

Bipartisan Campaign Reform Act

This situation brought greater attention to soft money's influence on elections and highlighted how much that influence was able to subvert the spirit of the 1970s reforms. Senators John McCain (R-AZ) and Russ Feingold (D-WI) had pushed for greater campaign finance regulations since the mid-1990s. After some modification, the **Bipartisan Campaign Reform Act (BCRA)** of 2002, also known as the McCain-Feingold Act, finally passed the House with a 240–189 vote and the Senate with 60–40 vote, and President Bush signed it. The act banned soft money contributions to the national parties, increased the limits on hard money donations to \$2,000 from individuals (with future adjustments for inflation), \$5,000 from PACs, and \$25,000 from the national parties per election cycle. The law also placed an aggregate limit on how much an individual could donate to multiple candidates in a two-year cycle. Since then, the limit has been raised to \$2,700 per individual.

The BCRA prohibited PACs from paying for electioneering communications on radio or TV using campaign treasury money within 60 days of the general election and 30 days of a primary. To clear up who or what organization is behind a broadcasted advertisement, the McCain-Feingold law also requires candidates to explicitly state, “I’m [candidate’s name] and I approve this message.” That statement must last at least four seconds.

Though the law was dubbed bipartisan, the vote in Congress and the reaction to the law has been somewhat partisan, with more Democratic support than Republican. It was challenged immediately by then-Senate Majority Whip, Mitch McConnell (R-KY), in the courts and largely upheld. The 2010 case of ***Citizens United v. Federal Election Commission (FEC)***, however, overturned key parts of the law.



MUST-KNOW SUPREME COURT CASES: *CITIZENS UNITED V. FEC* (2010)

The Constitutional Questions Before the Court: Does the 2002 Bipartisan Campaign Reform Act's (McCain-Feingold Act) donation disclosure requirement violate the First Amendment's free speech clause, and is a negative political documentary that never communicates an expressed plea to vote for or against a candidate subject to the BCRA?

Decision: No and Yes for Citizens United, 5:4

Before *Citizens United*: *Buckley v. Valeo* (1976) upheld the limits on campaign contributions from individuals (\$1,000) and PACs (\$5,000) but ruled that candidates could contribute unlimited funds from their own money to their campaigns. It also ruled that there was no limit on total revenue or expenditures for campaigns.

Facts: The BCRA prevented corporations or nonprofit agencies from engaging in “electioneering communications,” primarily TV and radio campaign ads, 60 days before the general election. In 2008, the conservative group Citizens United produced *Hillary: The Movie*, a critique meant to derail Hillary Clinton's chance for the presidency. The law prevented the film's airing, regarding it as “electioneering communications,” but

the group appealed to the Supreme Court. The opportunity to broadcast the movie had passed by the time the Court issued its ruling, which has had a dramatic impact on campaign financing.

Reasoning: The Court ruled that part of the BCRA violated the First Amendment's free speech clause and that corporations, labor unions, and other organizations could use funds from their treasuries to endorse or denounce a candidate at any time, provided ads are not coordinated with any candidate. The majority opinion reasoned that the limitations amounted to censorship.

The Court reasoned further that just because a PAC or any entity entitled to free speech supports a candidate via advertising, that candidate does not necessarily owe anything to that PAC. There's no assumption that the donation is buying a favor from the candidate, which in any event is already criminal and punishable by statute.

The Court's Majority Opinion by Mr. Justice Anthony Kennedy, joined by Chief Justice John Roberts and Justices Antonin Scalia, Samuel Alito, and Clarence Thomas:

The law before us . . . makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. . . . These prohibitions are classic examples of censorship. Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. . . . If [this part of the law] applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. . . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. . . .

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. . . .

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

Since *Citizens United*: In 2014, in *McCutcheon v. FEC*, the Supreme Court ruled that the limit on how much a donor can contribute over a two-year election cycle was unconstitutional. To stay within that limit, the plurality of the Court argued, donors who could afford to give the maximum amount to a number of candidates would have to rule out some candidates and causes they might also wish to support. In that way, the Court ruled, their freedom of expression was unconstitutionally limited.

Political Science Disciplinary Practices: Analyze and Interpret Supreme Court Decisions

As you analyze the ruling in *Citizens United v. FEC* (or any other court case or law), compare it to other related cases or laws. Identify specific categories for comparison. If you are comparing Supreme Court cases, for example, the categories for comparison might include the constitutional principle at stake, the facts of the case, the decision, the makeup of the court, the historic time of the decision, and dissenting opinions,

among others. Creating these specific and relevant categories will help you sharpen the comparisons you make.

Apply: Complete the activities below.

1. Describe the facts of the *Citizens United v. FEC* case and the congressional regulation at issue.
2. Describe the claim the group Citizens United made about BCRA.
3. Explain how the Court's reasoning in *Citizens United* led to its ruling.

Impact of Citizens United

Debates over free speech and competitive and fair elections have increased since *Citizens United*. Free speech advocates, libertarians, and many Republicans view most campaign finance regulations as infringements on their freedoms, so they hailed the ruling. Others agreed with President Obama when he criticized the ruling at his 2010 State of the Union address as a decision that would “open the floodgates to special interests.”

In addition to allowing ads by outside or soft money groups immediately before an election, the Court's ruling also allowed for unlimited contributions to these groups from individual citizens and other organizations. This **dark money** has penetrated political campaigning, causing a lack of transparency about where the money originates. Even though political ads must express who is behind them, determining exactly where the money ultimately comes from is hard to do.

“*Citizens United* changed the culture at the same time that it changed the law,” according to Zephyr Teachout, Fordham University law professor and author of *Corruption in America*. “Before *Citizens United*, corporate or individual money could be spent with a good enough lawyer. But after *Citizens United v. FEC*, unlimited corporate money spent with intent to influence was named, by the U.S. Supreme Court, indispensable to the American political conversation.”

The ruling also concentrates who dominates the political discussion. Five years after the ruling, the Brennan Center at New York University found that of the \$1 billion spent, about 60 percent of the donations to PACs came from 195 people or couples. More recently, an analysis by OpenSecrets.org found that during the 2016 election cycle, the top 20 individual donors gave more than \$500 million to PACs. The 20 largest organizational donors also gave a total of more than \$500 million to PACs. And more than \$1 billion came from the top 40 donors. About one-fifth of political donations spent in all federal elections in 2016 came from dark money sources.

In the 2016 election cycle, special interests spent at least \$183.5 million in dark money, up from \$5.2 million in 2006. Of that, liberal special interests spent at least \$41.3 million, or 22.5 percent; conservatives spent most of the remaining amount.