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'Citizens United' Case Gets Renewed Scrutiny

by [David Welna](#)

As early as Monday, the Supreme Court could decide to revisit its landmark *Citizens United* ruling of two and a half years ago.

That case gave corporations the green light to spend unlimited amounts in political campaigns. Now, a Montana case could lead the high court to take a second look at *Citizens United*.

Meanwhile, the role of Chief Justice John Roberts in the case is also raising questions in Congress.

Politicians have battled on Capitol Hill over the *Citizens United* decision ever since the Supreme Court's ruling in January 2010. Days later, as President Obama delivered his State of the Union address, he scolded the Supreme Court justices who sat right below him.

"With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests — including foreign corporations — to spend without limit in our elections," the president said.

Indeed, much of the mountain of campaign money raised this year would not be allowed had it not been for a series of rulings from the court headed by Roberts. And a huge share of that money is benefiting Republican candidates.

Praise And Disapproval

On Friday, Senate Minority Leader Mitch McConnell, R-Ky., praised the Roberts court at a meeting of the conservative Faith and Freedom Coalition.

"Now, you know, we haven't always agreed with decisions we've gotten in court, but on this issue, the court's been pretty good," he said. "The courts have said Congress does not have the authority to muzzle political speech."

In fact, in 2007 the Roberts court also partly overturned a 4-year-old ruling that upheld the McCain-Feingold campaign finance law. That was only two years after Roberts had assured senators that he respected the doctrine of *stare decisis*, a Latin term for giving much deference to previous court decisions.

Alabama Republican Sen. Jeff Sessions says the court was right to tackle campaign finance.

"It was ripe. It had been out there for a number of years. The country needed an answer," he says.

But critics of the court say it took a narrow question — whether a TV-on-demand documentary about Democrat Hillary Clinton could be shown in the weeks leading up to the 2008 presidential primaries — and answered it by vastly easing restrictions on corporate campaign spending.

"The court got way, way, way ahead of its skis here," says Sen. Sheldon Whitehouse, a Rhode Island Democrat. He has filed a friend of the court brief demanding that the high court reverse its *Citizens United* decision.

"It was a decision they were so eager to make, but now I think they're embarrassed by the wild discrepancy between the world as they presumed it in their written decision and the world as we see it around us, post-*Citizens United*," he says.

Roberts' Role

Arizona Sen. John McCain, the Republican who co-sponsored the McCain-Feingold law, voted to confirm Roberts as chief justice. McCain now has regrets.

"I am more disappointed in him than any of the other four that voted to overturn McCain-Feingold," McCain says.

At his confirmation hearing nearly seven years ago, Roberts compared judges to umpires: They don't make the rules, he said, they apply them.

"Judges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath," Roberts said.

Former Pennsylvania Sen. Arlen Specter was the Republican chairman of that hearing. Now a Democrat, Specter says Roberts has made a complete U-turn.

"There's no doubt that in *Citizens United*, Chief Justice Roberts did not follow what he described as modesty, a nonactivism, or not giving a jolt to the system," Specter says. "*Citizens United* was a tremendous jolt to the system."

But Ilya Shapiro of the libertarian Cato Institute says the chief justice did adhere to *stare decisis*: "Chief Justice Roberts' opinion is a very clear exposition of the modern doctrine of *stare decisis*, as it stands."

Campaign finance expert Richard Hasen, who teaches at the University of California, Irvine's law school, says the question is not so much whether the Roberts court respected precedent.

"I think the problem is more one of hypocrisy — that if you say that you're a neutral umpire and that you're going to give extra respect to precedents, and then you don't, then it looks hypocritical."

Hasen predicts *Citizens United* will be overturned by a less conservative Supreme Court someday