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Op-Ed: Citizens United court decision misunderstood

By Ilya Shapiro

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Five years ago, the Supreme Court issued its ruling in Citizens United v. Federal Election Commission, striking down limits on independent political spending. Probably the most misunderstood case in modern legal history, Citizens United simply doesn't stand for what many people say it does.

For example, the Brennan Center for Justice described the case as "giving the wealthy more power to influence elections than at any time since Watergate and opening the floodgates for dark money." A year ago, leading campaign-finance activist Fred Wertheimer said that it "struck down the longstanding ban on corporate expenditures in federal elections, a move that … created new avenues for corrupting our government."

Presidential mistakes

These laments echo President Obama's famous statement during his 2010 State of the Union Address: "The Supreme Court reversed a century of law that I believe will open the floodgates of special interests – including foreign corporations – to spend without limit in our elections."

In that one sentence, the former law professor made four errors that are all too common.

First, Citizens United didn't reverse a century of law. The president was referring to the Tillman Act of 1907, which banned corporate donations to campaigns. Such donations are still banned. Instead, the decision overturned a 1990 precedent that upheld a ban on independent spending by corporations. That 1990 ruling was the only time the court allowed a restriction on political speech for a reason other than the need to prevent corruption.

Second, the "floodgates" point depends on how you define those terms. In modern times, nearly every election cycle has seen an increase in political spending, but there's no indication that there's a significant change in corporate spending. And the rules affecting independent spending by wealthy individuals, who are spending more, haven't changed at all.

Indeed, much of the corporate influence peddling in Washington that has reformers concerned has nothing to with campaign spending. Most corporations spend far more on lobbying lawmakers already in Washington than they do in political spending to choose which politicians come to Washington.

No foreign invasion

Third, Citizens United said nothing about restrictions on foreign spending in our political campaigns. In 2012, the Supreme Court summarily upheld just such restrictions.

Fourth, while independent spending on elections now has few limits, candidates and parties aren't so lucky. Even last year's decision in McCutcheon v. FEC, which struck down aggregate – not per-candidate – contribution limits, only affected the relatively few bigwigs (about 600 in the 2012 cycle) who had hit the $123,200 cap. The amount that an individual can give to a single campaign remains untouched.

And so, if you're concerned about the money spent on elections – though Americans spend more on Halloween – the problem isn't with big corporate players. Exxon, Halliburton and all these "evil" companies (or even "good" ones) aren't suddenly dominating the conversation. They spend little on political ads because they don't want to alienate half of their customers.

On the other hand, smaller players now get to speak freely: groups such as the National Federation of Independent Business, Sierra Club, the American Civil Liberties Union and the National Rifle Association. Even if we accept "leveling the playing field" as a proper basis for regulation, the freeing of associational speech achieves that goal.

People don't lose rights when they get together, be it in unions, advocacy groups, private clubs, for-profit enterprises or any other way.

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. That's a good thing.

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute.