



BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION

Executive Summary: Testimony of Stephen M. Hoersting

February 2, 2010

Corporations, of course, are not individuals. But they are “persons” under U.S. law and protected by the First Amendment. Protestations to the contrary, including those based upon on a misreading of the *Trustees of Dartmouth College* case of the 1800s, confuse municipal corporations with private ones, and are wrong.

Foreign participation in U.S. elections is already (and absolutely) banned. Legislative efforts to *tighten* the existing ban can only violate the rights of U.S. nationals using money raised within the United States to participate in U.S. elections. Likewise, mere belt-and-suspenders provisions that can achieve nothing of substance are unworthy of the Senate.

All of the proposed “fixes” for the Court’s proper recognition that the First Amendment applies to all American associations, whether the “fixes” include so-called shareholder protection measures, corporate speech taxes, or an invocation of the antitrust laws, are unconstitutional violations of speech, association, or equal protection.

While the *Citizens United* opinion only takes us back to the regime of the late 1990s, there is one key difference. In the 1990s, party officials had some input over the decisions of the party committees that received a portion of available funds. Unless Congress recognizes that the remaining McCain-Feingold provisions will drive the parties to irrelevancy, party affiliation will continue to weaken significantly—not because the public disagrees with your message. Rather because current law makes it relatively impossible to affiliate with anything labeled “Democrat” or “Republican”, and relatively simple to affiliate with an outside organization.

Left may beat right after this Court opinion, or right may beat left. That remains to be seen. But it is clear that when party loyalists and 2002 McCain-Feingold advocates like Karl Rove and Ed Gillespie are busy founding outside organizations, you may know that the party committees, and the political parties they speak for, are already in trouble.



**BEFORE THE UNITED STATES SENATE
COMMITTEE ON RULES AND ADMINISTRATION**

*Examining the Supreme Court's Decision to Allow Unlimited Corporate and Union Spending in
Elections*

Tuesday, February 2, 2010, 10 a.m.
SR-301 Russell Senate Office Building

Testimony of:

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Chairman Schumer, Ranking Member Bennett, and Members of the Committee, thank you for the opportunity to testify today on behalf of the Center for Competitive Politics.

By way of introduction, my name is Stephen M. Hoersting, vice president and co-founder of the Center for Competitive Politics and former general counsel to the National Republican Senatorial Committee.

The *Citizens United* opinion is a landmark in First Amendment jurisprudence. It reestablishes core rights to political speech by reaffirming the principal that any association of individuals may speak independently about candidates without limitation. Nonetheless, there is consternation in certain quarters over the opinion. Some believe that the First Amendment enshrines egalitarianism and empowers the government, one way or another, to silence the large for the supposed benefit of the small. It doesn't. Others believe the opinion will somehow lead to the establishment of a corporate- (or perhaps a union-) controlled state. These concerns miss three fundamental premises of our democracy: First, it is voters that decide who holds power in our constitutional republic, and the Court's opinion only allows voters access to more information. Second, the citizens are capable of sifting through the relative value and veracity of information they receive from multiple sources. And third, that government has no place in determining either who has said enough or when the People have heard enough.

The *Citizens United* opinion protects movie makers from government censors. The basis for that censorship, as the Deputy Solicitor first conceded, extended, in dormancy, to the banning of books. What is remarkable about the *Citizens United* opinion is not that it was decided 5-4, or even that it permits full participation by all associations in America, but rather that not one of the

4 dissenting Justices would concur in the judgment and eschew a regime that would ban documentary films and political books. *This* is what's shocking in the *Citizens United* opinion.

There are mischaracterizations now circulating about the opinion that need correcting.

Corporations are "persons" under our laws and enjoy rights protected by the First Amendment

The first mischaracterization is that corporations are not "persons" under our laws, and therefore not deserving of protection under the First Amendment. Proponents of the mischaracterization assert that this has been the case since the 1800s. Nothing could be further from the truth. Corporations are not lacking in First Amendment rights. All citations to the *Trustees of Dartmouth College* case of 1819 for this proposition are wrong. As detailed by Mark Fitzgibbons in an accompanying article incorporated in this testimony, "*Trustees of Dartmouth College* discusses the clear distinctions between 'private' corporations (established by individuals) and 'public' or 'civic' corporations such as cities, townships, and those established by the government." Justice Stevens' dissenting conclusion in *Citizens United* "that the sovereign may interfere with First Amendment or other rights of privately founded and financed corporations because they are "artificial" creations is not only absent in the *Trustees of Dartmouth College* decision, but it is contradictory to it."

Professor Lawrence Tribe makes similar assertions. They are equally incorrect, for the reasons detailed in another article incorporated as part of this testimony: Bradley A. Smith, "*Citizens United*, Shareholder Rights, and Free Speech: Restoring the Primacy of Politics to the First Amendment."

Foreign participation in U.S. elections is absolutely illegal, not just mostly illegal.

The second mischaracterization is that the *Citizens United* opinion somehow opens the door to foreign participation in U.S. elections. This is wholly in error.

Citizens United struck down a blanket prohibition on corporate expenditures found in 2 U.S.C. §441b. A separate section of the law, 2 U.S.C. §441e, prohibits “foreign nationals” from making expenditures or contributions, which extends to corporations, unions or other associations which are neither incorporated nor headquartered in the United States. Current law provides a complete prohibition on foreign participation in any U.S. election, from dogcatcher to President, and to any activity “in connection with” an election. The *Citizens United* opinion specifically leaves this prohibition in place.

FEC regulations at 11 CFR 110.20 further delineate the prohibition. It is instructive:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.

Foreign-owned but U.S. incorporated and headquartered subsidiaries (“domestic subsidiaries”) using solely those funds earned inside the United States and controlled solely by U.S. nationals, are eligible to operate PACs. This is because PACs allow U.S. employees and U.S. executives to participate in politics no matter their employer. Indeed, even domestic subsidiaries with a majority of foreign directors are permitted to establish PACs so long as all decisions are delegated to a U.S. national. See FEC Advisory Op. 2006-15. But understand: Domestic subsidiaries with a majority of foreign directors will *not* approve corporate political

expenditures going forward, even as they continue to allow their U.S. employees to fund a PAC. This is because doing so would be a crime under existing law.

Any characterization that this decision allows foreign corporations to spend without limit in our elections is incorrect, at best. Any *tightening* of the existing ban to “fix” a nonexistent problem would only prevent U.S. nationals from participating in U.S. elections with funds earned within the United States. This would be shameful legislation, violating the rights of U.S. nationals. Tangentially, any harmless belt-and-suspenders approach that merely restates existing law and achieves nothing would be a cynical statute unworthy of U.S. Senators.

Congress should not attempt measures to put the genie back into the bottle

There is a belief that Congress must “do something” about the opinion, other than accept its freeing of core political speech. Professor Lawrence Tribe proposes a new slate of corporate restrictions purportedly aimed at protecting shareholder rights while at the same time diluting them. *See Smith, supra*. Tribe’s remedies are predicated on the contradictory assertions that corporate political spending must be limited because corporations seek policies that will benefit its shareholders, but at the same time corporate political spending must be limited because it merely wastes the resources of the shareholders. It cannot be both.

The “various solutions proposed indicate a certain schizophrenia.” *Smith, supra*. Professor Tribe argues that “the impact of a corporate political ad would surely be cut down to size” if the law made corporations attach disclaimers that indicate its profit-furthering motive. But if the concern is for shareholders, shouldn’t the ad be presented as effectively as possible to benefit the corporation?

Tribe would hold CEOs personally liable and in treble damages for any campaign violation, for no other purpose than to deter and restrict the very speech rights the Court just vindicated in *Citizens United*. Punitive legislation, however, is unconstitutional. *See Davis v. FEC*.

The same is true for a 500% tax on corporate speech, and it limiting the tax to corporate speech would pose an equal protection problem.

Invoking the antitrust laws fares no better. Collusion in business is called antitrust and is illegal. In politics, “collusion” is generally called the right of association and is protected by the First Amendment.

Sen. Chuck Schumer (D-N.Y.) is reportedly considering a proposal to ban political expenditures by companies which “employ Washington lobbyists; or enjoy government contracts; or receive government bailouts or other substantial subsidies.” Rep. Grayson introduced a bill restricting companies who employ or retain registered lobbyists from political spending. Rep. Niki Tsongas proposed legislation “prohibiting entities from using Federal funds to contribute to political campaigns or participate in lobbying activities.”

Each of these targeted bans would pose constitutional concerns under the First and Fourteenth Amendments. Public employee unions (associations of teachers, firefighters, police officers, etc.) depend on government funds for their salaries and pensions. Doctors and other medical professionals depend on government reimbursements for Medicare and Medicaid patients. Millions of businesses and unions benefit from targeted tax breaks passed by Congress. If Congress banned business corporations from political spending because of a voluntary,

financial relationship with the government, it must also ban all other organizations with similar financial connections. Congress should only impose political expenditure restrictions on corporations that receive no-bid government contracts or whose controlling shareholder is the federal government (Fannie Mae, Freddie Mac, Sallie Mae, General Motors, Chrysler and AIG).

A regime of unlimited spending takes us back only to the late 1990s, but with one major difference

Another mischaracterization is that a law permitting “unlimited” political spending by corporations must result in “unlimited” spending by corporations. A review of recent political spending by incorporated entities shows, however, that legal permission has not led to corporations emptying their treasuries in support of political agendas.

In the 2002 election cycle, the Republican and Democratic parties raised approximately \$300 million combined in soft money from businesses, unions, and other organizations,¹ during a period when after-tax corporate profits totaled over \$1 trillion.² And, looking to the dreaded ExxonMobil as the “worst” possible example, lobbying expenditures in 2008 totaled roughly \$29 million³ while the company earned profits of more than \$45 billion the same year.⁴ An internal

¹ “Soft Money Background,” Center for Responsive Politics, available at <http://www.opensecrets.org/parties/softsource.php>

² Charles P. Himmelberg, James M. Mahoney, April Bang, and Brian Chernoff, “Recent Revisions to Corporate Profits: What We Know and When We Knew It,” *Current Issues in Economics and Finance*, p.3, table 1, March 2004, Federal Reserve Bank of New York, available at: http://ny.frb.org/research/current_issues/ci10-3.pdf

³ “Lobbying: Top Industries (2008),” Center for Responsive Politics, available at: <http://www.opensecrets.org/lobby/top.php?showYear=2008&indexType=i>

⁴ “ExxonMobil shatters annual profit record,” Jan. 30, 2009 CBS News, available at: <http://cbsnews.com/stories/2009/01/30/business/main4764148.shtml>

memo regarding ExxonMobil's giving to public policy groups in 2002 shows that they gave only \$5.1 million to such groups,⁵ while earning profits of approximately \$11.5 billion.⁶

As campaign finance lawyer Adam Bonin noted in a *DailyKos* post,⁷ campaign finance regulations changed modestly after *Citizens United*: Before the ruling, corporations could contribute directly to candidates in more than half the states, run political expenditures with “express advocacy” — using words like “vote for” or “vote against”—in more than half the states, and run issue ads in all 50 states and federal elections using words like, “Sen. Smith is wrong on the environment, call him and tell him so.” Such ads, after McCain-Feingold in 2002, could not be aired within 30 days of a primary or 60 days of a general election. After *Citizens United*, business corporations, unions and nonprofit advocacy groups can now run “express advocacy” ads for or against candidates in all 50 states and run their issue ads anytime, instead of only when they're likely to be ignored by the voting public (i.e. not near an election). In defending McCain-Feingold in the Courts, “reformers” argued vociferously that these “issue ads” were no different in effect from the “express advocacy” ads the *Citizens United* Court ruled corporations have a right to broadcast, and the Court had expressly adopted that view in *McConnell v. FEC*. If that is true, then the change in the law is merely, as a practical matter, back to the status quo of the 1980s and 1990s. While many people do not like that change, it is difficult to argue that elections improved, or special interest influence declined, during the seven-year reign of McCain-Feingold.

⁵ http://www2.exxonmobil.com/files/corporate/public_policy1.pdf

⁶ David Koenig, “ExxonMobil set record profit in 2003,” Jan. 30, 2004, Associated Press, available at: <http://media.www.thebatt.com/media/storage/paper657/news/2004/01/30/News/Exxon.Mobil.Set.Record.Profit.In.2003-592894.shtml>

⁷ *DailyKos*, “Citizens United: Don't Panic,” Jan. 28, 2010; <http://www.dailykos.com/storyonly/2010/1/27/830892/-Citizens-United:-Dont-Panic>

But there is one big difference between the 1990s and now. In the 1990s some corporate and union resources made their way to national political party committees to be spent by operatives who had the short-term and long range interests of the political parties in mind. Unless Congress now frees itself of the only McCain-Feingold provisions not now held to be unconstitutional, the party committees will see their relative fortunes whither as others spend all around them. The Center for Competitive Politics has compiled “A Modern, Moderate Agenda”, which suggests reforms Congress should make to unburden itself in the wake of the *Citizens United* opinion. Those recommendations are attached to this statement and incorporated in this testimony.

Thank you.



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January 28, 2010

A Dangerous Dissent on *Citizens United*

By [Mark J. Fitzgibbons](#)

The dissenting opinion in *Citizens United*, written by Justice Stevens and joined by the court's other three liberals (including Justice Sotomayor), is remarkable for a number of reasons. Justice Stevens attempts to base his opinion in originalism, which is quite welcome for the mere fact that it better exposes the sometimes-camouflaged antipathy towards freedom held by liberal, big-government types.

Citing *Trustees of Dartmouth College v. Woodward* (decided in 1819) to support his thesis that the First Amendment does not extend fully to corporations, except for the "institutional press" as he so names it, Justice Stevens writes,

"The Founders thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare" since "the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign."

That contradicts the fact the Dartmouth College was established to fulfill a mission protected by the First Amendment (the teaching of religion), and *Trustees of Dartmouth College* said that no legislature in America has the authority to deprive a chartered entity of "vested rights."

Trustees of Dartmouth College was decided long before the 14th Amendment was ratified, which courts in the 20th century claimed as the basis to apply the Bill of Rights to state actions. But even in 1819, due process was considered beyond the authority of states to violate, and courts recognized that legislative power was limited. The decision also acknowledges the fact that corporations may be established with express or implied purposes that include the free exercise of rights.

The common law recognized that the sovereign does have the authority to regulate the formation of corporations and imposes certain conditions on their existence and operations. *Trustees of Dartmouth College* discusses the clear distinctions between "private" corporations (established by individuals) and "public" or "civic" corporations such as cities, townships, and those established by the government.

Justice Stevens' conclusion that the sovereign may interfere with First Amendment or other rights of privately founded and financed corporations because they are "artificial" creations is not only absent in the *Trustees of Dartmouth College* decision, but it is contradictory to it.

Founder and our fourth Chief Justice John Marshall wrote:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being a creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, *individuality*; properties, by which a perpetual succession of many persons are considered the same, and may act as a single individual.

In other words, Justice Marshall's written opinion supports the principle that corporations may act and speak as any individual may, and the opinion notes that legislatures lack the power to take away "vested" rights. The position that follows from Justice Stevens' must be that First Amendment rights are not vested. That is as dangerous a judicial notion as any I know.

Perhaps an even more radical and equally dangerous statement in the liberals' dissent is that "every corporate activity ... rest [s] entirely in a concession of the sovereign," and therefore could be "comprehensively regulated in the service of the public welfare." As I mentioned earlier, the opinion in *Trustees of Dartmouth College* makes the clear distinction between private

corporations versus public (or civic) corporations such as cities and townships. Justice Stevens' language is pulled from the description of public corporations found in *Trustees of Dartmouth College*.

I do not know whether Justice Stevens' intent in failing to acknowledge this important distinction between private and public corporations was to influence more than just restrictions on First Amendment rights. The Marshall court makes clear, however, that government may not intrude on private corporations the way it may on public ones, and it must respect the *private* nature of *private* corporations even when their purposes may be for the public benefit. That may be just horribly incompetent lawyering on Justice Stevens' part (although the other three liberal justices signed onto his dissenting opinion).

I can, however, guarantee this: Left-wing and government lawyers will glom onto that language to attempt to justify the most invasive intrusions into corporations -- including nonprofits -- and their First Amendment, property, and other rights. That is why it is important to expose Justice Stevens' error now, before it becomes incorporated into our jurisprudence by mistake or design.

Justice Stevens also writes about the "unique role played by the institutional press in sustaining the public debate." Justice Scalia's concurrence with the majority opinion helps expose the fallacy of Justice Stevens' First Amendment favoritism and bias. In footnote 6 to his opinion, Justice Scalia writes, "It is passing strange to interpret the phrase 'the freedom of speech, or of the press' to mean, not everyone's right to speak or publish, but rather everyone's right to speak or the institutional press's right to publish."

"*Liberty of the press*," he continues (and I omit the cite), "in civil policy, is the free right of publishing books, pamphlets, or papers without previous restraint; or the unrestrained right which every citizen enjoys of publishing his thoughts and opinions, subject only to punishment for publishing what is pernicious to morals or to the peace of the state."

Justice Scalia notes correctly that the freedom of the press -- i.e., the freedom to publish one's thoughts -- rests with each individual. It is not a right reserved to some professional society. It strikes me as of no small inconsequence that the corporate media are among the biggest whiners about *Citizens United*. They are rapidly losing the artificial monopoly, created in part by Congress and in part by the courts, but not by the First Amendment, on the protections afforded under the freedom of the press.

Justice Stevens, in his footnote 16, sums it up best: "We do not share [the majority's] view of the First Amendment." That may be the most accurate statement in his dissenting opinion.

(Excerpted from a speech to be delivered at the January 29-31 [Leadership Tea Party Class](#), Dallas, Texas.)

Page Printed from: http://www.americanthinker.com/2010/01/a_dangerous_dissent_on_citizen.html at February 01, 2010 - 09:22:27 AM CST

***Citizens United*, Shareholder Rights, and Free Speech: Restoring the Primacy of Politics to the First Amendment**

By Bradley A. Smith, Josiah H. Blackmore II/Shirley M. Nault Designated Professor of Law, Capital University Law School, Columbus, Ohio; and Chairman, Center for Competitive Politics.

Last month's Supreme Court decision in *Citizens United v. Federal Election Commission* is an important step to restoring political speech to the primacy it deserves under the First Amendment.

For years, now, both outside observers such as I and members of the court, most notably Justices Scalia and Thomas, have pointed out that the Court has been giving greater protection to such non-political speech as internet pornography, nude dancing, and the transmission of stolen communications than it has to core political speech. These charges, whether made in judicial opinions, see e.g. *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000) (Thomas, J. dissenting) or in public commentary have gone unanswered. It is, of course, relatively easy to defend the First Amendment when the consequences of doing so seem unlikely to upset one's own life or to have little broad impact, see e.g. *East Hartford Education Association v. Board of Education*, 562 F.2d 838 (2d Cir. 1977) (upholding the right of a teacher not to wear a tie in the classroom), than it is when upholding the First Amendment may have major consequences for one's own cherished political beliefs. And let us make no mistake – there is a reason that the political left has been howling about *Citizens United*, and it is the belief that corporate political speech will benefit causes with which they disagree. See e.g. Katie Obradovich, *Harkin: SCOTUS Ruling Benefits GOP*, Des Moines Register, Jan. 21, 2010 (available at <http://blogs.desmoinesregister.com/dmr/index.php/2010/01/21/harkin-supco-ruling-benefits-gop/>) (“[T]hey want to cut corporate taxes. They want to do away with estate taxes for the wealthy...”) (quoting Senator Tom Harkin); *id.* (“The legislation I introduced today will prevent the Wall Street corporations ... from turning around and pouring that same money into candidates that will prevent financial regulation on their industry.”) (quoting Leonard Boswell, D-Ia); Paul Abrams, *Supreme Court to Hand Government to Republicans, Again*, Huffington Post, Dec. 17, 2009 (available at http://www.huffingtonpost.com/paul-abrams/supreme-court-to-hand-gov_b_395239.html) (complaining that overruling ban on corporate speech will “gut” healthcare reform, prevent financial regulation or “breaking up” of banks, end subsidies for “clean energy,” result in tax cuts, end regulation of business; return prayer to schools, end abortion rights, and result in “perpetual war.”); Jeff Zeleny, *Political Fallout From Supreme Court Ruling*, New York Times, Jan. 21, 2010 (available at <http://thecaucus.blogs.nytimes.com/2010/01/21/political-fallout-from-the-supreme-court-ruling/>) (“It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.”) (quoting President Obama).

In fact, the Supreme Court had to rule in favor of *Citizens United*, and what is remarkable is not that it did, but that four Justices dissented. Remember, the government's position in the case was that under the Constitution, it had the power to ban the distribution of books through Kindle; to prohibit political movies from being distributed by video on demand technology; to prevent Simon & Schuster from publishing, or Barnes & Noble from selling, a 500 page book with even one sentence of candidate advocacy; or to prevent a union from hiring a writer to author a book about the benefits to working Americans of the Obama agenda. For all the outrage about this opinion, I have yet to hear anybody seriously defend that result. The fact that not one of the dissenters could find a middle ground on which to concur in the judgment suggests that the majority was correct – this case was all or nothing. Far from being activist, the majority reached the only logical conclusion. The dissenters were the activists here, prepared to enforce an interpretation of the First Amendment wholly foreign to most Americans.

In his critique of the decision here at SCOTUS Blog, Professor Tribe avoids the hysteria that has taken over much of the left. While there is no doubt that this decision is important and will result in more public political speech (which I believe is a good thing), Professor Tribe notes that fears of an “overwhelming flood” of corporate political spending are overblown. Professor Tribe correctly points out that before *Citizens United*, 26 states already allowed unlimited corporate spending in elections (and two more allowed limited corporate spending), and these states, representing over 60 percent of the nation’s population, were not overwhelmed by corporate or union spending in state elections. Moreover, they include the top five rated states in *Governing Magazine’s* rating of the best governed states (Utah, Virginia, Washington, Delaware and Georgia). Furthermore, prior to the McCain-Feingold Act of 2002, corporations could fund “issue ads,” hard hitting ads that discussed candidates and issues but stopped short of asking citizens to vote in any particular way. In defending McCain-Feingold in the Courts, reformers had argued vociferously that these “issue ads” were no different in effect from the “express advocacy” ads the *Citizens United* Court ruled corporations have a right to make, and the Court had expressly adopted that view in *McConnell v. FEC*. If that is true, then the change in the law is merely, as a practical matter, back to the status quo of the 1980s and 1990s. While many people do not like that change, it is difficult to argue that elections improved, or special interest influence declined, during the seven year reign of McCain-Feingold.

Nevertheless, Professor Tribe joins the chorus of those who seem to assume that Congress must “do something” about *Citizens United*. And here, the arguments have taken a curious twist.

The new rallying cry seems to be a combination of simultaneously attacking shareholder rights while claiming to defend them. The attack on shareholders rights comes in the form of claims, voiced by Justice Stevens in his interminably long dissent, by Justice Sotomayor at oral argument, and by numerous liberal commentators, that corporations really have no rights, since they are “creatures of the state.” In dissent, Stevens pulled a quote from the great Chief Justice John Marshall, “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it.” (quoting *Dartmouth College v. Woodward*, 17 U.S. 518 (1819)). Never mind that Justice Marshall found that the corporation did have constitutional rights – Stevens uses Marshall to argue that it does not.

Here again, Stevens reveals the radical, activist position of the dissenters. For well over 100 years, it has been recognized that corporations possess constitutional rights as “persons.” Few of us, for example, would endorse the proposition that a corporation could have its property seized (i.e., the property of the natural persons who are its shareholders) without due process. While corporations do not have the ability to exercise, as corporations, all Constitutional rights, they have long been recognized as able to assert constitutional rights where doing so is necessary to preserve the rights of the corporate members or shareholders. Thus, where a corporation asserts a right to speak, it is really the members of the corporation asserting a right to associate and to speak as a group. That is why corporations possess First Amendment rights (as opposed to the Fifth Amendment right against self-incrimination, or the right to vote, which are only exercised on an individual basis, not through association in the group).

If Stevens and the others who joined his opinion are serious in thinking that corporations have no rights other than those granted (at whim, apparently) by the state, they are perhaps the most radical group of justices we have ever seen, prepared to overturn hundreds of precedents from the nation’s earliest days to the present.

At the same time that the dissenters launch this remarkable assault on shareholder rights, they claim to be defending the rights of shareholders. This schizophrenic position seems to be the result of schizophrenic beliefs about a subsidiary issue. The desire to “do something,” as we have seen, comes about precisely from the belief that corporations, when engaging in political participation, will focus solely on turning a profit for their shareholders, *see Citizens United* (Stevens, J., concurring)(citing brief of American Independent Business Alliance as amicus curiae). This is the *quid pro quo* rationale that has long undergirded campaign finance restrictions, *see Buckley v. Valeo*, 424 U.S. 1 (1976), and even the “corrosion” rationale behind the now overruled *Austin v. Michigan Chamber of Commerce*: corporations will attempt to influence public policy solely to gain undue favors that enrich their shareholders, and that is a bad thing. Yet now, we are told that corporate spending must be limited to protect those same shareholders from, in Professor Tribe’s words, corporations “squandering their property in federal elections.” Thus, corporate spending on politics must be limited because corporations (unlike individuals?) seek to promote policies that will maximize their benefits to the corporation, but must be restricted because in doing so they are “squandering” corporate resources. The two propositions do not work in tandem.

If corporate shareholder rights are really at issue, then the problem really arises when managers spend corporate funds in ways not intended to boost corporate profits. This is an implied critique of *Citizens United* when critics attack corporate managers as “spending other people’s money.” But even if this is true, this is a question not of campaign finance law, but of corporate law. What is really under attack here is the business judgment rule. If the business judgment rule is the problem, corporate political spending is the least of our worries. Even before McCain-Feingold, Fortune 500 companies spent roughly ten times as much money on lobbying as on campaign expenditures. Must shareholders approve all lobbying in advance? (And, from the public interest side, is it better if corporations seek to exercise influence by lobbying lawmakers rather than lobbying the public, through campaign spending?). Furthermore, these companies give away roughly ten times as much money as they spend on lobbying. These donations can go not only to such causes as United Way or the local Opera, which many shareholders might not like, but to controversial “political” charities, including groups such as the Brennan Center for Justice (which has long received corporate contributions to support its crusade for campaign finance reform, without ever expressing concern for whether the shareholders were in agreement with its agenda), Planned Parenthood, and even the Boy Scouts, once non-controversial but now a lightning rod for gay rights organizations (which, themselves, are sometimes controversial recipients of corporate charity). Many corporations voluntarily support affirmative action, even though many shareholders disagree with such policies. The managers do this under the business judgment rule. Similarly, managers may decide to increase pollution within legal limits in order to boost profits, though some shareholders would prefer they do not – or they may decide to make a voluntary reduction in pollution at some cost in profitability, even though some shareholders would prefer that they do not. Or corporations may run product ads suggesting that competitors are not treating their customers fairly, leading some shareholders to fear that the long-term effects of such ads will be to turn public opinion in favor of industry-wide regulation that will harm the corporation’s own profitability. But these types of decisions are all made under the business judgment rule.

Corporate scholars have long wrestled with the scope of the business judgment rule – indeed, it may be fair to say that there is no more vexing issue in corporate law than the question of how to have efficient corporate governance while preventing officers and managers from betraying their duties to shareholders. But that is precisely why it would be a huge mistake to make a radical assault on long considered issues of corporate law due to a short term populist panic about corporate political spending, which is a miniscule portion of what any for-profit corporation does.

Meanwhile, the various specific solutions posed also indicate a certain schizophrenia. For example, Professor Tribe, having argued that shareholders must be protected from resources being “squandered” on political ads, seeks added disclosure on corporate ads. He argues that “the impact of a campaign ad, whether in the form of a thirty-second spot or an extended production, would be cut down to size if it had to be (accurately) presented as a self-interested attempt by big pharma or by a cigarette or oil company or a bank holding company or hedge fund to influence the outcome of a candidate election for the benefit of the sponsoring company’s bottom line rather than masquerading behind a veil of public-spiritedness.” But if the concern is really for shareholders, shouldn’t we want the corporate spending to be done as effectively as possible, with as much impact as possible? Why would we limit that? (And as an aside, since when do most politicians, or individual voters, forthrightly declare that they simply want more stuff from the government, rather than hiding behind the “public interest?”)

Professor Tribe says that the idea is not “to suppress political speech,” but in fact that is exactly the idea. He makes a series of proposals specifically designed to suppress political speech. For example, he wants all corporate political ads to feature the name of the corporation’s CEO and the percentage of its treasury spent on the ad. But of what benefit would any of that be to the listening public? The apparent goal is simply to discourage speech. Moreover, he proposes making corporate executives personally liable for treble damages and attorneys fees as a “deterrence” to spending corporate dollars on political activity. The basis of such claims would be a “federal cause of action for corporate waste.” This would either be toothless, simply relying on the manager’s claims of good faith, or would result in hindsight second guessing by prosecutors, minority shareholders, and juries as to whether the corporation could show specific *quid pro quo* benefits from its political involvement - exactly the thing that campaign finance reformers have long argued should be prevented, not required, when corporations engage in politics.

The lack of wisdom in these proposals is illustrated by the fact that there is no evidence that any substantial percentage of decisions on corporate political spending are in fact opposed by shareholder majorities. It seems more likely that the opposite is true. These proposals are clearly intended to make it much harder, if not impossible, for the shareholder majority to support its own best interests (which, again, the reformers seem to presume is contrary to the policy preferences of the reformers), in the name of shareholder rights. It is hard to defend any of this as a victory for shareholder rights, rather than an effort to silence voices that the silencers seem to assume they will not like.

In summary, lacking a rationale for the corporate speech ban that can withstand even rational basis First Amendment analysis, opponents of corporate political speech are making a series of contradictory arguments, both underinclusive and overinclusive in their scope, in the name of shareholder rights, with the specific intent of hindering corporate speech by majority shareholders.

Finally and unfortunately, at this stage no discussion of *Citizens United* can be complete without addressing the question of foreign corporations engaging in political spending. Of course, no one seriously believes that the ban on corporate spending was enacted to prevent foreign corporations from engaging in spending, as opposed to all corporations, nor did the government defend the statute on that grounds, but even if we take that argument in good faith, it makes little sense. First, a separate and very broad provision of the law clearly bans all foreign nationals from participating financially in any U.S. election, from dog catcher to president. It is true that U.S. subsidiaries of foreign owned corporations could spend money in an election (just as they were able to do in 28 states before *Citizens United*), but even to do that the subsidiary must be U.S. incorporated and U.S. headquartered, and must make expenditures from funds earned in the United States. So a foreign corporation could not simply run

money into the company to then make expenditures. Furthermore, no foreign national can be involved, directly or indirectly, in any way, in decisions to spend, or on how to spend, any funds for political purposes. So to address one hypothetical I have heard, it would be a violation of the law for a Saudi billionaire to suggest to the U.S. citizens making decisions that the U.S. subsidiary spend money in an election. And finally, note that these U.S. subsidiaries are already eligible to spend unlimited sums on lobbying congress or on promoting or opposing state ballot measures. Additionally, these U.S. subsidiaries already have, and have long had, the right to create and pay the expenses for corporate Political Action Committees, which can not only spend on political races without limit, but can contribute directly to candidates. The horror stories about foreign corporations simply illustrate, again, how weak are the both the First Amendment and broader Constitutional arguments against the Court's ruling in *Citizens United*.

Citizens United is important not because it will lead to a flood of corporate and union spending in political races, but because it re-establishes a core principle of First Amendment law, which is that the government cannot be in the business of discriminating against U.S. citizens engaged in political activity simply because of the organizational form of their engagement. But even if it should lead to a flood of corporate spending, the alternative endorsed by the government and the dissenting justices on the Supreme Court – an America where the government could ban political books and movies – is clearly far worse.



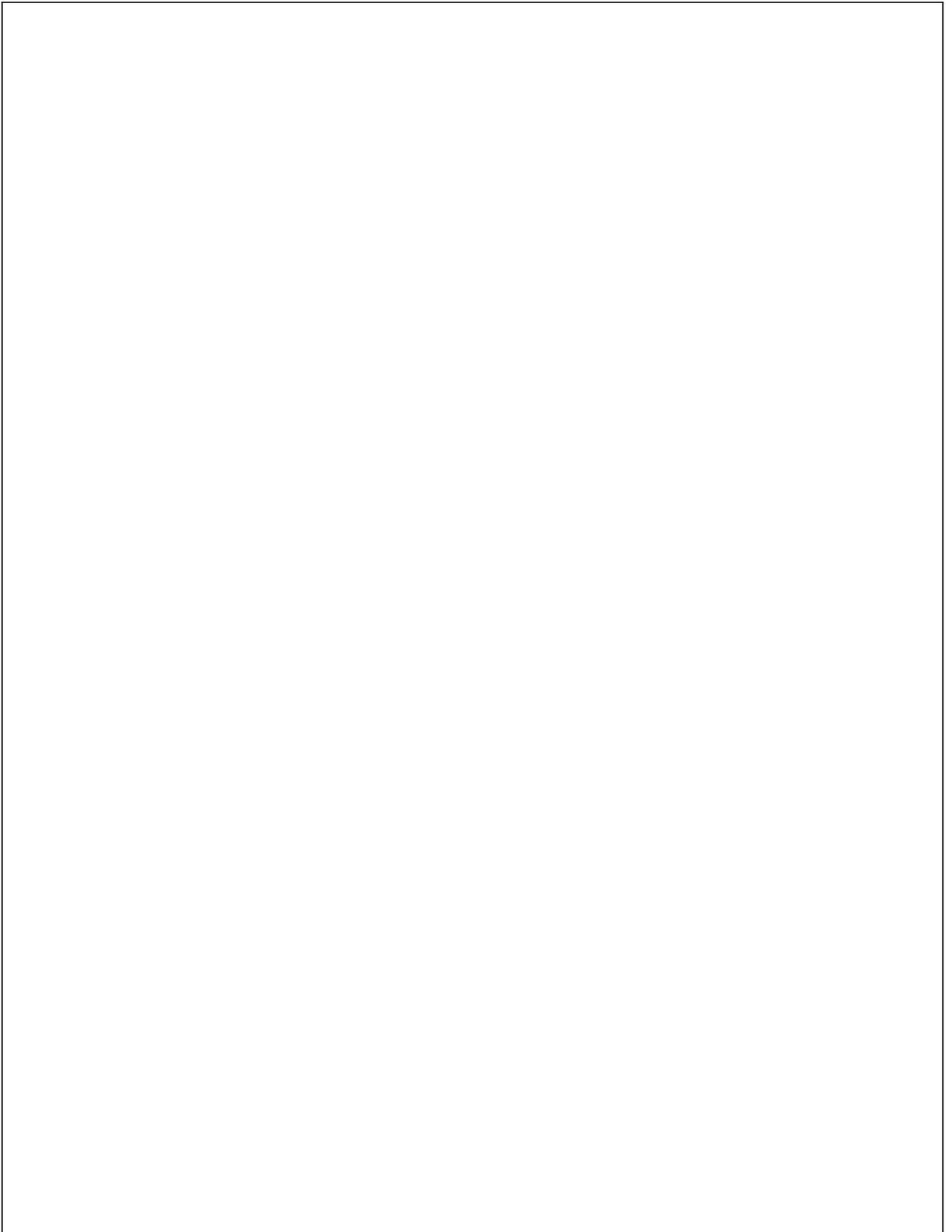
After Citizens United

A Moderate, Modern Agenda for Campaign Finance Reform

Prepared by the

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Introduction

On Jan. 21, 2010, the U.S. Supreme Court handed down its ruling in *Citizens United v. Federal Election Commission*, dramatically altering the campaign finance landscape for federal candidates. Previously silenced, incorporated businesses and unions as well as many advocacy organizations and trade associations will be able to spend money directly from their general treasuries advocating the election or defeat of federal candidates.

While the full impact of this ruling will be unknown for several years, there is little doubt that the ruling in *Citizens United* places candidates and political parties at a distinct disadvantage to incorporated entities that wish to spend independently. While candidates and political committees remain limited in their ability to raise funds to communicate their message, incorporated entities face no such limit.

This unlevel playing field was noted by Supreme Court Justice Breyer during oral arguments, when he observed that "...the country [would be] in a situation where corporations and trade unions can spend as much as they want... but political parties couldn't... [and] therefore, the group that is charged with responsibility of building a platform that will appeal to a majority of Americans is limited, but the groups that have particular interests, like corporations or trade unions, can spend as much as they want..."

In *After Citizens United: A Moderate, Modern Agenda for Campaign Reform*, the Center for Competitive Politics proposes a modest agenda of six proposals that will help to put candidates and parties closer to a level playing field with individuals and corporations engaged in independent expenditures.

We believe these modest steps towards reform can attract broad, bipartisan support because they do not dramatically alter the current system. Many simply update decades-old laws that have failed to keep up with the times, while others allow more Americans to contribute and to give to more candidates.

It is our hope at the Center for Competitive Politics that this reform agenda will not only lead to more modern system of campaign finance regulation that shows greater respect for the First Amendment, but that it will also spur elected officials and the public to re-examine the fundamental premises on which current regulations and restrictions on political speech rest. We are confident that such a re-examination will lead to a better understanding of the First Amendment, and ultimately to further liberalization of speech regulations.

Brad Smith, Chairman

Sean Parnell, President

1. Remove Limits on Coordinated Party Spending

Under *Buckley v. Valeo*, individuals and organizations have a right to engage in unlimited spending if they do so independent of a candidate's campaign. In *Colorado Republican Federal Campaign Committee v. Federal Election Commission* (“Colorado I”), the Supreme Court clarified that this right extends to political parties. And, of course, in *Citizens United* the Court has now held that incorporated entities including businesses, unions, and trade associations have the right to draw on an unlimited amount of funds for independent expenditures.

At the same time, the law still limits how much political parties can spend in coordination with their candidates, a limitation upheld by the Supreme Court in *Federal Election Commission v. Colorado Republican Federal Campaign Committee* (“Colorado II”).

The odd result of these cases is to drive a wedge between parties and candidates. Parties can spend unlimited sums to help their candidates, but only if they do so independently of the candidates — that is, without sharing information on the candidate’s strengths and weaknesses, strategies, plans, polling data, and so forth. Prior to McCain-Feingold, this dichotomy might have made some type of sense, in that parties could accept and spend “soft” money — unregulated funds — to support candidates so long as they avoided “express advocacy” in spending their dollars. Therefore, “soft money” could be spent independently and hard money could be spent in coordination with the candidate.

Since McCain-Feingold, however, national political parties are prohibited from accepting any unregulated contributions. Thus, all party spending is “hard” — regulated and limited, money. There would seem to be no purpose in any longer limiting the ability of political parties to spend unlimited “hard” money in coordination with a campaign. Eliminating this barrier is unlikely to lead to any added spending — it would merely allow parties and candidates to do what parties and candidates ought to do: work together to gain election, and to spend money on the races they deem most important.

Beyond removing a needless barrier that raises the costs of campaigning, allowing parties and candidates to work together may actually increase accountability and confidence in the system. For example, in 2006, when some observers called on Tennessee Republican Senate candidate Bob Corker to denounce certain ads about his opponent being run by the National Republican Senatorial Committee, Corker had to say — truthfully — that he had nothing to do with the ads (nor could he have under the coordination restrictions).

Because most citizens simply do not believe that a candidate cannot somehow instruct his party on advertising, cynicism among the voting public increases when they are correctly told candidates cannot legally ask their own party to stop running a specific ad.

2. Restore Tax Credits for Small Contributions

Prior to the federal tax reform of 1986, taxpayers received a tax credit for political contributions up to \$50, or \$100 on a joint return. Adjusted for 1978 dollars (the last time Congress adjusted the amounts) it would today be approximately \$165, or \$330 on a joint return.

Restoring the tax credit at these levels would increase the pool of small donations available to candidates, which would make it easier to raise funds and reduce time spent fundraising. In addition, a tax credit might encourage more people to become involved in the political process and could do far more than contribution limits to restore faith in government.

3. Adjust Contribution Limits for Inflation, Including the Aggregate Limits

The McCain-Feingold bill doubled individual limits on giving to candidates and indexed them for inflation. This increase, however, accounted for barely half of the loss in value of contributions since the limits were first enacted in 1974. Moreover, other limits were not increased at all.

Had all contribution limits been increased with inflation since their enactment in 1974, by the time McCain-Feingold was passed in 2002 the limit for an individual to contribute to a campaign would have been approximately \$3,650. The limit for PACs, both what an individual can contribute to a PAC and what the PAC can contribute to a candidate, would have been approximately \$18,250.

Similarly, the aggregate limit for an individual in a two year election cycle would have been in excess of \$180,000, up from the \$50,000 allowed at that time by the law. McCain-Feingold partially redressed the problem, raising the aggregate limit over a two year election cycle to \$95,000 and adjusting it for inflation, but this made up a bit less than half the deficit that had been created by the simple lapse of time.

Individual contributions to political parties show a similar story. Originally set at \$20,000 per year, the limits were modestly raised and indexed for inflation in 2002. The annual limit on contributions to political parties is currently only \$30,400, while it would be closer to \$87,760 had it been indexed to inflation in 1974.

Much of the “soft money” problem that served as the justification for McCain-Feingold was, in reality, a hard money problem, created by contribution limits that were unadjusted for inflation, let alone population growth. By adjusting the contribution limits for inflation to match the original amounts set in 1974, much of the political funding that was first called “soft money” and that has since flowed to 527 and 501(c)4 groups to escape the low limits would instead flow back into candidates and political parties.

Restoring the original buying power of the 1974 contribution limits would also have the effect of reducing the demands on candidate time for fundraising while also providing a boost to lesser-known candidates who would be helped by higher limits. It is worth noting that in 2004, a previously little-known state senator from Illinois was able to build an effective campaign organization in his race for U.S. Senate in part because of the higher contribution limits he operated under thanks to the so-called “Millionaires Amendment” (since struck down by the U.S. Supreme Court in *Davis v. Federal Election Commission*). Four years later, of course, that relatively unknown state senator was elected President of the United States.

Higher contribution limits also address what many regard as the problem of self-funding candidates. While a candidate’s wealth does not increase relative to contribution limits, the ability of non-wealthy opponents to raise funds to remain competitive would significantly increase.

4. Permit Independent Solicitation and Facilitation of Contribution to PACs

Congress should allow new groups making use of new technologies more leeway than they already enjoy under the Federal Election Campaign Act to empower existing PACs and small donors.

Currently, connected PACs are permitted to solicit contributions from a restricted class of potential donors, such as corporate executives, union members, or donors to a citizen group. Although they may not solicit contributions outside of their restricted class, they are permitted to accept them if someone wishes to donate.

ActBlue is a non-connected political committee that was formed to enable individuals, local groups, and national organizations to raise funds for Democratic candidates of their choice. ActBlue—which has its counterparts on the Republican side of the political spectrum—serves primarily as a conduit for contributions earmarked for Democratic candidates and political party committees. ActBlue lists Democratic candidates’ campaign committees on its website, and it solicits contributions designated for those committees on its website’s blog and fundraising pages. Viewers may make a contribution designated for a listed campaign committee through ActBlue’s website.

ActBlue has in the past sought permission from the Federal Election Commission to solicit funds for the separate segregated funds (PACs) of corporations, labor unions, and associations. This request was largely denied by the Federal Election Commission, although the statutory language does not specifically bar what ActBlue wished to do.

PACs represent an opportunity for citizens to join together and associate themselves with their fellow citizens on specific interests and issues, and to speak with one voice through direct

contributions as well as through independent or coordinated expenditures. Expanding the potential sources of contributions for PACs without upsetting the prohibition on the use of corporate or union treasury funds to solicit beyond the restricted class would add yet another strong voice to the political process.

To strengthen the ability of PACs to compete with unlimited independent expenditures, Congress should clarify the laws regarding separate segregated funds and solicitation of restricted classes by allowing registered political committees that serve as conduits for other political committees to solicit contributions on behalf of the separate segregated funds of corporations, labor unions, and other associations.

5. Adjust Disclosure Thresholds for Inflation

Disclosure, according to the Supreme Court, helps to prevent corruption or its appearance by shedding sunlight on the money supporting candidates. It also can provide voters with helpful voting cues. The donations of interest groups and knowledgeable contributors may send signals to voters at large as to which candidates are worthy of support. And disclosure does not directly limit one's ability to speak. For these reasons, disclosure of contributions and expenditures is one part of the law on which most observers agree.

Disclosure is not, however, without its costs. Foremost among them is invasion of privacy. There are many reasons why people might wish to give anonymously. Some persons, for example, would not want their contributions to the Log Cabin Republicans, an organization of gay Republicans, to be disclosed publicly. Others will prefer to give anonymously in order to avoid retaliations by vengeful politicians. As John McCain himself argued in urging his colleagues to pass the McCain-Feingold law, many people will choose not to speak — and especially not to criticize incumbent lawmakers — if faced with disclosure.

Assuming that some disclosure of campaign contributions is worth these costs, we must still consider the level of disclosure. The Federal Election Campaign Act's (FECA) thresholds for reporting individual donors and independent expenditures have not been adjusted since 1979. As a result, these thresholds, low when enacted, are ridiculously low now: \$200 and \$250, respectively. It is absurd to believe that donations and expenditures of \$200 to \$250 pose a danger of corruption and undue influence in the political process. If these numbers had merely kept up with inflation, the threshold on disclosure of individual contributions would now be approximately \$600, and the limit on the disclosure of independent expenditures would now be approximately \$750.

Beyond the costs in privacy, mandatory disclosure at low levels may actually decrease whatever utility disclosure generally has. These small donations fill page after page in the reports of any

major campaign, making it more difficult and time-consuming to find large donors that may in fact provide “voting cues” to the broader public.

The extensive reporting of small contributions also increases the administrative burden on campaigns of reporting. This both raises the costs of campaigning and places the heaviest burden on small, grassroots campaigns, and on campaigns that rely more on small donors — curious results for the “reform” community to support.

Finally, raising the disclosure threshold may increase the number of Americans willing to contribute more than \$200 to candidates, or even contribute at all, once they know their contribution will not become public knowledge and potentially subject them to retaliation.

Adjusting disclosure limits for inflation, as has already been partially done for contributions, would be a modest measure that would pose no danger of corruption and that would have a salutary effect on the system and the privacy rights of individuals, and potentially increase the funds available to candidates who must compete against unlimited independent expenditures in the post-*Citizens United* world.

6. Abolish the Prohibition on Corporate and Union Contributions

Today’s corporate world is far different than it was in 1907 when the Tillman Act was enacted into law. It is difficult to see how banning contributions by advocacy groups — whether major organizations formed specifically to promote certain national issues, such as NARAL Pro-Choice America or the National Rifle Association — unleashes “great aggregations of wealth” into our politics. It is even more difficult to see how banning contributions from community groups, regional chambers of commerce, local unions, and local businesses does so.

Lifting the outright ban on corporate contributions does not mean permitting unlimited contributions. Corporate contributions could have the same limits imposed as individual or PAC contributions currently do, including aggregate caps and provisions to ensure that corporate subsidiaries aren’t able to evade the cap. The advantages of doing this would be many.

First, operating a PAC is expensive. Many corporations and small trade associations spend as much money operating their PACs as those PACs actually spend on politics. But there are definite economies of scale, so that the expense of complying with PAC regulation tends to favor larger enterprises. Indeed, for many small corporations, the cost of maintaining a PAC and soliciting contributions is not worth the benefit. The same, of course, applies to unions — the repeal would favor small union locals. Current complex reporting requirements could be replaced by a simple statement of contributions at a reasonable point before any election.

The egalitarian effect here would not only come in contributions. Indeed, primarily it would come in the ability of smaller corporations and unions to host candidates and allow candidates to meet with employees and members. Present law blankets such activity, once common, with a web of restrictions and prohibitions. However, a corporation with a large PAC can pay for such activities through the PAC and thereby avoid this added regulation. Smaller businesses cannot. Not only would abolishing the PAC requirement favor smaller businesses, unions, and advocacy groups, it would promote more opportunities for direct worker-candidate interaction.

The Tillman Act also failed to foresee the rise of subchapter-S corporations (S-corp), which are in many cases, and perhaps in most, small businesses owned by a single individual or family. Owners of S-corps often send contributions to candidates from their company accounts, thinking of themselves as small-business owners and not corporations. This causes campaigns to have to return the contribution and explain to would-be contributors that they need to send a personal check instead, which typically means the business owner transfers money from their business account to their personal account, then writes the check using essentially the same funds. Allowing corporate contributions would end the confusion and hassle associated with S-corps.

Another advantage of abolishing the PAC requirement would come in streamlined enforcement. The complete ban on corporate and union contributions means that a violation occurs when the first dollar is spent. The FEC has detailed rules that prohibit, for example, corporate lobbyists from even touching personal checks written to candidates by corporate executives, or that make it illegal for a secretary in a corporation or union office to type a note from an officer to a colleague, urging the latter to make a contribution. These regulations could be largely scrapped, and the minor complaints that come with them flushed out of the system, simply by allowing some minimal level of corporate and union expenditure.

It will be said in some quarters that allowing corporations to spend funds for political activity directly from corporate treasuries is unfair to shareholders, but this argument does not hold water. Corporations are free to use shareholder funds now for any number of things, including activities with political overtones that many shareholders may oppose. This includes lobbying, something nearly all large corporations and many smaller engage in.

For example, a corporation may support the Boy Scouts, which some oppose because of their stance on homosexuality; or it may support Planned Parenthood, which some oppose because of its advocacy of abortion rights. These matters are traditional questions of corporate governance. They are not the province of campaign finance laws.

It should also be noted that replacing the ban on corporate and union contributions with reasonable limits would be harmonious with the *Buckley v. Valeo* admonition that the legitimate

constitutional purpose of limitations is to prevent corruption. It is hard to believe that a contribution from the treasury of a small business is any more “corrupting” than a contribution from a corporate PAC or from the CEO of a Fortune 500 company.

Over 30 states currently allow some corporate contributions. These states include Utah and Virginia, which allow unlimited corporate contributions, and were recently named among the best-governed states in America by the Pew-funded *Governing Magazine*. There is no evidence that states that allow corporate contributions in state races are more “corrupt” or less well governed than other states.

Finally, in an era in which incorporated entities are now free to engage in unlimited independent advocacy, allowing direct contributions would provide businesses, unions, advocacy groups, and trade associations an alternate option to support or oppose specific candidates. Rather than engaging in independent expenditures or contribute to a 527 or 501(c) organization, an incorporated entity might instead chose to contribute directly to a candidate or political party. This would be particularly beneficial for smaller entities, which might not have the funds or sophistication to mount an effective independent expenditure campaign.

Conclusion

Candidates for federal office in 2010 and beyond face a dramatically different campaign environment than that of 2008. Incorporated entities, including for-profit companies, unions, trade and professional associations, and advocacy groups are now free to conduct unlimited independent expenditure campaigns urging the election or defeat of specific candidates.

This new freedom for independent groups comes at a time when candidates, political parties, and PACs are limited to a greater extent than ever before in their own fundraising. Our proposals aim to modernize elements of the campaign finance system while removing some of the limits that put candidates, parties, and PACs at a disadvantage, while not fundamentally altering the general regulatory system that Congress has set in place over the last 35 years.

The six reforms offered here offer the best hope for candidates hoping to compete in the new campaign environment. Because of the modest nature of these reforms, we believe that bipartisan support in Congress and even the support of many in the pro-regulation community can be had for some if not all of these proposals. Restoring and enhancing the ability of candidates to effectively communicate their message to voters in a post-*Citizens United* world will improve our election process, and help to sustain the competitive balance vital to our democratic republic.

Summary for Policymakers

- 1) Remove Limits on Coordinated Party Spending
 - a. Since all party spending is hard money, or regulated money, there is no purpose in limiting party expenditures in coordination with a campaign.
 - b. This will allow parties and candidates to do what they ought to do – work together to gain election, and also increase accountability.

- 2) Restore Tax Credits for Small Contributions
 - a. Restoring tax credits on small contributions would dramatically increase the pool of small donations available to candidates, making it easier to raise funds and reduce time spent fundraising.
 - b. It would encourage more citizens to become involved in the political process and could do more than contribution limits in restoring faith in government.

- 3) Increase Contribution Limits, Including Aggregate Contribution Limits
 - a. Increasing contribution limits would reduce the need for large donors to give to 527 and 501(c)3 organizations.
 - b. It would free up candidate time from fundraising, because fewer large donors would need to be solicited.

- 4) Permit Independent Solicitation and Facilitation of Contributions to PACs
 - a. Enabling more contributions to PACs beyond their restricted class would permit for more participation by citizens in the political process, allowing them to contribute regulated dollars directly to causes they support.
 - b. Promotes more opportunities for direct interaction between workers and candidates.

- 5) Increase Disclosure Threshold
 - a. Adjusting the threshold for disclosure for inflation back to 1979 would respect donor privacy and allow the focus to be on large contributions.
 - b. Campaigns would shed the administrative burden of disclosing contributions that are in no way corrupting, lifting the burden on campaigns and grassroots groups that rely on small donations.

- 6) Abolish the Prohibition on Corporate and Union Contributions
 - a. Repealing the corporate and union ban in favor of allowing direct corporate and union contributions, subject to limits, would reduce the need to fund independent expenditures or give to 527 and 501(c) organizations.
 - b. Promotes more opportunities for direct interaction between workers and candidates.
 - c. Streamlines enforcement by weeding out minor complaints from the system while allowing people to focus on larger donations.

The Center for Competitive Politics (CCP) is a 501(c)(3) nonprofit organization based in Alexandria, Va. CCP's mission, through legal briefs, studies, historical and constitutional analyses, and media communication is to promote and defend citizens' First Amendment political rights of speech, assembly, and petition, and to educate the public on the actual effects of money in politics and the benefits of a more free and competitive election and political process. Contributions to CCP are tax deductible to the extent allowed by law.



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