

Statement of  
**The Honorable Benjamin L. Cardin**

United States Senator  
Maryland  
March 10, 2010

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

"WE THE PEOPLE? CORPORATE SPENDING IN AMERICAN ELECTIONS  
AFTER CITIZENS UNITED"

SENATE JUDICIARY COMMITTEE

March 10, 2010

Mr. Chairman, I thank you for calling this very important hearing today.

My view of the Citizens United decision is clear. A very activist Supreme Court has tipped the scales of justice further against American voters, which will only exacerbate the great imbalance that currently exists in U.S. campaigns. By effectively legislating in areas that Congress has set reasonable guidelines, the Supreme Court is swinging the door wide open for special interests and corporate America to have an even greater influence over our political system.

The Supreme Court runs the risk here of literally returning to Lochner-era jurisprudence of the 1920's and 1930's, which threatened numerous New Deal programs as America was trying to recover from the Great Depression. That Court's extreme views on the rights and privileges of corporations - at the expense of society and the American people - were ultimately rejected by the President, Congress, American people, and ultimately by the Supreme Court itself.

I am increasingly concerned that this Supreme Court is not inclined to follow precedent, and that it is deciding cases much more broadly than necessary in order to reach a desired policy conclusion. Justice Stevens is correct in his dissent that "essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law...there were principled, narrower paths that a Court that was serious about judicial restraint could have taken."

The Court's action here flies in the face of their proper role of constitutional interpretation, and ignores the role of Congress in weighing competing interests and passing necessary legislation under its Article I authority.

I again agree with the dissent of Justice Stevens in this case, when he writes that "our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races." And that's what we did in 2002, when Congress acted on a bipartisan basis to pass the Bipartisan Campaign Reform Act, which President Bush signed into law.

We don't really know how much more corporate money this ruling will inject into our political system, but I fear it will increase dramatically, to the detriment of the free and fair nature of our electoral process.

So I have great difficulty in understanding the Court's decision here, which overruled the Austin case from 1990 and the McConnell case from 2003 which had upheld restrictions on political spending by corporations. Indeed, I find myself again agreeing with Justice Stevens on the explanation of the Court's action here: "the only relevant thing that has changed since Austin and McConnell is the composition of this Court."

So I look forward to today's hearing and examining how Congress can respond to this decision, whether by legislation or constitutional amendment. Congress must now work together in a bipartisan fashion to restore the original intent of the law.