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## **Summary of Democracy 21 Model Bill to Shut Down Individual-Candidate Super PACs and Prevent Coordination between Outside Spending Groups and Candidates**

The Democracy 21 Model Bill deals with two important campaign finance problems: the role being played by individual-candidate Super PACs in elections, and coordination between candidates and outside spending groups supporting those candidates.

Super PACs can raise and spend unlimited contributions to support a candidate as long as they function independently from the candidate.

If, however, a Super PAC, or other outside spending group, coordinates its expenditures with a candidate they are supporting, then the coordinated expenditures are also in-kind contributions to the candidate and subject to the contribution limits that apply to the candidate.

Individual-candidate Super PACs operate as arms of the candidate they support. The PACs are established by candidates or their agents and are run by close political and personal associates of the candidate. The candidate and their agents engage in fundraising efforts for their designated Super PACs and meet with the PACs' donors and potential donors.

Individual-candidate Super PACs serve as vehicles for candidates and their supporters to circumvent and eviscerate the candidate contribution limits. The donors give unlimited contributions to the Super PAC knowing that their contributions will be spent to support only the candidate backed by the Super PAC. The candidates know that donors giving to their designated Super PACs are giving to directly support only their campaigns.

The Model Bill described below has been prepared by Democracy 21 for use at the state and local levels. The legislation would establish rules to shut down individual-candidate Super PACs and rules to prevent coordination between outside spending groups and candidates they support.

The model legislation builds on proposals developed by Democracy 21. The proposals were incorporated into legislation that was introduced by Representatives David Price (D-NC) and Chris Van Hollen (D-MD) in 2012 as part of the more comprehensive Empowering Citizens Act (H.R. 6448). The Act contained provisions to repair the presidential public financing system, create a small donor, matching funds public financing system for congressional races, shut down individual-candidate Super PACs and strengthen the rules prohibiting coordination between outside spending groups and candidates.

The Empowering Citizens Act was reintroduced by Price and Van Hollen in 2013 (H.R. 270) and reintroduced by the Representatives in January 2015 (H.R.424).

In January 2015 Representatives Price and Van Hollen also introduced the Stop Super PAC-Candidate Coordination Act (H.R.425), which contains only the individual-candidate Super PAC and anti-coordination provisions of the comprehensive Empowering Citizens Act. The provisions in the Democracy 21 model bill are virtually the same as the provisions in H.R.425.

[A Washington Post editorial](#) following the 2102 elections (November 18, 2012) said the Super PAC provisions contained in the Empowering Citizens Act (and now also in H.R.425) would “eliminate the candidate-specific super PACs, such as Mitt Romney’s Restore our Future and President Obama’s Priorities USA, that did the most to shred the fiction of independent expenditures.”

[A New York Times editorial](#) on February 16, 2014 said, “This election year will be the moment when individual candidate super PACs – a form of legalized bribery – become a truly toxic force in American politics.” The *Times* editorial said about the Super PAC provisions:

Once again, Congress will have to step in to stop the corruption, and fortunately a good reform vehicle exists: [the Empowering Citizens Act](#), a bill introduced by two House Democrats, David Price and Chris Van Hollen, which would limit the spending of super PACs closely aligned to a campaign.

The *Times* editorial went on to state that the Super PAC provisions represent “the best chance for ridding politics of special-interest cash and preventing another era of scandal.”

For further information about the Model Bill, contact Democracy 21 at [info@democracy21.org](mailto:info@democracy21.org).

### **The Democracy 21 Model Bill**

The Model Bill restores the integrity of candidate contribution limits by defining coordination to include the factors that establish the close relationships and ties between a candidate and an individual-candidate Super PAC and that make the Super PAC for all practical purposes an operating arm of the candidate’s campaign.

Once such coordination between a candidate and a Super PAC is established, the individual candidate Super PAC is treated under the bill as a “coordinated spender.” All future expenditures by the Super PAC for public communications to support the candidate are treated as both coordinated expenditures with the candidate and as in-kind contributions to the candidate subject to candidate contribution limits.

The Act defines a Super PAC to be coordinated with a candidate when:

- the Super PAC is directly or indirectly established by or at the request or suggestion of, or with the encouragement of, or with the approval of, the candidate ((including an individual who later becomes the candidate) or the agents of the candidate it supports;

- the candidate or the candidate’s agents solicit funds or engage in other fundraising activity for the Super PAC, including by providing or sharing fundraising lists with the Super PAC;
- the Super PAC is established, directed or managed by former political, media or fundraising advisers or consultants to the candidate or entities controlled by the candidate;
- the Super PAC has had communications with the family of the candidate about the candidate’s campaign; or
- the Super PAC has retained the professional services of any person who during the two-year period prior to the expenditure has provided or is providing professional services relating to the campaign to the candidate or the candidate’s campaign, or
- the Super PAC is established, financed, maintained or controlled by a political party committee but is not subject to the contribution limits that apply to party committees.

The Model Bill also establishes a general definition of coordination between a candidate and any outside group making expenditures to support the candidate. The definition is based on the broad language used by the Supreme Court to describe the meaning of independent expenditures.

The Supreme Court has said that independent spending must be done “totally independently,” *Buckley v. Valeo*, 424 U.S. 1, 47 (1976); “not pursuant to any general or particular understanding,” *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 614 (1996) (“*Colorado I*”); “without any candidate’s approval (or wink or nod),” *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 442 (2001) (“*Colorado II*”); and must be “truly independent,” *id.* at 465.

The Model Bill treats as “coordinated expenditures,” any public communications or payments for public communications made by a person pursuant to any discussion with, or any general or particular understanding with, a candidate or the candidate’s agents about the communications or payments made to support the candidate.

“Coordinated expenditures” are treated as in-kind contributions and are subject to any contribution limits that apply to the candidate being supported.

The public communications by outside spending groups covered by the Model Bill include:

- (a) any public communication by an outside spending group that refers to a candidate in the period 60 days before a primary and 120 days before a general election;
- (b) any public communication by an outside spending group at any time that expressly advocates the election or defeat of a candidate; and
- (c) any public communication that promotes or supports a candidate or attacks or opposes the candidate’s opponent.

In *McConnell v. FEC*, the Supreme Court upheld the constitutionality of the “promotes, supports attacks or opposes” test, also known as the PASO test. Under this standard, a communication does not need to contain express advocacy in order for a communication to be covered by campaign finance laws.

The Supreme Court stated in upholding the PASO test that “any public communication that promotes or attacks a clearly identified Federal candidate directly affects the election in which he is participating.” The Court said that the PASO words ‘provide explicit standards for those who apply them’ and ‘give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.’”

The Model Bill prohibits an outside spending group from avoiding the coordination rules by establishing a “firewall” to try to separate the group into one section that works with the candidate and another section that makes “independent expenditures” to support the candidate. The Model Bill treats the group as one organization for purposes of the coordination rules.

The Model Bill does not establish or change the coordination rules that apply to a party coordinating with the party’s candidates.

The Model Bill imposes strong penalties to ensure that violations are not treated as simply a cost of doing business. The Bill imposes fines for “knowing and willful” violations of the coordination rules in an amount that is three times the amount of the coordinated expenditures involved. The Bill also imposes joint and several liability on any director, manager or officer of an outside spending group for any unpaid penalties by the group violating the coordination restrictions.