

## Citizens United v. Federal Election Commission

An in-depth look at the January 21, 2010, US Supreme Court decision  
(A handout for the MCA event on March 22, 2010)

"This is a victory for Citizens United, but even more so for the First Amendment rights of all Americans."  
Citizens United President David Bossie.

### What did the court decide?

1. Corporations have a constitutional right to spend their own funds on elections.

"Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster".... and there is "no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers."

The Court reversed its 1990 decision in *Austin v. Michigan Chamber of Commerce*, which upheld a Michigan campaign finance act that prohibited corporations from using treasury money to support or oppose candidates in elections, in part due to "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."

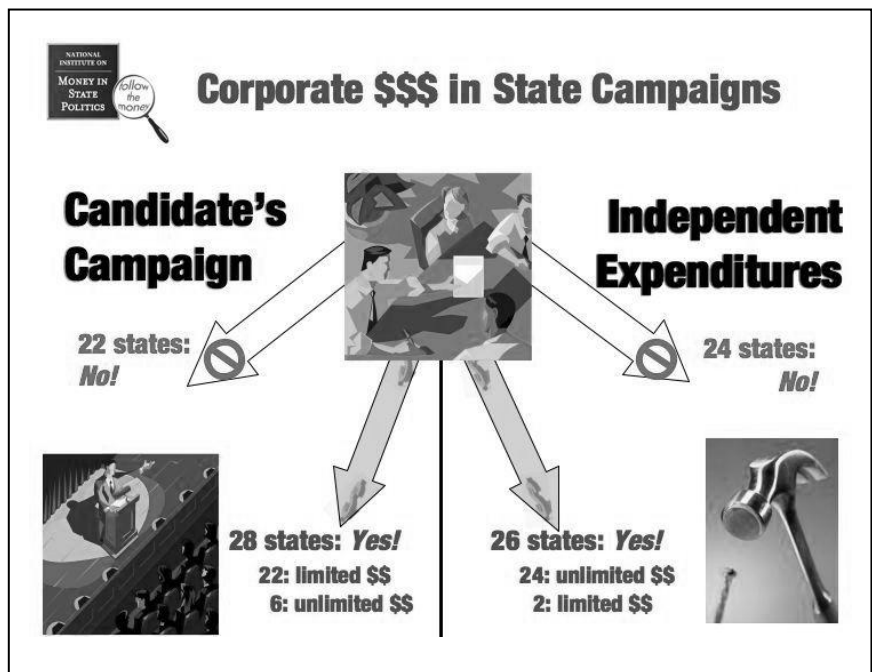
2. Disclaimer and disclosure requirements for corporate campaign expenditures are legal.

"Transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages".... and with "the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

However, these requirements may be waived or reversed if there is a specific threat of harassment or mistreatment of donors. But it's more likely that to protect their image with consumers and to avoid being associated with a particular candidate, corporations will contribute more to trade associations or 501(c)(4) organizations to fund campaign advertising, thus avoiding disclosure since Internal Revenue Service (IRS) rules and Supreme Court precedent provide for donor confidentiality for such tax-exempt organizations.

For in-depth information about these legal issues, search Wikipedia for:

Federal Election Campaign Act (1971, 1974, 1976, 1979)  
Buckley v. Valeo (1976)  
First Nat'l Bank of Boston v. Bellotti (1978)  
Austin v. Michigan Chamber of Commerce (1990)  
Bipartisan Campaign Reform Act (McCain-Feingold) (2002)  
McConnell v. FEC (2003)  
Citizens United v. FEC (2010)



## **Concerns:**

### Campaign finance

Controlling the amount of money in politics is problematic both legally and practically. Given corporate 'free speech' rights, perhaps the best approaches are (1) to defend and enhance disclosure requirements and (2) to assure some minimum level of media access for all candidates through government funding and/or mandated free air time.

### Corporate governance

Consolidation of economic activity across a wide range of sectors leaves consumers and investors with limited choices. Is it right that consumers and investors be forced to support, with their \$\$, the politics of CEOs?

### Corporate personhood

The Citizens United decision is a wake-up call to get concerned about corporate power. Corporate power is pervasive and insidious, persuasive yet invidious. It's cultural underpinning is consumerism; it's legal underpinning is corporate personhood. Controlling corporate power will require changing our values; and it will require a constitutional amendment to abolish corporate personhood.

### The Roberts Court

As currently constituted, this is an activist court that is ready to expand its reach, challenge precedent and redefine the law at every opportunity. It is especially supportive of corporate power and corporate personhood. Citizens United is neither the first nor undoubtedly the last decision of this court that will change the legal landscape in the US.

## **Responses:**

Our democratic political system is a commons just like the archetypal village green in a New England town. It is a bounded space where members can access certain resources. The space consists of our elections (and appointment processes) for government office. The resources are the various executive, legislative and judicial positions that constitute our government and that, in turn, control access to the physical resources of our national commons.

The members were initially propertied males but now include all adult citizens - and then some. Corporations and other associations have been sneaking in to play since before the Robber Baron era; but since 1978, thanks to another 5-4 Supreme Court decision (First Nat'l Bank of Boston v. Bellotti), they've been official non-voting members of the political commons.

Any commons can suffer from greedy or inconsiderate members who grab more than their share or trash the resource (like with attack ads). Such behavior can yield significant rewards for the bully, while the costs are spread through all members of the commons and may not elicit much notice or response. The political commons works the same way. So our twin challenges are: can we devise legal means to constrain potential corporate bullies, and can we motivate citizens to demand their implementation?

As to means, there are three general strategies: tinker with the corporate rules of play (campaign finance reform); shame or cajole corporations into playing nice (disclosure and corporate governance); or kick them out of the commons altogether (abolish corporate personhood). There are many ideas being discussed and some legislation has been introduced in Congress and in various states. However, most of the legislative remedies will likely not survive the Roberts Court, especially if it continues along its pro-corporate trajectory. And serious consideration of corporate personhood is unlikely, absent a huge public outcry.

As to motivation, there is a convergence of issues that may, together, foster a public discussion of values. Those issues include health care, global climate change, good food, economic security, economic equality, plus many more - including, now, campaign finance. And they beg the questions, what should our political and economic goals be? The best response to Citizens United, and one that is under our control, is to actively pursue those questions wherever and however we can.

For some ideas for things to do, search for:

Sunlight Foundation comprehensive disclosure

Socialfunds "Citizens United"

Yes! Magazine "Citizens United"