Citizens United v. FEC (2010)

Argued: March 24, 2009
Reargued: September 9, 2009
Decided: January 21, 2010

Background

Each election cycle billions of dollars are spent on congressional and presidential campaigns, both by candidates and by outside groups who favor or oppose certain candidates. Americans disagree about the extent to which fundraising and spending on election campaigns should be limited by law. Some believe that unlimited fundraising and spending can have a corrupting influence—that politicians will "owe" the big donors who help them get elected. They also say that limits on fundraising and spending help make elections fair for those who don't have a lot of money. Others believe that more spending on election campaigns supports broader debate and allows more people to learn about and discuss political issues. Those supporting more spending say that giving and spending money on elections is a basic form of political speech protected by the First Amendment.

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.

This case, however, is not about direct donations to candidates. Instead, this case is about how and when companies and other organizations can spend their own money to advocate the election or defeat of a candidate.

Facts

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.*

In 2008, Citizens United, a non-profit organization funded partially by corporate donations, produced *Hillary: The Movie*, a film created to persuade voters not to vote for Hillary Clinton as the 2008 Democratic presidential nominee. Citizens United wanted to make the movie available to cable subscribers through video-on-demand services and wanted to broadcast TV advertisements for the movie in advance. The Federal Election Commission said that *Hillary: The Movie* was intended to influence voters, and, therefore, the BCRA applied. That meant that the organization was not allowed to advertise the film or pay to air it within 30 days of a primary election. Citizens United sued the FEC in federal court, asking to be allowed to show the film. The district court heard the case and decided that even though it was a full length movie and not a traditional television ad, the film was definitely an appeal to vote against Hillary Clinton. This meant that the bans in the BCRA applied: corporations and organizations could not pay to air this sort of direct appeal to voters so close to an election.

Because of a special provision in the BCRA, Citizens United was allowed to appeal the decision directly to the U.S. Supreme Court, which the organization did. Citizens United asked the Court to decide whether a feature-length film really fell under the rules of the BCRA and whether the law violated the organization's First Amendment rights to engage in political speech. The Supreme Court agreed to hear the case and heard oral argument in March 2009. Two months later the Supreme Court asked both parties to submit additional written responses to a further question: whether the Court should overrule its prior decisions about the constitutionality of the BCRA. The Court scheduled a second oral argument session for September 2009.

Issue

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?

Law and Supreme Court Precedents

- ***Austin v. Michigan Chamber of Commerce* (1990)**

  A state law in Michigan said that for-profit and non-profit corporations could not use their money to run ads that support or oppose candidates in state elections. The Supreme Court decided that the Michigan law was constitutional, even though it did restrict corporations' speech. First, the justices said that the government had a very important reason for

restricting speech—reducing corruption or the appearance of corruption. Corporations, they reasoned, can accumulate a lot of money and they might use that money to unfairly influence elections. The justices also pointed out that the Michigan law allowed corporations to set up separate special funds with money from donors and spend that money on election ads. That allowed the corporations other avenues for their speech.

- **The Bipartisan Campaign Reform Act (BRCA) of 2002 (Also known as the McCain-Feingold Act)**

  Among other things, this federal law banned any corporation (for-profit or non-profit) or union from paying for "electioneering communications." It defined an "electioneering communication" as a broadcast, cable, or satellite communication that named a federal candidate within 60 days of a general election or 30 days of a primary.

  In 2003, in a case called *McConnell v. FEC,* the Supreme Court said that the portion of the BCRA about electioneering communications was constitutional.

- ***Wisconsin Right to Life v. FEC*** **(2007)**

  The BCRA banned corporations and unions from paying broadcast advertisements that named specific candidates for office near election time. This included both "express advocacy" (ads that specifically appealed to voters to vote for or against a certain candidate) and "issue advocacy" (ads that expressed a view about a political issue and mentioned a candidate). The Supreme Court decided that the ban on issue advocacy was unconstitutional. The Court said that issue advocacy was political speech, and the government could not prevent organizations from discussing issues simply because the issues might be relevant in an upcoming election. The justices said that issue ads are not equivalent to contributions, and there is not a compelling reason that banning the issue ads would reduce corruption. They also said that issue ads can reasonably mention public officials, as long as they are not direct appeals to vote for or against a specific candidate.

Arguments for Citizens United (petitioner)

- Freedom of political speech is vital to our democracy and spending money on political advertisements is one way of spreading speech.
- The First Amendment applies equally to speech by individuals and speech by groups. Companies, unions, and other organizations should not face stricter rules about their speech than individuals do.
- Newspapers are corporations. Through editorials, news organizations and media companies try to influence elections. If Congress is allowed to ban corporations from placing political ads, what prevents them from regulating the media as well?

- If a movie about a political candidate produced by a corporation can be banned, then books about political candidates that are published within 60 days of an election might be banned as well. Government censorship of this kind would have far reaching implications.
- Though some people or organizations have more money and can therefore speak more, the First Amendment does not allow for making some forms of speech illegal in order to make things "fair."
- Merely spending money to support a candidate—particularly when the money is not given to the candidate, but rather spent independently—does not create or even suggest the corruption that campaign finance reform was originally created to address.
- Incumbents (the public officials already in office) have the most to gain by banning independent spending by companies and organizations. The incumbents have access to much more free visibility and media time. Americans, including organizations and corporations, should be able to criticize the existing government and advocate for a change in leadership.

Arguments for the Federal Election Commission (respondent)

- The First Amendment does not apply to corporations because the Constitution was established for "We the People" and was set up to protect individual, rather than corporate, liberties.
- The BCRA leaves corporations other ways to speak and to spend money on elections. The law allows corporations and unions to form Political Action Committees and to fund advertisements through the PAC. PACs can only use money that has been given to them for the purpose of political advocacy, unlike a corporation's general income, which comes from all sorts of people who might not agree with the corporation's message.
- The Supreme Court has ruled on these issues before in *Austin v. Michigan Chamber of Commerce* and in *McConnell v. FEC,* which upheld the BCRA's bans. The Court should not completely change the law, which has clear public support.
- Corruption is not limited to bribes and direct transactions. By being allowed to spend unlimited sums of money in support of a candidate, corporations and unions will have a certain amount of access to, if not power over, that candidate.
- Even if no corruption takes place, the public may view the vast sums spent by corporations and unions for specific candidates and see the appearance of corruption. That could cause people to lose faith in the electoral system.
- Corporations can accumulate so much money that they could overwhelm the conversation and drown out the speech of less wealthy individuals in an election.

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.

Majority

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 *McConnell 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.

Dissent

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.

