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[2010 Midterm Elections: Brought to You by McDonald's™](#)

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Flurries of comments similar to the title of this entry made their way around the Internet today, after the Supreme Court decided *Citizens United v. Federal Elections Commission*. But are these dire predictions warranted?

The reactions have been varied, to say the least. Libertarians and conservatives [hailed](#) the decision as a major victory for free speech. Liberals [decried](#) it as a major blow to democracy. So what was all this about? A documentary whose main thesis boiled down to “Hillary Clinton sucks” – this is the stuff of deep constitutional scholarship, people.



Anyway, a conservative 501(c) organization called “Citizens United” made *Hillary: The Movie*.

They wanted to show the film on cable pay-per-view services during the 2008 primaries season. They also wanted to run commercials for the movie on cable TV networks. A federal trial court ruled that it could not, under campaign finance regulations then in effect, since to run the movie on cable TV would amount to a feature-length campaign ad, and such organizations were barred from financing such advertisements directly.

Citizens United appealed and the case eventually went up to the Supreme Court. Their core argument was that the doctrine of “corporate personhood” (the legal fiction that corporations are actually persons under the law, with similar rights and responsibilities as living, breathing people), along with the First-Amendment right to free speech entitled them to fund this movie, and air it wherever and whenever they like.

Courts have struggled for quite some time with the issue of when financial contributions are protected by the First Amendment right to free speech. Since 1976, when [Buckley v. Valeo](#) was decided, the Supreme Court has recognized that, in some cases, financial contributions to political causes are protected speech. The Supreme Court extended this idea in *Citizens United*, overturning an outright ban on corporations (including non-profits) from specifically advocating the election or defeat of any candidate within 60 days of the relevant election.

The Court was particularly concerned with the proposition that the federal government might have the power to ban politically-charged books, websites, or blogs, if a corporate entity is involved. For example, if the ACLU supported a particular candidate because he or she is particularly committed to the cause of civil liberties, they would not be able to explicitly advocate his election, and the defeat of his rival, within 60 days of the election. For the Court, this was simply too

much.

But what about the dire predictions? Will this decision open the floodgates of corporate money in politics, completely drowning out the voice of ordinary people? We'll see. The 2010 midterm elections aren't that far off, and they're the first major campaigns that will occur after this ruling.

The Cato Institute accurately [points out](#) that corporations still may not contribute directly to candidates, and notes that around half of the states in the U.S. have no significant campaign finance restrictions for state elections, and do not have markedly higher rates of corruption than the states that do. It goes on to argue (treading a bit close to conspiracy theory territory), that the real purpose of campaign finance laws is to protect incumbents, not to reduce corruption.

On the other end of the spectrum an [opinion piece](#) in the Seattle Times sums up the opinions of the decision's detractors, claiming that all hope of passing regulations of financial institutions is lost. This is certainly a curious claim – all the Court did was lift restrictions on corporations paying for advertisements, independent of a given candidate. It doesn't give corporations the right to vote (though some people have certainly said it puts us on that road), nor does it allow them to give money directly to candidates. Sure, they can now produce advertisements supporting candidates who oppose financial regulations, but that's hardly the same as being able to buy and sell politicians, as some detractors seem to believe the decision allows.

So, who's right? The extremes on both sides are probably wrong: this decision won't place politicians in the pockets of special-interest groups (at least not any more than they already are). On the other hand, it's clear that large corporations have a great deal more money than the average citizen. If they can spend as much of that money as they want on advertising, they could drown out virtually any other voice, if they so desired.

Of course, the more politically-savvy among us will probably continue to ignore political advertisements, and research the issues and candidates in deciding to cast their vote. But, sadly, those people probably don't make up much of the population. And let's be honest; advertising wouldn't be the multi-billion dollar industry that it is if it didn't work.

There are definitely real concerns about money's role in politics. At the same time, we should not forget that corporate personhood is not meant to protect the corporate entity as such, but its human constituents. A corporation has no rights or responsibilities under the law, but the humans who make up a corporation do. The fact that the corporation is sometimes treated as a "person" under the law (a separate legal entity from any of the people who own or control it), is simply a convenient means to protect those rights.

This point is most forcefully argued by [Ilya Somin](#). Still, there is nothing stopping the individual people who compose a corporation from using their own money (rather than the money of the corporation and, ultimately, the stockholders) to fund an advertisement. Why they need to use a corporation to do so isn't entirely clear (though it could be argued that restricting a particular means of expression is just as bad as prohibiting a form of expression – certainly the government couldn't constitutionally ban all books, and claim that it wasn't restricting speech because there are plenty of other means of expressing ideas).

It should be clear by now that I have mixed feelings about this decision, and will probably continue to have mixed feelings even as we get a sense of its consequences in the 2010 elections.

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