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Citizens United v. FEC
Supreme Court of the United States
558 U.S 310 (2010)

THE STORY

In 2008, Citizens United, a nonprofit DC-based, free-speech advocacy group, released a film called Hillary: The Movie about then-Senator Hillary Clinton who was a primary candidate for President of the United States representing the Democratic party. The movie featured interviews with political commentators and others who were critical of her, which was clear in the two ads Citizen United ran to promote the movie. Although the film was released in theatres and on DVD, Citizens united wanted to make a bigger splash by offering the movie on a cable on-demand channel called Elections '08 and worked out a deal in 2007 with a cable provider to shoulder the on-demand fees so people could watch the film for free. To do this, Citizens United created two ads – one 30-second and one 10-second – to air on broadcast and cable television. The plan was to feature the film through the on-demand channel within 30 days of the election, but Citizens United feared that running promotional ads and airing the movie would violate a rule in the Bipartisan Campaign Reform Act of 2002 (BCRA).

The BCRA was a law created to make amendments to the Federal Election Campaign Act, specifically focused on two issues:

1. Clarifying rules about the use of soft money in campaign financing and;
2. Limiting corporations ability to run messages via broadcast, cable, or satellite that refers to a candidate for Federal office by name and made within 30 days of a primary or 60 days of a general election. This limit was called electioneering communication.

In addition, federal law prohibited corporations to use corporate treasury funds to donate to a candidate or for use toward independent expenditures, which advocate the election or defeat of a federal election candidate through any form of media. As a compromise, BCRA allowed corporations to set up separate entities known as Political Action Committees (PACs) to engage in these types of activities. Citizens United worried that their film and ads would be punishable under the corporate-funded independent expenditures. As a result, Citizens United set out to get clarification from a judge about the law and ask them to sign an order to stop the law from being enforced by the Federal Elections Commission (FEC) citing it was unconstitutional.

THE LEGAL ROUTE

I. United States District Court for the District of Columbia
    a. Since Citizens United is headquartered in Washington, D.C. three judges heard Citizens United's case arguing that electioneering communications and disclaimer and disclosure requirements were unconstitutional and their request for a declaratory and injunctive relief. The judges disagreed and denied Citizens United motion. The district won.

II. United States Supreme Court
    a. There was a provision written in the BCRA that stated district court appeals would go directly to the U.S. Supreme Court. They are now hearing the case.

THE PRECEDENTS

1. **<u>Austin v Michigan Chamber of Commerce 494 U.S. 652 (1990):</u>** A state law preventing corporations from making independent expenditures on behalf of a state candidate is constitutional. The court found a compelling interest is preventing “"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." State corporations may, however use segregated funds to do so, i.e. a PAC.

2. **<u>Buckley v Valeo - 424 U.S. 1 (1976)</u>** – Restrictions on campaign contributions are legal because they prevent quid pro quo corruption or the appearance of such. If donors can’t coordinate with a candidate then there is less danger that the donor is giving the money as a quid-pro-quo for something the candidate will or won’t do. But restrictions on campaign expenditures, which are more like “pure speech” than contributions, do impose a restraint on political speech and thus are not constitutional.

3. **<u>Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978):</u>** Speech doesn’t lose its First Amendment protection simply because it is from a corporation. Corporations have an important view in the marketplace of ideas.

4. **<u>McConnell v. Federal Election Commission (2003):</u>** A law that bans “soft money” and regulates the source, content and timing of political advertising does not violate the First Amendment because the government has an interest in prevent corruption or the appearance of corruption. Note: this tested the legality of portions of the McCain-Feingold Act)

5. **<u>2 U.S.C. ß 441b</u>**. Corporations and unions can’t use money from their treasury to advocate for or against a candidate. Stockholders and employees of the corporation (or members of a union), however can form a political action committee with a separate, segregated account and fund such speech.

   Corporations can’t broadcast electioneering communications within 30 days of a primary election and within 60 days of a general election.

   ß 434(f)(3) 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…. “

6. **<u>Bipartisan Campaign Reform Act (BCRA, 2002)</u>**

   ß 201: Any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC that includes the identity of the person making the expenditure, the amount of the expenditure, the election to which it applies and the names of contributors. the communication was directed, and the names of certain contributors.

   ß 311: All electioneering communications on TV that the candidate doesn’t pay for must include a spoken and written disclaimer of four second that “____ is responsible for the content of this advertising.'" [ ] The required statement must be made in a "clearly spoken manner," and displayed on the screen in a "clearly readable manner" for at least four seconds. In addition the ad must state that the

communication "is not authorized by any candidate or candidate's committee" and must display the name and address/website of the funder

7. **Tillman Act (1907)** – Corporations and national banks can't contribute to federal campaigns.

THE KEY QUESTION
Under the First Amendment, can government limit how corporations, including nonprofits and unions, use corporate finances to support or speak out against candidates in local and national elections under FEC laws?

THE ANSWER AND VOTE
No. The United States Supreme Court found that section 441(b) of the Bipartisan Campaign Reform Act of 2002 was unconstitutional. Citizens United won 5-4. Justices Kennedy, Roberts, Scalia, Alito and Thomas were the majority and Justices Stevens, Ginsburg, Breyer and Sotomayor dissented.

REASONS FOR THE DECISION
1. The First Amendment prohibits suppressing the speech of a speaker based on their identity and wealth, as free speech is not dependent on financial ability and the majority of U.S. corporations have less than $1 million in income refuting the notion corporations have aggregates of wealth. In addition, the First Amendment gives us the freedom to think for ourselves. Citizens should be trusted to be able to discern between what is true and false.
2. PACs may not be setup in time to make its views known since they are burdensome to corporations due to costs and regulations
3. There are 26 states with unrestricted independent expenditure rules and there hasn't been a claim of corruption from those states. Referring to the Buckley case, the anti-corruption government interest which was referenced was related to *quid pro quo* corruption. Since corporations spend money to try to persuade voters its clear they do it because they believe the voters have the final say.
4. Regarding shareholder protections, shareholders have the power to correct abuses via procedures of corporate democracy and the power they're given wouldn't allow abuses to be swept under the rug.
5. Using the *Austin* case, as technology progresses, political speech will become more popular online, but banning a blog created with corporate funds because it discussed a political candidate isn't allowed to be singled out by Congress.
6. Disclaimers help by making it clear to the audience who is backing the advertisement and is less restrictive compared to other regulations. Plus, with no evidence of previous ill-actions resulting from disclosures, it allows citizens to hold corporations and elected officials accountable for their position on an issue.

POINTS FROM THE DISSENT
1. The statues mentioned in Austin and McConnell have exemptions for PACs, but isn't any more of a burden than complying with other parts of the law the court decided to uphold.
2. While corporate speakers contribute to society, they cannot vote or run for office, making their right to speech vastly different from an individual citizen. Also, in

response to the government not restricting political speech based on identity, the government does indeed place restrictions on speech from federal workers, prisoners, students and foreigners, to name a few, but when justified, they do not create conflict. Lastly, the majority's decision hurts State's rights as it is limiting their ability to monitor and regulate corporate electioneering.

3. There are ranges of corruption that are not neatly outlined, but would include giving preferential treatment to someone based on their donation. Given the potential direct effects proposed legislation has on a company, they are well-suited with resources and money to buy access.
4. An influx of corporate spending on political ads can seemingly dominate the election cycle and citizens may find their voice or influence on policy is less important and/or invalid.

KEY LEGAL POINT

Under the First Amendment, corporations, including nonprofits and unions are allowed the free speech protections as it pertains to corporate campaign spending during local and national elections supporting or speaking out against a candidate. The government cannot limit their spending under FEC laws since there was no direct evidence companies have an excessive amount of influence over an election.