

INTRODUCTION

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The Supreme Court under Chief Justice William Rehnquist is most readily associated with *Bush v. Gore*,¹ the case that famously (or infamously, depending on your view) determined the 2000 presidential election. The current Court—led by Chief Justice John Roberts—announced its legacy decision a decade later. This decision is likely to have even greater implications for our democracy than *Bush v. Gore*. In *Citizens United v. Federal Election Commission*,² the Court held that corporations and unions have a First Amendment right to spend unlimited funds on campaign advertisements, provided that these communications are not formally “coordinated” with any candidate. In other words, it found that the political speech rights of American voters and corporate entities are indistinguishable.

Citizens United's immediate impact was substantial. In one swift stroke, the Court overturned at least twenty years of its own precedent, rendered unconstitutional more than sixty years of federal law restricting corporate electioneering expenditures, and annihilated the statutes of twenty-two states that previously prohibited election spending from corporate general-treasury funds.

The lasting effects of the decision are still materializing. *Citizens United* led to the creation of so-called SuperPACs, political groups that can collect and spend unlimited amounts of money on electioneering, so long as strategic decisions are not coordinated with candidates. *Citizens United* also fostered widespread abuse of federal disclosure rules, allowing political actors to easily shield their spending from public scrutiny. Together, SuperPACs and dark money will define the 2012 electoral cycle; after that, our legal and political choices will shape the character of elections to come.

Citizens United also ignited widespread popular, academic and political discussion about money, politics and the Constitution. Seizing the moment, the Brennan Center for Justice convened a symposium just nine weeks after the decision was rendered in which several of the nation's leading First Amendment thinkers participated. In doing so, the Center sought to channel the raw post-*Citizens United* energy (and, for many, outrage) into productive debate. Our overarching goal was to foster fresh and innovative ideas for campaign finance regulation, an area long burdened by regulatory complexity, soiled by partisan strife, and confused by often contradictory constitutional rulings.

The articles in this volume emerged from that gathering. Together, the

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1. 531 U.S. 98 (2000).

2. 130 S. Ct. 876 (2010).

contributing authors ponder some of the most significant questions facing our post-*Citizens United* democracy, such as:

- Under the First Amendment, how closely should political spending be equated with political speech?
- How can we balance individual rights to autonomous speech with the speech rights of associations of people, including business corporations comprised of shareholders?
- How can the historical treatment of political corruption inform our current efforts to protect the legitimacy of electoral outcomes?
- How suspicious should we be when the government tries to regulate political speech, even if motivated by genuinely good intentions?
- When courts grapple with campaign finance cases, should they consider the practical implications for democratic discourse and—if so—to what extent?
- How should our commitment to equality and robust political participation influence the regulation of money in politics?

These articles reveal *Citizens United's* silver lining: Even though many of us vehemently object to its logic and holding, *Citizens United* has forced a new phase in our country's continuous march to improve our democracy. This volume represents the first steps in that struggle.