No. 08-205

In The Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

BRIEF *AMICI CURIAE* OF CAMPAIGN LEGAL CENTER, DEMOCRACY 21, COMMON CAUSE, U.S. PIRG, AMERICANS FOR CAMPAIGN REFORM, LEAGUE OF UNITED LATIN AMERICAN CITIZENS AND ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF APPELLEE ON SUPPLEMENTAL QUESTION

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INTEREST OF *AMICI CURIAE*[1]

This *amici curiae* brief is filed on behalf of seven non-profit, non-partisan organizations that support effective campaign finance laws to ensure political participation and protect the integrity of government.[2]

SUMMARY OF ARGUMENT

For more than a half-century, American elections have been conducted without resort to the immense aggregated wealth in corporate treasuries. The laws effecting this restriction were upheld by this Court in *McConnell v. FEC*, 540 U.S. 93 (2003), and *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990), and approved as recently as the 2007 decision in *FEC v. Wisconsin Right to Life, Inc.* (*WRTL*), 127 S. Ct. 2652 (2007).

Appellant Citizens United requests that this Court now overturn *Austin* and part of *McConnell*. *Amici* respectfully submit that this Court should not take this radical step.

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[1] Letters consenting to the filing of this brief have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party. No person or entity other than *amici* or their counsel made a monetary contribution to the brief's preparation or submission.

[2] A description of the *amici curiae* is attached as Appendix A hereto.

First, overturning these decisions would effectively render unconstitutional the 60-year-old federal restriction on corporate and union expenditures in federal elections, *see* 2 U.S.C. § 441b, as well as the statutes in 24 states that prohibit or limit corporate spending in state elections.

Such action would also controvert the long line of Supreme Court decisions approving restrictions on corporate and union spending in candidate elections. Appellant's entire argument rests on its assertion that *Austin* was a "jurisprudential outlier," Supplemental Brief for Appellant ("Br.") at 10, but this claim is simply unsustainable. *Austin* explicitly based its holding on past Supreme Court decisions, and moreover, has been cited approvingly in all subsequent Supreme Court cases addressing restrictions on corporate campaign activities.

In sum, overturning *Austin* and *McConnell* would require a dramatic break from this Court's precedent, a dismissal of six decades of election law and a blunt rejection of principles of *stare decisis*. Appellant has presented no constitutional justification for such action.

ARGUMENT

I. Overturning *Austin* Would Invalidate Decades-Old Restrictions on Corporate Expenditures and Unleash a Flood of Corporate Money into Candidate Elections.

A. For Over a Century, Restrictions on Corporate Campaign Activities Have Been a Cornerstone of American Election Law.

The federal effort to prevent corporations from intervening in candidate elections dates back to the turn of the last century. At that time, the patronage system for financing political campaigns through "assessments" upon the salaries of officeholders was breaking down and corporate contributions were rapidly filling the vacuum. The possibility that corporations were purchasing influence over candidates and political parties alarmed citizens and public officials alike. ROBERT E. MUTCH, CAMPAIGNS, CONGRESS AND COURTS: THE MAKING OF FEDERAL CAMPAIGN FINANCE LAW 1-3, 176-77 (1988).

The issue came to a head in the 1904 presidential election, where the losing candidate, Alton Parker, publicly accused his opponent, Theodore Roosevelt, of secretly funding his campaign with contributions from life insurance companies. *See* Adam Winkler, "*Other People's Money": Corporations, Agency Costs and Campaign Finance Law*, 92 GEO. L. J. 871, 886 (2004). These accusations gained further force in

1905 when an investigation by the state of New York revealed that the three largest insurance companies had indeed made large contributions to Roosevelt's campaign and the Republican Party. *Id.* at 892. The public was outraged that the companies would divert policyholders' funds into candidate elections, particularly as the companies had sought legislation that would limit the ability of policyholders to sue managers for breach of fiduciary duty. *Id*. at 894-95. Congress responded by enacting the Tillman Act, ch. 420, 34 Stat. 864 (1907), which prohibited corporations and national banks from making "money contribution[s] in connection with any election to any political office." The Act was subsequently consolidated with other federal campaign finance regulations in the Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (1925).

In 1943, Congress extended the corporate restriction to labor unions on a temporary basis. The impetus for the extension was the wealth and power that unions had accrued in the New Deal era, and their increasingly high profile in federal elections. *U.S. v. Congress of Industrial Organizations* (*CIO*), 335 U.S. 106, 115 (1948). Fearing that this new source of aggregated wealth would also have "untoward consequences for the democratic process," *U.S. v. United Automobile Workers* (*UAW*), 352 U.S. 567, 578 (1957), Congress required unions to comply with the campaign finance laws applicable to corporations for the duration of World War II. War Labor Disputes Act, ch. 144, § 9, 57 Stat. 163 (1943).

The War Labor Disputes Act was quickly deemed ineffectual. Following the 1944 election, reports surfaced that unions had circumvented the contribution restrictions by making independent expenditures to support their favored candidates. In order to plug this loophole, Congress enacted the Taft-Hartley Act, § 304, 61 Stat. 159 (1947), which amended the Federal Corrupt Practices Act to clarify that both contributions and *expenditures* by corporations and unions were prohibited by the law. This was the origin of the federal statutory language restricting corporate expenditures challenged in this case. *See* 2 U.S.C. § 441b.

Importantly, however, the intent of the Taft-Hartley Act was not to "extend greatly the coverage" of existing law, but rather to restore the law to its original intent. *CIO*, 335 U.S. at 122. The legislative history indicates that Congress believed that the Federal Corrupt Practices Act already prohibited both contributions *and* expenditures by corporations and unions. As Senator Taft explained, "the previous law prohibited any contribution, direct or indirect, in connection with any election," and his legislation "only make[s] it clear that an expenditure . . . is the same as an indirect contribution, which, in [his] opinion, has always been unlawful." 93 CONG. REC. 6594 (1947) (statement of Sen. Taft); *see also UAW*, 352 U.S. at 582, *citing* H.R. REP. NO. 79-2739, at 40 (1946) (stating that House Special Committee was "firmly convinced" that the "act prohibiting any corporation or labor organization from making any

contribution" "was intended to prohibit such expenditures").

Thus, federal law has sought to regulate corporate expenditures since the 1907 Tillman Act, and has explicitly done so since the enactment of the Taft-Hartley Act in 1947.

B. Overturning *Austin* Would Radically Alter How Elections Are Conducted and Financed.

Overturning *Austin* would in effect invalidate the federal restriction on corporate expenditures, upon which both the legislative and executive branches have relied for decades. Congress has enacted successive federal campaign finance laws to further regulate corporate and union expenditures, including both the Federal Election Campaign Act (FECA), 2 U.S.C. §§ 431, *et seq*., and the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). The invalidation of *Austin* would cause a sea-change in election law, requiring major amendment of FECA and its implementing regulations, and the revision of decades of regulatory practice.

Overturning *Austin* would also throw into constitutional jeopardy the campaign finance statutes of the 22 states that prohibit the expenditure of corporate treasury funds and the two states that limit

such expenditures in state candidate elections.[3] Many of these state laws are longstanding. EARL R. SIKES, STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION 279-82 (1928).

Further, the invalidation of these statutory checks on corporate expenditures would, in turn, expose federal elections to the corrosive and distorting effects of corporate money for the first time in 60 years.

The enormous wealth that corporations have amassed in the economic marketplace has the potential to flood the political marketplace. In 2005, the Internal Revenue Service estimated that the total net worth of U.S. corporations was $23.53 trillion. U.S. CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 2009, at *Table 731, available at* http://www.census.gov/compendia/statab/tables/09s0731.pdf. Post-tax corporate profits in 2005 were similarly staggering, totaling almost $1 trillion. *Id*. at *Table 761*, *available at* http://www.census.gov/compendia/statab/tables/09s0761.pdf.

For the purposes of comparison, Democratic presidential nominee Barack Obama shattered all historic fundraising records and raised $745 million in the 2008 election cycle. CENTER FOR RESPONSIVE POLITICS (CRP), *Banking on Becoming President, at*

[3] A chart of all state statutes regulating corporate expenditures is attached as Appendix B hereto.

http://www.opensecrets.org/pres08/index.php?cycle=2008. And the average House candidate and Senate candidate in the 2008 election cycle raised $711,000 and $2.44 million, respectively. CRP, *2008 Overview: Stats at a Glance*, *at* http://www.opensecrets.org/overview/index.php?cycle=2008&Type=A&Display=A. Given the disparity between corporate wealth and typical political fundraising, it is clear that corporations have the capacity to overwhelm all other political actors in elections, including the candidates and political parties who actually campaign in such elections.

II. A Decision to Overturn *Austin* Would Be Contrary to Decades of Supreme Court Precedent and Would Contravene Principles of *Stare Decisis*.

Appellant argues *Austin* should be overruled because it is "hopelessly at odds with well-settled tenets of this Court's First Amendment jurisprudence." Br. at 9. But just the opposite is true. *Austin* is not a constitutional outlier. Rather, it is the logical conclusion of a line of cases dating back a half-century that address the restrictions on corporate and union activity in candidate elections. Moreover, *Austin* has been cited approvingly in all recent Supreme Court decisions addressing corporate campaign finance restrictions, and therefore by no means can be considered a "mere survivor of obsolete constitutional thinking." *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 857 (1992).

Overruling *Austin* would mark a radical departure from both the Court's own precedent and from principles of *stare decisis*.

A. This Court's Precedent Confirms that Far From Being an Anomaly, *Austin* Is Deeply Embedded in this Court's Campaign Finance Jurisprudence.

For over a half-century, the Supreme Court has approved statutory restrictions on corporate and union contributions and expenditures in candidate elections. To now overrule *Austin* would not be a neat excision of a single case; rather it would plow up long settled, and well settled, ground.

1. Supreme Court Precedent Prior to *Austin*

The Tillman Act and Federal Corrupt Practices Act elicited few major legal challenges until they were extended to restrict union contributions and expenditures. Robert E. Mutch, *Before and After Bellotti: The Corporate Political Contributions Cases*, 5 ELECTION L.J. 293, 293-94 (2006). The Supreme Court thus first considered the law in a challenge to the union expenditure restriction brought in the *CIO* case.

The *CIO* Court ultimately disposed of the case on statutory grounds. Importantly, however, the Court noted that the Tillman Act was the "antecedent" to the union restriction, 335 U.S. at 113, and provided

the first judicial articulation of the motivation behind the Act, namely: (1) "the necessity for destroying the influence over elections which corporations exercised through financial contribution," and (2) "the feeling that corporate officials had no moral right to use corporate funds for contributions to political parties without the consent of the stockholders." *Id*.

The Court expanded upon this analysis in *UAW*, where it held that a union's use of union dues for a television broadcast to influence congressional elections was covered by the federal union expenditure restriction. In considering the restriction, the Court recounted approvingly the history of "the circumstances that begot this statute." 352 U.S. at 570. It noted that the initial impetus for regulation was the "popular feeling" in the post-Civil War era "that aggregated capital unduly influenced politics, an influence not stopping short of corruption." *Id*. This sentiment, the Court said, drove the passage of the Tillman Act which aimed "not merely to prevent the subversion of the integrity of the electoral process," but also "to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *Id*. at 575. Because Congress subsequently found that the restrictions on corporate and union *contributions* were being circumvented by *expenditures* made by these entities, it enacted the Taft-Hartley Act to "plug the existing loophole" and thereby "protect the political process from . . . the corroding effect of money employed in

elections by aggregated power." *Id*. at 582 (citation omitted).

The Court first considered restrictions on corporate political activity in *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). The question there, however, was whether the state of Massachusetts could restrict the expenditure of corporate treasury funds to influence *ballot initiatives*. The Court carefully distinguished restrictions on corporate spending in *candidate elections*, which were enacted to prevent the "corruption of elected representatives through the creation of political debts," *id*. at 788, from spending on *ballot initiatives*, where, "the risk of corruption perceived in cases involving candidate elections . . . simply is not present." *Id*. at 790. Because the restrictions on corporate ballot initiative spending could not be justified by the government's anti-corruption interests, the Court struck down Massachusetts' law. Nothing in *Bellotti*, however, questioned the validity of the restrictions on corporate money in candidate campaigns.

In *FEC v. National Right to Work Committee* (*NRWC*), 459 U.S. 197 (1982), the Court first reviewed the federal restrictions on corporate activity in candidate elections. The case followed the enactment of FECA, which codified the preexisting federal restrictions on corporate and union campaign activities at 2 U.S.C. § 441b. *NRWC* reviewed a provision of the new law that required corporations to use a separate segregated fund to make political contributions and expenditures, and to solicit only

their "members" for contributions to such fund. *See* 2 U.S.C. § 441b(b)(4).

The Court emphasized that Congress' "judgment that the special characteristics of the corporate structure require particularly careful regulation" was entitled to deference. 459 U.S. at 209-10. It described the gradual "step by step" evolution of the federal regulation of corporate and union political spending, and affirmed that the "careful legislative adjustment of the federal electoral laws" "reflects a permissible assessment of the dangers posed by [corporations and unions] to the electoral process." *Id*. at 209.

The Court ultimately held that the PAC-requirement did not violate the First Amendment because the "associational rights" asserted by the corporation were "overborne by the interests Congress has sought to protect in enacting § 441b." *Id*. at 207. In so holding, it again explained that Congress had a compelling interest in (1) "ensur[ing] that substantial aggregations of wealth" amassed by corporations were not "converted to political 'war chests' which could be used to incur political debts from legislators," and (2) "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." *Id*. at 207-08 (citations omitted).

The Court revisited the constitutionality of § 441b in *FEC v. Massachusetts Citizens for Life, Inc.*

(*MCFL*), 479 U.S. 238 (1986). At issue was whether the corporate expenditure restriction prohibited the non-profit corporation MCFL from distributing a newsletter urging readers to vote "pro-life" in the upcoming election. The Court held that this expenditure was indeed covered by the restriction, but found that MCFL should be exempted because the state interests justifying the restriction do not apply to an ideological non-profit corporation that has no shareholders, was not established by a corporation or union, and did not accept contributions from such entities. *Id*. at 263-64.

The Court began its analysis by narrating the history of the federal restriction on corporate expenditures, affirming that "Congress has long regarded it as insufficient merely to restrict payments made directly to candidates or campaign organizations." *Id*. at 246. Like the *NRWC* Court, it also acknowledged that Congress' decision to focus on the particular dangers posed by business corporations was a decision "to which we have said we owe considerable deference." *Id*. at 259 n.11 (citations omitted).

The Court then reviewed the governmental interests supporting the restriction, explaining: "Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace." *Id.* at 257. It noted, however, that § 441b was intended to correct this distortion in electoral advocacy: "By requiring that corporate independent expenditures be financed

through a political committee expressly established to engage in campaign spending, § 441b seeks to prevent this threat to the political marketplace. The resources available to this fund, as opposed to the corporate treasury, in fact reflect popular support for the political positions of the committee." *Id*. at 258. The corporate expenditure restriction is therefore justified because it "ensure[s] that competition among actors in the political arena is truly competition among ideas." *Id*. at 259.

The Court ultimately concluded that "the concerns underlying the regulation of corporate political activity are simply absent with regard to MCFL." *Id*. at 263. In exempting MCFL from § 441b, however, the Court at the same time affirmed "the legitimacy of Congress' concern" about "organizations that amass great wealth in the economic marketplace," thereby recognizing the validity of the interests underlying the expenditure restriction as applied to business corporations or other corporations that do not resemble MCFL. *Id*.

2. The *Austin* Decision and Beyond

Four years after the *MCFL* ruling, this Court decided *Austin*. As the foregoing section illustrates, the Court at that point had already amassed a significant body of case law analyzing the union and corporate expenditure restrictions. Far from making a "precipitous break with prior precedent," Br. at 10, *Austin* instead relied heavily upon this case law.

The *Austin* Court leaned particularly on *MCFL*, largely importing its analysis of the federal corporate expenditure restriction. It first quoted the decision to find that the state had an interest in ensuring that corporations did not deploy their "'resources amassed in the economic marketplace' to obtain 'an unfair advantage in the political marketplace.'" 494 U.S. at 659 (quoting *MCFL*, 479 U.S. at 257). The Court went on to conclude that "the compelling governmental interest in preventing corruption support[s] the restriction of the influence of political war chests funneled through the corporate form." *Id.* (citing *MCFL*, 479 U.S. at 257). The *Austin* decision thus fits squarely into the chain of this Court's precedents on corporate and union spending in elections.

In all of its subsequent decisions in this area, this Court cited *Austin* in upholding the corporate regulation at issue.

In *FEC v. Beaumont*, 539 U.S. 146 (2003), the Court relied on *Austin* to hold that the federal restriction on corporate campaign contributions is constitutional even as applied to a nonprofit corporation.

As the Court did in many earlier cases, the *Beaumont* Court prefaced its consideration of the restriction by recounting a "century of congressional efforts to curb corporations' potentially deleterious influences on federal elections." *Id.* at 152 (internal quotations omitted). It concluded its review of the "continual congressional attention to corporate political activity," *id*. at 153, by highlighting again the

deference owed Congress in this area: "In sum, our cases on campaign finance regulation represent respect for the 'legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.'" *Id*. at 155 (quoting *NRWC*, 459 U.S. at 209-10).

The Court then turned to the governmental interests supporting the contribution restriction, remarking that the "original rationales for the law" had endured. *Id.* at 154. Quoting *Austin*, the Court noted that corporations' "state-created advantages not only allow corporations to play a dominant role in the Nation's economy, but also permit them to use resources amassed in the economic marketplace to obtain an unfair advantage in the political marketplace." *Id*. at 154 (quoting *Austin*, 494 U.S. at 658-59) (internal quotations omitted). Reiterating past cases, it found that the corporate expenditure ban was intended to prevent "corruption or the appearance of corruption," and to "protect[ ] '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.'" *Id*. at 154 (quoting *NRWC*, 459 U.S. at 208).

By the time this Court in *McConnell* considered the facial constitutionality of section 203 of BCRA, 2 U.S.C. § 441b, the law in this area was so settled that the Court recognized that "Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly

advocating the election or defeat of candidates in federal elections has been firmly embedded in our law." 540 U.S. at 203.

Although the *McConnell* Court acknowledged that the plaintiffs did not contest the state's compelling interest in regulating corporate expenditures, it nevertheless highlighted that Congress' efforts in this sphere should be accorded deference. It noted that "our prior decisions regarding campaign finance regulation, which 'represent respect for the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation'" "easily answered" the question "whether the state interest is compelling." *Id*. at 205 (quoting *Beaumont*, 539 U.S. at 155 (quoting *NRWC*, 459 U.S. at 209-10)). Quoting *Austin*, the Court explained that it had "repeatedly sustained legislation aimed at the 'corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.'" *Id*. at 660 (quoting *Austin*, 494 U.S. at 660).

Finally, citing *Austin,* the Court's 2007 decision in *WRTL* also reaffirmed the constitutionality of BCRA's restriction on corporate expenditures for electioneering communications as applied to spending for express advocacy and the "functional equivalent of express advocacy." 127 S. Ct. at 2656. The Chief Justice's controlling opinion noted that the Court "has already ruled that BCRA survives strict scrutiny to

the extent it regulates express advocacy or its functional equivalent." *Id*. at 2664.

B. Principles of *Stare Decisis* Weigh Strongly Against Overruling *Austin* and *McConnell*.

Given that the constitutionality of the corporate expenditure restrictions has become "firmly embedded in our law," *McConnell,* 540 U.S. at 203, neither *Austin* nor *McConnell* can be overruled without fundamentally undermining this Court's First Amendment precedents and principles of *stare decisis*.

This Court has recognized that the doctrine of *stare decisis* is "of fundamental importance to the rule of law," *Harris v. U.S*., 536 U.S. 545, 556-57 (2002), because it "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Randall v. Sorrell*, 548 U.S. 230, 243 (2006). Consequently, a departure from precedent is improper unless a "special justification" is shown, even where the case turns on constitutional questions. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

In considering whether a break from precedent is justified, the Court reviews several considerations, including "whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine," "whether

facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification," or "whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling." *See Casey*, 505 U.S. at 854-55. Here, these considerations militate against overturning *Austin* and *McConnell*.

First, subsequent case law has in no way undercut the validity of *Austin* or the legal principles upon which the decision rests. To the contrary, *Austin* is deeply rooted in this Court's campaign finance jurisprudence, and has been relied upon by this Court in all of its subsequent decisions addressing restrictions on corporate campaign activities. *See, e.g.*, *Beaumont*, 539 U.S. at 154; *McConnell*, 540 U.S. at 166; *WRTL,* 127 U.S. at 2656. Indeed, the only subsequent case which appellant proffers as allegedly contrary to *Austin* is *Davis v. FEC*, 128 S. Ct. 2759 (2008). Br. at 3, 9. *Davis*, however, considered a statutory provision that affected a *candidate*'s expenditure of his personal funds in an election, not a *corporation*'s expenditure of treasury funds, and hence has no application here.

Appellant also argues that *Austin* was wrongly decided because it "effected a dramatic break" with cases that *preceded* it, specifically *Buckley* and

Bellotti.[4] Br. at 5. Even putting aside the obvious fact that this Court carefully considered these cases when it ruled in *Austin*, *see* 494 U.S. at 657-58, the foregoing review makes clear that *Austin* is entirely consistent with the decisions in this area: *Austin* relies on the same principles, and cites the same governmental interests as *UAW*, *NRWC* and *MCFL*. Indeed, the fundamental rationale for the corporate expenditure restriction upon which *Austin* relies – namely, that "the special characteristics of the corporate structure require particularly careful regulation" – has withstood decades of litigation. *Beaumont,* 539 U.S. at 155; *MCFL*, 479 U.S. at 256; *NRWC,* 459 U.S. at 209-10. And this Court has recognized that *stare decisis* applies with particular force where, as here, the precedent at issue "has become settled through iteration and reiteration over a long period of time." *Randall*, 548 U.S. at 234.

Nor has there been any showing that factual circumstances have changed so radically as to "rob" *Austin* "of significant application or justification." *Casey*, 505 U.S. at 854. As was true in 1990 when *Austin* was decided, business corporations still "accumulate" "immense aggregations of wealth . . . with the help of the corporate form . . . that have little or no correlation to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660.

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[4] As noted above, *Austin* is *not* in conflict with *Bellotti*, as the Court there specifically distinguished ballot initiative elections from candidate elections. 435 U.S. at 790.

The wealth available to business corporations has only increased, and corporations have remained active in candidate elections, as demonstrated by the *1,598* corporate PACs registered with the FEC today. FEC, *Number of Federal PACs Increases* (March 9, 2009), *available at* http://www.fec.gov/press/press2009/20090309PACcount.shtml. Also still salient is the concern that dissenting shareholders cannot adequately prevent corporations from using their investment dollars for political expenditures that they do not support. Indeed, the rise of mutual funds and employer-based retirement plans has further limited the choices available to the average investor, as well as the control exerted by such investors over corporate governance.

Finally, overruling *Austin* would disregard the considerable reliance that Congress and nearly half the states have placed upon it in enacting and enforcing campaign finance laws. Congress enacted BCRA only seven years ago, secure in the belief that *Austin* was good law and that the then almost 60-year-old federal corporate expenditure restriction was constitutional. Similarly, 24 states have relied upon the body of Supreme Court precedent approving restrictions on corporate spending. Moreover, candidates and political parties have also relied upon *Austin* and the federal expenditure restriction in developing their fundraising practices: their focus on raising contributions from individual donors reflects that American federal elections have been free of

corporate and union expenditures for well over a half-century. This Court should not lightly topple one of the fundamental legal pillars of American elections that has stood for three generations, and that has successfully prevented aggregated wealth from subverting the electoral system.

CONCLUSION

For all these reasons, the judgment of the district court should be affirmed.

July 2009

Respectfully submitted,

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APPENDIX A

The following groups constitute the *amici curiae* who submit the foregoing brief:

- **Americans for Campaign Reform** is a non-partisan, grassroots organization of citizens whose purpose is to help enact public funding of all federal elections – for the House, the Senate and the Presidency. Americans for Campaign Reform is about getting big money out of our political process so that our elected officials can represent the only special interest that matters: America.
- **The Asian American Legal Defense and Education Fund (AALDEF)** is a 35-year-old national civil rights organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. AALDEF seeks to ensure that Asian Americans have an equal opportunity to participate in the political process.
- **The Campaign Legal Center** is a non-profit, non-partisan organization created to represent the public perspective in administrative and legal proceedings interpreting and enforcing campaign finance and other election laws throughout the nation. It participates in rulemaking and advisory opinion proceedings at the FEC to ensure that the agency is properly enforcing federal election laws, and files complaints with the FEC requesting that enforcement actions be

taken against individuals or organizations that violate the law.

- **Common Cause** is a nonprofit, nonpartisan citizens' organization with approximately 300,000 members and supporters nationwide. Common Cause has been concerned with the growing problem of soft money in the federal political process, and has publicly advocated for appropriate regulation in order to restore integrity to the electoral system. Common Cause was a strong advocate for congressional enactment of the Bipartisan Campaign Reform Act of 2002.

- **Democracy 21** is a non-profit, non-partisan policy organization that works to ensure the integrity of our democracy. It supports campaign finance and other political reforms, and conducts public education efforts to accomplish these goals, participates in litigation involving the constitutionality and interpretation of campaign finance laws and works to ensure that campaign finance laws are effectively and properly enforced and implemented.

- **The League of United Latin American Citizens (LULAC)** is the largest and oldest Hispanic Organization in the United States. LULAC advances the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans through community-based programs operating at more than 700 LULAC councils

nationwide. The organization involves and serves all Hispanic nationality groups.

- **U.S. PIRG** represents state Public Interest Research Groups ("PIRGs") at the federal level, including in the federal courts. U.S. PIRG and many state PIRGs have long been interested in campaign finance issues and the resolution of this case will assist them in their advocacy for effective and comprehensive campaign finance reforms.

APPENDIX B

CURRENT STATE STATUTES REGULATING CORPORATE EXPENDITURES IN CONNECTION TO STATE CANDIDATE ELECTIONS

Alabama	ALA. CODE §§ 10-2A-70, 10-2A-70.1
Alaska	ALASKA STAT. §§ 15.13.135, 15.13.400
Arizona	ARIZ. REV. STAT. ANN. § 16-920
Colorado	COLO. CONST. ART. XXVIII, § 3(4)(a)
Connecticut	CONN. GEN. STAT. § 9-613
Iowa	IOWA CODE § 68A.503
Kentucky	KY. REV. STAT. ANN. § 121.035
Massachusetts	MASS. GEN. LAWS, ch. 55, § 8
Michigan	MICH. COMP. LAWS §§ 169.251, 169.254
Minnesota	MINN. STAT. § 211B.15
Montana	MONT. CODE ANN. § 13-35-227(1)
New York	N.Y. ELEC. LAW § 14-116
North Carolina	N.C. GEN. STAT. ANN. § 163-278.19
North Dakota	N.D. CENT. CODE §§ 16.1-08.1-03.3, 16.1-08.1-03.5
Ohio	OHIO REV. CODE ANN. § 3599.03
Oklahoma	OKLA. STAT., TIT. 74, § 257:10-1-2
Pennsylvania	25 PA. CONS. STAT. ANN. § 3253

Rhode Island	R.I. GEN. LAWS § 17-25-10.1
South Dakota	S.D. CODIFIED LAWS § 12-27-18
Tennessee	TENN. CODE ANN. § 2-19-132
Texas	TEX. ELEC. CODE §§ 253.094, 253.104
West Virginia	W.VA. CODE § 3-8-8
Wisconsin	WIS. STAT. § 11.38
Wyoming	WYO. STAT. § 22-25-102