US Supreme Court abolishes restrictions on big business political spending

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In a profoundly anti-democratic decision with far-reaching implications, the US Supreme Court on Thursday struck down a law limiting the ability of corporations to spend money in support of political campaigns.

The five-to-four ruling, in the case of *Citizens United v. Federal Election Commission*, declared that corporations have a "right" to unfettered campaign spending. The extreme right-wing four-justice bloc on the court was joined by the "centrist" Justice Anthony Kennedy, who wrote the majority decision.

The ruling is a landmark in the erosion of democratic principles in the United States, and will result in even greater corporate manipulation of elections and more open bribery and corruption. It amounts to a legal blank check for corporations and the financial elite that controls them to openly purchase politicians and install them in power. It renders even more threadbare the pretension that the formal holding of elections in the US constitutes genuine democracy.

"[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption," wrote Justice Kennedy. "The fact that speakers [i.e., donors] may have influence over or access to elected officials does not mean that these officials are corrupt."

The opinion goes on, quoting from Kennedy's prior opinions, to make the case for unrestrained corporate spending on elections:

"Favoritism and influence are not … avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness."

In other words, according to the Supreme Court, when corporations spend billions manipulating elections and obtain the desired results, this is "democracy." This Orwellian characterization of democracy could have been dictated by the hedge funds, financial institutions, insurance companies and pharmaceutical corporations that routinely inject billions into American politics in return for favors from both corporate-controlled parties.

Up to now, under established law and Supreme Court precedent, corporations were obliged to funnel their campaign bribes though "independent" political action committees, or PACs. This placed certain legal and public relations restraints on their manipulation of the electoral process. Now, even these restraints are lifted.

From a legal standpoint, the majority opinion rests primarily on the specious claim that corporate campaign spending is protected by the First Amendment guarantee of free speech. The majority opinion baldly asserts, in disregard for the historical origins of the Bill of Rights, the democratic conceptions of its authors, and the egalitarian traditions that are deeply ingrained in the public consciousness, that corporate money equals speech.

This legal fiction turns the First Amendment upside down.

The First Amendment, adopted in 1791 in the aftermath of the American Revolution as part of the Bill of Rights, was celebrated at the end of the 18th century as one of the great codifications in law of democratic Enlightenment principles. The First Amendment separates church and state and protects freedoms of religion, speech, press, assembly and the right to petition the government for redress. The US Supreme Court has historically asserted the power to invalidate laws that violate the US Constitution and its amendments.

The law that restricted corporate spending on elections was the Bipartisan Campaign Reform Act (BCRA), also known as the McCain–Feingold Act after its leading senatorial advocates. Passed in 2002, the BCRA is itself of dubious constitutional validity, although for different reasons than those articulated yesterday by the Supreme Court. It includes blanket restrictions on individual and organized political spending, periods prior to election day during which some forms of electoral advocacy by organizations is prohibited, and numerous provisions that further buttress the two-party system.

The case of *Citizens United v. Federal Election Commission* arrived in the Supreme Court by an unusual route. In 2008, Citizens United, a multi-million-dollar right-wing political organization, ran television commercials promoting its film *Hillary: The Movie*, a documentary attacking then-Senator Hillary Clinton for being a "socialist" in the run-up to the Democratic presidential primary elections.

The film was available in theaters and on "on demand" television. The Federal Election Commission (FEC) charged that the film violated the BCRA, 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.

Citizens United appealed from a ruling in favor of the FEC in the United States District Court for the District of Columbia. The Supreme Court originally heard oral arguments on the case on March 24, 2009, on the narrow issue of whether the BCRA applied to this particular film. Citizens United argued that the film was not an "electioneering communication" and was simply a factual documentary; the FEC argued it was not.

However, on September 9, 2009, the Supreme Court ordered a re-hearing on a new issue: whether corporate political spending was constitutionally protected. As Justice John Paul Stevens pointed out in his dissent on Thursday, the issue of corporate political spending in general was not presented to the Supreme Court, so the court's seizure of that issue was illegitimate.

On the basis of the September re-hearing, the Supreme Court effected a massive change in the law in favor of big business, invalidating laws that had been in place since the presidency of Theodore Roosevelt and overruling two previous cases: *Austin v. Michigan Chamber of Commerce* (1990) and *McConnell v. FEC* (2002).

The opinion in *Citizens United v. Federal Election Commission* does not

address the question of direct contributions to candidates because Citizens United did not give money directly to a candidate. However, under the sweeping new doctrine announced in the case, the Supreme Court could consider all corporate spending constitutionally protected. Kennedy's opinion was joined by Chief Justice John Roberts and Justices Antonin Scalia, Samuel Alito and Clarence Thomas.

Roberts and Alito filed a separate concurrence—a document agreeing with the result of the majority opinion but offering a separate rationale—to defend themselves against Justice Stevens's accusation that they were not "serious about judicial restraint." Roberts and Alito are notorious for denouncing any extension of constitutional protection to ordinary people as "judicial activism" or a failure to exercise "judicial restraint."

Scalia also filed a concurring opinion, in which Alito and Thomas joined, to attack Stevens's characterization of the general attitude towards corporate political influence that predominated when the First Amendment was drafted at the end of the 18th century.

Stevens read his dissent from the bench, a rare practice that suggests the dissenting justice's lack of respect for the majorty opinion. Stevens's sharp 90-page dissent was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, and the recently appointed Sonia Sotomayor.

"The Framers [of the Constitution and the Bill of Rights] took it as a given that corporations could be comprehensively regulated in the service of the public welfare," Stevens wrote. "Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends."

The opinion in *Citizens United v. Federal Election Commission* often resorts to arguments that are transparently spurious. Kennedy at one point complains that under the Supreme Court's prior opinions, "Congress could also ban political speech of media corporations." Stevens observes that this is unlikely for a host of reasons, not the least of which is that freedom of the press is separately protected in the First Amendment.

Citizens United v. Federal Election Commission also upholds, by an eight-to-one majority, disclosure requirements in the BCRA for groups that mount political advertising campaigns. Only Justice Clarence Thomas would have abolished the disclosure requirement.

Thomas justified his dissent on this issue on the basis of reported instances where "donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation." In other words, a corporation must not only be allowed to spend unlimited money on candidates, but must also be allowed to remain anonymous while doing so. That way, the corporation is insulated from the popular resentment that results from the policies it has secretly purchased.

Several leading Democratic politicians, including President Obama, denounced the decision. Obama released a written statement predicting that the decision would lead to a "stampede of special interest money in our politics." Such statements no doubt reflect the concern that unlimited spending by corporations on elections would even further undermine public confidence in their legitimacy.

Something must be said about the Supreme Court's double standard regarding constitutional rights. While the Supreme Court finds more and more "rights" in the Constitution for corporations to enjoy, it is simultaneously effecting a sweeping rollback of democratic rights for ordinary people.

While the Supreme Court strikes down laws preventing corporations from spending billions on elections in the name of protecting "free speech," it has in other cases refused to strike down anti-democratic obstacles to ballot access for independent and third-party candidates. Military commissions and imprisonment without trial, torture, barbaric prison conditions, domestic spying, corrupt prosecutors, and police misconduct are routinely tolerated as not violative of constitutional rights. Restrictions on corporations are not.

The conception of the corporation announced by the Supreme Court yesterday has implications far outside elections. It is not hard to imagine how the doctrine of corporate constitutional rights could be extended to attack the minimum wage, child labor laws, workplace safety laws, environmental regulations, or any other legal restrictions on corporate activities.

It is worth remembering that the first minimum wage laws in the US, adopted in a number of states more than a century ago in the midst of social upheaval, were attacked in the Supreme Court on the grounds that they violated constitutional freedoms. In the notorious case of *Lochner v. New York* (1905), the Supreme Court held that a New York law limiting the number of hours that a baker could work each week to 60 violated the "liberty of contact." These and other "freedoms" are returning to the pages of Supreme Court opinions.

"This case will have a profound effect in changing the nature of elections in the United States," said Erwin Chemerinsky, dean of UC Irvine School of Law and author of a major treatise on US constitutional law, in an interview with *Wall Street Cheat Sheet* in September.

He continued: "This case will have a very significant effect on federal, state and local elections. Corporations have tremendous wealth and they could then use it to get the candidates of their choice elected or the candidates they opposed defeated."

This ruling comes at a time when confidence in the Obama administration and the two corporate parties has significantly deteriorated. The bourgeoisie is faced with steadily eroding support for its disastrous military adventures and its economic policy of self-enrichment at all costs. It is increasingly anxious to block popular opposition from developing from below. The Supreme Court's ruling facilitates further control by big business over US electoral politics.

Even with the prior restrictions in place, the 2008 US presidential election cycle featured a record intervention by corporations and the wealthy to the tune of an estimated $5.3 billion. As Justice Stevens noted sardonically in his dissent, "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."

As regards 2010, the floodgates are now open. Republican campaign attorney Ben Ginsberg told the *Washington Post*, "It's going to be the Wild, Wild West."