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.