

Askin: Changing the rules of campaign finance

THE MOST perceptive summary of the 200-page Supreme Court opinions in the Citizens United (“Hilary, the Movie”) case may have been that of the headline writer in The New York Times, who wrote: “Lobbies’ New Power: Cross Us and Our Cash Will Bury You.”

This case involved the right of a non-profit corporation, the conservative Citizens United, to advertise its film on television within 30 days of a presidential primary election in a state in which Hilary Clinton was on the ballot. Since Citizens United was paying for the ad with funds that included some contributions from business corporations, the Federal Election Commission ruled that such ads would violate the McCain/Feingold law.

Most election law experts agreed the case was of minor significance and the FEC had misinterpreted McCain/Feingold. It could have been easily decided on statutory grounds.

But after hearing initial arguments last year, the Supreme Court made the unusual move of asking the parties to reargue the case in September and to respond to two major constitutional issues.

One involved the constitutionality of a section of McCain/Feingold, which a 5-4 majority had upheld just four years ago. The other, more significant issue was whether the Court should overrule a 20-year-old decision, *Austin v. Michigan Chamber of Commerce*, which held that business corporations could be prohibited from spending funds from the corporate treasury to make independent expenditures supporting or opposing candidates for public office.

An independent expenditure is one that is not coordinated with a candidate’s campaign or a political party.

In that case, liberal Justice Thurgood Marshall had written that such restrictions were constitutional because of “the corrosive and distorting effect of immense

aggregations of wealth that are accumulated with the help of the corporate form that have little or no correlation to the public's support for the corporation's political ideas.”

Unleashing corporations

On Jan. 21, the Supreme Court disowned that principle and ruled that business corporations (and labor unions) were free to spend unlimited amounts of their treasury funds to elect or defeat candidates.

As Justice John Paul Stevens noted in his 90-page dissent: “The rule announced today – that Congress must treat corporations exactly as human speakers – represents a radical change in the law,” and is “at war with the views of generations of Americans.”

This ruling will open the floodgates to corporate money in the political process, despite a hundred years of legislation attempting to prevent it. Not only McCain/Feingold, but the 1947 Taft/Hartley Act and the 1907 Tillman Act (passed at the urging of Teddy Roosevelt) had recognized the evil of corporate domination in the political process.

Indeed, corporations won't even have to spend their money to get their way. How many members of Congress will have the courage to support strict banking regulations or to challenge the insurance or energy industry lobbyists who warn them that a “wrong” vote could result in an outpouring of corporate expenditures to defeat them.

Corporate biases

Defenders of the decision piously ask, What's wrong with more speech? It only provides more information to the electorate – ignoring the fact that 80 percent of corporate contributions go to one party.

In a normal debate situation or in a courtroom, the rules require that each side have equal time. They do not allocate time according to the wealth of the participants.

And as Justice Stevens further noted 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.”

The majority opinion by Justice Anthony Kennedy suggests that corporations have the same “inalienable rights” as “We the People” who wrote the Constitution in the first place. But Kennedy ignored the fact that such an idea first entered constitutional jurisprudence erroneously in a reporter’s account of an 1886 case. It was merely an offhand remark uttered in the oral argument by the chief justice, but appeared in the opinion as the considered view of the court.

The Kennedy opinion also equates business corporations with other “associations” that have the right to spend money in ways that reflect the views of their members, which ignores the fact that corporate managers have no duty to consult shareholders on the content of their political communications.

And the notion that the shareholders whose money is being spent can somehow rein in spending with which they disagree is ludicrous. The holdings of most stockholders are actually controlled by third parties (IRA managers, money market or pension fund directors, etc.) and they would have a hard time even figuring out what they own, let alone be able to influence its allocation.