

## Corporate Free Speech v. Free Elections: A Political Economic Analysis of Network News Transcripts Surrounding *Citizens United v. Federal Election Commission*

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*On January 21, 2010, the United States Supreme Court sided with nonprofit organization, Citizens United, in its case against the Federal Election Commission. The nonprofit argued that it should be able to broadcast political speech anytime during an election citing freedom of speech. The Citizens United case paved the way for SpeechNow.Org v. FEC and a few advisory opinions by the Court that legitimized unlimited corporate, union, and wealthy individual political spending in the form of Super PACs. Using a political economic interpretive lens, this analysis focuses on ABC, CBS, and NBC news coverage of Citizens United v. FEC. The ruling and media coverage is evaluated by how it is problematic in terms of freedom of speech, the normative role of the news media in a democracy, and the ever-changing public sphere. This study finds that although the broadcast networks had much to gain from the ruling, the reporters and anchors failed to disclose that conflict of interest and instead, focused on the controversy of the decision by framing it as a partisan issue and a bitter argument between President Obama and the Supreme Court without providing insight into how it might change elections or lead to political corruption.*

Keywords: Citizens United, Federal Election commission, SpeechNow.org, “Hillary”

“Ruthless, vindictive, venal, sneaky, ideological, intolerant, liar,”-are just some of the adjectives used to describe then-presidential hopeful, Sen. Hillary Clinton, in the documentary *Hillary: The Movie*'s online trailer. Cast members involved with the conservative non-profit, Citizens United, in the film's production included Ann Coulter, Lawrence Kudlow, and Robert Novak. Under the 2002 Bipartisan Campaign Reform Act, films such as *Hillary: The Movie*, were outlawed the month before a primary election and three months before a general election. Citizens United was prohibited from distributing the film in theaters and on pay-per-view by the Federal Election Commission. By November 2008, Citizens United filed a lawsuit against the Federal Election Commission and lost in the district court. The United States District Court for the District of Columbia ruled that the film was "susceptible of no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary

Clinton world, and that viewers should vote against her" (Rucker, 2010, ¶8). On January 21, 2010, the Supreme Court overruled the district court's decision and decided that *Hillary: The Movie* was a legal form of Citizens United's freedom of speech and could be aired at anytime during or prior to an election. Corporations and unions now have free reign to spend as much money as they wish to campaign for or against candidates at any point in an election.

This research paper uses a political economic approach to analyze network news broadcasting discourse surrounding the 5-4 Supreme Court ruling *Citizens United v. the Federal Election Commission*. The paper explains the history of campaign finance law and what the current ruling means for democracy. The ruling and media coverage is evaluated by how it is problematic in terms of freedom of speech, the normative role of the news media in a democracy, and the ever-changing public sphere.

As such, this paper answers three questions: What does it mean for democracy when corporations are given the same rights as citizens? What ideologies were perpetuated during broadcast news coverage of the Supreme Court decision? How is the Court's ruling and the media's coverage problematic when one considers freedom of speech and the normative role of the media in a democracy?

This paper will first examine free speech and the normative role of media in a democracy. It will then discuss the history of federal election campaign finance laws and the impact of the January 21, 2010 Supreme Court ruling. Finally, it will provide an analysis of network news television transcripts that mention the Court's ruling.

According to the Federal Election Commission, the issue of money intruding on politics has been a concern in American elections for over 100 years. Research on television media's coverage of the Court's ruling on this specific case is important because the mainstream media stand to make Super Bowl-like profits by selling commercial air time to corporations and unions during elections. Broadcasters are legally required to give candidate advertisements the lowest rate, but can profit from outside organizations' election spending. Nearly half a billion dollars was spent on broadcasting political advertisements just in the 2008 general election (Scheinkman et

al., 2008). Since network news media relies on selling commercials to generate profits, it is important to make sure that the news media are doing their job when reporting on issues that affect citizens. The recent Supreme Court ruling, while beneficial to corporations, unions, and broadcast television, is problematic for citizens. Granting corporations the same rights as citizens is actually granting them *more* rights in political elections than citizens have because corporations have millions of dollars available to them to spend. The following discussions of political economy of media and the normative role of media in a democracy should help to decipher what the media ought to be achieving before turning to the analysis of how the Court decision was actually covered.

#### *Political Economy of Media*

Vincent Mosco defines political economy as: “The study of the social relations, particularly the power relations, that mutually constitute the production, distribution, and consumption of resources” (2009, p. 24). These “resources” are the “newspapers, books, videos, films, and audiences” produced by media outlets (Mosco, 2009, p. 24). A political economist of media studies the many layers of production and distribution from ownership of the different corporations involved in the making of a media product to the product’s marketing and consumption (Mosco, 2009). One subset of political economy theories, critical political economy, borrows from the ideas of Marx. It is important to discuss media in capitalistic economies using a critical approach because the media take on multiple powers within society attempting to mesh profit-seeking businesses with a duty to inform the public which, according to Oscar Gandy Jr. (1992), gives the mass media an “ideological role” (p. 36). Gandy (1992) explains, “Political economy to the study of mass communication is uniformly critical of the status quo in theory as well as in the systems that the theory seeks to understand” (p. 24).

The commercial media thrive within a capitalist economy and therefore stand to lose possible profit by questioning it. Less than 30 years ago, when Ben Bagdikian first published *The Media Monopoly*, he worried that the media were controlled by only fifty owners. Today, in his newly titled 2004 edition, *The New Media Monopoly*, there are

only five owners of all mainstream media (see Bagdikian, 2004; Bettig & Hall, 2012; McChesney, 2008; & Meehan, 2005). This is due to a series of political decisions by the Federal Communications Commission and because without proper regulation, capitalism leads to concentration (McChesney, 2008). Jhally (1989) argues that capitalism is oppressing society: “We should recognize that the marketplace does not automatically ensure diversity, but that (as in the example of the United States) the marketplace can also act as a serious constraint to freedom” (p. 81). Jhally (1989) and Robert McChesney (2008) both discuss the fact that human emotions and values are viewed as traits to be commodified by the mainstream media in order to gain consumers and sell more advertisements. Americans may be tempted to see democracy and capitalism as going hand in hand. One without the other may be viewed as incomplete. As David Harvey (2005) would argue, this ideology is perpetuated in the United States because it is beneficial to those in power. The neoliberal ideology, which supports a profitable corporate sector with as little government intervention as possible, seeks to allow those in power to keep the power at the expense of everyone else in a society (Harvey, 2005). This goal is achieved through deregulation and privatization that charades as the only way to ensure personal freedoms (Harvey, 2005). The media are run on advertising revenue and owned by only a handful of people, not because that is the only way the system could exist, but because of a series of FCC deregulations that serve corporate interests rather than the interests of citizens (McChesney, 2008). McChesney (2008) writes, “in the United States it generally has been assumed, even by critical scholars devoted to social change, that a profit-driven, advertising-supported corporate media system was the only possible system” (p. 492). Since the Cold War, it seems to have become un-American to question capitalism. Why is this the common ideology in the United States? McChesney (2008) argues, “The strength of the corporate status quo was not that it was so popular or democratic, but, rather, that it cultivated the notion that there was no alternative to the status quo; it had been mandated by the Founding Fathers, Adam Smith, or God, or some combination there of” (p. 497.) As long as the

news media is reliant on advertising dollars there is an immediate and pressing need for watchdogs of the watchdog.

*Free Speech & the Normative Role of the Media in a Democracy*

The First Amendment grants the press the same freedom of speech enjoyed by individual citizens. If the quality of a country's journalistic press is in any way a reflection of the fitness of that country's democracy, then the past ten years have certainly been a rough patch for the United States. Lack of original and investigative mainstream media coverage during 9/11, The War on Terror, Hurricane Katrina, and the Iraq War are examples of recent journalistic failures (Bagdikian, 2004; McChesney 2008; Tierney et al., 2006).

The press was granted freedom of speech by the Founding Fathers because democracy relies on a knowledgeable citizenry to vote and ensure that government is representing the people. Journalists should serve as a watchdog to protect citizens from propaganda put forth by government, people, or corporations. Before the January 21, 2010, Supreme Court decision, freedom of speech in elections was exclusive to individual citizens and the institution of the media. As President Abraham Lincoln exclaimed in the Gettysburg Address, the United States government is intended to be a "government of the people, for the people, by the people." When radio broadcasting began using the public airwaves in the 1920s, they had to agree to use those waves to "serve the public interest, convenience, and necessity" (The Benton Foundation, 2005).

Thus, the Founding Fathers believed that a free and balanced media is required for democracy. McChesney (2008) explains the normative role of media in a democracy: Democratic theory generally posits that society needs a journalism that is a rigorous watchdog of those in power and who want to be in power, can ferret out truth from lies, and can present a wide range of informed positions on the important issues of the day. Each medium need not do all of these things, but the media system as a whole should make this caliber of journalism readily available to the citizenry (p. 25).

McChesney's (2008) interpretation of what American journalism ought to be accomplishing may be easier to envision if all of the major news organizations were not owned by only five conglomerates. According to political economic theory, concentrated ownership due to mass commercialization and profit-driven business goals are the main causes for inadequate news coverage. Bettig & Hall (2012) claim that concentrated ownership is problematic for citizens, "Mergers produce no real benefits to society, only to investors" (p. 20). In today's media climate, citizens are not getting a diverse range of opinions. Consumers are given the appearance of choice, but all of these choices are being created by the same few companies.

If one agrees that a free press is a necessity in a democracy, then one would expect a diverse range of voices and opinions to be amplified by the news media. One would also anticipate a media that reports on news that is relevant to citizens rather than the news that would be beneficial to only elites and politicians. The news of the day should include independent research and investigation by journalists as well so that representatives of the people can be held accountable more readily by citizens.

McChesney (2008) defines the journalism ideal:

What exactly does a democratic journalism entail? I believe it must provide a rigorous accounting of people who are in power and people who wish to be in power, in both the government and corporate sector. It must have a plausible method to separate truth from lies, or at least prevent liars from getting away scot-free. And it must provide a wide range of informed opinions on the most important issues of our times; not only the issues of the day, but the major issues that loom on the horizon (p. 118).

Overall, the normative role of media in a democracy is to inform the citizenry of previous, current, and impending issues. As McChesney (2008) explains, achieving this ideal is not the responsibility of one organization. Rather, a diverse group of media practitioners should work independently to cover the news and all of them together should represent and carry out the normative role of media in a democracy.

That fact that all of Americans' news comes from only five sources is problematic because the type of journalism described above is required for a working

democracy. Bagdikian (2004) and McChesney (2008) both make the claim that rather than being the American citizens' watchdog, the media have taken over the role of being corporate "lapdogs." McChesney (2008) argues that journalism needs democracy just as much as democracy needs journalism (p.152). An informed citizenry could plausibly lead to a more deliberative democracy which may reignite another necessary aspect of a working democracy, Habermas' (1989) public sphere, or Fraser's (1997) public spheres.

### *The Public Sphere*

In *The Structural Transformation of the Public Sphere* (1989), Jurgen Habermas explains the concept of the "public sphere" as a place where one's private life and political life connect by talking to others about matters of the political realm. Conversely, Habermas argues that public life only was discussed within the public sphere and private life was better left elsewhere. Members of the middle and upper classes, or Bourgeoisie as Habermas referred to them, deliberated and came to conclusions about what path government should take during their deliberations. In Habermas' view, government is not valid without the approval of a democratic public sphere. Habermas attempted to argue that within his idea of the public sphere, which he claims existed in the 1700s, social classes were ignored. He concedes that the public sphere never reached perfection and unraveled in part due to the commodification of citizens as consumers of media and advertising.

Nancy Fraser provides a feminist critique of Habermas' public sphere, pointing out that class, gender, and race do matter and that the imagined sphere where those issues were overlooked never existed. Fraser (1997) writes in *Rethinking the Public Sphere*, "The theory should render visible the ways in which social inequality taints deliberation within publics in late-capitalist societies" (p. 92). In the case of the 18th century, anyone who did not own property, which would include nearly all women, had no say in political dealings. Fraser (1997) further finds issue with the concept of personal versus public issues because certain groups may categorize issues differently. In order to truly be democratic, Fraser (1997) prescribes not one public sphere, but

several, in hopes of attaining easier accessibility as well as permitting voices to be heard that may otherwise be silenced by a more powerful majority.

Iris Marion Young (2000) joins thoughts of the public sphere and political economy by addressing the great power media hold and their tendency to try to hide that power while using it for their own advantage. The media do hold great power and a great pocketbook. Perhaps the best way to outmaneuver the media conglomerates is through social movements and civic activism that reveal their power and any slip-ups that they make (Young, 2000). Young (2000) views activism as a way to gain political identity. She writes, “We should judge the health of the public sphere by how well it functions as a space of opposition and accountability, on the one hand, and policy influence, on the other” (p. 173). Through activism, Young argues, a democracy may gain a more fit public sphere because citizens would be directly engaged in changing policies. Thus, a sign of health in democracy is when citizens are interested in taking a part in the political world, not when they blindly follow government promulgation out of a twisted sense of nationalism. Perhaps the same thermometer could be used to measure the health of journalism within a democracy. It is imprudent for the news media to be nationalistic, as it is their most important job to serve as a watchdog for citizens. It is not possible for the media to do their job when they see the people as consumers rather than as citizens.

The public sphere should be a place where citizens come together to discuss what is happening in the world. With a diverse and widely available media system, one would expect the debates of the public sphere(s) to be lively and also unique from one another. The local, national, and international news of the day would be equally well-covered by the media in order to inform the citizens of each area. The public-serving media functioning within a democracy would therefore create a climate where the public sphere(s) would include citizens who were as well-informed as they wished to be about current events and important topics within their communities, free from corporate, government, and commercial interests. If the media were functioning as they should in a democracy, then court and political decisions would be made in the best interests of its citizens rather than in the best interests of corporations. The

following discussion of the present state of campaign finance law may lead one to believe that American media, as well American democracy, are not functioning at their highest potential.

*History of the Federal Election Commission*

According to the Federal Election Commission, attempts to outlaw corporate money from interfering with elections began as early as 1903 during President Theodore Roosevelt's term when he feared that money might begin to sway the outcome of free elections. In reaction, many laws were drafted between the years of 1907 and 1966 to:

Limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections; Regulate spending in campaigns for federal office; and Deter abuses by mandating public disclosure of campaign finances (Federal Election Commission, 2004, ¶3).

In 1971, election laws were amalgamated in the Federal Election Campaign Act (FECA). It wasn't until 1974, after President Nixon's reelection and rumors of financial misconduct, that the Federal Election Commission was created to help enforce the law (Federal Election Commission, 2004). FECA forced candidates to make all donors and contribution amounts to their campaigns public and also put caps on how much individuals and groups could give to candidates. It outlawed donations from corporations, unions, federal government contractors, and foreigners. However, FECA allowed unlimited amounts of money to be spent independently promoting or protesting specific candidates so long as the creators of the communication identified themselves clearly within the advertisement (Federal Election Commission, 2004). Roosevelt's fear of elections becoming unfair due to corporate donations was finally taken seriously at this time and his plan of federal election public funding began to develop (Federal Election Commission, 2004).

In 2002, the Bipartisan Campaign Reform Act (BCRA) created the first major amendments to the Federal Election Campaign Act. The BCRA was headed by Republican Senator John McCain and Democratic Senator Russell Feingold. It sought more severe restrictions on the previously unchecked finances in elections. The

BCRA changed FECA by banning “soft money” from being spent by local, state, and national parties. The BCRA also created a section on “electioneering communication” which was defined as “any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)” (Cornell University Law School, 2003). Corporations, labor unions, and nonprofit organizations were included in those outlawed from “electioneering communication” until the recent 5-4 decision in *Citizens United v. the Federal Election Commission*. The laws are intended to create a boundary line between campaign finances and special favors for special interests. The Supreme Court decision not only did away with the boundary, but it essentially gave corporations citizenship and the ability to vote with their money. The Court’s decision started with a documentary created by right-wing nonprofit, Citizens United.

#### *Citizens United*

According to the organization’s Web site, “Citizens United seeks to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security. Citizens United's goal is to restore the founding fathers' vision of a free nation, guided by the honesty, common sense, and good will of its citizens” (<http://www.citizensunited.org/about.aspx>, 2010, ¶1). The organization is actually a 501(c)4 social welfare organization. 501(c)4s are known by their tax codes and only have to disclose donors to the Internal Revenue Service rather than publicly. These organizations can donate to Super PACs without a transparent money trail back to the original donors.

Citizens United created a documentary critical of presidential candidate Hillary Clinton titled, *Hillary: The Movie*. The film’s trailer alone includes eight counts of name-calling and a quotation that Senator Hillary Clinton is “steeped in sleaze.” According to the *Washington Post*, the only compliment in the film comes from Ann Coulter who says that the senator “looks good in a pants suit” (Rucker, 2010, ¶2). The nonprofit organization planned to show the film on cable television and in some theaters, but according to the BCRA, the film fell into the category of “electioneering

communication” and therefore could not be shown one month before a primary or two months before a general election. Citizens United sued the Federal Election Commission citing that censoring the film was a threat to the organization’s freedom of speech. The lower court held with the Federal Election Commission and claimed that the film was "susceptible of no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her" (Rucker, 2010, ¶8). At the Supreme Court level, however, Citizens United won 5-4 and the Court cited the film as legal expression of its freedom of speech. In the opinion of the Court, the Supreme Court stated, “There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations. Yet television networks and major newspapers owned by media corporations have become the most important means of mass communication in modern times” (Supreme Court of the United States, 2009, p. 37). Indeed, the Supreme Court ruled in *First Nat. Bank of Boston v. Bellotti* that corporations have First Amendment rights to freedom of speech.

Justice Anthony Kennedy delivered the opinion of the Court and explained that people as well as groups of people should have their speech protected and that because spending money is necessary to disseminate that speech, corporations should be permitted to spend money on political speech. The majority opinion also showed concern that if spending money on political speech was not legalized, then books and even some blogs may fall under the category of “electioneering communications” and be deemed illegal during elections. Justice John Paul Stevens dissented, writing that allowing unlimited spending also allows those individuals and groups to have access to political candidates, and even threaten them in order to receive favorable treatment, which opens the door for corruption. “It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves

members of ‘We the People’ by whom and for whom our Constitution was established” (*Citizens United v. FEC*, 2010, p. 76). Justice Stevens made several key points in the 90-page dissent addressing the issue of corporate money being used to unfairly influence elections and claimed that the fear of media censorship, such as books, was not legitimate and was not brought up by the case in the first place. The decision was made 5-4, along ideological lines. It seems U.S. elections have always been just one Court Justice away from such a decision.

The precedent could mean many different things for the future of elections – and for the pocketbooks of media owners. *Citizens United* refers to the ruling as a victory for voters, claiming that they will now receive a more diverse set of messages since both unions and corporations can rally around candidates and produce independent advertisements. President Obama referred to the change as, “A major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power everyday in Washington to drown out the voices of everyday Americans” (quoted in Liptak, 2010, ¶5). Obama joined other Democrats worrying that it will become even easier for corporations to trade mass amounts of support in the form of money for special favors from candidates should they be elected. It will also create problems for candidates who now may feel pressured to bend to the needs of corporations or risk being bombarded with negative advertisements created by big businesses to keep them from winning elections.

Super PACs were made possible on July 22, 2010, after one Supreme Court ruling, one district court ruling, and two Federal Election Commission advisory opinions. As discussed, the Supreme Court ruled in *Citizens United v. FEC*, that political speech is a version of freedom of speech that can be equated to freedom of spending and should be extended to unions and corporations without limit so long as those groups do not coordinate with candidates or their campaigns. The Justices decided that there was not enough evidence to support the claim that outside money in elections leads to corruption.

A few months after *Citizens United*, in the District of Columbia District Court, the justices determined in *SpeechNow.Org v. FEC* that groups may collect general funds

from individuals as well as from corporations and unions. In advisory opinions to *Club for Growth, Inc* and *Commonsense 10*, the FEC concluded that a political action committee could get money from people and groups outside of the corporation with whom it is affiliated without limit under a new title, an independent expenditures-only committee. Further, the original PAC treasurer, who does coordinate with candidates and campaigns could also be the treasurer of the expenditures-only committee so long as the accounts were kept separate. Shortly after these decisions, independent expenditures-only committees became known as Super PACs by politicians and the media (Briffault, 2012).

If one believes that the United States' three network news sources have a duty to "serve the public interest, convenience or necessity," then one would predict that the coverage of the Court's decision would be informative, investigative, full of diverse opinions, and complete with a history of campaign finance law (The Benton Foundation, 2005). The following section is an original analysis of all network news coverage surrounding the Supreme Court's decision.

#### *Super PACs*

In October 2012, Free Press studied how broadcasters dealt with the onslaught of Super PAC advertisements prior to and during the first Presidential debate in Denver, Colorado in August and September. Free Press concentrated its study on the five Super PACs that spent the most in Denver: American Crossroads, Americans for Prosperity, Restore Our Future, House Majority PAC, and Priorities USA Action. Together, the groups spent more than \$6.5 million to purchase airtime for nearly 5,000 advertisements (Karr, 2012). Free Press was interested in finding out how well Denver broadcasters fact-checked the often-misleading advertisements from which they were profiting. It found that for every one minute of news stories, there were 162 minutes of advertisements. In total, there were less than 11 minutes of news coverage devoted to the five Super PACs, compared to 29 hours of advertisements. Further, Free Press notes that "stations kept airing ads that their reporters found were false or misleading" (Karr, 2012, p. 3). Stations legally can and should reject advertisements that are misleading as research from public policy groups have found that fact

checking stories leave viewers more informed about political issues (Karr, 2012). Free Press concludes, “There’s a clear pattern in Denver. And it matches what we have found in other battleground markets. Stations continue to air ads from organizations like those discussed here, even after their newsrooms expose the groups for spreading misinformation” (Karr, 2012, p. 8).

Brooks and Murov (2012) used pretest and posttest survey methods to measure both backlash against and the persuasiveness of Super PAC advertisements in the 2010 election. In their testing, Brooks and Murov (2012) tested three different types of ads: those without a sponsor, those with a candidate sponsor, and those sponsored by an unknown independent group. The findings supported exactly what candidates and Super PACs must have already known. Attack ads are accepted more favorably if they are created by an unknown group than they are if they are created and sponsored by the candidate him/herself. Brooks and Murov (2012) explain, “This study indicates that candidates have every reason to hope for an unofficial division of labor, in which independent groups that are unaccountable to voters will do the dirty work of running these kinds of harsh attack ads that the candidates would rather not do themselves” (p. 404). Further, the utilization of 501(c)s to protect the identity of certain groups has tripled since 2004, according to the Campaign Finance Institute, allowing groups to avoid backlash from consumers, members, and shareholders (Brooks & Murov, 2012). McChesney and Nichols (forthcoming) argue in their new book on political corruption, *Dollarocracy*, that the negative advertisements often utilized by Super PACs are created with the intent of getting the opponent’s supporters to stay home rather than vote.

Critical studies of news coverage of Super PACs like the Free Press study discussed above are currently quite rare. This is likely because even though there are hundreds of Super PACs registered with the FEC today, they are a phenomenon that is only a few years old. Most academic studies of Super PACs to date are concerned with what a Super PAC is and what the future of elections might look like rather than focusing on the messages of their advertisements themselves and if the news media is informing the public about them (see Bartelt, 2012; Briffault, 2012; and Gordon,

2012). While Super PACs are currently under-studied because of their relative newness, there have been many studies of PAC advertisements.

Much of the literature on political action committees (PACs) focuses on to what extent there is conflict between corporate donations to politicians. They question whether there is more solidarity between corporate PACs or union PACs using support to partisan candidates as a measure for quantitative analysis. There is little critical research of PACs.

While findings vary a bit, it is generally agreed that there is a high level of unity between corporate groups and also between unions when analyzing which candidates' PACs they have historically funded (See Banthin & Stelzer, 1986; Clawson & Su, 1990; Jorgensen, 2010; Mizruchi, 1990; & Neustadt, Scott & Clawson 1991). Generally, unions are a bit more unified than corporations. Previous literature shows that even prior to Super PAC spending, there was concern about corporate power in elections and groups using that power to get pro-business candidates elected.

In 2007, Cebula used 40 variables to analyze voting behavior and how PAC contributions may have contributed to that behavior. The study found that contributions by PACs to Congressional campaigns appeared to reduce voter participation "significantly" (Cebula, 2007, p. 411). Research today continues to show that the more saturation of unidentified negative advertisements, the more likely voters are to become apathetic. Nichols and McChesney (2012) write that "citizens are checking out" thanks to the excessive, and often negative, Super PAC advertising (para. 29). This perceived corruption when combined with a lack of investigative journalism may leave citizens feeling as though there is little reason to vote.

#### *Network News Television Coverage*

The examples of mainstream media's inadequacy during times of war and crisis may lead one to wonder what sorts of other reporting issues exist just under one's nose when the news of the day is reported. Baird and Gagl's (2006) research on one Supreme Court case has shown that media coverage matters in terms of public opinion. "The results lend strong support for the notion that there is an important link

between how the media covers Court decision-making processes and public perceptions and evaluations of the institution” (Baird & Gangl, 2006, p. 603).

ABC, CBS, and NBC, aired only 15 broadcast news stories regarding the corporate and union campaign finance decision. This section analyzes the news transcripts that were found on Lexis-Nexis using the search terms “campaign finance” and “supreme court” between the dates of January 1, 2010 and March 20, 2010. The coverage is separated into two categories: Stories following the Court’s decision and stories following the State of the Union after President Obama criticized the decision and Justice Alito reacted negatively by shaking his head on live television and mouthing that Obama’s comments weren’t true. The State of the Union address spurred an onset of broadcast news stories about the exchanges between President Obama and the Court’s Justices during and after the speech.

### *ABC*

Of the three networks, ABC had the most stories on the Court’s decision, airing a total of eight stories. Five were aired in the days directly following the decision and three were aired after President Obama’s State of the Union address.

Although ABC gave the most airtime to the Supreme Court’s decision, it also had some of the most problematic coverage. In *World News with Diane Sawyer*, Diane Sawyer referred to the Court’s decision as a “blockbuster.” The story followed what became a typical format: clips from *Hillary: the Movie*, keywords “freedom” and “censorship” and prepackaged elite quotes; this story’s elites were comprised of Republican election attorney, Benjamin Ginsberg and Justice John Paul Stevens. Ginsberg stated, “The more voices that are heard in the marketplace of ideas and politics, the better off voters are, the better off the system is” (Sawyer, 2010a, para. 7). Perhaps in an attempt at balance, Justice John Paul Stevens was cited next: “At bottom, the court’s [sic] opinion is thus a rejection of the common sense of the American people” (Sawyer, 2010a, para. 8). ABC *Nightline* co-anchor Terry Moran ended the story with what could be construed as criticism, “Every time a member of the House of Representatives or a senator takes a vote right across the street here, they’ll be thinking about all that new money and whether it will be for them or against

them” (quoted in Sawyer, 2010a, ¶12). When the camera returned to anchor Diane Sawyer, she simply said, “Again, a blockbuster decision, as we said” (Sawyer, 2010a, ¶13). The coverage seemed to criticize while simultaneously sensationalizing the decision by referring to it as a “blockbuster” repeatedly. *Nightline* followed the story later in the evening and rather than giving any information regarding the decision, it included five sentences during its “Closing Argument” segment at the end of the show. Only two of the five sentences were informative, both including a summary of elite quotes, this time from Justice Anthony Kennedy and Justice John Paul Stevens, rather than original content. Perhaps even more problematic, the summary of the two Supreme Court Justices opinions was narrowed down to: “Justice Anthony Kennedy writing the majority opinion ruled limitations like those amounted to nothing short of ‘censorship’, especially in this vast new internet age where there’s so much communication available. Justice John Paul Stevens writing the dissent called the decision a ‘rejection of common sense that opens the door for big business special interest groups to buy elections” (Moran, 2010a, para. 2). The story ended with a question directing viewers to the station’s website, “So, tonight, we ask, is the court’s decision a good one? Or do you think it will give too much power to corporations and unions? Tell us what you think by clicking on the ‘Nightline’ page at ABCNews.com or on the ‘Nightline’ twitter page” (Moran, 2010a). The question at the end of *Nightline* is more likely a ploy to drive viewers to the website in order rack up “hits” and therefore be able to charge more for on-line advertisements than an attempt to use the space as a place for public discourse and civil debate.

On January 23, *Good Morning America* aired three sentences about Pres. Obama’s criticism of the decision on campaign finance before moving on to a story on unemployment. One day later, on *ABC News Sunday* Terry Moran hosted two senators, one Republican and one Democrat. The three discussed many topics, and included the longest discussion of the Supreme Court decision that aired on ABC. The two guests were clearly a part of television’s “golden rolodex” of sources and left the impression that there are only two sides to the debate: a Democratic one and a Republican one. Democratic Senator Robert Menendez of New Jersey repeatedly

referred to how this decision was going to hurt “average Americans,” “average citizens,” and the “little guy.” In actuality, it appears the Court’s ruling is problematic for any person who is not a corporation. Viewers watching would sense that this decision will not affect their own lives, but rather, the lives of whomever those “average” people are to whom Senator Menendez continually referred. Meanwhile, South Carolina’s Senator Jim DeMint bolstered the importance of freedom claiming, “free speech needs to come first.” Rather than asking the senator to explain what exactly he meant, Moran answered, “Okay” and moved on to a discussion on foreign corporations’ free speech rights in American elections. Throughout the entire story, the issue of democracy was only mentioned once. Senator DeMint answered that he did not support trying to limit the decision through new legislation, “We can’t promote freedom and democracy by repressing free speech.” The issue of whether or not corporate money will corrupt democracy is not discussed. After watching the short segment on campaign finance, viewers might have worried that foreign corporations may be able to meddle in American elections, but, they may have viewed it as yet another elite, partisan issue that has little effect on their own lives.

The following day, Terry Moran continued his monopoly on the Supreme Court story on *This Week*. He hosted a “roundtable” of various experts on the ABC payroll including George Will, Sam Donaldson, Matthew Dowd, and Cokie Roberts. The commentators had a mixture of political and journalistic backgrounds. Moran began with a bold question, “So is this a vindication of the First Amendment or is this a surrender to the plutocracy” (Moran, 2010b, ¶95)? George Will responded first and continued to perpetuate the idea that freedom of speech is equal to freedom of money: “Vindication. Because the court recognized the obvious which is that you cannot disseminate political speech without money. And therefore to restrict money is to restrict the dissemination of speech...Microsoft is trying to sell software. They’re not interested in getting into political fights” (Moran, 2010b, ¶96). Will also referred to the old laws as “the incomprehensible thick set of regulations on our political speech,” as if corporations and people were one and the same (Moran, 2010b, ¶96). His argument claimed that corporations have little to gain for the ruling and that the real win is for

nonprofits and citizens who will now receive a more diverse set of opinions in political advertising. In actuality, corporations will not be engaging in “political fights” with one another, but rather, increasing their own interests collectively by ensuring that the candidate who supports their own business interests (bigger profits and less taxes) is elected. The other commentators claimed that money is already in politics so this change in law will not change the election process. Only Donaldson brought up the issue of equality and corporations having more power than citizens. He was quickly cut off by Dowd and Will. Will answered more questions than the other commentators and his responses were several sentences longer than the responses of his colleagues. He was also able to answer both the first and the last questions. Roberts, the only woman on the panel, only spoke once during the discussion. Will ended the story claiming, “A mountain of social science has failed to demonstrate that campaign contributions as opposed to the convictions of the legislator and of his constituents determine how someone votes” (Moran, 2010b, ¶104). If that were true, corporations and groups such as Citizens United would not be so ready to spend hundreds of thousands, if not millions, of dollars on political advertising.

ABC coverage on this topic would have ended with the roundtable had it not been for President Obama’s statement on the decision during the State of the Union address. On January 28, 2010, *Good Morning America* picked up on the story again, although only briefly. The morning show included part of one sentence about the exchange between President Obama and Justice Samuel Alito. It wasn’t until March 10, 2010, after the White House and Chief Justice John Roberts had another exchange that the issue received more coverage. On *World News with Diane Sawyer*, Terry Moran was called upon once again to report on the story. It was framed as a fight between President Obama and Chief Justice Roberts. Moran began, “It was round two, Diane. And it’s hard to remember the last time a president and a chief justice went at it like this...This time, it’s an argument not just about the law, but about how presidents and justices should behave in public” (Sawyer, 2010b, ¶2). After previous coverage that was at best light and mildly informative, Moran could have taken this opportunity to revisit the decision and discuss its underlying issues and

possible consequences. Instead, the story was sensationalized using violent and exaggerated phrases such as: “war of words,” “choosing sides” (¶1), “round two,” “went at it” (¶2), “clash,” “in this corner” (¶3), “the scrap” (¶4), “bashed” (¶6), “that had to hurt,” “caused a stir,” “took his shot,” “hit back” (¶8), “dangerous game,” “battles” (¶14), “taking another shot” (¶15), and “political scrum” (¶16). Viewers were given the impression that the “war of words” was nothing more than an insignificant argument between elites. The story criticized the way that the two men were arguing rather than addressing the content of the disagreement.

The last story aired by ABC on the Supreme Court decision was another five sentences during the “closing argument” section of *Nightline*. The final question was once again about the “political scrum,” “So, tonight, we ask, is the chief justice simply upholding high principle or displaying a thin skin?” (Bashir, 2010, ¶2). An avid ABC news-watcher would have little idea what the Supreme Court decision really means for democracy, elections, or herself/himself. The following pages on CBS and NBC tended to follow the same type of coverage, which seemed formulaic.

### *CBS*

CBS aired four stories on the campaign finance decision. Three were aired before the State of the Union, one was aired after. CBS’s first story followed the format set in ABC’s original story. It aired on January 21, 2010 on *CBS Evening News*. The story began with controversial clips from *Hillary: the Movie* and followed with a few quotes generated by an election law analyst. Anchor Katie Couric asked reporter Jan Crawford what the decision means for the “average voter” (Couric, 2010, ¶12). Crawford responded, “It’s going to completely change the way we see political campaigns being run. Corporations and unions can just spend unlimited amounts of money on negative campaign ads, more than the candidates themselves can afford. So the real danger is that the candidates are just going to get drowned out and lose complete control of their message” (Couric, 2010, ¶13). The story ends with a criticism, but uses violent phrases such as “struck down” (¶1) and “demolished” (¶6) to describe the law-changing process. Crawford brings up the potential for “unlimited” amounts of cash to affect elections, but fails to discuss what may change besides a

candidate's control over his or her "message." The real issue is the allowance of unlimited spending from corporations and unions on elections leaves the doors wide open for corruption during a time when journalists are being cut and investigative stories are all too rare. The story ended abruptly and almost humorously. Couric thanked Crawford and then claimed, "And coming up next: hold the salt, it could save your life" (Couric, 2010, January 21, ¶16).

The next morning, *The Early Show* aired just two sentences about the court case overturning previous laws on campaign financing. The short paragraph called it a "landmark decision" and left viewers feeling untroubled by stipulating that corporations still can not give money directly to candidates (Rodriguez, Hill, & Smith, 2010, ¶1). On January 24, Bob Scheiffer interviewed Senator John McCain on *Face the Nation*. Scheiffer asked Sen. McCain only three questions regarding the Court's decision. McCain claimed that while he didn't support the decision, he also won't take part in the Democrats' hope to rein in the ruling through legislation because, "The Supreme Court has spoken. I respect their decision" (Scheiffer, 2010, ¶12). The interview is problematic because McCain was the Republican half of the Bipartisan Campaign Reform Act, but now gives the impression that it is unpatriotic or un-American to question the authority of the Supreme Court. The man who was once a leader in keeping corporate money out of politics now refuses to stand up for the very bill he helped to create. This refusal to cross party lines and disagree with the Supreme Court may leave citizens thinking that Court's decisions should not be challenged.

The final mentioning of the ruling came during a roundtable discussion on *The Early Show* January 24, 2010. Justice Alito's negative reaction to Pres. Obama's criticism was mentioned in passing by Mo Rocca. Reporting of the campaign finance decision was thinly covered by CBS. Aside from the opening story on campaign finance, the other three stories were noticeably shorter than those on ABC or NBC as they were often limited to a few sentences. There was an opportunity for an in-depth discussion on campaign finance with one of the most known proponents of keeping money out of politics, Senator John McCain. For reasons unknown, CBS did not push

the interview in that direction. Although the coverage was light, the network did not sensationalize the words between President Obama and Chief Justice Roberts as ABC did.

*NBC*

NBC had the fewest number of stories on the Supreme Court decision coming in at three. Just one of the three stories was about the original ruling, the other two were about President Obama's criticism. On NBC, the Court's decision did not make the January 21 evening news. The first mention of the ruling was made the next morning on *Today*. Meredith Vieira claimed, "The Court ruled that the government cannot ban political spending by corporations in elections" (Lauer & Curry, 2010, January 22, ¶1). She then asked *Meet the Press* moderator David Gregory what the ruling will change. He responded that Democrats were upset, but that both parties would take advantage of the change although there is a threat of special interests gaining more power. Had it not been for President Obama's mention of the ruling during the State of the Union, this may have been the only coverage the decision would have received on NBC.

On January 31, 2010, *Meet the Press* had President Obama's adviser, David Axelrod, in the studio. Perhaps due to an obsession with telling "both sides of the story," and only having one side of the political disagreement present, Gregory failed to ask Axelrod about the consequences of the decision (Bettig & Hall, 2012, p. 86). Instead, he insisted repeatedly that Axelrod answer whether the exchange between President Obama and Justice Alito was appropriate. His questions were: "Was it appropriate for the president to criticize the Supreme Court during the State of the Union? And do you consider Justice Alito's response to be appropriate or inappropriate" (Gregory, 2010, ¶1)? "That moment, though, was that the appropriate forum" (¶4)? "But the question I'm asking, David, is whether that was an appropriate criticism" (¶6). "You still haven't answered whether you think it was an appropriate thing—criticism of the president" (¶8). "And Alito's response" (¶9)? Even if Axelrod had found President Obama's remarks to be misplaced within the address, would that really be a newsworthy issue? If one is to believe that it is the duty of the news media

to inform the citizenry, then the discussion should concentrate on policy, reform, money, power, and ownership. It seems that those are not topics the big five media conglomerates like to broach because they are informative rather than entertaining and therefore do not serve the conglomerates' commercial interests. The interview had promise of a real discussion about the Supreme Court ruling, but instead, Gregory concentrated on insignificant details surrounding the debate rather than the issue itself.

The final mention of campaign finance by NBC came during *Nightly News* on March 16, 2010. The story was about Supreme Court Justice Clarence Thomas' wife. She had just come out as an outspoken Tea Party supporter. Justice Thomas was a part of the 5-4 majority that passed the finance decision. The news story addresses that Thomas was a part of the decision, but not which way he voted and does not clearly link towards a conflict of interest between the Justice's decision and the political interests of his wife. While it may have been unfair to point to the connection, the network decided to just half-way report on the story.

#### *Ideologies Perpetuated*

Overall, the coverage provided by the three networks had much in common. All three relied solely upon what has come to be known as a "golden rolodex" of elites, experts, and politicians. Not a single story on any network asked actual citizens what they thought about the ruling. The networks framed the story as a partisan rather than citizen issue. Much of the rhetoric surrounding the ruling was based around the disagreement between President Obama and the Supreme Court. Late January also happened to be the time that the John Edwards paternity scandal appeared and the stories about the court ruling were overshadowed by the more sensational story. ABC, although it had the most coverage of the ruling, relied almost completely upon *Nightline* co-anchor Terry Moran who used to function as the station's Supreme Court and Washington correspondent. This is problematic because viewers received the same voice over and over each time campaign finance was discussed on the network. It is also the same voice that ABC viewers have been hearing for all political issues during the last two decades.

All three networks referred to the “average American.” Instead of explaining the consequences that this ruling may have on the legitimacy of democracy, the media concentrated on whether or not it would affect the daily life of an American, which of course, it will not in the short term. It will, however, completely change election campaigns. This was viewed as more of an exciting change than as a frightening amount of power that has been given to corporations who have accountability to shareholders rather than to citizens. The networks also used many violent words to describe the way free speech for corporations “broke out” of the Supreme Court decision. After watching some of the coverage, one may think that corporations had previously been oppressed. Most importantly, citizens were left out of the discussion completely as politicians and elites were consistently asked questions that did not require them to explain what the Court’s ruling meant for both citizens and for free elections. The coverage frequently discussed the issue of money, but the growing power of conglomerates and corporations was ignored.

*What Does it all Mean?*

The Supreme Court ruling in itself is problematic for citizens in a democracy. When corporations, unions, and nonprofits are given the right to spend unlimitedly on political speech, they are actually being granted more rights than citizens have because these organizations have so much more money to spend than citizens. In a capitalistic society, money equals power, whether the news media reports on it or not. Citizens can rally and take to the street and march for a candidate, but very few would have the funds to create their own political endorsements to air on cable or network television. A corporation cannot be jailed for its wrongdoings as a citizen would be. It has no conscience. It is confusing, then, as to why corporations have been granted the right to attempt to set the electoral conversation by buying hundreds of millions of dollars worth of time and space to run their advertisements. Super PAC advertisements will no doubt overwhelm viewers. Journalists will not be able to compete with the amount of money spent and their fact-checking stories can easily be overlooked or missed as Karr’s (2012) study showed in Denver. Ten minutes of Super

PAC coverage cannot inform viewers about the hundreds of hours of misleading advertisements.

The lack of mainstream media coverage of the campaign finance news story further proves that there is much room for improvement in current political coverage. In the case study of Citizens United, there are two clear reasons why academics and citizens must serve as a watchdog of the press. First, rather than serious political coverage, infotainment is too often generated to produce the audiences that advertisers prefer. Second, broadcasters have since benefitted monetarily from the ruling in the 2010 and 2012 elections and therefore, have little reason to critically report on the Supreme Court ruling and its aftereffects. The story was rarely discussed by NBC, and even though ABC aired eight stories on the topic, they were all relatively uninformative and were brief to make more time for the sexier topic of John Edwards' love child. The news industry continues to be more concerned with getting consumers to sit in front of advertisements than with informing citizens. The media are very careful not to report on itself (Bettig & Hall, 2012). The networks should have disclaimed the fact that they stand to make massive amounts of money thanks to this new law by selling campaign advertising time to corporations. Citizens who do not have the time to research this Supreme Court decision on their own will be blindsided by the onslaught of political advertising in the coming years and may not always be looking to see who or what company paid for the advertisements.

The idealized public sphere will never be able to exist as long as citizens are being left in the dark. Citizens have been commodified, commercialized, and bought and sold by the media. This is not the fault of individual journalists. While they are responsible for what they write and say, there are extenuating circumstances when money-making becomes the main goal of the organizations for which they work. Access to the whole story may not be available or the reporter may self-censor in order to maintain their position within the corporation. For example, NBC failed to report on its parent company, General Electric when, despite billions in profits in 2010, it paid no taxes (Farhi 2011). It is a danger to the health of American democracy that five media conglomerates not only control citizens' access to

information (which is frightening enough), but that they also own a huge and diverse set of other holdings ranging from electric companies to factories creating weapons of war. According to Jhally (1989), a media monopoly is not welcome in a democracy, but it is a mainstay in authoritarian governments, “it is all too easy to lapse into a homogenizing authoritarianism” (p. 65). McChesney (2008) agrees, “Without viable journalism we not only make democracy unthinkable, we open the door to a tyranny beyond most of our imaginations” (p. 118). The United States still believes itself to be a representative democracy, but one may wonder if the decay of journalism is in fact related to the health of the political system of which it is a part. Is it possible that the same corporate forces that inhibit freedom of the press are also inhibiting democracies in capitalistic societies to an extent that it is less for the people, or by the people and more for and by big businesses? Could it be that the oligopolies that control the media may be creating a landscape where democracy begins to work more like oligarchy? According to this paper’s research, the answers to those questions are yes and yes.

Citizens and corporations benefit from very different legislation. Citizens will now have to compete with corporations who will bombard televisions and radios with advertisements supporting small government and freer markets. As Justice Stevens suggested in the dissent, corporations are not concerned with the well-being of citizens. Their only cause will be electing the officials that will provide them with the biggest tax cuts and the fewest guidelines. Bagdikian (2004) writes, “...the not-so-hidden meaning behind the slogan ‘get government off our backs’ eventually is ‘let us have either a monopoly or cooperative arrangements with a small number of our companies in the same business’” (p. 54). In the coming elections, citizens will see that message sold to them in a variety of well-researched and expensive advertisements. They will be sold candidates who support the needs of corporations, not candidates who care about American citizens.

#### *What Can We Do Now?*

Democrats drafted legislation to limit the power that the Court’s decision in *Citizens United v. The Federal Election Commission* will have on election advertising paid for by corporations. The act put forth by Democratic U.S. Senator Chuck Schumer (NY)

and Democratic Congressman Chris Van Hollen (MD) was launched as the DISCLOSE Act: Democracy is Strengthened by Casting Light on Spending in Elections Act (“Democrats move to blunt Citizens United ruling,” 2010). If the legislation was passed it would have forced CEO’s to appear within the advertisement approving the message just as politicians do, “campaign-related activity” contributions would have to be reported within 24 hours to the Federal Election Commission, corporations that have 20% or more of their voting shares controlled by foreigners would not be able to contribute to campaign advertising, corporations and unions would have to make their election spending public on their websites within 24 hours, taxpayer money would not be able to be used to fund political advertising, candidates attacked by advertising would be given adequate airtime for rebuttal at the lowest possible rate, and coordination rules would be tightened so that corporations cannot use loopholes to coordinate with candidates during the three months prior to an election (“Democrats move to blunt Citizens United ruling,” 2010). It is important that this legislation succeeds in limiting the power of freedom of speech that has been given to corporations regarding elections. As of yet, only one Republican is supporting the DISCLOSE Act, Representative Mike Castle (DE), and it has been blocked in both the House of Representatives and the Senate (Halloran, 2010). Supporting the act in the form of Young’s (2000) idealized activism and civic movements is perhaps the best way American citizens can regain some of their power that has been given to corporations, but we must also support independent media until the current news media is less obligated to the commercial interests and pressures that may affect news coverage.

When the media are controlled by only a handful of people, when advertisers have the clout to influence news stories, when corporations are given the same rights as citizens, American democracy is in a state of decay. Citizens must revolt against the mainstream news media by supporting alternative journalism and working for legislation to tighten ownership regulations again and look toward a non-capitalistic way to get news such as co-ops or government-funded channels. As Herman (1992) wrote, it is possible to have independent journalism that doesn’t rely on

advertisements. There are also regulatory options such as taxing advertisements and putting that money back into public media, providing tax rebates for citizens to put toward their favorite public, independent, or nonprofit media organizations, and forcing broadcast stations to continue providing news in order to maintain licensure, but make that news coverage operate without commercials. Further, political commercials could be altogether outlawed and replaced by requiring broadcasters to give candidates free airtime during elections. Although many of these suggestions may seem radical, they would certainly lead to a more democratic media and are possible with the support of activists, an active citizenry, and progressive lawmakers. Addressing chronic news media issues and the lack of informative political coverage are paramount if America is to have a legitimate democracy and the possibility of a healthy public sphere.

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