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## Campaign Donations and Free Speech

January 28, 2010 - In the State of the Union speech given by President Obama yesterday, the President criticized a recent Supreme Court ruling that allows corporations to fund issue advertising during election season. The case, Citizens United vs. the Federal Elections Commission ended a ban on such advertising that has been in place for several years. While it is true that the ruling overturned a portion of McCain-Feingold, a bill that placed strict limits on corporate funding of elections, the rhetoric surrounding the Court's decision has been loud and largely inaccurate. The issue concerns ACCESS because we know that corporate lobbying is a corrupting influence in American politics, but we also believe in the Constitution. And we all know, you can't have your cake and eat it too!

The Citizens United case dealt with a very simple issue; freedom of speech. Specifically, Citizens United had produced a film that was not at all flattering to then presidential candidate Hillary Clinton. The group wanted to release the film while campaigning was still going on in 2008. But the Federal Election Commission stepped into the fray and determined that the film was actually an anti-Hillary ad. Because of McCain Feingold, Citizens United was barred from advertising it.

The question before the court went something like this. Did McCain-Feingold place an unconstitutional restriction on free speech by corporations? Earlier this month, the Court answered "yes". The 5 to 4 ruling reversed the portions of the law that forbid corporations from involving themselves directly in political issues within 60 days of an election.

While this may not be viewed as ideal by anyone who is concerned with corporate influence in the political process, it is far from the Armageddon that some people, including the President, are painting it to be. The Obama administration, a good many members of Congress and TV commentators have repeatedly said that the Courts ruling overturns a century of election laws in the United States. In fact, they President made that inaccurate claim in the State of the Union speech itself. They have also claimed that it would open the floodgates for foreign companies that want to influence US elections. Both claims are blatantly false, and the people making them are either ill-informed or lying.

Under McCain-Feingold, corporations could not make direct political donations or use their treasuries to run issue ads. Instead, they could form Political Action Committees (PAC) which could made donations. These PACs would receive their funds from various sources including employee donations. And they could involve themselves directly in the political process. The PACs would then try to represent the interests of the companies that had formed them in the first place.

The laws involving the formation of PACs are relatively recent. They are not a century old. The portions of the law that forbid corporations from giving money to candidates directly remain in place. And the Court specifically said in its opinion that restrictions on foreign money were a proper regulatory issue for the government.

The opinion which was written by Justice Kennedy, he wrote there was, "no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers." The opinion did go on to say that the government could force corporations to make disclosures regarding their speech, but the government clearly can no longer stop corporations from speaking.

The decision is really a mixed bag. It is unclear at this time that it will have a great deal of impact on the 2010 elections. Will companies risk alienating employees and stockholders to make political statements? Will corporate funding be more or less effective than PAC funding? Nobody really knows.

What is clear is that the decision is a victory for the Constitution. In a republic like the United States, the Constitution is there to defend the rights of the minority by limiting government interference. It just so happens that in this case, as distasteful as it may be to some, that minority is corporate America. There is no doubt that the government was interfering in their political speech.

But none of this has stopped some people from criticizing the Court. Senator Patrick Leahy said that the decision "shows no deference to Congress and no respect for the rule of law as reflected in the precedents of the Supreme Court." On the contrary, the decision means that Congress must show deference to the Constitution and respect the laws that this great nation was founded on.

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