



## Montana's Citizens United Fails

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Today's Supreme Court summary reversal of the Montana Supreme Court's ruling that *Citizens United v. FEC* somehow didn't apply to Montana is hardly surprising. A few first reactions:

1. The Court really had no choice. Montana's case was that it is so uniquely corrupt that surely to combat that corruption it can interfere with First Amendment rights in ways that other states cannot. It would be a bit as if a state argued that its crime rates were so bad that the right of *habeas corpus* shouldn't apply there, or that it should be allowed to conduct unreasonable searches without a warrant, or that its courts were so backlogged it should be allowed to dispense with the right to trial by jury. The argument is absurd on its face. Worse, the evidence that Montana produced is essentially "[junk history](#)" — for example, it pointed to cases of legislators being illegally bribed by individuals as reasons to limit independent campaign expenditures by corporations. Of course, were Montana to prevail, every state could make the argument about how its people and political system are uniquely corrupt. In any case, the people of Montana should be cheered to know that the U.S. Supreme Court thinks more highly of them than their own attorney general and state supreme court do.

2. Beyond the absurdity of Montana's argument that *Citizens United* did not apply in its case is the question of whether the Court should have used the case to revisit *Citizens United*. But why would it do that? Nothing has changed in the past two years. If anything, from an empirical standpoint, *Citizens United* and other deregulatory cases — most notably, the Court of Appeals decision in [SpeechNow.org v. FEC](#), which allowed the creation of what have become known as super PACs — have been quite successful.

Most obviously, none of the dire predictions of the naysayers have come true. We are not being swamped with corporate spending, which remains a small fraction of the total political spending. Fortune 100 firms aren't even giving to super PACs or making expenditures on their own. There has been no scandal.

On the plus side, the 2010 election cycle was extremely competitive, perhaps the most competitive congressional elections in a generation. We have actually seen a rebirth of political discussion about the fundamental direction of the country. Voter turnout was

high in 2010, high in the Wisconsin recalls, and is expected to be high this fall. More voices are being heard than ever before, including grassroots voices such as the tea parties and the Occupy movement, both of which received big boosts from corporate and/or union financial support.

So empirically, *Citizens United* has been successful. It's true, of course, that more money is being spent on politics, but that's a good thing — it is generally recognized among political scientists that more spending increases voter knowledge and interest. Those who complain about more spending per se are like those who complain that cars go faster when the speed limit is 65 miles per hour than when it is 55 miles per hour. They do go faster, but that says nothing about the appropriate speed limit.

3. Remarkably, there are still four justices on the Supreme Court who would overturn *Citizens United*. I say “remarkably” because it is worth recognizing where these justices are in their interpretation of the First Amendment. At the time of *Citizens United*, three of them (Justices Breyer, Ginsburg, and Sotomayor, plus then-Justice Stevens) would have taken the radical step of prohibiting the advertising and satellite television showing of a documentary movie about a political candidate simply because a corporation had a role in financing its production or distribution. Name me a movie or book that doesn't receive such corporate support. This is a truly radical position, and Justice Kagan has now joined them. If you think much about it, this is a remarkable and radical interpretation of the First Amendment.

This demonstrates the importance of who wins presidency this fall — Obama has already appointed two justices who would give the government the power to prohibit speech in such a fashion. Given the president's own comments on *Citizens United*, it is clear that, given a chance, he will appoint more.