



“IN THE KNOW:” The Supreme Court’s Decision on Corporate Spending: Now What?

On January 21, 2010, the United States Supreme Court issued a 5-4 decision to allow corporations and unions unprecedented freedom to fund ads that directly support or oppose political candidates.

The Committee of Seventy has historically supported limiting the amount of money that can flow to political candidates in order to diminish pay-to-play. For this reason, we publicly expressed our deep concern about the Supreme Court’s decision, which could have a profound impact on the outcome of federal, state and local elections.

We hope this Q&A will give you more background what to expect following this ruling.

--January 26, 2010

I heard the U.S. Supreme Court just issue a major ruling. What was it all about?

On January 21, the U.S. Supreme Court issued a major campaign finance ruling. When people talk about campaign finance, they are referring to how money is raised and spent in elections. Some people believe the government should be allowed to regulate campaign finance. Others believe that government has no business placing any restraints in this area.

What did the Court say?

The Court ruled that corporations and unions are permitted to spend their own money on political ads to directly support or oppose candidates for elective office. The name of the case is *Citizens United v. Federal Election Commission*.

Why is that such a big deal?

The Court’s decision, which was supported by five of the nine Supreme Court Justices, represents a major reversal of campaign finance regulations. Since 1947, corporations and unions have been banned from spending their own general funds on political ads that expressly urge people to "vote for," "vote against," "support," or "defeat" specific candidates for elective office.



Why did the Court lift the ban?

The political free speech rights of individuals are guaranteed by the First Amendment of the U.S. Constitution. In the *Citizens United* case, the Supreme Court extended that same right to corporations and unions. They said the government was guilty of censorship if it tried to command "where a person may get his or her information or what distrusted source he or she may not hear."

I read that Senator John McCain said campaign finance reform is dead. Is he right?

It's probably an exaggeration to say that campaign finance reform is dead. But it's on life support since the Supreme Court appears to be headed in the direction of lifting regulations on campaign finance.

Once the Supreme Court rules, there's nothing more to be done, right?

Yes and no. People who oppose the ruling are talking about their options to limit its impact.

What are some of the options being considered?

Here are some ideas according to news accounts around the country:

- Creating rules prohibiting corporations and unions sponsoring political ads from communicating directly with candidates. This would help prevent, or at least diminish, undue influence. Federal law already prohibits election campaigns from coordinating with 527 committees, which are tax-exempt issue advocacy groups that advocate either on behalf of or in opposition to political issues, not to elect or defeat a particular candidate.
- Requiring publicly traded companies to get approval from shareholders before spending on elections. Doing this would ensure that the people who actually own the company would have a say in management's decision to support or oppose a candidate.
- Banning advertising by corporations that get government funding. This would help avoid situations where a corporation feels pressured to spend a lot of money on political ads to support incumbents who award them government contracts.
- Increasing transparency by creating one website to disclose all sources of campaigns ads. Disclosure statements are now spread among several departments and agencies.

Other ideas are bound to emerge over the next weeks and months. Check www.seventy.org to keep track of them.



What are members of Congress thinking? Don't some of the options need their approval?

As with every highly charged political issue, members of Congress fall into different camps. Opinions could change so it may not be fair to make generalizations. When the Court's ruling was announced, it was generally applauded by Republicans. Most Democrats denounced the decision.

Did President Obama weigh in yet?

The President strongly denounced the ruling by saying: "I can't think of anything more devastating to the public interest. The last thing we need to do is hand more influence to the lobbyists in Washington, or more power to the special interests to tip the outcome of the elections."

What did the President mean by the public interest?

He meant that voters who want to support their favorite candidate by sending a small contribution will have their participation diluted because corporations and unions can now spend millions of dollars to urge the defeat of the same candidate. So voters may decide not to bother.

When does the court's ruling go into effect?

Immediately. We may see corporate-funded political ads during the current mid-term elections.

Does the Court's decision mean non-stop political ads?

The Supreme Court also said that the ads could run anytime, including on Election Day. This overturned the provision in the federal Bipartisan Campaign Reform Act of 2002 that banned "electioneering communications" within 30 days of a primary or caucus or 60 days of a general election.

Are corporations really going to throw so much money into political campaigns?

It's hard to know, but the stakes are very high. Just think about all the companies that want to be heard on health care reform – on both sides of the issue. And that is only one example.



Will we know who is sponsoring the ads?

Yes, the identity of all corporations or unions paying for ads must be disclosed to the public.

Isn't it just easier to give money to the candidates themselves than to spend it on ads?

It might be easier, but it isn't legal. The Supreme Court kept in place the ban on corporations and unions giving their own funds **directly** to candidates.

Michael Bloomberg just spent \$108 million to win a third term as New York's Mayor. Why shouldn't corporations be allowed to spend the same amount of money to defeat him, or any other wealthy candidate for that matter?

Supporters of the Supreme Court's decision agree that it makes no legal sense to let one set of individuals give whatever they want, and tell another set of individuals that they can't. Some people are determined to do away with campaign finance regulations of any kind. One legal scholar predicted that lifting the ban on direct corporate contributions to candidates is "the next shoe to drop."

I heard some people talking about publicly funded campaigns. Would that help?

Bills have been introduced in the Senate and House – called the Fair Elections Now Act – to allow participating candidates to qualify for federal funds for the primary election, and then for the general election, after they raise a specified amount of money from contributors in their home communities. They could also get additional matching funds and media vouchers.

Can public funds "override" corporate dollars?

It's hard to answer that question until we see how corporations respond to the Supreme Court's ruling. It also depends on how many donations a candidate is able to raise. But it obviously isn't easy to compete against corporate money.

Who would pay for public funding anyhow?

Corporations with large government contracts would have to pay a small fee into the Fair Elections Fund to pay for Senate races. House races would be funded by 10% of the revenues from the auction of unused airwaves used by the government, TV and radio broadcasters and cell phone companies, among others.



Does the Court's ruling apply only to federal candidates?

The case that prompted the Supreme Court's decision involved the airing of a movie by a conservative group – Citizens United – that was very critical about then-presidential candidate Hillary Rodham Clinton. But legal analysts say that the ruling will extend to state and local candidates for elected office.

How does the Court's ruling specifically affect Pennsylvania?

Like the federal law, Pennsylvania elections law also bans corporations from using their funds to urge the support or defeat of individual candidates. Expect a legal challenge based on the Supreme Court's ruling.

Don't corporations already give a lot of money to Pennsylvania candidates?

Yes, they do. Unlike presidential and congressional candidates, who are subject to a campaign finance law limiting donations to their campaigns, Pennsylvania has no campaign finance law. Although corporations can't give directly, they can give as much as they want to candidates for Governor and the state General Assembly through their political action committees. A political action committee, or PAC, is a group that is organized to elect political candidates.

Isn't giving from a PAC essentially the same thing as giving from the company itself?

No, the difference is that individuals within the company contribute to a PAC. The company itself cannot fund the PAC from its general accounts.

Philadelphia has a campaign finance law, doesn't it?

Unlike the state, Philadelphia has a campaign finance law that limits contributions to specific candidates for elected offices, such as the Mayor, City Council, District Attorney, City Controller and four other independently elected officers. The Supreme Court's decision would have no impact on this law.

Are we likely to see corporate-funded ads in Philadelphia?

We could – during the next municipal elections in 2011. Some say there could be even more ads on the local level because they are cheaper to run.



Committee of Seventy

Clean and effective government. Fair elections. Informed citizens.

This Q&A is only the beginning of what will be a long debate about the role of money in political campaigns. The Committee of Seventy will keep you informed as this debate unfolds.

In the meantime, please feel free to e-mail your comments, or requests for other “IN THE KNOW TOPICS” topics you care about, to info@seventy.org. We look forward to hearing from you.