

Debate

Business's New Freedoms and Potential Responsibilities Under *Citizens United*

ISSUE: Should there be limits on the amount of money that can be contributed by businesses to influence public policy and laws?

“If you’re not at the table, you’re on the menu.”¹ This quote expresses the importance for businesses of being proactive in public policy development. In today’s environment businesses are discovering that business-government relations are not a luxury but a necessity. In order to be successful most businesses are learning that they need a long-term broad political strategy to advance their interests in government. Managers and business leaders are learning that they cannot afford to ignore politics, but must incorporate political concerns into their business strategies to succeed.

Much of this political activity comes in the form of political spending and campaign ads. According to one study, Ohio is the state with the most campaign advertising. It is estimated that the average viewer in Cleveland was exposed to approximately 87 presidential campaign spots each week during the 2012 presidential elections. Candidates spent \$350 million on television ads in nine states. A main source of this money comes from businesses both directly and indirectly.

In this time of unprecedented spending, the question has been raised as to what the ongoing impact of the U.S. Supreme Court Decision in *Citizens United* will have on campaigns. Additionally, what will businesses do in response to this newfound freedom? The heart of the question lies in the relationship between business and government. In *Citizens United*, the United States Supreme Court limited the ways in which government could regulate corporations in the political arena. The ruling effectively strengthened the power of businesses. This means that businesses that recognize the need for political activity can exert significant influence. For instance, Microsoft and Google have found many ways of influencing political activity, including lobbying, placing high-powered attorneys on retainer (paying them advance fees for services), drafting legislation, and contributing money toward political campaigns, candidates, issues, and expenditures. A business’s political strategies may range from containing legislation to defining issues to coping with new laws. There have been definite measurable benefits from corporate political activity. A recent survey shows that such donations increase a company’s value by 3.5 percent. Indeed, in today’s world corporations have become politically savvy.

¹ This Washington political saying is of unknown origin and has been cited in print since at least 2000.

Citizens United essentially holds that corporations are allowed to spend as much as they like to support candidates. It viewed these contributions to be a constitutional right like free speech, describing it as another means of communicating ideas. In addition, the court overturned the prior limits on contributions. These were originally considered permissible because unlike expenditures, political contributions from businesses served as “a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support.”¹² Essentially the court held that money is speech, and the First Amendment prevents government regulation of both spending and contributing. In undoing these laws, the Supreme Court explicitly affirmed the underlying value of the First Amendment itself in allowing the “unfettered interchange of ideas.”³

Up until then there had been long standing prohibitions on corporate giving in an attempt to buffer the impact of money—and often corruption—in politics and perhaps create a fairer playing field. These laws were made in response to the fears that businesses were buying votes—in fact, buying laws. They were meant to limit the influence of money in campaigns. Clearly, there are obligations and expectations that arise from contributions. Indeed, this was best expressed by a steel baron who contributed to President Roosevelt’s campaign as he lamented, “We bought the son-of-a-bitch and then he did not stay bought.”⁴

This system rests on the fact that the electorate is and should be informed. There is a presumption of basic civic understanding. However, the question arises—Are Americans informed? Are they prepared for this responsibility? Along with free speech, the founders also envisioned high-quality civic education. Hence, much of the basis for the public education system was to have a citizenry able to evaluate and handle the weight of these decisions.

Much rides on our elections today. Voters have a greater responsibility than in the past. They must sift through tons of campaign information and then make determinations that will set the course for the country’s economic and political future. In a recent study, two-thirds of Americans know at least one of the judges on the Fox television show “American Idol,” but only 15 percent could identify the Chief Justice of the United States Supreme Court. Additionally, almost 75 percent could name the Three Stooges, while the same do not know the difference between a judge and legislator. Less than three-fifths of adults in Florida could correctly identify the three branches of government.

While Americans may not understand how government works, they are no less demanding of businesses. A poll showed that two-thirds of respondents are now expecting businesses to go beyond just making a profit and take ethical responsibility for their roles in society. In light of today’s environment, businesses may find themselves with great opportunity and even greater responsibility.

Businesses now have an opportunity in this new unfettered legal environment. The authors of *The MBA Oath* offer a vision for businesses for meeting these newer responsibilities and higher expectations—going beyond the bottom line. The law is to be considered a floor, not a ceiling. Businesses must go beyond their bottom line and meet their ethical responsibilities to their stakeholders.

² Jeffrey Toobin, “Money Unlimited: How Chief Justice John Roberts Orchestrated the Citizens United decision,” *The New Yorker*, May 21, 2012, http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin?currentPage=all (accessed June 10, 2014).

³ Ibid.

⁴ Ibid.

While governments may create laws that are useful, business leaders must recognize that laws take a long time to develop. The quicker way is to change business practices. In the wake of the *Citizens United* decision, business leaders find themselves with an unprecedented opportunity. Businesses can stand by and wait for new laws and regulations to set limits. They can use their power to support policies that are favorable to their industry, even if they are unfavorable to other stakeholders. Or businesses themselves can take the center stage and make thoughtful and reasoned decisions supported by ethical principles and approaches.

Businesses can now, more than ever, exercise corporate governance and develop ethical best practices. This involves reestablishing and earning legitimacy for business. The word *governance* comes from the Greek word “steering,” emphasizing that businesses can steer in a positive direction. While the Supreme Court firmly established businesses’ rights under the Constitution, leaders must not forget that business still has a “fragile mandate.” Rather than letting laws dictate their ethical decisions, business leaders should make strategic and ethical choices about how to use this newfound freedom and responsibility with integrity. This is one major way to get ahead of the law.

There are two sides to every issue:

1. It is quicker and more efficient to allow businesses to self-regulate themselves regarding political spending.
 2. The U.S. Constitution should be amended to allow control of political spending by businesses.
-

Sources

- Max Anderson and Peter Escher, *The MBA Oath: Setting a Higher Standard for Business Leaders* (New York: Penguin Group, 2010), p. 75.
- Archie B. Carroll and Ann K. Buchholtz, *Business & Society: Ethics, Sustainability, and Stakeholder Management* (Mason, OH: South-Western Cengage Learning, 2012).
- Sandra Day O’Connor, “Judicial Independence and 21st Century Challenges,” *The Bench: The Magazine for the American Inns of Court*, July/August 2012, p. 14. Used information from the Annenberg Public Policy Institute.
- Beth Fouhy, “2012 Election Ads: Presidential Campaign TV Spending Focused in 9 States,” *The Huffington Post*, August 5, 2012, http://www.huffingtonpost.com/2012/08/05/2012-election-ads_n_1743865.html (accessed June 10, 2014).
- Richard H. Levenstein, “Making a Difference: Educating the Public About the Importance of a Fair, Impartial, and Independent Judiciary One Judge and One Lawyer at a Time,” *The Bench: The Magazine for the American Inns of Court*, July/August 2012, p. 22. Used information from a Harris Interactive Poll of Florida’s adult population commissioned by the Florida Bar in December 2005.
- National Conference of State Legislatures, “Trust for Representative Democracy Quotes,” 2014, <http://www.ncsl.org/legislatures-elections/trust/trust-for-representative-democracy-civic-educatio.aspx> (accessed June 10, 2014).
- Willow Misty Parks, Washington Campus Essay, September 2012, excerpt from essay submitted.
- Doug Schuler, *Business and Government: Some Introductory Thoughts*, Rice University, Washington Campus PowerPoint © 2013.
- Jeffrey Toobin, “Money Unlimited: How Chief Justice John Roberts Orchestrated the Citizens United decision,” *The New Yorker*, May 21, 2012, http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin?currentPage=all (accessed June 10, 2014).
-