



Cause for Concern

More than 40% of Hill Staffers Responding to
Public Citizen Survey Say Lobbyists Wield
More Power Because of *Citizens United*

“...If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern...”

-Supreme Court's Decision in
Citizens United v. FEC
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About Public Citizen

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An informal survey of congressional staffers suggests that the Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* has left significant numbers of congressional staffers fearing retaliation against their bosses if they act in ways that displease lobbyists.

Citizens United lifted the century long ban on corporations spending money for messages expressly intended to influence the outcomes of elections. The opinion permitted corporations to spend unlimited sums to influence elections, provided that they do not coordinate their expenditures with federal candidates.

Public Citizen's survey was sent to the e-mail addresses of 3,401 congressional staff members,¹ split nearly equally between those who work for Republicans and Democrats. Responses were received from 80 staff members, of whom 70 percent work for Democrats. Survey recipients were asked if they believe *Citizens United* has strengthened the influence of lobbyists in the policymaking process; if they personally feel a need to respond differently to lobbyists in the wake of the opinion; and to describe why they think the opinion has or has not affected the relationships between lobbyists and congressional staff members.

There was a stark contrast between the responses of Democratic and Republican staffers. Of Democratic respondents, nearly three-in-five (57.1 percent) said *Citizens United* "has strengthened the influence of lobbyists in the policymaking process" and 16 percent said they feel "a need to respond differently to lobbyists' requests" following the opinion.

None of the Republican staffers said they believed that *Citizens United* has strengthened lobbyists' influence or that they personally feel a need to respond differently to lobbyists because of the opinion.

Of the staffers—all Democrats—who reported a need to respond differently to lobbyists, 78 percent said that they "worry about preventing electioneering expenditures against the member for whom I work."

For example, one House legislative assistant wrote, "During the 2010 cycle, something like \$1 million was spent against us by organizations that don't disclose their donors. It will be more in 2012. The concern that every decision we make that affects some large organization or corporation will end up contributing to that number is ever-present, and totally demoralizing. This isn't how the system is supposed to work."

"The prospect of a massive donation to an outside organization that would run ads against my boss and not have any identifying information about who is behind them has a chilling effect on our decision-making," a Democratic legislative director wrote. "I'm reluctant to

¹ E-mails were sent to all chiefs of staff, staff directors, legislative directors, policy advisors, legislative assistants, legislative counsels, and staffers with variations of those titles, identified through a service to which Public Citizen subscribes.

advise my boss to take a hard-line on issues that are important to some companies, because I know that they could spend a fraction of their resources and totally swamp us with ads.”

One Democratic Senate legislative director reported not noticing effects of the opinion, but said that lobbyists are apt to interject the subject of campaigns into policy discussions. “While I do my best to avoid discussions of the campaign with lobbyists, they often bring it up on their own, a trend which I’m sure will grow the closer my boss comes to re-election,” the staffer wrote.

Several Democratic staffers said they did not believe the opinion has affected lobbyist-staffer interactions. For example, one wrote, “I do not think they have had any impact. Lobbyist[s] are educators. Unless a staffer cannot take their information and check for themselves, then they are not doing their job.”

At least one staffer, seemingly counter-intuitively, suggested that the anonymous nature of spending permitted by *Citizens United* would discourage doing favors for lobbyists because it would be impossible to tell if the favor is repaid at election time. “Because more campaign spending is now anonymous, staffers have less trust that courting lobbyists from across the aisle will have any effect on whether or not that lobbyist’s organization will actually support the staffer’s boss,” the legislative assistant wrote.

Some Democratic staffers suggested the system is so fraught with corruption that *Citizens United* does not stand to make it worse. For example, one legislative assistant wrote, “[I]t was already foul and corrupt in the first place! Could scarcely have made it worse, sad to say!”

Republican respondents to the open-ended question generally celebrated the opinion and downplayed its potential effects on policy making.

“We vote based on what we believe not out of political expediency,” one Republican legislative assistant wrote. “*Citizens United* was a great case for freedom of speech.”

“Our relationship with lobbyists has not changed, period,” a Republican legislative director wrote.

One Republican staffer cited ethics rules as a check against undue lobbyist influence.

“The ethics rules in place have had the biggest effect on that relationship, not *Citizens United*,” the staffer wrote.

Public Citizen's Analysis

Public Citizen's informal survey was not intended to collect statistically significant data. The predictably low response rate and other limitations precluded any attempt to yield representative data on congressional attitudes.

Nonetheless, the survey responses undercut a key rationale underlying *Citizens United*. The Court permitted unfettered corporate spending in large part because it believed that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."² The threat of actual or apparent corruption is the basis on which the Court has historically found laws regulating political campaign spending to be constitutional.

The Court acknowledged in *Citizens United* that if elected officials were shown to "succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern."³ The Court also acknowledged its obligation to give weight to laws passed by Congress to dispel either "the appearance or the reality" of improper influences of independent expenditures.⁴

Of the congressional staffers who reported acting with increased responsiveness to lobbyists, most indicated the reason was to deter lobbyists from directing large sums of money to be spent against their bosses. This would not constitute acceptance of substantive arguments put forth by lobbyists, the definition of a proper, above-board lobbying relationship. Instead it would amount to staffers subordinating their policy judgments to their concerns about election expenditures against their bosses.

While influence garnered through the threat of retribution may not meet the narrowest definition of corruption (illicit quid-pro-quo exchange), any alteration of policy making behavior that is intended to influence election spending by special interests would represent a degradation of the honesty and integrity of the policy making process. Such effects would be almost certain to engender public perceptions of improper influence, and therefore undercut the Supreme Court's conclusion that independent expenditures do not contribute to "corruption or the appearance of corruption."⁵

² *Citizens United v. Federal Election Commission*, 130 S. Ct. at 55.

³ *Ibid.*, at 45.

⁴ *Ibid.*

⁵ *Ibid.*, at 42.

Appendix

Results from all respondents (n=80)

Do you believe Citizens United has strengthened the influence of lobbyists in the policymaking process?

Answer	Number	Pct.
Yes	33	41%
No	34	42%
I don't know	11	14%
No answer	2	3%

Have the changes brought about by Citizens United left you feeling a need to respond differently to lobbyists' requests?

Answer	Number	Pct.
Yes	9	11%
No	54	68%
I don't know	7	9%
No answer	10	12%

Results from respondents who work for Democratic members of Congress (n=56)

Do you believe Citizens United has strengthened the influence of lobbyists in the policymaking process?

Answer	Number	Pct.
Yes	32	57%
No	15	27%
I don't know	7	12%
No answer	2	4%

Have the changes brought about by Citizens United left you feeling a need to respond differently to lobbyists' requests?

Answer	Number	Pct.
Yes	9	16%
No	35	63%
I don't know	3	5%
No answer	9	16%

Please share your opinion of why you think relationships between lobbyists and congressional offices have or have not changed because of Citizens United.

1. Because it was already foul and corrupt in the first place! Could scarcely have made it worse, sad to say!
2. It's possible that it has increased the pressure on Members of Congress to be more responsive to the interests advocated by lobbyists, though it's often hard to discern the Member's motivation for responding a given way. I have not operated at a high enough level for a long enough period of time to be comfortable in saying that there is any significant difference.

3. My relationship with lobbyists has not changed because it was influenced by contributions in the first place.
4. During the 2010 cycle, something like \$1 million was spent against us by organizations that don't disclose their donors. It will be more in 2012. The concern that every decision we make that affects some large organization or corporation will end up contributing to that number is ever-present, and totally demoralizing. This isn't how the system is supposed to work.
5. I do not think they have had any impact. Lobbyist[s] are educators - Unless a staffer cannot take their information and check for themselves, then they are not doing their job. There is not [a] way a member of Congress can know everything about every issue. A good lobbyist's job is to educate the member.
6. This is a really dumb survey and is not substantive at all. It's akin to push polling.
7. Lobbyists for powerful entities, like corporations, have a huge presence and supreme influence in most offices -- not only because they have full access to members of Congress at fundraisers but also because they have money to hire a team of staff to work on any one issue ... I am not aware of many non-profits or consumer advocacy groups that have that kind of staff power or influence ... and Citizens United will likely only exacerbate this disparity...
8. I personally have not noticed a change -- yet. My boss was not in cycle last year so I'm not sure how things will change when he is. While I do my best to avoid discussions of the campaign with lobbyists, they often bring it up on their own, a trend which I'm sure will grow the closer my boss comes to re-election.
9. Although this is my first year as a staff member in Congress, it is clear that lobbyists of corporations know they now have more power and resources to help elect congressional members who agree with them, so their attitudes reflect a sense of increased empowerment when communicating with members and staff compared to non-corporate lobbyists. The results of the 2010 House election have likely bolstered this situation for them.
10. The prospect of a massive donation to an outside organization that would run ads against my boss and not have any identifying information about who is behind them has a chilling effect on our decision-making. I'm reluctant to advise my boss to take a hard-line on issues that are important to some companies, because I know that they could spend a fraction of their resources and totally swamp us with ads.
11. Because more campaign spending is now anonymous, staffers have less trust that courting lobbyists from across the aisle will have any effect on whether or not that lobbyist's organization will actually support the staffer's boss.
12. The access to the members at fundraisers, where there is no policy filter or countering viewpoint, increases with the additional need to draw money from uncapped donors, especially people with access to bottomless corporate or union coffers.
13. I believe the change has had a larger impact on campaigns and who gets elected rather than the influence lobbyists may or may not have on officials already in office. I also tend to believe that the influence of money and lobbyists, at least at the LA level, tends to be overstated. Few LAs have any idea how much money any specific lobbyist (or the group they represent) may or may not have donated and are basing their recommendations to the Senator based on what they believe to be good policy or good politics, not what may or may not lead to more or less campaign donations.
14. I have noticed no difference in the way I interact with lobbyists or the way that they interact with me. I don't necessarily believe that lobbyists have seen their influence grow as a result of this case. Instead, it seems a few big players (Koch Brothers, Karl Rove, etc.) get to have a much bigger say in elections without people realizing how much one person or one industry is shaping the race. In my opinion, the actions of lobbyists

haven't really been changed as a result of this case; they are here to lobby policy, while these big fund raising groups exist to sway elections.

15. It is not my job to worry about campaigns. I don't work for a campaign. It is my job to represent the Member for whom I work and his/her constituents. I listen to lobbyists because they represent people. I don't care if they have money.
16. Lobbyists have been a part of our government for as long as I can remember and the work that they provide is often of help in some minimum aspect in decision making. The two recent Supreme Court decisions will perhaps however change the face of how individuals address the next decade of elections and contributions therein. It bears close watching as to what transpires.
17. I don't think it has changed.
18. The integrity of my Member is stronger than any lobbyist's efforts.
19. The issue isn't about responding to lobbyists, it's about knowing that no matter what a Member does they can expect to have a ton of money dropped in a race against them and that money will come from unknown sources, likely have little connection to the truth or reality about an issue, the Member/candidate's position, etc.
20. We have the best democracy money can buy. The best thing we could do for our democracy is to enact campaign finance reform. Get the money out of Congress now.
21. Lobbyist for powerful corporations that can spend freely on campaigns now get more credence from certain offices.

Results from respondents who work for Republican members of Congress (n=19)

Do you believe Citizens United has strengthened the influence of lobbyists in the policymaking process?

Answer	Number	Pct.
Yes	0	0%
No	16	84%
I don't know	3	16%
No answer	0	0%

Have the changes brought about by Citizens United left you feeling a need to respond differently to lobbyists' requests?

Answer	Number	Pct.
Yes	0	0%
No	17	89%
I don't know	2	11%
No answer	0	0%

Please share your opinion of why you think relationships between lobbyists and congressional offices have or have not changed because of Citizens United.

1. Maybe because the economy dictates lobbying behavior primarily. Additionally, our office is often a lost cause for lobbyists.
2. We vote based on what we believe not out of political expediency. Citizens United was a great case for freedom of speech.
3. It's not clear to me that there has been a change. Members focus largely on the interests of their District when deciding whether to take an action or position.
4. Never been influenced much by lobbyists, but i do not see much of a decline in influence in other offices since many staff and members continue to become lobbyists. Jack Abramoff scandal probably did more than anything to wake people up that you should not do unethical favors for lobbyists.
5. I'm not sure why it would have changed. The ethics rules in place have had the biggest effect on that relationship, not Citizens United.
6. Our relationship with lobbyists has not changed. Period.
7. No change.
8. I haven't noticed a change. Everything seems to be functioning as it did before.
9. Our office meets with groups all of the time, some are lobbyists some are just groups from home. I don't feel it is any different. There are still ethics rules.