

# Will Funny Money Elect The Next President?

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Is the American political process drowning in corporate money, dammed-up funds in long confinement finally set loose by a U.S. Supreme Court decision so controversial even its supporters defend it with a wink and a smirk?

As you read this, tens of millions of dollars, much of it from secret corporate sources, is winding its byzantine way into the campaign chests of politicians and the major parties.

How did this happen?

In January 2010, a 5-4 majority of the Supreme Court decided, to paraphrase the words of Mitt Romney: Corporations are people too.

Writing for the majority in *Citizens United vs. Federal Election Commission*, Justice Anthony Kennedy returned time and again to that theme, and to Supreme Court precedents that said the political speech of corporations was protected by the First Amendment. That applied, he wrote, even if the funds corporations were spending in political races belonged to stockholders.

The 2002 Bipartisan Campaign Reform Act prohibited corporations -- and unions, by the way -- from using their general treasury funds to make independent expenditures for an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate.

Corporations could still set up a political action committee, but PACs are subject to even more restrictions and disclosures. Of course, PAC money has to come from the pockets of corporate executives, not from the corporate treasury, and they could only donate \$2,500 in every election cycle.

Not good enough to satisfy the First Amendment, Kennedy said.

"A PAC is a separate association from the corporation," he wrote in the majority opinion. "So the PAC exemption from (the law's) expenditure ban, (the law) does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak -- and it does not -- the option to form PACs does not alleviate the First Amendment problems with (the core provision of the McCain-Feingold Act). PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years and file an organization statement and report changes to this information within 10 days.

"And that is just the beginning," Kennedy said. "PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur."

Kennedy wrote in ringing language to frame the issue of unfettered corporate political contributions.

"When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought," he said. "This is unlawful. The First Amendment confirms the freedom to think for ourselves."

The high court's four-member liberal bloc dissented from the majority's main holding. Justice John Paul Stevens, who was to retire later that year, worried not only about the effect of the ruling on U.S. elections, but on the credibility of the Supreme Court itself.

"The court's ruling threatens to undermine the integrity of elected institutions across the nation," Stevens wrote. "The path it has taken to reach its outcome will, I fear, do damage to this institution."

Democrats, of course, hit the roof after the ruling, believing they would come out on the short end of the corporate money stick.

Speaking shortly after the decision in his State of the Union Address, President Barack Obama looked down on the handful of Supreme Court justices who had come to Congress to hear it and blasted the ruling, while the justices sat and steamed in silence.

"Last week, the Supreme Court reversed a century of law to open the floodgates for special interests -- including foreign corporations -- to spend without limit in our elections," Obama said. "Well I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities."

In the first flush of indignation, Democrats vowed to enact laws to curb the Supreme Court ruling, but that kind of talk died down with the 2010 elections, when Republicans took control of the U.S. House and it became obvious that ship had sailed.

Since then, there hasn't been so much as a whisper from Congress about curbing Citizens United, and only groups like Common Cause still show concern. Democrats instead have gone about setting up their own conduits for corporate money to compete with Republicans.

The effect of the Supreme Court decision was manifest with that year's November election.

Common Cause says the 2010 midterm election was the most expensive in U.S. history. The cost is expected to exceed \$4 billion -- compared with the last midterm election in 2006, which cost \$2.6 billion.

On its Web site, Common Cause says 2010 numbers compiled by the Center for Responsive Politics show "\$293 million came from groups operating independently of the candidates or political parties. Those groups, known as 'super PACs,' '527 organizations' and '501(c) organizations,' were free to spend without limits and accept unlimited donations from corporations, trade associations and unions."

A little less than half of that independent money, \$138 million, came from 501(c) groups -- named for a section of federal law -- who are not required to report donors to the FEC.

The Web site said independent money, including secret donations, was important to the election results. In seats that changed from Democrat to Republican or vice versa, "independent groups spent an average of \$764,000 on behalf of the winner and just \$273,000 on behalf of the loser"

The main beneficiaries of secret 501(c) money -- Republican House and Senate candidates. More than \$183 million was spent on behalf of Republican candidates by 501(c) groups, the Web site said..

But Democrats weren't left out.

Democratic House and Senate candidates were the biggest beneficiaries of donations by 527 organizations to political party committees, the Web site said. The 527s spent \$102.7 million on behalf of Democratic candidates, and can accept unlimited corporate and union funds. While their donations are subject to FEC disclosure requirements, Common Cause said, many of the 527s have not disclosed their donors.

More than \$104 million in 527 money, the largest amount, was spent on congressional races and came from single-issue groups. Union-affiliated 527s spent \$42.4 million, the Web site said.

State campaigns got more than \$252 million from 527 groups, figures compiled by the Center for Responsive Politics showed.

Collections for 2012 are already in full swing.

Writing for the Aug. 10 Huffington Post, Bob Edgar, Common Cause president and chief executive officer, said a gathering of conservative CEOs convened by Koch Industries has pledged about \$88 million for the upcoming elections while the U.S Chamber of Commerce, a Republican ally, likely will spend more than the \$75 million it spent in 2010, "and partisan operatives including Republican Karl Rove and Democrat David Brock have set up so-called super PACs to get into the unlimited corporate money game as well."

Under the headline, "Supreme Court's decision threatens U.S. election process," The Daily Cardinal, the student newspaper at the University of Wisconsin-Madison, said in its Aug. 14 edition \$30 million was spent on Wisconsin's August recall elections.

"To put that into perspective, the deficit estimate this past spring, triggering the Budget Repair Bill and instigating waves of protests, was \$137 million," the newspaper said. "The money spent on these special elections (would have solved) 20 percent of that budget crisis and is enough to cover the average salary of 646 teachers for a year."

The Daily Cardinal said roughly \$25 million of that \$30 million was spent "by special interest groups organized into political action committees. A landmark Supreme Court decision last year opened the floodgates for the deluge of money currently saturating Wisconsin local television and radio."

The newspaper also cites that mysterious \$1 million donation to a super PAC associated with former Massachusetts Governor Romney, the purported front-runner for the Republican presidential nomination.

W Spann LLC, a company formed last March, donated \$1 million to the pro-Romney super PAC, Restore Our Future, before the company dissolved in July. Reports later said the donor was actually Edward Conrad, former executive at Bain Capital, Romney's former hedge fund.

Restore Our Future "raised \$12.2 million in the first six months of 2011 and, under the laws of post-Citizens United, there are no restrictions on how they can spend this money," The Daily Cardinal said.

The student newspaper fretted about the source of independent money.

"There are many reasons to be concerned about the health of American democracy," it said. "The electoral process, in particular has been flooded with unknown sources of wealth. There is little reason to believe that current campaign laws are sufficient to ensure that money being contributed to super PACs is limited to American donors."

Concern over the source of independent money led 10 corporate law professors, including Harvard Law School's Lucian Bebchuk and Columbia Law School's Robert Jackson, to petition the Securities and Exchange Commission, The Wall Street Journal reported Aug. 5.

The petition asked the SEC to require corporations to disclose political contributions from corporate money to stockholders. It argued that the Supreme Court decision assumed this would be the case.

There was no immediate comment from the SEC on the petition.