

THE UNION

You can thank 'Citizens United' for the film '13 Hours'

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In 2004 a nonprofit advocacy group called “Citizens United” complained to the Federal Elections Commission (FEC) that Michael Moore’s film “Fahrenheit 9/11” was an “electioneering communication” which actively sought to discredit George Bush, and thus violated the Bipartisan Reform Act of 2002, which limited those types of communications close to elections.

Citizens United wanted Moore’s film (which he admitted he hoped would influence the 2004 election) shut down. The FEC declined to do so, stating that “The film ... represented bona fide commercial activity, not contributions or expenditures.”

In response, Citizens United began producing conservative documentary films in 2005. When they released “Hillary: The Movie” in 2008, they sought assurance that the standard the FEC had applied to Michael Moore’s film in 2004 would apply equally to their film. The district court in D.C. reviewed the issue and judged that the purpose of the film could only be to influence the electorate, and therefore the FEC could ban the film.

This decision was appealed to the Supreme Court, where the justices probed how it squared with the First Amendment. *Citizens United v. the FEC* has been presented in the media as a case about the rights of corporations. We have all heard “The Supreme Court said corporations are people.” Citizens United is a corporation, which claimed its film was protected speech under the First Amendment, but this is nothing new. In 1936 the Supreme Court held that newspapers, although corporations, were entitled to the protection of the First Amendment, and that principle has been reaffirmed many times since then.

In *Citizens United v. the FEC*, the Supreme Court affirmed that individuals do not lose rights when they get together — whether it be in unions, advocacy groups, private clubs, nonprofits, or for-profit enterprises. By removing limits on independent political speech — spending by people unconnected to candidates and parties — Citizens United weakened the government’s control of who can speak, how much, and on what subject — and that’s a good thing.

During his 2010 State of the Union Address, President Obama stated “The Supreme Court reversed a century of law that I believe will open the floodgates of special interests – including foreign corporations — to spend without limits in our elections.” There are four errors in this statement.

First, what was actually overturned was a 1990 precedent that upheld a ban on independent spending by corporations. That 1990 ruling was the only time the court allowed restrictions on political speech for a reason other than the need to prevent corruption.

Second, in regard to “floodgates,” in this century almost every election cycle has seen an increase in political spending, but there is no indication that there has been a significant change in corporate spending, and the rules affecting independent spending haven’t changed at all.

Third, Citizens United changed nothing about restrictions on foreign spending in political campaigns.

Fourth, the president claimed that special interests can “spend without limits in our elections.” The amount that an individual can give to a single campaign remains untouched. Large companies are not suddenly dominating the airwaves – they spend little on political ads because they don’t want to alienate half of their customers. On the other hand, smaller players like the National Federation of Independent Business, the Sierra Club, and the ACLU can now speak freely.

The film “13 Hours: The Secret Soldiers of Benghazi,” was recently released by Paramount Pictures (a for-profit corporation). “13 Hours” is about what happened in Libya on Sept. 11, 2012, when terrorists stormed our diplomatic compound and killed Ambassador Chris Stevens, Sean Smith, Glen Doherty, and Tyrone Woods.

For the first time in years, Hollywood put out a film that might do some harm to the Democratic Party, and thanks to our First Amendment, there is nothing the Obama administration can do about it.

Government may not censor films about current events, politics, or any other subject even if they might affect an election. In Citizens United, the Supreme Court agreed with the drafters of the First Amendment that Congress cannot be trusted to make the decision about what or what not to restrict from the marketplace of political ideas. By a 5-4 vote, those rights were upheld for another generation (credit to Ilya Shapiro, a senior fellow at the Cato Institute, for specific cases and data).