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**Civics 101**

**Episode 94: Super PACs**

**Virginia Prescott:** [00:00:23] I'm Virginia Prescott and this is Civics 101. The pod cast refresher course on the basics of American democracy. Political campaigns cost money. Lots of money. And the more you've got the more likely you are to be seen and heard by voters. A new player in campaign finance launched in 2010: the super PAC. These groups raise hundreds of millions to support candidates, while raising outrage from critics. So how do super PACs work and why are they so controversial? To find out we are asking Dante Scala. He's associate professor of political science and a fellow at the Carsey Center for Public Policy at the University of New Hampshire. Dante so great to have you in the studio.

**Dante Scala:** [00:01:03] Thank you very much. Thanks for coming in.

**Virginia Prescott:** [00:01:05] Before we get to a super PAC, what's a PAC?

**Dante Scala:** [00:01:08] So a PAC is a political action committee and that's a popular term for a committee that is organized and established in order to raise and spend money to elect candidates or perhaps to defeat candidates. They've been around for about seven decades. If you can go back to the first PAC which was established by a labor union to work for the re-election of Franklin Delano Roosevelt.

[00:01:41] And so the PAC is really a work around around federal law because the labor union wanted to be careful not to violate federal law which did not allow unions to contribute directly to federal candidates. So the union wanted to support FDR but couldn't do it directly. So what do they do. They create this committee or PAC and they essentially take the money which is donated by say individual union members as opposed to the corporate union treasury itself and those members would contribute money into a bank account that was separate from say the union treasury. So that was the beginning of the political action committee. And they've been in existence ever since.

**Virginia Prescott:** [00:02:29] You said that was a workaround. So what are the kind of rules for PACs? You know how much money can a PAC accept or use for a campaign? How much of a candidate's campaign can come from PACs?

**Dante Scala:** [00:02:39] So currently a political action committee can receive up to five thousand dollars from say an individual in a given calendar year. Now there is no aggregate limit on how much they can raise or how much they can spend. But there are those individual limits. Also there are limits on how much a PAC can donate like they can donate for example again. Five thousand dollars to a candidate committee for a given election. They can also give more money. Fifteen thousand dollars say to a national party committee they could even donate to another PAC if they wish to. But the key thing about a PAC which keeps them from being super is that limit on how much an individual can donate and then how much that PAC can can accept from an individual.

**Virginia Prescott:** [00:03:40] OK so we're supersizing this now, we've got this super PAC. What exactly is a super PAC?

**Dante Scala:** [00:03:47] So a super PAC is one not a technical term used by say the Federal Election Commission. It was basically a journalist's invention that captured the idea but in some ways it's a different sort of animal entirely from a PAC.

[00:04:03] The difference between a Super PAC and PAC is that a super PAC can accept unlimited sums of money from a corporation, from a union, from some type of association, or even an individual. So they can raise unlimited sums of money from those places and then they can also spend unlimited sums of money to advocate for or against a political candidate.

[00:04:33] And basically they can do all that as long as they follow two rules. Number one a super PAC cannot donate money directly to a candidate and then two, and this gets rather murky rather quickly, the super PACs spending cannot be quote unquote coordinated with the candidate that they're trying to benefit.

[00:04:59] So as long as super PACs follow those two rules they can raise and spend unlimited amounts of money.

[00:05:08] Now important to note super PACs often are depicted as being outside groups and outside the political party structure. But it's probably better to understand it as, there is a connection there. Super PACs tend to be quite partisan. Better to understand them as being part of the political party structure, not the formal structure, but the informal party network.

**Virginia Prescott:** [00:05:32] I'd love to work through an example of that. First, can anyone create a SuperPAC?

**Dante Scala:** [00:05:36] Yes as long as you're willing to do the requisite paperwork and file it and so forth with the federal government anyone can create a super PAC. A few years ago a high school junior and a couple of his pals decided on a lark to create a super PAC. They filled out the paperwork and lo and behold the FEC contacted them some weeks later about one point or another about their super PAC and then they forsook the whole thing. The comedian Stephen Colbert created his own super PAC. It was called Americans for a better tomorrow, tomorrow. And and he did that of course you know to highlight what he saw as the absurdity of the campaign finance structure in the United States. But again anyone can create it.

**Virginia Prescott:** [00:06:34] OK. I have a million dollars, right. I think the BLT should be established as America's official sandwich. And I start the All Americans for the Most American BLT. What can I do to further my sandwich agenda? I can't give money directly to a candidate's campaign, correct?

**Dante Scala:** [00:06:56] You cannot.

**Virginia Prescott:** [00:06:57] OK. But can I run ads or make phone calls or send out mailers for a candidate as the the BLT PAC?

**Dante Scala:** [00:07:08] Right. So you as an individual could only give you know several thousand dollars to say a pro BLT candidate you want to support and let's say you want to do more. You can go and create say a direct mail campaign and you can shower the voters of the first congressional district with pro BLT candidate mailers and you can run television ads on behalf of that candidate you can set up a phone bank on behalf of that candidate.

[00:07:41] You could put together a volunteer organization to go door to door on behalf of that candidate as long as there is that separability or lack of coordination between your organization your pro BLT Super PAC and that candidate you're supporting. There's all sorts of campaign type activities that you can do that for the voter receiving the mail piece or the the door piece is indistinguishable.

**Virginia Prescott:** [00:08:11] Right. They don't see anything. Does the FEC require me to say "paid for by Americans for a better BLT tomorrow" or something?

**Dante Scala:** [00:08:20] There has to be some disclosure. Of course like in a mailing piece you have to be examining it with a magnifying glass to figure out where the money is coming from.

**Virginia Prescott:** [00:08:32] Can I help facilitate travel or speaking engagements for a candidate?

**Dante Scala:** [00:08:36] Let's say your pro-BLT candidate is running for Congress. That candidate can attend one of your fundraisers. That candidate can speak at the fundraiser. The candidate can be a featured guest. So you know all the invitations that you're sending out to people who you want to donate to your super PAC can say pro BLT candidate Smith is going to appear at this event.

[00:09:03] All of that can happen on behalf of the super PAC as long as the candidate herself is raising a limited amount of money. OK. So the candidate has to follow the old rules of the game but that doesn't prohibit someone from your super PAC say soliciting a donor who's just met the pro-BLT candidate and that donor wants to do more than just write a check to the candidate. There's no reason a superPAC official couldn't go to that donor and say, Would you like to do more? You can contribute to our super PAC and spend an additional say hundred thousand dollars, that both the donor and the superPAC know will go on behalf of that candidate.

**Virginia Prescott:** [00:09:46] All right, does my super PAC have to disclose the source of its funding you know say like my friend Oscar Meyer says oh I'll donate a million more dollars. Do I have to disclose that to the public?

**Dante Scala:** [00:09:56] Yes. If an individual donates to a super PAC that say you know Mr. Meyer donates to the super PAC that does have to be disclosed in FEC Federal Election Commission documents and it becomes public and so forth.

**Virginia Prescott:** [00:10:13] But would Oscar Meyer as a corporation have to be disclosed if they gave a million dollars?

**Dante Scala:** [00:10:19] Here's where it gets a bit murkier. So yes and no. Chances are what the corporation will do and what what we've seen so far when Citizens United debuted from the Supreme Court back in 2010 there was all sorts of concern about, corporations themselves are going to wade into politics. That hasn't happened the way we might think. You know we don't see Target say advertising for congressional candidates and so forth because you know the reason for that is it tends to be bad for business. Target doesn't want to alienate one political tribe or another especially these days.

[00:10:56] But what an individual or even organization could do, in order to avoid transparency, is donate to what are so-called dark money groups and these are technically known as 501 c organizations. And they're often described as nonprofit groups you know groups that are in existence to contribute to the social welfare that sort of thing. And so they are under federal law. Don't have to disclose their donors as long as they remain say a social welfare group as opposed to an overtly political group.

[00:11:34] So they can spend some money on politics but not all of their money on politics. So as long as they stay within the boundaries, that individual, let's say Mr. Meyer wants to contribute but doesn't want to disclose. So the individual Mr. Meyer gives to the 501 c, the 501 c can turn around and donate that money to the BLT super PAC. And so that's another way that money can be funneled in a way that avoids transparency.

[00:12:03] And this is where you know you go back to the logic of the Supreme Court majority back in Citizens United. That idea was well as long as there is disclosure, some of the Justices thought, as long as there's disclosure what's the harm in allowing individuals to donate large amounts of money? Isn't that basically an exercise of free speech as long as there is disclosure? Now the difficulty now is we have individuals contributing large large large amounts of money without disclosure. And that's where people get very nervous because you have large amounts of money changing hands and no one can follow at least not very easily.

**Virginia Prescott:** [00:12:45] Let's just clarify though you mentioned the 2010 decision Citizens United. Is that the sort of dawn of the super PAC?

**Dante Scala:** [00:12:53] It's part of the dawn. It's usually the one that gets the most attention right in part because Democrats and Barack Obama himself when he was president focused on Citizens United.

[00:13:03] But it's only part of the equation. So the Citizens United case, Supreme Court says there are no limits on corporations making independent expenditures. It's unconstitutional. So corporations and unions can now spend directly in federal elections.

[00:13:20] There was a second federal court decision that took place below the Supreme Court level, at the appeals court level, that was also important. It was called the Speech Now dot org decision and that removed the cap on how much an individual donor could contribute to an independent expenditure group. And later that year the FEC the Federal Election Commission which again is the federal agency that oversees campaign finance regulations basically said well here's how we interpret the Speech Now ruling. If you're a political committee, if you're a corporation, if you're a union, you can make an unlimited contribution to a super PAC or as it's technically known an independent expenditure only committee.

[00:14:08] So to understand the super PAC it's those two cases together that paved the way for what we have now.

**Virginia Prescott:** [00:14:15] And how much money we're talking about Dante, like how much money spent on super PACs in just election 2016?

**Dante Scala:** [00:14:24] Yeah so in 2016 I mean we saw that outside groups not formally connected to a political party spent more than 1.4 billion dollars. And that's you know all the races you know presidential races as well as say congressional races and that is up from about 1 billion dollars in 2012. And again these are the super PACs plus the 501 c so-called dark money organizations all working together. So there's a lot of money spent by these groups.

**Virginia Prescott:** [00:14:58] So these watchdog groups like Open Secrets and you mentioned people feared that Citizens United opened the door for corporate money to go in and influence elections. What about the case for super PACs. What's behind the reason that we have them and that it is OK?

**Dante Scala:** [00:15:15] A big part of the defense of super PACs is a defense of free speech and that goes back to the simple definition that spending money is equal to free speech and that if you tell a donor that you can only spend a thousand dollars on behalf of pro BLT candidates that if you prevent them from spending more of their money that you're essentially restricting their free speech rights.

**Virginia Prescott:** [00:15:48] Has the super PAC changed our electoral system or the way we do elections?

[00:15:53] It has allowed big donors, the very wealthy, to have even more of an impact on races because what we find with super PAC funding is that a disproportionate amount comes from a very small number of people.

[00:16:13] A lot of super PACs are essentially, though, extensions of campaigns themselves. You know there are more ideological super PACs like Club for Growth for example on the conservative side. But a lot of super PACs really you know they haven't had necessarily the disruptive influence in terms of overturning the way that candidates do business.

[00:16:36] Now they've given candidates an even easier way though to raise lots and lots of money relatively quickly. One could argue that has had something of a level playing field effect, like say in the presidential primary for example New Hampshire Public Radio did some good reporting on say the candidacy of Carly Fiorina, who is a Republican running in a very crowded field. She wasn't very well funded compared to others. And in a previous generation Carly Fiorina had to go to lots and lots of individual donors and collect a few thousand dollars apiece, that takes a long time to raise significant money.

[00:17:17] Now with a super PAC that Fiorina had she was able to get a lot of money from a relatively few people which freed her up to pursue other campaign activities. So one effect of super PACs, intended or unintended, has made it easier for candidates to do business.

[00:17:37] Now some people would argue that this has weakened political parties and that perhaps what Super PACs have done have made candidates even less tied to political parties than they used to be and maybe we need more control for our democracy to work.