



# Super PACs in Federal Elections: Overview and Issues for Congress

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## Summary

Super PACs emerged after the U.S. Supreme Court permitted unlimited corporate and union spending on elections in January 2010 (*Citizens United v. Federal Election Commission*). Although not directly addressed in that case, related, subsequent litigation (*SpeechNow v. Federal Election Commission*) and Federal Election Commission (FEC) activity gave rise to a new form of political committee. These entities, known as *super PACs* or *independent-expenditure-only committees* (IEOCs), have been permitted to accept unlimited contributions and make unlimited expenditures aimed at electing or defeating federal candidates. Super PACs may not contribute funds directly to federal candidates or parties.

This report explores what super PACs are, how they developed, and what they raised and spent in the 2010 and 2012 election cycles. As of this writing, Congress has not amended the Federal Election Campaign Act (FECA) to recognize formally the role of super PACs. No legislation introduced thus far in the 113<sup>th</sup> Congress focuses specifically on super PACs, but some bills contain relevant provisions. H.R. 270 (Price, N.C.) would bar super PAC fundraising by federal candidates and officeholders. The latest version of the DISCLOSE Act, H.R. 148 (Van Hollen), proposes new disclaimer requirements that would apply to ads funded by super PACs and other entities. At the agency level, the FEC has issued advisory opinions, but has not yet approved regulations governing super PACs.

Despite limited policy action on super PACs, these new entities are quickly occupying a major place in federal elections. In just 10 months of operation in 2010, almost 80 super PACs emerged, spending a total of approximately \$90 million—more than \$60 million of which went to elect or defeat federal candidates through independent expenditures. Super PAC activity increased sharply in 2012; more than 400 active super PACs spent more than \$600 million directly supporting or opposing candidates. Various issues related to super PACs may be relevant as Congress considers how or whether to pursue legislation or oversight on the topic. These include relationships with other political committees and organizations, transparency, and independence from campaigns.

For those advocating their use, super PACs represent freedom for individuals, corporations, and unions to contribute as much as they wish for independent expenditures that advocate election or defeat of federal candidates. Opponents of super PACs contend that they represent a threat to the spirit of modern limits on campaign contributions designed to minimize potential corruption.

This report will be updated periodically to reflect major developments.

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## Introduction and Highlights of Key Findings

The development of super PACs is one of the most recent components of the debate over money and speech in elections. Some perceive super PACs as a positive consequence of deregulatory court decisions in *Citizens United* and related case *SpeechNow*. For those who advocate for super PACs, these new political committees provide an important outlet for political speech advocating independent calls for election or defeat of federal candidates. Others contend that they are the latest outlet for unlimited money in politics that, while legally independent, are functional extensions of one or more campaigns.

This report does not attempt to settle that debate, but it does provide context for understanding what super PACs might mean for federal campaign finance policy and federal elections. The report does so through a question-and-answer format with attention to super PAC activities in 2010 and 2012, and what those findings might mean looking ahead.

Selected findings and observations include the following points.

- Super PACs potentially have major policy and electoral consequences. A variety of issues related to the state of law and regulation affecting super PACs, disclosure, agency administration, and other topics might be relevant as Congress considers whether to pursue oversight or legislation.
- Additional regulation of super PACs might be attractive to those who believe that these organizations are thinly veiled extensions of individual campaigns. Those who believe super PACs are independent speakers might counter that super PACs' spending is not coordinated with campaigns and, therefore, should be subject to fewer disclosure requirements or other obligations than entities that can contribute to candidates.
- Most super PACs are financially modest, but a few raise and spend substantial sums. Ten super PACs accounted for almost 75% of all super PAC spending in 2010. A similar, but less dramatic, distinction emerged during the 2012 cycle, when 10 super PACs accounted for approximately 65% of total spending.
- For the 2012 cycle, super PACs raised a total of \$826.6 million and spent a total of \$799.2 million.
- In 2010 and 2012, 70%-80% of super PAC spending directly supported or opposed federal candidates through independent expenditures (IEs). Super PACs spent \$620.9 million on IEs supporting and opposing House, Senate, and presidential candidates in 2012—almost 10 times the approximately \$65 million spent in 2010.
- Super PAC IEs in 2012 House and Senate races were more likely to favor Democrats than in 2010. Most super PAC IEs at the presidential level favored Republicans.
- Large contributions are permissible but, for some, raise concerns because of the way in which they are disclosed, because they would be impermissible if given directly to candidate campaigns, or both. The original source of super PAC contributions need not necessarily be reported to the FEC if the contributions are routed through entities such as some 501(c) organizations.

## Organization and Scope of the Report

Questions and answers about selected super PAC topics organize the following discussion. In particular:

- *Brief Answer* sections provide short summary information responding to each question.
- The *Discussion* following the brief answers expands on the analysis. These sections include bullet points designed to help the reader navigate the text.
- Tables and figures throughout the report summarize selected fundraising and spending data discussed in the text.

Before proceeding, readers should be aware of this report's scope and purpose. This report is intended to provide an overview of the developing role of super PACs in American elections, with an emphasis on summaries of available spending data and major policy issues that may face Congress.<sup>1</sup> The report discusses selected litigation to demonstrate how those events have changed the campaign finance landscape and affected the policy issues that may confront Congress; it is not, however, a constitutional or legal analysis.

The report is also not intended to be a political analysis of strategic advantages or disadvantages surrounding the choice to form a super PAC, or of super PACs' effects on individual candidates. Fully addressing how super PACs affected individual races and candidates would require political analysis beyond the scope of this report. Nonetheless, understanding aggregate spending patterns in individual races (as opposed to campaigns) may assist Congress in its consideration of potential legislative, regulatory, or oversight responses.

Given the rapid development and frequently changing nature of super PACs, the report is not intended to address every organization or policy issue that may be relevant. It reflects current understanding of super PACs based on the analysis described throughout the report. Importantly, however, because federal election law and regulation have not been amended to address the role of super PACs, the findings presented here may be subject to alternative interpretations or future developments. Campaign finance data discussed in the report were collected and analyzed as noted in the text and discussed in the **Appendix**.

Finally, a note on terminology may be useful. The term *independent expenditures* (IEs) appears throughout the report. IEs refer to purchases, often for political advertising, that explicitly call for election or defeat of a clearly identified federal candidate (e.g., "vote for Smith," "vote against Jones"). Campaign finance lexicon typically refers to *making IEs*, which is synonymous with the act of spending funds for the purchase calling for election or defeat of a federal candidate. Parties, PACs, individuals, and now, super PACs, may make IEs. IEs are not considered campaign contributions and cannot be coordinated with the referenced candidate.<sup>2</sup>

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<sup>1</sup> For a discussion of current campaign finance issues generally, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted).

<sup>2</sup> On the definition of IEs, see 2 U.S.C. §431(17).

# What Are Super PACs?

## Brief Answer

Super PACs first emerged in 2010 following two major court rulings that invalidated previous limits on contributions to traditional PACs. As a result of the rulings, in *Citizens United* and *SpeechNow*, new kinds of PACs devoted solely to making independent expenditures emerged.<sup>3</sup> These groups are popularly known as *super PACs*; they are also known as *independent-expenditure-only committees (IEOCs)*. Independent expenditures (IEs) are frequently used to purchase political advertising or fund related services (such as voter-canvassing). IEs include explicit calls for election or defeat of federal candidates but are not considered campaign contributions.

IEs must be made independent of parties and candidates. In campaign finance parlance, this means IEs cannot be *coordinated* with candidates or parties. Determining whether an expenditure is coordinated can be highly complex and depends on individual circumstances.<sup>4</sup> In essence, however, barring those making IEs from coordinating with candidates means that the entity making the IE and the affected candidate may not communicate about certain strategic information or timing surrounding the IE. The goal here is to ensure that an IE is truly independent and does not provide a method for circumventing contribution limits simply because an entity other than the campaign is paying for an item or providing a service that could benefit the campaign.

**Table 1** provides an overview of how super PACs compare with other political committees and politically active organizations. In brief, super PACs are both similar to and different from traditional PACs. Super PACs have the same reporting requirements as traditional PACs, and both entities are regulated primarily by the federal election law and the FEC as political committees. Unlike traditional PACs, super PACs cannot make contributions to candidate campaigns. Super PACs' abilities to accept unlimited contributions make them similar to organizations known as *527s* and some 501(c) organizations that often engage in political activity.<sup>5</sup> However, while these groups are governed primarily by the Internal Revenue Code (IRC), super PACs are regulated primarily by the FEC. Unlike *527s* as they are commonly described, super PACs are primarily regulated by the federal election law and regulation.

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<sup>3</sup> 130 S. Ct. 876 (2010); and 599 F.3d 686 (D.C. Cir. 2010) respectively.

<sup>4</sup> The discussion here is not intended to be exhaustive. For additional information, see, for example, 11 C.F.R. §109.20 and 11 C.F.R. §109.21.

<sup>5</sup> As the term is commonly used, *527* refers to groups registered with the Internal Revenue Service (IRS) as Section 527 political organizations that seemingly intend to influence federal elections in ways that may place them outside the FECA definition of a political committee. By contrast, political committees (which include candidate committees, party committees, and political action committees) are regulated by the FEC and federal election law. There is a debate regarding which *527s* are required to register with the FEC as political committees. For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by (name redacted) and (name redacted). All political committees, including super PACs, are Section 527 political organizations for tax purposes.

**Table I. Basic Structure of Super PACs versus Other Political Committees and Organizations**

(Refers to federal elections only)

	Is the entity typically considered a political committee by the FEC?	Must certain contributors be disclosed to the FEC?	Can the entity make contributions to federal candidates?	Are there limits on the amount the entity can contribute to federal candidates?	Can federal candidates raise funds the entity plans to contribute in federal elections?	Are there limits on contributions the entity may receive for use in federal elections?
Super PACs	Yes	Yes	No	Not permitted to make federal contributions	Yes, within FECA limits	No
“Traditional” PACs <sup>a</sup>	Yes	Yes	Yes	\$5,000 per candidate, per election	Yes, within FECA limits	\$5,000 annually from individuals; other limits established in FECA <sup>b</sup>
National Party Committees	Yes	Yes	Yes	\$5,000 per candidate, per election	Yes, within FECA limits	\$32,400 from individuals (2014 cycle); other limits established in FECA
Candidate Committees	Yes	Yes	Yes	\$2,000 per candidate, per election	Yes, within FECA limits	\$2,600 per candidate, per election from individuals (2014 cycle); other limits established in FECA
527s <sup>c</sup>	No	No, unless independent expenditures or electioneering communications <sup>d</sup>	No	Not permitted to make federal contributions	N/A	No
501(c)(4)s, (5)s, (6)s <sup>e</sup>	No	No, unless independent expenditures or electioneering communications <sup>f</sup>	No	Not permitted to make federal contributions	N/A	No

**Source:** CRS adaptation from **Table I** in CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted); and Federal Election Commission, “Contribution Limits 2013-2014,” [http://www.fec.gov/ans/answers\\_general.shtml](http://www.fec.gov/ans/answers_general.shtml).

**Notes:** The table does not include the following notes regarding additional limitations on contributions: (1) For individuals, a special biennial limit of \$123,200 (\$48,600 to all candidate committees and \$74,600 to party and PAC committees) also applies. These amounts are adjusted biennially for inflation; (2) The national party committee and the national party Senate committee (e.g., the DNC and DSCC or RNC and NRSC) share a combined per-campaign limit of \$45,400, which is adjusted biennially for inflation.

- a. This report uses the term *traditional PACs* to refer to PACs that are not super PACs. Here, the term includes separate segregated funds, nonconnected committees, and leadership PACs. The table assumes these PACs would be *multicandidate committees*. *Multicandidate committees* are those that have been registered with the FEC



(or, for Senate committees, the Secretary of the Senate) for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. See 11 C.F.R. §100.5(e)(3). In practice, most PACs attain multicandidate status automatically over time.

- b. As noted later in this report, nonconnected PACs utilizing an exemption per the *Carey* case may raise unlimited amounts for independent expenditures if those amounts are kept in a separate bank account and not used for contributions.
- c. As the term is commonly used, 527 refers to groups registered with the Internal Revenue Service (IRS) as Section 527 political organizations that seemingly intend to influence federal elections in ways that place them outside the FECA definition of a political committee. By contrast, political committees (which include candidate committees, party committees, and political action committees) are regulated by the FEC and federal election law. There is a debate regarding which 527s are required to register with the FEC as political committees. FEC contributor disclosure for these organizations applies only to those who designate their contributions for use in independent expenditures or electioneering communications. This table does not address general reporting obligations established in tax law or IRS regulations. For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by (name redacted) and (name redacted).
- d. Federal tax law requires that 527s periodically disclose to the IRS information about donors who have given at least \$200 during the year. See 26 U.S.C. §527(j). This information is publicly available. See 26 U.S.C. §6104.
- e. For additional discussion of these groups, see CRS Report RL33377, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, by (name redacted); and CRS Report R40183, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, by (name redacted) and (name redacted).
- f. Federal tax law requires that these groups disclose information to the IRS about donors who have given at least \$5,000 annually. See 26 U.S.C. §6033. Unlike information on donors to political committees and 527s, however, this information is confidential and not made public. See 26 U.S.C. §6104.

## Discussion

Super PACs originated from a combination of legal and regulatory developments. Most notably, in January 2010, the Supreme Court issued a decision in *Citizens United v. Federal Election Commission*.<sup>6</sup> *Citizens United* did not directly address the topic of super PACs, but it set the stage for a later ruling that affected their development, as discussed below.

### *Citizens United and SpeechNow*

As a consequence of *Citizens United*, corporations and unions are now free to use their treasury funds to make expenditures (such as for airing political advertisements) explicitly calling for election or defeat of federal or state candidates (*independent expenditures* or *IEs*), or for advertisements that refer to those candidates during pre-election periods, but do not necessarily explicitly call for their election or defeat (*electioneering communications*). Previously, such advertising would generally have had to be financed through voluntary contributions raised by traditional PACs (those affiliated with unions or corporations, nonconnected committees, or both).

A second case paved the way for what would become super PACs. Following *Citizens United*, on March 26, 2010, the U.S. Court of Appeals for the District of Columbia held in *SpeechNow.org v. Federal Election Commission*<sup>7</sup> that contributions to PACs that make only IEs—but not contributions—could not be constitutionally limited.

Also known as *independent-expenditure-only committees (IEOCs)*, the media and other observers called these new political committees simply *super PACs*. The term signifies their structure akin to traditional PACs but without the contribution limits that bind traditional PACs. As discussed in the next section, after *Citizens United* and *SpeechNow*, the FEC issued advisory opinions that offered additional guidance on super PAC activities.

As the data discussed below show, the most obvious effects from super PACs are likely to be on the nation's electoral campaigns. By definition, super PACs are devoted to engaging in independent activities. They cannot<sup>8</sup> make direct contributions to campaigns or coordinate their activities with campaigns. Nonetheless, super PACs could dramatically shape the environment affecting campaigns, particularly if they choose to engage in express advocacy that explicitly calls for election or defeat of particular candidates. In addition, despite prohibitions on coordination of their activities with campaigns, some observers have raised concerns that super PACs might not be independent of candidate campaigns in practice.<sup>9</sup> Super PACs are treated as political committees and are regulated primarily by FECA and FEC regulations, unlike some

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<sup>6</sup> 130 S. Ct. 876 (2010). For additional discussion, see CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in Citizens United v. FEC*, by (name red acted).

<sup>7</sup> 599 F.3d 686 (D.C. Cir. 2010).

<sup>8</sup> Federal election law and FEC regulations have not been amended to clarify the role of super PACs. *SpeechNow* and related FEC advisory opinions have held that super PACs cannot make contributions to candidates or parties.

<sup>9</sup> This is particularly true, some argue, for super PACs that are believed to be organized primarily for supporting or opposing particular campaigns rather than several campaigns. See, for example, Fred Wertheimer, "Democracy Loses With Super PACs," *Politico*, September 28, 2011, p. 27.

other “outside” spenders, such as organizations regulated primarily under Sections 527 and 501(c) of the Internal Revenue Code (IRC).

## **Why Might Super PACs Matter to Congress?**

### **Brief Answer**

The development of super PACs is one of the most recent chapters in the long-running debate over political spending and political speech. Super PACs potentially have major regulatory and electoral consequences. As data in this report show, super PACs have emerged quickly and have become a powerful spending force in federal elections. Nonetheless, as of this writing, federal election law and regulation have not been amended to formally recognize and clarify the role of super PACs. Congress may wish to consider the issue through legislation or oversight.

### **Discussion**

Several policy issues and questions surrounding super PACs may be relevant as Congress considers how or whether to pursue legislation or oversight. These topics appear to fall into three broad categories:

- the state of law and regulation affecting super PACs,
- transparency surrounding super PACs, and
- how super PACs shape the campaign environment.

For those advocating their use, super PACs represent newfound (or restored) freedom for individuals, corporations, and unions to contribute as much as they wish for independent expenditures that advocate election or defeat of federal candidates. Opponents of super PACs contend that they represent a threat to the spirit of modern limits on campaign contributions designed to minimize potential corruption.

Additional discussion of these subjects appears throughout this report.

## **How Have Super PACs Been Regulated?**

### **Brief Answer**

Thus far, Congress has not enacted legislation specifically addressing super PACs. Existing regulations and law governing traditional PACs apply to super PACs in some cases. The FEC has issued advisory opinions on the topic but has not approved new regulations on super PACs.

### **Discussion**

The FEC is responsible for administering civil enforcement of FECA and related federal election law. The commission began considering a notice of proposed rulemaking (NPRM) expected to

address various *Citizens United* issues shortly after the Supreme Court's January 2010 decision.<sup>10</sup> After disagreement throughout 2011 and two previous deadlocked<sup>11</sup> votes, in December 2011, commissioners approved a notice of proposed rulemaking (NPRM) posing questions about some aspects of what form post-*Citizens United* rules should take.<sup>12</sup> Among other points, the agency essentially asks how broadly new rules should define permissible corporate and union independent expenditures and electioneering communications. It is unclear to what extent final rules, if adopted, will address super PACs.

Despite the lack of amendments to federal law or campaign finance regulation, the FEC has issued advisory opinions (AOs) that provided guidance on some super PAC questions.<sup>13</sup> These AOs responded to questions posed by members of the *regulated community*, as those governed by campaign finance law are sometimes known, seeking clarification about how the commission believed campaign finance regulation and law applied to specific situations applicable to super PACs. Six AOs are particularly relevant for understanding how the FEC has interpreted the *Citizens United* and *SpeechNow* decisions with respect to super PACs, as briefly summarized below.

- In July 2010, the FEC approved two related AOs in response to questions from the Club for Growth (AO 2010-09) and Commonsense Ten (AO 2010-11).<sup>14</sup> In light of *Citizens United* and *SpeechNow*, both organizations sought to form PACs that could solicit unlimited contributions to make independent expenditures (i.e., form super PACs). The commission determined that the organizations could do so. In both AOs, the commission advised that while post-*Citizens United* rules were being drafted, political committees intending to operate as super PACs could supplement their statements of organization (FEC form 1) with letters indicating their status.<sup>15</sup> The major policy consequence of the Club for Growth and Commonsense Ten AOs was to permit, based on *Citizens United* and *SpeechNow*, super PACs to raise unlimited contributions supporting independent expenditures.<sup>16</sup>

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<sup>10</sup> See, for example, Federal Election Commission, "FEC Statement on the Supreme Court's Decision in *Citizens United v. FEC*," press release, February 5, 2010, <http://www.fec.gov/press/press2010/20100205CitizensUnited.shtml>.

<sup>11</sup> The commission deadlocked in two 3-3 votes on draft NPRM documents 11-02, draft A, and 11-02-A, at the January 20, 2011, meeting. See Federal Election Commission, January 20, 2011, meeting minutes, pp. 4-5, [http://www.fec.gov/agenda/2011/approved2011\\_06.pdf](http://www.fec.gov/agenda/2011/approved2011_06.pdf). A vote to approve draft NPRM document 11-33 failed on a 2-4 vote at the June 15, 2011, commission meeting. At the same meeting, alternative draft NPRM document 11-33-A resulted in a deadlocked 3-3 vote. See Federal Election Commission, June 15, 2011, meeting minutes, pp. 3-4, [http://www.fec.gov/agenda/2011/approved2011\\_39.pdf](http://www.fec.gov/agenda/2011/approved2011_39.pdf). FECA requires that at least four commissioners vote affirmatively to approve NPRMs and final rules. For additional discussion, see CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by (name redacted).

<sup>12</sup> Federal Election Commission, "Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," 248 *Federal Register* 80803, December 27, 2011.

<sup>13</sup> AOs provide an opportunity to pose questions about how the commission interprets the applicability of FECA or FEC regulations to a specific situation (e.g., a planned campaign expenditure). AOs apply only to the requester and within specific circumstances, but can provide general guidance for those in similar situations. See 2 U.S.C. §437f.

<sup>14</sup> The AOs are available from the FEC website at <http://saos.nictusa.com/saos/searchao>.

<sup>15</sup> For sample letters, see Appendix A in AOs 2010-09 and 2010-11. A template is available at [http://www.fec.gov/pdf/forms/ie\\_only\\_letter.pdf](http://www.fec.gov/pdf/forms/ie_only_letter.pdf).

<sup>16</sup> AOs do not have the force of regulation or law. Although AOs can provide guidance on similar circumstances in other settings, some may argue that AOs cannot, in and of themselves, create broad guidance about super PACs or other topics.

- In June 2011, the commission approved an AO affecting super PAC fundraising. In the Majority PAC and House Majority PAC AO (AO 2011-12), the commission determined that federal candidates and party officials could solicit contributions for super PACs within limits.<sup>17</sup> Specifically, the commission advised that contributions solicited by federal candidates and national party officials must be within the PAC contribution limits established in FECA (e.g., \$5,000 annually for individual contributions).<sup>18</sup> It is possible, however, that federal candidates could attend fundraising events—but not solicit funds themselves—at which unlimited amounts were solicited by other people.
- In AO 2011-11, the commission responded to questions from comedian Stephen Colbert. Colbert’s celebrity status generated national media attention surrounding the request, which also raised substantive policy questions. The Colbert request asked whether the comedian could promote his super PAC on his nightly television program, *The Colbert Report*.<sup>19</sup> In particular, Colbert asked whether discussing the super PAC on his show would constitute in-kind contributions from *Colbert Report* distributor Viacom and related companies. An affirmative answer would trigger FEC reporting requirements in which the value of the airtime and production services would be disclosed as contributions from Viacom to the super PAC. Colbert also asked whether these contributions would be covered by the FEC’s “press exemption,” thereby avoiding reporting requirements.<sup>20</sup> In brief, the commission determined that coverage of the super PAC and its activities aired on the *Colbert Report* would fall under the press exemption and need not be reported to the FEC. If Viacom provided services (e.g., producing commercials) referencing the super PAC for air in other settings, however, the commission determined that those communications would be reportable in-kind contributions.<sup>21</sup> Viacom would also need to report costs incurred to administer the super PAC.<sup>22</sup>
- On December 1, 2011, the FEC considered a request from super PAC American Crossroads. In AO 2011-23, Crossroads sought permission to air broadcast ads featuring candidates discussing policy issues. American Crossroads volunteered that the planned ads would be “fully coordinated” with federal candidates ahead of the 2012 elections, but also noted that they would not contain express

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<sup>17</sup> Majority PAC was formerly known as Commonsense Ten, the super PAC discussed above.

<sup>18</sup> On limitations on contributions to PACs, see Table 1 in CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted). This section assumes a super PAC would achieve *multicandidate committee* status. Multicandidate committees are those that have been registered with the FEC (or, for Senate committees, the Secretary of the Senate) for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. See 11 C.F.R. §100.5(e)(3). In practice, most PACs attain multicandidate status automatically over time.

<sup>19</sup> Colbert’s super PAC is popularly known as the *Colbert Super PAC*. It is registered with the FEC as *Americans for a Better Tomorrow, Tomorrow*. For a scholarly discussion, see (name redacted), “Seriously Funny: Understanding Campaign Finance Policy Through the Colbert Super PAC,” *Saint Louis University Law Journal*, vol. 56, no. 3 (Spring 2012), pp. 711-723.

<sup>20</sup> On the press exemption, see 2 U.S.C. §431(9)(B)(i); 11 C.F.R. §100.73; 11 C.F.R. §100.132; and discussion in AO 2011-11, pp. 6-8.

<sup>21</sup> See AO 2011-11, pp. 7-9. AOs are available from the FEC website at <http://saos.nictusa.com/saos/searchao>.

<sup>22</sup> *Ibid.*, p. 9.

advocacy calling for election or defeat of the candidates.<sup>23</sup> In brief, the key question in the AO was whether Crossroads could fund and air such advertisements without running afoul of *coordination* restrictions designed to ensure that goods or services of financial value are not provided to campaigns in excess of federal contribution limits.<sup>24</sup> (As a super PAC, Crossroads is prohibited from making campaign contributions; coordinated expenditures would be considered in-kind contributions.) Ultimately, the FEC was unable to reach a resolution to the AO request. In brief, at the open meeting at which the AO was considered, independent commissioner Stephen Walther and Democrats Cynthia Bauerly and Ellen Weintraub disagreed with their Republican counterparts, Caroline Hunter, Donald McGahn, and Matthew Petersen, about how FEC regulations and FECA should apply to the request.<sup>25</sup> As a result of the 3-3 deadlocked vote, the question of super PAC sponsorship of “issue ads” featuring candidates appears to be unsettled. Although deadlocked votes are often interpreted as not granting permission for a planned campaign activity, some might also regard the deadlock as a failure to prohibit the activity. As a practical matter, if the FEC is unable to reach agreement on approving or prohibiting the conduct, it might also be unable to reach agreement on an enforcement action against a super PAC that pursued the kind of advertising Crossroads proposed.

- Also at its December 1, 2011, meeting, the FEC considered AO request 2011-21, submitted by the Constitutional Conservatives Fund PAC (CCF). CCF is a leadership PAC<sup>26</sup> affiliated with Senator Mike Lee. CCF and other leadership PACs are not super PACs, although the CCF AO request is arguably relevant for super PACs. Specifically, in AO request 2011-21, CCF sought permission to raise unlimited funds for use in independent expenditures, as super PACs do. The FEC held, in a 6-0 vote, that because CCF is affiliated with a federal candidate, the PAC could not solicit unlimited contributions. To the extent that the CCF request is relevant for super PACs, it suggests that leadership PACs or other committees affiliated with federal candidates may not behave as super PACs.

To summarize, although the FEC has not yet issued rules regulating super PACs, AOs have provided guidance relevant for some circumstances. Perhaps most notably, through the Club for Growth (2010-09) and Commonsense Ten (2010-11) AOs, the commission confirmed that super

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<sup>23</sup> See AO request (AOR) 2011-23, p. 5. The AOR was filed, as is typical, in a letter from the requester’s counsel to the FEC General Counsel. See Letter from Thomas Josefiak and Michael Bayes to Anthony Herman, General Counsel, FEC, October 28, 2011, in the AO 2011-23 documents at <http://saos.nictusa.com/saos/searchao>.

<sup>24</sup> Coordination is discussed later in this report. On coordination and the three-part regulatory test for coordination, see, respectively 2 U.S.C. §441a(a)(7)(B) and 11 C.F.R. §109.21.

<sup>25</sup> Commissioners Bauerly and Weintraub issued a “statement of reasons” document explaining their rationale, as did Commissioner Walther and the three Republican commissioners. See Cynthia L. Bauerly and Ellen L. Weintraub, *Statement on Advisory Opinion Request 2011-23 (American Crossroads)*, Federal Election Commission, Washington, DC, December 1, 2011; Steven T. Walther, *Advisory Opinion Request 2011-23 (American Crossroads): Statement of Commissioner Steven T. Walther*, Federal Election Commission, Washington, DC, December 1, 2011; and Caroline C. Hunter, Donald T. McGahn, and Matthew S. Petersen, *Advisory Opinion Request 2011-23 (American Crossroads): Statement of Vice Chair Caroline C. Hunter and Commissioners Donald T. McGahn and Matthew S. Petersen*, Federal Election Commission, Washington, DC, December 1, 2011.

<sup>26</sup> Leadership PACs are PACs affiliated with Members of Congress that provide an additional funding mechanism to support colleagues’ campaigns. Although historically the purview of members of the House and Senate leadership, many Members of Congress now have leadership PACs. Leadership PACs are separate from the candidate’s principal campaign committee.

PACs could accept unlimited contributions and use those funds to make independent expenditures. In AO 2011-12 (Majority PAC and House Majority PAC), the commission granted permission for federal officeholders and party officials to solicit super PAC funds within the limits established in FECA. The Colbert AO (2011-11) applies to the relatively unique situation of a media personality discussing his super PAC on his television program. The Colbert AO may, nonetheless, have broad implications in the future by presenting a model for other media personalities and organizations to voice their support or opposition for political candidates, for media corporations to have greater latitude to support personalities who do so, or both. The FEC was unable to reach a consensus on American Crossroads' request (AO 2011-23) to air "issue ads" featuring candidates. Finally, in AO 2011-21, the commission determined that leadership PACs could not engage in unlimited fundraising for independent expenditures, as super PACs do.

## What Information Must Super PACs Disclose?

### Brief Answer

Super PACs must follow the same reporting requirements as traditional PACs. This includes filing statements of organization<sup>27</sup> and regular financial reports detailing most contributions and expenditures.

### Discussion

In the Commonsense Ten AO, the FEC advised super PACs to meet the same reporting obligations as PACs known as *nonconnected committees* (e.g., independent organizations that are not affiliated with a corporation or labor union). These reports are filed with the FEC<sup>28</sup> and made available for public inspection in person or on the commission's website.

Super PACs and other political committees must regularly<sup>29</sup> file reports with the FEC<sup>30</sup> summarizing, among other things,

- total receipts and disbursements;
- the name, address, occupation, and employer<sup>31</sup> of those who contribute more than \$200 in unique or aggregate contributions per year;

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<sup>27</sup> This is FEC form 1. Essentially, it provides the FEC with information about how to contact the campaign and identifies the treasurer.

<sup>28</sup> Political committees devoted solely to Senate activities file reports with the Secretary of the Senate, who transmits them to the FEC for public posting. In theory, if a super PAC were devoted solely to affecting Senate campaigns, it is possible the super PAC would file with the Secretary rather than with the FEC. Nonetheless, the information would be transmitted to the FEC.

<sup>29</sup> Reporting typically occurs quarterly. Pre- and post-election reports must also be filed. Non-candidate committees may also file monthly reports. See, for example, 2 U.S.C. §434 and the FEC's *Campaign Guide* series for additional discussion of reporting requirements.

<sup>30</sup> As noted previously, unlike other political committees, Senate political committees (e.g., a Senator's principal campaign committee) file reports with the Secretary of the Senate, who transmits them to the FEC. See 2 U.S.C. §432(g).

<sup>31</sup> The occupation and employer requirements apply to contributions from individuals.

- the name and address of the recipient of disbursements exceeding \$200;<sup>32</sup> and
- the purpose of the disbursement.<sup>33</sup>

Reporting timetables for traditional PACs, which appear to apply to super PACs, depend on whether the PAC's activity occurs during an election year or non-election year.

- During *election years*, PACs may choose between filing monthly or quarterly reports. They also file pre- and post-general election reports and year-end reports.<sup>34</sup>
- During *non-election years*, PACs file FEC reports monthly or "semi-annually" to cover two six-month periods. The latter include two periods: (1) "mid-year" reports for January 1-June 30; and (2) "year-end" reports for July 1-December 31.<sup>35</sup>

Super PACs also have to report their IEs.<sup>36</sup> IEs are reported separately from the regular financial reports discussed above. Among other requirements,

- independent expenditures aggregating at least \$10,000 must be reported to the FEC within 48 hours; 24-hour reports for independent expenditures of at least \$1,000 must be made during periods immediately preceding elections;<sup>37</sup> and
- independent expenditure reports must include the name of the candidate in question and whether the expenditure supported or opposed the candidate.<sup>38</sup>

The name, address, occupation, and employer for those who contributed at least \$200 to the super PAC for IEs would be included in the regular financial reports discussed above, but donor information is not contained in the IE reports themselves. In addition, as the "Is Super PAC Activity Sufficiently Transparent?" section discusses later in this report, the original source of some contributions to super PACs can be concealed (either intentionally or coincidentally) by routing the funds through an intermediary.

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<sup>32</sup> FECA contains some exceptions. For example, all disbursements used to make contributions to another political committee must be itemized, regardless of amount. See 2 U.S.C. §434(b)(4).

<sup>33</sup> FEC policy guidance has stated that "when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear." In general, however, political committees have broad leeway in describing the purpose of disbursements. For example, the commission has noted that generic terms such as "administrative expenses" are inadequate, but "salary" is sufficient. The quoted material and additional discussion appears in Federal Election Commission, "Statement of Policy: Purpose of Disbursement," 72 *Federal Register* 887-889, January 9, 2007.

<sup>34</sup> Quarterly reports are due to the FEC on April 15, July 15, and October 15. The final quarterly report is due January 31 of the next year. Monthly reports are due to the commission 20 days after the end of the previous month. The year-end report is due by January 31 of the year after the election. Pre-election reports summarizing activity for the final weeks of an election period must be filed with the FEC 12 days before the election. Monthly or quarterly reports are not required if their due dates fall near an otherwise required pre-election report. Post-general reports must be filed 30 days after the election; post-primary reports are not required. Additional requirements apply to special elections. See 11 C.F.R. §104.5(c)(1).

<sup>35</sup> The reports are due to the FEC by July 31 and January 31 respectively. See 11 C.F.R. §104.5(c)(2).

<sup>36</sup> Separate reporting obligations apply to electioneering communications.

<sup>37</sup> See, for example, 2 U.S.C. §434(g).

<sup>38</sup> 2 U.S.C. §434(g)(3)(B).



## Overall, What Did Super PACs Raise and Spend in the 2010 and 2012 Federal Elections?

### Brief Answer

Super PAC activity increased substantially between 2010 and 2012, in terms of both the number of super PACs that were active in the elections and their financial activity. Approximately 80 organizations quickly formed in response to the 2010 *Citizens United* and *SpeechNow* rulings. These first super PACs spent a total of approximately \$90.4 million, more than \$60 million of which was spent on IEs advocating for or against candidates.<sup>39</sup> Just 10 super PACs accounted for almost 75% of all super PAC spending in 2010.<sup>40</sup> In 2012, although more than 800 super PACs registered with the FEC, only about 450 of those groups reported raising or spending funds.<sup>41</sup> For the 2012 cycle, super PACs reported raising a total of \$826.6 million and spending a total of \$799.2 million.<sup>42</sup>

### Discussion

To assess where and how super PACs became involved in federal elections, CRS analyzed super PAC reports filed with the FEC for the 2010 and 2012 cycles. The **Appendix** provides additional information about the methodology used to gather the data and conduct the analysis.

During the 2010 election cycle, 79 groups registered as super PACs spent a total of approximately \$90.4 million. This sum is perhaps notable not only for its size, but also because most of these organizations did not operate until the summer of 2010.<sup>43</sup> As **Figure 1** shows, super PAC resources in 2010 were highly skewed, meaning that a relatively small number of groups accounted for a large amount of financial activity—both individually and as a proportion of all super PAC activity.

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<sup>39</sup> Remaining amounts were apparently spent on items such as administrative expenses and non-federal races. IE totals range from approximately \$61 million to approximately \$65 million depending on whether one analyzes summary data provided by the FEC or sums individual IE filings. As discussed elsewhere in this report, various data sources and different filing schedules often yield slightly different numbers.

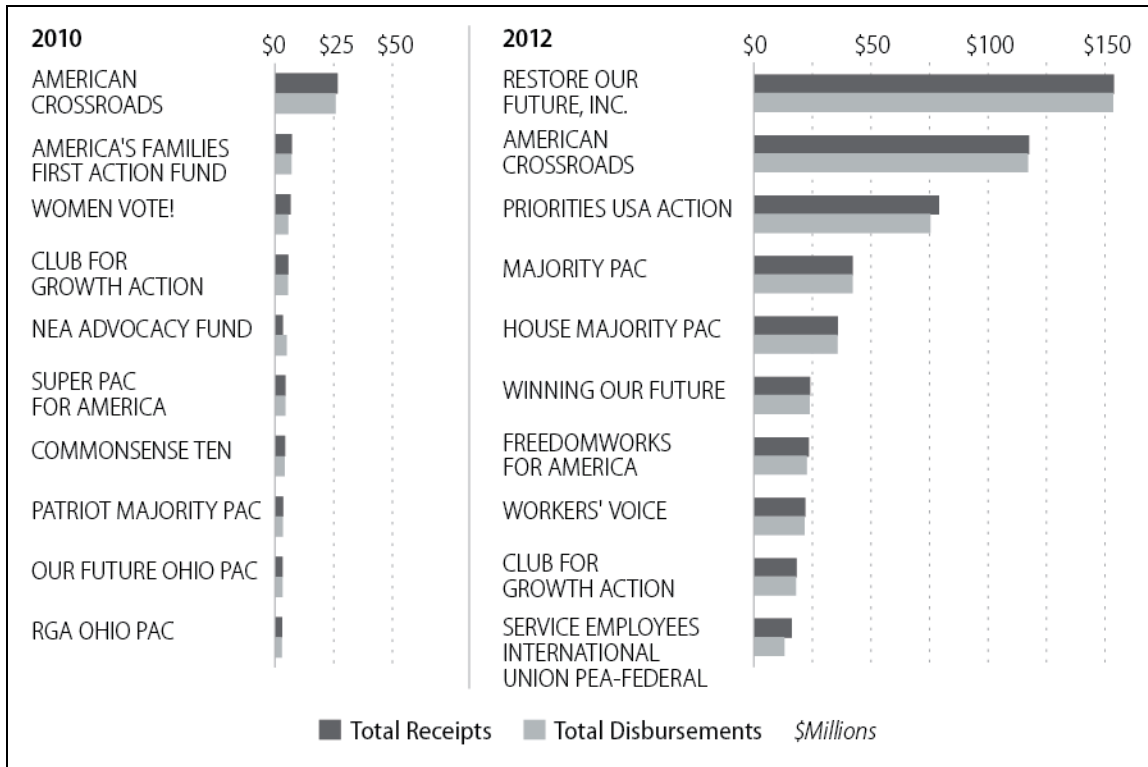
<sup>40</sup> The FEC provided CRS with data on spending by individual committees. The text in this section is based on CRS analysis of those data, including aggregating the totals and calculating percentages listed in the text.

<sup>41</sup> The FEC subsequently administratively terminated some super PACs that had no financial activity.

<sup>42</sup> The 2012 findings are based on CRS analysis of total receipts and disbursements by super PACs as reported in the FEC Committee Summary File.

<sup>43</sup> The FEC provided CRS with data on spending by individual committees. CRS aggregated the totals listed in the text. In the absence of additional regulations concerning registration for super PACs, it is not clear that all organizations are reflected in the figures in the text.

**Figure 1. Top 10 Super PACs by Total Receipts and Disbursements, 2010 and 2012**



**Source:** CRS figure and analysis of super PAC data in the FEC Committee Summary File.

**Notes:** Amounts in the figure refer to total receipts and disbursements as reported to the FEC, not just independent expenditures.

In 2012, super PAC financial activity remained skewed, but overall fundraising and spending increased sharply. For example, although all super PACs spent less than \$100 million in 2010, two Republican super PACs alone—Restore Our Future and American Crossroads—each spent more than \$100 million in 2012. These two groups were the only super PACs that raised or spent more than \$100 million in 2012. The most financially active Democratic super PAC, Priorities USA Action, spent approximately \$75 million. All other super PACs individually raised and spent less than \$50 million.

Even though the number of super PACs grew sharply—from 80 to more than 800 between 2010 and 2012—many were not actively involved in fundraising or spending. In fact, only about 450 super PACs reported raising or spending any money during the 2012 cycle.<sup>44</sup> Most that did exhibited relatively modest activity; these super PACs raised a median of approximately \$53,000 and spent a median of approximately \$57,000.<sup>45</sup>

Nonetheless, dozens of super PACs raised or spent millions of dollars. Specifically, 75 super PACs reported raising or spending a total of at least \$1 million; 27 raised or spent at least \$5 million.<sup>46</sup> Just 16 super PACs reported raising or spending at least \$10 million during the 2012

<sup>44</sup> This information is based on CRS analysis of super PAC data in the FEC Committee Summary File.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

cycle. A small number of super PACs also dominated fundraising and spending in 2012, albeit to a slightly smaller degree than in 2010. Whereas 10 super PACs accounted for about 75% of super PAC fundraising and spending in 2010, 10 super PACs in 2012 collectively raised approximately \$531.8 million and spent approximately \$522.7 million, representing about 65% of all super PAC spending.

**Table 2** below summarizes financial activity of the 10 super PACs reporting the largest receipts and expenditures for 2012. The table reports total disbursements rather than only IEs. Therefore, it is important to note that although these entities raised and spent the most overall, other super PACs might have more direct impact on the election through higher spending on IEs that call for election or defeat of particular candidates.

**Table 2. The 10 Super PACs Reporting the Most Receipts and Disbursements for the 2012 Election Cycle**

Committee Name	Total Receipts	Total Disbursements
RESTORE OUR FUTURE, INC.	\$153,741,731	\$153,316,373
AMERICAN CROSSROADS	\$117,472,407	\$117,044,325
PRIORITIES USA ACTION	\$79,050,419	\$75,333,806
MAJORITY PAC	\$42,121,541	\$42,117,050
HOUSE MAJORITY PAC	\$35,844,951	\$35,689,886
WINNING OUR FUTURE	\$23,921,705	\$23,861,421
FREEDOMWORKS FOR AMERICA	\$23,453,198	\$22,621,967
WORKERS' VOICE	\$21,855,151	\$21,687,667
CLUB FOR GROWTH ACTION	\$18,253,913	\$17,931,937
SERVICE EMPLOYEES INTERNATIONAL UNION PEA-FEDERAL	\$16,264,036	\$13,079,983

**Source:** CRS analysis of super PAC data in the FEC Committee Summary File.

**Notes:** Committee names appear as listed in the FEC data accessed March 2013. All figures are rounded compared with the original data. These figures could be affected by future amended filings. Total disbursements include all expenditures, not only independent expenditures. The table relies on combined receipt and disbursement data. Separate analyses of disbursement and spending data could yield different results.

## What Did Super PACs Spend Supporting or Opposing Federal Candidates in 2010 and 2012?

### Brief Answer

Super PACs spent approximately \$65.8 million on IEs directly supporting or opposing federal candidates in 2010. That amount increased almost tenfold in 2012, when super PACs spent \$620.9 million in IEs supporting and opposing House, Senate, and presidential candidates.<sup>47</sup> Most

<sup>47</sup> Ibid. This figure excludes IEs supporting or opposing third-party and independent candidates.

of that spending was far more likely to oppose candidates than to support candidates. Some of the increase in spending would be expected during a presidential election year, but the rapid growth in super PAC activity during just two election cycles suggests that the groups are solidifying their presence in American elections. As the data below show, super PACs were active across federal elections.

## Discussion

As noted above, super PACs spent approximately \$90.4 million in 2010 overall and almost \$800 million overall in 2012. Their independent expenditures—those expenses devoted to calling explicitly for election or defeat of a federal candidate and perhaps the best indicator of super PACs’ influence in elections—accounted for 70%-80% of their spending during both election cycles. **Table 3** below shows how super PACs chose to prioritize their spending on House, Senate, and presidential contests in 2012.

**Table 3. Overview of 2012 Super PAC Independent Expenditures by Type of Race and Party**

Chamber	Party	Support or Oppose	Total IE Spending
HOUSE	DEMOCRATIC	OPPOSE	\$26,473,473
		SUPPORT	\$16,693,098
	REPUBLICAN	OPPOSE	\$42,988,145
		SUPPORT	\$16,875,654
SENATE	DEMOCRATIC	OPPOSE	\$34,313,099
		SUPPORT	\$12,188,177
	REPUBLICAN	OPPOSE	\$63,514,924
		SUPPORT	\$24,033,595
PRESIDENTIAL	DEMOCRATIC	OPPOSE	\$189,330,326
		SUPPORT	\$18,086,773
	REPUBLICAN	OPPOSE	\$118,289,181
		SUPPORT	\$58,064,074

**Source:** CRS analysis of 2012 Federal Election Commission independent expenditure reports.

**Notes:** Information in the table is as reported in FEC independent expenditure reports. CRS calculated the information in the *Total IE Spending* column. The table excludes third-party and independent candidates.

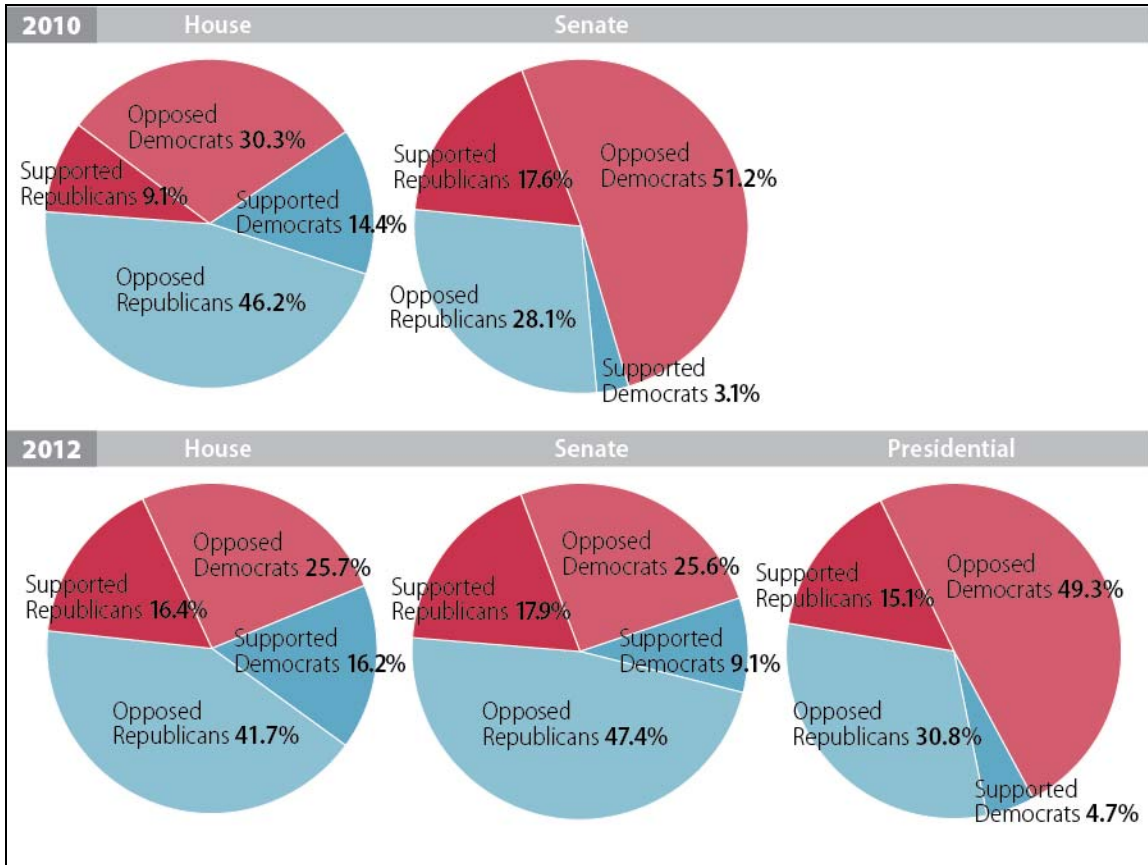
When considering super PAC spending on IEs in 2010 and 2012, readers might find percentages more illustrative than raw spending totals.<sup>48</sup> **Figure 2** below displays the percentage of IE spending favoring and opposing candidates across various types of races in 2010 and 2012.<sup>49</sup> As

<sup>48</sup> **Table 3** excludes 2010 data to conserve space, but the data are available from the author and in previous versions of this report.

<sup>49</sup> The data represent total spending. Although not reflected in FEC reports, alternative measures might include, for example, the number of unique advertisements, gross rating points (in brief, a measure of advertising impressions) purchased, etc.

the figure shows, there are both similarities and differences between 2010 and 2012 super PAC IE spending across chambers and parties.

**Figure 2. Support and Opposition for Federal Candidates in 2010 and 2012 Super PAC Independent Expenditures**



**Source:** CRS figure and analysis of Federal Election Commission independent expenditure reports.

**Notes:** Support and opposition labels are taken from independent expenditure reports. Percentages are based on dollar amounts spent, not number of expenditures. The figure excludes IEs made supporting and opposing independent and third-party candidates.

Although overall spending increased sharply, as discussed previously, the ratio of support-and-opposition spending in House-contest IEs among super PACs was roughly consistent between 2010 and 2012. A large plurality of the spending, approximately 46% of IE spending in 2010 and 42% of IE spending in 2012, opposed Republican candidates, compared with about 26%-30% of IEs that opposed Democrats. In Senate contests, a greater proportion of spending favored Democrats in 2012 than in 2010. Specifically, less than one-third of super PAC IE spending in 2010 Senate contests favored Democrats by either opposing Republicans (28.1%) or supporting Democrats (3.1%). In 2012, however, more than half of super PAC IE spending favored Democrats by opposing Republicans (47.4%) or supporting Democrats (9.1%). At the presidential level, almost two-thirds of 2012 super PAC IEs favored Republicans by either supporting Republicans (15.1%) or opposing Democrats (49.3%). (Super PACs did not exist in the 2008 presidential cycle.)

### **Most Super PAC IE Spending Targeted Relatively Few Races**

As the preceding section shows, most 2012 super PAC spending occurred in the presidential race. Examining activity in House and Senate races may be especially relevant for Congress. As with other data discussed throughout this report, super PACs spent more on IEs affecting House and Senate races in 2012 than in 2010. That spending also affected more races. **Figure 3** below shows the 25 House and Senate races from 2010 and 2012 in which super PACs spent the most on IEs.

Total super PAC IE spending in 2010 races ranged from just \$1,100 (in a Kentucky House race) to more than \$10 million in the Colorado Senate contest. In 2012, super PAC spending ranged from less than \$1,000 in a few House races to \$14.5 million in the Wisconsin Senate race.<sup>50</sup> The scope of spending also increased, from 111 House and Senate races in 2010 to 203 in 2012.

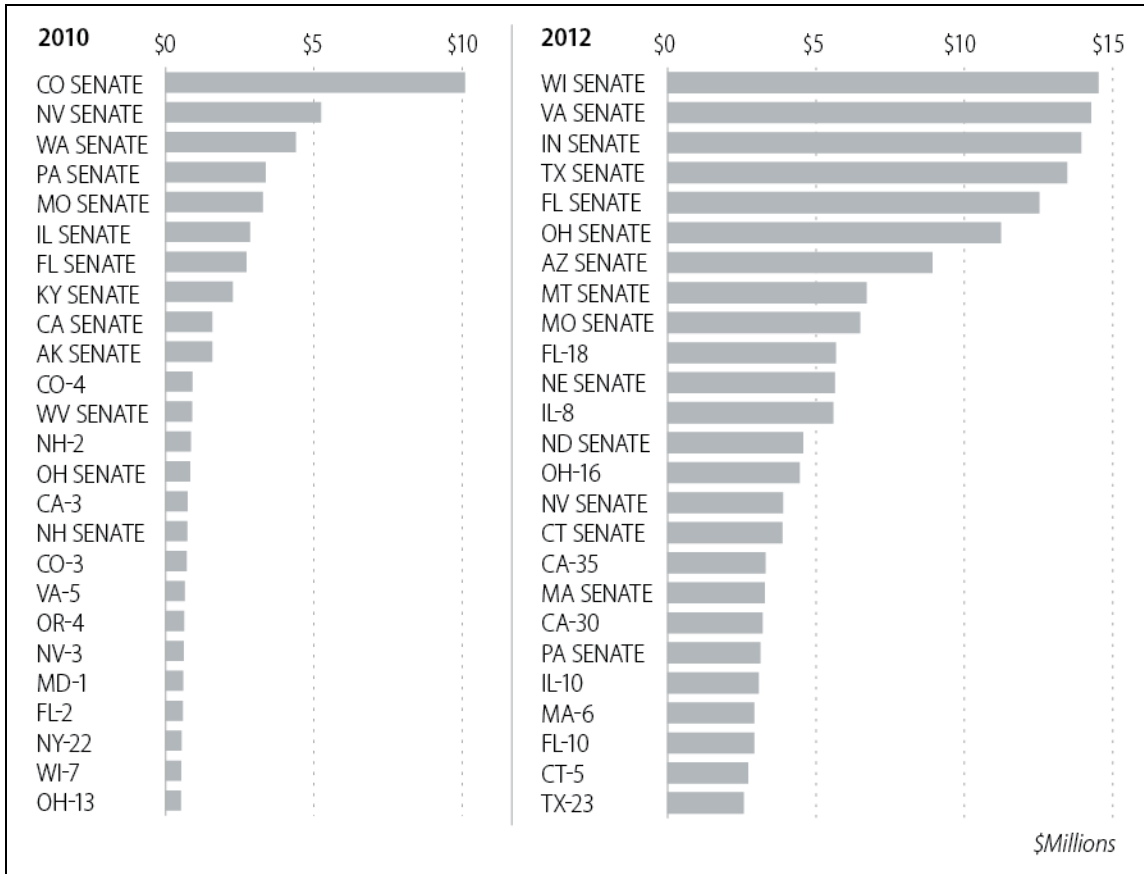
Not surprisingly, when super PACs chose to make IEs, they targeted their efforts carefully. In fact, the \$10.1 million super PACs spent on IEs in just one Senate race—in Colorado—accounted for 16.5% of all super PAC IEs spending in 2010. Of the approximately \$60 million super PACs spent in IEs overall in 2010, about 60% (\$37.4 million) were in the 10 Senate contests in which super PACs invested most heavily.<sup>51</sup> In 2012, despite spending in more races, most spending was again targeted to a relative few. Almost 70% of super PAC IE spending occurred in the 25 races shown on the right side of **Figure 3**.

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<sup>50</sup> This section only shows data in the figures and table for spending in the 25 contests in which super PACs spent the most on IEs. The underlying CRS analysis is based on all super PAC IE spending.

<sup>51</sup> These are the *CO Senate* through *AK Senate* entries on the top of the left side of the figure.

**Figure 3. The 25 Congressional Races in 2010 and 2012 in Which Super PACs Spent the Most on Independent Expenditures**



Source: CRS figure and analysis of Federal Election Commission independent expenditure reports.

## What Major Super PAC Issues Might Be on the Horizon?

### Brief Answer

Because super PACs are new players in elections and because federal law and regulation have not been amended to reflect their presence, Congress might wish to conduct oversight or pursue legislative activity to clarify these new groups' place in federal campaigns. Super PAC activity might also be relevant for congressional oversight of the FEC as that agency continues to consider post-*Citizens United* rulemakings and reporting requirements. Looking ahead, questions about super PAC relationships with other organizations (particularly the issues of coordination and contribution limits), transparency, and their effect on future elections may be of particular interest.

## Discussion

Super PACs address some of the most prominent and divisive issues in campaign finance policy. Most attention to super PACs is likely to emphasize their financial influence in elections, as is typically the case when new forces emerge on the campaign finance scene. Underlying that financial activity is law, regulation, or situational guidance (e.g., advisory opinions)—or the lack thereof—that shape how super PACs operate and are understood.

## Policy Approaches

As noted previously, despite *Citizens United* and *SpeechNow*, federal election law and FEC regulations have not, as of this writing, been amended to reflect the rise of super PACs. If Congress considers it important to recognize the role of super PACs in some way, it could amend FECA to do so. As it has generally done with other forms of PACs, Congress could also leave the matter to the FEC's regulatory discretion.<sup>52</sup> The following points may be particularly relevant as Congress considers how or whether to proceed.

- Because advisory opinions do not have the force of regulation or law, the status of super PACs is arguably unsettled. Additional legislative or regulatory action to implement super PAC components of *Citizens United* and *SpeechNow* might provide additional clarity to those wishing to organize or contribute to super PACs.
- If Congress believes additional clarity would be beneficial, it could choose to enact legislation. This approach might be favored if Congress wishes to specify particular requirements surrounding super PACs, either by amending FECA, or by directing the FEC to draft rules on particular topics. Legislation has a potential advantage of allowing Congress to specify its preferences on its timetable. It has the potential disadvantage of falling short of sponsors' wishes if sufficient agreement cannot be found to enact the legislation. No legislation introduced in the 112<sup>th</sup> or 113<sup>th</sup> Congresses focuses specifically on super PACs, but some bills contain relevant provisions. In the 113th Congress, H.R. 270 (Price, N.C.) would bar super PAC fundraising by federal candidates and officeholders. The latest version of the DISCLOSE Act, H.R. 148 (Van Hollen), proposes new disclaimer requirements that would apply to ads funded by super PACs and other entities.
- As an alternative to legislation, Congress could choose to defer to the FEC (or perhaps other agencies, such as the IRS or SEC) with respect to new or amended rules affecting super PACs. This approach has the potential advantage of delegating a relatively technical issue to an agency (or agencies) most familiar with the topic, in addition to freeing Congress to pursue other agenda items. It has the potential disadvantage of producing results to which Congress might object, particularly if the six-member FEC deadlocks, as it has done on certain

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<sup>52</sup> For example, traditional PACs, known as *separate segregated funds*, originally arose from advisory opinions in the 1970s. Congress later incorporated the PAC concept into FECA amendments. For a historical overview, see, for example, Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), pp. 152-185; and Anthony Corrado, "Money and Politics: A History of Federal Campaign Finance Law," in *The New Campaign Finance Sourcebook*, Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter (Washington: Brookings Institution Press, 2005), pp. 7-47.



high-profile issues in recent years. The result could resemble the status quo, in which there are few definitive answers about how super PACs are regulated. If Congress chose the rulemaking approach, providing as explicit instructions as possible about the topics to be addressed and the scope of regulations could increase the chances of the rules reflecting congressional intent. Doing so might also increase the chances that consensus could be achieved during the implementation process.

## **Potential Policy Questions and Issues for Consideration**

Despite some high-profile activity in 2010 and 2012, much about super PACs remains unknown. This lack of knowledge is due to a combination of the fact that these entities are new players in elections and because the state of law and regulation surrounding the entities is arguably an open question. The following points may warrant consideration as the super PAC issue continues to emerge.

### ***What is the Relationship Between Super PACs and Other Political Committees or Organizations?***

As noted previously, the FEC considers super PACs to be political committees subject to the requirements and restrictions contained in FECA and FEC regulations. As such, super PACs are prohibited from coordinating their activities with campaigns or other political committees (e.g., parties).<sup>53</sup> Particularly during the 2012 election cycle, some observers raised questions about whether super PACs were really operating independently or whether their activities might violate the spirit of limits on contributions or coordination regulations. The following points may be relevant as Congress assesses where super PACs fit in the campaign environment.

- Concerns about super PAC independence appear to be motivated at least in part by the reported migration of some candidate campaign staff members to super PACs that have stated their support for these candidates.<sup>54</sup>
- A second source of concern may be that legally separate organizations (e.g., 501(c) tax-exempt political organizations, which are generally not regulated by the FEC or federal election law) operate alongside some super PACs.<sup>55</sup> Media reports (and, it appears, popular sentiment) sometimes characterize these entities, despite their status as unique political committees or politically active organizations, as a single group. Questions also emerged during the 2012 cycle about whether some large contributions—that would be prohibited if they went to candidate campaigns—were essentially routed through super PACs as IEs.

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<sup>53</sup> As noted previously, this report reflects common understanding of regulation and law as applied to super PACs. Subsequent changes in law or regulation that explicitly address super PACs could yield alternative findings.

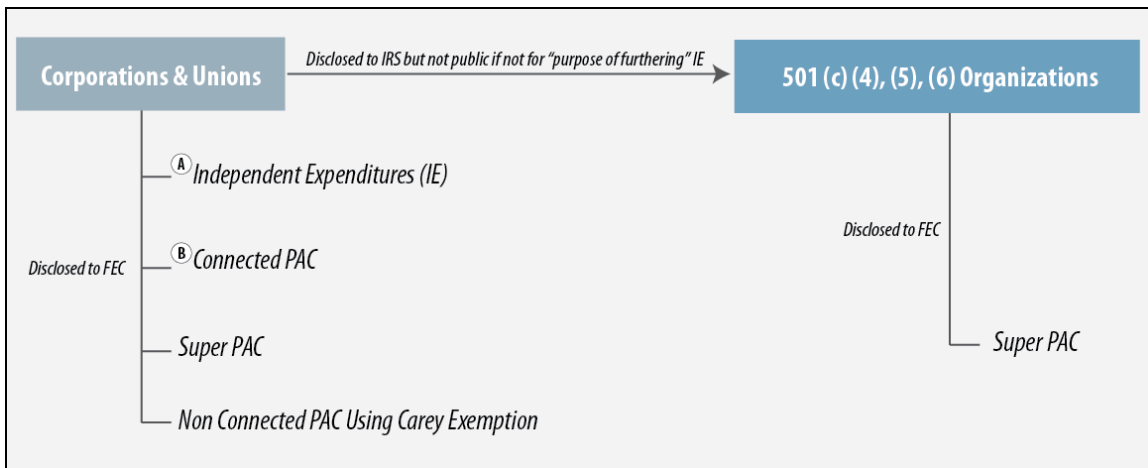
<sup>54</sup> See, for example, Nicholas Confessore, “Lines Blur Between Candidates and PACs with Unlimited Cash,” *New York Times*, August 27, 2011, p. A1; Steven Greenhouse, “A Campaign Finance Ruling Turned to Labor’s Advantage,” *New York Times*, September 26, 2011, p. A1; and Kenneth P. Vogel, “Super PACs’ New Playground: 2012,” *Politico*, August 10, 2011, online edition retrieved via LexisNexis.

<sup>55</sup> For example, American Crossroads is a registered super PAC; Crossroads Grassroots Policy Strategies (GPS) is a 501(c)(4) tax-exempt organization. The same is reportedly true for perceived Democratic counterparts Priorities USA Action and Priorities USA, respectively. See, for example, the sources noted in the previous foot note; and Eliza Newlin Carney, “The Deregulated Campaign,” *CQ Weekly Report*, September 19, 2011, p. 1922.

Donors who wish to do so may now contribute to candidate campaigns in limited amounts and in unlimited amounts to super PACs supporting or opposing these or other candidates.

- As noted previously, super PACs must identify donors who contributed at least \$200. This requirement sheds light on contributions that go directly to super PACs, but not necessarily those that go indirectly to super PACs. In particular, the original source of contributions to trade associations or other organizations that later fund IEs through super PACs could go unreported. For example, assume Company A made a contribution to Trade Association B, and placed no restrictions on how the contribution could be used. Trade Association B then used Company A's funds to contribute to a super PAC. Trade Association B—not Company A—would be reported as the donor on FEC reports. As **Figure 4** below shows, an essential element in this relationship in this series of events is whether the original contribution was “made for the purpose of furthering” an independent expenditure. In practice, this means that those who do not wish their identities to be reported to the FEC could make an unrestricted donation to an intermediary organization, which then funnels the money to a super PAC. By contrast, if a corporation, union, or individual chose to contribute directly to a super PAC, or to make IEs itself, the entity’s identity would have to be disclosed to the FEC.

**Figure 4. Sample Disclosure for Corporations and Unions Using Direct Spending versus Contributions to Other Entities**



**Source:** CRS figure based on analysis of current disclosure requirements discussed throughout this report.

**Notes:** An individual could also spend funds as described in the left side of the figure (e.g., as could a corporation or union). The 501(c) groups on the right side of the graph refer to social welfare organizations [(c)(4)s], unions [(c)(5)s], and trade associations (c)(6)s].

- Reporting obligations would also apply to electioneering communications (ECs), if applicable, although such a scenario appears unlikely for super PACs.
  - A corporation or union could provide administrative support to a connected PAC, but contributions must come from voluntary donations raised subject to FECA limits.
- Because super PACs are prohibited from coordinating their activities with campaigns, Congress might or might not feel that gathering additional information about super PACs’ independence is warranted. Whether or not super

PACs are sufficiently independent and whether their activities are tantamount to contributions could be subject to substantial debate and would likely depend on individual circumstances.

- Concerns about the potential for allegedly improper coordination between super PACs and the candidates they favor are a prominent aspect of the debate thus far, but some might contend that more coordination would benefit super PACs and candidates by permitting them to have a unified agenda and message. Candidate frustration with “outside” spending is not unique to super PACs. Indeed, uncoordinated activities by traditional PACs, parties, and interest groups are a common occurrence in federal elections, although some contend that super PACs make concerns about outside messages increasingly urgent.<sup>56</sup> Some observers contend that the ability to coordinate should, therefore, be increased. Others, however, warn that permitting more communication between outside groups and campaigns would facilitate circumventing limits on campaign contributions. If Congress wished to limit potential coordination between super PACs and candidates or parties, it could amend FECA to supersede the existing coordination standard, which is currently housed in FEC regulations and has long been complex and controversial.<sup>57</sup>
- It remains to be seen whether super PACs will compete with or complement other institutional actors in elections, particularly other entities that engage in independent expenditures, such as political parties. It is also unclear whether, over time, super PACs will primarily focus on multiple candidates or single candidates. Thus far, developments suggest that, as with other non-party groups, super PACs could both complement and threaten traditional parties. After the 2012 elections, for example, some observers blamed super PACs for exacerbating alleged divisions among Republicans, while others saw them as a resource to eliminate primary candidates that some political professionals viewed as insufficiently mainstream to win general elections.<sup>58</sup>
- Over time, some “traditional” PACs—not operating as super PACs—might be able to adapt some super PAC organizational characteristics. Specifically, in October 2011, the FEC announced that, in response to an agreement reached in a recent court case (*Carey v. FEC*<sup>59</sup>), the agency would permit *nonconnected* PACs—those that are unaffiliated with corporations or unions—to accept unlimited contributions for use in independent expenditures. The agency directed PACs choosing to do so to keep the IE contributions in a separate bank account

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<sup>56</sup> See, for example, Josh Boak, “Enter the Era of the Super PAC,” *Campaigns & Elections*, September 2011, online edition, <http://www.campaignsandelections.com/magazine/us-edition/257312/enter-the-era-of-super-pacs.thtml>. On campaign concerns about outside messages generally, see, for example, Michael John Burton and Daniel M. Shea. *Campaign Mode: Strategic Vision in Congressional Elections* (Lanham, MD: Rowman and Littlefield, 2003); (name redacted) *Campaign Crises: Detours on the Road to Congress* (Boulder, CO: Lynne Rienner Publishers, 2010); and *Dancing Without Partners: How Candidates, Parties, and Interest Groups Interact in the Presidential Campaign*, ed. David B. Magleby, J. Quin Monson, and Kelly D. Patterson (Lanham, MD: Rowman and Littlefield, 2007).

<sup>57</sup> The coordinated communication regulations are at 11 C.F.R. 109.21.

<sup>58</sup> See, for example, Eliza Newlin Carney, “Republican Super PAC War Splits the Party,” *Roll Call*, March 20, 2013, p 1.

<sup>59</sup> Civ. No. 11-259-RMC (D.D.C. 2011).

from the one used to make contributions to federal candidates.<sup>60</sup> As such, nonconnected PACs that want to raise unlimited sums for IEs are now able to create a separate bank account and meet additional reporting obligations rather than forming a separate super PAC. It remains to be seen how widely this practice will be adopted. Even if widespread, super PACs could continue to be an avenue for those other than nonconnected PACs (e.g., PACs connected to labor organizations or corporations, or groups of individuals) to engage in unlimited fundraising and spending on IEs.

### *Is Super PAC Activity Sufficiently Transparent?*

In addition to the organizational questions noted above—which may involve transparency concerns—Congress may be faced with examining whether enough information about super PACs is publicly available to meet the FECA goal of preventing real or apparent corruption.<sup>61</sup> The following points may be particularly relevant as Congress considers transparency surrounding super PACs.

- In the absence of additional reporting requirements, or perhaps amendments clarifying the FEC’s coordination<sup>62</sup> rules, determining the professional networks that drive super PACs will likely be left to the media or self-reporting. In particular, relationships between super PACs and possibly related entities, such as 527 and 501(c) organizations, generally cannot be widely or reliably established based on current reporting requirements.<sup>63</sup>
- As the **Appendix** notes, and as is the case with most political committees, assessing super PAC financial activities generally requires using multiple kinds of reports filed with the FEC. Depending on when those reports are filed, it can be difficult to summarize all super PAC spending affecting federal elections. Due to amended filings, data can change frequently. Reconciling IE reports with other reports (e.g., those filed after an election) can also be challenging and require technical expertise. Streamlining reporting for super PACs might have benefits of making data more available for regulators and researchers. On the other hand, some may argue that because super PAC activities are independent, their reporting obligations should be less than for political committees making or receiving contributions.
- Because super PACs (and other PACs) may file semi-annual reports during non-election years, information about potentially significant fundraising or spending activity might go publicly unreported for as long as six months. Consequently, some super PACs did not file detailed disclosure reports summarizing their 2011

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<sup>60</sup> Federal Election Commission, “FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account,” press release, October 5, 2011, <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

<sup>61</sup> For additional discussion of disclosure matters generally, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted).

<sup>62</sup> See, for example, 11 CFR §109.20-11 CFR §109.23.

<sup>63</sup> See, for example CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by (name redacted); Eliza Newlin Carney, “The Deregulated Campaign,” *CQ Weekly Report*, September 19, 2011, p. 1922; and Diane Freda, “Section 501(c)(4) Spending Expected to Hit New Records in 2012 Election,” *Daily Report for Executives*, vol. 180 (September 16, 2011), p. J-1.

activity until after the 2012 Iowa caucus and primaries in states such as New Hampshire, Florida, and South Carolina.

- Given the preceding points, a policy question for Congress may be whether the implications of the current reporting requirements represent “loopholes” that should be closed or whether existing requirements are sufficient.<sup>64</sup> If additional information is desired, Congress or the FEC could revisit campaign finance law or regulation to require greater clarity about financial transactions. As with disclosure generally, the decision to revisit specific reporting requirements will likely be affected by how much detail is deemed necessary to prevent corruption or accomplish other goals.

## Conclusion

Super PACs are only one element of modern campaigns. Regular media attention to super PACs might give an overstated impression of these organizations’ influence in federal elections. Nonetheless—and notwithstanding that much about the organizations remains to be seen—there appears to be no shortage of individuals and organizations eager to form these new political committees that can raise and spend unlimited sums supporting or opposing federal candidates.

Super PACs join other groups in American politics, such as parties and 527 organizations, that are legally separate from the candidates they support or oppose, but whom some regard as practically an extension of the campaign. Questions of super PAC independence were particularly relevant in 2012, as super PACs competed to elect or defeat congressional and presidential candidates. As with most campaign finance issues, whether Congress decides to take action on the super PAC issue, and how, will likely depend on the extent to which super PAC activities are viewed as an exercise in free speech by independent organizations versus thinly veiled extensions of individual campaigns.

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<sup>64</sup> Members of Congress have taken a variety of positions over the appropriate level of disclosure for political committees and other organizations in recent years. This is particularly true for what level of disclosure should be required for contributions to organizations making IEs or electioneering communications—perhaps most notably in recent years through the 111<sup>th</sup> Congress debate over the DISCLOSE Act. See CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by (name redacted), (name redacted), and (name redacted). In the 112<sup>th</sup> Congress, Representative Van Hollen filed a rulemaking petition with the FEC stating that the agency had improperly interpreted statute when writing regulations (11 C.F.R. §109.10(e)) that required disclosure of contributions supporting independent expenditures only if the contributions were made “for the purpose of furthering” the IEs. See Federal Election Commission, “Rulemaking Petition: Independent Expenditure Reporting,” 76 *Federal Register* 36000, June 21, 2011. As of this writing, the matter is unresolved.

## Appendix. Methodological Notes

The information about super PAC fundraising and spending contained in this report resulted from CRS analysis of FEC data. This appendix briefly discusses the methodology employed and notes caveats that may affect how the data are interpreted or replicated. Alternative approaches would likely yield different results. CRS consulted extensively with FEC staff about data matters.<sup>65</sup>

This report relies primarily on two data sources. Notes in the text, tables, and figures identify the data for each point of analysis. As explained in the text of the report, super PACs file at least two kinds of regular financial reports with the FEC: (1) monthly or semi-annual summaries of all fundraising and spending (FEC form 3X and schedule E<sup>66</sup>); and (2) 24- or 48-hour notices of independent expenditures (which may also be filed using schedule E). Because these reports cover different periods and are filed at different times, slight differences in fundraising and spending amounts are common. Reconciling the reports can be particularly challenging and time-consuming, and may be of limited utility because differences between the two are usually small.

For the overall fundraising and spending amounts discussed in the report, the analysis relies on summaries of total fundraising and spending (derived from the 3X filings) provided by the FEC for 2010, or as accessed from the FEC Committee Summary File for 2012. The analysis of spending supporting or opposing candidates comes from the independent expenditure (IE) reports, which provide the clearest statements of super PAC spending favoring one candidate or another and which are filed in real-time. Amended or duplicate filings may change the results if replicated in the future. Amended filings appear not to have been a major factor in the 2010 data. For 2012, CRS analyzed all IE filings and deleted filings that appeared to be superseded by amendments. Nonetheless, variation in campaign finance data is typical depending on the source, when the data were accessed, and how amendments were handled.

In the absence of additional reporting requirements, identifying super PACs currently requires the assumption that a super PAC has notified the FEC of its status by letter. To isolate super PAC spending on IEs, CRS accessed the entire 2010 and 2012 IE data files and selected those made by organizations that had notified the commission of their super PAC status.<sup>67</sup> Some cases of ambiguous organization names (e.g., various state-level chapters of a national organization or groups with similar names but different filing obligations) required consultation with FEC staff. It is possible that organizations that were excluded are, in fact, super PACs but filed reports incorrectly or not at all. Similarly, because data throughout the report rely on information reported to the FEC, an organization whose spending was too low to trigger disclosure requirements would not be reflected in the report. Therefore, the data exclude a presumably small amount of super PAC financial activity. Missing data might be exacerbated if a super PAC did not believe its activities required disclosure, or if, for example, it chose not to file until federal election law or regulations were amended to explicitly address super PACs.

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<sup>65</sup> In particular, this included FEC disclosure database analyst Paul Clark.

<sup>66</sup> Form 3X reports receipts and disbursements for entities other than authorized committees (e.g., PACs). Schedule E of form 3X reports itemized independent expenditures, including indications of support or opposition for specific candidates. Electronic versions of schedule E are known as Form 24.

<sup>67</sup> The remaining IEs were reported by entities such as traditional PACs, parties, or individuals.

For the analysis of spending on individual races, CRS standardized spellings of candidate names and the indicators for the districts or states in which they sought election. The total spending amounts and total IE amounts listed for the House and Senate races discussed are based on amounts from individual candidate reports contained on the FEC website, which CRS combined to yield totals for the entire race. These totals include primary and general election activity, and are listed as such on the FEC website.

CRS calculated the *avored Democrats* and *avored Republicans* amounts by totaling sums in IE reports listed as supporting or opposing candidates from each major party (e.g., *avored Democrats* includes expenditures reported as supporting Democrats or opposing Republicans). The *avored* measure arguably accounts for the overall effect of IE spending by examining both supportive and opposing messages that could benefit one candidate over another. The measure assumes that, for example, a negative message (reported as *oppose*) about a Republican candidate advantages the Democratic opponent. This would not be so in all cases (such as in IEs aired during primary contests). Overall, however, this approach may provide a more complete picture of super PAC activities than one that assumes advertising that supports or opposes one candidate has no effect on another.

This report does not attempt to assess the practical effect of these expenditures on individual candidates or to fully document their implications in individual races. As such, the spending discussed here should be regarded as one measure of super PAC activity, but not a comprehensive accounting of super PACs' electoral influence.

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