

# Meet the Parents of the Super PACs

*Political spending is good for democracy. It's a shame today's liberals don't trust the wisdom of voters.*

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If you are looking for the villains who created the so-called Super PACs, look no further. We are the guilty parties.

We are two of the winning plaintiffs in *SpeechNow.org v. Federal Election Commission*, which was decided by the U.S. Circuit Court of Appeals for the District of Columbia Circuit in March 2010. Contrary to the belief that *Citizens United* created Super PACs, *SpeechNow.org* made such groups possible and legal.

As Jan. 31's disclosure of the supporters of Super PACs showed, the majority of funding for almost all of them comes from individuals. In *Citizens United v. Federal Election Commission* (2010), the Supreme Court did not alter the \$5,000 limit on individuals combining their efforts through traditional political action committees to promote a federal campaign.

But *SpeechNow.org* recognized the right of individuals to give unlimited funds to any such committee organized solely to make independent expenditures (although the contributors and their contributions must be disclosed). What *Citizens United* did was to affirm the right of corporations and unions to make such independent expenditures.

To understand the larger context, let's step back. The most fundamental Supreme Court decision on campaign finance was *Buckley v. Valeo* (1976), which grappled with the 1974 amendments to the Federal Election Campaign Act (FECA). (Ed Crane was also a plaintiff in that case.) Virtually all aspects of those amendments enhanced the prospects for incumbents, not surprisingly since incumbents wrote them. Most self-serving, perhaps, was a radical spending limit on congressional campaigns. The Warren Court struck down the spending limit as a blatant affront to the First Amendment.

Yet the court in *Buckley* inexplicably affirmed a \$1,000 contribution limit to federal campaigns—ignoring that contributions obviously affect spending levels. According to research by the Cato Institute's John Samples, incumbent re-election rates, already high, increased after that decision.

Nevertheless, in *Buckley* the court ruled that individuals could spend unlimited amounts to support a federal candidate if those expenditures were not coordinated with the candidate's campaign. *SpeechNow.org* went further. It held that the First Amendment allows two, or four, or 400 or more individuals to pool their resources and exercise the same right to make independent expenditures that one individual could make under *Buckley*. Hence, Super PACs.

Money is a proxy for information in campaigns. Yet Americans spend as much on potato chips as they do on all federal elections (\$3.6 billion in 2010). Maybe that partly explains why most Americans cannot name their congressman, much less say where he or she stands on the issues.

That's why we believe Super PACs are a good thing. In the recent Republican South Carolina primary, Super PACs reportedly outspent the candidates' campaigns by two to one. That means more information was available on the candidates and more interest in the campaigns has been generated. It could be argued that Super PACS are the reason the GOP primary campaign this year is a horse race and not a coronation.

That said, we'd prefer to allow donors to give money to candidates' campaigns directly. Under such a system Super PACs would still exist, but they'd likely

have less influence. And donors could give their candidates a stronger voice in the messaging about their campaigns.

It is instructive to recall the 1968 presidential campaign of Minnesota's late Democratic Sen. Gene McCarthy (who was also a plaintiff in *Buckley*). Popular support for the war in Vietnam was declining, yet no establishment candidate was available to challenge the war—certainly not Richard Nixon. On the Democratic side, President Lyndon Johnson was escalating the conflict. McCarthy was the most outspoken and articulate opponent of the war in the U.S. Senate, but he lacked the resources to conduct a serious presidential campaign.

Had the 1974 amendments to FECA, with their \$1,000 contribution limits, been in place in 1968, there would have been no "Clean Gene for President" campaign. As it was, wealthy liberals such as Stewart Mott, Stanley Sheinbaum and the recently deceased Max Palevsky stepped up to make six- and seven-figure contributions to fund the McCarthy campaign, donations worth nearly \$10 million in today's dollars.

Suddenly, tens of millions of antiwar Americans had a candidate. McCarthy didn't win the New Hampshire Democratic primary, but he did so well that President Johnson, seeing the handwriting on the wall, announced he was not going to run for re-election. Such is the manner in which campaign-finance laws can affect history.

According to a group called United for the Future, there are some 70 progressive organizations committed to overturning *Citizens United*. No doubt they'll also target the *SpeechNow.org* case, once its implications are fully understood. That is unfortunate. There was a time when liberals put their faith in freedom and the wisdom of the voters.

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