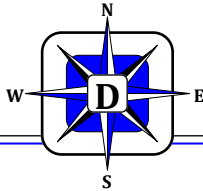




# John Davis Political Report <sup>©</sup>

*Special*

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## Supreme Court: Business Has Unlimited Political Free Speech Rights

NC 527s Obsolete; Political Parties Weakened; Trade Groups Will Flex New Political Muscle

**John N. Davis, President**

*John Davis Political Report* is a weekly essay about the political trends impacting North Carolina politics. A Premium Subscription through the 2010 elections is only \$500. **Make checks payable to John Davis Consulting, EIN 26-3064837, and mail to P.O. Box 30714, Raleigh, NC 27622.** Davis has followed NC politics for 24 years, serving as President of NCFREE, a political research group, where he was Editor of the *Almanac of North Carolina Politics*. Davis specializes in analyzing political trends, candidates and campaigns.

*"They're the men who served with John Kerry in Vietnam. Tortured for refusing to confess what John Kerry accused them of ... of being war criminals. With nothing to gain for themselves, they have come forward to talk about the John Kerry they know."*<sup>1</sup>

Swift Boat Vets and POWs for Truth, TV ad excerpt, September 2004

Below you will find a memo written by Patton Boggs, one of the leading campaign finance law firms in America, summarizing the implications of the new U.S. Supreme Court decision handed down on January 20, 2010, freeing corporations from campaign spending limits on *independent expenditure advertising*. Here are some of the highlights:

- ✓ Before last week's ruling, corporate funds could not be used to fund independent ads that expressly called for the election or defeat of a political candidate. Now they can.
- ✓ Before the ruling, corporate funds could not be used to fund independent *issue advocacy* ads within 30 days of a primary or 60 days of the general election. Now they can.

Example: The famous **Swift Boat Veterans ads never called for the election of George Bush or the defeat of John Kerry.** Those ads merely disclosed questions about John Kerry's war record. Corporations could have helped fund those ads up to 30 days before the primary and 60 days before the general election. However, as those ads were developed after the Democratic National Convention in 2004 and run only in September and October, within the 60 days before the general election, none of the \$26 million raised to fund the ads was from corporate funds. Today, corporate money CAN be used to pay for the Swift Boat Veterans type ads all the way up to Election Day, *and*, you CAN call for the election or defeat of a candidate.

<sup>1</sup> <http://www.swiftvets.com/index.php?topic=Ads>



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## MEMORANDUM

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**To:** Interested Parties  
**From:** Benjamin L. Ginsberg, William McGinley, Glenn Willard, Kathryn E. Biber and John Hilton  
**Date:** January 21, 2010  
**Subject:** Citizens United v. FEC – Opportunities for Participation Grow

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American campaigns and elections will change dramatically as a result of today's Supreme Court decision in *Citizens United v. FEC*. The opinion provides new opportunities for many players in the process, but includes some large pitfalls for candidates and the political parties.

The most immediate and basic implication of the decision is that corporations and unions may now pay for unlimited independent expenditures directly from their general treasuries. And by invalidating a key portion of the McCain-Feingold law that barred such expenditures within 60 days of a general election and 30 days of a primary, all entities will be able to directly advocate the election or defeat of specific federal candidates right through Election Day.

This affirmation of corporate and union First Amendment rights will also apply to state and local laws currently restricting corporations and unions from engaging in independent expenditures. Whether these provisions are in state law or in state constitutions, they are now unconstitutional under the First Amendment.

The Court left in place the prohibition on direct corporate or union contributions to candidates, as well as the current disclaimer and disclosure requirements on communications (although the precise level of reporting detail that will be required for corporate or union independent advocacy, including through 501c4 social welfare organizations and 501c6 trade associations is unclear).

The decision will drastically alter the landscape for candidates and political parties. While the limits and prohibitions on contributions to them remain in place, much more spending by outside groups throughout the election cycle specifically praising or criticizing candidates should be expected. There is no language in the opinion suggesting support on the Court for overturning the ban on the political parties raising non-federal funds, so parties, too, stand to be considerably outspent.

That means there will be extensive pressure in Congress to revisit those limits and prohibitions legislatively so that candidates are not drowned out in their campaigns and the public debate.

Here's a quick analysis of what the decision means for key players in the political process:

**Candidates:** The limits placed on the size of contributions to candidates places them at a significant disadvantage compared to corporations and unions that will now be able to spend unlimited amounts on express advocacy right through Election Day. Controlling the issues they want to run on will become a real challenge, as will having sufficient funds to portray their positions and images.

**Political Parties:** Unless the laws change, the political party as we know it is threatened with extinction. The parties do several things for their candidates and supporters – raise money and conduct independent expenditures, conduct voter contact programs and describe the party's position on issues, often through issue advocacy. With the limits on the amounts and sources of funds they can accept, the parties will be bit players compared to outside groups that can now conduct those core functions with unlimited funds from any source.

**Corporations and Unions:** Freed from their First Amendment shackles, corporations and unions can now engage fully in the political process. The reality of what this means is sure to be hotly debated depending on the speaker's outlook. Republicans see a coordinated and extremely well-funded union effort that gives over 98 percent of its funds to Democrats, while corporations' political giving tends to incumbent heavy and more evenly divided. Democrats see the size of corporate treasuries compared to unions and believe they are about to get swamped.

**501c4s and 501c6s:** Likely to emerge as the biggest players in the 2010 and 2012 elections, ideological groups and trade associations also have been granted the ability to engage much more robustly in the political process. Meager disclosure requirements of their donors will make them a favorite repository of funds for independent expenditures.

**Wealthy Individuals:** Ever since the 2004 elections when McCain-Feingold took effect, wealthy individuals have engaged in considerable spending. The Court's opinion has significantly loosened what they may say. The decision, combined with the D.C. Circuit's *Emily's List* opinion of last fall, also eliminates the chances of Federal Election Commission enforcement actions that harassed many conservative donors off the playing field in the last two cycles. See Ginsberg, Politico op-ed from Jan. 21. <http://www.politico.com/news/stories/0110/31669.html> The decision will also lead to a number of new outlets who can carry the messages that these donors have wanted carried.

**527s:** This vehicle of choice for many outside, independent communications in the last three cycles has been rendered obsolete for this purpose by the Court's decision.

**Vendors:** The opinion should drastically increase the number of voices singing in the First Amendment choir. This is very good news for those who assist those efforts.