**Summary of Citizens United v. Federal Election Commission**Citation: 558 U.S. 310 (2008)

**Relevant Facts**: Citizens United, a conservative non-profit organization, sought to air what it described as a documentary film about then-Senator and Presidential candidate Hillary Clinton. The film portrayed Clinton in an unflattering light. In addition to broadcasting the film, Citizens United sought to promote its release through televised advertisements. However, the 2002 Bipartisan Campaign Reform Act (BCRA) popularly known as McCain-Feingold limited use of corporate or union general treasury funds to support electioneering communications within 30 days of a primary election or 60 days of a general election. The terms of the BCRA specifically limited communications that mentioned candidates by name and were widely distributed. Fearful of potential liability, Citizens United brought suit against the FEC, requesting declaratory and injunctive relief, and arguing that the limitations of the BCRA were unconstitutional as applied to the film in question. The district court granted summary judgment to the FEC, relying on the Supreme Court’s earlier dismissal of a facial challenge to the BCRA.

**Issues**: Does the movie in question fit within the statutory definition of an electioneering communication, subject to FEC Regulation? Do limitations on corporate spending advocating or opposing political candidacies violate the First Amendment? Do the disclosure and disclaimer requirements of the BCRA unconstitutionally limit free speech?

**Holding**: The Court determined facial validity, not the application in this particular case, was the appropriate question for consideration, thus bypassing the Petitioner’s limited arguments. Yes, limitations on corporate expenditures violate the First Amendment. No, disclosure requirements provide some burden to speech but are within the valid authority of Congress to regulate elections consistent with the First Amendment.

**Reasoning**: Justice Kennedy delivered the opinion of the Court, joined in sections I-III by Chief Justice Roberts and Justices Scalia, Thomas, and Alito. In Section IV, Justice Kennedy was joined by all but Justice Thomas. Justice Kennedy first explained that Citizens United’s contention that their film did not meet the distribution requirements as it was only available through “on demand” services was inapplicable under a fair reading of the statute. Similarly, their request for an exception to the regulations as the film was mostly funded by private individuals was unsustainable under the majority’s reading of the statutory text. Furthermore, the majority explained that the potential for the BCRA to chill political speech made resolution of the substantive First Amendment claims necessary. As to the substantive claims, Justice Kennedy explained that laws abridging speech (political speech in particular) are subject to strict scrutiny. When, as here, the Government distinguishes between speakers and regulates speech on the basis of that distinction, history and logic suggest that the regulations are invalid. Next, the majority argued that the First Amendment had historically applied to corporations as well as individuals, until more recently when Congress asserted the authority to regulate corporate speech on the basis of a “compelling” interest in limiting the corrosive influence of corporate expenditures regarding political topics. Faced with conflicting precedents, Justice Kennedy explained, the Court resolved the conflict in favor of recognizing corporate speech rights. The majority found the rationale for limiting corporate speech, that corporate funds came from individuals and may show no correlation with support of the corporation’s political views, unpersuasive and suggested there was no basis for exempting media corporations and no other types of corporate organizations. Distinguishing other campaign finance regulations, the Court concluded that limits on contributions are justifiable, while limits on expenditures are not, as only the former tended to support corruption or its appearance. The Court also found the statute over-inclusive and under-inclusive, overly broad because it purported to limit foreign influence while not also limiting the rule to foreign entities, and too limited as it failed to apply the same standard to different types of corporate interests. As to stare decisis, the majority pointed out that prior rules limiting corporate spending had proven unworkable, and those cases were poorly reasoned to begin with, departing from historically strong traditions of protecting political speech and recognizing corporate personhood. As to the final issue regarding disclosure and disclaimer, a less divided majority concluded that such limited regulations were acceptable as they did not prevent speech and did serve the valid purpose of informing the public regarding the source of communications. The majority found Citizens United’s argument unpersuasive regarding threats to members and donors, finding no evidence in the record regarding actual threats. Accordingly, the disclosure requirements were upheld.

**Concurrence/Dissent**: Chief Justice Roberts filed a concurring opinion, joined by Justice Alito. First, the Chief Justice pointed out that the majority correctly concluded that corporations as well as individuals are entitled to robust protection of their political discourse. The bulk of his opinion, however, addressed stare decisis and judicial restraint, arguing that cases ought not to be decided on narrow grounds merely because they are narrow; nor should the Court avoid the proper result merely because the Court previously reached a contrary conclusion. While they must proceed cautiously and only with reluctance depart from precedent, the goal is and always has been correct decisions. Justice Scalia filed a concurring opinion, joined by Justice Alito and joined in part by Justice Thomas. Justice Scalia responded to Justice Steven’s dissent, arguing that his historical analysis was misplaced, pointing ought that the bulk of his arguments were directed at the views of the Framers on corporations in society generally, not the rights of individuals to associate with others in corporate form and avail themselves of their speech rights. Justice Stevens concurred in part and dissented in part, joined by Justices Ginsburg, Breyer, and Sotomayor. In a long opinion, Justice Stevens took issue with a variety of positions asserted by the majority. He objected to what he characterized as rather limited regulations preventing broadcast of a film during a limited window. He also argued that the majority failed to adequately address the genuine concerns regarding corporations engaging in electioneering that shareholders oppose. Most significantly, Justice Stevens objected not only to corporations being treated as persons for the purposes of the First Amendment, but the majority’s insistence that they be afforded identical treatment. In support of his position, Justice Stevens contended that while corporations play an important role in society, and individuals can organize in corporate form to exercise individual rights, corporate citizenship is distinct from natural person-hood as corporations cannot vote or otherwise act as individuals may. Appealing to history, Justice Stevens argued in great detail about both the original understanding of the First Amendment and the Framers views regarding the potential evils of excessive corporate influence in society. Justice Thomas concurred in part and dissented in part, agreeing with the bulk of the majority opinion, but concluding that the disclosure requirements should similarly be struck down. In Justice Thomas’s view, the Court lacked the authority to uphold limitations of speech merely because the speakers wished to remain anonymous. Citing other, recent cases in which members and donors to organizations had been harassed and threatened, Justice Thomas found the possible chilling effect on protected speech real, and would have overturned that portion of the BCRA too.

**Conclusion**: Congress may not treat corporations and citizens differently with regard to regulated political speech, but may require disclosure regarding the source funding for advertisements. Corporations, whether for-profit or non-profit, and unions may spend money on elections from their general treasuries as they see fit, without regard to time limitations in the BCRA