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"Wrong" Speech Is Also Free Speech: Citizens United at Two

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In the past week, many commentators have used the second anniversary of the Supreme Court's decision in *Citizens United v. Federal Election Committee* to reiterate their critiques of the controversial decision. Rep. Bernie Sanders (I-Vt.) and Public Citizen's Robert Weissman, for example, [write](#) that the decision "poisoned our political process" and ask whether the "merits or the money" will now "tip the balance when an issue comes before Congress."

I sympathize with Rep. Sanders and Mr. Weissman. We all hope that our nation's policies are chosen due to merit rather than some other influence. But our valuation of a policy's merit is intertwined with our ideological commitments. Rep. Sanders and Mr. Weissman make this clear when they list policies that they believe would be in effect if corporate speech were suppressed, that is, if "merit" won out over money. Among these: a national health care program, rectifying the "collapse of the middle class," fixing the high price of prescription drugs, and ending gratuitous military spending.

Rep. Sanders and Mr. Weissman thus demonstrate a crucial fact: many who oppose *Citizens United* do so because they want to silence speech that promotes policies they oppose. They want to silence it because they think it is bad speech that gives a disproportionate influence to bad ideas. Yet there can be no greater violation of the First Amendment than to act with this motive. Critics of the decision cite the "[undue influence](#)" corporations can have on elections through such mechanisms as "drowning out [candidates'] messages" with "misleading negative ads." Sean Siperstein [writes](#) about a new campaign by Public Citizen to expose the "mega-corporations" that are most "responsible for greedy, disastrously short-sighted policies, to the detriment of the rest of us."

These critiques blur the line between one type of influence that the Supreme Court has acknowledged should be stopped--outright candidate bribery--and other types of influence that are strongly protected by the First Amendment--such as affecting the national debate or influencing candidates' policies by making both them and the public aware of issues. Critics of *Citizens United* often conflate these two types of political spending, regarding all corporate

spending as either corrupting the national debate through disproportionate influence, or corrupting politicians through something tantamount to bribery.

But tellingly, their critiques are one-sided. Missing from any of the articles linked above is any discussion of the "disproportionate" effect that unions have on the American political landscape. Although it is rarely acknowledged, *Citizens United* permitted both unions and corporations to make independent campaign expenditures. And make no mistake about it, unions are significant moneyed interests in American politics, comprising [nine of the top 15](#) "heavy hitter" campaign spenders over the last 22 years, according to OpenSecrets.org. It is striking, to say the least, that those who rail against disproportionately loud voices and the "undue influence" of political speech are so silent when it comes to the effects of union spending. Perhaps it is more difficult to be critical of the undue influence of speech that one believes is meritorious. If you agree with the speaker, why not buy him a megaphone?

The omission of any discussion of union money in essentially [every critique](#) of *Citizens United* [published](#) in the [past month](#) is glaring. A dispassionate assessment of the effects of money in politics demands attention to union spending. But an ideologically committed assessment would tend to view the ideas that one finds convincing as being the result of merit, while viewing the ideas one believes unconvincing and harmful to the nation to be the result of "undue influence." This predilection is not because of any inadequacy on the part of *Citizen United's* critics, it is a result of human nature.

Yet I do not want to unjustly besmirch Rep. Sanders and the other critics of the decision. Perhaps they believe that union spending should also be curtailed. If so, I wish they would make more of a fuss about it. Otherwise, they demonstrate bias that is extremely harmful to their argument. They also underscore my broader point: it is difficult, if not impossible, for any ideologically committed person to assess which speech, if any, is "unduly influential."

The reasons for this are rooted in human psychology. It can be difficult to explain to ourselves why people disagree with us. This observation is simultaneously mundane and profound. On some level we expect disagreement, but on another level, we scratch our heads at how others can believe in ideas that are so obviously, well, *wrong*. This is more true for the ideologically committed who have devoted their lives and careers to pushing for a society that they believe would be happier and more just, a category of people to which I fully belong.

There are many possible explanations available to us for why there is opposition to our views. Perhaps those who oppose us are evil. Maybe they're selfish and only care about themselves. But the hardest explanation to accept is that your opponents are honest, well-meaning, informed people who have rational reasons for their views. It's easier, and more self-rewarding, to believe that your opponents are being misinformed by speakers who shout the loudest and actively spread lies.

This last explanation has become a crucial part of the modern debate over campaign finance reform. Understandably so. After all, why should we let liars and shouters stand in the way of a better world?

The First Amendment, that's why.

The First Amendment does not allow anyone to pursue his vision of a better world through censorship. Although we'd all love the liars and shouters to be silenced, the First Amendment forbids such censorship precisely because there is no way to agree on who is a liar and who is "too loud." Those determinations are too intertwined with our ideological commitments.

Although I agree with Rep. Sanders and Mr. Weissman that money may have too much influence on politics, perhaps we should address this problem by creating a government that lacks the power to reward undue influence -- that is, a limited government that cannot determine whether someone succeeds or fails in life -- and not by stifling free speech.

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