



## Liberal Nullification Watch: Montana Supreme Court vs. *Citizens United*

*Damon W. Root* | January 13, 2012

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The Cato Institute's Trevor Burrus has a long post examining the Montana Supreme Court's recent decision in *Western Tradition Partnership v. Attorney General of Montana*, where that court essentially ignored the U.S. Supreme Court's holding in *Citizens United v. FEC* and instead voted to uphold the state's campaign finance regime:

[W]hat they were thinking is abundantly clear: they wanted to register their dissent with *Citizens United* as well as cling to a distant hope that the Supreme Court might review the scope of their decision. Unfortunately for them, because of the method in which they chose to do so, coupled with the recentness of *Citizens United* and a blistering dissent that catalogs their errors, the Supreme Court will not seriously examine their reasoning.

The only remaining question is whether the Supremes will unanimously vote to reverse the Montana court and thus resolutely affirm the status of SCOTUS within the judicial hierarchy. There remains a possibility, however, that one or more of the justices who disagree with *Citizens United* (and recall that Justice Kagan argued the case before the Court as solicitor general) will use the case to voice their opposition to the decision. This would be unwise, and it would only contribute to the perception of the Court's fractured nature. The justices should not be fractured on condemning a lower court that blatantly ignores controlling precedent.

Yet the opinion is still worth reading for anyone interested in campaign finance law generally or in *Citizens United* itself. Not only does the majority opinion make a woefully inadequate attempt to distinguish Montana's "unique" situation from facts already addressed by the Supreme Court, but it highlights fundamental differences in political philosophy that *Citizens United* has brought to the surface.

Read the entire thing [here](#). Read Reason's coverage of *Citizens United* and its discontents [here](#).

3 Reasons Not To Sweat The "Citizens United" SC...



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