



## It's a new era for campaign spending

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WASHINGTON — Corporations and unions can unleash millions of dollars on campaign ads to help defeat or elect candidates, under a sweeping Supreme Court decision Thursday that rolls back decades-old limits on political spending.

The 5-4 ruling — which dismissed the idea that corporate wealth could distort the political debate and rejected corporate restrictions as "censorship" — immediately reshapes the campaign battlefield 10 months before November's high-stakes congressional elections. It also threatens state and local campaign-finance laws across the nation.

Twenty-four states have similar laws prohibiting or restricting corporate spending in state candidate elections. Gubernatorial races are underway in 19 of those states.

"It's going to transform not just federal elections, but state and local elections, including judicial elections across the country," said Richard Hasen, a campaign-finance specialist at Loyola Law School in Los Angeles. "The spigot is ... wide open."

The ruling — supported by the high court's five-member conservative wing and opposed by its four more liberal justices — did not address Congress' ban on corporate and union contributions to presidential and congressional candidates. That ban remains in place.

President Obama— who refused taxpayer money during the 2008 general election campaign so he could raise four times more than the \$85 million he would have received in public funds — said the ruling would lead to a "stampede of special interest money in our politics." He promised to work with Congress on a "forceful" response to the court's ruling.

Top Democrats who have backed campaign-finance limits, including Sen. Charles Schumer of New York, moved Thursday on legislation to curb spending in advance of this fall's midterm elections. Democrats' proposals included a bill that would bar companies with federal contracts from tapping their corporate treasuries to defeat or elect federal candidates.

Senate Minority Leader Mitch McConnell hailed the court's ruling as a restoration of free speech in campaigns. "The government was picking winners and losers" under the campaign-finance limits, the Kentucky Republican said.

Groups and lawmakers favoring such limits warned that American elections would forever be changed by Thursday's ruling.

"I fear that our elections will become like NASCAR races — underwritten by companies," Sen. Russ Feingold, D-Wis., wrote in an op-ed piece in USA TODAY. He co-authored a 2002 law that imposed sweeping limits on campaign spending.

The court's decision is the latest from the high court and other federal judges across the nation to reverse federal and state campaign spending rules established in the decades after the Watergate scandal, which led to the resignation of President Nixon in 1974. On Wednesday, federal court in Arizona struck down a key part of that state's public-funding system for candidates as unconstitutional.

The Supreme Court's conservative majority based its opinion on free-speech grounds.

"The censorship we now confront is vast in its reach," Justice Anthony Kennedy said in his majority opinion.

In a sharp dissent, Justice John Paul Stevens said the ruling "threatens to undermine the integrity of elected institutions around the country."

### **A biting dissent**

Before Thursday, the court's majority had been moving toward curtailing government power to regulate campaign money. Thursday's decision is the most significant step to date. It reverses a 1990 ruling and portions of a 2003 decision that had upheld limits on corporate expenditures.

Thursday's case originally came to the justices as a narrow challenge to Citizens United's video-on-demand offering of a scathingly critical movie about Hillary Rodham Clinton during her unsuccessful 2008 campaign for the Democratic presidential nomination. Federal regulators said it was an election communication and not merely a documentary, making it subject to campaign-finance restrictions barring corporate-funded ads close to an election.

Citizens United sued, setting off a dispute over speech rights that reached the high court. The justices, who first heard the case in March, ratcheted up the stakes last June, when they said they would hold a second hearing and re-examine the past rulings on corporate spending in political elections.

The significance of the majority opinion — written by Kennedy and joined by Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Samuel Alito— is its new treatment of corporate speech and spending.

"By suppressing the speech of manifold corporations, both for-profit and non-profit," Kennedy wrote, "the government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests."

Kennedy pointed to "rapid changes in technology," including blogs and social networking websites, that now provide people with information on candidates. He said the First Amendment does not allow Congress to distinguish between the context of such political speech or the corporate identity of the speaker.

Thursday's decision offered the first significant case for Justice Sonia Sotomayor, who joined the court in August. She voted as her liberal predecessor David Souter had in the past, and did not write a separate opinion.

The liberal dissenters — Sotomayor, Stevens, Ruth Bader Ginsburg and Stephen Breyer— derided the majority for not deferring to Congress.

Stevens noted that challenges to the disputed provision had been made before, including in a 2003 case when the justices upheld the McCain-Feingold law.

"The only relevant thing that has changed since (then) is the composition of this court," Stevens wrote.

Roberts penned a separate opinion defending his position and responding to criticism that the court was ignoring precedent. He said the key 1990 case at issue was flawed and should be rejected. "There is a difference between judicial restraint and judicial abdication," Roberts wrote.

Stevens spoke for the four dissenters on the left. In an impassioned and sometimes faltering voice, the 89-year-old justice, who read excerpts from his 90-page dissenting opinion from the bench, said the majority decision was "at war" with decades of work by legislatures to safeguard the electoral process.

The court's reasoning — that corporations have similar rights to individuals to participate in elections — opens the door to future court challenges to the century-old ban on direct contributions from companies and unions to candidates.

"If the central idea here is that corporations are no different than anyone else, it's hard to say that you should maintain the ... ban on corporate contributions," said Richard Briffault, a campaign-finance specialist at Columbia University.

### **A flood of spending?**

The immediate focus Thursday, however, was on this fall's state and congressional contests and the potential for a barrage of negative TV ads and mailings.

The decision specifically affects presidential and congressional candidates, but also appears to render similar state laws unconstitutional, making them likely to be struck down by courts or repealed quickly by state legislatures, Hasen said.

Analysts said they did not expect to see a flood of corporate spending on ads that call for the election or defeat of an individual candidate.

"I don't see the Cokes and Pepsis of this world writing checks for political campaigns in this economic environment," said Evan Tracey, who tracks political advertising at Campaign Media Analysis Group. "They have shareholders, boards of directors and customers who come from all sides of the political spectrum."

Experts, such as campaign-finance lawyer Kenneth Gross, said the money is more likely to flow through trade associations and non-profit groups. Corporations provide money to such groups now, but that money could not be used for campaign ads and any other political communication that advocates for the election or defeat of a candidate.

Robin Conrad of the U.S. Chamber of Commerce called Thursday's opinion "a positive for the political process."

The group spent \$144.5 million on lobbying in 2009 and more than \$35 million on advertising and outreach efforts in the 2008 election. Its president, Tom Donohue, recently attacked Democratic proposals on health care and climate change, and pledged this fall to "highlight ... candidates who support a pro-jobs agenda and hold accountable those who don't."

Thursday's decision left intact rules that require businesses and unions to disclose their spending and that prohibit unlimited donations, also known as "soft money," to political parties.

Texas Sen. John Cornyn, head of the Republican Senate campaign committee, said he hoped the soft-money ban soon would fall, allowing "political parties ... to speak as freely as other citizen organizations."

New Jersey Sen. Robert Menendez, who heads the fundraising committee for Senate Democrats, said the decision would benefit Republicans. In 2002, the last year soft-money contributions flowed to parties, nearly 60% of the cash went to GOP committees, according data compiled by the non-partisan Center for Responsive Politics.

Joseph Sandler, a campaign-finance lawyer, said the ruling created no partisan advantage because it frees Democrat-allied unions to tap their treasuries.

Karen Ackerman, political director of the AFL-CIO, said the opinion opens "some avenues to spend resources in different ways than we have in the past" but said it was too soon to predict how labor would respond.

Rep. Chris Van Hollen, D-Md., said he and Schumer were working on a bill to limit spending by federal contractors and corporations that received bailout money from the government. Other options include requiring advance shareholder approval of political spending and mandating that corporate CEOs and union heads appear in any advertising they fund.

The bills would be introduced in the next two weeks, Van Hollen said. "We need to move as quickly as possible to shut the floodgates."