No. 11-1179

IN THE
Supreme Court of the United States

AMERICAN TRADITION PARTNERSHIP, INC., F.K.A. WESTERN TRADITION PARTNERSHIP, INC., ET AL.,

Petitioners,

v.

STEVE BULLOCK, ATTORNEY GENERAL OF MONTANA, ET AL.,

Respondents.

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

BRIEF OF CITIZENS UNITED AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

In *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), this Court held that a federal ban on corporate independent political expenditures was unconstitutional under the First Amendment. The Montana Supreme Court, however, upheld a ban on corporate independent political expenditures in Montana state elections because it said that "unlike *Citizens United*, this case concerns Montana law, Montana elections and it arises from Montana history." App. 13a. This presents the following issue.

Whether Montana is bound by the holding of *Citizens United*, that a ban on corporate independent political expenditures is a violation of the First Amendment, when the ban applies to state, rather than federal, elections.

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BRIEF OF CITIZENS UNITED AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE**

Citizens United is a nonprofit membership corporation that has tax-exempt status under 26 U.S.C. § 501(c)(4) as an organization not organized for profit but operated exclusively for the promotion of social welfare. Through a combination of education, advocacy, and grass-roots programs, Citizens United seeks to promote the traditional American values of limited government, free enterprise, strong families, and national sovereignty and security. This case is of central concern to Citizens United because it implicates the rights of corporations to disseminate their political views and is a departure from Supreme Court precedent protecting those rights. Citizens United has challenged similar restrictions in the past, including the restrictions on corporate independent expenditures struck down in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

SUMMARY OF ARGUMENT

In *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), this Court held that a provision of federal law prohibiting corporations and unions from making in-

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* The parties have consented to the filing of this brief. Pursuant to this Court's Rule 37.2(a), counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae's* intention to file this brief. Letters of consent from all parties to the filing of this brief have been submitted to the Clerk. Pursuant to this Court's Rule 37.6, *amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

dependent expenditures supporting or opposing candidates for federal office violated the First Amendment. Yet, in this case, the Supreme Court of Montana upheld Montana's ban on corporate independent expenditures in support of (or opposition to) candidates in state elections, holding that the State had demonstrated that the ban comports with the First Amendment because it is narrowly tailored to further what it described as Montana's "unique[ly]" strong interest in restricting corporate political speech. App. 26a ¶37.

As the two dissenting opinions make clear, that decision cannot be reconciled with the holding or reasoning of *Citizens United*. Justice Baker, for example, recognized that the Montana Supreme Court was bound by *Citizens United* to invalidate Montana's law to the extent it prohibits corporate independent expenditures because "the State of Montana made no more compelling a case than that painstakingly presented in the 90-page dissenting opinion of Justice Stevens and emphatically rejected by the majority in *Citizens United*." App. 33a ¶49. Similarly, as Justice Nelson emphasized, "a fair reading" of *Citizens United* "leads inescapably to the conclusion that every one of the Attorney General's arguments—and [the Montana Supreme Court's] rationales adopting those arguments—was argued, considered, and then flatly rejected by the Supreme Court." App. 43a-44a ¶66. What happened below, he explained, is essentially this:

> The Supreme Court in *Citizens United* (and in [*Republican Party of Minn. v.*] *White*[, 536 U.S. 765 (2002)]) rejected several asserted governmental interests; and this Court has now come along, retrieved those interests from the garbage can, dusted them off, slapped a "Made in Montana" sticker on them, and held them up as grounds for sus-

> taining a patently unconstitutional state statute.

App. 84a ¶120.

This Court's duty to serve "as the bulwar[k] of a limited Constitution against Legislative encroachments," *The Federalist No. 78*, at 428 (Alexander Hamilton) (E.H. Scott ed. 1898), is no less strong where a state, rather than federal, statute is at issue. The Supreme Court of Montana's holding that the First Amendment permits Montana to restrict corporate independent expenditures is flatly at odds with *Citizens United* and the settled First Amendment principle that corporations, no less than individuals, possess the right to participate in the political process. In addition, the Montana Supreme Court's rationale for distinguishing *Citizens United*—which rested on the supposedly unique history of corporate electioneering in Montana—was expressly rejected in *Northwest Austin Municipal Utility District Number One v. Holder*, 129 S. Ct. 2504 (2009), where this Court confirmed that history alone is an insufficient ground for sustaining a constitutionally suspect statute.

Having recently and squarely addressed the issue presented in this case, this Court should grant certiorari and summarily reverse the decision of the Montana Supreme Court. Summary reversal is appropriate to reaffirm the precedential force of *Citizens United*; to disapprove the Montana Supreme Court's transparent attempt to evade this Court's clear mandate; and to confirm once again that vibrant and unrestrained debate among *all* speakers is fundamental to the American political process.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS IN *CITIZENS UNITED* AND *NORTHWEST AUSTIN*.

The Montana Supreme Court—like every other state court—is bound by this Court's holding in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), that it violates the First Amendment to prohibit corporations and unions from making independent expenditures in support of, or opposition to, political candidates. The Montana Supreme Court nevertheless upheld the State's ban on corporate independent expenditures by minimizing the burdens of the Montana prohibition and invoking what it characterized as the State's "unique[ly]" strong anti-distortion and anti-corruption interests. App. 26a ¶37. That decision disregards the clear holding and reasoning of *Citizens United*, which rejected those interests as insufficient to restrict corporate independent expenditures. In addition, the state supreme court's reliance on Montana history to sustain the State's 100-year-old prohibition on corporate independent expenditures is foreclosed by this Court's decision in *Northwest Austin Municipal Utility District Number One v. Holder*, 129 S. Ct. 2504 (2009).

A. THE DECISION BELOW SQUARELY CONFLICTS WITH THE HOLDING AND REASONING OF *CITIZENS UNITED*.

In *Citizens United*, this Court struck down a provision of the Federal Election Campaign Act that, as amended by the Bipartisan Campaign Reform Act ("BCRA"), prohibited corporations and unions from making independent expenditures in support of, or opposition to, candidates for federal office, as well as "electioneering communications" that did not expressly advocate a candidate's election or defeat, but nevertheless referenced a candidate, within 30 days of a primary election or 60 days of a general election.

130 S. Ct. at 913. In so doing, the Court reaffirmed that "political speech does not lose First Amendment protection 'simply because its source is a corporation.'" *Id.* at 900 (quoting *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 784 (1978)); *see also id.* at 913. The Court explained that the government may not constitutionally restrict political speech based either on the fact that the speaker is organized as a corporation or a desire to equalize the relative ability of speakers to influence elections. *Id.* at 903-04. And, it stated unequivocally that BCRA operated as "a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak." *Id.* at 897.

The Supreme Court of Montana's assertion that the decision below is distinguishable because it "concerns Montana law, Montana elections and it arises from Montana history" is untenable. App. 13a ¶16. The First Amendment is a bedrock protection of fundamental rights that restrains government action at all levels. *See* U.S. Const. art. VI, cl. 2; U.S. Const. amend. XIV. There are no state-specific exceptions to the First Amendment's protections for core political speech. In fact, this Court has repeatedly struck down state restrictions on political speech under the First Amendment. *See, e.g.*, *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002) (holding that the Minnesota canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violated the First Amendment); *Bellotti*, 435 U.S. at 795 (striking down under the First Amendment a Massachusetts statute forbidding certain expenditures by banks and business corporations related to referendum proposals).

Since *Citizens United*, courts have invalidated state and local restrictions on political speech and expressly recognized *Citizens United*'s applicability to those enactments. *See, e.g.*, *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 143 (7th Cir. 2011) (hold-

ing that, after *Citizens United*, a Wisconsin statute was "unconstitutional to the extent that it limits contributions to committees engaged solely in independent spending for political speech"); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 695 (9th Cir.) (explaining that the conclusion that a city may not impose financial limits on political action committees' independent expenditures is "compelled by the long and growing line of Supreme Court cases concluding that limitations on independent expenditures are unconstitutional"), *cert. denied*, 131 S. Ct. 392 (2010); *see also Farris v. Seabrook*, 667 F.3d 1051 (9th Cir. 2012), *amended by and reh'g and reh'g en banc denied*, No. 11-35620, 2012 WL 1194154 (9th Cir. Apr. 11, 2012) (affirming a district court's preliminary injunction prohibiting the State of Washington from enforcing its limit on contributions to political committees supporting the recall of a state or county official).

The decision below—upholding Montana's ban on corporate independent expenditures—misreads and disregards the unambiguous holding and reasoning of *Citizens United*. Because the state supreme court's numerous errors have been discussed at length in the dissenting opinions, the stay application, and the petition for certiorari, *amicus* will highlight only a few of the most egregious errors.

First, the Montana Supreme Court refused to give force to the basic principle that the First Amendment's protections for political speech extend to corporations. *Citizens United*, 130 S. Ct. at 899-900. In discussing the burdens imposed by the Montana law, the court avoided the obvious conclusion that the prohibition stifled corporate speech by observing that two individuals—the founder and the sole shareholder of two of the plaintiff corporations—had not "demonstrate[d] any material way in which Montana law hindered or censored their political activity." App. 13a-14a ¶17. But, as Justice Nelson correctly noted in dissent, whether two *individuals*—whose

speech rights were not at issue—"have been hindered or censored" is beside the point. App. 62a-63a ¶92. The Montana law quite plainly infringes corporate speech by imposing a ban on corporate independent expenditures—notwithstanding the ability of individuals affiliated with those corporations to speak in other capacities.

Second, the decision below ignores this Court's clear holding that a PAC is not a constitutionally sufficient alternative to corporate independent expenditures. *Citizens United*, 130 S. Ct. at 897. In *Citizens United*, this Court concluded that "Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak." *Id.* at 897. As the Court explained, "[a] PAC is a separate association from the corporation" *and*, in any event, it is a burdensome alternative to direct political speech by the corporation itself. *Id.* The Montana Supreme Court completely disregarded this Court's analysis of the legal distinctions between a corporation and its PAC, suggesting instead that this Court merely held a PAC was not a sufficient alternative "because of the burdensome, extensive, and expensive Federal regulations that applied." App. 10a-11a ¶12. The state supreme court then purported to distinguish *Citizens United* on the ground that, "[u]nlike the Federal law PAC considered in *Citizens United*," political committees in Montana "are easy to establish and easy to use to make independent expenditures for political speech." App. 32a ¶47; *see also* App. 16a ¶21 (stating that "under Montana law a political committee can be formed and maintained by filing simple and straight-forward forms or reports"). In relying on these supposed distinctions between federal and Montana law, however, the court lost sight of the essential point: Whatever the administrative requirements, a PAC alternative cannot cure the constitutional defect with a ban on corporate independent expenditures because forming a separate

association does not allow the corporation to speak. *See Citizens United*, 130 S. Ct. at 897.

Third, the decision below revived the anti-distortion and anti-corruption rationales that this Court in *Citizens United* found unconvincing and insufficient to justify a ban on corporate independent expenditures. In *Citizens United*, this Court analyzed the legal sufficiency of rationales that purportedly supported the constitutionality of restrictions on corporate independent expenditures before concluding that the government could not defend the ban as a means of curbing the influence of wealth amassed in the economic marketplace or equalizing the relative ability of speakers to influence elections. *See Citizens United*, 130 S. Ct. at 903-04. Yet, in direct contravention of *Citizens United*, the Supreme Court of Montana upheld the State's prohibition on corporate independent expenditures based on Montana's purportedly "clear interest" in "preserving the integrity of its electoral process," "encouraging the full participation of the Montana electorate," and minimizing the "corporate power that can be exerted with unlimited political spending." App. 26a ¶38; App. 22a ¶29.

In relying on those state interests as a basis for silencing corporate political speech, the Montana Supreme Court attempted to recast *Citizens United* as a factbound ruling with little applicability outside the "unique and complex" federal regulatory scheme. App. 10a ¶11; *see also* App. 12a ¶15 ("*Citizens United* was decided on its facts or lack of facts . . . ."); App. 16a ¶21 (the "Court in *Citizens United* emphasized the length, complexity and ambiguity of the Federal restrictions"). That description of *Citizens United* is simply false. This Court's analysis of what the First Amendment means and requires was not limited to the setting of federal elections. *See Am. Tradition P'ship v. Bullock*, 132 S. Ct. 1307 (2012) (statement of Ginsburg, J., respecting the stay) (indicating that court below was bound to follow *Citizens United*, but suggesting it might be revis-

ited). It applies equally in *every* State, and compels the conclusion that Montana's law prohibiting independent political expenditures by a corporation is unconstitutional.

Fourth, the Supreme Court of Montana again ignored this Court's precedent in concluding that the State's ban on corporate independent expenditures is necessary to ensure that elected judges are not biased in favor of campaign supporters. *See* App. 30a ¶44 ("Litigants appearing before a judge elected after a large expenditure of corporate funds could legitimately question whether their due process rights were adversely impacted."). The court's reasoning disregarded this Court's holding in *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), that an elected judge is required to recuse himself "when a person with a personal stake in a particular case ha[s] a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.* at 2263-64. Thus, as this Court recognized in *Citizens United*, recusal—not a ban on political speech—is the appropriate means of protecting a litigant's due process right to a fair trial before an unbiased judge. *See* 130 S. Ct. at 910.

B. The Montana Supreme Court's Reliance On History To Uphold The State's Ban On Corporate Expenditures Conflicts With *Northwest Austin*.

The Montana Supreme Court's decision upholding the State's ban on corporate independent expenditures also rested on the "context of the time and place [the ban] was enacted." App. 17a ¶22. The state supreme court's reliance on Montana's purportedly unique history to sustain the 100-year-old law cannot be reconciled with this Court's decision in *Northwest Austin*, 129 S. Ct. 2504.

In upholding Montana's current ban on corporate independent expenditures, the Montana Supreme Court re-

cited examples of alleged corporate influence in the State during the first half of the twentieth century and concluded that the electorate "clearly had a compelling interest to enact the challenged statute in 1912." App. 25a ¶36. It then questioned:

> [W]hen in the last 99 years did Montana lose the power or interest sufficient to support the statute, if it ever did. If the statute has worked to preserve a degree of political and social autonomy is the State required to throw away its protections because the shadowy backers of WTP seek to promote their interests? Does the state have to repeal or invalidate its murder prohibition if the homicide rate declines? We think not.

App. 26a ¶37.

In *Northwest Austin*, however, this Court confirmed that historical data alone are insufficient to justify a statute in the face of constitutional infirmity. Considering Congress's extension of Section 5 of the Voting Rights Act ("VRA"), which "authorizes federal intrusion into sensitive areas of state and local policymaking," the Court emphasized that "[p]ast success alone is not adequate justification to retain the preclearance requirements." 129 S. Ct. at 2511 (internal quotation marks omitted). Although the Court left open whether conditions continued to warrant preclearance under the VRA, it could not have been more clear that the Act's "current burdens . . . must be justified by current needs." *Id.* at 2512.

Thus, even assuming that corporate expenditures had actually corrupted the political process in Montana in 1912, *Northwest Austin* makes clear that century-old events standing alone cannot justify modern-day burdens on First Amendment rights. If, as the Montana Supreme Court suggests, the State's prohibition on corporate inde-

pendent expenditures has remedied some of the evils it was designed to prevent, those achievements may in fact have rendered the law obsolete. *See* 129 S. Ct. at 2511-12; *see also Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (explaining that the Court "expect[s] that 25 years from now, the use of racial preferences will no longer be necessary to further" an interest in student body diversity in the context of public higher education).

The Montana Supreme Court nevertheless asserted that "[t]he corporate power that can be exerted with unlimited political spending is still a vital interest to the people of Montana," and that Montana remains "especially vulnerable to continued efforts of corporate control" due to "corporate influence, sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs." App. 22a ¶29; App. 26a ¶37. Ultimately, Montana's supposedly "unique and compelling interests" in restricting corporate political speech, App. 26a ¶37, are nothing more than a repackaging of the discredited anti-distortion and anti-corruption rationales that this Court has already expressly rejected as grounds for prohibiting corporate independent expenditures. *See Citizens United*, 130 S. Ct. at 913. If allowed to stand, the Montana Supreme Court's decision would invite a state-by-state roll-back of corporations' First Amendment rights based on unsubstantiated geographic and demographic considerations that have no place in First Amendment analysis.

II. SUMMARY REVERSAL IS THE APPROPRIATE RESPONSE TO THE OBVIOUS CONFLICTS BETWEEN THE DECISION BELOW AND THIS COURT'S CONTROLLING PRECEDENT.

Under appropriate circumstances, this Court may enter an order summarily disposing of a case on the merits. Sup. Ct. R. 16.1. Summary reversal is appropriate where a

lower-court decision addressing an issue of national importance is so plainly contrary to this Court's controlling precedent that full briefing and argument are not required to identify the error. *See* Eugene Gressman et al., *Supreme Court Practice* § 5.12(a) (9th ed. 2007) (a summary reversal order "usually reflects the feeling of a majority of the Court that the lower court result is so clearly erroneous, particularly if there is a controlling Supreme Court precedent to the contrary, that full briefing and argument would be a waste of time"). In light of the Montana Supreme Court's refusal to follow this Court's binding, and squarely on point, First Amendment precedent, summary reversal is appropriate in this case.

A. Summary Reversal Is Warranted To Correct The Supreme Court Of Montana's Clear Error On An Issue Of National Importance.

On numerous occasions, this Court has summarily reversed lower-court decisions that directly and plainly conflict with a prior holding of this Court. In *CSX Transportation, Inc. v. Hensley*, 556 U.S. 838 (2009) (per curiam), for example, this Court summarily reversed a decision of the Tennessee Court of Appeals that failed to adhere to the plain import of its recent decision in *Norfolk & Western Railway Co. v. Ayers*, 538 U.S. 135 (2003), which established the appropriate standard for recovering damages for fear of cancer under the Federal Employers' Liability Act. *See*, *e.g.*, *Bobby v. Mitts*, 131 S. Ct. 1762 (2011) (per curiam) (summarily reversing decision that conflicted with *Smith v. Spisak*, 130 S. Ct. 676 (2010)); *Spears v. United States*, 129 S. Ct. 840 (2009) (per curiam) (summarily reversing decision that conflicted with *Kimbrough v. United States*, 552 U.S. 85 (2007)); *Brosseau v. Haugen*, 543 U.S. 194, 198 n.3 (2004) (per curiam) (summarily reversing decision "to correct a clear misapprehension of the qualified immunity standard"); *Arkansas v. Sullivan*, 532 U.S. 769, 771 (2001)

(per curiam) (summarily reversing decision that was "flatly contrary" to this Court's controlling Fourth Amendment precedent).

Summary reversal is especially appropriate where a lower court has declined to follow a recent decision of this Court recognizing constitutional rights that had previously been violated on a widespread basis and where that decision has generated significant controversy and opposition. *See Johnson v. Virginia*, 373 U.S. 61 (1963) (per curiam) (summarily reversing contempt conviction for refusing to comply with segregated seating requirements in courtroom); *Pennsylvania v. Bd. of Dirs. of City Trusts of City of Phila.*, 353 U.S. 230 (1957) (per curiam) (summarily reversing decision that the denial of admission to an educational institution on the basis of an applicant's race was consistent with the Fourteenth Amendment); *Trs. of the Monroe Avenue Church of Christ v. Perkins*, 334 U.S. 813 (1948) (per curiam) (summarily reversing judgment upholding validity of racially restrictive covenant).

Summary reversal is warranted in this case because the Montana Supreme Court unquestionably departed from this Court's recent precedent recognizing the fundamental First Amendment right of individuals to band together in the corporate form to engage in political speech. In order to sustain Montana's prohibition on corporate independent expenditures, the Montana Supreme Court improperly cabined the holding of *Citizens United* to the context of federal election law, minimized the ban's burdens on political speech, and relied on governmental interests expressly considered and rejected by this Court. The Montana Supreme Court's narrow reading of *Citizens United* and watered-down application of strict scrutiny to a ban on corporate independent expenditures would empower States to disregard the First Amendment rights of corporations at will.

In apparent recognition of the magnitude of the Montana Supreme Court's errors, this Court has already issued a stay of the lower court's decision. *Am. Tradition P'ship*, 132 S. Ct. 1307. Summary reversal is now appropriate to correct those manifest errors.

In its opposition to the application for a stay, the State argued that state court decisions passing on the constitutionality of state laws are unsuitable for summary reversal. Montana's Opposition to the Application for a Stay of the Montana Supreme Court's Decision Pending Certiorari, at 9-10 (Feb. 15, 2012). But it is well-settled that a state court's refusal to follow the controlling precedent of this Court is not insulated from summary disposition. *See, e.g.*, *Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201 (2012) (per curiam); *Ohio v. Reiner*, 532 U.S. 17 (2001) (per curiam); *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147 (1993) (per curiam); *Ashland Oil, Inc. v. Tax Comm'r of W. Va.*, 497 U.S. 916 (1990) (per curiam); *California v. Beheler*, 463 U.S. 1121 (1983) (per curiam); *Oregon v. Mathiason*, 429 U.S. 492 (1977) (per curiam); *Connally v. Georgia*, 429 U.S. 245 (1977) (per curiam).

This remains the case where a state court upheld the constitutionality of a state statute. In *Turner v. Department of Employment Security of Utah*, 423 U.S. 44 (1975) (per curiam), for example, this Court summarily vacated a decision of the Utah Supreme Court upholding a state statute that made pregnant women ineligible for unemployment benefits for an 18-week period surrounding childbirth. *Id.* at 44. The state supreme court upheld the challenged ineligibility provision in part because it rested on a conclusive presumption that women are "unable to work" during that time. *Id.* at 45. In vacating the decision, this Court held that the presumption of incapacity and unavailability for employment created by the state statute was virtually identical to the presumption that had already been found unconstitutional in *Cleveland Board of*

Education v. LaFleur, 414 U.S. 632 (1974). *Turner*, 423 U.S. at 46; *cf. Rose v. Ark. State Police*, 479 U.S. 1 (1986) (per curiam) (summarily reversing a state court decision upholding a state statute that conflicted with a federal statute).

State courts—like federal courts—have an unwavering obligation to uphold the Constitution of the United States and follow this Court's decisions until they are withdrawn or modified. *See* U.S. Const. art. VI, cl. 2. They are not freed from that constitutional obligation where the decision of this Court is controversial or unpopular, where it was rendered by a divided Court, or where state officials disagree with the decision as a matter of policy. *See Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958). In constitutional matters, "[i]t is emphatically the province" of this Court—not the political branches, lower courts, or state officials—"to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); App. 40a ¶60 (Baker, J., dissenting) ("'Americans today accept the [United States Supreme] Court's role as guardian of the law. They understand the value to the nation of following Court decisions, . . . even when they disagree with a Court decision and even when they may be right and the decisions may be wrong.'") (quoting Stephen Breyer, *Making Our Democracy Work: A Judge's View* 214 (2010)).

B. THE QUESTION WHETHER CURRENT CORPORATE EXPENDITURES WARRANT RECONSIDERATION OF *CITIZENS UNITED* IS NOT PRESENTED.

When this Court granted a stay of the Montana Supreme Court's decision, Justice Ginsburg, joined by Justice Breyer, wrote that "Montana's experience, and experience elsewhere since this Court's decision in *Citizens United* make it exceedingly difficult to maintain that independent expenditures by corporations do not give rise to corruption or the appearance of corruption." *Am. Tradition P'ship*,

132 S. Ct. at 1307-08 (citation and internal quotation marks omitted). "A petition for writ of certiorari," they suggested, would "give the Court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway." *Id.* at 1308.

Respectfully, that question is not presented here. The Montana Supreme Court did not uphold its State's prohibition on corporate independent expenditures on the basis of the purportedly "huge sums" that corporations have spent exercising their fundamental First Amendment freedoms since *Citizens United* was decided. Instead, the lower court purported to decide the case based on Montana's supposedly unique history, geography, politics, and economy. *See* App. 13a ¶16. The Montana Supreme Court's state-specific analysis makes this case an exceedingly poor vehicle to reexamine the broader constitutional questions settled in *Citizens United*.

* * *

The decision below is a transparent attempt to circumvent the application of this Court's precedent to a state statute that is materially indistinguishable from the federal prohibition on corporate independent expenditures struck down by this Court in *Citizens United*. Such constitutional mischief should proceed no further. The Court should reaffirm its position as the final arbiter of the Constitution's meaning by granting review and summarily reversing the decision of the Supreme Court of Montana.

CONCLUSION

This Court should grant the petition for a writ of certiorari and summarily reverse the decision of the Supreme Court of Montana.

Respectfully submitted.

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