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Noah D. Domnitz

No doubt: Judicial activism

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In an unabashed act of judicial activism, the conservative block of the Supreme Court set aside its claimed repulsion to "legislating from the bench" and ruled that corporations and unions may spend unlimited money in federal elections.

In *Citizens United vs. FEC*, the majority, made up of Chief Justice John Roberts and Justices Antonin Scalia, Samuel Alito, Anthony Kennedy and Clarence Thomas, overturned parts of several pieces of legislation, including the bipartisan McCain-Feingold bill. The decision allows corporations and unions to spend unlimited money from their general treasuries on television ads and other forms of media in support of various candidates for federal office.

Whether or not you support of the effects of the Supreme Court's decision, there is no denying that this is "legislating from the bench." The legislature has passed several laws limiting the spending by corporations on federal campaigns. This string of laws trace back to the Tillman Act, passed in 1907. Yet the justices who supposedly stand for judicial restraint and abhor the notion of judicial activism rolled up their sleeves and went to work.

Scalia has gained great notoriety for advocating on behalf of judicial restraint. "If you want something changed," he has said, "pass a law." Well, the legislature did pass a law; in fact, it passed several laws, which showed the clear will of the people was to curtail corporate spending on federal elections. But the conservative, "restraint" justices now have taken action to gut that line of legislation. This decision is the epitome of the "judicial activism" that Scalia and Thomas have so often admonished. The common complaint about judicial activism is that it evades the will of the people and ignores the constitutional right of the people to legislate.

I hope that the members of Congress who so vehemently grilled and so publically skewered Justice Sonia Sotomayor for being a "activist judge" will release statements condemning this showing of judicial activism. I want to hear from GOP Sens. Jeff Sessions of Alabama and Chuck Grassley of Iowa that they condemn this act of legislating from the bench by the Supreme Court. My guess is we'll hear nothing of the kind.

On July 27, 2009, Sessions, a member of the Senate Judiciary Committee, in a statement in USA Today clarified why he would not be supporting Sotomayor. The subtitle of the article was "Nominee lacks deep convictions to resist judicial activism," and it included his opinion: "I don't believe that Judge Sotomayor has the deep-rooted convictions necessary to resist the siren call of judicial activism&ensp.&ensp.&ensp.&ensp." I hope that Sessions now will show the same scorn for the conservative justices who were, themselves, unable to resist the siren call of judicial activism.

I hope USA Today will save space for his condemnation of the majority.

It will be very informative to see which of the 31 senators who voted against Sotomayor's confirmation will voice their opposition to this activism by the highest court in the land. Perhaps they're comfortable with the justices legislating from the bench when it inures to their benefit.

Grassley is up for re-election in November. I wonder if we'll hear him speak out about this most recent showing of judicial activism. I wonder if Grassley will ask corporations not to spend money on his re-election; after all, they only have that capability because the Supreme Court carved up longstanding legislation. Maybe he'll say that corporations should wait for the legislature to approve this change in the law before they spend money on his campaign.

I'm guessing we'll hear crickets.

The timing of this diversion from judicial philosophy by the conservative block of justices is also compelling. The majority has now cleared the way for a total inundation of our lives by political advertisements. If you thought there were a lot of television and radio ads during the 2008 election cycle, just wait; you ain't seen nothin' yet.

This decision is a win for corporate America and powerful unions and, most likely, a loss for "the individual" and poorly funded groups, whose voice will now be further drowned out by wealthy interests. Regardless of which side of that issue you support, there is no denying that the new rights enjoyed by corporations and unions were brought about by only one thing: judicial activism on a supreme scale.

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