**CITIZENS UNITED versus FEC (2010)**

***(Campaign Financing)***

**Background:**

In the case, the [conservative](https://en.wikipedia.org/wiki/Conservatism_in_the_United_States) non-profit organization [Citizens United](https://en.wikipedia.org/wiki/Citizens_United_%28organization%29) wanted to air a film critical of [Hillary Clinton](https://en.wikipedia.org/wiki/Hillary_Clinton) and to advertise the film during television broadcasts, which was a violation of the 2002 [Bipartisan Campaign Reform Act](https://en.wikipedia.org/wiki/Bipartisan_Campaign_Reform_Act) (BCRA), commonly known as the McCain–Feingold Act. Section 203 of BCRA defined an "electioneering communication" as a broadcast, cable, or satellite communication that mentioned a candidate within 60 days of a general election or 30 days of a primary, and prohibited such expenditures by corporations and unions. The [United States District Court for the District of Columbia](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_District_of_Columbia) held that §203 of BCRA applied and prohibited Citizens United from advertising the film [*Hillary: The Movie*](https://en.wikipedia.org/wiki/Hillary%3A_The_Movie) in broadcasts or paying to have it shown on television within 30 days of the [2008 Democratic primaries](https://en.wikipedia.org/wiki/Democratic_Party_%28United_States%29_presidential_primaries%2C_2008).

In December 2007, Citizens United filed a complaint in U.S. District Court for the District of Columbia challenging the constitutionality of several statutory provisions governing "electioneering communications". It asked the court to declare that the prohibition on corporate and union funding were facially unconstitutional, and also as applied to *Hillary: The Movie,* and to enjoin the Federal Election Commission from enforcing its regulations. Citizens United also argued that the Commission's disclosure and disclaimer requirements were unconstitutional as applied to the movie pursuant to the Supreme Court decision in [*Federal Election Commission v. Wisconsin Right to Life, Inc.*](https://en.wikipedia.org/wiki/Federal_Election_Commission_v._Wisconsin_Right_to_Life%2C_Inc.). It also sought to enjoin funding, disclosure and disclaimer requirements as applied to Citizens United’s intended ads for the movie.

In accordance with special rules in section 403 of the [BCRA](https://en.wikipedia.org/wiki/Bipartisan_Campaign_Reform_Act), a three-judge court was convened to hear the case. On January 15, 2008, the court denied Citizens United’s motion for a preliminary injunction, finding that the suit had little chance of success because the movie had no reasonable interpretation other than as an appeal to vote against Senator Clinton, that it was therefore express advocacy, not entitled to exemption from the ban on corporate funding of electioneering communications, and that television advertisements for the movie within 30 days of a primary violated the BCRA restrictions on "electioneering communications". The court held that the Supreme Court in [*McConnell v. FEC*](https://en.wikipedia.org/wiki/McConnell_v._FEC) (2003) had found the disclosure requirements constitutional as to all electioneering communications, and *Wisconsin RTL* did not disturb this holding because the only issue of that case was whether speech that did not constitute the functional equivalent of express advocacy could be banned during the relevant pre-election period.

**Majority Opinion:**

[Justice Kennedy's](https://en.wikipedia.org/wiki/Anthony_Kennedy) majority opinion found that the BCRA §203 prohibition of all independent expenditures by corporations and unions violated the First Amendment's protection of free speech. The majority wrote, "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech."

Justice Kennedy's opinion also noted that because the First Amendment does not distinguish between media and other corporations, the BCRA restrictions improperly allowed Congress to suppress political speech in newspapers, books, television, and blogs.The Court overruled *Austin*, which had held that a state law that prohibited corporations from using treasury money to support or oppose candidates in elections did not violate the First and Fourteenth Amendments. The Court also overruled that portion of *McConnell* that upheld BCRA's restriction of corporate spending on "electioneering communications". **The Court's ruling effectively freed corporations and unions to spend money both on "electioneering communications" and to directly advocate for the election or defeat of candidates (although not to contribute directly to candidates or political parties).**

The majority ruled that the Freedom of the Press clause of the First Amendment protects *associations* of individuals in addition to individual speakers, and further that the First Amendment does not allow prohibitions of speech based on the identity of the speaker. Corporations, as associations of individuals, therefore have free speech rights under the First Amendment. Because spending money is essential to disseminating speech, as established in [***Buckley v. Valeo***](https://en.wikipedia.org/wiki/Buckley_v._Valeo)**, limiting a corporation's ability to spend money is unconstitutional because it limits the ability of its members to associate effectively and to speak on political issues.**

The decision overruled *Austin* because that decision allowed different restrictions on speech-related spending based on corporate identity. Additionally, the decision said that *Austin* was based on an "equality" rationale – trying to equalize speech between different speakers – that the Court had previously rejected as illegitimate under the First Amendment in *Buckley*. The Michigan statute at issue in *Austin* had distinguished between corporate and union spending, prohibiting the former while allowing the latter. The *Austin* Court, over the dissent by Justices Scalia, Kennedy, and O'Connor, had held that such distinctions were within the legislature's prerogative. In *Citizens United v. Federal Election Commission*, however, the majority argued that the First Amendment purposefully keeps the government from interfering in the "marketplace of ideas" and "rationing" speech, and it is not up to the legislatures or the courts to create a sense of "fairness" by restricting speech.[28]

The majority also criticized *Austin's* reasoning that the "distorting effect" of large corporate expenditures constituted a risk of corruption or the [appearance of corruption](https://en.wikipedia.org/wiki/Appearance_of_corruption). Rather, the majority argued that the government had no place in determining whether large expenditures distorted an audience's perceptions, and that the type of "corruption" that might justify government controls on spending for speech had to relate to some form of "quid pro quo" transaction: "There is no such thing as too much speech."[28] The public has a right to have access to all information and to determine the reliability and importance of the information. Additionally, the majority did not believe that reliable evidence substantiated the risk of corruption or the appearance of corruption, and so this rationale did not satisfy [strict scrutiny](https://en.wikipedia.org/wiki/Strict_scrutiny).

The Court's opinion relied heavily on the reasoning and principles of the landmark campaign finance case of *Buckley* and [*First National Bank of Boston v. Bellotti*](https://en.wikipedia.org/wiki/First_National_Bank_of_Boston_v._Bellotti), in which the Court struck down a broad prohibition against independent expenditures by corporations in ballot initiatives and referenda.[28] Specifically, the Court echoed *Bellotti's* rejection of categories based on a corporation's purpose. The majority argued that to grant Freedom of the Press protections to media corporations, but not others, presented a host of problems; and so all corporations should be equally protected from expenditure restrictions.

The Court found that BCRA §§201 and 311, provisions requiring disclosure of the funder, were valid as applied to the movie advertisements and to the movie itself.[28] The majority ruled for the disclosure of the sources of campaign contributions, saying that

... prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are "in the pocket" of so-called moneyed interests... This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.