

## Supreme Court's campaign finance ruling: just the facts



Chris Usher / Face the Nation / AP

'Face the Nation': Sen. John McCain (R) of Arizona told CBS's Bob Schieffer that the Supreme Court's ruling effectively ended the campaign finance reform he'd led. He predicted 'an inundation of special-interest money into political campaigns.'

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On Jan. 21, the US Supreme Court announced a **landmark decision** establishing for the first time that corporations enjoy the same First Amendment free-speech rights as individuals.

The **5-to-4 ruling** in [Citizens United v. Federal Election Commission](#) has touched off dire predictions by **campaign finance-reform** advocates that campaigns for Congress and the presidency will soon be flooded with corporate dollars and influence.

Supporters of the decision say that the reformers' rhetoric is overblown and that the opinion reflects proper respect for free-speech principles.

Why are advocates of campaign finance reform so upset?

For nearly 40 years there has been a fundamental debate raging over how best to finance American political campaigns.

On one side, **liberal reformers** have sought to limit the influence of wealthy corporate interests by emphasizing the importance of maintaining a "**level playing field**." They have argued that corporations and labor unions could dominate the airwaves with slick and highly effective attack ads, leaving no time for the targeted candidates to respond. If American democracy is based on **the principle of one person, one vote**, they say, then corporations must be muzzled during political campaigns to prevent their amassed wealth from dominating and corrupting a political campaign.

**Conservatives and libertarians**, on the other hand, have countered that limiting the amount of money a corporation – or anyone – can spend to make their political point is  **censorship** and a violation of the **letter and spirit** of the **First Amendment's guarantee of free speech**. Corporate power and influence aren't **inherently corrupting**, they say, as long as they're part of a vibrant debate within an **open marketplace of ideas**.

The debate most recently arose at the Supreme Court after the **conservative advocacy group** Citizens United, a corporation, was prevented from airing a 90-minute documentary critical of then-candidate Hillary Rodham Clinton. The group wanted to air the film on pay-per-view cable television. The [Federal Election Commission](#) determined that the documentary, "[Hillary: The Movie](#)," was a form of **electioneering** that could be **regulated** under federal election laws. The FEC also ruled that advertisements about the film could be regulated, too. A panel of three federal judges **upheld the FEC ruling**. Citizens United then **appealed** to the Supreme Court.



High court decisions in 1990 and 2003 had strengthened the hand of those arguing for restrictions on corporations and for creation of a level campaign playing field. But other decisions since the 1970s advanced the idea that spending money in elections – even corporate money – can involve an expression of free speech.

What happened on Jan. 21 with the decision in *Citizens United v. FEC* is that five of the nine justices decided to erase the two key **precedents** that had laid the groundwork for reform focused on creating a level playing field. Those arguments have now been declared unconstitutional.

That's why campaign advocates of finance reform view the decision as akin to being pushed off a cliff. The decision marks the end of what had been a spirited debate over how to achieve the highest promise of American democracy.

Instead of a tightly regulated level playing field, the conservative wing of the Supreme Court has pointed America toward a messy "marketplace of ideas." **In Justice Anthony Kennedy's view, if corporate speech presents a threat of undue influence in American politics, the proper response in the spirit of the First Amendment is to meet it with even more speech.**

Won't corporations control everything?

The Supreme Court did not jettison all campaign finance restrictions. Corporations and unions are still prohibited from making direct contributions to federal candidates. Such contributions must be made either by individuals or through regulated **political action committees (PACs)**.

In addition, although corporations may now spend money to make a political point during election season, the high court has strongly endorsed – by an **8-to-1 vote** – **disclaimer and disclosure requirements** within the federal campaign finance law.

That means that when corporations place a political ad on television or radio within 30 days of a primary or 60 days of a general election, it must include the disclaimer: "\_\_\_\_\_ is responsible for the content of this advertising."

This disclaimer requirement may deter many corporations from engaging in the kind of vicious political attack ads that some analysts suggest will now become commonplace.

But it may not deter those **corporations organized to push an ideological agenda**. In that case, such disclaimers will help ordinary voters assess the value of a particular message.

The high court also upheld a more sweeping disclosure requirement. Any corporation spending more than \$10,000 a year on **electioneering** efforts must publicly disclose the names of individual contributors.

The disclaimer and disclosure laws were designed by Congress to help voters, the media, and others hold corporations – and their contributors – responsible for the content of their speech.

How will the ruling affect campaigns?

Corporations and unions will be able to spend directly, whenever they want, on advertising for and against presidential and congressional candidates. Laws governing corporate involvement in state campaigns will also presumably be struck down or repealed in the 24 states that have such laws. (Twenty-six states currently do not regulate corporate spending in their elections.)

Some analysts predict that, starting with this fall's campaigns, millions more corporate dollars will flood the media, benefiting Republicans more than Democrats. The money is likely to be funneled through **trade associations** and **nonprofit groups**, rather than deployed directly by the corporations, which will want to avoid closely associating their brands with a partisan position.

Opponents of the decision argue that, aside from the new influx of corporate money into campaigns, **lobbyists** will now be able to hold the threat of corporate-funded **attack advertising** over an elected official's head.

Other observers see less radical change ahead. Corporations have already effectively been influencing federal elections by funding **issue ads**, though in a more restricted manner. Now, restrictions governing timing and content are gone, although disclosure rules remain.

The Supreme Court "took what had been a revolving door and took the door away altogether," says Evan Tracey, who tracks political advertising at the Campaign Media Analysis Group in Arlington, Va. "There was something there that slowed the money down. Now it's gone."

Who benefits, and who loses?

Republicans, who tend to be friendlier to the interests of corporations, are the likely **beneficiaries** of this extra campaign spending. Democrats would benefit more than Republicans from greater union spending, although unions are not nearly as wealthy as major corporations.

Underfunded candidates who prove **viable** toward the end of a campaign may be helped with supportive advertising from outside groups, since the rule banning such ads less than 30 days before a primary and 60 days before a general election was struck down. This means there will probably be more competitive races.

Another big winner is the TV and radio industry. Mr. Tracey predicts as much as 20 percent more campaign ad spending in 2010 because of the ruling, or about \$500 million – more than half of it to local outlets.

Can the decision be overturned?

The current Supreme Court has spoken. But if one of the five justices in the majority on the decision were to leave and be replaced by a more liberal justice, the court could take a new campaign finance case and decide that corporations do not enjoy the free-speech rights of individuals.

Can Congress affect the impact of the ruling?

Efforts are already under way to boost the power of **small donors** to counter the anticipated rise of corporate influence in elections. One bill, the Fair Elections Now Act, would create a voluntary **public financing system** for congressional elections. Candidates would qualify for **federal matching funds** by raising a large number of small donations in their communities.

Sen. Charles Schumer (D) of New York and Rep. Chris Van Hollen (D) of Maryland are planning to introduce legislation soon that would limit spending by contractors and corporations that received **federal bailouts**.

Other ideas include mandating shareholder approval for political spending and requiring CEOs and union leaders to appear in ads that they helped fund.