



5 DAYS AND 90 WAYS
TO STRUGGLE AND PLAY, BE ENTERTAINED
AND AWED, AND REALLY ENGAGE
WITH SCIENCE.

52°F

Clear

Forecast

sponsored by *Window World*

Home | [Find it in today's St. Louis Post-Dispatch](#) | Suburban Journals | St. Louis' Best Bridal | Ladue News | MySTLtoday.com | Coupons | Mobile

[Log In](#) | [Subscriber Services](#) | [Advertise](#)

Web Search powered by YAHOO! SEARCH

 site

Home News Business Sports Entertainment Health Life & Style Photos Jobs Autos Homes ShopSTL Classifieds
Cardinals Stats Rams Blues Mizzou Illini SLU Prep Soccer Golf Auto Racing More sports Calendar Columns Blogs Forums

[Home](#) ► [News](#) ► [Editorial / Commentary](#)

[Email this](#) [Share this](#) [Print this](#) [Comments \(Be the first to comment\)](#)

Who's afraid of political speech?

By [Jeffrey Milyo](#) and [Tim Groseclose](#)

09/29/2009

The end of democracy is nigh! So say liberal pundits and progressive advocacy groups. The impetus is the Supreme Court's order for reargument in the Citizens United case. At issue, according to reform advocates like columnist E.J. Dionne, is whether corporations will be permitted to donate to the campaigns of federal candidates. This is false.

Corporate contributions to federal candidates have been prohibited for more than 100 years; union contributions have been outlawed for more than 60 years. These prohibitions are not at issue and never have been. The propensity of reformers to exaggerate betrays the weakness of their position.

The question before the court is whether corporations are permitted to engage in speech that might influence public opinion about a candidate. The type of activity being considered is an "independent expenditure"; a category of spending created in recognition of the fact that people have legitimate reasons to weigh in on political issues, quite apart from making direct contributions to candidates. For example, a homemade protest sign might be a kind of independent expenditure, as might a blog in which you express political opinions.

The courts permit restrictions on direct contributions to candidates; the rationale is that unlimited contributions may lead to the appearance of corruption, if not actual corruption. In contrast, independent expenditures, which are made without the cooperation or consent of any candidate, do not raise these same concerns.

In 1990, the Supreme Court held that corporations and unions may not engage in independent expenditures. At the time, this wasn't as crippling to speech as it might be, since "campaign speech" then was defined narrowly to be only those communications that expressly advocate for or against a candidate. This left open many close substitutes for campaign speech, including independent issue ads or direct contributions to political parties. Not surprisingly, many groups availed themselves of these means of exercising their free speech rights.

yesterday's most emailed

1. African-American gospel fans embrace white choir in national competition
2. Adoption group is under shadow
3. Rams are the new Lions
4. Monsanto, cousins face series of suits in Sauget
5. There's nothing as inappropriate as an inappropriate cat
6. MoDOT stands alone in awarding bonuses
7. Can Union Station be 'in' again?
8. Bulger or Boller? That's not the issue
9. Bellefontaine Cemetery dedicates century-old chapel
10. Lake of the Ozarks issue weighing on Jay Nixon

ST. LOUIS POST-DISPATCH
YAHOO! hotjobs

ADON / STAFF DEVELOPMENT COORDINATOR

Bridgeton, MO
Life Care Centers of Bridgeton

RETAIL SALES ASSOCIATE

Saint Louis, MO
Confidential

PUBLIC SAFETY OFFICER

Saint Charles, MO
St. Charles Community College

LPN NURSE SUPERVISOR

Florissant, MO
DeSmet Retirement

BEAUTICIAN

O'fallon, MO
Great Clips

MAINTENANCE TECH

Saint Louis, MO
JRK Property Holdings LLC

SALES PROFESSIONAL

Saint Louis, MO
Confidential

RN S

Bridgeton, MO
VNA HomeCare

VARIOUS POSITIONS

Granite City, IL
Children's Home + Aid

DRIVER

Saint Louis, MO
US Xpress

[More Jobs](#)

new start career training

That led to a decade of wailing and handwringing over soft money; then as now, reform advocates argued that democracy was slipping away. In 2002, the McCain-Feingold reform restricted contributions to political parties and added an electioneering communications ban, which redefined campaign speech to include any broadcast that mentions a candidate too near an election.

The Citizens United case is about whether people should be allowed to see "Hillary: the Movie." That particular flick never threatened to be a blockbuster, but should it be illegal? The government argues that the movie, which questions Hillary Clinton's character, is the functional equivalent of campaign speech. If so, where are the limits to this sort of reasoning? What about movies that are more subtle in their pitch, like "They Live" or "Bob Roberts"? What if regulators decide that "Mr. Smith Goes to Washington" is an allegory for Sarah Palin? These are the issues that the court will address in Citizens United; not whether corporations can cut checks directly to candidates.

And some clarification is needed, as the government originally argued that Congress has the power to regulate political books. Popular books by Al Franken, Ann Coulter or candidates themselves, if funded by a corporation, then would be in the purview of FEC regulators.

Reasonable people may wonder how empowering regulators to outlaw books and movies squares with the First Amendment. Especially since there is no scientific evidence that campaign reforms have any real impact on corruption or the appearance of corruption.

In fact, several states allow direct contributions from corporations or unions to candidates; yet there is no evidence that democracy has been undermined Idaho or Virginia. As a state legislator, Barack Obama collected corporate and union contributions; does that make him corrupt?

Reform advocates avoid these issues by recasting "corruption" to mean any political influence. That's how Sen. McCain could claim that our campaign finance system is corrupt, even though he couldn't identify any illegal activity.

But it is a stilted view of democracy that reserves no place for persuasion in political discussion. The original genius of American democracy is that it encourages open and vigorous debate, even when you don't like the speaker.

Jeffrey Milyo is a senior fellow at the Cato Institute, the Middlebush Professor of Social Science at the University of Missouri and the Hanna Family Scholar at the Center for Applied Economics at the University of Kansas. Tim Groseclose is the Marvin Hoffenberg Chair of American Politics at UCLA.

[Write a letter to the editors](#) | [Subscribe to a newsletter](#) | [Subscribe to the newspaper](#)
[Read the latest news stories](#) | [View all P-D stories from the last 7 days](#)

► [Click here to read all comments, or be the first to comment on this story](#)

(0) Comments

Please [Login](#) or [Register](#) to comment.



Dead end job? Search here for the training you need to revive your career today!

[View all programs](#)

Enter ZIP here

[Search](#)

shop today's ads [shop](#)

Search by Keyword [Go!](#)



West County Flooring



Rothman Furniture



Macy's



Bartel's Jewelers



American Express



Abelard Inn Bed & Breakfast

► [See All Advertisers](#)