

ABSTRACT

In Defense of “Super PACs” and of the First Amendment,
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This article is a defense of “Super PACs” and of the First Amendment principles that they embody, namely, that we need a robust, wide-open and uninhibited discussion of politics and government in order to make our democracy work. Like the famous Citizens United ruling in 2010, Super PACs have gotten a bad press and have been widely condemned as threats to democracy. But Super PACs are really nothing new. They trace their origins back to Buckley v. Valeo, the Supreme Court’s landmark 1976 free speech ruling which rejected any justification for limiting the independent expenditures for political speech. Thus, the day after Buckley, individuals and groups were free to spend whatever they wished to support or oppose political candidates. Whether they were allowed to join together for such purposes was less clear. But Citizens United removed any lingering doubt by holding that any speaker – individual, corporate, union, non-profit – was free to make independent expenditures without prohibition or limitation. Based on those principles, a federal appeals court easily and unanimously ruled that what one person or group could do individually, several people or groups could do cooperatively, namely, pool their resources to get out their common message. That is a Super PAC.

As a result, Super PACs played a noticeable role in the 2012 federal elections. But despite popular misconception, they did not dominate or control those elections, accounting for only 10 percent of the campaign spending, almost all contributions to them were fully and publically disclosed, and almost no corporations played any role in any such Super PAC spending. Indeed, so far as is known, extremely few Fortune 500 companies have contributed to support a Super PAC. Rather, Super PACs enabled more speech and debate in our political process, a result to be desired most significantly under the First Amendment. So, rather than being a threat to democracy, Super PACs have been a boon.