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Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1976

THE FIRST NATIONAL BANK OF BOSTON, NEW ENGLAND MERCHANTS NATIONAL BANK, THE GILLETTE COMPANY, DIGITAL EQUIPMENT CORPORATION, AND WYMAN-GORDON COMPANY, APPELLANTS

v.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL, APPELLEE

ON APPEAL FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF THE FEDERAL ELECTION COMMISSION, AMICUS CURIAE

STATEMENT OF INTEREST

The Federal Election Commission has primary jurisdiction over the administration and enforcement of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.*, ("the Act"). (Pub. L. No. 92–225, 86 Stat. 3 (1972); Pub. L. 93–443, 88 Stat. 1263 (1975); Pub. L. No. 94–283, 90 Stat. 475 (1976)). The Commission is authorized to appear in and defend against actions with regard to the administration and enforcement of that Act, as well as

the related provisions of the Internal Revenue Code (Title 26 U.S.C., Chapters 95 and 96). 2 U.S.C. §§ 437d(a)(6), 437h; 26 U.S.C. §§ 9010, 9040. This brief is submitted pursuant to Supreme Court Rule 42(4).

The Federal Election Campaign Act makes it " . . . unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office . . . or for any corporation whatever, or any labor organization to make an expenditure in connection with any election . . ." to any federal office. 2 U.S.C. § 441b. The Massachusetts statute challenged by appellants contains similar restrictions, not directly at issue in this case, which state that no corporation "shall directly or indirectly give, pay, expend or contribute or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office . . ." (Mass. Gen. Law, C.55, Sec. 8).

The Commission's interest in this case extends to its impact on the constitutionality of the statute within its jurisdiction. The Commission is given substantial powers to structure resolution of questions concerning the application of the federal statute to the diverse factual and legal questions raised by its provisions. See, generally, 2 U.S.C. Secs. 437c, 437d. The Commission is authorized to bring actions to construe the constitutionality of statutory provisions under its jurisdiction. 2 U.S.C. § 437h; 26 U.S.C. § 9011

(b). The Commission can give advisory opinions on the application of the law to specific facts. 2 U.S.C. § 437f. Where events afford it reason to believe that the Act may have been violated, the Commission has power to reach a voluntary resolution of such matters, either because a person demonstrates that no action should be taken (2 U.S.C. § 437g(a)(4)) or because an agreement reached as a result of the statute's command "to correct or prevent such violation by informal methods of conference, conciliation and persuasion," permits resolution of questions raised (2 U.S.C. § 437g(a)(5)). Provisions of the Act can only be enforced through the courts (2 U.S.C. § 437g(a)(5)); Commission decisions not to take enforcement action are also reviewable by direct action in the courts (2 U.S.C. § 437g(a)(9)).

Acceptance of appellant's broad statements of the extent and nature of the rights of corporations under the first amendment to the United States Constitution would, however, affect judgments on similar issues under the provisions of the Act.[1] Declination by this Court of the broad arguments advanced by appellants would serve to elucidate the balance of the rights of individuals within a corporation, of the material inter-

[1] Appellants apparently concede (Appellants' Brief, p. 36, n. 17) that the resolution of this case on the merits need not necessarily affect judgment on the issues presented under the Act. As to the justiciability of the particular statutory provisions in the absence of a concrete factual record to which the statute has been applied, or the mootness of the present action, the Commission expresses no opinion as such questions relate to the operation of the particular Massachusetts statutory provisions.

ests of the corporation and of the public interest in an electoral system free of improper influences, in specific factual contexts with their attendant sharpening of the choices posed by particular resolutions. Accordingly, the Commission urges the Court, if it concludes that it has present jurisdiction over this action, to reject appellants' broad claims and to restrict any decision to the facts of the case before it.

ARGUMENT

I. THIS COURT SHOULD REJECT APPELLANT'S ARGUMENT THAT EXPENDITURE OF FUNDS BY CORPORATIONS IN CONNECTION WITH ELECTIONS IS PROTECTED FROM REGULATION RY THE FIRST AMENDMENTS TO THE UNITED STATES CONSTITUTION.

It cannot be maintained as a historical proposition that corporations of every kind are accorded as a matter of constitutional right all of the protections afforded to natural persons by the Constitution. *Dartmouth College* v. *Woodward,* 17 U.S. (4 Wheat.) 518, 561 (1819); *Pierce* v. *Society of Sisters,* 268 U.S. 510, 535 (1925) Rather, the Constitution has always been read to afford to corporations constitutional protections only as they relate to the protection of their interests. See, e.g., *Doran* v. *Salem Inn, Inc.,* 422 U.S. 922 (1975); *Southwestern Promotions, Ltd.,* v. *Conrad,* 420 U.S. 546 (1975); *New York Times* Co. v. *Sullivan,* 376 U.S. 254 (1964); *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495 (1952); *Grosjean* v. *American Press Co.,* 297 U.S. 233 (1936). Corporations have not been permitted to avail themselves of many of the con-

stitutional protections, particularly with respect to the personal freedoms, such as self-incrimination. *Hale* v. *Henkel,* 201 U.S. 43, 74–75 (1906); *California Bankers Ass'n.* v. *Shultz,* 416 U.S. 21, 55, 71 (1974). Corporations do not possess "liberty" rights guaranteed by the fourteenth amendment to natural persons. *Western Turf Ass'n.* v. *Greenburg,* 204 U.S. 359, 363 (1907); *Northwestern Life Ins. Co.* v. *Riggs,* 203 U.S. 243 (1906). Nor are they citizens within the meaning of the privileges and immunities clause of the fourteenth amendment. *Hague* v. *CIO,* 307 U.S. 496 (1939); *Hemphill* v. *Orloff,* 277 U.S. 537 (1928); *Asbury Hospital* v. *Cass County,* 327 U.S. 207 (1945). There is no corporate privilege against self-incrimination, (*United States* v. *White,* 322 U.S. 694 (1944); *Wilson* v. *United States,* 211 U.S. (1911)), nor to rights of privacy, (*United States* v. *Morton Salt,* 338 U.S. 632, 651–652 (1950).

Appellants bold assertion that corporations have an unabridgeable right to expend money for political purposes asks this Court to conclude that the first amendment does not distinguish between citizens and artificial entities themselves incorporated by the government.[2] Yet this Court has long emphasized the personal nature of both first amendment guarantees and the electoral rights which they protect. The annals of this Court abound with decisions emphasizing

[2] In view of the Court's holding that the fourteenth amendment makes the first amendment applicable to action by states, the issues are considered as direct first amendment problems. See, *Bigelow* v. *Virginia,* 421 U.S. 809, 811 (1975).

that the first amendment stakes out an area of personal freedom for citizens on which the government can neither make, nor brook, interference, except where the most compelling circumstances prevail. See, e.g., *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1976); *Abood* v. *Detroit Board of Education,* — U.S. —, 45 U.S.L.W. 4473, 4480. The right to associate for political purposes is preeminently an individual right. "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association." *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250 (1957). "We require only that the rights of every citizen to believe as he will and to act and associate according to his beliefs be free to continue as well." *Elrod* v. *Burns,* 427 U.S. 347, 372 (1976). See, also, *Cousins* v. *Wigoda,* 419 U.S. 477, 487 (1975). The most personal right protected by the Constitution, not extended to corporations, is the right to vote. "Citizens, not history or economic interests, cast votes." *Reynolds* v. *Sims,* 377 U.S. 533, 565 (1964). See also, *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966); *Wesberry* v. *Sanders,* 376 U.S. 1 (1964). Voting is the "fundamental political right, because preservative of all rights," *Yick Wo* v. *Hopkins,* 118 U.S. 356, 379 (1885).

Appellants seek support for their claim of direct first amendment rights for corporations in this Court's decisions that corporations whose existence involves the exercise of activities protected by the first amendment have standing to assert them. Ignoring the constitutional exception which frees the institutional

press from government control, appellants insist that decisions which establish that the first amendment's protection for freedom of the press extends to corporations in the business of communications suggest that incorporation itself brings with it first amendment rights. Each of the cited decisions emphasizes, however, the special role of the press in our system of freedom of expression. Appellants heavy reliance on *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936) exemplifies the short reach of the decisions cited. Specifically reaffirming the validity of general taxes, this Court found a special tax on newspapers which had "a long history of hostile misuse against the freedom of the press" to be a "deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees." 297 U.S. at 250. See, *Associated Press* v. *United States*, 326 U.S. 1 (1945). Appellants citation of *New York Times* v. *Sullivan*, 376 U.S. 254 (1964) seems similarly inapposite, since the foundation of that decision's elaboration of traditional libel tests was precisely the importance of the role of a free press in fostering robust and uninhibited debate. 376 U.S. at 270.[3] Finally, this

[3] *Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 390 (1969), makes clear that it is not corporate rights but the balance of public interests, varying with the medium of expression, which controls: "But the people as a whole retain the interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." 395 U.S. at 390. That decision

Court, in holding that an incorporated association has standing to assert rights of association to secure legal redress for constitutional rights, expressly limited the decision to corporations whose very activity was the furthering of such association:

> We think petitioner may assert this right on its own behalf, because, though a corporation, it is directly engaged in those activities, claimed to be constitutionally protected, which the statute would curtail. *NAACP* v. *Button*, 371 U.S. 415, 428 (1963).

In effect, appellants rely upon the undoubted ability of citizens to pool their financial resources to battle for political and social goals to argue that all corporations must be deemed substantially equivalent to such traditional voluntary associations. That, however, ignores the substantially different purposes for which corporations generally exist, and the paramount influence that that has upon the rights which flow to them. This Court has long emphasized that the character of the corporation measures the protections afforded it: "Being a mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly, or as in-

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reaffirmed, therefore, with specific reference to the electronic media, the basic idea set forth as to more traditional press media in cases such as *Time, Inc.* v. *Hill*, 385 U.S. 374 (1967), *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495 (1952) and *Kingsley International Pictures* v. *Regents*, 360 U.S. 684 (1959), cited by appellants. See, also, *Virginia Pharmacy Board* v. *Virginia Citizens Council*, 425 U.S. 748, 761–765 (1976).

cidental to its very existence." *Dartmouth College* v. *Woodward*, 17 U.S. at 636. "Appellees are corporations and therefore, it is said, they cannot claim for themselves the liberty which the fourteenth amendment guarantees. Accepted in the proper sense, this is true . . . [citations omitted]. But they have business and property for which they claim protection." *Pierce* v. *Society of Sisters*, 268 U.S. at 535. ". . . corporations can claim no equality with individuals in the employment of a right of privacy. They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities." *United States* v. *Morton Salt Co.*, 338 U.S. at 651–652. See, also, *California Bankers Ass'n.* v. *Schultz*, 416 U.S. at 65; *Hemphill* v. *Orloff*, 277 U.S. at 550; *Prudential Insurance Co.* v. *Cheek*, 259 U.S. 530, 536 (1922).

Appellants' attempt to extend first amendment protections to all business corporations as a matter of right should be rejected by the Court. The holdings that the interest of the corporation defines its protection rest on the recognition that corporations are subject to an entirely different form of regulation, appropriate to their unique and powerful role in the control of the economic wealth of our society. That the same rights guaranteed to individuals are often applicable to corporations should not allow corporations to rely upon rights particularly guaranteed to individuals.

II. ANY INTEREST IN CONTRIBUTIONS AND EXPENDITURES BY CORPORATIONS IN CONNECTION WITH ELECTIONS IS OUTWEIGHED BY THE IMPORTANT POLICIES OF PROTECTION OF ELECTIONS FROM EITHER THE APPEARANCE OR THE ACTUALITY OF UNDUE INFLUENCE OR CORRUPTION AND OF PROTECTION OF NATURAL PERSONS FROM FORCED ASSOCIATION WITH VIEWS NOT THEIR OWN.

This Court has never ruled on the constitutionality of the ban on expenditures and contributions by corporations in connection with federal elections.[4] However, it has long recognized that the prohibitions serve two major purposes: the prevention of undue influence over the electoral process by corporations (and unions) and the protection of stockholders (or union members) who do not wish to contribute to those causes which the organizations have chosen to support. The legitimacy of those aims has frequently been recognized by this Court. See, e.g., *Cort* v. *Ash*, 422 U.S. 66, 80–82 (1975); *Pipefitters Local 562* v. *United States*, 407 U.S. 385, 402, 413–427 (1972); *United States* v. *UAW*, 352 U.S. 567, 593 (1957); *United States* v. *CIO*, 335 U.S. 106, 113–115 (1948). Lower courts which have had occasion to reach the issue have upheld the restrictions for those reasons, expressly ruling them constitutional. *United States* v. *Chestnut*, 533 F. 2d 40, 50, 51 n. 12 (2d Cir. 1976), *cert. den.*, 429 U.S. 829 (1976); *United States* v. *Boyle*, 482 F. 2d 755 (D.C. Cir. 1973), *cert. den.*, 414 U.S. 1076

[4] National banks, subject to direct federal regulation, are also prohibited from such activity in state elections as well. 2 U.S.C. § 441b.

(1973); *United States* v. *Pipefitters Local 562*, 434 F. 2d 1116 (8th Cir. 1970), rev'd on other grounds, 407 U.S. 385 (1972); *Schwartz* v. *Romnes*, 357 F. Supp. 30, 36 (S.D.N.Y. 1973), rev'd on other grounds, 495 F. 2d 844 (2d Cir. 1976); *United States* v. *United States Brewers' Ass'n.*, 239 Fed. 163 (W.D. Pa. 1916).

This Court's considered refusal to issue broad constitutional rulings on the issues arguably posed by these restrictions rests on principles of the highest order in constitutional litigation. On the one hand, Congress has extensive power to regulate federal elections, founded in the express provision of article I, section 4 of the Constitution for elections to Congress and the power implied from article II to regulate presidential elections. *Burroughs & Cannon* v. *United States,* 290 U.S. 534, 545–47 (1934); *Smiley* v. *Holm,* 285 U.S. 355 (1932). See, also, *United States* v. *Mosley,* 238 U.S. 383 (1915); *Ex Parte Yarbrough,* 110 U.S. 651 (1884); *Ex Parte Siebold,* 100 U.S. 371 (1879); *United States* v. *Classic,* 313 U.S. 299 (1941). The Congress has broad latitude in determining the means necessary to those ends. "The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Burroughs & Cannon* v. *United States,* 290 U.S. at 547. See, also, *Oregon* v. *Mitchell,* 400 U.S. 112 (1970); *Katzenbach* v. *Morgan,* 384 U.S. 641 (1966); *South Carolina* v. *Katzenbach,* 383 U.S. 301 (1966). Nor does that power

extend solely to the protection of the government from the undue influence of particular groups upon its selection and operation. *United States* v. *Harriss,* 347 U.S. 612, 625–626 (1954); *Ex Parte Curtis,* 106 U.S. 371, 373 (1882); *Civil Service Commission* v. *Letter Carriers,* 413 U.S. 548, 564–65 (1973); *Buckley* v. *Valeo,* 424 U.S. at 25–29. Nor need such laws be narrowly drawn, to strike only at actual corruption or undue influence: "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley* v. *Valeo,* 424 U.S. at 27. In short, the interests of the citizens in protection of the electoral process are of the highest magnitude.

On the other hand, "contribution and expenditure limitations operate in an area of the most fundamental first amendment activities." *Buckley* v. *Valeo,* 424 U.S. at 14. "Speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana,* 379 U.S. 64, 74–75 (1964). See, also, *Board of Education* v. *Barnette,* 319 U.S. 624 (1943); *Elrod* v. *Burns,* 427 U.S. at 372. Free and unfettered discussion of ideas, not readily severable into categories of truth or falsity, belief or fact, constitutes the lifeblood of our constitutional political system: ". . . there is practically universal agreement that a major purpose of that Amendment [the first] was to protect the free discussion of gov-

ernment affairs . . .", *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966). Our society is thus founded on the belief that " . . . the ultimate good desired is better reached by the free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . .", *Abrams* v. *United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

Where these two great interests of the citizens interact, this Court has stated that it will overturn the Congressional balance only upon a clear showing of interference with protected rights, and will defer its judgments until government authorities seek to bar specific activity. With regard specifically to the federal prohibition on expenditures and contributions by corporations and unions, Mr. Justice Frankfurter, speaking for the Court, warned:

> "Counsel are prone to shape litigation, so far as it is within their control, in order to secure comprehensive rulings. . . . Such desire on their part is not difficult to appreciate. But the Court has its responsibility. Matter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface, and in the outcome constitutional questions may disappear. Allegations of the indictment hypothetically framed to elicit a ruling from this Court or based upon misunderstanding of the facts may not survive the test of proof." *United States* v. *UAW*, 35 U.S. at 592 (1957).

Due to similar considerations this Court, when the Hatch Act's prohibitions on individual political activity first came before it, declined to declare the Act unconstitutional on allegations of hypothetical first amendment injury comparable to those made here:

> "The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other." *United Public Workers* v. *Mitchell,* 300 U.S. 75, 89–90 (1937) (footnote omitted).

That judicial restraint enabled the Court, when the issues returned to it almost thirty years later, to view the proscriptions in the light of the experience of actual or threatened enforcement of the Act against specific conduct. As the Court then noted:

> "The Commission was to *issue notice, hold hearings, adjudicate, and enforce.* This process, inevitably and predictably, would *entail further development of the law* . . . and would be pro-

> ductive of a more *refined definition* of what conduct would or would not violate the statutory prohibition of taking an active part in political management and political campaigns.
>
> ". . . It is to these regulations purporting to construe § 7324 as *actually applied in practice*, as well as to the statute itself, with its various exclusions, that we address ourselves in rejecting the claim that the Act is unconstitutionally vague and overbroad." (citations omitted, emphasis added)

Civil Service Commission v. *Letter Carriers*, 413 U.S. at 575. See, also, *Longshoremen's Union* v. *Boyd*, 347 U.S. 222, 224 (1954); *South Carolina* v. *Katzenbach*, 383 U.S. at 316–17; *California Bankers Ass'n.* v. *Shultz*, 416 U.S. at 56, 75–76; *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 341 (1936) (Brandeis, J., concurring).

In essence, this Court's decisions warrant the conclusion that extreme care should be exercised before accepting the conclusion urged by appellants that the legislative balance should be overthrown because none of the interests supporting the statute could warrant the restrictions placed. The amount of evidence considered by Congress in enacting and reenacting these prohibitions has been massive. Congress legislated the initial Federal Corrupt Practices Act on the basis of voluminous evidence of the corrupting influence of corporate contributions. In expanding the prohibition to cover labor unions, even more corroborative evidence came before Congress. See, *United States* v.

CIO, 335 U.S. at 113–115; *Pipefitters Local 562* v. *United States*, 407 U.S. at 402–413. That record expanded further when Congress in the face of substantial evidence regarding the funding of the 1972 elections, reaffirmed the prohibition on expenditures and contributions by corporations and unions.[5]

Nor should this Court conclude that Congress had no reason for its concern that the secondary policy underlying the statute—of protecting the interests of stockholders and corporate officers or agents from forced support of views not their own—could not be achieved without the present prohibitions. This Court has, of course, previously concluded that those interests underlay previous statutes. See, *United States* v.

[5] Even a cursory glance at the legislative history of the 1974 Campaign Act Amendments reveals the depth of Congressional concern with illicit contributions from corporations, their effect upon the legislators, and the growing public disillusionment with the electoral system. See, e.g., Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rept. No. 981 93d Cong., 2d Sess. (1974); Hearings before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. (1973); Hearings on a Survey of Public Attitudes before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 93d Cong., 1st Sess. (1973); Hearings on H.R. 7612 and S. 372 before the Subcomm. on Elections of the House Comm. on House Administration, 93d Cong., 1st Sess. (1973); Hearings on S. 372 before the Subcomm. on Communications of the Senate Comm. on Commerce, 93d Cong., 1st Sess. (1973); Hearings on S. 372 before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. (1973); Hearings on S. 1103 S. 1954, and S. 2417 before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. (1973); Hearings on S. 3496, Amendment No. 732, S. 2006, S. 2965 and S. 3014 before the Senate Comm. on Finance, 89th Cong., 2d Sess. (1966).

CIO, 335 U.S. at 111–113. *Pipefitters Local 562* v. *United States,* 407 U.S. at 409–410, n. 20. When Congress enacted the 1976 Amendments to the Federal Election Campaign Act, it reacted to this Court's decision in *Pipefitters,* amplifying the statute with a detailed scheme for assuring the voluntary nature of contributions by those individuals to funds separate and segregated from corporate (and union) treasury funds, including specific provisions for veiling the identity of small contributors (and noncontributors). 2 U.S.C. §441b(b)(3) and (4). In the fact of such legislative concern, this Court should not readily conclude that such protection is unnecessary for individuals whose economic well-being can be substantially influenced by the organization. See, *Abood* v. *Detroit Board of Education,* 45 U.S.L.W. at 4480–4481.

Balanced against the considerations in support of these prohibitions are not the interests of natural persons, but the far more restricted rights of corporations. Thus, even assuming, *arguendo,* that corporations have first amendment rights, those rights are clearly subject to restrictions appropriate to corporate existence. Initially, of course, their basic existence is regulated by charter from the government.[6] Although the bulk of corporate law is state law, a survey of federal securities regulations alone is sufficient

[6] See, e.g., R. Barber, *The American Corporation* 19–20 (1970); A. Berle & G. Means, *The Modern Corporation and Private Property* (Rev. ed. 1968); C. Kaysen, *The Corporation in Modern Society* 104 (1959). See, also, Brief of *Amicus,* Chamber of Commerce, pp. 8–10.

to demonstrate the broad regulatory control over corporate affairs, including regulation of corporate speech. See, e.g., provisions of the Securities and Exchange Act of 1934, codified in 15 U.S.C. § 78n (regulation of the content of proxy statements), §78j(b) (prohibition of deceptive statements in connection with any sale of securities), § 78 p (regulation of insider trading). These regulations include restrictions on the content of corporate speech, in matters materially affecting their interests. Tax laws are specially constructed, recognizing the proper classification of corporations for these purposes. See, e.g., *Cammarano* v. *United States*, 358 U.S. 498 (1959) (protected right to lobby not accorded tax protection; 26 U.S.C. § 23 (a)(1)(A)). Similarly, the expression of corporate employees, as well as individuals, can be regulated to protect labor peace and free elections. *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969); *NLRB* v. *Virginia Electric Power Co.*, 314 U.S. 469 (1941). And the Federal Trade Commission has the power to impose cease and desist orders restraining unfair methods of competition. 15 U.S.C. § 45(b). See, *New York Times* v. *United States*, 403 U.S. 713, 731 n. 1 (1972) concurring opinion).

No prohibition here appears on individuals from speaking their beliefs; the prohibition is against the use of corporation funds to amplify those statements. Nor does anything in the law prohibit the pooling of resources by individuals whose views coalesce; indeed, the federal law permits such coalescence of voluntary funds under the auspices of corporations and unions.

That money is essential to effective communication does not establish the corollary proposition that money in elections must be unregulated, no matter its source. Business corporations are organized for the purposes of increasing financial gain and furthering the economic interests of their stockholders; attempts to influence the political process are *prima facie* for the purpose of furthering the financial return from their investments and the dangers of a *quid pro quo* arrangement between elected public officials and corporate contributors can be seen as even more compelling than the dangers of the same arrangement between such an official and a private individual.

Appellants' arguments essentially attack legislative judgments about where the appropriate lines should be drawn in balancing these interests. The Federal Election Campaign Act is replete with the Congressional judgment that campaign financing regulation is necessary but that the balance required by the competing interests should be the result of experience with the administration of such laws.[7] Where

[7] The federal statute also directs the Commission to gather and assess the experience gained from the operation of state laws and thus "to serve as a national clearinghouse for information in respect to the administration of elections." 2 U.S.C. § 438(b). State regulation of election campaign laws has proceeded with a variety of limitations; some do not restrict corporate expenditures and contributions, some ban them with regard to ballot issues, some with regard to contributions. See, *Analysis of Federal and State Campaign Finance Law—Quick-Reference Charts—Summaries* (Prepared for the Federal Election Commission under contract by the Library of Congress, American Law Division (Dec. 1976–Jan. 1977) (U.S. Dept. of Commerce, NTIS, PB 265–219, PB 265–220).

no evidence exists to rebut the legislative judgment that such dangers exist, the hypothetical fear of deprivation of the rights of citizens to hear diverse viewpoints should not overturn the considered legislative judgments without further factual consideration of the legislative prohibition.[8]

CONCLUSION

If the Court concludes that it has jurisdiction over this matter, it should affirm the judgment of the court below.

Respectfully submitted.

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[8] While the Commission takes no position on the overbreadth or vagueness arguments as to this particular statute, the argument that adjudication over factual issues will best illuminate the constitutional questions subsumes much of them; overbreadth and vagueness in the clash of the electoral and political interests involved can best be resolved and balanced on the basis of the statute as applied in practice. That logic leads to the conclusion that the Court should reject appellants' attempt to have the statute declared unconstitutional even before it is applied to them. See, also, *Bates* v. *State Bar of Arizona*, 45 U.S.L.W. 4895, 4903 (June 27, 1977).

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