

## Citizens United v. Federal Elections Commission (2010)

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### Introduction

In order to be recognized as a legal person in the United States, one is subject to the rights and duties of a democratic system. The lawful characteristics and qualities of an entity, or legal personality, is the prerequisite of establishing legal capacity. The power of legal capacity creates the opportunity for all persons – natural or juridical – to open bank accounts, buy property, and to sue and be sued in their own name.<sup>1</sup> Capacity is an aspect of status, and once defined by natural or judicial personal law, persons can carry their capacity around with them, in resemblance to a passport.<sup>2</sup>

Synecdoche, meaning simultaneously understanding, is a figure of speech that creates a play on words by referring to something with a related concept.<sup>3</sup> For example, referring to a person as an “Einstein,” as it uses a particular name to represent a class of people: geniuses. Similarly, in the context of American politics, figures of speech have allowed groups of individuals, such as corporations, to be treated as if they are persons.<sup>4</sup> Naturalized persons such as human beings, receive their personhood when they are physically born, whereas juridical persons do so when they are incorporated in accordance with the law.<sup>5</sup> In conclusion, the mission of this essay is to 1. Provide the reader a brief analysis of money, politics, and other influences, before, during, and after the Court’s decision in *Citizens United v. Federal Election Commission* (2010), and, 2. Offer insight toward a deep-rooted issue regarding the topic of personhood within the First Amendment of the Constitution.

### Overview

In a 5-4 vote, the justices who made up the Roberts Court during 2009 declared that in the case of *Citizens United v. Federal Election Commission*, the government restriction on “independent” political spending by corporations and unions was unconstitutional according to the First Amendment of the Constitution.<sup>6</sup> The Court also claimed that the anti-Clinton broadcast *Citizens United* was attempting to broadcast should be allowed.<sup>7</sup> The appellant, hereon out known as “FEC,” had two major issues to bring forth, which were presented “as applied”. Moreover, the arguments regarding independent expenditures that *Citizens United* presented were considered to be unsustainable, which therein the Court took upon itself to analyze the overly broad scope of facial challenges.<sup>8</sup>

As a result, the Court identified a compelling governmental interest limiting political speech by corporations through the rational of anti-distortion. The court also then rejected, through ideological philosophy, the anticorruption rational introduced by the *Citizens United* case.<sup>9</sup> Finally, the disclaimer, disclosure and reporting requirements established by the 2002 Bipartisan Campaign Reform Act (hereon out known as “BCRA”) were upheld by the Court. This is because cases such as *Buckley v. Valeo* (1976) and *McConnell v. FEC* (2003) as applied to *Citizens United* established that the BCRA requirements imposed no ceiling, or prevented anyone from publicly speaking.<sup>10</sup>

### Historical Relevance and Past Precedents

Dating all the way back to 1907, the United States Federal Government has taken regulatory measures meant to limit the influence of “money in politics”.<sup>11</sup> As economic and political ideas progressed and

<sup>1</sup>John Dewey, “The Historic Background of Legal Personality,” *Yale Law Journal* 35, no. 6 (1926): 655-73. ([http://rci.rutgers.edu/~tripmcc/phil/dewey-historic\\_background\\_of\\_corporate\\_legal\\_personality.pdf](http://rci.rutgers.edu/~tripmcc/phil/dewey-historic_background_of_corporate_legal_personality.pdf)).

<sup>2</sup>John Dewey, “The Historic Background of Legal Personality.”

<sup>3</sup>*Oxford English Dictionary*, s.v. “synecdoche,” (<http://www.sas.upenn.edu/~haroldfs/drawing/synec.html>).

<sup>4</sup>Richard A. Friedrichs, “*Trusted Criminals: White Collar Crime in Contemporary Society*,” Belmont, MA: Wadsworth Publishing Company (1996). (<https://books.google.com/books?id=ZQGmgHjovawC&pg=PA273#v=onepage&q&f=false>).

<sup>5</sup>Richard A. Friedrichs, “*Trusted Criminals: White Collar Crime in Contemporary Society*.”

<sup>6</sup>*Citizens United v. Federal Election Committee*, No. 08-25, 558 U.S. 310 (2010).

<sup>7</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>8</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>9</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>10</sup>*Citizens United v. Federal Election Committee*, No. 08-25, 558 U.S. 310 (2010).

<sup>11</sup>*Citizens United v. Federal Election Committee*, 2010.

changed over time, modifications were made to these regulations in order to protect the commonwealth.<sup>12</sup> Some of the most significant cases involving this issue were brought in front of the Supreme Court during the second half of the 20th century. During this time, the regulatory laws that limited corporate funding in presidential campaigns were being reaffirmed in the outcomes of these cases and therefore further embedded into the governmental system.<sup>13</sup> However, controversy surrounding this issue did not peak until over a century after it was introduced, during the Supreme Court Term of 2009-2010, when an extremely controversial decision was made in the infamous *Citizens United v. Federal Election Commission (FEC)* case.<sup>14</sup>

The Federal Election Campaign Act (FECA) was passed in 1971 and was meant to prohibit corporations and labor unions from “using their general treasury funds to make electioneering communications or for speech that expressly advocates the election or defeat of a federal candidate”.<sup>15</sup> FECA also established the option for corporate “Political Action Committees” or PACs who could continue to collect funds – but only from voluntary stockholders or union members.<sup>16</sup> Although “mostly” nonprofit corporation Citizens United had built a PAC worth millions since its establishment in 1988, the corporation sought to release a free video-on-demand film as well as TV ads promoting their film attacking 2008 presidential candidate Hillary Clinton.<sup>17</sup> In doing so, Citizens United would sue the FEC and challenge Section 203 of the 2002 Bipartisan Campaign Reform Act (BCRA) and Section 441(b) of FECA.<sup>18</sup> The BCRA was a modification of FECA that “barred corporations and unions from paying for media that mentioned any candidate in periods immediately preceding elections”.<sup>19</sup>

On January 21, 2010, when the U.S. Supreme Court Ruled (5-4) that laws preventing corporations and unions from using general treasury funds violate the First Amendment’s guarantee of freedom of speech, it invalidated parts of BCRA and FECA while also overturning in whole or in part two previous Supreme Court Rulings: *Austin v. Michigan Chamber of Commerce* (1990) and *McConnell v. Federal Election Commission* (2003).<sup>20</sup> In *Austin v. Michigan Chamber of Commerce*, the Court held that the government could require for-profit corporations to use PACS while engaging in electoral advocacy, which would then be reiterated as a primary precedent in cases to come – up until *Citizens United* in 2010.<sup>21</sup> For instance, *McConnell v. Federal Election Commission* applied that same principle to uphold BCRA’s restrictions on “electioneering communications,” in order to preserve the integrity of the electoral process, prevent corruption, and maintain individual citizens’ confidence in the federal government.<sup>22</sup> Finally, the *Citizens United* decision also “effectively negates parts of the Court’s 2007 ruling in *Wisconsin Right to Life v. Federal Election Commission*”.<sup>23</sup>

### Concurring Opinions and Make-Up of The Court

In the case of *Citizens United v. FEC*, the Roberts Court had a total of five concurring opinions. It is important for the reader to note that the Roberts Court was appointed by President Bush and sought to be wholly conservative.<sup>24</sup> Chief Justice Roberts wrote the majority’s opinion with the support of five Republican elected justices. The justices in support were Justice Kennedy, Alito, Scalia, and Thomas (in part).<sup>25</sup>

The majority’s opinion primarily states that political speech is indispensable from a democracy; more-

<sup>12</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>13</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>14</sup>Richard Epstein, “Citizens United v. FEC: The Constitutional Right That Corporations Should Have But Do Not Want,” *Harvard Journal of Law & Public Policy* 34, no. 2 (2013): 639. (<http://www.harvard-jlpp.com/wp-content/uploads/2013/10/EpsteinFinal.pdf>).

<sup>15</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>16</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>17</sup>Brian Duignan, “Citizens United v. Federal Election Commission,” *Encyclopedia Britannica: Law Case* (2010). (<http://www.britannica.com/event/Citizens-United-v-Federal-Election-Commission>).

<sup>18</sup>Duignan, “Citizens United v. Federal Election Commission,” Law Case (2010).

<sup>19</sup>Nick Bentley, “What Is Citizens United? | An Introduction,” Reclaim Democracy – Restoring Citizen Authority Over Corporations (2015). (<http://reclaimdemocracy.org/who-are-citizens-united/>).

<sup>20</sup>Duignan, “Citizens United v. Federal Election Commission,” Law Case (2010).

<sup>21</sup>Robert Weissman, David Arkush, and Craig Holman, “Testimony Submitted on Behalf of Public Citizen on Citizens United v. FEC,” Public Citizen – Protecting Health, Safety, and Democracy, February 3, 2010: 1. ([http://www.citizen.org/documents/Final\\_testimony\\_on\\_CU.pdf](http://www.citizen.org/documents/Final_testimony_on_CU.pdf)).

<sup>22</sup>*Citizens United v. Federal Election Committee*, No. 08-25, 558 U.S. 310 (2010).

<sup>23</sup>Weissman, “Testimony Submitted on Behalf of Public Citizen,” 1.

<sup>24</sup>Nick Bentley, “What is Citizens United? | An Introduction,” Reclaim Democracy – Restoring Citizen Authority Over Corporations (2015). (<http://reclaimdemocracy.org/who-are-citizens-united/>).

<sup>25</sup>*Citizens United v. Federal Election Committee*, 2010.

over, “speech” is constitutionally interpreted by the terms of speech not by the terms of the speaker.<sup>26</sup> The opinion also states that the First Amendment protects the associations of individuals, in addition to the individual speaker. Therefore, corporations were associations of individuals protected by the right of free speech.<sup>27</sup> In addition, the majority’s opinion detailed that the BCRA disclosures were constitutional because 1. They justified governmental interests, and 2. Provided electorates with valuable information, and 3. Felt irresponsible to prevent corruption due to the protection of a free marketplace of ideas.<sup>28</sup>

The minority, represented by Justice Stevens, Ginsburg, Breyer, and Sotomayer argued that the First Amendment only protects individual speech.<sup>29</sup> Democracy in the United States has become increasingly watered down due to the overwhelming influence corporations hold in elections. The next concurring opinion represented Justice Roberts, joined by Alito, describes the judicial restraint and stare decisis: “Judging the constitutionality of an act of Congress is the gravest and most delicate duty that this court is called upon to perform”.<sup>30</sup> Justice Scalia authored the third concurring opinion, with the support of Justices Alito and Thomas. In this opinion, Justice Stevens’ view of the framers’ interpretation was criticized. The final concurring opinion came from Justice Thomas, who argued that anonymous free speech should be protected by the Constitution.<sup>31</sup>

## Legacy

*Citizens United v. FEC* is historically significant because of the dangerous impact large corporations can have on politics when they are granted the same rights as ordinary citizens – the effects of which we are living with today. According to the article “What is Citizens United? | An Introduction,” an explosion in independent political spending ensued in the aftermath of *Citizens United*.<sup>32</sup> So much so that in the first presidential election following the decision (2012) there was more than twice the political spending [than] any previous election; “independent political spending of the kind *Citizens United* allows accounted for all of that increase”.<sup>33</sup> Some would go as far to say that in this decision, the Supreme Court “unleashed a flood of corporate money into our political system by announcing that corporations have a constitutional right to spend unlimited amounts of money to promote or defeat candidates”.<sup>34</sup> Overall, the Court’s ruling dramatically enhanced the role of corporations and unions while simultaneously narrowing the views they represent – ultimately undermining the role of political parties in determining who will hold public office.<sup>35</sup>

While many Americans criticized the *Citizens United* decision as an “overreaching attempt to rewrite campaign finance law,” others perceived the decision as a “resounding victory for freedom of speech”.<sup>36</sup> The Court’s decision in *Citizens United* went against a number of precedents that had long-established limitations and regulations on corporate spending in politics, and the case is therefore considered “one of the most divisive decisions of the Court in recent years”.<sup>37</sup> Nonetheless, the majority of justices in the Supreme Court during this case were determined to uphold the First Amendment of the Constitution by protecting corporations’ “freedom of speech.”

## Conclusion

Further court rulings on the topic of money and politics have been explored since the Court’s decision in *Citizens United v. FEC* (2010). For example, the case of *SpeechNow v. FEC* (2010) followed in light of the Supreme Court’s decision in *Citizens United* – specifically the notion that the government has

<sup>26</sup>Bentley, “What is Citizens United? | An Introduction.”

<sup>27</sup>Bentley, “What is Citizens United? | An Introduction.”

<sup>28</sup>Bentley, “What is Citizens United? | An Introduction.”

<sup>29</sup>*Citizens United v. Federal Election Committee*, No. 08-25, 558 U.S. 310 (2010).

<sup>30</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>31</sup>*Citizens United v. Federal Election Committee*, 2010.

<sup>32</sup>Nick Bentley, “What is Citizens United? | An Introduction,” Reclaim Democracy – Restoring Citizen Authority Over Corporations (2015). (<http://reclaimdemocracy.org/who-are-citizens-united/>).

<sup>33</sup>Bentley, “What is Citizens United? | An Introduction.”

<sup>34</sup>Robert Weissman, David Arkush, and Craig Holman, “Testimony Submitted on Behalf of Public Citizen on Citizens United v. FEC,” Public Citizen – Protecting Health, Safety, and Democracy, February 3, 2010: 1. ([http://www.citizen.org/documents/Final\\_testimony\\_on\\_CU.pdf](http://www.citizen.org/documents/Final_testimony_on_CU.pdf)).

<sup>35</sup>*Citizens United v. Federal Election Committee*, No. 08-25, 558 U.S. 310 (2010).

<sup>36</sup>Brian Duignan, “Citizens United v. Federal Election Commission,” *Encyclopedia Britannica: Law Case* (2010). (<http://www.britannica.com/event/Citizens-United-v-Federal-Election-Commission>).

<sup>37</sup>Richard Epstein, “Citizens United v. FEC: The Constitutional Right That Corporations Should Have But Do Not Want,” *Harvard Journal of Law & Public Policy* 34, no. 2 (2013): 641. (<http://www.harvard-jlpp.com/wp-content/uploads/2013/10/EpsteinFinal.pdf>).

no anti-corruption interest in limiting independent expenditures.<sup>38</sup> The Court ruled, “contributions to groups that make only independent expenditures cannot corrupt or create the appearance of corruption”.<sup>39</sup> As a result, the court of appeals held that the government has no anti-corruption interest in limiting contributions to an independent group such as SpeechNow.<sup>40</sup> Contribution limits as applied to SpeechNow “violate the First Amendment by preventing individuals from donating to SpeechNow in excess of the limits and by prohibiting SpeechNow from accepting donations in excess of the limits”.<sup>41</sup>

Ultimately, the plaintiffs in the case, *SpeechNow*, asked the Court to find the contribution limits, reporting requirements and political committee registration requirements unconstitutional as applied to their proposed activities. The plaintiffs also requested that the court preliminarily and permanently enjoin the FEC from enforcing these provisions against SpeechNow and the individual plaintiffs.<sup>42</sup> On March 26, 2010, the U.S. Court of Appeals for the District of Columbia Circuit ruled in *SpeechNow.org v. FEC* that, “the contribution limits of 2 U.S.C. 441a are unconstitutional as applied to individuals’ contributions to SpeechNow”.<sup>43</sup> The court also ruled that the reporting requirements of 2 U.S.C. 432, 433 and 434(a) and the organizational requirements of 2 U.S.C 431(4) and 431(8) can be constitutionally applied to SpeechNow.<sup>44</sup>

Following the ruling of *Speechnow v. FEC*, then came the topic of electoral financing. In *McComish v. Bennett* (2011), the Supreme Court deemed an Arizona law that provided extra taxpayer-funded support for office seekers who have been outspent by privately funded campaigns.<sup>45</sup> An article published by CNN reports:

“A conservative 5-4 majority of justices said the law violated free speech, concluding the state was impermissibly trying to ‘level the playing field’ through a public finance system. Arizona lawmakers had argued there was a compelling state interest in equalizing resources among competing candidates and interest groups”.<sup>46</sup>

As a result of this decision, states and municipalities are prevented from using a source of public financing.<sup>47</sup> All in all, the ruling meant the end of similar fundraising programs in Connecticut, Maine and several other states.<sup>48</sup>

In *Western Tradition Partnership, Inc. v. Attorney General of Montana*, the state of Montana believed that they had a compelling reason to maintain restrictions regarding the limitation of corporate contributions.<sup>49</sup> However, the Supreme Court of Montana determined that the case of *Citizens United* had already precluded the legal issue, and this case offered no new arguments and failed to distinguish that prior decision.<sup>50</sup> In addition to limiting the size of donations to individual candidates and parties, the Federal Election Campaign Act (1971) also includes aggregate caps on the total amount that an individual may give to all candidates and parties. The most recent case regarding campaign finance law was decided in *McCutcheon v. FEC*. In 2012, Sean McCutcheon, who is a Republican Party activist, sought to donate more than was allowed by the federal aggregate limits on federal candidates.<sup>51</sup> In 2014, the Supreme Court reversed a ruling that struck down and invalidated aggregate limits, but not the limits on giving to any one candidate or party.<sup>52</sup>

<sup>38</sup>Federal Elections Commission. “Speechnow.org v. FEC, Keating v. FEC Summary.” SpeechNOW (2010). (<http://www.fec.gov/law/litigation/speechnow.shtml>).

<sup>39</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>40</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>41</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>42</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>43</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>44</sup>Federal Elections Commission, “Speechnow.org v. FEC, Keating v. FEC Summary.”

<sup>45</sup>Bill Mears, “Justices Strike Down Taxpayer-supported Campaign Spending Law,” CNN (June 27, 2011). (<http://edition.cnn.com/2011/US/06/27/scotus.arizona.campaign.finance/index.html>).

<sup>46</sup>Mears, “Justices Strike Down Taxpayer-supported Campaign Spending Law.”

<sup>47</sup>Jess Bravins and Brent Kendall, “Campaign Funding Measure in Arizona Overturned,” *The Wall Street Journal* (June 28, 2011). (<http://www.wsj.com/articles/SB10001424052702304447804576411652081842860>).

<sup>48</sup>Bravins, “Justices Strike Down Taxpayer-supported Campaign Spending Law.”

<sup>49</sup>*Western Tradition Partnership, Inc. v. Attorney General of Montana*, 2011 M.T. 328 (2012). (<http://electionlawblog.org/wp-content/uploads/MT-expenditures-decision.pdf>).

<sup>50</sup>*Western Tradition Partnership, Inc. v. Attorney General of Montana*, 2012.

<sup>51</sup>Ben Jacobs. “Meet Sean McCutcheon, the Republican Activist Trying to Make History at the Supreme Court.” *The Daily Beast* (October 8, 2013). (<http://www.thedailybeast.com/articles/2013/10/08/meet-shaun-mccutcheon-the-republican-activist-trying-to-make-history-at-the-supreme-court.html>).

<sup>52</sup>Jacobs, “Meet Sean McCutcheon, the Republican Activist Trying to Make History at the Supreme Court.”

Ultimately, the issues of independent expenditure will only continue to grow larger for our democracy. I believe that the only way for campaign finance law to function sustainably is by differentiating the subject of “personhood” through an entity’s ability to exercise independent freewill. By adding a new amendment that excludes for-profit corporations from being protected by the First Amendment in the same manner as individual citizens, I believe that our democracy can be restored.

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