No. 11-1179

In The
Supreme Court of the United States

AMERICAN TRADITION PARTNERSHIP, INC., f.k.a. WESTERN TRADITION PARTNERSHIP, INC., et al.,

Petitioners,

v.

STEVE BULLOCK, ATTORNEY GENERAL OF MONTANA, et al.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Montana Corrupt Practices Act, which requires natural persons associating as business corporations to contribute to and account for political campaign expenditures through a segregated fund of voluntary contributions, violates the First Amendment in light of the minimal burdens imposed by the Act, significant differences between state and federal elections, unrefuted evidence of actual and likely corruption in Montana's elections, and experience elsewhere since this Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

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STATEMENT OF THE CASE

This case concerns the Corrupt Practices Act of 1912, enacted by the People of Montana through ballot initiative. Init. Act. Nov. 1912, § 25, 1913 Mont. Laws at 604. That act prohibited certain business corporations from "pay[ing] or contribut[ing] in order to aid, promote or prevent the nomination or election of any person." *Id.* After legislative clarification in 1979, current law provides that business corporations make campaign contributions and expenditures by accounting for and disclosing them through a separate, segregated fund of voluntarily solicited contributions from shareholders, employees, and members. *See* Mont. Code Ann. § 13-35-227(3); *cf.* 1979 Mont. Laws 1011, ch. 404. "A corporation may not make . . . an expenditure" not so funded and accounted for. Mont. Code Ann. § 13-35-227(1).

The Commissioner of Political Practices administers the Corrupt Practices Act to further accountability and transparency in a minimally burdensome manner. Every group making independent campaign expenditures qualifies as either a political action committee (if it has a primary purpose to influence elections) or an incidental committee (if it does not have a primary purpose of influencing elections). *See* Mont. Code Ann. § 13-1-101(22) (defining political committee); Mont. Admin. R. 44.10.327 (political committee types). Each group files the same simple two-page disclosure form, and periodic short-form expenditure disclosures as appropriate, whether it

constitutes an unincorporated association of individuals, an incorporated voluntary association, or a business corporation. *See* Mont. Admin. R. 44.10.327, 44.10.405 (statement of organization), & 44.10.531(4) (independent expenditure reporting); *cf.* Form C-2, *available at* http://politicalpractices.mt.gov/content/pdf/5cfp/fillC-2COMPLETE.pdf.

The Petitioners are an incorporated voluntary association (Montana Shooting Sports Association, "MSSA"), an incorporated sole proprietorship (Champion Painting, "Champion"), and a foreign corporation registered to do business in Montana (American Tradition Partnership, formerly Western Tradition Partnership, "ATP"). App. 6a-7a. They filed this action on March 8, 2010, and an Amended Complaint dated April 15, 2010. Pet. 4; App. 115a. They conducted no discovery prior to moving for summary judgment, and instead presented two affidavits consisting of less than six double-spaced pages of conclusory testimony from the principals of MSSA and Champion. App. 13a. The State cross-moved on the basis of an extensive record, including depositions of the Petitioners' principals, affidavits detailing the function of the Corrupt Practices Act, and expert affidavits from historians, public officials – Republicans and Democrats – and campaign finance analysts. *Id.* Plaintiffs did not rebut these facts. *Id.*

The district court granted summary judgment to the Petitioners on October 18, 2010. App. 109a. The Montana Supreme Court reversed. App. 32a-33a. It relied on a close reading of *Citizens United v. Federal*

Election Comm'n, 130 S. Ct. 876 (2010), citing it two dozen times in concluding that "[t]he District Court erroneously construed and applied the *Citizens United* case." App. 10a. In its own application of the case, it considered this Court's careful analysis of the record and the particular burdens imposed by the federal law and the federal regulatory system on federal campaigns. App. 10a-12a. The Montana court expressly adopted and applied the strict scrutiny analysis required by *Citizens United*, App. 12a-13a, as well as by the Montana Constitution, App. 24a-25a. The court distinguished *Citizens United* on three primary grounds.

First, the court relied on the Petitioners' various admissions and unrefuted evidence that their core political speech was neither banned nor abridged in any material way. It found "the statute has no or minimal impact on MSS[A] and Champion." App. 31a.

MSSA "has been an active fixture in Montana politics and in the legislative process for many years," including in candidate campaigns, simply by filing a registration and disclosures under the Act. App. 13a-14a. In 2008, MSSA publicly supported or opposed candidates in every statewide and legislative campaign using its corporate resources in full compliance with the law. Marbut Dep. 53:14-24, 54:25-55:16. Its status as a voluntary association funded by individual members means it is not subject to segregated fund accounting under the law. Baker Aff. ¶ 11; Unsworth Aff. ¶ 17. It chose to use a segregated fund of separate donations that are earmarked for campaign purposes, and therefore reportable as to their source, but it did

not have to; MSSA is free to use its member dues for campaign expenditures. It is precisely the sort of "voluntary association" speech that the Corrupt Practices Act does not regulate. Unsworth Aff. ¶ 15. Thus, as the court explained, the only First Amendment burden MSSA claimed was based on its misreading of laws it has complied with for years. App. 13a-14a, 16a. MSSA therefore suffers no burden at all under the Corrupt Practices Act.

Champion's only claimed First Amendment burden was also based on ignorance of, rather than compliance with, the law: it sought a tax benefit for political expenditures (which is prohibited by other law) and the ability to lend the company's endorsement to campaign speech (which is allowed by the Corrupt Practices Act). App. 14a-15a. As to the former, neither the federal nor state governments allow such a tax benefit. *See* I.R.C. § 162(e); *see also* Mont. Code Ann. § 15-31-114(1)(a) (corporate deduction for "ordinary and necessary" business expenses). As to the latter claimed burden, the Act allows Champion expressly to endorse a candidate in its own name. Baker Aff. ¶ 10; Unsworth Aff. ¶ 17.

Champion's only actual "burden," then, is that its owner (Kenneth Champion) must make independent expenditures from his personal rather than his corporate checking account, both of which contain his company's money. Champion Dep. 26:15-26:17. In fact, the Act *reduces* Champion's burden, because the corporation would have needed to register as an incidental political committee while Mr. Champion

does not need to do so. *See* Mont. Code Ann. § 13-1-101(22) (political committee is "two or more individuals or a person other than an individual").

ATP, which presented no evidence of any burden on its political speech, objected primarily to its classification as a political committee subject to full disclosure of its funding sources. App. 15a-16a. ATP, unlike its copetitioners, represents precisely the kind of covert corporate influence the Corrupt Practices Act regulates through its minimal accountability requirements. This is not because it is itself a voluntary association, a 501(c)(4) "nonprofit ideological corporation," Pet. 4. Instead, it is because its status as a nonprofit voluntary association is a shell that conceals undisclosed funding by business corporations that do not themselves account to citizens and shareholders for their campaign spending through a segregated fund. ATP's undisputed purpose is to use the nonprofit corporate form primarily to evade disclosure of funding sources that are themselves out-of-state (and potentially offshore) business corporations that seek to influence Montana elections anonymously. Hoffman Aff. ¶¶ 4-5, Ex. A; Baker Aff. ¶ 12.

Its solicitation to donors revealed how ATP seeks to serve as an anonymous conduit of unaccountable campaign spending:

> There's no limit to how much you can give. As you know, Montana has very strict limits on contributions to candidates, but there is no limit to how much you can give to this program. You can give whatever you're

> comfortable with and make as big of an impact as you wish.
>
> Finally, we're not required to report the name or the amount of any contribution that we receive. So, if you decide to support this program, no politician, no bureaucrat, and no radical environmentalist will ever know you helped make this program possible. *The only thing we plan on reporting is our success to contributors like you who can see the benefits of a program like this. You can just sit back on election night and see what a difference you've made.*

App. 15a (emphasis added).

Second, the court held that Montana law as administered imposed no significant regulatory burden in general. Unlike the "length, complexity and ambiguity" of the federal laws administered by the Federal Election Commission and addressed in *Citizens United*, compliance with the Corrupt Practices Act only requires "filing simple and straightforward forms or reports." App. 16a. In contrast to the 33 different types of speech covering 71 distinct entities and thousands of pages of regulations and explanatory materials supporting the federal law's criminal sanctions, Montana's simple forms are backed by civil and administrative enforcement oriented at disclosure rather than deterrence. As a result, the record shows that businesses of all sizes are active in Montana politics, ranging from Blue

Cross Blue Shield of Montana to the Tri-County Beverage Hospitality Association of small businesses.

Third, the court recounted the compelling interests that lay behind the adoption of the Corrupt Practices Act, as well as the modern-day political reality that continues to support those compelling interests. They include responding to an extraordinary history of political corruption by out-of-state foreign corporations and interests in the years leading up to the aptly named Act, App. 17a-22a & 25a-26a, maintaining an extraordinarily accessible government in a sparsely populated state, App. 22a-24a & 26a-27a, and preserving citizens' control of and confidence in an elected judiciary, what this Court has held is "a state interest of the highest order," App. 27a-31a. The Montana Supreme Court did not limit its consideration to history; it also detailed testimony on politics as currently practiced in Montana by candidates, electors, and businesses and other interest groups of all sizes. App. 22a-27a.

The court concluded that the distance between the accountable and transparent Montana politics of today and the dark days of Copper Kings confirmed rather than rebutted the People's compelling interest in the Corrupt Practices Act, and that the State's compelling interests remain:

> The question then, is when in the last 99 years did Montana lose the power or interest sufficient to support the statute, if it ever did. If the statute has worked to preserve a degree of political and social autonomy is the

> State required to throw away its protections because the shadowy backers of WTP seek to promote their interests? Does a state have to repeal or invalidate its murder prohibition if the homicide rate declines? We think not. 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. Clearly Montana has unique and compelling interests to protect through preservation of this statute.

App. 26a. The court entered summary judgment in favor of Montana and against the Petitioners. App. 32a-33a.

Two weeks after the Montana Supreme Court's decision, the Petitioners sought a stay in the Montana Supreme Court. The Montana Supreme Court denied the motion for a stay. App. 113a-114a. On Petitioners' motion, this Court granted a stay pending its consideration of the petition and the merits. *See American Tradition Partnership, Inc. v. Bullock*, No. 11A762, 2012 WL 521107 (U.S. Feb. 17, 2012).

REASONS FOR DENYING THE PETITION

The Montana Supreme Court applied rather than defied *Citizens United*. This case is distinguishable

from that case based on the law at issue and the facts in the record. First, the Corrupt Practices Act as administered is not a ban on corporate speech because it does not require the creation of a legal entity separate from the individuals associated in the corporate form. Moreover, there are meaningful qualitative differences between the many substantial burdens imposed on corporate campaign speech by the federal law at issue in *Citizens United* and the minimal burdens imposed on similar speech by the state law at issue here.

Second, as Montana's history attests, corporate independent expenditures can corrupt. Unusually compelling interests motivated the adoption and administration of the Corrupt Practices Act in Montana's state and local elections and those interests remain today. No State in the Union has detailed a more compelling threat of corruption by corporate campaign expenditures than Montana, and the unrefuted testimony presented below establishes that the corruption threat continues against Montana's state and local elections. That threat includes the domination of Montana's small republic by out-of-state, foreign corporations.

In any event, this case presents no basis for the summary reversal Petitioners request. Even if this case holds the great public importance Petitioners ascribe to it, that would be cause for hearing it on the merits. The Act has long been an important part of the Montana political process. The Act's distinctive features would present the Court with an opportunity

to clarify the relatively unsettled doctrine in this area. And the question of whether "experience elsewhere since this Court's decision in *Citizens United*" justifies reconsideration under its own principles, *American Tradition Partnership v. Bullock*, No. 11A-762 (Feb. 17, 2012) (Stmt. of Ginsburg, J.), cannot and should not be determined summarily. No precedent of this Court supports summary invalidation of a long-established state law so critical to its republican form of government.

I. THE COURT BELOW APPLIED *CITIZENS UNITED* TO THE FACTS BEFORE IT.

In *Citizens United*, this Court held "The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether." *Citizens United*, 130 S. Ct. at 886. "Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Id.* at 898, *quoting Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 464 (2007) (opinion of Roberts, C.J.). Campaign finance regulations that "do not prevent anyone from speaking," on the other hand, are subject to lesser, exacting scrutiny under the First Amendment. *Citizens United*, 130 U.S. at 914, *quoting McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003).

Petitioners concede the decision below acknowledged the proper levels of scrutiny. Pet. 12-13. They simply disagree with the substance of the Montana Supreme Court's analysis of the law applied to the facts before it. Yet as that court explained, "the factual record before a court is critical to determining the validity of a governmental provision restricting speech." App. 12a. The record here established that under the minimally burdensome Corrupt Practices Act, Petitioners and business corporations are vocal participants in Montana politics. This is "a material factual distinction between the present case and *Citizens United*." App. 16a. On this record, the court below correctly applied *Citizens United*, consistent with a century of law and practice in Montana and elsewhere, that the Corrupt Practices Act satisfied constitutional scrutiny.

A. The Corrupt Practices Act Does Not Ban or Severely Burden Petitioners' Speech.

Whether the Corrupt Practices Act serves as a ban or other severe burden on speech turns on how it designates a corporation as a political committee for accounting and disclosure purposes. If that designation creates "a separate association from the corporation" so as not to "allow corporations to speak," then strict scrutiny applies. *Citizens United*, 130 S. Ct. at 897. In the courts below, however, Petitioners presented no evidence that corporate speech had been "suppressed . . . altogether." Unlike the federal law

that required a corporation to "establish[ ]" *and* "administ[er]" a separate segregated fund, 2 U.S.C. § 441b(b)(2)(c), under Montana law a corporation may opt simply to administer its own account of "voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation." Mont. Code Ann. § 13-35-227(3).

Petitioners assert that the decision below "conflicts with the reasoning of *Citizens United*" because a political committee "does not speak for a corporation." Pet. 10. Under the federal law the required political committee was "a separate association from the corporation." *Citizens United*, 130 S. Ct. at 897. That is not true of the Montana law. There is no basis for Petitioners' assertion that the political committee designation establishes "separate legal entities." Pet. 11. Instead, the entity speaking as a "political committee" is the corporation itself, spending the voluntarily contributed funds of corporate principals in the corporate name.

Indeed, the political committee registration and disclosure forms promulgated under the Act recognize that corporations can and do file *as corporations*. Under Montana law, "'Political Committee' means . . . a person" and "'Person' means a[ ] . . . corporation." Mont. Code Ann. § 13-1-101(22), (20). The Form C-2 "Statement of Organization" required for registration and disclosure of corporate campaign expenditures contains a check-box to indicate whether or not the designated committee itself is incorporated. *Cf.* Form

C-2, *available at* http://politicalpractices.mt.gov/content/pdf/5cfp/fillC-2COMPLETE.pdf.

Montana's registration and associated disclosure forms are the same minimally burdensome forms any organization (whether or not a business corporation) making independent campaign expenditures would file. *See* Mont. Code Ann. § 13-1-101(22) (defining political committee; Mont. Admin R. 44.10.327 (political committee types). The testimony of Petitioners themselves established that it takes no more than two minutes to provide the required information to file for a political committee designation, and the Commissioner's office will even fill out the paperwork for a filing corporation. Champion Dep. 9:22-12:9; Baker Aff. ¶ 17. Given these aspects of the law at issue it is, at best, empty formalism to regard the political committee designation as a "separate legal entity."

Based on this misunderstanding of Montana law, Petitioners proceed to read paragraph after paragraph out of this Court's reasoning in *Citizens United* by denying that "the difficulties of federal PAC compliance" mattered to the Court's reasoning. Pet. 11. Unlike the law at issue here, the federal law at issue in *Citizens United* was "an outright ban, backed by criminal sanctions . . . making it a felony for all corporations – including nonprofit advocacy corporations" to engage in electioneering communications. 130 S. Ct. at 907. The Corrupt Practices Act is enforceable through an administrative process and "civil action . . . for an amount up to $500 or three times the amount of the unlawful contribution or expenditures,

whichever is greater." Mont. Code. Ann. § 13-37-128(1). Consistent with its original purposes and *Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S 238 (1986), the Act does not apply to nonprofit advocacy incorporations like MSSA, which engages in campaign speech through a corporate form in full compliance with the Act. Neither MSSA nor the other Petitioners cited any of the "classic examples of censorship" under Montana law that this Court cited under federal law. *Citizens United*, 130 S. Ct. at 897.

Petitioners developed no support in the record for their claim that Montana's filing requirements – the two-page form MSSA has filed under for more than a decade – "remain onerous." Pet. 11. Unlike the Commissioner's office, the Federal Election Commission had "adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975." *Citizens United*, 130 S. Ct. at 895. This complicated regulatory scheme "force[d] speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day." *Id.* at 889. As a result, "smaller or nonprofit corporations cannot raise a voice" under the federal regime. *Id.* at 907. This is demonstrably untrue in Montana, where hundreds of small businesses have been active in Montana politics over the past decade, including the likes of the Dawson-Wibaux County Farm Bureau and the Tri-County Beverage Hospitality Association of businesses. Baker Aff. Exs. A, B. MSSA, the only

one of the three Petitioners who had even bothered to consult Montana's short-form filing requirements for registration and disclosure of campaign expenditures completed them (through its sole employee Gary Marbut, a nonlawyer) without legal or other assistance. Marbut Dep. 68:10-17.

Moreover, while under the federal law "a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign," *Citizens United*, 130 S. Ct. at 898, under Montana law there is no such requirement "for prior permission to speak." *Id.* at 895. Instead, a corporation need only file its registration statement "within 5 days after it makes an expenditure." Mont. Code Ann. § 13-37-201. These administrative burdens are nothing like the "equivalent of prior restraint," *Citizens United*, 130 S. Ct. at 896, and indeed are far less onerous than the political expenditure disclosure required by the Federal Election Commission and endorsed by this Court as "a less restrictive alternative to more comprehensive regulations of speech." *Citizens United*, 130 S. Ct. at 915.

Thus, Petitioners are unable to evince any cognizable First Amendment harm beyond the *de minimis* task of filing disclosures consistent with the holding of *Citizens United*. *See* 130 S. Ct. at 916. All any of the three Petitioners have to file to engage in independent expenditures consistent with the Corrupt Practices Act is identical to what they would

need to file for disclosure purposes even if their constitutional claims were successful.

Beyond these simple disclosure filings, the only practical requirement imposed by the law at issue is that a business corporation must voluntarily raise and separately account for the shareholder funds its management seeks to use for campaign expenditures. *See* Mont. Code Ann. § 13-35-227(3). So understood, the law is more akin to an accounting rule – ensuring the voluntary and transparent funding of campaign expenditures – than censorship. It is critical to a system of "effective disclosure" that "permits citizens and shareholders to react to the speech of corporate entities in a proper way." *Citizens United*, 130 S. Ct. at 916.

It is this accountability, and not any censorship, that ATP seeks to escape. A foreign out-of-state corporation under Montana law, and a 501(c)(4) corporation under federal law, ATP is "as much the creature[ ] of law as of traditional forces of speech and association," formed to "manipulate the system and attract [its] own elite power brokers, who operate in ways obscure to the ordinary citizen." *Randall v. Sorrell*, 548 U.S. 230, 265 (2006) (Kennedy, J., concurring in the judgment). The Corrupt Practices Act allows corporations to speak as corporations, accountably, but ATP exists to allow corporations to speak through it, unaccountably.

It is undisputed that ATP sold itself to corporate campaign donors as a conduit "for anonymous spending

by others." App. 16a; Hoffman Aff., Ex. A at 33. It is this shell game of one voluntary association in corporate form (ATP) spending the money of another, hidden, business corporation (unknown), that requires a segregated fund to ensure accountability. Such accounting prevents ATP and similar groups "from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Massachusetts Citizens*, 479 U.S. at 264. Its veiled communications hardly convey the "valuable expertise" of ATP's hidden corporate funders, who might otherwise be "the best equipped to point out errors or fallacies in speech of all sorts." *Citizens United*, 130 S. Ct. at 912; *cf.* Hoffman Aff., Ex. B (Partnership-affiliated flier associating candidate with serial murderers). ATP's function to contravene otherwise valid contribution and disclosure limits is cause for enforcement, not invalidation, of the Act.

B. Any Burden Imposed By the Corrupt Practices Act Satisfies Constitutional Scrutiny.

In *Citizens United* "[t]he Government d[id] not claim that [corporate independent] expenditures have corrupted the political process in those States" without Corrupt Practices Acts. *Id.* at 909. With respect to the circumstances in Montana before its Corrupt Practices Act, Montana did make that claim below, and does so here. It "has never been doubted" that the People may prevent "the problem of corruption of elected representatives through the creation of political

debts." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 788 n.26 (1978).

Petitioners treat this Court's conclusion "that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption," *Citizens United*, 130 S. Ct. at 909, as an axiom rather than a claim about how politics actually works. Pet. 16. Yet rather than an irrefutable "matter of law" as Petitioners contend, *id.*, this Court grounded this factual premise in the federal presidential campaign "speech here in question," Congress's findings, and the extensive record in *McConnell v. Federal Election Comm'n* concerning federal law and federal elections. *Citizens United*, 130 S. Ct. at 909-10. This case presented to the court below a more developed and distinct record of state politics.

Petitioners' reading of *Citizens United* to hold that "only quid-pro-quo corruption [i.e., bribery] can justify restricting core political speech," Pet. 19, also is inconsistent with this Court's more recent decisions. *See Bluman v. Federal Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011), *affirmed*, No. 11-275 (Jan. 9, 2012) (protecting the overall process of democratic self-government is a compelling state interest sufficient to ban campaign expenditures); *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010) (protecting national security is a compelling state interest sufficient to ban political advocacy coordinated with designated terrorist groups). If the Court had declared a rule of unconstitutionality *per se*, rather

than a balancing based on the relevant burdens on speech, these cases would have come out the other way. Such a balancing also is appropriate here.

1. Montana Has Compelling State Interests in Preventing Corruption and Maintaining Accountability in State Elections.

As the Court below held, geographic, economic, and demographic factors "make Montana especially vulnerable to continued efforts of corporate control to the detriment of democracy and the republican form of government," App. 26a. Petitioners now deride this reality as "the Anaconda scare." Pet. 15. Yet they have not disputed it.

The compelling historical interests for the enactment of the Corrupt Practices Act are unmistakable. A century ago, Montanans acted to take back their state government after the Copper Kings' corporate interests had controlled the political sphere for decades. Fritz Aff. ¶¶ 4-5; 14-25, 28; Brown Aff. ¶ 21. No less than the United States Senate "expressed horror at the amount of money which had been poured into politics in Montana." Fritz Aff. ¶ 14. Foreign corporations extorted special interest favors from Montana lawmakers through "naked corporate blackmail of a sovereign state." Fritz Aff. ¶¶ 15-16, 21-23. These corporate interests expended as much as $1000 per vote (in today's dollars) to influence elections. Fritz Aff. ¶¶ 17-18. That influence bled into

state campaigns with no federal analogues, such as those of local government officials and judges who, notwithstanding their relatively small constituencies, possessed substantial authority over corporate interests. Fritz Aff. ¶¶ 19-20.

The Madisonian balance of faction checking faction, *cf. Citizens United*, 130 S. Ct. at 907, remained an unsubstantiated theory because of the enormous natural resource wealth that drew foreign corporate interests (similar to ATPs own patrons) to the Treasure State. Fritz Aff. ¶¶ 15, 21, 29. As the author of the First Amendment observed, small republics like the States are more susceptible to "[t]he influence of factious leaders," where it is easier than at the federal level "for unworthy candidates to practice with success the vicious arts by which elections are too often carried." The Federalist No. 10 at 59, 58 (James Madison) (Henry Cabot Lodge ed. 1888). In a small state like Montana, these outside corporations' campaign expenditures have no connection with our electorate other than the price they put on each vote. Brown Aff. ¶¶ 25-26; Cooney Aff. ¶ 20. Even the Copper King Senator William Clark feared how "[m]any people have become so indifferent to voting [in Montana] by reason of the large sums of money that have been expended in the State." Fritz Aff. ¶ 19.

As the record below established and the court below found, the State's compelling interests remain important. *Cf. Northwest Austin Municipal Utility Dist. No. 1 v. Holder*, 557 U.S. 193 (2009) ("current burdens . . . must be justified by current needs"). In

Montana and elsewhere, today's state political campaigns are different in kind, not just degree, from federal campaigns. State elections are many orders of magnitude smaller than federal elections. The $12 million annual budget of Citizens United, a relatively small player in national politics, is roughly double the total amount raised by every state executive, legislative, and judicial candidate over a biennial election cycle in Montana. Bender Aff. ¶ 20. Yet state and local policy may be no less consequential financially to corporations – and may exert no less a pull to harness public policy to private ends.

These distinct conditions of the political systems in the States, reflected in the record and acknowledged in the law, suggest several state interests sufficient to justify any disparate burden on corporate campaign expenditures. First, this Court has long recognized a duty at the federal and state level to preserve the conception of a political community for citizens, who alone are sovereign in the republican form of government. Second, States are especially susceptible to corruption given the nature and number of their elected offices. Third, States retain plenary power to ensure the effective regulation of the corporate form they enable. None of these distinct State interests were before the Court in *Citizens United*.

a. A State Has a Distinct Duty to Preserve its Citizens' Political Community.

The Corrupt Practices Act rests upon a core principle of republican government underlying this Court's hesitancy to embrace foreign campaign expenditures in *Citizens United*. *See id.*, 130 S. Ct. at 911. *Bluman* is particularly instructive on this point. The Court's affirmation in that case could not have relied on any lesser First Amendment rights of foreign persons relative to domestic persons, because as *Citizens United* recognized the primary constitutional harm of such campaign finance restrictions is depriving the listener of information rather than depriving the speaker of a voice. *See id.*, 130 S. Ct. at 908 (it is unlawful for Government "to command where a person may get his or her information or what distrusted source he or she may not hear"). Instead, the most reasonable reading of *Bluman* in light of *Citizens United* is that government has a compelling interest in regulating non-citizen participation in activities of democratic self-government. *See Bluman*, 800 F. Supp. 2d at 288. Whatever the privileges of "the Citizens of each State" to participate directly in the campaign processes of other States, *cf.* art. IV, § 2, corporations as corporations do not enjoy the same privilege. *See Paul v. Virginia*, 75 U.S. 168, 177 (1869) ("corporations are not citizens"), overruled on other grounds, *United States v. South-Eastern Underwriters Assn.*, 322 U.S. 533 (1944).

Under our federal system, where the States are not mere subsidiaries of the national government, "[t]he Constitution . . . contemplates that a State's government will represent and remain accountable to its own citizens." *Printz v. United States*, 521 U.S. 898, 920 (1997). A cornerstone of this federal system is the national government's guarantee of "a Republican Form of Government." U.S. Const., art. IV, § 4. How a State maintains its government under this guarantee must be entitled to some latitude. The power to structure the processes of republican government reserved under the Tenth Amendment "inheres in the State by virtue of its obligation . . . to preserve the basic conception of a political community." *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973) (citations and quotations omitted). Although the First Amendment provides in part that "*Congress* shall make no law . . . abridging the freedom of speech, or of the press," U.S. Const. amend. I (emphasis added), the Bill of Rights applies to the States, where it does, through the Fourteenth Amendment's guarantees of "due process of law" or "privileges or immunities of citizens." U.S. Const. amend. XIV; Pls.' Br. at 12.

While "at least" a corporation "cannot be denied the right to speak on the simplistic ground that it is not 'an individual American,'" *Citizens United*, 130 S. Ct. at 925 (Scalia, J., concurring), the incorporation of the First Amendment's guarantees against the States historically has "varied depending on the person, group, or entity to whom those rights were assigned." *McDonald v. City of Chicago*, 130 S. Ct.

3020, 3064 (2010) (Thomas, J., concurring). The specific scope of those rights must be "deeply rooted in this Nation's history and tradition." *Id.* at 3036, *citing Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *see also McDonald*, 130 S. Ct. at 3050 (incorporation is "a theory that makes the traditions of our people paramount") (Scalia, J., concurring). Tradition in this case favors the Corrupt Practices Act. This is all the more true where, as here, the citizens themselves, and not any entrenched representatives or faction, have enacted the law at issue.

b. State Elections Are Distinctly Susceptible to Corrupting Influences.

Little has changed about Montana's natural resource wealth in the past century, but much has changed in its politics. The Corrupt Practices Act ushered in a robust form of grassroots politics, including participation by businesses large and small. Fritz Aff. ¶¶ 27-28; Cooney Aff. ¶ 20. That law's spirit of accountability eventually led to a new Montana Constitution. That Constitution makes paramount the rights of citizen participation in and public information about government proceedings. Mont. Const. art. II, §§ 8, 9. Republican legislator Bob Brown and Democratic legislator Mike Cooney, both former Secretaries of State, attested to this evolution. Unlike the corporate transactional politics that preceded the Act, state campaigns now rely on person-to-person contact across vast distances supported by personal

contributions. Brown Aff. ¶¶ 12-18; Cooney Aff. ¶¶ 9-15; Unsworth Aff. ¶¶ 19-20.

Consistent with this democratization of the state government, the Constitution also provides for direct election of many more officials than are present at the federal level. *See* Mont. Const. art. V, § 3 (election of legislators); art. VI, § 2 (election of statewide offices); art. VII, § 8 (election of judiciary); art. XI, § 3 (election of local government). Each of these offices presents a different set of policy decisions susceptible to "improper influences from independent expenditures," from legal actions, licensing, contracting, and land use decisions, to the administration of elections themselves. Brown Aff. ¶¶ 24-26; Cooney Aff. ¶¶ 21-23. In elections for second-tier executive officials like the Secretary of State (charged with administering elections and corporate law) or the Public Service Commission (charged with public utility regulation), "[c]orporations would have a very powerful weapon at their disposal through the use of unlimited independent expenditure[s]" to corrupt executive actions that are "less visible than decisions made in the legislature," which unequivocally "would have a negative effect on the deliberation" of state officers. Cooney Aff. ¶ 23. The threat of such mischief in the executive branch also extends to quasi-judicial and law-enforcement officials like county attorneys and sheriffs, too. *See* Mont. Code Ann. § 7-4-2203.

As in most states, Montana voters also select judges in heretofore nonpartisan elections. These elections, wholly unexamined in *Citizens United*, pose

distinct risks of corruption. *See Caperton v. A.T. Massey Coal*, 556 U.S. 868, 873, 876 (2009) (finding that $3 million in contributions including "$500,000 on independent expenditures," more than the total amount spent by individuals or either candidate, could "corrupt [a candidate's] integrity") (internal quotations omitted); *see generally* Larry Howell, *Once Upon a Time in the West: Citizens United, Caperton, and the War of the Copper Kings*, 73 Mont. L. Rev. 25 (2012). Indeed, in *Caperton* this Court recognized no difference between independent expenditures and contributions in terms of undue influence on the judiciary. *Id.*, 556 U.S. at 885. Montana's law ensures that such influence over judges and others remains the "extraordinary" acts of a single individual, *see id.* at 886, rather than business as usual. Bender Aff. ¶ 31 and Ex. C. Not even Petitioners claim a right to influence judicial campaigns through corporate expenditures, yet their arguments sweep broadly enough to undermine the integrity of the judicial system as much as the political system.

Thus, as the unrefuted record below established, "Montana state and local politics are more susceptible to corruption than federal campaigns." Brown Aff. ¶ 24. Without the law the People of Montana enacted as the *Corrupt* Practices Act, the voters' concern about the appearance of corruption will become worse. Cooney Aff. ¶ 24. The replacement of expenditures from voluntarily solicited and personally accountable funds with unlimited direct corporate campaign expenditures "pose a special threat of

corrupting politics in Montana." Brown Aff. ¶ 21; *see also* Fritz Aff. ¶ 29; Brown Aff. ¶¶ 19-26; Cooney Aff. ¶¶ 16-25. Such a corporate takeover of Montana candidate campaigns, motivated only by a fiduciary duty to maximize profit, would "accomplish the same type of corruption of Montana politics" that existed before the Corrupt Practices Act. Brown Aff. ¶ 22; Cooney Aff. ¶ 25. As the dissent below noted, independent expenditures corrupt through a *quid pro quo* of a candidate's loyalty to those who finance the candidate's election, regardless of whether those funds pass through the candidate's own campaign. App. 90a.

Beyond this, independent expenditures allow "implicit threats" against officeholders by corporations; officeholders, fearing massive corporate spending in an election, will vote as the corporations desire even if the officeholder believes it is against the public interest. This is a far less expensive (and less detectable) means of corruption than holding out the prospect of campaign contributions. Indeed, this was one of ATP's selling points as it solicited corporate money for its election program. *See* Hoffman Aff. Ex. A at 29-30 (explaining that ATP's independent expenditure program of attack ads works "with great success" because politicians "usually improve their stance on the issues they felt the most heat on" and "get the message loud and clear when their colleagues get beaten at the ballot box"); *see also* Robert Hall, *Free Speech and Free Elections*, 3 First Amend. L. Rev. 173, 178 n.17, 188-90 (2004) (describing hog

industry executives threatening legislators for votes against their industry, then outspending political parties to defeat targeted legislators). Such threats are even more pernicious than *quid pro quo* corruption. Threatened corporate expenditures cost nothing, but the threat of expenditures limited only by a corporation's legally mandated profit motive "may be far more effective than withholding a money contribution to the legislator or making a money contribution to the legislator's opponent." Cooney Aff. ¶¶ 21-23; Brown Aff. ¶ 24. In short, "[u]nlimited independent corporate expenditures would have a negative and improper influence on the legislative process." Cooney Aff. ¶¶ 21-22; Brown Aff. ¶ 23.

c. States Have Distinct Powers and Needs to Regulate Corporations Effectively.

In 1898, mining company shareholders brought a derivative suit alleging misappropriation of corporate funds for political expenditures to promote "the silver cause" and lobby for the formation of a new county. *McConnell v. Combination Mining & Milling*, 30 Mont. 239, 76 P. 194, 198 (1904), *modified on other grounds,* 31 Mont. 563, 79 P. 248 (1905). The Montana Supreme Court held that the expenditures, made "for strictly political purposes," were *ultra vires*, noting that "[t]he stockholders of the company . . . were not unanimous in their political beliefs. . . ." *Id.* at 199.

Montana's ancient *ultra vires* doctrine, as codified in a more robust form through the Corrupt Practices Act, is exactly the kind of "procedure of corporate democracy" contemplated in *Citizens United*. "Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation." *Santa Fe Indus. v. Green*, 430 U.S. 462, 479 (1977), *quoting Cort v. Ash*, 422 U.S. 66, 84 (1975). It is the State that provides for incorporation, and the State is in the best position to determine whether and how these procedures "can be more effective today" in helping shareholders "determine whether their corporation's political speech advances the corporation's interest in making profits." *Citizens United*, 130 S. Ct. at 916.

Yet the evolution of state corporate law could not deliver on the promise of corporate democracy. Shareholders suits like *McConnell* were insufficient to prevent corporate managers' use of shareholder funds for political speech that may not represent the shareholders' political beliefs. In Montana, as a practical matter, the Corrupt Practices Act displaced *ultra vires* liability for corporate independent expenditures.

The accountability the segregated fund now provides is even more critical today, when in modern capital markets (just as in labor unions) "the volitional nature of being a shareholder in a public company

does not protect shareholders from the consequences of political speech they disfavor." Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 Harv. L. Rev. 83, 114 (2010); *see International Ass'n of Machinists v. Street*, 367 U.S. 740, 769 (1961) (construing the Railway Labor Act to deny "the power . . . to use [a member's] exacted funds to support political causes which he opposes.").

When two-thirds of stock in the United States is held by institutional investors, shareholder-citizens are unable to use state-law "procedures of corporate democracy," *Citizens United*, 130 S. Ct. at 911, to influence a corporation's campaign speech. *See* Br. of Domini Social Invests. LLC at 6, *Western Tradition Partnership v. Attorney General*, 2011 MT 328 (DA 11-0081). As this Court has recognized in the union context, resolving this accountability problem through a voluntary segregated campaign fund "involves no curtailment of the traditional political activities [of the organization]. . . . It means only that those unions must not support those activities, against the expressed wishes of a dissenting employee, with his exacted money." *Machinists*, 367 U.S. at 770.

A related difficulty for dissenting shareholders in the absence of a segregated fund requirement is that the use of the corporate form by groups like ATP would render disclosure laws unenforceable. Unsworth Aff. ¶ 20; Baker Aff. ¶¶ 13-15; Hoffman Aff. ¶¶ 4-5, Ex. A. Corporate officers "diverting money" for

campaign expenditures through the corporate treasury could transform the corporation itself into an informal political committee while avoiding disclosure of funding sources. *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 155 (2003) (citation and quotation marks omitted); *see also Federal Election Comm'n v. Colorado Republican Campaign Comm.*, 533 U.S. 431, 456 (2001) ("all Members of the Court agree that circumvention is a valid theory of corruption"). A segregated fund of voluntary and accountable support for campaign expenditures protects against such diversions.

Complex corporate structures enable evasion of disclosure requirements, coordinated expenditure restrictions, and other unchallenged campaign laws, and absent segregated fund accounting demand an added level of regulatory complexity to rival securities and corporate tax law. Unsworth Aff. ¶ 20; Baker Aff. ¶¶ 13-16. As the Commissioner testified below, "[u]nlike voluntary associations that may be incorporated but can easily account for the member dues and donations that fund their campaign activities, the volume of transactions and complexity of accounting of business corporations facilitates evasion of campaign finance disclosure requirements." Unsworth Aff. ¶ 20. The segregated fund requirement ensures simplified disclosure of only, and more importantly all, money intended for campaign purposes.

2. The Corrupt Practices Act Is Narrowly Tailored to Montana's Interests.

The original form of the Corrupt Practices Act applied only to the same kind of corporations that enjoyed "the state-granted monopoly privileges" the Founders resented. *Citizens United*, 130 S. Ct. at 926 (Scalia, J., concurring); *see* Init. Act. Nov. 1912, § 25, 1913 Mont. Laws at 604. These are the kind of corporations that traditionally have "interfere[d] with governmental functions." *Citizens United*, 130 S. Ct. at 899. Not incidentally, these may be the same kind of corporations ATP is serving: extractive industries to which a captive government may delegate extensive powers of eminent domain. Hoffman Aff. ¶ 5 & Ex. A; *see also* Mont. Code Ann. § 70-30-102 (enumeration of public uses).

Consistent with the original purpose of the Corrupt Practices Act, Montana's current law has been construed to exclude voluntary associations organized for political advocacy. Unsworth Aff. ¶ 15; *see R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 (1992) (in construing local law, the Court is "bound by the construction given to it by" the state supreme court). This policy recognizes that "[s]ome corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status," while other corporations may "serv[e] as conduits for the type of direct spending

that creates a threat to the political marketplace." *Massachusetts Citizens*, 479 U.S. at 263-64.

"[T]he speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf," *Citizens United*, 130 S. Ct. at 928 (Scalia, J., concurring) is that of such voluntary associations, not business corporations that enable managers to speak in someone else's name with someone else's money. MSSA, which has engaged in independent campaign expenditures for more than a decade under the Act, is an example of the former. ATP's hidden corporate patrons represent the latter. Montana's compelling interests reinforce the narrow scope of the law over business corporations, while excluding voluntary associations that only incidentally incorporate.

The historical and current application of the Corrupt Practices Act to for-profit business corporations, and the absence of a separate entity requirement, distinguishes the cases involving nonprofits and independent PACs that create Petitioners' alleged "circuit split." Pet. 19-20. *See North Carolina Right to Life v. Leake*, 525 F.3d 274, 277 (4th Cir. 2008) (nonprofit, membership corporation); *Wisconsin Right to Life State PAC v. Barland*, 664 F.3d 139, 144 (7th Cir. 2011) (nonprofit, membership fund); *Long Beach Chamber of Commerce v. Long Beach*, 603 F.3d 684, 687 (9th Cir. 2010) (PAC contribution cap, not segregated fund); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1118-19 (9th Cir. 2011) (same); *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010)

(voluntary association); *Emily's List v. FEC*, 581 F.3d 1, 8 (D.C. Cir. 2009) (non-profit corporation).

II. THE QUESTION PRESENTED SHOULD BE DECIDED ON THE MERITS, IF AT ALL.

Petitioners make an extraordinary request for summary invalidation of a century-old law in the absence of full briefing and review of the record. Pet. 20. Yet their assertion of this case's "Great Public Importance" exaggerates the effect of the law on "the speech here in question," *Citizens United*, 130 S. Ct. at 908, and, if true, argues for rather than against hearing on the merits. Pet. 20. Even if the Court were to grant the Petition, this is not the rare case meriting summary reversal.

Whether or not this case might be a proper vehicle for reconsidering *Citizens United*, it is ill-suited to summary reversal given the lack of a record establishing any substantial burden on Petitioners' free speech rights. The lead Petitioner ATP literally did not show up in the case below: it all but defaulted on proving its case so as to avoid revealing its funding sources. (The record on ATP was developed through the introduction of authenticated documentary admissions by a party-opponent, produced by a third party.) The testimony of the other two Petitioners, MSSA and Champion, established that the Act imposed no burden on their political speech.

Petitioners' claim that "this case involves the suppression of core political speech protected by the First Amendment," Pet. 20-21, relies on the broadest possible reading of *Citizens United*, one that would deem unconstitutional all state regulation of corporate independent expenditures as a "ban." There is no need to read that case so broadly, and therefore no need to reconsider it in light of the above distinctions between the federal and Montana laws.

And even on the broadest reading of *Citizens United*, this case presents an opportunity for the Court to clarify its application. While Petitioners urge a *stare decisis* analysis under *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), Pet. 24, that particular framework played no part in *Citizens United* itself. Instead, the Court's departure from precedent reflected the dynamic development of campaign finance legislation (and related First Amendment doctrine), and in particular the fact that "[t]he universe of campaign finance regulation is one this Court has in part created and in part permitted by its course of decisions." *Randall v. Sorrell*, 548 U.S. 230, 264 (2006) (Kennedy, J., concurring in the judgment).

In this area of the law, a claim that is "not well reasoned" or "undermined by experience," *Citizens United*, 1303 S. Ct. at 912, or that is supported by "[n]o serious reliance interests," *id.* at 913, or is so controversial as to undermine the claim's "ability to contribute to the stable and orderly development of the law," *id.* at 922 (Roberts, C.J., concurring), may

merit reconsideration. Montana is free to offer, and the Court is "free to accept," new arguments and evidence to support a Corrupt Practices Act that has not been the subject of judicial review until this case. *Id.* at 924 (Roberts, C.J., concurring). Whether the court below properly accepted Montana's arguments should be assessed on the merits of the case, and not simply the assertions in the Petition. The best means by which this Court can "decide when reconsideration of a decision is warranted," Pet. 23, is by reviewing that decision on the merits, not just the Petition.

For example, Petitioners claim that "most of the 'huge sums' being spent by super PACs are not from corporations," and that this suggests the Court in *Citizens United* expected more political spending from corporations. Pet. 28. Yet the same evidence could just as well suggest that the Court overestimated the chill to corporate campaign speech under the previous federal regime. At the very least, given the inefficacy of current disclosure rules, it is too soon to tell the impact of corporate campaign expenditures based on a snapshot taken at the time of the Petition. That scene will continue to develop as the next election draws near. Thus the Petition, laden with fluid, non-record facts adduced from recent political websites, suggests reasons to reexamine, rather than ratify, Petitioners' thinly supported factual predicates. Pet. 28-30.

As was recently observed about a similarly momentous issue, "history and precedent counsel

caution before reaching out to decide difficult constitutional questions too quickly, especially when the underlying issues are of lasting significance." *Seven Sky v. Holder*, 661 F.3d 1, 53 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). "After all, what appears to be obviously correct now can look quite different just a few years down the road." *Id.*, *citing West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), *overruling Minersville School District v. Gobitis*, 310 U.S. 586 (1940) *and NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) (Hughes, C.J.), *backing away from A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (Hughes, C.J.).

Yet Petitioners unabashedly maintain "[t]he facts *are* irrelevant." Pet. 32. So framed, a summary invalidation of a law amounts to a veto, not judicial review. "Few exercises of the judicial power are more likely to undermine public confidence in the neutrality and integrity of the Judiciary than one which casts the Court in the role of a Council of Revision," some framers' failed proposal of a factless federal negative over state and federal laws. *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1449 (2011). While the Constitution of the United States is the supreme law of the land, U.S. Const. art. VI, § 2, the "judicial power" can only apply that law to the case Petitioners actually developed – or here, failed to develop – below. U.S. Const. art. III, § 2.

There is therefore no basis for summary reversal of the judgment below. Petitioners reach back across several decades, and hundreds of thousands of

petitions, to find only a handful of summary reversals. None of them fit this case. Like the more recent summary reversals, Stay Opp'n at 9-10, most of these cases involved long-established rules of criminal procedure, a far cry from the constitutional challenge to a century-old law presented here. *See Kaup v. Texas*, 538 U.S. 626 (2003) (Fourth Amendment arrest); *Ohio v. Reiner*, 532 U.S. 17 (2001) (Fifth Amendment self-incrimination); *New Mexico v. Reed*, 524 U.S. 151 (1998 (Article IV extradition); *Greene v. Georgia*, 519 U.S. 145 (1996) (Sixth Amendment juror bias); *Trevino v. Texas*, 503 U.S. 562 (1992) (Fourteenth Amendment peremptory challenge discrimination). *See also Ashland Oil, Inc. v. Tax Commissioner of West Virginia*, 497 U.S. 916 (1990) (retroactivity of civil constitutional decision); *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147 (1993) (constitutionality, under First Amendment, of criminal procedural rule); *Rose v. Arkansas State Police*, 479 U.S. 1 (1986) (statutory preemption); *Connally v. Georgia*, 429 U.S. 245 (1977) (Fourth Amendment search and Fourteenth Amendment due process). All of them are *per curiam*. All but one of them are without dissent. *See Rose*, 479 U.S. at 5 (Marshall, J., dissenting).

Finally, and contrary to Petitioners' speculation, the disposition most likely to "pose[ ] the prospect of considerable litigation," Pet. 21, is summary reversal. Such a reversal, lacking a basis in the full record and arguments of parties, would do little to answer the disputed questions Petitioners raise about the application of *Citizens United* in state, local, and judicial

elections. Pet. 22-23, *quoting Personal PAC v. McGuffage*, No. 12-CV-1043, 2012 WL 850744, *4 (N.D. Ill. Mar. 13, 2012) ("If the Supreme Court grants a writ of *certiorari* in the Montana case, the parameters of *Citizens United* as applied to political climates of individual states may be explained.") (*quotation omitted*).

CONCLUSION

The petition should be denied. In the alternative, the Court should grant certiorari for full briefing and argument on the merits.

Respectfully submitted,

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