

## CANDIDATES & SUPER PACS: THE NEW MODEL IN 2016

By Brent Ferguson

### Introduction

As voters begin to assess presidential candidates ahead of the 2016 election, they'll face a new world in which ostensibly outside groups — which often have extremely close ties to the candidates, but are theoretically separate from them because they aren't "controlled" by the candidate and don't give their money directly to her campaign — could dominate political spending. That's because super PACs and other groups conceived after the 2010 *Citizens United* decision may raise money without limits, while candidates cannot. While many have understood that super PACs would make a significant impact on American elections, few could have predicted the speed with which they have evolved and moved to the center of our political system.<sup>1</sup>

The skyrocketing spending from these groups has left many concerned that elected officials work mainly for the big spenders that helped get them into office.<sup>2</sup> In cases like *Citizens United*, the U.S. Supreme Court has told us not to worry: outside spending cannot corrupt a candidate, the argument goes, because the candidate cannot control that spending — it's not in his control, he may not want it, or may not approve of the way it is spent. That argument is looking increasingly divorced from reality. This analysis will discuss several ways in

which presidential candidates in the 2016 cycle are engaging in even greater collaboration with super PACs and other outside groups, obliterating the distinction between candidates and "independent" organizations, which the Court has claimed is so important.

### Development of Super PACs

Unlimited outside spending is not a new phenomenon, but its volume and nature is in the midst of drastic change. Since 1976, the Supreme Court has said that individuals have a right to spend unlimited amounts as long as that spending is not given to or coordinated with a candidate. But until 2010, there was a \$5,000 limit on contributions to federal PACs, which, along with prohibitions on most corporate and union electioneering, effectively discouraged outside spending on the scale we see today. An appeals court ruling that year struck down the \$5,000 limit based on the reasoning of *Citizens United*, and the super PAC was born.

The 2016 election will be the fourth election since the genesis of super PACs. Each has seen novel uses of the powerful campaign spending vehicle. The rise in super PAC spending has been quite significant, but the more remarkable recent phenomenon is the decreasing separation between candidates and supportive super

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1. Nicholas Confessore & Eric Lichtblau, 'Campaigns Aren't Necessarily Campaigns in the Age of Super PACs', N.Y. TIMES, May 17, 2015, [http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?\\_r=0](http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?_r=0) ("With striking speed, the 2016 contenders are exploiting loopholes and regulatory gray areas to transform the way presidential campaigns are organized and paid for.")

2. In a recent New York Times poll, 84% of respondents said that money has "too much influence." Almost 80% said that independent spending should be limited. *Americans' Views on Money in Politics*, N.Y. TIMES, June 2, 2015, <http://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>.

PACs. The Supreme Court's conclusion in *Citizens United* allowed unlimited spending by corporations and unions, and rested on the premise that spending through outside groups was done separately from candidates, so there was no chance of bribery between candidate and spender. And as candidates continue to see that the hopelessly deadlocked Federal Election Commission (FEC) refuses to enforce the law, they have gone further and further toward ensuring that super PACs are not independent, but are the principal organ of their campaigns.

The transformation of super PACs into arms of candidates' campaign teams may well mean that elections are funded by even fewer donors, as candidates focus on raising money for their super PACs rather than in the \$5,400 chunks that can be given to their campaigns. Many worry that big donors will gain even more influence over policy, as contribution limits become meaningless, and candidates essentially get the direct benefit of unlimited donations from the country's wealthiest people and corporations through donations to groups that are nominally "independent" of the candidates, but in practice are closely aligned with their campaigns.

### How Candidates Are Using Super PACs and Other Groups This Election Cycle

Early reports show that super PACs and other outside groups are poised to play an unprecedented role in the 2016 election cycle. *The New York Times* reports that candidates are using affiliated groups "engineered to avoid fund-raising restrictions imposed on candidates and their parties after the Watergate scandal."<sup>3</sup> Here are six ways candidates are engaging with outside groups; some of these methods appear to be new, while some have previously been used in a limited fashion but are now commonplace among 2016 presidential contenders.

### (1) Presidential aspirants appear to be delaying their formal announcements to avoid following rules that apply to candidates:

There is significant media speculation that a few candidates have delayed declaring that they are running for President to avoid laws that prevent them from coordinating with and raising unlimited money for super PACs.<sup>4</sup> The theory is that if no candidacy has been declared, there can be no unlawful coordination between a candidate and an independent group. Jeb Bush has been at the center of the debate about this practice: though in May 2015 he said in a speech that he is "running for President in 2016," he corrected himself and has not yet announced his candidacy.<sup>5</sup> During the early months of 2015, Bush has raised tens of millions of dollars in unlimited contributions for his Right to Rise super PAC; if he were a candidate (and some say he is), Bush would not be permitted to ask for more than \$5,000 from super PAC donors.<sup>6</sup> Similarly, as reported by the Campaign Legal Center, Carly Fiorina set up a super PAC in 2014 that raised \$1.8 million. Though she visited Iowa and New Hampshire early in 2015 and "self-identified as a 'candidate,'" she did not officially announce her presidential bid until several months later.<sup>8</sup> Demonstrating how quickly this practice may catch on, it was recently reported that a prospective candidate for a U.S. Senate seat in Florida "has adopted the Bush model" and decided to delay announcing his candidacy until "meet[ing] with prospective donors via a newly minted super PAC."<sup>9</sup>

This apparently novel method of circumventing or possibly breaking the rules has not escaped the notice of government watchdog organizations. Democracy 21 and the Campaign Legal Center have filed complaints with the FEC against Jeb Bush, Martin O'Malley, Rick Santorum and Scott Walker,<sup>10</sup> saying that the four "must take the American people for fools — flying repeatedly to Iowa and New Hampshire to meet with party leaders and voters, hiring campaign staff, and raising millions of dollars from deep-pocketed mega

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3. Nicholas Confessore & Eric Lichtblau, 'Campaigns' Aren't Necessarily Campaigns in the Age of 'Super PACs', N.Y. TIMES, May 17, 2015, [http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?\\_r=0](http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?_r=0).

4. *Id.* ("Mr. Bush and several other contenders have delayed registering their campaigns with the Federal Election Commission, even as they travel the country, meet with voters, attend candidate forums and ask donors for money. That allows them — or so their representatives argue — to personally raise money for and coordinate spending with super PACs.")

5. Bush recently stated, "I'm running for president in 2016," then seemed to correct himself by saying "if I run" later in the sentence. Paul Blumenthal, *Jeb Bush Messes Up Charade Of Not Running For President*, HUFF. POST, May 13, 2015, [http://www.huffingtonpost.com/2015/05/13/jeb-bush-president\\_n\\_7278624.html](http://www.huffingtonpost.com/2015/05/13/jeb-bush-president_n_7278624.html).

6. FEC rules allow candidates to appear at super PAC fundraisers but they may only solicit contributions within the federal limits. See FEC Advisory Opinion 2011-12 (June 30, 2011). The Campaign Legal Center and Democracy 21 have written a letter to Attorney General Loretta Lynch arguing that Bush's fundraising is illegal because he is already legally a candidate. They have asked the Attorney General to appoint an independent Special Counsel to investigate Bush's super PAC. Letter from J. Gerald Hebert, & Fred Wertheimer to Loretta E. Lynch, U.S. Atty Gen. (May 27, 2015), available at <http://www.campaignlegalcenter.org/sites/default/files/Letter%20to%20DOJ%20re%20Bush%20Super%20PAC%20%28May%202015%29%20-%20FINAL.pdf>.

7. PAUL S. RYAN, CAMPAIGN LEGAL CTR., "TESTING THE WATERS" AND THE BIG LIE: HOW PROSPECTIVE PRESIDENTIAL CANDIDATES EVADE CANDIDATE CONTRIBUTION LIMITS WHILE THE FEC LOOKS THE OTHER WAY (2015), available at [http://www.campaignlegalcenter.org/sites/default/files/Testing\\_the\\_Waters\\_and\\_the\\_Big\\_Lie\\_2.19.15.pdf](http://www.campaignlegalcenter.org/sites/default/files/Testing_the_Waters_and_the_Big_Lie_2.19.15.pdf).

8. Jenna Johnson, *Carly Fiorina Begins Presidential Bid*, WASH. POST, May 4, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/05/04/carly-fiorina-expected-to-announce-run-for-president-monday/>.

9. Andrea Drusch, *Republican Candidate Adopts Jeb Bush Super-PAC Strategy for the Senate*, NAT'L J., May 19, 2015, <http://www.nationaljournal.com/politics/carlos-lopez-cantera-jeb-bush-super-pac-20150519>.

10. Martin O'Malley and Rick Santorum have now declared their candidacies for president, and most predict that Jeb Bush will announce in the next week.

donors, all the while denying that they are even ‘testing the waters’ of a presidential campaign.”<sup>11</sup> Yet given the FEC’s recent record of inaction, it seems unlikely the complaints will be fully investigated.

## (2) Several candidates’ top aides may be working for super PACs:

Candidates (declared and undeclared) have also seen their top-level aides leave to run supportive super PACs rather than staying to run the campaigns themselves. Historically, candidates’ advisers have rarely left a campaign to work for an outside group dedicated to supporting their former boss. In recent elections, some lower-level candidate aides began to work for super PACs, but “nobody of [this level of] prominence within their respective candidates’ circles has been dispatched from the beginning to run an outside group before.”<sup>12</sup>

Super PACs are supposed to be independent, and contributions to them less potentially corrupting because the candidate cannot control how their money is spent. But when top-level aides work for a super PAC instead of a candidate, there is a compelling argument that the group will lose whatever “independence” it may have had, essentially functioning as an arm of the campaign because of the aides’ familiarity with the candidate. And if they allow top advisers to work for a super PAC, candidates may be telling donors they should support that super PAC, and may reap the benefits of that support if the candidate is elected.

A recent story in *The Washington Post* indicated that a top campaign adviser to Hillary Clinton is planning to run a supportive super PAC in order “to send an unequivocal signal that Clinton wants donors to rally around the independent group.”<sup>13</sup> There are reports that Jeb Bush’s super PAC will

be run by a longtime aide even after Bush announces his candidacy.<sup>14</sup> One of Rand Paul’s closest advisers will run the main super PAC supporting his campaign, *The New York Times* reported.<sup>15</sup>

## (3) Candidates are fundraising for their preferred super PACs and other outside groups like never before:

Much more than in the 2012 presidential election, candidates and those likely to run are now raising money for super PACs that support them. Again, when a candidate decides to spend her time raising money for a super PAC, it may indicate the candidate has endorsed the group and therefore that contributions to the super PAC will earn donors the same access and influence as campaign contributions.

Sometimes the candidates ask for money directly (declared candidates are allowed to ask for up to \$5,000 under current law),<sup>16</sup> and sometimes they simply headline a super PAC fundraiser and allow the group to make the direct request for money. When Mitt Romney attended a super PAC fundraiser during his 2012 campaign, the decision to do so was controversial; now, such fundraising is commonplace for top-level candidates.<sup>17</sup> Ahead of a potential presidential announcement in June, Jeb Bush “has been rushing to fill the Right to Rise bank account,” with the goal of raising \$100 million by the end of May.<sup>18</sup> Before his announcement in late May, candidate George Pataki was the guest of honor at his super PAC’s dinner at which co-chairs were asked for \$250,000 donations.<sup>19</sup> And Wisconsin Gov. Scott Walker has raised over \$5 million for Our American Revival, which has made clear that Walker does not control the group, but is “simply working with [it] to advance a big, bold conservative reform agenda across the country.”<sup>20</sup>

11. Press Release, Campaign Legal Ctr., *FEC Complaints Against Presidential Hopefuls Show Widespread Violations, Total Disregard for Campaign Finance Law: They Must Take the American People for Fools*, (Mar. 31, 2015), <http://www.campaignlegalcenter.org/news/press-releases/fec-complaints-against-presidential-hopefuls-show-widespread-violations-total>. Bush was recently asked about the complaint in a television interview. He reaffirming that he was undecided and said he “would never” break the law. Kyle Balluck, *Bush Rejects Accusations of Election Law Violations*, THE HILL, May 31, 2015, <http://thehill.com/blogs/ballot-box/presidential-races/243544-bush-dismisses-accusations-of-election-law-violations>.
12. Jim Rutenberg, *The Next Era of Campaign-Finance Crazyism Is Already Underway*, N.Y. TIMES, Apr. 21, 2015, <http://www.nytimes.com/2015/04/21/magazine/the-next-era-of-campaign-finance-crazyism-is-already-underway.html?ref=topics&r=1>.
13. Matea Gold, *Guy Cecil in Talks to Join Pro-Clinton Super PAC, Reducing Jim Messinas’ Role*, WASH. POST, May 1, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/05/01/guy-cecil-in-talks-to-join-pro-clinton-super-pac-reducing-jim-messinas-role/?postshare=7091430515191682>.
14. Maggie Haberman & Jonathan Martin, *Hints and Whispers Preceded Changes in Jeb Bush’s Team*, N.Y. TIMES, June 8, 2015, <http://www.nytimes.com/politics/first-draft/2015/06/08/hints-and-whispers-preceded-changes-in-jeb-bushs-team/>; Thomas Beaumont, *Jeb Bush Prepares to Give Traditional Campaign a Makeover*, AP, Apr. 21, 2015, <http://bigstory.ap.org/article/409837aa09ee405493ad64a94b8c2c3d/bush-preparing-delegate-many-campaign-tasks-super-pac>.
15. Jim Rutenberg, *The Next Era of Campaign-Finance Crazyism Is Already Underway*, N.Y. TIMES, Apr. 21, 2015, <http://www.nytimes.com/2015/04/21/magazine/the-next-era-of-campaign-finance-crazyism-is-already-underway.html?ref=topics&r=1>.
16. See, e.g., MJ Lee, *Clinton’s Super PAC Fundraising Irks Progressives*, CNN POLITICS, May 18, 2015, <http://www.cnn.com/2015/05/18/politics/hillary-clinton-super-pac-election-2016/> (“Hillary Clinton’s decision to personally raise money for a super PAC supporting her campaign is agitating her progressive critics.”); Evan Halper, *Hillary Clinton’s Use of ‘Super PAC’ May Undercut Her Finance Reform Message*, L.A. TIMES, May 7, 2015, <http://www.latimes.com/nation/politics/politicsnow/la-pn-hillary-clinton-fundraisers-california-20150507-story.html>.
17. Nicholas Confessore & Eric Lichtblau, *‘Campaigns’ Aren’t Necessarily Campaigns in the Age of ‘Super PACs’*, N.Y. TIMES, May 17, 2015, [http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?\\_r=0](http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?_r=0).
18. Alex Isenstadt, *Jeb Bush’s \$100M May*, POLITICO, May 8, 2015, <http://www.politico.com/story/2015/05/jeb-bush-right-to-rise-super-pac-campaign-117753.html>.
19. Matea Gold, *Why super PACs Have Moved From Sideshow to Center Stage for Presidential Hopefuls*, WASH. POST, Mar. 12, 2015, [http://www.washingtonpost.com/politics/once-the-sideshows-super-pacs-now-at-the-forefront-of-presidential-runs/2015/03/12/516d371c-c777-11e4-a199-6cb5e63819d2\\_story.html](http://www.washingtonpost.com/politics/once-the-sideshows-super-pacs-now-at-the-forefront-of-presidential-runs/2015/03/12/516d371c-c777-11e4-a199-6cb5e63819d2_story.html).
20. Nicholas Confessore & Eric Lichtblau, *‘Campaigns’ Aren’t Necessarily Campaigns in the Age of ‘Super PACs’*, N.Y. TIMES, May 17, 2015, [http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?\\_r=0](http://www.nytimes.com/2015/05/18/us/politics/super-pacs-are-remaking-16-campaigns-official-or-not.html?_r=0); Erin McPike, *Scott Walker PAC: Jeb Bush is Not the Only One Who Can Raise Money*, CNN POLITICS, Mar. 16, 2015, <http://www.cnn.com/2015/03/16/politics/scott-walker-pac-donors-bundlers/>.

#### **(4) Candidates are benefitting from a new species of dark money group with very close ties to the candidates and their super PACs:**

Further, candidates in this election cycle will likely benefit more from groups other than super PACs, such as nonprofits that do not need to disclose their donors. Such groups, usually organized under sections 501(c)(4)-(6) of the tax code, have played a role in previous elections, but until now, most of the top-spending dark money groups have not been associated with a single candidate.<sup>21</sup>

Yet as *The Wall Street Journal* reports “[w]hat’s different this time is the number of presidential hopefuls who are getting their own 501(c)(4) groups, and the degree to which the groups are taking hold so early in the cycle.”<sup>22</sup> Marco Rubio’s campaign has made news because a group affiliated with his super PAC “commissioned a political research book on early-state primary voters last year.”<sup>23</sup> Though a spokesman has said that the nonprofit focuses on “issue education,” it was established by the head of Rubio’s super PAC, and the research book was drafted by a firm that was recently paid \$200,000 by Rubio’s leadership PAC. According to the *National Journal*, “[e]lements of the book seem tailor-made to aid a Rubio presidential campaign in particular.”<sup>24</sup> Jeb Bush also “has moved to shift costs like policy research and voter data maintenance to nonprofits that are formally independent of [his] campaign efforts.”<sup>25</sup>

#### **(5) Super PACs may be expressly coordinating with candidates and relying on a questionable exception to justify it:**

At least one super PAC has stated its intention to fully coordinate with a candidate, but avoid regulation by distributing unpaid online communications. That group, called Correct the Record, has announced plans to fully

coordinate its efforts with Hillary Clinton’s campaign, including by using the same law firm as Clinton, saying its actions are legal because it will engage in unpaid online communications, “disseminating information about Clinton on its Web site and through its Facebook and Twitter accounts.”<sup>26</sup> Again, this raises concerns for those who are worried that the line between supposedly independent super PACs and candidates is getting too fuzzy: when a group can coordinate its message with a candidate, is it really independent? What use are contribution limits to candidates if there is a group that can accept unlimited contributions and then work with the candidate to produce communications on his behalf?

#### **(6) Candidates are using outside groups to serve basic campaign functions, not just to buy television and mail advertisements:**

As candidates become ever closer to the super PACs that support them, super PACs are broadening their functions. In the 2012 presidential election, super PAC spending focused on television and mail advertisements, leaving grassroots and voter turnout efforts to campaigns and parties. For example, the main super PAC supporting Mitt Romney spent almost 98 percent of its \$142 million in independent expenditures on broadcast and mail advertising.<sup>27</sup> This means that candidates may be indebted to super PAC donors for more than just attack ads — they may come to rely on them for running viable campaigns. This year, there has been “an expansion not just of super PAC fundraising but of the PACs’ responsibilities,” marking a “big shift from four years ago.”<sup>28</sup> The director of Carly Fiorina’s super PAC has explained that the group will “engage in recruiting and activating volunteers, contacting voters and even handling rapid response in the event that Mrs. Fiorina is attacked by the press or fellow candidates.”<sup>29</sup> Similarly, the super PAC supporting

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21. In the 11 most competitive Senate races from 2014, the top outside spenders were mostly super PACs and dark money groups that spent on multiple races. Of the 20 top non-candidate spenders in those races, only one group (Kentucky Opportunity Coalition) was a single-candidate dark money group. IAN VANDEWALKER, BRENNAN CTR. FOR JUSTICE, OUTSIDE SPENDING AND DARK MONEY IN TOSS-UP SENATE RACES POST-ELECTION UPDATE (2015), [http://www.brennancenter.org/sites/default/files/blog/Post\\_Election\\_Spending.pdf](http://www.brennancenter.org/sites/default/files/blog/Post_Election_Spending.pdf).

22. John D. McKinnon, *Tax-Exempt Groups Give 2016 Hopefuls a Boost*, WALL ST. J., June 8, 2015, <http://www.wsj.com/articles/tax-exempt-groups-give-2016-hopefuls-a-boost-1433802587>.

23. Scott Bland, *Secret-Money Group Tied to Marco Rubio Super PAC Has Been Researching Presidential Primary Voters*, NAT’L J., Apr. 10, 2015, <http://www.nationaljournal.com/2016-elections/secret-money-group-tied-to-marco-rubio-super-pac-has-been-researching-presidential-primary-voters-20150410>.

24. *Id.*

25. Maggie Haberman & Nicholas Confessore, *Hillary Clinton Embraces a ‘Super PAC,’ Trying to Erode a Republican Edge*, N.Y. TIMES, May 6, 2015, [http://www.nytimes.com/2015/05/07/us/politics/hillary-clinton-to-court-donors-for-super-pac.html?\\_r=1](http://www.nytimes.com/2015/05/07/us/politics/hillary-clinton-to-court-donors-for-super-pac.html?_r=1).

26. Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton’s Campaign*, WASH. POST, May 12, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clinton-campaign/>; Press Release, Correct the Record, Correct The Record Launches as New Pro-Clinton SuperPAC (May 12, 2015), <http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/> (“Correct The Record, though a SuperPac, will not be engaged in paid media and thus will be allowed to coordinate with campaigns and Party Committees.”); Peter Overby, *‘Candidates’ Driving Cash-Filled Trucks Through Campaign-Finance Loopholes*, NPR POLITICS, May 15, 2015, <http://www.npr.org/sections/itsallpolitics/2015/05/15/407005810/candidates-driving-cash-filled-trucks-through-campaign-finance-loopholes>; Jennifer Epstein, *Is New Hillary Clinton Super-PAC Pushing Legal Boundaries?*, BLOOMBERG POLITICS, May 12, 2015, <http://www.bloomberg.com/politics/articles/2015-05-13/is-new-hillary-clinton-super-pac-pushing-legal-boundaries>.

27. Derek Willis, *Super PACs Are Gobbling Up Even More Power, Jeb Bush Edition*, N.Y. TIMES, Apr. 21, 2015, [http://www.nytimes.com/2015/04/22/upshot/super-pacs-gobbling-up-even-more-power-jeb-bush-edition.html?\\_r=0&abt=0002&abg=1](http://www.nytimes.com/2015/04/22/upshot/super-pacs-gobbling-up-even-more-power-jeb-bush-edition.html?_r=0&abt=0002&abg=1).

28. Reid Epstein & Rebecca Ballhaus, *Roles of Presidential Super PACs Expanding*, WALL ST. J., Apr. 30, 2015, <http://www.wsj.com/articles/roles-of-presidential-super-pacs-expanding-1430437766>.

29. Presumably, all of these actions will take place separately from the Fiorina campaign.

Ben Carson's campaign will likely seek to improve voter turnout among groups that have not traditionally voted in Republican primary elections, according to *The Wall Street Journal*.<sup>30</sup>

## The Future, and What Can Be Done

On top of the Supreme Court's decisions limiting government's power to reduce the influence of money in politics, lack of enforcement is allowing candidates to collaborate closely with super PACs and dark money groups. The past few election cycles have shown that the trend is likely to continue: outside groups will raise and spend more money and work even more closely with campaigns. Unless something changes, super PACs and associated dark money nonprofits could very well take the lion's share of campaign responsibilities, essentially functioning in the way campaigns formerly functioned. Good-government advocates are concerned that when mega-donors can give to groups tied closely to candidates, those donors will get preferential treatment after the election, through tax breaks and other laws that help the specific donors or their industry.

Many view the proliferation of candidate-controlled super PACs as intractable,<sup>31</sup> but there is no reason to throw in the towel, even if the Supreme Court does not quickly overrule its decisions that have unleashed unlimited spending. As the Brennan Center showed in a report issued last fall about state-level candidates coordinating with super PACs,<sup>32</sup> common-sense rules and enforcement can prevent many of the practices discussed above, such as candidates fundraising for super PACs and candidates' staffers being dispatched to work for outside groups.

First, either Congress or the FEC should improve rules concerning collaboration and overlap between candidates' campaigns and super PACs. As some states have already done, federal law could (a) prevent candidates from fundraising for super PACs that will support them; (b) prevent candidates' staffers from working for a super PAC during the same election cycle they work for a candidate; and (c) ensure that candidates and super PACs do not share information by using the same vendors or consultants. While federal law already partially targets these areas, the current regulations are too narrow. States like California and Connecticut have seen that proper rules prevent candidates and outside groups from collaborating with impunity.

Yet even better laws will not succeed if they go unenforced. The FEC has a dismal enforcement record in past election cycles and has thus far failed to address possible violations this cycle. Some have called for the Department of Justice (DOJ) to increase its enforcement efforts due to the FEC's inaction.<sup>33</sup> It's true that robust DOJ enforcement may curb some of the worst abuses through criminal prosecution, but its efforts cannot "substitute for competent and active civil enforcement" by the agency dedicated to administering the federal campaign system.<sup>34</sup>

The 2016 candidates are using super PACs like never before. Unfortunately, it's no surprise our leaders have done nothing to stop them: Congress and the FEC have consistently failed to act while the current system has been dismantled. Until that changes, we will continue to see politicians push the envelope, moving our elections further and further toward an elite bastion of funders and away from everyday Americans.

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30. Reid Epstein & Rebecca Ballhaus, *Roles of Presidential Super PACs Expanding*, WALL ST. J., Apr. 30, 2015, <http://www.wsj.com/articles/roles-of-presidential-super-pacs-expanding-1430437766>.

31. In a recent New York Times poll, 58% of respondents said they were "pessimistic that changes will be made to improve the way political campaigns are funded in the United States." *Americans' Views on Money in Politics*, N.Y. TIMES, June 2, 2015, <http://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>.

32. CHISUN LEE, BRENT FERGUSON, & DAVID EARLEY, BRENNAN CTR. FOR JUSTICE, *AFTER CITIZENS UNITED: THE STORY IN THE STATES* (2015), available at <https://www.brennancenter.org/publication/after-citizens-united-story-states>.

33. Letter from J. Gerald Hebert, & Fred Wertheimer to Loretta E. Lynch, U.S. At'y Gen. (May 27, 2015), available at <http://www.campaignlegalcenter.org/sites/default/files/Letter%20to%20DOJ%20re%20Bush%20Super%20PAC%20%28May%202015%29%20-%20FINAL.pdf>.

34. Zoë Carpenter, *Will Jeb Bush Get Away With His 'Scheme' to Skirt Campaign Finance Rules?*, THE NATION, May 27, 2015, <http://www.thenation.com/blog/208353/will-jeb-bush-get-away-his-scheme-skirt-campaign-finance-rules#>.

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All three of these candidates have leadership PACs; many of the nominally independent outside groups are also 501(c)(3) and/or 501(c)(4) organizations, which are legally distinct from 527 organizations (which themselves have many variations). Many campaigns are using at two or three or four legal entities for fundraising; some campaigns, such as those of Ben Carson, Ted Cruz, and Rick Perry, are utilizing multiple fundraising vehicles of the same (legal) category, to permit donors more fine-grained control over how their money is utilized.Â ^ "Candidates & Super PACs: The New Model in 2016 â€" Brennan Center for Justice". ^ a b c d "Revenge of Citizens United". POLITICO.