

LEGAL PROS SAY NO TO CITIZENS UNITED¹

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In the wake of the Supreme Court's decision in *Citizens United v. FEC*, corporate money has poured into the 2010 elections in unprecedented amounts. Now, a bipartisan group of leading law professors, former state attorneys general, former prosecutors, and prominent attorneys from across the country has signed a letter calling on Congress to consider a Constitutional amendment to overrule *Citizens United* and return elections and government to the people. We joined that call because the notion of "corporate rights" expressed in *Citizens United* is antithetical to Constitutional principles of free speech, democracy, and self-government.

In that case, the Court ruled that the First Amendment prohibits restrictions on so-called "independent expenditures" by corporations to attempt to defeat or elect candidates. The Court equated corporations with people for purposes of free speech rights and struck down key provisions of the federal Bipartisan Campaign Reform Act. The creation of absolute corporate "speech" rights to spend money on elections is contrary to Constitutional principles and to the American vision of self-government by free people. That vision cannot coexist with elections dominated by hundreds of millions of dollars of corporate electioneering money.

Caution about corporate interference in politics goes back to our earliest days as a nation. James Madison, for example, warned that corporations may be "necessary evils," but they must have proper "limitations and guards." That's why the federal ban on corporate political contributions enacted by Theodore Roosevelt and Congress in 1907 was never, until *Citizens United*, viewed as a restriction on anyone's free speech. We know that amending the Constitution must be reserved for what Madison called "great and extraordinary occasions." Americans have many times used the amendment process to remove obstacles to people's participation in self-government on equal terms. The 13th Amendment ended slavery; the 14th guaranteed liberty, due process, and equal protection to all; and the 15th guaranteed the right to vote could not be abridged on account of race. With the 17th Amendment, the people claimed the right to elect U.S. Senators. The 19th Amendment guaranteed the right of women to vote—directly overruling the Supreme Court. In fact, in the 20th Century alone, we amended the Constitution 12 times.

Constitutional amendments require a wide consensus across all party lines. *Citizens United* has created that consensus. Most Americans know that corporations are not people and that money is not speech. Indeed, according to multiple polls, more than two-thirds of the American people, regardless of political party, reject the *Citizens United* decision and do not accept that we the people cannot decide for ourselves the appropriate level of regulation of the use of corporate money to determine our election results.

We did not lightly conclude that the long, hard work of a Constitutional amendment campaign must begin. But we cannot ignore the state of our nation and the increasing danger that our government may no longer be of, for, and by the people. We look forward to exploring with Congress, our states, and the American people the path back to a spirited and healthy democracy.

¹ Yes! Magazine, November 17, 2010