

Is the Campaign-Finance Ruling Good for Democracy?

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The only three sure things in life, Benjamin Franklin should have said, are death, taxes and campaign-finance reform. Trying to keep money out of politics is like trying to keep a basement dry in New Orleans.

Which make it a perfect subject for an apocalyptic battle among the Justices of today's Supreme Court. Nothing revs them up like a symbolic fight over an intractable issue. Thursday's pile of opinions in *Citizens United v. Federal Election Commission*, striking down certain limits on corporate electioneering, found them arrayed in their now familiar 5-to-4 pattern and firing their big rhetorical guns. Depending on which very, very long opinion you prefer, they either struck a blow for the First Amendment or sold American politics into bondage to soulless corporations.

Citizens United is a conservative nonprofit dedicated to getting the U.S. out of the U.N. and keeping the Clintons out of office. During the last presidential campaign, the group produced *Hillary: The Movie* and arranged to distribute it via video on demand using the corporation's money, rather than money from its related political action committee. The FEC ruled this a violation of campaign rules.

This raised a question in the minds of the court's majority. If freedom of speech protects the right of rich individuals to use television to distribute their political views during election season, does the same right extend to rich groups — like businesses, labor unions, the NRA, the ACLU or Citizens United?

As so often happens with this court, the case at hand became the occasion for a clash of worldviews. (For Justices Anthony Kennedy and John Paul Stevens, the dueling authors of the main opinions, these clashes have become so predictable and so dramatized, they should think about starting a cable-TV show.) "The right of citizens to inquire, to hear, to speak and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it," trumpeted Kennedy. Stevens responded, "The court's ruling threatens to undermine the integrity of elected institutions across the nation." The rhetoric was so florid, it was hard to keep in mind that they were talking about politics and political advertising.

A long history of court opinions shows that entirely reasonable Justices have disagreed about this question for many years. There is an obvious tension that open-minded people can easily recognize between freedom of speech and the danger of certain voices drowning everyone else out. On certain subjects, though, this court is not open-minded. Kennedy and his four conservative brethren saw only the principle that the Constitution is designed to limit government power. Faced with a Congress that had passed a law declaring who can say what about elected officials, and how and when, they squeezed the trigger.

This wasn't a partisan opinion, though some headlines have suggested that, focusing on the word *corporation* to mean Big Business, as in Republican. But the decision does not simply apply to business. It lifts limits on all incorporated groups. Under the law that was struck down, Kennedy noted, "the following acts would all be felonies. The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the

challenger because the incumbent U. S. Senator supports a handgun ban; and the American Civil Liberties Union creates a website telling the public to vote for a presidential candidate in light of that candidate's defense of free speech."

In dissenting, Stevens and his liberal allies displayed a competing worldview. For them, government is a force that ameliorates and repairs flaws in society — in this case, the corrosive effect of wealth on open democracy. The 90-page dissent spoke admiringly of the many years of debate and the 100,000 pages of documents underlying the McCain-Feingold reforms of 2002, and shuddered to imagine the influence that big corporations and big labor groups might exercise over politics in the absence of such congressional efforts.

Ultimately, these clashing worldviews converged in one odd respect. Both the majority and minority seemed to be writing from a parallel universe, not quite our own. Kennedy's imagined world of stifled corporations and voiceless labor unions bears no resemblance to the America we live in, where the government pumps tens of billions of dollars into an auto-industry bailout skewed in favor of GM, Fiat and the United Auto Workers. At the same time, Stevens' picture of corporate fat cats oppressing the little guy ignores the revolution in campaign finance and communications that is being wrought by the Internet. Viable candidacies can now be launched overnight by the enthusiasm of small donors. Times have never been better for a candidate who manages to fire the interest of grass-roots voters.

And so, regardless of Thursday's ruling and the hyperbole of the Justices, more Americans have more access to more streams of political communication than ever before. Both the First Amendment and free public debate are alive and well.