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**BIG MONEY v.  
THE PEOPLE?**

**OR**

**EMPOWERING GOVERNMENT  
TO CENSOR POLITICAL  
SPEECH?**

# OPERATING ASSUMPTIONS

- ✓ Freedom of speech is “the indispensable condition of nearly every other form of freedom”
- ✓ “Speech concerning public affairs . . . is the essence of self-government”
- ✓ “Debate on public issues should be uninhibited, robust, and wide-open”
- ✓ “People will perceive their own best interests only if they are well enough informed, and that the best means to that end is to open the channels of communication”

# BACKGROUND ON *CITIZENS UNITED*

- ✓ The issue before SCOTUS was not about campaign contributions to candidates
- ✓ Corporations could already spend unlimited amounts on most political advocacy through PACs
- ✓ Citizens United is a nonprofit corporation
- ✓ Produced an anti-Hillary Clinton documentary with general funds – not PAC money
- ✓ FEC prohibited CU from running ads or showing the film before the 2008 elections

# QUESTION ADDRESSED

Should the FEC have the power to jail, fine, or censor nonprofits for showing a political documentary during campaign season?



## *Citizens United* Re-Affirmed Core Rights

- ✓ Political speech is entitled to the highest protection
- ✓ Companies, unions & nonprofits can spend their money to put out a political book, pamphlet, website, or movie and advocate for or against a candidate.
- ✓ Justice Douglas (1957): “Some may think that one group or another should not express its views in an election because it is too powerful, because it advocates unpopular ideas . . . **These are not justifications for withholding First Amendment rights from any group – labor or corporate.** First Amendment rights are part of the heritage of all persons and groups in this country.”

## CITIZENS UNITED RELIED ON ESTABLISHED LAW

Corporations have constitutional rights (*Dartmouth*, 1819)

Corporations have 1st Amendment rights (*Grosjean*, 1936)

Unconstitutional to impose blackout periods restricting corporate speech before elections (*Mills*, 1966)

Money can be speech (*Buckley v. Valeo*, 1976)

1st Am. includes the right to listen (*Va. Pharmacy*, 1976; *Lamont*, 1965)

Corporations can run political ads, publish newsletters about candidates, & electioneer (*Bellotti*, 1976; *Mass. Citizens for Life*, 1986)

# 28<sup>TH</sup> AMENDMENT UNRAVELS CONSTITUTIONAL PROTECTIONS

<i>Dartmouth College</i> (1819)	Constitution prevents state from changing corporate charter
<i>Grosjean</i> (1936)	State cannot impose punitive taxes on corporations that criticize a governor
<i>Joseph Burstyn, Inc.</i> (1952)	State could not prevent the distribution of Rossilini's <i>The Miracle</i>
<i>NAACP v. Alabama</i> (1958)	State violated right of assoc. by demanding disclosure of NAACP's members
<i>NAACP v. Button</i> (1963)	State couldn't prosecute NAACP under statute banning "the improper solicitation of any legal or professional business"

# 28<sup>TH</sup> AMENDMENT EMPOWERS GOV'T TO...

- ✓ Prohibit America Promise from advocating for the 28th Amendment
- ✓ Prevent Trout Unlimited from opposing Pebble
- ✓ Forbid the NAACP from accessing courts to fight discriminatory laws
- ✓ Impose punitive taxes on Planned Parenthood
- ✓ Shut down FB, Twitter & other websites
- ✓ Expand police state to allow warrantless searches of Save Our Salmon & Sierra Club
- ✓ Seize ACLU's property without compensation

