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Campaign Finance Opinion Could Roil Economy

By Sara Jerome

If the Supreme Court overturns rulings that empower government to limit corporate spending on elections when it rehears [Citizens United v. Federal Election Commission](#) in September, the impact could reverberate across the economy, afflicting "severe consequences on the openness, dynamism and operation of markets."

This is the argument the Center for Political Accountability, a non-profit, and the Zicklin Center, a research division of the Wharton School at the University of Pennsylvania, waged [in an amicus brief filed last week](#).

The CPA/Zicklin brief is one of numerous briefs filed in the past week weighing in on a case prompted by whether the FEC was justified in mandating that a 2008 film by the conservative non-profit Citizens United that negatively portrayed then-Democratic presidential primary candidate **Hillary Clinton** not be broadcast or advertised on television. The Court heard the case in June but decided to rehear it on September 9, before the start of the next term, a move that upped the ante by widening the scope of what the Court will consider.

Although many who oppose corporate spending in elections have sounded alarm bells about the case, the CPA/Zicklin brief stands out even among recently-filed briefs in that it wages a broad macroeconomic argument. Predicting doom and gloom for the financial system if the Court overturns decisions limiting corporate influence on the election process, the brief focuses on the nation's economic health rather than focusing more exclusively on elections.

"The brief introduces into the argument some justifications for corporate prohibition that have never been fully considered by the Court," said **Karl Sandstrom**, CPA's counsel, who authored the brief. Sandstrom, who is also of counsel at law firm Perkins Coie, noted that CPA comes at the case from a distinct perspective as an organization that works with shareholder advocates for transparency in corporate political spending. "[The brief] shows the large consequences the decision could have on the overall economy."

At stake in September are two decisions that help underpin today's federal campaign finance laws. The court will consider the 1990 decision [Austin v. Michigan Chamber of Commerce](#), which upheld the Michigan Campaign Finance Act and effectively permitted the government to ban corporations from using treasury

dollars to influence campaigns. The other is part of 2003's [McCConnell v. Federal Election Commission](#) decision upholding most of Bipartisan Campaign Reform Act--the constitutionality of banning corporate funding for broadcast ads that mention federal candidates in the days leading up to a federal election is under question.

If those decisions are overturned, bans against corporations donating money to influence elections--to candidates, parties, and political groups--would persist through the Federal Election Campaign Act. Legislation limiting other specific avenues of corporate influence would also remain. But bans on corporate expenditures--on ads, for instance--would no longer be allowed.

"All of [campaign finance law] could change, in a flash potentially," said Charles Hall, the communications director at Justice at Stake, an organization that advocates for impartiality in the courts and which filed its own brief on the case, coming down on the same side as CPA/Zicklin, albeit through an argument focused more specifically on court elections. "This decision [to broaden the case] sent shock waves to anyone that cares about elections," Hall said.

(Notably, not everyone anticipates such drastic changes. *National Journal's* **Stuart Taylor Jr.** writes in this week's magazine (subscription) that for "all the alarms among liberal election-law experts" [he doubts that](#) "the Court's majority is planning to open the floodgates to unlimited campaign spending by Big Business.")

Nevertheless, the CPA/Zicklin brief takes a distinct tack on the issue. Rather than exclusively examining how corporate spending could impact elections, it looks at how this new avenue for corporate spending could throw a monkey wrench in the financial system.

According to the brief, corporate election spending would plunge shareholders, and in turn, the economy, into great vulnerability because corporate managers would be tempted to use company treasuries--which include profits--for personal political gain rather than to maximize shareholder value, clouding incentive systems and introducing some dysfunction into the markets.

"I like to use the example of an executive seeking an ambassadorship [for himself]," said **Bruce Freed**, the CPA's executive director. If the executive spends corporate dollars to improve his odds, he is not maximizing profits. That behavior, across iterations, and magnified by the scale of the corporate treasury funds that managers control, could wreak havoc on the economy, according to the Zicklin/CPA brief.

Sandstrom wagered that although this argument has not been widely mentioned to this point, it could be persuasive for Justice **Anthony Kennedy**, the perennial swing vote, since the Justice revealed his concern for campaign finance law in ruling to uphold restrictions in [Austin v. Michigan Chamber of Commerce](#).

Meanwhile, proponents of greater leeway for corporate spending also filed amicus briefs last week, often making arguments on free speech grounds, waging that corporate expenditures are protected by First Amendment rights.

Ilya Shapiro, a Supreme Court expert at the Cato Institute, which filed its own brief on behalf of Citizens United, saw problems in the CPA/Zicklin brief's macroeconomic argument. How executives use company money, he said, is "an issue for the shareholders, and not a matter of public policy. The government shouldn't be telling corporate officers how to behave" in this instance.

Sandstrom countered that the system is set up so that individual shareholders have little ability to influence a corporation's choices. "It's difficult for shareholders to marshal support," even when they do push back, he said, since individuals do not have an easy way to identify or organize with other shareholders who have similar concerns.

"The odds are stacked against you," he said, noting that many individuals own stock through mutual funds through their 401Ks and do not actively participate in deciding where that money is invested.

Shapiro also pointed out that it's already legal for corporations to influence politics--through lobbying. "Would corporations start making political [expenditures] totaling a lot of money [if these campaign finance laws are overturned]? Absolutely. But we allow lobbying--also a constitutionally protected activity--and campaign [spending is] no different," he said.

Sandstrom, though, argued that lobbying, far from exemplary of seamless avenues of corporate influence, raises some of the same conflicts. "They're both bad," he said.

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