The New York Times

September 8, 2009

EDITORIAL

A Threat to Fair Elections

The Supreme Court may be about to radically change politics by striking down the longstanding rule that says corporations cannot spend directly on federal elections. If the floodgates open, money from big business could overwhelm the electoral process, as well as the making of laws on issues like tax policy and bank regulation.

The court, which is scheduled to hear arguments on this issue on Wednesday, is rushing to decide a monumental question at breakneck speed and seems willing to throw established precedents and judicial modesty out the window.

Corporations and unions have been prohibited from spending their money on federal campaigns since 1947, and corporate contributions have been barred since 1907. States have barred corporate expenditures since the late 1800s. These laws are very much needed today. In the 2008 election cycle, Fortune 100 companies alone had combined revenues of $13.1 trillion and profits of $605 billion. That dwarfs the $1.5 billion that Federal Election Commission-registered political parties spent during the same election period, or the $1.2 billion spent by federal political action committees.

The Supreme Court has repeatedly upheld the limitations on corporate campaign expenditures. In 1990, in Austin v. Michigan Chamber of Commerce, and again in 2003, in McConnell v. Federal Election Commission, it made clear that Congress was acting within its authority and that the restrictions are consistent with the First Amendment.

In late June, the court directed the parties to address whether Austin and McConnell should be overruled. It gave the parties in Citizens United v. Federal Election Commission a month to write legal briefs on a question of extraordinary complexity and importance, and it scheduled arguments during the court's vacation.

All of this is disturbing on many levels. Normally, the court tries not to decide cases on constitutional grounds if they can be resolved more simply. Here the court is reaching out to decide a constitutional issue that could change the direction of American democracy.

The court usually shows great respect for its own precedents, a point Chief Justice John Roberts made at his confirmation hearings. Now the court appears ready, without any particular need, to overturn important precedents and decades of federal and state law.

The scheduling is enormously troubling. There is no rush to address the constitutionality of the corporate expenditures limit. But the court is racing to do that in a poorly chosen case with no factual record on the critical question, making careful deliberation impossible.

Most disturbing, though, is the substance of what the court seems poised to do. If corporations are allowed to spend from their own treasuries on elections — rather than through political action committees, which take contributions from company employees — it would usher in an unprecedented age of special-interest politics.

Corporations would have an enormous say in who wins federal elections. They would be able to use this influence to obtain subsidies, stimulus money and tax loopholes and to undo protections for investors, workers and consumers. It would take an extraordinarily brave member of Congress to stand up to agents of big business who then could say, quite credibly, that they would spend whatever it takes in the next election to defeat him or her.

The conservative majority on the court likes to present itself as deferential to the elected branches of government and as minimalists about the role of judges. Chief Justice Roberts promised the Senate that if confirmed he would remember that it's his "job to call balls and strikes and not to pitch or bat."

If the court races to overturn federal and state laws, and its well-established precedents, to free up corporations to drown elections in money, it will be swinging for the fences. The American public will be the losers.