

## US Supreme Court in the eye of the storm

*Debate erupts after country's top Judges kill campaign finance regulation*

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When the Supreme Court's decision *Buckley v. Valeo* invalidated in 1976 the first serious post-Watergate attempt to regulate campaign finance, the *New York Times* did not even mention the case. This week's decision, *Citizens United v. FEC*, which invalidates a three-decade effort to limit the impact of money on politics, took two-thirds of the paper's front page.

The decision has triggered an unprecedented debate in the US, including heavy criticism from President Barack Obama and Senator John McCain, the co-sponsor of the famous McCain-Feingold bill which was struck down in significant part by the Supreme Court as unconstitutional. The case itself is moot: a corporation by the name of *Citizens United* had sought to sell to cable television the right to their "video on demand" customers of a film that was heavily critical of Hillary Clinton then running for the democratic nomination. The Federal Elections Commission considered that such airing of the film, as well as ads announcing it, breached the campaign finance regulations by being too partisan and too close to a deadline stipulated by the law. In its decision last Thursday, the Supreme Court upheld the right of the FEC to request disclosures and disclaimers from *Citizens United*, but struck down a far more important principle, upheld since *Buckley*. It is unconstitutional, it held, to limit corporation money in the political sphere.

How significant is the decision? Constitutional scholars, as well as the whole American political world, are perusing the 183 pages-long ruling of which we offer significant excerpts on this page. Part of the reasons why Americans are worried is because of the glaringly partisan aspect of the decision, 5 Republican-appointed judges v. 4 Democrat appointees, very much like the universally criticized *Bush v. Gore* decision in 2000, when the exact same split partisanship gave the presidency to candidate Bush, despite the fact that he had received half a million votes less than his rival. With the electoral setback in Massachusetts threatening Obama's health reform bill, the atmosphere has become particularly charged, with a sense that extreme right-wing doggedness is imperiling any message of change associated with the Obama presidency.

Nor does the tone of the majority opinion help in assuaging the doubters. Justice Kennedy, who wrote the opinion, and Chief Justice Roberts, who concurred, did not hesitate to express big ideas: time for overruling previous decisions, they said,

because they are wrong, time to look beyond the narrow case at hand, which has long been moot, to ensure what they consider as two pillars of free speech in their interpretation of the US Constitution's first amendment. First, they decided, Congress cannot pass a law that targets corporations, because corporations are very much like individuals. Their "speech" will not be impaired on account that they are corporate. Second, and more importantly, Congress cannot cap money in electoral campaigns, whether in contributions or expenditures. Money = free speech.

This is where the grave reversal of Buckley takes place. Buckley had distinguished between two types of political money: contributions, which could be capped, and expenditures, which couldn't. What that meant in practice is that laws may limit the amount of money that people could give in support of campaigns, and Buckley held that a law preventing individuals from contributing more than \$1,000 was valid. However, once their money was in the kitty of a political party, or if it was a candidate's own wealth, he or the party could do whatever they wanted with it. Buckley had been heavily criticized for the distinction between contributions and expenditures, indeed the distinction made little sense, especially in the light of 'soft money' and other easy ways to circumvent the cap. In my little book "Democracy in America," I had singled out Buckley as one of the worst decisions of the Supreme Court, and argued that putting a maximum limit on expenditures in campaigns would serve the political process better than a cap on contributions, if indeed the distinction were necessary, which it wasn't. The argument ran as follows: "By capping expenditures, donors would not be constitutionally prevented from peddling their influence in political campaigns, but candidates would be encouraged to spread their limited campaign allowances, rather than seek to intensify ad infinitum the astronomic masses of money made available by lobbies and conglomerates." Indeed, I saw the Supreme Court as the main potential repository of the principle of "one man, one voice," and the upholder of the citizen's voice against its drowning in corporate money. How wrong I was.

Already in Buckley, the Supreme Court under Chief Justice Burger had stopped its call to equality which was started by his great predecessor Earl Warren. Under current Chief Justice Roberts, even the bipartisan effort to limit the nefarious effect of money on the political process, heralded by no less a figure than the most influential Republican political leader, John McCain, is jettisoned by the Court. This cannot be the end of the story, but the next appointment on the Court has become a central condition for any reform during the Obama presidency.

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