



## Scalia's Misdirection on Citizens United

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The Blog of LegalTimes is [reporting](#) on an interview Justice Scalia gave to C-SPAN, scheduled for broadcast this Sunday. In it, the arch-conservative Justice throws out a statistic seemingly designed to mislead Americans:

Asked if there is too much money in politics, Scalia said no, arguing that as in other First Amendment contexts, more speech is better. "I forget what the figures are, but I think we spend less on our presidential campaigns each year, when there's a presidential election, than the country spends on cosmetics," Scalia said.

A similar tactic was used by a supporter of *Citizens United* just two days ago at a Senate hearing on "[Taking Back Our Democracy: Responding to Citizens United and the Rise of Super PACs](#)." Ilya Shapiro, a Senior Fellow at the Cato Institute, gave [testimony](#) opposing any constitutional remedies to *Citizens United* and urging Congress to eliminate campaign contribution limits to candidates. In it, he belittled the importance of how much money is being spent to buy our elections:

And so, if you're concerned about the amount of money spent on elections—though Americans spend more annually on chewing gum and Easter candy ...

Shapiro cited a [George Will article](#) making the same point about Halloween candy:

Total spending, by all parties, campaigns and issue-advocacy groups, concerning every office from county clerks to U.S. senators, may reach a record \$4.2 billion *in this two-year cycle* [2009-2010]. That is about what Americans spend *in one year* on yogurt but less than they spend on candy in two Halloween seasons.

Cosmetics? Easter candy? Halloween candy?

Halloween is just a few days before Election Day. Does someone's decision to purchase Halloween candy affect the upcoming election? Does buying some new lipstick affect another person's decision on whether to vote or who to vote for? Most importantly, does getting a chocolate rabbit for the kids give you special influence when elected officials are making policy?

Of course not. These statistics have no relationship whatsoever to the distorting influence of vast amounts of spending on our elections. And surely the defenders of *Citizens United* know it. But for those not paying a lot of attention, it sure makes it sound like this out-of-control election spending isn't really a problem at all.

So if you watch Justice Scalia's interview this weekend, ask yourself: If he is so sure of the rightness of his argument, why is he trying to distract me with an irrelevant statistic?