

# Rescuing American Democracy and the Restoration of the First Amendment

Robert Weissman

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# Overview

- How Did We Get Here: Supreme Court Decision-Making History
- The Citizens United Decision
- Consequences
- What Can We Do

# First, Let's Start with the Bottomline



- The central holding of Citizens United: For-profit corporations have a First Amendment right to spend unlimited amounts of money from their treasury to influence election outcomes

How Did We Get Here

# Separate Strands of Supreme Court Decision-Making - I

1. Money (political contributions) is a form of speech (Buckley, 1976)
2. Corporations are entitled to protections -- exactly which, not specified -- provided by the constitution (“corporate personhood”) (Santa Clara, 1886)



# Separate Strands of Supreme Court Decision-Making - II



“Contemplation of Justice”  
Photo by Lois Long

3. Corporations are entitled to First Amendment Rights
  - A. Commercial Speech (Virginia State Pharmacy Board, 1976), with unsettling evolution
  - B. Political Speech (Bellotti, 1978)
  - (C. Press Freedom - longstanding)

# Harms from Commercial Speech Protections for Corps

Undermined or affected have been:

- Rules limiting tobacco advertising likely to be seen by children;
- Regulations restricting alcohol advertising.
- Limitations on casino and gambling marketing.
- Pharmaceutical marketing, including direct-to-consumer advertising and promotion of off-label uses of pharmaceuticals.
- Rules designed to force disclosure of hidden ads (product placements and product integration) on television and radio.

# Harms from Political Speech Protections for Corps

Protections have been used to:

- Provide a corporate right to spend money in state referenda campaigns.
- Overturn a rule mandating that regulated utilities include in their bills information on how to join a consumer group.
- Prohibit state laws mandating disclosure of whether dairy products include genetically engineered growth hormone.
- Justify sham lawsuits and lobbying activities aimed at protecting monopolies.
- Seek immunity for financial credit rating firms that issue grossly negligent ratings of bonds and other debt instruments. ...



... but not, until now, a right to spend money from the corporate treasury to support or oppose candidates for electoral office.

# Citizens United Background

- Citizens United is a conservative advocacy group receiving some corporate funding
- Citizens United produces a movie, *Hillary: The Movie*, which attacks Hillary Clinton
- Issue presented: Can they air the movie as an on-demand offering during the period when an independent expenditure television advertisement would otherwise be banned under McCain-Feingold? Is this like an ad?

# Supreme Court Magic

- Narrow technical case transformed, to: Are all limits on spending by corporations -- so long as not coordinated with candidates -- prohibited by the First Amendment?



# The Holding

- Having reframed the case to ask the question it sought, the Court by a 5-4 majority gives the predetermined answer: Yes.
- Directly overrules *Austin*, a 1990 case holding corporate expenditures can be regulated; reverses 70 years of campaign finance law.
- Extraordinary level of judicial activism, disregard for tradition and restraint.

# Empty Justice



# The Majority

- “Speech is an essential mechanisms of democracy, for it is the means to hold officials accountable to the people.”
- “Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others.”
- “By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing and respect for the speaker’s voice.”

# More from the Majority

- “The censorship we now confront is vast in its reach.”
- “Independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”



“Authority of Law” Photo by Lois Long

# The Stevens Dissent

- “Although they make enormous contributions to our society, corporations are not actually members of it.”
- “The unparalleled resources, professional lobbyists, and single-minded focus they bring to this effort ... make quid pro quo corruption and its appearance inherently more likely when they (or their conduits or trade groups) spend unrestricted sums on elections.”



# More Stevens

- “Starting today, corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interests.”
- “The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it.”
- “It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires.”

QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.

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# Consequences: Context

- Amount Spent on 2008 election:  
**\$5.285 billion**
- Exxon profits 2007-2008: **\$85 billion**
- Top-selling drug, Lipitor, revenues,  
2007-2008: **\$27 billion**
- Goldman Sachs bonus and compensation  
expense for 2009: **\$16 billion**

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# Consequences

- Scenario I: Across the board impact
  - More corporate money
  - Trade associations
  - Front groups
- Scenario II: Affected industry invests across the board for its interest
  - E.g. Pharma, Wall Street
- Scenario III: Company picks off its adversaries
  - Impact esp. at local/state level
- Scenario IV: Chilling impact, change candidate selection

What  
We  
Can  
Do



# Public Financing of Elections

- Fair Elections Now Act
- Introduced by Rep. John Larson and Sen. Richard Durbin
- 126 House co-sponsors
- Public funding in exchange for agree accept no donations of over \$100
- Would give a foundation of support for all candidates -- but not offset corporate “independent expenditures” opened up by Citizens United

# Shareholder and Other Strategies

- Shareholder Protection: An absolute majority of shareholders must approve corporate political expenditures
- Pay to Play Prohibitions: Corporations doing business with the government may not make political expenditures
- Congressional leadership/White House legislation expected soon

# Constitutional Amendment Principles

1. First Amendment speech protections do not apply to for-profit corporations.
2. First Amendment speech protections do not apply to non-profit corporations or associations that are predominantly funded by corporations.
3. First Amendment freedom of press continues to apply to for-profit corporations.

# Sample Language

- The freedoms of speech and the press, and the right to assemble peaceably and to petition the Government for the redress of grievances, as protected by this Constitution, shall not encompass the speech, association, or other activities of any corporation or other artificial entity created for business purposes, except for a corporation or entity whose business is the publication or broadcasting of information, when such corporation or entity is engaged in that business. A corporation or other artificial entity created for business purposes includes a corporation or entity that, although not itself engaged in business pursuits, receives the majority of its funding from other corporations or artificial entities created for business purposes.



# Why a Constitutional Amendment?

- Preserving our democracy requires reversing the decision
- The Court has inappropriately granted constitutional rights to corporations
- A campaign for a constitutional amendment can succeed even absent winning passage of an amendment

# Strategy

- Show broad support -- this is why the petition is so important
- Expand public support
- Carry on a conversation over best amendment language
- Generate local, state resolutions etc.
- Cultivate interest in the media and on the Hill
- With enough demonstrated support, finalize language and push for Congressional passage

# 6 Easy Steps

1. Sign the petition at DontGetRolled.Org
2. Ask 10+ friends to sign the petition at DontGetRolled.Org
3. Write a Letter to the Editor
4. Post about the amendment on DontGetRolled.Org in blog comment sections
5. Email [action@citizen.org](mailto:action@citizen.org) if you'd like to be a grassroots leader on the campaign
6. Donate at DontGetRolled.Org

[DontGetRolled.Org](http://DontGetRolled.Org)