Amendment XXVIII: Control Campaign Finance

Unlimited corporate political speech undermines the integrity of our government. We should therefore allow the federal government to restrict independent corporate campaign expenditures by adding the following amendment to the U.S. Constitution:

*Congress and the States may place reasonable restrictions on the amount of money that any individual or group of individuals may contribute towards the election of a candidate for political office.*

In 2010 the Supreme Court found that the FEC could not restrict the amount of money that corporations can contribute to a political candidate so long as that money is not spent in coordination with the candidate’s campaign. They reasoned that previous restrictions on corporate contributions did not pass the test of strict scrutiny, or in other words, that previous restrictions were not warranted by a compelling state interest, or that they were not narrowly tailored. The Supreme Court was wrong on both these counts. Limiting corporate contributions to political elections improves political debate and reduces corruption, and previous restrictions on corporate contributions were not defined broadly: The Supreme Court has ruled that political speech restrictions similar to those that previously applied to corporations are permissible in other contexts.

The Supreme Court argued that there was not a compelling state interest in limiting independent expenditures by corporations because corruption would be impossible without communication between donor and recipient. Unfortunately, corruption is more complicated than the quid pro quo understood by the Supreme Court. It is easy for an understanding to arise between parties that favors given now will be rewarded later, even if that understanding isn’t formalized. Nevertheless, the majority opinion concluded that, “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption”[[1]](#endnote-1). To see how wrong this conclusion is, we only need to look to Congress’s passage of Medicare Part D program in 2003. The program prevented Medicare from negotiating lower drug prices with drug companies and was a boon for the pharmaceutical industry. In 2016 the federal government spent $103 billion dollars on drugs for seniors through Part D at prices 80 percent higher those paid by programs that do negotiate drug prices, like Medicaid and the VHA[[2]](#endnote-2). This bill was not passed because it’s a good one: it passed because the members of congress who supported it were in the pocket of the pharmaceutical industry. The most striking example is Billy Tauzin, a congressman from Louisiana, who just days after retiring from the House was hired as chief lobbyist at one of the industry’s largest trade groups, a role for which he was compensated more than $2 million per year. There is no paper trail to suggest that Tauzin knew he would be hired by the trade group were he to pass Part D. Nevertheless, both parties knew what was expected of them and acted accordingly. Super PACs make this style of corruption both more pervasive and harder to detect, because the amount of money donated is unlimited and the connection between donor and ultimate political recipient is obscured by design. Clearly, the state has a compelling interest in limiting this kind of corruption by imposing restrictions on corporate political speech.

The Supreme Court was also incorrect when they said that previous campaign finance laws were not narrowly tailored. They prohibited corporations from explicitly advocating for the election or defeat of a candidate at any time, and from mentioning a candidate in public communications within 30 from a primary and 60 days from a general, but any other form of political speech was permissible. Corporations had the right to fund speech about political issues, just not speech about political candidates. As shown previously, our government has a vested interested in maintaining this distinction, and the restrictions on corporate political speech are not so broad that benefits of this distinction are outweighed by the negatives of restricting speech. The Supreme Court has even agreed that restrictions similar to those placed on corporations are permissible in other contexts— in 2011 when two Canadian residents brought a suit arguing that they should have the right to donate to U.S. political campaigns, conservative Brett Kavanaugh, then judge on the D.C. district court, ruled that such restrictions were constitutional because they, “restrain them only from a certain form of expressive activity closely tied to the voting process— providing money for a candidate or spending money in order to expressly advocate for or against the election of a candidate”[[3]](#endnote-3). The Supreme Court summarily affirmed this opinion shortly after the circuit court issued its ruling. Could Kavanaugh’s reasoning not be applied to restrictions on corporate political speech? In my opinion, the corruption caused by unlimited corporate contributions warrants at least as many restrictions on speech as the threat of foreign influence on our elections through limited campaign contributions does.

1. *Citizens United v. FEC,* 2010, accessed 04/20/20, pg. 42. <https://transition.fec.gov/law/litigation/cu_sc08_opinion.pdf>. [↑](#endnote-ref-1)
2. Stuart Silverstein (Oct 21, 2016). *This Is Why Your Drug Prescriptions Cost So Damn Much*. Mother Jones. Accessed 04/20/20. <https://www.motherjones.com/politics/2016/10/drug-industry-pharmaceutical-lobbyists-medicare-part-d-prices/>. [↑](#endnote-ref-2)
3. Bluman v. FEC, 2011 D.C., accessed 04/23/20, <https://www.bloomberglaw.com/public/desktop/document/Bluman_v_Federal_Election_Commission_Civil_No_101766_BMK_RMURMC_2?1587618126> [↑](#endnote-ref-3)