

2011

# Corporate Speech: A Frame Anaylsis of CNN, MSNBC, and Fox News Coverage of Citizens United v. FEC

Emma Rachel Brown  
*University of South Florida*, esylvest@mail.usf.edu

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Corporate Speech:

A Frame Analysis of CNN, MSNBC, and Fox News Coverage of *Citizens United v. FEC*

by

Emma R. Brown

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts  
School of Mass Communications  
College of Arts and Sciences  
University of South Florida

Major Professor: Roxanne Watson, Ph.D.  
Kimberly Golombisky, Ph.D.  
Kenneth Killebrew, Ph.D.

Date of Approval:  
June 30, 2011

Keywords: framing, political, speech, cable, broadcast

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## **Dedication**

This thesis is dedicated to my parents and husband, who love and support me unconditionally.

### **Acknowledgements**

Thank you to my thesis chair Dr. Roxanne Watson and committee members Dr. Kim Golombisky and Dr. Ken Killebrew for helping to make this thesis the best it could be.

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## **Abstract**

This study examined how Fox News, CNN, MSNBC, ABC, NBC, and CBS portrayed the *Citizens United v. Federal Election Commission* decision from the time of the decision, January 21, 2010 until the mid-term elections November 2, 2010. The broadcast transcripts were read for emergent frames to see how the stations framed coverage. The cable channels had the most coverage. MSNBC, ABC, NBC, and CBS framed the decision negatively, Fox News portrayed it positively, and CNN was neutral to negative in coverage.

## **Introduction**

The debate about the best way to fund political campaigns has waged back and forth for nearly 40 years. The issue becomes particularly intense when it comes to funding by corporations. In a 2010 landmark 5-4 decision, *Citizens United v. Federal Election Commission*,<sup>1</sup> a divided Supreme Court removed political spending restrictions that had limited the political expenditures of corporations since 1947. Conservatives were happy about this decision, but President Barack Obama and Democrats expressed serious concern (Barnes & Eggen, 2010).

Political pundits anticipated at the time of the decision that the money that would flood the future campaigns would benefit the Republicans more than it would the Democrats (Richey & Feldmann, 2010). Another common prediction was that underfunded candidates would receive better advertising support making for far more competitive races. It also was anticipated that the television and radio industries would benefit from the advertising spending through an estimated 20% increase in funding (Richey & Feldmann, 2010).

President Obama criticized the decision, describing it as a “green light to a new stampede of special interest money,” and a “major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their

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<sup>1</sup> 130 S. Ct. 876 (2010).

power every day in Washington to drown out the voices of everyday Americans” (Barnes and Eggen, 2010).

On Thursday, January 21, 2010, the Supreme Court held 5-4 that corporations’ right to support or oppose a political campaign is protected free speech and legal decisions that had limited their right to make expenditures on behalf of political campaigns were a restriction on their First Amendment rights (*Citizens United v. FEC*, 2010, p. 893). In the wake of this decision, corporations may now spend as much as they want from their treasuries to support or oppose a candidate. The Court in *Citizens United* held that corporations have the same rights as individuals when it comes to political speech.

*Citizens United*, a conservative, non-profit organization, was still not entirely pleased with the decision. In April, the group sent a letter to the Federal Election Commission (FEC) claiming it should be treated as a press entity rather than a corporation (The Influence Industry, 2010). Media organizations are exempt from campaign finance laws (*Citizens United v. FEC*, 2010 p. 884).

The *Citizens United* decision came in January 2010, two years after the historic victory at the polls by Democratic candidate Barack Obama. In the 2010 midterm elections that followed the decision nine months later, the Republican Party reclaimed the House of Representatives and 47 state houses. Issues that weighed in on the electoral race included displeasure with incumbent politicians and anxiety about the U.S. economy. CNN.com dubbed the major issues of the midterm election as economy, health care, wars, the deficit, education, illegal immigration, terrorism, and energy (CNN Politics, 2010). Despite the federal stimulus and bailout money given to

corporations such as General Motors, Chrysler, and Wall Street financial firms, 15 million Americans were still jobless in November 2010 (CNN Politics, 2010). The Obama administration was plagued with still spiraling unemployment, promoting its bi-partisan health bills, and trying to end wars in Iraq and Afghanistan.

While the U.S. Supreme Court asserted that companies, like other citizens, have a First Amendment right to contribute to political campaigns (*Citizens United v. FEC*, 2010, p. 900), pundits predicted that the new rule allowing unlimited corporate contributions to candidate campaigns enabled corporations to disproportionately influence the outcome of the election (Feingold, 2010).

Democrats were concerned that *Citizens United*, coupled with the lack of a requirement to disclose source funding, would result in abuse of the electoral process. In early May, the Democrats proposed a bill titled the Disclosure Act Proposal that would have required corporations, unions, Section 501(c)(4) and (6) organizations, which are social welfare organizations (IRS.org), to disclose all campaign-related expenditures to the public. The bill went even further, requiring corporate CEOs to appear on camera in political ads and verbally approve the message. The act passed through the House of Representatives on June 25 by a vote of 219-206. However, it failed in the Senate on Sept. 23, 2010 by a vote of 59-39.

While all of this was happening, Supreme Court Justice John Paul Stevens, the justice who had outlined an 80-page dissent in the *Citizens United* case, announced that he was retiring on Friday, April 9, 2010 (Biskupic, 2010). With the midterm elections pending, there was a lot of buzz over who President Obama would select as the new Supreme Court nominee. Obama ultimately chose Elena Kagan as his

nominee on May 10, 2010. Kagan, then Solicitor General for the United States, had also represented the Federal Election Commission in *Citizens United* (Harvard Law School, 2009). Both of these issues weighed in heavily in discussions during the 10-month period following the *Citizens United* decision.

This study uses frame analysis to examine the broadcast transcripts of CNN, MSNBC, and Fox News between the dates of the Court's decision on January 21, 2010 and the November 2, 2010 mid-term elections. The purpose is to answer the question "how did the media frame the discussion about the Court decision in *Citizens United v. FEC*?"

This paper will outline the previous case law leading up to the *Citizens United* decision, give an overview of the case itself, and provide a theoretical framework based on both First Amendment and framing theories. The paper also includes a literature review of relevant framing studies followed by the method of content and frame analysis. The findings will be analyzed in the discussion section, followed by the conclusion.

## **Legal History of Corporate Political Speech**

*Citizens United* flies in the face of more than 20 years of U.S. Supreme Court decisions that have limited the right of corporations to contribute to political campaigns.

The 1971 Federal Election Campaign Act<sup>2</sup> limited both the contributions and expenditures that organizations could make from the corporate treasury fund to the political campaigns of a clearly identified candidate for federal office to \$1,000 (FECA, Subchapter 1, 431. Definitions). Two categories of political spending are identified in FECA—contributions and expenditures. FECA defined campaign contributions as including the gift or advance of anything of value “made by any person for the purpose of influencing any election for Federal office” (FECA, Subchapter 1, 431. Definitions). Expenditures, on the other hand, are defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and a written contract, promise, or agreement to make an expenditure” (FECA, Subchapter 1, 431. Definitions). Thus, while direct funds given to a campaign would be considered a contribution, an expenditure involves any indirect payment made on behalf of a campaign.

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<sup>2</sup> 18 USC § 608 (1970).

The act also required candidates for political office to disclose contributions exceeding \$200 and prevented candidates from using their own money to fund their campaigns (Federal Election Commission, 5 C.F.R. § 2634.302, 2009).

In 1976, the Court in *Buckley v. Valeo*<sup>3</sup> held that the FECA restrictions on individual contributions to political campaigns and candidates were constitutional, but that restrictions on candidates contributing to their own campaigns violated the First Amendment.

The action, brought by Senator James Buckley, 1968 presidential candidate Eugene McCarthy, and others claimed that provisions in the statute violated their First and Fifth Amendment rights to freedom of expression and due process (*Buckley v. Valeo*, 1976, p. 11).

In upholding the \$1,000 restriction on contributions to political campaigns the Court accepted the FEC's argument that the limitations on the contributions in the act were necessary to prevent "corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office" and also to "mute the voices of affluent persons and groups in the election process ...thereby... equalizing the relative ability of all citizens to affect the outcome of elections" (*Buckley v. Valeo*, 1976, p. 25-26).The Court also rationalized the restriction as necessary to "brake on the skyrocketing cost of political campaigns," opening "the political system more widely to candidates without access to sources of large amounts of money" (*Buckley v. Valeo*, 1976, p. 25-26).

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<sup>3</sup> 424 U.S. 1 (1976).

However, the U.S. Supreme Court disagreed with the Court of Appeal's decision to uphold the constitutionality of the restrictions on political expenditure on the ground that the restrictions regulated conduct, not speech (Buckley v. Valeo, 1976, p. 15-16).<sup>4</sup> The Supreme Court also rejected arguments that such speech could not be regulated using time, place, and manner restrictions <sup>5</sup> because, the Court noted, "restrictions on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached" (Buckley v. Valeo, 1976, p.18-19).

Thus, while finding that "expenditure limitations contained in the Act represent[ed] substantial rather than merely theoretical restraints on the quantity and diversity of political speech" (Buckley v. Valeo, 1976, p. 19), the Court held that contributions served only "as a general expression of support for the candidate and his views, but [did] not communicate the underlying basis for the support" (Buckley v. Valeo, 1976, p. 20-21).

The Court also found that, while the contribution limits did not impose on the associational rights of organizations that were free to join political parties and demonstrate their loyalty through small contributions, expenditure limitations did, by precluding them "from effectively amplifying the voice of their adherents, which was

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<sup>4</sup> The Court of Appeal had relied on United States v. O'Brien, 391 U.S.367 (1968), where the court held that burning the draft card was symbolic speech that was not protected under the Constitution in light of the compelling state interest.

<sup>5</sup> Citing Cox v. Louisiana, 379 U.S. 559 (1965); Adderly v. Florida, 385 U.S. 39 (1966); and Kovacs v. Cooper, 336 U.S. 77 (1949).

the original basis for the recognition of First Amendment protection of the [right to] freedom of association" (*Buckley v. Valeo*, 1976, p. 22).

Thus, the Court upheld the FECA limitations on contributions (*Buckley v. Valeo*, 1976, p. 57), which constituted "symbolic expression," or "support evidenced by a contribution" (*Buckley v. Valeo*, 1976, p. 21). The Court, however, found statutory limits on expenditures to be an unconstitutional infringement on the right to freedom of expression (*Buckley v. Valeo*, 1976, p. 58).

In the following year a narrow majority in the U.S. Supreme Court held that corporations and unions could buy advertising to discuss issues, provided the corporation's and union's treasury funds were not used to cause the election or defeat of a political candidate. In *First National Bank of Boston v. Bellotti*,<sup>6</sup> the Supreme Court reversed a lower court's decision, holding that restrictions placed on expenditures by banks and business corporations to influence the outcome of referendums were unconstitutional (*First National Bank of Boston v. Bellotti*, 1978).

In *First National Bank v. Bellotti* the First National Bank and other banks and businesses wanted to use their corporate funds to publicize their views on a proposed constitutional amendment. The amendment, on the ballot during the 1976 elections, would impose a graduated tax on individuals (*First National Bank of Boston v. Bellotti*, 1978, p. 769). However, a Massachusetts electoral statute prohibited such expenditures.<sup>7</sup> The companies brought an action alleging that the statute violated the First Amendment freedom of expression and Fourteenth Amendment equal protection

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<sup>6</sup> 435 U.S. 765 (1978).

<sup>7</sup> Mass. Gen. Laws Ann. ch. 5, § 8 (1977).

clauses in the U.S. Constitution (First National Bank of Boston v. Bellotti, 1978, p. 770).

In the 5 to 4 decision, several justices viewed the issue of corporate speech as a First Amendment issue. The Court rejected submissions by Massachusetts attorney general Francis Bellotti that corporate speech was only protected where it related specifically to the company's business or the company was involved in the business of communications (First National Bank of Boston v. Bellotti, 1978, p. 781).<sup>8</sup> The Court found the restricted protection in the statute for corporate speech to issues that "materially affected" the business was an "impermissible legislative prohibition on speech" (First National Bank of Boston v. Bellotti, 1978, p. 784).

The Court held that the referendum-related speech proposed by the bank was at the "heart of the First Amendment's protection" (First National Bank of Boston v. Bellotti, 1978, p. 776). The Court noted that it had already decided that "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs" (First National Bank of Boston v. Bellotti, 1978, pp. 777-78),<sup>9</sup> and the discussion on the referendum question involved "the type of speech indispensable to decision making in a democracy" (First National Bank of Boston v. Bellotti, 1978, p. 777). The Court held that the speech should be protected whether it came from an individual or an organization. "The inherent worth of the speech in terms of its

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<sup>8</sup> The Court noted a number of cases, including Times Film Corp. v. Chicago, 365 U.S. 43, 47 (1961); Kingsley Int'l Pictures Corp. v. Regents, 360 U.S. 684, 688 (1959); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Grosjean v. American Press Co., 297 U.S. 233, 244 (1936), where the Court "did not rely on the corporation's property rights under the Fourteenth Amendment in sustaining its freedom of speech." Id. at 780.

<sup>9</sup> Citing Mills v. Alabama, 384 U.S. 214, 218 (1966).

capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual," said Justice Lewis Powell speaking for the majority (p. 777). Powell was joined by justices Warren Burger, Potter Stewart, Harry Blackmun, and John Stevens in his majority opinion.

Thus, the Supreme Court carved out a special area for protection of corporate speech in the law when the speech was aimed at advocating an opinion rather than the election of a candidate. In his dissent, Justice William Rehnquist said that a corporation does not have all the rights of a natural person and, therefore, should not enjoy the right to influence elections (*First National Bank v. Belotti*, 1978). Justice Byron White, joined by justices William Brennan and Thurgood Marshall, also gave a separate dissent stating that the Court erred in its decision and that "the Court not only invalidates a statute which has been on the books in one form or another for many years, but also casts considerable doubt upon the constitutionality of legislation passed by some 31 States restricting corporate political activity" (*First National Bank v. Bellotti*, 1978, p. 803).

In the 1986 case, *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*,<sup>10</sup> the Supreme Court ruled that an anti-abortion group was not barred from spending \$10,000 to distribute a newsletter encouraging people to vote for a named pro-life candidate. The Court held that the Massachusetts Citizens for Life, Inc. and ideological groups were of little threat to the integrity of the election as their aims were to spread political ideas, not to make money (*Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 1986).

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<sup>10</sup> 479 U.S. 238 (1986).

But the Court was not as lenient when it came to corporations. In 1990 the Supreme Court upheld restrictions on corporate spending to independently support, or oppose, political candidates. The case began in 1985, when a special election was called to fill a vacancy in the Michigan House of Representatives, the Chamber of Commerce, which comprised some 800 corporations, wanted to use treasury funds to support a candidate for the election. *Austin v. Michigan Chamber of Commerce*,<sup>11</sup> was an action challenging the section of the Michigan Campaign Finance Act that prohibited businesses from spending corporate treasury funds to support or oppose candidates for election to a state office and from making contributions and independent expenditures to state candidate elections (Federal Election Commission v. Massachusetts Citizens for Life, Inc, 1986, p. 655).

The Sixth Circuit Court had held that the terms of the act did not apply to the Chamber because it was a non-profit organization, and if the act were applied to the Chamber it would be a violation of the First Amendment.

On appeal to the Supreme Court, Justice Marshall, speaking for the majority, found that the Chamber of Commerce could not claim immunity from the act on the basis of being an ideological organization because it did not share the characteristics of ideological organizations enumerated in *Massachusetts Citizens for Life*, including that the organization should be formed with the specific purpose of propagating political ideas, have no shareholders and be free from the influence of business (*Austin v. Michigan Chamber of Commerce*, 1990, p. 664). Because the Chamber did not share these qualities, the Court held that it was subject to the statute.

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<sup>11</sup> 494 U.S. 652 (1990).

The Court in *Austin* said that restrictions on corporate political speech are constitutional if they are narrowly tailored to serve a compelling government interest. The Court found the statute was “narrowly tailored to serve [the] compelling state interest [of] eliminat[ing] the distortion caused by corporate spending while also allowing corporations to express their political views” to prevent corruption of the electoral process by the influx of corporate funding (Federal Election Commission v. Massachusetts Citizens for Life, Inc, 1986, p. 660). Thus, the Court reversed the lower court’s decision, stating that certain cases would require restrictions.

The Bipartisan Reform Act<sup>12</sup> of 2002, also known as the McCain-Feingold Act, named for Republican Senator John McCain and Democratic Senator Russell Feingold, was passed with the intention of remedying the “distorting effect private money has had on politics” (Danetz, 2002, p. A21). It “sought to level the playing field for House or Senate candidates who face wealthy opponents writing big checks to their own campaigns” (Wasserman, 2008, p. 3). Wasserman (2008) cites the example of the 2000 election where “Democrats Maria Cantwell, Jon Corzine, and Mark Dayton each spent eight figures of their own resources to win Senate seats” (p. 3).

The Bipartisan Reform Act which amended the Federal Election Campaign Act of 1971 (FECA), the Communications Act of 1934<sup>13</sup> as well as other government codes, also restricted campaign spending of “soft money” by corporations and unions. “Hard money” is contributed directly to the candidate and is subject to regulation by

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<sup>12</sup> 2 U.S.C.S. § 441i (2002).

<sup>13</sup> 47 U.S.C.S. § 151 (1934).

the Federal Election Commission. Soft money is “money raised outside the limits and prohibitions of the federal campaign finance law” or “nonfederal money” (Federal Election Commission; Major Provisions of the Bipartisan Campaign Reform Act of 2002).

The act drew serious criticism when it was first passed because of concerns that parties would be weakened and political debate stifled (Broder, 2005, p. A27). However, despite the concerns, during the 2004 presidential election that followed the passage of the act, national party committees raised \$1.2 billion in hard money, far more than the combined contributions of hard and soft money that candidates had received in the 2000 presidential election (Broder, 2005, p. A27). The act did not completely rid the election of influential big-money contributions and, although Broder (2005) states that Republicans continued to have an overall fundraising advantage, Democrats actually narrowed the gap to “the smallest in two decades” (p. A27).

In 2003 the Court upheld, in part, the constitutionality of the Bipartisan Campaign Reform Act of 2002. In *McConnell v. Federal Election Commission*<sup>14</sup> the Court upheld the constitutionality of the BCRA ban on “soft money” contributions. The Court also held that the prior “magic words,” like “Vote Against Jane Doe,” requirement of FECA no longer held any meaning and did not prevent corruption of the political process (McConnell v. Federal Election Commission, 2003, p. 126). The Court in *McConnell* applied a less rigorous standard of review to the campaign contribution limits defining the test as “closely drawn” rather than “strict” scrutiny

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<sup>14</sup> 540 U.S. 93 (2003).

(McConnell v. Federal Election Commission, 2003, p. 134). Strict scrutiny “requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest” (Citizens United v. FEC, 2010, p. 898).

Closely drawn scrutiny merely requires the restriction to match a ““sufficiently important interest”” (Federal Election Commission v. Beaumont, 2003, p. 162).

The plaintiffs in *McConnell* filed suit claiming that various amendments to the Federal Election Campaign Act of 1971 (FECA) and the Communications Act of 1934 contained in the BCRA violated the constitutional right to freedom of speech.

The District Court found that the soft money bans were justified because of Congress’ desire to prevent the appearance of, and actual corruption of, federal candidates and officeholders. The Supreme Court concurred and also found that restrictions on the use of soft money by state and local party committees were necessary because of Congress’ desire to prevent the appearance of, or actual, corruption of officeholders and federal candidates. The Court found the limit on contributions to tax-exempt organizations applied only to funds not raised in compliance with FECA; that the restrictions weren’t limited to “express advocacy” but could encompass issue advertising, as these forms of advertising could often be misleading; and that the limits on independent expenditures were invalid (McConnell v. Federal Election Commission, 2003, p. 127). The Supreme Court upheld the validity of the recordkeeping requirements because they were identical to existing regulations.

Justice Stevens, joined by Justice Sandra Day O’Connor, delivered one of the three majority opinions for the very mixed Court. The Court, finding BCRA’s

restrictions on soft money unconstitutional, struck down requirements for disclosure of executory contracts for political advertising; but upheld BCRA's recordkeeping requirements as constitutional (*McConnell v. Federal Election Commission*, 2003, p. 121-122).

Rehnquist, joined by Justice John Paul Stevens in his dissenting opinion, said that the court should have used the strict scrutiny test, which "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest," rather than the lesser "closely drawn" test applied to determine whether the statute was constitutional (*Citizens United v. FEC*, 2010, p. 897). The majority also decided that Congress can enact laws to prevent corruption of the political process.

Thus, in the years preceding *Citizens United*, the Supreme Court battled with the issue of what constitutes acceptable limitations on the right of corporations to engage in political speech.

### **Citizens United v. Federal Election Commission**

The 2010 decision in *Citizens United* overturned years of precedent and the Bipartisan Campaign Reform Act which had amended the Federal Election Campaign Act of 1971 (FECA) and other government codes by restraining campaign spending by corporations and unions. The case also overturned laws in many states that limited corporate expenditures in local races. Before the Bipartisan act, corporate campaign expenditures were somewhat limited, as corporations could only raise funds through political action committees, which have to abide by contribution limits. There are two types of Political Action Committees registered with the FEC-- separate segregated funds (SSF) and nonconnected committees" (Federal Election Commission, Quick Answers to PAC Questions). SSF's are "established and administered by corporations, labor unions, membership organizations or trade associations" and can only solicit monies from these bodies, while nonconnected committees "are not sponsored by or connected to any of the aforementioned entities and are free to solicit contributions from the general public" (Federal Election Commission, Quick Answers to PAC Questions). With *Citizens United*, PACs are no longer the only way for corporations to give money during elections; they can now give directly.

The Federal Election Campaign Act of 1971 provided for the increased disclosure of contributions for federal campaigns. Later, as amended in 1974, it placed

legal limits on campaign contributions, required full disclosure, and created the Federal Election Commission (Federal Election Commission Act, 434, § 437c, 2002).

In the wake of the 2010 decision, corporations can advertise freely, though they are still required to disclose their political stance when they do so. However, the Court did not address whether or not corporations can give funding directly to a candidate. Currently they cannot make this type of contribution. The 180-page decision in *Citizens United v. Federal Election Commission*<sup>15</sup> also requires corporations to disclose the amount of money they are spending and to include disclaimers with advertisements.

This decision also goes against precedent set in the 1978 decision *First National Bank of Boston v. Bellotti*.<sup>16</sup> Federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech, either “electioneering communication” or “speech expressly advocating the election or defeat of a candidate” (*Citizens United v. Federal Election Commission*, 2010, p. 881). These limits were upheld in *McConnell v. Federal Election Commission*.<sup>17</sup> In *Citizens United*, the Court re-examined *McConnell*, *Bellotti*, and the decision in *Austin v. Michigan Chamber of Commerce* and held that these rulings were inconsistent with the First Amendment. Justice Kennedy, speaking for the majority, found that, while the government could regulate corporate political speech through disclaimer and

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<sup>15</sup> 130 S. Ct. 876 (2010).

<sup>16</sup> 435 U.S. 765 (1978).

<sup>17</sup> 540 U.S. 93 (2003).

disclosure agreements, it could not suppress the speech entirely. Justice Kennedy said that, if the restrictions were to be allowed, they would have a chilling effect on speech.

The *Citizens United*<sup>18</sup> action was brought in the Federal district court in January 2008 when a non-profit conservative organization, Citizens United, released a 90-minute documentary titled, “Hillary: The Movie.” The documentary, produced during Hillary Clinton’s 2008 Democratic primary presidential run, reflected negatively on her political career. The lower court found that allowing Citizens United to air or broadcast “Hillary: The Movie” would violate the McCain-Feingold provision which prohibited corporations, unions, and special interest groups from using general treasury money to broadcast communication referring to a candidate during the election season.

The U.S. Supreme Court, in overturning the lower court’s decision, held that the decision was an unconstitutionally broad suppression of speech that, if allowed, could have a chilling effect on political speech. To merely look at the case individually and claim that this video was a violation would make any corporation, for profit or otherwise, leery of engaging in such forms of speech in the future. Justices said, rather than risk going to court, corporations would suppress their own speech (*Citizens United v. FEC*, 2010, p. 880).

Justice John Paul Stevens, joined by justices Ruth Bader Ginsburg, Sonia Sotomayor, and Stephen Breyer, wrote, in a 90-page dissent, that the decision “threatens to undermine the integrity of elected institutions across the Nation” (*Citizen’s United v. Federal Election Commission concurrence/dissent*, 2010, p. 931).

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<sup>18</sup> 130 S. Ct. 876 (2010).

In a CNN article on the day of the decision, Welch (2010) wrote Americans should not be afraid of the decision which was necessary to ensure true freedom of speech. “American people are not sheep, eager to be led by the highest bidder,” and they should be allowed to think for themselves (Welch, 2010).

In his State of the Union address, President Obama said, “With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests -- including foreign corporations -- to spend without limit in our elections” (Silverleib, 2010). He continued, “I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people. And I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems” (Silverleib, 2010). The White House backed the President's opinion (Garrett, 2010). As the President spoke, the television camera captured Justice Samuel Alito in the audience with a “look of bewilderment,” mouthing the words “not true” (Garrett, 2010).

In an article for Fox News, seven days after the *Citizens United* decision, Major Garrett (2010) focused on Obama's criticism of the Supreme Court decision and Alito's response. Garrett (2010) cited Politifact.com which had labeled Obama's statement as “Barely True” noting that Obama “was exaggerating the impact of the ruling,” regarding the ability of foreign corporations to have an immediate influence on America's politics (Garrett, 2010). Garrett (2010) noted that the Court, in *Citizens United*, had not addressed the issue of whether foreign businesses would be allowed to make contributions to political campaigns. PolitiFact justifies this by stating: “Current

federal law...2 U.S.C. 441e(b)(3)<sup>19</sup> -- prevents ‘a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country’ from making ‘directly or indirectly’ a donation or expenditure ‘in connection with a Federal, State, or local election,’ to a political party committee or ‘for an electioneering communication.’ (PolitiFact.com).”

In the 1857 Supreme Court case, *Dred Scott v. Sanford*,<sup>20</sup> a slave’s assertion of his legal right to freedom was thrown out because, the Court held, he was not a U.S. citizen under the constitution, and thus, had no standing to bring an action in court. In delivering the majority opinion, Chief Justice Roger B. Taney stated, “In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show[ed], that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument” (*Dred Scott v. Sanford*, 1857, p. 407).

In a commentary on MSNBC, Keith Olbermann criticized Taney for this decision, describing it as a huge mistake that led to the Civil War and countless deaths. Olbermann said that Chief Justice John Roberts’ decision in *Citizens United* may have “more dire implications” than those in the 1857 decision (Olbermann, 2010). Olbermann (2010) said that, because in the wake of *Citizens United* there are no more

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<sup>19</sup> Citing Federal Election Campaign Act-- 2 U.S.C. 441e (1990) which “prohibits foreign nationals, either directly or through another person, from making contributions in connection with any election for any political office.”

<sup>20</sup> 60 U.S. 393 (1857).

checks and balances, corporations can spend unlimited monies to “implant the legislatures of their choice in every office,” and those legislatures will, therefore, be beholden to them (Olbermann, 2010). Olbermann’s entire piece painted a dismal picture for America’s future, at one point he stated, “it is almost literally true that any political science fiction nightmare you can now dream up, no matter whether you are conservative or liberal, it is now legal” (Olbermann, 2010).

Although scholars have examined the way in which the media framed many social and political issues, the 2010 Court decision in *Citizens United v. FEC* is still relatively recent and the media’s portrayal of the political effect has not been examined.

## **Theoretical Framework**

In *Citizens United*, the Court relies on the Marketplace of Ideas in its reasoning asserting that, “ideas [should be allowed to] compete in this marketplace without government interference” (*Citizens United v. FEC*, 2010, p. 906) and that also “Political speech is indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation” (*Citizens United v. FEC*, 2010, p. 900).

The marketplace of ideas, a First Amendment theory concerned with the attainment of truth, is intrinsic to an understanding of how the Court reached its decision in *Citizens United* and even the frames used by the media in discussing the decision.

The marketplace of ideas theory can be traced back to the 17<sup>th</sup> century writings of English poet, John Milton, in his book “Areopagitica,” but are also accredited to 19<sup>th</sup> century philosopher John Stuart Mill. Mill in his essay, “On Liberty,” defended the need to protect the marketplace of ideas against censorship. He wrote, where an opinion is repressed, “[i]f the opinion is right, [humanity is] deprived of the opportunity of exchanging error for truth; if it is wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error” (Mill, 1859, p. 59-60).

Justice Oliver Wendell Holmes first articulated the concept of a marketplace of ideas in the Supreme Court in his dissent in the 1919 case *Abrams v. United States*.<sup>21</sup> Holmes said in his dissenting opinion that “the ultimate good desired is better reached by free trade in ideas that the best test of truth is the power of the thought to get itself accepted in the competition of the market” (*Abrams v. United States*, 1919, p. 630).

According to Hopkins (1997), for the most part, the Supreme Court does not recognize a “single, universal marketplace of ideas, but numerous mini-marketplaces” (p. 40). Each of those marketplaces is identified by its personal “dynamics, parameters, regulatory scheme, and audience” (p. 40). Although use of the theory increased steadily, particularly in the 1970s, the justices have made little to no effort to explain why they rely on it so heavily, and there has been a “dramatic shift” in the way the Court defines and applies it (pp.40-41). Yet, Hopkins (1997) notes, “the Court has said repeatedly that the primary purpose of the First Amendment is to protect an uninhibited marketplace where differing ideas can clash” (p. 42). The competition of ideas is a key aspect of the marketplace of ideas theory.

But Kerr (2002) makes the argument for regulation of corporate speech based on the marketplace of ideas theory. Kerr (2002) argues that regulation of corporate speech enables more ideas to flourish in the “political marketplace,” furthering the common good (p. 394). Kerr (2002) sees business corporations as dominant forces in American society and writes that many Americans feel “more governed by corporations than by the state” (Kerr, 2002, p. 394). Because of their wealth and influence, corporations are a powerful force in the mass media realm. The question

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<sup>21</sup> 250 U.S. 616. (1919).

Kerr (2002) addresses whether regulating corporate speech “advances or diminishes free speech in a democratic society,” and he attempts to justify regulation on an ethical basis (p. 395).

Kerr (2002) draws on utilitarianism and the marketplace of ideas theory to make his point. For utilitarians, the course of action that allows the greatest good for the greatest number of people is the correct choice. There are different types of utilitarianism, but Kerr (2002) employs “rule utilitarianism” which focuses on ethical justifications for institutional or societal practices (p. 395). Kerr (2002) writes that the “wealth and power of corporations could drown out other points of view and undermine democratic processes” (p. 397). Corporate wealth has the potential to unfairly influence elections and can give the appearance of corruption, or lead to actual corruption (Kerr, 2002, p. 399).

Rome and Roberts (1985) provide balancing perspectives on the debate over corporate speech. While they acknowledge that corporate speech differs from individual speech so much that it should be given less or no First Amendment protection, they also suggest that the protection of all expression and the right of the speaker benefits all recipients (Rome & Roberts, 1985). Friedman and May (1986), who support regulation, state that corporations are not “sovereign members” of our society and, therefore, do not have the right to protected political speech (Friedman and May, 1986, p. 19-20).

The marketplace has not been accepted universally as a defense for free speech. Marketplace critics (Barron, 1967 & Bambauer, 2006) challenge the premise of the theory, whether the market works in today’s world, and whether it ever existed

to begin with. Barron (1967) states that “if there ever was a self-operating marketplace of ideas, it has long ceased to exist” as the poor and minority groups do not have fair and equal access (p. 1641).

According to Barron and Dienes (2008), critics do not think the marketplace will produce truth because people are not always the most rational decision makers and can be easily influenced by emotion, religion, conformity, and habit. Bambauer (2006) states that, while the marketplace of ideas is how people “should deliberate and decide,” it “places faith in reason,” and “people learn from their mistakes” (p. 708). He says this is a falsehood because “human beings have cognitive biases and filters that distort our thinking” (p. 708).

Barron and Dienes (2008) also argue that not everyone has access to the marketplace of ideas. They suggest minority groups have no access, and that the public may not have time to wait for the right decision to be reached in cases of genocide (Barron & Dienes, 2008, p. 9). Barron and Dienes (2008) write that the market no longer exists because it is dominated by the media and excludes citizens. They state that, because of the financial power that corporations wield they have the capacity to affect the electoral process in a disproportionate manner, thereby distorting the marketplace.

## **Literature Review**

This study seeks to accomplish something unique in the realm of frame analysis by determining how the media frames a particular Supreme Court decision. Gitlin (1980) defined news frames as “principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters” (p. 6). Potter (1998) pointed out that journalists “construct reality” by selecting what gets covered, deciding on a story focus, and “determining how the story gets told” (p. 111).

Research has shown that media frames affect the public perception of Supreme Court rulings (Clawson & Waltenburg, 2003; Positgo, 2010; Richardson & Lacendorfer, 2004). Therefore, it is important to examine media framing of important Court decisions. Only one study has examined the effect of the media’s frames of a court’s decision on public opinion about the decision (Endres, 2004). A few studies have examined Supreme Court decisions, but most of those focus on the issue of affirmative action (Clawson & Waltenburg, 2003; Richardson & Lacendorfer, 2004). A quantitative newspaper content analysis of how the Supreme Court rulings on affirmative action at the University of Michigan in the case *Gratz v. Bollinger* and *Grutter v. Bollinger*<sup>22</sup> were framed found “how the media frame the Court’s actions can affect the public support for Court policies” (Clawson & Waltenburg, 2008, p. 251). In

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<sup>22</sup> 539 U.S. 244 (2003) and 539 U.S. 306 (2003).

*Grutter v. Bollinger* the court affirmed the decision of the circuit court that the Equal Protection Clause did not prohibit the university's narrowly tailored use of race in admissions (Grutter v. Bollinger, 2003).

Researchers examined how media frames affect White and Black support for a controversial affirmative action ruling. They found that media frames had a significant impact on the extent to which the public agreed with the decision when it came to White participants. Black participants were more likely to be swayed by "racial resentment and gender" (Clawson & Waltenburg, 2008, p. 267).

Another study focused on the framing of political issues that formed the basis of legal decisions by exploring how the sex amendment Title VII was framed in the media. This amendment prohibited employers from discriminating against their employees on the basis of gender and made it illegal to post notices or advertisements for employment that indicated any "preference, limitation, specification, or discrimination, based on race, color, religion, sex or national origin, except where a bona fide occupational qualification existed" (Endres, 2004, p. 7). The amendment was framed by the media during the almost 10-year period between its enactment in 1964 and the 1973 U.S. Supreme Court's decision upholding the constitutionality of the prohibition of classified ads categorized by sex. Endres (2004) found that all the frames used by a specialized business magazine to report on the Supreme Court's decision upholding the constitutionality of the prohibition of classified advertisements categorized by sex<sup>23</sup> were negative.

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<sup>23</sup> Pittsburgh Press v. Pittsburgh Commission on Human Relations, 413 U.S. 316 (1973).

Other studies have focused on how public views of Congress have been affected by media frames of legislative actions. Picard (1987) found the media portrayed the 98<sup>th</sup> Congress as being strongly opposed to the Freedom of Information Act, even though this was not entirely true. Shortly after the Reagan administration took office, a series of regulatory and legislative actions to reduce the scope of the Freedom of Information Act (FOIA) and other such legislation that provided for the free flow of information were passed into law. The 97<sup>th</sup> Congress introduced almost three dozen pieces of legislation that restricted FOIA. When the 98<sup>th</sup> Congress took seats in 1983, many proposed bills and amendments were already before Congress. Thus, although it appeared that the 98<sup>th</sup> Congress was opposed to openness, in fact, the majority of its laws came down “clearly and more weightily on the side of openness and availability” (Picard, 1987, p. 619). However, a few very broadly drawn proposals were introduced by the 98<sup>th</sup> Congress to reduce the effectiveness of FOIA, which Picard (1987) blames for the media’s harsh attitude toward the 98<sup>th</sup> Congress.

Other researchers have examined legal issues to determine the effects of media frames on audience perceptions. A study on the issue of fair use, which provides an exception to copyright when the copyrighted material is used in teaching and scholarship,<sup>24</sup> during the Digital Rights Movement, found that the Electronic Frontier Foundation presented consumers as users and presents fair use in a user-centered fashion, which made the audience view the movement in a positive manner (Postigo, 2008, p. 1008).

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<sup>24</sup> 17 U.S.C.S. § 107(1998).

While only one study has looked at the effect of frames used in depicting Supreme Court opinions, others have examined judiciary issues. Robinson and Powell (1996) examined how the media framed the 1991 Senate Judiciary hearings on the confirmation of Supreme Court nominee Clarence Thomas. During the hearings, Anita Hill, a legal colleague, accused Thomas of sexual harassment. Robinson and Powell (1996) found that, instead of relying on images and descriptions about Clarence Thomas coming from Hill, the media used images that reflected Thomas' own portrayal of himself. Similarly, the media's portrayal of Anita Hill reflected her own self portrait rather than Thomas' portrayal of her. This was all in reference to a national audience.

The *Citizens United* decision affects the amount of money that corporations can use to support or reject candidates on issues in elections. While not many framing studies have focused on Supreme Court decisions, several studies have looked at how political campaigns were framed by the media.

In a study of major broadcast and cable television networks during the 2000 presidential election campaign, Winfield and Friedman (2003) found that the media portrayal of the candidates' wives challenged the traditional First Lady frames (pre-determined frames that had been used to describe First Ladies). These frames include being an "escort" to their husband, "defenders" of their husband's causes, and "sacrificing" for their husband's careers (Winfield & Friedman, 2003, p. 550-552). Instead the frames used in the 2000 election depicted presidential candidates' wives as being policy advisors to their husbands but not "as political" as Hillary Clinton (Winfield & Friedman, 2003, p. 557).

Lowry (2008) looked at framing as a tool to employ media bias and found that people believed the news was biased toward one party or another (Democratic or Republican). He also, unexpectedly, found that audience members thought the media was biased toward covering only negative news (Lowry, 2008).

In the 1996 presidential election, Kiousis and McCombs (2004) found a strong correlation between the amount of attention the news media gives to political figures and the public awareness about and attitude toward those figures.

In a study of the coverage of the 1998 Michigan governor's race, Carter, Fico and McCabe (2002) found that less than 4 % of the coverage was hard news (p. 41). Most stories were one sided, did not look at issues in the race, or even specific candidates, focusing, instead, on the race itself. The researchers found that, because television news often only broadcasts one segment about a candidate in a given newscast, it can appear biased toward another candidate.

Studying the frames used by the *New York Times*, the *Washington Post*, the *Los Angeles Times*, and *USA Today* during coverage of the 1996 presidential election campaign, Deseran and Orcutt (2009) found that, while all candidates ran on platforms centered on the drug crisis, based on national surveys, the media had “ignored and even criticized” these claims (Deseran & Orcutt, 2009, p. 871). While the media worked with politicians to emphasize a drug crisis in the 1980s, during the 1996 election the media coverage and frames changed.

Previous research that indicated that a political party's election results can depend on how visible they are in the media and the tone the media uses led Hopman, Vliegenthart, Vreese and Albaek (2010) to study the 2007 national election campaign

in Denmark. They found that the more visible and positive the tone of an article was toward a given party, the more voters were inclined to vote for that party.

Other studies have looked at how gender is portrayed in electoral campaigns. In a 1998 gubernatorial race, Devitt (2002) found that, while male and female candidates received equal amounts of coverage, the frames used to depict female candidates were more likely to focus on their personal traits, like appearance or personality; whereas the coverage of male candidates focused on their stand on public policy issues. The researcher found the differences in the frames used were determined by the male reporters who covered the campaigns.

As technology has developed, more candidates have sought to counter media frames through their own self-frames on websites and social media. In an online analysis of the 2004 presidential candidates' websites, Bichard (2006) found that, while there were some similarities in the websites, each candidate chose to focus on a different issue. Incumbent President George W. Bush's website was more positive in tone, focusing on the present and community and individual issues. Democratic presidential candidate John Kerry's website was more negative, concentrating on past and future frames and the society as a whole.

The 2010 decision that left corporations free to contribute to political campaigns, was followed approximately 10 months later by a midterm election where unprecedented spending occurred. Thus, the frames used by the media to portray the 2010 decision is an important area of research to be explored, particularly during the 10-month period leading up to the first federal elections after the decision.

## **Method**

The purpose of this study is to find out how the news stations MSNBC, CNN, Fox News, ABC, NBC, and CBS framed the *Citizens United* decision. The research question is “how do these stations frame the discussion of the *Citizens United v. FEC* decision?” The method used to accomplish this goal was to conduct a frame analysis of the transcripts of each respective network to see how the issue was presented.

A single story can have multiple and different types of frames. Gamson (1989) said that a news story may even contain conflicting frames. This is partly because frames are not devices that influence the construction of entire news stories, but are elements that appear within news stories. Frames limit or define a message’s meaning by shaping what people take away from the message. Entman (1993) said that framing essentially involved both the selection of and salience given to a topic. Framing involves choosing some aspects of a topic and, then, using frames to elevate the salience of a particular piece of information. Salience, as Entman defines it, means “making a piece of information more noticeable, meaningful, or memorable to audiences” (p. 53).

The researcher conducted a comparative frame analysis of the broadcast transcripts of CNN, MSNBC, and Fox News during the approximate 10-month period between the Jan. 21, 2010, decision and the Nov. 2, 2010, mid-term elections. This study includes all programming on these networks that mentions *Citizens United*;

specifically newscasts, commentary, and news talk shows. Whereas newscasts are aimed at presenting facts, commentaries reflect the personal opinion of a commentator, and talk show hosts often invite guests to discuss the topic at hand.

The transcripts were found by conducting a search via LexisNexis broadcast transcripts for the aforementioned time period. All entries containing “Citizens United v. FEC” were included in the study. The search was limited to all transcripts between the dates of Jan. 20, 2010 and Nov. 3, 2010 to ensure that all transcripts between the day of the decision, on January 21 and the mid-term elections on November 2 would be included in the search results. The search term entered for each broadcast station was “citizens united.” The researcher also tried using the search terms “citizens united v. the federal election commission” and “citizens united v. fec” but found all the results from these searches were replicated in the results for “citizens united,” and that the search term that yielded the most exhaustive results from all of the stations was “citizens united.” In the transcript conversations, the decision was most often referred to as “Citizens” or “Citizens United,” which might be the reason why this term yielded better results.

The researcher decided to use television news transcripts rather than newspapers, although they are less frequently used in frame analysis, because as Brosius and Kepplinger (1990) wrote, “television...is the medium that provides political information to most of the citizens in Western industrial societies and...is the most credible source of information” (p. 184). According to Pew Research (2010), in 2010 39 % of people regularly got their news from cable channels.

Iyengar (1991) identifies two types of frames: thematic and episodic. Episodic frames focus on particular instances or events. Thematic frames examine issues over a period of time. Episodic frames focus on individual aspects of an issue while thematic frames focus on an issue as a whole. Iyengar suggests that the type of frame used to depict an issue affects the way people view the issue at hand. Thematic frames cause people to view the issue as a major social problem that affects many and continues over a long period of time, but issues presented in an episodic frame appear to affect only a few people and, thus, do not appear to be serious.

Entman (1993) wrote that media frames typically diagnose, evaluate, and prescribe. News frames can diagnose causes and “identify the forces creating the problem,” make moral judgments and “evaluate causal agents and their effects,” suggest remedies by offering and justifying ways to fix problems, and predict their likely effects (Entman, 1993, p. 52).

According to Husselbee and Elliot (2002), the manner in which the media present issues has a noteworthy impact on the audience; affecting understanding and awareness of public problems. For Husselbee & Elliot (2002) framing occurs “when a journalist chooses to emphasize certain elements of a story over others” (p. 835). Potter (1998) pointed out that journalists “construct reality” by selecting what gets covered, deciding on a story focus, and “determining how the story gets told” (p. 111).

CNN, Fox News and MSNBC are all key competitors in the 24-hour cable news business. CNN, founded in 1980 by Ted Turner, media mogul since the early 1970s, is operated by Time Warner’s Turner broadcasting division. CNN reaches more than 100 million U.S. homes, with an international division that reaches 200 countries

and has 45 bureaus around the world (Hoovers, 2011). Fox News Network, which began broadcasting in 1996, is owned by the Australian-born Rupert Murdoch who founded News Corporation, and reaches more than 95 million U.S. homes (Hoovers, 2011). MSNBC reaches more than 90 million U.S. households (Hoovers, 2011).

In 2010 Fox News was the number one cable station in primetime, followed by CNN and MSNBC (Pew Research, 2010). Fox News led with 23 % total viewers, CNN had 18 %, and MSNBC had 11 % (Pew Research, 2010). ABC was the number one broadcast news channel for average viewership in 2010 followed by NBC and CBS (Pew Research, 2010). ABC led by 14 %, followed by NBC with 12 %, and CBS with 8 % (Pew Research, 2010).

The Fox News Channel, according to the company's press site, is "a 24-hour general news service devoted to delivering fair and balanced coverage of the day's events. FNC's primetime lineup offers one-hour opinion and news talk programs examining the issues with key players shaping the news coverage of the moment" (Fox News Channel Press, 2011). This primetime devotion to opinion shows probably accounts for the higher framing occurrences by anchors and commentators of Fox.

MSNBC's information page states, "We provide something for every news consumer with our comprehensive offerings that deliver the best in breaking news, original journalism, lifestyle features, commentary and local updates down to the block level" (MSNBC.com, 2011). CNN, refers to itself simply as "one of the world's most respected and trusted sources for news and information" (Turner, 2011). MSNBC also includes its commentary in the "about us" section of the online site, whereas CNN does

not. This devotion to commentary segments by MSNBC and Fox could account for the higher amount of framing and bias by the two station's employees.

Fox News has a clear viewership according to Pew Research (2010): 48 % of viewers identify themselves as conservative Republicans, while only 7 % identify themselves as liberal democrats. There is “no single news network ranks among the top sources,” for other partisan groups the way that Fox News does for Republicans, according to Pew (Pew Research, 2010).

The transcripts were found by going to LexisNexis Academic and conducting three separate “power searches.” This allowed for the selection of broadcast transcripts within a specific time frame. After selecting “news” and “broadcast transcripts,” each of the news networks for this study was available on the list. In the case of this study, those selections were the cable networks: CNN, MSNBC, and Fox News Network and the broadcast networks: NBC, ABC, and CBS.

In this qualitative study, the researcher looked for emergent frames to ensure there would be no limitations from preconceived expectations, emergent frames were used. This means that the “...research begins with the close reading of texts and moves to the creation and continuous development of emergent interpretations and to tracking themes, frames, and angles...” (Hesse-Biber & Leavy, 2008, p. 137). First each transcript was identified according to the show it was associated with. Then they were read for common themes and the identified themes were divided into overall categories of coverage. These categories were: the initial aftermath of the decision, the State of the Union address in which President Obama criticized the decision, the midterm elections, and the nomination of a new Supreme Court candidate. After

determining how *Citizens* was featured in the discussion, the researcher read each transcript for language to determine if there was a favorable or unfavorable opinion of the decision.

This involved identifying both outright statements by the anchors themselves indicating that the decision was positive or negative through words that specifically defend or criticize the decision. For example MSNBC's Keith Olbermann's outright statement that foreign money is going into the elections, "courtesy of the *Citizens United* decision" (October 5, 2010) and calling the Supreme Court as "wildly pro-corporate" (April 29, 2010) both indicate unfavorable coverage. Transcripts of shows can also imply support for or bias against the decision based on the political leanings and comments of supporters or critics who are invited onto the shows for interviews.

The cable news networks had far more coverage of the *Citizens United* decision (161 transcripts) than the broadcast news stations (12 transcripts). Of the cable news channels, MSNBC covered the decision most often (69 transcripts), followed by CNN (67 transcripts), and Fox (25 transcripts). NBC had four, ABC had five, and CBS had three.

For all six news channels, the same issues arose in regard to the decision. Those were 1. the amount of money going into the midterm elections, 2. the anonymity allowed to companies putting ads out, 3. whether or not foreign money was getting into the elections, 4. whether Republicans benefited more than Democrats from the decision, 5. Obama's criticism of the Court in his State of the Union address, and 6. the nomination of Elena Kagan to the Supreme Court. Each of the news channels transcripts were placed into a framing category.

Reports on Fox News generally favored the decision, while MSNBC commentators were very negative. CNN's transcripts ranged from neutral to negative commentaries. Both NBC and CBS transcripts were negative. While ABC was relatively neutral, the news channel indicated that the decision was advantageous to Republicans and was "bizarre" (April 18, 2010).

A detailed analysis of the transcripts can be found in the Findings and Discussion sections of this paper. This study examined the frames used by broadcast media in discussing the Supreme Court decision in *Citizens United v. FEC*. The frames that emerged in this study reflect how these news channels portrayed the *Citizens United* decision to the public. This thesis relies on Golan and Wanta's (2001) argument that the frames used to present a particular story affect the way the audience will think about the subject. The researcher examined what was emphasized, left out, and elaborated in the frames used to cover the *Citizen's United v. FEC* decision.

## **Findings**

The findings section of this paper will give a quick overview of the common themes from the transcripts and the areas chosen by each station for coverage of the Supreme Court decision in *Citizens United*. As stated earlier, cable news networks made more references to the *Citizens United* decision (161 transcripts) than the broadcast news stations (12 transcripts). Although MSNBC (69 transcripts) had the most coverage of the decision, CNN (67 transcripts) was a close second, followed by Fox (25 transcripts). NBC had four, ABC had five, and CBS had three.

Although MSNBC had more transcripts covering the decision than the other stations, CNN had wider coverage across a variety of shows, a total of 15. These were: *CNN Newsroom* (23), *The Situation Room* (10), *Rick's List* (8), *American Morning* (6), *CNN Live Event/Special* (4), *John King, USA* (4), *CNN Sunday Morning* (2), *CNN Larry King Live* (2), *Anderson Cooper 360 Degrees* (2), *CNN Reliable Sources* (1), *Campbell Brown* (1), *State of the Union with John King* (1), *State of the Union with Candy Crowley* (1), *CNN Saturday Morning* (1), and *the Joy Behar Show* (1). These programs ranged from news programs to commentary and talk show programs.

Fox (25 transcripts) also covered the decision on a variety of programs, including news, commentary, and talk shows. It appeared on seven: *Fox Special Report with Bret Baier* (11), *Fox News Sunday* (5), *Journal Editorial Report* (4), *Live Event* (1), *The*

*O'Reilly Factor* (1), *Fox Hannity* (1), and *Fox on the Record with Greta Van Susteren* (1).

MSNBC's coverage of *Citizens* spanned only five programs: *Countdown* (27), *The Rachel Maddow Show* (17), *The Ed Show* (16), *Hardball* (5), and *MSNBC Special* (4).

In the case of NBC, references to *Citizens United* were made on three programs: *Meet the Press* (2), *Today* (1), and *The Chris Matthews Show* (1). CBS featured the decision on *CBS The Early Show* (2) and *Face the Nation* (1). ABC covered the decision on *This Week* (2), *Good Morning America* (2), and *World News with Diane Sawyer* (1).

Because the networks had far less coverage than the cable stations, the researcher examined specific findings for NBC, ABC and CBS together, followed by CNN, Fox and MSNBC. Issues addressed in commentaries from all six news channels, range from: the amount of money going into the midterm elections (77), the anonymity allowed to companies putting ads out and whether or not foreign money was getting into the elections (16), Obama's criticism of the Court in his State of the Union address (8), his nomination of Elena Kagan to the Supreme Court (47), to discussions on the day of the decision and the two weeks that immediately followed it (13).

These all fall under the broader categories of coverage: 1. initial aftermath of the decision, 2. the State of the Union address, 3. the midterm elections, and 4. the new Supreme Court nominee (see Figure 1 below).

The majority of the discussion focused on the midterm elections. The topics discussed ranged from the amount of money going into the elections, whether foreign

money was included, the lack of disclosure requirements in advertisements, to which party was benefitting more.

The second highest category of coverage related to the new Supreme Court nominee. Within this area, the early conversation focused on the pending retirement of Justice Stevens followed by the discussion of who would be the new nominee. Once she was nominated, Elena Kagan became the focus of discussion. While the *Citizens United* decision came up in other instances, the two other most significant were the coverage when the decision first came down and President Obama's State of the Union address.

Generally speaking when referring to each of these discussion themes, programs on MSNBC, NBC, ABC, CBS and CNN all were critical of and generally negative about the 2010 decision. On Fox commentators and guests generally defended the decision, accusing President Obama and Democrats of lying and attacking it unfairly. The following is a detailed discussion of these themes and the viewpoints of the stations.

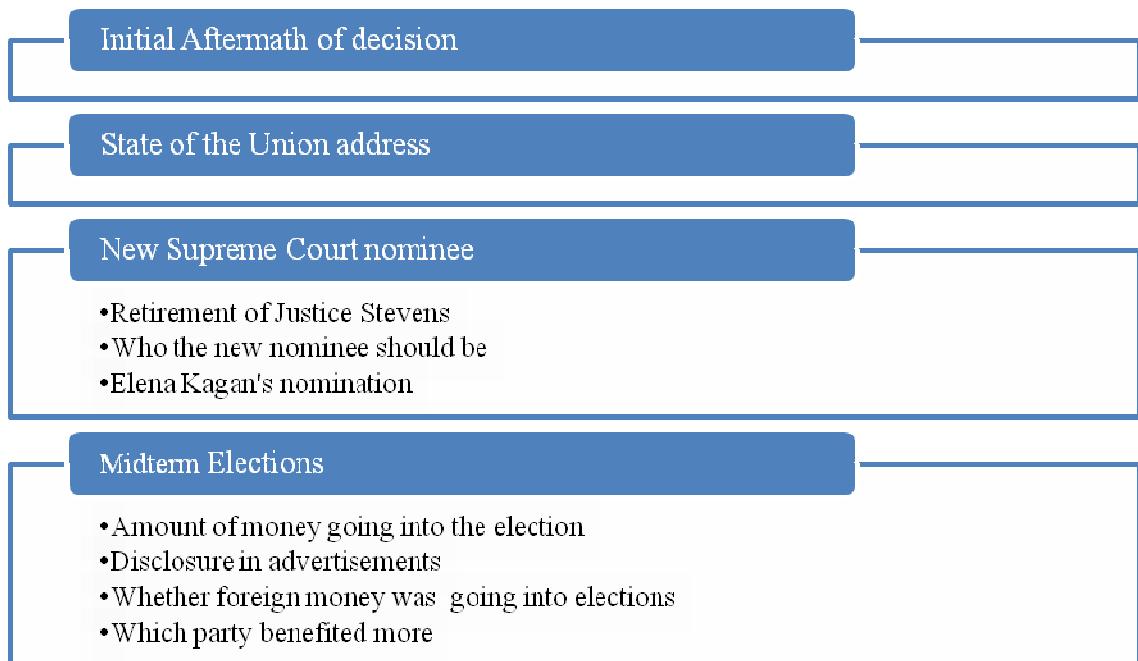


Figure 1: Emergent Frames used by the Network and Cable Channels

## **Discussion**

### **NBC, ABC, and CBS**

NBC, ABC, and CBS networks covered issues such as the Kagan nomination, the immediate aftermath of the Supreme Court decision and the midterm elections. The discussion about the midterm election focused on the amount of money going into the election, the lack of disclosure about who was funding the ads, the fear that foreign money would get into the American elections and influence its outcome, and that one political party would gain an unfair advantage from the decision.

All four of NBC's transcripts negatively portrayed the decision, framing it in the context of Elena Kagan's nomination to the Supreme Court, which was seen as a positive step to offset the perceived Republican imbalance on the Court that had resulted in the decision. Interestingly, most of the negative statements came not from NBC anchors or commentators but Democratic politicians. Democratic Senator Mitch McConnell described *Citizens United* as "a blow for the First Amendment," on one episode of *Meet the Press* (May 16, 2010). On another episode, Democratic Senator Chuck Schumer said that people were "shocked" and that the "sanctity of our political process" was now at risk (May 16, 2010). On *The Chris Matthews Show*, Andrew Sullivan, of the *Atlantic Senior Editor*, stated that, because this decision was a sign of "radical moves to the right on the court," Obama's nominee would be a "real lefty" (May 16, 2010). The *Today* show aired President Obama's nomination of Kagan, in which he emphasized that Kagan

had “defended” Americans when she argued for the government in her role as Solicitor General during the *Citizens United* case (May 10, 2010).

Instead of the Supreme Court nominee, the three CBS transcripts all aired in October shortly before the election focused on the money coming into the midterm elections. On *CBS The Early Show*, anchor Harry Smith reported the increase is “thanks to” *Citizens United* and that a lot of money was pouring in “especially on the Republican side.” (October 6, 2010) On another episode of *CBS The Early Show*, Democratic Governor Ed Rendell complained that groups were putting “millions of dollars into this campaign and under the *Citizens United* decision, they don’t have to report who gave the money” (October 11, 2010). Rendell also said that most of the money was going to Republican candidates. The third transcript, from *CBS Face the Nation*, addressed whether or not foreign money would influence the elections. Republican Liz Cheney and Democrat Howard Dean debated whether foreign money was getting into the midterm elections. Dean believed it was, but when asked, could not provide evidence of this. Dean referred to the decision as “outrageous” and “one of the worst Supreme Court decision[s] ever” (October 17, 2010). The debate also focused on whether or not corporations should have the right to anonymity in advertising and whether Republicans would be able to mobilize more money than Democrats. Thus, while CBS discussions included comments from one anchor, the negative frames mostly came from politicians. NBC, on the other hand, seemed exclusively to have commentary from Democratic politicians. CBS also attempted to balance the commentary by including a debate by both parties. However, in the midst of this discussion, the commentary from the anchor was negative.

Of the networks, ABC News had the most broadcast transcripts mentioning *Citizens United*, with a total of five. ABC News commentators were also generally negative toward the decision, but covered more of the decision than the other broadcast stations. The first, from *World News with Diane Sawyer*, which aired on the day of the decision, addressed its effect on the marketplace of ideas noting more voices would now be heard (January 21, 2010). But the commentator also speculated that the midterm elections would test the impact of the decision with a larger number of ads sponsored by corporations and even implied it would lead to corruption in the words: “Every time a member of the House of Representatives or a senator takes a vote...they’ll be thinking about all that new money and whether it will be for them or against them.”

In one episode of *This Week*, George Will of ABC News said the decision “most pleased conservatives,” (April 11, 2010) and in another episode of *This Week*, former Democratic President Bill Clinton referred to the decision as one of “the most bizarre rulings in the history of the Supreme Court” (April 18, 2010). A debate on *Good Morning America* touched on the issue of which political party stood to gain an advantage from the decision and whether groups would be able to secretly buy elections. The final transcript from *Good Morning America* was an interview with Supreme Court Justice Stephen Breyer about Obama’s State of the Union Address, where he called out the Supreme Court, and Alito mouthed the words “not true” (September 14, 2010). Breyer adopted a neutral tone and said that, despite the incident, he hoped there would always be at least one justice at the State of the Union addresses in the future.

Overall the coverage on the three networks was negative. Much of the commentary which framed the decision came from guests. While NBC’s guests were

almost always Democrats, the other two stations sought to balance commentary by including debates or interviews from both sides. However, to the extent there were comments from hosts and anchors, their opinions were negative.

## CNN

Four news events drove the coverage on CNN surrounding the *Citizens United* decision: commentary on the day of the decision and the week that followed (5 transcripts), the State of the Union address (4 transcripts), the new Supreme Court nominee (23 transcripts), and the midterm elections (34 transcripts) (see Table 1 on p. 62). There was one unrelated transcript --Joy Behar on her show suggested that Justice Thomas voted in favor of *Citizens* because of his wife's affiliation with the group Liberty Central, which Behar described as, "a right wing group really out to get Obama and the Democrats" (October 20, 2010). Behar also said that "Clarence Thomas...has spent a lot of time trying to get the Supreme Court to say, ok, [sic]corporations, bring on the money" (October 20, 2010). But Behar's guest, political analyst Christopher Metzler, said Behar's claims were "a stretch."

On the day of, and the weeks that followed the decision, newscasts and commentators on all stations were explaining what it meant and debating whether or not it was a good thing for Americans. *CNN Newsroom* anchor Kyra Phillips interviewed CNN's political editor Mark Preston about the implications of the decision (January 21, 2010). He said, "what we'll probably see in the next few months is this flood of money heading into the 2010 midterm elections by corporations, by unions, and also by private individuals...who want to influence certain races," he later noted that these groups "can put as much money as they want down to try to influence [the races] and try to run ads"

(January 21, 2010). On another airing of *CNN Newsroom*, anchor Tony Harris, made a factual and unbiased presentation of the issues in the *Citizens United* case (January 21, 2010).

On *Rick's List*, anchor Rick Sanchez raised the issue that many companies resident in the U.S. are foreign owned, which created the potential for foreign influence in American elections. He also said that the majority of people who listened to Michael Smerconish's conservative morning talk show, the *Michael Smerconish Program*, reported being opposed to the Supreme Court ruling (January 22, 2010). On *The Situation Room*, host Wolf Blitzer covered the pros and cons of the decision. Blitzer speculated that the "dizzying number of ads in the last presidential election," could "be the norm" after *Citizens United* (January 21, 2010). Blitzer also slammed the Supreme Court for "effectively smack[ing] down 100 years of the government's trying to police how unions and big business influence elections" (January 21, 2010). Blitzer said that, while Republicans saw the decision as a victory, Democrats saw it as a disaster. He noted that it would be difficult for people to know who created candidate ads because not all corporations are required to disclose that information.

President Obama's State of the Union address on Jan. 27, 2010 also focused attention on the *Citizens United* decision. On *State of the Union with John King*, anchor Howard Kurtz addressed Justice Alito's reaction to President Obama's criticism of the decision in a debate balanced between the show's guests, representing each political party. On *CNN Sunday Morning*, correspondent Brian Todd called the president's actions "a biting face-to-face political jab at the court" (March 14, 2010). Chief Justice Roberts' response post-State of the Union was the main point of coverage for this transcript and

two transcripts from *The Situation Room*. Roberts took issue with the Court having to sit in Congress motionless while the rest of the assembly cheered wildly, calling it “troubling,” a “political pep rally,” and noting that “I’m not sure why we’re even there” (March 10, 2010).

Coverage of the “new Supreme Court nominee” can be broken down even further. First, there was speculation about whether Justice Stevens would retire, followed by the official announcement of his retirement. This was followed by the speculation of who would be the new nominee, ending with the official nomination of Elena Kagan.

When the speculation that Justice Stevens would be leaving began, *The Situation Room*’s anchor Suzanne Malveaux touted this as President Obama’s opportunity to select a new justice who could bring balance back into Court decisions. She stated “this is a court that has become more political,” citing the *Citizens United* decision as an example (March 15, 2010). On *CNN Newsroom* the topic arose again, with Jeffery Toobin, CNN’s senior legal analyst, stating that a liberal justice would be Obama’s most likely candidate. In another airing of *CNN Newsroom*, Toobin said that Justice Stevens had “watched the Supreme Court move to the right on issue after issue. And the decision in January, the *Citizens United* case, where it said that corporations have free speech rights almost equal to those of human beings, was just a cap stone to that change in the Court” (April 5, 2010). On *Campbell Brown*, *Citizens* is referred to as one of the biggest cases that Justice Stevens “lost” during his 36-year career on the Supreme Court bench (April 9, 2010). When the conversation turned to who the nominee would be, transcripts from all programs under review speculated it would most likely be someone liberal.

On *CNN Larry King Live*, talk radio host Stephanie Miller, said “the Supreme Court is already listing [sic] very far to the right with the *Citizens United* decision” (April 9, 2010). On *CNN Newsroom*, Toobin quotes Justice Stevens as saying “the court had moved to the right and he had stayed in the same place” (April 9, 2010). The 90-page dissent written by Stevens in *Citizens* was the longest of his career. On *American Morning*, Toobin said “this Supreme Court in particular has shown no hesitation to overruling [sic] precedents” (April 14, 2010). On *Rick’s List*, Democratic Senator Patrick Leahy said “we have right now a very, very activist, conservative activist, Supreme Court” (June 29, 2010). On three additional transcripts guests refer to an activist and partisan Supreme Court, citing the *Citizens United* majority decision as an example.

After Elena Kagan’s nomination, the discussion focused on the fact that she had lost the *Citizens United* case as the Solicitor General. When President Obama introduced her as the nominee, he said “last year, in the *Citizens United* case, she defended bipartisan campaign finance reform against special interest seeking to spend unlimited money to influence our elections” (May 10, 2010). He also said that Kagan chose to argue *Citizens United* as her first case before the Supreme Court even though she had “long odds of success” (May 10, 2010).

While most of the transcripts were similar in issues raised regarding the composite of the Court and the new nominee, one differed. *CNN Live Event/Special* speculated that the decision would affect the marketplace of ideas in the United States. Toobin stated that “Democrats, usually backers of the underdog, have been very hostile to this case because they believe that in giving corporations and labor unions a lot of power that distorts the marketplace of ideas” (June 29, 2010).

The majority of the coverage of *Citizen United* by CNN focused on the midterm elections and the likely impact of the new legal status granted to corporations. Coverage focused on:

1. the increasing amount of money being spent on advertising by third parties
2. the increase in ads
3. the negative nature of the ads
4. the potential for foreign influence
5. the issue of non-disclosure
6. the debate over a perceived Republican advantage due to the decision
7. charges that the Supreme Court was comprised of “conservative activists”

(April 21, 2010).

John King sarcastically thanked the Supreme Court for allowing corporations to spend “as much money as they want” (August 23, 2010). He played a clip of President Obama saying groups are “running millions of dollars in ads against Democratic candidates” (August 23, 2010). This theme that Republicans were the beneficiaries of the *Citizens United* decision is reflected throughout the transcripts. On *American Morning*, anchor Ali Velshi said “in fact, in federal races, pro-GOP groups outspent pro-democratic groups almost three to one. In state races, it was almost two to one” (October 4, 2010). He also noted that, when money is channeled through non-profits, “we don’t actually have to know who is paying for these ads.” Anonymity leads to a sense of no repercussions which, Velshi said could result in a higher number of negative ads (October 4, 2010).

In a conversation on another episode of *American Morning*, guest Evan Tracey of Campaign Media Analysis Group agreed, noting that the decision to run negative campaign ads was not surprising because they “absolutely work” (August 23, 2010). Pundits estimated \$4.2 billion would be spent on advertising during what would be an extremely competitive midterm election. On another episode of *American Morning* anchor John Roberts stated that, in the wake of *Citizens United*, there “could be a historic level of mudslinging” (August 3, 2010).

On *The Situation Room*, Democratic strategist Donna Brazile said “there’s been some outrageous spending by third party troops,” and “mainly by conservatives” (October 4, 2010). CNN Newsroom correspondent Josh Levs speculated that, with all the money coming from conservative groups, “Republicans see an opportunity” (October 23, 2010). In a discussion on disclosure, Evan Tracey said that groups were “afraid of being targeted” because of their political viewpoints (October 21, 2010). For example, if a corporation were to fund an ad backing a candidate who wanted to outlaw abortion, the corporation, itself, could receive backlash from pro-choice groups.

In early May a bill that would have required organizations to disclose all campaign-related expenditures to the public failed to pass in the Senate. On his show, John King said Republicans had opposed the Disclosure Act, but Democrats supported it (October 6, 2010). While King indicated his concern over the new election climate created by *Citizens United*, he did not openly support or oppose the Disclosure Act.

On *Anderson Cooper 360 Degrees*, Cooper focused on the issue of not knowing where the campaign funding came from in his “Keeping Them Honest” segment. While admitting that campaign finance laws bar foreign money from influencing elections, he

cited “giant loopholes that [could] allow people and corporations to practically buy an election without ever revealing themselves” (October 4, 2010).

On *Rick’s List*, Toobin claimed that activist judges “use their power to overrule the will of the people,” and he said the *Citizens United* decision was the perfect example of the conservative activism of the Supreme Court. Toobin said, in coming to the decision, the Supreme Court was saying “we know better” than the previous justices and the American people (June 29, 2010).

In the eleven days leading up to the midterm election the discussion focused on the sheer number of ads being aired. Five transcripts from *CNN Newsroom* and one from *CNN Sunday Morning* focused around concerns that, in the wake of the *Citizens United* decision, more money was being spent in the elections and more ads were being aired than ever before.

CNN focused more on money in covering the *Citizens United* decision than any of the other cable stations did. John King noted there was “tons, millions of outside money coming in affecting races probably in your community” (October 6, 2010). On *The Situation Room*, Wolf Blitzer asked if the money was making a difference and fellow anchor John King replied yes. Blitzer also called the amount of money that had entered the election “mind-boggling” (October 22, 2010).

The high number of campaign ads and their negative content was another focus of coverage. On *CNN Newsroom*, advertisers were deemed the real winners of the midterm (October 20, 2010). Anchor Mark Preston said, “ad-makers here in Washington, D.C., local television states across the country, are making lots of money off this election” (October 20, 2010).

CNN did a day-by-day analysis of the midterms that included in each case the impact of the decision. No other station examined the elections as closely and included references to the impact of *Citizens United* in each day's analysis. Whether the station was airing debates between candidates, touching on how the decision was affecting the race, or just discussing it themselves in regular programming, the *Citizens United* decision came up consistently in discussions in the months leading up to the actual election.

While the tone in the CNN transcripts is generally unfavorable to the decision, most of the opinionated statements came from guests on the show rather than the commentators themselves. This was not the case with MSNBC where show hosts and commentators freely and outspokenly attacked the decision.

### **MSNBC**

MSNBC's coverage was similar to CNN and fell into six groupings. Like CNN, MSNBC most often mentions *Citizens United* in the context of the midterm election coverage (39 transcripts). Coverage also included the discussions on the day of and in the weeks immediately following the decision (6 transcripts), the coverage of the State of the Union address (3 transcripts), coverage of the failed Disclosure bill (4 transcripts), coverage of the new Supreme Court nominee (13 transcripts), and the last category was miscellaneous (4 transcripts). These included cases where the decision was only mentioned in passing (3) and a report on Justice Thomas' wife's involvement with non-profits (1).

From the day of the decision coverage by MSNBC took a decided slant. On that day, *Countdown* aired a promotion that decidedly framed the coverage of the decision:

“The Supreme Court has just predetermined the winners of next November’s elections. It won’t be Republicans. It won’t be Democrats. It will be corporate America” (January 21, 2010). Immediately following the Supreme Court’s decision, Keith Olbermann, on *Countdown*, said that foreign money would “flood the airwaves” with commercials and that Chief Justice John Roberts “took it upon himself to expand” *Citizens United* (January 26, 2010). On another episode, Olbermann said that *Citizens United* “opens up Pandora’s Box for the big boys to buy the elections secretly” and enables “full corporate takeover of our elections” (February 17, 2010). On yet another show, he noted that, in the wake of the *Citizens United* decision, “corporations have the ability now to put unlimited amounts of money into campaigns to elect or defeat a candidate” (February 2, 2010).

MSNBC commentators generally defended President Obama’s January 27 State of the Union address. On *Countdown*, Olbermann believed Justice Alito was “rightly criticized” for mouthing the words “not true” (January 28, 2010). He said disrespect for the president was at a “new low in a Supreme Court judge who shakes his head and doesn’t even understand the implications of the decision with which he concurred. Don’t do it too hard, it may fall off,” he quipped.

Rachel Maddow said that the decision “essentially destroy[s] all of the important rules about campaign donations in our country” (October 8, 2010). She also said that Justice Alito was wrong and it was “very true” that “shady and potentially foreign funding of conservative candidates” will be a “major issue for Democrats in this year’s elections.”

On *The Ed Show*, Ed Schultz, referred to Citizens United as a “right wing group” that “did a hit job on Hillary Clinton and won the support of the Supreme Court” (March

11, 2010). While Schultz attempted to bring more balance to the discussion by interviewing David Bossie, founder and president of Citizens United, his own bias came out in the interview when he said that Obama called the Supreme Court out in his address and “now righties are accusing him of violating the balance of power.” In the interview, Schultz said that legislation will be brought forward to try and protect the “little guy.” Bossie, describing himself as a little guy too, insisted that the decision can’t be undone.

The legislation that Schultz discusses did come forth in the form of the Disclosure bill, but this was ultimately defeated in the Senate in September, a defeat which MSNBC commentators portrayed negatively. On her show, Maddow said that Republicans “effectively kill[ed]” the bill despite the fact that “80 percent of the American people opposed the [*Citizens United*] decision...” (July 27, 2010). She said “Republicans in Congress have basically decided that public opinion on individual issues and legislation just doesn’t matter to them anymore” (July 27, 2010). On *The Ed Show* Schultz called the Republicans act in blocking the Disclosure Act “un-American,” and said Republicans had “stood up with big business like they always do, against regular working Americans” (July 27, 2010). He ended by saying that, by their action in killing the bill, Republicans had given corporations “the power to essentially buy our elections” (July 27, 2010).

The coverage of the new Supreme Court nominee started with speculation that Justice Stevens was about to retire, followed by his announcement of retirement, retirement, and speculation about who would be the new nominee. Finally it ended with the discussion surrounding the Kagan nomination.

In the aftermath of Steven’s retirement there was a discussion on *The Ed Show* about who the new nominee should be, John Nichols, Washington correspondent of *The*

*Nation* said, “the *Citizens United* case proved, it [The Supreme Court] also decides the framework of our democracy and, increasingly, a lot of economic issues” (April 9, 2010). On *Hardball*, Chris Matthews interviewed judiciary committee member Senator Amy Klobuchar. She said the new nominee should be someone like Justice Stevens because he wrote a “strong defense” that said “corporations aren’t people, people are people” (April 9, 2010).

On another airing of *Hardball*, Chris Matthews interviewed judiciary committee member Democratic Senator Chuck Schumer who said the *Citizens United* decision “makes you more want someone practical because you got the feeling that the five Justices who ruled for it had no understanding of the pernicious, corrosive effect that money had on our politics” (April 13, 2010).

President Obama chose Elena Kagan as his nominee for the Supreme Court on May 10, 2010. When Elena Kagan became the official nominee, MSNBC coverage related to the *Citizens United* case that she had argued, and the composition of the Supreme Court that had sat on the case, took an increasingly negative turn. Chris Hayes, guest hosting on *The Ed Show*, said that senators questioning Kagan, were “vocal about the problems with the current court particularly its consistent privileging of corporate interests over citizens interests,” citing the example of *Citizens United* (June 30, 2010).

Rachel Maddow’s coverage of Kagan’s nomination was hopeful and positive, Maddow shared her belief that Kagan would balance out the Court (June 28, 2010). Maddow cited Senator Al Franken’s comment that “the Roberts Court...[favored] powerful corporate interests and [was] against the rights of individual Americans.” She also cited Senator Sheldon Whitehouse, who said that *Citizens United* was “opening our

democratic system to a massive new threat of corruption and corporate control” (June 28, 2010). In another show, however, Maddow expressed concern that Kagan would not be strong enough to stand up to the conservative members of the Court since she had lost when arguing the *Citizens United* case before the Supreme Court as Solicitor General (May 10, 2010).

As in the case of CNN, *Citizens United* received the most coverage in conjunction with the midterm elections on MSNBC. Within this coverage, MSNBC closely watched the races to gage whether Republicans or Democrats had gained the greater advantage from the decision. The discussion focused on the amount of money being spent, where the money was coming from, and the negative nature of most ads.

On *Countdown*, Lauren Valle, a moveon.org supporter, referred to the midterm elections as an “official merger between the Republican Party and corporate America” (October 26, 2010). *Countdown* reported that the Republican spending advantage in the election was 6 to 1 (September 28, 2010). As the elections grew closer, Olbermann updated the odds at 8 to 1 (October 6, 2010). On Maddow’s show, former Democratic governor Howard Dean said that the Democrats couldn’t keep up with Republicans in fundraising (August 6, 2010). This monetary advantage was attributed to the influx of third party money as a direct result of the *Citizens United* decision.

In two MSNBC Special reports, a broader spectrum of opinion was presented, defending the *Citizens United* decision. In one, Lawrence O’Donnell, an MSNBC anchor, stated “...banks and corporations are people too. *Citizens United* taught us that” (November 2, 2010).

MSNBC's hosts viewed *Citizen United*'s likely effect on the midterm elections as being negative for not only Democrats, but Americans as a whole. Olbermann (August 2, 2010) called the aftermath a "cesspool," Maddow (January 30, 2010) said that it "opened the floodgates to unrestricted corporate spending," Schultz (March 25, 2010) called it "bad for America." Maddow (October 29, 2010), Olbermann (October 7, 2010), Schultz (October 18, 2010), and Matthews (October 22, 2010) all said that foreign money and secret money were an issue. Maddow (October 4, 2010) believed that "conservatives are doing their very best to flood the political system with totally unrestricted, anonymously donated money that will wash away every other political dynamic there is." Matthews said "big corporations at home and overseas are throwing money at the U.S. Chamber of Commerce so that it can bankroll campaigns against Democrats" (October 22, 2010). Schultz accused Karl Rove "and other Republican political operatives" of "quietly buil[ding] a network of five conservative groups that specialize in campaign fund-raising, organizing and advertising" (May 6, 2010).

Within the discussion of the millions of dollars flooding into the elections, Maddow posed the question, do "human sized" donations even make a difference anymore? (September 30, 2010) Schultz challenged the companies putting foreign money into the election to "come out and show us where their donations are coming from" (October 28, 2010). Olbermann also said that foreign money was coming into the election. He called *Citizens United* "far worse" than the end of democracy and said that "half of the 80 million dollars spent by outside groups on the midterms is from unknown individuals" (October 4, 2010). He also said that the "faceless, nameless corporate interests are spending unprecedeted sums of cash, possibly some of it foreign, to push

their radical right-wing candidates over the finish line” (October 4, 2010). Olbermann also stressed on multiple shows that the types of ads being funded by the now empowered corporations were negative attack ads.

On the day following the election *The Ed Show*, Schultz announced “Citizens United, Karl Rove and corporate cash took down a lot of Dems last night” in the Wisconsin election (November 3, 2010). Although the Republican candidate for Wisconsin, Ronald Johnson, defeated the Democratic candidate Russ Feingold, Senate seats were ultimately divided with Democrats winning 54, Republicans 46 and Independents 3.

If the MSNBC hosts remained un-swayed in their opinion that *Citizens United* was a bad decision for the American people and the election process, Fox News was just as dogged in its defense of the decision.

### **Fox News**

Fox News had one transcript from the day of the decision, five transcripts regarding the State of the Union address, four on the Disclosure Act, seven discussing Elena Kagan’s nomination, and seven addressing the issue of foreign money. Unlike the other two cable stations, there was only one Fox News transcript on *Citizens United* as it pertained to the midterm elections.

*Fox Special Report with Bret Baier* in its coverage on the day of the decision, speculated that the decision would be a “major game changer for the 2010 midterm elections” (January 21, 2010). In another transcript, dated some eight months before the November election specifically referring to the midterms, on the *Journal Editorial*

*Report*, James Copeland of the Manhattan Institute, predicted that the decision would not make “an enormous fundamental difference unfortunately” (March 27, 2010).

The two most covered issues were the Kagan nomination and the issue of foreign money and in each case Fox News took a position that favored the Supreme Court decision. Fox News coverage disputed the accusation that foreign money would seep into the election process. In *Fox Special Report with Bret Baier*, Mara Liasson of National Public Radio, said “it’s clear that some of the organizations that are spending money on ads take foreign money, but it’s not clear they are using the foreign money in the ads. That would be illegal. The fact that they take foreign money is fine” (October 12, 2010). She noted that the “problem is the Democrats are being vastly outspent” (October 12, 2010). While MSNBC demonized the Chamber of Commerce, charging it with funneling in foreign funds, Fox defended it. On *Fox Special Report with Bret Baier*, syndicated columnist Charles Krauthammer accused Obama of being “McCarthy-like” in his accusation of foreign spending in elections (October 11, 2010). He also referred to it as “reptilian desperation,” and that it “oozes of slime and innuendo.” On the same show Juan Williams of NPR, chided Democrats for “using this [the decision] as a scare tactic to stir the base.”

*Fox News Sunday* discussed the issue of anonymous donors with guest Nina Easton, of *Fortune Magazine*, who insisted there had been “anonymous donors before the Citizens United decision” (October 24, 2010). Bill Kristol, of *The Weekly Standard*, added “I think it’s a healthy thing that there has been incredible participation by big donors and also by small donors.” In an interview Dana Perino, former White House press secretary for George W. Bush, said on *Fox Live Event* that “the Democrats are

having a rough time. They're going to lose seats in November big time" (October 11, 2010). But she refuted claims that Republicans "use[d] all sorts of foreign donations to spend on campaigns. It's demonstrably false..." She also noted that Republicans were outspent in the 2004, 2006, and 2008 elections.

Four Fox News transcripts focused on attempts by Congress to pass the Disclosure Act, which was perceived as being aimed at weakening the *Citizens United* decision by requiring corporations to disclose their identity in advertisements. After initial discussion of the act, Citizens United President David Bossie, interviewed on *Fox Special Report*, said that "once again, the government has the ability to say who can participate and who can't" (April 29, 2010). When the act was first passed through the House, Baier on *Fox Special Report*, referred to it as "some of the strongest ever disclosure requirements for election-related spending" and said that it was "designed to blunt the impact...of *Citizens United*" (June 25, 2010). On the *Journal Editorial Report*, host Paul Gigot called the Disclosure Act the "Democratic response" to *Citizens United* (June 19, 2010). When the act ultimately failed in the Senate, 41-57, Juan Williams of NPR stated on *Special Report* that "Democrats, Republicans, but especially the Republicans said no" to "transparency in terms of the campaign contributions" (July 27, 2010).

While MSNBC defended President Obama's State of the Union address, Fox defended the Supreme Court's decision. Fox's *Journal Editorial Report* referred to the State of the Union address as "the democratic attack on the Roberts' Court," an attempt to "demonize" them and "make it into a radical situation" (July 3, 2010). On *Fox Special Report with Bret Baier*, Charles Krauthammer, a syndicated columnist, described the

President's "attack" on the Supreme Court as "unprecedented...a breach of etiquette" (January 28, 2010). On another episode, Baier interviewed David Bossie of Citizens United, who said that the President was "factually wrong when he attacked the Supreme Court" (January 28, 2010). In another *Fox Special Report*, Krauthammer said that Obama breached "protocol and decorum" and that it was an "insult" to the Supreme Court judges (March 10, 2010). Two other Fox News transcripts said the President had wrongly accused the Supreme Court of allowing foreign money into elections.

Like CNN and MSNBC, Fox also covered Elena Kagan's nomination. This coverage accounted for seven transcripts tying with the issue of foreign money for the most emphasized by the cable station. The discussion surrounding *Citizens United* and Elena Kagan's Supreme Court nomination focused on Kagan's role in prosecuting the case as Solicitor General, ultimately losing the case, and disagreeing with the Supreme Court's decision. Most of the comments were neutral, although four implied she would be a more liberal judge because she had argued against the *Citizens United* organization in the case.

Of the three cable news channels, Fox covered the *Citizens United* decision least. Fox News' coverage was, however, both more supportive of the Supreme Court decision than the other stations and tended to defend the anonymous donations and the issue of foreign money seeping into the electoral process. Unlike the other stations, Fox did not focus on the specific sums of money going into the midterms.

Table 1

*Breakdown of Issues Covered in the Transcripts by Category*

	<b>MSNBC</b>	<b>CNN</b>	<b>FOX</b>	<b>CBS</b>	<b>NBC</b>	<b>ABC</b>
Decision and weeks after	6	5	1	0	0	1
State of the Union address	3	4	5	0	0	1
Disclosure	4	7	4	0	0	0
Supreme Court nominee	13	23	7	0	4	1
Midterm Elections	39	34	1	3	0	1
Foreign Money	11	4	7	0	0	0
Thomas' Wife	1	1	0	0	0	0
Miscellaneous	3	0	0	0	0	1

(note: some transcripts had multiple frames, but the initial categorization was based on the main frame/focus of each transcript).

### Specific Frames

As stated earlier, Iyengar (1991) identifies two types of frames: thematic and episodic. Fox News was more likely to use episodic frames, focused on particular instances or events. The station focused on specific aspects of the decision. Mainly, Fox looked at the attempt to pass the Disclosure Act and President Obama's criticism of the Supreme Court's decision in his State of the Union address. By using the episodic frame approach, Fox framed the issue as sporadic and less serious.

CNN's coverage was more complete using thematic frames, which examined issues over a period of time, and looked at all its facets. Thematic frames place a higher degree of importance on an issue. CNN constantly examined the amount of money being spent and the types of advertisements being aired. The station compared

both the expenditures, the content, and quantities of advertising to previous election years and speculated that this would be the future of all elections. Thus, CNN examined the implications of the decision in a more holistic manner.

Entman's (1993) statement that news frames can diagnose causes and "identify the forces creating the problem," make moral judgments and "evaluate causal agents and their effects," is reflected in the coverage by all the stations (Entman, 1993, p. 52). MSNBC's show hosts clearly framed the *Citizens United* decision as having a negative effect on democracy in the U.S. CNN was more neutral, though most of the commentary on this cable channel also leaned toward the decision being bad. Fox, however, downplayed the seriousness of the decision.

Of the 67 CNN transcripts (see Figure 2), 44 % of the coverage focused on the midterm elections. It accounted for 49 % of MSNBC's 69 transcripts (see Figure 3) and only 4 % of Fox News's 25 transcripts (see Figure 4). The highest area of coverage for Fox News was split between the new Supreme Court nominee (28 %) and foreign money getting into elections (28 %). The next highest was 20 % which represented the coverage of the State of the Union address, then 16 % on disclosure requirements (see Figure 4).

The distribution of Fox News' coverage was fairly even, whereas CNN and MSNBC had big gaps between the highest points of coverage and the lowest. This might be due, in part t the fact that MSNBC and CNN both had more than twice the amount of coverage that Fox News gave to the *Citizens United* decision. The small amount of coverage would minimize the distance between areas of coverage. The next highest area of coverage for CNN (30 %), and MSNBC (16 %) was the new Supreme Court nominee. MSNBC also devoted 14 % of coverage to foreign money.

While Fox News had the least amount of transcripts of the three cable stations, it is still a significant difference while 49 % of MSNBC's and 44 % of CNN's coverage was devoted to midterms, only 4% of Fox News' examined this issue. While CNN and MSNBC emphasized the same of similar areas for extensive coverage and often used similar frames in the *Citizens United* decision, Fox News differed. The Supreme Court nomination, however, was a hot topic for everyone. The issue of foreign money entering the election campaign was a hot issue for both MSNBC and Fox News but not for CNN. On the other hand, CNN and MSNBC covered discussions in the immediate aftermath of the decision, whereas it was not a focus for Fox News.

Of the networks, CBS cared most about the midterm election, NBC about the Kagan nomination, and ABC did not focus on one area, but rather touched on different aspects of the decision.

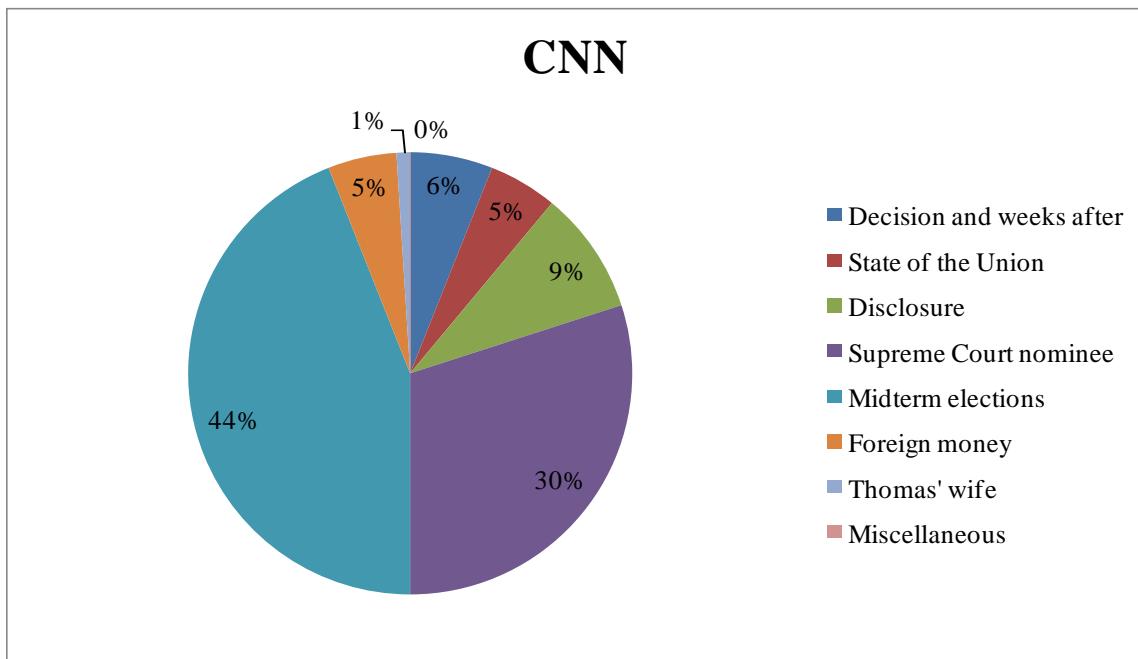


Figure 2: Percentage of Coverage across Categories for CNN

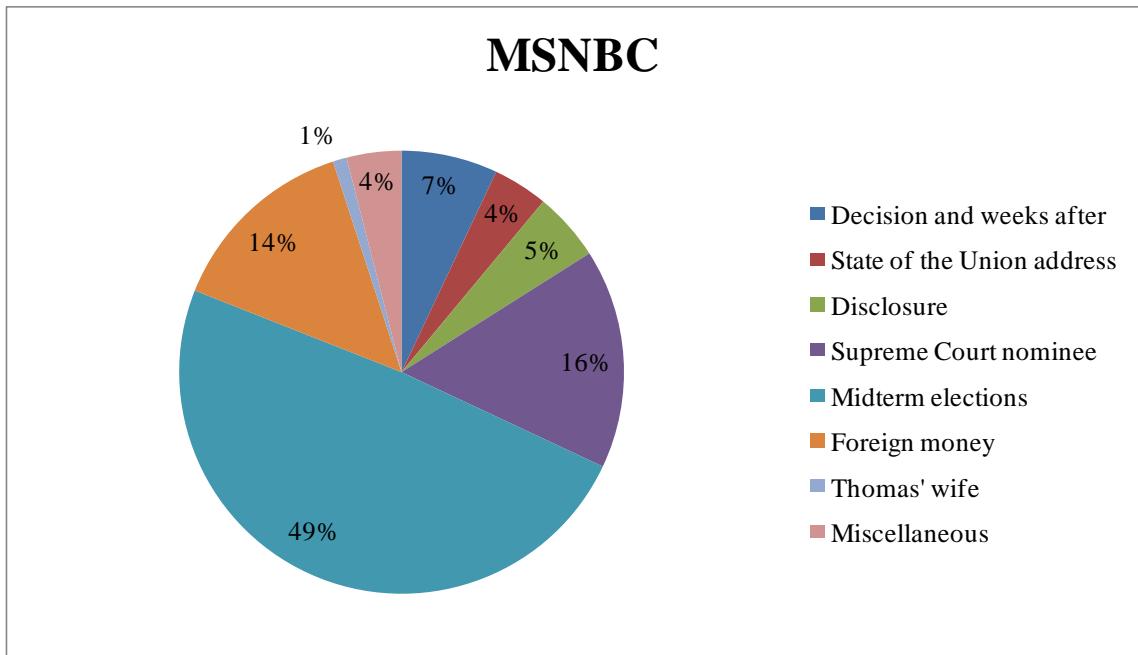


Figure 3: Percentage of Coverage across Categories for MSNBC

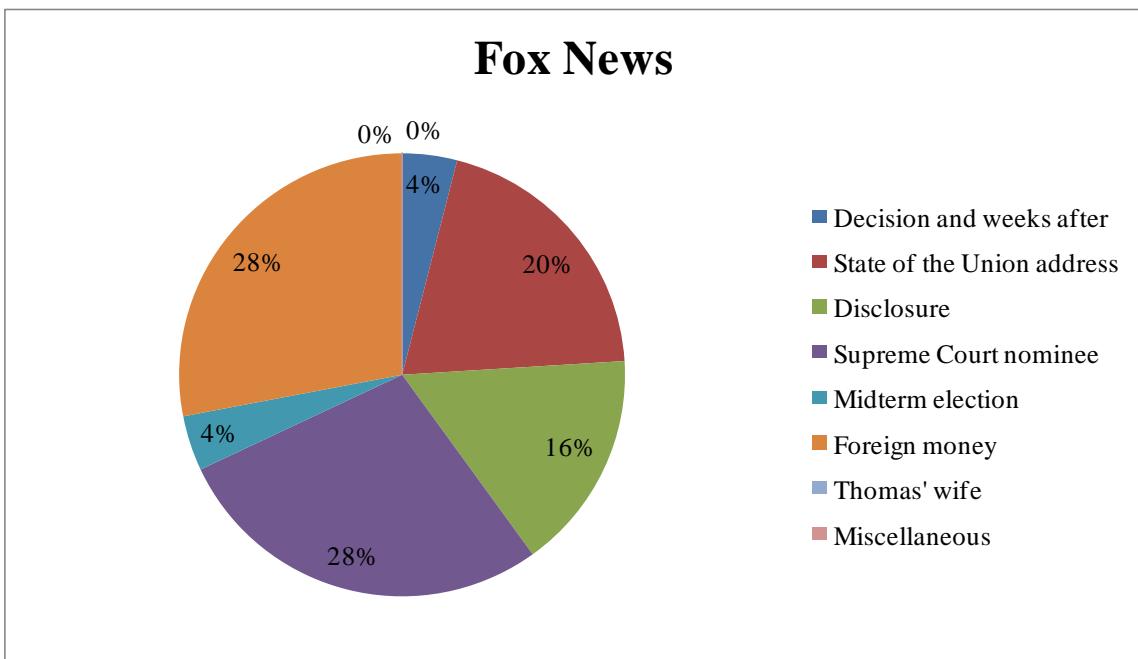


Figure 4: Percentage of Coverage across Categories for Fox News

## **Conclusion**

This study sought to find out how six news stations framed the coverage of the Supreme Court decision *Citizens United v. Federal Election Commission*. This was done by examining the transcripts from the three broadcast networks NBC, ABC, and CBS, as well as the three cable stations CNN, MSNBC, and Fox News. Qualitative textual analysis of the transcripts yielded common areas of coverage: the day of and immediate aftermath of the decision, the State of the Union address, the midterm elections, and the new Supreme Court nominee.

The cable news channels made far more references to the decision than the network news channels. Cable channels generally offer far more commentary shows than networks which could account for this difference in coverage. While MSNBC had the most transcripts about *Citizens United*, CNN and Fox News referred to the decision across a larger variety of shows.

It was no surprise that the news stations covered the meaning and potential effects of the decision extensively. While this accounted for most of the coverage by CNN and MSNBC focused on the decisions meaning for the midterms it was far from the only topic addressed, and Fox News only referred to it once. Thus, while CNN and MSNBC seemed to emphasize the decision's effects, Fox News seemed to minimize it.

While MSNBC and CNN were both critical of the decision's effect, and what they deemed to be an unfair Republican advantage, and kept the issue continuously in the public sphere, Fox News mentioned *Citizens United* in direct relation to the midterm

elections only once and in a manner that implied a positive effect. On the other hand in several references to the decision, CNN and MSNBC mainly framed it negatively. Thus, while CNN and MSNBC attempted to highlight the negative impact of the decision, Fox seemed to have brushed the decision aside as minimal and positive.

President Obama's State of the Union address which criticized the Supreme Court decision was also framed differently by the stations. MSNBC commentators and guests chastised the decision and were supportive of the President's criticism, while Fox News commentators and guests defended the Supreme Court and chastised the President.

When Justice Stevens retired, the discussion around his retirement focused on the last truly prominent opinion he wrote; the 90-page dissent in *Citizens United*. The news of Stevens' retirement and Kagan's nomination featured prominently on all cable stations and on NBC. Kagan, the new nominee, also had connections to *Citizens United* as she was the Solicitor General who argued the government's case and ultimately lost. As expected, MSNBC and CNN touted the Kagan nomination as a means of balancing the Supreme Court politically. However, interestingly, although this was one of the most covered areas by Fox News, the coverage was mainly neutral, referring only incidentally to her liberal tendencies.

Still, the researcher's expectation that the majority of the coverage of *Citizens United* would be framed within the context of the 2010 midterm elections was correct-- whether the discussion focused on the amount of money coming into elections from third parties, the debate about whether all of those parties should be required to fully disclose in their advertising, or whether foreign money was making it into U.S. elections. Fox News commentators downplayed the significance of any third party spending and the

issue of foreign money coming into the elections, saying this issue was not new. However, CNN and, more so, MSNBC commentators expressed serious concerns about the lack of disclosure in some corporate advertisements and the possibility of foreign money coming into the American election process.

There was also concern among commentators and their guests alike over which party was benefitting the most. Ultimately the Democrats managed a narrow majority of seats in the 2010 midterm Senate race: Republicans 46 seats, Democrats 51, and Independents 3 seats. However, in the race for the House, Republicans won 242 seats compared to the Democrats' 191 seats. There was an overwhelming Republican victory in the house and a narrow defeat in the Senate. This ended the trend of Democratic dominance in both houses that had been in place since 2004.

While the researcher did expect Fox News coverage to differ from CNN and MSNBC, it was surprising that Fox had fewer transcripts than the other two cable stations. The broadcast channels and MSNBC and CNN all mostly framed the decision negatively, while Fox News remained positive. Fox News and MSNBC had the highest occurrence of framing by the news station's employees themselves, whereas the incidents of framing appearing on CNN programs and on the networks often emanated from guests. From a journalistic perspective of objective reporting, CNN did the best job out of the three cable stations. As most of the coverage of *Citizen United* came from commentary shows there were overt frames in the coverage portraying the decision as negative or positive.

As stated earlier in the discussion section, Fox News covered the decision the least (see Table 1), but the coverage it focused the most on was fairly evenly distributed

(foreign money, Supreme Court nominee, State of the Union address, disclosure).

MSNBC and CNN had the most coverage, but for both stations more than 40 % (see Figures 2 and 3) of that coverage was devoted to the midterm elections, while a mere 4 %, (or one transcript) of Fox's coverage focused on the election (see Figure 4). This showed a clear difference between the three big cable networks in emphasis in coverage of issues. MSNBC and CNN emphasized the importance of the issue to the election, while Fox News downplayed its significance. CNN devoted an additional 30 % (see Figure 2) of its coverage to the new Supreme Court nominee. The other issues covered by CNN were comparatively less extensively covered. MSNBC's next highest area of coverage was also the new nominee (16 %) and foreign money (14 %), as seen in Figure 3. This shows that the next highest area of coverage for both of these stations was the new nominee which was tied for the highest in Fox News' coverage with foreign money (28 %), as seen in Figure 4. CBS also focused on the midterm elections; NBC, on the Kagan nomination; and ABC varied in its coverage.

Framing can actually occur in the deciding which people to invite on a program as guest commentators. As previously stated, both MSNBC and NBC featured almost entirely Democratic guests. David Bossie, president of Citizens United, was featured on some MSNBC programs, but on these programs he was treated in a hostile manner and his opinion was generally contradicted. On Fox News he was treated much more respectfully. Fox News guests also seemed to have stronger Republican ties. ABC and CBS programs sought to create a balance by inviting some Republican commentators to debates, but for the most part the guests on those programs were also Democrats.

When it comes to the cable channels, particularly Fox News and MSNBC, the primetime television slot is devoted to commentary and talk shows. This could account for the higher framing occurrences by anchors and hosts themselves as opposed to guests. In fact, the vast majority of shows that covered the decision for all three cable channels were commentary and talk shows.

According to Husslebee & Elliot (2002) framing occurs “when a journalist chooses to emphasize certain elements of a story over others” (p. 835), and Potter (1998) said journalists “construct reality” by selecting what gets covered, deciding on a story focus, and “determining how the story gets told” (p. 111). The way news stations frame coverage of an issue is crucial to a public understanding of that issue. The manner in which the media presents issues has a noteworthy impact on the audience, affecting understanding and awareness of public problems. Thus, the way these stations have framed the *Citizens United* decision, could have an impact on the way the public views it. Thus, this analysis is important. However, this paper focused on the frames used by the hosts and guests and did not examine the effects on audience response and belief. Future research could use surveys to examine the effects of the frames on public opinion.

This is the first study to look at the way news stations framed a Supreme Court decision to the public. A limitation of this study is that it looked at the way coverage was framed, but not at the effects of that coverage. Future research could also examine other forms of media for framing, such as online or print media. The scope of coverage could also be broadened to include coverage of the aftermath of the midterm elections.

Future research could also include visual elements by actually watching the broadcasts rather than just reading the transcripts.

The news stations in this study found the decision of *Citizens United* to be worthy of coverage, serious in nature, and likely to have a significant effect on the American electoral process. The picture painted by these stations presented a great shift in the midterm election process. It remains to be seen what, if any, effect *Citizens United* will have on the 2012 general elections and all future elections; and the way the media will frame the election.

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