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

SUPPLEMENTAL BRIEF OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE

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INTEREST OF *AMICUS CURIAE*[1]

The Committee for Economic Development ("CED") is a nonprofit, nonpartisan, and nonpolitical public policy organization directed by approximately 200 senior corporate executives and university leaders. Since its founding in 1942, its mission has been to use the leadership of the corporate community to support policies that promote economic growth. CED is a leading advocate for business interests on issues ranging from health care to corporate governance.

Businesses are the perceived beneficiaries of a rule allowing unfettered independent spending from corporate treasury funds to advocate the election or defeat of candidates for office. It is their First Amendment rights this Court supposedly would vindicate by reversing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and the relevant portions of *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003). In this *amicus curiae* brief, CED seeks to counteract the assumption that corporations want more leeway to spend money on political campaigns. To the contrary, the business leaders who serve as CED's trustees believe that a decision striking down the ban on corporate electioneering expenditures would severely harm corporate interests.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

Because this issue is critically important to this nation's businesses, CED respectfully urges this Court not to disturb the well-established regulatory regime built around *Austin* and *McConnell*.

SUMMARY OF ARGUMENT

The question posed in this Court's order regarding supplemental briefing is whether corporations have a First Amendment right to make independent expenditures from their treasury funds to support or oppose a candidate for public office. The recognition of such a right would have a profound and unwelcome impact on corporations and elections. This Court should leave in place its decisions in *Austin* and *McConnell* upholding restrictions on corporate electioneering.

The impact of striking down the electioneering restrictions would be profound because it would allow sustained, substantial corporate involvement in elections for federal office for the first time in this nation's history. When candidates devised new avenues to access corporate resources, Congress invariably closed those avenues quickly. Reversing *Austin* and *McConnell* would create the first major avenue for spending from corporate treasury funds that Congress could not close.

Businesses would not welcome such a regime because it would expose corporations to corrupt shakedowns for political money. Corporations would face intense pressure to provide indirect financial support for candidates to attract the attention of, and avoid retribution from, elected officials. Corporate electioneering would harm public confidence in business, fueling the perception that large corporations secure unfair advantages by purchasing political influence. Yet each corporation would be helpless to get out of the political game, fearful of losing out in the economic marketplace to competitors that were willing to play ball.

Existing rules already give corporations the ability to speak on the issues that matter to them. Thus, the primary effect of overruling *Austin* or *McConnell* would be to promote political rent-seeking, not genuine expression of ideas. Such a decision would hurt rather than help business interests.

ARGUMENT

I. Long-Standing Restrictions On Using Corporate Treasury Funds In Campaigns Should Not Be Disturbed, Particularly In This Case.

This country's political tradition features a firmly established separation between corporate funds and candidate elections. The provision restricting electioneering communications—§ 203 of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), 2 U.S.C. § 441b(b)(2)—is the latest in a long, unbroken line of statutes preserving that separation. This Court should not intervene to disturb the considered legislative judgment underlying § 203. That is especially true here because interested parties—litigants, Congress, and the business interests on whose behalf CED advocates—had no opportunity to assemble a factual record of the likely impact of striking down the electioneering ban.

A. Congress Has Prevented Significant Corporate Involvement in Federal Elections for More Than a Century.

From 1907 to the present, Congress has never allowed corporations to use their resources freely to influence federal elections. In fact, every time that existing laws have seemed inadequate to restrict such a use of corporate funds, Congress has acted promptly to address the inadequacy. For more than a century, federal elections have taken place under a consistent policy of highly restricted corporate involvement.

Businesses first began making significant campaign contributions in the late nineteenth century. *See* Robert E. Mutch, *Before and After* Bellotti*: The Corporate Political Contributions Cases*, 5 Elec L. J. 293, 295 & n.5 (2006). As popular unease grew over corporations' electoral sway, Congress passed the Tillman Act in 1907. Pub. L. No. 59-36, 34 Stat. 864. Aimed at "purg[ing] national politics of . . . the pernicious influence of 'big money' campaign contributions," this Act banned corporations from contributing money from corporate treasury funds in connection with federal elections. *United States v. Int'l Union United Auto. Workers of Am.*, 352 U.S. 567, 572 (1957) ("*Automobile Workers*").

In the 1920s, politicians took advantage of the Tillman Act's use of the term "money contribution," which left a loophole allowing corporations to make unrestricted nonmonetary contributions (*e.g.*, loans, in-kind assistance, or use of corporate facilities).

Congress hastily closed this loophole through the Federal Corrupt Practices Act of 1925, replacing "money contribution" with "anything of value." Ch. 368, 43 Stat. 1070. Likewise, when the political influence of labor unions grew in the 1940s, Congress passed the Taft-Hartley Act, which applied the corporate contribution ban to unions. Pub. L. No. 80-101, 61 Stat. 159 (1947). Congress also prohibited both corporate and union independent expenditures for or against candidates. *Id.*

This regime held for almost half a century, though it was revised somewhat by the Federal Election Campaign Act of 1971 ("FECA"). Pub L. No. 92-255, 86 Stat. 3 (1972). FECA clarified that corporations could use treasury funds to pay for internal communications, registration and get-out-the-vote drives aimed at stockholders, and the establishment and operation of political action committees. 2 U.S.C. § 441b. FECA did not alter the existing contribution and expenditure bans.

More recently, in the 1990s, the explosive rise of issue advocacy and soft money challenged the tradition of separating corporate treasury funds from elections. "Issue advocacy" refers to advertisements that do not expressly call for the election or defeat of a specific candidate. "Soft money" refers to funds given to political parties for purposes such as registering voters, getting out the vote, and certain kinds of advertising. By the 2000 election cycle, corporate soft money contributions totaled 48% of all soft money receipts and often were given in sums of $100,000 or more by large companies. *See* Robert G. Boatright et al., *Interest Groups and Advocacy Organizations After BCRA*, *in The Election After*

Reform: Money, Politics, and The Bipartisan Campaign Reform Act 112-18 (Michael J. Malbin ed., 2006).

Again, Congress acted quickly, passing the Bipartisan Campaign Reform Act of 2002. BCRA banned parties and candidates from receiving or spending soft money. 2 U.S.C. § 441i. It also extended the prohibition on corporate contributions and expenditures supporting "electioneering communication[s]"—advertisements that refer to a candidate and that are broadcast within sixty days of a general election or thirty days of a primary. 2 U.S.C. § 434(f)(3).

BCRA succeeded not only in eliminating corporate soft money but also in minimizing corporate electoral involvement overall. In 2004, corporate donations to so-called "527 committees," the main mechanism for circumventing the soft-money ban, totaled less than 13% of what corporations had given in soft money in 2000. Stephen R. Weissman & Ruth Hassan, *BCRA and the 527 Groups*, *in The Election After Reform*, *supra*, at 90. Corporate-funded advertising campaigns within the BCRA-designated time periods essentially vanished. *See id.* at 90.

Congress thus has consistently attempted to keep corporate money out of federal elections for more than a century. Its efforts generally have worked. For decades at a time, most notably from 1947 until the 1980s, the dam against large-scale corporate funding of elections held, and elections were conducted with minimal financial influence from corporate treasury funds. While candidates occasionally have identified new loopholes to access unregulated corporate resources, Congress has moved with impressive speed to close each spigot soon after it opened. Periods of unfettered corporate activity are clearly the historical exception, not the rule.

B. Reversing *Austin* or *McConnell* Would Disregard the Deference Traditionally Accorded to Congressional Regulation of Corporate Electoral Expenditures.

This Court has repeatedly recognized that regulating corporate funds in elections is a delicate and difficult task better suited to legislative than judicial management. In *Automobile Workers*, for instance, the Court declined an opportunity to overturn the Taft-Hartley Act's prohibition on corporate and union expenditures. The Court acknowledged "the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital." *Automobile Workers*, 352 U.S. at 585. Because of Congress's expertise and the sensitivity of the subject, "[r]efusal to anticipate constitutional questions [was] peculiarly appropriate." *Id.* at 591.

Similarly, in *Federal Election Commission v. National Right To Work Committee* ("*NRWC*"), 459 U.S. 197 (1982), the Court held that the "careful legislative adjustment of the federal electoral laws, in a cautious advance, step by step, to account for the particular legal and economic attributes of corporations and labor organizations[,] warrants considerable deference." *Id.* at 209 (quotation marks omitted); *see also id.* at 210 (refusing to "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared"); *Austin*, 494 U.S. at 661 (same); *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 258 n.11 (1986) (same). More recently, the Court stated that "our cases on campaign finance regulation represent respect for the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 155 (2003) (internal quotation marks omitted). This judicial respect for Congress's special role should "discourage any broadside attack on corporate campaign finance regulation." *Id.* at 156.

"Second guess[ing]" legislative judgment here is particularly unwise because reversing *Austin* and *McConnell* would leave Congress with few if any options to deal with the problem of corporate electioneering expenditures. The immediate result of such a decision would be predictable: just as candidates financed their campaigns almost entirely through contributions from corporate treasury funds before the Tillman Act, pursued vast nonmonetary contributions from corporations before the Federal Corrupt Practices Act, and relied on corporate soft money contributions to their parties before BCRA, candidates would depend on and encourage substantial independent expenditures made on their behalf and financed by corporate treasury funds. When this avalanche of new spending takes place, Congress would be powerless to stop it. Efforts to restrict the objects of this spending, to limit the time periods during which the funds can be deployed, or perhaps even to require information about the funds' sources and magnitude, could be held to violate the First Amendment. In this way, a subject particularly suited to legislative supervision would be removed from Congress's effective control.

C. This Case Is a Particularly Poor Vehicle for Reversing *Austin* or *McConnell*.

This case is a particularly unsuitable vehicle for considering the question presented because the relevant record is poorly developed. The only evidence before this Court goes to the validity of § 203 as applied. To decide whether to overrule *Austin* or *McConnell*, the Court would need to evaluate § 203's facial validity without the benefit of the data, reports, affidavits, and testimony that the business community for which CED advocates (as well as the parties and Congress) would have compiled had they known that the statute was in constitutional jeopardy.

In *McConnell*, the only previous decision involving a facial challenge to § 203, the Court often referenced the "ample" and "voluminous" record, which spanned 100,000 pages. 540 U.S. at 132, 145. The enormous record in *McConnell* "carried and framed the case," providing a basis for the reasoning of both the majority and the dissent. David B. Magleby, *The Importance of the Record in* McConnell v. FEC, 3 Election L.J. 285, 285 (2004) (quotation marks omitted).

Here, in contrast, the Court would appraise § 203's facial constitutionality without information about the burden it imposes, corporations' other options for electoral involvement, corporations' own views on § 203, the likely effects of striking the provision, and countless other matters. That is because, as the Federal Election Commission notes in its supplemental brief, *see* Supp. Br. of Appellee 3-4, Citizens United did not pursue a facial challenge to § 203 before the district court. None of the interested parties had any reason to assemble a factual record relevant to such a challenge, and none did so: the record assembled before the district court is replete with information about *Hillary: The Movie* but bereft of information about the range of applications of § 203.

The Court would thus be well-advised to defer the question until it is squarely presented in a case with a fully developed factual record.

II. Overruling *Austin* Or *McConnell* Would Harm, Not Help, Corporate Interests.

As past and present executives of some of the nation's largest companies, CED's trustees have direct experience with solicitations for financial support from party leaders, elected officials, and the officials' influential backers. Their experiences teach a simple lesson: corporate participation in elections is more transactional than ideological. It is forced by the competitive need to maintain access to and avoid retribution from elected officials of both parties. Thus, as *McConnell* recognized, prior to BCRA's soft money ban, individual corporations commonly gave money to both parties, a pattern of giving explicable only as cynically pragmatic. *See McConnell*, 540 U.S. at 124-25.

Overruling *Austin* or *McConnell* would put corporations in the same prisoner's dilemma that existed when soft-money contributions were permitted. While corporations generally would prefer not to divert their resources from running profitable businesses to funding politics, they would fear the consequences of remaining on the sidelines. The race to the bottom that occurred with direct contributions at the end of the nineteenth century and with soft money in the early 1990s would begin anew. And in addition to forcing corporations to waste overwhelming sums of shareholder wealth on independent electioneering, the new regime would undermine public trust in business by furthering the already extant belief that corporations are in bed with government officials.

A. Corporations Would Spend on Electioneering to Secure Preferred Access to and Avert Retribution from Elected Officials, Not to Advance Ideas.

Corporate support for political candidates is a fundamentally commercial process in which businesses feel compelled to participate. "Sophisticated political donors . . . are not in the business of dispensing their money purely on ideological or charitable grounds. Rather, these political donors typically are trying to wisely invest their resources to maximize political return." Declaration of Wright H. Andrews, attorney and lobbyist, ¶ 8, *McConnell*, 540 U.S. 93 (No. 02-1674)

("Andrews Decl.").[2] As this Court recognized in *McConnell*, "many corporate contributions [are] motivated by a desire for access to candidates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties." 540 U.S. at 124-25.

Politicians openly acknowledge the connection between money and access. Senator Carl Levin (D-Mich.) stated: "The parties advertise access. It's blatant. Both parties do it." 147 Cong. Rec. 53,248 (Apr. 2, 2001). To insure access regardless of the political climate, corporations must contribute to both parties. In the 2000 election cycle, 35 of the 50 largest soft-money donors gave to both parties, and 28 of the 50 gave more than $100,000 to both parties. *See McConnell*, 540 U.S. at 124 n.12. As the *McConnell* Court recognized, this pattern is inconsistent with genuine expression of ideas.

The record in *McConnell* was replete with examples of cash for access. *See, e.g., McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 555-60 (D.D.C. 2003), *aff'd in part, rev'd in part*, 540 U.S. 93 (2003); Declaration of Gerald Greenwald, Chairman Emeritus of United Airlines and CED trustee, ¶ 12, *McConnell*, 540 U.S. 93 (No. 02-1674) ("Greenwald Decl.") ("[B]usiness leaders believe—based on

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[2] As noted above, *see* Part I.C, *supra*, the record in this case does not include evidence about the impact that striking down the electioneering restrictions would have on corporations and the political process. Nevertheless, the experiences of CED's trustees, publicly available research, and the record assembled in *McConnell* provide ample reason to believe that this impact would be negative and substantial.

experience and with good reason—that . . . access [to politicians] gives them an opportunity to shape and affect governmental decisions."); Press Release, CED, *Senior Business Executives Back Campaign Finance Reform* (Oct. 18, 2000) (showing that 75% of business leaders believe political contributions give them an advantage in shaping legislation).

The *McConnell* record also showed the danger of retribution for corporations that do not participate. One Fortune 500 lobbyist described corporate spending on political campaigns in one simple word: "protection." Burt Solomon, *Forever Unclean*, Nat'l J., Mar. 18, 2000, at 858 ("If you decline to give, you're taking a risk of legislative retribution. . . . Companies are scared that on some critical issue, they'll get hosed."). This Court also approvingly quoted Mr. Greenwald's statement that "[b]usiness and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed." *McConnell*, 540 U.S. at 125 n.13 (quoting Greenwald Decl.).

"Independent" corporate expenditures would pose precisely the same risks posed by direct and soft money contributions. As Justice Scalia stated in a prior oral argument:

> I can understand why there's . . . corruption if the donor gives the candidate money . . . . But you allow individuals to spend $100,000 in their own advertising for this candidate, and it says at the bottom of the ad, . . . paid for by Schwartz, and the candidate knows

> Schwartz has bought hundreds of thousands of dollars of television advertising, that is perfectly okay, right? . . . I can't understand that. That seems to me so fanciful to think that the one situation presents . . . an opportunity for corruption and the other doesn't. You're much better off if you want to corrupt Schwartz, spending the money on an advertisement that says . . . presented by XYZ Corporation.

Tr. of Oral Argument at 5-6, *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (No. 00-191). It is naïve to think that candidates and elected officials would be unaware of which corporations spend on their or their parties' behalf.

If *Austin* were overruled, corporations would use electioneering expenditures, made directly or through bundling organizations, to the same massive extent they would make direct contributions absent regulation. For example, after California limited the amount of direct contributions in 2000, independent expenditures increased by 6144% in legislative elections. *See* California Fair Political Practices Commission, *Independent Expenditures* 4 (June 2008), *available at* http://www.fppc.ca.gov/ie/IEReport2.pdf. Seventy-two percent of the independent expenditures were made by a mere 25 independent expenditure groups, largely representing the interests of corporations, labor unions, and tribal casinos. *Id.* In many state races, these expenditures "accounted for more than 50% of the total spent in the campaign." *Id.* Given the fungibility of electioneering expenditures and direct contributions, this Court should not disturb Congress's effort to shield corporations from compelled political participation.

B. Because Corporate Spending on Behalf of Candidates Often Lacks an Ideological Purpose, It Erodes Public Confidence in Business.

When corporations spend money to elect or defeat specific candidates, the public loses confidence in the integrity of business, and of government. "[M]illions of Americans are convinced that lobbyists and the interests we represent are unprincipled 'sleaze balls' who, in effect, use great sums of money to bribe a corrupt Congress." Andrews Decl., ¶ 20.

The polls and Members of Congress recognize Americans' belief that corporate interests control Congress. *See, e.g.*, Mark Mellman & Richard Wirthlin, *Research of Findings of a Telephone Study Among 1300 Adult Americans* (Sept. 23, 2002). Former Senator Alan Simpson (R-Wyo.) observed that, "[b]oth during and after my service in the Senate, I have seen that citizens of both parties are as cynical about government as they have ever been because of the corrupting effects of unlimited soft money donations." Declaration of Alan K. Simpson, ¶ 14, *McConnell*, 540 U.S. 93 (No. 02-1674).

There is a widespread perception that corporate coziness with government officials "contributed to the current crisis in the financial system." John Rauh &

Dan Weeks, *Take Wall Street out of Congress*, Concord Monitor, Feb. 7, 2009; *see also* Jim McElhatton & Jennifer Haberkorn, *Failed firms' leaders gave big to politicians*, Wash. Times, Sept. 19, 2008, at A1 ("[S]uch donations were made by company executives eager to keep government regulation out of their business and . . . Americans must now be left wondering whether the largesse influenced the decision to rescue the companies when they failed."). This perception is harmful to the business community. As leaders in that community, CED's trustees are particularly concerned about the potential for unlimited corporate expenditures to elect or defeat a candidate to further undermine the public's trust in corporations.

As CED has said before, businesses "wish to compete in the marketplace, not in the political arena." *See* CED, *Investing in the People's Business: A Business Proposal for Campaign Finance Reform* 1 (1999). Overruling *Austin* or *McConnell* would impair the ability of corporate leaders to stick to their core economic mission by dragging them into politics.

III. Existing Rules Enable Corporations To Engage In Genuine Expression Without Exposing Them To Coercive Pressure To Advocate On Behalf Of Candidates.

All of this is not to say that companies do not value their right to speak on issues important to their economic activities. The current statutory regime, however, does not meaningfully impinge on corporate political speech or even on corporate involvement in elections. It restricts (1) only electioneering communications, not issue advocacy and (2) only the use of corporate treasury funds, not the organization of segregated funds structured to facilitate political participation. Consequently, the current regime strikes an appropriate balance between protecting corporations from coerced support for candidates and permitting corporations to engage in genuine expression.

This Court consistently has affirmed the importance of maintaining that balance. *See NRWC*, 459 U.S. at 209 (recognizing that "particular legal and economic attributes of corporations" might require "careful legislative adjustment of the federal electoral laws"); *Beaumont*, 539 U.S. at 153 ("Today, as in 1907, the law focuses on the special characteristics of the corporate structure that threaten the integrity of the political process.") (internal quotation marks and citations omitted). It should do so again here.

A. Issue Advocacy Provides a Healthy Outlet for Genuine Corporate Expression.

The first way in which § 203 balances corporate expression against compelled candidate support is by distinguishing electioneering communications from genuine issue advocacy.

In *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007), this Court limited BCRA's ban on the use of treasury funds to pay for electioneering communications to ads that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.* at 470. Corporations thus are free to advocate regarding issues that they view as important without the pressure of a system where access and preferred legislative outcomes hinge on that spending. Independent expenditures on issue advertising also are difficult for candidates to track: generally, they are not directed to particular districts and do not advocate the election or defeat of a specific candidate (or even a party).

The First Amendment understandably protects issue advocacy, because corporations can make truly voluntary choices about whether to participate and also can advocate positions based on actual beliefs and interests, not fear of retribution. But the First Amendment should not protect a system that forces corporations to choose whether to pay to play or be shunned by Congress. *Cf. Int'l Ass'n of Machinists v. Street*, 367 U.S. 740 (1961).

B. Political Action Committees Are Robust Outlets for Corporate Views in Candidate Elections.

Section 203 also balances these competing interests by allowing corporations to use segregated funds known as political action committees, or PACs, to contribute to candidates or parties and pay for electioneering communications. By requiring that corporate political expenditures come from individual donations, not corporate treasury funds, PAC requirements drastically limit corporations' exposure to compelled expenditures.

This Court has, in a variety of contexts, upheld requirements that corporations use PACs rather than treasury funds to participate in politics. *See, e.g.*, *McConnell*, 540 U.S. 93; *Beaumont*, 539 U.S. 146; *NRWC*, 459 U.S. 197. In doing so, it has recognized that such requirements provide corporations with ample opportunity to engage in genuine political expression. *See Beaumont*, 539 U.S. at 162. Crucially, PACs are "wholly controlled" by their parent corporation, which also may fund a PAC's administrative expenses. *Id.* at 149, 162-63. PACs enjoy robust First Amendment protections and are free to engage in express advocacy, electioneering communications, and political contributions. *See Fed. Elec. Comm'n v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480 (1985).

As of 2006, over 1,800 corporate PACs were registered with the FEC. *See* Edward Zuckerman, *The Almanac of Federal PACs: 2008-2009* (2008). Moreover, experience has demonstrated that PACs are versatile vehicles of political expression, having accounted for about $135 million in independent expenditures in the 2007-08 election cycle alone. *See* Press Release, Federal Election Commission, *Growth in PAC Financial Activity Slows* (Apr. 24, 2009), *available at* http://www.fec.gov/press/press2009/20090415PAC/20090424PAC.shtml. This Court was thus correct to conclude in *McConnell* that, "[b]ecause corporations can still fund electioneering communications with PAC money, it is 'simply wrong' to view [§ 203] as a 'complete ban' on expression rather than a regulation." 540 U.S. at 204 (quoting *Beaumont*, 539 U.S. at 162).[3]

[3] This Court has recognized that the "practical effect" of certain segregated fund requirements "may be . . . to make engaging in

CONCLUSION

On behalf of its trustees, including CEOs of major corporations, *amicus* respectfully suggests that this Court think twice before embarking on an uncharted and dangerous course that will harm organizations whose rights the Court would purport to vindicate. This Court should not disturb *Austin* or *McConnell*.

Respectfully submitted,

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protected speech a severely demanding task" for nonprofit, nonstock ideological corporations. *See Mass. Citizens for Life*, 479 U.S. at 256. However, this concern applies with far less force to sophisticated for-profit corporations and thus does not compel reconsideration of *Austin* or *McConnell*. At most, such a concern counsels toward applying *Austin*'s exception for corporations with "features more akin to voluntary political associations than business firms" to § 203. *See Austin*, 494 U.S. at 661.