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# A Supreme Opportunity to Build on Citizens United

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Campaign-finance reform advocates like to say that the Supreme Court's 2010 ruling in *Citizens United v. Federal Election Commission* has created a Wild West of campaign finance in which anything goes. In fact, political campaigns remain subject to heavy government regulation that impedes free speech.

The Roberts court has been chopping away at the thicket of campaign-finance rules on a case-by-case basis—including ending a ban on broadcast "issue" ads that mention a candidate within 60 days of an election (*Wisconsin Right to Life v. FEC*, 2007), and limiting the ability of states to subsidize candidates in an effort to "equalize" spending (*Arizona Free Enterprise Club PAC v. FEC,* 2012). Most famously, in *Citizens United*, the court upheld the right of corporations to make political expenditures (though not to contribute to candidates' campaigns).

With these rulings, despite alarmist warnings about their consequences, voter turnout has increased, more races have been competitive, presidential nominating contests have not ended with the New Hampshire primary, and the electorate has had one of the most sustained debates about the role of government that it has had in years.

How aggressively the Supreme Court will continue to protect free speech rests on three cases currently before the court, at least two of which—*Danielczyk v. United States* and *McCutcheon v. FEC*—are scheduled for conference on Friday, when the justices will decide whether to put them on the calendar for full argument. The third case, *James v. Federal Election Commission*, has been briefed by the parties but not yet scheduled for conference.

*Danielczyk* is the most controversial. Plaintiff Bill Danielczyk is being prosecuted for using corporate funds to reimburse individuals who made contributions at a fundraiser for Hillary Clinton's 2008 presidential campaign. Mr. Danielczyk argues that corporate contributions to candidates' campaigns are constitutionally protected speech, based on *Citizens United*. If he wins, corporations could contribute directly to campaigns, subject to the current $2,600 contribution limit. Several states already allow direct campaign contributions in state campaigns.

A win by Mr. Danielczyk would also democratize campaign contributions. With rare exceptions, only shareholders and top executives can contribute to a corporate political-

action committee, so small companies can rarely raise enough money to make a PAC worth the legal and accounting costs of complying with burdensome regulations. That means large corporations (and unions, whose members can contribute) have PACs while small businesses do not. *Danielczyk* could change this.

Contributions to individual candidates are a significant concern in these legal matters, but there is another major concern: the fate of political parties. Since 1796, parties have been instrumental in mediating American politics, bringing new voters into the system and creating a structure for effective government in Congress. Campaign-finance laws carry the threat of political parties' functional extinction.

The 2003 McCain-Feingold Campaign Reform Act capped the amounts that national political parties can accept in contributions from any one person. The act also made it almost impossible for state and local parties to assist candidates for federal office. The result? More and more political money has gone to "social welfare" groups such as Planned Parenthood, trade groups such as the National Association of Realtors, or Super PACS such as the Pro-Obama Priorities USA Action (Super PACS can accept contributions from any source and make unlimited expenditures but not contribute directly to parties or candidates.) But why should political parties be subject to restrictions that other groups of people trying to elect candidates are not?

In *McCutcheon v. FEC*, plaintiffs Shaun McCutcheon and the Republican National Committee argue that McCain-Feingold's limits on giving to national political parties, and the overall limit on how much an individual can contribute to all political committees and campaigns (now $123,200), are unconstitutional. If the plaintiffs prevail, political parties would be better able to compete with Super PACS for campaign dollars, and large donors could contribute more to parties when they prefer to do so.

In addition to the caps on giving to political parties and the overall contribution cap, McCain-Feingold also limits total giving to candidate committees to $48,600. That means that an individual may contribute only the legal maximum of $2,600 to just 18 candidates.

Virginia James, an independent investor and supporter of the Club for Growth, seeks to support a whole slate of challengers, but cannot do so. She is challenging the cap in the third case, *James v. FEC*.

The $2,600 donation limit to a candidate committee was meant to prevent large contributions from "corrupting" candidates. The total contribution limit was meant to prevent donors from circumventing these limits by making larger contributions to parties and PACs that might then give to the candidates at the "unearmarked" direction of the donor.

Ms. James doesn't challenge the overall cap on candidate contributions. Rather, she argues that the $2,600 sub-cap serves neither purpose intended by the law. With a cap on total contributions, giving more to individual candidates actually decreases the amount she can give in larger contributions to political parties and PACs. Thus the current law restricts Ms. James's freedom to support candidates and fails to serve any anticorruption purpose. If Ms. James is successful, her case would free up donors to contribute money to

individual candidates as they see fit, rather than according to an arbitrary division established by Congress.

Campaign-finance law remains a bewildering maze of arcane regulations, navigable only by a priesthood of expensive political consultants, accountants and lawyers. The Roberts court has done a great deal to clear up this mess, with salutary results for campaigns and elections. The issues presented in *Danielczyk*, *McCutcheon*, and *James* constitute the next wave of true reform.

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