



4-2018

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Recommended Citation

Kantor, Christopher J., "Citizens United v. Federal Election Commission, and the Inherent Unfairness to the “Un-united” American Citizen" (2018). *Writing Across the Curriculum*. 27.
http://digitalcommons.sacredheart.edu/wac_prize/27

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Citizens United v. Federal Election Commission,
and the Inherent Unfairness to the “Un-united” American Citizen

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PO-351-A

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11/8/17

Among contemporary United States Supreme Court rulings that have impacted the structure of our nation, the 2010 case *Citizens United v. Federal Election Commission* resulted in significant political campaign finance reform that gave rise to an election system influenced by money, corporations, and powerful individuals. The ruling of *Citizens United* allows for the unlimited spending of corporations and labor unions on political expenditures and the limited disclosures of these campaign donors. This overturned precedent established in the 1990 case *Austin v. Michigan Chamber of Commerce* and the 2003 case *McConnell v. Federal Election Commission*, the respective rulings of which shaped the way campaign donations were regulated and maintained in political elections. The subsequent deregulation of corporate money financing political campaigns as a result of this ruling places *Citizens United* among the most iniquitous and decadent rulings of the Supreme Court of the United States.

The Court's previous decision in *Austin v. Michigan Chamber of Commerce* (1990) is among the Supreme Court cases that have set lasting precedent influencing campaign finance policies and provided the foundation upon which regulatory practices were implemented in political campaigning. The *Austin* case followed the Michigan Chamber of Commerce's challenge to the Michigan Campaign Finance Act of 1976 (MCFA). This act, passed by the Michigan State Legislature, "prohibited corporations from using treasury money for independent expenditures to support or oppose candidates in elections for state offices".¹ As a result of this act's passage, corporations were not permitted to make direct campaign donations, unless that corporation set up an independent fund intended for political expenditures. In *Austin*, the Michigan Chamber of Commerce used its general funds to finance political advertisements advocating for the election of a candidate campaigning for the Michigan House of

¹ "Austin v. Michigan Chamber of Commerce." Oyez. Accessed November 9, 2017.

Representatives. After an injunction was issued against the Chamber of Commerce for violating the MCFA, the case was appealed to the Supreme Court. In its appeal, the Michigan Chamber of Commerce argued that the MCFA violated both the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by restricting a corporation's ability to engage in free speech practices, thus discriminating against the corporation's equal expression of speech protected under the Fourteenth Amendment. The Supreme Court rejected these arguments, however, and upheld the Michigan Campaign Finance Act. The Court explained that the MCFA was narrowly crafted in order to maintain integrity and fairness in the political process.² In his majority opinion, Justice Thurgood Marshall wrote: "By requiring corporations to make all independent political expenditures through a separate fund made up of money solicited expressly for political purposes, the Michigan Campaign Finance Act reduces the threat that huge corporate treasuries will be used to influence unfairly the outcome of elections."³ The Court's opinion was effectively justified in the interest of preventing corruptive practices flooding the political election process resulting from direct campaign contributions of large corporations.

The *Austin* ruling was used, in part, as a foundation for the Court's subsequent decision in *McConnell v. Federal Election Commission* (2003). The *McConnell* case follows an injunction filed by U.S. Senator Mitch McConnell against the Federal Election Commission regarding the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA was a legislative measure which prohibited unrestricted donations made directly to political parties from corporations and unions. The BCRA also limited political advertisements by non-political entities up to 60 days before a political election and 30 days before a primary

² "Austin v. Michigan Chamber of Commerce." Oyez.

³ "Austin v. Michigan Chamber of Commerce." Legal Information Institute. Accessed November 9, 2017.

election, and restricted a political party's use of funds to advocate for an expressly identified candidate.⁴ It was argued before the Court that the BCRA inherently violated the First Amendment by restricting the expression of political speech through advertisements.

Just as the Court upheld the Michigan Campaign Finance Act in *Austin* at the state level, the Court upheld the BCRA, rejecting its violation of the First Amendment. The Court's ruling was justified in the interest of preventing corruption resulting from unlimited campaign contributions; the same principle upon which the Court's ruling was justified in *Austin*. Justice Stevens and Justice O'Connor delivered the opinion of the Court, affirming that as the BCRA only marginally impacted a business entity's ability to provide financial contributions towards political campaigns and engage in free communication, there was no breach in the First Amendment.⁵ In its opinion, the Court explained: "Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits--interests in preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption."⁶ The marginal transgression of the First Amendment was justified in the interest in preventing corruption in the election process and political candidates. Until the ruling of *Citizens United* was delivered by the Court seven years later, the BCRA provided the principal foundation upon which campaign contributions were regulated and maintained in the United States.

The Court's 2010 decision in *Citizens United*, however, subsequently changed the nature of campaign finance in the United States, as well as superseded the precedent established in

⁴ "McConnell v. Federal Election Commission." Oyez. Accessed November 9, 2017.

⁵ "McConnell v. Federal Election Commission." Legal Information Institute. Accessed November 9, 2017.

⁶ "McConnell v. Federal Election Commission." Legal Information Institute.

Austin and *McConnell*. In this case, Citizens United, a conservative non-profit political organization, attempted to air the film “*Hillary: The Movie*,” before the 2008 Democratic primary election. The film was deeply critical of Hillary Clinton’s candidacy for president and expressly opposed her candidacy. Citizens United sought an injunction against the Federal Election Commission in response to the Commission’s application of the BCRA, which prohibited political advertisements before state elections and primary elections. Citizens United appealed their case all the way to the Supreme Court, where it argued that Section 203 of the BCRA, which prohibited the public broadcast of political advertisements before an election or primary election, was an inherent violation of the First Amendment in its application of restricting speech. Citizens United also argued that Section 201 of the BCRA, which established disclosure requirements of campaign contributions, was unconstitutionally applied to the circumstances of the case.

On January 21, 2010, the Supreme Court, in a 5-4 decision, ruled §203 of the BCRA unconstitutional in its apparent violation of the First Amendment. In the majority opinion authored by Justice Anthony Kennedy, the Court stated that: “If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, from simply engaging in political speech”.⁷ The Court held that political speech is indispensable to democracy, as it holds political officials accountable to the people, which is no less true because that speech comes from a corporation. As a direct result of this ruling, *Austin* was overturned, as the First Amendment could no longer regulate corporate funding of independent political broadcasts in candidate elections. Though corporations were still prohibited from making direct

⁷ “*Citizens United v. Federal Election Commission*.” Supreme Court of the United States. Accessed November 9, 2017.

campaign contributions, this ruling opened the floodgate to unlimited corporate and union spending in political advertisements and super PAC contributions.

Additionally, the Court upheld the disclosure requirements maintained in §201 of the BCRA, in the general interest of providing the American electorate with important information regarding campaign contributions. Justice Kennedy expressed in his opinion that: “The government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”⁸ This upholding partially overturned the ruling *McConnell*. The legal precedent established in *McConnell*, which restricted corporations in their communication of political speech before elections, was thus overturned by the ruling of *Citizens United*.

The dissenting opinion of the Court, authored by Justice John Stevens, expressly conveyed the displeasure of many Court members regarding the ruling. In his dissenting opinion, Justice Stevens wrote: “The Court’s ruling threatens to undermine the integrity of elected institutions across the nation. The path it has taken to reach its outcome will... do damage to this institution.”⁹ The dissent argued that the majority’s ruling maintains no regard for case law and legal precedent, particularly those set by the Court in *Austin* and *McConnell*. The very same principles which were maintained in the two prior cases were thus rendered obsolete in *Citizens United*.

By unrestricting corporate spending in political elections, *Citizens United* does very little to protect against the corporate influence over political elections. Corporate dominance over political elections effectively undermines the rights of individuals. A 2014 study of how the

⁸ Citizens United, Supreme Court of the United States

⁹ Citizens United, Supreme Court of the United States

Citizens United ruling has impacted corporate spending on senatorial elections conducted by the Brennan Center for Justice Analysis concluded that following the ruling of *Citizens United*, outside corporate spending on senatorial elections has more than doubled from 2010 to 2014.¹⁰ This study, which examined data based on independent expenditures and electioneering communications reported to the Federal Election Commission, also found that among the 10 highest-spending super PAC's, all but two got less than one percent of their individual contributions from small donors of \$200 or less, suggesting that these large super PAC's are mostly funded by an exclusive few.¹¹

Based on the *Citizens United* ruling, political expenditures of corporations, unions and other interest groups in political elections are effectively expressions of speech protected under the First Amendment. As a result, political expenditures are weighted concurrently with one's expression of speech. The more money you have, the more political influence you can communicate. In response to the ruling, John Dunbar, the current CEO of the Center for Public Integrity and former reporter for the Associated Press, adequately expressed that: "Spending is speech, and is therefore protected by the Constitution — even if the speaker is a corporation."¹² This principle presents a potential conflict with the Equal Protection Clause of the Fourteenth Amendment by not guaranteeing equal expression of political speech among American citizens. Unlimited corporate spending in political elections directly promotes the interest of wealthy individuals who can afford to have their speech communicated. This inadvertently creates an unfair threshold for speech expression, which undermines the weight and communication of

¹⁰ Ian Vandewalker. "Election Spending 2014: Outside Spending in Senate Races Since *Citizens United*." Brennan Center for Justice Analysis. Accessed November 9, 2017.

¹¹ Vandewalker, "Election Spending 2014"

¹² John Dunbar. "The 'Citizens United' Ruling and Why it Matters.", The Center for Public Integrity, October 18th, 2012

political speech of the average American citizen. This principle of money influencing political speech threatens the American electorate with the presence of corruption, dishonesty, and nepotism in American politics. Mary G. Wilson, President of the League of Women Voters of the United States and graduate of the University Of Denver College Of Law, provided a rather cynical example of how the *Citizens United* ruling could be exploited for the benefit of wealthy corporations. She expressed the dangers of major corporations spending hundreds of thousands of dollars in a senatorial or congressional race to make sure that politicians will be responsive to their corporate concerns, and how corporate and union funds could overwhelm campaigns for state representatives, state and municipal judges, and zoning commissions.¹³ Unlimited corporate spending on political expenditures directly promotes the corporate interests of business entities. As such, this could incentivize elected officials to act in the best interest, not of their respective jurisdictions and electorate, but of those corporations whose campaign contributions and advertisements promote their respective elections.

Aside from undermining the rights of individual citizens, unrestricted corporate spending in political elections may also disrupt the balance among party lines in American politics. Nina Totenberg, American Legal Correspondent for National Public Radio, suggested that since Republican policies have generally favored the interests and freedoms of major corporations, the influx of further corporate spending in American politics may provide Republicans with a corporate and union advantage, thus tipping the balance of political allegiances.¹⁴ Republican candidates who support policies protecting the corporate interest would unwittingly incentivize large corporations to finance their political campaigns, resulting in the more effective

¹³ Mary G. Wilson. "League Commentary on Citizens United v FEC Case Before the Supreme Court: A Revolution From the Court?." League of Women Voters. Accessed November 9, 2017.

¹⁴ Deborah Tedford. "Supreme Court Rips Up Campaign Finance Laws." National Public Radio. January 21, 2010.

communication of such policies. Though support of political parties and their respective policies is a freedom protected in the Constitution and a principle reflecting those which the Constitution were crafted upon, this inherently creates unequal opportunities for the expression of such support for a political party or policy.

The ruling of *Citizens United*, therefore, threatens the integrity of American democracy. Without corporate regulation in American politics and elections, the United States could certainly develop into another era dominated by big corporations as it once was at the turn of the 20th century. Corporate influence in American politics inherently undermines an individual's political speech when compared to the wealth, power, and interests of major corporations. Though this particular ruling did not create the institution of super PAC's in an election system already flooded with money, this ruling does not protect against the corporate influence in American politics and only facilitates further corporate involvement in American politics.

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