Chapter 6

Are Super PACs Arms of Political Parties? A Study of Coordination

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In just two election cycles, “super PACs” have become vehicles for the raising and spending of hundreds of millions of dollars for political campaigns, thanks to a pair of 2010 decisions by the federal courts, Citizens United v. Federal Election Commission and SpeechNOW.org v. Federal Election Commission. The federal courts have removed caps on donors’ contributions under the condition that super PACs would be “independent expenditure-only” committees, avoiding coordination of their activities with potential allies such as candidates or political parties. This change in campaign finance law raises the question of the nature of super PAC independence: Are super PACs only independent in a narrowly legal sense, or do they achieve functional independence as well? In other words, are super PACs actually extended arms of political parties, or do they work at cross-purposes with political parties a significant portion of the time? If the latter, is this evidence of a threat to the traditional role of political parties in campaigns and elections? This paper considers these questions in light of expenditure data from 2012 U. S. Senate contests.¹ The findings present a mixed picture: Coordination between super PACs and the two major political parties is apparent, but much more so among the Democratic Party and its super PAC allies. The Republican Party and its super PAC associates show much more evidence of acting at cross-purposes than functional coordination.
The Federal Election Commission (FEC) has issued a set of boundary lines that delineate what counts as an independent expenditure, and what should be tallied as a coordinated one. “When an individual or political committee pays for a communication that is coordinated with a candidate or party committee, the communication is considered an in-kind contribution to that candidate or party committee and is subject to the limits, prohibitions and reporting requirements of the federal campaign finance law,” according to the FEC. The regulation continues as follows:

In general, a payment for a communication is “coordinated” if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee or their agents, or a political party committee or its agents. 11 CFR 109.21. To be an “agent” of a candidate, candidate's committee or political party committee for the purposes of determining whether a communication is coordinated, a person must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that specific principal. Such activities would also result in a coordinated communication if carried out directly by the candidate, authorized committee staff or a political party official. 11 CFR 109.3(a) and (b).^2

The FEC has established a three-part test for determining whether a communication is coordinated, including payment and content. The third part of the FEC coordination test concerns conduct. A “coordinated expenditure” has taken place if a party or candidate

- suggests a particular communication to an independent expenditure-only committee;
- or becomes “materially involved” in decision-making regarding the makeup of the advertisement;
- or participates in “substantial discussions” regarding the communication;
- or uses the same vendor to produce the advertisement;
- or if a former employee of the candidate or party conveys relevant campaign information to the committee.

Satirists and scholars alike have noted that the FEC standards are not without loopholes.^3 In a paper on super PAC involvement in the recent elections, Farrar-Myers and Skinner argue that super PAC expenditures may meet the FEC’s standards for technical independence, yet still achieve