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Citizens United’s Outrageous Offspring

Judge James Cacheris gave the impression last week that he was considering putting right what he got wrong when he ruled in May that corporations are free to make direct donations to federal candidates. That first judgment directly contravened last year’s Citizens United case and the Supreme Court’s earlier decision in Federal Election Commission v. Beaumont, which upholds a ban on corporate donations to candidates.

In reaffirming his ruling this week, Judge Cacheris appears not to have reconsidered his stance at all. He pays lip service to his duty as a lower court judge to apply Supreme Court precedent, but his reasoning and result brazenly flout it. The Justice Department must appeal this latest ruling.

Judge Cacheris fails to reckon with the Supreme Court’s explicit language in Citizens United, when it said that “Citizens United has not made direct contributions to candidates, and it has not suggested that the court” should overturn the ban on campaign contributions, as it did not.

Likewise, he rejects the precedent set by the Beaumont case, claiming that it doesn’t control his ruling either because it involves political spending by a nonprofit corporation. While Judge Cacheris extends the substantive holding of Citizens United, even more dangerously he mimics its model of extreme judicial activism. The conservative justices used and endorsed a dramatically unrestrained approach there. Refusing to be bound by precedent while pretending to respect it, this judge has outdone them.