

Supreme Court Voids Campaign Spending Curbs

A divided court strikes down decades-old restrictions on corporate campaign spending, 5-4, reversing two of its precedents and freeing companies to advertise

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by Greg Stohr

[Bloomberg] -- A divided U.S. Supreme Court struck down decades-old restrictions on corporate campaign spending, reversing two of its precedents and freeing companies to conduct advertising campaigns that explicitly try to sway voters.

The 5-4 majority, invoking the Constitution's free-speech clause, said the government lacks a legitimate basis to restrict independent campaign expenditures by companies. The ruling went well beyond the circumstances in the case before the justices, a dispute over a documentary film attacking then-presidential candidate Hillary Clinton.

"When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought," Justice Anthony Kennedy wrote for the majority. "This is unlawful. The First Amendment confirms the freedom to think for ourselves."

Companies, which had been barred since 1947 from using general-treasury dollars in support of or in opposition to a candidate, now can spend millions of dollars on their own campaign ads, potentially punishing or rewarding lawmakers for their votes on legislation. Labor unions, though they weren't directly at issue in the case, have been subject to the same restrictions and may also now expand their political spending.

Political Action Committees

Corporations and unions seeking to support candidates had previously been forced to rely on regulated political action committees. Today's case dealt with independent corporate expenditures as opposed to the ban on contributions directly to candidates, which dates from 1907 and remains intact.

The ruling divided the court along ideological lines, with the newest justice, Sonia Sotomayor, joining the liberal wing in dissent. Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Samuel Alito joined Kennedy in his 57-page opinion.

"While American democracy is imperfect, few outside the majority of this court would have thought its flaws included a dearth of corporate money in politics," Justice John Paul Stevens wrote in a 90-page dissent. He took the unusual step of reading a summary of his opinion from the bench.

The decision may boost Republicans as they aim to recapture congressional seats in the November election. Senate Republican leader Mitch McConnell of Kentucky, who was in the courtroom as the justices announced their ruling, said the court "struck a blow for the First Amendment."

House Speaker Nancy Pelosi, a Democrat from California, said the ruling "strengthens the hand of special interests."

A Bold Step

The ruling marks the boldest step yet for Roberts and fellow George W. Bush appointee Alito, who previously had shied away from explicitly reversing precedents. The majority today overturned a 1990 Supreme Court decision that said corporations can be barred from using general treasury funds to pay for campaign advertisements.

The court also reversed part of a 2003 decision upholding the McCain-Feingold overhaul of federal campaign finance regulations. The 2002 law barred corporate and union treasury spending in the weeks leading up to an election if the advertisements mentioned a federal candidate. The court today said that so-called electioneering provision is unconstitutional.

The 2002 law was named after its Senate sponsors, Republican John McCain of Arizona and Democrat Russ Feingold of Wisconsin. McCain said in a statement that he was disappointed by the ruling.

'Hillary: The Movie'

The ruling is a victory for Washington-based Citizens United, the corporation that created "Hillary: The Movie." The 90-minute film, which creators sought to air on a video-on-demand channel during Clinton's 2008 presidential campaign, features interviews with a number of prominent critics of the New York senator, including Ann Coulter and Newt Gingrich.

Citizens United released the movie to theaters and to stores in DVD format. It shelved plans to air the movie on "Elections '08," a cable channel that would have charged the group a fee.

Citizens United's president, David N. Bossie, said the ruling "has made possible the participation in our political process that is the right of every American citizen."

Advocates of campaign finance restrictions said the ruling will unleash a torrent of corporate spending. Bob Edgar, president of Washington-based Common Cause, said the ruling was "the Super Bowl of bad decisions" and marked "a triumphant day for Wall Street."

Two Arguments

Today's decision, which overturned a lower court ruling, came after the court heard an unusual second round of arguments in the case to revisit the 1990 and 2003 precedents. During the first round of arguments, in March, the justices debated resolving the case along narrower grounds, possibly by carving out an exception to the electioneering law for documentary films or videos seen through on-demand services.

The law contains an exception for some non-profit corporations. The justices opted not to expand that exemption so that Citizens United would qualify under it.

"The court cannot resolve this case on narrower ground without chilling political speech, speech that is central to the meaning and purpose of the First Amendment," Kennedy wrote.

Transformative Ruling

The decision "will mark a transformation of campaign finance law, not only on the federal level, but in state and local elections -- including judicial elections -- as well," said Rick Hasen, an election-law professor at Loyola Law School in Los Angeles.

The Obama administration urged the justices to uphold the lower court ruling, as did McCain and Feingold. U.S. Solicitor General Elena Kagan, the administration's top Supreme Court lawyer, argued that restrictions on corporate spending protect investors who disagree with a company's political positions.

Asked about the ruling, Obama told reporters, "we're studying it."

Citizens United had support from the Chamber of Commerce and the National Rifle Association.

On a secondary issue, the court ruled that Citizens United must comply with provisions in the 2002 law requiring the disclosure of some donors.

Disclosures Upheld

"The government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether," Kennedy wrote.

Both Roberts and Alito vowed during their Senate confirmation hearings to respect precedent. Like other nominees, they left open the possibility of overruling decisions that had proven unworkable or been undermined by later developments.

In the Citizens United case, Roberts wrote a separate opinion, joined by Alito, to explain why he voted to overrule two precedents. He said the 1990 decision "threatens to subvert the principled and intelligible development of our First Amendment jurisprudence."

The case is Citizens United v. Federal Election Commission, 08-205.

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