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Expository Writing

Campaign Finance Reform and the Problems with the Citizens United v.
Federal Election Commission Supreme Court Case

In 2010, the conservative leaning Supreme Court, in the name of free speech, made one of the largest misjudgments in its history, namely the abolishment of campaign finance reform. (Citizens United v. Federal Election Commission) In Citizens United v. Federal Election Commission, the Court ruled that, among other things, it was unconstitutional to prohibit corporations from indirectly supporting political campaigns or restricting the amount of money they could contribute to said campaigns. In addition, the Court legalized indirect contributions by trade associations, of which foreign institutions may be members. (Citizens United v. Federal Election Commission) As a result of this judicial action, the Citizens United ruling exposed the American political system to financial corruption and international influence.

The Citizens United v. Federal Election Commission decision overturned two vital pieces of legislation, the Michigan Campaign Finance Act of 1990 and The Bipartisan Campaign Reform Act of 2002. Together, these two statutes accomplished three important tasks: the regulation of money raised for political parties from non-federal sources (soft money) (Campaign Finance Law Quick Reference), the restriction of endorsements of a political candidate on television or radio thirty days before a primary election or sixty days before an election for political office (electioneering communications) (Citizens United v. Federal Election Commission), and the imposition of limits on the political support of candidates by corporations. (Summary of Citizens United) It was the elimination of this last restriction that has most greatly impacted the American political process.

As a result of the Court's judgment, corporations are able to contribute indirectly and without limit to political campaigns via "super" PACs (political action committees). (Krieg 1) Before the Citizens United ruling, PACs existed, which were groups created to promote candidates but which corporations or other organizations could not support. (Sao) In its decision,

the Court allowed for the creation of super PACs, which are PACs to which corporations, unions, institutions, and individuals are permitted to donate money without restriction. (Suo) This means that even though corporations remain unable to donate directly to campaigns, they are now legally allowed to contribute to political groups that run advertisements in support of a particular candidate, as long as these groups do not contribute directly to the candidate or coordinate their activities with the candidate. This is akin to forbidding a child from buying candy but allowing his friend to buy it for him. Moreover, the Court did not institute any limits on how much could be donated to super PACs, which has resulted in large sums of money being indirectly donated to American political campaigns. (Top Contributors to Mitt Romney) (Top Contributors to Barack Obama)

The Citizens United case additionally makes it possible for foreign corporations to influence the American political system. Although foreign institutions continue to be restricted from directly donating to American political campaigns, trade associations of which foreign corporations may belong, are permitted to donate freely to super PACs, in support of candidates. (Fang 1)

Campaign finance reform has a long history stretching back over one hundred and fifty years. (Campaign Finance And Free Speech) Throughout most of this time, the United States Supreme Court has maintained that campaign finances must be regulated in order to help prevent political corruption. The first piece of legislation passed in the name of moderating campaign donations was the 1867 Naval Appropriations Bill. This bill made it illegal to fire navy shipyard workers for their political opinions and made it unlawful for government employers to force or ask their employees to donate to political campaigns. (Koven 59) (Campaign Finance And Free Speech) Although this law was narrow in both influence and scope, it was the federal

government's first attempt to regulate money in politics and it paved the way for the government to enact further legislation regarding campaign finances.

Over one hundred years later in 1972, after decades of case law and legislation fortifying the regulation of money in politics, Congress passed the Federal Election Campaign Act which forced elected officials to disclose the amount of money they spent on their own campaigns as well as all of the donations they received. (Campaign Finance And Free Speech) This statute was the true start of modern campaign finance reform. It showed that the federal government was taking a stand on political corruption and attempting to limit the political influence of candidates through monetary donations. Between 1972 and 2010, additional legislation was created under campaign finance reform in an attempt to make the funding of political campaigns transparent and stop the undue influence of money on government officials. However, the trend toward controlling money in politics abruptly ended in 2010, when the Supreme Court decided in *Citizens United* that campaign finance reform unfairly and unconstitutionally restricted corporations and wealthy individuals from donating to political candidates.

The years in between 1867 and 1972 saw the long lasting debate over campaign finance reform continue. In the late nineteenth century and early twentieth century, an increase in corporate wealth and influence led to heightened corporate interest in the American political system. Before 1907, businesses were legally permitted to make donations to political campaigns and then use their leverage with the elected officials to pursue their agendas. During this time, a political donation essentially became a bribe. Then, following a "corporate fundraising scandal" in Theodore Roosevelt's 1904 campaign, Congress passed the 1907 Tillman Act, which forbid corporations from donating to congressional or presidential campaigns. (npr.org) (Adam Cohen 1) (Koven 59) The Tillman Act restrictions on corporations lasted until 1944, when a coalition of

industrial unions named the Congress of Industrial Organizations found a loophole in the 1907 statute and created the first PAC, an organization of corporations or individuals that had the ability to directly donate up to five thousand dollars to political candidates' campaigns.

(opensecrets.org) (Free Dictionary) Through their donations to these PACs, corporations were now able to influence the American political system indirectly. (opensecrets.org) Corporations were able to donate to PACs until the 1990 *Austin v. Michigan Chamber of Commerce* case, which once again forbid corporations from making any contribution to political campaigns. (*Austin v. Michigan Chamber of Commerce*)

The 2010 *Citizens United* ruling rejected the decision in *Austin v. Michigan Chamber of Commerce* and allowed for the creation of super PACs. The Court rejected the concept that indirect corporate and sizeable, individual donations lead to political corruption, and asserted that these donations are protected by the first amendment. As a result, corporate and wealthy individual donors are now able to legally influence the outcome of campaigns through large donations. (*This American Life*)

Citizens United v. Federal Election Commission began as a dispute between the conservative, not-for-profit organization, *Citizens United*, and the Federal Election Commission, a government institution created to uphold the laws regarding the financial aspects of federal campaigns. (fec.gov) (*Citizens United v. Federal Election Commission*) In January of 2008, preceding the presidential democratic primary, *Citizens United* created a "documentary" about Hillary Clinton called *Hillary* which condemned the opinions and beliefs of the prospective presidential nominee, calling her a "European socialist" and "a cross between Machiavelli and Lady Macbeth who 'looks good in a pantsuit.'" (Mencimer 1) *Citizens United* then released the movie as a video-on-demand 30 days before the primary election despite this being in clear

violation of the prohibitions on electioneering communications, as defined in the Bipartisan Campaign Reform Act of 2002. (Campaign Finance And Free Speech) The Federal Election Commission took legal action against Citizens United and the case ultimately reached the Supreme Court.

At first, Citizens United argued that their documentary was not in violation of the electioneering communications statute because it was not publically distributed, but rather released as a video-on-demand. (Citizens United v. Federal Election Commission) However, the Court quickly dismissed this claim, saying that any type of public dissemination of information was considered a violation of the electioneering communications law. Citizens United then changed their contention, insisting that the ban on electioneering communications was unconstitutional because it denied corporations their rights under the first amendment. (Citizens United v. Federal Election Commission) The Supreme Court majority, led by Chief Justice John Roberts agreed, voting not only to abolish the law against electioneering communications, but to eliminate all of campaign finance reform as well. The Court claimed that any restriction on the ability of corporations or individuals to support candidates, either vocally or financially, was a violation of the first amendment.

In order to understand the ruling in Citizens United, one must look back to the 1866 Supreme Court case of Santa Clara County v. Southern Pacific Road Company. In the Santa Clara County case, the Supreme Court established what is now known as “corporate personhood,” a concept in which corporations, like individuals, fall under the fourteenth amendment of the U.S. Constitution, giving corporations equal protection under United States law. (Santa Clara County v. Southern Pacific R. Co) The Santa Clara decision affirmed the constitutional rights of corporations, including the right to free speech.

The concept of “corporate personhood” was implicit in the Supreme Court’s decision in *Citizens United*, that campaign finance reform was in violation of the first amendment rights of corporations. It is a foundation on which the Court based its analysis. However, corporate personhood is, for all practical purposes, a fiction. Corporations are not individuals, but inanimate entities that do not possess human traits; they do not have the ability to form opinions, run for political office, or vote. As a result, “corporate personhood” benefits the individuals that own the corporations, not the inanimate entity into which they have invested their money. (smartvoter.org) Yet, the Supreme Court in *Citizens United* ruled that it was unconstitutional to forbid corporations from donating indirectly to political campaigns. This decision paved the way for the development of super PACs. (*Citizens United v. Federal Election Commission*) (Sao)

Super PACs exist in order to facilitate the indirect contributions of corporate institutions and wealthy individuals. The implications of this political vehicle have already manifested themselves in the current political climate in a myriad of ways. First, economic support of candidates by corporations is now legal and has already taken on a major role in elections. (opensecrets.com) It is likely that candidates receiving these endorsements feel obligated to represent the interests of their corporate supporters instead of the needs of their individual constituents as “payback” for corporate generosity. (Udall) This creates a political environment in which elected officials are chosen and legislation is passed according to the wishes of wealthy donors. In the words of Senator Tom Udall of New Mexico: “When elected officials become dependent on the largesse of special interests, our representative democracy is distorted, and the integrity of the legislative process is endangered.” (237)

Second, as discussed above, trade associations that include foreign organizations are permitted under *Citizens United* to contribute to political campaigns, which places foreign

special interest groups in a position to indirectly fund those campaigns. As a result, candidates may be accountable to the wants of foreign corporations. (Fang 1) Third, with the abolishment of campaign finance reform, politicians have access to even larger amounts of money allowing -- and forcing -- them to spend additional time campaigning for reelection in order to compete with their opponents who also have larger campaign reserves. And, although it is true that the richest candidate does not always get elected, according to the campaign manager for a 2012 congressional candidate, money is a “major factor” in who wins an election. (11/27/12 interview) As a result, elected officials have been spending vast amounts of time fundraising that could and should be spent governing. (237) In short, the ruling in Citizens United has almost certainly furthered political corruption.

Despite the destructive ramifications of the Court’s decision, supporters of this ruling continue to assert that this judgment is beneficial to the American political system, often substantiating their claims with false evidence or impossible logical leaps. In the Citizens United summary, Chief Justice Roberts insisted that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt.” (Citizens United v. Federal Election Commission) This declaration has absolutely no basis in fact. The ability of corporations to influence politicians means that the political system has become corrupt. Moreover, it is naive to believe that a large influx of money from a corporation to a campaign will not cause the candidate to become obligated to fulfill the agenda of the corporate donor. Believing otherwise is unrealistic. It would be foolish for corporations to spend millions of dollars endorsing candidates unless they benefit from the exchange. Rather, corporations endorse candidates in order to ensure that their needs become priority and that no

legislation is passed that will hinder their profits. The Citizens United ruling has furthered corruption in the American political process by allowing corporations to have influence and access to politicians in office.

Another argument voiced in support of the Court's judgment is that freedom of speech applies to every individual regardless of economic class. (Spakovsky) However, the purpose of campaign finance reform was not to compromise the rights of those with money, but rather to ensure that those with wealth would not unduly influence American political campaigns. Instead of simply eliminating the prohibitions on electioneering communications, as requested by Citizens United, the Court used the opportunity to abolish all of campaign finance reform.

Other supporters of the majority decision argue that trade associations will not "find many deep, willing pickets among corporate members." (Gross) This claim is, however, false. Goldman Sachs alone donated over one million dollars to the Romney campaign and the University of California contributed over one million, two hundred thousand dollars to the Obama campaign, in the 2012 presidential election. Clearly large institutions are taking full advantage of the Citizens United ruling. (Top Contributors to Mitt Romney) (Top Contributors to Barack Obama)

Perhaps the strongest argument in favor of the Court's decision in Citizens United is the assertion stated in an article in *The New American*. This article maintains that under campaign finance reform, "media conglomerates" were able to voice their political opinions while other corporations were restricted. Thus, the Supreme Court decision merely leveled the playing field by allowing all institutions to voice their respective beliefs. However, this is not a legitimate claim. Media is vital in ensuring that the American public remains informed and aware of all that happens in the government. According to Pippa Norris, "During campaigns, the media provides

citizens with information to compare and evaluate the retrospective record, prospective policies, and leadership characteristics of parties and candidates, providing the essential conditions for informed voting choices.” (Norris) As a result, because of the immense need for the information provided by the media, these conglomerates must be judged by a different standard, perhaps one that is based on a criterion of objectivity. The purpose of the media is not to influence the outcome of the election but rather to inform the public, analyze current events, and keep viewers updated on different political opinions. Nonetheless, it is true that in recent years, the media has become increasingly subjective as a result of the influence of parent companies. Thus, the claim made in the *The New American* is valid. That said, the decision made by the Supreme Court to allow all corporations to voice their political opinions and influence the American political system, was no solution. Rather, a better resolution to this problem would have been for the Court to create an independently and publicly run organization that would ensure that the media remain independent of its parent companies with the goal of bringing back objectivity to the news.

The Court’s decision to abolish campaign finance reform altogether, compels an examination of its motivations. It seems that the Supreme Court justices almost always vote according to their own individual political views. Of the nine justices who decided the Citizens United case, the supposed “conservative” justices, John Roberts, Samuel Alito, Clarence Thomas, Antonin Scalia, and Anthony Kennedy, voted in favor. (Tom Cohen 3) The remaining justices, Stephen Breyer, Ruth Bader Ginsburg, Sonia Sotomayor, and John Paul Stevens, the supposed “liberal” justices, dissented. (The Radical Supreme Court) (Tom Cohen 3) It is likely that the conservative justices voted differently from the liberal members of the Court because conservative ideology tends to favor “limited government” and free enterprise. (Ed 1)

(Newsmax 1) This most likely motivated the right wing judges to eliminate the statutes governing campaign finance reform in favor of a “freer” political donation system. The current conservative bent to the Supreme Court may account for the Citizens United ruling; a decision that President Obama proclaimed will "open the floodgates for special interests -- including foreign corporations -- to spend without limits in our elections." (CBS)

The Supreme Court’s decision in Citizens United v. Federal Election Commission has made it possible for corporations to affect their own agendas by indirectly donating large sums to political candidates. Since it is unlikely that the Supreme Court, in its current configuration, will change its decision, the only way for campaign finance reform to be reinstated would be for Congress to either pass a constitutional amendment or enact a new law rendering the Citizens United ruling moot. (Baum) There is no other way to change a Supreme Court decision.

Democrats and Independents in Congress have proposed a number of bills since the 2010 ruling with the goal of doing just that, which is ironic as elected officials may very well be attempting to outlaw the same types of donations that won them political office. Two examples of this are: Representative David Obey’s “Let the People Decide Clean Campaign Act,” which would have publicly funded, and disallowed private donations to, political campaigns in order to ensure that candidates have equal campaign funds, and Representative Christopher Van Hollen Jr.’s “Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act,” which would have forced political candidates to report the names of organizations creating political advertisements on their behalf. (Udall 247) (Udall 249) (GovTrack.us) Unfortunately, these piece of proposed legislation and others have died after being referred to committee, voted down in the Senate, or voted down by Congress. (GovTrack.us)

Despite these losses, however, there continues to be a strong effort to mute the effects of Citizens United V. Federal Election Commission. Congressional committees are currently reviewing three major pieces of legislation that have the potential to amend the Court's decision. The first is a bill, introduced by Representative John Dingell of Michigan, called "Restoring Confidence in Our Democracy Act." (GovTrack.us) This act would allow Congress to impose limits on the amount of money corporations and labor organizations may spend on federal campaigns. (GovTrack.us) The second piece of legislation is a resolution proposed by Senator Bernard Sanders of Vermont called "The Saving American Democracy Amendment." (GovTrack.us) If passed, this resolution would amend the Constitution so that for-profit corporations would no longer be protected under the first amendment, (GovTrack.us) thereby preventing them from being able to indirectly donate to campaigns. The last piece of legislation aimed towards amending the Citizens United decision is called the "Schrader Amendment" proposed by Representative Kurt Schrader of Oregon, which would allow Congress to impose limits on how much could be donated to campaigns. (GovTrack.us) This would ensure that both corporations and individuals would be unable to have undue influence on political candidates as a result of large donations. (GovTrack.us)

Although these proposals would, if supported, quell some of the effects of the Citizens United ruling, the ideal solution to the "undue influence" problems presented by the Supreme Court decision should go further. Comprehensive legislation needs to be created that would accomplish two things: impose limits on how much money can be spent on campaigns, as set forth in both the Dingell and Schrader proposals, and make any and all indirect donations to campaigns illegal. This two-part proposal would serve to equalize the playing field in order to ensure that no candidate had an unfair monetary advantage and make the actions of super PACS

illegal, which would cut down on political corruption of candidates by large institutions and wealthy individuals.

Citizens United v. Federal Election Commission abolished critical campaign finance reform and provides wealthy individuals, corporations, and other large institutions with the opportunity to heavily influence the American political system. Since it is unlikely that the Supreme Court will modify its decision without a change in its political makeup, it is imperative that a new law be created by Congress that will incorporate both a unilateral restriction on campaign spending and a ban on indirect donations. I believe that my proposal accomplishes both of these tasks and would solve the problems created by the Supreme Court ruling.

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