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PACs and Super PACs in Federal Election Campaigns: Legal Framework

Political action committees (PACs) and super PACs play significant roles in federal election campaigns by raising and spending money to influence elections. While PACs have been a part of the campaign finance ecosystem for decades, super PACs originated in 2010. This In Focus provides an overview of the legal origins of PACs and super PACs, discusses how each is regulated under federal campaign finance law, and offers considerations for Congress.

Key Acronyms and Terms Defined

Contribution: Money or anything of value given for the purpose of influencing a federal election.

Electioneering communication: A broadcast, cable, or satellite transmission that refers to a federal office candidate and is transmitted within 60 days of a general election or 30 days of a primary.

FEC: Federal Election Commission; provides civil enforcement of FECA.

FECA: Federal Election Campaign Act; body of law regulating campaign finance in federal elections.

Independent expenditure: Money spent on a communication that expressly advocates election or defeat of a federal candidate, uncoordinated with any candidate or political party.

PAC: Political action committee; a FECA-regulated political committee that makes contributions and independent expenditures.

Political committee: A group of persons that receive contributions or make expenditures aggregating over \$1,000; required to register with the FEC and file disclosure reports.

Super PAC: A FECA-regulated political committee that makes only independent expenditures, also known as an independent expenditure-only committee.

PACs

FECA prohibits corporations and labor unions from making campaign contributions *directly* from their own revenue funds, i.e., general treasuries. However, corporations and unions can establish PACs to make contributions and can use their treasury funds to establish, administer, and solicit contributions to the PACs. Such corporate and labor union-connected PACs, also known as separate segregated funds, can solicit contributions to their PACs from *only* a limited group of individuals who are associated with the corporations or unions. Corporations can solicit PAC contributions from their stockholders and their families, as well as from their executive or administrative personnel and

their families. Labor unions can solicit contributions from their members and their families.

In *FEC v. Beaumont*, the Supreme Court upheld the constitutionality of the prohibition on corporations making direct campaign contributions from their general treasuries. As the Court explained, its jurisprudence on campaign finance regulation respects congressional judgment that the corporate structure requires careful regulation to counter the “misuse of corporate advantages” and that unlimited contributions can necessitate restrictions to counter corruption.

As a result of the 2010 Supreme Court ruling in *Citizens United v. FEC*, corporations and labor unions can make independent expenditures and disbursements for electioneering communications directly from their treasury funds and do *not* need to establish PACs for such spending. Against a First Amendment challenge, the Court in *Citizens United* invalidated the FECA ban on corporate and union spending from general treasury funds, even though the ban permitted corporations and unions to establish PACs for such spending. As the Court explained, PACs are separate entities, and permitting corporate and union-connected PACs to spend is not “somehow allow[ing] a corporation to speak.”

Under certain circumstances, an individual or group of individuals, within 10 days of raising or spending over \$1,000, must register with the FEC as a PAC known as a nonconnected committee. Such PACs are not connected to or sponsored by corporations or labor unions and may solicit contributions from the general public, in accordance with restrictions discussed below.

PACs are subject to FECA’s contribution limits, source restrictions, and disclosure requirements. For example, an individual is limited to contributing up to \$5,000 per year to a PAC, and a PAC is limited to contributing up to \$5,000 to a candidate per election. Further, PACs cannot accept contributions from federal government contractors or from foreign nationals. FECA also requires PACs to register and file periodic disclosure reports with the FEC, including the disclosure of “the total amount of all receipts” and “the total amount of all disbursements” during the reporting period. These reports are made publicly available.

Super PACs

Relying on the ruling in *Citizens United*, the U.S. Court of Appeals for the District of Columbia in *SpeechNow.org v. FEC* provided the legal underpinning for the creation of super PACs. The court determined that, in view of the Supreme Court’s ruling that independent expenditures do

not give rise to the risk of corruption or the appearance of corruption, the government necessarily does not have an anticorruption interest in limiting contributions to groups that make *only* independent expenditures. The court held that FECA's contribution limits are unconstitutional under the First Amendment as applied to such groups. Such groups have since become known as super PACs or independent expenditure-only committees.

Since *SpeechNow* was decided, the FEC has issued advisory opinions providing guidance regarding the establishment and administration of super PACs. For example, the FEC has confirmed that a super PAC may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor unions. The FEC has also explained that when fundraising for super PACs, federal candidates, officeholders, and party officials are subject to FECA fundraising restrictions. That is, they can solicit contributions only up to \$5,000 per year from individuals and federal PACs.

Key Comparisons Between PACs and Super PACs

- Both PACs and super PACs are subject to FECA's source restrictions, including the prohibitions on accepting contributions from federal contractors and foreign nationals.
- Both PACs and super PACs are required to register with the FEC and to file periodic disclosure reports, which are made publicly available.
- Contributions to PACs are subject to limits; contributions to super PACs are not.
- PACs are permitted to make contributions; super PACs are not.

Super PACs and Independent Expenditures

The regulatory line between coordinated communications and independent expenditures by super PACs and other outside groups is based on long-standing Supreme Court precedent. In *Buckley v. Valeo*, the Court determined that the First Amendment does not allow for any limits on expenditures that are made independently of a candidate or political party, i.e. independent expenditures, because they do not present the risk of corruption or its appearance. The Court reasoned that “[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.” The Court has also determined that a limit on an independent expenditure “heavily burdens core First Amendment expression.” In *Colorado Republican Federal Campaign Committee v. FEC*, the Court announced that the “constitutionally significant fact” of an independent expenditure is the absence of coordination between the candidate and the source of the expenditure. Later, in *FEC v. Colorado Republican Federal Campaign Committee*, the Court opined that the independence of such spending is easily

distinguishable when it is made “without any candidate’s approval (or wink or nod).” Further, in *Citizens United*, the Court determined that independent expenditures by corporations and labor unions do not create a risk of quid pro quo corruption so long as they are not coordinated with any candidate or party. In sum, as a result of the Supreme Court’s campaign finance jurisprudence, super PACs and other outside groups can engage in unlimited independent expenditures so long as such expenditures are made independently of any candidate or party.

Independent Expenditures and Coordination

- As defined by FECA, independent expenditures cannot be “made in concert or cooperation with or at the request or suggestion of” a candidate or a party.
- Regulations provide that a communication will be considered “coordinated” if it is made “in cooperation, consultation or concert, with, or at the request or suggestion of” a candidate or a party.
- If a political advertisement is made in coordination with a candidate or political party, it is treated as an in-kind contribution to the corresponding candidate or party, or as a coordinated party expenditure, rather than an independent expenditure.
- As with other contributions, in-kind contributions and coordinated party expenditures are subject to FECA’s contribution limits and source restrictions.

Considerations for Congress

As an increasingly prominent player in federal elections, super PACs have drawn congressional interest. For example, some have argued for legislation that would strengthen the criteria for establishing coordination between super PACs and candidates. In holding that independent expenditures do not create a risk of quid pro quo corruption, the Supreme Court emphasized the constitutional significance of such expenditures being made without coordination with a candidate or party. Therefore, courts may be likely to uphold such legislation.

Current FEC regulations set forth criteria establishing when a communication by an organization, including a super PAC, will be considered coordinated with a candidate or a party and thereby treated as a contribution instead of an independent expenditure. Congress may enact legislation to codify or clarify such regulations, alter such regulations to strengthen or lessen the criteria for establishing coordination, or eliminate coordination criteria altogether.

For further information, see CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*; and CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*.

L. Paige Whitaker, Legislative Attorney

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