

POLITICO

INVESTIGATION

How We Killed the Tea Party

Greedy super PACs drained the movement with endless pleas for money to support “conservative” candidates—while instead using the money to enrich themselves. I should know. I worked for one of them.

By PAUL H. JOSSEY | August 14, 2016



AP Photo

As we watch the Republican Party tear itself to shreds over Donald Trump, perhaps it's time to take note of another conservative political phenomenon that the GOP nominee has utterly eclipsed: the Tea Party. The Tea Party movement is pretty much dead now, but it didn't die a natural death. It was murdered—and it was an inside job. In a half decade, the spontaneous uprising that shook official Washington degenerated into a form of pyramid scheme that transferred tens of millions of dollars from rural, poorer Southerners and Midwesterners to bicoastal political operatives.

What began as an organic, policy-driven grass-roots movement was drained of its vitality and resources by national political action committees that dunned the movement's true believers endlessly for money to support its candidates and causes. The PACs used that money first to enrich themselves and their vendors and then deployed most of the rest to search for more "prospects." In Tea Party world, that meant mostly older, technologically unsavvy people willing to divulge personal information through "petitions"—which only made them prey to further attempts to lighten their wallets for what they believed was a good cause. While the solicitations continue, the audience has greatly diminished because of a lack of policy results and changing political winds.

I was an employee at one of the firms that ran these operations. But nothing that follows is proprietary or gleaned directly from my employment. The evidence of the scheming is all there in the public record, available for anyone willing to look.

The Tea Party movement began building in the George W. Bush years. Profligate spending and foreign adventurism with no discernible results nurtured disgust with Washington's habit of spending beyond its means and sending others to die in its wars. When President Obama made reorganizing the nation's health care system his foremost priority—and repeatedly misrepresented its effects in the process—anger at Washington exploded.

Republicans inside the Beltway reacted to the burgeoning Tea Party with glee but uncertainty about how to channel the grass-roots energy usually reserved for the left. A small group of supposedly conservative lawyers and consultants saw something different: dollar signs. The PACs found anger at the Republican Party sells very well. The campaigns they ran would be headlined "Boot John Boehner," or "Drop a **Truth Bomb** on Kevin McCarthy." And after Boehner was in fact booted and McCarthy bombed in his bid to succeed him, it was naturally time to "Fire Paul Ryan." The selling is always urgent: "**Stop what you're doing**" "This can't wait." One active solicitor is the Tea Party Leadership Fund, which received \$6.7 million from 2013 to mid-2015, overwhelmingly from small donors. A typical solicitation from the TPLF read: "Your immediate contribution could be the most important financial investment you will make to help return America to greatness." But, according to an **investigation** by *POLITICO*, 87 percent of that "investment" went to overhead; only \$910,000 of the \$6.7 million raised was used to support political candidates. If the prospect signs a "petition," typically a solicitation of his or her personal information is recorded and a new screen immediately appears asking for money. Vendors pass the information around in "list swaps" and "revenue shares" *ad infinitum*.

Starting a new PAC is easy: Fill out some paperwork, throw up a splash-page website, rent an email list, and you're off. It's an entrepreneurial endeavor. Through trial-and-error, operatives test messages to see which resonate best and are most likely to get them and their vendors paid. They may pay someone known in the movement to "sign" the pitch, as current Donald Trump spokeswoman **Katrina Pierson** has on TPLF emails.

Today, the Tea Party movement is dead, and Trump has co-opted the remnants. What was left of the Tea Party split for a while between Trump and, while he was still in the race, Ted Cruz, who was backed by Jenny Beth Martin, co-founder and national coordinator of the Tea Party Patriots. In 2014, the Tea Party Patriots group **spent** just 10 percent of the \$14.4 million it collected actually supporting candidates, with the rest going to consultants and vendors and Martin's hefty salary of \$15,000 per month; in all, she makes an **estimated** \$450,000 a year from her Tea Party-related ventures. Today, of course, it's all about Trump, but Trump rallies are only Trump rallies, not Tea Party rallies that he assumed control of. There are no more Tea Party rallies.

A recent **poll** showed that just 17 percent of Americans support what was once known as the Tea Party—the lowest number ever. The bailout-Obamacare-driven grass-roots revolt has vanished. Various **autopsies** have offered a number of causes: IRS targeting, bad candidates, hostile media, and even some hazy form of moral and political victory, in that the Tea Party pushed the GOP to take tougher stances on some issues. All have at least some merit.

But any insurgent movement needs oxygen in the form of victories or other measured progress in order to sustain itself and grow. By sapping the Tea Party's resources and energy, the PACs thwarted any hope of building the movement. Every dollar swallowed up in PAC overhead or vendor fees was a dollar that did not go to federal Tea Party candidates in crucial primaries or general elections. This allowed the GOP to easily defeat or ignore them (with some rare exceptions). Second, the PACs drained money especially from *local* Tea Party groups, some of which were actively trying to grow the movement electorally from the ground up, at the school board and city council level. Lacking results five years on, interest in the movement waned—all that was left were the PACs and their lists.

Any postmortem should start with the fact that there were always two Tea Parties. First were people who believe in constitutional conservatism. These folks sense the country

they will leave their children and grandchildren is a shell of what they inherited. And they have little confidence the Republican Party can muster the courage or will to fix it.

Second were lawyers and consultants who read 2009's political winds and saw a chance to get rich.

For 18 months ending in 2013, I worked for one of these consultants, Dan Backer, who has served as treasurer for dozens of PACs, many now defunct, through his law and consulting firm. I thus benefited from the Tea Party's fleecing.

The PACs seem to operate through a familiar model. It works something like this: Prospects whose name appear on a vendor's list get a phone call, email or glossy mailer from a group they've likely never heard of asking them for money. Conservative pundit and **Redstate.com** Editor-in-Chief Erick Erickson described one such encounter. A woman called and asked if she could play a taped message touting efforts to help Senators Rand Paul and Ted Cruz fight for conservative governance. When the recording stopped an older man (the woman was gone) offered Erickson the chance to join "the Tea Party." He wouldn't say who paid him, just "the Tea Party." Membership was even half price. For just \$100 he was in! Erickson declined.

Erickson's call came from **InfoCision** or a similar vendor hired by PACs to "prospect" for new donors. Often PAC creators have financial interests in the vendors—in fact, sometimes they *are* the vendors, too—which makes keeping money in house easier, and harder to track. PAC names include "Tea Party," "Patriots," "Freedom," or some other emotive term to assure benevolence. And names and images of political figures the prospects admire (or detest), usually accompany the solicitation, giving the illusion of imprimatur. Those people are almost never actually involved and little money ends up supporting candidates.

According to Federal Election Commission reports between 80 to 90 percent, and sometimes all the money these PACs get is swallowed in fees and poured into more prospecting. For example, conservative activist Larry Ward created **Constitutional Rights PAC**. He also runs Political Media, a communications firm. The *New York Times* reviewed Constitutional Rights' filings and found: "Mr. Ward's PAC spends every dollar it gets on consultants, mailings and fund-raising—making no donations to candidates." Ward justified the arrangement by saying Political Media discounts solicitations on behalf of Constitutional Rights.

Let that sink in. Ward takes his PAC's money and redistributes it to his company and other vendors for more messaging and solicitations, but suggests critics should rest easy since the PAC gets a discount on Political Media's normal rate. Constitutional Rights PAC may be extreme but it's hardly an outlier.

POLITICO last year reviewed the activity of 33 conservative PACs for the 2014 cycle. Combined, they raked in \$43 million dollars, according to the *POLITICO* report. Of that, \$39.5 million went to overhead including \$6 million to entities owned by PAC operators; candidates got \$3 million. Another report analyzed 17 conservative PACs from the 2014 midterm. It came up with different numbers than *POLITICO*, finding that the bottom 10 PACs in terms of the ratio of spending to actual candidate support received \$54,318,498 and spent only \$3,621,896 supporting candidates.

And who is Constitutional Rights' treasurer? My old boss Dan Backer. Backer also serves as treasurer to TPLF, and many others. An analysis found 10 conservative PACs whose treasurer was Scott MacKenzie spent 92 percent of the \$17.5 million they raised on operating expenses, and less than 1 percent on candidate support.

PACs are not legally obliged to responsibly spend their loot. As former FEC enforcement officer Kenneth Gross stated, "If I have a PAC and want to spend it on a trip to Atlantic City, that's fine," provided it's accurately reported. Unlike nonprofits they are not governed by a board, have no fiduciary duty to their donors and are not subject to IRS audits.

The PACs keep cash flowing by trolling the news for supposed apostasy. The government botches the rescue of employees in a foreign embassy? "Stand with us for Benghazi!" A bunch of kids are murdered in Connecticut? "Help us defend your Second Amendment rights!" "Sign our petition!"

Another favorite tactic is the "Draft Committee." Pick a popular figure then start a committee to "draft" him or her to run for office. TPLF "drafted" Sarah Palin for Senate in Alaska and Backer "drafted" Newt Gingrich for Senate in Virginia. After I left his firm, Backer "drafted" new Texas resident Allen West for Senate in Florida. None of these candidates were remotely interested or associated with the effort, and in fact could not be by law. But there were signatures to collect and donations to request. (As a litigator, I rarely participated in the conduct described here. I nonetheless knew these schemes paid most of my salary.)

The “draftees” or their campaigns often send cease-and-desist **letters**, as Gingrich and Palin did. This cycle, Backer and MacKenzie have kept Trump’s lawyers busy. Despite Trump’s constant protests about “corrupt” super PACs, MacKenzie started “Patriots for Trump” and Backer founded “TrumPAC.” MacKenzie **shuttered** Patriots when the Trump campaign complained, although the **Facebook page** remains active. The campaign **persuaded** Backer to change TrumPAC’s name to “Great America PAC.” But the PAC **begged off** requests to shutter and “refund any funds raised” based on Trump’s candidacy. Jesse Benton, Great America’s chief strategist and formerly a Ron Paul operative, **explained** the PAC would remain active because Trump would need “a robust and effective finance organization ... after he secured the nomination.” By law, the campaign can have no say in how this “finance organization” spends its money, though its **website** still prominently features the candidate and his trademark slogan. It **pledged** to raise \$20 million dollars before the Republican convention.

PACs exploited a reservoir of goodwill toward minority candidates in particular to raise money for themselves. After his razor-thin 2012 congressional defeat, Allen West, an African-American former Florida congressman, filed a **complaint** with the FEC against PACs raising money off his race but **doing nothing** to help him. The FEC concluded it lacked authority to police such efforts. “Draft Ben Carson” **paid off** well for the North Carolinian who took a \$236,000 salary and sent gobs more to a company comprised only of him. After Carson’s campaign ended “The 2016 committee”—the successor to Draft Ben Carson—sought to keep the money flowing, stating it would now promote the surgeon for vice president. It finally **shuttered** after a barrage of **scam** accusations. (In fairness, Carson’s entire campaign could credibly be explained as just a **list-building operation**.)

Challenged about spending allocations by *POLITICO*, Backer responded that it’s a misinterpretation of FEC reports to suggest that the PACs he helps oversee have spent more on their own operating expenses than on their stated causes. As for Great America PAC, he said it’s “probably the best most effective steward of donor funds. This PAC does stuff, whereas nobody else does.”

From my vantage point, I would occasionally hear disquieting remarks that gave me pause. Rumors about the legitimacy of our operations would sometimes flare up in our small office. When a campaign manager would lash out about PACs using the candidate’s name

to make money, I wondered if he was talking about us. When I eventually opened my own firm I vowed never to have such doubts about what I was doing.

The PACs' electoral record for the little money that did trickle to candidates is terrible. According to *POLITICO*, \$3 million of \$43 million raised from 33 analyzed groups did support candidates in 2014. But finding races they positively affected is difficult. They played **absolutely no role** in that cycle's biggest Tea Party victory, the scalping of Eric Cantor. The victor, however, had lots of **new friends** the next morning fearlessly tweeting support for their new champion, Dave Brat. Spin matters more than tangible success. After the 2014 midterms, Jenny Beth Martin quickly **opined** the Republican wave was a Tea Party victory despite lacking Tea Party candidates because voters rewarded the movement's "principles."

A provocative **theory** holds these groups intentionally back candidates that can't win to assure fundraising flow. Some may genuinely believe they help (others obviously know they don't). But it's no secret that the day after Mitt Romney's defeat was a huge fundraising day in the conservative world. And electoral success would undoubtedly affect business. Current affinity for Cruz and Trump is conditioned on them losing. Victory attenuates the need for the "action" these groups purport to catalyze. It also blunts the emotional appeals which kick-start contributions. That's why one conciliatory note in the inauguration speech would start the emails flying about how the grass roots has been sold out and "we need your help to keep President Trump true to his word. Sign our petition!"

The PACs excuse their profligate spending through artful dodges. This or that group doesn't concentrate on electoral spending, which shows up on FEC reports, but on "organizing," "rallies," "training volunteers" or **showing people** they aren't alone. At the same time, a Tea Party rally can be a convenient way to collect information and raise funds, as is "organizing" the grass roots for issue X by sending more emails and solicitations.

Another excuse the PACs make is that small-dollar fundraising is expensive. That's true, and donor prospecting is not inherently unethical. It becomes so only when fundraising is the ends not means. Sometimes the PACs promise to do better after cultivating a house file. But they are also quick to put themselves on the cross when **confronted**, as Pierson did, "The only reason [TPLF] draws attention is that it is anti-establishment." In other words, lots of groups do it.

She's not exactly wrong. High political overhead isn't new, nor is it limited to Republicans. Jon Stewart **mocked** the Democrats constant barrage of Henny-Penny fundraising emails in 2014. Mr. Campaign Finance himself, Russ Feingold, ran a PAC that essentially **existed** to keep himself and his staff paid while he awaited another Senate run—it spent 5 percent on electoral activities. Some Democratic operatives **drew** ire after raising \$11 million off the left's favorite bugaboo *Citizens United v. FEC*—although there complaints centered on PAC intrusion on nonprofit turf and focusing on swing-races instead of overturning the maligned free-speech case.

Political advocacy law, of the kind I practice, is different from other types of law in which people spending money expect a tangible benefit, like defense of a lawsuit. Political advocacy can be a years-long, even decades-long, process where progress at any point in time can be hard to define. Elections are single points in a political cycle that renews every two years. This ambiguity makes the field easily vulnerable to marketing over results. But when small-dollar donors give to an organization promising political results, a high ethical standard should exist.

No one should take a vow of poverty to go into politics, but it should reflect a higher calling. Mine came after spending six days in a hospital in downtown New Orleans following Hurricane Katrina. When I got out I knew a comfortable career in cardiopulmonary science wouldn't be satisfying. I enrolled in law school the following year determined to fight for the principles of liberty, individualism and self-determination that made America the world's envy. The people who supported the Tea Party believed in those same principles just as much as the immigrant who risks his life to come here. These people deserve something tangible for parting with their money.

So what can be done, given that Tea Party candidates create a particularly target-rich environment?

Some candidates have found success in the courtroom. In 2013, Scott MacKenzie's Conservative Strikeforce began soliciting ostensibly to help Ken Cuccinelli win the Virginia gubernatorial race. The campaign received \$10,000 of the \$2.2 million raised in Cuccinelli's name. He **sued**, claiming the PAC violated the Lanham Act through false advertising. The case settled on **favorable terms** to Cuccinelli. Most important, henceforth, Conservative Strikeforce must stop using the name and/or image of any

candidate who requests it. As Cuccinelli recently **reflected**: “Their defense was ‘free speech’... But you don’t have the freedom to go tell little old ladies that if they give you \$50, you are going to do ‘X’ with it and then not do it. You don’t have a First Amendment right of free speech to bilk them out of money.”

On the federal side, FEC Commissioner Ann Ravel has **pushed** to expand the commission’s authority into this realm to protect candidates like Allen West. Ravel is sincere, but conservatives and libertarians are skeptical of government intruding into speech-related activities. It’s also possible that voluntary standards or a privately run grading system may provoke better practices.

Importantly, the conservative media must police this. Most reporting on these PACs comes from outlets the right generally distrusts, like the *New York Times* and *POLITICO*. It’s shameful that MSNBC’s Chris Hayes has discussed these schemes more than most right-leaning outlets. Excepting **Erick Erickson**, **Jonah Goldberg** and the *Daily Caller*, conservative reporting is rare. One commentator **speculates** professional relationships with PAC operators eschews hard journalism. If true, this taints much lofty talk about conservative values.

But most important, the responsibility is on you—the Tea Party activist, the older conservative—to know where your money goes. You can view a group’s track record on **OpenSecrets.org** in minutes. How much goes toward candidate contributions or so-called independent expenditures, which are supposed to be spent on the candidate (though even those can be thinly veiled solicitations if the “ask” or landing page directs to the PAC and not the candidate). And do PAC operators donate *their* money?

If you give, give directly to the candidate. The money may still be wasted, but at least it goes to someone incentivized to spend wisely. Or if you care about a certain issue, give to an organization that specializes in that issue; it will at least employ true believers. If you give to the Tea Party, give *local*. They need money more than groups hiring telemarketers or sending glossy mailers. Be wary of solicitations that promise to “Help Candidate X.” Odds are Candidate X has nothing to do with it.

But the best news is you can make a difference without spending a dime. Campaigns and political parties are always searching for volunteers. Look for organizations that don’t just ask for money. A couple years ago I attended an Americans for Prosperity gathering in Fairfax, Virginia, on a client’s behalf. Two young staffers spoke to about 15 activists. They

asked how AFP could help them. Did they want to become better writers, to write op-eds or letters to the editor? AFP could arrange writing seminars. Did they want to become better organizers? They would bring someone from the home office. Not once did they ask for money (perhaps they did at some other time). Instead of asking the crowd to invest in AFP, these staffers asked how AFP could invest in them. I was floored. Charles and David Koch are true believers and they don't need your money. And there are others: Erickson points to Senate Conservatives Fund, Madison Project and Club for Growth as groups he personally supports. And you can always start your own Facebook or Twitter group around the issues and candidates you care about. That will have more impact than lining the pockets of some consultant you've never met.

The excesses of George W. Bush and Barack Obama created the "second" Tea Party—named after the 1773 anti-tax revolt incited by Boston colonials—in 2009, when CNBC's Rick Santelli extolled the virtues of reining in runaway government and touched a raw nerve. The Tea Party critique of government—the way it has grown, concerned with itself and its vested interests, and benefits the governed as only an afterthought—has never been more cogent. At its best, the Tea Party sought a return to the nation's philosophical roots of government of the people, by the people and for the people. In sad irony, the Tea Party was hijacked by those who mirrored its critique of government: bloated, inefficient and looking out only for themselves.

If there is a Tea Party 3.0 it must unshackle itself and rise again as a grass-roots movement.