

COMMENTARY

Court decisions on corporate rights have endangered American democracy



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Today is the eighth anniversary of the U.S. Supreme Court decision in *Citizens United v. FEC*, in which a 5-to-4 majority struck down portions of a bipartisan campaign finance law, the McCain-Feingold Act. The court ruled that corporations have constitutional rights to free speech in the form of election spending. Dissenting Justice John Paul Stevens protested this radical departure from a century of settled law and asserted:

“Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.”

Citizens United is a political action committee organized in 1988 and funded by the Koch brothers, which promotes corporate interests, socially conservative causes and candidates who advance their goals. In 2007 Citizens United crafted a political attack video called “Hillary — the Movie” and sought to broadcast ads for it in the weeks before the 2008 primary, in a deliberate challenge to provisions of the Bipartisan Campaign Reform Act of 2002 prohibiting any corporation or labor union from making an “electioneering communication” within 30 days of a primary. When the FEC disallowed it, James Bopp Jr., a lawyer who has made it his life’s work to dismantle campaign finance law and advance conservative Republican principles, took the case to court. The district court ruled in favor of the FEC, but the Supreme Court overturned the lower court decision.

Citizens United was followed by a federal D.C. Circuit Court of Appeals ruling in *Speech-Now.org v. FEC*, which allowed super PACs to raise and spend unlimited amounts of money on electioneering. The 2014 Supreme Court ruling in *McCutcheon v. FEC* struck down the aggregate limit for individual contributions. These decisions have opened the floodgates and allowed dark money and corporate dollars to pour into our elections in vastly increased amounts.

By 2016, electoral spending by super PACs, nonprofits, unions and political organizations exceeded \$1.6 billion, up from \$286 million in 2006, according to the Center for Responsive Politics. At least \$183.5 million of that was dark money, where the names of the donors are not disclosed; by comparison, in 2006 dark money spending was just over \$5 million. In 2006 big donors, with contributions over \$100,000, accounted for just 4 percent of total campaign contributions. Ten years later their share of the total had risen to more than 36 percent.

These trends are drowning democracy. According to research by Issue One, members of Congress now spend an average of 20 to 30 hours per week fundraising. Another study found campaign donors are

more likely than regular constituents to get meetings with lawmakers or high-ranking officials. Other research shows that congress people more often vote lobbyists' preferences than their constituents' preferences: The recent tax reform legislation is case in point.

Thanks to journalist Jane Mayer ("Dark Money") we now know the backstory to these watershed decisions. They are the fruit of a 40-year campaign by libertarian billionaires to limit the democratic rights of individual citizens in order to expand the economic and political power of the economic elites. Billions of dollars of strategic political spending by Charles and David Koch and others in their cabal — including Richard Mellon Scaife, John Olin, Harry and Lynde Bradley, and the DeVos family (Richard Sr., Richard Jr. and Betsy) — funded not only electoral campaigns, but also libertarian think tanks and academic programs, phony grass-roots groups, all-expense-paid seminars at fancy resorts to indoctrinate judges in the libertarian view of law and property rights, and a stairway of fabricated cases to systematically create a chain of decisions and body of law serving corporate interests.

We are now well down the road to oligarchy. The only recourse we have to restore democracy of, by and for the people is to collectively stand up and exercise our sovereignty. We have the power to overturn these Supreme Court decisions with a constitutional amendment stating that corporations are not people, money is not speech, and our elected representatives do have the authority to regulate campaign finances; moreover, it is their responsibility to ensure that the voices of ordinary citizens — not the biggest donors — will be heard. Nineteen states — half the number required to ratify — have already gone on record supporting such an amendment.

The amendment should be followed with model legislation in all 50 states setting out in their respective corporate codes the legal rights and privileges we grant corporations under the law, as part of their corporate charter. Clearly, we will want them to have a right to due process, the right to hold property and enter contracts, standing to sue and be sued, and other perquisites of orderly legal process. What political privileges corporations should have is a matter for deliberation by our elected representatives, not a question for activist courts to legislate.

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