

The Case for Ending Individual-Candidate Super PACs

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Super PACs that support an individual officeholder are the most virulent form of Super PACs. They exist to bypass and eviscerate candidate contribution limits, which were upheld by the Supreme Court in *Buckley v. Valeo* as necessary to prevent corruption and the appearance of corruption.

H.R. 1, the For the People Act of 2019, sponsored by Rep. John Sarbanes (D-MD) and cosponsored by 227 Representatives, would end individual-candidate Super PACs. The bill is expected to be considered by the House next week.

A donor today can contribute \$2,800 per election to a federal officeholder. But that same donor can also give \$1 million or more to a Super PAC supporting only that officeholder. Both the donor and officeholder know that the contribution will be spent only to elect the officeholder.

Common sense and human nature tells us that the corrupting nexus between a \$1 million donor and the officeholder benefiting from that \$1 million contribution creates opportunities to buy decisions and results from the officeholder.

The Supreme Court's 2010 decision in the *Citizens United* case unleashed Super PACs into our political system. Individual-candidate Super PACs quickly showed up in the 2012 presidential campaign. Almost every presidential candidate, including President Obama and Republican nominee Mitt Romney, had a Super PAC supporting only their candidacy.

For example, two White House officials left the Obama Administration and shortly thereafter created Priorities USA Action, an individual-candidate Super PAC to support the Obama presidential reelection effort. The Super PAC received and spent [more than \\$65 million](#) in unlimited contributions, [including](#) a single contribution of \$6.5 million, to support President Obama in the 2012 presidential campaign.

Three former top officials of the Romney 2008 presidential campaign created Restore Our Future to support the 2012 Romney presidential campaign. This individual-candidate Super PAC spent [\\$142 million](#) in unlimited contributions to support Romney, [including](#) two \$15 million contributions it received – the most spent by *any* Super PAC in the 2012 elections.

Contributors who at that time could give \$2,500 per donor to the Obama and Romney campaigns were able to give six- and seven-figure contributions to Priorities USA Action and Restore Our Future. Obama and Romney were no doubt aware of their generous benefactors.

Individual-candidate Super PACs continued to prosper in the 2016 presidential election. Perhaps the most revealing example of how they were used to circumvent contribution limits occurred in Jeb Bush's presidential primary campaign. His individual-candidate Super PAC, Right to Rise PAC, [raised](#) more than \$121 million in unlimited contributions, including a \$10 million

contribution, for Bush's presidential primary campaign. Meanwhile, his presidential campaign committee raised only \$34 million in contributions subject to a limit. In other words, Bush financed his unsuccessful presidential campaign primarily with unlimited contributions, despite the candidate contribution limits that applied to his campaign committee.

Individual-candidate Super PACs have also spread quickly to congressional races. By the 2018 elections cycle, 259 individual-candidate Super PACs supporting federal officeholders and other candidates had [raised](#) \$176 million in unlimited contributions.

Under applicable court decisions, a Super PAC can spend its money to influence a federal election only if it does so *independently* from the federal candidate it is spending money to support.

If, however, the Super PAC *coordinates* with the candidate it is supporting, the Super PAC's expenditures are also treated as in-kind contributions to the candidate. As such, they are subject to the PAC contribution limit of \$5,000 per year to a candidate. Thus, expenditures above \$5,000 would be prohibited as coordinating with the candidate.

And herein lays the path to eliminating individual-candidate Super PACs.

While individual-candidate Super PACs claim to be operating independently from the individual candidates they support, their supposed "independence" is an illusion.

In reality, individual-candidate Super PACs are generally tied closely to the candidate they support and function as an operating arm of the candidate's campaign. These Super PACs are generally run by former close political or personal associates of the candidate. Sometimes they are even run or primarily financed by family members of the candidate or financed by a single donor usually close to the candidate.

The Supreme Court has never fully defined what constitutes coordination between a candidate and outside spending group – it has left that job to Congress. But the Court has set forth clear standards to describe what is required for outside spending by a group to be independent from the candidate it is supporting.

The Court has said that independent spending must be done "[totally independently](#)," "[not pursuant to any general or particular understanding with a candidate](#)," "[without any candidate's approval \(or wink or nod\)](#)," and "[truly independent](#)."

The coordination definitions in H.R. 1 address the "independence" issue and in so doing would put an end to individual-candidate Super PACs which are, as a practical matter, coordinated with the candidate they support. These provisions come from a [bill](#) introduced in the last Congress by Rep. David Price (D-NC).

H.R. 1 embodies two complementary approaches to set a legislative definition of "coordination" that comprehensively and realistically governs whether the activities involved are independent.

First, the bill sets forth a general definition of coordination that is based on the broad concepts and language used by the Supreme Court in a number of decisions to explain what the Court had in mind for independent spending. This is necessary because the FEC has interpreted the existing statutory coordination provisions into nonexistence.

Second, the bill separately addresses the special case of spending by a “coordinated spender.” This is defined in H.R. 1 by using the characteristics that generally occur in the close relationship between the individual-candidate Super PAC and the candidate it is supporting.

Thus, under the bill, the determination of whether an individual-candidate Super PAC is a “coordinated spender” is based on the role played by the candidate in establishing or supporting the Super PAC, or based on the political, personal or family relationships between the candidate and the individuals establishing or managing the Super PAC.

Once an individual-candidate Super PAC meets the definition of a “coordinated spender,” any future campaign expenditures by the Super PAC to support the candidate would be treated as coordinated expenditures and therefore would also be in-kind contributions to the candidate from the Super PAC. Since the Super PAC can only contribute \$5000 per year to the candidate, the individual-candidate Super PAC would, for all practical purposes, be shut down.

The provisions in H.R. 1 reflect the reality that the characteristics that generally accompany individual-candidate Super PACs make them inherently coordinated with the candidates they support. As such, they should not be allowed to serve as vehicles for eviscerating candidate contribution limits.

Individual-candidate Super PACs, in essence, bring back the pre-Watergate relationship between candidates and contributors who make large contributions that inherently creates opportunities for corruption. This dangerous relationship for our democracy was shut down following Watergate, and it must be shut down again now.

H.R. 1 will end individual-candidate Super PACs.

(This opinion piece is excerpted from [testimony](#) presented by Fred Wertheimer to the House Administration Committee in support of H.R. 1)