US Supreme Court set to ease rules on corporate campaign cash

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The US Supreme Court met in a special early session Wednesday to hear arguments in a case that could strike down the limited restrictions on corporate funding for election campaigns that go back a century.

Held during the High Court's summer recess, fully a month before it was set to reconvene, the session involved the rare re-argument of a case already heard by the court last March—*Citizens United v. Federal Election Commission*.

The case stemmed from the FEC's barring the broadcast of a film, entitled "Hillary: The Movie," that was produced by Citizen's United, a non-profit corporation linked to the Republican Party and the Christian right. The group had sought to air the film—a piece of right-wing propaganda portraying Clinton as a corrupt and Machiavellian "socialist"—on a video-on-demand channel in the run-up to the 2008 Democratic National Convention.

The FEC found that the broadcast would be in violation of the Bipartisan Campaign Reform Act of 2002, known widely as McCain-Feingold, which prohibits corporations as well as unions from using their general funds to pay for "electioneering communications" 30 days before a presidential primary and 60 days prior to a general election.

The advocacy group sought and was denied a preliminary injunction against the FEC ban in a Washington, DC federal court.

The first round of oral arguments last spring focused largely on the details of federal election campaign statutes, including whether "Hillary: The Movie" qualified as electioneering, given that it did not explicitly advocate a vote for anyone. The film's makers insisted that it was an "educational documentary." They also challenged McCain-Feingold's demands for disclosure of the names of those financing the film and a disclaimer as onerous.

In ordering the lawyers for the government and Citizens United to re-argue the case, the court signaled that it wanted instead to focus on the underlying constitutional issue of whether campaign finance restrictions represent a violation of the supposed right of corporations to free speech.

To reach such a finding, the high court would have to repudiate two of its previous rulings—*Austin v. Michigan Chamber of Commerce* of 1990, which supported the government's right to restrict corporate campaign spending, and *McConnell v. FEC* of 2003, which upheld the main provisions of McCain-Feingold. Such an overturning of past precedents is rare and in this case could unleash the wholesale tearing down of curbs on corporate funding of election campaigns that date back to 1907.

Three of the court's members, Justices Anthony Kennedy, Antonin Scalia and Clarence Thomas, have already stated their support for doing away with campaign finance restrictions in a minority opinion they signed in the challenge brought by Republican Senator Mitch McConnell in 2003.

Putting forward the same position in a 2007 case involving an ad run by a Wisconsin anti-abortion group , Scalia issued a scalding criticism of his fellow right-wingers, Chief Justice John Roberts and Justice Samuel Alito, for ruling against the restriction on the ad but failing to explicitly overrule the court's precedent and throw out the campaign funding rules altogether. "This faux judicial restraint," Scalia wrote, "is judicial obfuscation."

In Wednesday's oral arguments, Chief Justice Roberts seemed to draw closer to Scalia's position.

Defending the FEC rules, Solicitor General Elena Kagan repudiated the contention of a government lawyer last March that the provisions used to bar the "Hillary" film could also be employed to restrict Internet postings, the distribution of DVDs and the publication of books. This statement—which contradicted the provisions of McCain-Feingold, which apply only to broadcast media—was seized upon by the Republican right in casting the campaign against corporate funding restrictions as a crusade against government censorship.

After Kagan revised the earlier position, insisting that the FEC had no plan to control the distribution of books, Roberts shot back, "We don't put our First Amendment rights in the hands of FEC bureaucrats."

During the March session, Justice Alito, like Roberts, a

George W. Bush appointee, responded to the government attorney's contention by describing it as "pretty incredible" that a book "could be banned."

In Wednesday's hearing, Solicitor General Kagan appeared resigned to the government losing the case. She suggested narrower grounds upon which the court could rule in favor of Citizens United, without finding the campaign finance law as a whole unconstitutional.

These included a finding that as a non-profit corporation funded mainly by private individuals, the organization should not be subjected to the restrictions. Similar bases for a ruling for the right-wing group include finding that the campaign finance restrictions did not apply to video on demand or that the film was indeed a documentary and not a piece of campaign propaganda. However, if the court's right-wing majority had wanted to rule on such grounds, it could have done so last spring.

Chief Justice Roberts seemed to taunt the government's attorney, asking Kagan, "So you want to give up this case, change your position, and basically say you lose solely because of the questioning we have directed o n re-argument?"

Civil rights and liberal organizations have been bitterly divided by the case. The American Civil Liberties Union filed a brief supporting Citizens United only after a contentious debate within its leadership. The ACLU brief noted that the campaign finance act prevented its own airing of advocacy ads in response to attacks on democratic rights, citing the passage in July 2008 of the FISA Amendments Act and of the Military Commissions Act in October 2006. Both events took place during the periods preceding either party conventions or the general election in which such ads are subject to FEC bans.

The right wing has seized upon these reactionary elements of the McCain-Feingold provisions to portray their challenge as a defense of freedom of speech. Arguing for Citizens United was Theodore Olson, the solicitor general under the Bush administration and a prominent right-winger. Olson was involved in the conspiracies in the 1990s to bring down Bill Clinton and represented George W. Bush before the Supreme Court in the 2000 stolen election.

"The most fundamental right that we can exercise in a democracy under the First Amendment is dialogue and communication about political candidates," Olson told the court. "We have wrapped up that freedom, smothered that freedom, with the most complicated set of regulations and bureaucratic controls."

But in an opinion piece published in the *Wall Street Journal* on Monday, Olson made it clear that the main aim behind the challenge over corporate campaign cash was to enable big business to tighten its grip on the US political system.

"Speech may not be silenced because of speculation that a few large entities might speak too loudly, or because some corporations may earn large profits," wrote Olson. "The First Amendment does not permit the government to handicap speakers based on their wealth, or ration speech in order somehow to equalize participation in public debate."

At the heart of these arguments is the reactionary contention that corporations are the equivalent of individuals under the law, enjoying all of the same constitutional rights. This doctrine, which dates back to the end of the 19th century, has been utilized by big business to turn protections written into the Bill of Rights, meant to guard against the abridgment of liberty for the average citizen, into a means of tightening the stranglehold of corporate wealth over society.

If the court does strike down McCain-Feingold, the effect will be largely one of rendering even more blatant the domination of both political parties, their candidates and the entire political process in America by the banks and major corporate interests—something that the campaign finance legislation did nothing to stop.

All of the claims by the erstwhile liberals that McCain-Feingold would revitalize American democracy have proven empty. The restrictions on corporations directly financing candidates and parties has served largely to redirect the vast streams of campaign cash into the coffers of the Democratic and Republican National Committees and the so-called "527 committees" which spend massive amounts of money to support or oppose candidates, but are not regulated by the Federal Election Commission.

Since the enactment of McCain-Feingold in 2002, the amount of money spent in the presidential and congressional races has nearly doubled to $5.3 billion in 2008. The banks and finance houses, the insurance industry, the pharmaceutical giants and other corporate sectors have used their political action committees to pour massive amounts of cash into both Democratic and Republican campaigns. And they have already reaped huge returns on their investment, from the multi-trillion-dollar Wall Street bailout to the drive to enact a health "reform" that will boost insurance profits while slashing care.