Electioneering Speech and Federal Campaign Reform Efforts

A series of federal laws have attempted to reform the campaign process for federal elections and reduce the influence of money in those elections. Among the kinds of restrictions that Congress has enacted have been restrictions on campaign spending and donations, and disclosure requirements. Some of these efforts have been upheld by the Supreme Court and others have been struck down.

Among the reform measures have been efforts to restrict the spending of corporations and unions to influence the outcome of federal elections. These spending restrictions have focused on money spent from the general treasury of a corporation or union, as compared to the ability to set up a Political Action Committee. Federal law bans spending by these entities on certain kinds of advocacy close to the date of an election. In the 1970s, as a result of the Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), a decision upholding some and striking down other provisions of the Federal Election Campaign Act of 1971 as amended in 1974, the distinction between express advocacy (speech that expressly advocates the election or defeat of a clearly identified candidate for federal elective office) and issue advocacy (speech advocating a viewpoint on a political issue) was introduced into federal law.

Relying on this distinction, corporations and unions could spend money to air issue ads even on the eve of an election, but could not spend money to air express advocacy. The theory behind this distinction was that while both kinds of advocacy restricted the First Amendment rights of corporations and unions, the federal government had a sufficient government interest to justify restricting express advocacy, but not issue advocacy. The use of this distinction between express and issue advocacy led to a proliferation of "sham issue advocacy" which was express advocacy disguised as issue advocacy because the statute's restrictions were only triggered by "magic words" such as "vote for." If those magic words were avoided, the advocacy escaped the restrictions imposed on express advocacy.

In order to close this loophole, in the Bipartisan Campaign Reform Act of 2002 (BCRA) Congress substituted the broader concept of electioneering communication for express advocacy. The BRCA defines electioneering communication as encompassing any "broadcast, cable, or satellite communication" that:

"(I) refers to a clearly identified candidate for Federal office;

"(II) is made within--

"(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

"(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

"(III) in the case of a communication which refers to a candidate other than President or Vice President, is targeted to the relevant electorate."

Federal law further provides that a communication is " 'targeted to the relevant electorate' " if it

"can be received by 50,000 or more persons" in the district or State the candidate seeks to represent.

In *McConnell v. FEC*, 520 U.S. 93 (2003), the Supreme Court rejected a facial challenge to this provision. In doing so, the Court refused to conclude that the line between express advocacy and issue advocacy was mandated by the First Amendment, particularly in light of the fact that many "issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy." Therefore Congress's decision to replace the term "express advocacy" with the broader term "electioneering communication" was not precluded by the First Amendment. In addition, the term "electioneering communication" was not unconstitutionally vague and did not amount to a "'complete ban' on expression" because corporations and unions "can still fund electioneering communications with PAC money."

The Court also rejected the argument that "the compelling justifications that adequately support the regulation of express advocacy do not apply to significant quantities of speech encompassed by the definition of electioneering communications. It concluded that: "This argument fails to the extent that issue ads broadcast during 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect."

In 2006, the Supreme Court concluded that, despite the ruling in *McConnell*, as-applied challenges to the BCRA provisions that regulate electioneering communication could be brought. A year later in *FEC v, Wisconsin Right to Life, Inc.*, the Court struck down the application of the BCRA electioneering communication provisions as-applied to several radio ads that criticized a group of Senators who were blocking votes on judicial nominees, urging listeners to contact the Senators. Among those named in the ads was Senator Feingold, then running in a primary election. In his opinion, Chief Justice Roberts concluded that an ad qualifies as an electioneering communication "only if the ad is the functional equivalent of express advocacy." Moreover, in light of First Amendment concerns, "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." This narrow definition came close to reinstating the line between express advocacy and issue advocacy. In a concurring opinion, Justices Scalia, Thomas, and Kennedy wanted to overrule the relevant portion of *McConnell*. Chief Justice Roberts and Justice Alito did not find it necessary to reach that question.

Last Term, the Supreme Court agreed to hear the case of *Citizens United v. FEC*, another case that raised an as-applied challenge to the treatment of electioneering communications. However, at the end of the Term the Court did not decide the case, but instead issued a rehearing order asking the parties to address the much broader question of whether the statutory language should be struck down on its face: "The parties should address the following question: 'For the disposition of this case, should the Court overrule either or both *Austin v. Michigan Chamber of Commerce* and the part of *McConnell v. FEC* which addresses the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002?'"

Oral argument in that case is scheduled for September 9. The only published lower court opinion in the case appears below, as do some excerpts from the briefs filed in the case:

CITIZENS UNITED v. FEDERAL ELECTION COMMISSION

530 F. Supp. 2d 274 (D.D.C. 2008)

MEMORANDUM OPINION

For the reasons that follow we deny Citizens United's motions for a preliminary injunction to enjoin the Federal Election Commission ("FEC") from enforcing provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), with respect to Citizens' advertisements for a movie--*Hillary: The Movie*--and its distribution of *The Movie* through cable TV video on-demand.

I.

Citizens United is a nonprofit membership corporation, tax-exempt under Internal Revenue Code § 501(c)(4). Citizens produced a movie titled *Hillary: The Movie*. *The Movie* focuses on Senator Hillary Rodham Clinton's "Senate record, her White House record during President Bill Clinton's presidency, . . . her presidential bid," and includes "express opinions on whether she would make a good president." Citizens plans to distribute *The Movie* in January or February 2008 through theaters, video on-demand ("VOD") broadcasts, and DVD sales. (Citizens notified the court on January 7, 2008, that it had released *The Movie* for "public sale and exhibition." *The Movie*'s release date coincides with the dates when many states will hold primary elections or party caucuses. Senator Clinton is a presidential candidate in those states. Citizens intends to fund at least three television advertisements--two 10-second advertisements, "Wait"[1] and "Pants,"[2] and one 30-second advertisement, "Questions"[3] --to coincide with the release of its

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[1] The script for the television advertisement, "Wait" reads as follows:

[Image(s) of Senator Clinton on screen]
"If you thought you knew everything about Hillary Clinton . . . wait 'til you see the movie."
[Film Title Card]
[Visual Only] Hillary: The Movie.
[Visual Only] www.hillarythemovie.com

[2]The script for the television advertisement, "Pants" reads as follows:

[Image(s) of Senator Clinton on screen]
"First, a kind word about Hillary Clinton: [Ann Coulter Speaking & Visual] She looks good in a pant suit."
"Now, a movie about the everything else."
[Film Title Card]
[Visual Only]
Hillary: The Movie.
[Visual Only] www.hillarythemovie.com

movie. The advertisements promote *The Movie* and direct viewers to *The Movie*'s website for more information about the film and how to see or purchase it. If Senator Clinton becomes the Democratic presidential nominee, Citizens plans to broadcast the three advertisements and possibly other advertisements within 30 days before the Democratic National Committee Convention and within 60 days before the November general election--both periods are within BCRA's definition of an electioneering communication. Citizens has elected not to broadcast its advertisements pending resolution of this litigation. It has entered into negotiations to broadcast *The Movie* through the "Political Movies" component of a new nationwide VOD channel, "Elections '08," but has decided to forego the opportunity pending resolution of the current litigation because, according to Citizens, the broadcast would be banned under BCRA and, even if this were not so, the broadcast would require Citizens to disclose certain information and make certain statements as described below.

BCRA amended the Federal Election Campaign Act of 1971 ("FECA"). Passed in 2002, it represented "the most recent federal enactment designed to purge national politics of what was conceived to be the pernicious influence of 'big money' campaign contributions." *McConnell v. FEC*, 540 U.S. 93, 115 (2003). BCRA introduced a new system for regulating what it termed "electioneering communications." Under BCRA § 201, an "electioneering communication" is:

> any broadcast, cable, or satellite communication which-
>
> (I) refers to a clearly identified candidate for Federal office;
>
> (II) is made within-
>
> (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
>
> (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate

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[3] The script for the television advertisement, "Questions" reads as follows:

[Image(s) of Senator Clinton on screen]
"Who is Hillary Clinton?"
[Jeff Gerth Speaking & Visual] "[S]he's continually trying to redefine herself and figure out who she is . . ."
[Ann Coulter Speaking & Visual] "[A]t least with Bill Clinton he was just good time Charlie. Hillary's got an agenda . . ."
[Dick Morris Speaking & Visual] "Hillary is the closest thing we have in America to a European socialist . . ."
"If you thought you knew everything about Hillary Clinton . . . wait 'til you see the movie.
[Film Title Card]
[Visual Only] Hillary: The Movie. In theaters [on DVD] January 2007.
[Visual Only] www.hillarythemovie.com

a candidate, for the office sought by the candidate . . . .

For presidential candidates, the communication must also be capable of being received by 50,000 or more persons. Citizens recognizes that under this statutory definition, both its advertisements and a VOD[4] broadcast of *The Movie* would be electioneering communications. Electioneering communications are subject to a host of restrictions imposed by BCRA. Three are relevant here: § 203, § 201, and § 311. Section 203 prevents corporations and labor unions from funding electioneering communications out of their general treasury funds, unless the communication is made to its stockholders or members, to get out the vote, or to solicit donations for a segregated corporate fund for political purposes. This provision does not bar electioneering communications paid for out of a segregated fund that receives donations only from stockholders, executives and their families.[5] Any electioneering communication that is not prohibited is subject to the disclosure requirements of § 201 and the disclaimer requirements of § 311.

Citizens' complaint, filed on December 13, 2007, contains two major claims: (1) that § 203's prohibition of corporate disbursements for electioneering communications violates the First Amendment on its face and as applied to *The Movie* and to the 30-second advertisement "Questions"[6]; and (2) that BCRA § 201 requiring disclosure and § 311 requiring disclaimers are unconstitutional as applied to Citizens' three advertisements (and to *The Movie*, if Citizens broadcasts it in a manner that does not violate § 203).

II.

The court will not issue a preliminary injunction unless the movant shows that it has "1) a substantial likelihood of success on the merits, 2) that it would suffer irreparable injury if the injunction is not granted, 3) that an injunction would not substantially injure other interested parties, and 4) that the public interest would be furthered by the injunction." Granting injunctive relief is an "extraordinary and drastic remedy," and it is the movant's obligation to justify, *"by a clear showing*," the court's use of such a measure.

A.

We will analyze first Citizens' likelihood of prevailing on the merits of its claims regarding *The Movie*. In *McConnell*, the Supreme Court upheld § 203 on its face, rejecting claims that the financing of "electioneering communications" constituting express advocacy or its functional

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[4] The parties did not raise the issue of whether VOD was within the definition of "electioneering communication." However, a broadly worded FEC regulation defining "electioneering communications" indicates that VOD would be a "broadcast, cable, or satellite communication" because it is "disseminated through the facilities of a cable television system."

[5] Corporations and labor unions may also contribute to Political Action Committees, which are permitted to make electioneering communications.

[6] Plaintiff's challenge regarding "Questions" will be denied as moot. The FEC, in its filings and at oral argument, conceded that the advertisement is exempt from the Prohibition.

equivalent were within the protection of the First Amendment. 540 U.S. at 203-09. *McConnell* did not, however, "purport to resolve future as-applied challenges." *FEC v. Wis. Right to Life, Inc.*, 127 S. Ct. 2652, 2661 (2007) ("*WRTL*"). The Chief Justice's opinion in *WRTL* stated that an advertisement could not be considered the functional equivalent of express advocacy unless it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[7] To promote the objectivity of this analysis, courts are to disregard contextual evidence of the corporation's intent in running an advertisement.[8]

Citizens wants us to enjoin the operation of BCRA § 203 as a facially unconstitutional burden on the First Amendment right to freedom of speech. The theory is that with respect to § 203, *WRTL* narrowed *McConnell* to such an extent that it "left the door open to facial invalidation based on the sort of circumstances that have now arisen." For Citizens to prevail on this claim, we would have to overrule *McConnell*, which is to say that Citizens has no chance of prevailing. Only the Supreme Court may overrule its decisions. The lower courts are bound to follow them.

With respect to Citizens's as-applied claims regarding *The Movie*, the first question under Chief Justice Roberts' *WRTL* opinion--and as it turns out, the last question--is whether the film is express advocacy or its functional equivalent. If it is, *McConnell* makes it likely that Citizens would not win on the merits of its claim that the First Amendment permits it to broadcast the movie within the electioneering communications period as currently funded. Citizens contends that *The Movie* is issue speech and, as it stated in oral argument, that issue speech is any speech that does not expressly say how a viewer should vote. The trouble is that the controlling opinion in *WRTL* stands for no such thing. Instead, if the speech cannot be interpreted as anything other than an appeal to vote for or against a candidate, it will not be considered genuine issue speech even if it does not expressly advocate the candidate's election or defeat.

The Movie does not focus on legislative issues. *The Movie* references the election and Senator Clinton's candidacy, and it takes a position on her character, qualifications, and fitness for office. Dick Morris, one political commentator featured in *The Movie*, has described the film as really "giv[ing] people the flavor and an understanding of why she should not be President." After viewing *The Movie* and examining the 73-page script at length, the court finds Mr. Morris's

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[7] The parties agree, as do we, that the Chief Justice's formulation is now the governing test for the functional equivalent of express advocacy. Although the Court's opinion in *WRTL* was fragmented, the Chief Justice's opinion approved the judgment of the district court on the narrowest grounds. "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977).

[8] *WRTL* discounted evidence that included the corporation's other candidate-related advocacy, the timing of the advertisements, and the advertisement's reference to an Internet address that directed viewers to a website containing express advocacy against the election of candidates for federal office.

description to be accurate. *The Movie* is susceptible of no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her.[9] *The Movie* is thus the functional equivalent of express advocacy. As such, it falls within the holding of

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[9] A selection of excerpts from the movie are indicative of the film's message and serve to demonstrate the difficulty that this court had in its ultimately unsuccessful attempt to find a reasonable interpretation of *The Movie* that would take it out of the *WRTL* "functional equivalent to express advocacy" classification.

Excerpts include statements by the film's narrator, one of several political commentators or another interviewee stating:

"She's driven to get the power. That is the driving force in her life."

"She is the expert at not saying what she believes--she will run on attacking Republicans, and being the first woman president--oh isn't that amazing, she's a woman she can walk and talk."

"She is steeped in controversy, steeped in sleaze, that's why they don't want us to look at her record."

"Over the past 16 years Hillary Clinton has undoubtedly become one of the most divisive figures in America. How this makes her suited to unite the country as the next president is troubling to many."

"I mean think of what it says about Hillary Clinton that she was willing to put up with his open philandering, with anything in a skirt who wanders before his eyesight--all for the power--at least with Bill Clinton he was just good time Charlie. Hillary's got an agenda and she's willing to put up with that to be [P]resident of the [U]nited [S]tates, she's got a to do list when she gets to the White House."

"I think the American people have a right to as much of a public record as possible about Hillary Clinton. Those records should be released before the 2008 elections so that we can learn a lot more about exactly how much influence she had in the White House, what her positions were in the White House, and how she acted in the White House."

"Finally, before America decides on our next president, voters should need no reminders of [] what's at stake--the well being and prosperity of our nation."

"If she reverts to form, Hillary Clinton will likely be in the future what she has been in the past, which is a person, a woman, a politician of the left, and I don't think that's going to [be] good for the security of the United States."

"I can tell you beyond a shadow of a doubt that uh, the Hillary Clinton that I know is not equipped, not qualified to be our commander in chief."

"[W]e must not ever underestimate this woman. We must not ever understate her chances of winning. We mustn't be lolled into a state of complacency by the new found moderation that she likes to talk about. And we must never forget the fundamental danger that this woman [poses] to every value that we hold dear."

McConnell sustaining, as against the First Amendment, § 203 insofar as it bars corporations from funding electioneering communications that constitute the functional equivalent of express advocacy. There is no substantial likelihood that Citizens will prevail on its as-applied challenge.

B.

[The court also considered a challenge to the application of disclosure and disclaimer requirements of the BCRA to the ads aired by Citizens United.]

We therefore hold that Citizens has not established the requisite probability of prevailing on the merits against the disclosure and disclaimer provisions-§ 201 and § 311, respectively.

C.

Citizens tells us that without a preliminary injunction it will not be able to broadcast *The Movie*, that it will have to disclose the identity of its contributors to the FEC if it runs the advertisements, and that some portion of the time it purchased for the advertisements would be consumed by the disclaimers BCRA requires. If Citizens had made more of a showing that it had a chance of prevailing on the merits, these kinds of harms might have warranted preliminary relief. But in the face of *McConnell*'s ruling that the disclosure and disclaimer provisions are constitutional and that the restriction on corporate speech advocating the defeat of a candidate does not violate the First Amendment, Citizens is unable to raise "questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation."

As to the remaining factors governing preliminary relief, we cannot say that enjoining enforcement of the BCRA provisions at issue would serve the public interest in view of the Supreme Court's determination that the provisions assist the public in making informed decisions, limit the coercive effect of corporate speech, and assist the FEC in enforcing contribution limits. Citizens' motion for a preliminary injunction shall be DENIED.

CITIZENS UNITED, Appellant, v. **FEDERAL ELECTION COMMISSION**, Appellee.

No. 08-205

SUPREME COURT OF THE UNITED STATES

March 17, 2009

EXCERPT FROM REPLY BRIEF FOR APPELLANT

The government defends its effort to criminalize Citizens United's political documentary by repeatedly invoking its authority, purportedly exercised "[s]ince 1907," to suppress political expression that might influence federal elections by individuals who have organized themselves into corporations or labor unions.

If the government had started instead with the First Amendment's imperative that "Congress shall make *no* law . . . abridging the freedom of speech," it would have been forced to articulate some compelling constitutional justification for prohibiting dissemination of a 90-minute movie

by a nonprofit, ideologically motivated group concerning the qualifications, character, and fitness of a candidate for the Nation's highest office. Because Citizens United's documentary engages in precisely the political debate the First Amendment was written to protect, only a narrow restriction carefully crafted to prevent actual or threatened electoral corruption could be used to suppress it.

Yet nowhere in its brief does the government make any effort to advance a remotely plausible theory as to how Video On Demand dissemination of Citizens United's movie could have been a corrupting influence in last year's Democratic Party presidential primaries. The government certainly does not even hint that Senator Clinton's opponents might have been so grateful for Citizens United's documentary movie that they might have been tempted to endow Citizens United or its members with *quid pro quo* benefits.

Instead, the government rests its case on the simple but disturbing proposition that election-related speech by a union or corporation (unless licensed by the government as an *"MCFL"* corporation or defined by the government as "news media") is so inherently evil that it must be prohibited and, if attempted, punished as a felony with a five-year prison term. The government's position is so far-reaching that it would logically extend to corporate or union use of a microphone, printing press, or the Internet to express opinions--or articulate facts--pertinent to a presidential candidate's fitness for office.

Citizens United's documentary movie is condemned by the government as the functional equivalent of express advocacy because it focuses on, and criticizes, Senator Clinton's character, fitness, and qualifications for office. Indeed, it is the government's position that the movie is to be suppressed precisely because it expresses a point of view on *issues* that bear upon a presidential candidate's suitability for the Nation's highest office. That is a perverse basis for pronouncing election-related debate unworthy of First Amendment protection.

It is the government's deep suspicion of election-related debate--not Citizens United's efforts to participate in that debate--that "reflects a jaundiced view of American democracy." That cynicism is flatly incompatible with any reasoned or historically grounded understanding of the First Amendment. As applied to Video On Demand dissemination of *Hillary: The Movie*, BCRA's criminalization of election-related debate plainly exceeds Congress's sharply limited authority to abridge the freedom of speech.

The government's defense of its application of BCRA's message-distorting disclaimer requirements, donor-discouraging disclosure obligations, and resource-consuming reporting mandates is equally indefensible under the First Amendment. Even if, as the government asserts, governmental concerns less compelling than the prevention of *quid pro quo* corruption can sustain the imposition on speech of these burdens, expenses, and intrusions, the government's justification for doing so collapses under its own weight when scrutinized.

Whatever interest the government may have in facilitating the criminal enforcement of BCRA's substantive restrictions on "electioneering communications," that interest cannot be extended to communications that the government concedes do not constitute express advocacy or its functional equivalent and that are therefore beyond the reach of BCRA's prohibitions. Nor is the governmental interest in providing the public "information about participants in the electoral

process" meaningfully advanced by application of the disclaimer, disclosure, and reporting requirements to messages that the government acknowledges are "not unambiguously election-related," and, in fact, may "have *nothing* to do with a candidate election." Even the relaxed scrutiny urged by the government is, after all, *"exacting,"* and requires a *"substantial relation"* between the specific application of BCRA's commands and an important governmental objective. Applying the full panoply of BCRA's disclaimer, disclosure, and reporting requirements to messages that have *"nothing"* to do with a candidate election cannot conceivably provide the public with "information about participants in the electoral process." On the other hand, that level of government intrusiveness and regulatory bureaucracy can, and surely will, stifle constitutionally protected speech that the public has a right to receive.

. . . .

Respectfully submitted.

THEODORE B. OLSON, Counsel of Record

CITIZENS UNITED, Appellant, v. **FEDERAL ELECTION COMMISSION**, Appellee.

July 31, 2009

Amicus Brief

EXCERPT FROM SUPPLEMENTAL BRIEF OF AMICI CURIAE SENATOR JOHN MCCAIN, SENATOR RUSSELL FEINGOLD, FORMER REPRESENTATIVE CHRISTOPHER SHAYS, AND FORMER REPRESENTATIVE MARTIN MEEHAN IN SUPPORT OF APPELLEE

INTRODUCTION AND SUMMARY OF ARGUMENT

If judicial modesty is a virtue, then "[w]hen the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including *stare decisis.*" By that standard, this Court's order that the parties brief and argue whether *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) and *McConnell v. FEC*, 540 U.S. 93 (2003), should be overruled is a modest proposal only in the Swiftian sense.

The Court's directive dramatically changes the issue in this case. No longer is it only whether BCRA and its implementing regulations can apply to ondemand satellite transmission of a movie by a nonprofit corporation that accepts some funding from business corporations, and whether that movie is the functional equivalent of express advocacy. The Court now asks whether *all* restrictions on use of treasury funds of *for-profit* corporations (and unions) for express advocacy should be held facially unconstitutional.

Overruling *Austin* or *McConnell* in this case would be unwarranted and unseemly. *Stare*

decisis requires respect for precedents absent a special justification for overruling them. No such justification exists. *Austin* and *McConnell* (and their antecedents) are vital cornerstones of modern campaign finance regulation and have engendered much reliance. Overruling them would severely jolt our political system by suddenly overturning not only federal statutes that have stood for decades, but also laws of many States. The foundations of *Austin* and *McConnell* have not been undermined by precedential development, and their holdings have not proved unworkable. Nor does the Court have new information that undermines their factual basis; there is *no* factual record in this case that even bears on, let alone undermines, the justifications for the longstanding restrictions on the use of corporate treasury funds for express candidate advocacy.

More fundamentally, *Austin* and *McConnell* were correctly decided. Unlimited expenditures supporting or opposing candidates may create at least the appearance of corruption, as *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), illustrates. The tremendous resources business corporations and unions can bring to bear on elections, and the greater magnitude of the resulting apparent corruption, amply justify treating corporate and union expenditures differently from those by individuals and ideological nonprofit groups. So, too, does the countervailing free-speech interest of the many shareholders who may not wish to support corporate electioneering but have no effective means of controlling what corporations do with what is ultimately the shareholders' money. *Austin* was rightly concerned with the corruption of the system that will result if campaign discourse becomes dominated not by individual citizens--whose right it is to select their political representatives--but by corporate and union war-chests amassed as a result of the special benefits the government confers on these artificial "persons." That concern remains a compelling justification for restrictions on using corporate treasury funds for electoral advocacy--constraints that ban no speech but only require that it be funded by individuals who have chosen to do so.