



## Supporting Question 3

### Featured Source

**Source A:** Staff, video explaining Super PACs, "'Civics in a Minute': What is a Super PAC?" *TakePart*, 2012

*NOTE: The screen shot below is of the first page of the TakePart site. Teachers and their students can access this page and the information on the site, by clicking on this link: <http://www.takepart.com/video/2012/05/04/what-super-pac-civics-minute>.*

# 'Civics in a Minute': What Is a Super PAC?

TakePart's Jacob Soboroff explains what Super PACs are.



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### "Civics in a Minute": What is a Super PAC?

Super PACs—everybody is talking about them this election cycle. And while they sound like what you might find in a superhero's tights, they're actually much more creepy.

PACs, or Political Action Committees, have been around since the 1940s. They're private organizations that raise money for candidates or issues. Everyone from soda companies to pot smokers can form a PAC, and until recently, there were strict limits on how much money individuals could give to them. That all changed in 2010 when two Supreme Court decisions set off a campaign cash-feeding frenzy.



One said that laws barring corporations and unions from spending money for political purposes violated the first amendment. The second one ruled that caps on how much an individual can give to an independent political organization were also unconstitutional.

And thus, the Super PAC was born! Technically called “Independent Expenditure Only Committees,” Super PACs can raise as much money as humanly possible from corporations, unions, and deep-pocketed fat cats. There are absolutely, positively zero limits on how much money they can raise or spend. And while Super PACs are prohibited from coordinating with individual campaigns, they’re often run by friends or associates of the candidates.

So why does anybody care about these groups? Because we are talking big, big bucks going into influencing our democratic process. As of March 2012, 364 Super PACs had sucked in more than 130 million dollars and spent more than \$75 million supporting their candidate or trashing his opponents.

Are Super PACs destroying our democracy or are they protected by the first amendment? Let us know. Log onto [takepart.com/Tuesday](http://takepart.com/Tuesday), comment right here on this video, subscribe to our channel, and maybe send us a tweet.



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### Featured Source

**Source B:** C-SPAN, video clip detailing the Citizens United v. FEC Supreme Court ruling, “Supreme Court Ruling Campaign Finance,” 2012

*NOTE: The screen shot below is of the first page of the C-SPAN site. Teachers and their students can access this page and the information on the site, by clicking on this link: <http://www.c-span.org/video/?c3817900/supreme-court-ruling-campaign-finance>.*

## Supreme court ruling on Campaign Finance

4:10 - 5:56



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### Featured Source

**Source C:** Robert Barnes, article describing the influence of Super PACs, “Super PAC Mania” (excerpts), *Columbia Law School Magazine*, 2012

### Super PAC Mania

Super PACs bankrolled by a relatively small number of multimillionaires have changed the landscape of this year’s presidential race. How did we get here, and what can we expect from future elections held in the era of super PACs?

The Supreme Court does not often become a foil for late-night television comedians, and the nation’s complicated campaign finance laws are an unlikely source for comedy. But there was Stephen Colbert on a recent episode of *The Colbert Report* opening with a mini-seminar.

“Folks, it seems like these days, everyone is talking about super PACs, which, thanks to the Supreme Court’s *Citizens United* ruling, can collect and spend unlimited money on political advertising,” Colbert told his viewers, some of whom had already contributed to his own super PAC creation: Americans for a Better Tomorrow, Tomorrow.

Colbert’s super PAC (which has raised more than \$1 million) is not intended to have much impact on the 2012 presidential election, and his understanding of recent Supreme Court precedent may lack nuance. Still, Colbert’s matter-of-fact invocation of *Citizens United v. Federal Election Commission* when discussing the independent campaign spending organizations known as super PACs is an indication of how the case has become embedded in the national conversation during this election season.

It might seem that a Supreme Court decision that drew an immediate and unprecedented rebuke from the president in his State of the Union address could not become more controversial with the passage of time. But that is exactly what has happened to *Citizens United*, the Court’s 5-to-4 ruling in 2010 that allowed unlimited corporate and union spending in candidate elections. The 2012 presidential campaign is unfolding in a never-before-seen wave of spending from wealthy donors and super PACs functioning as shadow fundraising arms of the candidates. *Citizens United*, meanwhile, has become—rightly or wrongly—shorthand for the ills that campaign finance reformers say are fundamentally changing presidential politics.

And despite President Barack Obama’s extremely public campaign finance pronouncement—“I don’t think American elections should be bankrolled by America’s most powerful interests,” he said during the 2010 address to Congress—his reaction to the growing influence of super PACs in 2012 has been to wade into the fray. Obama’s re-election campaign has wholeheartedly endorsed a super PAC organized by former aides and has said Cabinet secretaries, and even senior White House staff, are available to attend fundraisers.

Obama’s campaign managers are quick to assert that they could not unilaterally disarm in the face of super PAC spending that has lapped what the Republican presidential candidates themselves have raised. Restore Our Future, the super PAC supporting Mitt Romney, relies on 16 donors who each contributed \$1 million or more during this campaign cycle; many of the donors have also contributed the maximum amount to Romney’s formal campaign. And while the super PAC that supports Rick Santorum is also technically independent from Santorum’s now suspended campaign, its chief donor, Foster Friess, sometimes traveled with the candidate.



None of this was specifically authorized, or perhaps even contemplated, when the Court made its decision in *Citizens United*, according to Columbia Law School Professor Richard Briffault, who is among the nation's foremost campaign finance authorities. But he says the ruling provided the rationale for subsequent court decisions and Federal Election Commission (FEC) actions that make for profound changes.

"*Citizens United*, particularly the Supreme Court's flat assertion that independent expenditures, whatever their actual effect on the political process, raise no danger of corruption or the appearance of corruption, provided crucial doctrinal support for the legal actions that launched super PACs and have enabled them to flourish," Briffault, the Joseph P. Chamberlain Professor of Litigation, writes in a forthcoming law review article. "The rise of super PACs suggests that the real impact of *Citizens United* may be the re-validation of the unlimited use of private wealth generally in elections, not just spending by corporations and unions."

Whether viewed as a ringing defense of the First Amendment or an abandonment of protections against the corruption of politics, *Citizens United* strikes most experts as extending a strain of Supreme Court jurisprudence that goes a long way toward dooming the campaign finance regulatory regime that Americans enacted after the resignation of President Richard Nixon.

"The post-Watergate system that was created in 1974 is basically on the verge of collapse," says Richard Briffault, adding that the reasoning behind *Citizens United* may curtail future attempts to restrict spending on behalf of candidates. "The Court is making campaign finance law almost impossible."

Briffault and Nathaniel Persily, the Charles Keller Beekman Professor of Law and Professor of Political Science, say attempts to curb the influence of money in politics created a natural tension between free speech and campaign regulation. The Court first dealt with the conflict in its 1976 *Buckley v. Valeo* ruling, holding that campaign contributions could be limited to deal with corruption concerns, but that campaign spending was political speech that should not be confined. The Roberts Court, although closely divided, has been vigilant in rejecting restrictions on independent spending committees, as well, if the result would be less political speech.

Although *Citizens United* dealt with the ability of corporations and unions to use their general treasuries for such spending, the real consequence of the decision has been "to basically unleash money more generally," Briffault says. "So what you're really seeing now with the likes of super PACs is not so much corporate funds as [spending by] wealthy individuals. And the corporations that you are seeing, for the most part, are not business corporations but not-for-profits that have been put together as devices for collecting and pooling and channeling the money of wealthy individuals, and maybe some businesses too."

Persily adds that the ruling gave reassurance to unions, corporations, and wealthy individuals that almost any form of express advocacy would be permitted. "While *Citizens United* itself was not that big an advance in the law, it turned a license for corporate involvement in the political process into a blessing," he says.

The Court's prescription for equipping voters to evaluate this new infusion of political speech was disclosure of information on the donors. But gridlock in Congress prevented action on new and more timely disclosure rules. And the FEC, mired in a partisan standoff, has been less active in a watchdog agency role.

As a result, Professor Robert J. Jackson Jr. says, voters are often left in the dark about the sources of spending, and shareholders of many publicly held corporations have no idea about the extent of a company's political spending.

"The reality right now is that corporations spend hundreds of millions of dollars—at least—and none of that is meaningfully disclosed," says Jackson, referring to money spent on both campaigns and lobbying efforts. "That's





just the straightforward reality.”

The 2012 election financing morass at least partially stems from a case that many believe could have been decided much more narrowly. The majority in *Citizens United* bypassed an opportunity to rule based on the unique facts of the case—which involved the right to air a documentary critical of Hillary Clinton during the 2008 election season. Instead, the Court struck down part of the existing campaign finance law and overruled its 1990 decision in *Austin v. Michigan Chamber of Commerce*, which held that corporations and unions could not use general funds to support or oppose candidates.

Key to what has happened since was a finding in the majority opinion by Justice Anthony M. Kennedy. “We now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption,” Kennedy wrote.

Lower courts and the FEC have interpreted the Court’s decision to mean that, since independent spending cannot be corrupting, there is no justification for limiting the amount that individuals and corporations can give to groups involved in independent spending.

The changes have fundamentally altered the arc of the Republican presidential contest. While individual contributions made directly to a candidate are capped at \$2,500 during the primary, super PACs offer the possibility of unlimited “indirect” spending in support of a candidate’s electoral goals. And big bucks can net real impact. The decision of Las Vegas casino magnate Sheldon Adelson and his wife Miriam to give more than \$10 million to the super PAC supporting Newt Gingrich’s campaign for the Republican presidential nomination gave the former House speaker new life after a shaky start.

Some proponents of the *Citizens United* decision, such as longtime First Amendment lawyer Floyd Abrams, say detractors of the ruling have distorted its meaning. Even if what individuals can give directly to a candidate is capped, campaign donors since the *Buckley* decision have been able to fund express advocacy to whatever extent they want. Both Democrats (George Soros) and Republicans (Karl Rove) had already found ways to contribute, collect, or bundle money to further their political interests.

But Briffault says the new super PACs are taking the next step. “I think people assumed there might be committees that existed purely to elect Republican candidates or Democratic candidates or anti-tax candidates or environmental candidates,” Briffault says. “I don’t think what was fully foreseen was the emergence of committees existing solely to elect Romney or Gingrich or Rick Perry. They function as if they are the candidate’s committee, except they have to keep their distance from the candidate. And they are raising and spending in some cases more than the candidate.”

The ability to give unlimited amounts to a super PAC supporting a candidate seems to be a way around *Buckley*’s support for limiting contributions that go directly to a candidate, according to Briffault. “I think the distinction has collapsed,” he says.

During the first month of the election year, five wealthy individuals contributed \$19 million, approximately a quarter of the total raised for the presidential race in January, according to a *Washington Post* analysis. A dozen people have sent nearly \$65 million total to super PACs in the 2012 cycle.

During the 2010 elections, super PACs spent nearly \$84 million. Richard Briffault says that was merely a warm-up for 2012. The pro-Romney super PAC alone has already spent more than half that amount.



Such astronomical figures, Briffault says, are part of the reason that the *Citizens United* ruling has struck such a chord with the general public, which polls show are overwhelmingly opposed to the decision. “I think the public sees this as connecting to general problems of growing inequality and the growing power of the wealthy and powerful in American life and American politics,” he says.

The reasoning of the Court’s decision is easy to understand, according to Briffault: “The logic was that the real interest here was in people hearing the ideas. And that there is less interest in who’s doing the speaking than in hearing whatever there is to be said.” But that leaves little room for those who worry about the role of money in politics.

“One of the real, lasting consequences of *Citizens United*,” Nathaniel Persily says, “is the anemic view of corruption that survives....You’re left with something like quid pro quo corruption, and that is the most difficult kind of corruption to prove.”

In addition, the Court last year struck down provisions of public campaign finance laws that proponents say make them most attractive. In *Arizona Free Enterprise Club v. Bennett*, the Court said Arizona could not increase the amount of money given to a publicly funded candidate based on the spending of his or her privately financed opponents. Such provisions function as attempts at “leveling the playing field,” and Chief Justice John G. Roberts, Jr. reinforced in the *Arizona* decision that this is not a legitimate reason for curbing First Amendment rights.

“The majority of the Court, and it’s really a bare majority of five, is hostile to anything that smacks of equalization,” Briffault says. “They are willing to permit states and Congress to adopt rules that are designed to prevent corruption, but they take a very narrow view of when corruption is likely to happen.”

Beyond the *Arizona* decision, the Court has shied away from taking any new challenges to the campaign finance regime. It has turned down a petition from the Republican National Committee to reconsider the McCain-Feingold campaign finance reform act’s prohibition on “soft-money” contributions to political parties. And it upheld, without hearing the case, a lower court’s decision that foreign nationals are not allowed to contribute to campaigns.

Persily suspects the Supreme Court may be taking a time-out on this issue. “I was surprised by the public backlash to *Citizens United*,” he says. “And I think they were, too.”

But new challenges await. A district judge in Northern Virginia recently ruled in a criminal case that direct corporate contributions to candidates—banned since 1907—cannot be squared with the court’s reasoning in *Citizens United*. The decision is on appeal to the U.S. Court of Appeals for the 4th Circuit in Richmond.

And as united as the Court’s current majority appears in taking a libertarian approach on campaign finance issues, it is worth remembering Briffault’s point that it is a slim one-vote majority. If President Obama wins another term and a member of the *Citizens United* majority retires, the shift could be significant. Justices Ruth Bader Ginsburg ’59 and Stephen G. Breyer, dissenters in the case, have even suggested that the Court should re-examine the ruling in light of what has transpired since it was decided in 2010.

One vehicle for a reassessment would be a decision by the Montana Supreme Court late last year that upheld the state’s ban on corporate spending in elections, which is directly at odds with *Citizens United*.

“Montana’s experience, and experience elsewhere since this Court’s decision in *Citizens United*...makes it exceedingly difficult to maintain that independent expenditures ‘do not give rise to corruption or the appearance of corruption,’” Ginsburg wrote in support of hearing the case.



But it seems unlikely that the majority is ready to reconsider.

“So,” Briffault concludes in his upcoming law review article, “105 years after Congress enacted the first restrictions on contributions in federal elections, and 38 years after the comprehensive post-Watergate contribution limits were adopted, we appear to be rapidly heading into an era in which those contribution limits have been rendered functionally meaningless. We shall soon find out what this means for our campaign finance system, our elections and our politics.”

*Columbia Law School Magazine*. Used with permission. <http://www.law.columbia.edu/magazine/621141>.