

Roberts, Randy - Period 6

23 September 2022

Citizens United v. Federal Election Commission;

Justices' Rational and Personal Inclinations

Among other things, the Bill of Rights contains within it the first amendment. Within that amendment, one of the five rights protected is the right to freedom of speech. This concept is seen as indispensable in a modern democracy; without freedom of speech, a nation's citizenry is seldom able to express their satisfaction or dissatisfaction with the current regime. This freedom of political speech, by debatable logical or illogical extension, extends to the funding of advertisements and political messages. When done by corporations or unions, this extension has been a matter of great contention, most recently debated in the court case of Citizens United v. Federal Election Commission. (CU v FEC). The majority opinion as determined by this case is that corporations hold the same power as individuals, and thus are able to fund political campaigns as they list.¹ This opinion is based on a confined interpretation of the constitution, rather than a broader and more pragmatic approach to modern law as myself and the dissenting justices would apply.

As an interjection-and something of an interlude to the opinionated manner of the other discussions-it should be noted that methods of interpretation are, more often than not, used to push a specific political agenda. Whether admitted or not, any person well vested in politics, including justices, has a particular political ideology or group or ideas which they affiliate with. In America, and as an unfortunate side effect of our first past the post two party electoral system, this is broadly defined as liberal and conservative. The former is far more likely to choose a

¹ Federal Election Commission

<https://www.fec.gov/legal-resources/court-cases/citizens-united-v-fec/>

pragmatic, or less perfectly defined interpretation, whereas the latter is far more likely to choose a textualist or originalist interpretation.²³

By a 5-4 majority decision, the supreme court, through its ruling on the case at hand, overturned their previous ruling in *Austin vs Michigan Chamber of Commerce* (1990) and partially overturned *McConnell v. Federal Election Commission* (2003).⁴ As judicial opinions are, there is a nearly insurmountable pile of law-related jargon, though it can be boiled to be comparatively more palatable to a layman. In essence, the majority justices argued an originalist viewpoint. Through this, they argued that campaign contributions, when used to express political opinions and not used in direct collusion with a campaign, are an expression of freedom of speech.⁵ The topic of discussion was a documentary, colloquially referred to as *Hillary*, as the film was incredibly critical of then secretary of state.

To the contrary, the dissenting opinion argued a matter of pragmatism. One could seldom argue that the first amendment, as written, doesn't give everyone-including those affiliated with corporations-the right to expressing their political beliefs. The argument, then, is that allowing such acts would be "a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government."⁶ This quote is from John Stevens, though the idea expressed is thought by the dissenting justices of more liberal mind. As well-and comparatively unusual for justices of that inclination-the dissenting justices followed judicial precedent, whereas the conservatives overturned previous decision. As mentioned, two previous cases were fully or partially overturned in the ruling. As it was debated,

² Whittington https://scholar.princeton.edu/sites/default/files/Originalism_Conservative_0.pdf

³ Hunter & Milofsky <https://link.springer.com/content/pdf/bfm:978-0-230-60305-9/1.pdf>

⁴ Britannica <https://www.britannica.com/event/Citizens-United-v-Federal-Election-Commission>

⁵ Cornell <https://www.law.cornell.edu/supct/html/08-205.ZS.htm>

⁶ Bill of Rights Institute

<https://billofrightsinstitute.org/activities/handout-h-citizens-united-v-f-e-c-2010-dissenting-opinion>

this was acknowledged by the dissenting justices, as *Austin vs Michigan Chamber of Commerce* expressly forbid corporations from using their treasury money for personal electoral contributions.⁷

Personally, and in opposition to the majority, I concur with the opinion expressed by the dissenting justices. It has been a hot button issue whether or not corporations should be entitled to the same degree of political speech as a common person, and the inclinations on the issue have changed over time.⁸ In large part, this debate is a debate of fiscal conservatism versus fiscal liberalism. It is the natural want of a group to suppress a group which does not support them; in this sense, it is a matter of the business owner versus the proletariat, to put it in the language of political thesis. Falling on the latter end of this economic spectrum, my natural inclinations are towards disallowing corporations from having extraneous influence over our government. Just as a liberal justice would say, my leanings are supported by pragmatism. Corporations, by merit of their practice, have a greater deal of money with which to influence government. An originalist or textualist may argue this is alright; corporations influencing government is a necessity for a pluralist democracy to function, after all. To the contrary, our modern government should lean into a populist interpretation. It is in the best interest of the most people for corporations to refrain from influencing the government, as it is directly in the interest of corporations to attempt to get the government to disenfranchise those below them; wage earners, the employed, etcetera. In this same vein, it may be seen as a matter of moral reasoning to disallow corporations from unduly influencing politics, as it is a near certainty they will attempt to worsen the lives of their lessers for the sake of personal benefit.⁹¹⁰

⁷ Oyez <https://www.oyez.org/cases/1989/88-1569>

⁸ MTSU <https://www.mtsu.edu/first-amendment/article/939/corporate-speech>

⁹ CRS <https://www.everycrsreport.com/reports/R45129.html>

¹⁰ Public Citizen

<https://www.citizen.org/article/corporate-sponsors-of-voter-suppression-state-lawmakers-50-million/>

