

SUPREME COURT UNLEASHES CORPORATE CAMPAIGN CASH IN CITIZEN'S UNITED DECISION

✘ The stunning and decisive loss by Martha Coakley to Scott Brown in the Massachusetts Senate special election has already caused a tsunami of fear among Democrats, and corresponding joy among Republicans, heading toward next fall's midterm elections. If you think this is cause for concern for Democrats looking forward to the 2010 midterm elections, picture the scene if the Republican party were also able to benefit from removal of restrictions on corporate and financial industry cash infused into their electoral coffers heading into the midterms and 2012 Presidential election.

As I wrote back last August, the Supreme Court took very unusual steps in a case by the name of *Citizens United v. FEC* to craft a case – originally argued on separate grounds – into a vehicle to make a Supreme Court declaration on the constitutionality of campaign finance restrictions and regulations. As Adam Cohen of the New York Times put it:

If the ban is struck down, corporations may soon be writing large checks to the same elected officials whom they are asking to give them bailouts or to remove health-and-safety regulations from their factories or to insert customized loopholes into the tax code.

Citizens United v. FEC was originally argued on March 24, 2009; but subsequently noticed for re-argument on the new grounds involving the opening of corporate campaign contributions on September 9, 2009. The general consensus among

the cognoscenti is that the Justices were leaning heavily toward blowing up the regulations and restrictions on corporate campaign contributions. For a complete blow by blow procedural and substantive history leading up to the decision, see Lyle Denniston's SCOTUSWiki on this case.

Well, the decision in *Citizens United v. Federal Elections Commission* is in and attached hereto. As you can see, it is a 5-4 split decision with Justice Kennedy writing the majority opinion. The decision below is reversed in part and affirmed in part, and the seminal case of *Austin v. Michigan* is hereby overruled as is that part of *McConnell v. FEC* which upheld the restrictions on independent corporate expenditures. In dissent, and/or partial dissent is Justice Stevens, joined by Ginsburg, Sotomayor, and Breyer. Justice Thomas also filed an opinion concurring in part and dissenting in part.

Today's decision in *Citizens United v. FEC* abolishes the previously settled distinction between corporate and individual expenditures in American elections and would appear to apply to state and local elections as well as Federal ones given that the Court recognizes such a First Amendment right. This is literally an earth shattering change in the lay of the land in campaign finance, and it will have ramifications in every way imaginable for the foreseeable future.

Quoting a very interested observer, Senator Russ Feingold, he of McCain-Feingold fame, John Nichols had this to say in *The Nation*:

But U.S. Senator Russ Feingold, the Wisconsin Democrat who has been in the forefront of campaign-finance reform efforts for the better part of two decades, is worried.

"This would be in my view, a lawless decision from the Supreme Court," says the senator who gave his name to the

McCain-Feingold law. "Part of me says I can't believe they'll do it, but there's some indication they might, and that means the whole idea of respecting the previous decisions of the Supreme Court won't mean anything anymore."

A lawyer who chairs the Constitution Subcommittee of the Senate Judiciary Committee, Feingold notes with regard to controls on corporate campaigning:

"These things were argued in 1907, when they passed the ban on corporate treasuries. It was argued in 1947, Taft-Hartley did this. The Supreme Court has affirmed over and over again that it's not part of free speech that corporations and unions can use their treasuries (to buy elections)."

If the court does overturn both law and precedent to advance a corporate agenda, Feingold says, "It's just an example of activism, and legislating by a court, if they do this."

It is, as well, dangerous for democracy.

Says Feingold: "If they overturn a hundred years of laws, it means that corporations or unions can just open their treasuries (and) just completely buy up all the television time, and drown out everyone else's voices."

Looks like we will be swimming in danger just like Russ Feingold feared. And when you couple the newly unleashed and unfettered corporate cash with the resurgent masters of corporate symbiosis and subservience, the Republican party, you have a recipe for the Democratic party heading into the perfect storm.