



# Justice at Stake

## c a m p a i g n

### **Citizens United: a High-Stakes Rush to Erode Campaign Laws?**

*An Issues Backgrounder From Justice at Stake*

*Citizens United v. Federal Election Commission*, re-argued Sept. 9 before the U.S. Supreme Court, **has the potential to fundamentally weaken national and state campaign finance laws.**

The case raises this question: Should the court overturn longstanding precedents, and allow corporate treasuries to pour millions of dollars into U.S. elections? **The New York Times editorialized that such a decision would be a “disaster for democracy.”** In the long term, any *Citizens United* ruling will be echoed in the states, potentially exposing elected court systems to new special-interest attacks.

#### **The Case**

Citizens United, a conservative nonprofit group that gets corporate funding, produced an election-year documentary critical of Hillary Rodham Clinton. During the 2008 Democratic presidential primary season, it sought to distribute “Hillary: The Movie” by cable television video-on-demand.

A federal court said the documentary fell under the 2002 **Bipartisan Campaign Reform Act, also known as McCain-Feingold.** That law bars nonprofit groups from using corporate funds to advocate for or against a federal candidate in the 30 days before a primary and 60 days before a general election.

#### **The Precedents**

After hearing oral arguments last spring, the Supreme Court did not issue a narrow ruling on whether the government could bar the Citizens United documentary at election time. Instead, the court set a rehearing and broadened the case dramatically, saying it would examine whether any ban on corporate election spending violates the First Amendment. Specifically, it signaled it might overturn two cases in which such bans were held to be constitutional: ***Austin v. Michigan Chamber of Commerce***, a 1990 case involving a Michigan election law; and a portion of ***McConnell v. FEC***, a 2003 decision upholding McCain-Feingold.

#### **The Stakes for State Courts**

If the high court overturns established precedent, it could wipe out federal limits on corporate treasury spending whose origins date back to 1907. Corporate and union money could then flood federal elections. Moreover, many states impose some limits on corporate election spending, and those laws also could be overturned if the federal corporate/union bans are struck down.

States with elected courts would be especially vulnerable. Special-interest spending in court races [has soared in the last decade](#), raising widely publicized questions about whether justice is now “for sale.” The Supreme Court’s June 2009 decision in [Caperton v. Massey](#) spotlighted the **problems of special-interest spending in judicial elections** and gave a victory to defenders of fair and impartial courts.

An adverse decision in *Citizens United*, however, could [destroy those gains and erode confidence in fair courts](#). For this reason, Justice at Stake and 19 civic and legal reform groups filed an [amicus curiae brief in the Citizens United case](#), urging the Supreme Court to affirm earlier rulings upholding campaign finance rules.

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