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SUPREME COURT OF THE UNITED STATES

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**CITIZENS UNITED v. FEDERAL ELECTION
COMMISSION**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—
Decided January 21, 2010

As amended by §203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an “electioneering communication” or for speech that expressly advocates the election or defeat of a candidate. 2 U. S. C. §441b. An electioneering communication is “any broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office” and is made within 30 days of a primary election, §434(f)(3)(A), and that is “publicly distributed,” 11 CFR §100.29(a)(2), which in “the case of a candidate for nomination for President . . . means” that the communication “[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days,” §100.29(b)(3)(ii). Corporations and unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U. S. C. §441b(b)(2). In *McConnell v. Federal Election Comm’n*, 540 U. S. 93, 203–209, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin v. Michigan Chamber of Commerce*, 494 U. S. 652, that political speech may be banned based on the speaker’s corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party’s Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast

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and cable television. Concerned about possible civil and criminal penalties for violating §441b, it sought declaratory and injunctive relief, arguing that (1) §441b is unconstitutional as applied to *Hillary*; and (2) BCRA's disclaimer, disclosure, and reporting requirements, BCRA §§201 and 311, were unconstitutional as applied to *Hillary* and the ads. The District Court denied Citizens United a preliminary injunction and granted appellee Federal Election Commission (FEC) summary judgment.

Held:

1. Because the question whether §441b applies to *Hillary* cannot be resolved on other, narrower grounds without chilling political speech, this Court must consider the continuing effect of the speech suppression upheld in *Austin*. Pp. 5–20.

(a) Citizen United's narrower arguments—that *Hillary* is not an “electioneering communication” covered by §441b because it is not “publicly distributed” under 11 CFR §100.29(a)(2); that §441b may not be applied to *Hillary* under *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U. S. 449 (*WRTL*), which found §441b unconstitutional as applied to speech that was not “express advocacy or its functional equivalent,” *id.*, at 481 (opinion of ROBERTS, C. J.), determining that a communication “is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate,” *id.*, at 469–470; that §441b should be invalidated as applied to movies shown through video-on-demand because this delivery system has a lower risk of distorting the political process than do television ads; and that there should be an exception to §441b's ban for nonprofit corporate political speech funded overwhelming by individuals—are not sustainable under a fair reading of the statute. Pp. 5–12.

(b) Thus, this case cannot be resolved on a narrower ground without chilling political speech, speech that is central to the First Amendment's meaning and purpose. Citizens United did not waive this challenge to *Austin* when it stipulated to dismissing the facial challenge below, since (1) even if such a challenge could be waived, this Court may reconsider *Austin* and §441b's facial validity here because the District Court “passed upon” the issue, *Lebron v. National Railroad Passenger Corporation*, 513 U. S. 374, 379; (2) throughout the litigation, Citizens United has asserted a claim that the FEC has violated its right to free speech; and (3) the parties cannot enter into a stipulation that prevents the Court from considering remedies necessary to resolve a claim that has been preserved. Because Citizen United's narrower arguments are not sustainable, this Court must, in an exercise of its judicial responsibility, consider §441b's facial validity. Any other course would prolong the substantial, nationwide

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chilling effect caused by §441b’s corporate expenditure ban. This conclusion is further supported by the following: (1) the uncertainty caused by the Government’s litigating position; (2) substantial time would be required to clarify §441b’s application on the points raised by the Government’s position in order to avoid any chilling effect caused by an improper interpretation; and (3) because speech itself is of primary importance to the integrity of the election process, any speech arguably within the reach of rules created for regulating political speech is chilled. The regulatory scheme at issue may not be a prior restraint in the strict sense. However, given its complexity and the deference courts show to administrative determinations, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. Pp. 12–20.

2. *Austin* is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures. Hence, §441b’s restrictions on such expenditures are invalid and cannot be applied to *Hillary*. Given this conclusion, the part of *McConnell* that upheld BCRA §203’s extension of §441b’s restrictions on independent corporate expenditures is also overruled. Pp. 20–51.

(a) Although the First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech,” §441b’s prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such 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.” *WRTL*, 551 U. S., at 464. This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain

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preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion. Pp. 20–25.

(b) The Court has recognized that the First Amendment applies to corporations, *e.g.*, *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 778, n. 14, and extended this protection to the context of political speech, see, *e.g.*, *NAACP v. Button*, 371 U. S. 415, 428–429. Addressing challenges to the Federal Election Campaign Act of 1971, the *Buckley* Court upheld limits on direct contributions to candidates, 18 U. S. C. §608(b), recognizing a governmental interest in preventing *quid pro quo* corruption. 424 U. S., at 25–26. However, the Court invalidated §608(e)'s expenditure ban, which applied to individuals, corporations, and unions, because it “fail[ed] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process,” *id.*, at 47–48. While *Buckley* did not consider a separate ban on corporate and union independent expenditures found in §610, had that provision been challenged in *Buckley*'s wake, it could not have been squared with the precedent's reasoning and analysis. The *Buckley* Court did not invoke the overbreadth doctrine to suggest that §608(e)'s expenditure ban would have been constitutional had it applied to corporations and unions but not individuals. Notwithstanding this precedent, Congress soon recodified §610's corporate and union expenditure ban at 2 U. S. C. §441b, the provision at issue. Less than two years after *Buckley*, *Bellotti* reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U.S., at 784–785. Thus the law stood until *Austin* upheld a corporate independent expenditure restriction, bypassing *Buckley* and *Bellotti* by recognizing a new governmental interest in preventing “the corrosive and distorting effects of immense aggregations of [corporate] wealth . . . that have little or no correlation to the public's support for the corporation's political ideas.” 494 U. S., at 660. Pp. 25–32.

(c) This Court is confronted with conflicting lines of precedent: a pre-*Austin* line forbidding speech restrictions based on the speaker's corporate identity and a post-*Austin* line permitting them. Neither *Austin*'s antidistortion rationale nor the Government's other justifications support §441b's restrictions. Pp. 32–47.

(1) The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but *Austin*'s antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is “indispensable to decision-

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making in a democracy, and this is no less true because the speech comes from a corporation.” *Bellotti, supra*, at 777 (footnote omitted). This protection is inconsistent with *Austin*’s rationale, which is meant to prevent corporations from obtaining “‘an unfair advantage in the political marketplace’” by using “‘resources amassed in the economic marketplace.’” 494 U. S., at 659. First Amendment protections do not depend on the speaker’s “financial ability to engage in public discussion.” *Buckley, supra*, at 49. These conclusions were reaffirmed when the Court invalidated a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. *Davis v. Federal Election Comm’n*, 554 U. S. ___, ___. Distinguishing wealthy individuals from corporations based on the latter’s special advantages of, e.g., limited liability, does not suffice to allow laws prohibiting speech. It is irrelevant for First Amendment purposes that corporate funds may “have little or no correlation to the public’s support for the corporation’s political ideas.” *Austin, supra*, at 660. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations. Although currently exempt from §441b, they accumulate wealth with the help of their corporate form, may have aggregations of wealth, and may express views “hav[ing] little or no correlation to the public’s support” for those views. Differential treatment of media corporations and other corporations cannot be squared with the First Amendment, and there is no support for the view that the Amendment’s original meaning would permit suppressing media corporations’ political speech. *Austin* interferes with the “open marketplace” of ideas protected by the First Amendment. *New York State Bd. of Elections v. Lopez Torres*, 552 U. S. 196, 208. Its censorship is vast in its reach, suppressing the speech of both for-profit and nonprofit, both small and large, corporations. Pp. 32–40.

(2) This reasoning also shows the invalidity of the Government’s other arguments. It reasons that corporate political speech can be banned to prevent corruption or its appearance. The *Buckley* Court found this rationale “sufficiently important” to allow contribution limits but refused to extend that reasoning to expenditure limits, 424 U.S., at 25, and the Court does not do so here. While a single *Bellotti* footnote purported to leave the question open, 435 U. S., at 788, n. 26, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials

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are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton v. A. T. Massey Coal Co.*, 556 U. S. ___, distinguished. Pp. 40–45.

(3) The Government's asserted interest in protecting shareholders from being compelled to fund corporate speech, like the anti-distortion rationale, would allow the Government to ban political speech even of media corporations. The statute is underinclusive; it only protects a dissenting shareholder's interests in certain media for 30 or 60 days before an election when such interests would be implicated in any media at any time. It is also overinclusive because it covers all corporations, including those with one shareholder. P. 46.

(4) Because §441b is not limited to corporations or associations created in foreign countries or funded predominately by foreign shareholders, it would be overbroad even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process. Pp. 46–47.

(d) The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent's antiquity, the reliance interests at stake, and whether the decision was well reasoned—counsel in favor of abandoning *Austin*, which itself contravened the precedents of *Buckley* and *Bellotti*. As already explained, *Austin* was not well reasoned. It is also undermined by experience since its announcement. Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws. Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. In addition, no serious reliance issues are at stake. Thus, due consideration leads to the conclusion that *Austin* should be overruled. The Court returns to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech based on the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. Pp. 47–50.

3. BCRA §§201 and 311 are valid as applied to the ads for *Hillary* and to the movie itself. Pp. 50–57.

(a) Disclaimer and disclosure requirements may burden the ability to speak, but they “impose no ceiling on campaign-related activities,” *Buckley*, 424 U. S., at 64, or ““prevent anyone from speaking.”” *McConnell*, *supra*, at 201. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing “the electorate with information” about election-related spending sources. The *McConnell* Court applied this interest in rejecting facial challenges to §§201 and 311. 540 U. S., at 196. However, the Court

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acknowledged that as-applied challenges would be available if a group could show a “reasonable probability” that disclosing its contributors’ names would “subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.*, at 198. Pp. 50–52.

(b) The disclaimer and disclosure requirements are valid as applied to Citizens United’s ads. They fall within BCRA’s “electioneering communication” definition: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. Section 311 disclaimers provide information to the electorate, *McConnell*, *supra*, at 196, and “insure that the voters are fully informed” about who is speaking, *Buckley*, *supra*, at 76. At the very least, they avoid confusion by making clear that the ads are not funded by a candidate or political party. Citizens United’s arguments that §311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising and that §311 decreases the quantity and effectiveness of the group’s speech were rejected in *McConnell*. This Court also rejects their contention that §201’s disclosure requirements must be confined to speech that is the functional equivalent of express advocacy under *WRTL*’s test for restrictions on independent expenditures, 551 U. S., at 469–476 (opinion of ROBERTS, C.J.). Disclosure is the less-restrictive alternative to more comprehensive speech regulations. Such requirements have been upheld in *Buckley* and *McConnell*. Citizens United’s argument that no informational interest justifies applying §201 to its ads is similar to the argument this Court rejected with regard to disclaimers. Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make §201 unconstitutional as applied. Pp. 52–55.

(c) For these same reasons, this Court affirms the application of the §§201 and 311 disclaimer and disclosure requirements to *Hillary*. Pp. 55–56.

Reversed in part, affirmed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined, in which THOMAS, J., joined as to all but Part IV, and in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part IV. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, and in which THOMAS, J., joined in part. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part.