

SERIOUSLY FUNNY: UNDERSTANDING CAMPAIGN FINANCE POLICY THROUGH THE COLBERT SUPER PAC

R. SAM GARRETT*

INTRODUCTION

It's not every day that a lesson about coordinated campaign expenditures comes from a national celebrity wearing a trashcan on his head. Examples of the Federal Election Campaign Act ("FECA") prohibition on making contributions in the name of others also usually can't be found in risqué jokes on late-night television. Campaign reporting requirements are normally the stuff of staid conferences for political professionals, not rallies outside the Federal Election Commission ("FEC"). Yet this and more can be found in Stephen Colbert's super PAC (the "Colbert Super PAC"), which I suggest below provides a unique vantage for understanding major developments in campaign finance law and policy.

Ironically, in graduate school I quietly did just about everything possible to avoid studying campaign finance or to include prolonged attention to the subject in my dissertation on crisis-management in House and Senate campaigns—a topic that does, indeed, include political fundraising difficulties.¹ Like many of my own students today, I erroneously assumed that campaign finance is primarily about numbers. I also assumed—correctly—that campaign finance is one of the most complicated areas of American law. My interests in practical campaigning and unifying theory and practice could be explored, I argued, without the distraction and complexities of detailed attention to campaign finance.

* Ph.D., American University; Specialist in American National Government, Congressional Research Service, Library of Congress; Research Fellow, Center for Congressional and Presidential Studies, American University. The views expressed in this Article are those of the author and not necessarily those of the Congressional Research Service, Library of Congress, or any other institution with which the author is affiliated. The author thanks Candice J. Nelson and James A. Thurber for helpful comments on a draft of this Article. Trevor Potter's presentation to the author's fall 2011 Campaign Finance in American Elections and Public Policy course at American University provided helpful background information.

1. R. Sam Garrett, *Adrenalized Fear: Crisis-Management in U.S. House and Senate Campaigns* (July 13, 2005) (unpublished Ph.D. dissertation, American University) (on file with Proquest); *see also* R. SAM GARRETT, *CAMPAIGN CRISIS: DETOURS ON THE ROAD TO CONGRESS* (2010).

Fate responded by making campaign finance my primary responsibility when I later began working as a policy analyst. As I learned more about the field, I realized that campaign finance is, of course, about numbers, but not as I expected. As I suggest to my colleagues and students today, studying campaign finance isn't *primarily* about numbers. The numbers are data that represent the most practical component of campaign finance—the raising and spending of money in American elections. The quantitative side is a vital component of the field. Without the numbers, legal and policy issues matter little.

More importantly, however, over time I realized that the intricacies of campaign finance law are not only a complex set of requirements about fundraising and spending. They also set the rules of the game for how Americans wage campaigns and express political speech. For lawyers, perhaps this is an obvious point. But as a political scientist—and, I suspect, for students of various disciplines—the connection between arcane law and everyday political behavior isn't always obvious. After all, except in some subfields, such as administrative law, many political scientists—and political science students, many of whom end up in law school classrooms—have only cursory exposure to case law, statutes, and regulation.

In this Article, I suggest that the Colbert Super PAC—also known as Americans for a Better Tomorrow, Tomorrow—offers a unique opportunity to show students why campaign finance matters and how even the most arcane legal and regulatory issues have important political consequences. Thinking about and teaching the Colbert Super PAC as a case study of various campaign finance topics can benefit from, and is challenged by, the interdisciplinary landscape described above. Below, I discuss broad and specific topics about law, policy, and politics that those teaching Election Law and related courses might consider illustrating through the Colbert Super PAC case study.

Given the controversy and misimpression surrounding some super PAC disclosure, it is perhaps appropriate that this Article include some disclosure as well. As this Article is being written in the late summer and early fall of 2011, much about the Colbert Super PAC remains unknown. Colbert's plans did not emerge publicly until the summer of 2011. The FEC approved Colbert's advisory opinion ("AO") request to form the super PAC and answered questions about potential FECA² implications for corporate parent Viacom on June 30, 2011.³ With typical flourish that aired that night on *The Colbert Report*, the comedian filed his committee's Statement of Organization at the

2. Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431–457 (2006).

3. FEC Advisory Op. 2011-11 (June 30, 2011).

Commission the same day.⁴ Because it is a non-election year, Colbert's super PAC can choose to reveal its financial activities every six months.⁵ Given the timing of these events, my own plans to teach elements of election law and campaign finance policy—in my case, through an upper-level undergraduate and master's course in political science—are also in progress.

For all these reasons, teaching election law and campaign finance policy through the Colbert Super PAC case study is intriguing, but not yet concrete. This Article, then, proposes some initial thoughts about what major principles in election law and campaign finance policy the Colbert Super PAC case appears to embody. In addressing those issues, I provide an overview of how those teaching Election Law, Campaigns and Elections courses, or both might use the Colbert Super PAC as a critical case study to expose students to timeless concepts such as the FEC advisory opinion process, the debate over campaign finance disclosure, and more recent questions about how super PACs emerged and what they suggest about the state of federal election law and policy. I hope professors and students will find the framework I sketch below helpful as they explore their own ideas about the Colbert Super PAC's significance for American elections.

I. INTERDISCIPLINARY OPPORTUNITIES AND CHALLENGES

Serious attention to practical politics is often woefully absent in typical university classrooms, whether in undergraduate, graduate, or law school settings.⁶ Some of the gap between theory and practice is legitimate. Undergraduate liberal arts institutions, for example, are charged with broadly educating students, unlike a law school or graduate program designed to prepare practitioners. Even professional programs can find it difficult to introduce real-time political issues. The typically long lead time required in scholarly publishing and the need to produce textbooks and journal articles that can stand the test of time compound the challenge of bringing recent political developments into the classroom.

These institutional pressures aside, individual professors can also find it challenging to unify theory and practice. Full-time professors may have little or no experience in practical political or policy settings and must conduct sufficiently scholarly—albeit sometimes impractical—research to get published, win tenure and get promoted. Some adjuncts have never been part of the full-time academy. Even if adjuncts once taught full-time, part-time

4. See Americans for a Better Tomorrow, Tomorrow, Inc., Statement of Organization (June 30, 2011), available at <http://images.nictusa.com/pdf/383/11030620383/11030620383.pdf#navpanes=0>.

5. 2 U.S.C. § 434(a)(4)(A)(iv).

6. For a discussion of the divide between theory and practice in campaigns and elections scholarship, see chapters 1 and 8 in GARRETT, *supra* note 1.

teaching leaves few incentives to follow the latest scholarship, professional norms, and methodologies within scholarly disciplines. This leaves their more practical knowledge often divorced from an academic foundation.

I do not intend to portray the Colbert Super PAC as a cure-all teaching tool that can bring together disciplines and methodologies in all cases. There are important and legitimate areas of expertise that will and should be pursued primarily in their respective programs of study and areas of professional training. I do suggest, however, that the prominence of the Colbert Super PAC provides an important opportunity for scholarly engagement across disciplines. Colbert's celebrity and popularity among young people practically guarantees that students will follow the *Colbert Report* and its regular coverage of campaign finance in general, and the super PAC in particular, at a time when election law and policy are experiencing monumental change. The Colbert Super PAC, therefore, provides a unique opportunity to explore the intersection of critical developments in politics, policy, and law, and to consider how various academic disciplines can contribute to that inquiry. Colbert's humor and celebrity can engage students in ways not typically found in the often dry but important subject matter of election law and policy.

II. THE COLBERT SUPER PAC AS A CRITICAL CASE STUDY

Social science regularly uses illustrative examples, sometimes called "critical case studies," to understand complicated or emerging concepts.⁷ Because so much remains to be seen about how *Citizens United*⁸ and subsequent developments will affect campaign finance and the legal landscape, teaching the case and related issues can be difficult. The complexity of the case and campaign finance in general can compound those challenges. Consequently, tangible, clear examples of what we do know about major concepts become all the more important in the classroom and beyond.

The Colbert Super PAC in and of itself arguably concerns the relatively narrow topics of unlimited fundraising and spending on independent expenditures by a particular type of organization (super PACs) and its connection to the FEC press exemption. I suggest that the important point for classroom settings, though, is that analyzing the Colbert Super PAC requires a clear understanding of the basics of campaign finance law, *Citizens United*, and how super PACs relate to both. The fact that Colbert regularly discusses the super PAC on his program and posts easily accessible video clips on his website make the topic ready-made for classroom use.⁹ As students'

7. See generally ROBERT K. YIN, CASE STUDY RESEARCH: DESIGN AND METHODS (3d ed. 2003) (discussing case study methodology).

8. *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

9. See COLBERT NATION, <http://www.colbertnation.com/colbert-superpac/> (last visited Feb. 28, 2012). Specific examples include, among others, Colbert's appearance before the FEC, *I Can*

knowledge of more advanced topics such as coordination, filing requirements, and non-connected committees (that is, independent PACs) increases, they can be challenged to identify their own impressions and questions about how the Colbert Super PAC illustrates serious points of campaign finance law.

III. LEGAL AND REGULATORY DEVELOPMENT

Most notably, the Colbert Super PAC can serve as a critical case study by helping students understand the lay of a quickly changing campaign finance landscape. In this sense, the case illustrates both where campaign finance law has been and where it stands. It also shows how legal changes have influenced campaign finance regulation (or the lack thereof) and the evolution of campaign finance policy in general. The Colbert case also provides opportunities for considering possible future developments.

On the historical front (albeit recent history), super PACs are directly connected with two major campaign finance cases.¹⁰ First, *Citizens United v. FEC* is most widely noted for reversing the decades-old ban on corporate and union treasury expenditures in federal elections.¹¹ *Citizens United* set the foundation for super PACs that emerged shortly thereafter.

Haz Super PAC!, COLBERT NATION (June 30, 2011), <http://www.colbertnation.com/the-colbert-report-videos/391146/june-30-2011/colbert-super-pac---i-can-haz-super-pac->; *Stephen Addresses Colbert Super Nation*, COLBERT NATION (June 30, 2011), <http://www.colbertnation.com/the-colbert-report-videos/391147/june-30-2011/colbert-super-pac---stephen-files-his-super-pac-papers---addresses-colbert-nation>; Iowa Straw Poll ads, *Super PAC Ad—Episode IV: A New Hope*, COLBERT NATION (Aug. 11, 2011), <http://www.colbertsuperpac.com/episodeiv-anewhope/>; *Parry-with-an-a-gate—Day 6—We May Have Did It!*, COLBERT NATION (Aug. 18, 2011), <http://www.colbertnation.com/the-colbert-report-videos/395000/august-18-2011/colbert-super-pac---parry-with-an-a-gate---day-6---we-may-have-did-it->; *Parry-with-an-a-gate—Day 6—WOI in Des Moines Reports*, COLBERT NATION (Aug. 18, 2011), <http://www.colbertnation.com/the-colbert-report-videos/395001/august-18-2011/colbert-super-pac---parry-with-an-a-gate---day-6---woi-in-des-moines-reports>; super PAC contributors, *The Heroes Respond*, COLBERT NATION (Aug. 4, 2011), <http://www.colbertnation.com/the-colbert-report-videos/393971/august-04-2011/colbert-super-pac---the-heroes-respond>; *For the Children*, COLBERT NATION (July 28, 2011), <http://www.colbertnation.com/the-colbert-report-videos/393422/july-28-2011/colbert-super-pac--for-the-children>; and coordination, *Buddy Roemer Pt. 2*, COLBERT NATION (July 28, 2011), <http://www.colbertnation.com/the-colbert-report-videos/393425/july-28-2011/buddy-roemer-pt-2>. In my experience, some video clips are easier to find through a keyword search using a search engine rather than searching on the Colbert Nation site. As a practical consideration, professors might wish to queue video clips in advance because of the commercials that precede the clips. Depending on one's campus environment and personal comfort, some clips might be more appropriate for classroom use than others.

10. On super PAC development and 2010 election activities generally, see R. SAM GARRETT, CONG. RESEARCH SERV., "SUPER PACS" IN FEDERAL ELECTIONS: OVERVIEW AND ISSUES FOR CONGRESS (2011).

11. *Citizens United*, 130 S. Ct. at 913.

The second major case, *SpeechNow.org v. FEC*, specifically addressed what would become super PACs.¹² In that case, relying on the *Citizens United* precedent, the D.C. Circuit Court of Appeals held in March 2010 that unlimited contributions to PACs that make only independent expenditures were constitutionally protected.¹³ The organizations remained prohibited from making unlimited contributions to candidates; indeed, by definition, independent expenditure committees are presumed not to coordinate their activities with candidates and not to make contributions.¹⁴

The FEC and some practitioners began informally referring to these new entities as “independent expenditure-only committees” (“IEOCs”). The media and other observers called them simply, “super PACs,” signifying their structure akin to traditional PACs but without the contribution limits that bind traditional PACs. As of this writing, Congress has not amended campaign finance law to reflect the development of super PACs, but the concept quickly became recognized in campaign finance practice.

A course focusing on case law might end there, but there is room to dig deeper into the policy process. At least, understanding the evolution of super PACs requires considering the agency role in implementing judicial decisions. Although perhaps not the most prominent component of election law or related classes, agency regulations and related developments can be—and in this case, have been—vitally important in giving the law everyday meaning for practitioners.

In particular, super PACs—including the Colbert Super PAC—have been affected by the advisory opinion process. The FEC, as of this writing, has been unable to reach an agreement on proposed rules for implementing *Citizens United* and *SpeechNow*. In the interim, the agency issued AOs offering specific guidance related to super PACs, one of which addressed the Colbert Super PAC.¹⁵

The first wave of AO activity occurred in the summer of 2010, when the FEC approved two related AOs in response to questions from the Club for Growth¹⁶ and Commonsense Ten.¹⁷ In these instances, the Commission determined that the organizations could solicit unlimited contributions for use in independent expenditures.¹⁸ In both AOs, the FEC also advised that, while

12. *SpeechNow.org v. FEC*, 599 F.3d 686, 689–90 (D.C. Cir. 2010).

13. *Id.* at 694–95.

14. *Id.* at 695; FEC Advisory Op. 2011-12, at 3 (June 30, 2011).

15. In brief, AOs are one option members of the regulated community have for understanding how the FEC interprets the applicability of FECA or FEC regulations to a specific setting. AOs apply only to the requester and within specific circumstances, but can provide general guidance for those in similar situations. *See* 2 U.S.C. § 437f (2006).

16. FEC Advisory Op. 2010-09, at 1 (July 22, 2010).

17. FEC Advisory Op. 2010-11, at 1 (July 22, 2010).

18. FEC Advisory Op. 2010-09, at 1; FEC Advisory Op. 2010-11, at 3.

post-*Citizens United* rules were being drafted to amend agency reporting forms, would-be super PACs could file letters with the Commission indicating their status.¹⁹ Hence, the FEC had recognized—albeit not through regulation—the concept of super PACs.

A year later, in the summer of 2011, the Commission issued the Majority PAC and House Majority PAC AO.²⁰ Here, the Commission determined that federal candidates and party officials could solicit contributions for super PACs.²¹ The Commission also advised, however, that contributions solicited by federal candidates and national party officials must be within the PAC contribution limits established in FECA (for example, \$5000 annually for individual contributions).²²

The Colbert Super PAC posed a narrower but nonetheless prominent set of questions²³—prominence that was bolstered by Colbert's appearance before the Commission and a televised rally afterward. Essentially, the issue in the Colbert request was whether the comedian could promote his super PAC on *The Colbert Report*.²⁴ If so, would doing so constitute in-kind contributions from *Colbert Report* distributor Viacom and related companies? Colbert also asked whether these contributions would be covered by the FEC's press exemption.²⁵ The FEC determined that coverage of the super PAC and its activities aired on the *Colbert Report* would fall under the press exemption and need not be reported to the FEC.²⁶ If Viacom provided services referencing the super PAC for air in other settings, however, they would be disclosed as in-kind contributions.²⁷ Viacom would also need to report costs incurred to administer the PAC.²⁸

IV. VISUALIZING SUPER PAC DEVELOPMENT: POLICY SUBSYSTEMS

In the classroom, using a subsystem map of the Colbert Super PAC policy environment may help students follow the complex events and entities that connect this case to recent developments in campaign finance law. Figure 1 below provides a sample of the basic subsystem surrounding the Colbert Super

19. FEC Advisory Op. 2010-09, at 2 n.1; FEC Advisory Op. 2010-11, at 3 n.4.

20. FEC Advisory Op. 2011-12, (June 30, 2011).

21. *Id.*

22. *Id.* at 4.

23. FEC Advisory Op. 2011-11, at 4 (June 30, 2011).

24. *Id.*

25. *Id.*; see 2 U.S.C. § 431(9)(B)(i) (2006); 11 C.F.R. §§ 100.73, 100.132 (2011).

26. FEC Advisory Op. 2011-11, at 8.

27. *Id.*

28. *Id.* at 6.

PAC. Associated with policy analysis, the subsystem approach essentially provides a visual diagram of the actors surrounding a policy issue.²⁹

Subsystem maps are usually far more detailed than the framework shown in Figure 1, although they need not necessarily be so for classroom use—especially if helping students follow a general policy process rather than as a component of a thorough policy analysis. Typically, the policy issue—in this case, the Colbert Super PAC, but often a piece of legislation or agency rule—appears in the middle of the map. Subsystem maps also generally show administrative agencies, specialized media, Congress (at the chamber and committee levels) or other branches of government, and any other policy actors the author deems relevant. Subsystems can be adapted to one's individual needs. For example, the map in Figure 1 could be changed to include other cases preceding *Citizens United* in a law class (for example, *Buckley*³⁰) or the identities of those who filed AO comments in a policy course highlighting campaign finance or interest groups.

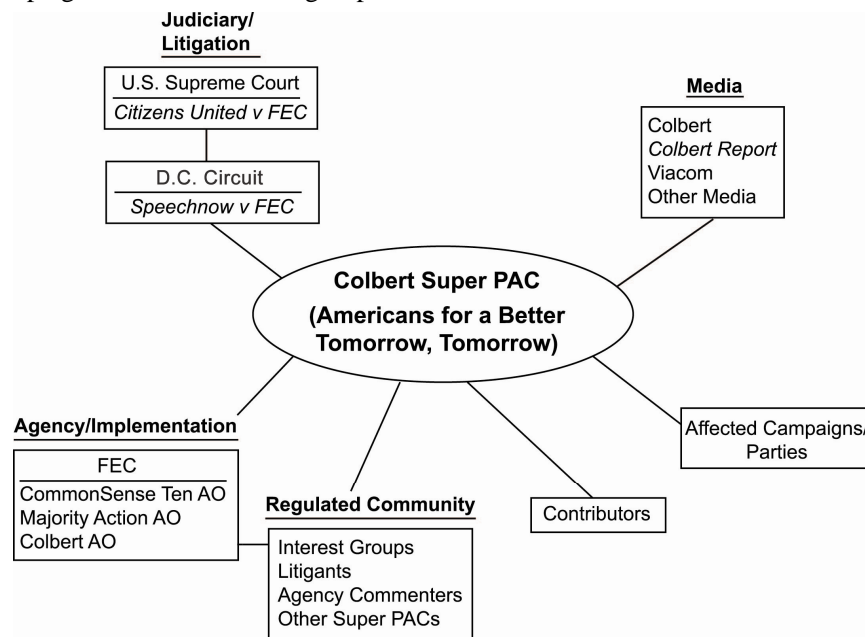


FIGURE 1. SAMPLE POLICY SUBSYSTEM FOR COLBERT SUPER PAC

29. See, e.g., Frank R. Baumgartner & Bryan D. Jones, *Agenda Dynamics and Policy Subsystems*, 53 J. POL. 1044 (1991) (applying the subsystems concept to federal nuclear energy policy); James A. Thurber, *Political Power and Policy Subsystems in American Politics*, in AGENDA FOR EXCELLENCE 2: ADMINISTERING THE STATE, 76 (B. Guy Peters & Bert A. Rockman eds., 1996) (concluding that policy subsystems vary across policy issues and range from simple to complex).

30. *Buckley v. Valeo*, 424 U.S. 1 (1976).

Whether relying on the subsystems concept per se or simply discussing how the Colbert Super PAC evolved while introducing other material, walking students through the policy map can serve as an important reminder that the policy process is not linear. In this case, the Colbert Super PAC did not result only from two prominent court cases. It is also affected by FEC actions, comments from the regulated community during the AO process, *Colbert Report* viewers, and the campaigns that might be affected by the PAC's activities.

Subsystem maps are also notable for what they exclude. The Obama Administration and Congress do not appear in Figure 1 because neither branch has taken major action on the super PAC issue in general or with respect to Colbert Super PAC in particular. The lack of involvement from Congress or the administration illustrate that after Congress enacted the Bipartisan Campaign Reform Act ("BCRA") in 2002,³¹ most policymaking activity on campaign finance issues shifted to the FEC and the courts.

V. LOOKING AHEAD: ISSUES FOR DISCUSSION

The evolution of the super PAC issue in general, and the Colbert Super PAC case in particular, are ripe for classroom discussion and additional scholarly research. I conclude by highlighting selected issues that professors might consider incorporating into the classroom. Importantly, one of the key advantages of teaching through the Colbert case is that the publicity surrounding the issue will likely continue throughout (at least) the 2012 election cycle. Professors and students can both participate in identifying new questions and debate topics as Colbert produces more material and as the 2012 elections unfold.

A. *Open Legal and Regulatory Questions*

Just as the Colbert Super PAC provides an opportunity to teach students about how law affects various components of the policy process, it also provides an opportunity to consider whether that process has sufficiently clarified the state of law and regulation. Statute, of course, trumps regulation, but how are lawyers and other members of the regulated community to answer questions about the Colbert case and others post-*Citizens United* when all that has definitively changed—as of this writing—is the issuance of a Supreme Court decision?

Although the House of Representatives passed an amended version of the DISCLOSE Act designed to counter some aspects of *Citizens United* in 2010,

31. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. BCRA amended FECA and is codified throughout 2 U.S.C. §§ 431–457 (2006).

the bill died in the Senate.³² If Congress elects not to amend federal election law to further regulate super PACs, regulatory agencies could nonetheless do so. Most prominently this includes the FEC, although it is possible agencies such as the Internal Revenue Service, Securities and Exchange Commission, or Federal Communications Commission might also tangentially address campaign finance disclosure.

Thus far, a handful of FEC AOs are the only official word, beyond the *Citizens United* and *SpeechNow* decisions, to guide super PACs, their lawyers, and contributors. AOs generally provide cover from civil enforcement actions for those facing similar circumstances as described in the AO. They do not, however, offer the same degree of certainty as law or regulation. The standstill on super PAC regulations to date provides powerful examples for students to understand the hierarchy of guidance and protection that these various stages of the policy process can offer, as well as fodder for debate about whether the choices Congress or the FEC has made represent partisan stalemate or deliberate policymaking.

Recent AOs can also help students understand coordinated communications. Coordinated communications are defined through a three-part regulatory test addressing whether, for example, an advertisement benefits a campaign but was nonetheless paid for by a another entity and therefore subject to contribution limits or prohibitions, and whether the ad's content and the producer's conduct were designed to benefit the campaign.³³ Coordinated communications are complex and controversial. The FEC's coordination regulations have been subject to long and involved litigation, which itself could be appropriate for classroom use, particularly in law schools.³⁴

In November 2011, Colbert addressed coordinated communications on his program³⁵ by highlighting super PAC American Crossroads' AO request³⁶ seeking FEC permission to air what the group claimed were issue ads featuring federal candidates in ways that appear to meet the standard for restricted

32. For an overview of the DISCLOSE Act, see R. SAM GARRETT, L. PAIGE WHITAKER & ERIKA K. LUNDER, CONG. RESEARCH SERV., *THE DISCLOSE ACT: OVERVIEW AND ANALYSIS* (2010).

33. On the definition of "coordinated communications" and the three-part test, see 11 C.F.R. § 109.21(a), (b), (g) (2011).

34. See, e.g., *Shays v. FEC (Shays III)*, 508 F. Supp. 2d 10 (D.D.C. 2007) (regarding FEC rulemaking on coordinated communications), *aff'd in part, rev'd in part* 528 F.3d 914 (D.C. Cir. 2008).

35. *Issue Ads*, COLBERT NATION (Nov. 7, 2011), <http://www.colbertnation.com/the-colbert-report-videos/401673/november-07-2011/colbert-super-pac---issue-ads>; *Issue Ads-Trevor Potter*, COLBERT NATION (Nov. 7, 2011), <http://www.colbertnation.com/the-colbert-report-videos/401674/november-07-2011/colbert-super-pac---issue-ads---trevor-potter>.

36. American Crossroads, Advisory Opinion Request, at 1 (Oct. 28, 2011) (resulting in FEC Advisory Op. 2011-23). FEC Advisory Opinions, requests, public comments, and dissenting opinions are searchable at <http://saos.nictusa.com/saos/searchao>.

coordinated communications but which, American Crossroads argued, could not be considered prohibited coordinated communications.³⁷ Colbert, through his super PAC, filed comments³⁸ in response to the American Crossroads request and produced a counter ad featuring presidential candidate and former Louisiana Governor Buddy Roemer arguing that, despite Roemer's appearance, the ad was not coordinated with Colbert's super PAC.³⁹

Even if the complexities of coordinated communications are not explored in detail, the exchange surrounding the American Crossroads request (AO 2011-23) could be a valuable starting point for discussing whether spending by "outside" groups is truly independent of candidates, whether it should be, and what these questions indicate for the adequacy of contribution limits. The episode can also highlight the role of advisory opinions in providing guidance on unsettled issues of regulation and law, in addition to transparency and public participation in the comment process.⁴⁰ The AO also provides an opportunity to illustrate that issuing advisory opinions requires agreement from at least four⁴¹ Commissioners—in an evenly divided six-member body—that can result in stalemate on controversial issues.

B. *Lessons in Disclosure*

Reviewing the Colbert Super PAC's campaign finance reports can show students practical examples of the complex array of super PAC FEC filing requirements and time tables. Contrary to common misperception in media accounts and in the classroom, super PACs do, indeed, report their contributions and expenditures to the FEC. Although Colbert's super PAC did file one disclosure report shortly after it formed, no contributions or expenditures were reported for the covered period.⁴² Despite the regular media attention the super PAC is receiving, including a nightly crawl on the show listing donations and Colbert's claim to have tens of thousands of supporters (or more),⁴³ additional detail about the Colbert Super PAC's fundraising and spending presumably will be unavailable until early 2012, after the second semi-annual 2011 report is submitted. The same is true for other PACs that

37. 11 C.F.R. § 109.21 (2011).

38. Americans for a Better Tomorrow, Tomorrow, Comment on American Crossroads Advisory Opinion Request, at 1 (Nov. 6, 2011).

39. *Issue Ads-Trevor Potter*, *supra* note 35. The ad appears after the interview with Trevor Potter.

40. 2 U.S.C. § 437f(c) (2006).

41. 11 C.F.R. § 112.4(a) (2011).

42. The super PAC filed an initial quarterly report, for the period ending June 30, 2011. A copy of the report is available on the FEC website at <http://query.nictusa.com/pdf/313/11931787313/11931787313.pdf#navpanes=0>. The super PAC then gave notice that it would change its filing status to semi-annually, meaning its next report would not be due until January 2012.

43. David Carr, *Comic's PAC Is More Than a Gag*, N.Y. TIMES, Aug. 22, 2011, at B1.

elect to file semi-annually. Quarterly or monthly filing for these PACs would begin during the election year.⁴⁴ The PAC would also have to file separate independent expenditure reports within twenty-four or forty-eight hours of publicly distributing a communication constituting an independent expenditure (depending on the amount spent and the proximity to the election).⁴⁵

This is not to say, however, that the Colbert Super PAC's funding—nor that of many others—is perfectly transparent. As Colbert demonstrated in a September 29, 2011, interview with election lawyer and former FEC chairman Trevor Potter, 501(c)(4) organizations can be used to funnel contributions to super PACs for independent expenditures.⁴⁶ Although the super PAC is required to disclose the 501(c)(4) as a contributor if the (c)(4) gave at least \$200,⁴⁷ the original source of funds provided to the (c)(4) is not disclosed in FEC reports. The addition of Colbert's "Anonymous Shell Corporation,"⁴⁸ 501(c)(4) as a funding source for the super PAC provides opportunities to explore the heart of one of the most controversial issues in campaign finance policy—the distinction between political committees regulated primarily by federal election law and regulations on the one hand, and tax exempt political organizations regulated primarily by tax law on the other.⁴⁹ Understanding these requirements can provide practical skills for attorneys-in-training who may be responsible for filing FEC reports in the future. Particularly in policy classes, they also may spur critical debate about whether existing reporting requirements are necessary to prevent corruption or whether they are sufficiently onerous to burden political speech.

Even with a detailed review of the Colbert Super PAC's filing requirements, some important political and practical issues remain to be seen. Perhaps most importantly, does Colbert regard his super PAC as a joke? Is it a parody of the nation's campaign finance law or simply fodder for late-night viewers? Also importantly, how does Colbert plan to spend his super PAC's

44. 2 U.S.C. § 434(a)(4) (2006).

45. 11 C.F.R. § 104.4 (2011).

46. See *Trevor Potter & Stephen's Shell Corporation*, COLBERT NATION (September 29, 2011), <http://www.colbertnation.com/the-colbert-report-videos/398531/september-29-2011/colbert-super-pac---trevor-potter---stephen-s-shell-corporation> [hereinafter *Shell Corporation*].

47. 2 U.S.C. § 434(b)(3).

48. *Shell Corporation*, *supra* note 46.

49. Political committees include super PACs, as well as candidate committees, party committees, and PACs. See 2 U.S.C. § 431(4). Most prominently for campaign finance policy, political organizations include social welfare, labor, and trade groups regulated primarily under 26 U.S.C. §§ 501(c)(4), 501(c)(5), and 501(c)(6) respectively, and groups regulated under 26 U.S.C. § 527. Political committees are considered 527 organizations for tax purposes, although the term "527" as generally appears in popular usage implies organizations perceived to influence elections but not regulated by election law. For additional discussion, see L. PAIGE WHITAKER & ERIKA LUNDER, CONG. RESEARCH SERV., 527 GROUPS AND CAMPAIGN ACTIVITY: ANALYSIS UNDER CAMPAIGN FINANCE AND TAX LAWS (2009).

money—which, based on his viewership might be substantial, but which we won't know about until early 2012? Will Colbert's viewers take the issue seriously and learn substantive lessons about campaign finance policy? Will the super PAC motivate them to become involved in politics? If Colbert or other celebrities use the super PAC model to become actively involved in federal elections, it may be no laughing matter.

CONCLUSION

Colbert's super PAC is unique for its prominence and humor. What isn't unique are the serious legal, policy, and political issues surrounding Americans for a Better Tomorrow, Tomorrow. This Article offers preliminary thoughts about how the Colbert Super PAC can serve as a case study to teach students about a variety of fundamental legal and policy issues. The Colbert example can be tailored to individual needs, such as a discussion of *SpeechNow* in a law class or of political advertising in a traditional campaigns and elections policy course. Ideally, as this Article has suggested, exploring the serious side of the Colbert Super PAC requires interdisciplinary inquiry uniting aspects of law and political science.

