

**DELIBERATION READING 1**  
**Background Information on *Citizens United v. Federal Election Commission*, 2010**

**Circumstances of the Case**

Citizens United is a non-profit corporation that receives most of its funds from individual donors, but also accepts a small portion of its donations from for-profit corporations. In January, 2008 Citizens United released a movie titled *Hillary: The Movie*, a 90-minute documentary that expressed opinions about whether Hillary Clinton would make a good President. At the time, Clinton was considered to be the likely Democratic nominee for President of the United States. Citizens United wanted to make the movie available through video-on-demand, but it was not sure if the Federal Elections Commission (FEC) would consider it "electioneering communication." An electioneering communication was defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identifiable candidate for Federal office". The McCain-Feingold Act prohibited the distribution of any electioneering communications within 30 days of a primary election or 60 days of a general election.

Federal law also prohibited all corporations and unions from using funds from their general treasuries for express advocacy or for electioneering communications. However, corporations and unions could form separate political action committees (PACs) that could pay for electioneering communications. Additionally, federal law required disclosure of the sources of the funds used to make the communication (in this case, the money that paid for *Hillary: The Movie*).

Before proceeding and possibly facing civil and criminal penalties, Citizens United asked the Washington, DC District Court to declare the release to video-on-demand constitutional and to prevent the FEC from interfering with their plans. The court ruled against them and they appealed to the DC Circuit Court of Appeals, which also ruled against them. The Supreme Court of the United States heard the case twice: the first time the Supreme Court sent the case back to the trial court and the second time the Supreme Court ruled on the three legal questions posed in the case:

**Legal Questions**

- 1) Can Congress discriminate against the speech of corporations just because they are corporations?
- 2) Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)
- 3) Can Congress require Citizens United to disclose the sources of the funds used to produce *Hillary: The Movie*?

**The Supreme Court of the United States' Ruling on the Legal Questions**

- 1) Can Congress discriminate against the speech of corporations just because they are corporations?**  
*No. Suppression of speech just because the speaker is a corporation violates the First Amendment. The government was not able to prove that it had a compelling interest in regulating corporate speech.*
- 2) Can Congress limit the amount of money that corporations may spend promoting a political candidate? (known as corporate independent expenditures)**  
*No. Limiting corporate independent expenditures (i.e., the money used to make *Hillary: The Movie*) is not constitutional under the First Amendment. However, the government may still regulate direct contribution to candidates, since direct contributions may appear more improper and cause a greater risk of corruption.*
- 3) Can Congress require Citizens United to disclose the sources of the funds used to produce *Hillary: The Movie*?**  
*Yes. The disclosure requirements are constitutional, but there may be instances in the future where such disclosure could result in physical harm to donors. In those cases the requirements could be reconsidered.*

Your Name: \_\_\_\_\_

### **Citizens United v Federal Election Commission (2010)**

**Directions:** Read the handout summary over this important court case and then answer the following questions in **COMPLETE** sentences for full credit.

1. Explain what the non-profit corporation, Citizens United, did in 2008 that started this court case.
2. In your own words, explain what “electioneering communication” is.
3. Why could Citizens United have been prohibited from releasing *Hillary: The Movie*?
4. What were the first TWO questions Citizens United took before the Supreme Court? (summarize and shorten the first two in the list)
5. With regards to the first question, how did the court rule?
6. With regards to the second questions, how did the court rule?
7. **CRITICAL UNDERSTANDING:** The ruling in this case is extremely controversial today, and most political critics say that what this 2010 ruling has done has “corrupted” our political election process. Explain why this is the case.