

CAMPAIGN FINANCE LAW: WHAT YOU NEED TO KNOW

Citizen's United, PACs, and Super PACs: Money in American Politics

By Tyler McClay, General Counsel for the Missouri Catholic Conference

There is much talk these days about the influence and effect of money on politics. The news reveals stories about wealthy political donors giving large amounts of money to individual candidates, raising questions about undue influence. “Special interest groups” and lobbyists are frequently disparaged for unduly shaping public policy at the expense of the common good. Politicians are criticized for no longer caring about the little guy. “Money is corrupting our politics,” is a common refrain.

Many blame the current state of money in politics on the U.S. Supreme Court’s 2010 decision in *Citizen’s United*. In this decision, the U.S. Supreme Court ruled that Congress can’t set limits on political speech paid for by corporations and unions. Six years later, there is still much confusion about the *Citizen’s United* ruling and what it means.

To address some of this confusion, it should be said at the outset that *Citizen’s United* did *not* outlaw campaign contribution limits. Federal campaign finance law currently limits the amount of money that can be contributed to candidates and parties, and includes limitations on contributions made by political action committees (PACs).

What *Citizen’s United* did do was outlaw limits on *independent expenditures* made in support of candidates and parties including expenditures financed by corporations and unions. Independent expenditures are disbursements made primarily by “Super PACs” for fliers, radio spots, television ads, and other media that are part and parcel of American election cycles. These independent expenditures can directly benefit candidates, much like campaign contributions, and they have been criticized for their corrupting influence on American political discourse, but they are not considered “contributions.” They are referred to as “independent” expenditures, because they are made by Super PACs independently from and without coordination with a candidate’s campaign.

In order to break down *Citizen’s United* further, let’s first look at the cost of modern day Missouri political campaigns.



RECENT MO CAMPAIGN SPENDING

Campaigns for public office involve a lot of fundraising. This is true both at the state and federal level. It is not uncommon for statewide and Congressional races in Missouri to involve millions of dollars. Candidates for Missouri Senate and House seats, and even those running for local office are raising more and more money to fund their campaigns, and to ward off challengers. Here are real examples of Missouri campaign budgets in 2016.

All figures reflect amounts raised as of October 1, 2016. Data is from the Federal Election Commission (www.fec.gov), and the Missouri Ethics Commission (www.mec.mo.gov).

U.S. SENATE:

ROY BLUNT (R) \$8.7 MIL. // JASON KANDER (D) \$6.4 MIL.

MISSOURI GOVERNOR:

ERIC GREITENS (R) \$13.3 MIL. // CHRIS KOSTER (D) \$18.8 MIL.

MISSOURI SENATE, DISTRICT 19-COLUMBIA:

CALEB ROWDEN (R) \$550K // STEPHEN WEBBER (D) \$1.1 MIL.

MISSOURI HOUSE, DISTRICT 14-KANSAS CITY:

KEVIN CORLEW (R) \$163K // MARTIN RUCKER (D) \$46K

In a fiercely contested 2014 race for Cole County Circuit Judge (Jefferson City), incumbent candidate Democrat Pat Joyce raised \$146K and her opponent Republican Brian Stumpe raised \$144K in a failed bid to unseat her. These are significant numbers, but they provide a context and also a sense of the range of the spending involved in current political campaigns, both at the state and federal level in Missouri.

NEXT: MO CAMPAIGN FINANCE LAWS



MISSOURI CAMPAIGN FINANCE LAWS

INDIVIDUAL

Missouri is one of six states that has set no limit on the amount of money an individual can donate directly to a candidate running for state public office. As a result, in recent years, wealthy Missourians have donated up to \$1 million in support of candidates. Donations of \$50

thousand and more are not uncommon.

Missouri law does require, however, that candidates receiving campaign contributions of money or anything else of value over \$25 report these contributions to the Missouri Ethics Commission (MEC) on a quarterly basis. In addition, donations over \$5,000 must be reported within 48 hours of their receipt. Reports on contributions must include the name, address, employer and/or occupation of the donor, providing transparency. The MEC maintains the reports of contributions made, and they are available for review by the public on the MEC website (www.mec.mo.gov).

PACS

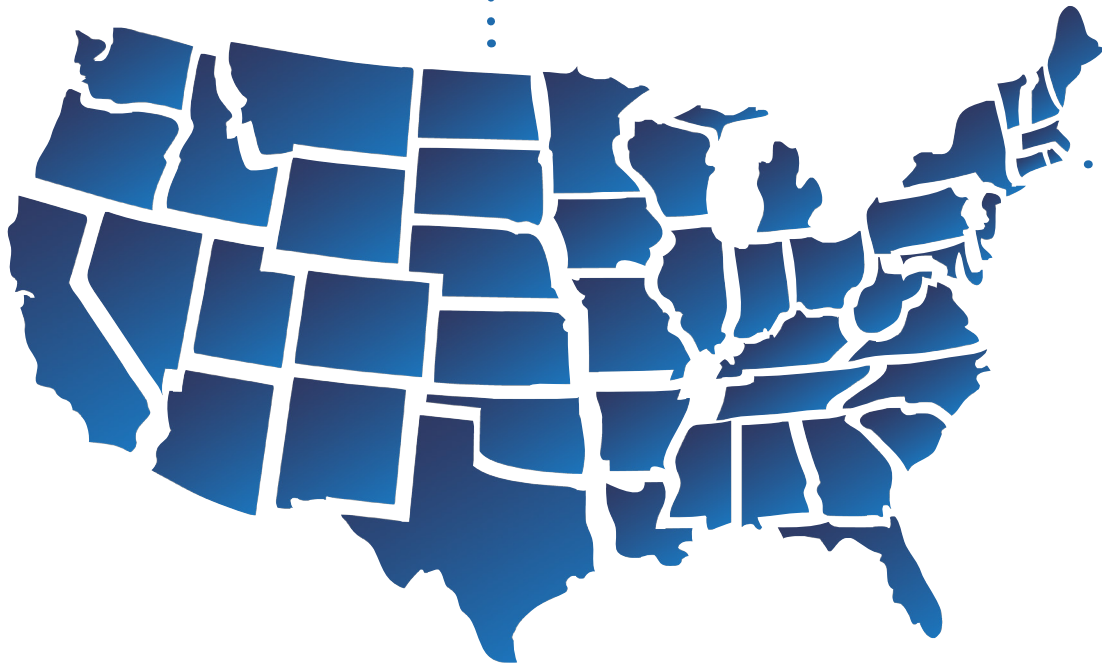
Continuing Committees, or Political Action Committees (PACs), are both legal and common in Missouri. Missouri PACs are ongoing committees formed for the purpose of supporting or opposing candidates, or ballot issues. Missouri PACs can be formed to support and contribute money to an individual

candidate, a political party, or to the political goals of an interest group, but they must be formed, controlled, and directed by someone other than a candidate for public office. Examples of PACs in Missouri include the Missouri Senate Campaign Committee, the Marion County Democratic Campaign Committee, Missouri Club for Growth PAC, the Professional Firefighters of Central St. Louis County PAC, the Missouri Right to Life PAC, and the Missouri National Organization for Women PAC. These are just six of the registered PACs in Missouri; there are many others.

There are no limits on the amount of money individuals or corporations can contribute to PACs registered in Missouri to influence Missouri state elections or ballot initiatives. Moreover, Missouri PACs can make unlimited contributions to candidates for state public office (e.g. Governor, State Senate, State Representative, etc.), or to ballot initiatives (e.g. Amendment 2 promoting embryonic stem cell research in 2006). Like campaign committees, Missouri PACs are required to file quarterly reports with the MEC listing the name, address and occupation and/or employer of donors to the PAC. Missouri PACs must also disclose contributions they make to candidates and expenditures made in support of or opposition to ballot initiatives.

NEXT: FED CAMPAIGN FINANCE LAWS

FEDERAL CAMPAIGN FINANCE LAWS



INDIVIDUAL

Unlike Missouri law, federal law limits the amount of money an individual can contribute directly to a candidate running for federal office.

The current limit is \$2,700 per election.

The U.S. Supreme

Court has consistently upheld contribution limits as constitutional, reasoning that such limits are a legitimate way for government to promote its interest in preventing corruption, or the appearance of corruption, that can result from large contributions.

Large contributions, the court recognized, can be given in the expectation that they will secure political favors or access (referred to as a *quid pro quo*, or literally “this for that”). See: *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). Federal campaign committees must report all donations received over \$200 to the Federal Election Commission (FEC). These reports must include the name, address, occupation and/or employer of the donor.

NEXT: PACS





PACS

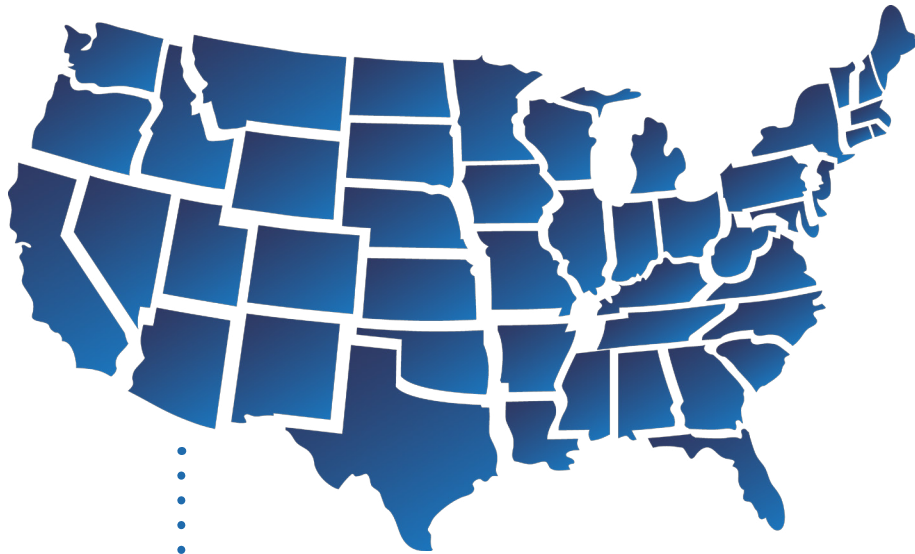
Federal PACs are political action committees, similar to those in Missouri, that are formed by corporations, unions, trade groups, or advocacy organizations in order to solicit donations and make expenditures to influence voters in federal elections. PACs are typically formed to make financial and in-kind contributions to candidates running for Congress, or other federal public office.

Corporations and unions are not permitted under federal law to make contributions from their corporate or union bank accounts directly to candidates running for federal office. However, they may form PACs for this purpose by setting up separate and segregated bank accounts. Federal law also prohibits corporations or unions from making donations to their PACs from corporate or union bank accounts. They can solicit donations from management (corporations) and members (unions), but not the general public. Although they can't make contributions to candidates or to their PACs from their bank accounts, they can use corporate and union bank accounts to pay the administrative expenses of their PACs.

Federal law limits the amount of money individuals, including corporate employees and union members, can contribute to PACs, and the U.S. Supreme Court has upheld these limits as constitutional. See: *FEC v. NCPAC*, 470 U.S. 480 (1985). The current limit is \$5,000 per year. In addition, federal law limits the amount of money PACs can contribute to candidates. The current limit is \$5,000 per election for multi-candidate PACs, and \$2,700 per election for non-multi-candidate PACs. Multi-candidate PACs, like political party PACs, can contribute up to \$5,000 per election per candidate in support of multiple candidates. Non-multi-candidate PACs are those formed to support a single candidate, and can only donate \$2,700 to the candidate they were formed to support. Donations to PACs over \$200 must be reported by the PAC to the FEC and include the name, address, occupation and/or employer of the donor. PACs must also report contributions they make to candidates for public office, contributions to other PACs, and any expenditures made from PAC coffers.

NEXT: SUPER PACS





SUPER PACS

Super PACs are a unique and hybrid form of political action committees. Unlike PACs, Super PACs are *not* permitted to make contributions directly to candidates for public office. They are also not permitted to be directly affiliated with candidate's campaigns. Super PACs must be formed *only* to make *independent expenditures* in support of or in opposition to candidates.

They are sometimes referred to as Independent Expenditure Only Committees. Like PACs, Super PACs solicit donations, but they use the money they receive to pay for media campaigns through the use of mailers, radio spots, television ads, and web banners rather than by making contributions directly to candidates.

Super PACs, like PACs, must report all donations they receive over \$200 to the FEC, and must include the name, address, and occupation and/or employer of the donor. Expenditures made by Super PACs must be reported as well. Unlike PACs, corporations and unions can make donations from corporate and union bank accounts to Super PACs for

these independent expenditures. While donations to Super PACs must be disclosed, donations to Super PACs by not-for-profit corporations will not always reveal the names of the donors giving to the not-for-profit, since not-for-profit corporations are not required to identify their donors. Thus the source of funds used by a Super PAC to finance a media campaign can be obscured. Some refer to this as “dark” money, since the source of the money isn’t known. Following the *Citizen’s United* ruling, donations to Super PACs or independent expenditure only committees cannot be limited.

Since Super PACs expenditures are *independent*, and not made in coordination with individual candidates, the candidates themselves don’t have to stand by the ads paid for by Super PACs the way they do with those paid for by PACs affiliated with the candidate’s campaign. At the end of a Super PAC ad, for example, you won’t hear, “I’m John Smith, and I approve this message.” A Super PAC ad will end with an identification of the Super PAC paying for it, but the source of those funds will not always be clear. Super PACs are probably the most controversial PACs, and are what people associate most with the U.S. Supreme Court’s 2010 *Citizen’s United* decision.

Citizen’s United was a case involving a challenge to the McCain/Feingold campaign finance law of 2002. The U.S. Supreme Court ruled in a 5-4 decision that limits on *independent expenditures* by unaffiliated PACs (now known as Super PACs) are unconstitutional, even when those expenditures are made from funds contributed by corporate or union bank accounts. To be clear, *Citizen’s United* did not outlaw limits on campaign contributions. Federal law still restricts how much money individuals and affiliated PACs can contribute to candidates for federal office, as noted above. What the majority struck down were restrictions on *independent expenditures* by Super PACs funded by individuals, corporations and unions that remain unaffiliated with candidates for federal office.

The majority of the Supreme Court reasoned that limiting *independent expenditures* would effectively stifle the free exchange of ideas. “Political speech is indispensable to decision making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.” *Citizen’s United*, 558 U.S. 310, 349 (2010). A concern for the corrupting influence of such expenditures, the majority ruled, “is not sufficient to displace the speech here in question.” *Id.* at 357. “[I]t is our law and our tradition,” the Court continued, “that more speech, not less, is the governing rule.” *Id.* at 361.

The majority pointed out that the “skyrocketing cost” of media

campaigns make limitations on independent expenditures on political speech unrealistic. Moreover, the majority added, McCain/Feingold exempts media corporations from any limitations on corporate independent expenditures. “Yet media corporations accumulate wealth with the help of the corporate form, the largest media corporations have immense aggregations of wealth...” *Id.* at 351. By restricting media campaigns funded by unions and corporations, the majority reasoned, “the electorate [has been] deprived of information, knowledge and opinion vital to its function.” *Id.* at 354. The majority in *Citizen’s United* did uphold disclosure requirements in the statute. The transparency offered by these requirements, assisted by the advent of the Internet, the Court reasoned “enables the electorate to make informed decisions and give proper weight to different speakers and messages.” *Id.* at 371.

In the dissent, the four Justices remarked that corporations are not natural persons, and aren’t voting members of our society. *Id.* at 424. Thus, their political speech doesn’t deserve the same protection given to individuals. The Framers of our Constitution, they propose, “took it as a given that corporations could be comprehensively regulated in the service of the public welfare.” *Id.* at 428. Congress heard testimony, the dissent pointed out, before passing McCain/Feingold that offered evidence suggesting candidates steer donors toward interest groups and other not-for-profit corporations that then use the money to pay for negative campaigns ads to support the candidate. These ads, they assert, have a distorting and corrupting influence on public discourse. *Id.* at 448-49. The dissent expressed concern for the corrupting influence, and even the appearance of a corrupting influence, unlimited spending on such ads could have on elections. “Starting today,” the dissenters remarked, “corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interests.” *Id.* at 455.

Much more could be written about *Citizen’s United*, and the arguments for and against the reasoning of the majority or the dissent. The debate between those concerned about restrictions on political speech and those concerned about the corrupting influence of money and campaign ads on our politics will no doubt continue long after this article goes to press. Regardless of whether one agrees or disagrees with the *Citizen’s United* decision, unlimited independent expenditures by Super PACs are here to stay, at least for now. Whether the impact of Super PACs and their ad campaigns will be considered sufficiently corrupting of our politics in the years to come to cause Congress to take action, or for the Court to reverse course, remains to be seen.

CONTRIBUTION LIMITS QUICK FACTS

QUICK FACTS: MISSOURI

- No limit on individual donations to candidates
- Candidates who receive donations greater than \$25 must report donations to MEC
- Donations over \$5,000 must be reported within 48 hours
- PACS are legal and common
- No limits on individual or corporate donations to PACS
- PACS can make unlimited donations to candidates
- PACS are required to file quarterly reports with the MEC

QUICK FACTS: FEDERAL

- Limits individual contributions to candidates to \$2,700 per election
- Campaign committees must report donations over \$200 to FEC
- Limits individual contributions to PACS to \$5,000 per year
- Limits PAC donations to candidates to \$5,000 per election for multi-candidate PACS
- Limits PAC donations to candidates to \$2,700 per election for single candidate PACS
- Donations over \$200 must be reported to the FEC

CAMPAIGN CONTRIBUTION LIMITS TO BE ON MISSOURI BALLOT IN NOVEMBER

As mentioned earlier, Missouri currently sets no limits on campaign contributions. This November, however, Missouri voters will have the opportunity to vote to put campaign contribution limits into the Missouri Constitution through a ballot initiative. The proposal, certified as “Amendment 2” by the Missouri Secretary of State’s Office, would amend the Missouri Constitution to add a section styled the “Missouri Campaign Contribution Reform Initiative.” The proposal would set limits on campaign contributions similar to those outlined above in federal law. Individuals would only be permitted to donate \$2,600 to candidates for state public office, and would be prohibited from donating more than \$25,000 to any political party per election cycle. Corporations and unions would be prohibited from making donations directly to candidates, but could make such donations through PACs. PACs would only be permitted to donate \$2,600 to individual candidates, and no more than \$25,000 to political parties per election cycle. In addition, PACs would not be permitted to make contributions to other PACs.

If Amendment 2 were to pass, Missouri would join forty-four other U.S. states in limiting campaign contributions. Amendment 2 would not make Super PACs illegal in Missouri, and it would not prevent Super PACs from making independent expenditures in support of candidates. One way to measure the potential impact of Amendment 2

on campaign finance is to compare the amount of money raised in the current campaign for a U.S. Senate seat with the amount raised in the 2016 race for the Missouri Governor’s mansion. As mentioned, federal law limits campaign contributions, Missouri law does not. According to reports from the Federal Election Commission (www.fec.gov) and the Missouri Ethics Commission (www.mec.mo.gov) effective October 1, 2016, Republican Senator Roy Blunt (R), has raised \$8.7 million for his campaign to maintain his Senate seat. His Democratic opponent, Missouri Secretary of State Jason Kander, has raised \$6.4 million. The Senate race is governed by federal campaign finance law. In contrast, Republican candidate for Governor of Missouri, Eric Greitens has raised \$13.3 million for his campaign. Democratic candidate Missouri Attorney General Chris Koster has raised \$18.8 million. This race is governed by Missouri campaign finance law. Both races are hotly contested with polls suggesting that they are very competitive. Obviously, the amount of money raised in the state race for governor has outpaced the amount raised for the U.S. senate seat. The differences in the amounts raised reflect the different laws that are in place.

The Missouri Catholic Conference has not taken a position in favor of or in opposition to Amendment 2, and does not intend by this article to suggest how one should vote on this initiative. We are providing this information, however, so that voters can make an informed decision.

QUESTIONS? EMAIL US.
MOCATHOLIC@MOCATHOLIC.ORG

