Extra Credit Writing #1

***Citizens United v. Federal Election Commission*, 588 U.S. 310, 130 S.Ct. 836 (2010)**

**Factual circumstances of the Case**

In January 2008, Citizens United, a corporation, released a film entitled “*Hillary: The Movie*.” It was a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party’s 2008 Presidential primary elections. *Hillary*mentioned Senator Clinton by name and depicted interviews with political commentators and other persons, most of them quite critical of Senator Clinton. *Hillary*was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand within 30 days of the 2008 primary elections. It feared, however, that both the film and the ads would violate a federal campaign law banning corporate-funded independent expenditures, thus subjecting the corporation to civil and criminal penalties. In December 2007, Citizens United sought declaratory and injunctive relief against the FEC, asking the Court, in part, to find the federal campaign law unconstitutional as violating free political speech, even though Citizens United was a corporation.

A United States District Court and then the United States Circuit Court of Appeals ruled against Citizens United and held the federal campaign law to be constitutional. The case was then heard by the US Supreme Court.

**Applicable Law**

A provision in the **Bipartisan Campaign Reform Act of 2002 (BCRA)**, as found at **2 U.S.C. §441b**, prohibited corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, or to broadcast any electioneering communication. An electioneering communication was defined as “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 or 60 days of a general election. That term was further defined by The Federal Election Commission’s (FEC) regulation [**11 CFR §100.29**](http://www.law.cornell.edu/supct-cgi/get-cfr-cite/11/100)**(a)(2)**as a communication that was “publicly distributed.” “In the case of a candidate for nomination for President … *publicly distributed*means” that the communication “[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days.” **11 CFR§100.29(b)(3)(ii)**.

**Decision of the Court**

In finding the federal campaign law to be an unconstitutional infringement on the political free speech rights of Citizens United, the Court stated in part:

Some members of the public might consider *Hillary*to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation’s course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. “The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.

**How the Ruling affected my Understanding of the Law**

Attempting to unravel the myriad complexities within this socio-politico conflict is not unlike trying to unravel the Gordian Knot and certainly places the advocate somewhere between Scylla and Charybdis. Our representative republic prides itself on the democratic values of personal power and the concept of one vote for one voice. Yet, in our elections, whether local or national, history clearly supports the proposition that the wealthy can purchase a stronger and louder vote regardless of the merits of the voice.

So, on the one hand we have our constitutional guarantee that holds freedom of political speech sacrosanct, yet, on the obverse, it would seem that abuses of that freedom could lead to its demise in a political society predicated on high values such as individual freedom and equality.

My conscience was not shocked by the legislative attempt to reduce the political impact of wealth in the electoral arena or by the Supreme Court balancing that reasonable attempt against the historic and profound protections of the freedom of political speech and finding that in that balance the right to speak, regardless of the wealth of the speaker, cannot be silenced.