
CITIZENS UNITED, ISSUE ADS AND RADIO: AN EMPIRICAL ANALYSIS

Christopher Terry[†] and Mitchell T. Bard[ⓧ]

I. INTRODUCTION

When the Supreme Court handed down its ruling in *Citizens United v. Federal Election Commission*,¹ it was unlikely the justices expected the case to elicit much of a reaction beyond those who closely follow the worlds of constitutional law and the game of politics. After all, a ruling on whether corporations can spend money supporting candidates for office would hardly seem to trigger the kind of popular outcry usually reserved for hot-button cultural issues like abortion or affirmative action. Yet the decision created what Barry Friedman, a law professor at New York University, called the “only one firestorm”² of the seven-year tenure of Chief Justice John Roberts, a reaction that is said to have surprised the chief justice and may have contributed to the erosion of public confidence in the Court as an institution.³

In addition to sparking outrage in certain circles, both inside and outside of government, the case has remained front and center in American politics, playing a role in the debate on issues as varied as the Republican presidential race and the Supreme Court’s consideration of the constitutionality of the

[†] University of Wisconsin, Ph.D. 2012. Dr. Terry is a lecturer of media law, history and policy in the Department of Journalism, Advertising and Media Studies at the University of Wisconsin-Milwaukee.

[ⓧ] University of Miami School of Law, J.D. 1993. Mr. Bard is currently a graduate student at the University of Wisconsin-Madison School of Journalism and Mass Communication, where his research primarily focuses on how the atomization of the 20th century mass media system has affected news, especially on television and the Internet. He is a featured blogger for The Huffington Post.

¹ *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

² Adam Liptak, *Health Care Act Offers Roberts a Signature Case*, N.Y. TIMES, March 11, 2012, <http://commens.org/JiKqcX>.

³ A national survey conducted by Rasmussen on March 13-14, 2012, found that only 28 percent of respondents rated the Supreme Court’s job performance as “excellent” or “good.” *New Low: 28% Give Supreme Court Positive Ratings*, RASMUSSEN REPORTS, March 18, 2012, <http://commens.org/JVDRvM>.

Affordable Care Act. That is not to say that the question at the heart of *Citizens United* is not an important one. In fact, it goes to the core of our democracy, since, if those who oppose the decision, including President Barack Obama, are correct, the decision would allow corporations to exert unprecedented influence over the workings of our government.

Although the two sides have engaged in largely doctrinal arguments about corporate influence, the question at the heart of *Citizens United* is not an entirely theoretical question. Rather, the manner in which money is being raised and spent after the decision is an empirical one, and, thanks to Federal Communication Commission rules that require radio and television stations to maintain public records of political advertisement purchases, it is a question for which data is available to formulate an answer.

It is into this breach we take a first step in this article, as we seek to put aside the rhetoric for a moment and determine if there was a change in spending in the 2010 midterm elections, which fell just nine months after the Supreme Court ruled on *Citizens United* in late January 2010. To do so, we look at the advertising spending in one radio market, Milwaukee, Wisconsin, before and after the Court's decision.

Part II provides a brief summary of the majority and dissent positions in *Citizens United*, especially the majority's decision to overrule more than two decades worth of Supreme Court precedent in the area, as well as the proposition that the decision would open the floodgates of corporate money into elections. The focus of Part III is the aftermath of the decision, which breaks down the policy argument on corporate influence and identifies some of the major players in the ensuing controversy. Part IV delves into the policy debate by looking at empirical data to assess if political spending changed in the immediate aftermath of *Citizens United*, using the Milwaukee radio market as a laboratory. Finally, Part V takes a broader view, placing the study in a larger legal and media context.

II. BACKGROUND: CITIZENS UNITED V. FEDERAL ELECTION COMMISSION

In *Citizens United*, the United States Supreme Court struck down a two-decade-old precedent, holding that a federal law that limited the amount of money corporations and unions could spend on broadcast advertisements leading up to federal elections violated the entities' free-speech rights and was therefore unconstitutional.⁴ The statute in question—the Bipartisan Campaign

⁴ *Citizens United*, 130 S. Ct. at 886. *Citizens United* held that two cases, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), violated First Amendment free speech rights, and were thus

Reform Act (“BCRA”)—prevented “corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an ‘electioneering communication’ or for speech expressly advocating the election or defeat of a candidate.”⁵

The procedural nature of the action is meaningful because it suggests that the litigants hoped that the Supreme Court would strike down the BCRA. Citizens United, a nonprofit corporation, distributed a documentary critical of Hillary Clinton, who at the time was a U.S. Senator and presidential candidate.⁶ The corporation wanted to release the documentary via video-on-demand within 30 days of a primary election.⁷ No legal action was taken against Citizens United. Instead, it filed a lawsuit in federal court seeking a declaratory judgment that the application of the BCRA to its release and promotion through television advertisements was unconstitutional.⁸

The U.S. District Court for the District of Columbia denied Citizen United’s motion for an injunction, and granted the Federal Election Commission’s (“FEC”) motion for summary judgment.⁹ In doing so, the court held that the BCRA was constitutional on its face in light of the Supreme Court’s earlier ruling in *McConnell v. Federal Election Commission*.¹⁰ The Supreme Court granted a direct appeal of the matter and requested that the parties re-argue and re-brief the case to address whether *McConnell*,¹¹ as well as another Supreme Court case, *Austin v. Michigan Chamber of Commerce*,¹² should be overturned.¹³ While the FEC argued that such consideration was improper, the Court rejected this argument, noting that Citizens United had consistently asserted a violation of its First Amendment rights throughout the suit.¹⁴ After hearing arguments, the Supreme Court reversed the district court’s decision on the spending provisions of the BCRA by a 5-4 vote, finding that the provisions

unconstitutional.

⁵ *Citizens United*, 130 S. Ct. at 886 (citing 2 U.S.C. § 441b (2000)).

⁶ Adam Liptak, *Justices, 5-4, Reject Corporate Spending Limit*, N.Y. TIMES, Jan. 21, 2010, <http://commcns.org/Jyz9ny>; Philip Rucker, *Citizens United Used ‘Hillary: The Movie’ to Take on McCain-Feingold*, WASH. POST, Jan. 22, 2010, <http://commcns.org/L34ZFQ>.

⁷ David Axelman, *Citizens United: How the New Campaign Finance Jurisprudence Has Been Shaped by Previous Dissents*, 65 U. MIAMI L. REV. 293, 300 (2010); Breanne Gilpatrick, *Removing Corporate Campaign Finance Restrictions In Citizens United v. Federal Election Commission*, 130 S. CT. 876 (2010), 34 HARV. J. L. & PUB. POL’Y 405, 406 (2011); Richard L. Hansen, *Citizens United and the Illusion of Coherence*, 109 MICH. L. REV. 581, 591 (2011).

⁸ Axelman, *supra* note 7, at 300; Gilpatrick, *supra* note 7, at 406.

⁹ *Citizens United v. Fed. Election Comm’n*, 530 F. Supp. 2d 274, 278 (D.D.C. 2008); Gilpatrick, *supra* note 7, at 406-07.

¹⁰ *Id.*

¹¹ *McConnell v. Fed. Election Comm’n*, 540 U.S. 93 (2003).

¹² *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990).

¹³ *Citizens United*, 130 S. Ct. at 888.

¹⁴ *Id.* at 892-93.

violated the First Amendment.¹⁵

From a legal standpoint, the striking aspect of the Supreme Court's decision in *Citizens United* is its disregard for the Court's precedents.¹⁶ Under the doctrine of *stare decisis*, the justices have historically been loath to overturn long-held precedents on the theory that citizens have relied on the established principals for so long.¹⁷ *Citizens United* overruled *Austin*, a 20-year-old precedent, and *McConnell*, a seven-year-old case.¹⁸ Justice Kennedy, writing for the court, directly addressed the *stare decisis* issue by finding that the interests of overturning *Austin* outweighed the benefit of deference to precedent since "*Austin* was not well reasoned."¹⁹

While a breach of *stare decisis* may have been too arcane to generate wider press notice, the Court's unprecedented bestowal of freedom of speech rights on corporations was not. *Citizens United* was covered heavily by the mainstream media, with the *New York Times* noting that the "ruling represented a sharp doctrinal shift, and [] will have major political and practical consequences,"²⁰ and the *Washington Post* reporting that "[t]he decision shakes the foundation of corporate limitations on federal and state elections that stretch back a century..."²¹ Days later, during his State of the Union address, President Barack Obama, with several members of the Supreme Court sitting several feet away, criticized the decision as well, arguing it "will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections," and that "American elections should [not] be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people."²²

The immediate reactions of the media and President Obama coalesced around the idea that the Supreme Court had handed corporations *carte blanche*

¹⁵ Robert Barnes & Dan Eggen, *Supreme Court Rejects Limits on Corporate Spending on Political Campaigns*, WASH. POST, Jan. 22, 2010, <http://commcns.org/J2HJZb>; Adam Liptak, *Justices, 5-4, Reject Corporate Spending Limit*, N.Y. TIMES, Jan. 21, 2010, <http://commcns.org/Jyz9ny>; Randall P. Bezanson, *No Middle Ground? Reflections on the Citizens United Decision*, 96 IOWA L. REV. 649, 662, 667 (2011); Gilpatrick, *supra* note 7, at 407; Richard L. Hasen, *Citizens United and the Illusion of Coherence*, 109 MICH. L. REV. 581, 582 (2011).

¹⁶ *Citizens United*, 130 S. Ct. at 930.

¹⁷ *Leegin Creative Leather Products v. PSKS, Inc.*, 551 U.S. 877, 899 (2007).

¹⁸ *Citizens United*, 130 S. Ct. at 913.

¹⁹ *Id.* at 912.

²⁰ Adam Litpack, *Justices, 5-4, Reject Corporate Spending Limit*, N.Y. TIMES, Jan. 21, 2010, <http://commcns.org/Jyz9ny>.

²¹ Robert Barnes & Dan Eggen, *Supreme Court Rejects Limits on Corporate Spending on Political Campaigns*, WASH. POST, Jan. 22, 2010, <http://commcns.org/J2HJZb>.

²² President Barack Obama, State of the Union Address (Jan. 27, 2010), *available at* <http://commcns.org/LaDS1v>.

to use their resources to influence the outcome of elections.²³ By granting corporate entities free speech rights that are essentially equivalent to those of individuals—that is, that they qualify as a “person” whose rights are protected by the First Amendment—and by rejecting the notion that corporations would be able to corrupt the political system through the funding of political candidates and causes, those who opposed the decision charged that *Citizens United* threatened to transfer an inordinate amount of power to corporations in determining American elections, all at the expense of the people.²⁴

Justice Stevens made essentially the same argument in his lengthy, highly critical, and passionate dissent, finding the majority’s holding “profoundly misguided.”²⁵ In particular, Stevens noted that the “basic premise underlying the Court’s ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based on a speaker’s identity, including its ‘identity’ as a corporation. While that glittering generality has rhetorical appeal, it is not a correct statement of the law.”²⁶

Regarding the financial power of corporations, Stevens worried that the ruling would “undermine the integrity of elected institutions.”²⁷ He noted that the legislative and judicial proceedings surrounding the passage of the BCRA provided evidence that entities that had expended money on issue ads for certain candidates received special access after the campaign.²⁸ In turn, the Court’s “blinkered and aphoristic approach to the First Amendment,” Stevens argued, would “promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve” and “undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process.”²⁹

Stevens concluded his dissent with a stern warning:

In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules. . . . At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its

²³ Michael S. Kang, *After Citizens United*, 44 IND. L. REV. 243, 243 (2010).

²⁴ Bezanson, *supra* note 15, at 656; Molly J. Walker Wilson, *Too Much of a Good Thing: Campaign Speech After Citizens United*, 31 CARDOZO L. REV. 2365, 2366, 2373, 2382, 2389-90 (2010).

²⁵ *Citizens United*, 130 S. Ct. at 929 (Stevens, J., dissenting).

²⁶ *Id.* at 930 (Stevens, J., dissenting).

²⁷ *Id.* at 931 (Stevens, J., dissenting).

²⁸ *Id.* at 965 (Stevens, J., dissenting).

²⁹ *Id.* at 977 (Stevens, J., dissenting).

flaws included a dearth of corporate money in politics.³⁰

Justice Kennedy, writing for the Court, rejected Stevens' concern.³¹ In *Austin*, the Court justified holding corporations to a different standard under the First Amendment due to the "anti-distortion" interest of the government in preventing "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 for the corporation's political ideas."³² Rather than heeding the Court's precedent, Kennedy branded this interest "unconvincing and insufficient," thus justifying overruling *Austin* and *McConnell*.³³

III. THE AFTERMATH OF *CITIZENS UNITED*

Justices Stevens and Kennedy represent the two sides of the debate regarding the impact of *Citizens United* on corporate influence in elections.³⁴ The eclectic group of organizations that weighed in on the case demonstrates this division of viewpoints. The U.S. Chamber of Commerce, the AFL-CIO, the American Civil Liberties Union, the conservative Cato Institute, a group of former Federal Election Commission (FEC) commissioners, the National Rifle Association, Senate minority leader Mitch McConnell, and several media organizations were among those to file amicus curiae briefs on behalf of *Citizens United*.³⁵ Alternatively, the Democratic National Committee, several media organizations, Senator John McCain, the Center for Political Accountability and the Carol and Lawrence Zicklin Center for Business Ethics Research at the Wharton School, and the Brennan Center for Justice at New York University filed amicus briefs supporting the FEC.³⁶

Some supporting the ruling downplayed the impact of corporate financing, noting that unions could provide a countervailing source of money for the other side.³⁷ Those opposed to the Supreme Court's holding argue that unions

³⁰ *Id.*

³¹ *Citizens United*, 130 S. Ct. at 908-09 (finding that the anticorruption interest advanced by J. Stevens is not sufficient to displace the speech in question).

³² *Austin*, 494 U.S. at 660.

³³ *Citizens United*, 130 S. Ct. at 913.

³⁴ *Id.* at 905, 910; *Id.* at 965-66, 971, 973-77 (Stevens, J., dissenting). See also Walker Wilson, *supra* note 24, at 2386-87.

³⁵ *Preview of United States Supreme Court Cases: Wednesday September 9, 2009*, AMERICAN BAR ASSOCIATION, <http://commcns.org/LWVBGc> (last visited Apr. 15, 2012).

³⁶ *Id.*

³⁷ Brief for American Federation of Labor and Congress of Industrial Organizations as Amici Curiae Supporting Appellant at 17-18, *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010). See also Supplemental Brief for U.S. Chamber of Commerce as Amici Curiae Supporting Appellant at 10, *Citizens United v. Fed. Election Comm'n*, 130 S. Ct.

do not have the power and resources of corporations and that, in any event, the corrupting influence of money would subvert the power of ordinary citizens.³⁸ In short, the question posed by *Citizens United* is whether the decision “threatens to undermine the integrity of elected institutions” in the United States, as Justice Stevens suggests,³⁹ or whether the worry is much ado about nothing, as Kennedy suggests.⁴⁰ The 2010 elections presented the first opportunity to assess the answer to that question.⁴¹

Considering the amount spent during the 2008 election cycle, a specific criticism of *Citizens United* is that it would lead to an increase in spending on political issue ads.⁴² Issue ads are related to campaign advertising, but are not run or paid for by political candidates.⁴³ Instead, issue ads represent the paid-for political and policy positions of a variety of interest groups.⁴⁴

Issue ads are, unquestionably, a form of political speech, but groups wishing to purchase issue advertising are not given the same protections or access as political candidates.⁴⁵ Most notably, broadcast media are not required to sell advertising time to issue groups and may discriminate in which ads they will carry,⁴⁶ although such a practice is not common.⁴⁷ Additionally, issue advertising is not subject to the lowest rate or equal time provisions of Section 315 of the Communications Act of 1934, as amended.⁴⁸

876 (2010) (discussing union spending).

³⁸ Supplemental Brief for John McCain, et al. as Amici Curiae Supporting Appellee at 2, *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

³⁹ *Citizens United*, 130 S. Ct. at 931 (Stevens, J., dissenting).

⁴⁰ *Id.* at 917.

⁴¹ Katrina vanden Heuvel, *Reversing ‘Citizens United’*, WASH. POST, Jan. 18, 2011, <http://commcns.org/JNYOW>.

⁴² See *Corporate Democracy: Potential Fallout From a Supreme Court Decision on Citizens United*, COMMON CAUSE (2009), <http://commcns.org/LaDSY1>. Although issue ads are more common during election periods, not all issue ads name candidates or politicians or discuss upcoming elections. Issue ads that ran on the stations covered in this study outside of the August 1st to Election Day study period for each of the three years included varied topics such as abortion rights, school choice, emission standards for vehicles, union organizing, tavern operations, water safety and gun control.

⁴³ Eric Lichtblau, *Democratic Senator’s New Ads May Break New Ground*, N.Y. TIMES, Oct. 12, 2011, <http://commcns.org/LWVz11>.

⁴⁴ *Id.*

⁴⁵ David V. Oxenford, *Political Broadcasting: Answering Your Questions on the FCC’s Rules and Policies*, DAVIS WRIGHT TREMAINE LLP (2009), <http://commcns.org/LaDSYK>.

⁴⁶ Elizabeth Elices, *Citizens United and the Future of FCC Content Regulation*, 33 HASTINGS COMM. & ENT. L.J. 51, 61-65 (2010).

⁴⁷ Broadcast radio and television stations typically plan ahead for the scheduling and inventory requirements that the advertising election seasons generate. In more than 15 years in radio, the author is only personally aware of one station that refused to carry any non-candidate ads in an election cycle, and that was a music-formatted station during the 2002 midterm elections in Wisconsin.

⁴⁸ Section 315 requires media outlets to provide equal access to all legally qualified political candidates in a federal election. 47 U.S.C. § 315 (2006). See also Elices, *supra* note

IV. EXAMINING THE EFFECTS OF *CITIZENS UNITED*

Although spending in political campaigns has been increasing for some time, the midterm elections in 2010 provide the first opportunity to examine the post-*Citizens United* political advertising environment.⁴⁹ In the state of Wisconsin, the 2010 midterm contests featured an unprecedented amount of election-related spending, including an increase in issue ads for television.⁵⁰ One public watchdog, the Wisconsin Democracy Campaign (“WDC”), tracked more than \$19 million in election-related spending, including \$6.7 million by interest groups during the 2010 cycle.⁵¹ While the WDC study looked at spending on issue advertising on television, it does not report data to compare spending on media purchases in 2010 with earlier political advertising cycles.⁵²

While the *Citizens United* decision has faced significant criticism on both legal and theoretical grounds, the current available literature appears to have significant gaps. Specifically, there is a lack of quantitative analysis regarding whether the decision actually has resulted in increased non-candidate political issue advertising.⁵³ Relying on the combined academic, professional media, and legal backgrounds of the authors, as well as data collected from the public files of commercial radio stations in the Milwaukee, Wisconsin, radio market, this pilot study design seeks to inform on this important question.

Assuming a broadcast radio or television station is willing to sell issue ads, it typically decides to carry them at a pre-specified rate and publishes a rate card that identifies the prices for issue advertising sales.⁵⁴ This information will

46, at 61-65.

⁴⁹ Stephanie Condon, *Campaign Season Spending Up 75% Since 2008, Study Shows*, CBS NEWS (Oct. 14, 2010), <http://commens.org/KipahO>; *Spending on U.S. House and U.S. Senate Advertising Approaches \$200M in Last Five Weeks, \$367M Total Since Jan 1*, WESLEYAN MEDIA PROJECT (Oct. 13, 2010), <http://commens.org/Jz3ww3>; Kenneth Jost, *Mixed Reviews for First Post-Citizens United Election, JOT ON JUSTICE* (Nov. 14, 2010), <http://commens.org/J0HQmS>.

⁵⁰ *Legislative Races Top \$19 Million in 2010: Special Interest Groups Spent \$6.7 Million to Influence Makeup of Legislature*, WISCONSIN DEMOCRACY CAMPAIGN (Mar. 7, 2011), <http://commens.org/JacSNQ>.

⁵¹ The \$19.25 million spent by the legislative candidates reflects a forty-eight percent increase from the \$13.03 million spent in the 2006 legislative races and was eighty-seven percent higher than the \$10.02 million spent in the 2002 races. *Id.*

⁵² Some of the data in the WDC study, including advertising spending by several issue groups, is estimated. *Id.*

⁵³ For a treatment of legal and theoretical issues associated with *Citizens United*, see Axelman, *supra* note 7. See generally Elices, *supra* note 46; Gilpatrick, *supra* note 7; Walker Wilson, *supra* note 24.

⁵⁴ 147 CONG. REC. S2604-56 (daily ed. Mar. 21, 2001). Rate cards are a media outlet’s “menu” of purchasing for advertising. A broadcast station will typically produce a special rate card for issue advertising during election cycles, and this information will then be part of the station’s public file. Rate cards include pricing for a variety of ad placement options. See *MARKETING TERMS*, <http://commens.org/JacSNO> (last visited Apr. 15, 2012).

be available in the station's public file, along with a list of advertisers buying issue ads.⁵⁵ While this information is available to any member of the public willing to go to a broadcast radio or television station and make such a request, these public files are notoriously difficult to navigate without industry knowledge and previous experience.⁵⁶

While radio is sometimes thought of as a second-tier media source for information in the modern media environment, such beliefs are misguided.⁵⁷ One study found that in 2008, approximately 60 percent of news and talk radio content was election-related.⁵⁸ Another study indicated that approximately 236 million Americans accessed radio at least once a week in 2009.⁵⁹ Informational radio formats, including all news and news-talk radio stations, are among the highest rated radio stations in a market.⁶⁰ In Milwaukee specifically, the listenership of the two competing commercial news-talk stations dramatically increases in the months preceding an election.⁶¹

A. Methodology and Results

Public file data on issue advertising was collected from all 32 commercial radio stations in the Milwaukee radio market.⁶² Stations are required to keep public records of both candidate and issue advertising for a period of two years.⁶³ In practical terms, this means that as new election cycles begin, old

⁵⁵ Broadcasting stations are required to include the rate charged to the candidate or third-party group in the political section of their public file. See Oxenford, *supra* note 45, at 19-20.

⁵⁶ FCC, THE PUBLIC AND BROADCASTING: HOW TO GET THE MOST SERVICE FROM YOUR LOCAL STATION 25-27 (July 2008), <http://commcns.org/JacQoY>.

⁵⁷ *Radio's Role in Today's Media Landscape*, RADIO ADVERTISING BUREAU, <http://commcns.org/KoCxyJ> (last visited Apr. 15, 2012).

⁵⁸ PEW RESEARCH CENTER PROJECT FOR EXCELLENCE IN JOURNALISM, *Radio Content* (2009), <http://commcns.org/KDE6LQ>.

⁵⁹ PEW RESEARCH CENTER PROJECT FOR EXCELLENCE IN JOURNALISM, *Traditional Broadcast* (2010), <http://commcns.org/J2HJZe>.

⁶⁰ Mike Stern, *Here's News: All-News Radio is Thriving*, MEDIA LIFE (Jan. 31, 2011), <http://commcns.org/JacSNS>.

⁶¹ See generally Christopher Terry, *Milwaukee's Radio News Trinity: Clear Channel, Journal Communications, and Wisconsin Public Radio and Coverage of the 2004 Election* (2005) (on file with author) (discussing the operation and competitive relationship between the Milwaukee-based commercial talk radio stations, WTMJ-AM and WISN-AM). Terry also authored a student paper on the topic, which was presented at the 2008 annual meeting of the International Communication Association, held in Montreal, Canada. See Christopher Terry, *The FCC's Outlet Diversity Policy: A Finger on the Balance Scale of Viewpoint Diversity* (2008) (on file with author).

⁶² See KATZ MEDIA GROUP RADIO RESOURCE CENTER, <http://commcns.org/JLmNHT> (last visited Apr. 15, 2012) (providing a complete listing of the commercial media stations in Milwaukee).

⁶³ 47 C.F.R. § 73.1212(e) (2010).

data is purged from station files to make room for new advertising.⁶⁴ In the current sample, of the 36 stations in the market (32 commercial and 4 non-commercial), data for issue advertising purchases in 2008 as well as 2010 were available from nine stations.⁶⁵ From this sample, six stations also had data available from the midterm election cycle in 2006. This information also was collected and analyzed as part of the sample.

Using the collected data, this study addresses the belief that the *Citizens United* decision's removal of some restrictions on outside advertising would lead to an increase in non-candidate political issue advertising. The following hypotheses were proposed:

- 1) The quantity of non-candidate issue advertising will show an increase in 2010 when compared to 2008.
- 2) The number of groups purchasing issue advertising will demonstrate an increase in 2010 when compared to 2008.
- 3) Overall spending on radio issue advertising will increase in 2010 when compared to 2008.

The data collected breaks down as follows:

2006				
Station	Program Format	Groups Buying Ads	Number of Ads	Dollars Spent
WISN-AM	Talk	8	479	\$61,966
WRIT-FM	Oldies	3	124	\$16,790
WQBW-FM	Rock	0	0	0
WKKV-FM	Urban	3	319	\$36,790
WMIL-FM	Country	3	209	\$45,775

⁶⁴ There is movement towards the electronic filing of this public information. *See in re Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Order on Reconsideration and Further Notice of Proposed Rulemaking*, 26 F.C.C.R. 15,788, ¶ 10 (Oct. 27, 2011). Traditionally, however, the public file of a station is little more than a drawer in a filing cabinet; as new information is added, old information is removed. *Id.* ¶ 12 (listing the items broadcasters are required to file with the Commission, as well as those to be held only on public file at the broadcast station). The six radio stations for which data was available for 2006 shared a hard-copy public filing cabinet. The data for 2006 had been purged from the shared cabinet, but was in a labeled cardboard box on the floor that, according to a personal conversation with station personnel, "...was heavy, so no one had carried it out to the dumpster yet."

⁶⁵ Data includes the collected information on all non-candidate issue ads purchased in 2006, 2008 and 2010 between August 1st and the corresponding Election Day in November of that year. Stations in the study were visited once during the election season, and again one month after Election Day to collect and verify information.

Station	Program Format	Groups Buying Ads	Number of Ads	Dollars Spent
WOKY-AM	Nostalgia	1	40	\$3,900
	Total	18	1171	\$165,221

2008

Station	Program Format	Groups Buying Ads	Number of Ads	Dollars Spent
WISN-AM	Talk	4	267	\$35,130
WRIT-FM	Oldies	1	15	\$1,200
WQBW-FM	Rock	0	0	0
WKKV-FM	Urban	3	766	\$56,467
WMIL-FM	Country	4	234	\$36,005
WOKY-AM	Nostalgia	0	0	0
WKTI-FM	Top-40	0	0	0
WTMJ-AM	News/Talk	6	114	\$69,240
WJMR-FM	Pop	2	363	\$40,471
	Total	20	1759	\$238,513

2010

Station ⁶⁶	Program Format	Groups Buying Ads	Number of Ads	Dollars Spent
WISN-AM	Talk	13	400	\$71,524
WRIT-FM	Oldies	2	117	\$7,380
WRNW-FM	CHR	0	0	0
WKKV-FM	Urban	6	271	\$27,225
WMIL-FM	Country	2	15200	\$68
WOKY-AM	Nostalgia	0	0	0

⁶⁶ WQBW and WKTI changed formats and call letters prior to the 2010 election season. WQBW became WRNW. See Duane Dudek, *Smooth Jazz, Brew and Radio Now Recap*, JOURNAL SENTINEL ONLINE (May 28, 2010), <http://commcns.org/Kw9HjI>. WKTI became WLWK. See Tim Cuspersin, *Blades Will Slip Some Chat into a Sea of Music on 'The Lake'*, JOURNAL SENTINEL ONLINE (Dec. 4, 2008), <http://commcns.org/JVDRM2>. "CHR" stands for contemporary hits radio.

Station ⁶⁶	Program Format	Groups Buying Ads	Number of Ads	Dollars Spent
WLWK-FM	Classic Hits	0	0	0
WTMJ-AM	News/Talk	8	263	\$73,430
WJMR-FM	Pop	3	258	\$24,540
	Total	36	1377	\$219,299

The results of the study are mixed. Overall, the number of groups running issue ads increased from 2008 to 2010, while the total amount of money spent on ads and the number of total spots run during the election cycles decreased between 2008 and 2010. Therefore, the first and third hypotheses were not supported for these Milwaukee radio stations between 2008 and 2010; however, the second hypothesis was supported because the number of groups purchasing airtime almost doubled (from twenty to thirty-six) between 2008 and 2010.

At the individual station level, WISN-AM experienced a significant increase in the number of groups and advertising dollars in the 2010 cycle as compared to either 2006 or 2008. On the other hand, the total number of ads on WISN-AM was highest in 2006, while the 2010 cycle demonstrated an increase over 2008. WTMJ-AM, WISN-AM's primary competitor for the news-talk audience in the market, demonstrated an increase in the number of groups, spots and overall spending between 2008 and 2010.

Results for WRIT-FM demonstrate that issue advertising was highest during the 2006 cycle, but the number of groups, dollars spent, and spots increased in the 2010 cycle when compared to 2008. WOKY-AM demonstrated the highest results in 2006, before the station dropped to zero issue advertising sales in both the 2008 and 2010 cycles.⁶⁷

WKKV-FM, an urban-formatted music station that targets African American listeners,⁶⁸ saw a larger number of groups purchasing ads in 2010, but the number of ads and the corresponding spending on those ads dropped significantly between 2008 and 2010. WJMR-FM, a music station⁶⁹ for which 2006 data was not available, showed an increase in the number of groups purchasing ads in 2010, but overall spending and the total number of ads were higher in 2008.

⁶⁷ According to the station's rate card, WOKY accepted issue ads in 2008 and 2010 (information on file with authors).

⁶⁸ WKKV, <http://commcns.org/JNYOY> (last visited Apr. 15, 2012).

⁶⁹ WJMR-FM PROFILE, ARBITRON STATION INFORMATION PROFILES, <http://commcns.org/JOHPiD> (last visited Apr. 15, 2012).

Two stations, WQBW-FM and WKT1-FM, reported no issue advertising sales in any of the study periods. In the case of WQBW-FM, nothing in the public file indicated that the station refused to sell issue advertising.⁷⁰

B. Discussion

The comparison of spending and issue ads between 2008 and 2010 generates at least one methodological issue that bears mention. Specifically, 2008 marked a presidential election year, whereas 2006 and 2010 featured midterm elections.⁷¹ Midterm years in Wisconsin include the campaign for the state governor, which may explain the levels of issue ads on these stations in 2006 and 2010. The authors hope to expand the data from this pilot study with data from the 2012 cycle, which will allow for a comparison of issue advertising between two midterm and two presidential-year elections. However, if presidential elections generate more spending than midterm contests, the fact that the 2010 issue ad expenditures nearly caught up to 2008 levels (\$219,299 to \$238,513) may point to the impact of the relaxed corporate limitations required by *Citizens United*.⁷²

The increases in issue advertising on the competing news talk stations may indicate that in local election years, issue groups are turning to the local medium of radio to advertise. Even in the age of new media, radio represents a comparatively inexpensive option for airing messages that can target politically interested and active audiences. The findings regarding news radio stations are important, as they demonstrate groups are using issue ads, at least in part, to reach out to the most politically attuned individuals, especially at the local level. As a result, the vast increases in the number of groups running issue ads, the amount of issue ads purchased, and the total expenditure on issue ads between 2008 and 2010 on the news stations could indicate the impact of *Citizens United*.⁷³

⁷⁰ Like sister station WOKY, WQBW's rate card indicated that the station would accept non-candidate political issue advertising. WKT1's rate card was located within the station's public file.

⁷¹ See LORRAINE C. MILLER, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 4, 2008 (2009), <http://commcns.org/LWVzhi>; LORRAINE C. MILLER, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 7, 2006 (2007), <http://commcns.org/Jyz6IE>; KAREN L. HAAS, CLERK OF THE HOUSE OF REPRESENTATIVES, STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 2, 2010 (2011), <http://commcns.org/L35217>.

⁷² Greene Gilpatrick, *Removing Corporate Campaign Finance Restrictions in Citizens United v. Federal Election Commission*, 34 HARV. J.L. & PUB. POL'Y 405, 411-12 (2011).

⁷³ See discussion, *supra* Part IV.A. WISN-AM went from 4 groups running 267 ads valued at \$35,130 to 13 groups running 400 ads at a cost of \$71,524, while WTMJ-AM saw

Directing a message to a specific demographic group is a strength of radio advertising, and not surprisingly the data collected in this study suggest that issue groups are taking advantage of this strategy. For example, in 2008 the issue ads running on WKKV and WJMR, two stations that largely target African American listeners, were get-out-the-vote and voter-protection messages designed to rally minority voters. In 2010, the subject matter of issue ads shifted, instead discussing how African Americans would do better if they supported conservatism and conservative candidates.

Finally, the increase in the number of groups running issue ads may support the criticism of the *Citizens United* decision. While many of the groups in 2010 ran ads in each election cycle,⁷⁴ it can be argued that issue advertising appeals to an increasing number of groups as a method for disseminating a message. The problem with this development, of course, is that issue groups with sufficient funds will be able to “shut down” their opponents not by the value of the arguments or merits of their policy positions, but rather the amount of money the groups are willing to spend.⁷⁵

There are certainly limitations to this study. The data represent only one mid-size media market, so it remains unclear if the findings would be replicated in other localities. Additionally, the only data available thus far covers just two election cycles—2008 and 2010—making it more difficult to draw conclusions about differences between the two periods.

V. CONCLUSION

While this pilot study did not come to any definitive conclusions on causation, it does serve as a first step toward answering whether the Supreme Court’s decision that “shakes the foundation of corporate limitations on federal and state elections that stretch back a century,”⁷⁶ will have a real impact on advertising during election cycles. The study opens up a new vein for future

an increase from 6 groups running 114 ads at a cost of \$69,240 to 8 groups running 263 ads valued at \$73,430.

⁷⁴ At least six groups paid for and ran issue ads in more than one of the three election cycles (information on file with authors).

⁷⁵ Walker Wilson, *supra* note 24, at 2365-80 (2010). Walker Wilson argues the “recency, frequency, and vividness” of information plays a greater role in voting preference than the truthfulness of the information. *Id.* at 2378. Further, “voters rely on imperfect and incomplete information and tend to process that information haphazardly, leaving them vulnerable to manipulation by politically motivated actors.” *Id.* at 2376. The assumption can therefore be made that the more money a group has to spread their “version” of the truth, the greater number of potential voters will rely on that truth in shaping their political ideology. *Id.* at 2376-80.

⁷⁶ Robert Barnes and Dan Eggen, *Supreme Court Rejects Limits on Corporate Spending on Political Campaigns*, WASH. POST, Jan. 22, 2010, <http://commcns.org/J2HJZb>.

research in this area.

By examining data from the Milwaukee, Wisconsin radio market, the study demonstrates that the number of organizations purchasing issue ads in 2010 nearly doubled from the number in 2008, from twenty to thirty-six. The study also revealed substantial increases between the 2008 and 2010 election cycles at the city's two news radio stations, finding gains in the number of groups buying issue ads, the number of issue ads purchased, and the amount of money spent on these ads. Given the different nature of the election cycles, the fact that there was nearly as much spending in the midterm contests of 2010 as there was during a presidential election in 2008 might signal the influence of corporate money unleashed by *Citizens United*.

In the end, if the critics of *Citizens United* are correct, the decision "threatens to undermine the integrity of elected institutions across the Nation," as Justice Stevens explained.⁷⁷ This study raises some early red flags, but future studies are needed to further investigate this important question that lies at the heart of our democracy.

⁷⁷ *Citizens United*, 130 S. Ct. at 931 (Stevens, J., dissenting).

