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## Opinion

### Elections for sale?

#### **If the Supreme Court lifts restrictions on corporate campaign contributions, watch out.**

By Doug Kendall

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If we learned anything this last year, it's that corporations must have government oversight. They are too big to fail, and powerful enough that corporate malfeasance, abetted by a lax government, can bring the global economy to its knees.

Yet the U.S. Supreme Court has reached out to consider an argument to give corporations a free hand to influence electoral politics. A ruling accepting this argument would shake the very foundation of our republic, turning us from a government of "we the people" to "we the corporations."

In his historic run to the presidency, Barack Obama broke every political fundraising record, raising nearly \$750 million from more than a million contributors in 2007 and 2008. Now consider a corporation such as Exxon Mobil. During 2008 alone, Exxon generated profits of \$45 billion. With a diversion of even 2% of these profits to the political process, Exxon could have far outspent the Obama campaign and fundamentally changed the dynamic of the 2008 election.

That's what's at issue as the Supreme Court takes on, for the second time, the case of [Citizens United](#) vs. FEC in a special hearing Wednesday, a month before the formal opening of the new term.

The case involves a film, "Hillary: The Movie," which sharply attacks Hillary Rodham Clinton and her presidential candidacy. It was produced by Citizens United, a conservative nonprofit advocacy group, to coincide with the 2008 presidential primary season. The Federal Election Commission saw the movie as no different from a standard-issue attack ad -- just longer -- and considered it subject to restrictions imposed under the 2002 McCain-Feingold campaign finance law as an "electioneering communication."

Citizens United began as a seemingly inconsequential case about the extent of the FEC's power to regulate such communications, but that was transformed at oral argument in March into a much bigger deal. Citizens United pressed for a sweeping rejection of

congressional authority to regulate campaign spending by corporations, and the court's conservative justices were plainly sympathetic to this broad argument.

Things got really scary on June 29, when the high court not only ordered re-argument of the case but ordered the parties to brief and argue the supplemental question of whether it should overrule *Austin vs. Michigan Chamber of Commerce* and parts of *McConnell vs. FEC*, both of which uphold regulation of corporate spending in candidate elections.

The case now turns on a simple but vitally important question: Are corporations different from individuals?

Citizens United and its allies want the court to treat corporate campaign expenditures -- which have been declared a form of "speech" by a prior Supreme Court ruling -- identically to expenditures by people, which are unlimited if done independently and not coordinated with a candidate's campaign. They argue, in essence, that corporate "speech" is entitled to just as much protection under the 1st Amendment as individual speech. In its *Austin* ruling, the court rejected that idea, finding that the "unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures."

The line between corporations and individuals when it comes to constitutional protections is as old as the United States. The framers wrote the Constitution to protect citizens and the people and never once used the word "corporations."

Early Supreme Court rulings embraced this distinction, holding that the legal rights of a corporation derive from its corporate charter, not the Constitution.

Since the nation's founding, our constitutional story has been one of democratic progress, moving toward broader enfranchisement and more meaningful political participation for individual Americans. Regulation of corporate influence in elections has helped make this progress possible. Indeed, one of the animating concerns of the 17th Amendment, which secured direct election of senators by the people, was the outsized influence corporations were having on the selection of senators by state legislatures.

The court's ruling in *Austin*, in other words, is fully consistent with the Constitution's text and history. If conservative justices on the Supreme Court overrule *Austin*, they will be guilty not only of unleashing corporate influence on elections -- in blatant disregard of the will of Congress and of the American people -- but of violating their own purported allegiance to upholding our founding document.

Asked the type of government established at the Constitutional Convention, Ben Franklin famously quipped: "a republic, if you can keep it." But what if the Supreme Court takes it from us?

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