



Citizens United v. Federal Election Commission & The First Amendment

Overview

Students will consider the scope of the protections provided by the First Amendment by learning about the Supreme Court of the United States case *Citizens United v. Federal Election Commission*. Through reviewing clips from the documentary *Citizens United v. Federal Elections Commission*, students will examine whether or not the First Amendment applies to corporations and if political contributions can be considered speech. Students will continue their exploration by participating in a small group, structured deliberation process, during which they'll deliberate the arguments of the case, focusing on whether our democracy should protect the speech of corporations. Through the process of deliberation, students will develop critical thinking and analytical reading skills, learn to support statements based on evidence and sound reasoning, identify areas of agreement and disagreement with classmates, and expand their argumentative writing skills. (Additional topics/readings for deliberation are available at www.deliberating.org.) Students can further demonstrate what they have learned by writing an editorial of their own as an optional homework assignment.

Grades

10-11

Course

Civics & Economics; US History

North Carolina Standard Course of Study for Civics & Economics

- Objective 2.06: Analyze court cases that demonstrate how the United States Constitution and the Bill of Rights protect the rights of individuals.
- Objective 4.04: Demonstrate active methods of promoting and inhibiting change through political action.
- Objective 5.06: Analyze roles of individual citizens, political parties, the media, and other interest groups in public policy decisions, dispute resolution and government action.
- Objective 6.06: Analyze the role of lobby groups and special interest groups in the enactment of legislation.
- Objective 8.07: Identify and describe the roles and functions of various economic institutions and business organizations.
- Objective 10.06: Discuss the consequences and/or benefits of the freedom of economic, legal, and political choices.

North Carolina Standard Course of Study for US History

- Objective 12.02: Evaluate the impact of recent constitutional amendments, court rulings, and federal legislation on United States' citizens.
- Objective 12.04: Identify and assess the impact of social, political, and cultural changes in the United States.

Materials

- Deliberation Readings 1, 2, & 3, attached
- Deliberating in a Democracy Lesson Procedures, attached (from www.deliberating.org)
- Handout 1-Deliberation Guide, attached (from www.deliberating.org)
- Handout 2-Deliberation Activities, attached (from www.deliberating.org)
- Handout 3-Student Reflection on Deliberation, attached (from www.deliberating.org)
- Homework Assignment, attached

Essential Questions:

- What rights are afforded by the First Amendment to the US Constitution?
- To whom do the fundamental rights outlined in the Bill of Rights apply?
- What constitutes "speech" under the First Amendment?
- How can speech be used to promote political action? Are there types of political speech that should be limited?

Duration

One class period

Student Preparation

To synthesize and culminate this lesson, students will participate in a deliberation. Through the structured steps of the deliberation process, students are set up to be successful in having a respectful and focused conversation around a controversial topic. However, it is still important for teachers to ensure students understand and agree to the “Rules for Deliberation” as noted on the attached Handout 1. For some classrooms, simply reviewing the rules as provided may be enough. If students tend to struggle with group work in general, or if the foundation for respectful communication is not already set, teachers may need to devote class time to focus on the expectations for deliberation and what each rule specifically means. An example of a way to introduce deliberation expectations in a more detailed process is:

- a) Explain to students that they will be discussing a highly controversial issue in class, and that to have a successful, mature conversation where everyone is heard, it is imperative that certain ground rules be set. Post a piece of chart paper in front of the class. Record student responses to the following questions:
 - When having a discussion and expressing your opinions out loud, how do you like to be treated? What makes you feel heard and valued? What does it take to make you feel safe to participate? Imagine a college classroom where students discuss issues with one another and their professor - What do you think the characteristics of that classroom and discussion are? How should a mature discussion look? Sound? Feel?
- b) Once comments wane, point out to students that they have noted some terrific traits, behaviors, and expectations for respectful deliberation, and that in order to discuss controversial issues in the class, they must exhibit the characteristics from their list. Ask students to unanimously agree to try their best to always abide by the very expectations they have developed. Teachers can go as far as asking students to sign the paper to pledge their commitment to respectful discussion at this point or after step “d.”
- c) Teachers may also want to ask students to brainstorm negative behaviors, or actions that would be unacceptable as part of a respectful deliberation. (Again, note these on chart paper.) Facilitate student thinking by asking:
 - When having a discussion and expressing your opinions, what types of treatment upset you? What makes you feel disrespected, ignored, or not valued? (Once a list has been compiled, again ask students if they can agree to try their best to not exhibit any of the negative attributes or actions that they themselves have noted that they don’t like.)
- d) Next, draw students’ attention to a posted list of the “Rules for Deliberation” (see the attached Handout 1-Deliberation Guide). Ask students if these rules provide a good summary of what they have shared (for example, if a student noted that they don’t like it when someone says “shut-up” during a discussion, that is covered under “Remain engaged and respectful when controversy arises.” If anything that students noted in their brainstorm does not fall under one of the general deliberation rules provided, teachers should add a rule covering it.
- e) Some students may actually need to practice the expectations, or see them in action, before fully understanding them. One way to do this is to break students up into small groups. Ask half of the groups to prepare a skit in which they illustrate a group deliberation/discussion that properly follows the rules; ask the other groups to prepare scenes that break the rules. Allow students to perform these skits in front of their classmates, and ask the audience members to evaluate what they saw:
 - a. Did this represent a positive or a negative discussion? Why?
 - b. How would participating in this group have made you feel? Why?
 - c. Would learning have taken place in this group? Why?
 - d. Why is it important that we make sure we follow the rules we have all created and agreed upon?

Teachers may want to have students consider the expectations and self-reflect on which expectation they think will be most challenging for them, either in writing or in a class discussion. If students share their thoughts out loud, other students can commit to assisting them in this area.

In truth, most students want to feel respected and valued, and they want to feel that their viewpoint matters. Thus, getting the class to buy-in to these “Rules for Deliberation” sets them up for a successful learning experience.

- f) Once students are prepared, begin the deliberation process following the attached “Deliberating in a Democracy Lesson Procedures.”

Procedure

Warm Up

1. Either write or display electronically the text of the First Amendment to the US Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. Ask students what it is they're seeing displayed on the board. After giving students time to consider and respond, explain that the statement is the US Constitution's Amendment I: Freedom of Religion, Press, and Expression.
3. On a whiteboard or piece of flip chart paper, create two columns—one labeled "What?" and another labeled "Who?" Ask students to reread the amendment carefully and begin facilitating a classroom discussion.
 - a. Ask the students *what* types of speech the First Amendment protects. Note student responses under the "What?" column as they respond. To further student thinking regarding particulars, pose questions such as: Does it protect complaints about the government? (*yes*) Does it protect hate speech? (*usually*)

Finally, lead students to consider political speech, asking them if the First Amendment protects political speech.

- Explain to students that political speech is one of the most highly guarded forms of speech because it is purely expressive and it is essential to a functioning republic.
 - Ask students for examples of political speech; these may include protests, demonstrations, rallies in support of an issue or candidate. List these under a subheading of "Political speech" in the "What?" column.
 - Then, ask students if they think campaign commercials are considered political speech: that is, are campaign commercials protected by the First Amendment?
 - Explain to students that under the Bipartisan Campaign Reform Act of 2002, also known as the McCain-Feingold Act, these types of communications were restricted. Specifically, the McCain-Feingold Act: prohibited all corporations, both for-profit and not-for-profit, and unions from broadcasting "electioneering communications. Electioneering communication was defined as a broadcast, cable, or satellite communication that mentioned a candidate within 60 days of a general election or thirty days of a primary.
 - Summarize for students the notes taken under the "What?" column: the First Amendment protects speech, but there are limitations on the types of speech it protects. One example of speech not protected by the First Amendment are "electioneering communications" defined in the McCain-Feingold Act.
- b. Next, ask the students *who* the First Amendment applies to. To get them started, pose questions such as "does it apply to every American?"; "does it apply to people of all ages?" As students brainstorm who the amendment applies to, take notes under the "Who?" column. Prompt students to generate as many ideas as possible about who the amendment applies to. After they are done brainstorming, review the list to see if anything is missing. Specifically, look for names of unions or corporations (i.e., nonprofit organizations, for profit companies, etc.). If no names of corporations are listed, then ask students "What about corporations such as Wal-Mart? Does the First Amendment apply to Wal-Mart?"

Documentary: *Citizens United v. Federal Election Commission*

3. Tell students that they are going to further explore who and what is protected by the First Amendment by watching portions of documentary on the US Supreme Court case *Citizens United v. Federal Election Commission*. Tell them that they should pay close attention to the facts of the case and the arguments being presented. No further introduction is necessary for the documentary. (*Teacher Note: the attached "Student Handout," which will be provided to students after they view the documentary, serves as a good teacher synopsis of the case.*) Do not reveal the Supreme Court's decision in regards to the case yet.

Start the documentary at the beginning, pausing and advancing as outlined below:

- **Discussion point #1.** Pause at 1:08
 - Who is David Bossie? What is his title and what does his organization do?
 - *David Bossie is head (the President) of Citizens United, a conservative advocacy organization in Washington, D.C.*
 - What tools does Citizens United use to publicize its positions?
 - *Press releases, videos, blogs, and now, full length documentaries.*
 - Why do you think Citizens United employs a variety of mediums to publicize its positions? Do people trust information that comes from some of these tools more than others?
- **Discussion point #2.** Advance DVD to 6:48 and pause at 9:20
 - What job did Bossie hold in the 1990s?
 - *Bossie was an investigator for the House Committee on Government and Oversight; he was involved in several investigations of the Clintons.*

- Bossie's states that the movie is not advocating for or against Hillary Clinton. He claims, "I never say in our films 'do this or do that;' we say here are the facts, remember this, and then go make up your own mind." Is it possible to represent a political position like that of Citizens United and provide balanced facts on a political issue?
- **Discussion point #3.** Advance DVD to 12:58 and pause at 16:09
 - When did Citizens United originally plan to release *Hillary: The Movie*? What was the rationale for this release date?
 - *They planned to release the movie in early 2008 based on the theory that Hillary Clinton would be the Democratic nominee for President and the film would be of interest from March through November 2008.*
 - What circumstances led to Citizens United releasing the movie sooner than planned?
 - *In an October 2007 debate among the candidates for the Democratic nomination, Clinton gave a confusing answer about whether she supported allowing illegal immigrants to obtain drivers licenses. According to Bossie, the moment she gave her answer, the wheels of her campaign started to come off. He became concerned that Clinton would be out of the race soon and no one would be interested in the movie.*
 - How did Citizens United market the film? In your opinion, do the examples showed on the DVD resemble campaign commercials?
 - *They marketed the films through a series of television ads.*
 - Why did Bossie want to advertise the film without the "express disclaimer" that is associated with political ads?
 - *He felt that the disclaimer would turn the movie ad into a political ad, and he believed that the disclaimer would detract from the ad's effectiveness.*
 - Do you agree with Bossie's analogy between the ad for *Hillary: The Movie* and an ad for *The Bourne Identity*?
 - Why did Bossie decide to file suit against the FEC (Federal Elections Commission)?
 - *He believed that being forced to add the disclaimer violated his First Amendment rights.*
- **Discussion point #4.** Advance the DVD to 18:32 and play through the end.
 - What evidence did the FEC give in stating that *Hillary: The Movie* was "express advocacy"?
 - *The FEC stated that Clinton was portrayed unfavorably and that the film had only had one message: Clinton was unsuited to be President. The message was conveyed through the selection of only anti-Clinton commentators.*
 - In his objection to the FEC's suggestion that Clinton was portrayed unfavorably, what example does Bossie provide?
 - *He points to a section of the film in which a commentator compares Clinton as a socialist. Bossie states that, for some people, this might be a good thing.*
 - The FEC points to the conclusion of *Hillary: The Movie* as removing any doubt that the film was intended to persuade viewers to vote against Clinton. After viewing the conclusion of the film, do you agree or disagree with the FEC's assertion?

Deliberating the Pro and Con Arguments in Citizens United v. Federal Elections Commission

4. Tell students they are going to work together to learn more about the *Citizens United* case and the arguments for and against the Supreme Court's decision on the case by participating in a deliberation.
 - Use the attached "Lesson Procedures" handout to lead students through the ten steps of the deliberative process.
 - For additional information regarding the deliberative process, including a video of how to set up the deliberation activity in your class, go to www.deliberating.org. Additional topics/readings for deliberation are also available here.
 - When distributing the Readings in Step 2 of the attached "Lesson Procedures," make sure each student has a copy of each of the attached Deliberation Readings 1, 2, & 3. The first reading provides general background information; the other two readings are editorials, each representing a different opinion.
 - During Step 4, share the following question for deliberation: Should our democracy protect the speech of corporations?
5. Optional: As a homework assignment, assign the attached editorial.



Lesson Procedures

Step One: Introduction

Introduce the lesson and the Student Objectives on the **Lesson Plan**. Distribute and discuss **Handout 1—Deliberation Guide**. Review the Rules of Deliberation and post them in a prominent position in the classroom. Emphasize that the class will deliberate and then debrief the experience.

Step Two: Reading

Distribute a copy of the **Reading** to each student. Have students read the article carefully and underline facts and ideas they think are important and/or interesting (**ideally for homework**).

Step Three: Grouping and Reading Discussion

Divide the class into groups of four or five students. Group members should share important facts and interesting ideas with each other to develop a common understanding of the article. They can record these facts and ideas on **Handout 2—Deliberation Activities** (Review the Reading).

Step Four: Introducing the Deliberation Question

Each **Reading** addresses a Deliberation Question. Read aloud and/or post the Deliberation Question and ask students to write the Deliberation Question in the space provided on **Handout 2**. Remind students of the Rules for Deliberation on **Handout 1**.

Step Five: Learning the Reasons

Divide each group into two teams, Team A and Team B. Explain that each team is responsible for selecting the most compelling reasons for its position, which you will assign. Both teams should reread the **Reading**. Team A will find the most compelling reasons to **support** the Deliberation Question. Team B will find the most compelling reasons to **oppose** the Deliberation Question. To ensure maximum participation, ask everyone on the team to prepare to present at least one reason.

Note: Team A and Team B do not communicate while learning the reasons. If students need help identifying the arguments or time is limited, use the **Deliberation Question with Arguments** handouts. Ask students to identify the most compelling arguments and add any additional ones they may remember from the reading.

Step Six: Presenting the Most Compelling Reasons

Tell students that each team will present the most compelling reasons to **support** or **oppose** the Deliberation Question. In preparation for the next step, Reversing Positions, have each team listen carefully for the most compelling reasons.

- Team A will explain their reasons for **supporting** the Deliberation Question. If Team B does not understand something, they should ask questions but NOT argue.
- Team B will explain their reasons for **opposing** the Deliberation Question. If Team A does not understand something, they should ask questions, but NOT argue.

Note: The teams may not believe in or agree with their reasons but should be as convincing as possible when presenting them to others.

Step Seven: Reversing Positions

Explain that, to demonstrate that each side understands the opposing arguments, each team will select the other team's most compelling reasons.

- Team B will explain to Team A what Team A's **most compelling** reasons were for **supporting** the Deliberation Question.
- Team A will explain to Team B what Team B's **most compelling** reasons were for **opposing** the Deliberation Question.

Step Eight: Deliberating the Question

Explain that students will now drop their roles and deliberate the question as a group. Remind the class of the question. In deliberating, students can (1) use what they have learned about the issue and (2) offer their personal experiences as they formulate opinions regarding the issue.

After deliberating, have students find areas of agreement in their group. Then ask students, as individuals, to express to the group their personal position on the issue and write it down (see My Personal Position on **Handout 2**).

Note: Individual students do **NOT** have to agree with the group.

Step Nine: Debriefing the Deliberation

Reconvene the entire class. Distribute **Handout 3—Student Reflection on Deliberation** as a guide. Ask students to discuss the following questions:

- What were the most compelling reasons for each side?
- What were the areas of agreement?
- What questions do you still have? Where can you get more information?
- What are some reasons why deliberating this issue is important in a democracy?
- What might you or your class do to address this problem? Options include teaching others about what they have learned; writing to elected officials, NGOs, or businesses; and conducting additional research.

Consider having students prepare personal reflections on the Deliberation Question through written, visual, or audio essays. Personal opinions can be posted on the web.

Step Ten: Student Poll/Student Reflection

Ask students: "Do you agree, disagree, or are you still undecided about the Deliberation Question?" Record the responses and have a student post the results on www.deliberating.org under the partnerships and/or the polls. Have students complete **Handout 3**.



Handout 1—Deliberation Guide

What Is Deliberation?

Deliberation (meaningful discussion) is the focused exchange of ideas and the analysis of arguments with the aim of making a decision.

Why Are We Deliberating?

Citizens must be able and willing to express and exchange ideas among themselves, with community leaders, and with their representatives in government. Citizens and public officials in a democracy need skills and opportunities to engage in civil public discussion of controversial issues in order to make informed policy decisions. Deliberation requires keeping an open mind, as this skill enables citizens to reconsider a decision based on new information or changing circumstances.

What Are the Rules for Deliberation?

- Read the material carefully.
- Focus on the deliberation question.
- Listen carefully to what others are saying.
- Check for understanding.
- Analyze what others say.
- Speak and encourage others to speak.
- Refer to the reading to support your ideas.
- Use relevant background knowledge, including life experiences, in a logical way.
- Use your heart and mind to express ideas and opinions.
- Remain engaged and respectful when controversy arises.
- Focus on ideas, not personalities.



Handout 2—Deliberation Activities

Review the Reading

Determine the most important facts and/or interesting ideas and write them below.

- 1) _____
- 2) _____
- 3) _____

Deliberation Question

Learning the Reasons

Reasons to Support the Deliberation Question (Team A)	Reasons to Oppose the Deliberation Question (Team B)

My Personal Position

On a separate sheet of paper, write down reasons to support your opinion. You may suggest another course of action than the policy proposed in the question or add your own ideas to address the underlying problem.



Name: _____

Date: _____

Teacher: _____

Handout 3—Student Reflection on Deliberation

Large Group Discussion: What We Learned

What were the most compelling reasons for each side?

Side A:

Side B:

What were the areas of agreement?

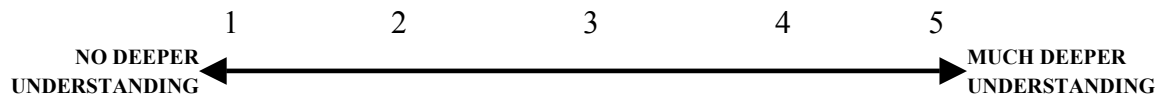
What questions do you still have? Where can you get more information?

What are some reasons why deliberating this issue is important in a democracy?

What might you and/or your class do to address this problem?

Individual Reflection: What I Learned

Which number best describes your understanding of the focus issue? [circle one]



What new insights did you gain?

What did you do well in the deliberation? What do you need to work on to improve your personal deliberation skills?

What did someone else in your group do or say that was particularly helpful? Is there anything the group should work on to improve the group deliberation?

DELIBERATION READING 1

Background Information on *Citizens United v. Federal Election Commission, 2010*

Circumstances of the Case

Citizens United is a non-profit corporation that receives most of its funds from individual donors, but also accepts a small portion of its donations from for-profit corporations. In January, 2008 Citizens United released a movie titled *Hillary: The Movie*, a 90-minute documentary that expressed opinions about whether Hillary Clinton would make a good President. At the time, Clinton was considered to be the likely Democratic nominee for President of the United States. Citizens United wanted to make the movie available through video-on-demand, but it was not sure if the Federal Elections Commission (FEC) would consider it “electioneering communication.” An electioneering communication was defined as “any broadcast, cable, or satellite communication” that “refers to a clearly identifiable candidate for Federal office”. The McCain-Feingold Act prohibited the distribution of any electioneering communications within 30 days of a primary election or 60 days of a general election.

Federal law also prohibited all corporations and unions from using funds from their general treasuries for express advocacy or for electioneering communications. However, corporations and unions could form separate political action committees (PACs) that could pay for electioneering communications. Additionally, federal law required disclosure of the sources of the funds used to make the communication (in this case, the money that paid for *Hillary: The Movie*).

Before proceeding and possibly facing civil and criminal penalties, Citizens United asked the Washington, DC District Court to declare the release to video-on-demand constitutional and to prevent the FEC from interfering with their plans. The court ruled against them and they appealed to the DC Circuit Court of Appeals, which also ruled against them. The Supreme Court of the United States heard the case twice: the first time the Supreme Court sent the case back to the trial court and the second time the Supreme Court ruled on the three legal questions posed in the case:

Legal Questions

- 1) Can Congress discriminate against the speech of corporations just because they are corporations?
- 2) Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)
- 3) Can Congress require Citizens United to disclose the sources of the funds used to produce *Hillary: The Movie*?

The Supreme Court of the United States’ Ruling on the Legal Questions

- 1) *Can Congress discriminate against the speech of corporations just because they are corporations?*
No. Suppression of speech just because the speaker is a corporation violates the First Amendment. The government was not able to prove that it had a compelling interest in regulating corporate speech.
 - 2) *Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)*
No. Limiting corporate independent expenditures (i.e., the money used to make *Hillary: The Movie*) is not constitutional under the First Amendment. However, the government may still regulate direct contribution to candidates, since direct contributions may appear more improper and cause a greater risk of corruption.
 - 3) *Can Congress require Citizens United to disclose the sources of the funds used to produce Hillary: The Movie?*
Yes. The disclosure requirements are constitutional, but there may be instances in the future where such disclosure could result in physical harm to donors. In those cases the requirements could be reconsidered.
-

DELIBERATION READING 2– Editorial A

The Chance for a Free Speech Do-Over

Will the Supreme Court finally overturn McCain-Feingold and enforce the First Amendment?

By Theodore B. Olson

Los Angeles Times, Published September 7, 2009

Public discussion about the character and fitness for office of presidential candidates is at the core of the First Amendment's command that "Congress shall make no law . . . abridging the Freedom of Speech." Yet Congress, in its zeal to impose onerous campaign-finance restrictions, has made political speech a felony for one class of speakers. Corporations and unions can face up to five years in prison for broadcasting candidate-related advocacy during federal elections.

Is outlawing political speech based on the identity of the speaker compatible with the First Amendment? Tomorrow, the Supreme Court will hear arguments to determine the answer to this question.

The case—*Citizens United v. Federal Election Commission*—involves a 90-minute documentary produced by Citizens United, a small nonprofit advocacy corporation. "Hillary: The Movie" examines the record, policies and character of the former New York senator, now Secretary of State, Hillary Rodham Clinton. The documentary was set to be broadcast during Mrs. Clinton's presidential primary campaign. But the broadcast was banned when the Federal Election Commission declared that the broadcast would violate the 2002 McCain-Feingold campaign finance law.

The government defends this restriction by saying that corporations and unions are uniquely capable of amassing great wealth and must therefore be prevented from overwhelming the voices of others during an election. Relying on a 1990 Supreme Court decision (*Austin v. Michigan State Chamber of Commerce*), the government characterizes this threat as a "type of corruption" on the peculiar theory that such expenditures do not "reflect actual public support for the political ideas espoused by corporations." Therefore, the government reasons, corporate expenditures "distort" the political process and must be banned.

In crafting McCain-Feingold, Congress acted without proof that such expenditures have any distorting effect on elections. And it responded to a nonproblem with a sledgehammer rather than a scalpel. The current ban on candidate-related speech is not limited to big corporations or powerful unions. It prohibits election advocacy by all unions and all corporations, regardless of size. It even criminalizes speech by nonprofit advocacy corporations such as Citizens United and the ACLU, which cannot conceivably distort or corrupt the political process.

The government claims the authority to suppress corporate and union speech not only in broadcast formats but also in books, pamphlets and yard signs. Put simply, the government's theory is that because wealthy corporations and unions might speak too much during elections, all of them must be silenced.

While the law prohibits even the smallest nonprofit groups from engaging in election advocacy, it exempts wealthy individuals, and it does not restrict the many advantages of incumbency for sitting members of Congress. A limitless loophole is also granted to the media. Thus the corporations that own NBC and ABC (GE and Disney, respectively), and corporations like The New York Times (or News Corp., owner of this newspaper), can express whatever views they want during campaigns.

Loopholes aside, the government's argument that speech may be outlawed because it does not reflect "public support for the ideas expressed" is absurd. It is the very antithesis of free speech.

Hard-charging campaign rhetoric is something that the First Amendment's authors had experienced firsthand. In making the choice between government-approved, polite discourse and boisterous debate, the Founders chose freedom. They did not say Congress could enact finely reticulated restrictions on speech. They said plainly that there could be "no law" abridging the freedom of speech.

The idea that corporate and union speech is somehow inherently corrupting is nonsense. Most corporations are small businesses, and they have every right to speak out when a candidate threatens the welfare of their employees or shareholders.

Time after time the Supreme Court has recognized that corporations enjoy full First Amendment protections. One of the most revered First Amendment precedents is *New York Times v. Sullivan* (1964), which afforded publishers important constitutional safeguards in libel cases. Any decision that determines that corporations have less protection than individuals under the First Amendment would threaten the very institutions we depend upon to keep us informed. This may be why Citizens United is supported by such diverse allies as the ACLU, the U.S. Chamber of Commerce, the AFL-CIO, the National Rifle Association and the Reporters Committee for Freedom of the Press.

Persons of modest means often band together to speak through ideological corporations. That speech may not be silenced because of speculation that a few large entities might speak too loudly, or because some corporations may earn large profits. The First Amendment does not permit the government to handicap speakers based on their wealth, or ration speech in order somehow to equalize participation in public debate.

Tomorrow's case is not about Citizens United. It is about the rights of all persons—individuals, associations, corporations and unions—to speak freely. And it is about our right to hear those voices and to judge for ourselves who has the soundest message.

Mr. Olson, an attorney at Gibson, Dunn & Crutcher, will deliver the oral argument on behalf of Citizens United before the Supreme Court tomorrow.

http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052970203585004574393250083568972.html

The Court's Blow to Democracy

NY Times, Published January 21, 2010

With a single, disastrous 5-to-4 ruling, the Supreme Court has thrust politics back to the robber-baron era of the 19th century. Disingenuously waving the flag of the First Amendment, the court's conservative majority has paved the way for corporations to use their vast treasuries to overwhelm elections and intimidate elected officials into doing their bidding.

Congress must act immediately to limit the damage of this radical decision, which strikes at the heart of democracy.

As a result of Thursday's ruling, corporations have been unleashed from the longstanding ban against their spending directly on political campaigns and will be free to spend as much money as they want to elect and defeat candidates. If a member of Congress tries to stand up to a wealthy special interest, its lobbyists can credibly threaten: We'll spend whatever it takes to defeat you.

The ruling in *Citizens United v. Federal Election Commission* radically reverses well-established law and erodes a wall that has stood for a century between corporations and electoral politics. (The ruling also frees up labor unions to spend, though they have far less money at their disposal.)

The founders of this nation warned about the dangers of corporate influence. The Constitution they wrote mentions many things and assigns them rights and protections — the people, militias, the press, religions. But it does not mention corporations.

In 1907, as corporations reached new heights of wealth and power, Congress made its views of the relationship between corporations and campaigning clear: It banned them from contributing to candidates. At midcentury, it enacted the broader ban on spending that was repeatedly reaffirmed over the decades until it was struck down on Thursday.

This issue should never have been before the court. The justices overreached and seized on a case involving a narrower, technical question involving the broadcast of a movie that attacked Hillary Rodham Clinton during the 2008 campaign. The court elevated that case to a forum for striking down the entire ban on corporate spending and then rushed the process of hearing the case at breakneck speed. It gave lawyers a month to prepare briefs on an issue of enormous complexity, and it scheduled arguments during its vacation.

Chief Justice John Roberts Jr., no doubt aware of how sharply these actions clash with his confirmation-time vow to be judicially modest and simply "call balls and strikes," wrote a separate opinion trying to excuse the shameless judicial overreaching.

The majority is deeply wrong on the law. Most wrongheaded of all is its insistence that corporations are just like people and entitled to the same First Amendment rights. It is an odd claim since companies are creations of the state that exist to make money. They are given special privileges,

including different tax rates, to do just that. It was a fundamental misreading of the Constitution to say that these artificial legal constructs have the same right to spend money on politics as ordinary Americans have to speak out in support of a candidate.

The majority also makes the nonsensical claim that, unlike campaign contributions, which are still prohibited, independent expenditures by corporations “do not give rise to corruption or the appearance of corruption.” If Wall Street bankers told members of Congress that they would spend millions of dollars to defeat anyone who opposed their bailout, and then did so, it would certainly look corrupt.

After the court heard the case, Senator John McCain told reporters that he was troubled by the “extreme naïveté” some of the justices showed about the role of special-interest money in Congressional lawmaking.

In dissent, Justice John Paul Stevens warned that the ruling not only threatens democracy but “will, I fear, do damage to this institution.” History is, indeed, likely to look harshly not only on the decision but the court that delivered it. The Citizens United ruling is likely to be viewed as a shameful bookend to *Bush v. Gore*. With one 5-to-4 decision, the court’s conservative majority stopped valid votes from being counted to ensure the election of a conservative president. Now a similar conservative majority has distorted the political system to ensure that Republican candidates will be at an enormous advantage in future elections.

Congress and members of the public who care about fair elections and clean government need to mobilize right away, a cause President Obama has said he would join. Congress should repair the presidential public finance system and create another one for Congressional elections to help ordinary Americans contribute to campaigns. It should also enact a law requiring publicly traded corporations to get the approval of their shareholders before spending on political campaigns.

These would be important steps, but they would not be enough. The real solution lies in getting the court’s ruling overturned. The four dissenters made an eloquent case for why the decision was wrong on the law and dangerous. With one more vote, they could rescue democracy.

<http://www.nytimes.com/2010/01/22/opinion/22fri1.html>

Homework Assignment: Reaction to Citizens United

You are an editorial writer for the renowned publication “The Post Times,” a newspaper known for providing cutting-edge political commentary. The Supreme Court of the United States has just handed down its decision in *Citizens United v. Federal Election Commission*. It’s already being deemed a landmark decision and your readers will be expecting a thoughtful editorial on this decision when they read their “The Post Times” at their desks tomorrow mornings.

Your assignment:

Write a 750-word editorial expressing your opinion about the *Citizens United* decision. Your editorial should address your thoughts on the following:

- Do you agree with the majority opinion that the First Amendment applies to corporations?
 - Why or why not? What evidence do you have to support your opinion?
- Do you agree with the majority opinion that Congress cannot limit the amount of money a corporation spends to support a political candidate?
 - Why or why not? What evidence do you have to support your opinion?

You know that all good editorials end with a compelling conclusion, so be sure to pull your argument together at the end of the editorial.
