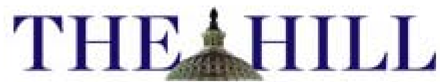

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The Big Question: Will corporate money change campaigns?

By Sydelle Moore, Brooke Wylie and Drew Wheatley - 01/21/10 11:08 AM ET

Some of the nation's top political commentators, legislators and intellectuals offer insight into the biggest question burning up the blogosphere today.

Today's question:

The U.S. Supreme Court strikes down campaign finance restrictions. What is your reaction to this decision?

Rob Richie, president of FairVote, said:

> "It's been 39 years since Congress sent a new constitutional amendment to the states that then earned approval, following a decade in which the Constitution was amended four times. Every half-century -- the 1860s, the 1910s and the 1960s -- the American people realize that they own this republic and take action to protect it and generally expand democracy through constitutional change.
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> "This ruling will trigger a new debate about how best to balance democracy, equality and liberty that must go beyond nine justices on the Supreme Court. I foresee will trigger serious talk of constitutional change - one example being Move to Amend. Stay tuned."

Thomas E. Mann, senior fellow of Governance Studies at the Brookings Institue, said:

> I'm not surprised by the decision. Ever since John Roberts joined the Court and Sam Alito replaced Sandra Day O'Connor, a 5-4 conservative majority has signaled its disdain for campaign finance regulation and its desire to deregulate policy by overturning laws passed by Congress and reversing judicial precedents. They reached for a case, which was originally filed and argued on narrow grounds, to allow themselves to do just that. It makes a mockery of Chief Justice Roberts' pious statements during his confirmation hearing before Congress about his embrace of judicial modesty and constitutional avoidance. His concurring decision fashioned to answer this expected criticism strikes this reader as defensive and lame. This decision constitutes a dramatic change in law yet nothing has changed to produce it other than the composition of the Court. Sadly, deliberation on the Court is becoming as ideologically driven as that in Congress.
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> How will critics react? A timely, constitutional, and effective legislative response will be very hard to achieve. Over the longer run, the best option is to use policy to encourage the proliferation of small donors to balance the resources of corporations. In the short term, politicians are likely to try

to link the decision to populist outrage at large financial institutions. Perhaps more constructively, I expect citizen groups to use the disclosure provision that was retained to embarrass corporations that rush to take advantage of this reversal in the law and large institutional and individual investors offended by the prospect of corporate treasuries being raided for political campaigns at the direction of its top management to work to ensure those decisions are made by trustees and shareholders.

Rep. Alan Grayson (D-Fla.), said:

Today's U.S. Supreme Court ruling is the worst Supreme Court decision since the Dred Scott case. It leads us all down the road to serfdom. It allows corporations to spend an unlimited amount of money to influence and manipulate federal elections. It overturns more than a century of law and precedent.

The court decision completely ignores the likelihood that corporations will spend money to elect officials who will do their bidding, and punish those who won't. It allows unlimited election spending by all corporations, even foreign ones. The Supreme Court has decided to protect the rights of GE, Volkswagen, Lukoil and Aramco, at the expense of our right to good government.

I introduced five bills, the Save Our Democracy package, in anticipation of the Supreme Court's ruling. We need to act on them immediately. If we do nothing, then before long, there won't be Senators from Oklahoma or Virginia, there will be Senators from Citibank and Walmart. Maybe they will wear insignias on their $500 suits, like NASCAR drivers do. If this ruling goes unchallenged, then you can kiss your country goodbye.

Sen. John McCain (R-Ariz.), said:

I am disappointed by the decision of the Supreme Court and the lifting of the limits on corporate and union contributions. However, it appears that key aspects of the Bipartisan Campaign Reform Act (BCRA), including the ban on soft money contributions, remain intact.

Tom Fitton, president of Judicial Watch, said:

The First Amendment has been vindicated by the High Court. Judicial Watch believes that better enforcement of bribery and extortion laws are key to fighting government corruption - not self-serving restrictions on free speech by politicians. Allowing full participation in our nation's political process for citizens acting through corporations will do more to hold corrupt politicians accountable than any campaign finance restriction or bureaucratic regulation.

Judicial Watch filed an amicus curiae brief in support of free speech in Citizens United v. Federal Election Commission. Judicial Watch argued in its brief that:

. Political speech is at the heart of the First Amendment and is entitled to the broadest protection.

. Unlike contributions to candidates, independent expenditures, which are not coordinated with a candidate or campaign, do not pose a danger of corruption or its appearance.

. The Supreme Court has consistently invalidated legislative attempts at limiting or restricting corporate expenditures as violative of First Amendment free speech.

Ciara Torres-Spelliscy, Brennan Center for Justice at NYU School of Law, said:

> This is a dark day for our democracy. In Citizens United, the Supreme Court has granted corporations the same speech rights as American citizens. This holds the potential to drown out small donors with big corporate cash. A huge problem Citizens United raises is that when publicly-traded corporations “speak” by purchasing advertisements that few individuals could afford, they do so with other people’s money—that of shareholders. In the coming days Congress will need to make thoughtful changes to the law to empower voters and citizens. Such changes could be providing public financing for Congressional elections, changing the securities laws to empower shareholders to vote on corporate political expenditures and even a Constitutional amendment to undo the harm the Supreme Court has caused today.

Bruce E. Gronbeck, professor of Political Communication at the University of Iowa, said:

> *Once again, we run into one of the ugliest First Amendment rights questions that this country faces: we equate money with speech. The coming of electronic media, especially, made speaking to a truly national audience possible, and, given our commercial media systems, that took cash. And, since the dawning of radio politics (1924), campaign films (1924), television ads (1952), and serious use of computer data (1960) and computer-based communications (1992), the cost of presidential campaigning has soared election and election. Until the Supreme Court is willing to decouple money and speech, until Congress is willing to legislate free air time for electioneering (to go among with free digital communication), and until states go along with similar reforms, citizens will be stuck with the most expensive electoral system in the world. Obscenely expensive "talk."*

Dick Morris, Pundits blog contributor, said:

> The harm of allowing big corporate and union money in elections is dwarfed by the impediments to free speech that the McCain-Feingold law represented. This is a key blow for freedom and for democracy**.**

Karen Scharff, executive director of Citizen Action of New York, said:

> Today's Supreme Court decision has opened the floodgates to corporate control of our democracy. Already, wealthy donors and large corporate interests shape public policy against the public interest — their campaign contributions drove the financial deregulation that destroyed our economy, and they killed serious cost controls in healthcare reform. Now that we have reached a point in politics where the best funded candidates win, the abandonment by the Court of all regulation gives the wealthiest corporate interests the ability to determine who will be elected to Congress in 2010.

Meredith McGehee, executive director of the Campaign Legal Center, said:

> Today's decision from the Supreme Court is an extreme example of judicial overreach that arbitrarily overturns decades of precedent and undercuts the powers of the legislative branch. What the Supreme Court majority did today was empower corporations to use their enormous wealth and urge the election or defeat of federal candidates, and in doing so, buy even more power over the legislative process and government decision-making. As a result of this decision, for profit corporations and industries will be able to threaten members of Congress with negative ads if they vote against corporate interests, and to spend tens of millions on campaign ads to "punish" those who do not knuckle under to their lobbying threats.
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> More than a century's worth of federal and state policy restricting corporate campaign activity in federal elections has been undermined by the Court today, to say nothing of the longstanding precedent upholding those laws against myriad challenges. Most irresponsibly, the narrow Court majority chose to take this radical step without even the benefit of a record from the lower courts, and in a case where there were several opportunities to decide the issues without over-turning Acts of Congress. This case has all the hallmarks of the very judicial activism that conservatives usually criticize. Lacking an even vaguely authoritative set of facts in the case, the Court chose to act

not upon relevant facts in a fully developed record, but rather based on its gut instinct in a gesture of disturbing condescension toward Congress and the American people. In this case five Justices have decided to assume the role of legislators, and to actively reach out to decide matters better left to the expertise of Congress.

Nick Nyart, president and CEO of Public Campaign, said:

Recent debates over health care and financial industry reform have demonstrated the power that special interests currently wield in Washington, D.C. And today, by a narrow majority, the Roberts' Court has given these deep pocketed interests even more say in the political process.

In its decision, the Court has erased the distinction between corporate and individual expenditures in federal elections, opening the door for unlimited corporate influence.

This decision will force candidates for Congress to spend even more time dialing for dollars and attending gala fundraisers instead of focusing on the challenges facing them. It will increase members of Congress's fear of political reprisal for votes cast or policy decisions made that may be in the best interests of their constituents but are opposed by deep-pocketed special interests. Congressional schedules will be pitted against the calendar of campaign fundraisers.

If you like Congressional gridlock and insider politics, then you'll love this decision. If you think the lobbyists for the banks, insurance firms, and oil companies need more power, you'll love this decision. But if you value fairness, democracy and the free speech of ordinary citizens, this is a disaster. It is an immoral decision that puts the Roberts' Court on the side of Wall Street and the big money lobbyists against the interests of Main Street America.

Congress needs to address this decision swiftly and forcefully to empower everyday Americans and end the undue influence of big money on our elected officials. With this decision, the need to change the system has never been greater, and the stakes have never been higher.

Justin Raimondo, editorial director of Antiwar.com, said:

This is a victory for free speech: setting limits on campaign contributions is an intolerable infringement on free speech, and could be used to stifle opponents of government policies, or "third" parties that threaten the two-party monopoly.

Campaign finance laws are a perfect example of the phenomenon of "regulatory capture," in which the entities that are supposed to be reined succeed in co-opting the very agencies set up to regulate them. Remember: Congress is composed, not of some objective body of disinterested solons and scholars, but career politicians who want to ensure their own power in perpetuity. To have them, of all people, ensuring the sanctity of free and open elections is like entrusting a bear to guard the honey pot. Gerrymandering has ensured that the House of Representatives is filled with political hacks and the servants of lobbyists: campaign finance "reform" ensures that these aristocrats, and their compadres in the Senate, are protected from insurgents forever.

William E. Lee, professor of Grady Journalism & Mass Communication at the University of Georgia, said:

When informed of the Supreme Court's 1964 decision in New York Times v. Sullivan, Alexander Meiklejohn exclaimed, "it is an occasion for dancing in the streets." Today's Citizens United decision is also an occasion for dancing in the streets. The Roberts Court finally issued a bold First Amendment ruling. Unlike the tepid approach taken in Wisconsin Right to Life, criticized by Justice Scalia as "faux judicial restraint," the Court today did not hold back. At every turn where the

Court could have issued a narrow and qualified ruling, it instead spoke boldly about the primacy of political speech and the absurdity of the complex system of regulation created by Congress and the FEC. The only downside to this ruling is that I now have to completely rewrite the political speech chapter in my book The Law of Public Communication. It will be a pleasure, however, to gut the material about corporations, qualified non-profit corporations, PACs and similar mind-numbing material. In its place will be a powerful exposition of the the right to speak, regardless of the identity of the speaker.

Alan Abramowitz, professor of Political Science at Emory University, said:

> Although not unexpected, this obviously represents a huge change in campaign finance regulation with potentially major consequences for the electoral process. If this isn't judicial activism, I don't know what is.

Anna Burger, secretary-treasurer of Service Employees International Union, said:

> “Today the US Supreme Court lifted the floodgates and started dismantling century-old restrictions on corporate electoral activity in the name of the ‘free speech rights’ of corporations—meaning if you are a ‘corporate person’ (aka a CEO or corporate official), you are now free to hit the corporate ATM and spend whatever of your shareholders’ money it takes to elect the candidates of your choice.
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> “Unlimited corporate spending in federal elections threatens to drown out the voices of the people who should really be at the center of the political process, i.e., voters and candidates. Unleashing corporate spending will only serve to distort and ultimately delegitimize the electoral process.
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> “Let’s be clear: corporations have already been shilling out a lot of cash for political activities, letting their shareholders and managerial employees know exactly which candidates they want to win or lose elections and paying heavy sums for attack ads, direct mail and other forms of public communication through PACs.
>
> “But with today’s Citizens United decision, the Court has given corporate managers the greenlight to bypass the checks and balances, use unlimited amounts from the general treasury –funds that should be used to increase the value of the business or pay dividends to shareholders—to instead pay for public communications expressly advocating the election or defeat of the candidates of their choice.
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> “Our democratic process was meant to protect the people not profit margins and today’s decision makes the need for an effective system for public funding, effective disclosure regulations, and other reforms of federal elections all the more pressing.
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> “We look forward to working with concerned individuals, officials and groups to remedy to the greatest degree possible the unfortunate consequences of this Supreme Court decision, through legislation and other appropriate means.”

Frank Askin, professor of law at Rutgers University, said:

> A not unexpected constitutional disaster. Appears to open the floodgate to corporate involvement in electoral politics. But still have to read the decision to see just how sweeping it is. Does it allow direct corporate contributions to political candidates, wiping out a hundred years of constitutional jurisprudence going back to the Tillman Act in 1907? Does it permit Congress to enact narrower restrictions on political spending by some types of business corporations?

***Bill Press*,** host of the "Bill Press Show" and a contributor to the Pundits Blog, said:

This is a huge step backward for representative democracy. It puts the lobbyists and big corporations back in charge of Washington and will make it harder for everybody, liberal or conservative, to get good legislation passed. We might as well erect a big sign over the Capitol building: "Money Rules."

John Feehery, Pundits Blog contributor, said:

Good riddance. The law was a perfect example of the old adage that the path to hell is paved with good intentions. Free speech might be uncomfortable for politicians, but that is the way this country was supposed to operate.

Ilya Shapiro, senior fellow in Constitutional Studies at the Cato Institute and editor in chief of the *Cato Supreme Court Review,* said:

As Justice Kennedy said in announcing the opinion, “if the First Amendment has any force, it prohibits jailing citizens for engaging in political speech.”

While the Court has long upheld campaign finance regulations as a way to prevent corruption in elections, it has also repeated that equalizing speech is never a valid government interest. After all, to make campaign spending equal, the government would have to prevent some people or groups from spending less than they wished. That is directly contrary to protecting speech from government restraint, which is ultimately the heart of American conceptions about the freedom of speech.

Today’s ruling may well lead to more corporate and union election spending, but none of this money will go directly to candidates — so there is no possible corruption or even “appearance of corruption.” It will go instead to spreading information 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. In short, the Citizens United decision has strengthened both the First Amendment and American democracy.

Robert Weissman, president of Public Citizen, said:

Shed a tear for our democracy.

Today, in the case Citizens United v. FEC, the U.S. Supreme Court has ruled that corporations have a First Amendment right to spend unlimited amounts of money to influence election outcomes.

Money from Exxon, Goldman Sachs, Pfizer and the rest of the Fortune 500 is already corroding the policy making process in Washington, state capitals and city halls. Today, the Supreme Court tells these corporate giants that they have a constitutional right to trample our democracy.

In eviscerating longstanding rules prohibiting corporations from using their own monies to influence elections, the court invites giant corporations to open up their treasuries to buy election outcomes. Corporations are sure to accept the invitation.

The predictable result will be corporate money flooding the election process; huge targeted campaigns by corporations and their front groups attacking principled candidates who challenge parochial corporate interests; and a chilling effect on candidates and election officials, who will be deterred from advocating and implementing policies that advance the public interest but injure deep-pocket corporations.

Because today’s decision is made on First Amendment constitutional grounds, the impact will be felt not only at the federal level, but in the states and localities, including in state judicial elections.

In one sense, today’s decision was a long time in coming. Over the past 30 years, the Supreme Court has created and steadily expanded the First Amendment protections that it has afforded for-profit corporations.

But in another sense, the decision is a startling break from Supreme Court tradition. Even as it has mistakenly equated money with speech in the political context, the court has long upheld regulations on corporate spending in the electoral context. The Citizens United decision is also an astonishing overreach by the court. No one thought the

issue of corporations' purported right to spend money to influence election outcomes was at stake in this case until the Supreme Court so decreed. The case had been argued in lower courts, and was originally argued before the Supreme Court, on narrow grounds related to application of the McCain-Feingold campaign finance law.

The court has invented the idea that corporations have First Amendment rights to influence election outcomes out of whole cloth. There is surely no originalist interpretation to support this outcome, since the court created the rights only in recent decades. Nor can the outcome be justified in light of the underlying purpose and spirit of the First Amendment. Corporations are state-created entities, not real people. They do not have expressive interests like humans; and, unlike humans, they are uniquely motivated by a singular focus on their economic bottom line. Corporate spending on elections defeats rather than advances the democratic thrust of the First Amendment.

We, the People cannot allow this decision to go unchallenged. We, the People cannot allow corporations to take control of our democracy.

Public Citizen is going to do everything we can to mitigate the damage from today's decision, and to overturn this misguided ruling.

First, we must have public financing of elections. Public financing will give independent candidates a base from which they may be able to compete against candidates benefiting from corporate expenditures. We will intensify our efforts to win rapid passage of the Fair Elections Now Act, which would provide congressional candidates with an alternative to corporate-funded campaigns before fundraising for the 2010 election is in full swing. Sponsored by Sen. Richard Durbin (D.-Ill.) and Rep. John Larson (D.-Conn.), the bill would encourage unlimited small-dollar donations from individuals and provide candidates with public funding in exchange for refusing corporate contributions or private contributions in amounts of more than $100. The proposal has broad support, including more than 110 co-sponsors in the House.

In the wake of the court's decision, it is also essential that the presidential public financing system be made viable again. Cities and states will also need to enact public financing of elections.

Second, we will urge Congress to ensure that corporate CEOs do not use corporate funds for political purposes, against the wishes of shareholders. We will support legislation requiring an absolute majority of shares to be voted in favor, before any corporate political expenditure is permitted.

These mitigating measures will not be enough to offset today's decision, however. The decision itself must be overturned.

Public Citizen will aggressively work in support of a constitutional amendment specifying that for-profit corporations are not entitled to First Amendment protections, except for freedom of the press. We do not lightly call for a constitutional amendment. But today's decision so imperils our democratic well-being, and so severely distorts the rightful purpose of the First Amendment, that a constitutional corrective is demanded.

We are formulating language for possible amendments, asking members of the public to sign a petition to affirm their support for the idea of constitutional change, and planning to convene leading thinkers in the areas of constitutional law and corporate accountability to begin a series of in-depth conversations about winning a constitutional amendment.

The Supreme Court has lost its way today. Democracy is rule of the people - real, live humans, not artificial entity corporations. Now it's time for the people to reassert their rights.

Today's earlier question:

Will Democrats push ahead with healthcare reform legislation? If so, how?

***Larry J*. *Sabato*,** director of the Center for Politics at the University of Virginia, said:

If Democrats insist on pushing through the current health care package, they will validate GOP claims of

"arrogance" and miss the important message from Massachusetts and a host of recent national opinion polls. Massachusetts was not an isolated case. Check out today's Crystal Ball at http://bit.ly/SenateRatings. In the wake of Scott Brown's victory, as well as fresh surveys and insider soundings around the country, the U.Va. Center for Politics estimates that, if the election were held today, Republicans would gain an additional 7 Senate seats, bringing the Democrats from their current 59 down to 52.

The good news for Democrats is that the election isn't today, and there's time (barely) for some substantial mid-course corrections before November 2nd.

The good news for Republicans is that they can potentially expand the playing field further by securing strong challengers in states like Indiana, Washington, and Wisconsin.

Justin Raimondo, editorial director of Antiwar.com, said:

This question should be rephrased to read: "Are the Democrats really that tone deaf and far removed from reality that they would push ahead with healthcare 'reform' in spite of overwhelming public opposition and a pressing need to deal with the economic crisis that is daily reducing Americans to penury?"

Hal Lewis**,** professor of Physics at UC Santa Barbara, said:

Sure they will, they are tone deaf. All the polls, capped by the Massachusetts election, say that the American people don't want it. It takes a special kind of arrogance for elected representatives to simply ignore this, and the current White House crowd has that arrogance in spades. I suspect that the Congressmen especially are scared stiff, with their plush sinecures on the line in November. It may turn out to be an interesting year.

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