

Excerpts from Citizens United & Other Supreme Court Decisions on Disclosure & Disclaimer

U.S. Supreme Court decisions going back to Buckley v. Valeo (1976) have supported disclosure and disclaimer requirements on First Amendment grounds.

- Disclaimer and disclosure requirements “impose no ceiling on campaign-related activities” – *Buckley v. Valeo*
- Disclaimer and disclosure requirements “do not prevent anyone from speaking” - *McConnell v. FEC*
- “The Court has subjected these requirements to ‘exacting scrutiny,’ which requires a ‘substantial relation’ between the disclosure requirement and a ‘sufficiently important’ governmental interest – *Citizens United v. FEC*
- “In Buckley, the Court explained that disclosure could be justified based on a “government interest in ‘provid[ing]the electorate with information’ about the sources of election-related spending.” - *Citizens United v. FEC*

The Supreme Court has also long upheld a public interest in information about political communications and continued to do so in *Citizens United*

- Disclaimers ““insure that the voters are fully informed’ about the person or group who is speaking” - *Citizens United v. FEC* quoting *Buckley v. Valeo*
- “Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.” – *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978)
- “The Court therefore upheld BCRA §§201 and 311 on the ground that Court upheld disclosure and disclaimer requirements “on the ground that they would help citizens “make informed choices in the political marketplace.”” - *Citizens United v. FEC*, quoting *McConnell v. FEC*.
- Disclaimers “provid[e] the electorate with information” - *McConnell v. FEC*
- “At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.” - *Citizens United v. FEC*
- “[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.” - *Citizens United v. FEC*

The Supreme Court comprehensively rejected claims by Citizens United that disclosure and disclaimer requirements ran afoul of the First Amendment

- “Citizens United argues that the disclaimer requirements...are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for any commercial advertisements, including the ones at issue here. We disagree.” - *Citizens United v. FEC*

- “Citizens United...asserts that [the disclaimer requirement] decreases both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer. We rejected these arguments in *McConnell*...And we now adhere to that decision as it pertains to the disclosure provisions.” - *Citizens United v. FEC*
- “Citizens United claims that...the disclosure requirements...must be confined to speech that is the functional equivalent of express advocacy...We reject this contention.” - *Citizens United v. FEC*
- “We find no constitutional impediment to the application of BCRA's disclaimer and disclosure requirements to a movie broadcast [for Citizens United] via video-on-demand.” - *Citizens United v. FEC*
- “We find the [disclosure and disclaimer] statute valid as applied to the ads for the [Citizens United] movie and to the [Citizens United] movie itself.” - *Citizens United v. FEC*

The Citizens United decision upheld the Constitutionality of disclosure and disclaimer requirements as an alternative to more stringent limitations on political expenditures

- “The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech...In *Buckley*, the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures.” - *Citizens United v. FEC*
- “In *McConnell*, three Justices [Kennedy, Rehnquist, Scalia] who would have found [independent expenditure bans] to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements.” - *Citizens United v. FEC*
- Analogously “the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself.” - *Citizens United v. FEC*
- “The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” - *Citizens United v. FEC*