Issues Addressed in the Supreme Court's *Citizens United* Decision

INTRODUCTION

*Citizens United v. Federal Election Commission* consists of two classes of argument: procedural, or jurisdictional; and substantive, or "on-the-merits." This memorandum will focus on the latter, though both are important and both have stimulated much controversy.

The procedural arguments stem, in large measure, from the Court’s decision to rule on an issue that the Dissent feels strongly was “not properly” before the Court. In its original complaint to the District Court, Citizens United sought facial invalidation of 441b of the federal Election Campaign Act (FECA). However, upon final motion to the Supreme Court it no longer made such a request. Notwithstanding this fact, the Majority opted to entertain the question: Should 441b be found unconstitutional and thus void? In the end, that is exactly what the Court found.

On the merits, three primary issues were considered:

- **Concerns for the propriety of according full First Amendment protection to corporations.** Corporations are considered to be *legal*, as opposed to *natural*, persons. Thus, historically, their political speech has been restricted to a significant degree.

- **The antidistortion arguments:** The key questions here are: 1) Is it reasonable to expect that corporate independent expenditures will distort campaign debate by permitting corporations to monopolize air waves and other media outlets during election periods? 2) Even if it is reasonable to expect that the foregoing would occur, is that sufficient cause to render 441b void?

- **The anticorruption arguments:** The key questions here are: 1) Would sizable corporate contributions increase risks of corruption and or the appearance of corruption?. 2) Even if it is reasonable to expect that the foregoing would occur, is that sufficient cause to render 441b void?

A fourth issue, shareholders’ protection, was also considered, though it was treated (certainly by the majority) as more of a tangent than a core argument.

It is possible to isolate some themes that run throughout the arguments. The Majority evidences great concern for the primacy of free speech—especially political speech—in our democratic form of government. For them, the bar for restricting that speech is set extraordinarily high—almost impossible to hurdle. They are as concerned about the right of listeners to hear speech as they are for the right of speakers to speak.

The Dissent is more policy oriented; they are greatly troubled by the possibility that large corporations will be able to dominate campaign debate and drown out other “voices.” Of equal
concern for the Dissent are the possibilities for corruption and the appearance of corruption. The Dissent feels strongly that Congress, charged with making national policy, could reasonably have found that this concern constitutes a “compelling state interest,” thus satisfying a key test for restricting corporate political speech.

There are also tertiary issues, most of them important in their own right. Given the limitations of time and space, however, I have opted not to address those in this memorandum. Finally, a word about style: This memorandum contains many direct quotes from the Justices—some, relatively lengthy. This results in some “chewy” reading, but I believe that it is especially important to let the Justices speak for themselves in a case of this magnitude.

Bert Levine.
3-5-10
Contents
I. SCOPE OF MEMORANDUM ................................................................. 4
II. THE CITIZENS UNITED CASE .......................................................... 4
III. QUESTION OF LAW TO BE DECIDED .............................................. 5
IV. JURISDICTIONAL ISSUES ................................................................. 5
V. CASES OVERRULED AND STATUTES FOUND UNCONSTITUTIONAL .............. 6
VI. PRINCIPAL ARGUMENTS ............................................................... 7
   A. The First Amendment, Political Speech, and the Corporate Form of Association Arguments .................................................................................. 7
   B. Antidistortion Arguments ................................................................ 8
   C. Anticorruption Arguments ............................................................ 11
VII. SHAREHOLDER’S RIGHTS ............................................................. 12
I. SCOPE OF MEMORANDUM
The opinions in *Citizens United v. Federal Election* (January 21, 2010, hereinafter: “*Citizens United*”)—especially the dissent—are lengthy and argued with great passion. They are not, however, especially complex—at least not as they pertain to the First Amendment-related arguments, which provide the primary focus of what follows. This memorandum sets out the issues and support arguments presented by Justice Kennedy, writing for the Majority, and Justice Stevens, writing for the Dissent. Four other Justices—Roberts, Scalia, Thomas, and Alito—produced concurring opinions for the Majority; no Justices wrote concurring opinions for the Dissent.¹ For the sake of brevity and digestibility, I include herein only the Majority and Dissenting opinions.

Two caveats are important: Given the length of the opinions—183 pages in total—and the breadth of the arguments—primary, secondary and tertiary—produced by Justices Stevens and Kennedy, I have attempted to isolate only the most significant arguments. In truth, much more could have been written, though I believe that what follows presents an accurate and unbiased representation of the core positions.

Second, I have included only a cursory discussion of the reasons why the Court felt compelled to take up the issues it did and justified in doing so. (See “Jurisdictional Issues.”) Justice Stevens and several early commentators are clearly troubled by the Majority’s decision to determine the facial constitutionality of the relevant statute at all. But because these issues are largely procedural and do not go squarely to the matters of speech, campaign finance, elections, and corporate participation in all of the foregoing, they fall beyond the scope of this memorandum.

With the above understood, and as noted above, I focus on the core constitutional questions at issue in *Citizens United*: 1) the overarching matter of the relationship of the First Amendment “guarantee” of free speech to corporate political speech; 2) the argument that corporate political speech would unduly distort the overall conduct of political campaigns (the antidistortion arguments); 3) the argument that corporate speech (and money) would lead to either actual corruption or the appearance of corruption, both of which standards were employed by the Court in *Buckley v. Valeo*.²

II. THE CITIZENS UNITED CASE³
In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary [“Hillary, The Movie”] (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 and cable television. Concerned about possible civil and criminal penalties for violating §441b of the Federal Election Campaign Act (hereinafter FECA), it sought declaratory and injunctive relief, arguing that: 1) §441b is unconstitutional as applied to *Hillary*; and 2) The Bipartisan Campaign Reform Act’s (hereinafter, BCRA)

---

¹ Nothing is to be read into the fact that four Justices wrote concurring opinions for the Majority and none of the Justices followed this course for the Dissent. It may well be that Justice Stevens addressed all of the concerns of his colleagues who joined him in the dissent.
² In *Buckley* the court held that both the possibility of actual corruption and/or the appearance of corruption justified a statutory provision setting campaign contributions limits for individuals and separate segregated funds (PACs).
³ This summary is taken directly from the case syllabus as prepared by the *Citizens United* Court.
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.

### III. QUESTION OF LAW TO BE DECIDED

Is Section 441b, of the Federal Election Campaign Act (FECA) as amended by Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) constitutional? This provision prohibits corporations and unions from making independent expenditures for speech that qualifies as an “electioneering communication” and/or for expressly advocating the election or defeat of a candidate for federal office, if such expenditures are made from funds taken from the corporation’s or union’s general treasury.

### IV. JURISDICTIONAL ISSUES

**Majority:** The Court finds that it cannot resolve Citizens United’s request for declaratory and injunctive relief on the narrow grounds supporting their claims, e.g., “*Hillary* is not an ‘electioneering communication’…because it is not ‘publicly distributed.’” To do so would run the risk of “chilling political speech, speech that is central to the meaning and purpose of the First Amendment.”

Anticipating charges that the Court is being unduly “activist,” Kennedy avers that it would not be “judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications.” Kennedy goes further, arguing that the Court “would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling.

Addressing a still more arcane matter—can the Court consider an issue that was not raised by the parties during the immediate proceeding?—the Court argued:

1. [T]his court may reconsider *Austin* [the lead case in which 441b was determined to be constitutional] and §441b’s facial validity here because the District Court ‘passed upon’ this issue,…. (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.

**Dissent:** Justice Stevens is emphatic: “The Court’s ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution.” He reasons that “the question was not properly brought before us…. the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court’s invitation.”

---

4 An electioneering communication is defined as: “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. (Source: Case syllabus and U.S Code.)

5 Here the Court is alluding to an “as applied” ruling, e.g., “the statute is being applied in an unconstitutional manner” as opposed to a “facial” ruling, e.g., “the statute is unconstitutional and cannot be applied in any manner that would render it constitutional.

6 In its petition to the Court, Citizens United was not asking that 441b be held to be unconstitutional.
Stevens further claims that the court was not, as the Majority claimed, “asked to reconsider Austin and, in effect, McConnell.” He observes that it would be more accurate to say that “we have asked ourselves’ to reconsider those cases.” For Stevens, this procedure is “unusual and inadvisable for the court.”

After noting that in its motion for summary judgment, Citizens United had “abandoned [the] facial challenge” it had originally raised during the District Court proceedings,” Stevens notes that the Appellant was “raising only ‘an as applied challenge to the constitutionality’” of the applicable federal statutes. He continues: “The jurisdictional statement never so much as cited Austin, the key case the majority overrules today.” He notes that it is only in the “most exceptional cases coming here” that questions not “passed upon below” are decided by the Supreme Court. He adds to this that CitizensUnited “did not so much as assert an exceptional circumstance.” On these arguments, he proceeds to challenge the validity of rendering a facial disqualification of 441(b) as opposed to rendering an “as applied” ruling.

V. CASES OVERRULED AND STATUTES FOUND UNCONSTITUTIONAL

Citizens United overrules one prior Court decision (Austin v. Michigan Chamber of Commerce (1990)) and partially overrules another (McConnell v. Federal Election Commission (2003)). A brief outline of Austin and those portions of McConnell that were affected by Citizens United follows.

1. Austin v. Michigan Chamber of Commerce (1990): The Court held that “Section 54(1) of Michigan state law does not violate the First Amendment (Section 54(1) forbade Corporations, other than “media corporations,” from making independent expenditures in support of, or opposition to, candidates for state office.) The Court held:

   Although 54(1)’s requirements burden the Chamber's exercise of political expression, they are justified by a compelling state interest:[in] preventing corruption or the appearance of corruption in the political arena by reducing the threat that huge corporate treasuries, which are amassed with the aid of favorable state laws and have little or no correlation to the public's support for the corporation's political ideas, will be used to influence unfairly election outcomes.

   Section 54(1) is sufficiently narrowly tailored to achieve its goal, because it is precisely targeted to eliminate the distortion caused by corporate spending while also allowing corporations to express their political views by making expenditures through separate segregated funds. Because persons who contribute to segregated funds understand that their money will be used solely for political purposes, the speech generated accurately reflects contributors' support for the corporation's political views.

2. McConnell v. The Federal Election Commission: The McConnell Court relied upon Austin, holding that: political speech may be banned “based on the speaker’s corporate identity.”
VI. PRINCIPAL ARGUMENTS

A. The First Amendment, Political Speech, and the Corporate Form of Association Arguments.

Majority: The Court argues that the First Amendment has its “fullest and most urgent application to speech uttered during a campaign for political office.” Acknowledging the significance of political speech for a democratic republic—“political speech must prevail against laws that would suppress it”—the Court cites the well established test for determining if a statutory restriction of a fundamental right comports with the Constitution: Such a restriction must serve a “compelling state interest”\(^7\) and must be “narrowly tailored” to achieve its objective. In other words, the restriction must not forbid more than is necessary to accomplish its compelling goal. The Court cautions that, “Speech restrictions based on the identity of the speaker are all too often simply a means to control content” and reminds the parties that speech does not benefit only the speaker, but may prove valuable to the listener as well. (See Below – Antidistortion Arguments: The Listener’s Perspective.). “The Government may not [through class restrictions on speech, e.g., Corporations] deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.”

Dissent: Justice Stevens argues that corporations are “different from human beings” and charges that the majority opinion “elides” that fact. He then lists some of the well-recognized differences between corporations and humans. Corporations:

- enjoy limited liability for their owners
- have perpetual life
- are organized to separate ownership from control
- benefit from favorable tax treatment
- are not infrequently controlled by foreign persons and or other entities.

He adds to this the possible disjunction between “popular support for the ’corporation’s political ideas’” and the statutorily conferred benefits that permit the accumulation of “resources in [their] treasury.” The latter, treasury resources, “are not an indication of support for political ideas…. They reflect instead the economically motivated decisions of investors and customers.” Corporations, he argues “have no consciences, no beliefs, no feelings, no desires” and are not members of the “We the People” by whom and for whom the Constitution was established.

On the basis of these distinctions, Stevens finds that corporate electioneering is “more likely to impair compelling government interests [than would similar communications by non-corporate interests].”(Emphasis added.) It follows then that restrictions on [corporate] electioneering are “less likely to encroach upon First Amendment freedoms.”

With the above points made, Justice Stevens addresses the question “‘who’ is even speaking” when a corporation places an advertisement endorsing a candidate. After eliminating customers, employees, and shareholders as likely speakers, he settles upon the corporation’s officers and directors as having “the best claim to be the ones speaking.” Thus, Stevens reiterates, albeit somewhat circuitously, the claim that corporations \textit{qua} corporations can have no political views;

\(^7\) The now well-accepted doctrine of Substantive Due Process requires that, before restricting a fundamental freedom protected by the Constitution, the government must establish a compelling interest in creating the restriction. It must also tailor its restriction as narrowly as possible.
if there can be no political views, it follows that there can be no denial of a right to express such views.

Stevens, rejects the majority’s argument that the First Amendment forbids legislative “distinctions based on a speaker’s identity including its ‘identity’ as a corporation.” He acknowledges that corporations “make enormous contributions to our society,” but then follows with this pivotal observation closely related to the arguments made above: “[C]orporations are not actually members of [our society].” He counters the majority’s assertion that a “compelling state interest” must undergird the state’s denial of a fundamental right, e.g. political speech by arguing that lawmakers “have a compelling constitutional, if not democratic duty, to….guard against the potentially deleterious effects of corporate spending in …. elections.” (Emphasis added) For this he cites existing precedent: “We have unanimously concluded that this “reflects a permissible assessment of the dangers posed by [corporations] to the electoral process.”

He then argues that corporate shareholders (and, presumably corporate officers and other employees) remain free to “do however much electioneering [as] she pleases outside of the corporate form.” Further, prior cases upholding restrictions on corporate political speech “leave open many additional avenues for corporations’ political speech.” These avenues include: “genuine” issue advertising, Internet, telephone, and print advocacy.” In sum, for Stevens, natural citizens who are way part of a corporate structure, have available to them many vehicles other than corporate funded “campaigns” if they wish to participate in political debate.

B. Antidistortion Arguments.

Majority: The core argument - Justice Kennedy provides a brief history of the corporate political speech-and campaign expenditures issue:

[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,”…. 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. 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.”

[Thus], 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

Kennedy rejects the “premise that the Government has an interest in ‘equalizing the relative ability of individuals and groups to influence the outcome of elections…. [F]irst amendment
protections do not depend on the speaker’s financial ability to engage in the public discussion.’” Kennedy continues, arguing that “The rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits suppression of political speech based on the speaker’s identity.” (Emphasis added.)

Citing Justice Scalia’s dissent in a prior case, Kennedy asserts that the special legal status of the corporate “person” does not deny said persons of their right to free speech. The fact that: “State law grants corporations special advantages—such as limited liability, perpetual life, and favorable [tax] treatment…does not suffice, however, to allow laws prohibiting speech.”

The listener’s perspective - The court argues that political speech ought not to be protected solely for the benefit of speakers; listeners must be considered as well. It draws on Madison’s “Federalist 10” for the proposition that in “our Republic” the best means for “checking” the speech of self-interested parties is to encourage yet more political speech. Kennedy writes:

The government has muffle[d] the voices that best represent the most significant segments of the economy….By suppressing the speech of manifold corporations, both for-profit and nonprofit, the government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of “destroying the liberty” of some factions is “worse than disease…. Factions should be checked by permitting them all to speak…. And entrusting the people to judge what is true and what is false.

Not all corporations are large: Justice Kennedy argues that most corporations are small and are “without large amounts of wealth.” Citing a brief Amici Curiae filed by 26 states, Kennedy argues that, at present, large companies with significant resources regularly “counsel the Members of Congress and Presidential administrations on many issues.” He sees this circumstance as providing a significant advantage for large companies. He also argues that direct participation in election campaigns may help to offset this advantage. “When that phenomenon [lobbying federal policymakers] is coupled with 441b, [the prohibition against corporate electioneering] the result is that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the government.

The media exception. The court argues that upholding the antidistortion rationale for prohibiting corporate contributions to electioneering activities would “produce the dangerous, and unacceptable, consequence that Congress could ban the political speech of media corporations.” Kennedy argues that media corporations are like other corporations to the extent that they “accumulate wealth with the help of the corporate form.” The court then makes an extended argument (only partially set out here) for equating media corporations to other business entities in the context of political speech:

8 11 CFR Ch. 1. Section 100.73 of the Code of Federal Regulations effectively exempts newspaper and broadcasting companies from prohibitions against corporate electioneering.
The law’s exception for the media is, on its own terms, all but an admission of the invalidity of the antidistortion rationale. By its own terms the law exempts some corporations but covers others. The exemption applies to media corporations owned or controlled by corporations that have diverse and substantial investment and participate in endeavors other than news.

**Dissent: The core argument** - Stevens does not accept the Majority’s “basic premise” that “the First Amendment bars regulatory distinctions based on a speaker’s ‘identity’ as a corporation”…[That] is not a correct statement of the law.” Stevens understands the Majority’s view as representing a “dramatic break from our past.” He provides an alternative view (as opposed to Kennedy’s) of Court history on the matter of corporate political money:

> Congress has placed special limits on campaign spending by corporations… We have unanimously concluded that this “reflects a permissible assessment of the dangers posed by those entities to the electoral process”…. and have accepted the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.

At a later point in his argument he asserts that corporate electioneering is more “likely to impair compelling government interests” than are the contributions of natural people. This explains, why, his view, “restrictions on [corporate] electioneering are less likely to encroach upon first Amendment freedoms.”

**The listener’s perspective:** The dissent is not much impressed by the Court’s “primary emphasis…. on the listener’s interest in hearing what every possible speaker [including corporations] may have to say” about which candidate(s) should, or should not be elected to federal office. It finds “many flaws” in this line of reasoning.

Stevens, perhaps tongue-in-cheek, argues: “surely the public’s perception of the value of corporate speech should be given important weight.” He then reminds the Court that “That perception today is the same as it was a century ago when Theodore Roosevelt delivered speeches to Congress that…. led to the limited prohibition on corporate campaign expenditures.” Here Justice Stevens is clearly alluding to the 1907 Tillman Act that prohibited corporate contributions to candidates for federal office. He concludes this portion of his argument: “The distinctive threat to democratic integrity posed by corporate domination of politics was recognized at ‘the inception of the republic’ and ‘has been a persistent theme in American political life.’”

Stevens finds that corporate political speech, through domination of “broadcasting slots,” may drown out other speakers and thus reduce the quantity and range of campaign messages available to prospective voters: “They can flood the market with advocacy that bears ‘little relationship or correlation’ to the ideas of natural persons…. The opinions of real people may be marginalized.”

He rejects the majority’s “theoretical argument” that there is “no such thing as too much speech,” and concludes:
If individuals in our society had infinite free time to listen to and contemplate every last bit of speech uttered by anyone, anywhere; and if broadcast advertisements had no special ability to influence elections apart from the merits of their arguments (to the extent they make any); and if legislators always operated with nothing less than perfect virtue; then I suppose the majority’s premise would be sound. In the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener’s exposure to relevant viewpoints, and it may diminish citizens’ willingness and capacity to participate in the democratic process.

The media exemption - Stevens is equally unimpressed with the Majority’s concern for the potential restrictions on editorializing by media companies. He dismisses their arguments on this point noting the “unique role played by the institutional press in sustaining public debate.”. Quoting from Austin Stevens distinguishes between the primary function of media corporations and other business entities: “[M]edia corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public.” He concludes that Section 203 of BCRA “does not apply to media corporations.”

C. Anticorruption Arguments

Majority: Kennedy cites Buckley for the finding that large contributions “could be given ‘to secure a political quid pro quo.’” While conceding this form of corruption is possible, he is quick to note: “The practices Buckley noted would be covered by bribery laws,” He argues further that while “the Buckley Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption,” the court did not “extend” that rationale to independent expenditures. (Emphasis added)

Kennedy relies on the anti-collusion and anti-coordination rules that govern independent expenditures in order to offset concerns about the potential for corrupt behavior: “The absence of prearrangement and coordination of an expenditure with the candidate or his agent…. alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.” After reiterating the “chilling effect” of the statutory prohibition at issue, Kennedy finds that the anticorruption interest is not sufficiently strong to offset concerns for free political speech. He points out that 26 states do not “restrict independent expenditures by forprofit (sic) corporations,” and notes that the Government does not argue that these expenditures have caused corruption in those states. He concludes: “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”

Dissent: Justice Stevens finds the majority’s understanding of corruption to be too narrowly formed. He argues that they limit themselves to considering corruption as consisting of quid pro quo relationships only, and maintains that “on numerous occasions we have recognized Congress’ legitimate interest in preventing…. ‘undue influence on an officeholder’s judgment’” and from creating “‘the appearance of such influence.’”

9 In Buckley v. Valeo (1976) the Court famously accepted as a rationale for permitting limits on campaign contributions to federal candidates the concern that large contributions might give the appearance that corrupt behavior was actually occurring.
Stevens argues that “Corruption can take many forms. He rejects the majority’s idea that actual corruption can be “neatly demarcated from other improper influences” and then stresses that this view of corruption does not accord with the record Congress developed in passing BCRA.”

In pointing to this record Stevens appears to be invoking a long-held view, accepted by virtually all Justices past and present, that the court ought not to substitute its judgment about what is good policy for that of the Congress, as long as Congress could reasonably have decided that the 441b restrictions were, in fact, good policy. Stevens supports this view by citing the District Court’s record for the case:

The factual findings of the Court illustrate that corporations and labor unions routinely notify Members of Congress as soon as they air electioneering communications relevant to the Members’ elections. The record also indicates that Members express appreciation to organizations for the airing of these election-related advertisements.

Stevens indicates that the lower court’s analysis shows how difficult it is to separate actual corruption from corrupt-like behavior “that all such arrangements may have.” He concludes. “There are threats of corruption that are far more destructive to a democratic society than the odd bribe. Yet the majority’s [limited] understanding of corruption would leave lawmakers impotent to address all but the most discrete abuses.”

VII. SHAREHOLDER’S RIGHTS

Majority: Kennedy rejects the government’s view that “corporate independent expenditures can be limited because of its [the government’s] interest in protecting dissenting shareholders from being compelled to fund corporate political speech.” The majority argues that this line of thinking would permit the government to control the speech “even of media corporations.” Should a shareholder of such a corporation object to “the political views the newspaper expresses” the government could be justified in restricting the speech at issue, This, according to the majority, “The First Amendment does not allow.”

The majority further argues: “[T]here is little evidence of abuse that cannot be corrected by shareholders ‘through the protection of corporate democracy.’”

Dissent: Stevens argues that the statute in question may “serve First Amendment values” by protecting the rights of shareholders from a kind of coerced speech: electioneering expenditures that do not “reflec[t] [their] support.” Shareholders “who disagree with the corporation’s electoral message” may feel that the corporation’s campaign messages—messages their investment money is helping to fund—are “undermin[ing] their political convictions” He further argues that the Court has “unanimously recognized the governmental interest in “protect[ing] the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed.” The Dissent finds the majority’s suggestion that aggrieved shareholders might find a remedy through “corporate democracy” to be unrealistic: The opportunities for success “are so limited as to be almost nonexistent,”
Stevens points with favor to the “PAC mechanism” as a viable alternative for corporations that seek to contribute money to candidates and or fund independent campaigns. Use of PAC money “helps assure that those who pay for an electioneering communication actually support its content.”