



Paul S. Ryan, Senior Counsel

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The 2012 Election - How
Much Did Money Matter?

Two Unfulfilled Promises of *Citizens United*

- *Citizens United* unleashed **unlimited “independent” political spending** and, by extension, **unlimited contributions** to pay for such “independent” spending. But the Court assured us of **two things**:
 1. Money would be spent **“independently”** of candidates.
 2. Money would be **fully disclosed and transparent**.

Unfulfilled Promise of “Independence”— Why Independence Matters

- Back in 1976, the Supreme Court in *Buckley v. Valeo* held that **large contributions** to candidates/officeholders, as well as **expenditures coordinated with** candidates/officeholder, **pose a serious threat of corruption** and—just as importantly—an **appearance of corruption** that undermines voters’ faith in democracy.

Unfulfilled Promise of “Independence”

- *Citizens United* Court assumed that “[t]he **absence of prearrangement and coordination . . .** with the candidate . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.” (quoting *Buckley v. Valeo* (1976)).
- In *Buckley*, the Court presumed that expenditures meeting the legal definition of “independent expenditure” **are in fact expenditures “made totally independently of the candidate and his campaign.”**
- Similarly, in its 2003 *McConnell v. FEC* decision, the Court emphasized that “independent expenditures” should be “**truly . . . independent**” and referenced “**wholly independent expenditures.**”

Groups Making Expenditures Are Not Independent of Candidates and Parties

- Earlier this year, *Huffington Post* reported a new video released by the super PAC House Majority PAC. *HuffPost* wrote:

*In another sign of the close ties between super PACs and elected officials, seven newly minted **Democratic House members appear in a promotional video . . . singing the super PAC's praises** for helping to even the playing field for Democrats, who face massive outside spending by conservative organizations*

Groups Making Expenditures Are Not Independent of Candidates and Parties (Cont.)

- In mid-October 2012, coinciding with the 3rd presidential debate, the Romney campaign held a series of events at New York City's Waldorf Astoria hotel.
- According to the *LA Times*, among the series of events held at the Waldorf Astoria to thank the donors backing Mitt Romney was a session with the leaders of the supposedly-independent super PAC Restore Our Future.
- I was quoted in the article saying: “**The coordination rules are a joke** and completely undermine the promise ... that this new flood of money would be raised and spent in any **meaningfully independent** way from the candidates. . . . These super PACs are connected at the hip with the candidates' campaigns.”

Current “Coordination” Laws Don’t Require “Total” or “True” Independence

- Federal and state law allows nearly-unlimited coordination of fundraising—**only coordinated spending** is regulated.
- “Coordination” occurs under federal law only when an **expenditure for a specific communication** (*i.e.*, political ad) meets **both** prongs of the “coordinated communication” regulation:
 1. the ad contains specified **content** *and*
 2. the candidate requests or suggests the ad; is materially involved in the spender’s decisions regarding the content of the ad, the intended audience, or the media outlet used; or otherwise meets one of the rule’s narrow “**conduct**” standards.

Current “Coordination” Laws Don’t Require “Total” or “True” Independence (Cont.)

- An “independent” spender can be married to a candidate and **share the same bed every night** without running afoul of federal coordination restrictions, so long as the spouses refrain from discussing the details of specific ad buys.
- FEC has interpreted federal law to **permit candidates to attend, speak and be featured guests at super PAC fundraisers** where unlimited individual, corporate, and labor organization contributions are solicited, so long as the candidate doesn’t make the unlimited “ask.”

“Independent” Groups Run By Candidates’ Former Employees, Friends and Family

- Super PAC Restore Our Future is run by several former Romney aides, including Charles R. Spies, who served as general counsel to Romney’s 2008 Presidential campaign.
- Super PAC American Crossroads and related 501(c)(4) Crossroads GPS were co-founded by Ed Gillespie, who then became a Senior Advisor to Mitt Romney’s 2012 campaign.
- Super PAC Priorities USA Action and related 501(c)(4) Priorities USA were co-founded by former Obama White House aides Bill Burton and Sean Sweeney.

Unfulfilled Promise of Transparency

- *Citizens United* Court promised that **through disclosure laws**, voters and shareholders would have all the information they need **(1)** to hold corporate officers accountable for election spending, **(2)** determine whether elected officials are “in the pocket” of special interests and **(3)** to make informed decisions on Election Day.

Federal Campaign Finance Law Disclosure Requirement

- Under federal campaign finance law, groups that do not meet the definition of “political committee”—*e.g.*, 501(c)(4) groups—are only required to disclose donors who gave “**for the purpose of furthering**” political ads.
- 3 FEC Commissioners would only require disclosure if donor explicitly gave \$\$ for the purpose of furthering **a specific ad buy**.
- **Result: Groups don’t disclose their donors.**



Thank You.