

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

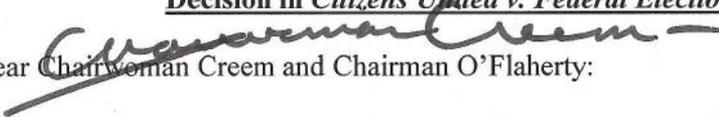
(617) 727-2200
www.mass.gov/ago

December 7, 2011

The Honorable Cynthia Stone Creem
Senate Chair, Joint Committee on the Judiciary
Room 405
State House
Boston, MA 02133

The Honorable Eugene L. O'Flaherty
House Chair, Joint Committee on the Judiciary
Room 136
State House
Boston, MA 02133

RE: S.B. 772, "Restoring Free Speech", a Resolution to Reverse the U.S. Supreme Court Decision in *Citizens United v. Federal Election Commission*


Dear Chairwoman Creem and Chairman O'Flaherty:

I am writing in support of Senate Bill 772, *Restoring Free Speech* (the "Resolution"), which is a Resolution that calls for a federal Constitutional Amendment to reverse the United States Supreme Court decision in *Citizens United v. Federal Election Commission*.

This Resolution would send a strong message to Congress that the voice of the American people should not be diluted or trampled on by corporations under the guise of the First Amendment, and that the people should have the ability to participate freely and equally in self-government.

As you may know, in January 2010 the Supreme Court handed down its decision in *Citizens United v. Federal Election Commission*. The case involved restrictions on corporate spending in the run-up to federal elections established by the Bipartisan Campaign Reform Act of 2002 (also known as the "McCain-Feingold Act" or "BCRA"). Specifically, BCRA banned corporate-financed "electioneering communications" from being shown on television within 30 days of a primary election and 60 days of a general election. The Supreme Court ruled that these restrictions on corporate political campaign ads violated the First Amendment's free speech protections, thereby allowing corporations to spend unlimited amounts of money on elections.

In effect, the *Citizens United* decision solidified a thirty-year movement by the Supreme Court to use the First Amendment to invalidate democratically-enacted regulations on corporate conduct. Additionally, the *Citizens United* decision resulted in the Supreme Court overturning a century of jurisprudence, dating back to the Tilman Act of 1907, which supported Congressional authority to restrict corporate spending on federal elections. Indeed, the *Citizens United* decision directly overrules *McConnell v. Federal Election Commission*, a Supreme Court decision from 2003 upholding the BCRA provisions at issue in the *Citizens United* case.



The *Citizens United* case was of extreme interest to advocates for and against restrictions on unlimited corporate political spending. As a result, a large number of amicus briefs were filed on behalf of both sides of the issue. Numerous amicus briefs that cut across partisan lines were filed in support of Congress' power to restrict corporate electioneering. One such brief was filed by Senator John McCain, former Senator Russ Feingold, and former Congressmen Christopher Shays and Martin Meehan, the four major sponsors of BCRA. On the other side, numerous powerful special interest groups including the Chamber of Commerce, the National Rifle Association, organized labor, and major media organizations filed briefs in opposition to Congress' power to restrict corporate electioneering. And as the chief law enforcement officer of the Commonwealth, I joined with 25 other state Attorneys General in filing an amicus brief arguing that the Supreme Court should leave intact the states' ability to regulate and restrict corporate spending in elections.

In the immediate aftermath of the *Citizens United* decision, the reaction was mixed. Powerful special interests such as the ones mentioned above were generally pleased with the decision. On the other side, many activist groups were immensely disappointed and immediately began campaigns to reverse the decision or limit its impact. There were also those, including myself, who chose to wait to see what the effects of the decision were before taking action. Unfortunately, many of our worst fears have been realized.

The major concern in the wake of the *Citizens United* decision was that it would unleash a torrent of undisclosed corporate and special interest money into the electoral process due to the flourishing of corporate spending through 501(c) non-profit organizations, which are not required to disclose their donors. The 2010 Congressional Elections, which occurred less than a year after the decision, sadly confirmed this fear. Fundraising data compiled by OpenSecrets.org, a website run by the Center for Responsive Politics to track money in American politics, shows that the amount of money spent by non-party committees during the 2010 elections was over \$300 million, more than four times the amount of such money spent during the 2006 Congressional Elections and on par with the amount of such money spent during the 2008 Presidential and Congressional Elections.

This trend of increasing expenditures by non-party committees is only going to continue during the 2012 election cycle. The 2012 elections will mark the first Presidential election cycle since the *Citizens United* decision. If history is any indicator, spending during the 2012 elections will be far greater than that of the 2010 elections. Spending during the 2008 elections, for instance, was nearly twice that of the 2006 elections. The potential additional increase in spending by groups not required to disclose their donors—which now includes unlimited donations by multi-billion dollar corporations—is particularly frightening given the huge increase in such spending that has already occurred.

The good news is that we can do something to right this wrong. Activists from all walks of life have come together to advocate for the reversal of *Citizens United* or, barring that, mitigate its effects. Because the case was decided on Constitutional grounds, there are only two ways to completely reverse it: (1) bring another case before the Supreme Court and hope that the Court decides to reverse itself; or (2) amend the Constitution. Progress is being made on both fronts.

In addition to supporting litigation fighting states' rights to restrict corporate spending through amicus briefs and the like, there is a national movement to amend the Constitution to make clear that First Amendment protections belong to natural persons, not corporations. This proposed amendment was introduced in the United States House of Representatives with bipartisan support by Massachusetts' own Congressman James P. McGovern. Several alternative amendments have been introduced in both the House and Senate with exclusively Democratic support. These proposals are now making their way through Congress.

Beyond action at the federal level, at least 10 states and 9 local governments (all in Massachusetts) have introduced measures calling on Congress to amend the Constitution to reverse the *Citizens United* decision since 2010. The Resolution before you, which was filed by Senator James B. Eldridge and Representative Cory Atkins, is among them. Certainly, amending the United States Constitution is not an easy task, but the Constitution has been successfully amended in the past to correct egregious decisions by the Supreme Court.

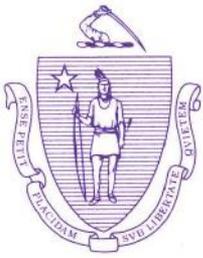
As we have seen, average citizens are feeling increasingly disenfranchised and believe that our current political system favors the wealthy few instead of the public good. Individual people's voices will continue to be steadily drowned out if corporations and other special interests are allowed to spend billions in unreported and unaccounted for funds to influence elections. The passage of the Resolution would send a strong message that it is time to put the electoral process back in the hands of the people, not corporations. For these reasons, I urge you to pass the Resolution. If you have any additional questions, please do not hesitate to contact me or Jennifer Stark, Chief of my Policy and Government Division, at (617) 727-2200.

Cordially,

A handwritten signature in black ink, appearing to read "Martha Coakley". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Martha Coakley

Cc: Senator James B. Eldridge
Representative Cory Atkins



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Cordially,

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Martha Coakley

Cc: Senator James B. Eldridge
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