Supplementary Material

Chapter 11: The Contemporary Era—Democratic Rights/Free Speech/Campaign Finance

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American Tradition Partnership, Inc. v. Bullock, 567 U.S. ___ (2012)

The American Tradition Partnership (ATP) is a conservative group that opposes most environmental regulation. Members of that organization opposed a Montana law, originally enacted in 1912, that declared, "A corporation may not make a contribution or an expenditure in connection with a candidate or political committee that supports or opposes a candidate or political party." That law, ATP insisted, was inconsistent with the Supreme Court's opinion in Citizens United v. FCC *(2010). The ATP along with other groups sued Steve Bullock, the attorney general of Montana, asking that the ban on corporation contributions be declared unconstitutional. The local district court agreed, but that decision was reversed by the Supreme Court of Montana. Chief Justice McGrath's majority opinion distinguished* Citizens United *on the ground that, given the distinctive political environment in Montana, that state had a distinctive, compelling reason to restrict corporate expenditures in political campaigns. He wrote,*

> *The State of Montana, or more accurately its voters, clearly had a compelling interest to enact the challenged statute in 1912. At that time the State of Montana and its government were operating under a mere shell of legal authority, and the real social and political power was wielded by powerful corporate managers to further their own business interests. The voters had more than enough of the corrupt practices and heavy-handed influence asserted by the special interests controlling Montana's political institutions. Bribery of public officials and unlimited campaign spending by the mining interests were commonplace and well known to the public. . . .*
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> *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? . . . 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.*

The Supreme Court by a 5–4 vote summarily reversed the Montana decision. The per curiam opinion bluntly stated that no difference existed between Citizens United *and the law under constitutional attack in* American Tradition Partnership. *Justice Breyer suggested that* Citizens United *should either be overruled or distinquished. Imagine you believed that* Citizens United *was rightly decided in 2010. Do the distinctive conditions of Montana provide any basis for distinguishing that decision? Have events after 2010 made a stronger case for overruling* Citizens United?

PER CURIAM.

A Montana state law provides that a "corporation may not make . . . an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." The Montana Supreme Court rejected petitioners' claim that this statute violates the First Amendment. In *Citizens United v. Federal Election Commission* (2010), this Court struck down a similar federal law, holding that "political speech does not lose First Amendment protection simply because its source is a corporation." The question presented in this case is whether the holding of *Citizens United*

applies to the Montana state law. There can be no serious doubt that it does. Montana's arguments in support of the judgment below either were already rejected in *Citizens United*, or fail to meaningfully distinguish that case.

JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

In *Citizens United v. Federal Election Commission* (2010), the Court concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." I disagree with the Court's holding for the reasons expressed in Justice Stevens' dissent in that case. As Justice Stevens explained, "technically independent expenditures can be corrupting in much the same way as direct contributions Indeed, Justice Stevens recounted a "substantial body of evidence" suggesting that "[m]any corporate independent expenditures . . . had become essentially interchangeable with direct contributions in their capacity to generate *quid pro quo* arrangements."

Moreover, even if I were to accept *Citizens United*, this Court's legal conclusion should not bar the Montana Supreme Court's finding, made on the record before it, that independent expenditures by corporations did in fact lead to corruption or the appearance of corruption in Montana. Given the history and political landscape in Montana, that court concluded that the State had a compelling interest in limiting independent expenditures by corporations. Thus, Montana's experience, like considerable experience elsewhere since the Court's decision in *Citizens United,* casts grave doubt on the Court's supposition that independent expenditures do not corrupt or appear to do so.

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