sullivan.¹⁶⁷

Similarly, Montana Gov. Steve Bullock's 2012 campaign drew scrutiny for conferring with a D.C.-based political consulting firm that was also managing advertising strategies for three outside groups that supported Bullock.¹⁶⁸ An investigation by Media Trackers, a watchdog outfit, concluded that the same firm handled the Bullock campaign's television advertising strategy.¹⁶⁹ Bullock campaign attorneys said that no illegal coordination took place.¹⁷⁰

An ongoing investigation by the Maryland elections board tests the state's new guidelines prohibiting campaigns and super PACs from sharing services that involve the exchange of "campaign material, strategies, or information that is not generally available to the public, such as advertising, messaging, strategy, polling, research, or allocation of resources."¹⁷¹ Gubernatorial candidate Larry Hogan's campaign recently accused opponent Anthony G. Brown's team of violating coordination rules by using the same fundraising consultants as a supportive state super PAC.¹⁷² Among the issues regulators are likely to consider: Whether the fundraising role is related closely enough to messaging strategy to fall under coordination regulations.¹⁷³

Though the collaborative techniques discussed here raise deep and common-sense questions about the actual independence of unlimited outside spending, many are not illegal under existing laws at the local, state, and federal level. Unlimited outside spending that incorporates publicly available campaign materials, for instance, is often permitted, as is unrestricted spending using funds raised by the candidate who stands to benefit from that spending. The following section considers how different states across the country are grappling with these and other new challenges in coordination regulation, and distills some practical lessons for the way forward.

III. HOW SELECTED STATES GUARD AGAINST COORDINATION OF UNLIMITED ELECTION SPENDING

Ensuring the independence of outside election spending has never been more urgent. Since the 2010 *Citizens United* decision, outside spending in elections at all levels has skyrocketed. At the same time, unlimited spenders and the candidates they support have developed numerous ways to work in sync, appearing to stray far afield from the type of independent spending that the Court seemed to imagine it was deregulating.

In recent years suspicions of coordination in federal elections — and the failure of federal regulators to do anything about it — have drawn wide attention. In search of other models of laws and enforcement approaches, the Brennan Center decided to look at how a number of states have grappled with the problem. States are not tied to the broken federal oversight system, after all, and within constitutional limits may police the financing of their own elections.

The following sections describe the widely varying coordination laws in 15 states, with particular attention to how or whether they target the increasingly common collaboration tactics described earlier in this report: candidate-specific outside groups, candidate fundraising for supportive outside groups, collaboration in messaging, and the use of common consultants and vendors. We chose the 15 states not by any statistical metric, but with the goal of identifying the most interesting developments. The selection includes those states that are hosting contested elections for top statewide offices this year and a few states that, reacting to trends after *Citizens United*, recently implemented reforms.

This review shows that tough rules, combined with active enforcement, make it possible for regulators and courts to catch violations and thus deter other potentially corruptive arrangements. Adequate enforcement is crucial: tough rules are nothing without it, and with it even moderate rules can make a difference. Reducing illegal coordination is essential to permitting entire campaign finance systems to function effectively. Enforcement prevents end-runs around contribution limits, brings to light connected spending that should be publicly disclosed, and helps candidates opt into public financing with less fear of unfair competition. In certain states — such as California, Connecticut, and Minnesota — robust laws and enforcement signal that candidates and outside groups will find it much more difficult to get away with illegal coordination.

A. Coordination Rules in Selected States

To assess how 15 states regulate coordination, we used the more commonly known federal approach, described below, as the baseline. For each state, we reviewed all existing statutes, regulations, court decisions, agency enforcement decisions and compliance opinions, and any other legal authority relevant to the issue of coordination.

The federal standard begins with the rule that spending is independent, and therefore cannot be limited, only if it “is not made in concert or cooperation with or at the request or suggestion of” a candidate.¹⁷⁴ Based on this language from the Bipartisan Campaign Reform Act of 2002, the Federal

Election Commission (FEC), the agency charged with enforcing the law,¹⁷⁵ regulates communications as coordinated if a three-part test is met.¹⁷⁶

First, the test asks if the communication was paid for by an outside spender — not the candidate, the campaign, or the party.

Second, the so-called content part of the federal test asks if the spending in question concerns a type of communication that is subject to coordination regulation in the first place — if it is closely enough related to a pending election. An expenditure is subject to regulation if it expressly advocates the election or defeat of a clearly identified candidate,¹⁷⁷ is the “functional equivalent” of such express advocacy,¹⁷⁸ republishes campaign material, or refers to a candidate and occurs within certain time periods before the election.¹⁷⁹

Third, the test asks if the conduct in question is of a type that could lead to a finding of illegal coordination. Such conduct includes:

- The candidate requested or suggested that the communication be created or distributed;¹⁸⁰
- The candidate had “material involvement” in or “substantial discussion” about strategic planning of the communication;¹⁸¹
- The candidate and spender used the same vendor within a short window of the communication’s distribution and the vendor used or conveyed to the spender nonpublic information about the campaign’s plans (unless the vendor implemented a firewall policy to separate services to the two clients);¹⁸²
- A person who recently worked for the candidate is involved in the outside group’s spending and the former employee used or conveyed to the spender nonpublic information about the campaign’s plans (unless the spender implemented a firewall policy to separate the candidate’s former employee from work on the communication);¹⁸³ or
- The spender disseminates or republishes the candidate’s campaign material.¹⁸⁴

We provide a comprehensive analysis of the coordination law in each state, and descriptions of dozens of enforcement actions and compliance opinions, in the Appendix of this report.¹⁸⁵ The following chart delivers the highlights, ranking the 15 states and the federal government into categories of strictness of regulation (in alphabetical order within each category).

HOW SELECTED STATES REGULATE COORDINATION

Strong Regulation

California

- Provides fairly detailed guidance about what constitutes coordination.
- Does not restrict regulation to only express advocacy.
- Presumes coordination if the outside spender uses any provider who has provided the relevant candidate's campaign with political or fundraising strategy services in the same election.
- Regulator agency has been very active, chiefly by issuing many publicly available advice letters to clarify the scope of the law and in some enforcement cases demanding penalties.

Connecticut

- Provides a detailed list of scenarios that could constitute coordination.
- Considers candidate fundraising for a supportive spender as possible evidence of coordination.
- Broadly defines the type of spending subject to regulation: any "expenditure" that is made in coordination with a candidate, where "expenditure" means any payment made to promote the success or defeat of a candidate.
- Regulator agency actively enforces the law and issues opinions clarifying the law.

Maine

- Provides a detailed list of scenarios that could constitute coordination.
- Presumes coordination if a spender and candidate use the same strategists or staff.
- Broadly defines the type of spending subject to regulation: any advertisement that is intended to support or oppose a candidate.
- Regulator agency moderately enforces the law and issues opinions clarifying the law.

Minnesota

- Requires that *all* steps leading up to a political communication, including "fundraising, budgeting decisions, media design . . . production, and distribution," be independent of the candidate.
- Regulator agency interprets the legislative intent of the law as being "to require the highest degree of separation between candidates and independent expenditure spenders that is constitutionally permitted." Agency actively enforces the law and issues opinions clarifying the law.

Moderate Regulation

Federal Government (included as a reference point)

- Regulates both express advocacy (explicit pleas to elect or defeat the relevant candidate) as well as issue ads mentioning the candidate near the time of an election — commonly referred to as electioneering communications.
- Provides fairly detailed guidance about conduct constituting coordination: “substantial discussion” or greater involvement between the candidate and spender; spending based on the candidate’s request or suggestion; involvement of a former employee of the candidate or a consultant who also works for the relevant candidate in outside spending within a certain time period; re-publication of the candidate’s campaign material by spenders.
- Permits unlimited spending based on candidate fundraising for the spender, though candidates may not explicitly solicit more than the candidate solicitation limit of \$5,000.
- Regulator agency, the Federal Election Commission, notoriously has failed to enforce coordination rules since the mid-2000s.

Arizona

- Provides fairly detailed guidance on what conduct constitutes coordination; broadly defines coordinated conduct; bans employee overlap between candidate campaigns and supportive spender groups.
- Does not require a “cooling off” period before campaign staffers may work for supportive spenders, and does not regulate use of the same consultant by candidates and supportive spenders.
- Regulator agency has a fairly active enforcement record, but has declined to conduct extensive probes or assess penalties.

Colorado

- Mirrors the federal approach in some ways, for instance in restricting only “substantial discussion” about an expenditure — not lesser interactions — between candidate and spender. Regulates use of a common consultant, but does not prevent supportive spenders from hiring the relevant candidate’s recent campaign employee.
- Enforcement body, the secretary of state, has not used its authority to initiate cases; coordination enforcement has been initiated only by private complaint. Complainants face an unusually tight timeframe for marshalling evidence to support their claims, making it difficult to demonstrate that coordination occurred.

Michigan

- Prohibits state super PACs, which can accept corporate contributions, from coordinating with candidates under the state statutory standard or under the federal standard; or from making an expenditure that “otherwise constitutes *quid pro quo* corruption or reasonably fosters the appearance of *quid pro quo* corruption.”
- Appears to regulate groups other than super PACs only under the state’s relatively permissive statutory standard, which specifies that an expenditure is considered coordinated if it is made “at the direction of, or under the control of” a candidate. This standard permits candidates to fundraise for outside groups and to provide ad materials to outside groups.

Montana

- Provides little detailed guidance as to what constitutes coordination conduct beyond a basic statutory definition of “coordinated expenditure.”
- Regulator agency, the Commissioner of Political Practices, has in the past decade prosecuted a considerable number of cases and meaningfully responded to requests for guidance. Coordination enforcement numbers have shot up in the last year.

Vermont

- Recently enacted an unusually strong new requirement that an unlimited spending group “conduct[] its activities entirely independent of candidates” in order to accept unlimited contributions.
- Otherwise, regulates coordination similar to the federal approach.
- Does not restrict regulation to express advocacy; also includes electioneering communications — issue ads that mention candidates close to Election Day.

Wisconsin

- Provides some detailed guidance describing activities that would constitute coordination.
- Requires independent spenders to file an oath stating that they have not collaborated with the relevant candidate.
- Does not presume that an expenditure is coordinated even if made by the candidate’s former campaign staffer or by a spender who used the same consultant as the candidate to produce the expenditure.

Weak Regulation

Arkansas

- Defines an expenditure to be coordinated if it is made with “arrangement, cooperation, or consultation between a candidate... and the person making the expenditure” or if the ad was made “in concert with or at the request or suggestion of a candidate.” Provides little guidance on how to apply this standard in actual scenarios.
- Restricts regulation to only express advocacy communications, permitting unlimited coordination of all other advertising.

Florida

- Provides a good deal of detailed guidance about identifying coordination in its statutes.
- Restricts regulation to only express advocacy communications, permitting unlimited coordination of all other advertising.
- Enforcement decisions resulting from different authorities, including courts and administrative law judges, together provide an unclear, sometimes contradictory, and sometimes unnecessarily lenient picture of the law, making compliance difficult and enforcement unlikely to be strong.

New Mexico

- The only state, among those we researched, that provides no state definition of coordination. The secretary of state recently decided to apply the federal definition, but it is not clear whether this approach will go unchallenged.
- Likely because of the lack of coordination law, there has been no known investigation of coordination.

Ohio

- Provides relatively strong coordination rules on paper, but lacks any history of enforcement.
- Ohio’s Supreme Court has decided one case involving coordination, though involving an elected judge and under judicial conduct rules, not under the state’s general coordination law.
- Does not restrict regulation to only express advocacy communications; regulates any outside advertising that mentions a candidate during election season.

Pennsylvania

- Prohibits independent spenders from cooperating or consulting with a candidate, but provides no guidance as to the specific types of conduct prohibited.
- Lacks any history of enforcement, perhaps because the state imposes no limit on direct campaign contributions by individuals. Preventing coordinated spending — essentially, the giving of indirect contributions — may be less meaningful in this context.

B. How the States Regulate Increasingly Common Collaboration Tactics

Our review of state laws and enforcement cases shows it is possible to create rules to quell the increasingly common collaboration tactics documented in this report. Some states have only recently implemented tougher rules, reacting to developments after *Citizens United*.

“Since *Citizens United*, we’ve seen outside groups work very closely with candidates on fundraising, polling, and events,” Shannon Kief, legal program director of Connecticut’s elections agency, told the Brennan Center. It became more imperative, she said, to be able to spot outside spending that is not “really independent” but rather “shadow money making candidates beholden to special, sometimes undisclosed, interests, with bottomless resources.”¹⁸⁶

Other states have, through enforcement actions and compliance opinions, sent clear messages about impermissible conduct. In many states, though, gaps in the law permit candidates and outside groups to push the boundaries of unlimited spending well past any reasonable notion of independence.

a. Candidate-Specific Outside Groups

Candidate-specific outside groups pose perhaps the biggest potential coordination problem of the super PAC era. Much of the growth in outside spending since 2010 has come from groups dedicated to the election of one candidate and often helmed by the candidate’s former advisers and associates.¹⁸⁷ These groups enjoy a special degree of synchronicity with candidates, as former associates possess intimate knowledge of a candidate’s strategies, goals, and support network, and candidates can have confidence in the work of the outside group.

The most far-reaching proposal to reduce the problem appears in a federal bill recently introduced by U.S. Reps. David Price (D-N.C.) and Chris Van Hollen (D-Md.). The proposal would treat spending as coordinated if the spender worked for the supported candidate during the relevant election cycle or within the four preceding years.¹⁸⁸

Though less comprehensive, laws in Connecticut and Maine also seek to deter unlimited spending by those with close connections with candidates. Connecticut law presumes that spending is coordinated if the spender has worked for the relevant campaign in the same election cycle, and Maine has a similar law with a one-year window of prohibited overlap.¹⁸⁹

States that lack this so-called cooling off requirement struggle to regulate groups formed by close associates of candidates. In a prominent case in Arizona, an attorney general candidate’s former campaign staffer launched a supportive PAC just days after resigning from the campaign.¹⁹⁰ In Connecticut or Maine, she could not have engaged in independent and therefore unlimited spending; in Arizona, the move was perfectly legal. The absence of a cooling off requirement has enabled the former staffer to deny coordinating the PAC’s spending strategy with the campaign’s, though she had only just been privy to the campaign’s strategy.¹⁹¹ The prosecutor’s effort to demonstrate coordination instead through e-mail and telephone records is wending its way through the courts.¹⁹²

It is too early to tell whether new laws like Connecticut's and Maine's will better ensure the independence of unlimited spending or reduce the amount of outside spending coming from candidate-specific groups with close ties to the candidate. Broader rules, such as in the Price-Van Hollen proposal, may be necessary.

b. Candidate Solicitation of Money for Outside Groups that Support Them

States have also begun to restrict spending by outside groups to promote candidates who have raised money for the group, viewing the act of fundraising as an act of coordination. Minnesota's regulatory body recently published an opinion stating that, if a candidate raises money for an outside group, that conduct will "destroy the independence of an expenditure later made by the [group]" in support of the candidate.¹⁹³ California's Fair Political Practices Commission has reached the same conclusion, while Connecticut's law allows the state to use candidate fundraising as evidence of coordination.¹⁹⁴

By contrast, Michigan's secretary of state has specifically stated that the law does not prevent candidates from raising money for super PACs that spend to promote them.¹⁹⁵ Other states have not addressed the issue head-on, but candidates and groups seem to act on the assumption that such fundraising is permissible without an explicit bar.

In Florida, for example, the race for governor has seen an enormous amount of outside spending, with 96 percent of television ad spending coming from outside groups.¹⁹⁶ Candidates in Florida can raise money for outside groups, and even groups that coordinate explicitly with candidates can spend without limit if they avoid expressly advocating the election of their favored candidate. As of late September, these loose rules helped Florida become the state with the third-highest state-level spending on candidates.¹⁹⁷

Republican candidate Rick Scott has raised money for a group, Let's Get to Work, that is dedicated to his re-election and has spent almost \$11 million to promote him — the most state-level spending of any professedly independent group this year in the nation other than the Republican Governors Association.¹⁹⁸ A report by the Center for Public Integrity states that Scott had "raised money mostly for 'Let's Get to Work,' rather than his campaign."¹⁹⁹

One Maine case shows how a too-narrow fundraising restriction can hamper efforts to check coordination. In 2012, the state's oversight body decided that it could not enforce the state's fundraising restriction against a state senate candidate who had raised funds for supportive groups via her campaign web site.²⁰⁰ The reason: those groups had also supported other candidates, and the state's law specified that the restriction applied to only candidate fundraising for single-candidate groups.²⁰¹ One of the groups had even posted language on its website that "may [have] convey[ed] to donors that the two [groups were] setting aside money that is specifically designated to promote [the candidate]," the regulator's decision noted.²⁰² Still, no violation was found.

c. Collaboration with Outside Groups on Messaging

Several states closely restrict candidates and outside groups from collaborating in their messaging to potential voters. In Montana, the Commissioner of Political Practices found that several legislative candidates had illegally coordinated mailers with an outside group that spent heavily in their elections, in several cases concluding that the violations warranted civil prosecution.²⁰³ The investigation revealed that the outside group had created letters to voters that were signed by the candidates' wives, and charged the candidates below-market prices for the services.²⁰⁴ The group had provided candidates with mailing lists of likely voters.²⁰⁵ The commissioner found that the group's own mailers, attacking the candidates' opponents, had been coordinated with the candidates, in part because of the timing of the candidates' own mailings.²⁰⁶

This February, Minnesota's Campaign Finance & Public Disclosure Board ruled that a candidate's participation in a photo shoot for a party committee will destroy the independence of literature distributed by the party using photos from the shoot. In the particular case, the Board was persuaded that the party committee and candidates genuinely did not understand that the photos shoots would constitute coordination, and viewed this ignorance as a mitigating factor.²⁰⁷ Though the ad campaign amounted to more than \$300,000, the state fined the party committee only \$100,000, and did not fine the candidates at all.²⁰⁸

Vermont has made clear that campaigns are prohibited from supplying confidential information for messaging purposes to outside groups spending unlimited amounts to support their candidates. The attorney general's prosecution of a 2010 gubernatorial candidate for giving polling data to an outside group that then spent \$242,000 on radio and television ads promoting his election, as described in detail in Section Two, sent a widely publicized message.²⁰⁹ The value of the coordinated ad campaign far exceeded the \$6,000 contribution limit.²¹⁰

d. Use of Common Consultants and Vendors

Several states we studied restrict candidates from using the same consultant or vendor as outside groups that spend to promote those candidates, because common providers are a potential conduit for coordination. California's longstanding law presumes coordination if a candidate uses the same consultant as a supportive outside group.²¹¹ But if the consultant implements a firewall policy to separate staffers serving the two clients, the state would be less likely to find that the group and candidate had coordinated via the consultant, according to a 2002 compliance advisory by the state's regulator agency.²¹²

In contrast, Colorado's more limited law, which resembles the federal rules, does not permit authorities to presume coordination based on the use of a shared consultant. Instead a coordination finding requires evidence that the shared consultant had access to non-public campaign information that was used in the creation of the outside group's advertisement.²¹³ In one case, when a complainant alleged that certain candidates had coordinated with an outside group by using common consultants, the consultants testified that they had not shared any information.²¹⁴ The complainant was unable to gather evidence to the contrary within a tight timeframe, and summary judgment was granted in the defendant's favor without meaningful investigation.²¹⁵

Minnesota law goes further than merely presuming that an ad is coordinated if it involves a shared consultant. Its law requires that *all* steps leading up to a political communication, including “fundraising, budgeting decisions, media design . . . production, and distribution,” be independent of the candidate.²¹⁶ In 2002, its regulatory agency found probable cause to believe that the campaign of then-gubernatorial candidate Tim Pawlenty had coordinated via a shared media consultant with an outside group on a series of television ads.²¹⁷ In a settlement not admitting liability, the campaign agreed to report the ads as in-kind contributions worth \$500,000 and to pay a fine of \$100,000.²¹⁸ The outside group was fined \$3,000 for claiming that the coordinated ad expenditures were independent.²¹⁹ The media consultant had created the outside ads using “visual images, concepts, ideas, and scripted material” created for the Pawlenty campaign, as well as Pawlenty campaign footage the outside group had purchased from a different provider.²²⁰

Under Michigan’s more lax standards, a candidate and supportive outside group who had used two of the same vendors for polling and survey services avoided a finding of coordination in a case this year.²²¹ Merely using the same vendors did not constitute coordination or even justify presuming coordination, the secretary of state concluded.²²²

IV. CONCLUSION: THE NEED AND POSSIBILITIES FOR REFORM

Four years after *Citizens United*, the Supreme Court's unleashing of independent spending has had an entirely different — and, as many warned at the time, predictable — effect. As this report documents, outside spending in the high-stakes state and local arenas has shot up, while candidates and outside spenders have developed numerous collaboration tactics that nevertheless pass muster under many existing coordination laws.

The problems of representation and political opportunity caused by the outsize influence of wealth in American elections loom far larger than even the toughest coordination rules can fix. Yet many broader reforms await a new day at the Supreme Court, whose current majority permits only measures that target the narrowest conception of corruption.

In the meantime, our review shows, states and cities can take important steps to better curb coordination of unlimited outside spending and thus better protect the integrity of current campaign finance reforms. The efficacy of campaign contribution limits, disclosure requirements, and public financing programs depends on effective coordination regulation to detect and hold to account connected spending that masquerades as independent.

Already states and cities are taking up the challenge. Connecticut, Minnesota, and Vermont have shown that innovation in coordination regulation is possible. In the past few years they have implemented new approaches to better capture the realities of post-*Citizens United* spending, such as candidate involvement in super PAC fundraising.

Oversight bodies in Philadelphia and San Diego recently proposed new regulations to target increasingly common collaboration tactics. Philadelphia's proposed rules, which the Brennan Center testified to support, would treat outside spending as coordinated if it used funds raised by the candidate benefiting from the spending.²²³ They would also clarify that the redistribution of campaign material, which currently counts as restricted spending, includes the use of campaign video footage posted online, even providing an example to explain the rule's meaning.²²⁴

“We have an opportunity to see what's happening around the country and get our regulations up to date in time for our first high-stakes election since *Citizens United*,” said Michael J. Cooke, director of enforcement for Philadelphia's elections oversight agency, referring to the city's open mayoral contest next year. The city has limited direct campaign contributions since 2007, following a spate of pay-to-play scandals.²²⁵ “Now if outside spenders are permitted to work with candidates to spend massive amounts on their campaigns, it will simply undermine the contribution limits and turn back the clock,” Cooke said.²²⁶ San Diego's proposal similarly would treat outside spending to disseminate video and audio recordings created by the candidate as contributions, even if the material was publicly available online.²²⁷

Legislators in one state that never had a coordination law at all have been striving, since *Citizens United*, to pass one. This year, New Mexico's state senate approved a proposal, but for the third time in three years it died in the house; proponents are expected to reintroduce the bill in 2015.²²⁸ In the

meantime other parts of the government are answering the call for change. The New Mexico secretary of state this year issued a candidate guide that advises politicians to follow the federal coordination standard.²²⁹ In August the state attorney general urged the secretary of state to issue similar guidance to outside spenders.²³⁰

But the federal coordination standard is hardly robust, as our comparative review of different laws in Section Three shows. The bill introduced this September by U.S. Reps. David Price and Chris Van Hollen seeks to change that, proposing to modernize coordination regulation for the super PAC era.²³¹ Many features would address candidate-specific super PACs in particular, proposing to treat outside spending to promote a candidate as coordinated if it is “not made entirely independently of the candidate” or made after “more than incidental communication with[] the candidate.”²³² Such spending also would be restricted if done by groups the relevant candidate encouraged to form or assisted through fundraising.²³³ The proposed law would mandate a longer “cooling off” period before a candidate’s former employee could direct unlimited spending to promote the candidate, and similarly expand the time period when an unlimited spender may not use a consultant or vendor that has been hired by a candidate.²³⁴ Coordination rules would extend to all advertising that promotes or attacks a candidate, even if it does not run near the time of the election.²³⁵

Another federal proposal, the American Anti-Corruption Act, contains similar provisions.²³⁶ It would also treat spending as coordinated if the spending group was helmed or assisted by current or former colleagues or campaign staffers of the relevant candidate, regardless of how much time had passed between roles, or if the candidate approved of any of the organization’s activities.²³⁷

Our review of recent collaboration trends and of many different regulation approaches yields a clear set of recommendations for regulating coordinated spending more effectively. Generally, laws treat outside spending to promote a candidate’s election as coordinated if it is based on “substantial discussion” between the spender and the candidate. As a number of jurisdictions have recognized in initiating reforms, that standard does not adequately capture the many ways collaboration occurs today. Our recommendations for a modern and more effective approach include:

- **Make laws apply to a realistic universe of spending.** The weakest laws exclude huge swaths of outside spending from coordination regulation. They cover only so-called express advocacy — communications that explicitly ask voters to elect or defeat a particular candidate — rather than including the more common form of election-season advertisement that promotes or attacks candidates’ stances on issues. Jurisdictions that currently consider a reasonable range of spending in regulating coordination include Maine, Ohio, and the federal government. The Price-Van Hollen bill proposes improvements to federal coverage.
- **If a candidate raised money for a group, treat all spending by that group on behalf of the candidate as coordinated.** When candidates raise money for a group that then spends on communications to promote their election, they are cooperating to make those expenditures happen. What is more, it is this aspect of cooperation in particular — a candidate’s ability to solicit funds for a supportive and unlimited spender — that raises concerns about corruption analogous to those that justify limits on direct campaign contributions. Most jurisdictions,

including the federal government, fail to regulate coordination on this basis.²³⁸ But this year Minnesota announced that it would view any expenditure to promote the election of a candidate who has raised money for the spender as coordinated. Connecticut recently enacted a similar, but weaker, rule that would allow consideration of a candidate's fundraising role as evidence of coordination. Pending reforms to allow for determinations of coordinated spending because of related candidate fundraising include the Price-Van Hollen bill and the American Anti-Corruption Act.

- **Provide sensible “cooling off” periods before a candidate’s former advisers may staff a group that is permitted to make unlimited expenditures to promote the candidate’s election.** Otherwise, any spending in support of that candidate by a group with such staffing should be viewed as coordinated. Many cooling off periods, such as the federal rules’ 120-day window, are too short for an age when super PACs work year-round, not just in the couple of months before Election Day. Maine and Connecticut currently provide for more reasonable windows, and the Price-Van Hollen bill and the American Anti-Corruption Act proposals seek to expand those periods for federal elections.
- **Treat as coordinated any spending to promote the election of a candidate that reproduces material produced by the candidate’s campaign.** Many jurisdictions treat expenditures as contributions if they are used to reproduce or disseminate campaign communications. But few existing laws adequately address the now widespread practice of campaigns’ making available images, silent “B-roll” video footage, scripts, and other raw material for outside spenders to use in supportive advertising. Current proposals in Philadelphia and San Diego would treat such spending as coordinated.
- **Treat as coordinated any spending to promote the election of a candidate, when the spender uses a consultant who has also served the candidate in a position privy to related campaign information.** Federal regulations partially address this behavior by providing that an outside spender may not use a vendor that the candidate has used in the past 120 days. California and Maine also regulate this conduct, without the short time limitation.
- **Publish scenario-based examples of what constitutes prohibited coordination and what does not.** Many jurisdictions provide only a basic, statutory definition of coordination, leaving candidates and spenders on their own to figure out what it means, for instance, to “consult or cooperate” and thus trigger penalties. It is useful to publish examples of prohibited activity, in realistic contexts. For example, Connecticut provides a fairly detailed list of scenarios that will create a rebuttable presumption of coordination. While the federal rules are unnecessarily narrow, they provide more detailed guidance than the laws of many states.
- **Ensure adequate enforcement and deterrence.** Even the most comprehensive coordination law will not deter violations without adequate and sensible enforcement. An effective approach should include vesting a single entity with clear, primary authority to enforce the law, including through proactive investigations — not just in reaction to private complaints. The size of a penalty should track the severity of the violation, to make allowances for minimal transgressions while also ensuring adequate consequences for sizeable and deliberate wrongdoing.

- **Allow use of firewalls under appropriate circumstances as evidence that an outside group's spending was truly independent.** Under some circumstances — such as when a vendor provides services to both a candidate and an outside group — it may be possible to mitigate the risk of coordination through the vendor's use of an adequate firewall to separate the two streams of work. In such cases, states should allow proof of a formal, written policy, prohibiting the exchange of relevant information, to be used as evidence that no coordination occurred.

These recommended reforms — which address the most obvious problems and do not preclude further ideas — come as a package. Some of the elements already appear in some form in existing local, state, or federal rules. But, as our review of constantly evolving collaboration tactics shows, any jurisdiction seeking to quell potentially corruptive coordination on a meaningful scale needs to embrace a comprehensive approach.

ENDNOTES

- ¹ This report uses the term “outside spenders” or “outside groups” generally to describe those entities — including super PACs and nonprofit issue advocacy groups — permitted after Citizens United and related court decisions to raise and spend unlimited funds to promote candidates for election, though they are not supposed to coordinate their spending with the candidates’ campaigns.
- ² Telephone Interview with Jonathan Motl, Montana Commissioner of Political Practices (Sept. 5, 2014).
- ³ This figure reflects total independent expenditures for all state-level races from four states: Connecticut, Maine, Michigan, and Wisconsin. States were selected on the basis of hosting a competitive gubernatorial election, as defined by the *Cook Political Report*, in both 2010 and 2014, and on accessibility of independent spending reports that make comparisons possible. Though 43 states track some independent spending, only 19 states require the reporting of both express advocacy—communications that explicitly ask voters to elect or defeat a particular candidate—and so-called electioneering communications, typically defined as communications that mention a candidate for office shortly before a primary or general election. Our analysis compared the same time period for any given state. Data for Connecticut was obtained from the Connecticut State Election Enforcement Commission’s ECRIS database and reflects spending reported between 01/01/2010 and 08/31/2010 and 01/01/2014 and 08/31/2014; data for Maine was obtained from the Maine Commission on Governmental Ethics and reflects spending reported between 01/01/2010 and 06/30/2010 and 01/01/2014 and 06/30/2014; data from Michigan was obtained from the Michigan Secretary of State online campaign finance database and reflects spending reported between 01/01/2010 and 08/31/2010 and 01/01/2014 and 08/31/2014; data from Wisconsin was obtained from the Wisconsin Government Accountability Board campaign finance information system and reflects spending reported between 01/01/2010 and 08/31/2010 and 01/01/2014 and 08/31/2014. See KEVIN MCNELLIS, NAT’L INST. ON MONEY IN STATE POLITICS, BEST PRACTICES FOR INDEPENDENT SPENDING: PART TWO (Mar. 15, 2012). See also *Governor’s Maps*, COOK POL. REP. (Sept. 17, 2014), <http://cookpolitical.com/governor/maps> and *2010 Governors Race Ratings*, COOK POL. REP. (Sept. 2, 2010), http://cookpolitical.com/archive/chart/governor/race-ratings/2010-09-02_12-20-28.
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- ⁵ Many of the states we excluded from our review, 12, do not cap direct individual contributions at all. Six of those states do set some limit on corporate contributions. For the six states that cap neither individual nor corporate contributions to candidates, coordination regulations—which count coordinated spending under contribution limits, and typically impose penalties for amounts in excess—would matter far less than in states that do limit campaign contributions (See NAT’L CONFERENCE OF STATE LEGISLATURES, STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES, available at http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2012-2014.pdf (last updated Oct. 2013)).
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- ²⁵ *Id.*
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- ¹⁷⁷ 11 C.F.R. § 109.21(c)(3).
- ¹⁷⁸ *Id.* § 109.21(c)(5).
- ¹⁷⁹ *Id.* § 109.21(c)(1), (4).
- ¹⁸⁰ *Id.* § 109.21(d)(1).
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- ¹⁹⁹ *Id.*
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- ²⁰¹ *Id.* at 11.
- ²⁰² *Id.* at 3.
- ²⁰³ See, e.g., Bonogofsky v. Kennedy, No. COPP-2-13-CFP-0015 (Mont. Comm’ner of Political Practices Oct. 16, 2013); see also MONT. COMM’NER OF POLITICAL PRACTICES, CAMPAIGN FINANCE AND PRACTICES, <http://politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcp>x (last visited Oct. 2, 2014) (listing pending court cases). Under state law, the Commissioner must notify the appropriate county attorney if civil prosecution is justified. If the county attorney takes no action within thirty days, the Commissioner may bring a civil action. MONT. CODE § 13-37-124. Civil prosecution triggers a range of potential consequences, depending on the violation. The case at issue involved illegal corporate contributions, which can be fined at \$500 or three times the amount of the contribution, whichever is greater. Mont. Code Ann. § 13-37-128. A candidate who is convicted may be prevented from taking office or removed from office. Mont. Code Ann. § 13-35-106.
- ²⁰⁴ *Bonogofsky* at 9-17, 19.
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- 216 Minn. Campaign Fin. & Pub. Disclosure Bd., Advisory Opinion 437, at 3 (Feb. 11, 2014), *available at* <http://www.cfboard.state.mn.us/ao/AO437.pdf>.
- 217 Minn. Campaign Fin. & Pub. Disclosure Bd., Conciliation Agreement In the Matter of the (Tim) Pawlenty for Governor Committee, 15475, at 2 (Oct. 21, 2002) [hereinafter *Pawlenty Conciliation Agreement*], *available at* http://www.cfboard.state.mn.us/bdinfo/Con_Agr/Pawlenty_Tim_102502.pdf. *See also* Minn. Campaign Fin. & Pub. Disclosure Bd., Findings in the Matter of a Complaint Regarding the Tim Pawlenty for Governor Campaign and the Republican Party of Minnesota 3 (Oct. 10, 2002) [hereinafter *Pawlenty Findings*], at 5-6.
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- 226 E-mail Interview with Michael J. Cooke, Philadelphia Board of Ethics Director of Enforcement (Sept. 9, 2014).
- 227 San Diego Ethics Comm’n, Election Campaign Control Ordinance Proposed Amendments 1-2 (July 2, 2014), *available at* http://www.sandiego.gov/ethics/pdf/eccoamendments_140702.pdf.
- 228 Thomas J. Cole, *Super PACs go unchecked*, ALBUQUERQUE JOURNAL, Sept. 1, 2014, *available at* <http://www.abqjournal.com/455149/politics/super-pacs-go-unchecked-coordination-undefined.html> (“Three times since 2011, the state Senate has approved legislation sponsored by Sen. Peter Wirth, D-Santa Fe, to define a coordinated expenditure, but it has died in the House.”).
- 229 N.M. SEC’Y OF STATE’S OFFICE, GUIDE TO CAMPAIGN FINANCE AND CAMPAIGN REPORTING FOR CANDIDATES AND CAMPAIGN COMMITTEES 26 (2014), *available at* http://www.sos.state.nm.us/Elections_Data/default.aspx (follow “Guidelines of Candidates and Campaign Committees: associated with Proposed Rule-Campaign Finance” hyperlink) (hereinafter “N.M. Candidate Guide”) (“The New Mexico Campaign Reporting Act does not define ‘coordinated communications’ or ‘independent expenditures’”).
- 230 Thomas J. Cole, *Super PACs go unchecked*, ALBUQUERQUE JOURNAL, Sept. 1, 2014, *available at* <http://www.abqjournal.com/455149/politics/super-pacs-go-unchecked-coordination-undefined.html> (“In mid-August, the AG’s Office provided [the Secretary of State]’s office with a proposed advisory opinion concerning independent and coordinated expenditures. The proposed opinion advises New Mexico political committees to use the federal standards for coordination.”).
- 231 The bill is a standalone proposal containing those provisions of the Empowering Citizens Act (ECA), introduced in 2013 by Reps. Price and Van Hollen, that address super PACs and coordination. *See* H.R. 270 , 113th Cong. (2013).
- 232 H.R. 5641, 113th Cong. § 1(b) (2014).
- 233 *Id.*
- 234 *Id.*
- 235 H.R. 5641, 113th Cong. § 1(b) (2014).

²³⁶ The American Anti-Corruption Act is a legislative proposal written by Trevor Potter. *See* The American Anti-Corruption Act, Provision 7, *at* <http://anticorruptionact.org/>.

²³⁷ *Id.* at 7-8.

²³⁸ The Federal Election Commission has ruled that candidates may engage in fund-raising for outside groups, but may not solicit more than the amount they could receive under federal contribution limits. Fed. Election Comm'n, Advisory Opinion 2011-12 at 3. As long as the candidate complies, the group may still engage in unlimited spending in support of the candidate.

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