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Making Speech Truly Free: Applying the Principles of Citizens United to 501(c)(3) Organizations

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COMMENT

MAKING SPEECH TRULY FREE: APPLYING THE PRINCIPLES OF *CITIZENS UNITED* TO 501(C)(3) ORGANIZATIONS

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ABSTRACT

Since the beginning of the discussion involving campaign finance regulations, proponents of such legislation have advocated the position that the need to remove corruption—or even the appearance of corruption—from the political process was a sufficient justification for suppressing the free speech rights of certain organizations. Advocates of such legislation have argued that allowing those organizations capable of accumulating vast amounts of economic resources to engage in political expression poses significant danger to the integrity of the political process, and that it would inevitably lead to corruption. These same campaign finance reform advocates have argued that certain organizations were the beneficiaries of state-created advantages, and that those benefits represented compensation for the surrender of certain constitutional freedoms. The organizations subject to these restrictions were prohibited from contributing directly to political campaigns, engaging in direct advocacy for the election or defeat of candidates, and actively participating in the electoral process in many other ways. Numerous federal court cases allowed the prevention of potential corruption as a valid justification for the suppression of the free speech rights of these organizations. The United States Supreme Court, however, recently rejected that justification and now permits corporations and labor unions to participate in the political process. Many of the arguments that were given in support of the ban on the political participation of corporations and labor unions are also used to justify the prohibition on the political participation of 501(c)(3) organizations. 501(c)(3) organizations are the beneficiaries of certain state-created advantages, and proponents of

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campaign finance regulation argue that those benefits represent the consideration for the forfeiture of the right to engage in any form of political speech. After this justification was rejected as a valid basis for suppressing the political speech of corporations and labor unions, it should no longer be permitted as a valid justification for prohibiting the political speech of 501(c)(3) organizations.

Many of the state-created advantages that 501(c)(3) organizations enjoy are given in recognition of the significant contributions these organizations make in their communities, not as consideration for their political silence. Given the recent rejection of the prohibition on corporate political participation, free speech rights in this country are ripe for review, and the stage has been set for a new era of open political dialogue among all people and organizations desiring to participate in the political process. The political discourse in this country will benefit greatly and be enhanced by allowing all organizations to fully participate in the political process. Allowing 501(c)(3) organizations to participate in the political process is not only consistent with the founding principles of this nation, but also will allow voters to make more informed choices in the selection of their representatives. In a country born on the will to be free, it is simply irrational to prohibit organizations that provide substantial benefits to the community from fully participating in the political process and expressing their opinions on timely and important issues. Free speech will never truly be free until all organizations are permitted to express their views in the political process.

I. INTRODUCTION

For a long period in American history, the elimination of the potential for corruption in the political process has been used to justify suppressing the First Amendment rights of certain organizations. For many campaign finance reform advocates, eliminating corruption—which is generally proffered as the basis for all campaign finance legislation—can be achieved most effectively by preventing those organizations that enjoy certain economic advantages from participating in the political process. The organizations banned from the political discourse included corporations, labor unions, and non-profit organizations. The need to remove corruption, however, should never have been allowed as a justification for the suppression of political speech. The United States Supreme Court

eventually rejected the removal of corruption as a justification,[1] and as a result, campaign finance regulations should be amended to allow for the participation of numerous other groups. The fundamental nature of the First Amendment to the United States Constitution and the recent ruling in *Citizens United v. Federal Election Commission*,[2] allowing corporations and labor unions to fully participate in the political process, reveal that freedom of speech rights are ripe for application to non-profit community organizations and the statutory prohibition on their involvement should be removed to allow for their full participation in the political process. Additionally, the tax-exempt status granted to these organizations is an insufficient basis for effectively banning their political speech.

This Note starts with an introduction of the legislative history surrounding campaign finance regulations. Next, the Note analyzes the Supreme Court history and treatment of campaign finance regulations. The Note addresses the problem of silencing the political speech of 501(c)(3) organizations.[3] Finally, this Note proposes allowing 501(c)(3) organizations to fully participate in the political process. This is the next logical progression in the expansion of First Amendment rights in the political process because (1) it is consistent with the founding principles of this nation; (2) 501(c)(3) organizations share political views with their contributors; (3) the tax-exempt status given to 501(c)(3) organizations is not given in exchange for their political silence; and (4) revoking the tax-exempt status of a 501(c)(3) organization for participating in the political process is essentially a tax on speech.[4]

II. BACKGROUND

The history of campaign finance reform is fraught with change and controversy. The basic argument behind every piece of enacted legislation regarding campaign finance reform and every court decision about such legislation is that there is a need to remove corruption—or even the

1. *See infra* Part II.B.5.

2. Citizens United v. FEC, 130 S. Ct. 876, 884 (2010).

3. I.R.C. § 501(c)(3) (2006).

4. This Note also recognizes that the available alternatives, such as forming a political action committee or 501(c)(4) organization, are insufficient to cure the unconstitutional infringements on the political speech of 501(c)(3) organizations. *See Citizens United*, 130 S. Ct. at 897 (stating that such alternatives are inadequate because they are expensive and burdensome to administer); s*ee infra* Part III.4.

appearance of corruption—from the political process.[5] Corruption is not the only concern raised by advocates of campaign finance reform. Others have argued that "[c]ampaign finance reform rests on a central fear: that political actors will convert economic advantage into political power."[6] Whether this fear, coupled with the fear of corruption, is a proper justification for suppressing the free speech rights of certain individuals, corporations, labor unions, and other organizations is a question that has been presented to Congress and the United States Supreme Court numerous times and has yielded conflicting results.[7] As this section will reveal, the idea behind regulating campaign contributions and expenditures has been around for a long time, but such regulation has progressed with only piecemeal legislation.

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5. Lillian R. BeVier, *Money and Politics: A Perspective on the First Amendment and Campaign Finance Reform*, 73 CAL. L. REV. 1045, 1046 (1985) (noting that "[c]ampaign finance reforms have often been justified merely as [a] means to prevent political corruption"); Richard L. Hasen, *Justice Souter: Campaign Finance Law's Emerging Egalitarian*, 1 ALB. GOV'T L. REV. 169, 171 (2008); Daniel Ortiz, *The Democratic Paradox of Campaign Finance Reform*, 50 STAN. L. REV. 893, 895 (1998); Nathaniel Persily & Kellie Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119, 120 (2004).

6. *See* Ortiz, *supra* note 5, at 893.

7. *Citizens United*, 130 S. Ct. at 917 (holding that a statute banning independent political expenditures by corporations violates the First Amendment and that the government could not constitutionally restrict the political speech of corporations); McDonnell v. FEC, 540 U.S. 93 (2003) (holding *inter alia* that labor unions and corporations must use a separate segregated funds account to make political expenditures, that a ban on the use of "soft money" was constitutional, and that a ban on party donations to tax-exempt groups was generally valid); Austin v. Mich. Chamber of Commerce, 494 U.S. 652 (1996) (holding that a limitation on independent political expenditures by corporations was constitutional because corporations receive special treatment under state laws that allow them to amass significant treasuries and that such a limitation could also be constitutionally applied to non-profit corporations); Buckley v. Valeo, 424 U.S. 1 (1976) (holding *inter alia* that limitations on individual political donations to campaigns do not violate the First Amendment, but limiting the amount an individual may contribute to his own political campaign does violate the candidate's right to free speech); Newberry v. United States, 256 U.S. 232 (1921) (holding that the only powers Congress has over elections are those specifically given them by the Constitution and that limitations on campaign contributions cannot reasonably be inferred from the "time, place, and manner provisions of the Constitution").

A. Legislative History of Campaign Finance Reform

1. Campaign Finance Regulation Prior to the Tillman Act.

The first legislation pertaining to campaign finance regulation in the United States was a small provision in a naval appropriations bill in 1867.[8] This bill prohibited federal officials from soliciting campaign contributions from naval yard employees.[9] This provision stated:

> That no officer or employee of the government shall require or request any workingman in any navy yard to contribute or pay any money for political purposes, nor shall any workingman be removed or discharged for political opinion; and any officer or employee of the government who shall offend against the provisions of this section shall be dismissed from the service of the United States.[10]

This was the first legislative attempt to prohibit corruption in the financing of electoral campaigns, but it proved to be substantially ineffective because it lacked adequate enforcement mechanisms capable of preventing the individual political parties from soliciting political contributions from the naval yard employees.[11] There have been many other attempts to establish greater regulation in the area of campaign finance, but most of these regulations were enacted at the state level. Many of these state efforts were directed at prohibiting large corporations from contributing to political candidates.[12] In 1897, Nebraska, Tennessee, Missouri, and Florida banned corporations from making political contributions, but this was widely viewed as retaliation against the corporate support of President McKinley, who lost the popular vote in all four of those states in the 1896 election.[13] Nevertheless, prior to 1907, political campaigns and parties were receiving enormous amounts of money from large corporations.[14]

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8. Anthony Corrado, *Money and Politics: A History of Campaign Finance Law, in* THE NEW CAMPAIGN FINANCE SOURCEBOOK 7 – 8 (Anthony Corrado et al. eds., 2005).

9. *Id.* at 9.

10. *Id.*

11. *Id.*

12. BRADLEY A. SMITH, UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM 23 (2001).

13. *Id.*

14. *See* Corrado, *supra* note 8, at 10.

2. The Tillman Act of 1907

After benefitting from corporate contributions in his presidential campaign, President Theodore Roosevelt announced that he believed Congress should act to prohibit corporations from influencing federal elections.[15] The result of this political pressure was The Tillman Act of 1907,[16] which was the first federal ban on political contributions from corporations.[17] The chief sponsor's argument in support of the bill banning corporations from the political process—an argument identical to the one proffered by those currently advocating for more regulation—was "that the American people had come to believe that congressional representatives had become the 'instrumentalities and agents of corporations.'"[18] The legislation did not accomplish what its proponents had hoped, and most of its shortcomings stemmed from a failure to establish any effective means of enforcing its essential provisions.[19]

3. Federal Corrupt Practices Act

The Federal Corrupt Practices Act of 1910[20] was the first federal campaign finance regulation to require political parties and committees running elections in more than one state to disclose any amount of money contributed to the party or spent by them during a campaign.[21]

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15. VICTORIA FARRAR-MYERS & DIANA DWYRE, LIMITS AND LOOPHOLES: THE QUEST FOR MONEY, FREE SPEECH, AND FAIR ELECTIONS 8 (2008).

16. 34 Stat. 864 (1907).

17. SMITH, *supra* note 12, at 24; *see also* Robert Sitkoff, *Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters*, 69 U. CHI. L. REV. 1103, 1103 (2002) (noting that Congress had, in fact, "made it a crime for corporations to make financial contributions to candidates for federal office").

18. *See* SMITH, *supra* note 12, at 24; *see also* Sitkoff, *supra* note 17, at 1128.

> The passage of the 1907 Tillman Act . . . is usually explained as a product of political entrepreneurship by opportunistic politicians who capitalized on the Progressive Era's distrust of large corporations generally and a few salient corporate campaign finance scandals in particular. As one commentator expressed it, "To save democracy from oligarchic capital, electoral reformers organized to 'purify the politics' of American government."

Id. (quoting Adam Winkler, *The Corporation in Election Law*, 32 LOYOLA LA L. REV. 1243, 1246 (1999)).

19. *See* SMITH, *supra* note 12, at 24.

20. 2 U.S.C. § 241 (1910).

21. MELISSA M. SMITH ET AL., CAMPAIGN FINANCE REFORM: THE POLITICAL SHELL GAME 1 (2010).

Nevertheless, these disclosure requirements were ineffective because the disclosure was required to be made only after the election had been decided.[22] Congress quickly recognized the shortcomings of the initial legislation and amended the Act in 1911 to require the disclosure to be made at least ten days prior to any federal election.[23] The 1911 amendments also added a new element to the campaign finance regulatory scheme by imposing limits on how much a federal candidate could spend on an election.[24] The limits applied to both the primary and general elections and were set at $10,000 for Senate candidates and $5,000 for House candidates.[25] The imposition of spending limits was not well received by congressional candidates, and the regulation was soon struck down in *Newberry v. United States*.[26] In rejecting the government's argument that it could regulate primaries, the Supreme Court stated, "[w]e find no support in reason or authority for the argument that because the offices were created by the Constitution, Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from section 4."[27]

Congress then enacted the Federal Corrupt Practices Act of 1925,[28] which would be the prevailing law until the modern campaign finance regulations were passed.[29] Other than removing the federal government's regulation of party primaries, the 1925 amendments did little to change the original

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22. *Id.*; *see also* Phillip M. Nichols, *The Perverse Effect of Campaign Contribution Limits: Reducing the Allowable Amounts Increases the Likelihood of Corruption in the Federal Legislature*, 48 AM. BUS. L.J. 77, 94 (2011).

> The Federal Corrupt Practices Act required disclosure of donors to all multistate committees and to Senate and House candidates, including during nonelection years, and imposed spending limits on candidates. The Act did not, however, contain any enforcement provisions or penalties for failure to comply, nor did it require publication of or even public access to financial reports.

Id.

23. *See* SMITH, *supra* note 12, at 24.

24. *Id.* at 24-25.

25. *Id.*

26. Newberry v. United States, 256 U.S. 232, 255-56 (1921). For a more thorough discussion of this case and the rationale behind striking down the regulations, see *infra* Part II.B.1.

27. *Id.* at 249.

28. Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (1925) (strengthening the provisions of the Tillman Act of 1907 by requiring quarterly financial disclosure reports and requiring any donation over $100 to be reported).

29. *See* Corrado, *supra* note 8, at 15.

regulatory scheme. The 1925 amendments, however, did extend the regulatory scheme to state party committees as well, but it remained ineffective due to the weakness of the established enforcement mechanisms.[30]

4. Hatch Act of 1939

In an effort to further remove the appearance of corruption from the political process, Congress enacted the Hatch Act of 1939,[31] which prohibited political activity by federal employees. The goal of this campaign finance regulation was to separate those involved in the political process from the government employees responsible for implementing the nation's laws.[32] The problem with this regulation was that its resulting consequences were far more restrictive on free speech rights than had been initially foreseen.[33] The unintended consequences of the act caused great controversy, and people had vastly different views about the value of such a regulation.[34] It was noted that "[t]hose who emphasize civil rights acknowledge the need for some restraints on the political activity of civil servants. Those who emphasize the public interest in an impartial administration are careful to leave inviolate many of the political rights of government employees."[35] Today, these competing interests remain at issue in every discussion regarding campaign finance regulations and how extensive such regulations should be.

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30. *Id.*

31. 5 U.S.C. §§ 1501-1508 (1939).

32. *See* FARRAR-MYERS, *supra* note 15, at 9.

33. Henry Rose, *A Critical Look at the Hatch Act*, 75 HARV. L. REV. 510, 515-16 (1962).

> By resorting to the hastily improvised incorporation-by-reference device in order to avoid either delegating the job or undertaking itself the onerous task of defining ambiguous key language, Congress unintentionally cast its net too far with the result that the statute proscribes conduct not within the legislative purpose, as in the *Cole* case. Conversely, some conduct of the general type Congress was seeking to halt fell outside of that carelessly cast net.

Id. (referring to an individual who was recommended for termination from his government employment because his involvement in a religious organization that regularly distributed literature was considered impermissible "political activity" even though it took place outside of his employment and on his own time).

34. Milton J. Esman, *The Hatch Act: A Reappraisal*, 60 YALE L.J. 986, 987 (1951).

35. *Id.*

5. Smith-Connally Act of 1943 and Taft-Hartley Act of 1947

The Smith-Connally Act of 1943[36] was the first campaign finance regulation to limit the political participation of labor unions by prohibiting them from making political contributions to federal candidates out of their general treasury funds.[37] This regulation was attached to a war appropriations bill, which eventually caused the provision to expire, but the ban on political contributions from labor unions was reinstituted by the Taft-Hartley Act of 1947.[38] This legislation also greatly enhanced the regulations on labor unions and corporations by not only expanding the prohibition on contributions, but also by prohibiting independent political expenditures from these organizations.[39] Congress had previously attempted to regulate campaign expenditures, but there was little political desire to do so, and many believed that it would violate the First Amendment.[40] This was the first regulation that would have a broad impact on the way campaigns were financed because "'expenditure' is all-inclusive on its face, and as such seems to include any disbursement of money for a political purpose."[41] The response to this prohibition on the political activity of corporations and labor unions was the creation of the first political action committees (PACs).[42] The Taft-Hartley Act would be Congress's last major attempt to pass any substantial campaign finance reform until the 1970s when Congress would fervently attempt to reduce the amount of money spent in federal elections and drastically increase the requirements of financial reporting and disclosure from campaigns.[43]

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36. 57 Stat. 167-68 (1943).

37. *See* Corrado, *supra* note 8, at 17.

38. 61 Stat. 159 (1947).

39. Comment, *Section 304, Taft-Hartley Act: Validity of Restriction on Union Political Activity*, 57 YALE L.J. 806, 810 (1948) (arguing that the addition of the term "expenditures" was crucial to the increased scope of the regulation and that "a literal construction of the term 'expenditures' would virtually prohibit all political action by unions 'in connection with federal elections'"); *see also id.* at 810 n.19 (noting that the term "expenditure" would have an equally dramatic effect on corporations).

40. *Id.* at 810 n.17 (noting that a Congressional committee had considered the prohibition on expenditures "but specifically rejected it, saying, 'the extension of the prohibition to include expenditures would tend to limit the rights of freedom of speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution'").

41. *Id.* at 811.

42. *See* SMITH, *supra* note 12, at 28.

43. *See* SMITH, *supra* note 21, at 48.

6. Federal Elections Campaign Act

The first modern attempt at significantly reducing the cost of federal election campaigns and at reducing the perceived corruption in the political system came from passage of the Federal Elections Campaign Act of 1971[44] (FECA). FECA was passed with the intention of increasing the disclosure of the identity of campaign contributors, limiting the cost of federal campaigns by imposing a limit to the amount that can be spent on a federal campaign, and reducing the influence of affluent campaign supporters.[45] FECA instituted individual and PAC contribution limits, continued the prohibition on contributions from corporations and labor unions, limited the amount that an individual could contribute to his own campaign, and established strict financial reporting and disclosure requirements of all contributors to federal campaigns.[46] Nevertheless, FECA did little to accomplish Congress's goal of reducing spending in federal elections, and the increased financial reporting requirements revealed that campaign spending was actually increasing significantly.[47] Some of the failures were the result of the legal framework established by FECA, which allowed parties and PACs to circumvent the regulations by setting up separate organizations capable of thriving in the campaign arena.[48] Also, this framework failed to achieve Congress's goal of limiting the costs of federal campaigns because political candidates were able to circumvent some of the regulatory provisions.[49]

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44. 2 U.S.C. § 431 (1971).

45. GARY C. JACOBSON, THE POLITICS OF CONGRESSIONAL ELECTIONS 65 (7th ed. 2009).

46. *See* Corrado, *supra* note 8, at 21.

47. Anthony Corrado, *An Overview of Campaign Finance Law, in* GUIDE TO POLITICAL CAMPAIGNS IN AMERICA 90, (Paul S. Herrnson ed., 2005).

48. *See* Corrado, *supra* note 8, at 65.

49. Jon Simon Stefanuca, *The Fall of the Federal Election Campaign Act of 1971: A Public Choice Explanation*, 19 FLA. J. L. & PUB. POL'Y 237, 248 (2008); *see also* Jeremy Monteiro, Comment, *A Profile in Courage: The Bipartisan Campaign Reform Act of 2002 and the First Amendment*, 52 DEPAUL L. REV. 83, 86 (2002) (noting that "the clear inadequacies of the FECA were nationally exposed during the Watergate scandal, when President Nixon's campaign raised over fifty million dollars, much of that in illegal contributions designed to circumvent limitations set forth in the FECA"); Michael J. Ushkow, Note, *Judicial Supervision of Campaign Information: A Proposal to Stop the Dangerous Erosion of Madison's Design for Actual Representation*, 34 HOFSTRA L. REV. 263, 285 (2005) (noting that the Watergate Scandal revealed the flaws of FECA's regulation and stating that "[w]ealthy committees were able to circumvent FECA's disclosure requirements by siphoning smaller

FECA was amended in 1974 to strengthen the disclosure requirements, establish a total spending ceiling for federal campaigns, create an optional program of full public financing for presidential campaigns, and create the Federal Election Commission (FEC).[50] In 1976, Congress was forced to amend FECA again after certain provisions were struck down by the Supreme Court in *Buckley v. Valeo*.[51] But these changes were minimal and included a limit on the amount an individual could contribute to a PAC, a limit on the amount an individual could contribute to a national party committee, an elimination of the restrictions limiting campaign expenditures, and a change in the way the six commissioners are appointed to the FEC.[52] FECA was amended once again in 1979 to relax some of the restrictions on party-related activity, weaken the enforcement capability of the FEC, increase the amount given to the party nominating conventions from the public funding option, and reduce restrictions on party spending.[53]

7. Bipartisan Campaign Reform Act

Numerous loopholes present in FECA allowed political organizations to bypass its regulations revealing the need for a correction to the Act's shortcomings. The Bipartisan Campaign Reform Act of 2002[54] (BCRA) was enacted with the intention of banning previously unregulated "soft money" contributions, stemming the great proliferation of issue advertisements in campaigns, and as is the case with all other campaign finance reform bills, addressing the perceived corruption in the political process.[55] "Soft money" refers to the large amounts of money—money not subject to the same regulations as direct contributions—that individuals and organizations contribute directly to political parties, which in turn allocate those contributions directly to the support of a particular candidate.[56] BCRA was

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sums to a vast number of fundraising committees working on behalf of President Richard Nixon's re-election campaign").

50. *See* Corrado, *supra* note 47, at 94.

51. Buckley v. Valeo, 424 U.S. 1, 143 (1976); *see infra* Part II.B.2.

52. *See* Corrado, *supra* note 47, at 94.

53. *Id.* at 94-95.

54. 2 U.S.C. § 431 (2002).

55. GLENN UTTER & RUTH ANN STRICKLAND, CAMPAIGN AND ELECTION REFORM 27 (2d ed. 2008).

56. McConnell v. FEC, 540 U.S. 93, 145 (2003); *see also* Jeffrey P. Geiger, Note, *Preparing for 2006: A Constitutional Argument for Closing the 527 Soft Money Loophole*, 47 WM. & MARY L. REV. 309, 317-18 (2005) (explaining the history of soft money and how political parties use it to influence elections); Note, *Soft Money: The Current Rules and The*

also passed in response to an increase in the amount of soft money contributions and candidate-specific issue advertisements occurring during the 1996 and 2000 elections.[57] Proponents of BCRA's passage were aided by the enormous corporate scandal of the energy company Enron because that scandal once again highlighted the issue of the potential effects of corporate abuse and influence on elections.[58] Proponents of increased regulation argued that FECA's regulations were blatantly ineffective and that it was necessary to significantly restructure the enforcement system.[59] The main focus of BCRA was not to overhaul the entire campaign finance system, but mainly focused on closing the loopholes that were created under FECA.[60] The most significant provisions of BCRA banned soft money contributions by national, state, and local political parties; prohibited corporations and labor unions from running issue advertisements or electioneering communications thirty days before a primary election and sixty days before a general election; and prohibited political parties from transferring campaign donations to politically active, tax-exempt groups.[61]

One of FECA's shortcomings was that it did not regulate the amount of money individuals or groups could contribute to national political parties, which resulted in large amounts of money, known as soft money, flowing into the coffers of the national parties.[62] Under FECA, the largest donors were still able to achieve their political goals by circumventing the regulations and contributing money directly to the national parties, who then could legally spend the money on a variety of activities that would greatly benefit the candidates supported by the respective parties.[63] One of the key elements of BCRA was to eliminate these soft money contributions by forcing political parties to abide by the same "hard money" requirements

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Case for Reform, 111 HARV. L. REV. 1323, 1324 (1998) (stating that "[a]ny money not subject to the contribution limits or source prohibitions is therefore not subject to the same limitations that apply to hard money. This unregulated, nonfederal money is known as 'soft' money.").

57. *See* Corrado, *supra* note 8, at 33.

58. PAUL S. HERRNSON, CONGRESSIONAL ELECTIONS: CAMPAIGNING AT HOME AND IN WASHINGTON 294 (5th ed. 2008).

59. *Id.*

60. *Id.* at 259.

61. *See* Utter, *supra* note 55, at 27.

62. BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE, 254 n.2 (2002); *see also supra* notes 56-57 and accompanying text.

63. *See* Ackerman, *supra* note 62, at 45.

placed on campaigns.[64] BCRA also contained provisions that were intended to prevent political parties from eliminating the effect of the soft money ban by restricting them from raising funds from interest groups and non-profit 527 organizations.[65]

Those who supported the reforms established in BCRA argued that the political process needs to be more egalitarian and that these reforms would enable all people to have their voices heard.[66] This argument—that campaign finance regulations must prevent a small minority of affluent voters from having a disproportionate impact on elections—is the same argument that has been proffered in every Congressional debate regarding campaign finance reform legislation.[67] Opponents of the regulations expressed in BCRA argued that spending money on a candidate or campaign should be viewed as a form of speech.[68] As noted by Gregory Comeau, "the political speech that campaign finance legislation often hinders has a constitutionally protected status in the United States, putting it outside of Congress's authority to regulate."[69] These opposing viewpoints form the basic framework indicated in all of the campaign finance challenges that have come before the Supreme Court.[70]

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64. *See* SMITH, *supra* note 21, at 15.

65. *See* Corrado, *supra* note 8, at 39; I.R.C. § 527 (2003).

66. Gregory Comeau, *Bipartisan Campaign Reform Act*, 40 HARV. J. ON LEGIS. 253, 264 (2003).

> Many policy arguments in support of the BCRA are motivated by an underlying egalitarian concern that a small set of interests will exert disproportionate influence on legislators at the expense of the nation as a whole. Some supporters of campaign finance reform, such as Ronald Dworkin, argue that constitutional norms of equality require not only a system of one-person, one-vote, but also a system that provides equal ability to command the attention of others to one's own views; to make this possible, strong restrictions should limit spending on candidates.

Id.

67. *Id.*

68. *Id.* at 264-65 (arguing that opponents of BCRA and campaign finance regulation in general "tend to oppose this egalitarian perspective on ideological grounds," and that opponents of BCRA generally "argue that the best way to increase competition . . . is to strengthen political parties, not to weaken their financial base").

69. *Id.* at 265 (quoting James Bopp, Jr. & Richard E. Coleson, *First Amendment is Not a Loophole: Protecting Free Expression in the Election Campaign Context*, 28 UWLA L. REV. 1, 1 (1997)).

70. *See infra* Part II.B.

B. Supreme Court History of Campaign Finance Reform

While the United States Supreme Court has addressed the various campaign finance regulations in numerous cases, this Section will focus only on those cases most relevant to the argument that campaign finance regulations are aimed at preventing corruption in the political process. Initially, the Supreme Court agreed that preventing corruption was the most significant justification for limiting the constitutionally protected free speech rights of certain individuals and groups.[71] Nevertheless, the Court gradually expanded on this justification and began limiting the political speech of organizations who were recipients of state-conferred benefits.[72] This justification was eventually invalidated, and the right of some groups to participate in the political process was greatly expanded.[73]

1. Newberry v. United States

In *Newberry v. United States*,[74] Truman Newberry and numerous others challenged the constitutionality of the Federal Corrupt Practices Act,[75] which limited the amount of money a federal candidate could spend during the course of a campaign.[76] At trial, Newberry and several other defendants were found guilty of contributing and spending more than the prescribed limitations during the course of their campaigns for the United States Senate.[77] The federal statute in question prohibited a Senate candidate from spending more than $10,000 on his campaign for nomination and election.[78] The main issue before the Court was whether Congress, under Article I, Section 4 of the Constitution,[79] had the authority to prescribe limits on the amount of money a candidate could spend during the course of his campaign for nomination.[80] The majority of the Court had reservations about Congress's authority and stated, "[t]he government,

71. *See infra* Part II.B.2.

72. *See infra* Part II.B.3.

73. *See infra* Part II.D.5.

74. Newberry v. United States, 256 U.S. 232 (1921).

75. Federal Corrupt Practices Act of 1910, 2 U.S.C. §§ 241-248 (1910) (repealed 1972).

76. *See* Nichols, *supra* note 22, at 94.

77. *Newberry*, 256 U.S. at 246 n.2.

78. *Id.* at 243.

79. U.S. CONST. art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . .").

80. *Newberry*, 256 U.S. at 247.

then, of the United States, can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication."[81] The Court held that Congress did not have the authority to regulate state primaries, and that such authority was unnecessary for Congress to carry out the powers expressly granted to it.[82] The Court stated that if such power were granted, "its exercise would interfere with purely domestic affairs of the state and infringe upon liberties reserved to the people."[83]

The concurring and dissenting opinions in *Newberry* were the first revelations of the view, prevalent in modern case law, that Congress has extensive authority to regulate campaigns and campaign finance. The concurring opinion, authored by Justice Mahlon Pitney, disagreed with the notion that Congress lacked the authority to regulate state primaries.[84] Justice Pitney argued that Congress's authority to regulate elections should not be interpreted narrowly because the regulation of elections necessarily includes primaries.[85] Justice Pitney stated that "[i]f the authority to regulate the 'manner of holding elections' does not carry with it *ex vi termini*[86] authority to regulate the preliminary election held for the purpose of proposing candidates, then the States can no more exercise authority over this than Congress can."[87] The dissent argued that Congress did have the authority to regulate state primaries because it was necessary to properly execute the authority granted to it by the Constitution.[88] The dissent further noted that the Seventeenth Amendment, which established the direct election of Senators, made it essential for Congress to have the power to regulate primaries.[89] According to the dissent, the reason Congress had the power to regulate elections, including primaries, is that such regulation is

81. *Id.* at 249 (quoting Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 326 (1816)).

82. *Id.* at 258.

83. *Id.*

84. *Id.* at 279 (Pitney, J., concurring in part).

85. *Id.* at 279-80.

86. Latin phrase meaning "from the very meaning of the expression used." BLACK'S LAW DICTIONARY 667 (9th ed. 2009).

87. *Newberry*, 256 U.S. at 280 (Pitney, J., concurring in part).

88. *Id.* at 263 (White, J., dissenting) (arguing that Congress must have the authority to regulate primaries because the candidate who is nominated has a considerable impact on the general election which Congress has the constitutional authority to regulate).

89. *Id.* at 263.

essential to its existence.[90] As the other cases in this Section will reveal, the central holding of *Newberry*, expressly limiting Congress's authority to regulate state election practices, has since been significantly eroded.

2. Buckley v. Valeo

The seminal case of *Buckley v. Valeo*[91] established the general framework from which all future campaign finance challenges would be analyzed.[92] In fact, *Buckley* was at one time the most significant judicial opinion ever written regarding campaign finance laws.[93] This case was so fundamental because it addressed almost every aspect of the broad campaign finance regulation scheme established in FECA, a regulatory scheme that was not embraced by many candidates for federal office. After Congress amended FECA in 1974, several candidates running for federal office challenged its major provisions as unconstitutional and sought an injunction against its enforcement.[94] These candidates argued that in the modern campaign world, all effective methods of communication involve spending large sums of money.[95] Thus, any limitation or restriction on the use of money for political purposes violated the First Amendment.[96]

Before addressing the individual provisions of FECA that the federal candidates challenged, the Court outlined a number of overarching principles that demonstrate the First Amendment implications present in

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90. *Id.* at 269.

91. Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

92. *See* Corrado, *supra* note 47, at 92.

93. *Id.*

94. *Buckley*, 424 U.S. at 7-9.

95. *Id.* at 11.

96. *Id.* (introducing, for the first time, that in a First Amendment context, money equals speech); Ushkow, *supra* note 49, at 287 (noting that the *Buckley* Court acknowledged that the expenditure of unlimited amounts of money is a constitutionally protected right for certain groups and individuals because the expenditure of money is a form of speech); *see also* Kathleen M. Sullivan, *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311, 316 (arguing that money is speech and that limiting or restricting political contributions violates the First Amendment's anti-paternalistic principles). *But see* J. Shelley Wright, *Politics and the Constitution: Is Money Speech*, 85 YALE L.J. 1001, 1005 (1976) (arguing that political contributions are conduct and should not be treated as speech); Eugene Volokh, *Freedom of Speech and Speech about Political Candidates: The Unintended Consequences of Three Proposals*, 24 HARV J.L. & PUB. POL'Y 47, 58-59 (2008) (arguing that money is property not speech, and that restrictions on political contributions are not restrictions on an individual's free speech rights).

every campaign finance regulation scheme.[97] The Court addressed these principles because "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities."[98] The Court also stated that the ability to speak about political candidates is essential because, "[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation."[99] These principles established the framework from which the Court analyzed the challenged provisions.[100]

The Court rejected the provisions limiting the expenditures of political campaigns because they represented "substantial rather than merely theoretical restraints on the quantity and diversity of political speech."[101] While invalidating this provision, the Court referenced the idea that is always present in campaign finance regulations: that the playing field should be equal for all involved in political campaigns.[102] The Court stated that the reason for such a restriction was "aimed in part at equalizing the relative ability of all voters to affect electoral outcomes."[103] The Court upheld a limitation on the amount an individual can contribute to a political campaign because it was only a marginal suppression of that person's free speech.[104] It also stated that the reason such a limitation was permissible was because "the transformation of contributions into political debate involves speech by someone other than the contributor."[105] The Court also upheld the limitation on contributions to PACs, the limitation

97. *Buckley*, 424 U.S. at 14-15 (explaining that the discussion of public issues and the debate on the qualifications of candidates for federal office are an essential element of a Constitutional democracy, stating that political speech is afforded the highest level of First Amendment protection, stating that the ability of the electorate to make informed choices is essential to the survival of the democratic system, and stating that group association is one of the most effective methods for people to effectively make their voices heard in the political process).

98. *Id.* at 14.

99. *Id.* at 14-15.

100. *Id.* at 15.

101. *Id.* at 19.

102. *Id.* at 17.

103. *Id.*

104. *Id.* at 21; *see also* Ushkow, *supra* note 49, at 287 (stating that the contribution limits were upheld because they are "merely proxy speech," and that a political contribution only "enables others to speak on your behalf").

105. *Buckley*, 424 U.S. at 21.

on the contribution of services or non-monetary contributions, and the limitation on the total amount an individual could contribute during a single year.[106]

The Court also supported the long-established corruption argument, stating that the primary motivation for campaign finance regulation was "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office."[107] This reveals the egalitarian approach—that campaign finance regulations should ensure that all political speech is heard with the same level of effectiveness, regardless of financial resources—that is supported by many proponents of campaign finance regulations.[108] The Court also hinted that this egalitarian approach might merit consideration when it stated that the potential for corruption is not merely an illusory problem, and that large contributions have the potential to undermine the integrity of the entire political system.[109]

3. Austin v. Michigan Chamber of Commerce

One of the first challenges to laws prohibiting corporations from contributing to political campaigns using general treasury funds came in

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106. *Id.* at 36-37.

107. *Id.* at 25.

108. Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1390 (1994) (arguing that there is no justification for allowing disparities in wealth to be translated into disparities in political power and that the achievement of political equality is an important constitutional goal); *see also* J. Skelley Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality*, 82 COLUM. L. REV. 609, 631 (1982).

> [T]he political arena is less healthy, and less likely to serve the public interest and democratic ideals, if the agenda and the discussion are dominated by those with ample financial resources. Apparently the Chief Justice and the Court did not have these concerns in mind when Buckley and Bellotti were under consideration.
>
> The broader purposes of our political system are ill-served by allowing the power of money to drown out the voices of the relatively moneyless, or by allowing too many contests to turn on the differences in the amounts of money that candidates have to spend.

Id.; BeVier, *supra* note 5, at 1046 (noting that other advocates of campaign finance regulation seek systematic quality in the political process and not the avoidance of corruption).

109. *Buckley*, 424 U.S. at 26-27.

Austin v. Michigan Chamber of Commerce.[110] Similar to FECA, Michigan law prohibited corporations from spending general treasury funds on political campaigns.[111] The Michigan Chamber of Commerce challenged the constitutionality of this law after it was prevented from contributing to a special election in the state.[112] The Court stated that the use of money to support political candidates is speech and that campaign expenditures represent political expression at the core of the First Amendment.[113] The Court recognized that protections may be afforded to corporations by stating, "[t]he mere fact that the Chamber is a corporation does not remove its speech from the ambit of the First Amendment."[114] Once again, the Court referenced the principal corruption argument for campaign finance regulations, noting that the essential characteristics of corporations require that their political contributions and expenditures be regulated to avoid corruption or even the appearance of corruption.[115]

The *Austin* Court introduced the principal argument against allowing corporations to participate fully in the political process.[116] This argument notes the advantages that corporations receive from the state and that these advantages warrant limitations on corporate political participation. According to the *Austin* Court:

> State law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets—that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments. These state-created advantages not only allow corporations to play a dominant role in the Nation's economy, but also permit them to

110. Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 655 (1990).

111. *Id.*

112. *Id.*

113. *Id.* at 657.

114. *Id.* (citing First Nat'l Bank of Bos. v. Belloti, 435 U.S. 765, 777 (1978)).

115. *Id.* at 658.

116. Michael J. Merrick, *The Saga Continues—Corporate Political Free Speech and the Constitutionality of Campaign Finance Reform: Austin v. Michigan Chamber of Commerce*, 24 CREIGHTON L. REV. 195, 233-34 (1990) (noting that the court "had planted the seeds of an equality of voices rationale which ostensibly granted government the authority to regulate the political speech of business corporations without the difficult task of proving that such corporate speech threatens the fact or appearance of corruption").

> use "resources amassed in the economic marketplace" to obtain "an unfair advantage in the political marketplace."[117]

The idea behind banning corporations from directly contributing to political campaigns is based on the notion that the political ideas and preferences of corporations do not reflect the political ideas of the general public and corporations have the ability to unduly distort the outcomes in elections.[118] In essence, the *Austin* Court sought to establish some level of public support as a prerequisite to the political speech of corporations.[119] It is not the wealth corporations accumulate that underlies the argument that their political participation should be limited, but the fact that they are beneficiaries of state-created structures with different motivations and purposes than those of the general public.[120]

The position taken by the *Austin* majority was not universally supported, and many disagreed with the limitations placed on corporations. In his dissent, Justice Scalia argued that "[i]t is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights."[121] This argument basically views the limitation on the political contributions of corporations as a tax on speech. Justice Scalia also rejected the majority's rationale for limiting the speech of corporations because he thought it was irrational to argue that "government may ensure

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117. *Austin*, 494 U.S. at 658-59.

118. *Id.* at 660; *see also* William Patton & Randall Bartlett, *Corporate 'Persons' and Freedom of Speech: The Political Impact of Legal Mythology*, 1981 WISC. L. REV. 494, 510 (1981) (stating that by allowing corporation to be treated as persons for First Amendment purposes, "the state is simultaneously reducing the probability that other interests will be able to produce effective influence. The increase in both the willingness and the ability of corporate managers to produce influence inevitably increases the costs of countering that information.").

119. Miriam Cytryn, Comment, *Defining the Specter of Corruption: Austin v. Michigan Chamber of Commerce*, 57 BROOK. L. REV. 903, 940 (1991) (arguing that the *Austin* Court had additional motivations for restricting the political speech of corporations other than merely removing the appearance of corruption).

> Taking *Austin*'s fear of corporate influence together with its requirement that corporate speech reflect public support, *Austin*'s conception of an attempt to purge corruption becomes indistinguishable from an interest in equalizing the relative effect of speakers on the outcome of election. Insofar as the Michigan Act attempts to redistribute speech according to its relative support, it regulates speakers into proportional voices.

Id.

120. *Austin*, 494 U.S. at 660.

121. *Id.* at 680 (Scalia, J. dissenting).

that expenditures 'reflect actual public support for the political ideas espoused *by corporations*.'"[122] The reason such restrictions are irrational is that the government does not seek to ensure actual political support from all groups or persons, but only from corporations.[123]

4. *McConnell v. Federal Election Commission*

In *McConnell v. FEC*,[124] numerous provisions of BCRA and various other laws were challenged as unconstitutional, specifically focusing on the provisions prohibiting corporations from participating in the political process.[125] The Court began its opinion by discussing the history behind the prohibition on the political participation of corporations.[126] It stated that the prohibition on the political activities of corporations was necessary to prevent corporations from using their immense financial resources to support only those candidates who would advance their corporate interests, and that these interests are often in conflict with the interests of the general public.[127] The same egalitarian notions advanced in previous opinions formed the basis for the argument delivered in the portion of the *McConnell* opinion authored by Justice Souter and Justice O'Connor. These Justices stated that the ban on corporate political contributions is necessary because it limits the "growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions."[128] The Justices even stated that corporate influence on political parties and politicians is one of the "great political evils of the time."[129] This statement not only reveals the egalitarian argument that the Court was going to support, but inherent in this statement is the argument that the political contributions of corporations only increase the amount of corruption present in the political system.

The Court also agreed with the often-repeated argument in discussions regarding campaign finance regulations. The Court referenced the Congressional debate surrounding the enactment of the Hatch Act to support its position that avoiding corruption is essential to regulations on

122. *Id.* at 685 (emphasis in original).

123. *Id.*

124. McConnell v. FEC, 540 U.S. 93 (2003).

125. *Id.* at 114.

126. *Id.*

127. *Id.* at 115 (citing United States v. Auto. Workers, 352 U.S 567, 571 (1957)).

128. *Id.*

129. *Id.* at 116.

campaign finances. It quoted Senator Bankhead's argument that, "[w]e all know that money is the chief source of corruption. We all know that large contributions . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation."[130] This argument reveals the skepticism that proponents of campaign finance regulation have towards corporations and the view that their participation in the political process would unjustifiably skew the results of elections.

In an attempt to justify their restriction on the First Amendment freedoms of corporations, the Court noted that "[b]ecause corporations can still fund electioneering communications with PAC money, it is simply wrong to view the provision as a complete ban on expression rather than a regulation."[131] While corporations can establish PACs to engage in political expression, this argument ignored the fact that a ban on direct spending by corporations was a direct ban on the political speech of the corporate *entity* itself, and thus a suppression of its First Amendment rights. The Court recognized that the regulations they were upholding were limited restrictions on the First Amendment liberties of corporations, but it rejected the argument that those restrictions were impermissible in light of the interest in preventing corruption.[132] The Court stated,

> [e]ven if we assumed that BCRA will inhibit some constitutionally protected corporate and union speech, that assumption would not "justify prohibiting all enforcement" of the law unless its application to protected speech is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications."[133]

The Court apparently believed that restrictions removing the potential for political corruption in the electoral process are significantly important interests that can trump even the most fundamental of liberties—the right

130. *Id.* at 116-17 n.2 (quoting 86 Cong. Rec. 2720 (1940)).

131. *Id.* at 204 (internal quotation marks omitted).

132. *Id.* at 205 (stating that they have "repeatedly sustained legislation aimed at the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas").

133. *Id.* at 207 (quoting Virginia v. Hicks, 539 U.S. 113, 120 (2003)).

to engage in political speech.[134] This was a view not shared by some members of the Court and was eventually rejected in *Citizens United*.[135]

In his dissent, Justice Scalia articulated numerous problems with some of the provisions of BCRA that the Court was upholding. He was particularly troubled by the prohibition on corporate political speech, and thought it was an overt attempt of Congress to prevent effective criticism of their performance by the groups most able to give voice to that criticism.[136]

> We are governed by Congress, and this legislation prohibits the criticism of Members of Congress by those entities most capable of giving such criticism loud voice: national political parties and corporations, both of the commercial and not-for-profit sort. It forbids pre-election criticism of incumbents by corporations, even not-for-profit corporations, by use of their general funds; and forbids national-party use of "soft" money to fund "issue ads" that incumbents find so offensive.[137]

Justice Scalia thought the regulations were not aimed at preventing corruption, but aimed at protecting those who drafted the laws.[138] In his view, the Court's opinion regarding the prohibitions on corporate political speech represented a "sad day for the freedom of speech."[139] Justice Scalia does not hold the same skeptical opinion of corporations in the political process that many proponents of the egalitarian approach hold.[140] In his opinion, corporations are the organizations best suited to alert the public to important issues, and also "best represent the most significant segments of the economy and the most passionately held social and political views."[141] Justice Kennedy agreed with portions of Justice Scalia's argument and believed that it was particularly troubling that Congress was muting the voice of those entities most suited to alert the public about the dangers that

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134. *Id.*

135. Citizens United v. FEC, 130 S. Ct. 876 (2010); *see infra* Part II.B.5.

136. *McConnell*, 540 U.S. at 248-49.

137. *Id.* at 248 (Scalia, J., concurring in part, concurring in the judgment, dissenting in part).

138. *Id.* at 249 (noting that "if incumbents and challengers are limited to the same quantity of electioneering, incumbents are favored . . . *any* restriction upon a type of campaign speech that is equally available to challenger and incumbent tends to favor incumbents").

139. *Id.* at 248.

140. *Id.* at 257-58.

141. *Id.*

potential legislation posed to the nation's economy.[142] The arguments made by Justices Scalia and Kennedy eventually persuaded a majority of the Court to strike down the ban on the political speech of corporations in *Citizens United*.

5. Citizens United v. Federal Election Commission

In *Citizens United v. FEC*,[143] a non-profit corporation filed suit against the FEC in an attempt to invalidate the prohibition on corporate political speech.[144] The organization wanted to release a political documentary during the prohibited period of time before the election, but it was fearful that doing so would subject it to significant penalties.[145] The Court stated that to analyze the constitutional questions presented, it was necessary to reexamine both the *Austin* and *McConnell* opinions to determine the constitutional implications of banning corporate political speech.[146] In reexamining those cases, the Court asserted that the precedent established by those cases was inconsistent with First Amendment principles.[147] The Court stated that the government may regulate corporate political speech, but a *complete* prohibition on such speech was unconstitutional.[148] This point recognizes the established principle that for constitutional purposes, a corporation is a person entitled to First Amendment protection.[149] It should be noted, however, that advocates of extensive government regulation of campaign financing widely disagree with this proposition and argue that allowing corporations to be given First Amendment protection presents the opportunity for great inequality in the political process.[150] Additionally, the

142. *Id.* at 340 (Kennedy, J., concurring in part, dissenting in part).

143. Citizens United v. FEC, 130 S. Ct. 876 (2010).

144. *Id.* at 888.

145. *Id.*

146. *Id.* at 886.

147. *Id.* (stating that "[t]he government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether").

148. *Id.*

149. Pembina Consol. Mining & Milling Co. v. Pennsylvania, 125 U.S. 181, 187 (1888) (stating that "[u]nder the designation of 'person' there is no doubt that a private corporation is included").

150. *See* David Lagasse, *Undue Influence: Corporate Political Speech, Power, and the Initiative Process*, 61 BROOK. L. REV. 1347, 1349 (1995) ("Corporate campaign expenditures are not merely a facilitator of speech. Corporate expenditures have an impact on voter behavior that is better characterized as corporate conduct rather than pure speech. In fact, corporations largely control the outcome of initiative campaigns because of their ability to

dissenting justices explicitly rejected this notion.[151] The Court rejected the justification on which the *Austin* Court relied by stating that the ability to form a PAC to engage in political speech "does not alleviate the First Amendment problems."[152] The Court stated that PACs were not a sufficient alternative method of political communication that would permit the prohibition on corporate speech because they are "burdensome alternatives; they are expensive to administer and subject to extensive regulations."[153]

After rejecting the complete prohibition on corporate political speech, the Court addressed why corporate political speech deserves the same First Amendment protection afforded all other forms of political speech.[154] The Court acknowledged that Congress has the right to implement time, place, and manner restrictions when enacting campaign finance regulations, but

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out-spend other interest groups."); Dale Rubin, *Corporate Personhood: How the Courts Have Employed Bogus Jurisprudence to Grant Corporations Constitutional Rights Intended for Individuals*, 28 QUINNIPIAC L. REV. 523, 535-36 (2010) (arguing that that corporations should not be permitted to participate in the political process and that the First Amendment was only intended to apply to individuals).

151. *Citizens United*, 130 S. Ct. at 930.

> The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.
>
> In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

Id. (Stevens, J., dissenting). *But see* Carol Herdman, *Citizens United: Strengthening the First Amendment in American Elections*, 39 CAP. U. L. REV. 723, 752 (2011) (outlining the flaws in Justice Stevens argument by noting his inconsistent treatment of corporations, which he believes are not entitled First Amendment protection, and his treatment of PACs, which he argued should be able to participate in the political process).

152. *Citizens United*, 130 S. Ct. at 897.

153. *Id.*

154. *Id.* at 899 (noting that the First Amendment prohibits the government from favoring a certain class of speaker).

noted that constitutional safeguards must be respected.[155] It correctly stated, however, that if the regulations placed on corporations and labor unions were applied to individuals, then no one would believe that they were such restrictions and would view them as an effort to "silence entities whose voices the Government deems to be suspect."[156] This argument is where the Court begins to reject the egalitarian approach to campaign finance regulations and also reject the notion that the prevention of corruption is an adequate justification for allowing legislation designed to implement that approach. The Court rejected the egalitarian argument by stating, "[t]he government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration."[157] In the Court's opinion, it was unconstitutional to base a group's ability to speak on the measure of its financial wealth, regardless of the identity of the speaker.[158]

The Court also rejected the arguments made in previous cases, which asserted that because corporations receive special state-created advantages, they are subject to enhanced restrictions in the political arena. The Court accepted Justice Scalia's position that the "State cannot exact as the price of those special advantages the forfeiture of First Amendment rights."[159] The Court argued that the public would be able to determine the validity of a corporation's speech because "[t]he fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials."[160] This was a complete rejection of the principal argument espoused by campaign finance reform advocates who argue that the need to remove corruption or the appearance of corruption is a sufficient justification for suppressing the speech of certain organizations based on their corporate identity. It was also a complete rejection of the argument that perceived corruption stifles the confidence that voters have in the electoral system.[161] The Court correctly

155. *Id.* at 898.

156. *Id.*

157. *Id.* at 899.

158. *Id.* at 904 (stating that "[t]he First Amendment's protections do not depend on the speaker's 'financial ability to engage in public discussion.'") (quoting Buckley v. Valeo, 424 U.S. 1, 49 (1976)).

159. *Id.* at 905 (quoting Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 680 (1996) (Scalia, J., dissenting)).

160. *Id.* at 910.

161. *Id.* at 908 (stating that "[w]hen Government seeks to use its full power . . . to command where a person may get his or her information or what distrusted source he or she

concluded that in a democracy where the people are sovereign, "more speech, not less, is the governing rule."[162] Consistent with that principle is the notion that "[n]o sufficient governmental interest justifies limits on the political speech of non-profit or for-profit corporations."[163]

III. PROPOSAL

Many of the arguments that were given in support of a prohibition on the political participation of corporations are also given in support of a ban on the political participation of 501(c)(3) organizations. The most common of these arguments is that 501(c)(3) organizations receive a subsidy from the government and thus can be restricted in the ability to exercise their First Amendment rights.[164] This is no different than the argument that corporations are the beneficiaries of state-created advantages, and that those advantages warrant the prohibition on their political speech. This argument was rejected in *Citizens United*,[165] and the rationale of that case provides ample justification for rejecting it in the case of 501(c)(3) organizations. Not only has the United States Supreme Court rejected the logic behind the state subsidy argument, but it is also inconsistent with the understanding of why 501(c)(3) organizations are given certain tax advantages by the government. This Section will reveal the fallacy behind the arguments given in support of banning 501(c)(3) organizations from political participation, and it will also show why the penalty of removing their tax-exempt status for participating in the political process would equal nothing more than a tax on speech.

1. Full Political Participation by All Groups is Consistent with Founding Principles.

Allowing 501(c)(3) organizations to participate fully in the political process is consistent with the founding history of this country. The Supreme Court has recognized that "[a]t the founding, speech was open,

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may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.").

162. *Id.* at 911.

163. *Id.* at 913.

164. Donald B. Tobin, *Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy*, 95 GEO. L.J. 1313, 1317 (2007) (arguing that 501(c)(3) organizations do not have any First Amendment rights, and that the prohibition on their political speech is necessary to make sure their "subsidy" is not abused or misused).

165. *Citizens United*, 130 S. Ct. at 905.

comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge."[166] In a country born on the will to be free, and fundamentally supportive of active political participation, prohibiting charitable groups in which almost all people were involved would have made little sense. Justice Kennedy recognized the rationale for allowing corporate political speech by noting that "[t]he Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers . . . are entitled to less First Amendment protection."[167] While there were not 501(c)(3) organizations at the time of the founding, the Framers would certainly have encouraged the political participation of those organizations involved in charitable work. Charitable organizations were incorporated under a different statutory framework than they are now, but they were certainly not prohibited from engaging in political speech. In fact, "[a]t the time of the founding, religious, educational, and literary corporations were incorporated under general incorporation statutes, much as business corporations are today."[168] These are the exact types of organizations that are organized as 501(c)(3) organizations today. At the time of the founding, "[b]oth corporations and voluntary associations actively petitioned the government and expressed their views in newspapers and pamphlets."[169] It would be completely consistent with the founding principles to allow 501(c)(3) organizations to participate in the political process, regardless of the tax-exempt status they receive. If the same people who established the First Amendment believed it proper for charitable organizations to participate in the political process, there is no reason that same principle should not apply today.

2. 501(c)(3) Organizations Share Political Views With Their Donors.

While it can be argued that most corporations probably do not share the same political interests as those financially invested with them, the same cannot be said of 501(c)(3) organizations. Many people invest in corporations for financial gain or retirement purposes, and their association with the corporation is purely an economic decision.[170] This is not the case with 501(c)(3) organizations because most of their financial support comes from voluntary donations that are given to support the organization's

166. *Id.* at 906.

167. *Id.*

168. *Id.* at 926 (Scalia, J., concurring).

169. *Id.* at 927.

170. FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 257-58 (1986).

mission. The original purpose of prohibiting corporations from fully participating in the political process was to prevent the "corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[171] Even if this were a legitimate government interest—which the *Citizens United* Court rejected—the same purpose would not apply to 501(c)(3) organizations. The United States Supreme Court has recognized that, unlike the perceived dangers of corporations, 501(c)(3) organizations do not pose the same risk or endanger the political process because:

> Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed to disseminate political ideas, not amass capital. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace. While MCFL may derive some advantages from its corporate form, those are advantages that redound to its benefit as a political organization, not as a profit-making enterprise.[172]

501(c)(3) organizations would not exist without some level of public support for the work that they do, and they certainly would not maintain any level of support if the political views espoused by the organization did not align with those of its contributors.

Not only are the views of 501(c)(3) organizations similar to the political views of their contributors, but the organizations also provide a significant avenue for people who share similar political views to advocate effectively for their positions. There is no justification for limiting the speech of an association of like-minded individuals who join together to advance a political view. As Justice Scalia pointed out, the First Amendment refers specifically to speech, not speakers, and "[i]ts text offers no foothold for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals."[173] The speech of 501(c)(3) organizations should enjoy the same First Amendment protections of all other associations of individuals. If the political speech of corporations cannot be prohibited based on the state-created advantages they enjoy, then

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171. Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 660 (1990).

172. *Mass. Citizens*, 479 U.S. at 259.

173. *Citizens United*, 130 S. Ct. at 929 (Scalia, J., concurring).

the political speech of 501(c)(3) organizations also should not be prohibited based on the tax-exempt status they enjoy.

3. 501(c)(3) Organizations Receive Tax Benefits Because They Relieve the Government of Certain Duties.

Some argue that the reason 501(c)(3) organizations should be prohibited from fully participating in the political process is that they are the beneficiaries of government subsidies, and as a result, they trade some of their First Amendment rights.[174] Advocates of this position argue that because 501(c)(3) organizations are not taxed on their income and the donations that their contributors provide are tax deductible, the organization essentially receives a double subsidy.[175] The major flaw of this argument is that it ignores the reason 501(c)(3) organizations receive tax-exempt status. 501(c)(3) organizations receive tax-exempt status because they relieve the government of significant obligations it would otherwise have to provide using funds from the nation's treasury.[176] The United States Supreme Court has stated that the reason for the tax exemptions is "to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind."[177] The tax exemptions are provided to 501(c)(3) organizations for them to effectively carry out the public services they provide. The tax exemption is not a form of compensation for remaining silent and suppressing whatever political views the organization holds. 501(c)(3) organizations receive the benefit of tax exemption only if they satisfy the two requirements established by Congress when it created the exemption—that they serve a public purpose and that their mission is not contrary to public policy.[178] The Court has noted that "[a] charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man."[179]

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174. *See* Tobin, *supra* note 164, at 1317.

175. *Id.*

176. Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 687 (1970) (Brennan, J., concurring) (stating that "these organizations are exempted . . . contribute to the well-being of the community . . . and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community").

177. Bob Jones Univ. v. United States, 461 U.S. 574, 587 (1983).

178. *Id.* at 586.

179. *Id.* at 588 (quoting Ould v. Wash. Hosp. for Foundlings, 95 U.S. 303, 311 (1877)).

After the ruling in *Citizens United*, the political participation of those who receive state-created advantages is no longer contrary to law. Corporations and labor unions can no longer be prohibited from fully participating in the political process. Corporations and labor unions receive substantial state-created advantages, but the Court has said that those advantages are not sufficient to justify prohibiting their political participation. Additionally, *Citizens United* revealed a shift in the Court's view of public policy and shows why it should no longer be contrary to public policy to prohibit 501(c)(3) organizations from fully participating in the political process. The Court has recognized that it should be public policy to allow these charitable organizations to receive some benefit from the government because of their efforts.

> The exemption from taxation of money and property devoted to charitable and other purposes is based on the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare.[180]

501(c)(3) organizations are given tax-exempt status for very practical policy reasons, including the fact that they remove significant financial burdens from the government. It makes little sense to view these tax exemptions as compensation for the burden of being prohibited from participating in the political process. If the tax exemption is compensation for anything, it is compensation for the substantial role that 501(c)(3) organizations play in society and the tremendous benefit that society receives as a result of their efforts.

It has also been argued that allowing 501(c)(3) organizations to participate in the political process while maintaining their tax-exempt status would be subsidizing their political speech.[181] Those advocating for this argument assert that allowing their participation would have dangerous consequences.[182] Advocates of this position—that subsidizing the political participation of 501(c)(3) organizations is a mistake—fundamentally

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180. *Id.* at 590.

181. *See* Tobin, *supra* note 164, at 1317; *see also* Brandon S. Boulter, Note, *Expensive Speech:* Citizens United v. FEC *and the Free Speech Rights of Tax Exempt Religious Organizations*, 2010 BYU L. REV. 2243, 2275 (arguing that allowing 501(c)(3) organizations to participate in the political process would amount to the government funding the political activities of these organizations).

182. Tobin, *supra* note 164, at 1317; Boulter, *supra* note 181, at 2275.

misunderstand the reason that charitable organizations receive their tax-exempt status. 501(c)(3) organizations are not given their tax-exempt status in exchange for their political silence; they are given the exemptions because of their extremely vital role in society. The advocates of this position also argue that allowing 501(c)(3) organizations to participate in the political process would grant them an unjustified influence over the political process. The problem with this argument is that even if it were true, it no longer holds any constitutional merit. The *Citizens United* Court rejected the notion that preventing corruption was a sufficient justification for prohibiting the political participation of corporations.[183] The Court stated that the "Nation's speech dynamic is changing, and informative voices should not have to circumvent onerous restrictions to exercise their First Amendment rights."[184] While this statement was made discussing the problems with requiring corporations to establish PACs, the same is true of 501(c)(3) organizations with regard to their tax status. 501(c)(3) organizations should not be required to choose between receiving compensation for the benefits they provide society and the right to enter the political discourse.[185]

Advocates of the continued restriction on the political participation of 501(c)(3) organizations also fail to understand the dynamic of the electoral process. One advocate of the continued prohibition asserts that "[i]f 501(c)(3) organizations are allowed to intervene in political campaigns on behalf of candidates, the power of these organizations in comparison to other organizations will increase dramatically. They will become extremely powerful organizations and will have significant influence over public policy."[186] The fallacy behind this argument stems from a fundamental misunderstanding of the ability of voters to make informed choices. Voters are not blind to the self-interested motivations that are inevitable in political speech, and allowing 501(c)(3) organizations to join the political dialogue will only increase the amount of information that voters have at their disposal. Justice Scalia has recognized this point and correctly states:

> The premise of the First Amendment is that the American people are neither sheep nor fools, and hence fully capable of

183. Citizens United v. FEC, 130 S. Ct. 876, 913 (2010).

184. *Id.* at 912.

185. Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 692 (1970) (Brennan, J., concurring) (recognizing that removing the tax-exempt status from charitable organizations would force them to reduce part of their public service abilities).

186. *See* Tobin, *supra* note 164, at 1317-18.

> considering both the substance of the speech presented to them and its proximate and ultimate source. If that premise is wrong, our democracy has a much greater problem to overcome than merely the influence of amassed wealth. Given the premises of democracy, there is no such thing as *too much* speech.[187]

Allowing 501(c)(3) organizations to participate in the political dialogue does not pose the level of danger that the opponents of their participation espouse. The political speech of 501(c)(3) organizations is no more susceptible to corruption than any other political speech, and their political speech will be viewed the same as all other political speech. Allowing 501(c)(3) organizations to participate politically will only increase the ability of the voters to make informed choices.[188] If the positions espoused by a 501(c)(3) organization are corrupt, or if the voters see the organization as self-interested, then the voters are going to reject the position or candidate being advocated by the organization.

The truly dangerous position to take regarding campaign finance regulation is to allow elected officials to determine what political speech is acceptable in federal elections. Voters are capable of making decisions about what information to accept as valid and what information to reject as politically self-interested. It is simply foolish to assume that voters require the protection of a paternalistic Congress to decide what information should be made available. The Court has recognized this truth by stating that "[t]he Constitution . . . confers upon *voters*, *not Congress*, the power to choose the Members of the House of Representatives, Art. I, § 2, and it is a dangerous business for Congress to use the election laws to influence the voters' choices."[189] There is a substantial amount of self-interest and an enormous possibility of corruption in a system that allows those who stand to benefit from the regulations to make the decisions about which organizations can participate in the political dialogue. Nevertheless, the advocates of the position that corruption must be removed from the political process through campaign finance regulations conveniently ignore the potential for this type of corruption. The voters, not the officials elected by the voters, should be the ultimate authority on what speech presented in the electoral process is credible.

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187. McConnell v. FEC, 540 U.S. 93, 258-59 (2003).

188. *Citizens United*, 130 S. Ct. at 899 (stating that "[t]he Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration").

189. *Id.* at 904 (quoting Davis v. FEC, 554 U.S. 724, 742 (2008) (emphasis added)).

4. Removing the Tax-Exempt Status of 501(c)(3) Organizations for Participating in the Political Process is Essentially a Tax on Speech.

Penalizing a 501(c)(3) organization for participating in the political process by removing its tax-exempt status amounts to nothing more than a tax on the speech. *Citizens United* explicitly rejected the complete prohibition on a corporation's political speech.[190] The same should be true of 501(c)(3) organizations, and forcing them to forfeit their tax-exempt status to participate in the political process is a blatant attempt to "silence entities whose voices the Government deems to be suspect."[191] The original purpose of tax-exempt status was to foster the development of organizations "whose common denominator is their nonprofit pursuit of activities devoted to cultural and moral improvement and the doing of 'good works' by performing certain social services in the community that might otherwise have to be assumed by government."[192] 501(c)(3) organizations still provide enormous benefits to their communities, and this will not cease simply because they engage in some form of political speech. After *Citizens United*, it no longer makes sense to allow the price of tax-exempt status for 501(c)(3) organizations to be the complete prohibition on their political speech.

The Supreme Court has recognized that "[i]t cannot be gainsaid that a discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech."[193] Campaign finance laws currently place 501(c)(3) organizations under constant threat of revocation of their tax-exempt status for engaging in any form of political speech. The *Citizens United* Court recognized that while it was permissible to regulate the political speech of corporations,[194] a blanket prohibition on their political speech was simply unconstitutional.[195] In *Citizens United*, the Court rejected the often proffered argument that corporations are given special state-created advantages, and that those advantages made it permissible to

190. *Id.* at 886.

191. *Id.* at 898.

192. Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 696 (1970) (Harlan, J., concurring).

193. Speiser v. Randall, 357 U.S. 513, 518 (1958).

194. The 111th Congress tried to eviscerate this opinion by making the disclosure requirements on corporations so burdensome that it would have essentially nullified the effectiveness of their political speech. *See* the DISCLOSE Act, H.R. 5175, 111th Cong. §§ 211-14 (2010) (as passed by House, June 24, 2010); S. 3295, 111th Cong. §§ 211-14 (2010) (rejected by Senate, September 23, 2010).

195. *Citizens United*, 130 S. Ct. at 886.

prohibit their participation in the political process.[196] The Court recognized that the "State cannot exact as the price of those special advantages the forfeiture of First Amendment rights."[197] The tax-exempt status given to 501(c)(3) organizations is a special state-created advantage, and campaign finance laws currently require these organizations to forfeit their First Amendment rights to receive such status.[198] If it is unconstitutional to require corporations to forfeit their constitutional rights to receive state-created benefits, the same should be true of 501(c)(3) organizations. The Supreme Court has recognized that such a penalty amounts to a tax on speech:

> To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty,' its denial may not infringe speech.[199]

Because the *Citizens United* Court recognized the First Amendment rights of corporate entities, it should no longer be permissible to silence the voices of those organizations that exist for the benefit of the community. Additionally, it simply cannot pass constitutional muster to allow the government to tax the political speech of these organizations.

The alternatives available to 501(c)(3) organizations do not remove the constitutional problems of denying them First Amendment freedoms. Some argue that the ability to form a separate 501(c)(4) organization[200] is sufficient to remove the infringements on the speech of 501(c)(3) organizations. Unfortunately, some members of past Courts have agreed with this position, stating that "[a] 501(c)(3) organization's right to speak is not infringed, because it is free to make known its views on legislation through its 501(c)(4) affiliate without losing tax benefits for its nonlobbying

196. *Id.* at 905.

197. *Id.* (quoting Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 680 (1996) (Scalia, J., dissenting)).

198. I.R.C. § 501(c)(3) (2010) (stating that these organizations may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

199. Speiser v. Randall, 357 U.S. 513, 518 (1958).

200. I.R.C. § 501(c)(4) (2010).

activities."[201] This argument, however, ignores the significant burdens—burdens that also amount to a tax on speech—that the formation of such an organization places on a 501(c)(3) organization. The *Citizens United* Court also rejected this argument as it related to corporations.[202] It noted that the formation of such alternatives is an insufficient solution to the constitutional problems of prohibiting corporate speech because of the significant burdens they place on an organization.[203] These significant burdens cannot be considered an adequate solution to the suppression of a 501(c)(3) organization's free speech rights. Attempting to solve one constitutional infirmity with an equally burdensome alternative is no solution at all.

The suppression of the free speech rights of 501(c)(3) organizations should be eliminated. After *Citizens United*, there is no sufficient justification to continue silencing these organizations or banning them from participating in the political process. Revoking their tax-exempt status for engaging in political expression is nothing more than a tax on their speech. The justifications for revoking their tax-exempt status are insufficient because "[i]f the Government may not impose a tax upon the expression of ideas in order to discourage them, it may not achieve the same end by reducing the individual who expresses his views to second-class citizenship by withholding tax benefits granted others."[204] By prohibiting any political participation, campaign finance regulations have relegated 501(c)(3) organizations to second-class citizenship. This would never be allowed if such restrictions were placed on individuals, and after *Citizens United*, such restrictions on corporations are now prohibited. The next logical progression in the expansion of free speech rights in this country is to extend them to 501(c)(3) organizations.

IV. CONCLUSION

The *Citizens United* Court paved the way for an enormous shift in the way political campaigns are operated in this country. After rejecting the most significant arguments in favor of banning corporations and labor unions from the political process, the Court opened the door for the same

201. Regan v. Taxation with Representation of Wash., 461 U.S. 540, 553 (1983) (Blackmun, J., concurring).

202. *Citizens United*, 130 S. Ct. at 897.

203. *Id.*

204. *Speiser*, 357 U.S. at 536 (Douglas, J., concurring).

rationale to apply to non-profit, charitable organizations. Many of the arguments for banning corporations and labor unions from political participation are the same arguments offered in support of banning the political participation of 501(c)(3) organizations, which reveals that campaign finance regulations are ripe for amendment. 501(c)(3) organizations should be allowed to fully participate in the political process regardless of the tax-exempt status they receive. The tax exemptions given to 501(c)(3) organizations represent society's appreciation for their vital role in charitable causes and the reduction of certain burdens on the government; it does not represent consideration for their silence on political issues. Political speech is one of the most fundamental of all rights in this country, and 501(c)(3) organizations should be allowed to enjoy those rights without losing the benefits that are given to them. The political dialogue is only advanced when all organizations are free to exercise their First Amendment rights.