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The money at issue funds speech, not candidates

By [JOHN SAMPLES](#)

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John Samples is director of the Cato Institute's Center for Representative [Government](#).

Many people say the Supreme Court's decision in *Citizens United* is harming American democracy. Is it? Everyone knows democracy means "government by the people." But what does that mean concretely?

The people should select those who govern. Each citizen should have an equal vote on who holds office. But it involves more than voting. Citizens need information to judge candidates. There is no shortage of people willing to inform voters if government respects freedom of speech, of the press, and of association. The First Amendment guarantees these freedoms. It is a vital part of democracy.

Until last January, [Congress](#) prohibited corporations (including [labor unions](#) and some advocacy groups) from funding speech advocating the election or defeat of a candidate for federal office. In *Citizens United*, the Supreme Court voided this ban on [First Amendment](#) grounds. These organizations may now spend freely on political speech.

Citizens United has critics. Incumbents fear new speakers will lead to electoral defeats. Other critics believe the First Amendment applies only to "natural" persons and not to legal individuals like corporations.

The Constitution says otherwise. The Constitution indicates when a right or opportunity is limited to citizens or persons. The 15th Amendment protects the right "of citizens" to vote and defends against racial discrimination. The privileges and immunities of citizens are protected elsewhere as well. Only citizens are eligible for the presidency. The Constitution also mentions "persons" in several places. The First Amendment says only that [Congress](#) "shall make no law . . . abridging the freedom of speech." It does not say "the freedom of speech of citizens." The speech, not the speaker, is important, and it cannot be denied that Congress prohibited speech prior to *Citizens United*.

Others say businesses will dominate debate. Democracy, they assert, means everyone should have an equal say during [elections](#). We do not know the future, but we have some evidence from the past. In 2002, when corporations and labor unions could contribute soft money to the parties, such donations were evenly split.

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There is a deeper question here. Does maintaining equal voice in a democracy justify limiting the speech of those who say "too much"? The Supreme Court in 1976 said such rationales for

restricting speech were "wholly foreign to the First Amendment." Why? To attain equality of speech, government would have to limit those who spoke too much. Equal speech could not be free. The media and its freedom of the press would not be exempt from these limits. The *New York Times* and Fox News enjoy more speech than average Americans. Fortunately for media corporations, *Citizens United* recognized that our Constitution favors freedom over equality of speech.

Critics argue that newly freed corporate spending will corrupt the legislature by buying favors for the few at a cost to most voters. Courts have allowed Congress to regulate contributions to prevent such corruption. But *Citizens United* did not involve contributions to candidates or parties. The money at issue funds speech, not candidates. The question of corruption is not relevant.

Government by the people requires an equal vote and the freedom to speak and associate. Democracy also requires toleration of unpopular speech. When government and citizens fall short of those ideals, the courts should act. In *Citizens United*, the Supreme Court fulfilled that obligation.

Read why Citizens United is hurting democracy, by Michael Waldman, executive director of the Brennan Center for Justice at New York University law school.

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