

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)

Condensed Case



The Big Picture

Corporate spending to advance a political position or candidate is protected speech.

Ruling

Independent political expenditures by corporations, business associations, nonprofit organizations, and labor unions are distinct from direct contributions to candidates. These independent expenditures are protected speech under the First Amendment. The government lacked a basis for restricting them.

Constitutional Text

The First Amendment: *Congress shall make no law . . . abridging the freedom of speech.*

OPINION OF THE COURT:

[Citizens United, a nonprofit organization, released a film entitled *Hillary: The Movie*. The movie was critical of Senator Clinton, who was running for president. In December 2007, a cable company offered, for a payment of \$1.2 million, to make *Hillary* available free of charge to viewers on a channel entitled "Election '08."]

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited [businesses] from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. An electioneering communication is defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election. The Federal Election Commission's (FEC) regulations define an electioneering communication as a communication that is "publicly distributed." [Publicly distributed means the communication can] "be received by 50,000 or more persons in a State where a primary election...is being held within 30 days." Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes. The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union.

[The BCRA] makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election.

A PAC is a separate association from the corporation. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations.



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Dissenting Opinion

Citizens United is a wealthy corporation with millions of dollars. Under the BCRA, it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United's nor any other corporation's speech has been "banned." All that the parties dispute is whether Citizens United had a right to pay for broadcasts during the 30-day period.

The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

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. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence.

Political speech is "indispensable to decision making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual."

All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech.

There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations.

When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. [Under the reasoning advanced by the FEC, the agency] could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. "The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of



ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.”



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