Garland is no sure bet on overturning Citizens United

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Would a U.S. Supreme Court Justice Merrick Garland be the crucial fifth vote to overturn the Supreme Court's controversial 2010 decision in Citizens United, the case which led the way to Super PACs and a bigger role for the wealthy in politics? Would he strongly protect voting rights?

My view of Judge Garland's record as a judge on the United States Court of Appeals for the D.C. Circuit is that he would be moderately liberal on many election law issues. The big question, however, is how far he would be willing to go in overturning or greatly extending precedent. On that, the jury is still out.

Campaign finance

We should not read too much into Garland's vote in the SpeechNow v. Federal Election Commission (2010) case, which established Super PACs. That unanimous ruling was essentially compelled by the Supreme Court's Citizens United decision. Far more important in this area are Wagner v. FEC (2015), a case upholding the ban on government contractors making campaign contributions to federal candidates, and National Association of Manufacturers v. Taylor (2009) (NAM), a case upholding disclosure provisions relative to lobbyists.

Wagner was a majority en banc decision, meaning liberals and conservatives signed on to the opinion, so the result was not all that controversial. But the way that Garland wrote the decision indicates that he accepts Congress' role in crafting reasonable campaign finance regulations aimed at protecting government interests. Garland could have been more reluctant, noting that Supreme Court cases like Citizens United and McCutcheon v. FEC (2014) may undermine the constitutionality of total bans on contributions by any class of contributors. But he wasn't. Rather, Garland wrote a full-throated endorsement of the ban on contractor contributions. This reads as an opinion of a judge who believes in reasonable regulation. The same is to be said for his NAM decision, which is not reluctant to uphold disclosure requirements in the face of unsubstantiated claims of harassment. Garland also signed a 2008 decision, Shays v. FEC, which required the FEC to craft tougher regulations to implement the 2002 Bipartisan Campaign Reform Act, commonly known as the "McCain-Feingold" campaign finance law.

The harder question is what Garland would do if faced with the opportunity to overturn Citizens United. I have little doubt he would have dissented in Citizens United.
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