

## Handouts B and C Answer Keys

### Handout A: *Citizens United v. F.E.C.* (2010) Case Background

1. The banning of direct campaign contributions by corporations (Tillman Act, 1907), limitations on activities of federal employees (Hatch Act, 1939), banning direct campaign contributions by labor unions (Taft-Hartley, 1947), public reporting requirements and dollar-amount limitations on contributions (FECA, 1971 & 1974), and a ban on “electioneering communications” within a set time period prior to elections (BCRA, 2002).
2. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers’ ability to convey their message to as many people as possible.
3. Citizens United, a non-profit group funded by donations, produced a feature-length movie critical of presidential candidate Hillary Clinton. The movie was to be shown nationwide in select theaters and through a major cable company’s On-Demand service. It potentially ran afoul of the BCRA’s limitation on “electioneering communications” within 30-days of a primary election or 60-days of a general election, paid for by a corporation’s general fund.
4. *Citizens United v. F.E.C.* extended the principle, set 34 years earlier in *Buckley*, that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.
5. Accept reasoned answers.
6. Using the same reasoning as the Court did in *Buckley* and *Citizens United*, these laws would be unconstitutional. They would be unconstitutional not because “spending [on a lawyer] amounted to [assistance of counsel] protected by the [Sixth] Amendment,” or that “spending [on a private education] amounted to [private education] protected by the [Due Process Clause of the Fourteenth Amendment],” or that “spending [on an abortion] amounted to [an abortion] protected by the [Due Process Clause of the Fourteenth Amendment].” Rather, the reasoning would be that banning such spending *unconstitutionally interfered* with the rights to assistance of counsel, private education, or an abortion. Likewise, a government ban on candidates from traveling in order to give campaign speeches would likely be unconstitutional because the ban on travel unconstitutionally burdened the right to speak.

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### Handout B: Documents

#### Document A: *Federalist No. 10* by James Madison (1787)

According to Madison, a faction is a number of citizens who are 1) united by a common interest and 2) opposed to the rights of others and/or the permanent interest of the community.

For Madison, one check on the influence of factions is regular elections.

Accept reasoned answers.

#### Document B: Thomas Jefferson to Edward Carrington (1787)

The opinion of the people

“The only safeguard of the public liberty” is, for Jefferson, the ability of the people to speak and publish their opinions on governmental matters freely. Too much information is preferable to too little.

A disadvantage to press freedom is that the people may be led astray at times. This possibility is acceptable to Jefferson because he believes their good sense will win out, and they will correct themselves. Also, for all the faults that people are prey to, government censorship would be more dangerous than public error.

Those with power will “become wolves,” which is to say they will oppress those without power.

#### Document C: The First Amendment (1791)

Accept reasoned answers.

Giving speeches, speaking persuasively to friends or larger audiences, producing creative works, writing for a newspaper or other publication, keeping a blog, posting to YouTube, Facebook, or other social media, writing letters to the editor, attending political rallies, meeting in clubs or other groups.

#### Document D: *Dartmouth College v. Woodward* (1819)

“It possesses only those properties which the charter of its creation confers upon it...Among the most important are immortality and individuality, so that a perpetual succession of many persons are considered as the same, and may act as a single individual.”

Act as a single individual, manage its own affairs, hold property, enter into contracts

Accept reasoned responses. Students may suggest: Chief Justice John Marshall affirmed the principle that corporations have the same rights as individuals with respect to property ownership, contracts, and the ability to sue and be sued. This is based on the legal agreement between the persons who formed the corporation. Those individuals have property rights; therefore they retain those rights when they operate as a group. This idea is not that the corporation somehow is philosophically equivalent to a person, but only that individuals do not give up their property rights when they associate with others. Dartmouth College, as an association of persons, was a party to a contract, and that contract was just as enforceable as any other contract under the law.

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### **Document E: “The Bosses of the Senate,” Joseph Keppler (1889)**

“Quid pro quo” refers to a more or less equal exchange. In the context of political discourse, the term often suggests bribery. “Quid pro quo” refers to an expectation that, if wealthy contributors donate large sums of money to a political campaign, the person receiving this benefit will, once elected, use his or her influence to provide some special benefit to the donor.

The cartoonist believes that, through their financial support of candidates, the business interests of the industrial age have seized control of the Senate, and are the “bosses” of the Senators. The concern of quid pro quo corruption is indicated by the position and size, relative to the Senators, of the figures representing business interests. The closed door leading to the public gallery above the Senate reinforces the author’s message that the government is no longer open to “the people.”

Accept reasoned answers. Students may note that in the cartoon’s time period, Senators were appointed by state legislatures.

### **Document F: New Nationalism Speech, Theodore Roosevelt (1910)**

Business interests that seek to “control and corrupt the men and methods of government for their own profit.”

Roosevelt’s description of “special interests” seems very similar to Madison’s concept of “faction.”

### **Document G: *Buckley v. Valeo* (1976)**

Speech about candidates deserves the same First Amendment protection as other kinds of political speech. Civil discourse on politics is essential for self government. Engaging in speech requires spending money. Therefore, limits on spending by individuals and groups unconstitutionally burden their ability to speak freely. The First Amendment protects the ability to speak for or against a candidate, and was meant to ensure such speech could occur in a variety of ways.

### **Document H: Citizens United Mission Statement (1988)**

Probably not. While Citizens United is “a number of citizens...united and actuated by some common... interest,” its expressive activities do not satisfy the second part of the definition of faction: “adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.”

Accept reasoned answers.

### **Document I: *McConnell v. F.E.C.* (2003)**

Since the BCRA leaves PACs free to engage in political speech, corporations and unions are not limited in their ability to speak, they merely must do so through their PACs.

Accept reasoned answers.

### **Document J: *Citizens United v. F.E.C.* (2010)**

The First Amendment protects citizens, or associations of citizens, from being punished for engaging in political speech.

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Accept reasoned answers.

Accept reasoned answers.

### **Document K: *Citizens United v. F.E.C.* (2010), Dissenting Opinion**

The dissent argues that the right to free speech was designed to protect an individual’s right to speak, and was never understood to apply to corporations, which are business associations, not political ones. The notion of “corporate speech” was foreign to the Founders, and the First Amendment doesn’t protect it at the same level. Congress has a legitimate interest in protecting against “undue influence” and corruption, and the vast resources of corporations—in comparison to individuals—makes this “undue influence” more likely. The BCRA’s ban may regulate how a person, or persons, may speak, but it does not prevent anyone from speaking “in his own voice.”

Accept reasoned answers.

### **Document L: *Citizens United v. F.E.C.* (2010), Concurring Opinion**

This concurring justice argues that corporations existed at the time of the Founding. They not only engaged in speech and petitioned the government, but were understood by the authors of the First Amendment to have speech rights equivalent to individual Americans. Further, the First Amendment does not allow restrictions to be made on the basis of who is speaking.

### **Document M: “Another Dam Breaks,” Matt Wuerker, 2010**

The cartoonist believes the Supreme Court’s ruling in *Citizens United* has “broken the dam” holding back union and corporate money from overwhelming American voters with political speech. The resulting wave of “special interest” money threatens to drown the influence and voices of individual voting Americans.

Accept reasoned answers.