

Limitations on the Media and its Effects
On the Political Process

by

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Chapter One

Introduction

Our society is bombarded daily with a multitude of mediated messages. These messages deal with a broad selection of topics, most popularly ranging from global and national politics, to celebrities, to social welfare. As this Essay is being developed, the 2012 Presidential Primary season is upon the country, and the media have once again become consumed by the Republican race to the White House. The always-eager media are grasping every opportunity to highlight candidates' mudslinging at each other in order to fulfill their obligation to inform the populace and provide fair and balanced journalism.

In recent years, Americans have become aware of the pervasiveness of the media and the technological avenues now available to them as consumers of information. Today citizens across the country can be in a constant state of contact and within reach of breaking news. The general populace may be unaware, however, of the limitations placed upon the media in order to maintain an effective and ethical media, as well as to protect the citizens who consume it. These safeguards have been instituted by our country's judicial branch, the Supreme Court, along with the Federal Communication Commission (FCC), and the Federal Election Committee (FEC). These three institutions exercise their power in order to preserve the integrity and freedoms of our country, including the institutions that provide us with their services. These limitations include how candidates are able to utilize media in order to reach their targeted audiences, the means by which a

campaign can be financed, the practice of maintaining transparency within campaign finance, and importantly, how information is shared via the Internet among those who create and receive content. Because of the wide influence of all of the aforementioned limitations, the monitoring and curtailment of certain practices have become necessary.

Beyond this, the media in recent decades has taken a major role in presidential elections, their services often contributing to the victory or even defeat of candidates. But elections are not limited to the media, however. The election process and campaign finance issues have taken center stage in front of the Supreme Court. That is because, in order to achieve the highest position in America to which a politician can aspire, that individual has a long road ahead of him. Producing a successful campaign takes the work of hundreds, even thousands of individuals. Unfortunately, hardworking individuals are not all it takes. It also takes a great deal of money if the candidate wants to have a fighting chance at obtaining the office of Commander-In-Chief. It is this fact, that brings the media, campaign finance issues and the judicial branch together.

In this Essay I will endeavor to provide an understanding of the role that the media, primarily the Internet, plays in American politics. Moreover, I will provide a foundation from which the reader can understand the ways in which the law and government agencies have shaped the political process. To date, law and government agencies have regulated and monitored activities in campaigns, campaign finance law, and the Internet. It is important for individuals to understand and consider these regulations, because these activities and practices play a prominent role in our society and political process. In analyzing previous Supreme Court cases, readers may come to

understand the precedents that influenced these critical cases, which have affected our political process further. Lastly, this Essay will carefully look into the realm of the Internet. The future of the Internet, while bright and vast, faces an uphill battle as legislators and Government institutions seek ways to regulate it and protect intellectual property rights through legal safeguards and limitations.

Why Is This Important?

Without a healthy knowledge of the events surrounding the implementation of the safeguards that this Essay will study and the effects that mediated channels of communication are having on our lives and our republic, citizens may remain media illiterate and ignorant of many landmark decisions that have set the climate for our current media landscape. It is only with such knowledge that individuals can be assured that they are critically assessing mediated information, as well as guaranteeing their available means of interaction in various mediated environments. The ability to interact and participate in discourse aids individuals in discovering and critically assessing different ideas, making our democracy more dynamic and reducing political cynicism (Hanson & Haridakis, 2010).

In the twentieth century the Internet became the new frontier, but in the twenty-first century, it exploded. As with all new channels of mediated communication, it takes time for Government, including the FCC, to learn how to police it. Unlike with radio and broadcast communication, however, it has proved much more laborious and problematic to try to establish place limits and a jurisdiction to maintain them. These limits include issues with net neutrality, how the free flow of ideas is encouraged or inhibited, and also

how intellectual property is protected without stifling speech and expression, all of which have been cumbersome endeavors. Consequentially, on October 26, 2011, Representative Lamar S. Smith (R-TX) and 12 other bipartisan representative co-sponsors proposed The Stop Online Piracy Act, better known as SOPA. If passed it would allow the U.S. Department of Justice and copyright holders to seek court orders against any Internet website outside of United States jurisdiction that participates in copyright infringement. Included with the House's SOPA, was its counterpart, PIPA, or the Protect IP Act in the Senate. Although it is imperative to protect intellectual property, two bills so all-encompassing, if passed, have the ability to shut down all search engine websites, including Google, Yahoo!, AOL, and numerous others (McCullagh, 2011). Moreover, Americans could not fail to recognize that this would be catastrophic to their much loved social networking sites, most notably, Facebook, MySpace, Twitter, and other favorites such as Pinterest, Zynga, and LinkedIn. So far, both SOPA and PIPA have been shelved but not forgotten. Although this topic will be explored further later in this Essay, it is important to understand that the Government will exhaust every effort to regulate and obtain jurisdiction over the Internet. Only the future can tell what Government's next step will be to regulate it.

Attempting to understand the processes that have been used in order to get the media and political process to where they are today can be daunting and at times complicated. However, by informing individuals of the steps being taken by our country's government, a forum can open up for further public discourse and, additionally, provide understanding to the most important audience, the American people. As studies

have shown, discourse and information sharing has only increased the marketplace of ideas, while reducing distrust of politicians among citizens. This Essay begins with the theoretical framework of the uses and gratifications theory and how this theory furthers the understanding of individuals' media usage.

Chapter Two

Uses and Gratifications Theory

As our country began to seek new mediated communication channels for information and entertainment, scholars became curious about what motivated individuals to seek various avenues of information. The working premise behind uses and gratifications theory is that individuals are action-oriented and make deliberate choices in their selection of media and other communication instruments in order to satisfy their information and/or entertainment needs (Rubin & Haridakis, 2001). This assumption pioneered the school of thought that individuals did not constitute a passive audience, but were able to think critically about their information gathering, either rejecting or accepting what they consumed. Prior to this theory, media effects were thought to be significant. The pre-uses and gratifications school of thought regarding media effects can be easily summarized as a mechanistic perspective that “assumes direct influence on message recipients. Primary components of mechanistic effects research are: seeing audience members as passive and reactive; focusing on short-term, immediate, and measurable changes in thoughts, attitudes, or behaviors; and assuming direct influence on audiences” (Rubin, 2002, p. 525).

Researchers now speculate that there are numerous motives that drive individuals to seek out information through different channels, including technological, political,

economic, cultural, and religious. As the innovation of technology continues, individuals are better able to fulfill their information needs through new media (Rubin, 2002).

Without the concept of an active audience, uses and gratifications theory could not exist and, additionally, would not have been separated from numerous other communication theories. Uses and gratifications theory assumes the individual takes control. A vital aspect of this perception of an active audience is that they employ utility, intentionality, and selectivity (Blumer, 1979). “Utility” is used by communication theorists to mean that mass communication is an instrument for people, “intentionality” to mean that consumption of media is motivated, and “selectivity” that patterns in an individual’s use of media show their prior preferences and interests (Blumer, 1979).

Where uses and gratifications theory shows the audience as active, it is important in the history of communication research to acknowledge that, up until Blumer’s theorization of utility, intentionality, and selectivity, the idea of an active audience was not universally shared. In the world of communication and media research, it was believed that the audience was a victim and that its mind was a vulnerable sponge, absorbing propaganda and any mediated content fed through communication channels (Blumer, 1979; Rubin, 2002). According to uses and gratifications theory, however, consumers are no longer uncritical of the information provided by media outlets. Having stated that, researchers are quick to emphasize that activity is neither universal nor consistent. It would be incorrect to represent the audience as always “super-rational” and always selective because audience members are often in flux, meaning that the audience can be very active, very selective, and very critical of its mediated information at times

and less at other times. Rather, it would be more correct to present the active audience as being on a continuum from passive to active (Rubin, 2002).

Imperative to the understanding of the uses and gratifications theory is that this theory is based on a social-psychological perspective. By approaching media use from this prospective, researchers have observed that depending upon an individual's life situation and experiences, they can predict how important fulfilling one's needs and gratifications is and through what types of media that individual will attempt to satisfy them (Rubin & Haridakis, 2001).

Uses and gratifications theory's inception and early stages of research began with researchers such as Laswell, Wright, Larzarsfeld, McCombs, Shaw Katz, Blumer, and Gurevitch (Haridakis & Whitmore, 2006; Rubin, 2002). Laswell began by attempting to identify the functions that media served for individuals (Rubin, 2002). The early-developed model and the additions to the understanding of uses and gratifications theory provided to it, focused primarily on television. First introduced in the late 1940s and developed later in the late 1950s and early 1960s, uses and gratifications theory was an attempt to understand the short-term effects of political media campaigns on their targeted audience (Blumer, 1979). At that time, researchers wanted to disprove the myth that individuals were passive and at the mercy of what the media produced. An early study conducted by Blumer (1979) found that an individual was able to shape various channels of information, such as television programs, news articles, movies and songs, to his own purpose. Within this study, Blumer assumed that factors including "(a) people's social circumstances and roles, (b) their personality dispositions and capacities

(c) their actual patterns of mass media consumption, and (d) ultimately, the process of effects itself,” all have an influence on an individual’s ability to utilize different avenues of communication for his own use (Blumer, 1979, p 10). Later, Katz, Blumer and Gurevitch (1974) explained that the theory focused on:

“(1) the social and psychological origins of (2) needs, which generate (3) expectations of (4) the mass media or other sources, which lead to (5) differential patterns of media exposure (or engagement in other activities), resulting in (6) need gratifications and (7) other consequences, perhaps mostly unintended ones” (quoted in Haridakis & Whitmore, 2006, p. 767).

A scholar of uses and gratifications theory would be remiss to investigate the phenomenon without being aware of the impact that Dr. Alan Rubin, a former Kent State University professor, scholar, and researcher, has had on expanding this theory and providing further literature and clarity. Although Rubin did not pioneer the investigation into how the audience actively seeks out information to fulfill particular needs, he did expand upon the list of needs that individuals need to satisfy and, additionally, he helped bring the theory into the 21st century (Haridakis & Whitmore, 2006). By focusing on the audience, Rubin theorized that there were two types of media orientation: ritualized and instrumental. Ritualized media consumption occurs when the individual is attempting to pass time out of habit (Haridakis & Whitmore, 2006). The connotation of “ritualized” is important to this aspect because it is indicative of our patterns of media usage and can be very methodical. It can entail visiting the same websites on the Internet out of habit. When individuals participate in a ritualized routine, there is a stronger likelihood that the

media they are consulting to pass the time are not being sought out for information gathering. Such activity, therefore, demonstrates less intentionality, selectivity, and involvement (Haridakis & Whitmore, 2006). Conversely, instrumental media use is intentional and purposive. In this category, the individual is an information consumer whose activity is more involved. These individuals are also less susceptible to direct media effects (Haridakis & Whitmore, 2006).

Rubin also created typologies that describe all the reasons that people may have for media use. They were predicated at the time on television viewing. Some of these motivations were: to pass time, for companionship, excitement, escape, enjoyment, social interaction, relaxation, information, and to learn about specific content. Given the diversity and breadth of the Internet and its functions, I believe that the nine aforementioned motivations are also applicable to the Internet.

So why is the Internet important in evaluating uses and gratifications theory within the scope of the political process? Because while there are many communication theories that could be applicable to the use of the Internet as a medium for information, the uses and gratifications theory helps scholars and researchers understand the role that media can and is playing in our political process. After all, political campaigns and a desire to understand audience perception of political campaigns are what gave birth to uses and gratifications theory in the first place. Furthermore, uses and gratifications theory allows us to look at multiple communication channels and not just one, which makes the theory even more useful for understanding how individuals consuming media content. With the ability to understand the multifaceted ways in which the Internet is

quickly beginning to fulfill individuals' needs for information that this theory provides, and we can see how such individuals expand their ability to be active citizens and engage in discourse with others. It is in this way that the Internet becomes the biggest and most important media outlet for current and future elections.

Chapter Three

The Media's Influence in Past Presidential Elections

The previous chapter showed how utilized the media are for our entertainment and information-gathering needs. It becomes evident that the media holds great power in shaping presidential elections. Both the positive and the negative publications of candidates and their past commentary, voting record, and events occurring in their personal lives, affect their opportunity for winning an election. This movement to provide voters with an in-depth look into campaign strategy and the candidates running for office began when revered journalist Theodore 'Teddy' White wrote *The Making of the President*. Published in 1960, White's book informed journalists how to cover presidential campaigns and included information on how the candidates strategized and how the use of campaign aids, party officials, and consultants assist in the journey to the White House (Schudson, 2011). Upon the book's release, journalists were given a valuable tool that has shaped how campaigns have been covered since. The effects that *The Making of the President* were having on campaign coverage became apparent during Governor George McGovern's pursuit of public office in 1972, at which time White stated in an interview that he sincerely regretted the role he played in shaping how political campaigns were covered and trivialized (Schudson, 2011). Soon afterwards, in the 1987 presidential election, candidate Gary Hart of Colorado learned just how

destructive White's method of campaign coverage could be. The media's coverage of Hart became detrimental to his campaign when investigators learned of his extramarital affairs. Although it was not the first incident in which an individual running for public office had practiced looser morals than he preached, this occurrence was markedly different because it had a "raw, naked quality, as no previous scandal had" (Schudson, 2011, p. 89). Because of the intense scrutiny of Hart and the diligent work of investigative journalists, his campaign took a nosedive and never recovered, illuminating for future candidates that what happens behind closed doors does not necessarily stay there. Was it the hypocritical nature of Hart's controversy that ruined his chances at public office, or was it the sensationalism and cynical nature of politics that turned off voters? Most likely, it was a combination of the two. It could be deduced, however, that the media and its role in future politics would be substantial.

Hart's example showed just how influential the media is in destroying a candidate's image and the negative/positive ways in which the American audience views him. Today, however, the Internet can bring a campaign to life, or bring it crashing down in a much more rapid fashion. In recent elections, however, the ability of media channels to target audiences has been a primary topic and area of inquiry. The avenue that candidates have begun to utilize in order to tap into disparate demographics has been revolutionized, beginning in the 1990s with the Internet.

Although the Internet was rather rudimentary in the 1990s, even in those early developmental stages a few savvy candidates were able to recognize the power behind the developing medium. Beginning with Clinton-Gore in 1992, the Democratic nominees

sent out mass e-mails, issued e-bulletin boards, and created online discussion groups in order to distribute and inform potential voter of their platform and other valuable information regarding their campaign. These practices had never before been exercised (Stallings-Carpenter, 2010). From there, Dole and his campaign team in 1996 were the first to promote a campaign website during a televised debate. And though he would ultimately lose, Senator John McCain in 2000 was able to win the New Hampshire Presidential primary by raising an unparalleled \$4 million dollars (Stallings-Carpenter, 2010, p. 5). By the Super Tuesday primaries in 2000, the McCain campaign had raised over \$10 million dollars, with over 40% of the monies raised coming from contributions made via Internet. These examples of the early uses of the Internet in Presidential campaigns show that candidates even then had a vital tool in campaign finance and citizen outreach, with its potential truly seen during President Barack Obama's 2008 campaign. Clearly, President Obama's campaign committee was aware just how central the Internet was to meeting the information gathering needs of American citizens. This Essay will provide further substantive evidence of how the media continues to play a vital role in the political sphere.

The Media's Involvement in Howard Dean's Demise

Before President Barack Obama's successful utilization of the media, there was presidential candidate and former Governor of Vermont, Howard Dean. As previously mentioned, before Dean there were a few candidates who took advantage of the capabilities of the Internet. Dean, who at first appeared to be an unstoppable force, was one of the first presidential candidates to tap into the Internet as a weapon to spearhead

his campaign, and the first to use the Internet as a tool to raise money to finance his way to the White House. Dean was able to obtain an average of \$77 per person from 800,000 people, and was the first candidate to reach a younger audience, with twenty-five percent of his contributions coming from individuals under the age of thirty (Kuhn, 2009).

Raising such large sums of money through small donations had never been attempted before, nor was it believed that it could result in the large amounts of money accumulated (Stallings-Carpenter, 2010). By the middle of January, however, Dean had \$40 million at his disposal and other politicians were taking notice of his revolutionary fundraising practices. Together with Joe Trippi, Dean's campaign manager, the Dean campaign was able to form a "grassroots" movement on the Internet that would revolutionize American political finance.

Even though Dean turned out to be a "primary prince" in the days leading up to the infamous Iowa caucus, he found his face on the cover of the January 12, 2004, issue of *Time Magazine* and the August 11, 2004, issue of *Newsweek*. Though his brazen character was largely the cause of his campaign's demise, Dean's character is also what may have attracted his numerous supporters. The candidate's campaign chairman was quoted saying, "if Howard had been less direct, less blunt, less authentic, less true to himself and more cautious, he wouldn't have made some of the mistakes. On the other hand if he had been more cautious he might never have tapped into this energy and passion" (quoted in Kuhn, 2009). Yes, Dean's passion was magnetic, but it would be that same passion that would become his worst media nightmare. During the Iowa caucus, while speak to an energetic crowd, he let out the now well known "Dean Scream."

Almost instantly, as the sound clip was played over and over again on news stations and became a viral video on the Internet, voters were turned off. Overnight, Dean went from being a promising and viable candidate for the Presidency of the United States to a joke.

There were several reasons behind the fall of Howard Dean's campaign, including his many gaffes. These gaffes included his terror-filled rhetoric that America was not safe, even after the capture of Saddam Hussein. They continued when Dean yelled at a Bush supporter to sit down while at a rally, and again when he claimed that he was aiming to be the candidate for men with Confederate flags decorating their pickup trucks. His most notable gaffe, however, was the "Dean Scream." Even some of CNN's top executives, the senior vice president of ABC News, NBC news executives, and the Fox News chairman admitted to overplaying the infamous clip on the air. They argued, however, that because it commanded so much attention for viewers, it necessitated additional coverage (Burks, 2004). Unfortunately, Joe Trippi thought that the negative coverage of the scream would only last one day. As news networks worked to keep their viewers informed at all hours of the day, however, the networks found themselves, along with numerous other networks, constantly replaying the unflattering clip. In fact, the sound bite was aired 633 times in four days by different news networks, *excluding* talk shows and local news stations (Burks, 2004). Voters' sentiments for the candidate changed, they saw him as un-presidential" and "emotionally unstable." This sentiment was encouraged as cable networks began running and rerunning the clip of Dean, of jokes delivered by late night comedians, and the Internet remixes that were emerging at a record pace.

The following primary was in New Hampshire. By that time it was generally assumed that Dean was no longer a serious contender for the presidency. At the beginning of 2004, however, evidence showed that Dean trailed Bush by only six points, a smaller margin than Gore had when he won the popular vote in the 2000 presidential primary. Despite Dean's six-point deficit, America and Howard Dean were convinced that his chance at the presidency was lost. What was proved, however, was that "it is not what a politician does that creates scandal. It is whether the television networks and major metropolitan newspapers respond to the incident with saturation coverage" (quoted in Kuhn, 2009). Podvin cites as an example the time when a presidential candidate who desired to deregulate the corporate media was caught lying about breaking a law, a newsworthy event that received minimal coverage and did not take precedent over a presidential candidate (Howard Dean) who was also committed to breaking up the corporate media, but who, instead of getting caught breaking the law, emitted an unflattering scream at a campaign rally that resulted in a large and unfavorable amount of media coverage (Podvin, 2004).

If Howard Dean and the 'Dean Scream' taught viewers and future politicians anything, it is that despite a well-oiled campaign, a small blunder can bring the whole effort down. Dean's campaign presents scholars with an interesting case study of what to do and what not to do when strategically planning a campaign. Lastly, although this speaks loudly to the consequences of a televised broadcast, it speaks volumes to the effect his many gaffes would have in our current society, where videos are uploaded and shared instantly. Before a candidate is even aware of the possible damage, the video may

already have gone viral. Therefore, it becomes essential to envision situations such as Howard Dean's in today's technological and social environment. Although sharers of content may be sharing videos and articles for political information, it is also possible that they are sharing the content for entertainment needs.

President Obama's Successful Utilization of the Media

Howard Dean's campaign set the foundation for how a presidential campaign in the 21st century should be run making full utilization of the Internet. The incorporation of the Internet in Dean's 2004 campaign was noteworthy for a couple of reasons. First, it encouraged civic engagement amongst a population generally left out of desired and targeted demographics. Second, it allowed and enabled individuals to identify and connect with issues that demonstrated hardships being experienced in America, such as unemployment, high insurance premiums, and rising gas prices (Stallings-Carpenter, 2011). Then Senator Barack Obama, in the beginning stages of his campaign, understood that if he wanted a legitimate opportunity as a serious contender for the Presidency, he would need to take Dean's campaign format a step further, putting together an even more innovative team that would put him in contact with every household in America. What evolved was a major grassroots campaign that reached millions of homes in a unique, targeted, and personal way, making potential voters feel an intimate and individualized connection with the would-be-president.

In the political context, Stallings-Carpenter (2010) defines the Internet as a "network of networks" that has "enabled American citizens to easily join any type of political or special interest group." As a result, "US voters can obtain political

information or '*misinformation*' with just a few mouse clicks" (p. 2). Participating in online punditry and gathering political information via the Internet have been described as "e-democracy." The effect of e-democracy has been powerful with the staggering increase of Internet utilization since campaigns in the 1990s (Stallings-Carpenter, 2010). Using numerous website applications, including Facebook, ringtones for personal cellphones, text message updates, e-mails, and online collaborative software, President Obama's campaign was able to "stimulate electoral participation from a pool of unregistered voters and to further promote voter participation during the electoral season" (Stallings-Carpenter, 2010, p. 9). The aforementioned tools and web applications provided President Obama's campaign with the opportunity to coordinate large numbers of supporters, encouraging them to engage other potential voters and produce organized campaign events to further spread the platform of his campaign.

In addition to President Obama's revolutionary campaign strategies, there were the innovative means he implemented to raise money. Beginning in the 1970s, the American government developed a public financing system that has funded candidates' run for the presidency. During the 2008 presidential election, however, Barack Obama decided to bypass the public money and instead rely on his campaign team's fundraising capabilities. What resulted was an extraordinary \$750 million dollars raised over the course of 21 months, more money than all presidential candidates combined, raised in the 2004 presidential election (Bradley, 2008). The nearly four million contributors the campaign acquired over the course of the election was the primary factor in reaching this staggering amount, with the majority of those donations being under \$200. Though his

primary monies did not come from large contributions, these numbers make it clear that President Obama had significantly more money at his disposal than his adversary, Senator John McCain. Had President Obama decided to utilize federal grant money available through the public financing system, his fundraising capabilities would have been limited. In today's context, it seems ironic that public financing watchdogs "decried" the Obama campaign's fundraising because of the influence of money on politics (Lou, 2008). Many argued that in generating small donations from millions of citizens, the Obama campaign was more representative of democratic participation regarding public financing, regardless of how much money the campaign collected (Lou, 2008).

With the money raised, President Obama did not waste any time putting it to use. Over \$100 million of his funds went toward television advertisements, and an unprecedented \$5 million of it was used to purchase a 30-minute infomercial that was broadcast on several networks and cable stations (Bradley, 2008). The biggest catalyst in President Obama's success was the Internet, however. In all areas of civic life, especially politics, the Internet has presented a new way for individuals to interact with each other, including interactions with the electorate (Stallings-Carpenter, 2010). Unlike with television advertisements, individuals have to seek out a partisan and/or candidate's website actively, resulting in almost no unintentional viewings of Internet-mediated communication. Additionally, the typical visitor to a campaign website will stay an average of eight minutes or more, which provides him with the proper tools to share

further information with others and also information on how he can help volunteer or contribute in some measure to the campaign effort (Stallings-Carpenter, 2010).

This shows that President Obama used the information that his campaign observed from the Howard Dean campaign to his advantage in an unprecedented measure. The Pew Research Center reported that “online Obama supporters were generally more engaged in the online political process than online McCain supporters. Among Internet users, Obama voters were more likely to share online political content with others, sign up for updates about the election, donate money to the candidate online, set up political news alerts and sign up online for volunteer activities related to the campaign” (quoted in Smith, 2009). Obama’s campaign efforts were perhaps incorporated more effectively because of the collaboration of his campaign team with Chris Hughes, cofounder of Facebook (Talbot, 2008). Other than Chris Hughes, what made the biggest difference between Obama’s campaign and McCain’s campaign? After all, many of the practices that the Obama campaign exercised were also undertaken by the McCain campaign. According to David Talbot (2008) it is because, unlike President Obama, the other candidates did not make the Internet the *central* and *key* component of their campaign effort. The Obama campaign “built one central network and managed it effectively” (Talbot, 2008, p. 7).

President Obama’s first attempt at a run for the White House was extremely successful. Now President Obama will be seeking a second term. It will be interesting for researchers, scholars, and the American public to see how he will utilize not only the media but the Internet as well to inspire, motivate, and excite voters.

Chapter Four

Limitations on the Media and Political Process:

Supreme Court Landmark Cases

Being an American has different connotations for Americans and people all over the world. Primarily, American citizenship is seen as bestowing on its individuals numerous rights, liberties, and opportunities that are seldom awarded to citizens of many countries around the world. The Constitution of the United States of America has endowed people with the most coveted of all freedoms: the ability to express themselves freely without fear of persecution from their Government and/or sovereign. What may have begun as an amendment strictly for individuals, however, has evolved into a freedom awarded to large and influential entities, corporations. Could our Founding Fathers, the drafters of the Constitution and Bill of Rights, ever have imagined that corporations would be given personhood under the 14th Amendment? Would they have agreed to the recent developments surrounding corporations and their role in future presidential elections in the form of Political Action Committees (PACs)? These are questions that cannot be answered. Although many have speculated that this was not the intention of the Founding Fathers, it has nonetheless become our reality. *Citizens United v. FEC* has already made its mark in history. Whether the Justices are “originalists” or regard the document as a “living constitution,” when it comes to the Constitution’s interpretation, a contentious debate regarding *Citizens United v. FEC* is guaranteed.

The average individual may not be aware that the inception of the corporate form was in 1601 (Drutman, 2010). The East India Company, chartered under Queen Elizabeth I, was a much different type of corporation than we see today. During that time, corporations were closely monitored; they were created to unite investors in order to enable projects desired by the monarchy (Drutman, 2010). From the time of its genesis to today, however, the corporation has evolved into an entity with an immeasurable amount of power and resources. Although the evolution was gradual, the most critical moment in the history of the corporation came in a Supreme Court decision, *Santa Clara v. Southern Pacific Railroad* (1886). Under *Santa Clara*, the court ruled that corporations would be granted “personhood” under the 14th Amendment, the same amendment that had granted African-Americans personhood and given citizenship to immigrants. In the headnote of the opinion, Chief Justice Morrison Waite began by announcing that “the court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does” (*Santa Clara v. Southern Pacific Railroad*, 1886, p. 118). Because of this ruling, corporations are entitled to free speech protection, due process under law, protection from unlawful searches, seizures, and discrimination (*Santa Clara v. Southern Pacific Railroad*, 1886). Although corporation’s rights and their progression under the First Amendment would continue, it was this landmark decision that set the climate for a vital element in the *Citizens United v. FEC* case. This Essay will summarize that landmark case and what the decision means for the future of the country’s political

arena. Will the impact of corporations on future presidential elections be as marked and drastic as is being predicted? Or are the country's worries and speculations unnecessary?

The case *CBS, Inc. v. Federal Communications Commission* is another divisive decision that shaped our media landscape. This case went before the Court to determine how politicians can market and advertise themselves through the use of broadcast television during an election. Working on the evolution of a fair media and free speech rights, *CBS, Inc. v. Federal Communications Commission* looked to garner further rights for politicians and develop their ability to utilize the media to reach their desired audience. This chapter, therefore, begins with an examination of *CBS, Inc., v FCC*, to highlight how candidates attempt to connect with voters, and will follow up with campaign finance cases and how these four Supreme Court decisions factor into uses and gratifications theory and how people obtain their information.

CBS, Inc. v. Federal Communications Commission, 453 U.S. 367 (1981)

The most salient characteristic of the United States is its democratic government. By analyzing models around the world, an individual can conclude that democratic institutions come in many forms, with the most notable element being the concept of holding free and fair elections for political office. No two are ever quite the same, however. Since the creation of the Bill of Rights, including the First Amendment, the government has recognized the necessity for candidates to market themselves successfully to the American people through the various media available to them. A salient provision of the Communication Act of 1934 focused on the opportunities political candidates had for fair broadcasting in their campaigns. This provision would

ensure that candidates could have the same amount of airtime as their competitors, assuming that they were legally qualified to run. The *CBS, Inc. v. FCC* case began when the Carter-Mondale Presidential Committee requested from CBS, NBC, and ABC, time for a 30-minute program that would air between 8:00 p.m. and 10:30 p.m. on either the 4th, 5th, 6th, or 7th December, 1979. All of the networks declined the request by the committee. In addressing their refusal, petitioner CBS explained that the large number of candidates on both the Democratic and Republican side would cause a potential disruption of regularly scheduled programming if each candidate were given equal treatment. To appease the Carter-Mondale Presidential Committee, CBS offered two 5-minute time spots that the committee found to be insufficient. Additionally, ABC released a statement claiming that it had not yet reached a decision as to when they would sell time for political campaigns. NBC stated that it was not yet prepared to sell time for political campaigns as early as December of that year (*CBS, Inc. v. FCC*, 1981).

In response to the three networks' refusal, on October 29, 1979, the Carter-Mondale Presidential Committee filed a complaint, noting that the networks had neglected their obligation to provide "reasonable access" to broadcasting. As a consequence of their obligation to provide reasonable access under a statute in the Communication Act of 1934, the commission holds the right to "revoke any station license or construction permit...for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy" (*CBS, Inc., v. FCC*, 1981, p. 374). Here the Court states unambiguously that a

broadcasting station's license has limits; making this point clear the Court opined that "a license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a...frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a license to share his frequency with others." Further, "it is the right of the viewers and listeners, not the rights of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market...it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here" (*CBS, Inc., v. FCC*, 1981, p. 396). The FCC ruled that the three networks had violated the statute and that their reasons for doing so were "deficient" (*CBS, Inc. v. FCC*, 1981). The FCC then gave the networks the opportunity to decide how they would meet their obligation until November 26, 1979, at which time the FCC would take action and revoke licensing for the networks. What ensued were repeated appeals and denials of petition until the case reached the Supreme Court.

In a 6-3 decision, the Court ruled in favor of the FCC. In delivering the opinion of the Court, Justice Burger stated that the use of television has become a necessary element to meet and satisfy public interest. This fact was recognized prior to the enactment of the statute (*CBS, Inc. v. FCC*, 1981). It was stated that the Democratic National Committee had observed on multiple occasions that the FCC had ruled no group, person, or organization has the authority to order broadcasting services (*CBS, Inc. v. FCC*, 1981).

An important element of the First Amendment is that it protects not only free speech rights of citizens and the content of the speaker's message, but also an individual's right to *hear* the speaker's message. Justice Burger reiterated this sentiment, stating that it is the right of the viewer, not the broadcaster, that is supreme in the First Amendment. This vital element preserves and colors the marketplace of ideas.

How political candidates raised money and awareness of their platform would continue to evolve. It seems ironic that at the beginning of the country, a citizen stood for political office, rather than running for it (Schudson, 2011). This shows how different America is today and illustrates how it has evolved, just like the role and scope of the corporate form.

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)

In *Austin v. Michigan Chamber of Commerce*, the Michigan Chamber of Commerce, a nonprofit organization, went before the Supreme Court in 1989 to challenge the constitutionality of prohibitions on corporations from making direct expenditures in elections. The Michigan Chamber of Commerce claimed that the prohibition violated the First Amendment's protection of free speech and the 14th Amendment's Equal Protection Clause. This case arose from the Michigan Chamber of Commerce's desire to place advertisements in a local newspaper supporting the candidacy of Richard Bandstra for state office, an action that at the time was in direct conflict with section 54(1) of the Michigan Campaign Finance Act. This Act restricted corporations from spending money from their general treasury that would in any way affect the result of an election. Corporations did have an option, however: to form political action committees or PACs.

These PACs can make expenditures that are funded by the corporation's segregated funds. The ability to form PACs aids in avoiding the appearance of corruption, which invariably arises when large corporate monies are used in campaigns. It was acknowledged that corporations present circumstances in relation to political expenditures where it becomes necessary to impose a level of regulation in order to avoid corruption and/or the appearance of corruption (*Austin v. Michigan Chamber of Commerce*, 1990). The Michigan Chamber of Commerce's main argument was that its nonprofit organization should have been excluded from the act because it was a nonprofit entity, an entity that could be compared to a political association rather than a large corporate business firm.

The Court's 6-3 decision, found that, no, the Michigan Campaign Finance Act did not violate the First or 14th Amendment. Despite Chamber of Commerce's argument that they should be allowed to advocate for the election of a candidate because they are more like a political association than a business firm the Court disagreed, upholding the Michigan law. Justice Marshall stated that the Chamber of Commerce was in fact similar to a business because of its activities, which linked them to business leaders in the community. Additionally, he stated that more than 75% of the board members were individuals from business corporations (*Austin v. Michigan Chamber of Commerce*, 1990). Michigan's decision to regulate corporations and not unincorporated associations was well tailored to serve its compelling interest. In his opinion for the Court, Justice Marshall observed that the statute had been narrowly tailored to create and maintain the integrity of the political process. The Court recognized that it was in the political

processes' best interest to confront "a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support of the corporation's political ideas" (*Austin v. Michigan Chamber of Commerce*, 1990, p. 494). Therefore, by utilizing PACs, persons who contributed to the segregated fund would have full knowledge that their money would be used for political purposes. In this way, the speech generated by the funds would directly reflect the contributor's support of the corporation's political views (*Austin v. Michigan Chamber of Commerce*, 1990).

Ironically, the desire to preserve integrity in the political process and the Constitutional Amendments that Justice Marshall cited, although hardly analogous, are the very reasons that *Citizens United v. FEC* had its shocking outcome. The 5-4 decisions from *Citizens United v. FEC* shows that there were many Justices on the Court who had scruples regarding direct expenditures from large corporations. Not as many, however, as in the *Austin v. Michigan Chamber of Commerce* case. The *Austin v. Michigan Chamber of Commerce* decision would be overruled by the Court in *Citizens United v. FEC*, as I will explain later.

McConnell v. Federal Election Commission, 540 U.S. 93 (2003)

In 2002, Senators John McCain and Russell Feingold achieved a long-time goal of reforming the means by which monies are raised and spent during political campaigns. The purpose of the reform was to eliminate the loopholes in the campaign finance regulations (Gower, 2008). The McCain-Feingold Bill, recognized earlier in this Essay

as the Bipartisan Campaign Reform Act or BCRA, included a ban on unrestricted “soft money” donations (defined in the act as contributions made for non-federal, party-building activities) that are made directly to political parties. Entities that often make such donations are corporations and unions (Gower, 2008). The BCRA also limited the advertising that unions, corporations, and non-profit organizations could engage in up to 60 days prior to an election and further restricted political parties and the use of their funds for advertising on behalf of political candidates. These advertisements were commonly in the form of “issue ads” and/or “coordinated expenditures.” In past elections, issue ads had been defined as “political messages that did not expressly advocate the election or defeat of a specific candidate” (Gower, 2008, p. 32). Until that point, under the Federal Election Campaign Act neither soft money nor issue ads had been subject to any regulation (Gower, 2008). Though campaign reform was a goal that both Senators worked hard to achieve, within hours of President George W. Bush signing the BCRA into law, Senator McConnell and the National Rifle Association filed complaints that would challenge the constitutionality of the three provisions. After first going to a three judge district court, the case went before the Supreme Court for a second decision.

The two main issues contested in *McConnell v. FEC*, were 1) whether the regulation of soft money given by corporations violated the First Amendment’s protection of free speech, and 2) if the regulation of political advertisements violated the First Amendment’s free speech clause. In their 5-4 decision, the Supreme Court answered no to both questions. The Court acknowledged that the majority of soft money was

dedicated to registering voters and increasing voter turnout at the polls. Therefore, the regulation of it stayed in place because the monies were not to be directed toward campaign expenses, which is subject to more protection since it has higher value as a form of political speech. The Court also concluded that there was a sufficiently important government interest in preventing actual corruption and/or the appearance of corruption that could possibly result from such contributions. Although an issue of corruption had not been presented in connection with soft money or contributions of any kind, the Court decided that such regulation was necessary to prevent groups from bypassing the law (*Citizens United v. FEC*, 2010).

The common denominator in all the aforementioned cases is the issue of free speech protection under the First Amendment. In today's political process, the onslaught of mediated messages in the form of political commercials and issue ads has become overwhelming and, oftentimes, constitutes an unwelcome inundation of negative advertising on behalf of candidates. With television broadcast opportunities, however, not much time is given to candidates. In fact, during the 2008 Presidential Election, Democratic nominee Barack Obama bought a 30-minute time slot to speak to his voters and those still undecided, in an effort to sway them. His adversary, candidate John McCain, did not. Until that point, purchasing broadcast time was almost unheard of.

Regardless of whether the First Amendment protects individual rights to convey a message to an audience, or the audience's right to hear a message, what can be certain is that now corporations have their right to convey a message through the utilization of money. In the landmark case *First National Bank of Boston v. Bellotti*, Justice Powell,

writing the majority opinion, explained that the issue was not whether corporations have the same speech rights as natural persons, but whether the content of the speech is protected. It is imperative to protect the content of speech, regardless of the identity of the speaker. As the Court stated, this speech was “the type of speech indispensable to decision-making [sic] in a democracy, and this is no less true because the speech comes from a corporation rather than an individual” (Gower, 2008, p. 29).

Citizens United v. Federal Election Committee, 558 U.S. 08-205 (2010)

For decades now, a contentious issue among the Supreme Court judiciary and citizens of the country has been debated. The debate seeks to determine if corporations should be awarded the same rights and liberties as people. In a Supreme Court decision as recent as *First National Bank v. Bellotti* (1978), the line on this salient issue was split. In Justice White’s dissent, he reminded the Court that the primary purpose of the First Amendment is to give citizens the ability to express themselves and their ideas fully. Their expression is not and cannot be furthered by giving corporations the ability to speak freely under the First Amendment. Furthermore, for-profit corporations are not crucial to the marketplace of ideas or the expansion of ideas, and therefore are not indicative of citizens’ freedom of choice and expression (*First National Bank of Boston v. Bellotti*, 1978). On this manner, Justice Rehnquist offered his dissenting opinion as well, and furthered Justice White’s sentiment by clarifying that the First Amendment’s purpose is to uphold the rights and liberties of natural persons, not corporations (*First National Bank of Boston v. Bellotti*, 1978). Through the evolution of this topic, corporations were indeed awarded the same rights as natural persons. In gaining the same rights as people,

corporations gained free speech rights. Corporations are not actual people, however, and therefore are unable to speak, so they let their money do the speaking for them. It is here that *Citizens United v. FEC* picks up and furthers the debate about and expansion of corporate rights.

Citizens United v. FEC was argued before the Supreme Court on September 9, 2009, and decided on January 21, 2010. To obtain a better, more encompassing understanding of this landmark case, it is important to have sufficient detail regarding the background of this organization and case. Citizens United, a conservative, nonprofit organization dedicated to restoring the government to the control of citizens, was formed in 1988. Citizens United has a strong focus on undertaking educational projects to spread their message(s), through television advertisements and documentaries that promote conservative causes. During the 2008 Presidential election, our country saw an increase in partisan bashing on behalf of both parties, with the Republicans determined to keep a Democrat out of office and Democrats just as intent on keeping Republicans out of office. Therefore, with a non-profit organization whose existence was to further conservative values and keep control in the hands of active citizens, a characteristic of conservatives that is in opposition to the regulatory practices of Democrats, it was in Citizens United's best interest to promote and disseminate educational material aimed at bringing down the competition. The case began when Citizens United released a 90-minute documentary, or electioneering communication, to be aired on HBO, which would urge voters not to vote for the Democratic presidential primary candidate, Hillary Clinton. The documentary was entitled, *Hillary: The Movie*, and at the time was found to

be in direct conflict with the Bipartisan Campaign Reform Act of 2002 (BCRA) as an electioneering communication. Section 203 of the BCRA prohibits any corporation and/or charitable non-profit organization from funding “any broadcast, cable, or satellite communication that refers to a clearly identified candidate for Federal office and is made within 30 days of a primary election” and 60 days of a general election and is publicly distributed (*Citizens United v. FEC*, 2010, p. 1). Additionally, the electioneering communication must identify the candidate running for federal office obviously and it must be publically distributed. In order to pay for the distribution and advertising of the documentary, Citizens United wanted to use their general funds. Under the BCRA, however, organizations and corporations were prohibited from spending their money on electioneering communications. Further, fearing that the FEC would attempt to stop *Hillary: The Movie*, Citizens United sought an injunction based on the fact that the regulations and need for disclosure were illegal (*Citizens United v. FEC*, 2010).

The case was initially brought before the D.C. District Court, with Citizens United hoping to obtain declaratory and injunctive relief. Citizens United claimed that defining *Hillary: The Movie* as an electioneering communication under Section 203 of the BCRA was unconstitutional, and further, argued that Section 203 was an unconstitutional regulation of speech. The D.C. District Court denied the injunction and went on to provide the FEC with a summary judgment, holding that the provisions of the BCRA that Citizens United was contesting were constitutional. Citizens United decided to appeal to the Supreme Court, hoping for a different outcome, and their hopes were fulfilled. In a 5-4 decision, the Supreme Court ruled that corporations and nonprofit

organizations do in fact have the same political speech rights as individuals. This ruling has provided corporations and nonprofit organizations with a great deal of freedom in regard to campaign expenditures, because our judiciary has concluded that corporations and non-profit organizations do not have the *ability* to speak as individuals do. Therefore, they can only express themselves with monetary expenditures and contributions (*Citizens United v. FEC*, 2010). This allows corporations to use their general funds to make election expenditures. Justice Kennedy powerfully wrote in his opinion that “If the First Amendment has any force, it prohibits Congress from the fining or jailing of citizens, or associations of citizens, for simply engaging in political speech,” (*Citizens United v. FEC*, 2010, p. 33). The Court’s conclusion also rested on the fear that if a distinction were made between corporate speech and political speech, the First Amendment would be infringed on, thus reducing interactivity among citizens and the sharing of their ideas, and potentially creating a “chilling effect” on speech (*Citizens United v. FEC*, 2010). The Court also ruled 8-1 that the disclaimer and disclosure requirements applied to *Citizens United* are constitutional (*Citizens United v. FEC*, 2010).

The focus of this convoluted case and decision was the determination that the regulation provided by BCRA violated the free speech clause of the First Amendment because free speech laws should not rest on the status of the speaker. The Supreme Court felt that by not giving corporations the ability to express themselves through campaign expenditures, the regulation discriminated against corporate speech. Ultimately, the Court found no compelling interest in limiting corporate speech or a chilling effect as a consequence and further stated that political speech is no less valuable in the corporate

form (*Citizens United v. FEC*, 2010). Using strict scrutiny, the judiciary found that the law was unconstitutional despite arguments that the law was intended to avoid and prevent corruption in the electoral process and additionally to protect shareholders from being forced to invest in political speech that may be contrary to their own ideologies (*Citizens United v. FEC*, 2010). As a consequence, corporations and unions are now able to use their general funds to make election expenditures. Because of the difficulty of distinguishing between media and other types of corporations, this could allow Congress to repress political speech in numerous ways.

Lastly, the *Citizens United v. FEC* case is important in that it extends upon and informs of the requirements for disclaimer and disclosure in financing campaigns. As part of Citizens United's proactive suit to avoid civil and criminal penalties, the corporation sought declaratory and injunctive relief by also claiming that BCRA's disclaimer and disclosure requirements were unconstitutional as applied to *Hillary: The Movie*. Citizens United was granted a preliminary injunction (*Citizens United v. FEC*, 2010). The Court held that disclaimer and disclosure requirements were constitutional as applied to *Hillary: The Movie*. Disclaimer and disclosure requirements do not limit the amount of money that can be attributed to campaign-related activities and therefore do not burden the corporation's ability to speak. The precedent (*Buckley v. Valeo*, 1976) explained that those requirements, information about who was contributing what and how much, upheld the rights of the electorate to receive accurate information about financial sources. More specifically, it ensures that the public is aware that a candidate or political party is not financing political advertisements. Further, the Court disagreed that disclaimer and

disclosure requirements would have a chilling effect on political donations because the recipients of the donations would receive negative responses and possible retaliation from angry consumers, including threatening statements and various forms of intimidation that would make disclaimer and disclosure requirements unconstitutional if applied to issue ads and electioneering communications (*Citizens United v. FEC*, 2010). This was rejected on the premise that no evidence has been found that such a result could or has occurred.

As previously stated, the two main issues being contested in *Citizens United v. FEC*, were 1) whether limitations placed on corporate speech were constitutional and 2) if requirements for disclaimers and disclosures were constitutional. In granting writ of certiorari, the Court would have to consider overruling two prior cases: *Austin v. Michigan Chamber of Commerce* and *McConnell v. Federal Election Commission*. *Austin v. Michigan Chamber of Commerce* addressed the ban on corporate speech during elections, and *McConnell v. Federal Election Commission* reinforced the restriction of electioneering communications, both hot button issues in *Citizens United v. FEC*. What makes the ruling in *Citizens United v. FEC* disconcerting, however, is that the Supreme Court took up an issue that was not relevant on its face. The main arguments revolved around disclaimer and disclosure requirements and electioneering communications, not corporate speech through expenditures for political campaigns and the limits imposed upon them and their status as a non-profit or for-profit corporation. The conservative wing of the court took an opportunity to push their agenda and overturn a century's worth of decisions, relying on past dissenting opinions to justify overturning such landmark cases such as *FEC v. Wisconsin Right to Life, Inc.*, *McConnell v. FEC*, *FEC v. Beaumont*,

FEC v. Massachusetts Citizens for Life, and California Medical Assn. v. FEC (Citizens United v. FEC, 2010).

By abandoning *stare decisis*, the Court travels into dangerous territory. In his dissent, Justice Stevens, with the concurrence of Justices Ginsburg, Sotomayor, and Breyer, reiterated Justice Brandeis' sentiment that when the Court departs from previous decisions there is an increased likelihood that the decision will be made in error of constitutional law (*Citizens United v. FEC, 2010*). Additionally, Justice Stevens quoted from *Planned Parenthood of Southeastern Pa v. Casey* that "a decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided" (*Citizens United v. FEC, 2010, p. 17*). Justice Stevens quickly noted that neither he nor any Justice is an "absolutist" regarding *stare decisis*, but acknowledged that if it is going to have any clout, an exceptional rationalization needed to be made for overlooking it. This was not the case. He further contended that the justification the majority presented was not cogent enough (*Citizens United v. FEC, 2010*).

When looking at past precedents, the majority was "also conspicuously silent about *McConnell*, even though the *McConnell* Court's decision to uphold BCRA §230 relied not only on the anti-distortion logic of *Austin* but also on the statute's historical pedigree" (*Citizens United v. FEC, 2010, p. 19*). The necessity of *McConnell* and *Austin*, despite *Austin*'s antiquated case citations, is still clear. The only factor that has changed since the ruling on both of these landmark cases is the composition of the Court, as Justice Stevens conveyed in his dissent. With no requests from the lower appellate courts to revisit the provisions in either *Austin* or *McConnell*, it is unclear why the Court would

overrule these portions. Instead, the actions of this Court, according to Justice Stevens, “strike at the vitals of *stare decisis*, ‘the means by which we can ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion’ that ‘permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals’” (*Citizens United v. FEC*, 2010, p. 23).

Justice Stevens blows three huge holes in the arguments of the majority. First he states the three premises for which the majority based their ruling and then illuminates how all three are incorrect. First, the majority claimed that *Austin* and *McConnell* banned corporate speech. Second, that the identity of the speaker as a corporation was being discriminated against by not including regulatory distinctions in the types of speakers protected. And third, that *Austin* and *McConnell* were detached and cutoff from traditional protection of the First Amendment and not within the jurisdiction of campaign finance (*Citizens United v. FEC*, 2010). To strike down the first argument, Justice Stevens clarifies that the restrictions in *Austin* and *McConnell* do not impose a ban on all forms of corporate speech and expenditures, i.e. PACs and issue advertising. Addressing the second argument, the identity of the speaker, Justice Stevens shows that the Court has indeed discriminated against the identity of speakers in present and past incidences. For example, “students, prisoners, members of the Armed Forces, foreigners, and its own employees” are all subject to free speech restrictions (*Citizens United, v. FEC*, 2010, p. 29). Within this line of logic that the majority purports in *Citizens United v. FEC*, should then corporations owned and operated by foreign, ‘multinational’ entities be allowed their right to speak as well? And if this is allowed, then should not corporations be given

the right to vote since the act of voting is a form of speech? Lastly, the majority's third argument, that the rulings in *Austin* and *McConnell* are 'aberrations' to our First Amendment freedoms, Stevens states that the real aberration is the majority's ruling, as it is a "radical departure from what had been settled First Amendment law" (*Citizens United, v. FEC*, 2010, p. 34).

Nevertheless, the enigmatic ruling handed down by the Court has changed history; however, recent events have given the Court a second opportunity to change their decision. The Court should undoubtedly give the case a writ of certiorari and an honest examination. Hopefully, the Court will lead by the example of the Montana state court that upheld an anticorruption campaign finance law. By upholding the anticorruption law, the parties involved are able to file papers in order to seek the Supreme Court's review of the case. Recently, Justice Ruth Bader Ginsburg quoted in reference, Justice Kennedy's comments, that the most important thing is avoiding corruption, along with the appearance of corruption but not the "influence over or access to elected officials" that large amounts of money provide (*The Supreme Court and Citizens United*, 2012). Since the electoral process has begun, the Court will now have evidence from the recent election and the rise of the "super PACs" to base a future ruling upon. This important evidence would finally provide a solid record of how expenditures can and do have a corrupting effect. It will be interesting for campaign finance and legal scholars to watch the future events unfold. This time, the conservative wing of the Court may be unable to justify unlimited expenditures.

How Will The 2012 Presidential Election Be Affected?

“I don’t think American elections should be bankrolled by America’s most powerful interests, or worse, by foreign entities.”

–President Barack Obama, State of the Union Address (Epstein, 2011)

“I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country...corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic destroyed.”

-President Abraham Lincoln, November 21, 1864, in a letter to Colonel William F. Elkins (Shaw, 1950)

The words of President Barack Obama and those of one of his role models, former President Abraham Lincoln, call our attention to the power of corporations and the potential impact they can now exert upon our political process. During his 2008 State of the Union Address, in an *ad rem* manner, President Barack Obama directed the country’s attention to the *Citizens United v. FEC* ruling, revealing the conservative politics of the Court judiciary. Not all Justices were excited about the prospect of corporations having additional power added to their list, however. Citing progressive Elihu Root’s sentiments, Justices Stevens and O’Connor stated that corporate money and politics, like oil and water, do not mix. Therefore, it is best to make some effort to keep the two separate in order to mitigate the effects of money on the political process (Epstein, 2011). Would this decision come at the expense of ordinary citizens and the honor of our elections, though? According to some law scholars, the answer is no. In his

paper, Epstein (2011) asserted that it is in the best interest of all corporations, especially ones with large influence and capital gain, to keep a low profile during general elections. While the rest of society thought that corporations would be eager to spread their influence and utilize monies to further political pursuits, according to Epstein, that is an opportunity they would rather not have, for the reason that it puts corporations at political risk (Epstein, 2011).

It appears that corporations may have some ambivalence about exercising the constitutional rights that *Citizens United v. FEC* granted them. To summarize most corporations' feelings, the ability to fund campaigns through expenditures is a power that has the potential to become an unwanted liability rather than an asset (Epstein, 2011). The consequences of taking part in the political process include making enemies. These enemies are typically angry consumers who can band together, boycott products, and produce negative campaigns and exposure. The other side may argue that there are friends to win when corporations take political risks, but these friends typically will not increase sales or create a favorable image. Epstein supports this argument by providing instances of when corporations decided to participate in elections. For example, Target stated that it would be contributing \$150,000 to MN Forward, a business group that opposed equal rights, including marriage for gays. The reaction from consumers, including MoveOn.org, was immediate and strong. The backlash put Target's public relations department almost instantly into damage control. Similarly, Whole Foods' president, John McKay, made the unwise decision to take a stand on President Obama's healthcare reform, which was eventually passed into law. His decision to take a stand was

unwise because a large majority of Whole Foods customers are progressive and, therefore, sympathetic to that reform. When fire and brimstone rained down on McKay's critique, it sent him reeling. Needless to say, it appears that consumers' ability to speak out on corporations' statements and political actions will continue to have a chilling effect on the two in the future (Epstein, 2011).

The fact that many corporations' success relies on customer loyalty is significant to Epstein's view. Citizens United is a political business, not a corporation, and therefore does not face financial reversals from the public to the same degree as brand-name business that sells to the public. In the end, the *Citizens United v. FEC* ruling provides an advantage to business corporations that they really do not desire.

What about the individuals who protest that these new sets of rights and opportunities for corporations will lead to corruption? If previous rulings remind us of anything, it is that *Austin v. Michigan Chamber of Commerce* also set out to eliminate not only corruption but also the *appearance* of corruption (Epstein, 2011). It could be argued that real evidence of corruption is needed in order to defend the curtailment of corporate speech. Few could convincingly argue, however, that money equals power. Even defenders of campaign finance and corporate speech agree that a large amount of wealth confers power and power brings success. In recent decades, the level of cynicism among citizens has risen and shows that society perceives the level of corruption among politicians and corporations to be high. This blemishes the role that corporations and their interests play in Washington.

Additionally, readers must remember that the First Amendment provides that “Congress shall make no law...abridging the freedom of speech, or of the press...” With that reminder, the category of speech that Citizens United hoped to utilize was political speech. According to past precedent, political speech is the most protected of all categories of speech. Regardless of an individual’s or group of individuals’ thoughts on the ruling, political speech allows citizens to question their government and the officials who represent them.

Chapter Five

The Internet and Government's Attempt to Regulate It

The Internet plays a necessary role in the lives of millions of people and in the role and productivity of institutions, corporations, and business. *Reno v. American Civil Liberties Union* (1997) aptly described the Internet as “an international network of interconnected computers that enables millions of people to communicate with one another in ‘cyberspace’ and to access vast amounts of information from around the world” (p.17). In 15 years, the presence and scope of the Internet has increased dramatically, further complicating the Sisyphean issue of regulating and policing Internet activities. Here, I will endeavor to show the extreme complexity of regulating the Internet.

This Essay has analyzed case law at the Supreme Court level, specifically campaigns and campaign finance issues. Additionally, uses and gratifications theory has provided an audience-centered perspective from which to examine more closely the means by which individuals utilize various media to satisfy their information-gathering needs. These topics, including the subjects covered in this chapter, will continue to provide the information necessary to obtain a full understanding of the issues in the media today and how they are providing advantages and/or disadvantages to our political landscape.

The Federal Communications Commission

The Federal Communications Commission was enacted under the Communications Act of 1934. The independent U.S. Government agency's primary objectives are to regulate interstate and international communications through the mediums of television, radio, wire, satellite and cable (Federal Communications Commission, 2011). Within its jurisdiction of the 50 states, District of Columbia, and other U.S. territories, the FCC is directed by five Commissioners, who are appointed by the President of the United States and confirmed by the Senate. Each Commissioner is confirmed for a five-year term, with one Commissioner serving as the Chairperson of the organization as nominated by the President (Federal Communications Commission, 2011). The FCC's current Chairperson is Julius Genachowski, whose term will expire in 2013. The FCC's effort to regulate interstate and international communications is based on their duty to ensure that communications are reasonably available to all persons in the United States, regardless of their race, religion, national origin, or sex. Furthermore, the people should have access to these various forms of communication at a reasonable price (Federal Communications Commission, 2011).

The organization's objectives from 2006 to 2011 under the Government Performance and Results Act (GPRA) were to provide individuals with affordable access to broadband products and services that are efficient and reliable, with policies that create an initiative for innovation and investment. With the GPRA, the Commission wants to provide a foundation for competition that fuels innovation and provides affordability. Additionally, it seeks to supply radio frequencies that are reliable and effective, and that

can also drive competitors to improve communication technologies and create competition and diversity in the media. Furthermore, the Commission aims to provide the public with certainty and assurance when emergencies arise that effective strategies are being utilized for health, safety, defense and personnel. Lastly, it seeks to show that the FCC is persistently working towards a more innovative, efficient and modern approach to their services in order to enable maximum returns to stakeholders and the public (Federal Communications Commission, 2011). [The purpose of the GPRA is to improve federal agencies in the ways in which they supply services, effectively utilize resources, manage, and boost internal management, and also help enhance customer satisfaction (Rodriguez & Bijotat, 2003). Included within the GPRA are mandatory measures to help agencies and organizations develop a budgeting system that divides resources based upon the agency's performance (Federal Communications Commission, 2011).] The FCC's proposed budget for the 2012 fiscal year is around \$354 million (Federal Communications Commission, 2011).

The breadth and scope of the FCC's duties are substantial and began rapidly growing in size with the emergence of the Internet. As with the previous media available to consumers, the FCC has made an effort to regulate the Internet. This Essay will explore the steps by which the Government and the FCC have attempted to do so. For additional information regarding the FCC, the Communication Act of 1934, the Telecommunications Act of 1996, and various other Government initiatives to regulate

interstate and international communication services and their history, visit:

<http://energycommerce.house.gov/108/pubs/108-D.pdf>

The Communications Decency Act of 1996

The Communications Decency Act of 1996 (CDA) was the first attempt by Congress to regulate pornographic material on the Internet. An amendment to Telecommunications Act of 1996, the CDA was Title V. The Senate added this amendment in 1995 after an 84-16 vote (Federal Communications Commission, 2011). The CDA has two fundamental goals/purposes. First, to regulate both obscene and indecent material on the Internet, with indecent material being punishable when it is provided and/or made available to children. (In 1997, the indecency provision of the Act would be struck down in the landmark case *Reno v. American Civil Liberties Union* [1997]. We will deal with this case later). Second, in accordance with Section 230 of the Act, the CDA is to shield an Internet service provider by protecting him from libel suits for words that third-party publishers posted in relation to his Internet services.

As noted earlier in this Essay, attempting to regulate the Internet is a task that legislators have been working toward since the Internet first became recognized as a provider of information and entertainment. The FCC had already put restrictions and prohibitions on broadcast radio and television by monitoring and restricting offensive language and speech during certain hours when minors are likely to be watching and/or listening. If radio broadcasts or television violated these provisions, transgressors could lose their license. These provisions act as enforcers, deterring people from circumventing the law in order to display offensive material.

The Internet was a wholly different type of entity that required different types of monitoring, however. Therefore, the FCC's attempts began with monitoring and curtailing the amount and availability of indecent and obscene material. According to the Committee of Energy and Commerce, President Bill Clinton signed into law the two aforementioned provisions on February 8, 1996, imposing criminal sanctions on violators (Federal Communications Commission, 2011). Despite the Act's successful implementation, advocates of the First Amendment and the free speech rights it guarantees began pursuing the revocation of the indecency provision of the Act, arguing that indecency was protected under the First Amendment. The opponents of the provision argued that novels with any of the seven dirty words would become unlawful when their contents were posted on the Internet and, additionally, that the provision encroached upon the rights of adults to view and/or utilize the indecent material (Communications Decency Act, 1996). The seven dirty words were words that became the center of the *Federal Communications Commission v. Pacifica Foundation* (1978) case, involving comedian George Carlin and his monologue "Filthy Words." This case was the first to establish the regulation of indecent material for radio broadcasting, after a man complained to the FCC that the monologue aired on the radio while he was in the car with his son (*FCC v. Pacifica Foundation*, 1978). Soon, online civil liberties organizations encouraged web providers to change their website's backgrounds to black for 48 hours as a form of protest after the passage of the provision. This protest was known as the 'Black World Wide Web.' The Internet would see similar protests with SOPA and PIPA nearly 15 years later.

Another historical moment for the Internet and the CDA was in Section 230 of the Act. Section 230 protected Internet service providers from potential libel suits that could arise because of a third-party's comments. To date, the United States has seen numerous libel suits. With the Internet, the ability of anonymous individuals to produce false information is great. Fortunately, Representatives Christopher Cox of California and Ron Wyden of Oregon and the remaining members of the House recognized this problem. Specifically, Section 230 stated that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" (Darrell, 2011, p. 271).

In order to be granted immunity under Section 230, the defendant must meet a three-prong test. First, the defendant must be a provider of an interactive computer service. Second, the plaintiff must be claiming that the defendant is the publisher of the libelous content. Lastly, the defamatory content must have been provided by someone other than the defendant (Darrell, 2011). Although this section was not originally included in the CDA, it was added with almost unanimous approval as part of the Internet Freedom and Family Empowerment Act. Later it would become part of the CDA. The CDA and Section 230 are of paramount importance not only to the Internet, but also to the communication that the Internet fosters. The Internet enhances free speech and civic engagement. It is historical advances such as these that enable our dynamic republic to share in the marketplace of ideas, to participate in forums to share and debate ideas important to American life, and to encourage further growth and the development of free enterprise. The next section of this Essay will endeavor to increase understanding of the

CDA and how the issue of indecent material was eliminated from the Act under the landmark case, *Reno v. American Civil Liberties Union* (1997).

Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)

On June 26, 1997, the Supreme Court reached a (9-0) decision in *Reno v. American Civil Liberties Union* (1997) regarding two provisions in the Communications Decency Act of 1996. The two provisions of the Act were instituted in order to protect minors from indecent and harmful material on the Internet. The first provision in question, Title 47 U. S. C. A. §223(a)(1)(B)(ii) (Supp. 1997), made it a criminal act to knowingly transmit any obscene or indecent messages to an individual under the age of 18. The second provision, Section 223(d), forbade intentionally displaying to a minor any message “that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs” (*Reno v. ACLU*, 1997, p. 874). Favorable defenses of violations of these two provisions would be that an individual acted in “good faith” and that the provider took actions to restrict access by minors by mandating specific forms showing proof of age. Forms of age verification include a credit card or adult identification number (*Reno v. ACLU*, 1997).

After numerous suits filed against the two provisions, a three judge District Court filed a preliminary injunction against both, allowing the Government to enforce the two provisions while still reserving the right to investigate and/or prosecute obscenity or child pornography activities. The Government, spearheaded by Attorney General Janet Reno, argued that the two provisions violated the First and Fifth Amendments by being overly broad and vague in defining the types of Internet communications, which would become

criminal if conducted.

All nine Justices on the Court ruled in favor of the ACLU, holding that the Act did indeed violate the First Amendment because its regulation provided a “content-based blanket restriction of free speech” (*Reno v. ACLU*, 1997, p. 875). The Act failed to provide a sufficient definition of indecent communications, limited its restrictions to a certain group of individuals and, additionally, did not provide a statement in support from an authority regarding the nature of the indecent communication nor firmly prove that the transmission of offensive material was bereft of any social value (*Reno v. ACLU*, 1997). In this opinion, the Court declared that the First Amendment already makes a clear distinction between “indecent” and “obscene” expression, with the “indecent” being protected. Therefore, if the Act removed “or indecent” from the text, the Act would no longer constitute an “overly broad” challenge. Furthermore, the CDA lacked the precision necessary for the First Amendment to regulate the speech. The Government does have an interest in protecting children from obscene and indecent materials that could be harmful. The CDA errs, however, in repressing such a large amount of speech that adults have a constitutional right to send and receive (*Reno v. ACLU*, 1997). The Court found no reason to address any Fifth Amendment issues regarding the vagueness of the CDA.

The Government did attempt to provide an interesting argument regarding the Internet’s growth. The petitioner claimed that the CDA should be constitutionally upheld because it would promote Internet growth. The Government warned that if it did not regulate the Internet’s potentially indecent and patently offensive material, people would

be driven away it. The Court found this argument to be “unpersuasive” given the rapid expansion of the Internet at that time, which negated the Government’s argument (*Reno v. ACLU*, 1997).

Net Neutrality

Recently, observers and government institutions have become interested in the growing topic of net neutrality. Net neutrality is defined as the equal treatment of all traffic by Internet Service Providers or ISPs. Not only has information gathering on the Internet increased exponentially, but file sharing and downloading has as well. Before Internet downloads became commonplace, the issue of net neutrality was not important. Today, however, it is a much different story. Contemporary usage shows that large files such as movies are becoming more prevalent on the Internet. The current structure of broadband ISPs and the downloading of movies and other large files have placed a heavy burden on broadband traffic (Darrell, 2011). Downloaders are finding that the broadband lane is congested and not nearly as efficient as it could and should be. Darrell recapitulates the suggestion that broadband should become a “multilane highway” with electronic mail and web browsing in the fast lane and “Peer to Peer” or P2P sharing and downloads in the slow lane. Regardless of the actions that ISPs and broadband providers decide to take, it is evident that dealing with this issue has become necessary.

The first time the FCC became involved in net neutrality was in 2008, when the independent organization investigated complaints about Comcast Corp., which currently is the country’s largest cable ISP. What the commission discovered was that when Comcast’s broadband was becoming congested by large file downloads, the corporation

was disconnecting the download in order to ensure reasonable traffic management (Darrell, 2011). According to the FCC's rules and regulations, it is illegal to block a subscriber's downloads and other applications. Comcast confessed, stating that they were using "reset packets." When used, reset packets would break off the communication between the two file sharers in the middle of a downloading session (Darrell, 2011). Within their actions was also a level of deceit. When a session was interrupted, a return address would appear on the screen, leading the downloader to believe that it was from the other file sharer, when in fact it originated from Comcast.

The FCC investigated to see if Comcast's practices were in accordance with reasonable traffic management. The commission (3-2) determined that Comcast had violated federal net neutrality laws (Darrell, 2011). Comcast appealed the ruling to the U.S. Court of Appeals for the District of Columbia. The 3-judge panel ruled that the FCC did not have the authority to police net neutrality because the commission did not have a statute to base the ruling upon. This appellate finding provides the FCC with a few options: 1) appeal to a higher court, 2) ask Congress to give them the authority to regulate broadband, or 3) move net neutrality from Title I, Information Services, to Title II, Communication Services (Darrell, 2011). "By reclassifying broadband lines to be governed by the same rules as traditional phone networks, which the FCC has statutory legal authority over, the FCC would then be able to enforce net neutrality rules on ISPs" (Darrell, 2011, p. 388).

In his 2008 Presidential campaign, President Barack Obama promised the American public that the topic of net neutrality would become an issue that he would

support if he were elected president (Torres, 2012). Ironically, the Chairperson he nominated to head the FCC, Julius Genachowski, sold his support to AT&T, compromising the likelihood that he would eliminate a significant number of protections afforded to net neutrality and its wireless users. In response, media justice organizations have spearheaded a campaign against regulation of the Internet and in support of net neutrality. For millions, it is in their interest to keep the Internet and broadband services not only free of monetary expenditures, but also free of government/institutional regulation (Torres, 2012). Conglomerates, like AT&T and Comcast, along with other phone and cable companies, have already begun pumping money, about \$70 million dollars, into lobbying efforts to achieve their goal of power. The power they desire is the option that was suggested previously: they would like to be able to decide which Internet traffic goes fast and which slows down. If these conglomerates are allowed to dictate not only the expense of Internet broadband use but also which content moves faster or slower, users fear that their ability to communicate freely online will be encroached upon if not eliminated. Unfortunately, Genachowski's deal-making worked and regulations were implemented in November 2011. While wired Internet users are still protected under net neutrality regulations, individuals who utilize the media via smartphones and other wireless devices are not afforded the same amount of protection (Torres, 2012).

Astutely, and in an effort to rally concerned citizens, Torres (2012) points to the Occupy Wall Street Movement as an example of how big corporations can be challenged, when consumer voices are heard. "The public interest community and media justice organizations continue to fight for policies that will create a more democratic media

system. We need policies that decentralize control of our media system and allow the voices of ordinary people to be heard rather than give greater power to corporate gatekeepers...For too long, many people have felt hopeless about the prospect of holding politicians and lawmakers accountable and making them serve the interests of everyday people” (Torres, 2012, Better Media, Better Democracy section, para. 1). Here, not only does Torres make everyday citizens’ sentiments known, he also reminds his audience that we are the masses and that because of that, we have the power. Too often people forget that our representatives work for us. If they are to succeed at their job, they need to listen to the wants, needs, and concerns of their employer, American citizens. Torres is encouraging people to take their power back.

Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA)

The Internet industry has provided much economic growth since its inception by technological innovators in Silicon Valley. The Chamber of Commerce, the Recording Industry Association of America, and the Motion Picture Association of America in Hollywood may bring that growth to a screeching halt, however, if they have their way. As mentioned in the introduction of this Essay, Representative Lamar S. Smith (R-TX) and 12 other bipartisan representatives co-sponsored and introduced Bill 3261, the Stop Online Piracy Act. In marriage with SOPA was Protect IP Act, which was launched by the Senate. Together these two pieces of legislation attempted to fight the same battle against Internet piracy and copyright violations.

The Internet was a medium known to users as open and free, but that openness and freedom would have been threatened if SOPA and PIPA passed. Although millions

of Americans would support anti-piracy legislation, protestors asserted that SOPA was too threatening to the freedoms of the web. In the end, the voices of the protestors were heard and the efforts of SOPA and PIPA ceased. Despite recent developments, it is still important to understand the efforts by Congress and to become cognizant of where these efforts began. Was it the desire of Hollywood and the recording industry? Or was its genesis on Capitol Hill? A possible answer to this question is that both longed for Internet regulation and anti-piracy initiatives, but wanted to attribute the responsibility to the other party.

It is hard to imagine anything bringing together people of both political parties, but that is just what SOPA and PIPA did. By uniting together, opponents of the two bills were able to respond with nearly 4 million calls and emails in petition to their local representatives and lawmakers. Even corporations such as eBay!, Google, facebook, MySpace, Yahoo, Twitter, and AOL, joined the fight in protest (McCullagh, 2011). Possibly the most recognized protest by an Internet service provider was Wikipedia's demonstration. To grab the attention of information consumers and inform them of the incentives Government was pursuing, Wikipedia shut down its service, explaining on their webpage that for one day they were going to protest. The website also provided information on how to contact one's local representative.

Ironically, some of the same Republican representatives who opposed regulations of net neutrality are now backing and signing on to SOPA and PIPA. In fact, Representative Lamar S. Smith infamously stated that his peers should "reject government regulation of the Internet," and referred to one of the net neutrality proposals

as “a regulator’s dream, but an entrepreneur’s nightmare” (Sanchez & Segal, 2012, para. 2). Former comments by the representative on net neutrality are the antithesis of his current actions with SOPA.

But what exactly are SOPA and PIPA and how would their enactment affect the Internet? In layman’s terms, SOPA would allow law enforcement to issue a court order for investigation into different search engines, Internet providers, and other companies that may have conducted any and all forms of online piracy, including copyrighted intellectual property and counterfeit goods that are trafficked online (Gross, 2011). Under such court orders, issuers could bar advertising companies from continuing or conducting business with any business found in violation. Additionally, search engines would be unable to provide links to those websites, and ISPs would be ordered to deny access to those sites (Gross, 2011). The penalty for stealing another’s intellectual property and/or violating copyright laws would be a maximum sentence of five years in prison.

The opposition posits that SOPA and PIPA would infringe upon citizens’ freedoms because they would essentially allow the Government and corporations to determine what content users could and could not access, a practice that contradicts our free society. Conversely, supporters of the two pieces of legislation claim that it protects intellectual property, jobs, and revenue, and will encourage the enforcement of laws. These reasons are especially true regarding foreign websites. Foreign websites have been a huge motivator for legislators to enact regulatory law concerning the Internet because current laws do not address foreign-owned and -operated sites (Kang, 2011). Still, the opposition was relentless, claiming, “SOPA would stifle innovation, stymie free

speech and create a powerful incentive for social networking platforms to pre-emptively police their users' posts, for fear of being branded 'rogue sites' ” (Sanchez & Segal, 2012, para.4).

As these pieces of legislation were being purposed, people were astounded to find that the Chamber of Commerce was an ardent advocate and supporter of both SOPA and PIPA. The Chamber of Commerce is premised on a foundation of promoting American business and individual freedoms. Their defense of SOPA and PIPA has been even more bellicose than that of the Motion Picture Association of America and the Recording Industry of America. The Chamber is claiming that efforts by the opposition to educate the public on these bills are based on falsehoods that they are generating in an attempt to scare people onto their side. Business supporters for SOPA and PIPA include the Association of Magazine Media, Kate Spade, Ralph Lauren, the National District Attorneys Association, the Romance Writers of America, and multiple labor unions (McCullagh, 2011).

Conclusion

The dynamic relationship between the media and various political institutions throughout the decades illustrates that these two entities are never fully independent of each other. Scholars have acknowledged the “mediatization” of politics and of our society and that the influence and coverage that the media exerts and provides appears to have more possibilities for detriment than for benefit. Despite the safeguards and limitations that have been placed on the media, it continues to play a prominent role in politics and in daily life. It will not cease to grow in the years and decades to come. Whether it is capping the amount of coverage that a politician receives on a televised broadcast, determining what an electioneering communication is, regulating campaign finance efforts, or the other limitations outlined throughout this Essay, our Government has proved its interest in maintaining a responsible and active republic.

Since the Supreme Court reached its controversial decision in *Citizens United v. FEC*, the country has had a contentious debate whether this decision has been a victory or a setback for the democratic process. On this issue, Justice Ginsburg gave a statement indicating the possible overturn of the decision that created Super PACs and endowed corporations with the right to contribute unlimited amounts of money to a political candidate’s campaign. According to Justice Ginsburg, in light of recent events it is becoming exceedingly more difficult to maintain the argument that unlimited expenditures do not give rise to corruption, and in the least, do not give the appearance of corruption.

Although it may appear that issues surrounding politics, campaigns, campaign finance issues, and uses and gratifications theory are separate, at the dawn of the 21st century they are anything but that. Rather, these issues are intricately integrated, playing off each other to shape the avenues by which citizens understand current issues. Specifically, without campaign finance matters such as those seen in *Austin v. Michigan Chamber of Commerce*, *McConnell v. FEC*, and *Citizens United v. FEC*, the methods that candidates use to raise monies for their political pursuits would be much different than they are today. These three Supreme Court decisions have affected this issue and, in a domino effect, other areas of civic life. It is not completely without grounds to speculate that current campaign issues could lead to a slippery slope of corruption, as Justice Ginsburg suggested, and also overflow to other areas of the media and public life. Because of these changes, candidates are able to funnel their efforts into areas other than broadcast, publications, and commercial advertisements. Since President Barack Obama set the standard for utilizing media in the 2008 presidential election, Internet users can share easily the information that they obtain about a candidate with one another. The content produced by candidates through video, pictures, etc., entices viewers to share liberally with their friends and family. This is a positive attribute of the Internet, because it reduces cynicism and encourage active citizenship.

Because our country has a reputation for legal action, however, it has become important to protect producers and consumers of Internet content. Without the shelving of SOPA and PIPA, the Internet and future elections would be in jeopardy. Despite the individual's ability to share and receive information in a multitude of ways, the Internet

has proven to be the most colorful, convenient method to do so. Fortunately, all these matters can be analyzed through uses and gratifications theory for further clarification about what not only drives media use for gathering information, but for all other areas of their multifaceted daily life.

The history of the media in all its forms has been rich. The means by which individuals have utilized the media for their benefit in order to gain information are vast and will continue to grow as telecommunications find new innovative ways for individuals to stay connected and obtain news. For the foreseeable future, the media, media consumers, and politics will continue to depend upon each other. Uses and gratifications theory has demonstrated that individuals can use media to satisfy their information gathering needs. Since our culture has become increasingly dependent on the services of the Internet, it follows that citizens will look to consume political information via the Internet. In the last two decades, political candidates have recognized this fact and the opportunities presented, and have not hesitated to take advantage of it and utilize this medium for their political welfare. Almost simultaneously, the courts have also understood this reality. Therefore, to bring this Essay full circle, I will say that scholars must acknowledge that the political landscape has changed. How candidates market themselves has changed, how campaign finance maintains and encourages transparency in the medium of the Internet, how individuals can participate in active citizenship, sharing in the free marketplace of ideas without the fear of lawsuits for defamation or intellectual property infringement. More changes are sure to come. These are all positive attributes of the Internet. The age of political activity on the Internet appears bright.

Despite the difficulties researchers and legal scholars are experiencing in attempting to understand the consequences and ramifications of American life with the Internet, one universal truth is evident: the people are using it and they are in control.

Schudson (2011) claims that “Political institutions and media institutions are so deeply intertwined, so thoroughly engaged in a complex dance with one another, that it is not easy to distinguish where one begins and the other leaves off” (p. 147). The truth of this statement will continue to be seen in the years to come, continuing to prove that neither political institutions nor media institutions are monolithic in nature.

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