

HOW THE CITIZENS UNITED DECISION WILL AFFECT SOCIAL MEDIA IN THE 2012 PRESIDENTIAL ELECTION

October 2011

Cara Bloom

ABSTRACT

The *Citizens United v. Federal Election Commission* decision will create an exponentially greater demand for social media advertising in the 2012 election. Super PACs will become more ubiquitous across all levels of elections – presidential to local – to take advantage of the influx of funds. Profit maximizing social media sites are working to make it easier for Super PACs to advertise on their platforms and to do it without the many disclaimers required for TV advertising. The effect of decision will be an increase in social media advertising across all platforms. In addition, because small size of social media ads and the greater Super PAC funding, voters will have more trouble discovering where the ad is coming from and the purpose of that organization.

The unlimited spending on political campaigns legalized by the *Citizens United v. Federal Election Commission* decision will increase the amount of social media political advertisements as well as decrease visibility of the advertisements' purchasers, namely Super PACs. Political Action Committees can now receive unrestricted amounts from corporations and unions to use on political advertising. The increased funding will raise both the price and quantity of ads in the social media market, based on both an increased demand for advertising space and the inherent scarcity of space that exists even though new social media sites are now allowing political ads. Twitter will join Facebook and Google in the political advertising sphere where the latter two have been petitioning the FEC to allow small advertisements to appear without disclaimers stating the organization that paid for the ad or that organization's website. Disclaimers help voters to make educated decisions about the legitimacy of the advertisement, though even disclaimers that link to PAC websites can be unhelpful as it is often difficult to find who the PAC supports. The trend is moving towards a political atmosphere where each national politician will be supported by a PAC or PACs, allowing issue and party aligned PACs to take a larger role in local elections where social media advertising can have large effect on the outcome of an election, ultimately changing the way all politicians – local, state, or national – raise money for advertisements.

Corporations and unions are still precluded from donating large amounts directly to political campaigns, but they may now donate unlimited sums to Super PACs for use in both negative and supportive political advertisements.¹ Because the ads are not directly run by the campaign but by sympathetic PACs, the Federal Election Commission is now considering if candidates can work directly with the PACs on advertisements. These advertisements would be limited in ways that the candidates' ads are not: they cannot specifically advocate a candidate or air ads three months before a congressional election and four months before a presidential election, though Super PACS are finding loopholes to subvert these specifications.² The FEC recognizes the power of advertising and of money in advertising, making this law unlikely to pass by the 2012 election.³

Unbound non-profit Super PACs are the main result of the *Citizens United* ruling. Like Traditional Political Action Committees, Super PACs must report their donors to the FEC on a monthly or quarterly basis, however, unlike PACs, they cannot use these funds to donate directly to a political candidate. This does not stop the Super PACs from openly supporting a specific candidate; the conservative Super PAC "Make Us Great Again" has spent almost

¹ "Citizens United v. FEC: Corporate Political Speech." *Harvard Law Review* 124.1 (2010): 75-83. Print.

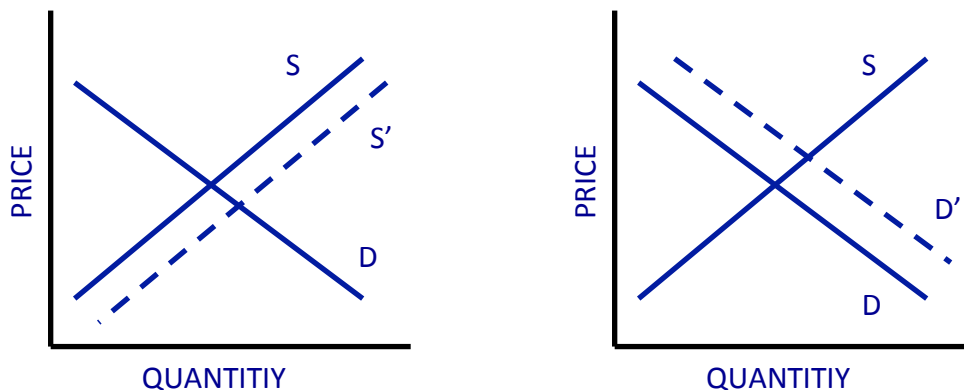
² Roarty, Alex. "Citizens United's Reshaping of the 2012 Election." *National Journal*[Washington] 27 Oct. 2011. Web.

³ Federal Election Commission. *Federal Registrar: Proposed Rules*. By LaTanya R. Butler. 198th ed. Vol. 76. 13 Oct. 2011. Web.

\$1.5 million to aid the campaign of Republican Rick Perry, making it the top spender so far in this election. By December 11th of this 2011 the 250 Super PACs had already raised \$8.5 million for the upcoming presidential election.⁴

In the 2010 Midterm elections outside groups spent \$300 million yet the well-known Super PAC American Crossroads – just one out of hundreds of PACs and non-profit 501(c)s preparing for the 2012 election – has a fundraising goal of \$240 million to aid conservative candidates⁵ and Restore Our Future a Super PAC will air a three million dollar ad campaign in Iowa alone to support candidate Mitt Romney.⁶ With the new funding model Super PACs can take advantage of, corporations and unions have been unchained from traditional limitations. Though each presidential election has had greater funding than the previous for the last hundred years, by looking at the PACs' predictions for the upcoming election it can be predicted that the increase in political spending will not be linear with those of years past but exponentially greater.

Because there will be more money in the political advertising business, there will be far more ads in this election than in years past, changing the online advertising economy. With the increase in the supply of donations to the PAC funding market (shown below left), the demand for advertisements (shown below right) will increase, causing the quantity of advertising to rise. To accommodate the increase in the number of ads as well as their adjusted prices, new markets are opening up across the web. Twitter recently announced that it will begin selling political ads on its site as “promoted tweets.”⁷ Though new sites are opening to political advertisements decreases the scarcity of space, the price of ads continues to rise, suggesting a much larger increase in demand for advertisements.



⁴ "Super PACs." *Center for Responsive Politics*. 15 Dec. 2011. Web. <www.opensecrets.org>.

⁵ Roarty, Alex. "Citizens United's Reshaping of the 2012 Election." *National Journal*[Washington] 27 Oct. 2011. Web.

⁶ Geiger, Kim. "Pro-Romney 'super PAC' Launches \$3.1 Million Ad Campaign." *Chicago Tribune*. Tribune Newspaper, 9 Dec. 2011. Web.

⁷ Byers, Dylan. "Twitter to Launch Political Ads." *Adweek*. 21 Sept. 2011. Web.

The cost of displaying an ad on Facebook increased by 45% and the click through cost increased by 74% during the last year in America, France, Great Britain, and Germany and the price increases are accelerating.⁸ Because the price of each individual advertising campaign is determined by bidding on the price of a click or display, this price increase is not yet true for all ads. Individual ads have individual prices so the surplus of money in the political advertising sphere – while increasing the quantity and price of political ads substantially – will decrease the ad space for other types of ads. This scarcity of space will indirectly increase the price of other ads, causing the price to increase across the entire market.

The quantity, price, and effectiveness of political advertising are all increasing at the national level, however these increases will disproportionately affect local elections where new social media advertising strategies will play a large role. In Rapid City, South Dakota a city of seventy thousand people an unknown named Sam Kooiker defeated the incumbent mayor using almost solely social media advertising. With only \$3,300 Kooiker micro targeted about three-quarters of the Rapid City population through thirty distinct groups including specific ads for 18 year olds, people interested in firefighter history, and an ad directed at Lakota Indians in the Lakota language. The latter had the highest click through rate of any ad the campaign aired. The opposition did not know the extent of the advertising initiative because they were not in the target audiences and therefore could not predict the effects of the advertising. Mayor Kooiker won the election by only 480 votes, effectively defeating the incumbent mayor using micro-targeted social media.⁹

The effect of social media advertising can be great in national elections but it can be used more effectively with well-directed local ads. The extra advertising money from the Citizens United decision is too beneficial for each national candidate not to have his or her own Super PAC – perhaps not by the 2012 elections but predictably before the 2018 midterms. If the incumbent's opposition is funded through a Super PAC, that incumbent will want the same advantage his or her opponent has until each national politician has their own PAC because when one candidate is better funded, he or she will inevitably have a better chance at the position.

In the third quarter, Romney raised \$17,000 to Perry's \$14,000;¹⁰ the sums are relatively close compared to the amounts that presidential campaigns will raise this year but three

⁸ "Prices of Advertising on Facebook Increase." *Internet Business News*. Coventry, 19 July 2011. Web.

⁹ Meloche, Thomas. Lecture. Marketing Roundtable. Ann Arbor. 8 Nov. 2011. *@nn Arbor Usa: the Address of Innovation*. Web. <www.annarborusa.org>.

¹⁰ Roarty, Alex. "Citizens United's Reshaping of the 2012 Election." *National Journal*[Washington] 27 Oct. 2011. Web.

thousand dollars made the difference in Kooiker's election. This, and the fact that most politicians will soon have their own Super PAC, means that Super PACs that are aligned with issues or parties rather than with specific candidates will begin to focus more on the smaller elections going around across the country. PACs will begin to realize that micro funding local elections is successful, filtering the money down to cities rather than congress or the states.

The process will begin gradually as the Super PACs begin funding congress members, governors, and then state legislative candidates. In the 2012 election many House of Representatives and Senate candidates will be funded from party PACs, rather than their own individual PACs, but the movement has already begun; the Super PAC Renew Delaware was created to aid republican Senator Tom Carper which had not started raising funds by the second quarter.¹¹ PACs like this will play a role in the 2012 election though not as large a role as party PACs like the House Majority PAC, supporting eighteen democratic House members¹² with a predicted six-figure advertising budget, much of which will be targeted at social media.¹³

With social media advertising campaigns such as these, it is often difficult to tell who has paid for the ad though the FEC has defined advertisements as public communications that are subject to a law requiring visible disclaimers declaring the purchaser of the advertisement. The FEC states,

"If the communication is not authorized by a candidate, an authorized committee of a candidate, or an agent of either, then the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee."¹⁴

Examples of this rule can be seen in the micro-script during the Make America Great Again pro-Perry advertisements that aired as tweets on the PAC's Twitter rather than as traditional online advertisements. Twitter's new political advertisements (which are denoted by a purple check mark) will have the web address of the PAC appear when the mouse rolls over the ad, but is not apparent in the ad itself to comply with the regulations.¹⁵

¹¹ "Super PACs." *Center for Responsive Politics*. 15 Dec. 2011. Web. <www.opensecrets.org>.

¹² "House Majority PAC." *Center for Responsive Politics*. 15 Dec. 2011. Web. <www.opensecrets.org>.

¹³ "Sean Duffy - "Struggling"" *House Majority PAC*. Web. 15 Dec. 2011. <www.thehousemajoritypac.com/>.

¹⁴ Federal Election Commission. *Federal Registrar: Proposed Rules*. By LaTanya R. Butler. 198th ed. Vol. 76. 13 Oct. 2011. Web.

¹⁵ Byers, Dylan. "Twitter to Launch Political Ads." *Adweek*. 21 Sept. 2011. Web.

Facebook and Google advertisements are held under the same laws as the new Twitter ads, though both companies have petitioned for more lenient disclaimer laws to make better use of the Citizens United funding increase. In 2010 Google requested that it be allowed to sell political advertisements consisting of 95 characters or less without a disclaimer arguing that since the disclaimer could be seen by clicking through to the landing site it didn't need to be in the ad itself. The FEC did not agree with Google's reason, but still granted that the advertisements were legal. When Facebook asked if its advertisements consisting of less than 160 characters could be held under the small items exception or impracticable exception to the disclaimer requirements, the FEC could not reach a verdict, leaving Facebook to keep disclaimers with the web address of the purchaser of the ad on the advertisement itself.

Links to these PAC websites are not always helpful though. The website for Restore Our Future, a conservative Super PAC supporting Mitt Romney, has a page with a paragraph denouncing the Obama administration, a donor contribution button, and an email address to contact for more information. At the bottom of the page it states that the site is paid for by Restore Our Future and is not aligned with any candidate or candidate's committee.¹⁶ The Super PAC has declared alignment with Governor Romney,¹⁷ yet his name does not appear on the site, making it hard for active voters to understand for what purpose the advertisements are criticizing President Obama.

Citizens United v. FEC states that disclaimers "provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking" while Justice John Paul Stevens held that the ruling "threatens to undermine the integrity of elected institutions across the nation" in the dissenting opinion.¹⁸ With powerful companies and PACs like Google and Citizens United fighting for less regulations and more anonymity, the FEC's goal of insuring voters are informed without being manipulated is becoming more difficult. Though many advertisements used in the 2012 elections will bear disclaimers, Google ads will not. Google accounts for 40% of the estimated 3.6 trillion inches of ad space bought on the Internet every year.¹⁹²⁰ With more ads being sold for this election than any of its predecessors and the anonymity offered through advertisements containing less than 95 characters, the advertising industry is becoming larger and more

¹⁶ *Restore Our Future*. Restore Our Future, Inc. Web. <www.restoreourfuture.com>.

¹⁷ "Super PACs." *Center for Responsive Politics*. 15 Dec. 2011. Web. <www.opensecrets.org>.

¹⁸ *Citizens United v. Federal Election Commission*. No. 08-205. United States Supreme Court. 21 Jan. 2010. Print.

¹⁹ "Quadrennial Events to Help Ad Market Grow in 2012 despite Economic Troubles." *The Zenith Optimedia Blog*. 5 Dec. 2011. Web. 15 Dec. 2011.

²⁰ Meloche, Thomas. Lecture. Marketing Roundtable. Ann Arbor. 8 Nov. 2011. @*nn Arbor Usa: the Address of Innovation*. Web. <www.annarborusa.org>.

anonymous through the *Citizens United v. FEC* decision than was possible in political social media for previous elections.

Voters in the 2012 elections will not have to look far for political advertising, though finding out who purchased the ads and what candidate or issue that group supports will sometimes be difficult. In the overload of advertising that is expected for the national elections, PACs will be hard to separate from the candidate's messages, though that will change once each politician has their own Super PAC the way those in the running for president do. The immense amounts of money these PACs in particular will raise because of the *Citizens United* ruling will open new advertising spaces across the web as well as increasing the prices for all social media advertisements. This would be a problem for local elections where candidates cannot raise large funds for advertising, but issue and party PACs will begin to filter money down to these small elections where the competition is more unbalanced than in large national elections, creating a space for micro-targeted social media advertising to make a larger impact. From the local elections to the presidential campaigns, there will be more money in the 2012 elections – and therefore more advertising – than in any previous election because of *Citizens United*. If the FEC decides whether candidates can work with their PACs on specific advertising, then the effects of this case will only continue to increase.