

The ACLU and *Citizens United*

In *Citizens United*, the Supreme Court ruled that independent political expenditures by corporations and unions are protected under the First Amendment and not subject to restriction by the government. The Court therefore struck down a ban on campaign expenditures by corporations and unions that applied to non-profit corporations like Planned Parenthood and the National Rifle Association, as well as for-profit corporations like General Motors and Microsoft.

That decision has sparked a great deal of controversy. Some see corporations as artificial legal constructs that are not entitled to First Amendment rights. Others see corporations and unions as legitimate participants in public debate whose views can help educate voters as they form their opinions on candidates and issues.

We understand that the amount of money now being spent on political campaigns has created a growing skepticism in the integrity of our election system that raises serious concerns. We firmly believe, however, that the response to those concerns must be consistent with our constitutional commitment to freedom of speech and association. For that reason, the ACLU does not support campaign finance regulation premised on the notion that the answer to money in politics is *to ban political speech*.

At the same time, we recognize that the escalating cost of political campaigns may make it more difficult for some views to be heard, and that access to money often plays a significant role in determining who runs for office and who is elected.

In our view, the answer to that problem is to expand, not limit, the resources available for political advocacy. Thus, the ACLU supports a comprehensive and meaningful system of public financing that would help create a level playing field for every qualified candidate. We support carefully drawn disclosure rules. We support reasonable limits on campaign contributions and we support stricter enforcement of existing bans on coordination between candidates and super PACs.

Some argue that campaign finance laws can be surgically drafted to protect legitimate political speech while restricting speech that leads to undue influence by wealthy special interests. Experience over the last 40 years has taught us that money always finds an outlet, and the endless search for loopholes simply creates the next target for new regulation. It also contributes to cynicism about our political process.

Any rule that requires the government to determine what political speech is legitimate and how much political speech is appropriate is difficult to reconcile with the First Amendment. Our system of free expression is built on the premise that the people get to decide what speech they want to hear; it is not the role of the government to make that decision for them.

It is also useful to remember that the mixture of money and politics long predates *Citizens United* and would not disappear even if *Citizens United* were overruled. The 2008 presidential election, which took place before *Citizens United*, was the most expensive in U.S. history until that point. The super PACs that have emerged in the 2012 election cycle have been funded with a significant amount of money from individuals, not corporations, and individual spending was not even at issue in *Citizens United*.

Unfortunately, legitimate concern over the influence of “big money” in politics has led some to propose a constitutional amendment to reverse the decision. The ACLU will firmly oppose any constitutional amendment that would limit the free speech clause of the First Amendment.