

4-20-2012

Stephen Colbert's Super PAC: A Better Tomorrow?

Shannon K. Anderson

Pepperdine University, shannon.anderson@pepperdine.edu

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/ppr>



Part of the [American Politics Commons](#)

Recommended Citation

Anderson, Shannon K. (2012) "Stephen Colbert's Super PAC: A Better Tomorrow?," *Pepperdine Policy Review*. Vol. 5, Article 6.

Available at: <https://digitalcommons.pepperdine.edu/ppr/vol5/iss1/6>

This Article is brought to you for free and open access by the School of Public Policy at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Policy Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Stephen Colbert's Super PAC: A Better Tomorrow?

THE COMEDIAN SHEDS LIGHT ON HOW CITIZENS UNITED HAS LED TO MURKIER
WAYS FOR CORPORATE MONEY TO INFLUENCE OUR POLITICAL SYSTEM

Shannon K. Anderson

Stephen Colbert proclaimed to throngs of assembled reporters and onlookers: "Moments ago the Federal Election Committee made their ruling. And ladies and gentlemen I'm sorry to say, we won!" On June 30, 2011, the Federal Election Commission (FEC) gave its formal approval for Stephen Colbert to form a political action committee (PAC) that could raise unlimited sums of money to be used on independent political expenditures . Colbert's committee, known alternately as Americans for a Better Tomorrow, Tomorrow and the Colbert Super PAC, thus became the 114th Super PAC—a new and powerful supped-up version of an old campaign financing vehicle—formed in the country since two Supreme Court rulings significantly reshaped the boundaries of what free speech is and who holds the right to it.¹ The implications for the upcoming November 2012 election are still not fully known, but so far these changes have enabled a few wealthy donors to exercise great influence in the Republican presidential primary.

Colbert has used Americans for a Better Tomorrow, Tomorrow to draw attention to these changes in American campaign finance law. As Colbert remarked to the New York Times, his Super PAC "is 100 percent legal and at least 10 percent ethical."² Foundational to our political economic system is the right to use our property as we choose, as is the right to say what we want – yet most Americans are squeamish about the idea of a system that combines both these rights without restrictions. Colbert, by highlighting the tension between the right to free speech and the manifestation of wealth as speech, seems to be asking us if we are creating the kind of society that accurately reflects our values as a nation. From this, the reader should question which specific changes is Colbert trying to highlight with his Super PAC. And, given his satiric

humor meant to critique our political economic system, what aspects of these changes does Colbert believe Americans should find troubling, and why? But first, a little background on how the Super PAC came to be.

HISTORY OF PACS

As influence of Washington grew following the post-Civil War consolidation of power at the national level, the financial stakes for shaping the outcome of federal elections also grew. With so much power concentrated in the hands of Congress and the President, gaining their favor could mean the difference in legislation that could significantly impact business' and labor unions' bottom lines. Trying to win over politicians with campaign contributions was strategically smart, but as businesses and labor unions sought to do so, the public grew concerned about the potential for corruption and undue influence. According to the FEC website, PACs arose in response to early-20th century legislation that banned corporations and labor unions from making direct contributions from their treasuries to influence Federal elections.³ To circumvent these prohibitions, in 1944 the Congress of Industrial Organizations (a.k.a. CIO, which would later become part of the AFL-CIO), a labor union, created the first PAC to sponsor the reelection of President Franklin Roosevelt by encouraging their members to directly contribute to the Roosevelt campaign. In this clever adherence to the letter—if not the spirit—of the law by not making contributions directly from the union treasury, the CIO set the precedent for PACs.⁴ Twenty-seven years later, in response to a growing public distrust in a government seemingly open to corrupting influences, PACs and restrictions governing them became codified into law via the Federal Election Campaign Act (FECA) of 1971 and three years after that, the FEC formed to enforce this legislation. Ultimately, as this paper will show, these policies only stemmed the tide of money that sought to influence Federal elections. Court cases in the early 21st century would later open the floodgates as the First Amendment was used to equate free spending with free speech—the particular folly of our political system that this author believes Colbert is trying to highlight with his Super PAC.

RECENT COURT CASES AFFECTING PACS

Though many court cases have shaped the boundaries of campaign finance law, this paper will focus on three specific cases—*Buckley vs. Valeo*, *Citizens United vs. FEC*, and *Speechnow.org vs. FEC*—because they are the most important cases for explaining how the definition of free speech has expanded to include the spending of money in advocacy of political

issues. This expanded definition is ultimately the basis for the current campaign financing legal framework from which Super PACs have risen. In the 1976 *Buckley vs. Valeo* ruling, the Supreme Court found that while an individual or group's contributions to political campaigns could be limited in the interest of preventing any person or group from having undue influence over a candidate, individual or group expenditures made in favor of the causes championed by those campaigns could not be limited because of First Amendment rights:

It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups and candidates. The restrictions . . . limit political expression at the core of our electoral process and of First Amendment freedoms . . ." however, "To the extent that large contributions are given to secure a political quid pro quo from current and potential officeholders, the integrity of our system of representative democracy is undermined.⁵

Under the *Buckley* rationale, a candidate could now contribute unlimited sums to his or her own campaign. However, while unfettering candidates' personal campaign expenditures, *Buckley vs. Valeo* upheld limits on how much money a PAC could contribute to a political party in a given year, to another PAC in a given year, and to a specific candidate in a given election on the basis that unrestricted campaign donations could lead to corruption. Based on the same reasoning, the court upheld the ban on unions and corporations from using treasury funds to make contributions directly to candidates or to make independent expenditures that called for the election or defeat of a candidate for fear of corrupting influence. What corporations and unions could do was continue to spend money on elections via the rules set in place in the 1971 FECA—to create PACs to make such expenditures— provided the money collected for these funds came from stockholders or employees or union members of the entity sponsoring the PAC, and that the money was spent in accordance with Congressionally-set expenditure limits. These rules remained largely unchanged for nearly three and a half decades.⁶

Then, in a 2010 watershed ruling, the Supreme Court ruled in *Citizens United vs. Federal Election Commission* that corporations and labor unions should also have the ability to make unlimited independent expenditures directly from their treasuries, rather than exclusively through money collected from shareholders and employees and then funneled through PACs with their corollary limits and disclosure requirements.⁷ On the heels of *Citizens United vs. FEC* came the March 2010 District of Columbia Appellate Court decision in *Spechnow.org vs. FEC*, the last

of the three important decisions discussed in this paper. The matter at hand was whether or not a nonprofit group could collect unlimited funds from individuals for the purpose of making unlimited independent expenditures and whether or not that group could be exempt from disclosure and reporting requirements.⁸ Basing their opinion on the precedent set in *Citizens United*, the appellate court ruled that *Speechnow.org* could collect unlimited funds from individuals for unlimited independent expenditures, but that it must still abide by disclosure and reporting requirements.

FIRST CAME THE COURT CASES, THEN CAME THE SUPER PACS

The combined impact of *Citizens United vs. FEC* and *Speechnow.org vs. FEC* laid the groundwork for the FEC to greatly loosen the fetters on the political spending of corporations, unions, and individuals, which it then led to the rise of Super PACs, also known as independent expenditure-only committees. Super PACs, according to the FEC website, can accept unlimited contributions from corporations, unions, political committees, groups, or individuals, provided that the funds are reported and disclosed and only used for independent expenditures.⁹ Super PACs must disclose all donors and donation amounts and are prohibited from accepting contributions from “foreign nationals, Federal contractors, national banks, or corporations organized by authority of any law of Congress.”¹⁰ The changes authorized by these recent court cases have allowed an easy, direct way for those seeking to influence the outcome of elections by spending money to do so; thus it comes as no surprise that as of the writing of this paper, 349 Super PACs were registered with the FEC. That works out to an average of over three new Super PACs formed each week since the *Citizens United* decision. As the 2012 election approaches, the pace has accelerated; in the period spanning November 2011 to March 2012, new Super PACs have been added at a rate of nearly 9 per week.

COLBERT’S SUPER PAC

If the reader’s eyes began to glaze over during the last two sections of this paper, he has the author’s preemptive pardon. After all, campaign finance is an extraordinarily tedious, esoteric area of law that most members of the media understandably avoid due to its obscurity and its failure to lend itself to exciting or even understandable new stories. Yet this area of law plays a critical role in ensuring the integrity of our democracy by preventing corruption. How can the media engage the public in grappling with the significant issues that arise in this central part of our republic?

Enter Stephen Colbert. Through his eponymous character portrayed on Comedy Central's Colbert Report, Stephen Colbert satirizes conservative political commentators and uses his arsenal of humor to attack flaws and follies of the American political-economic system. Following the Citizens United and Speechnow.org decisions, Colbert turned his comedic guns on the newly unfettered campaign finance environment created by these two legal decisions. With much fanfare, he hired a Washington law firm to help him establish his own Super PAC and his own 501 (c)(4) corporation, a "nonprofit" organization that allows the Super PAC to evade donor disclosure requirements (more on that later). The law firm petitioned the FEC for a ruling on the following three questions:

May Mr. Colbert form an independent expenditure-only committee [a.k.a. Super PAC] that accepts unlimited contributions from individuals, political committees, corporations, and labor organizations? If the [Super PAC] is discussed on the [Colbert Report], must airtime and related costs incurred by Viacom be reported as in-kind contributions, or will these costs be exempt from reporting requirements under the press exemption? If the [Super PAC] receives in-kind contributions from Viacom, may it also solicit and accept contributions from the general public?¹¹

The FEC responded affirmatively to the majority of Colbert's above requests; however, any administrative costs incurred by Viacom necessary to operate the Super PAC, as well as any expenses incurred by Viacom in producing footage to be used outside the Colbert Report, must be reported as in-kind contributions, the FEC ruled. Thus, in June of 2011, Stephen Colbert secured corporate sponsorship for his Super PAC with significant permissiveness in the type of undisclosed corporate expenditure that could take place. That decision enabled, in the words of Colbert—an "attempt to influence the [presidential] election by a shadowy organization armed with unlimited money—Colbert Super PAC."¹²

Colbert's 501 (c)(4) corporation, initially named Anonymous Shell Corporation, later became Super PAC S.H.H.¹³ Such corporations, according to a lawyer who has visited the Colbert Report several times to explain the legal process behind establishing the Colbert Super PAC and the 501 (c)(4) corporation, do not have to reveal their donors but must spend their money primarily on issue-driven campaigns.¹⁴ This information is corroborated on the IRS website.¹⁵ Thus, Colbert can use anonymous donations from his 501 (c)(4) to fund this Super PAC, thereby hiding the identity of donors.

In keeping with Colbert's style of satire with verisimilitude, Colbert's Super PAC takes its cues from the actions of current political campaigns. For example, the logo for A Better Tomorrow, Tomorrow is virtually identical to that of Freedom First, Tim Pawlenty's PAC. Colbert's Super PAC also responded to headlines when it ran ads in the run up to the Ames straw poll in Iowa. The mock-serious ads, which were run on two separate Iowa television stations, portrayed an Iowa inundated with a barrage of political ads, the product of unfettered spending. The ads went on to urge voters to write-in their vote for Rick Perry, who was not on the ballot, as he had not yet joined the primary race. The humor lay in that the ads supported Rick Parry—misspelled with an “A”—thereby attempting to gauge the impact of the Super PAC ads by later tallying up how many ballots contained the misspelled name. The Iowa Republican Party, however, refused to release the ballots.

SUPER PACS AND LOBBYING

What is so troubling about these new Super PACs? In a word: lobbying. Lobbying, by definition, seeks to influence decision makers to create legislation, rules, and regulations more favorable to the entity on whose behalf the lobbying is being done. Lobbying can take on a host of different manifestations, all of which fall under the broad classifications of direct lobbying, indirect lobbying, litigation or electioneering. Electioneering in particular contributes to the unsavory reputation of lobbying because it seeks to spend money for the purpose of exerting influence over the outcome of elections on which legislators depend to continue in their positions, creating conditions ripe for undue influence, manipulation and corruption. Other examples of electioneering include endorsements, scorecards, issue ads, and 527 contributions.

Prior to the Citizens United and Speechnow.org decisions, the financial influence that any one person, corporation, or union could bring to bear on an election was checked by Federal limits, but now, as David Kirkpatrick forewarned in a New York Times editorial following the Citizens United decision: “A lobbyist can now tell any elected official: if you vote wrong, my company, labor union or interest group will spend unlimited sums explicitly advertising against your re-election.”¹⁶ Yet the spending is not limited to such explicit “mud-slinging” type ads; in a recent segment on the Colbert Report, Stephen Colbert used Super PAC money to hire the services of conservative messaging guru Frank Luntz to use a focus group to design a more palatable version of the A Better Tomorrow, Tomorrow slogan that “corporations are people.”¹⁷ This effort at “reframing the issue” – or using marketing techniques to recast a political issue in a

favorable way, as Lundtz helped Colbert do by re-engineering the Super PAC slogan into the more benign “corporations are human,” can help achieve a desired outcome by influencing the publics’ and policymakers’ very conceptualization of a policy matter. This, in turn, makes it easier to convince them of the merits of your side of the matter. Thus, as Colbert demonstrates by spending money on reframing an issue, lobbyists now have a powerful new tool in their arsenal, with unexplored uses and unexamined implications. Not sure why you bought that infomercial product? How would you like those same forces that drove you to an unwise purchase to now be trying to influence your decision in the voting booth?

We return to where we began by asking what, exactly, is Stephen Colbert trying to say by creating a Super PAC? University of Maryland Professor of Journalism Mark Feldstein perhaps said it best when he remarked: “[Colbert] is taking advantage of loopholes to set up an organization that is not a legitimate political action committee, if there is such a thing, to make the point that the current system is a form of legalized bribery.”¹⁸ Colbert is indeed saying that, but he is also saying something more. He is pointing out that in light of recent court decisions discussed in this paper, there is much uncharted territory ahead. Those seeking to influence elections through spending have taken advantage of Super PACs and 501 (c)(4) corporations to push their agendas and it seems there is little legal framework to prevent them wielding an incredible amount of influence.

As of the writing of this paper, the USA reports that 25% of all donations to Super PACs have come from five wealthy donors, a stunning illustration of how Super PACs allow the financially powerful to use their wealth for political influence. In such a system, one must ask, is the idea of one person, one vote effectively a quaint anachronism?¹⁹ Now that money is free speech and corporations are given the right to free speech, such an idea is simply a false portrayal of political equality in a system where the wealthiest have co-opted an unhealthy share of power in our republic. This is an absurd truth. That is why Colbert is so clever to use humor to reveal this truth—using absurdity to expose the absurd. Hopefully, between their bursts of laughter, people will pay attention to what Colbert is trying to say.

REFERENCES

- ¹ Nancy Cordes, "Colbert Gets a Super PAC; So What Are They? - CBS News." *CBSNews.com*. 30 June 2011. Web. 29 Oct. 2011. <<http://www.cbsnews.com/stories/2011/06/30/eveningnews/main20075941.shtml>>.

- ² David Carr, "Stephen Colbert's PAC Is More Than A Gag." *NYTimes.com*. New York Times, 21 Aug. 2011. Web. 30 Oct. 2011. <<http://www.nytimes.com/2011/08/22/business/media/stephen-colberts-pac-is-more-than-a-gag.html>>.
- ³ "Appendix 4: Brief History," *Federal Election Commission Home Page*. Web. 29 Oct. 2011. <<http://www.fec.gov/info/appfour.htm>>.
- ⁴ Michael Levy, "Political Action Committee (PAC) (American Politics) -- Britannica Online Encyclopedia." *Encyclopedia - Britannica Online Encyclopedia*. Web. 29 Oct. 2011. <<http://www.britannica.com/EBchecked/topic/467577/political-action-committee-PAC>>.
- ⁵ "Buckley v. Valeo." *Legal Information Institute*. Cornell University School of Law, 10 Nov. 1975. Web. 30 Oct. 2011. <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0424_0001_ZO.html>
- ⁶ FEC Litigation—Court Case Abstracts. Web. 02 Mar. 2012. <http://www.fec.gov/law/litigation_CCA_B.shtml>
- ⁷ "Citizens United v. Federal Election Commission (Docket No. 08-205)," *Legal Information Institute*. Cornell University School of Law, 21 Jan. 2010. Web. 30 Oct. 2011. <<http://www.law.cornell.edu/node/7544>>.
- ⁸ "Speechnow.org v. FEC," *Federal Election Commission Home Page*. Web. 30 Oct. 2011. <<http://www.fec.gov/law/litigation/speechnow.shtml>>.
- ⁹ Cynthia Bauerly, "Advisory-Opinion.pdf." *Colbert Super PAC | Making a Better Tomorrow, Tomorrow | ColbertSuperPac.com*. 30 June 2011. Web. 30 Oct. 2011. <<http://www.colbertsuperpac.com/>>.
- ¹⁰ "Independent Expenditure-Only Committees," *Federal Election Commission Home Page*. Web. 30 Oct. 2011. <http://www.fec.gov/press/press2011/ieoc_alpha.shtml>.
- ¹¹ *Ibid.*
- ¹² "October 24, 2011 - Jon Huntsman - The Colbert Report - Full Episode Video | Comedy Central," *The Colbert Report | Comedy Central*. Viacom, 24 Oct. 2011. Web. 30 Oct. 2011. <<http://www.colbertnation.com/full-episodes/mon-october-24-2011-jon-huntsman>>.
- ¹³ *Colbert Super PAC | Making a Better Tomorrow, Tomorrow | ColbertSuperPac.com*., Web. 31 Oct. 2011. <<http://www.colbertsuperpac.com/>>.
- ¹⁴ "September 29, 2011 - Mark Cuban - The Colbert Report - Full Episode Video | Comedy Central," *Colbert Nation | The Colbert Report | Comedy Central*. 29 Sept. 2011. Web. 31 Oct. 2011. <<http://www.colbertnation.com/full-episodes/thu-september-29-2011-mark-cuban>>.
- ¹⁵ "Social Welfare Organizations," *Internal Revenue Service*. Web. 31 Oct. 2011. <<http://www.irs.gov/charities/nonprofits/article/0,,id=96178,00.html>>.
- ¹⁶ David D. Kirkpatrick, "Lobbyists Get Potent Weapon in Campaign Ruling - NYTimes.com." *The New York Times - Breaking News, World News & Multimedia*. 21 Jan. 2010. Web. 30 Oct. 2011. <<http://www.nytimes.com/2010/01/22/us/politics/22donate.html>>.
- ¹⁷ "October 24, 2011 - Jon Huntsman - The Colbert Report - Full Episode Video | Comedy Central."
- ¹⁸ Carr.
- ¹⁹ Fredreka Schouten, Gregory Korte and Christopher Schnaars, USA Today. 02 Feb. 2012. Web 03 Mar. 2012. <<http://www.usatoday.com/news/politics/story/2012-02-21/super-pac-donors/53196658/1>>

