CITIZENS UNITED v. F.E.C., 2010

Critical Engagement Question

Assess whether the Supreme Court ruled correctly in *Citizens United v. F.E.C.*, 2010, in light of constitutional principles including republican government and freedom of speech.

Learning Objectives

Students will:

- Understand the Founders' reasons for affording political speech the greatest protection.
- Apply principles of republican government and freedom of speech to evaluate the decision in *Citizens United v. F.E.C.*, 2010

Materials

Handout A: Agree or Disagree

Handout B: *Citizens United v. F.E.C.*, 2010, Background Essay

Handout C: *Citizens United v. F.E.C.*, 2010

Grade Level and Time

Two 50-minute high school classes

Standards

CCE (9-12): IIC2; IID3; IID5
NCHS: Era 3, Standard 3; Era 7, Standard 1; Era 10, Standard 1
NCSS: Strands 2, 5, 6 and 10

Common Core (Grades 9-10):

9. Analyze seminal U.S. documents of historical and literary significance (e.g., Washington's Farewell Address, the Gettysburg Address, Roosevelt's Four Freedoms speech, King's "Letter from Birmingham Jail"), including how they address related themes and concepts.

Common Core (Grades 11-12):

8. Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., The Federalist, presidential addresses).
9. Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including The Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, and Lincoln's Second Inaugural Address) for their themes, purposes, and rhetorical features.

OVERVIEW

During his 2010 State of the Union address, President Barack Obama did something very few presidents have done: he openly challenged a Supreme Court ruling in front of both chambers of Congress and members of the Supreme Court of the United States. That ruling, *Citizens United v. F.E.C.* (2010), and the President's commentary on it, reignited passions on both sides of a century-long debate: to what extent does the First Amendment protect the variety of ways Americans associate with one another and the diverse ways we "speak, " "assemble," and participate in American political life? It is this speech – political speech – that the Founders knew was inseparable from the very concept of self-government.

NOTES

DAY I

Warm-up *15 minutes*

Distribute **Handout A: Agree or Disagree**, and have students work individually or with a partner to mark each statement. Reconvene as a large group and share responses. You may wish to tell students that statements 1-3 contain actions which, according to the majority in *Citizen United*, would be felonies had the BCRA provision at issue in the case not been struck down by the ruling. Statements 4-6 are all from the majority opinion.

Activity *25 minutes*

Distribute **Handout B: *Citizens United v. F.E.C.*, 2010, Background Essay** and have students read independently, or read aloud as a class.

Wrap-Up *10 minutes*

As a class, go over the critical thinking questions. Have students write complete responses for homework.

DAY II

Warm-up *10 minutes*

As a class, go over definitions of the constitutional principles of republican government and freedom of speech. Republican governments, also called representative governments or mixed governments, are those where power of government resides with the people or is lent to their representatives. Freedom of speech is an example of a right the Founders believed was inalienable and necessary for self-government.

Activity *30 minutes*

Distribute **Handout C: *Citizens United v. F.E.C.*, 2010**. Have students work in pairs or trios to go over the documents and answer the scaffolding questions. Depending on students' reading levels and familiarity with primary sources, you may wish to divide the documents among groups.

Wrap-Up *10 minutes*

Spend focused time on the majority opinion in *Citizens v. United*, encouraging students to share their evaluations of the ruling, grounding their answers in the Constitution. You may wish to reveal, if you did not do so earlier, that the statements 1-3 on **Handout A** contained actions which, according to the majority in *Citizen United*, would be felonies had the BCRA provision at issue in the case not been struck down by the ruling. Statements 4-6 are all from the majority opinion.

Have students write their essay responses for homework or in class next time.

A

AGREE OR DISAGREE?

Directions: *Mark each statement with an "A" if you agree or a "D" if you disagree.*

_____ 1. Government should be able to punish the Sierra Club if it were to run an ad immediately before a general election, trying to convince voters to disapprove of a Congressman who favors logging in national forests.

_____ 2. Government should be able to punish the National Rifle Association if it were to publish a book urging the public to vote for the challenger because the incumbent U. S. Senator supports a handgun ban.

_____ 3. Government should be able to punish the American Civil Liberties Union if it creates a website telling the public to vote for a presidential candidate in light of that candidate's defense of free speech.

_____ 4. "The First Amendment protects speech and speaker, and the ideas that flow from each."

_____ 5. "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech."

_____ 6. "When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves."

B BACKGROUND ESSAY
Citizens United v. F.E.C., 2010

During his 2010 State of the Union address, President Barack Obama did something very few presidents have done: he openly challenged a Supreme Court ruling in front of both chambers of Congress and members of the Supreme Court of the United States. That ruling, *Citizens United v. F.E.C.* (2010), and the President's commentary on it, reignited passions on both sides of a century-long debate: to what extent does the First Amendment protect the variety of ways Americans associate with one another and the diverse ways we "speak," "assemble," and participate in American political life? It is this speech – political speech – that the Founders knew was inseparable from the very concept of self government.

Since the rise of modern "big business" in the Industrial Age, Americans have expressed concerns about the influence of corporations and other "special interests" in our political system. In 1910 President Teddy Roosevelt called for laws to "prohibit the use of corporate funds directly or indirectly for political purposes…[as they supply] one of the principal sources of corruption in our political affairs." Already having made such corporate contributions illegal with the Tillman Act of 1907, Roosevelt's speech nonetheless prompted Congress to amend this law to add enforcement mechanisms with the 1910 Federal Corrupt Practices Act. Future Congresses would enlarge the sphere of "special interests" barred from direct campaign contributions through – among others - the Hatch Act (1939), restricting the political campaign activities of federal employees, and the Taft-Hartley Act (1947), prohibiting labor unions from expenditures that supported or opposed particular federal candidates.

Collectively, these laws formed the backbone of America's campaign finance laws until they were replaced by the Federal Elections Campaign Acts (FECA) of 1971 and 1974. FECA of 1971 strengthened public reporting requirements of campaign financing for candidates, political parties and political committees (PACs). The FECA of 1974 added specific limits to the amount of money that could be donated to candidates by individuals, political parties, and PACs, and also what could be independently spent by people who want to talk about candidates. It provided for the creation of the Federal Election Commission, an independent agency designed to monitor campaigns and enforce the nation's political finance laws. Significantly, FECA left members of the media, including corporations, free to comment about candidates without limitation, even though such commentary involved spending money and posed the same risk of quid pro quo corruption as other independent spending.

In *Buckley v. Valeo (1976)*, however, portions of the FECA of 1974 were struck down by the Supreme Court. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers' ability to convey their message to as many people as possible. Limits on direct campaign contributions, however, were permissible and remained in place. The Court's rationale for protecting independent spending was not, as is sometimes stated, that the Court equated spending money with speech. Rather, restrictions on spending money for the purpose of engaging in political speech unconstitutionally interfered with the First Amendment-protected right to free speech. (The Court did mention that direct contributions to candidates could be seen as symbolic expression, but concluded that they were generally restrict-able despite that.)

The decades following *Buckley* would see a great proliferation of campaign spending. By 2002, Congress felt pressure to address this spending and passed the Bipartisan Campaign Finance Reform Act (BCRA). A key provision of the BCRA was a ban on speech that was deemed "electioneering communications" – speech that named a federal candidate within 30 days of a primary election or 60 days of a general election that was paid for out of a "special interest's" general fund (PACs were left

untouched by this prohibition). An immediate First Amendment challenge to this provision – in light of the precedent set in *Buckley* – was mounted in *McConnell v. F.E.C. (2003)*. But the Supreme Court upheld it as a restriction justified by the need to prevent both "actual corruption…and the appearance of corruption."

Another constitutional challenge to the BRCA would be mounted by the time of the next general election. Citizens United, a nonprofit organization, was primarily funded by individual donations, with relatively small amounts donated by for-profit corporations as well. In the heat of the 2008 primary season, Citizens United released a full-length film critical of then-Senator Hillary Clinton entitled *Hillary: the Movie*. The film was originally released in a limited number of theaters and on DVD, but Citizens United wanted it broadcast to a wider audience and approached a major cable company to make it available through their "On-Demand" service. The cable company agreed and accepted a $1.2 million payment from Citizens United in addition to purchased advertising time, making it free for cable subscribers to view.

Since the film named candidate Hillary Clinton and its On-Demand showing would fall within the 30-days-before-a-primary window, Citizens United feared it would be deemed an "electioneering communications" under the BCRA. The group mounted a preemptive legal challenge to this aspect of the law in late 2007, arguing that the application of the provision to *Hillary* was unconstitutional and violated the First Amendment in their circumstance. A lower federal court disagreed, and the case went to the Supreme Court in early 2010.

In a 5-4 decision, the Supreme Court ruled in *Citizens United v. F.E.C.* that: 1) the BCRA's "electioneering communications" provision did indeed apply to *Hillary* and that 2) the law's ban on corporate and union independent expenditures was unconstitutional under the First Amendment's speech clause. "Were the Court to uphold these restrictions," the Court reasoned, "the Government could repress speech by silencing certain voices at any of the various points in the speech process." *Citizens United v. F.E.C.* extended the principle, set 34 years earlier in *Buckley,* that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.

Comprehension and Critical Thinking Questions

1. Summarize the ways in which various campaign finance laws have restricted the political activities of groups, including corporations and unions.
2. What was the main idea of the ruling in *Buckley v. Valeo*?
3. What political activity did the group Citizens United engage in during the 2008 primary election? How was this activity potentially illegal under the BCRA?
4. How did the Supreme Court rule in *Citizens United v. F.E.C.*? In what way is it connected to the ruling in *Buckley*?
5. Do you believe that the First Amendment should protect collective speech (i.e. groups, including "special interests") to the same extent it protects individual speech? Why or why not?
6. What if the government set strict limits on people spending money to get the assistance of counsel, or to educate their children, or to have abortions? Or what if the government banned candidates from traveling in order to give speeches? Would these hypothetical laws be unconstitutional under the reasoning the Court applied in *Buckley* and *Citizens United*? Why or why not?

CITIZENS UNITED V. F.E.C., 2010

Directions: *Read the Background Essay and Key Question. Then analyze Documents A-L. Finally, answer the Key Question in a well-organized essay that incorporates your interpretations of Documents A-L, as well as your own knowledge of history.*

Key Question

Assess whether the Supreme Court ruled correctly in Citizens United v. F.E.C., 2010, in light of constitutional principles including republican government and freedom of speech.

Document A: *Federalist* # 10, James Madison, 1787
Document B: Thomas Jefferson to Edward Carrington, 1787
Document C: The First Amendment, 1791
Document D: "The Bosses of the Senate," Joseph Keppler, 1889
Document E: New Nationalism Speech, Teddy Roosevelt, 1910
Document F: *Buckley v. Valeo*, 1976
Document G: Citizens United Mission Statement, 1988
Document H: *McConnell v. F.E.C.*, 2003
Document I: *Citizens United v. F.E.C.*, 2010
Document J: Dissenting Opinion, *Citizens United v. F.E.C.*, 2010
Document K: Concurring Opinion, *Citizens United v. F.E.C.*, 2010
Document L: "Another Dam Breaks," Matt Wuerker, 2010

Document A: *Federalist # 10*, James Madison, 1787

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

[Because] the *causes* of faction cannot be removed…relief is only to be sought in the means of controlling its *effects*…If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.

1. **How does James Madison define a faction?**
2. **What does Madison argue serves as a "check" on the influence various factions may have on society?**
3. **Would the Federalist Papers have been legal under the BCRA?**

Document B: Thomas Jefferson to Edward Carrington, 1787

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. ... The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.…

If once they become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves.

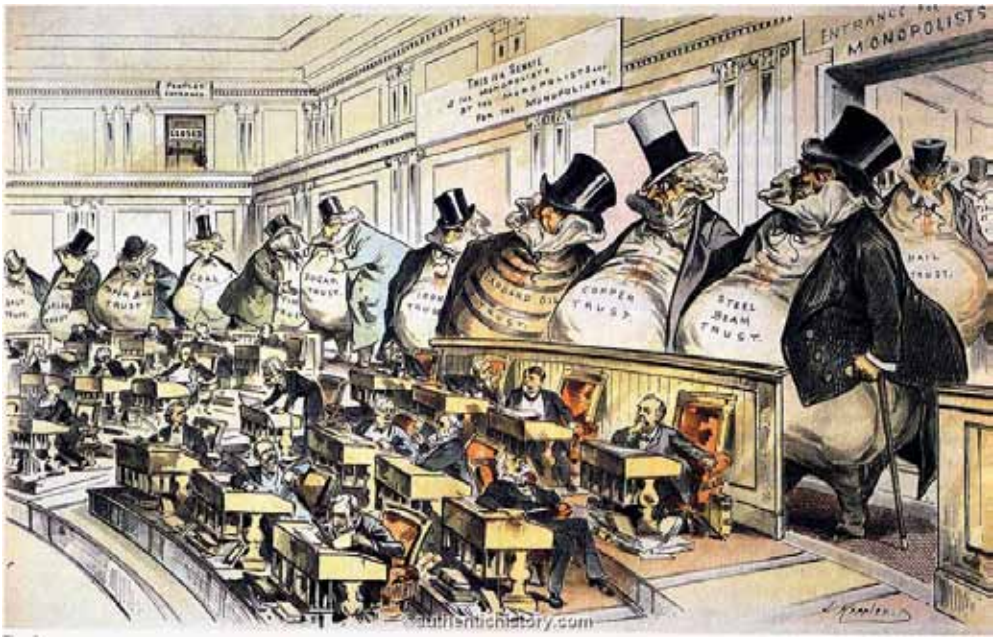
1. **What does Jefferson believe is "the basis of our governments"?**
2. **What does Jefferson believe is "the only safeguard of the public liberty"?**
3. **What does Jefferson seem to believe is a possible disadvantage of press freedom? Why does he find it acceptable?**
4. **What does Jefferson predict will happen if the people become inattentive to public affairs?**

Document C: The First Amendment, 1791

Congress shall make no law…abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

1. **Why did the Founders deem speech and assembly so vital to self-government?**
2. **List a variety of ways you see Americans "speak" and "assemble" in political life.**

Document D: "The Bosses of the Senate," Joseph Keppler, 1889



1. **How does this cartoon express the concern of "quid pro quo" corruption?**
2. **What is the significance of the closed door with the sign above it in the upper left hand corner of the cartoon?**
3. **Did Madison's assertion in *Federalist* 10 (Document A) – that the republican principle will serve as a check on the influence of factions – apply in the cartoon's time period? Does it apply today?**

Document E: New Nationalism Speech, Teddy Roosevelt, 1910

[O]ur government, National and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics. … [E]very special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution guarantees protection to property, and we must make that promise good. But it does not give the right of suffrage to any corporation.

1. **What does Roosevelt mean by "special interests"?**
2. **How does this concept relate to Madison's definition of "faction"?**

Document F: *Buckley v. Valeo*, 1976

Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation...Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest possible protection to such political expression in order to assure unfettered exchange of ideas for the bringing about of political and social changes desired by the people…A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

1. **Restate this excerpt from the *Buckley* ruling in your own words.**

Document G: Citizens United Mission Statement, 1988

Citizens United is an organization dedicated to restoring our government to citizens' control. Through a combination of education, advocacy, and grass roots organization, Citizens United seeks to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security. Citizens United's goal is to restore the founding fathers' vision of a free nation, guided by the honesty, common sense, and good will of its citizens…Citizens United has a variety of different projects that help it uniquely and successfully fulfill its mission. Citizens United is well known for producing high-impact, sometimes controversial, but always fact-based documentaries filled with interviews of experts and leaders in their fields.

1. **Do you believe James Madison would consider Citizens United a faction? Why or why not?**
2. **Is Citizens United an "assembly" of people seeking to engage in political "speech?" Why or why not?**

Document H: Majority Opinion, *McConnell v. F.E.C.*, 2003

Because corporations can still fund electioneering communications with PAC money, it is 'simply wrong' to view the [BCRA] provision as a 'complete ban' on expression…

We have repeatedly sustained legislation aimed at 'the corrosive effects of immense aggregations of wealth that are accumulated with the help of the corporate form' …[T]he government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office…corporations and unions may finance genuine issue ads during those time frames by simply avoiding any specific reference to federal candidates, or…by paying for the ad from a segregated fund [PAC].

1. **Restate the *McConnell* opinion in your own words.**
2. **In your opinion, is the *McConnell* ruling consistent with the ruling in *Buckley* (Document F) in its interpretation of the First Amendment?**

Document I: *Citizens United v. F.E.C.*, 2010

The F.E.C. has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. … given the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against F.E.C. enforcement must ask a governmental agency for prior permission to speak.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech.

At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge….By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of 'destroying the liberty' of some factions is 'worse than the disease' [*Federalist* 10]. Factions should be checked by permitting them all to speak, and by entrusting the people to judge what is true and what is false...

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. Today, 30-second television ads may be the most effective way to convey a political message. Soon, however, it may be that Internet sources … will provide citizens with significant information about political candidates and issues. Yet, [the BCRA] would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

1. **Why does the Court say that current F.E.C. regulations results in citizens needing "permission to speak"?**
2. **Why does the Court say that "The First Amendment confirms the freedom to think for ourselves"?**
3. **The Court reasoned, "The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy." Do you agree? What effect, if any, does this ruling have on the republican principle of the United States government?**

Document J: Dissenting Opinion, *Citizens United v. F.E.C.*, 2010

[In] a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, members of the Armed Forces, foreigners, and its own employees.

Unlike our colleagues, the Framers had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. … [M]embers of the founding generation held a cautious view of corporate power and a narrow view of corporate rights… and…they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition—if not also the very notion of "corporate speech"—was inconceivable.

On numerous occasions we have recognized Congress's legitimate interest in preventing the money that is spent on elections from exerting an 'undue influence on an officeholder's judgment' and from creating 'the appearance of such influence.' Corruption operates along a spectrum, and the majority's apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics….A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

A regulation such as BCRA may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice.

At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

1. **How does the reasoning in the dissenting opinion differ from that of the Majority (Document I)?**
2. **How would you evaluate the dissenters statement, "A democracy cannot function effectively when its constituent members believe laws are being bought and sold."**

Document K: Concurring Opinion, Citizens United v. F.E.C., 2010

The Framers didn't like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech.

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary…both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. The New York Sons of Liberty sent a circular to colonies farther south in 1766. And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757.

The dissent says that when the Framers "constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind." That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women—not, for example, of trees or polar bears. But the individual person's right to speak includes the right to speak in association with other individual persons. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of "an individual American." It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not "an individual American."

1. **Why does this Justice argue that the original understanding of the First Amendment does not allow for limitations on the speech of associations such as corporations and unions? Do you agree?**

Document L: "Another Dam Breaks," Matt Wuerker, 2010

1. **What does the cartoonist predict will be the effect of the *Citizens United* ruling?**
2. **What assumptions does the cartoonist seem to make about voters? Are they valid assumptions? Explain.**

Lesson Answer Key

Handout A: Agree or Disagree

1. Governments could place no restraints on publication in advance.
2. The law did not impose a prior restraint. That is, it did not prevent publication in advance.
3. The Court ruled that a broad claim of national security did not justify a prior restraint under the First Amendment. Accept reasoned answers.
4. The Court reasoned that free and open debate about the conduct of public officials was more important than occasional, honest factual errors that might hurt or damage officials' reputations. Accept reasoned answers.
5. Accept reasoned answers.

Handout B: *Citizens United v. F.E.C.*, 2010 Background Essay

1. The banning of direct campaign contributions by corporations (Tillman Act, 1907), limitations on activities of federal employees (Hatch Act, 1939), banning direct campaign contributions by labor unions (Taft-Hartley, 1947), public reporting requirements and dollar-amount limitations on contributions (FECA, 1971 & 1974), and a ban on "electioneering communications" within a set time period prior to elections (BCRA, 2002).
2. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers' ability to convey their message to as many people as possible.
3. Citizens United, a non-profit group funded by donations, produced a feature-length movie critical of presidential candidate Hillary Clinton. The movie was to be shown nationwide in select theaters and through a major cable company's On-Demand service. It potentially ran afoul of the BCRA's limitation on "electioneering communications" within 30-days of a primary election or 60-days of a general election, paid for by a corporation's general fund.
4. *Citizens United v. F.E.C.* extended the principle, set 34 years earlier in *Buckley,* that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.
5. Accept reasoned answers.
6. Using the same reasoning as the Court did in *Buckley*, these laws would be unconstitutional. They would be unconstitutional not because "spending [on a lawyer] amounted to [assistance of counsel] protected by the [Sixth] Amendment," or that "spending [on a private education] amounted to [private education] protected by the [Due Process Clause of the Fourteenth Amendment]," or that "spending [on an abortion] amounted to [an abortion] protected by the [Due Process Clause of the Fourteenth Amendment]." Rather, the reasoning would be that banning such spending *unconstitutionally interfered* with the rights to assistance of counsel, private education, or an abortion. Likewise, a government ban on candidates from traveling in order to give campaign speeches would likely be unconstitutional because the ban on travel unconstitutionally burdened the right to speak.

Citizens United DBQ Answer Key

Document A: Federalist # 10, James Madison, 1787

1. According to Madison, a faction is a number of citizens who are 1) united by a common interest and 2) opposed to the rights of others and/or the permanent interest of the community.
2. For Madison, one check on the influence of factions is regular elections.
3. Accept reasoned answers.

Document B: Thomas Jefferson to Edward Carrington, 1787

1. The opinion of the people
2. "The only safeguard of the public liberty" is, for Jefferson, the ability of the people to speak and publish their opinions on governmental matters freely. Too much information is preferable to too little.

3. A disadvantage to press freedom is that the people may be led astray at times. This possibility is acceptable to Jefferson because he believes their good sense will win out, and they will correct themselves. Also, for all the faults that people are prey to, government censorship would be more dangerous than public error.
4. Those with power will "become wolves," which is to say they will oppress those without power.

Document C: The First Amendment, 1791

1. Accept reasoned answers.
2. Giving speeches, speaking persuasively to friends or larger audiences, producing creative works, writing for a newspaper or other publication, keeping a blog, posting to YouTube, Facebook, or other social media, writing letters to the editor, attending political rallies, meeting in clubs or other groups.

Document D: "The Bosses of the Senate," Joseph Keppler, 1889

1. "Quid pro quo" refers to a more or less equal exchange. In the context of political discourse, the term often suggests bribery. "Quid pro quo" refers to an expectation that, if wealthy contributors donate large sums of money to a political campaign, the person receiving this benefit will, once elected, use his or her influence to provide some special benefit to the donor.
2. The cartoonist believes that, through their financial support of candidates, the business interests of the industrial age have seized control of the Senate, and are the "bosses" of the Senators. The concern of quid pro quo corruption is indicated by the position and size, relative to the Senators, of the figures representing business interests.
3. The closed door leading to the public gallery above the Senate reinforces the author's message that the government is no longer open to "the people."
4. Accept reasoned answers. Students may note that in the cartoon's time period, Senators were appointed by state legislatures.

Document E: New Nationalism Speech, Teddy Roosevelt, 1910

1. Business interests that seek to "control and corrupt the men and methods of government for their own profit."
2. Roosevelt's description of "special interests" seems very similar to Madison's concept of "faction."

Document F: *Buckley v. Valeo*, 1976

1. Speech about candidates deserves the same First Amendment protection as other kinds of political speech. Civil discourse on politics is essential for self government. Engaging in speech requires spending money. Therefore, limits on spending by individuals and groups unconstitutionally burden their ability to speak freely. The First Amendment protects the ability to speak for or against a candidate, and was meant to ensure such speech could occur in a variety of ways.

Document G: Citizens United Mission Statement, 1988

1. Probably not. While Citizens United is "a number of citizens…united and actuated by some common…interest," its activities do not satisfy the second part of the definition of faction: "adversed to the rights of other citizens, or to the permanent and aggregate interests of the community."
2. Accept reasoned answers.

Document H: *McConnell v. F.E.C.*, 2003

1. Since the BCRA leaves PACs free to engage in political speech, corporations and unions are not limited in their ability to speak, they merely must do so through their PACs.
2. Accept reasoned answers.

Document I: *Citizens United v. F.E.C.*, 2010

1. The Court reasons that, because laws governing "electioneering communications" are so voluminous and complicated, the presumption has become that speech is illegal, rather than free.
2. Citizens can and must judge for themselves which voices they will listen to.
3. Accept reasoned answers.

Document J: Dissenting Opinion, *Citizens United v. F.E.C.*, 2010

1. The dissent argues that the right to free speech was designed to protect an individual's right to speak, and was never understood to apply to corporations, which are business associations, not political ones. The notion of "corporate speech" was foreign to the Founders, and the First Amendment doesn't protect it at the same level. Congress has a legitimate interest in protecting against "undue influence" and corruption, and the vast resources of corporations – in comparison to individuals – makes this "undue influence" more likely. The BCRA's ban may regulate how a person, or persons, may speak, but it does not prevent anyone from speaking "in his own voice."
2. Accept reasoned answers.

Document K: Concurring Opinion, *Citizens United v. F.E.C.*, 2010

1. This dissenting justice argues that corporations existed at the time of the Founding. They not only engaged in speech and petitioned the government, but were understood by the authors of the First Amendment to have speech rights equivalent to individual Americans. Further, the First Amendment does not allow restrictions to be made on the basis of who is speaking.

Document L: "Another Dam Breaks," Matt Wuerker, 2010

1. The cartoonist believes the Supreme Court's ruling in Citizens United has "broken the dam" holding back union and corporate money from overwhelming American voters with political speech. The resulting wave of "special interest" money threatens to drown the influence and voices of individual voting Americans.
2. Accept reasoned answers.

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