No. 11-1179

In The
Supreme Court of the United States

AMERICAN TRADITION PARTNERSHIP, INC., CHAMPION PAINTING, INC., AND MONTANA SHOOTING SPORTS ASSOCIATION, INC.,

Petitioners,

v.

STEVE BULLOCK, ATTORNEY GENERAL OF THE STATE OF MONTANA, AND COMMISSIONER OF THE COMMISSION FOR POLITICAL PRACTICES,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Montana

BRIEF OF AMICI CURIAE THE MONTANA TRIAL LAWYERS ASSOCIATION, THE MONTANA CONSERVATION VOTERS, THE MONTANANS FOR CORPORATE ACCOUNTABILITY, AND THE MONTANA LEAGUE OF RURAL VOTERS IN SUPPORT OF RESPONDENTS

LAWRENCE A. ANDERSON
Attorney at Law, P.C.
P.O. Box 2608
Great Falls, MT 59403
406-727-8466
laalaw@me.com
Counsel for Amici Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Are States allowed to regulate corporate political speech more broadly by the Fourteenth Amendment than Congress is allowed to regulate such speech by the First Amendment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

INTEREST OF THE *AMICI CURIAE*[1]

Montana Conservation Voters (MCV) is an incorporated, Montana-based organization with 2200 dues-paying members. MCV advocates for responsible stewardship of the State's natural resources, supports political candidates, and promotes citizen involvement in Montana's political process.

The Montana League of Rural Voters is an incorporated, Montana-based, nonprofit membership organization. The League promotes protection of family farms and ranches and works to expand voting rights for traditionally disadvantaged rural populations.

Montanans for Corporate Accountability (MCA) is a project of the Policy Institute, a nonprofit "think tank" which works primarily on energy and tax issues. MCA seeks to strengthen democracy and local Montana economies by curbing the excessive power of large corporations.

The Montana Trial Lawyers Association (MTLA) is a membership organization of more than 500

---

[1] No counsel for a party to this action authored the *amici curiae*'s brief, in whole or in part. No party, no counsel for a party, and no person other than *amici* and their counsel have made a monetary contribution intended to fund the preparation or submission of this brief.

The parties were notified ten days prior to the due date of this brief of the intention to file. The parties have consented to the filing of this brief.

Montana attorneys. Its members seek just results for the injured, the accused, and those whose rights are jeopardized. It frequently serves as an *amicus curiae* on constitutional issues.

The *amici* all are committed to preserving the integrity of the democratic process in Montana. They all believe that Montana's campaign finance and disclosure laws are essential for the protection of that process. They believe that those laws, and the Montana Supreme Court's recent decision upholding them, are consistent with the Fourteenth Amendment to the U.S. Constitution.

SUMMARY OF ARGUMENT

Petitioners seek a summary reversal, invoking the doctrine of *stare decisis*. They claim that this case is directly controlled by *Citizens United v. Federal Election Commission*, ___ U.S. ___, 130 S.Ct. 876 (2010). Thus, they contend that the Montana Supreme Court's decision "flout[s] this Court's holdings . . . in a willful and transparent fashion." (Petition, pp. 21, 32)

Petitioners ignore a crucial distinction. *Citizens United* was a First Amendment case, involving Congressional restrictions on corporate speech. The present case arises under the Fourteenth Amendment and deals with state power to place restrictions on such speech.

That distinction is vital because of differences on this Court concerning the Fourteenth Amendment's incorporation of the Bill of Rights against the States. Justice Thomas does not accept the substantive due process analysis which has long been utilized by the Court. He maintains that Fourteenth Amendment review of state legislation should be based on the Privileges and Immunities Clause. *See McDonald v. City of Chicago, Ill.*, ___ U.S. ___, 130 S.Ct. 3020, 3058-88 (2010) (Thomas, J., concurring in part and concurring in the judgment).

Corporations are not rights-bearers under the Privileges and Immunities Clause. That clause applies to "citizens," not to "persons." Thus, under Justice Thomas's principles, the Fourteenth Amendment cannot incorporate corporations' First Amendment rights.

Subtracting Justice Thomas from the *Citizens United* majority leaves that opinion as a *minority* opinion in the Fourteenth Amendment context. Most members of this Court presumably would permit States reasonably to regulate political speech by corporations. This Court accordingly should allow the Montana Supreme Court's decision to stand.

ARGUMENT

I. *CITIZENS UNITED* IS NOT *STARE DECISIS* ON THE CONSTITUTIONAL ISSUE HERE.

A. *Citizens United*

In *Citizens United*, this Court voted 5-4 to strike down provisions of the federal Bipartisan Campaign Reform Act. The Court declared that "First Amendment protection extends to corporations" and that "political speech does not lose First Amendment protection 'simply because its source is a corporation.'" *Id*. at 899-00.

Citizens United held that Congress could not ban independent corporate expenditures to influence elections. It stressed the burden imposed by onerous federal regulations which were promulgated under the Act. *Id*. at 897-98. It rejected the federal government's argument that corporate expenditures can distort debate and can create corruption or the appearance of corruption. *Id*. at 904-09.

Four justices filed a dissent. They agreed that "corporations are covered by the First Amendment," but argued that "reasonable restrictions on corporate electioneering" are permissible. *Id*. at 952 (Stevens, J., dissenting). They argued that the public interest in preventing corruption justifies treating corporate speech differently from individual speech. *Id*. at 961-68.

The dissenters also argued that unrestricted corporate expenditures can "drown out noncorporate voices" and unfairly influence elections:

> [W]hen corporations grab up the prime broadcasting slots on the eve of an election, they can flood the market with advocacy that bears "little or no correlation" to the ideas of natural persons or to any broader notion of the public good. [citation omitted] *The opinions of real people may be marginalized*. . . .
>
> In addition to this immediate drowning out of noncorporate voices, there may be deleterious effects that follow soon thereafter. Corporate "domination" of electioneering [citation omitted] can generate the impression that corporations control our democracy. *When citizens turn on their televisions and radios before an election and hear only corporate electioneering, they may lose faith in their capacity, as citizens, to influence public policy*.

Id. at 974 (emphasis added).

These persuasive reasons justify state regulation of corporate speech. The absolutism of *Citizens United* does not govern analysis under the Fourteenth Amendment. This will be explained below.

B. Fourteenth Amendment Incorporation Analysis

Shortly after *Citizens United*, this Court decided a benchmark case on Fourteenth Amendment

incorporation of the Bill of Rights. The justices comprising the *Citizens United* majority held that the Second Amendment's right to bear arms applies to the States. *See McDonald v. City of Chicago, Ill.*, ___ U.S. ___, 130 S.Ct. 3020 (2010).

Four justices based their holding on substantive due process. *See id*. at 3030 to 3050. Justice Thomas, however, declined to endorse that reasoning. He took issue with the entire concept of substantive due process:

> [A]ny serious argument over the scope of the Due Process Clause must acknowledge that neither its text nor its history suggests that it protects the many substantive rights this Court's cases now claim it does.
>
> * * *
>
> *I cannot accept a theory of constitutional interpretation that rests on such a tenuous footing*. This Court's substantive due process framework fails to account for both the text of the Fourteenth Amendment and the history that led to its adoption, filling that gap with a jurisprudence devoid of a guiding principle.

Id. at 3062 (Thomas, J., concurring in part and concurring in the judgment (emphasis added)).

Justice Thomas proposed that Fourteenth Amendment review of state legislation should be based not on the Due Process Clause but on the Privileges and Immunities Clause. He declared that that clause improperly was truncated by the *Slaughter-House Cases*, 16 Wall. 36 (1873), and by *United States v.*

Cruikshank, 92 U.S. 542 (1876), and that those precedents should be reversed. *Id*. at 3084-88. He concurred with the result in *McDonald* based on the Privileges and Immunities Clause. *Id*. at 3088.

Justice Thomas's position on Fourteenth Amendment jurisprudence is pivotal here. Corporations are not rights-bearers under the Privileges and Immunities Clause. That clause holds: "No State shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States." U.S. Const., Am. XIV, § 1 (emphasis added).

It is long settled that corporations are *not* citizens, and that the Privileges and Immunities Clause does not apply to them. *Hague v. C. I. O.*, 307 U.S. 496, 514 (1939). *See also Paul v. Virginia*, 75 U.S. 168, 181 (1868) ("The term citizens . . . applies only to natural persons" under the parallel Privileges and Immunities Clause in Art. IV, § 2).

On Justice Thomas's principles, therefore, *Citizens United* must be limited to corporate speech rights vis-à-vis Congress under the First Amendment. *Citizens United* cannot govern the States, since corporate rights are not incorporated under the Fourteenth Amendment.

The *Citizens United* majority opinion, thus, is a *minority* opinion on the question presented here. Only four signers of that opinion support a Fourteenth Amendment analysis under which it could be applied to the States. *Citizens United* therefore does

not have the force of *stare decisis* on the question presented here.

II. MONTANA'S REGULATION OF CORPORATE SPEECH IS PERMISSIBLE UNDER THE FOURTEENTH AMENDMENT.

A. *Bellotti*

A point of departure for Fourteenth Amendment analysis of corporate political speech is *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). In *Bellotti*, this Court struck down a state law prohibiting corporate expenditures on ballot issues. The Court held that such expenditures were protected by reason of the public's interest in being informed. It stressed that it was *not* deciding whether corporations have "the full measure of rights that individuals enjoy under the First Amendment." *Id*. at 777.

Bellotti, moreover, cautioned that state laws restricting corporate speech might be justified on an appropriate record. It stated:

> Preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government" are interests of the highest importance. [citations omitted] Preservation of the individual citizen's confidence in government is equally important. [citations omitted]
>
> * * *

> According to appellee, corporations are wealthy and powerful and *their views may drown out other points of view. If appellee's arguments were supported by record or legislative findings* that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, *these arguments would merit our consideration*. [citations omitted] *But there has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts*. . . .

Id. at 789 (emphasis added).

In the present case, there *is* evidence showing that "the relative voice of corporations has been overwhelming in influencing referenda." 95% of campaign spending on recent Montana ballot issues came from corporations and other institutional donors. *Western Tradition Partnership*, *Inc. v. Attorney General of the State of Montana*, 363 Mont. 220, 271 P.3d 1 (2011), ¶ 38.

Those figures, combined with other evidence of record, show that "corporate advocacy threaten[s] imminently to undermine democratic processes." *Cf. Bellotti*, 435 U.S. at 789. The Montana Supreme Court held:

> Montana, with its small population, enjoys political campaigns marked by person-to-person contact and a low cost of advertising

> compared to other states. . . . [A]llowing unlimited expenditures of corporate money into the Montana political process would drastically change campaigning by shifting the emphasis to raising funds.
>
> * * *
>
> Montana politics is more susceptible to corruption than Federal campaigns, and . . . infusions of large amounts of corporate independent expenditure on just media coverage "could accomplish . . . corruption of Montana politics. . . ."
>
> * * *
>
> Issues of corporate influence, sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs make Montana especially vulnerable to continued efforts of corporate control to the detriment of democracy and the republican form of government.

Western Tradition Partnership, ¶¶ 30, 31, 37.

The present case, thus, involves precisely the sort of record that the *Bellotti* majority indicated would support restrictions on corporate speech. Montana law satisfies a Fourteenth Amendment standard of "reasonable regulation," using the *Bellotti* case as a benchmark.

It should be noted that four dissenters in *Bellotti* would have allowed the States broad authority to

limit corporate speech. Justice White (joined by Justices Brennan and Marshall) discussed the nature of corporations and argued:

> [C]orporate expenditures designed to further political causes lack the connection with individual self-expression which is one of the principal justifications for the constitutional protection of speech provided by the First Amendment. Ideas which are not a product of individual choice are entitled to less First Amendment protection.
>
> * * *
>
> [T]he interest of Massachusetts and the many other States which have restricted corporate political activity is . . . [in] *preventing institutions which have been permitted to amass wealth as a result of special advantages extended by the State for certain economic purposes from using that wealth to acquire an unfair advantage in the political process*. . . . Such expenditures may be viewed as seriously threatening the role of the First Amendment as a guarantor of a free marketplace of ideas.

Id. at 807, 809-10 (emphasis added).

Justice Rehnquist also dissented in *Bellotti*. He cited constitutional history and the nature of corporations to justify broad regulation by the States. He stated, *inter alia*:

> A State grants to a business corporation the blessings of potentially perpetual life and

> limited liability to enhance its efficiency as an economic entity. *It might reasonably be concluded that those properties, so beneficial in the economic sphere, pose special dangers in the political sphere*. . . . Indeed, the States might reasonably fear that the corporation would use its economic power to obtain further benefits beyond those already bestowed.
>
> * * *
>
> *The free flow of information is in no way diminished* by the Commonwealth's decision to permit the operation of business corporations with limited rights of political expression. *All natural persons, who owe their existence to a higher sovereign than the Commonwealth, remain as free as before* to engage in political activity.

Id. at 826-28 (emphasis added).

B. The Question of Corporate "Personhood"

1. Early Constitutional History

When analyzing constitutional rights, this Court lays stress on their historical background. As Justice Scalia stated in *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008): "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad."

In the case of corporations, history demonstrates that the people did *not* understand them to have constitutional rights. This was true both at Founding and at the time of ratification of the Fourteenth Amendment.

Shortly prior to the Founding, the English Parliament had granted monopolistic corporate charters to companies such as the East India Company. Those companies used them to the detriment of local colonial businesses. The charters and the laws that favored them are recognized as principal factors that led to the American Revolution.

Neither the Constitution nor the Bill of Rights mentions corporations. Their legal status was summed up by Chief Justice Marshall in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheaton) 518, 636 (1818) as follows:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. . . . Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person.

For nearly a century, this Court rejected claims of constitutional rights for corporations. *See*, *e.g., Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 88, 91 (1809) (a corporation, such as the Bank of the

United States, was neither a "citizen" nor a "person" for the purposes of Article III of the Constitution); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 586-87 (1839) (corporations are not "citizens" for the purposes of the Privileges and Immunities Clause of Article IV of the Constitution); *Paul v. Virginia*, 75 U.S. 168, 19 L.Ed. 357 (1868) (same).

2. The Passage of the Fourteenth Amendment

The Fourteenth Amendment became part of the Constitution in 1868. The intended significance of the Amendment was well documented at the time. *See, e.g.,* Antieau, *The Intended Significance of The Fourteenth Amendment* (1997); Graham, *An Innocent Abroad: The Constitutional Corporate "Person,"* 2 U.C.L.A. L. Rev. 155, 166-67 (Feb. 1955).

In 1866, the Joint Conference Committee on Reconstruction, the Congressional Committee that proposed the Amendment, reported to members of Congress and to the public. The report made clear that the purpose of the Amendment was to protect the rights of African-American citizens newly released from slavery:

> It was impossible to abandon them without securing them their rights as free men and citizens. The whole civilized world would have cried out against such base ingratitude, and the bare idea is offensive to all right-thinking men. Hence it became necessary to

> inquire what could be done to secure their rights, civil and political.

See Antieau, *op. cit*., pp. 6-7.

A review of records of the State legislatures that ratified the Amendment confirm that this was the purpose intended by the people. Thus, *e.g*., Pennsylvania legislators stated: "the object of the first clause [Section 1 of the Fourteenth Amendment] was to meet the doctrine enunciated in the somewhat celebrated Dred Scott decision;" and "the purpose of this privilege is universally conceded to be, to confer citizenship upon the four or five million Negroes residing in this country – not only federal citizenship, but State citizenship also." *See id.,* pp. 5-9.

3. Corporate Assertions of "Personhood"

Corporations began to assert that the term "person" in the Due Process Clause of the Fourteenth Amendment also included them. However, nothing in the records suggests that Congress intended to grant such corporate personhood. Legal scholars who have studied this assertion emphatically have rejected it. *See, e.g.,* Antieau, pp. 339-41; Charles Cullen, *The Fourteenth Amendment And The States* (1912), p.127; James, *The Framing of the Fourteenth Amendment* (1965), p.179.

A circuit court holding shortly after the Amendment's passage confirms this interpretation. In *Insurance Co. v. City of New Orleans*, 13 Fed. Cas. 67 (C.C. La. 1870), a New York insurance company

argued that New Orleans' foreign license tax violated the Amendment. The company argued that it was a "citizen" covered by the Privileges and Immunities Clause, and a "person" covered by the Equal Protection Clause.

Relying on the U. S. Supreme Court's holdings in *Bank of Augusta v. Earle* and *Paul v. Virginia*, as well as on the text of the Amendment, the circuit court rejected these arguments. As to citizenship, it reasoned:

> Who are citizens of the United States, within the meaning of the 14th amendment, we think is clearly settled by the terms of the amendment itself. 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' No words could make it clearer that *citizens of the United States, within the meaning of this article, must be natural, and not artificial persons*; for a corporation cannot be said to be born, nor can it be naturalized. I am clear, therefore, that a corporate body is not a citizen of the United States as that term is used in the 14th amendment.

Id. at 68 (emphasis added). The court similarly rejected the insurer's claim of "personhood." It stated:

> The word 'person' occurs three times in the first section, in the following connections: 'All persons born or naturalized in the United States' – 'nor shall any state deprive any person of life, liberty or property,' etc. – 'nor'

> shall any state 'deny to any person within its jurisdiction the equal protection of the laws.' The complainants claim that this last clause applies to corporations – artificial persons. Only natural persons can be born or naturalized; only natural persons can be deprived of life or liberty; so that it is clear that artificial persons are excluded from the provisions of the first two clauses just quoted. *If we adopt the construction claimed by complainants, we must hold that the word 'person,' where it occurs the third time in this section, has a wider and more comprehensive meaning than in the other clauses of the section where it occurs. This would be a construction for which we find no warrant in the rules of interpretation*. The plain and evident meaning of the section is, that the persons to whom the equal protection of the law is secured are persons born or naturalized or endowed with life and liberty, and consequently natural and not artificial persons. *This construction of the section is strengthened by the history of the submission by congress, and the adoption by the states of the 14th amendment, so fresh in all minds as to need no rehearsal*.

Id. (emphasis added).

4. This Court's Declaration of Corporate Personhood

Constitutional corporate personhood is generally attributed to this Court's decision in *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394

(1886). The county sued the railroad for failure to pay taxes, and the railroad presented the Court with six defenses, including the argument that the railroad is a "person" for the purposes of the Equal Protection Clause of the Fourteenth Amendment.

Justice Harlan, writing for the Court in *Santa Clara*, affirmed the decision for the railroad on non-constitutional grounds. His opinion stated:

> If these positions are tenable, *there will be no occasion to consider the grave questions of constitutional law upon which the case was determined below*; for, in that event, the judgment can be affirmed upon the ground that the assessment cannot properly be the basis of a judgment against the defendant.

118 U.S. at 411 (emphasis added). Nothing in Justice Harlan's opinion otherwise addressed the constitutional question.

In a companion case to *Santa Clara*, decided on the same day, Justice Field expressed regret that "the tax case from California" did not "decide the important constitutional question involved." *County of San Bernardino v. Southern Pac. R. Co.,* 118 U.S. 417, 422 (1886) (Field, J. concurring).

Thus, *Santa Clara* made *no* express holding on the weighty question of corporate "personhood" for purposes of the Fourteenth Amendment. It offered no reasoning and no assessment of Constitutional history. As Justice Rehnquist pointed out in *Bellotti*, the

Santa Clara holding involved "neither argument nor discussion." 435 U.S. at 822.

Justices Douglas and Black, dissenting in another case, observed:

> The [*Santa Clara*] Court was cryptic in its decision. It was so sure of its ground that it wrote no opinion on the point, Chief Justice Waite announcing from the bench:
>
> > "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does."
>
> There was no history, logic, or reason given to support that view. Nor was the result so obvious that exposition was unnecessary.

Wheeling Steel Corp. v. Glander, 337 U.S. 562, 576-77 (1949) (Douglas, J., dissenting). *See also Conn. General Co. v. Johnson*, 303 U.S. 77, 85-90 (1938) (Black, J., dissenting).

Despite this history, the Court began to cite *Santa Clara* as holding that corporations are "persons" under the Fourteenth Amendment. *See, e.g., Minneapolis & St. L. Ry. Co. v. Beckwith*, 129 U.S. 26, 28 (1889); *Missouri Pac. Ry. Co. v. Mackey*, 127 U.S. 205, 209-10 (1888); *Home Ins. Co. v. State of New York*, 119 U.S. 129, 133 (1886). The Court should be mindful of

the tenuous basis on which all this subsequent jurisprudence rests.

Corporate "personhood" has very dubious *stare decisis* value. At a minimum, the history of that principle under the Fourteenth Amendment militates for less expansive protection there than under the First Amendment.

C. The Reasonableness of the Montana Law

The Montana Supreme Court compellingly showed that Montana's law is reasonable in the restrictions that it places on corporate speech. Compliance involves a minimal regulatory burden, by way of contrast to the onerous regulations struck down in *Citizens United*. *See Western Tradition Partnership*, ¶¶ 21, 46-47. The public interest served by the law is weighty and clearly articulated. *See id.*, ¶¶ 22-45; *see also* ¶¶ 122-30 (Nelson, J., dissenting).

This Court should hold that the Montana law is a reasonable regulation, permissible under the Fourteenth Amendment. A law review article which strongly supports that conclusion is Greenwood, *Essential Speech: Why Corporate Speech is Not Free*, 83 Iowa L. Rev. 995 (1998). The article argues, *inter alia*:

- Rather than a being a group of citizens, corporate shareholders are an abstraction. At least in the modern publicly traded corporation, the shareholders in

whose interests corporations must speak are *not* the human beings who own (or, more often, on whose behalf other institutions own) the shares. More often than not, shareholders are other corporations, who have interests quite different from those of real citizens in their full capacity as citizens. Unlike real people, the fictional shareholder is a one-sided abstraction that seeks to increase the value of its shares without regard for any other value, and that buys and sells shares according to market forces. *Id*. at 1003, 1042.

- The modern business corporation is a centralized entity whose shareholders are barred by state law from governing a corporation directly. A corporation's center of power rests with its board of directors, who have fiduciary duties to the corporation. Thus, corporate policies are determined by fiduciaries who are required to set aside their personal views, and to act solely in the interest of the corporation. *Id*. at 1007, 1033-34, 1045.

- As an inanimate entity, corporations must speak through human agents. The actual speakers – the lobbyists, the advertising writers, the lawyers, the executives, the publicists – do not speak on their own behalf. They are paid to speak for the corporation, and they have professional duties of loyalty to the corporation. That is why corporate speech is

never free, but rather is always compelled. *Id*. at 1038, 1045.

- Business corporations, by law, must disregard interests other than increasing shareholder value. Their political speech thus is geared to externalizing the cost of doing business. Unlike human beings, who have many interests to harmonize, corporations only have one interest. As a result, corporate speech improperly tends to skew the political process. *Id*. at 1054-55, 1062-70.

These points militate for a narrow protection of corporate political speech. The values supporting free speech protection for individuals do not apply. For that reason, Fourteenth Amendment corporate speech protection should be more narrowly framed than is First Amendment protection.

This Court should recognize the foregoing points to hold that States can reasonably regulate corporate political speech. A "reasonable regulation" standard under the Fourteenth Amendment should be established with reference to *Bellotti* (including the White and Rehnquist dissents) and to the dissent in *Citizens United*.

CONCLUSION

With each passing day, corporations have a greater say in our lives – the food we eat, the products we

buy, the health care we receive, the news we see, the ideas we think, the economic rules we follow, the entertainment we enjoy, the education we acquire, the laws we enact, the work we do, the public officials we elect, the policies we have and the natural world we have left.

The influence of corporate wealth on elections is a matter of civic concern. The record compellingly shows that corporate cash perniciously can inundate the electorate in a small State. Montana's statute is a reasonable response to that threat to democracy.

This Court accordingly should deny the certiorari petition here and should allow the Montana statute to stand. In the alternative, it should grant the petition, affirm the Montana Supreme Court, and articulate the differences between First and Fourteenth Amendment corporate political speech. The Fourteenth Amendment allows States reasonably to regulate such speech, and Montana has met that standard here.

Respectfully submitted,

LAWRENCE A. ANDERSON
Attorney at Law, P.C.
P.O. Box 2608
Great Falls, MT 59403
406-727-8466
laalaw@me.com
Counsel for Amici Curiae

May 2012