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PUBLIC STRATEGIES ALERT

Landmark Supreme Court Ruling On Corporate Political Speech

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In a landmark campaign finance opinion released Thursday morning, the Supreme Court of the United States held that the government cannot ban corporations from making direct expenditures from their own funds for speech in support of, or in opposition to, candidates for elected office. The decision explicitly overturns decades of precedent allowing such bans, and is effective immediately.

The case, *Citizens United v. Federal Election Commission*, concerned the ability of a nonprofit corporation to air advertisements on broadcast and cable television regarding the availability on video-on-demand of a documentary it had produced critical of Hillary Clinton. The Federal Election Commission found such advertisements illegal under the Bipartisan Campaign Reform Act (commonly known as "McCain-Feingold"), which prevented such corporate-funded advertisements from airing within 30 days of the then-pending presidential primaries. The Court's decision today empowers corporate speakers to engage in virtually unlimited independent advertising, across all forms of media, to promote or oppose federal, state and local candidates for office.

Writing for the Court's 5-4 majority, Justice Anthony Kennedy held, "The Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's

voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each."

In addition to for-profit and nonprofit corporations, the decision also expands the speech options for labor unions and other organizations. The decision further leaves in place disclosure and disclaimer requirements regarding the sponsors of such expenditures.

This decision does not, however, affect the existing century-old ban on direct financial contributions from corporations to federal candidates or the state-level bans which exist in many jurisdictions, though it calls their continuing viability into question. The decision also leaves unresolved the question of whether foreign-controlled or -dominated corporations will be able to sponsor such advertising, as Congress has already announced plans to hold hearings on this and other issues relating to the decision.

The professionals at Cozen O'Connor Public Strategies are prepared to provide guidance for you on these novel issues. Please contact Adam C. Bonin at (215) 665-2051, or via email at abonin@cozen.com, should you have any questions regarding this opinion or campaign finance issues generally.



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