Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 10, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On
"We The People? Corporate Spending In American Elections After Citizens United"
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Today's hearing is another in a series we have held that focus on how recent activist decisions by narrow majorities on the Supreme Court affect the lives of hard-working Americans. In a case called Citizens United v. Federal Election Commission, five justices acted to overturn a century of law designed to protect our elections from corporate spending. They ruled that corporations are no longer prohibited from direct spending on political campaigns, and extended to corporations the same First Amendment rights in the political process that are guaranteed by the Constitution to individual Americans.

The Citizens United decision turns the idea of Government of, by and for the people on its head. It creates new rights for Wall Street at the expense of the people on Main Street. It threatens to allow unprecedented influence from foreign corporations into our elections. Americans concerned about fair elections have rightfully recoiled.

Our Constitution begins with the words, "We the People of the United States." In designing the Constitution, States ratifying it, adopting the Bill of Rights and creating our democracy, we spoke of, thought of, and guaranteed fundamental rights to the American people, not corporations.

There are reasons for that. Corporations are not the same as individual Americans. Corporations do not have the same rights, the same morals or the same interests. Corporations cannot vote in our democracy.

Corporations are artificial legal constructs to facilitate business. The difference is common sense and rooted in core American values. The great Chief Justice John Marshall wrote in 1819 that, "A corporation is an artificial being . . . the mere creature of law, it possesses only those properties which the charter of its creation confers upon it . . . ."

In previous hearings, we have highlighted a troubling pattern in the Supreme Court's recent rulings making it more difficult for corporations to be held accountable for their misconduct. These cases include Stoneridge, Ledbetter, Riegel, Circuit City and Gross, just to name a few. Those cases involve the Court's misinterpretation of statutory law. This case is an example of the Supreme Court continuing its pattern of favoring corporate interests by granting corporations

unprecedented constitutional rights. Corporate interests find five ready allies at the Supreme Court.

Teddy Roosevelt proposed the first campaign finance reforms limiting the role of corporations in the political process. Those reforms were preserved and extended through another century of legal developments that followed. Eight years ago, it was these same values that informed bipartisan efforts in Congress, on behalf of the American people, to enact the landmark McCain-Feingold Act. That legislation strengthened the laws protecting the interests of all Americans by ensuring a fair electoral process where individual Americans could have a role in the political process, regardless of wealth.

Six years ago, in McConnell v. Federal Election Commission, the Supreme Court upheld the key provisions of the McCain-Feingold Act against a First Amendment challenge. Now, a thin majority of the Supreme Court, made possible by President Bush's appointment of Justice Samuel Alito, reversed course on the very same question. In so doing, the conservative activist majority discarded not only the McConnell decision, but ran roughshod over longstanding precedent, and took it upon itself to effectively redraft our campaign finance laws. As Justice Stevens noted in dissent, "The only relevant thing that has changed since . . . McConnell is the composition of the Court." The Constitution has not changed. Nowhere does our Constitution even mention corporations.

This brand of conservative judicial activism is a threat to the rule of law. It undermined the efforts of Americans' elected representatives in Congress to keep powerful, corporate megaphones from drowning out the voices and interests of individual Americans. Rather than abiding by the limitations that Congress has developed to ensure a multitude of voices in the marketplace of election contests, the narrow majority on the Supreme Court decided that the biggest corporations should be unleashed, and can be the loudest and most dominant.

At the core of the First Amendment is the right of individual Americans to participate in the political process - to speak and, crucially, to be heard. That is what the campaign finance laws were designed to ensure - that Americans can be heard and fairly participate in elections. Five justices overruled congressional efforts to keep powerful, moneyed interests from swamping individuals' voices and interests. They showed no deference to Congress, and little to the precedents of the Supreme Court.

Vermont is a small state. It is easy to imagine corporate interests flooding the airwaves with election ads and transforming even local elections there. It would not take more than a tiny fraction of corporate money to outspend all of our local candidates combined. If a local city council or zoning board is considering an issue of corporate interest, why would the corporate interests not try to drown out the view of Vermont's hard-working citizens? I know that the people of Vermont, like all Americans, take seriously their civic duty to choose wisely on Election Day. Vermonters cherish their critical role in the democratic process and are staunch believers in the First Amendment.

Vermont refused to ratify the Constitution until the adoption of the Bill of Rights in 1791. The rights of Vermonters and all Americans to speak to each other and to be heard should not be undercut by corporate spending. I fear that is exactly what will happen unless both sides of the

aisle join with President Obama to try to restore the ability of every American to be heard and effectively participate in free and fair elections.

When the Citizens United decision was handed down, I said that it was the most partisan decision since Bush v. Gore. As in Bush v. Gore, the conservative activists on the Supreme Court unnecessarily went beyond the proper judicial role to substitute their preferences for the law. But Citizens United is broader and more damaging, because rather than intervening to decide a single election, the Court intervened to affect all future elections. The impact will reach local zoning board elections, state judicial elections, as well as national contests. Regrettably, this decision is only the latest example of the willingness of a narrow conservative activist majority of the Supreme Court to render decisions from the bench to suit their own ideological agenda. For all the talk about "judicial modesty" and "judicial restraint" from the nominees of President Bush at their confirmation hearings, we have seen a Supreme Court these last four years that has been anything but modest and restrained.

I am concerned that the Citizens United decision risks opening the floodgates of corporate influence in American elections. In these tough economic times, I believe individual Americans should not have their voices drowned out by unfettered corporate interests. I am also concerned that this decision will invite foreign corporate influence into our elections. We are in unchartered territory, but how the court came to its conclusion and the impact this case will have on our democracy deserves our attention here today.

I welcome our witnesses to the Committee today and look forward to their testimony.

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