

Today's decision in *Citizens United* was something of a foregone conclusion. Still, it was a bit breathtaking. The Court was obviously poised to strike down the latest Congressional restrictions on corporate political expenditures. But the Court went further and struck down even restrictions that had been upheld thirty years ago. Seldom has a majority been so eager to reach out, address a question that wasn't presented by the parties and overrule a bevy of prior decisions. The term "judicial activism" is overused but seems entirely appropriate here.

In the end, the Court just doesn't see any real reason for campaign finance restrictions. It may be willing to tolerate some token restrictions in the name of precedent, but basically, it views economic influence over the political process as altogether natural and appropriate.

The decision was a foregone conclusion because the key support for the prior precedents, Justice O'Connor, had left the Court and had been replaced by the more conservative Justice Alito. The decision rests on three key premises:

1. **It's just not a problem that money buys influence.** "That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy."
2. **Money talks.** "All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech."
3. **Economic interests deserve political voice.** Restrictions on corporate speech "muffle the voices that best represent the most significant segments of the economy."

What worries people about corporate speech is exactly the opposite: They find it problematic to allow special interests with their economic clout to buy political influence. But one person's "special interest" is another person's "voice that best represents the most significant segments of the economy."

Interestingly, the Court also opens the door for foreign influence over elections. The Court says that corporate restrictions might be constitutional if they were limited to "corporations or associations that were created in foreign countries or funded predominately by foreign shareholders." Notably, this does not say "controlled by" foreign shareholders, and operating control often requires less than 50% percent ownership. So the door is definitely open for foreign controlled corporations (in fact, corporations controlled by foreign

sovereign wealth funds) to spend funds to influence our elections.

What does this mean for environmental law? Corporations already have a lot of political influence; this decision will just increase that influence at the margin - at least in the short run, until corporations start feeling comfortable with multi-million dollar campaign expenditures. In the longer run, the effect will clearly be to increase the influence of special interests on the political process. Just what we needed!