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Maine Voices: Citizens United compromises integrity of campaigns for federal office

More political speech isn't beneficial if it's misleading or allows some groups inappropriate leverage.

By NOLAN L. REICHL Special to the Press Herald

CAPE ELIZABETH - This election season, Mainers are learning firsthand the impact of the Supreme Court's decision in Citizens United, which freed unions, corporations and wealthy individuals to spend unlimited sums on campaign advertising.

Even before the massive push that typically occurs in the final days of a campaign, outside groups already have spent far more on Maine federal and state legislative races this year than in any previous year.

Two years ago, it was notable when five state Senate races attracted a combined \$400,000 in non-candidate spending; this year, third parties already have spent more than that in one Bangor state Senate race.

Citizens United rests on particular values concerning the role of political speech. Justice Antonin Scalia, who supported the decision, put it this way in a recent interview: "The more speech the better."

To Justice Scalia, giving corporations, unions and other organizations the freedom to spend unlimited quantities of money on campaign advertising simply means more speech and more information for voters. What could be wrong with that?

For many people, what's wrong is that giving interest groups the freedom to make unlimited contributions or spend unlimited sums on elections will give them improper influence over elected officials. In other words, the counter to Scalia's argument is that unrestrained interest group spending creates incentives for our leaders to privilege narrow interests over the broader good.

The battle lines here are deeply drawn, as this "freedom versus corruption" debate has dominated discussion of campaign finance reform since Watergate. Unfortunately, this debate has so consumed the public dialogue that we largely have failed to consider that other values are at stake.

Chief among those other values is the public's desire for speech that is truthful and accurate, as opposed to speech that is false and misleading. So, when Justice Scalia asks what could be wrong with more speech, one could respond by asking: What if the "more speech" is false?

It seems clear that more false speech is a bad outcome for any campaign finance law, and so, when it comes to campaign finance policy, judges and policymakers can and should consider the extent to which any change in law would create or deter additional misleading speech.

The first step is to realize that different speakers have different incentives. Candidates are real live people who want to earn the trust of voters. But super PACs do not ever need the trust of voters; they need only the trust of a small group of donors. If a super PAC tells you an outrageous lie, the financial backers of the group can just shut it down after the election and start a new group next time. Unlike candidates, super PACs have little incentive to maintain long-term credibility.

Conservatives argue that doing away with contribution limits -- such as those governing donations to federal candidates -- would help solve this problem. In this way of thinking, if Congress were to raise the contribution limits, money once again would flow toward accountable candidates and away from unaccountable super PACs.

It's unclear whether this argument is true, since those determined to influence elections may have discovered that super PACs are a useful cover for spreading misleading speech. But even if raising contribution limits would lead to more truthful speech, this solution runs back into the "freedom versus corruption" debate. Lifting contribution limits might increase the amount of truthful speech, but doing so likely would make elected officials more reliant on those who make very large contributions. This is not a very good outcome, either.

In short, every potential campaign finance regulation leads to an array of difficult trade-offs. Right now, we are getting the worst of all worlds. Despite contribution limits, special interests have huge influence in Washington. And, as we're seeing in Maine this election cycle, Citizens United means that unaccountable money can dominate campaigns.

It appears that our campaign finance strategies have failed in part because the debate on this important issue has been so narrowly focused on only one choice: freedom or corruption.

These concerns are important, but so are many others. Truthful speech is important. High turnout is important. Giving all Mainers and Americans the chance to be heard is important.

Congress and the courts would be wise to break out of the traditional thinking on campaign finance reform, and consider ideas like Maine's Clean Election system, which shifts power to voters and away from donors. It's time for new thinking and new strategies to reform our broken federal campaign finance system.

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