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# Supreme Court: Free speech for all

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**OpEd Contributors**

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Will the Supreme Court's Citizens United decision destroy American democracy? You might think so given the responses of its critics. The Citizens United decision, far from signaling the fall of the republic, strengthens the First Amendment and freedom of speech.

Let's start with the facts of the case. Citizens United, a nonprofit political advocacy group, produced a film called "Hillary: The Movie" about the current Secretary of State, who at the time was a presidential candidate. The movie did not reflect well on Ms. Clinton but did not explicitly advocate her defeat in the 2008 presidential contest. Citizens United planned to show the film in theatres, sell it as a DVD, and make it available on-demand on cable TV. The group also planned to run ads marketing the movie.

What could be the problem with Citizens United's plans? Supporters of Hillary Clinton would not like the movie, but the First Amendment protects all speech, especially criticism of powerful political figures.

Citizens United knew, however, that distributing the movie—or even running ads for it!—was illegal under the McCain-Feingold campaign finance "reform." That is, part of McCain-Feingold prohibited advertising about candidates funded by corporations or labor unions during primaries and general elections.

But Citizens United is a corporation—that it's a nonprofit doesn't matter—Hillary Clinton was a candidate, and the movie most definitely discussed the merits of her candidacy. Showing the movie and even advertising it would thus be illegal unless the courts invalidated the relevant section of McCain-Feingold as a violation of the First Amendment (as the Supreme Court already has with several other parts of the law).

The courts have long upheld campaign finance regulations as a way to prevent corruption (or the appearance of corruption) in elections. Contributors to campaigns might buy favors from candidates once they are in office, for example, so contribution limits are supposed to deter such exchanges.

But Citizens United did not give money to a candidate for office. It spent money to speak out about Hillary Clinton independent of the campaigns of primary opponent Barack Obama, potential general election opponent

John McCain, or any other candidates.

Until yesterday, the law banned corporate contributions as a means to prevent a second kind of corruption. Corporate spending, it was said, would “distort” and thereby “corrupt” elections. The idea was that corporations had so much money that their spending would create vast inequalities in speech that would undermine democracy.

But this idea of corruption as inequality contravened earlier Supreme Court decisions stating that equality—a so-called level political playing field—could not justify campaign finance restrictions. After all, to make campaign spending equal or nearly so, the government would have to force some people or groups to spend less than they wished.

And equality of speech is inherently contrary to protecting speech from government restraint, which is ultimately the heart of American conceptions of free speech.

Today the Supreme Court reaffirmed its skepticism about using political equality as a justification for banning corporate speech.

Under the new ruling, will businesses (and labor unions) dominate talk about candidates and elections? Well, for two decades before McCain-Feingold, both could spend freely on advertising about candidates for federal office. Such spending made up a relatively small part of election-related speech and no one group dominated said the political arena.

Still, yesterday’s ruling might lead to more election spending by both corporations and unions. It is important to remember, however, that none of this money will go directly to candidates for office. It will go instead to broadcasting or otherwise communicating speech about candidates and issues. Such increases in spending should be welcome because studies have shown that more spending—more political communication—leads to better-informed voters.


Finally, we need to keep the central question in mind here: Who should decide how much Americans can speak during elections? As Justice Kennedy said in announcing the opinion:

“If the First Amendment has any force, it prohibits jailing citizens for engaging in political speech.” The Supreme Court has decided the First Amendment does have force. Now the American people have the right to decide how much to spend on their own political speech. We all will benefit from this affirmation of our Constitution.

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