Case 8

It has been 35 years since the US Supreme Court, in First National Bank of Boston v. Bellotti, extended free speech rights under the First Amendment to corporations, invalidating a Massachusetts law that prohibited the expenditure of corporate funds for influencing or affecting the opinion of voters. The majority found that the First Amendment covered the rights of citizens to hear speech and that citizens would benefit from hearing the views of corporations.

To the dismay of many, the 2010 Supreme Court ruling on Citizens United v. Federal Election Commission further extended the free speech guarantees of the First and Fourteenth Amendment of the US Constitution to corporations and unions. Inter alia, it invalidated section 203 of the Bipartisan Campaign Reform Act of 2002 (a.k.a. the McCain–Feingold Act), thereby allowing unlimited independent political expenditures by corporations and unions using their general funds. Prior to the Citizens United case, these entities could make political contributions, but they had to come from separate segregated funds (i.e., political action committees).

Although the country has yet to complete one full election cycle since the Court published the Citizens United decision, preliminary data suggest that the ruling might have had limited impact on the financing of federal campaigns. Writing for *The Atlantic* (May 21, 2012), Wendy Kaminer reported the following:

> A review of FEC records for independent expenditure-only committees–i.e. the so-called Super PACs–supporting the eight leading Republican Presidential candidates has evidenced minimal corporate involvement in the 2012 election cycle...not a single one of the Fortune 100 companies has contributed a cent to any of these eight Super PACs...of the entire $96,410,614, (contributed to the Super-PACs,) 86.32% was contributed by individuals, 12.87% by privately held corporations and less than one percent–0.81%–by public companies.

Perhaps restrictions contained in the McCain-Feingold Act fail to explain entirely why corporations do not spend more to shape the outcomes of elections. For an alternative explanation, consider the experience of Target, a national retailer headquartered in Minneapolis.

In 2010, Target donated $150,000 to Forward MN, a political action committee (PAC) running advertisements to benefit gubernatorial candidate Tom Emmer, who was critical of the lesbian gay bi-sexual transgender (LGBT) political agenda. Target's contribution ignited a boycott of their stores that counted some 400,000 participants on Facebook. Although this was not a national election and it is unclear how the boycott affected Target profits, if at all, the US Chamber of Commerce nonetheless cited the Target experience to justify its lobbying efforts to relax campaign finance disclosure laws. The Chamber contended that providing information on campaign contributions by corporations like Target deters other corporations from expressing their views through support of political campaigns. It argued that transparency, in essence, restricts free speech.

Those unhappy with the Citizens United decision worry that unregulated independent political expenditures by corporations with disproportionate resources have the potential to drown out other voices that may be more numerous, but have fewer financial resources.