

Courts Roll Back Limits on Election Spending

By [DAVID D. KIRKPATRICK](#)

WASHINGTON — Even before a landmark [Supreme Court](#) ruling on campaign finance law expected within days, a series of other court decisions is reshaping the political battlefield by freeing corporations, unions and other interest groups from many of the restrictions on their advertising about issues and candidates.

Legal experts and political operatives say the cases roll back campaign spending rules to the years before Watergate. The end of decades-old restrictions could unleash a torrent of negative advertisements, help cash-poor Republicans in a pivotal year and push [President Obama](#) to bring in more money for his party.

If the Supreme Court, as widely expected, rules against core elements of the existing limits, Democrats say they will try to enact new laws to reinstate the restrictions in time for the midterm elections in November. And advocates of stricter campaign finance laws say they hope the developments will prod the president to fulfill a campaign promise to update the presidential campaign financing system, even though it would diminish his edge as incumbent.

Many legal experts say they expect the court to use its imminent ruling, in the case of Citizens United v. [Federal Election Commission](#), to eliminate the remaining restrictions on advertisements for or against candidates paid for by corporations, unions and advocacy organizations. (The case centers on whether spending restrictions apply to a conservative group's documentary, "Hillary: The Movie.")

Even if the court rules more narrowly, legal experts and political advocates say that the 2010 elections will bring the first large-scale application of previous court decisions that have all but stripped away those restrictions. Though the rulings have not challenged the bans on direct corporate contributions to parties and candidates, political operatives say that as a practical matter the rulings and a deadlock at the Federal Election Commission have already opened wide latitude for independent groups to advocate for and against candidates.

"It will be no holds barred when it comes to independent expenditures," said Kenneth A. Gross, a veteran political law expert at the firm of Skadden Arps in Washington.

The United States Chamber of Commerce, the goliath of the lobbying world, is expected to outline its battle plan next week for the midterms. It spent \$25 million on advertisements and get-out-the-vote efforts in the 2006 elections and \$36 million in 2008, and will spend far more this year, chamber officials say. And in the last election it was already probing the limits of the court's rulings with commercials like one in New Hampshire denouncing Senator [Jeanne Shaheen](#), a Democrat, as "a taxing machine."

Labor unions, stalwart outside allies to the Democrats, plan to take advantage of the changing rules with their own record-setting spending, said Karen Ackerman, political director of the [A.F.L.-C.I.O.](#) But business, she argued, had more to gain.

“The corporate side will always have more to spend than the union side,” she said.

Even before the Supreme Court issues its Citizens United ruling, Democrats in the House and the Senate have begun lamenting its expected result. “Clearly, the [Republican Party](#) overwhelmingly would benefit,” said Senator [Robert Menendez](#) of New Jersey.

Representative Chris Van Hollen of Maryland vowed a “prompt legislative response” if the Supreme Court rules broadly. In the meantime, he said, the Democratic campaign committee planned to counterattack big donors to outside groups to show “they are not just disinterested citizens.”

Conservatives accused the Democrats of using the specter of corruption as an excuse to silence their opponents. “What this is about is prohibiting information from reaching the American people if it is critical of them, those poor little dears who can’t stand criticism,” said [Wayne LaPierre](#), chief executive of the [National Rifle Association](#).

Senator [John Cornyn](#) of Texas, chairman of the Republican Senate campaign committee, said: “It is about a nonprofit group’s ability to speak about the public issue. I can’t think of a more fundamental First Amendment issue.”

Still, Mr. Cornyn acknowledged that the expected ruling could “open up resources that have not previously been available” for the Republicans.

Democratic candidates and party committees have raised a total of \$396.5 million for the midterms, with \$50 million on hand and \$10 million debts in public filings released this week. Republicans had raised just \$204.7 million, with about \$30 million on hand and about \$6 million in debts, according to the nonpartisan Center for Responsive Politics.

The campaign finance system imposed after the Watergate scandal began to spring leaks in the 1990s with the large-scale exploitation of unlimited “soft money” contributions to political parties from wealthy individuals, corporations, unions and others. Congress fortified those rules by eliminating soft money with the 2002 campaign finance law known as McCain-Feingold, and since then activists and operatives have played cat-and-mouse with regulators in the search for other loopholes.

The Supreme Court began to poke new holes in the system in a 2007 ruling that outside groups could pay for critical commercials attacking individual candidates on specific issues up to the day of the election, as long as the ad did not explicitly urge a “vote for” or “vote against.”

The 2010 midterms will be the first big test of the changing rules in part because in 2008 both major party candidates — Mr. Obama and Senator [John McCain](#) — explicitly discouraged independent spending by their supporters. The Federal Election Commission had also punished

previous efforts to evade the McCain-Feingold rules severely enough to discourage new attempts.

No such restraints apply this year, in part because the changing composition of the Federal Election Commission has created a deadlock blocking vigorous enforcement. “The cop is gone from the beat,” said Trevor Potter, a lawyer for the nonpartisan Campaign Legal Center who has also worked for Mr. McCain.

Campaign finance laws block outside groups from coordinating with candidates, but it is easy enough for outside allies to read in news reports where a campaign wants to spend money and what message it wants to send. Such groups also tend to favor negative commercials because they are more potent.

So if the court strikes down the restrictions on outside spending, some legal experts say, the remaining restrictions on direct contributions to campaigns would mean much less because it would be easy to support a campaign through an outside group.

“The campaign finance system would certainly be less regulated than any time since Watergate,” said Richard L. Hasen, a campaign law expert at the Loyola Law School in Los Angeles.

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