



October 25, 2016

The Honorable Amy Foster, Chair
The Honorable Darden Rice, Vice Chair
The Honorable Charlie Gerdes
The Honorable Jim Kennedy
The Honorable Ed Montanari
The Honorable Steve Kornell
The Honorable Karl Nurse
The Honorable Lisa Wheeler-Bowman
Members, St. Petersburg City Council
PO Box 2842
St. Petersburg, FL 33731

Dear Members of the St. Petersburg City Council:

I am writing in support of the “Defend Our Democracy” ordinance that you are presently considering. I am writing to provide additional context for the phenomenon of super PAC spending in American elections, with a special focus on Florida elections and on local elections across the country.

Background

I am a Professor of Law at Stetson University College of Law, where I have taught and published in the areas of constitutional law, corporations, contracts, securities, and international private law. I am the author of *A Contractarian Critique of Citizens United*, 15 U. PA. J. CONST. L. 765 (2013), wherein I criticize the majority opinion in *Citizens United v. FEC* for ignoring the prevailing contractarian view of a corporation and arriving at the false conclusion that corporations should be entitled to the constitutional protections of individual citizens.

Super PACs

In the current 2015-16 political cycle alone, a record \$969 million has flowed into super PACs, which, by law, can accept—and spend—as much money as they want to influence American elections.¹ These heavy-handed instruments for influencing elections are not aggregations of small contributions from a large number of donors. Rather, the entire point of having a super PAC is to be able to accept unlimited contributions from a small number of extremely wealthy funders. Thus, in practice, super PACs allow wealthy donors to evade campaign contribution limits designed to prevent corruption, and have become the “new normal” for election spending across America. And whereas some believe that this phenomenon is confined to high-profile elections—such as the presidential race—clear and consistent evidence demonstrates that local elections are increasingly the targets of significant super PAC spending.²

¹ See Fredreka Schouten & Christopher Schnaars, “USA Today analysis: Rich Democrats surge past GOP in political giving,” USA TODAY, Aug. 30, 2016, <http://usat.ly/2cc0npZ>.

² See Alex Roarty, “Super PACs’ Next Target: Local Elections,” THE ATLANTIC, May 18, 2015, <http://theatlantic.com/2cge7A1>; Theodore Schleifer, “Super PACs coming to a city near you,” CNN, May 19, 2015, <http://cnn.it/2bEtUHF>.

Super PACs and Florida elections

Since being created by the D.C. Circuit Court of Appeals via its 2010 decision *SpeechNow.org v. FEC*,³ super PACs have taken off all across our state, and money contributed to political committees, including super PACs, has “skyrocketed.”⁴ Data from the Federal Election Commission indicate that Floridians have given over \$33 million nationwide to federally active super PACs in the 2015-16 cycle, and that super PACs have spent nearly \$27 million on federal races in Florida alone. That includes over \$1.5 million (via the “House Majority PAC”) on the race for Florida’s 13th congressional district.

But super PAC spending in Florida’s federal elections is nothing new: In Brevard County, for example, in 2014 the mother of a Democratic candidate for Congress was able to bypass the legal federal contribution limit of \$5,200 by giving \$225,000 to a single-candidate super PAC that supported her son.⁵ Stories from this election cycle, however, reveal that candidates now brazenly exploit the thin veneer of independence provided by super PACs: For example, in this year’s race for Florida’s 1st congressional district, a state representative-turned-congressional candidate is being supported by a super PAC funded by two organizations *he himself* used to run. Just three days before announcing his candidacy, the state representative sent letters to the Florida Division of Elections officially stepping down as the chairman of two political committees. Then, some three months later, these two groups contributed *all* of their funds to a super PAC now supporting his congressional bid.⁶ And over in Florida’s 19th congressional district, three potential candidates all reportedly delayed announcing their candidacies in order to first raise money through outside groups such as super PACs.⁷

Many people do not realize that super PAC money is also having a tremendous impact on *local* races. And Pinellas County is no exception: Citizens First, a super PAC based in Palm Beach County, has spent roughly \$160,000 on direct mail so far in 2016, including on pieces supporting a candidate for the District 5 seat on the Pinellas County School Board.⁸ Overall, data from the Florida Division of Elections show there to be over 1,000 active state political committees or electioneering communications organizations in Florida, roughly 40 of which are based in Pinellas County.

And Pinellas County is not alone: In Gainesville, big donors were able to work around recently adopted contribution limits by using super PACs to influence races for the Gainesville City Commission and the Alachua County Commission.⁹ In Miami-Dade County, super PACs locked horns in two county judicial races, raising nearly one-third of a million dollars.¹⁰ In fact, the *Miami Herald* declared that Florida’s 2014 political cycle was distinguished “by the emergence of political committees supporting judicial candidates.”¹¹ That same year, the Space Coast Liberty Caucus, a Cocoa Beach-based super PAC,

³ 599 F.3d 686 (D.C. Cir. 2010) (en banc).

⁴ David Ovalle, “Auto insurance political committee flexes muscle in Miami judicial races,” MIAMI HERALD, Aug. 19, 2014, <http://www.miamiherald.com/news/local/community/miami-dade/article1980577.html>.

⁵ See “The Custom-Made ‘Super PAC’,” N.Y. TIMES, Aug. 3, 2014, <http://nyti.ms/1mdxFin>.

⁶ Paul Blumenthal, “This Super PAC Is Funded By Groups Once Run By The Candidate It Now Supports,” THE HUFFINGTON POST, Aug. 5, 2016, <http://huff.to/2azUqO2>.

⁷ Alexandra Glorioso, “Money keeps some wondering whether they should seek U.S. Rep. Curt Clawson’s seat,” NAPLES DAILY NEWS, June 1, 2016, <http://bit.ly/29u9Pos>.

⁸ Florida Department of State, Division of Elections, “Citizens First: Campaign Finance Activity,” <http://dos.elections.myflorida.com/cgi-bin/TreFin.exe> (last accessed Sept. 11, 2016).

⁹ Christopher Curry, “Local cap on campaign contributions is easy to bypass,” GAINESVILLE SUN, May 3, 2014, <http://bit.ly/29W3oqa>.

¹⁰ David Ovalle, “Auto insurance political committee flexes muscle in Miami judicial races,” MIAMI HERALD, Aug. 19, 2014, <http://hrlid.us/29HWMiD>.

¹¹ David Ovalle, “Two incumbent Miami-Dade judges lose; Miami assistant attorney wins seat,” MIAMI HERALD, Aug. 26, 2014, <http://www.miamiherald.com/news/local/community/miami-dade/article1982453.html>.

received hundreds of thousands of dollars to benefit a Republican state senate candidate in Rockledge.¹² And this year, a super PAC based in Viera spent over half a million dollars¹³ against a Republican state representative in the 2016 primary race for Florida Senate District 17.¹⁴

Not surprisingly, Floridians are concerned about this trend: In 2014, *Florida Today* noted that a “locally based effort is seeking to reform campaign spending in Florida, at least for state legislative races. And even some of the beneficiaries agree change is needed.”¹⁵

Finally, Florida is unfortunately linked to the first documented instance of alleged quid pro quo corruption tied to super PAC contributions. In 2015, Dr. Salomon Melgen, who runs an ophthalmology clinic with four offices in St. Lucia and Palm Beach counties, was indicted on federal bribery charges stemming in part from an alleged “quid pro quo” transaction with U.S. Senator Robert Menendez of New Jersey, who was also indicted. According to the grand jury indictment, Senator Menendez granted specific political favors in exchange for contributions from Melgen to a super PAC earmarked for supporting the senator’s reelection, among other things.¹⁶ The indictment marked a turning point in the national conversation about the corrupting potential of contributions to super PACs, and ties this issue to Florida with particular resonance.

Super PACs and local elections outside Florida

Florida’s experience, unfortunately, is not unique. Consider, for example, that this year a super PAC is primed to spend \$100,000 on the mayoral race in Baton Rouge, Louisiana—a city of just over 225,000 people.¹⁷ Las Cruces, New Mexico—population 102,000—faced a similar situation last year, as significant super PAC spending against the city’s incumbent mayor occurred just prior to Election Day.¹⁸ Such outsized spending is increasingly the norm in mayoral races, including in Philadelphia (\$10 million),¹⁹ San Diego (\$4.7 million),²⁰ San Francisco (\$600,000),²¹ and Detroit (\$3.5 million).²²

¹² See Come Clean Florida, “2014 D16 Senate Race – Thad Altman,” <http://bit.ly/29s5f5b> (last visited July 16, 2016).

¹³ Florida Department of State, Division of Elections, “Stop Career Politicians: Campaign Finance Activity,” <http://dos.elections.myflorida.com/cgi-bin/expend.exe>.

¹⁴ See Jenna Buzzacco-Foerster, “Stop Career Politicians’ launches ad against Ritch Workman, FLORIDA POLITICS, June 28, 2016, <http://floridapolitics.com/archives/214865-stop-career-politicians-launches-ad-ritch-workman>.

¹⁵ Dave Berman & Jim Waymer, “Outside groups play role in campaigns,” *FLA. TODAY*, Aug. 23, 2014, <http://on.flatoday.com/1ttHmP2>.

¹⁶ See *United States v. Menendez*, No. 15-CR-155 (D.N.J. Apr. 1, 2015) (indictment), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/04/01/menendez_and_melgen_indictment.pdf.

¹⁷ See Stephanie Riegel, “Rispone creates super PAC to support White in Baton Rouge mayor’s race,” *GREATER BATON ROUGE BUSINESS REPORT*, Aug. 1, 2016, <https://www.businessreport.com/article/rispone-creates-super-pac-support-white-baton-rouge-mayors-race>.

¹⁸ See Fredreka Schouten, *Super PAC spending floods local elections*, *USA TODAY*, Nov. 5, 2015, <http://usat.ly/1NsJ5Qx>.

¹⁹ Dave Davies, “Coming To A Mayor’s Race Near You: SuperPACs Moving Into Cities,” *NPR*, Oct. 26, 2015, <http://n.pr/1S6k1NN>.

²⁰ Kelly Davis, “Super PACs in the San Diego mayoral race,” <http://sdcitybeat.com/print-article-12366-permanent.html>.

²¹ Chisun Lee, Brent Ferguson, David Earley, “After *Citizens United*: The Story in the States,” 6, https://www.brennancenter.org/sites/default/files/publications/After%20Citizens%20United_Web_Final.pdf.

²² The Center for Michigan, “Donor database: Detroit mayoral race attracted big-time Super PAC money for Mike Duggan,” *MLIVE*, July 22, 2014, http://www.mlive.com/news/detroit/index.ssf/2014/07/duggan_donor_database_big-time.html.

Super PAC spending now floods even down-ballot, low-profile races. Take Oklahoma City, for example, where four city council races were hit with \$400,000 in super PAC spending,²³ or New Mexico, where a super PAC spent \$100,000 on a district attorney race,²⁴ or Virginia, where a super PAC spent \$2 million on two state senate races,²⁵ or Denver, where a super PAC unloaded nearly \$100,000 on two school board races.²⁶

No matter how local, no election seems safe. In 2013, Americans for Prosperity, a 501(c)(4) organization, spent significant amounts of money to influence a mayoral and city council election in Coralville, Iowa, a town of just 20,000 people.²⁷ The following year, in Cole County, Missouri—population 76,000—a prominent billionaire whose pet ballot measure had been struck from the ballot by a county judge donated \$300,000 to a national super PAC that, nearly simultaneously, funneled \$300,000 to its state-level super PAC that then contributed \$100,000 to the judge’s opponent, and spent the remaining \$200,000 on TV ads and other materials targeting the judge.²⁸

Given the enduring, well-documented, and yet alarming rise of super PAC spending on local elections, I believe St. Petersburg is well-advised to take proactive steps to protect the integrity of its elections and ensure that its political system is safeguarded from the rising tide of super PAC spending by adopting the “Defend Our Democracy” ordinance.

If I can further assist in any way, please do not hesitate to contact me.

Sincerely,



Professor Joseph Morrissey²⁹
Professor of Law

cc: The Honorable Rick Kriseman, Mayor of St. Petersburg
Ms. Jacqueline Kovilaritch, City Attorney

²³ Michael Baker, “Oklahoma elections: Ed Shadid wins Oklahoma City Council War 2 seat,” NEWSOK, Apr. 5, 2011, <http://newsok.com/oklahoma-elections-ed-shadid-winsoklahoma-city-council-ward-2-seat/article/3555775/?page=1>.

²⁴ Sandra Fish and Jeff Proctor, “Soros-funded super PAC supports Torrez in BernCo DA race with \$107k,” NEW MEXICO IN DEPTH, June 3, 2016, <http://nmindepth.com/2016/06/03/soros-funded-super-pac-supports-torrez-in-bernco-da-race-with-107k/>.

²⁵ Fredreka Schouten, *Super PAC spending floods local elections*, USA TODAY, Nov. 5, 2015, <http://usat.ly/1NsJ5Qx>.

²⁶ Justin Miller, “Hedging Education,” THE AMERICAN PROSPECT, May 6, 2016, <http://prospect.org/article/hedging-education>.

²⁷ John Eligon, “Koch Group Has Ambitions in Small Races,” N.Y. TIMES, Nov. 3, 2013, <http://nyti.ms/1dGvW2z>.

²⁸ Scott Greytak, Alicia Bannon, Allyse Falce and Linda Casey, *Bankrolling the Bench: The New Politics of Judicial Elections 2013-14* 38 (2015).

²⁹ This opinion is drafted in my capacity as an individual and not on behalf of the Stetson University College of Law.