THE SUPER PAC:

POLITICAL PARADIGM SHIFT FOR THE 21st CENTURY

By

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Abstract:

Recently, in the United States, a new type of political action committee has arisen, popularly referred to as the "Super PAC." Unlike traditional PACs, super PACs can legally raise unlimited funds from individuals, corporations, unions and other groups. A political action committee is a type of organization that campaigns for or against candidates, ballot initiatives or legislation. Super PACs, or "independent-expenditure only committees," can only engage in unlimited political spending independently of campaigns. This was made possible through two judicial decisions: *Citizens United v. Federal Election Commission* and *Speechnow.org v. FEC*. In my thesis, I explore the history and implications of the Super PAC from a political philosophy perspective while incorporating elements of economic and legal thought.

Section I: Political action committees and the rise of the Super PAC

A political action committee (PAC) is an organization that accumulates campaign contributions for a specific candidate, legislation or party in general. While PACs are free to contribute funds to any candidate or cause, they are limited in the amount of funds they can give (OpenSecrets.org). For PACs supporting a specific candidate's election campaign, whether special, primary, or general, they can contribute up to $5,000. Annually, a PAC is allowed to give up to $15,000 to a national party and up to $5,000 annually to another PAC. Individuals, PACs and party committees can only give up to $5,000 to any single PAC per year. Before an organization is considered a PAC, it must register with the Federal Election Commission (FEC) within 10 days of its formation. In order to register, a PAC must provide its name, address and its treasurer, as well as any organizations it is associated with to the FEC. In order to limit contributions, the FEC treats affiliated PACs as a single donor

(*Federal Election Commission Campaign Guide*).

The birth of PACs began in 1944 when the Congress of Industrial Organizations formed a political action committee in the hopes of reelecting President Franklin D. Roosevelt. Union members voluntarily gave funds to the PAC and so did not violate the Smith Connally Act of 1943. This law prohibited union treasuries to give funds to federal elections. Since the union workers gave from their own monies, they were at liberty to form this kind of contributing organization (OpenSecrets.org). This is a significant difference when it comes to federal election law. Since the money given to a Super PAC is kept in a bank account instead of a union or corporate treasury, legally PACs are referred to as "separate segregated funds" (*Federal Election Commission Campaign Guide*). Politicians looking to obtain leadership positions in congress sometimes form what are known as Leadership PACs, which help support candidates running for office. Under the Open Government Act of 2007, sponsoring politicians must report their sponsorship to the FEC (OpenSecrets.org).

Recently, in the United States, a new type of political action committee has arisen, popularly referred to as the "Super PAC." Unlike traditional PACs, Super PACs can legally raise unlimited funds from individuals, corporations, unions and other groups. While regular PACs are limited in their contribution amount, Super PACs, or "independent-expenditure only committees," can only engage in unlimited political spending independently of campaigns. While Super PACs are allowed to raise unlimited amounts of money for a candidate, they are banned from, "coordinating activities with any candidate or campaign" (Krieg 1). This was made possible through two judicial decisions: *Citizens*

United v. Federal Election Commission and *Speechnow.org v. FEC*. In my thesis, I plan on exploring the history of Super PACs in depth from a political philosophy perspective and analyzing where campaign finance stands today and what this means for future elections.

According to the Federal Election Act, an organization becomes a PAC at the federal level once it receives or spends above $1,000 towards influencing a federal election. The PAC must also register with the FEC, name their PAC and fill out a statement of the organization (*Federal Election Commission Campaign Guide*). Under the Federal Election Act, individuals are not permitted to contribute more than $2,500 and corporations and unions were prohibited from making any contributions at all. The Supreme Court cases of 2010, (*Citizens United v. Federal Election Commission* and *Speechnow.org v. FEC*.) reversed decades of campaign-finance. These landmark decisions gave rise to the era of the Super PAC. The Court overturned laws capping the amount of expenditures given to a PAC. More controversially, the Court also ruled that corporations and non-profits could also donate unlimited funds to a PAC. By law however, Super PACs are required to disclose the name of the individual, organization or entity that is contributing to them, as well as the date and amount of the contribution (*Center for Competitive Politics*).

In order to fully understand the impact and importance of the super PAC, we have to go back to the history of the legal and judicial decisions of campaign finance. Controversy over money in politics dates all the way back to the 1800's. In the 1886 case, *Santa Clara County v. Southern Pacific Railroad*, the Supreme Court decided that a business corporation is recognized as a "person" by the court and is protected by the Equal Protection Clause of the Fourteenth Amendment. This definition became an important one for the Court as they

faced decisions concerning campaign-finance laws. This seemingly mundane case involving state taxes proved to be an important decision whose ramifications would be felt for over a hundred years.

Another important event in the ongoing controversy was the passing of the Tillman Act by Congress in 1907. This law prohibited corporations from giving directly to federal campaigns. Any corporation found violating this law would face criminal charges. This law still had its loopholes however. For example, individuals could give unlimited funds to political campaigns and be reimbursed by their employers. Despite this, Congress believed that they were making a move in the right direction to achieve the goal of establishing elections "free from the power of money." The stage was set for the two biggest cases in campaign finance: Citizens United and SpeechNow. The Tillman Act of 1907 implied that a corporation was not a person under the freedom of speech clause of the First Amendment. The stage was set for the coming of monumental First Amendment cases. If a later Court found that a corporation was a person, than they would be a problem with limiting free speech.

Section II: The Precedents: Stage setting and Court Ruling

In the decades to follow, this law did little to contain spending on political campaigns. After World War II, the primary mode of campaigning came through candidates buying time on television advertisements. This strategy served only to increase the ever-growing need for money. In fact, President Nixon's infamous Watergate scandals were caused by an obsession with campaign fund-raising. This scandal brought on the next movement of campaign-finance reform, known as the Federal Election Campaign Act

Amendments of 1974. These amendments supplemented the Act passed three years earlier, and many of these same regulations endure today. The Federal Election Campaign Act (FECA) of 1971 is a U.S. federal law that increased disclosure of federal campaign contributions. The law was amended in 1974 in order to provide limits on campaign contributions. These amendments imposed limits to contributions made to campaigns and required disclosure of campaign contributions and spending. It also created an entity to enforce the act, fittingly named the Federal Election Commission.

In 1975, shortly after the law went into effect, some political leaders challenged its constitutionality. The Court's decision on the case, *Buckley v. Valeo*, is known as one of the Court's most complicated and incomprehensible opinions. At the center of the controversy was a distinction between expenditures and contributions. According to the Court, the First Amendment barred Congress from placing limits on expenditures. This is because the Court believed that spending money was like speech because, "every means of communicating ideas in today's mass society requires the expenditure of money." (*Buckley v. Valeo*). In contrast, the Court ruled that it was constitutionally permissible to limit campaign contributions. The distinction rests in the "a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." The Court believed that limiting contributions does not inhibit political speech in a significant way. In the end, the Supreme Court ruled that Congress could limit contributions but not expenditures. The Court stated that the government only had an interest in preventing corruptions or the appearance of corruption and so quid pro quo exchanges such as contributions threatened corruption, while expenditures come from independent groups and therefore do not pose any direct threat of corruption. This

distinction was the determining feature of the constitutionality of campaign finance rules.

Later, in 2002, the Bipartisan Campaign Reform Act (BRCA), otherwise known as the "McCain-Feingold" Act, modified FECA. As its name suggests, the chief Senator supporters of this act were Senators Russ Feingold of Wisconsin and John McCain of Arizona. This new law placed restrictions on what is known as "electioneering communications." Electioneering communications are any broadcast advertising that mentions a candidate. If an electioneering communication was to be aired within 30 days of a primary or within 60 days of a general election, then unions and corporations could not transfer funds from their general accounts to these forms of media. The "McCain-Feingold" Act also prohibited independent expenditures funding "speech that expressly advocates the election or defeat of a federal candidate" (FECA). This law was established in order to address two main issues:

BCRA gave rise to the use of "soft money" in campaigns because of the restrictions placed on interest groups and political parties' ability to fund these campaigns. One of the most well known provisions of BRCA is known as the "Stand by Your Ad" stipulation. This requires candidates running for federal political office to incorporate "a statement by the candidate that identifies the candidate and states that the candidate has approved the communication" (H.R. 2356). This law not only applied to the candidates but also to special interest groups and parties in favor or opposition to a candidate. In the presidential election of 2004, the implications of BRCA were evident when ads began to come out including statements such as, "My name is X, and I approve this message." During the same election year, a non-profit organization named Citizens United stepped onto the national stage. Citizens United was founded in 1988 and boasts a membership and support of nearly

500,000 individuals. Citizens United describes itself as, "an organization dedicated to restoring our government to citizens' control" (*Citizens United*). It advocates small government and traditional values.

In 2004, Citizens United filed a complaint to the Federal Election Commission claiming that the advertisements for the Michael Moore Film, *Fahrenheit 9/11*, constituted as political advertising. If the advertisements were aired within 30 days of the primary election or 60 days of the general election, it would be in violation against the Bipartisan Campaign Reform Act of 2002. *Fahrenheit 9/11* was a documentary that gave critical commentary of the Bush administration's actions after the crisis of September 11, 2001. Due to its specific references to a political candidate running for office, Citizens United believed it fell under the domain of BRCA.

The FEC dismissed Citizens United's complaint and wrote that they found no evidence that the Act was violated. The respondents stated to the FEC that they did not plan on airing these ads during the electioneering communications period (Compliance Case Made Public). The FEC also dismissed a second complaint that illegal corporate spending supported the movie advocating the defeat of a candidate. This type of spending, coming directly from either corporation or union treasuries, was made illegal under the Taft-Hartley Act of 1947 as well as the Federal Election Campaign Act Amendments of 1974. The FEC's reasons for dismissing the complaint were due to the fact that they could not find any reason to believe that the respondents violated the act by accepting contributions from entities such as Michael Moore. This is because the film, trailers, and website all represented bona fide commercial activity and not contributions or expenditures as defined by the FEC Act.

After the decisions by the Federal Election Commission, Citizens United began to establish itself as a commercial filmmaker and produced numerous documentary films between the years of 2005 and 2007. Early in the year of 2008, Citizens United intended to run its television commercials in promotion of their political documentary entitled, *Hillary: The Movie*. The non-profit also made plans to air the movie on DirecTV. The film was extremely critical of Senator Clinton's ability to run the nation. The District Court described the documentary as an, "elongated version of a negative 30-second television spot" (District Court). Before airing the promotion however, Citizens notified the court of their intentions so as to ensure that they would not be in violation of BRCA. Until the ruling was made, Citizens United decided to hold off on broadcasting their advertisements (District Court). In January of that year, the United States District Court for the District of Columbia held that the advertisements for the film, *Hillary*, were in violation of the restrictions found in BRCA for "electioneering communications." Despite the political action committee's claims that the documentary was fact-based, the District Court found that the film's only purpose was to criticize and discredit Clinton's candidacy.

After the holding of the district court, President of Citizens United, David Bossie was determined to appeal to the Supreme Court. Before he did, he switched lawyers from James Bopp to Theodore Olsen. Ted Olsen was an iconic figure in the Conservative legal circle and had argued before the Supreme Court numerous times. After he won the case of *Bush v Gore*, President George Bush appointed him as Solicitor General. He was a well-established lawyer who knew how to win (Toobin).

On August 18, 2008, the Supreme Court docketed the case and heard the oral arguments on March 24, 2009. During the oral arguments, Olsen did not focus his

argument on the constitutionality of McCain-Feingold, but rather argued that the law applied only to commercials and not to documentaries on demand. Deputy Solicitor General, Malcolm L. Stewart representing the FEC, argued that under the decision of *Austin v Michigan Chamber of Commerce*, the government had the power to ban an advocacy group from funding a 90-minute documentary if the first minute alone urged viewers to vote for a specific candidate and then proceed as only a recital of information without further support in favor or against that candidate (*Citizens United v FEC*, Oral argument 32). This prompted a crucial question from Justice Alito, "Do you think the Constitution required Congress to draw the line where it did, limiting this to broadcast and cable and so forth? Could the law limit a corporation from providing the same thing in a book? Would the Constitution permit the restriction of all those as well?" As Jeffery Toobin would later write, it was "a single question [that] changed the case, and perhaps American history" (Toobin, 4).

This was a dynamic question because it went straight to the heart of what was at issue: every American's right to freedom of speech. If this law congress enacted could go so far as banning books that had a single line of favor or opposition for a candidate and was released within the proper amount of time before an election, then under the McCain-Feingold Act, congress could presumably ban the book, which flew right in the face of freedom of speech and press. The McCain-Feingold Act encompassed the three interests the government wanted to advance when it came to finance law: "distorting effects of large aggregations of wealth, an anti-corruption interest, and a shareholder protection interest" (Kelso 132). In the *Citizens United* Case, Justice Kennedy rejected each one. He argued that protection under the First Amendment does not depend on the individuals financial ability

to engage in political speech and that independent expenditures do not give way to corruption. He also argued that shareholder protection gives government the power to restrict media corporations' (Kelso 132).

In Randall R. Kelso's article, "Justice Kennedy's Jurisprudence on the First Amendment Religion Clauses," he argues that Kennedy has a high regard for and is a big defender of the First Amendment's protection of free speech. Kelso writes that based off of Kennedy's court opinions, there are three general principles that arise as the basis for his view of free speech. He believes that these principles are supporting political freedom; supporting individual autonomy; and protecting freedom to teach, learn and innovate (Kelso 114-5). Based off of these three principles, he thinks that Kennedy believes freedom of speech was intended to have, and deserves, a great amount of protection from all branches of federal and state government (114). During Justice Kennedy's 25-year tenure on the U.S. Supreme Court, most people considered him to be a moderate civil libertarian (Kelso 104). His moderate civil-libertarian approach is most prominent in some different areas of Supreme Court jurisprudence, including the First Amendment's Freedom of Speech Doctrine (Kelso 104).

When McCain and Feingold first drafted BRCA, many members of congress, including the then majority-whip Mitch McConnell, opposed the bill because they believed it to be unconstitutional. Although President George W. Bush signed it into law, he did say that he had, "reservations about the constitutionality of the broad ban on issue advertising." In his press release, it appeared that Bush believed the Supreme Court would strike down its key provisions, but in 2003, the Court upheld most of the legislation in the case, *McConnell v. FEC* ("President Signs Campaign Finance Reform Act").

Section III: Citizens United

To Alito's piercing question, the Solicitor General, Steward responded that the of the limits of McCain-Feingold, "could have been applied to additional media as well." After Steward's statement, the conservative trio of Kennedy, Roberts and Alito rapidly steered their inquiring away from questions concerning campaign finance laws, to government censorship. It was Roberts' question that went for the jugular of the government's position. Referring to a book, Roberts asked, "If it has one name, one use of the candidate's name, it would be covered, correct?" Roberts asked. Steward made his agreement. "If it's a five-hundred-page book, and at the end it says, 'And so vote for X,' the government could ban that?" Roberts continued. Steward had to give a reluctant yes. This questioning forced Steward to take an awkward position: that the government might have the power to ban a five hundred-page-book if it contained a single line that read, "vote for x," and was published and released within 30 days of the primary election (Toobin 4). This questioning raised important issues as to the amount of power the government had to control political speech.

However, Steward was wrong about the implications of the McCain-Feingold law. It was based on the nature of the pervasive influence of advertisement on elections and that TV ads are in a way unavoidable from the American public. Acquiring books however, entails a kind of interest and action on the part of the individual. Therefore congress would have no justification or reason for banning a book under the First Amendment.

As the Solicitor General, Steward had the unique role of defending the law even if he believed it to be unconstitutional and even if its implications hurt his case (Lederman). Other lawyers could've danced around the subject but as Solicitor General, Steward's duty

was to be forthright. Due to this embarrassing admittance, the damage to the government's case was profound. Since Olsen's argument focused narrowly on whether the McCain-Feingold law applied to this situation, many thought the final decision would be focused on this as well. At the initial conference, the Supreme Court found that the First Amendment forbids the government from restricting this type of political speech (Toobin). The decision was made in a vote of 5 to 4, with Kennedy as the swing vote. Kennedy as the swing vote was not surprising given his defense of free speech and first amendments rights. Kennedy saw the Bipartisan Campaign Reform Act as a first amendment right violation. This was not an instance of political manipulation, but a majority decision to uphold American's freedom of speech.

Roberts took it upon himself to write the opinion of the Court, and at first his opinion focused on the narrow argument Olsen had raised: if the law applied to the documentary or to non-profits in general. However, Kennedy's concurrence went much farther than just the decision at hand. Kennedy wrote that the Court should've declared the restriction of the McCain-Feingold law unconstitutional. This would mean an overturn of precedent from 1990 and the gutting of established restrictions of corporate expenditures. After both had written their part, the Court sided on Kennedy's more expansive opinion. Roberts withdrew and left Kennedy to write the majority opinion. As Toobin writes, "The new majority opinion transformed Citizens United into a vehicle for rewriting decades of constitutional law" (Toobin 5). As shown before, Kennedy's jurisprudence heavily supports freedom of speech and takes the First Amendment very seriously. Due to the precedent of Kennedy's opinions in other First Amendment case, this was not a light decision, nor a political move on Kennedy's part. He had a deep conviction that according

to the constitution, the government must protect individual's speech freedom and tread lightly upon hindering political speech.

Stevens, who was the senior justice in the minority, assigned the dissent to Souter. Souter used this opportunity to accuse Roberts of crossing the boundaries of the judicial branch and engineering his desired result. The dissent by Souter, who was about to retire, made Roberts fear that it would damage the credibility of the Supreme Court. Instead of letting the decision stand, Roberts decided to retract the opinion of Kennedy and schedule a reargument of the case in the fall. For the second argument the Court framed a new list of the Questions Presented. This set of questioning would focus on a much broader scope than the one presented by Citizens United (Toobin).

When announcing the reargument of the case on June 29, 2009, the Court told both parties that they were considering whether to overturn their decision in the 2003 McConnell case. Since this second argument was set for September 9, 2009, the decision would heavily impact the upcoming 2012 elections.

Before the reargument, the Senate had confirmed Elena Kagan as the Solicitor General. She had never argued a case before the Supreme Court – Citizens United would be her first. During the reargument, Justice Ginsburg brought up a topic for potential controversy in the future. She asked Olsen if he was claiming that there was no difference between the rights found in the first amendment for a corporation or a person. She wondered if there were any distinctions congress could draw between individuals and corporations in terms of campaign finance. Olsen affirmed that the Court has continuously given corporations the same protections under the First Amendment as individual Americans.

Kagan, knowing her side would most likely lose the case, attempted to limit the damage. Stevens tried to aid Kagan in her pursuit to persuade the Court to strike down a specific application of the law rather than overturning it completely. Stevens suggested that the Court could present a narrower ruling. For example, they could make an exception for nonprofits like Citizens United (Oral Argument 26).

After the second argument, the votes were the same as before: 5-4 with Kennedy as the swing vote. Kennedy's opinion was resurrected and contained powerful statements of the new standard for money in politics. "Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people," Kennedy began. "By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each" (*Citizens United v. FEC,* Opinion of the Court).

As noted before, this was a monumental case that has changed the way Americans will look at campaign finance. The Court's ruling opened the doors for unlimited fund-raising not only for non-profits, but also for corporations and other organizations as well. In short span of time to follow from then until today, other important cases would be decided based upon this precedent; cases like *SpeechNow v FEC* and *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*. There is no doubt that Kennedy and the majority of the Court are committed to the 1st Amendment's protection of free speech, but the implications of their decision in *Citizens United* has only begun to be

felt in political elections. What people are now asking is how Super PACs will contribute to, or detract away from, the public discourse.

Section IV. *SpeechNow.org v. FEC*

The non-profit organization, SpeechNow, sought to pool their revenues in independent expenditures to expressly advocate for or against a candidate running for political office. On November 19, 2007, SpeechNow submitted an advisory opinion request to the Federal Election Commission asking if their actions required them to register as a political action committee under the Federal Election Campaign Act. The Commission notified SpeechNow that not only would they have to register as a political committee after they had spent or raised $1,000, but also declared that the contribution limits would apply to them as well. On February 14, 2008, SpeechNow filed a complaint to the U.S. District Court for the District of Columbia arguing that the provisions of the Federal Election Campaign Act requiring them to register as a committee and limiting their contributions were unconstitutional (*Federal Election Commission*). The District Court ruled that according to *Buckley v Valeo*, the limits on contributions were not unconstitutional. The Court also found that the regulations, "sufficiently furthered" the government's interest to stop corruption and that SpeechNow did not successful show that contribution limits on expenditures is unconstitutional (*Federal Election Commission*).

On March 26, 2010 the Court of Appeals, based on Citizens United precedent, ruled that the contribution limits of the Act were unconstitutional but the disclosure requirement and organizational requirement portions of the Act were upheld. The court argued that while contribution limits were unconstitutional, disclosure requirements "impose no ceiling on campaign-related activities…and do not prevent anyone from speaking"

(McConnell v. FEC). The Court ruled that SpeechNow, an independent expenditure only committee was entitled to unlimited contributions under the First Amendment. The Court made clear however, that their holding did not does not affect, "limits on direct contributions to candidates." As a result of this case, organizations making independent expenditures must register as political action committees but are now able to raise unlimited funds for their organization. This ruling coupled with the ruling in the Citizen United case implies that corporations and unions may also give unlimited funds to these types of Independent Expenditure only organizations registered as PACs.

Section V. *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*

In 1998, the state of Arizona passed a campaign finance law that publically gave matching funds to a candidate when their privately funded opponent exceeded the allotted funding given to a publically financed candidate. In 2008, the Arizona Free Enterprise Club's Freedom Club PAC filed a lawsuit arguing that this law was unconstitutional because it hindered individual's freedom of speech (The Oyez Project). When the case went to the District Court of Arizona, the court found that the matching-funds provision in the legislation was unconstitutional. However, the Court of Appeals for the Ninth Circuit overturned that ruling and said that it only found "minimal" impact on free speech. When the case went to the Supreme Court in 2011, they ruled in a 5-4 vote that the Arizona Law was unconstitutional. In the opinion, Roberts wrote, "Arizona's matching funds scheme, which provides additional funds to a publicly funded candidate when expenditures by a privately financed candidate and independent groups exceed the funding initially allotted

to the publicly financed candidate, substantially burdens political speech and is not sufficiently justified by a compelling interest to survive First Amendment scrutiny." Justice Kagan filed a dissenting opinion, which was joined by Justices Ginsburg, Breyer, and Sotomayor (SCOTUSblog).

The majority opinion concluded that the "matching" effect of the Arizona law would cause self-financed candidates to reduce their spending on campaigns. In some sense, because of this matching policy, every dollar a candidate could raise would mean another subsidy dollar for their opponent. Robert's wrote that some would rather reduce their campaign spending than continue to bring their opponent money just because they were more heavily financed. It didn't matter if it was the own candidate's funds or expenditures from an outside group, the out-spending of the publically financed candidate would result in more subsidy flow. The majority of the Court believed that this legislation would produce less campaign speech instead of more. They concluded that this means the issues would be discussed less as well (Denniston).

The Court concluded that this restriction placed an unconstitutional burden on those candidates who used their own funds as well as outside groups looking to support certain candidates. The Supreme Court found that the burden was on the state to justify such a breach of the First Amendment. Roberts wrote that the system does not actually lessen corrupting influence in campaigns and the rational of "leveling the playing field," was found wanting. (Dennison). The dissent, led by Kagan, argued that law makers have for years been searching for a "Goldilocks solution" to find a subsidy plan that is "not too large, not too small, but just right." They believed that the "trigger-and-match" mechanism of the Arizona law provided this solution. The dissenters argued that it would bring more

candidates to the race because they would no longer be disadvantaged by self-financed candidates (Dennison).

The dissent's opinion expressed many liberals' concerns about campaign financing. Democrats argue that wealthy candidates as opposed to the average American populace will dictate political campaigns and hinder the general public, the poor and minorities from being heard. While liberals voice the strongest defense of the Arizona law, they are the ones who might have done the most to abuse it. For example, in the 2008 presidential election, Obama opted to not receive public financing and instead relied on private supporters. Obama argued that the campaign financing system was a broken one that allowed, "special interests [to] drown out the voice of the American people." Instead, Obama decided to privately accept contributions from Hollywood stars as well as opening a system over the Internet to accept small donations (CNNPolitics.com). While Obama and many other democrats criticize big donors for swaying elections and suppressing the people's voice, their behavior shows a greater concern for advantaging themselves through big donor's contributions and not for the voice of the small people. Essentially Obama did not want to limit large or small donations because it put him in a disadvantage to McCain – who was, in fact, publically financed and could not have kept up with the advantages Obama received. The Arizona case set the stage for much debate between those who favor public financing and those who believe the First Amendment calls for more repeals of finance regulations. From the Citizens United case to SpeechNow and the Arizona case, it appears that the majority of the Court leans more towards the view that freedom of speech entails freedom from burdensome regulations on political speech. As the majority opinion

stated in *Buckley v. Valeo*, "the concept that government may restrict the speech of some [in] order to enhance the relative voice of others is wholly foreign to the Fist Amendment."

Section VI. Conclusion

The issue many are concerned with is who can put money into political elections. As of now, the manner in which they can spend and raise unlimited expenditures is through Super PACs. Every even-numbered year, a third of the Senate and 435 congressmen are elected. Every second cycle, the people elect a new Commander and Chief. There exist about 5,000 registered PACs of which 2/3rds are connected to a trade association, corporation, or unions.

According to a Public Citizen article entitled, "Super Connected," the author, Taylor Lincoln argues that the majority of independent expenditure organizations (i.e. Super PACs) are not as 'independent' as the Supreme Court deemed them to be. He argues that the Court's decision in allowing unlimited corporate spending for campaigns hinged upon the rational that, "third-party expenditures do not threaten to cause corruption because they are independent" (Lincoln 3). After analyzing the expenditures of 108 Super PACs, Citizens Public concluded that most Super PACs are far from being independent. Their studies show that over 60% of Super PACs active in the last presidential election are specifically devoted to only one candidate. Not only that, but the PACs are founded and or managed by close friends and allies of the candidate.

Lincoln wrote that the findings of the report led him to conclude that in the coming elections, the establishment of Super PACs means, "the end of meaningful limits on campaign contributions." The only thing that could change the expected result would be a reversal of the Citizens United case or an amendment specifying the power congress has to

limit campaign spending (Lincoln 17). While Lincoln and others see Super PACs as a gateway to corrupt, other see it as liberating Americans from unconstitutional limitations.

The President of Citizens United, David Bossie, argued that Super PACs help to increase political speech for Americans. He cites that many lament the fact that over $2 billion dollars was spent in the 2012 election cycle. He argues that the fact of the matter is that $2 Billion dollars will be spent with or without Super PACs. In the 2012 election President Obama planned to spend over one billion dollars on his reelection campaign. Bossie argued that any Republican candidate could not hope to raise that much money and so independent Super PACs set out to counter Obama's campaign spending (Bossie).

Before the rise of the Super PAC, political action committees raised over 4 billion dollars from 1990 to 2008. The recent phenomenon has raised questions as to how likely Super PACs are to win elections. In the 2012 Obama/Romney election, 42% of the Super PACs supporting Romney gave over one million dollars, while 49% of PACs supporting Obama raised over a million. An article by the New York Times reported that, "nonprofit groups that do not have to file with the Federal Election Commission and other super PACs have spent at least $65 million more on television advertising, almost all of it against President Obama or in support of Mitt Romney" Obama's primary Super PAC, Priorities USA, raised $78.8 million dollars while the Restore our Future Super PAC raised $153.8 million dollars for Romney's campaign ("The 2012 Money Race"). From these numbers it seems clear that Romney had much more support through Super PACs, however that fact alone did not win him the Presidential office. It is unclear how much affect Super PACs will have in winning elections, what is clear is that they will be utilized by both parties.

The Director of the Center for Representative Government at the Cato Institute, John Samples, argued that Super PACs enhance democracy.

Looking towards the future, it is almost certain that the amount of Super PACs and their influence will continue to grow. Not only will this occur due to the unlimited amounts of funds they can raise but also due, in part, to the IRS scandal with Republican leading groups in 2013. Since the higher scrutiny of 501(c)(4)s, which do not require the disclosure of donors, many donors will be looking to retreat to 527s and Super PACs. This can only help democracy because political speech will increase and force donors to publically stand behind their contributions (Barrett). Whether you like Super PACs or not, they are here to stay and the American Political system needs to adapt and learn to live with it.