

Election Campaign Financing

Citizens United v. Federal Elections Commission, 2010

★★★★★★★★★★★★★★★★★★ **Background of the Case** ★★★★★★★★★★★★★★★★★★

Over the past 100 years, Congress has attempted to set some limits on campaign fundraising in order to reduce corruption or anything that can be perceived as corruption.

The Supreme Court has decided that both donating and spending money on elections is a form of speech. For candidates, the money pays for ways to share his or her views with the electorate—through advertisements, mail and email, and travel to give speeches. For donors, giving money to a candidate is a way to express political views. Therefore, any law that limits donating or spending money on elections limits free speech, and the government must have a very good reason for making such laws.

The Supreme Court has ruled that laws that restrict how much candidates can spend on a campaign are unconstitutional, since candidates spend money to get their message out, which is a very important form of political speech. However, the Court has said that laws that restrict how much individuals and groups can donate directly to candidates are allowed, because that spending is slightly removed from core political speech, and such laws can prevent corruption. In 2018, the maximum amount an individual could give directly to a federal candidate was \$2,700.

One of the federal laws that regulates how election money can be raised and spent is the Bipartisan Campaign Reform Act (BCRA), also known as the McCain-Feingold Act. Passed in 2002, one part of this law dealt with how corporations and unions could spend money to advocate the election or defeat of a candidate. The law said that corporations and unions could not spend their own money on campaigns. Instead, they could set up political action committees (PACs). Employees or members could donate to the PACs, which could then donate directly to candidates or spend money to support candidates. The law prohibited corporations and unions from directly paying for advertisements that supported or denounced a specific candidate within 30 days of a primary election or 60 days of a general election. It is this part of the BCRA that is at issue in *Citizens United v. Federal Election Commission*.

Constitutional Issues ★★★★★★★★★★★★★★★★★★

Does a law that limits the ability of corporations and labor unions to spend their own money to advocate the election or defeat of a candidate violate the First Amendment's guarantee of free speech?

★★★★★★★★★★★★★★ **The Supreme Court's Decision** ★★★★★★★★★★★★★★

Justice Kennedy wrote the majority opinion. He was joined by Chief Justice Roberts and Justices Scalia, Thomas, and Alito. Justice Stevens dissented and was joined by Justices Ginsburg, Breyer, and Sotomayor.

The Court ruled, 5–4, that the First Amendment prohibits limits on corporate funding of independent broadcasts in candidate elections. The Court reversed two earlier decisions that held that political speech by corporations may be limited (*Austin v. Michigan Chamber of Commerce* and portions of *McCormell v. FEC*). The justices said that the government’s rationale for the limits on corporate spending—to prevent corruption—was not persuasive enough to restrict political speech. A desire to prevent corruption can justify limits on donations to candidates, but not on independent expenditures (spending that is not coordinated with a candidate’s campaign) to support or oppose candidates for elected office. Moreover, the Court said, corporations have free speech rights and their political speech cannot be restricted any more than that of individuals. Justice Kennedy, writing for the majority, said that political speech is “indispensable to a democracy, which is no less true because the speech comes from a corporation.” The majority did not strike down parts of the BCRA that require that televised electioneering communications include disclosures about who is responsible for the ad and whether it was authorized by the candidate.

Dissenting Opinion

Justice Stevens, writing for the dissenters, said that the First Amendment protects people, not corporations. The dissenters felt that the government should be allowed to ban corporate money because it could overwhelm the debate and drown out non-corporate voices. They noted that Congress had imposed special rules on corporate campaign spending for more than 100 years. Without such limits, corporations’ wealth could give them unfair influence in the electoral process and lead to elections where corporate domination of the airwaves would decrease the average voter’s exposure to different viewpoints. They argued that the Court’s ruling “threatens to undermine the integrity of elected institutions across the Nation.” The dissenters argued that the BCRA left open ways for corporations to speak—through political action committees—and argued that PACs would better protect corporate shareholders from having their stake in a corporation used to support candidates they disagree with.

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. What were the facts of the case in *Citizens United v. Federal Election Commission* (2010)?
2. What is the BCRA? How did the law address concerns about the sheer amount of corporate money and how it could influence politics in the U.S?
3. In his dissent, Justice Stevens asserted, “In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters....Like all other natural persons, every shareholder of every corporation remains entirely free...to do however much electioneering she pleases outside of the corporate form.” How would you respond to this statement?
4. Do you agree with the Court’s ruling? What is your constitutional reasoning?