

Free Speech and Corporate Political Spending after Citizens United Case: Implication for Emerging Business

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Abstract

This paper examines the complex interplay between free speech principles, corporate political spending, and their profound implications for emerging businesses in the aftermath of the seminal 2010 Supreme Court decision in **Citizens United v. Federal Election Commission**. This case essentially transformed the face of corporate participation in political debates by removing limits on independent spending, which produced a major boom in corporate political participation. This judicial overreach on corporate personhood in the name of equating the value of monetary contributions to guarded speech, but also in terms of how such a step has not only increased the financial stream into the political campaigns but has also affected the strategic thought behind nascent businesses facing an environment dominated by the increasing role of political capital. In particular, the ruling allowed corporations to use unrestricted sums of money to benefit or detract political candidates and reduced the First Amendment to contain a powerful tool used by corporations in order to influence the election outcomes. This has brought in a lot of debate about this growth of corporate rights especially the free and easy profligacy in election campaign as far as their effect on the process of democracy and the fair involvement of all the parties is involved. This paper will delve into the mechanisms through which **Citizens United** has fostered an environment where corporate political spending can either stimulate economic growth and policy changes beneficial to a broader populace or exacerbate inequalities by prioritizing corporate interests over those of smaller entities and the general public.

Keywords: - Citizens United, corporate political spending, free speech, emerging businesses, campaign finance, First Amendment, corporate personhood, economic inequality, democratic processes.

1. Introduction

The Supreme Court's landmark decision in **Citizens United v. FEC** in 2010 significantly reshaped the landscape of corporate political spending by equating monetary contributions to political campaigns with

protected free speech under the First Amendment. This decision was a breakthrough as it destroyed restrictions on independent corporate and union political expenditure that had existed over the years contending that effective restrictions violated their constitutional rights to free expression. Such reinterpretation radically changed the rules of campaign finance, enabling corporations to place and write without limit on political advertisements and communications, giving them an opportunity never seen before to control the election results. This was followed by an immediate dramatic increase in independent spending, which surged to \$1 billion in the 2012 presidential race after only reaching \$0.14 billion in the 2008 presidential race. This uncontrolled explosion illustrates a stronger role of corporate organizations in political debate and policymaking (Estrada, 2023). Nevertheless, such a controversial move that has been explained by the majority as ensuring the avoidance of undue influence and ensuring information dissemination has been criticized greatly, and many are viewing it as a degradation of the welfare of voters, by giving the voice of the corporations a bigger audience over non-corporate ones. The decision has therefore triggered widespread arguments on how free speech ideals can still be balanced with the necessity to avoid corporate takeover of the political process particularly concerning the business environment of new firms. In particular, the ruling clarified that corporations as well as individuals have a right to the First Amendment and thus, struck down the provisions of the Bipartisan Campaign Reform Act that clustered against corporate and union independent expenditure within days preceding a given election. The new legal direction permitted corporations to use their inexhaustible corporate treasuries to support or oppose political contenders, virtually voiding federal and twenty four state-level bans against this kind of independent spending. The Court held that the social identity of the speaker should not be used to determine whether a speech should be considered as a free speech and therefore such an extension of the benefits of free speech to corporate organizations and groups as the ones able to contribute to the communal discussion. This decision became a significant precedent as a difference was drawn between direct contributions to the candidates, which are still regulated now and independent expenditure, which are now mostly free (González & Ramírez, 2019).

2. The Evolution of Free Speech and Corporate Personhood

The concept of corporate personhood, while seemingly affirmed by **Citizens United**, has a much deeper historical lineage, tracing back to cases like **First National Bank of Boston v. Bellotti**. This jurisprudential development laid foundational groundwork for the notion that corporations possess First Amendment rights akin to individuals, albeit with ongoing debates regarding the scope and implications of such an equivalence. This expansion of corporate free speech, particularly concerning political spending, highlights a critical tension between democratic ideals and economic power, prompting scholarly inquiry into its effects on policy outcomes and the competitive landscape for nascent enterprises (Batchis, 2019; Gilens et al., 2021).

2.1. Historical Context of Corporate Political Activity

The Supreme Court's consistent jurisprudence has progressively extended free speech protections to corporate entities, viewing political spending as a form of expression integral to the democratic process. This perspective posits that corporations, as associations of citizens, contribute to the marketplace of ideas, and restricting their political expenditures would therefore limit public discourse. The **Citizens United** decision specifically reinforced this by equating money spent on political campaigns to speech, thereby granting corporate political expenditures the highest level of First Amendment protection. However, this extension of rights has been criticized for conflating economic power with expressive capacity, potentially undermining the principle of one-person, one-vote by allowing corporations to wield disproportionate influence in elections. Indeed, while the Court in **Citizens United** did not explicitly state that corporations are people, its reasoning implicitly equated corporate speech with individual speech, thereby extending constitutional protections to corporate political spending. This interpretation has led to significant debate regarding the appropriate balance between corporate prerogatives and the integrity of the democratic process, particularly concerning the potential for wealthy entities to dominate political discourse. The ruling's reliance on cases like **Bellotti**, which established that corporations have a First Amendment right to contribute to the political process, is central to understanding this

judicial trajectory, despite some scholarly interpretations suggesting a misleading representation of **Bellotti's** original intent regarding restrictions based on speaker identity.

2.2. Key Legal Precedents before *Citizens United*

Prior to ***Citizens United***, a series of landmark cases progressively shaped the legal landscape concerning corporate political speech, laying the groundwork for the eventual unlimited expenditure framework. These precedents grappled with the tension between safeguarding free expression and preventing corruption or the appearance thereof in political campaigns. For instance, ***Buckley v. Valeo*** introduced the concept of "corruption or the appearance of corruption" as a compelling governmental interest that could justify limits on campaign contributions, while simultaneously equating money with speech, thus limiting restrictions on independent expenditures (Esclusa, 2021). However, ***Buckley*** did not directly address corporate independent expenditures, a distinction that would become central in later cases. The subsequent judicial trajectory saw cases like ***Austin v. Michigan Chamber of Commerce***, which upheld restrictions on corporate independent expenditures, arguing that the unique legal advantages of corporations could distort the political marketplace without such limitations. However, this precedent was later overturned, demonstrating a shifting judicial philosophy toward broadening corporate speech rights (Nelson, 2012).

3. The *Citizens United v. Federal Election Commission* Decision

The 2010 decision in ***Citizens United v. Federal Election Commission*** significantly reshaped campaign finance regulations by ruling that corporations and unions have the same First Amendment rights as individuals, thereby allowing them to spend unlimited amounts of money on independent political expenditures. This landmark ruling effectively struck down provisions of the Bipartisan Campaign Reform Act of 2002 that had prohibited such spending, asserting that limiting corporate independent political spending was an unconstitutional abridgment of free speech. The Court's majority opinion articulated those independent expenditures, unlike direct contributions; do not present a sufficient risk of quid pro quo corruption to justify governmental restriction. This rationale extended the precedent set in ***Buckley v. Valeo***, which had previously differentiated between contributions and expenditures, to encompass corporate and union spending, fundamentally altering the landscape of campaign finance.

3.1. Summary of the Majority Opinion

Central to the majority's reasoning was the assertion that independent political expenditures, even those from corporations and unions, do not pose a credible threat of corruption or the appearance of corruption, a distinction critical for upholding free speech principles. The Court reasoned that without coordination with a candidate's campaign, such expenditures cannot lead to quid pro quo corruption, thus extending the logic established in ***Buckley v. Valeo***. This stance effectively minimized concerns about undue corporate influence in elections, prioritizing the expressive rights of artificial entities over the potential for disproportionate political leverage. This perspective contrasts sharply with previous rulings, such as ***Massachusetts v. Federal Election Commission***, which had previously affirmed the state's interest in regulating corporate political spending to prevent such undue influence. The ***Citizens United*** decision, in overturning ***Austin*** and parts of the Bipartisan Campaign Reform Act, emphasized that the identity of the speaker, whether a corporation or an individual, should not abridge the freedom of political speech (Wilson, 2013).

3.2. Dissenting Arguments and Concerns

The justices who dissented raised their voices in opposition to the majority ruling that they would mark the start of a new age in which the corporations can use their fortunes to wallow in elections and manipulate the democratic process undermining the dominion of the voices of the ordinary citizens. They argued that the reasoning of the Court did not draw a substantial line between independent expenditure and direct contributions because there is a possibility of complex, uncoordination spending still producing a facade of undue affection or even of an indirect quid pro quo scheme. In addition, the dissent also stated that the majority definition of the term corruption was too narrow to encompass the more insidious, but equally damaging impacts of corporate

money to the political system, including that it caused a lack of trust in the populace and a sense of an unequal footing when going against larger campaigns. They theorized that unrestricted expenditure by corporations might trump down other opinions; thus subverting the deliberative role which is essential in a healthy democracy. The dissent specifically highlighted that the Court's reliance on a previous dissenting opinion in **Automobile Workers** was incongruous, as that earlier dissent had not commanded a majority and thus lacked precedential weight (Hellman, 2021).

3.3. Immediate Impact on Campaign Finance Regulations

The supreme court, through the ruling, quickly overturned federal and state-wide prohibitions on expenditures by independent corporations and labor unions on elections, which promptly caused a massive surge in expenditure by third party groups. Such deregulation enabled the emergence of Super Political Action Committees and other committees that were purely independent expenditure only and could raise and spend as much money as they wanted to support or fight political candidates. This new terrain greatly increased the economic strength of rich people and companies in federal campaigns, a large share of super PAC spending is financed by an extremely small group of donors. This money, which seemed to come at the most, was a source of concern regarding transparency and accountability in political campaigns. This move has been heavily criticized as to the possibility of foreign nationals being able to manipulate U.S. election and legislative processes improperly, further weakening the credibility of the democratic process by the people (Wilson, 2013).

4. Theoretical Frameworks of Corporate Political Spending

This part explores the conceptual basis on the reason why corporations spend on politics and the different operationalization on how the political spending thru theory is theoreticalized to impact on political outcomes. These models frequently rely on the economics and political science theory to explain the motivation of companies to take part in politics and how this would impact policies and market forces. In particular, the theories discuss how companies strategically employ resources within the political environment to influence regulations, gain competitive advantages, and reduce risks, and in most cases, establish a better operating environment (Gilens et al., 2021).

4.1. Shareholder Primacy vs. Stakeholder Theory

In the framework of corporate political expenditure, these two opposing theories provide different views on the main beneficiaries and moral responsibilities of corporate activities. Shareholder primacy is a theory that postulates that corporations are expected to focus most of their attention on shareholders to achieve as much wealth as possible and that, politics are a type of investment that they can make to make money (Bonica, 2016). On the other hand, the stakeholder theory states that companies have a wider obligation to large numbers of stakeholders such as employees, consumers, suppliers and in the community, which means that political expenditure could be used to harmonize these different interests instead of just enriching the stockholders. Though, these theoretical perspectives fail to comprehensively understand the subtle, yet real, motives behind corporate political lobbying because most of the time, corporations look to gain strategic benefits through political contributions that do not directly pertain to the direct monetary benefits or satisfaction of the corporate stakeholders. Rather, a more holistic picture requires inspection into how corporate political expenditure can be considered as a non-market approach, which is aimed at embedding defensive regulatory frameworks and molding discussion ideation to the benefit of the business institution ("Political Risk Management,," 2017).

4.2. Agency Theory and Managerial Discretion

According to this framework, corporate political expenditure may be motivated by managerial interests, instead of only shareholder value, which may result in the decision making that applies to executive personal career advancement or personal interests. This optional cost may appear in the form of donations to political campaigns or lobbying activities that can be either consistent with the personal political preferences of a manager or allow them to improve social capital although the effect on the corporation proper may be unclear or unworthy of quantification. An example is where the corporate political expenditure may be oriented to the personal political

interests of senior executives that might not match those of shareholders resulting in friction. This agency issue is especially relevant in the case of political expenditure, where the connection between expenditure and company performance may be avert and immeasurable, and thus giving sufficient opportunity to management opportunism. This conflict between the interests of managers and shareholders highlights an acute conflict in corporate management, especially when it comes to the distribution of corporate funds towards the political arena. This possibility of misalignment illustrates the necessity of sound oversight procedures to help keep corporate political performance truly in the long-term interest of the company and its shareholders and not in the ambitions of its management (Prabhat & Primo, 2018).

4.3. Resource Dependence Theory and Political Connections

According to this theory, organizations strategically enter into political activities to regulate the critical dependencies on the external resources that are in control of political actors including licenses, regulations, and government contracts. Developing political relationships through campaign donations, companies strive to improve their competitiveness and gain favoritism therefore, minimizing uncertainty and increasing their competitive advantage as well as alleviating numerous risks (Halari et al., 2023). This view focuses on how companies make use of their political contributions in a proactive approach of gaining necessary resources and avoiding the ugly changes in policies that may dramatically change the operational environment of a firm and business opportunities in the market. These approaches can relate to direct financial donations to political campaigns, which may create a direct connection between enterprises and the field of politics, providing companies with power over the regulatory and legislative environments. This can be applied to the achievement of good policy results, like lower taxes or weaker environmental laws, which has the direct effect of improving the profitability of the firm and market position. Furthermore, such relationships can offer a considerable informational aid, in turn, enabling organizations to foresee shifts in policy and modify their approach, respectively, which can further secure their status in the market and minimize uncertainties in operations. On the other hand, there is some research that holds that the politics between the two countries or entities such as donations to the campaigns may suggest agency problems in which the donating firms may be performing poorly compared to their non-participating counterparts (Kim et al., 2018).

5. Ethical and Societal Considerations

Drastic growth in corporate political expenditures after Citizens United has brought significant ethical and social challenges in terms of the authenticity of democratic procedures and fairness in sharing political power. The opponents claim that the unrestrained corporate expenditure may cause the voice of appropriately financed corporations to override the interests of the common citizens and medium-sized enterprises. This issue is further compounded by the fact that the politically related firms are often less affected by policy unpredictability and the difference in the financial reporting can be seen (Timbate et al., 2024), which means that playing on the uneven field., implying an uneven playing field.

5.1. Corporate Social Responsibility and Political Engagement

Corporate political participation must assume a societal well-being rather corporate perspective but the reality as proven by practical actions show that profit motives and general concerns of the society collide with one another. Criticisms about corporate political expenditure, particularly following the **Citizens United** ruling, typically revolve around the opinion that corporate political expenditures focus on financial corporate interests rather than ethical governance and social interests (Fiordelisi et al., 2022). These ethical issues are further complicated by the layer of secrecy that surrounds a lot of corporate political spending, and now the stakeholders can hardly determine what kind of drives and effects these activities have. Moreover, the possibility of the existence of informational benefits of political expenditures or the promise of special treatment underlines a structural threat to healthy competition and citizen confidence in the democracy. This creates the need to critically look at how corporate political interests which are usually disguised in complicated financial deals, play out in terms of regulatory frameworks and consequently affect how young businesses compete (Almaghrabi & Tsalavoutas, 2022).

5.2. Perceptions of Fairness and Democratic Integrity

It is possible that the feeling that corporate money is corrupting the decision-making process on appropriate policy will decrease the confidence that people have in democratic institutions and cause them to develop a sense of cynicism towards the fairness of the political process. These perceptions are not baseless, given the fact that with the heightened impact of the corporate lobbying there are chances that the lessening policy may amplify corporate interests at the expense of the people and fair economic chance (Li, 2021; Oliver, 2020). This disproportion can especially be disadvantageous to new companies, which often have no means of struggling with the old and proven companies in the political stage, which enhances the preservation of the market power in the hands of the previous powers. Furthermore, the sense of corporate power can make innovative startups and small firms think twice before entering into the sphere of rivals with connections and would prohibit competition and economic movement. The resulting loss of democratic credibility may have potentially lasting effects on the stability and the economic development of the society, which makes the issue of transparency and responsibility in the corporate political involvement a pressing concern (Shapira, 2020).

5.3. Influence on Public Policy and Market Competition

The large sums of money available via corporations in the political arena may considerably influence legislative and regulatory decisions, leading to personalized policy formulation that may be certainly influenced by corporate interests rather than the well being of the general society. This influence may take on many forms such as controlling taxation and environmental standards to providing preferential treatment in form of contracts and subsidies, which in most cases provide an unlevel playing field to small and emerging companies which might not have the equivalent political influence. This unfair competition may kill innovation, keep new firms out of the market, and keep players in the market dominating. The constructive impact of these political advantages may be to cement in place existing monopolies or oligopolies thus frustrate healthy competition as well as consumer choice. The issue of such corporate political expenditure also generates the question of a possible regulatory capture in which the interests of the industry can have undue influence in the government agencies and consequently the policy outcomes may result in the favoring of the regulated parties instead of the people (Saunders-Hastings, 2022).

6. Conclusion

This is further advanced by the concentration of power, which is commonly aided by a revolving door between business and government jobs and aggravates worries on healthy competition and democracy. This allows money to concentrate power and power to attract more money which results into a feedback loop through which the market process can get distorted and the institutions of a democratic society can be compromised. Not only does this systematic entanglement of economic and political powers hamper the emerging businesses, but it also poses a fundamental challenge to the concept of having equitable governance since it views business interests above societal interests. This is a universal feedback loop observed in both a democratic and non-democratic regime and this leads to an outcome where the economic elites use legal (although still transparent) mechanisms to maintain their influence as the case is with the campaign finance system in the United States post-**Citizens United**. This interconnection between the monetary input and political preference undermines the trust of the masses by increasing the voices of the rich at the expense of the masses. These moving remarks bring to light a universal truth: the power of money reinforces and undermines political power and that this power should be compared to understand in what way it influences the governance of the present day. This observational analysis of corporate political expenditure during the post-**Citizens United** times shows that there is an intricate interaction among legal provisions, economic motivations and political ideals that greatly influence new business and political process itself. Free-floating impact of corporate political expenditure thus produces unbalanced playing ground whereby market power is able to generate political power and vice-versa and will result in circumstances whereby regulatory frameworks are designed to support compounding interests instead of generating real competition and innovation. This methodical privilege of big businesses is an indication of the possibility of the Medici vicious cycle in which political power is converted into market power, and vice versa.

The fact that economic strength is used to acquire political strength, and then political strength is used to make proceeds to greater economic strength, is a challenge to the assumption of a level playing field whenever a business is starting. Such reinforcement is a cycle where economic power is converted into political strength and political power is converted into economic strength, and thus new entrants to the market are effectively closed off and inequalities are reinforced in the economic system.

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