

***Citizens United v. Federal Election Commission* and the First Amendment**

Overview

Students will consider the scope of the protections provided by the First Amendment by learning about the Supreme Court of the United States case *Citizens United v. Federal Election Commission*. Through reviewing clips from the documentary *Citizens United v. Federal Elections Commission*, students will examine whether or not the First Amendment applies to corporations and if political contributions can be considered speech. Students will continue their exploration by participating in a small group, structured deliberation process, during which they'll deliberate the arguments of the case, focusing on whether our democracy should protect the speech of corporations. Through the process of deliberation, students will develop critical thinking and analytical reading skills, learn to support statements based on evidence and sound reasoning, identify areas of agreement and disagreement with classmates, and expand their argumentative writing skills. (Additional topics/readings for deliberation are available at www.deliberating.org.) Students can further demonstrate what they have learned by writing an editorial of their own as an optional homework assignment.

Grades

10-11

NC Essential Standards for American History: The Founding Principles, Civics & Economics

- FP.C&G.1.5: Evaluate the fundamental principles of American politics in terms of the extent to which they have been used effectively to maintain constitutional democracy in the United States.
- FP.C&G.2.3: Evaluate the U.S. Constitution as a “living Constitution” in terms of how the words in the Constitution and Bill of Rights have been interpreted and applied throughout their existence.
- FP.C&G.3.4: Explain how individual rights are protected by varieties of law.
- FP.C&G.3.6: Explain ways laws have been influenced by political parties, constituents, interest groups, lobbyists, the media and public opinion

Essential Standards for American History II

- AH2.H.2.1: Analyze key political, economic, and social turning points since the end of Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).
- AH2.H.2.2: Evaluate key turning points since the end of Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

Materials

- Deliberation Readings 1, 2, & 3, attached
- Deliberating in a Democracy Lesson Procedures, attached (from www.deliberating.org)
- Handout 1-Deliberation Guide, attached (from www.deliberating.org)
- Handout 2-Deliberation Activities, attached (from www.deliberating.org)
- Handout 3-Student Reflection on Deliberation, attached (from www.deliberating.org)
- Homework Assignment, attached
- Additional Editorials Concerning *Citizens United* from Duke Law School’s “Pre-Law Institute”, attached, optional

Essential Questions:

- What rights are afforded by the First Amendment to the US Constitution?
- To whom do the fundamental rights outlined in the Bill of Rights apply?

- What constitutes “speech” under the First Amendment?
- How can speech be used to promote political action? Are there types of political speech that should be limited?

Duration

One class period

Student Preparation

To synthesize and culminate this lesson, students will participate in a deliberation. Through the structured steps of the deliberation process, students are set up to be successful in having a respectful and focused conversation around a controversial topic. However, it is still important for teachers to ensure students understand and agree to the “Rules for Deliberation” as noted on the attached Handout 1. For some classrooms, simply reviewing the rules as provided may be enough. If students tend to struggle with group work in general, or if the foundation for respectful communication is not already set, teachers may need to devote class time to focus on the expectations for deliberation and what each rule specifically means. An example of a way to introduce deliberation expectations in a more detailed process is:

- a) Explain to students that they will be discussing a highly controversial issue in class, and that to have a successful, mature conversation where everyone is heard, it is imperative that certain ground rules be set. Post a piece of chart paper in front of the class. Record student responses to the following questions:
 - When having a discussion and expressing your opinions out loud, how do you like to be treated? What makes you feel heard and valued? What does it take to make you feel safe to participate? Imagine a college classroom where students discuss issues with one another and their professor - What do you think the characteristics of that classroom and discussion are? How should a mature discussion look? Sound? Feel?
- b) Once comments wane, point out to students that they have noted some terrific traits, behaviors, and expectations for respectful deliberation, and that in order to discuss controversial issues in the class, they must exhibit the characteristics from their list. Ask students to unanimously agree to try their best to always abide by the very expectations they have developed. Teachers can go as far as asking students to sign the paper to pledge their commitment to respectful discussion at this point or after step “d.”
- c) Teachers may also want to ask students to brainstorm negative behaviors, or actions that would be unacceptable as part of a respectful deliberation. (Again, note these on chart paper.) Facilitate student thinking by asking:
 - When having a discussion and expressing your opinions, what types of treatment upset you? What makes you feel disrespected, ignored, or not valued? (Once a list has been compiled, again ask students if they can agree to try their best to not exhibit any of the negative attributes or actions that they themselves have noted that they don’t like.)
- d) Next, draw students’ attention to a posted list of the “Rules for Deliberation” (see the attached Handout 1- Deliberation Guide). Ask students if these rules provide a good summary of what they have shared (for example, if a student noted that they don’t like it when someone says “shut-up” during a discussion, that is covered under “Remain engaged and respectful when controversy arises.” If anything that students noted in their brainstorm does not fall under one of the general deliberation rules provided, teachers should add a rule covering it.
- e) Some students may actually need to practice the expectations, or see them in action, before fully understanding them. One way to do this is to break students up into small groups. Ask half of the groups to prepare a skit in which they illustrate a group deliberation/discussion that properly follows the rules; ask the other groups to prepare scenes that break the rules. Allow students to perform these skits in front of their classmates, and ask the audience members to evaluate what they saw:

- a. Did this represent a positive or a negative discussion? Why?
- b. How would participating in this group have made you feel? Why?
- c. Would learning have taken place in this group? Why?
- d. Why is it important that we make sure we follow the rules we have all created and agreed upon?

Teachers may want to have students consider the expectations and self-reflect on which expectation they think will be most challenging for them, either in writing or in a class discussion. If students share their thoughts out loud, other students can commit to assisting them in this area.

In truth, most students want to feel respected and valued, and they want to feel that their viewpoint matters. Thus, getting the class to buy-in to these “Rules for Deliberation” sets them up for a successful learning experience.

- f) Once students are prepared, begin the deliberation process following the attached “Deliberating in a Democracy Lesson Procedures.”

Procedure

Warm Up

1. Either write or display electronically the text of the First Amendment to the US Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. Ask students what it is they’re seeing displayed on the board. After giving students time to consider and respond, explain that the statement is the US Constitution’s Amendment I: Freedom of Religion, Press, and Expression.
3. On a whiteboard or piece of flip chart paper, create two columns—one labeled “What?” and another labeled “Who?” Ask students to reread the amendment carefully and begin facilitating a classroom discussion.
 - a. Ask the students *what* types of speech the First Amendment protects. Note student responses under the “What?” column as they respond. To further student thinking regarding particulars, pose questions such as: Does it protect complaints about the government? (*yes*) Does it protect hate speech? (*usually*)

Finally, lead students to consider political speech, asking them if the First Amendment protects political speech.

- Explain to students that political speech is one of the most highly guarded forms of speech because it is purely expressive and it is essential to a functioning republic.
- Ask students for examples of political speech; these may include protests, demonstrations, rallies in support of an issue or candidate. List these under a subheading of “Political speech” in the “What?” column.
- Then, ask students if they think campaign commercials are considered political speech: that is, are campaign commercials protected by the First Amendment?
- Explain to students that under the Bipartisan Campaign Reform Act of 2002, also known as the McCain-Feingold Act, these types of communications were restricted. Specifically, the McCain-Feingold Act:
 - prohibited all corporations, both for-profit and not-for-profit, and unions from broadcasting “electioneering communications. Electioneering communication was defined as a broadcast,

cable, or satellite communication that mentioned a candidate within 60 days of a general election or thirty days of a primary.

- Summarize for students the notes taken under the “What?” column: the First Amendment protects speech, but there are limitations on the types of speech it protects. One example of speech not protected by the First Amendment are “electioneering communications” defined in the McCain-Feingold Act.
- b. Next, ask the students *who* the First Amendment applies to. To get them started, pose questions such as “does it apply to every American?”; “does it apply to people of all ages?” As students brainstorm who the amendment applies to, take notes under the “Who?” column. Prompt students to generate as many ideas as possible about who the amendment applies to. After they are done brainstorming, review the list to see if anything is missing. Specifically, look for names of unions or corporations (i.e., nonprofit organizations, for profit companies, etc.). If no names of corporations are listed, then ask students “What about corporations such as Wal-Mart? Does the First Amendment apply to Wal-Mart?”

Documentary: *Citizens United v. Federal Election Commission*

3. Tell students that they are going to further explore who and what is protected by the First Amendment by watching portions of documentary on the US Supreme Court case *Citizens United v. Federal Election Commission*. Tell them that they should pay close attention to the facts of the case and the arguments being presented. No further introduction is necessary for the documentary. (*Teacher Note: the attached “Student Handout,” which will be provided to students after they view the documentary, serves as a good teacher synopsis of the case.*) Do not reveal the Supreme Court’s decision about the case yet.

Start the documentary at the beginning, pausing and advancing as outlined below:

- **Discussion point #1.** Pause at 1:08
 - Who is David Bossie? What is his title and what does his organization do?
 - *David Bossie is head (the President) of Citizens United, a conservative advocacy organization in Washington, D.C.*
 - What tools does Citizens United use to publicize its positions?
 - *Press releases, videos, blogs, and now, full length documentaries.*
 - Why do you think Citizens United employs a variety of mediums to publicize its positions? Do people trust information that comes from some of these tools more than others?
- **Discussion point #2.** Advance DVD to 6:48 and pause at 9:20
 - What job did Bossie hold in the 1990s?
 - *Bossie was an investigator for the House Committee on Government and Oversight; he was involved in several investigations of the Clintons.*
 - Bossie states that the movie is not advocating for or against Hillary Clinton. He claims, “I never say in our films ‘do this or do that;’ we say here are the facts, remember this, and then go make up your own mind.” Is it possible to represent a political position like that of Citizens United and provide balanced facts on a political issue?
- **Discussion point #3.** Advance DVD to 12:58 and pause at 16:09
 - When did Citizens United originally plan to release *Hillary: The Movie*? What was the rationale for this release date?
 - *They planned to release the movie in early 2008 based on the theory that Hillary Clinton would be the Democratic nominee for President and the film would be of interest from March through November 2008.*
 - What circumstances led to Citizens United releasing the movie sooner than planned?
 - *In an October 2007 debate among the candidates for the Democratic nomination, Clinton gave a confusing answer about whether she supported allowing illegal immigrants to obtain drivers licenses. According to Bossie, the moment she gave her answer, the wheels of her campaign started to come off. He became concerned*

that Clinton would be out of the race soon and no one would be interested in the movie.

- How did Citizens United market the film? In your opinion, do the examples showed on the DVD resemble campaign commercials?
 - *They marketed the films through a series of television ads.*
- Why did Bossie want to advertise the film without the “express disclaimer” that is associated with political ads?
 - *He felt that the disclaimer would turn the movie ad into a political ad, and he believed that the disclaimer would detract from the ad’s effectiveness.*
- Do you agree with Bossie’s analogy between the ad for *Hillary: The Movie* and an ad for *The Bourne Identity*?
- Why did Bossie decide to file suit against the FEC (Federal Elections Commission)?
 - *He believed that being forced to add the disclaimer violated his First Amendment rights.*
- **Discussion point #4.** Advance the DVD to 18:32 and play through the end.
 - What evidence did the FEC give in stating that *Hillary: The Movie* was “express advocacy”?
 - *The FEC stated that Clinton was portrayed unfavorably and that the film had only had one message: Clinton was unsuited to be President. The message was conveyed through the selection of only anti-Clinton commentators.*
 - In his objection to the FEC’s suggestion that Clinton was portrayed unfavorably, what example does Bossie provide?
 - *He points to a section of the film in which a commentator compares Clinton as a socialist. Bossie states that, for some people, this might be a good thing.*
 - The FEC points to the conclusion of *Hillary: The Movie* as removing any doubt that the film was intended to persuade viewers to vote against Clinton. After viewing the conclusion of the film, do you agree or disagree with the FECs assertion?

Deliberating the Pro and Con Arguments in Citizens United v. Federal Elections Commission

4. Tell students they are going to work together to learn more about the *Citizens United* case and the arguments for and against the Supreme Court’s decision on the case by participating in a deliberation.
 - Use the attached “Lesson Procedures” handout to lead students through the ten steps of the deliberative process.
 - For additional information regarding the deliberation process, including a video of how to set up the deliberation activity in your class, go to www.deliberating.org. Additional topics/readings for deliberation are also available here.
 - When distributing the Readings in Step 2 of the attached “Lesson Procedures,” make sure each student has a copy of each of the attached Deliberation Readings 1, 2, & 3. Deliberation Reading 1 provides general background on Citizens United; Deliberation Readings 2 and 3 are editorials, each representing a different opinion.
 - During Step 4 of the Lesson Procedures, share the following question for deliberation: Should our democracy protect the speech of corporations and unions?
5. Tell students that now that they have a better understanding of *Citizens United* and the positive and negative reactions to the Supreme Court’s decision, they will be writing an editorial on the decision themselves. Provide students with the attached Homework Assignment and instruct them to complete the assignment for the following class.

DELIBERATION READING 1

Background Information on *Citizens United v. Federal Election Commission*, 2010

Circumstances of the Case

Citizens United is a non-profit corporation that receives most of its funds from individual donors, but also accepts a small portion of its donations from for-profit corporations. In January, 2008 Citizens United released a movie titled *Hillary: The Movie*, a 90-minute documentary that expressed opinions about whether Hillary Clinton would make a good President. At the time, Clinton was considered to be the likely Democratic nominee for President of the United States. Citizens United wanted to make the movie available through video-on-demand, but it was not sure if the Federal Elections Commission (FEC) would consider it “electioneering communication.” An electioneering communication was defined as “any broadcast, cable, or satellite communication” that “refers to a clearly identifiable candidate for Federal office”. The McCain-Feingold Act prohibited the distribution of any electioneering communications within 30 days of a primary election or 60 days of a general election.

Federal law also prohibited all corporations and unions from using funds from their general treasuries for express advocacy or for electioneering communications. However, corporations and unions could form separate political action committees (PACs) that could pay for electioneering communications. Additionally, federal law required disclosure of the sources of the funds used to make the communication (in this case, the money that paid for *Hillary: The Movie*).

Before proceeding and possibly facing civil and criminal penalties, Citizens United asked the Washington, DC District Court to declare the release to video-on-demand constitutional and to prevent the FEC from interfering with their plans. The court ruled against them and they appealed to the DC Circuit Court of Appeals, which also ruled against them. The Supreme Court of the United States heard the case twice: the first time the Supreme Court sent the case back to the trial court and the second time the Supreme Court ruled on the three legal questions posed in the case:

Legal Questions

- 1) Can Congress discriminate against the speech of corporations just because they are corporations?
- 2) Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)
- 3) Can Congress require Citizens United to disclose the sources of the funds used to produce *Hillary: The Movie*?

The Supreme Court of the United States’ Ruling on the Legal Questions

- 1) **Can Congress discriminate against the speech of corporations just because they are corporations?**
No. Suppression of speech just because the speaker is a corporation violates the First Amendment. The government was not able to prove that it had a compelling interest in regulating corporate speech.
- 2) **Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)**
*No. Limiting corporate independent expenditures (i.e., the money used to make *Hillary: The Movie*) is not constitutional under the First Amendment. However, the government may still regulate direct contribution to candidates, since direct contributions may appear more improper and cause a greater risk of corruption.*
- 3) **Can Congress require Citizens United to disclose the sources of the funds used to produce *Hillary: The Movie*?**
Yes. The disclosure requirements are constitutional, but there may be instances in the future where such disclosure could result in physical harm to donors. In those cases the requirements could be reconsidered.

DELIBERATION READING 2– Editorial A

The Chance for a Free Speech Do-Over

Will the Supreme Court finally overturn McCain-Feingold and enforce the First Amendment?

By Theodore B. Olson

Los Angeles Times, Published September 7, 2009

Public discussion about the character and fitness for office of presidential candidates is at the core of the First Amendment's command that "Congress shall make no law . . . abridging the Freedom of Speech." Yet Congress, in its zeal to impose onerous campaign-finance restrictions, has made political speech a felony for one class of speakers. Corporations and unions can face up to five years in prison for broadcasting candidate-related advocacy during federal elections.

Is outlawing political speech based on the identity of the speaker compatible with the First Amendment?

Tomorrow, the Supreme Court will hear arguments to determine the answer to this question.

The case—*Citizens United v. Federal Election Commission*—involves a 90-minute documentary produced by Citizens United, a small nonprofit advocacy corporation. "Hillary: The Movie" examines the record, policies and character of the former New York senator, now Secretary of State, Hillary Rodham Clinton. The documentary was set to be broadcast during Mrs. Clinton's presidential primary campaign. But the broadcast was banned when the Federal Election Commission declared that the broadcast would violate the 2002 McCain-Feingold campaign finance law.

The government defends this restriction by saying that corporations and unions are uniquely capable of amassing great wealth and must therefore be prevented from overwhelming the voices of others during an election. Relying on a 1990 Supreme Court decision (*Austin v. Michigan State Chamber of Commerce*), the government characterizes this threat as a "type of corruption" on the peculiar theory that such expenditures do not "reflect actual public support for the political ideas espoused by corporations." Therefore, the government reasons, corporate expenditures "distort" the political process and must be banned.

In crafting McCain-Feingold, Congress acted without proof that such expenditures have any distorting effect on elections. And it responded to a nonproblem with a sledgehammer rather than a scalpel. The current ban on candidate-related speech is not limited to big corporations or powerful unions. It prohibits election advocacy by all unions and all corporations, regardless of size. It even criminalizes speech by nonprofit advocacy corporations such as Citizens United and the ACLU, which cannot conceivably distort or corrupt the political process.

The government claims the authority to suppress corporate and union speech not only in broadcast formats but also in books, pamphlets and yard signs. Put simply, the government's theory is that because wealthy corporations and unions might speak too much during elections, all of them must be silenced.

While the law prohibits even the smallest nonprofit groups from engaging in election advocacy, it exempts wealthy individuals, and it does not restrict the many advantages of incumbency for sitting members of Congress. A limitless loophole is also granted to the media. Thus the corporations that own NBC and ABC (GE

and Disney, respectively), and corporations like The New York Times (or News Corp., owner of this newspaper), can express whatever views they want during campaigns.

Loopholes aside, the government's argument that speech may be outlawed because it does not reflect "public support for the ideas expressed" is absurd. It is the very antithesis of free speech.

Hard-charging campaign rhetoric is something that the First Amendment's authors had experienced firsthand. In making the choice between government-approved, polite discourse and boisterous debate, the Founders chose freedom. They did not say Congress could enact finely reticulated restrictions on speech. They said plainly that there could be "no law" abridging the freedom of speech.

The idea that corporate and union speech is somehow inherently corrupting is nonsense. Most corporations are small businesses, and they have every right to speak out when a candidate threatens the welfare of their employees or shareholders.

Time after time the Supreme Court has recognized that corporations enjoy full First Amendment protections. One of the most revered First Amendment precedents is *New York Times v. Sullivan* (1964), which afforded publishers important constitutional safeguards in libel cases. Any decision that determines that corporations have less protection than individuals under the First Amendment would threaten the very institutions we depend upon to keep us informed. This may be why Citizens United is supported by such diverse allies as the ACLU, the U.S. Chamber of Commerce, the AFL-CIO, the National Rifle Association and the Reporters Committee for Freedom of the Press.

Persons of modest means often band together to speak through ideological corporations. That speech may not be silenced because of speculation that a few large entities might speak too loudly, or because some corporations may earn large profits. The First Amendment does not permit the government to handicap speakers based on their wealth, or ration speech in order somehow to equalize participation in public debate.

Tomorrow's case is not about Citizens United. It is about the rights of all persons—individuals, associations, corporations and unions—to speak freely. And it is about our right to hear those voices and to judge for ourselves who has the soundest message.

Mr. Olson, an attorney at Gibson, Dunn & Crutcher, will deliver the oral argument on behalf of Citizens United before the Supreme Court tomorrow.

<http://www.wsj.com/articles/SB10001424052970203585004574393250083568972>

DELIBERATION READING 3 – Editorial B
The Court’s Blow to Democracy
NY Times, Published January 21, 2010

With a single, disastrous 5-to-4 ruling, the Supreme Court has thrust politics back to the robber-baron era of the 19th century. Disingenuously waving the flag of the First Amendment, the court’s conservative majority has paved the way for corporations to use their vast treasuries to overwhelm elections and intimidate elected officials into doing their bidding.

Congress must act immediately to limit the damage of this radical decision, which strikes at the heart of democracy.

As a result of Thursday’s ruling, corporations have been unleashed from the longstanding ban against their spending directly on political campaigns and will be free to spend as much money as they want to elect and defeat candidates. If a member of Congress tries to stand up to a wealthy special interest, its lobbyists can credibly threaten: We’ll spend whatever it takes to defeat you.

The ruling in *Citizens United v. Federal Election Commission* radically reverses well-established law and erodes a wall that has stood for a century between corporations and electoral politics. (The ruling also frees up labor unions to spend, though they have far less money at their disposal.)

The founders of this nation warned about the dangers of corporate influence. The Constitution they wrote mentions many things and assigns them rights and protections — the people, militias, the press, religions. But it does not mention corporations.

In 1907, as corporations reached new heights of wealth and power, Congress made its views of the relationship between corporations and campaigning clear: It banned them from contributing to candidates. At midcentury, it enacted the broader ban on spending that was repeatedly reaffirmed over the decades until it was struck down on Thursday.

This issue should never have been before the court. The justices overreached and seized on a case involving a narrower, technical question involving the broadcast of a movie that attacked Hillary Rodham Clinton during the 2008 campaign. The court elevated that case to a forum for striking down the entire ban on corporate spending and then rushed the process of hearing the case at breakneck speed. It gave lawyers a month to prepare briefs on an issue of enormous complexity, and it scheduled arguments during its vacation.

Chief Justice John Roberts Jr., no doubt aware of how sharply these actions clash with his confirmation-time vow to be judicially modest and simply “call balls and strikes,” wrote a separate opinion trying to excuse the shameless judicial overreaching.

The majority is deeply wrong on the law. Most wrongheaded of all is its insistence that corporations are just like people and entitled to the same First Amendment rights. It is an odd claim since companies are creations of the state that exist to make money. They are given special privileges, including different tax rates, to do just that. It was a fundamental misreading of the Constitution to say that these artificial legal constructs have the same right to spend money on politics as ordinary Americans have to speak out in support of a candidate.

The majority also makes the nonsensical claim that, unlike campaign contributions, which are still prohibited, independent expenditures by corporations “do not give rise to corruption or the appearance of corruption.” If Wall Street bankers told members of Congress that they would spend millions of dollars to defeat anyone who opposed their bailout, and then did so, it would certainly look corrupt.

After the court heard the case, Senator John McCain told reporters that he was troubled by the “extreme naïveté” some of the justices showed about the role of special-interest money in Congressional lawmaking.

In dissent, Justice John Paul Stevens warned that the ruling not only threatens democracy but “will, I fear, do damage to this institution.” History is, indeed, likely to look harshly not only on the decision but the court that delivered it. The Citizens United ruling is likely to be viewed as a shameful bookend to Bush v. Gore. With one 5-to-4 decision, the court’s conservative majority stopped valid votes from being counted to ensure the election of a conservative president. Now a similar conservative majority has distorted the political system to ensure that Republican candidates will be at an enormous advantage in future elections.

Congress and members of the public who care about fair elections and clean government need to mobilize right away, a cause President Obama has said he would join. Congress should repair the presidential public finance system and create another one for Congressional elections to help ordinary Americans contribute to campaigns. It should also enact a law requiring publicly traded corporations to get the approval of their shareholders before spending on political campaigns.

These would be important steps, but they would not be enough. The real solution lies in getting the court’s ruling overturned. The four dissenters made an eloquent case for why the decision was wrong on the law and dangerous. With one more vote, they could rescue democracy.

<http://www.nytimes.com/2010/01/22/opinion/22fri1.html>

**Homework Assignment:
Reaction to Citizens United**

You are an editorial writer for the renowned publication “The Post Times,” a newspaper known for providing cutting-edge political commentary. The Supreme Court of the United States has just handed down its decision in *Citizens United v. Federal Election Commission*. It’s already being deemed a landmark decision and your readers will be expecting a thoughtful editorial on this decision when they read their “The Post Times” at their desks tomorrow mornings.

Your assignment:

Write a 750-word editorial expressing your opinion about the Citizens United decision. Your editorial should address your thoughts on the following:

- Do you agree with the majority opinion that the First Amendment applies to corporations?
 - Why or why not? What evidence do you have to support your opinion?
- Do you agree with the majority opinion that Congress cannot limit the amount of money a corporation spends to support a political candidate?
 - Why or why not? What evidence do you have to support your opinion?

You know that all good editorials end with a compelling conclusion, so be sure to pull your argument together at the end of the editorial.

Supreme corporations

BY GENE R. NICHOL

CHAPEL HILL -- I am Texan by birth and Southern by acculturation. My family would attest I'm not beyond relating stories that mysteriously expand upon each re-telling. Given my trade, I read much of Madison, Hamilton, Story and Marshall. But, truth told, I prefer Mark Twain, Will Rogers, Woody Guthrie and Huey Long. I do not find hyperbole completely uncongenial.

That conceded, I find no words to convey adequate outrage over Friday's U.S. Supreme Court decision, in the Citizens United case, to radically untether corporate spending in our electoral politics. It is bizarrely anti-democratic. It overtly robs the American people of any conceivable tool to prevent a complete slide into mocking, cynical, purchased, cash-register politics. It marks the court as mere shill for the dominance of economic privilege. Unmolested, it will lead to both democratic and constitutional crises. It is a ruling that will come to reside, deservedly, in infamy.

By a slim majority, the court reached beyond the factual dispute before it to reshape the way elections are conducted. Justice Anthony Kennedy's stunning opinion overruled two recent, major precedents - one from 1990 and one from 2003. Giving the back of the hand to statutes like the Tillman Act that have placed limits on campaign spending by business entities for over a century, the justices determined corporations must be treated like human beings in the political sphere.

Pressing further, Kennedy declared "expenditures ... made by corporations do not give rise to ... the appearance of corruption." That "speakers may have influence over ... elected officials does not mean those officials are corrupt." The "appearance of influence will not cause the electorate to lose faith in this democracy." Say what?

Accordingly, since Friday, corporations have enjoyed an unassailable constitutional right to spend, from their ample treasuries, unlimited amounts of money in elections - federal, state and local - to assist or to defeat particular candidates. If you have worried that institutions of daunting wealth have inadequate influence in the halls of government, be relieved.

A system of government in which those who seek certain policies are allowed to spend unrestrained sums on behalf of those who make the policies can be called many things. "Democratic" and "fair" are not among them.

The Citizens United ruling should put to rest any lingering doubts that Justices Roberts, Alito, Scalia, Thomas and Kennedy are anything other than aggressive, expansive, committed and ideological activists. They cast aside their oft-asserted standards of stare decisis, narrow fact-based decision-making, adherence to tradition, deference to elected branches of government and any conceivable notion of interpretation by original intention. (It's hard not to recall Jefferson's wish "that we shall crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength.")

But it's not the hypocrisy of the decision that crushes. It's the impact. It is one thing to talk about corruption. That trail can lead in an abundance of directions. But, regardless of label, ponder the reality, now constitutionally required. Months ago, Sen. Kay Hagan was reportedly torn about health care reform. Imagine that then representatives of an insurance company explained, publicly if need be, that if Hagan voted against reform they were prepared to spend \$2 million on her behalf in the next election. If she voted for reform, they'd spend \$2 million to take her out.

It is impossible to believe that such moves - multiplied across issues and jurisdictions - will not have a corrosive, debilitating and often insurmountable effect on the outcomes of our political process. It cannot be that the Supreme Court majority doesn't know this. The only logical conclusion is the judges embrace it.

And what is good for federal elections applies across the board. If a developer longs to secure a massive project in Chapel Hill, he is free to spend hundreds of thousands to aid a favored council candidate. It may, in fact, constitute a reasonable component of his business plan. Under such a reality, any system of campaign finance limitation is rendered absurd. We should repeal them all. That may be the actual motivation for the decision.

In the past two years, the Roberts Court has brought us two landmark, unprecedented, inexplicable departures from over a century of settled jurisprudence. One determined that all but a handful of restrictions on the right to possess firearms are unconstitutional. The other, now, gives a free hand to corporations to purchase elections and legislators.

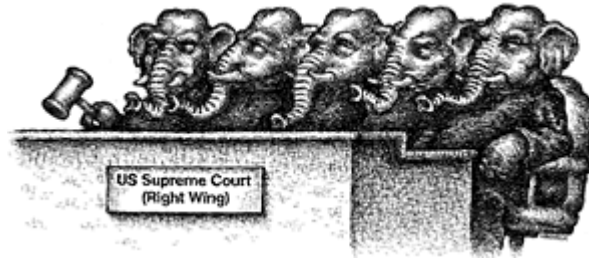
It's hard to believe any group could survey American life and determine what we need most are more guns and more corporate influence.

Gene R. Nichol is a professor of law and director of the Center on Poverty, Work and Opportunity at UNC-Chapel Hill.

Source: <http://www.newsobserver.com/2010/01/25/299567/supreme-corporations.html> (dead link)

Justice Alito's reaction at State of the Union address shows court's true colors

By EJ Dionne



WASHINGTON — The nation owes a substantial debt to Justice Samuel Alito for his display of unhappiness over President Obama's criticisms of the Supreme Court's recent legislation — excuse me, decision — opening our electoral system to a new torrent of corporate money.

Alito's inability to restrain himself during the State of the Union address brought to wide attention a truth that too many have tried to ignore: The Supreme Court is now dominated by a highly politicized conservative majority intent on working its will, even if that means ignoring precedents and the wishes of the elected branches of government.

Obama called the court on this, and Alito shook his head and apparently mouthed "not true." His was the honest reaction of a judicial activist who believes he has the obligation to impose his version of right reason on the rest of us.

The controversy also exposed the impressive capacity of the conservative judicial revolutionaries to live by double standards without apology.

The movement's legal theorists and politicians have spent more than four decades attacking alleged judicial abuses by liberals, cheering on the presidents who joined them in their assaults. But now, they are terribly offended that Obama has straightforwardly challenged the handiwork of their judicial comrades.

There is ample precedent for Obama's firm but respectful rebuke of the court. I know of no one on the right who protested when President Reagan, in a 1983 article in the *Human Life Review*, took on the Supreme Court's *Roe v. Wade* decision of 10 years earlier.

"Make no mistake, abortion-on-demand is not a right granted by the Constitution," Reagan wrote. "No serious scholar, including one disposed to agree with the court's result, has argued that the framers of the Constitution intended to create such a right. ... Nowhere do the plain words of the Constitution even hint at a 'right' so sweeping as to permit abortion up to the time the child is ready to be born."

Reagan cited Justice Byron White's description of *Roe* as an act of "raw judicial power," which is actually an excellent description of the court's ruling on corporate money in the *Citizens United* case.

Reagan had every right to say what he did. But why do conservatives deny the same right to Obama? Alternatively, why do they think it's persuasive to argue, as Georgetown Law professor Randy Barnett did in *The Wall Street Journal*, that it's fine for a president to take issue with the court, except in a State of the Union speech? Isn't it more honorable to criticize the justices to their faces? Are these jurists so sensitive that they can't take it? Do they expect everyone to submit quietly to whatever they do?

In fact, conservatives have made the Supreme Court a punching bag since the 1960s, when "Impeach Earl Warren" bumper stickers aimed at the liberal chief justice proliferated in right-wing precincts.

Richard Nixon made the Warren court's rulings on criminal justice a major issue in his 1968 presidential campaign. "Let us always respect, as I do, our courts and those who serve on them," he said in his acceptance speech that year. "But let us also recognize that some of our courts, in their decisions, have gone too far in weakening the peace forces as against the criminal forces in this country, and we must act to restore that balance." Many conservatives cheered this, too.

As for the specifics of Obama's indictment, Alito's defenders have said the president was wrong to say that the court's decision on corporate political spending had reversed "a century of law" and also opened "the floodgates for special interests — including foreign corporations."

But Obama was not simply referring to court precedents but also to the 1907 Tillman Act, which banned corporate money in electoral campaigns. The court's recent ruling undermined that policy. Defenders of the decision also say it did not invalidate the legal ban on foreign political activity. What they don't acknowledge is that the ruling opens a loophole for domestic corporations under foreign control to make unlimited campaign expenditures.

Alito did not like the president making an issue of the court's truly radical intervention in politics. I disagree with Alito on the law and the policy, but I have no problem with his personal expression of displeasure.

On the contrary, I salute him because his candid response brought home to the country how high the stakes are in the battle over the conservative activism of Chief Justice John Roberts' court.

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Institutional Integrity: Citizens United and the Path to a Better Democracy

By Lawrence Lessig

Whatever else one believes about the Supreme Court's decision striking down limits on corporate speech in the context of political campaigns, there's one thing no credible commentator could assert: That money bought this result. We can disagree with the Court's view of the Framers (and I do); we can criticize its application of stare decisis (as any honest lawyer should); and we can stand dumbfounded by its tone-deaf understanding of the nature of corruption (as anyone living in the real world of politics must). But we cannot say that somehow, the influence of money has produced this extraordinary result. The Court jealously guards its own institutional integrity. Two hundred years of careful doctrine, defining the economy of influence under which it does its work, has produced an institution whose decisions we can disagree with strongly, but whose integrity we can't fairly doubt. Maybe liberal or conservative politics sometimes gets too much mixed with constitutional law. But money is no where even close.

Thursday's decision by the Supreme Court denies to Congress the same institutional integrity enjoyed by the Court. The vast majority of Americans already believe that money buys results in Congress. This Court's decision will only make that worse. The Wall Street bailouts, the caving to insurance and pharmaceutical interests in health care reform, the ability of coal companies to stop Congress from addressing even profoundly important questions like global warming leads most to the view that it isn't reason or even constituent politics that determines what Congress does or doesn't do. It is instead the siren of campaign funding. Now a second siren walks onto that stage, promising, ever so indirectly, more campaign support from corporate treasuries. Who could doubt that this will further distract Members of Congress from what their constituents want? And who could believe it won't make Americans even more cynical about what Congress does?

The institutional integrity of Congress is already at a historical low. Less than one quarter of Americans have faith in this institution. Three times that have faith in the Supreme Court. If there's such a thing as political bankruptcy, then Congress is bankrupt. More Americans likely supported the British Crown at the time of the revolution than support our Congress today.

Yet despite the Court's decision, there is still one possible way that Congress could redeem itself. Following the examples of Arizona, Maine and Connecticut, Congress could enact a voluntary, opt-in system of Citizen Funded Elections that would give Members the chance to run for office without this integrity-destroying dependency on private campaign cash. One bill currently introduced in Congress would give candidates a grubstake to fund their campaigns, plus the freedom to raise unlimited amounts of money in \$100 contributions or less. In exchange, Members would give up the bundling of large contributions by the buyers of influence.

This change alone might not be enough to restore faith in this failing institution. The rumblings in favor of a constitutional amendment, or even a convention to consider a range of amendments, are growing. The fears that private money will overwhelm even an adequately funded public system are fair.

But fear of failure is no reason not to act, quickly and forcefully, to restore the integrity that this central institution of American democracy has lost. For whatever else the Framers were trying to do, they were not trying to establish a comedy at the core of their democracy. Nor the tragedy that this Congress has become.

Source: http://www.huffingtonpost.com/lawrence-lessig/institutional-integrity-c_b_433394.html

Commentary: Citizens United is an egregious exercise of judicial activism

By Thomas E. Mann

The 5-4 conservative majority decision in *Citizens United vs. the Federal Election Commission* that struck many decades of law and precedent will likely go down in history as one of the Supreme Court's most egregious exercises of judicial activism.

In spite of its imperative to rule on "cases and controversies" brought to the Court, to defer to the legitimate lawmaking authority of the Congress and other democratically elected legislatures, and to not allow simple disagreement with past judicial decisions to overrule precedent (*stare decisis*), the Roberts Court ruled unconstitutional the ban on corporate treasury funding of independent political campaigns.

The Court reached to make new constitutional law by ordering a re-argument of a minor case that itself raised no direct challenge to the laws and precedents that it ultimately overruled; dismissed the legitimacy of laws enacted over a century by Congress and state legislatures; equated the free speech protections of individuals and corporations in spite of countless laws and precedents that insisted on meaningful differences; and provided not a shred of evidence of new conditions or harmful effects that justified imposing their own ideological preferences on a body of settled law and social tradition.

The decision makes a mockery of Chief Justice Roberts' pious statements during his confirmation hearing that he embraced judicial modesty and constitutional avoidance. His concurring decision to respond to his critics was defensive and lame. Justice Stevens' caustic dissent eviscerating the majority opinion penned by Justice Kennedy and the Roberts' concurrence will likely be featured in legal journals and classes for decades to come.

To be sure, *Citizens United* is not the first sign that the Roberts Court is dead set on deregulating campaign finance. Previous decisions have pointed in this direction and more are certain to follow. How as a consequence are campaign finance practices likely to change? And what options exist for those who seek to limit or counter the anticipated fallout?

An immediate flood of corporate spending in federal and state campaigns is possible but uncertain. CEOs of some major corporations are wary of entering the political thicket in so transparent a fashion for fear of alienating customers and shareholders. Legal means already existed prior to this decision (PACs, communications within the corporate family, issue ads, contributions to trade associations such as the Chamber of Commerce) to play a significant role in elections.

Privately controlled companies led by individuals with strong ideological and partisan motivations are most likely to take advantage of the new legal environment but they could already act without restraint as individuals. Perhaps the greatest impact will flow from the threat of corporate independent spending campaigns for or against officeholders whose position on issue's before federal and state governments is important to their corporate interests. This could corrupt the policy process without any dollars actually being spent. It will be some time before we are able to gauge the real impact of *Citizens United*.

In the meantime, Congress and legislatures in states with corporate prohibitions on their books will search for means of limiting or countering the ruling. Measures being considered are bans on political spending by corporations that have foreign ownership, government contracts or registered lobbyists or ones that have received federal bailout funds, strengthened disclosure, and requirements for shareholder approval of corporate political spending.

Most of these steps might be difficult to enact and even tougher to defend before post-*Citizens United* courts. Over the longer haul, a more promising strategy is to fashion policy to encourage the proliferation of small donors to balance the political spending by corporations. In addition, politicians and citizen groups can speak and organize in a way that increases the costs to corporations who might otherwise avail themselves of this

new opportunity. Large institutional and individual investors offended by the prospect of corporate treasuries being raided for political campaigns at the direction of top management might be persuaded to lead shareholder campaigns against such activities.

A radical conservative Supreme Court majority cavalierly decided to redress an alleged shortage of corporate political speech in American democracy. If, as I suspect, most Americans are bewildered and dismayed by that decision, their best recourse is to use their numbers and organizing energies to ensure that individual speech is not drowned by the trillions of dollars of corporate assets.

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Source: <https://www.brookings.edu/opinions/citizens-united-vs-federal-election-commission-is-an-egregious-exercise-of-judicial-activism/>



Deliberation Procedures

PART I (In class the day before)

1. **Introduction.** Teachers review the meaning of deliberation, the reasons for deliberating, and the rules for deliberation. (Handout #1)

PART II (approximately 30 minutes)

2. **Careful Reading of the Text.** Students read the text individually, in small groups of 4 or as a whole class in order to reach a common understanding of the reading. If students do not understand the reading, the deliberation will not be successful. As a whole class or in their small groups, students agree on at least three interesting facts and/or ideas. (Handout #2).

Note on Supplemental Resources. Each deliberation includes both a basic reading and one or more supplemental resources. Supplemental resources may be a graph, a political cartoon or image, a glossary, a page of expert quotes, or a primary source or independent news story. These supplemental resources are optional materials that can be used to provoke discussion and critical thinking. These materials may be used by teachers as part of the lesson—as part of the *Introduction (Step 1)*, *Careful Reading of the Text (Step 2)*, *Presentation of Positions (Step 4)*, *Reversal of Positions (Step 5)*, or *Reflection (Step 8)*. Teachers can use these materials to differentiate instruction with some or all the students in class. Supplemental resources also can add depth or enrich the deliberation.

3. **Clarification.** After checking for understanding of the terms and content, the teacher makes sure students understand the deliberation question. (Handout #2)
4. **Presentation of Positions.** Students work in small groups of 4 divided into pairs (A & B). Each pair is assigned a position. The position of the A's is to find at least two compelling reasons to say YES to the deliberation question. The position of the B's is to find at least two compelling reasons to say NO to the deliberation question. A's teach B's at least two reasons to say YES to the deliberation question. B's teach A's at least two reasons to say NO to the deliberation question. (Handout #2)
5. **Reversal of Positions.** The pairs reverse positions. The B pair now adopts the position to say YES to the deliberation question; the A pair adopts the position to say NO to the deliberation question. The A's & B's should select the best reason they heard from the other pair and add at least one additional compelling reason from the reading to support their new position. (Handout #2)

PART III (approximately 15-20 minutes)

6. **Free Discussion.** Students drop their assigned roles and deliberate the question in their small groups. Each student reaches a personal decision based on evidence and logic.



PART IV (approximately 10-15 minutes)

- 7. Whole Class Debrief.** The teacher leads the whole class in a discussion to gain a deeper understanding of the question, democracy, and deliberation.
- What were the most compelling reasons for each side? What were the areas of agreement? What questions do you still have? Where can you get more information?
 - What is your position? (Poll the class on the deliberation question.) In what ways, if any, did your position change?
 - Is there an alternative policy that might address the problem more effectively? What, if anything, might you or your class do to address this problem?
 - What principles of democracy were inherent in this discussion? Why might deliberating this issue be important in a democracy?
 - Add other questions relevant to your curriculum.

PART V (15-30 minutes either in class or for homework)

- 8. Student Reflection.** Students complete the reflection form either at the end of class or for homework. (Handout #3)



Handout 1—Deliberation Guide

What Is Deliberation?

Deliberation is the focused exchange of ideas and the analysis of multiple views with the aim of making a personal decision and finding areas of agreement within a group.

Why Are We Deliberating?

People must be able and willing to express and exchange ideas among themselves, with community leaders, and with their representatives in government. People and public officials in a democracy need skills and opportunities to engage in civil public discussion of controversial issues in order to make informed policy decisions. Deliberation requires keeping an open mind, as this skill enables people to reconsider a decision based on new information or changing circumstances.

What Are the Rules for Deliberation?

- Read the material carefully.
- Focus on the deliberation question.
- Listen carefully to what others are saying.
- Understand and analyze what others are saying.
- Speak and encourage others to speak.
- Refer to the reading to support your ideas.
- Use relevant background knowledge, including life experiences, in a logical way.
- Remain engaged and respectful when controversy arises.



Handout 2—Deliberation Notes

The Deliberation Question:

Review the reading and in your group determine at least three of the most important facts and/or interesting ideas. Ask about any terms that are unclear.

Reasons to Support the Question - YES	Reasons to Oppose the Question - NO



Handout 3—Deliberation Reflection

What I think:

1. What did I decide and why? Did I support or oppose or have a new idea?

2. What did someone else say or do that was particularly helpful?

3. What, if anything, could I do to address the problem?

What we think:

1. What did we agree on?

2. What, if anything, could we do to address the problem?

Rate yourself and the group on how well the rules for deliberation were followed:

(1 = not well, 2 = well, 3 = very well)

	Me	Group
Read the material carefully.		
Focused on the deliberation question.		
Listened carefully to what others said.		
Understood and analyzed what others said.		
Spoke and encouraged others to speak.		
Referred to the reading to support ideas.		
Used relevant background knowledge and life experiences in a logical way.		
Remained engaged and respectful when controversy arose.		

1. What can I do to improve my deliberation skills?

2. What can the group do to improve the deliberation?