

THE CHRONICLE OF PHILANTHROPY

NEWS UPDATES

January 22, 2010

Supreme Court Campaign-Finance Ruling Could Aid Nonprofit Advocacy, But Adds New Concerns

By Suzanne Perry

The U.S. Supreme Court ruling on Thursday to lift restrictions on corporate campaign spending has drawn sharp attacks from government watchdogs and other nonprofit groups that fear it will allow businesses to drown out the voices of individuals, charities, and smaller advocacy organizations.

“U.S. Supreme Court Unleashes Money Pit,” reads the headline on a press release by OMB Watch, a nonprofit group that promotes government accountability.

“This is a defining moment for the nonprofit and philanthropy sector,” says Larry Ottinger, president of the Center for Lobbying in the Public Interest. He says charities are hobbled by outdated and confusing rules that limit their lobbying activities.

But while much of the debate and news-media coverage has focused on how the ruling will affect corporations, legal experts say the decision will also make it easier for nonprofit advocacy groups to try to influence elections.

And even more intriguingly, they say, because the court grounded its decision on First Amendment free-speech rights, it could pave the way for a challenge to the ban on campaign activity that applies to charities under section 501c3 of the tax code.

“I think we’ll see the litigation, sooner rather than later,” says Frances R. Hill, a law professor at the University of Miami who specializes in

nonprofit tax law.

“What the court did was to say corporations, which in the eyes of the law are persons, have the same First Amendment rights as individuals, and that is enormous.”

Law Called Unconstitutional

The Supreme Court ruled 5 to 4 that a law barring corporations from using money from their general treasuries for “express advocacy” — to urge that a candidate for federal office be elected or defeated — was unconstitutional.

“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,” says the “opinion” in [*Citizens United v. Federal Election Commission*](#), written by Justice Anthony Kennedy.

Until now, corporations that wanted to spend money to influence elections had to set up political-action committees, which face limits on the amounts and types of money they can raise. (Even after the ruling, corporations are still barred from contributing directly to political campaigns, or coordinating with them.)

The court also struck down rules that prohibited corporations from spending money on “electioneering communications” — TV or radio ads that mention a specific federal candidate — that air within 30 days before a primary election or 60 days before of a general election.

All of the language about “corporations” applies to nonprofit corporations, legal experts say. In fact, the group that lodged the Supreme Court challenge, Citizens United, is a nonprofit group that challenged a Federal Election Commission ruling that it could not air commercials advertising a documentary it had produced that was critical of Hillary Clinton, then running for president.

Therefore, legal experts say, nonprofit advocacy groups — those covered by section 501c4 of the tax code — may now urge the public to vote for or against a federal candidate without having to set up separate political-action committees. They will also be able to accept contributions from businesses to engage in such activity. Until now, these groups could advocate for a candidate’s election, but only to their members.

The ruling could make it easier for advocacy groups to speak out, says Abby Levine, deputy director of advocacy programs at Alliance for Justice, an association of environmental, civil rights, mental health, and other advocacy groups. “It may make things a little easier for them without having to worry about some of the administrative barriers and headaches they had to worry about before.”

Despite that advantage, she and others worry that groups fighting for social causes will never be able to match corporate coffers.

“As of today, we are disadvantaged as a public-interest, not-for-profit advocacy community in a profound way,” says Tom Sheridan, a political consultant for public-interest groups in Washington, adding that the ruling sets back efforts to draw up campaign-finance rules that “in some way leveled the playing field.”

Ms. Hill of the University of Miami says she worries that businesses may now be tempted to try to influence campaigns indirectly, by funneling money through 501c4 advocacy groups.

Supporters of the ruling counter that many states already allow corporations to spend unlimited money on behalf of political candidates without dire consequences. “Corporations have not taken over these states,” says the Center for Competitive Politics, which opposes campaign-finance restrictions. “No state is known to have a corruption problem due to independent expenditures, speech about candidates aimed at voters, who are free to accept, consider, or reject the information.”

Challenging Legal Limits

Charities governed by 501c3 — which are not affected by the court ruling — present a more complicated picture, legal experts say. Such groups are barred from any partisan political activity and may conduct only a limited amount of lobbying. The Supreme Court has previously ruled that such restrictions do not violate free-speech rights because charities benefit from tax-deductible contributions.

But the new ruling gives such weight to the First Amendment that some legal experts expect it may prompt a charity to challenge the existing rules. Although it would be a tough case to make, says Ronald Jacobs, a Washington lawyer, “it wouldn’t surprise me if someone tried it.”

In the meantime, Mr. Ottinger of the Center for Lobbying in the Public Interest urges charities and foundations to unite to promote more nonprofit advocacy, noting that groups are often afraid to conduct activities that are perfectly legal, like trying to influence legislation.

He said an informal group of nonprofit leaders, lawyers, and others are also working to propose ways to clarify IRS rules governing what charities may or may not do encourage Americans to vote.

“The Supreme Court is changing the rules of the game and nonprofits need to revisit and reexamine the rules that govern our participation in politics and policy in the democratic process,” he says.

Comments

1. This is the best use of the money donors give us?
Attempt to keep up with the kind of resources that large corporates will be throwing into the pot?
Really?

— Tom Jan 22, 03:32 PM <#>

2. The court's action is based on a terrible error: A corporation is not a person. As long as that error stands we will be subject to the kind of decision that was published this week.

— R. Hildebrandt Jan 22, 03:38 PM <#>

3. Ben Franklin said, "Democracy is two wolves and a lamb voting on what to have for dinner. Liberty is a well-armed lamb." This decision gives the gun to the wolves.

— LG Jan 22, 06:40 PM <#>

4. I think the ruling is a fair one. It puts greater onus on the public to be vigilant and better educated. My hope is that they will. My mind and experience tells me that they won't. This country is based on the idea that the public will exercise their rights wisely. This ruling gives them a greater reason to do so.

— William Barnes Jan 24, 04:38 PM <#>