

BACK STORY

LESSONS FROM THE COLBERT SUPERPAC

BY ERIN BARNETT, ESQ.

Federal campaign finance laws sure are tricky, and the 2010 United States Supreme Court decision, *Citizens United v. Federal Election Commission*, has only muddied the waters. So it's a good thing sharp legal minds, such as Stephen Colbert, host of Comedy Central's "The Colbert Report", are around to show us how it is all supposed to work.

Under *Citizens United*, certain entities known as political action committees (PACs) may now raise unlimited amounts of contributions received from individuals, corporations and unions for the purpose of supporting a candidate (such as the purchase of TV ad space), but are prohibited from donating directly to particular campaigns. Such PACs, dubbed "Super PACs," differ from traditional PACs that can donate directly to a particular campaign, but cannot accept corporate or union donations. Further, Super PACs are required to disclose the identities of their donors to the Federal Election Commission (FEC), whereas traditional PACs are not.

Stephen Colbert attended the June 2011, meeting of the FEC, requesting permission to form a Super PAC. When asked what the purpose of this Super PAC was to be, the comedian replied, "I say give [the money] to me and we'll find out!" With that, the Colbert Super PAC, formally known as Americans for a Better Tomorrow, Tomorrow, was born.

Super PACs are required to be independent from the candidates they support. However, the extent of such independence has been the subject of much cynicism, as candidates often have informal ties to their supporting Super PACs. To illustrate this point, on January 12, 2012, Colbert announced his intention to run for president of "the United States of South Carolina," thus making it illegal for Colbert to continue to be active in his Super PAC. Colbert signed control of his Super PAC over to fellow Comedy Central host, Jon Stewart; he renamed the PAC "The Definitely Not Coordinating with Stephen Colbert Super PAC." Though Colbert's actions were taken in jest, it was a clear parody of the close ties existing in real campaigns: the main Super PAC supporting Mitt Romney, Restore Our Future, was organized by several of Romney's former aides, while the main Super PAC supporting President

Obama, Priorities USA Action, is headed by former Obama press secretary, Bill Burton.

In addition to having the freedom to accept unlimited amounts of contributions, Super PACs also have the advantage of creating the impression of distance between a candidate and

his or her donors. An entertaining example of this occurred when the famed legal brothel Moonlite Bunny Ranch was requested by the Ron Paul campaign to donate, not to the campaign directly, but to a Ron Paul-supporting Super PAC. Donors looking for complete anonymity may consider donating to a 501(c)(4) organization associated with the Super PAC the donor hopes to benefit; a 501(c)(4) is not required to meet the donor-disclosure requirements of Super PACs, but can nonetheless donate to Super PACs in unlimited amounts. To highlight this potential legal loophole, Colbert also formed a 501(c)(4) called Colbert Super PAC S.H.H., to which donors can lawfully give unlimited funds anonymously. Examples of similar 501(c)(4)s include Crossroads GPS, a 501(c)(4), formed by leading Republican strategist Karl Rove, to support his Super PAC American Crossroads, and Priorities USA, which has



"Colbert Report" host, Stephen Colbert.
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donated more than \$215,000 to Obama's Super PAC.

For better or worse, Super PACs will no doubt make their marks on the 2012 presidential election. According to opensecrets.org, as of July 11, 2012, Restore Our Future had raised \$61,472,660; Priorities USA Action had raised \$14,580,589 by the same date. For its part, the Colbert Super PAC had raised \$1.02M as of its January, 2012 FEC filing, some of which has been spent on Colbert's ill-fated Presidential bid, and various mock political ads. More on Colbert's Super PAC can be found online at <http://www.colbertsuperpac.com>. ■



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