THE VIEW of *CITIZENS UNITED V FEDERAL ELECTION COMMISSION* FROM 2015

This article discusses decisions since 2010 and the CITIZENS UNITED case that have applied CITIZENS UNITED to other circumstances.

Introduction

The following statements come from the majority decision of *Citizens United v Federal Elections Commission.*[1]

> *"Spending money is essential to disseminating speech. Therefore limiting a corporation's ability to spend money in election campaigns is unconstitutional because it limits the ability of its members to associate effectively and to speak on political issues…."*
>
> *"The First Amendment purposefully keeps the government from interfering in the "marketplace of ideas" and "rationing" speech. Neither the legislatures nor the courts can create a sense of "fairness" by restricting speech…."*
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> *"The government has no place in determining whether large expenditures distorted an audience's perceptions…."*
>
> *"The type of "corruption" that might justify government controls on spending for speech must relate to some form of "quid pro quo" transaction. There is 'no reliable evidence to substantiate the risk of corruption or the appearance of corruption'. The statement in the first Amendment relating to 'FREEDOM OF THE PRESS' extends to all corporations who should be equally protected from expenditure restriction."*

Many citizens were very concerned about the impact that this invalidation of Congressional legislation would have on many aspects of how the country can be governed.

Mary Wilson, President of the League of Women Voters of the United States, wrote the following message to the members of the National League:

> *"Earlier this fall the Court heard oral arguments in* Citizens United*. What's at stake? Imagine Exxon or Pfizer spending hundreds of thousands of dollars directly in a Senate race to make sure that a Senator will be responsive to their corporate concerns about energy or health care policies. Or imagine one of the companies that recently received billions in federal aid spending a million dollars or two to support President Obama in his re-election bid because he saved the corporation from bankruptcy. And think how corporate and union funds could overwhelm campaigns for state representative, state and municipal judges, and zoning commissions. Add into this scenario unfettered spending by foreign-owned corporate entities and you truly have the ingredients for a revolution – a frightening revolution."*[2]

[1] Citizens United v. FED, http://www.supremecourt.gov/opinions/09pdf/08-205.pdf, viewed 01/17/16

[2] Wilson, Mary G., "League Commentary on Citizens United v FEC Case Before the Supreme Court – A Revolution from the Court?", *League of Women Voters*, http://lwv.org/content/league-commentary-citizens-united-v-fec-case-supreme-court, viewed 01/17/16

ARIZONA FREE ENTERPRISE CLUB v BENNETT (2011)

The ARIZONA CITIZENS CLEAN ELECTIONS ACT,[3] passed by a ballot initiative in 1998, created a system that provided subsidies to candidates in state races who agreed to limit their personal spending to $500. That part of the Arizona law was modeled after the federal legislation that provides the opportunity for presidential candidates to receive public funds from taxpayers who check a box on federal income tax forms to contribute to fund presidential elections. The Federal law was first adopted in 1971 and upheld by the Supreme Court in 1976.[4] However, the Arizona law had a provision to increase the subsidy to a candidate whose opponent chose to spend more than $500 of his/her personal wealth in the campaign.[5]

In 2011, the Court heard arguments in *ARIZONA FREE ENTERPRISE CLUB v BENNETT.*[6] The question the Court heard was: "Does the First Amendment prohibit linking the funds participating candidates receive in an election to the amount of money raised by or spent on behalf of their opponents?"[7] The majority opinion stated:

> *"The effect of Arizona's "matching" approach would be to cause self-financed candidates to curb their own campaigning. If they began to out-spend their subsidized opponents, every dollar they spent would be matched by a subsidy dollar dropped into their opponents' coffers. They, in effect, would be raising money for the opponent, and some of them, at least, would rather cut back their campaigning than help their rival. And if an outside group, operating independently of a privately financed candidate but still supporting that candidate, had contributed to the out-spending of the subsidized candidate that, too, would add to the subsidy flow. The end result: there would be less campaign speech, not more, so issues would get discussed less…"*[8]

The Court ruled the ARIZONA CITIZENS CLEAN ELECTIONS ACT unconstitutional.

WESTERN TRADITION PARTNERSHIP, INC. v ATTORNEY GENERAL OF MONTANA (2012)

In *WESTERN TRADITION PARTNERSHIP, INC. v ATTORNEY GENERAL OF MONTANA (2012),*[9] the question was whether the people of Montana could preserve Montana's authority to regulate corporate power and to prevent corporate corruption of elections and government. Montana's Attorney General challenged the Supreme Court's assertion in *Citizens United v FEC* that there is "no reliable evidence to substantiate the risk of corruption or the appearance of corruption."[10] Montana's CORRUPT PRACTICES

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[3] Proposition 200 (1998) – Arizona Clean Elections, https://ballotpedia.org/Arizona_Clean_Elections,_Proposition_200_%281998%29, viewed 01/17/16

[4] Denniston, Lyle, "Opinion analysis: Campaign subsidies in peril?", *SCOTUSblog,* June 27, 2011, http://www.scotusblog.com/2011/06/opinion-analysis-campaign-subsidies-in-peril/, viewed 01/17/16

[5] Liptak, Adam, "Justices Strike Down Arizona Campaign Finance Law", *New York Times,* June 27, 2011, http://www.nytimes.com/2011/06/28/us/politics/28campaign.html, viewed 01/17/16

[6] *ARIZONA FREE ENTERPRISE CLUB v BENNETT,* https://www.brennancenter.org/sites/default/files/legacy/Democracy/CFR/McComish_10-238.pdf, viewed 01/17/16

[7] "Arizona Free Enterprise Club's Freedom Club PAC v. Bennett", *Oyez – IIT Chicago-Kent College of Law,* https://www.oyez.org/cases/2010/10-238, viewed 01/17/16

[8] Ibid.

[9] Western Tradition Partnership, Inc., v Attorney General of Montana, http://electionlawblog.org/wp-content/uploads/MT-expenditures-decision.pdf, viewed 01/17/16

[10] Citizens United v FEC, http://www.supremecourt.gov/opinions/09pdf/08-205.pdf, viewed 01/17/16

ACT had been adopted in 1912, specifically in response to the overt buying of legislators by the Montana "Copper Kings ."[11] In *WESTERN TRADITION PARTNERSHIP, INC. v ATTORNEY GENERAL OF MONTANA*, Montana argued that they did have strong evidence that regulation is needed to combat corporate domination and corruption. The case also argued that *Citizens United v FEC* should not invalidate state laws that prevent corporate political spending from corrupting self-government in the states.

On June 12, 2012, the Court overruled a lower court that had held the MONTANA CORRUPT PRACTICES ACT to be constitutional. The Court did not even hear the arguments. Instead,

> *"…the conservative majority merely stated that the case mirrored its Citizens United ruling, accepted the appeal for review and then reversed the Montana decision.*
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> *According to the majority decision Montana's law interferes with the free speech of corporations as ruled in Citizens United v. Federal Election Commission. "This Court struck down a similar federal law, holding that 'political speech does not lose First Amendment protection simply because its source is a corporation.' The question presented in this case is whether the holding of Citizens United applies to the Montana state law. There can be no serious doubt that it does."*[12]

MCCUTCHEON v FEDERAL ELECTION COMMISSION (2014)

In the case of *MCCUTCHEON v THE FEDERAL ELECTION COMMISSION (2014,)*[13] Mr. McCutcheon claimed the right to contribute more than the Federal Election Commission limit permitted. He was joined by the Republican National Committee in his suit so that they could receive more than the limit of the aggregate funds he wanted to contribute. The court ruled in favor of McCutcheon. In the majority opinion Roberts wrote:

> *"Congress may target only a specific type of corruption — 'quid pro quo' corruption . . . Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties. . .*
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> *The aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in Buckley. They instead intrude without justification on a citizen's ability to exercise 'the most fundamental First Amendment activities'* ."[14]

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[11] Sledge, Matt, "Montana Attorney General Race Rocked by Out-Of-State Corporate Donations in Wake of Citizens United", *Huffington* Post, May 22, 2012, http://www.huffingtonpost.com/2012/05/22/montana-attorney-general_n_1537034.html viewed 04/06/16

[12] Gellner, Raymond, "Supreme Court overturns Montana corporate political corruption law", *examiner.com,* June 26, 2012, http://www.examiner.com/article/supreme-court-overturns-montana-corporate-political-corruption-law, viewed 01/17/16

[13] *McCutcheon v the Federal Election Commission*, http://www.fec.gov/law/litigation/mccutcheon_sc_opinion.pdf, viewed 01/17/16

[14] McCutcheon, et al. v. FEC Case Summary", *Federal Election Commission – Ongoing Litigation, http://www.fec.gov/law/litigation/McCutcheon.shtml, viewed 01/17/16*