

**1. What makes a super PAC super?**

Traditional political action committees are bound by a \$5,000 annual limit on the size of contributions they can accept from individuals and are prohibited from accepting contributions from corporations and labor unions. A super PAC is freed from these restrictions under two conditions: The PAC must neither 1) give money directly to a candidate or other political committees that give directly to candidates, nor 2) coordinate how it spends its money with a federal candidate. As long as those two conditions are met, a super PAC may accept donations directly from corporate or union treasuries and in amounts that are limited only by the size of donors' bank accounts. Movie mogul Jeffrey Katzenberg wrote a \$2 million check to the super PAC backing President Obama's reelection; casino magnate Sheldon Adelson and his wife have reportedly underwritten a super PAC backing Newt Gingrich to the tune of \$10 million. Neither of these donations could have been legally given to a traditional PAC.

**2. What's so new about the corporate and union activity? Haven't big labor and big business been active in political campaigns for years?**

The Supreme Court's ruling in Citizens United made it easier for corporations and unions to use their treasuries to directly influence elections. Some restrictions remain: if they want to give directly to candidates, they still have to establish political action committees and raise funds for them. But there are limits on how much traditional political action committees can accept in contributions and from whom: Currently, the cap on individual contributions is \$5,000 a year. Donors to traditional union and corporate PACS must work for or own shares in those corporations or belong to those unions. They must be identified and the amounts of their donations made public. By contrast, super PACs can accept money in unlimited amounts from unions, corporations and unaffiliated individuals as well as from non-profit organizations that have been incorporated under innocuous-sounding names and that do not have to report the sources of their funding. That means individuals and entities with whom candidates might not wish to be publicly associated can support their campaigns anonymously.

**3. Can a union, corporation or non-profit group create its own super PAC?**

Yes—with very few exceptions, anyone can set up and contribute to a super PAC. Foreign nationals can't, nor can foreign corporations, though a U.S.-based subsidiary of a foreign corporation can. Some government contractors are barred from giving as well, as are U.S. national banks. But it's also important to remember that corporations and labor unions, and individuals, for that matter, don't need a super PAC to spend unlimited money on elections. Provided they disclose the spending, they can write checks to pay for ads, get out the vote operations and other activities that aim to influence federal elections.

#### 4. **Can candidates have super PACs?**

Officially no. But it's easy to understand why it sometimes can seem as though they do. Although a candidate cannot coordinate expenditures with a super PAC (tell the PAC where an ad might be placed, whether the ad should be positive or negative, or what voters canvassers should contact), there's no law that says a candidate can't have connections with the entities backing his or her election. Many super PACs -- such as the one supporting Romney, the pro-Newt Gingrich Winning Our Future, and Priorities USA, which backs President Obama -- are run by former top aides of the candidates. And candidates can headline fundraisers for the super PACs that are supporting them (as Romney has) so long as they don't ask for donations beyond the legal limits permitted for their own campaign committees. Donors are free to write larger checks and super PAC staffers are free to ask for them, but as long as the candidate abides by federal campaign limits or doesn't actually ask for funds, it's all kosher. Bottom line: There's a legal prohibition against candidates' coordinating with super PACs but the FEC has been exceedingly lenient in defining what constitutes coordination, as University of California law professor Rick Hasen pithily outlines in his Election Law Blog.

#### 5. **How do I know if a political action committee is a super PAC?**

Super PACs generally notify the Federal Election Commission of their existence by sending a letter, like this one filed by the pro-Mitt Romney group Restore Our Future, stating that they intend to raise funds in unlimited amounts in accordance with recent court decisions. Most are attached to the PAC's "Statement of Organization" on the agency's website. The FEC encourages written

notification of a committee's intent to accept unlimited campaign contributions, but it is not mandatory.

**6. Do super PACs have to disclose the sources of their funding?**

That depends on what you mean by "disclose." Like other political action committees, super PACs do have to file regular financial disclosure forms with the Federal Election Commission. But because they are permitted to accept money from incorporated entities that do not have to make the sources of their funding public, it's possible for them to keep the names of actual donors undisclosed. In 2010, a super PAC that was active in one of that year's marquee House races listed a single donor: a 501(c)(4) organization that does not have to disclose its donors. This is what is known among some campaign finance lawyers as "the Russian doll problem."

**7. How did things get so confusing?**

In *Citizens United*, the Supreme Court overturned the longstanding ban on corporations or unions making "independent expenditures" to advocate for or against the election of candidates, arguing that such contributions could not corrupt candidates as long as the money is not given directly to their campaigns. Three months later, a lower court applied that reasoning to toss out the limits on the size of donations that individuals or corporate entities may make to "independent expenditure only" committees, now better known as super PACs. If the committees' spending isn't corrupting, the court reasoned, there's no reason to limit the amount of money donors can toss into the pot. This is how super PACs were born.

The two decisions opened the door for existing companies and other incorporated organizations, such as unions and trade associations such as the Chamber of Commerce, to make unlimited "independent expenditures" out of their own coffers. It also led to the incorporation of new politically active non-profits, such as the Crossroads combine founded by GOP strategists Karl Rove and Ed Gillespie, which includes both a super PAC and a nonprofit, incorporated under section 501(c)4 of the tax code as a social welfare organization. The potential advantage of the 501(c)4: The names of its donors do not have to be disclosed. There's been some speculation, however, that 501(c)4s won't be heavily used because the law requires that more than half their

money go to non-political purposes. Allen Dickerson, a lawyer with the Center for Competitive Politics, says it's "an extraordinarily inefficient way to influence politics." But Paul Ryan of the Campaign Legal Center argues doesn't think the legal requirement that 501(c)4s' spend more than 50 percent of their money on vaguely defined "non-political" activities will prove much of a deterrent.

**8. What can super PACs do with their money?**

Anything except contribute directly to, or coordinate expenditures with, candidates and candidate committees. They can pay for any typical political expenditure, and then some. Super PACs can and do pay for television ads, phone banks, canvassers and bumper stickers. In other words, they can act as a shadow campaign.

**9. What happens to super PACs' money when the candidates they are supporting withdraw from a race?**

That's hard to say because the law leaves the possibilities wide open. An orphan super PAC could use its money to help other candidates with independent expenditure campaigns. Super PACs may even be able to let the ex-candidate take over the PAC. The Campaign Legal Center's Ryan says there's nothing in the law that says the staff can't use the money for a post-campaign cruise, but Mimi Marziani says she and other lawyers at New York University's Brennan Center suspect that anyone who tries to take advantage of that loophole might find himself under investigation for fraud.

**Questions**

*Please answer these questions on the same sheet as your Chapter 7 answers.*

1. What is a Super PAC?
2. Identify two things a Super PAC cannot do.
3. Why does the connection between a candidate and a Super PAC which supports them seem blurred or not entirely clear?
4. Can Super PACs hide the source of their funding?
5. How did the case *Citizens United v. Federal Election Commission* change PACS?
6. What can super PACS do with their money?