

A Victory for Free Speech

Posted By [Jacob Laksin](#) On January 22, 2010 @ 9:19 pm In [FrontPage](#) | [88 Comments](#)



Can the government suppress free speech critical of elected politicians? In the home of the First Amendment, that may seem an unusual question to pose. But that was the question before the Supreme Court this week, as it handed down a landmark ruling in the case of [Citizens United v. Federal Election Commission](#) ^[1].

In a 5-4 decision, the Supreme Court *struck down* a ban on corporations and labor unions using money from their general funds to produce and air campaign ads in races for Congressional and presidential races. Also overturned was a ban on corporations and unions airing campaign ads 30 days before primary or 60 days before general election.

The case in question dates back to January 2008, when the conservative non-profit group Citizens United produced a documentary critical of then-presidential candidate [Hillary Clinton](#) ^[2] titled *Hillary: The Movie*. When the Federal Election commission used the McCain Feingold campaign finance law to [limit Citizen United's ability to advertise the film](#) ^[3] during the 2008 presidential primaries, the group sued to protest the restriction on free speech.

This week, the Supreme Court ruled in Citizen United's favor. In so doing, it won approval from free-speech advocates and strident criticism from many on the political Left. To discuss the case and its political implications, *Front Page* turned to [Ilya Shapiro](#) ^[4], a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*.

FP: The Supreme Court's decision has certainly stirred its share of controversy. How do you view the Court's ruling?

Shapiro: This is a big win for free speech. It is the most significant ruling on campaign finance since [the 1976 case] [Buckley vs. Valeo](#) ^[5] and it continued the trend of this court of allowing greater speech in the political arena. It's a victory for the marketplace of ideas and it's a victory for democracy.

FP: Some, especially on the Left, don't see it that way. The *New York Times* [despairs](#) ^[6] this morning that the decision is a "blow for democracy" that paves the way for "corporations to use their vast treasuries to overwhelm elections." Is there any merit to

the objection that the court's ruling will distort democracy by empowering corporations while diminishing the voice of regular citizens?

Shapiro: I think the concern about corporations is misplaced. Most corporations are not Exxon. They are smaller companies or non-profits. With the disclosure rules that are in place, voters will still be able to judge which candidate is in the pocket of some corporation, whether it's the ACLU or the Sierra Club, or the Cato Institute for that matter. We still have laws in place going back to 1907 that prevent direct contributions to candidates.

To the extent that there has been a diminution in the public's faith in the democratic process, the government is probably more to blame than the corporations. Earmarks, special tax breaks, the dispersal of government goodies and baddies – these types of actions harm democracy much more. McCain Feingold was never about regular citizens. It was a creature of the Beltway. There was no great call from the hinterland to get money out of politics.

I don't think democracy will be diminished as a result of the ruling. What we could see is more ads like the Swift Boats ads during the 2004 presidential campaign or the Hillary movie. But the way the law stood, some government bureaucrat could have simply banned books that were critical of a political candidate in an election year. That would have been far worse.

FP: In part, there is a partisan argument here. Democrats complain that if you make it easier for corporations to spend money in political campaigns, you empower Republicans, since the Left considers corporations and Republicans natural allies.

Shapiro: I think that argument is laughable. It's not at all clear which party would benefit from this ruling. Corporations are highly strategic about what they do with their money. It's because they want political influence that they donate money to both parties. Goldman Sachs [gave more money to Barack Obama than to any other candidate](#) ^[7] in the last election cycle. They were the number-one donor to his campaign. You could go down the list of Fortune 500 companies and find [similar contributions](#) ^[7]. So when Obama [rails](#) ^[8] that this ruling will help Wall Street, it's a little rich. He set the record for donors from big companies.

FP: Another common claim among critics of the ruling is that corporations don't deserve the same First Amendment rights as individuals.

Shapiro: No one is saying that corporations are human beings. But corporations are groups of private individuals who have legal rights. Take *Front Page* magazine. It's not an individual. But the government can't raid your office and just seize your computer. That would be a violation of the Fourth Amendment. Similarly, corporations have First Amendment rights. Think of it this way: [George Soros](#) ^[9] can spend as much as he wants in an election, but if you and a hundred other people get together to spend your money, suddenly, that can't work. Individuals don't lose their rights just because they come together to magnify the effects of their donations.

FP: Some claim that this decision bespeaks a political agenda of the court's conservative majority, that the court had no business hearing the case and seized on it for political purposes.

Shapiro: Justice Roberts has actually addressed this point in his concurring decision. In legal doctrine, you have something called *stare decisis*, which means that you don't reverse a precedent even if it's wrong. People rely on legal precedent. But in this case the precedent was not that old. On top of that, no one relies on having less speech. No one says, 'I have an interest in self-censorship.' The court used the smaller issue of the Hillary film to get at the larger issue of how free speech can be regulated. The court is acting properly when it upholds the Constitution.



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URLs in this post:

- [1] Citizens United v. Federal Election Commission:
<http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>
- [2] Hillary Clinton: **<http://www.discoverthenetworks.org/individualProfile.asp?indid=18>**
- [3] limit Citizen United's ability to advertise the film: **<http://www.washingtonpost.com/wp-dyn/content/article/2010/01/21/AR2010012103582.html?hpid=topnews>**
- [4] Ilya Shapiro: **<http://www.cato.org/people/ilya-shapiro>**
- [5] Buckley vs. Valeo:
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0424_0001_ZS.html
- [6] despairs: **<http://www.nytimes.com/2010/01/22/opinion/22fri1.html?ref=opinion>**
- [7] gave more money to Barack Obama than to any other candidate:
<http://www.opensecrets.org/pres08/contrib.php?cycle=2008&cid=N00009638>
- [8] rails: **<http://voices.washingtonpost.com/44/2010/01/reactions-to-the-supreme-court.html>**
- [9] George Soros: **<http://www.discoverthenetworks.org/individualProfile.asp?indid=977>**
- [10] Image: **http://www.addtoany.com/share_save?linkurl=http%3A%2F%2Ffrontpagemag.com%2F2010%2F01%2F22%2Fa-victory-for-free-speech%2F&linkname=A%20Victory%20for%20Free%20Speech**

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