

In *Citizens United*, the Court noted that there was a tension between the right of corporations to engage in political speech, as articulated in *Bellotti* and its progeny, and the limitations on such speech allowed in *Austin* to avoid the disproportionate economic power of corporations. Reasoning that the Court had rejected similar attempts to level the playing field among differing voices with disparate economic resources,⁹³⁰ the Court held that the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity of necessity prevents distinctions based on wealth.⁹³¹ In particular, the Court noted that media corporations, although statutorily exempted from these restrictions, do not receive special constitutional protection under the First Amendment,⁹³² and thus would be constitutionally vulnerable under an antidistortion rationale.

The Court also held that the ability of a corporation to form a PAC neither allowed that corporation to speak directly, nor did it provide a sufficient alternative method of speech. The Court, found that PACs are burdensome alternatives that are "expensive to administer and are subject to extensive regulation."⁹³³ The Court noted that the difficulty in establishing a PAC might explain why fewer than 2,000 of the millions of corporations in the country have PACs. Further, the Court argued that even if a corporation did want to establish a PAC to speak to an urgent issue, that such corporation might not be able to establish one in time to address issues in a current campaign.

While the holding of *Citizens United* would appear to diminish the need for corporations to create PACs in order to engage in political speech, it is not clear what level of regulation will now be

⁹³⁰ See *Buckley*, 424 U.S. at 49 (First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion."); *Davis v. Federal Election Commission*, 554 U.S. ___, No. 07-320, slip op. (2008) (invalidating the cap on contributions to one candidate if the opponent made certain expenditures from personal funds).

⁹³¹ *Citizens United*, slip op. at 34. The Court concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption," slip op. at 42. The State of Montana had had a long-standing bar on independent political expenditures by corporations founded on a record that those expenditures in fact could lead to corruption or the appearance of corruption. In a *per curiam* opinion, with four justices dissenting, the Court struck down the Montana law as contrary to *Citizens United*. *American Tradition Partnership, Inc. v. Bullock*, 567 U.S. ___, No. 11-1179, slip op. (2012).

⁹³² Slip op. at 35-37.

⁹³³ 558 U.S. ___, slip op. at 21. For example, a PAC must appoint a treasurer, keep detailed records of persons making donations, preserve receipts for three years, must report changes to its organizational statement within 10 days, and must file detailed monthly reports with the FEC. *Id.*