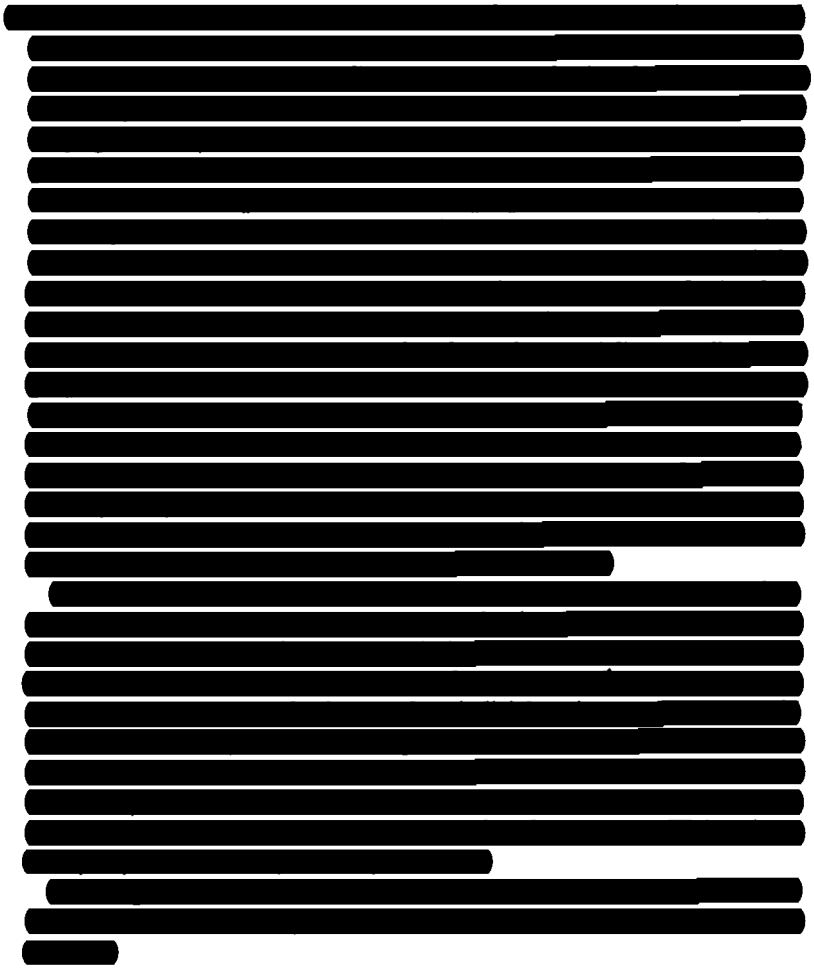
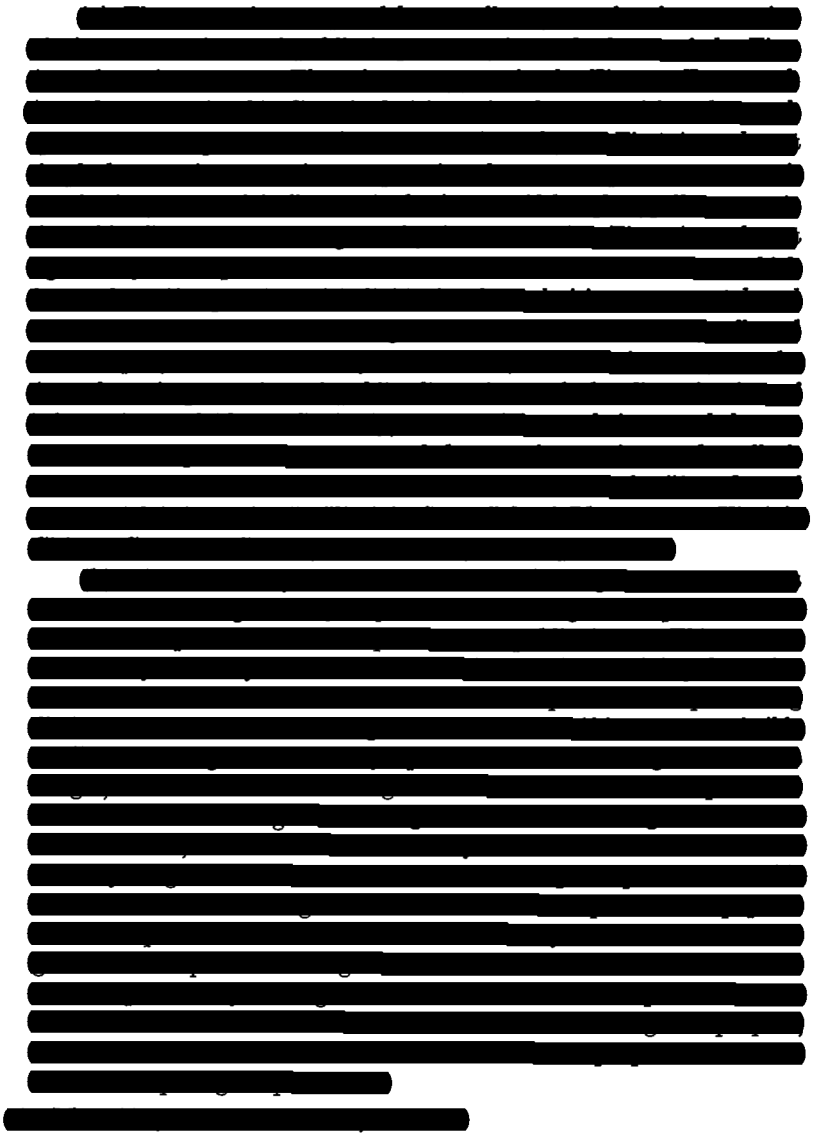
Syllabus

FIRST NATIONAL BANK OF BOSTON ET AL. *v.* BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

No. 76–1172. Argued November 9, 1977—Decided April 26, 1978





POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, BLACKMUN, and STEVENS, JJ., joined. BURGER, C. J., filed a concurring opinion, *post*, p. 795. WHITE, J., filed a dissenting opinion, in

which BRENNAN and MARSHALL, JJ., joined, *post,* p. 802. REHNQUIST, J., filed a dissenting opinion, *post,* p. 822.

Francis H. Fox argued the cause for appellants. With him on the briefs was *E. Susan Garsh.*

Thomas R. Kiley, Assistant Attorney General of Massachusetts, argued the cause for appellee. With him on the brief were *Francis X. Bellotti,* Attorney General, *pro se,* and *Stephen Schultz,* Assistant Attorney General.*

MR. JUSTICE POWELL delivered the opinion of the Court.

In sustaining a state criminal statute that forbids certain expenditures by banks and business corporations for the purpose of influencing the vote on referendum proposals, the Massachusetts Supreme Judicial Court held that the First Amendment rights of a corporation are limited to issues that materially affect its business, property, or assets. The court rejected appellants' claim that the statute abridges freedom of speech in violation of the First and Fourteenth Amendments. The issue presented in this context is one of first impression in this Court. We postponed the question of jurisdiction to our consideration of the merits. 430 U. S. 964 (1977). We now reverse.

I

The statute at issue, Mass. Gen. Laws Ann., ch. 55, § 8 (West Supp. 1977), prohibits appellants, two national banking

*Briefs of *amici curiae* urging reversal were filed by *Henry Paul Monaghan* for the Associated Industries of Massachusetts, Inc., et al., and by *Jerome H. Torshen, Jeffrey Cole, Stanley T. Kaleczyc, Jr.,* and *Lawrence B. Kraus* for the Chamber of Commerce of the United States.

William C. Oldaker filed a brief for the Federal Election Commission as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed by *Mike Greely,* Attorney General, and *Jack Lowe,* Special Assistant Attorney General, for the State of Montana; by *James S. Hostetler* for the New England Council; and by *Ronald A. Zumbrun, Robert K. Best, John H. Findley, Albert Ferri, Jr.,* and *W. Hugh O'Riordan* for the Pacific Legal Foundation.

associations and three business corporations,[1] from making contributions or expenditures "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." The statute further specifies that "[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation." A corporation that violates § 8 may receive a maximum fine of $50,000; a corporate officer, director, or agent who violates the section may receive a maximum fine of $10,000 or imprisonment for up to one year, or both.[2]

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[1] Appellants are the First National Bank of Boston, New England Merchants National Bank, the Gillette Co., Digital Equipment Corp., and Wyman-Gordon Co.

[2] Massachusetts Gen. Laws Ann., ch. 55, § 8 (West Supp. 1977), provides (with emphasis supplied):

"*No corporation carrying on the business of a bank,* trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, *no business corporation incorporated under the laws of or doing business in the commonwealth* and no officer or agent acting in behalf of any corporation mentioned in this section, *shall directly or indirectly give, pay, expend or contribute,* or promise to give, pay, expend or contribute, *any money or other valuable thing for the purpose of* aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party, or *influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation. No question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation.* No person or persons, no political committee, and no person acting under the authority of a political com-

Appellants wanted to spend money to publicize their views on a proposed constitutional amendment that was to be submitted to the voters as a ballot question at a general election on November 2, 1976. The amendment would have permitted the legislature to impose a graduated tax on the income of individuals. After appellee, the Attorney General of Massachusetts, informed appellants that he intended to enforce § 8 against them, they brought this action seeking to have the statute declared unconstitutional. On April 26, 1976, the case was submitted to a single justice of the Supreme Judicial Court on an expedited basis and upon agreed facts, in order to settle the question before the upcoming election.[3] Judgment was reserved and the case referred to the full court that same day.

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mittee, or in its behalf, shall solicit or receive from such corporation or such holders of stock any gift, payment, expenditure, contribution or promise to give, pay, expend or contribute for any such purpose.

"Any corporation violating any provision of this section shall be punished by a fine of not more than fifty thousand dollars and any officer, director or agent of the corporation violating any provision thereof or authorizing such violation, . . . shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than one year, or both."

[3] This was not the first challenge to § 8. The statute's legislative and judicial history has been a troubled one. Its successive re-enactments have been linked to the legislature's repeated submissions to the voters of a constitutional amendment that would allow the enactment of a graduated tax.

The predecessor of § 8, Mass. Gen. Laws, ch. 55, § 7 (as amended by 1946 Mass. Acts, ch. 537, § 10), was first challenged in *Lustwerk* v. *Lytron, Inc.*, 344 Mass. 647, 183 N. E. 2d 871 (1962). Unlike § 8, § 7 did not dictate that questions concerning the taxation of individuals could not satisfy the "materially affecting" requirement. The Supreme Judicial Court construed § 7 not to prohibit a corporate expenditure urging the voters to reject a proposed constitutional amendment authorizing the legislature to impose a graduated tax on corporate as well as individual income.

After *Lustwerk* the legislature amended § 7 by adding the sentence: "No question submitted to the voters concerning the taxation of the income, property or transactions of individuals shall be deemed materially

Appellants argued that § 8 violates the First Amendment, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and similar provisions of the Massachusetts Constitution. They prayed that the statute be declared unconstitutional on its face and as it would be applied to their proposed expenditures. The parties' statement of agreed facts reflected their disagreement as to the effect that the adoption of a personal income tax would have on appellants' business; it noted that "[t]here is a division of opinion among economists as to whether and to what extent a graduated income tax imposed solely on individuals would affect the business and assets of corporations." App. 17. Appellee did not dispute that appellants' management believed that the tax would have a significant effect on their businesses.[4]

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to affect the property, business or assets of the corporation." 1972 Mass. Acts, ch. 458. The statute was challenged in 1972 by four of the present appellants; they wanted to oppose a referendum proposal similar to the one submitted to and rejected by the voters in 1962. Again the expenditure was held to be lawful. *First Nat. Bank of Boston* v. *Attorney General,* 362 Mass. 570, 290 N. E. 2d 526 (1972).

The most recent amendment was enacted on April 28, 1975, when the legislature further refined the second sentence of § 8 to apply only to ballot questions "solely" concerning the taxation of individuals. 1975 Mass. Acts, ch. 151, § 1. Following this amendment, the legislature on May 7, 1975, voted to submit to the voters on November 2, 1976, the proposed constitutional amendment authorizing the imposition of a graduated *personal* income tax. It was this proposal that led to the case now before us.

[4] Appellants believe that the adoption of a graduated personal income tax would materially affect their business in a variety of ways, including, in the words of the court below,

"discouraging highly qualified executives and highly skilled professional personnel from settling, working or remaining in Massachusetts; promoting a tax climate which would be considered unfavorable by business corporations, thereby discouraging them from settling in Massachusetts with 'resultant adverse effects' on the plaintiff banks' loans, deposits, and other services; and tending to shrink the disposable income of individuals avail-

On September 22, 1976, the full bench directed the single justice to enter judgment upholding the constitutionality of § 8. An opinion followed on February 1, 1977. In addressing appellants' constitutional contentions,[5] the court acknowledged that § 8 "operate[s] in an area of the most fundamental First Amendment activities," *Buckley* v. *Valeo,* 424 U. S. 1, 14 (1976), and viewed the principal question as "whether business corporations, such as [appellants], have First Amendment rights coextensive with those of natural persons or associations of natural persons." 371 Mass. 773, 783, 359 N. E. 2d 1262, 1269. The court found its answer in the contours of a corporation's constitutional right, as a "person" under the Fourteenth Amendment, not to be deprived of property without due process of law. Distinguishing the First Amendment rights of a natural person from the more limited rights of a corporation, the court concluded that "whether its rights are designated 'liberty' rights or 'property' rights, a corporation's property and business interests are entitled to Fourteenth Amendment protection. . . . [A]s an incident of such protection, corporations also possess certain rights of speech and expression under the First Amendment." *Id.,* at 784, 359 N. E. 2d, at 1270 (citations and footnote omitted). Accordingly, the court held that "only when a general political issue materially affects a corporation's business, property or assets may that corporation claim First Amendment protection for its speech or other

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able for the purchase of the consumer products manufactured by at least one of the plaintiff corporations." 371 Mass., at 777, 359 N. E. 2d, at 1266.

[5] In contrast to its approach in the previous challenges to the predecessor of § 8, see n. 3, *supra,* the court determined that it had to address appellants' constitutional challenge because "[t]he statutory amendment to § 8 makes it clear that the Legislature has specifically proscribed corporate expenditures of moneys relative to this proposed amendment." 371 Mass., at 780, 359 N. E. 2d, at 1268. This was clear from the language of the second sentence of § 8 and from the legislature's synchronized amendment of § 8 and approval of the submission of the ballot question to the voters.

activities entitling it to communicate its position on that issue to the general public." Since this limitation is "identical to the legislative command in the first sentence of [§ 8]," the court concluded that the legislature "has clearly identified in the challenged statute the parameters of corporate free speech." *Id.*, at 785, 359 N. E. 2d, at 1270.

The court also declined to say that there was "no rational basis for [the] legislative determination," embodied in the second sentence of § 8, that a ballot question concerning the taxation of individuals could not materially affect the interests of a corporation. *Id.*, at 786, 359 N. E. 2d, at 1271. In rejecting appellants' argument that this second sentence established a conclusive presumption in violation of the Due Process Clause, the court construed § 8 to embody two distinct crimes: The first prohibits a corporation from spending money to influence the vote on a ballot question not materially affecting its business interests; the second, and more specific, prohibition makes it criminal *per se* for a corporation to spend money to influence the vote on a ballot question solely concerning individual taxation. While acknowledging that the second crime is "related to the general crime" stated in the first sentence of § 8, the court intimated that the second sentence was intended to make criminal an expenditure of the type proposed by appellants without regard to specific proof of the materiality of the question to the corporation's business interests.[6] *Id.*, at 795 n. 19, 790–791, 359 N. E. 2d, at 1276 n. 19,

[6] For purposes of this decision we need not distinguish between the "two crimes" identified by the Supreme Judicial Court. MR. JUSTICE WHITE, dissenting, conveys an incorrect impression of our decision when he states, *post*, at 803, that we have not disapproved the legislative judgment that the personal income tax issue could not have a material effect on any corporation, including appellants. We simply have no occasion either to approve or to disapprove that judgment. If we were to invalidate the second sentence of § 8, thereby putting a ballot question concerning taxation of individuals on the same plane as any other ballot question, we still would have to decide whether the "materially affecting" limitation in the general

1273–1274. The court nevertheless seems to have reintroduced the "materially affecting" concept into its interpretation of the second sentence of § 8, as a limitation on the scope of the so-called "second crime" imposed by the Federal Constitution rather than the Massachusetts Legislature. *Id.*, at 786, 359 N. E. 2d, at 1271. But because the court thought appellants had not made a sufficient showing of material effect, their challenge to the statutory prohibition as applied to them also failed.

Appellants' other arguments fared no better. Adopting a narrowing construction of the statute,[7] the Supreme Judicial Court rejected the contention that § 8 is overbroad. It also found no merit in appellants' vagueness argument because the specific prohibition against corporate expenditures on a referendum solely concerning individual taxation is "both precise and definite." *Id.*, at 791, 359 N. E. 2d, at 1273–1274.

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prohibition of § 8 could be squared with the First Amendment. The court below already has held that appellants' proposed expenditures would not meet that test and therefore would be proscribed. This is a finding of fact which we have no occasion to review. But cf. n. 21, *infra*.

Conversely, we would have to reach the question of the constitutionality of the "second" and more restrictive crime only if we first concluded that it is permissible under the First Amendment to limit corporate speech to matters materially affecting the corporation's business, property, or assets Because the "materially affecting" limitation bars appellants from making their proposed expenditures under either the first or second sentence of § 8, we must decide whether that limitation is constitutional.

[7] The court stated that § 8 would not prohibit the publication of "in-house" newspapers or communications to stockholders containing the corporation's view on a graduated personal income tax; the participation by corporate employees, at corporate expense, in discussions or legislative hearings on the issue; the participation of corporate officers, directors, stockholders, or employees in public discussion of the issue on radio or television, at news conferences, or through statements to the press or "similar means not involving contributions or expenditure of corporate funds"; or speeches or comments by employees or officers, on working hours, to the press or a chamber of commerce. 371 Mass., at 789, 359 N. E. 2d, at 1272.

Finally, the court held that appellants were not denied the equal protection of the laws.[8]

II

Because the 1976 referendum has been held, and the proposed constitutional amendment defeated, we face at the outset a question of mootness. As the case falls within the class of controversies "capable of repetition, yet evading review," *Southern Pacific Terminal Co.* v. *ICC,* 219 U. S. 498, 515 (1911), we conclude that it is not moot. Present here are both elements identified in *Weinstein* v. *Bradford,* 423 U. S. 147, 149 (1975), as precluding a finding of mootness in the absence of a class action: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again."

Under no reasonably foreseeable circumstances could appellants obtain plenary review by this Court of the issue here presented in advance of a referendum on a similar constitutional amendment. In each of the legislature's four attempts to obtain constitutional authorization to enact a graduated income tax, including this most recent one, the period of time between legislative authorization of the proposal and its submission to the voters was approximately 18 months. This proved too short a period of time for appellants to obtain complete judicial review, and there is every reason to believe that any future suit would take at least as long. Furthermore, a decision allowing the desired expenditures would be an empty gesture unless it afforded appellants sufficient opportunity prior to the election date to communicate their views effectively.

Nor can there be any serious doubt that there is a "reasonable expectation," *Weinstein* v. *Bradford, supra,* that appel-

[8] Because of our disposition of appellants' First Amendment claim, we need not address any of these arguments.

lants again will be subject to the threat of prosecution under § 8. The 1976 election marked the fourth time in recent years that a proposed graduated income tax amendment has been submitted to the Massachusetts voters. Appellee's suggestion that the legislature may abandon its quest for a constitutional amendment is purely speculative.[9] Appellants insist that they will continue to oppose the constitutional amendment, and there is no reason to believe that the Attorney General will refrain from prosecuting violations of § 8.[10] Compare *Nebraska Press Assn.* v. *Stuart,* 427 U. S. 539, 546–547 (1976), with *Spomer* v. *Littleton,* 414 U. S. 514, 521 (1974).

Meanwhile, § 8 remains on the books as a complete prohibition of corporate expenditures related to individual tax referenda, and as a restraining influence on corporate expenditures concerning other ballot questions. The criminal penalties of § 8 discourage challenge by violation, and the effect of the statute on arguably protected speech will persist. *Storer* v. *Brown,* 415 U. S. 724, 737 n. 8 (1974); see *American Party of Texas* v. *White,* 415 U. S. 767, 770 n. 1 (1974); *Rosario* v. *Rockefeller,* 410 U. S. 752, 756 n. 5 (1973); *Dunn* v. *Blumstein,* 405 U. S. 330, 333 n. 2 (1972). Accordingly, we conclude that this case is not moot and proceed to address the merits.

III

The court below framed the principal question in this case as whether and to what extent corporations have First Amend-

[9] Most of the States, and the District of Columbia, impose graduated personal income taxes. U. S. Dept. of Commerce, Bureau of the Census, State Government Tax Collections in 1977, Table 9, p. 13 (1977). Several States impose a graduated tax on corporate income. Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism, Vol. II, Table 113, pp. 219–222 (1977).

[10] We are informed that the Attorney General also has threatened one of the appellants with prosecution under § 8 for an expenditure in support of a local referendum proposal concerning a civic center. Brief for Appellants 22 n. 7, A–1.

ment rights. We believe that the court posed the wrong question. The Constitution often protects interests broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations "have" First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether § 8 abridges expression that the First Amendment was meant to protect. We hold that it does.

A

The speech proposed by appellants is at the heart of the First Amendment's protection.

> "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill* v. *Alabama,* 310 U. S. 88, 101–102 (1940).

The referendum issue that appellants wish to address falls squarely within this description. In appellants' view, the enactment of a graduated personal income tax, as proposed to be authorized by constitutional amendment, would have a seriously adverse effect on the economy of the State. See n. 4, *supra.* The importance of the referendum issue to the people and government of Massachusetts is not disputed. Its merits, however, are the subject of sharp disagreement.

As the Court said in *Mills* v. *Alabama,* 384 U. S. 214, 218 (1966), "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free

discussion of governmental affairs." If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy,[11] and this is no less true because the speech comes from a corporation rather than an individual.[12] The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.

The court below nevertheless held that corporate speech is protected by the First Amendment only when it pertains directly to the corporation's business interests. In deciding whether this novel and restrictive gloss on the First Amendment comports with the Constitution and the precedents of this Court, we need not survey the outer boundaries of the Amendment's protection of corporate speech, or address the abstract question whether corporations have the full measure of rights that individuals enjoy under the First Amendment.[13]

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[11] Freedom of expression has particular significance with respect to government because "[i]t is here that the state has a special incentive to repress opposition and often wields a more effective power of suppression." T. Emerson, Toward a General Theory of the First Amendment 9 (1966). See also A. Meiklejohn, Free Speech and Its Relation to Self-Government 24–26 (1948).

[12] The individual's interest in self-expression is a concern of the First Amendment separate from the concern for open and informed discussion, although the two often converge. See G. Gunther, Cases and Materials on Constitutional Law 1044 (9th ed. 1975); T. Emerson, The System of Freedom of Expression 6 (1970). The Court has declared, however, that "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U. S. 64, 74–75 (1964). And self-govenment suffers when those in power suppress competing views on public issues "from diverse and antagonistic sources." *Associated Press* v. *United States*, 326 U. S. 1, 20 (1945), quoted in *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 266 (1964).

[13] Nor is there any occasion to consider in this case whether, under different circumstances, a justification for a restriction on speech that would

The question in this case, simply put, is whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection. We turn now to that question.

B

The court below found confirmation of the legislature's definition of the scope of a corporation's First Amendment rights in the language of the Fourteenth Amendment. Noting that the First Amendment is applicable to the States through the Fourteenth, and seizing upon the observation that corporations "cannot claim for themselves the liberty which the Fourteenth Amendment guarantees," *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535 (1925), the court concluded that a corporation's First Amendment rights must derive from its property rights under the Fourteenth.[14]

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be inadequate as applied to individuals might suffice to sustain the same restriction as applied to corporations, unions, or like entities.

[14] The Massachusetts court did not go so far as to accept appellee's argument that corporations, as creatures of the State, have only those rights granted them by the State. See Brief for Appellee 4, 23–25. Cf. MR. JUSTICE WHITE's dissent, *post*, at 809; MR. JUSTICE REHNQUIST's dissent, *post*, p. 822. The court below recognized that such an extreme position could not be reconciled either with the many decisions holding state laws invalid under the Fourteenth Amendment when they infringe protected speech by corporate bodies, *e. g., Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U. S. 85 (1977); *Time, Inc.* v. *Firestone*, 424 U. S. 448 (1976); *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922 (1975); *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546 (1975); *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469 (1975); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974); *New York Times Co.* v. *United States*, 403 U. S. 713 (1971); *Time, Inc.* v. *Hill*, 385 U. S. 374 (1967); *New York Times Co.* v. *Sullivan, supra; Kingsley Int'l Pictures Corp.* v. *Regents*, 360 U. S. 684 (1959); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952), or with decisions affording corporations the protection of constitutional guarantees other than the First Amendment. *E. g., United States* v. *Martin Linen Supply Co.*, 430 U. S. 564 (1977) (Fifth Amendment double jeopardy); *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 353 (1977) (Fourth Amendment). In any event, appellee's argument is inapplicable to two of the appellants. National banks are creatures of federal law and in-

This is an artificial mode of analysis, untenable under decisions of this Court.

> "In a series of decisions beginning with *Gitlow* v. *New York*, 268 U. S. 652 (1925), this Court held that the liberty of speech and of the press which the First Amendment guarantees against abridgment by the federal government is within the *liberty* safeguarded by the Due Process Clause of the Fourteenth Amendment from invasion by state action. That principle has been followed and reaffirmed to the present day." *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 500–501 (1952) (footnote omitted) (emphasis supplied).

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strumentalities of the Federal Government, *Easton* v. *Iowa*, 188 U. S. 220, 229–230 (1903); *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), and their existence is in no way dependent on state law. See 7A Michie, Banks and Banking, ch. 15, §§ 1, 5 (1973 ed.).

In cases where corporate speech has been denied the shelter of the First Amendment, there is no suggestion that the reason was because a corporation rather than an individual or association was involved. *E. g.*, *Young* v. *American Mini Theatres, Inc.*, 427 U. S. 50 (1976); *Pittsburgh Press Co.* v. *Pittsburgh Comm'n on Human Relations*, 413 U. S. 376 (1973); *Kingsley Books, Inc.* v. *Brown*, 354 U. S. 436 (1957). Corporate identity has been determinative in several decisions denying corporations certain constitutional rights, such as the privilege against compulsory self-incrimination, *Wilson* v. *United States*, 221 U. S. 361, 382–386 (1911), or equality with individuals in the enjoyment of a right to privacy, *California Bankers Assn.* v. *Shultz*, 416 U. S. 21, 65–67 (1974); *United States* v. *Morton Salt Co.*, 338 U. S. 632, 651–652 (1950), but this is not because the States are free to define the rights of their creatures without constitutional limit. Otherwise, corporations could be denied the protection of all constitutional guarantees, including due process and the equal protection of the laws. Certain "purely personal" guarantees, such as the privilege against compulsory self-incrimination, are unavailable to corporations and other organizations because the "historic function" of the particular guarantee has been limited to the protection of individuals. *United States* v. *White*, 322 U. S. 694, 698–701 (1944). Whether or not a particular guarantee is "purely personal" or is unavailable to corporations for some other reason depends on the nature, history, and purpose of the particular constitutional provision.

Freedom of speech and the other freedoms encompassed by the First Amendment always have been viewed as fundamental components of the liberty safeguarded by the Due Process Clause, see *Gitlow* v. *New York*, 268 U. S. 652, 666 (1925) (opinion of the Court); *id.*, at 672 (Holmes, J., dissenting); *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 460 (1958); *Stromberg* v. *California*, 283 U. S. 359, 368 (1931); *De Jonge* v. *Oregon*, 299 U. S. 353, 364 (1937); Warren, The New "Liberty" Under the Fourteenth Amendment, 39 Harv. L. Rev. 431 (1926), and the Court has not identified a separate source for the right when it has been asserted by corporations.[15] See, *e. g.*, *Times Film Corp.* v. *Chicago*, 365 U. S. 43, 47 (1961); *Kingsley Int'l Pictures Corp.* v. *Regents*, 360 U. S. 684, 688 (1959); *Joseph Burstyn, supra.* In *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244 (1936), the Court rejected the very reasoning adopted by the Supreme Judicial Court and did not rely on the corporation's property rights under the Fourteenth Amendment in sustaining its freedom of speech.[16]

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[15] It has been settled for almost a century that corporations are persons within the meaning of the Fourteenth Amendment. *Santa Clara County* v. *Southern Pacific R. Co.*, 118 U. S. 394 (1886); see *Covington & Lexington Turnpike R. Co.* v. *Sandford*, 164 U. S. 578 (1896).

[16] The appellant in *Grosjean* argued that "[t]he liberty guaranteed by the fourteenth amendment against deprivation without due process of law is the liberty of NATURAL not of artificial persons." Brief for Appellant in *Grosjean* v. *American Press Co.*, O. T. 1935, No. 303, p. 42; see 297 U. S., at 235. See also *Hague* v. *CIO*, 307 U. S. 496, 518 (1939) (opinion of Stone, J.). But see *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958); *NAACP* v. *Button*, 371 U. S. 415 (1963).

The semantic reasoning of the court below would lead logically to the conclusion that the protection afforded speech by corporations, or, for that matter, other artificial entities and associations, would differ depending on whether the source of the alleged abridgment was a State or the Federal Government. But the States do not have greater latitude than Congress to abridge freedom of speech. The dissenting opinion of MR. JUSTICE REHNQUIST, *post*, at 823, is predicated on the view that the First Amend-

Yet appellee suggests that First Amendment rights generally have been afforded only to corporations engaged in the communications business or through which individuals express themselves, and the court below apparently accepted the "materially affecting" theory as the conceptual common denominator between appellee's position and the precedents of this Court. It is true that the "materially affecting" requirement would have been satisfied in the Court's decisions affording protection to the speech of media corporations and corporations otherwise in the business of communication or entertainment, and to the commercial speech of business corporations. See cases cited in n. 14, *supra.* In such cases, the speech would be connected to the corporation's business almost by definition. But the effect on the business of the corporation was not the governing rationale in any of these decisions. None of them mentions, let alone attributes significance to, the fact that the subject of the challenged communication materially affected the corporation's business.

The press cases emphasize the special and constitutionally recognized role of that institution in informing and educating the public, offering criticism, and providing a forum for discussion and debate.[17] *Mills* v. *Alabama,* 384 U. S., at 219; see

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ment has only a "limited application . . . to the States." See also *Buckley* v. *Valeo,* 424 U. S. 1, 291–292 (1976) (opinion of REHNQUIST, J.). Although advanced forcefully by Mr. Justice Jackson in 1952, *Beauharnais* v. *Illinois,* 343 U. S. 250, 287–295 (1952) (dissenting opinion), and repeated by Mr. Justice Harlan in 1957, *Roth* v. *United States,* 354 U. S. 476, 500–503 (1957) (dissenting opinion), this view has never been accepted by any majority of this Court.

[17] By its terms, § 8 would seem to apply to corporate members of the press. The court below noted, however, that no one "has . . . asserted that [§ 8] bars the press, corporate, institutional or otherwise, from engaging in discussion or debate on the referendum question." 371 Mass., at 785 n. 13, 359 N. E. 2d, at 1270 n. 13. Because none of the appellants claimed to be part of the institutional press, the court did not "venture an opinion on such matters." *Ibid.*

The observation of MR. JUSTICE WHITE, *post,* at 808 n. 8, that media

Saxbe v. *Washington Post Co.*, 417 U. S. 843, 863–864 (1974) (POWELL, J., dissenting). But the press does not have a monopoly on either the First Amendment or the ability to enlighten.[18] Cf. *Buckley* v. *Valeo*, 424 U. S., at 51 n. 56;

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corporations cannot be "immunize[d]" from restrictions on electoral expenditures, ignores the fact that those corporations need not make separately identifiable expenditures to communicate their views. They accomplish the same objective each day within the framework of their usual protected communications.

[18] If we were to adopt appellee's suggestion that communication by corporate members of the institutional press is entitled to greater constitutional protection than the same communication by appellants, the result would not be responsive to the informational purpose of the First Amendment. Certainly there are voters in Massachusetts, concerned with such economic issues as the tax rate, employment opportunities, and the ability to attract new business into the State and to prevent established businesses from leaving, who would be as interested in hearing appellants' views on a graduated tax as the views of media corporations that might be less knowledgeable on the subject. "[P]ublic debate must not only be unfettered; it must also be informed." *Saxbe* v. *Washington Post Co.*, 417 U. S. 843, 862–863 (1974) (POWELL, J., dissenting).

MR. JUSTICE WHITE's dissenting view would empower a State to restrict corporate speech far more narrowly than would the opinion of the Massachusetts court or the statute under consideration. This case involves speech in connection with a referendum. MR. JUSTICE WHITE's rationale would allow a State to proscribe the expenditure of corporate funds at any time for the purpose of expressing views on "political [or] social questions" or in connection with undefined "ideological crusades," unless the expenditures were shown to be "integrally related to corporate business operations." *Post*, at 803, 805, 806, 816, 819, 821. Thus corporate activities that are widely viewed as educational and socially constructive could be prohibited. Corporations no longer would be able safely to support—by contributions or public service advertising—educational, charitable, cultural, or even human rights causes. Similarly, informational advertising on such subjects of national interest as inflation and the worldwide energy problem could be prohibited. Many of these "causes" and subjects could be viewed as "social," "political," or "ideological." No prudent corporate management would incur the risk of criminal penalties, such as those in the Massachusetts Act, that would follow from a failure to prove the materiality to the corporation's "business, property or assets" of such contributions or advertisements. See n. 21, *infra*.

Red Lion Broadcasting Co. v. *FCC*, 395 U. S. 367, 389–390 (1969); *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 266 (1964); *Associated Press* v. *United States*, 326 U. S. 1, 20 (1945). Similarly, the Court's decisions involving corporations in the business of communication or entertainment are based not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas.[19] See *Red Lion Broadcasting Co.* v. *FCC*, *supra*; *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Time, Inc.* v. *Hill*, 385 U. S. 374, 389 (1967). Even decisions seemingly based exclusively on the individual's right to express himself acknowledge that the expression may contribute to society's edification. *Winters* v. *New York*, 333 U. S. 507, 510 (1948).

Nor do our recent commercial speech cases lend support to appellee's business interest theory. They illustrate that the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw. A commercial advertisement is constitutionally protected not so much because it pertains to the seller's business as because it furthers the societal interest in the "free flow of commercial information." *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U. S. 748, 764 (1976); see *Linmark Associates, Inc.* v. *Willingboro*, 431 U. S. 85, 95 (1977).[20]

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[19] The suggestion in MR. JUSTICE WHITE's dissent, *post*, at 807, that the First Amendment affords less protection to ideas that are not the product of "individual choice" would seem to apply to newspaper editorials and every other form of speech created under the auspices of a corporate body. No decision of this Court lends support to such a restrictive notion.

[20] It is somewhat ironic that appellee seeks to reconcile these decisions with the "materially affecting" concept by noting that the commercial speaker would "have a direct financial interest in the speech," Brief for Appellee 19, and n. 12. Until recently, the "purely commercial" nature

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We thus find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. The "materially affecting" requirement is not an identification of the boundaries of corporate speech etched by the Constitution itself. Rather, it amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

Section 8 permits a corporation to communicate to the public its views on certain referendum subjects—those materially affecting its business—but not others. It also singles out one kind of ballot question—individual taxation—as a subject about which corporations may never make their ideas public. The legislature has drawn the line between permissible and impermissible speech according to whether there is a sufficient nexus, as defined by the legislature, between the issue presented to the voters and the business interests of the speaker.

In the realm of protected speech, the legislature is consti-

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of an advertisement was thought to undermine and even negate its entitlement to the sanctuary of the First Amendment. *Valentine* v. *Chrestensen,* 316 U. S. 52 (1942); see *Bigelow* v. *Virginia,* 421 U. S. 809, 822 (1975); *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U. S. 748 (1976). Appellee would invert the debate by giving constitutional significance to a corporation's "hawking of wares" while approving criminal sanctions for a bank's expression of opinion on a tax law of general public interest.

In emphasizing the societal interest and the fact that this Court's decisions have not turned on the effect upon the speaker's business interests, we do not say that such interests may not be relevant or important in a different context.

tutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *Police Dept. of Chicago* v. *Mosley,* 408 U. S. 92, 96 (1972). If a legislature may direct business corporations to "stick to business," it also may limit other corporations—religious, charitable, or civic—to their respective "business" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment.[21] Especially where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people,[22] the First Amendment is

[21] Even assuming that the rationale behind the "materially affecting" requirement itself were unobjectionable, the limitation in § 8 would have an impermissibly restraining effect on protected speech. Much valuable information which a corporation might be able to provide would remain unpublished because corporate management would not be willing to risk the substantial criminal penalties—personal as well as corporate—provided for in § 8. *New York Times Co.* v. *Sullivan,* 376 U. S., at 279; *Smith* v. *California,* 361 U. S. 147, 151 (1959); *Speiser* v. *Randall,* 357 U. S. 513, 526 (1958). As the facts in this case illustrate, management never could be sure whether a court would disagree with its judgment as to the effect upon the corporation's business of a particular referendum issue. In addition, the burden and expense of litigating the issue—especially when what must be established is a complex and amorphous economic relationship—would unduly impinge on the exercise of the constitutional right. "[T]he free dissemination of ideas [might] be the loser." *Smith* v. *California, supra,* at 151; see *Freedman* v. *Maryland,* 380 U. S. 51, 59–60 (1965).

[22] Cf. *Madison School Dist.* v. *Wisconsin Employment Relations Comm'n,* 429 U. S. 167, 175–176 (1976).

Our observation about the apparent purpose of the Massachusetts Legislature is not an endorsement of the legislature's factual assumptions about the views of corporations. We know of no documentation of the notion that corporations are likely to share a monolithic view on an issue such as the adoption of a graduated personal income tax. Corporations, like individuals or groups, are not homogeneous. They range from great multinational enterprises whose stock is publicly held and traded to medium-size

plainly offended. Yet the State contends that its action is necessitated by governmental interests of the highest order. We next consider these asserted interests.

IV

The constitutionality of § 8's prohibition of the "exposition of ideas" by corporations turns on whether it can survive the exacting scrutiny necessitated by a state-imposed restriction of freedom of speech. Especially where, as here, a prohibition is directed at speech itself,[23] and the speech is intimately related to the process of governing, "the State may prevail only upon showing a subordinating interest which is compelling," *Bates* v. *Little Rock,* 361 U. S. 516, 524 (1960); see *NAACP* v. *Button,* 371 U. S. 415, 438–439 (1963); *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S., at 463; *Thomas* v. *Collins,* 323 U. S. 516, 530 (1945), "and the burden is on the government to show the existence of such an interest." *Elrod* v. *Burns,* 427 U. S. 347, 362 (1976). Even then, the State must employ means "closely drawn to avoid unnecessary abridgment . . . ." *Buckley* v. *Valeo,* 424 U. S., at 25; see *NAACP* v. *Button, supra,* at 438; *Shelton* v. *Tucker,* 364 U. S. 479, 488 (1960).

The Supreme Judicial Court did not subject § 8 to "the critical scrutiny demanded under accepted First Amendment

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public companies and to those that are closely held and controlled by an individual or family. It is arguable that small or medium-size corporations might welcome imposition of a graduated personal income tax that might shift a greater share of the tax burden onto wealthy individuals. See Brief for New England Council as *Amicus Curiae* 23–24.

[23] It is too late to suggest "that the dependence of a communication on the expenditure of money itself operates to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment." *Buckley* v. *Valeo,* 424 U. S., at 16; see *New York Times Co.* v. *Sullivan,* 376 U. S., at 266. Furthermore, § 8 is an "attempt directly to control speech . . . rather [than] to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern." *Speiser* v. *Randall,* 357 U. S., at 527. Cf. *United States* v. *O'Brien,* 391 U. S. 367 (1968).

and equal protection principles," *Buckley, supra,* at 11, because of its view that the First Amendment does not apply to appellants' proposed speech.[24] For this reason the court did not even discuss the State's interests in considering appellants' First Amendment argument. The court adverted to the conceivable interests served by § 8 only in rejecting appellants' equal protection claim.[25] Appellee nevertheless advances two principal justifications for the prohibition of corporate speech. The first is the State's interest in sustaining the active role of the individual citizen in the electoral process and thereby preventing diminution of the citizen's confidence in government. The second is the interest in protecting the rights of shareholders whose views differ from those expressed by management on behalf of the corporation. However weighty these interests may be in the context of partisan candidate elec-

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[24] The court justified its deferential standard of review more explicitly in its discussion of appellants' equal protection claim:

"We think that the appropriate standard of review on this issue is not the strict scrutiny that the plaintiffs suggest is apposite but, rather, is the traditional scrutiny involving economic matters. While we agree with the plaintiffs that where free speech is involved strict scrutiny is required . . . , we have already concluded that the plaintiffs do not possess First Amendment rights on matters not shown to affect materially their business, property or assets." 371 Mass., at 793, 359 N. E. 2d, at 1275 (citations omitted).

[25] The court reasoned that the inclusion of business corporations in § 8, but not entities such as unincorporated associations, partnerships, labor unions, or nonprofit corporations, *might* be attributable to the fact that the latter entities do not have shareholders: "Section 8 could represent a legislative desire to protect such shareholders against ultra vires activities . . . ." *Id.,* at 794, 359 N. E. 2d, at 1275. The court found justification for the noninclusion of other entities that have shareholders, such as business trusts and real estate investment trusts, in the supposition that "the Legislature may justifiably have concluded that such trusts did not present the type of problem in this area presented by general business corporations." *Ibid.* The court did not specify which "type of problem" it meant.

tions,[26] they either are not implicated in this case or are not served at all, or in other than a random manner, by the prohibition in § 8.

A

Preserving the integrity of the electoral process, preventing corruption, and "sustain[ing] the active, alert responsibility

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[26] In addition to prohibiting corporate contributions and expenditures for the purpose of influencing the vote on a ballot question submitted to the voters, § 8 also proscribes corporate contributions or expenditures "for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting, or antagonizing the interests of any political party." See n. 2, *supra*. In this respect, the statute is not unlike many other state and federal laws regulating corporate participation in partisan candidate elections. Appellants do not challenge the constitutionality of laws prohibiting or limiting corporate contributions to political candidates or committees, or other means of influencing candidate elections. Cf. *Pipefitters* v. *United States*, 407 U. S. 385 (1972); *United States* v. *Automobile Workers*, 352 U. S. 567 (1957); *United States* v. *CIO*, 335 U. S. 106 (1948). About half of these laws, including the federal law, 2 U. S. C. § 441b (1976 ed.) (originally enacted as the Federal Corrupt Practices Act, 34 Stat. 864), by their terms do not apply to referendum votes. Several of the others proscribe or limit spending for "political" purposes, which may or may not cover referenda. See *Schwartz* v. *Romnes*, 495 F. 2d 844 (CA2 1974).

The overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act was the problem of corruption of elected representatives through the creation of political debts. See *United States* v. *Automobile Workers*, *supra*, at 570–575; *Schwartz* v. *Romnes*, *supra*, at 849–851. The importance of the governmental interest in preventing this occurrence has never been doubted. The case before us presents no comparable problem, and our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office. Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections. Cf. *Buckley* v. *Valeo*, *supra*, at 46; Comment, The Regulation of Union Political Activity: Majority and Minority Rights and Remedies, 126 U. Pa. L. Rev. 386, 408–410 (1977).

of the individual citizen in a democracy for the wise conduct of government" [27] are interests of the highest importance. *Buckley, supra; United States* v. *Automobile Workers,* 352 U. S. 567, 570 (1957); *United States* v. *CIO,* 335 U. S. 106, 139 (1948) (Rutledge, J., concurring); *Burroughs* v. *United States,* 290 U. S. 534 (1934). Preservation of the individual citizen's confidence in government is equally important. *Buckley, supra,* at 27; *CSC* v. *Letter Carriers,* 413 U. S. 548, 565 (1973).

Appellee advances a number of arguments in support of his view that these interests are endangered by corporate participation in discussion of a referendum issue. They hinge upon the assumption that such participation would exert an undue influence on the outcome of a referendum vote, and—in the end—destroy the confidence of the people in the democratic process and the integrity of government. According to appellee, corporations are wealthy and powerful and their views may drown out other points of view. If appellee's arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration. Cf. *Red Lion Broadcasting Co.* v. *FCC,* 395 U. S. 367 (1969). But there has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts,[28] or that

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[27] *United States* v. *Automobile Workers, supra,* at 575.

[28] In his dissenting opinion, MR. JUSTICE WHITE relies on incomplete facts with respect to expenditures in the 1972 referendum election, in support of his perception as to the "domination of the electoral process by corporate wealth." *Post,* at 811; see *post,* at 810–811. The record shows only the extent of corporate and individual contributions to the two committees that were organized to support and oppose, respectively, the constitutional amendment. It does show that three of the appellants each contributed $3,000 to the "opposition" committee. The dissenting opinion makes no reference to the fact that amounts of money expended inde-

there has been any threat to the confidence of the citizenry in government. Cf. *Wood* v. *Georgia,* 370 U. S. 375, 388 (1962).

Nor are appellee's arguments inherently persuasive or supported by the precedents of this Court. Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections, *e. g., United States* v. *Automobile Workers, supra; United States* v. *CIO, supra,* simply is not present in a popular vote on a public issue.[29] To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution "protects expression which is eloquent no less than that which is unconvincing." *Kingsley Int'l Pictures Corp.* v. *Regents,* 360 U. S., at 689. We noted only recently that "the concept that government may restrict the speech of some elements of our society in order

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pendently of organized committees need not be reported under Massachusetts law, and therefore remain unknown.

Even if viewed as material, any inference that corporate contributions "dominated" the electoral process on this issue is refuted by the 1976 election. There the voters again rejected the proposed constitutional amendment even in the absence of any corporate spending, which had been forbidden by the decision below.

[29] See *Schwartz* v. *Romnes, supra,* at 851; *C&C Plywood Corp.* v. *Hanson,* 420 F. Supp. 1254 (Mont. 1976), appeal docketed, No. 76-3118 (CA9, Sept. 21, 1976); *Pacific Gas & Elec. Co.* v. *Berkeley,* 60 Cal. App. 3d 123, 131 Cal. Rptr. 350 (1976); *Advisory Opinion on Constitutionality of 1975 Pub. Act 227,* 396 Mich. 465, 491, 493–495, 242 N. W. 2d 3, 13, 14–15 (1976).

Appellee contends that the State's interest in sustaining the active role of the individual citizen is especially great with respect to referenda because they involve the direct participation of the people in the lawmaking process. But far from inviting greater restriction of speech, the direct participation of the people in a referendum, if anything, increases the need for " 'the widest possible dissemination of information from diverse and antagonistic sources.' " *New York Times Co.* v. *Sullivan,* 376 U. S., at 266 (quoting *Associated Press* v. *United States,* 326 U. S., at 20).

to enhance the relative voice of others is wholly foreign to the First Amendment . . . ." *Buckley,* 424 U. S., at 48–49.[30] Moreover, the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments.[31] They may consider, in making their

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[30] MR. JUSTICE WHITE argues, without support in the record, that because corporations are given certain privileges by law they are able to "amass wealth" and then to "dominate" debate on an issue. *Post,* at 809, 821. He concludes from this generalization that the State has a subordinating interest in denying corporations access to debate and, correspondingly, in denying the public access to corporate views. The potential impact of this argument, especially on the news media, is unsettling. One might argue with comparable logic that the State may control the volume of expression by the wealthier, more powerful corporate members of the press in order to "enhance the relative voices" of smaller and less influential members.

Except in the special context of limited access to the channels of communication, see *Red Lion Broadcasting Co.* v. *FCC,* 395 U. S. 367 (1969), this concept contradicts basic tenets of First Amendment jurisprudence. We rejected a similar notion in *Miami Herald Publishing Co.* v. *Tornillo,* 418 U. S. 241 (1974). There we held that the First Amendment prohibits a State from requiring a newspaper to make space available at no cost for a reply from a candidate whom the newspaper has criticized. The state court had held that "free speech was enhanced and not abridged by the Florida right-of-reply statute, which in that court's view, furthered the 'broad societal interest in the free flow of information to the public.'" *Id.,* at 245. Far more than in the instant case, allegations were there made and substantiated of a concentration in the hands of a few of "the power to inform the American people and shape public opinion," and that "the public has lost any ability to respond or to contribute in a meaningful way to the debate on issues." *Id.,* at 250.

[31] Government is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves. See *Thornhill* v. *Alabama,* 310 U. S. 88, 95 (1940); Meiklejohn, The First Amendment is an Absolute, 1961 S. Ct. Rev. 245, 263. The First Amendment rejects the "highly paternalistic" approach of statutes like § 8 which restrict what the people may hear. *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U. S., at 770; see *Linmark Associates, Inc.* v. *Willingboro,* 431 U. S., at 97; *Whitney* v. *California,* 274 U. S. 357, 377

judgment, the source and credibility of the advocate.[32] But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment. *Wood* v. *Georgia, supra.* In sum, "[a] restriction so destructive of the right of public discussion [as § 8], without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment." [33]

B

Finally, appellee argues that § 8 protects corporate shareholders, an interest that is both legitimate and traditionally within the province of state law. *Cort* v. *Ash,* 422 U. S. 66, 82–84 (1975). The statute is said to serve this interest by preventing the use of corporate resources in furtherance of

(1927) (Brandeis, J., concurring); *Abrams* v. *United States,* 250 U. S. 616, 630 (1919) (Holmes, J., dissenting).

The State's paternalism evidenced by this statute is illustrated by the fact that Massachusetts does not prohibit lobbying by corporations, which are free to exert as much influence on the people's representatives as their resources and inclinations permit. Presumably the legislature thought its members competent to resist the pressures and blandishments of lobbying, but had markedly less confidence in the electorate. If the First Amendment protects the right of corporations to petition legislative and administrative bodies, see *California Motor Transp. Co.* v. *Trucking Unlimited,* 404 U. S. 508, 510–511 (1972); *Eastern Railroad Presidents Conf.* v. *Noerr Motor Freight, Inc.,* 365 U. S. 127, 137–138 (1961), there hardly can be less reason for allowing corporate views to be presented openly to the people when they are to take action in their sovereign capacity.

[32] Corporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected. See *Buckley,* 424 U. S., at 66–67; *United States* v. *Harriss,* 347 U. S. 612, 625–626 (1954). In addition, we emphasized in *Buckley* the prophylactic effect of requiring that the source of communication be disclosed. 424 U. S., at 67.

[33] *Thomas* v. *Collins,* 323 U. S. 516, 537 (1945).

views with which some shareholders may disagree. This purpose is belied, however, by the provisions of the statute, which are both underinclusive and overinclusive.

The underinclusiveness of the statute is self-evident. Corporate expenditures with respect to a referendum are prohibited, while corporate activity with respect to the passage or defeat of legislation is permitted, see n. 31, *supra,* even though corporations may engage in lobbying more often than they take positions on ballot questions submitted to the voters. Nor does § 8 prohibit a corporation from expressing its views, by the expenditure of corporate funds, on any public issue until it becomes the subject of a referendum, though the displeasure of disapproving shareholders is unlikely to be any less.

The fact that a particular kind of ballot question has been singled out for special treatment undermines the likelihood of a genuine state interest in protecting shareholders. It suggests instead that the legislature may have been concerned with silencing corporations on a particular subject. Indeed, appellee has conceded that "the legislative and judicial history of the statute indicates . . . that the second crime was 'tailor-made' to prohibit corporate campaign contributions to oppose a graduated income tax amendment." Brief for Appellee 6.

Nor is the fact that § 8 is limited to banks and business corporations without relevance. Excluded from its provisions and criminal sanctions are entities or organized groups in which numbers of persons may hold an interest or membership, and which often have resources comparable to those of large corporations. Minorities in such groups or entities may have interests with respect to institutional speech quite comparable to those of minority shareholders in a corporation. Thus the exclusion of Massachusetts business trusts, real estate investment trusts, labor unions, and other associations undermines the plausibility of the State's purported concern for the persons who happen to be shareholders in the banks and corporations covered by § 8.

The overinclusiveness of the statute is demonstrated by the fact that § 8 would prohibit a corporation from supporting or opposing a referendum proposal even if its shareholders unanimously authorized the contribution or expenditure. Ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues.[34] Acting through their power to elect

[34] Appellee does not explain why the dissenting shareholder's wishes are entitled to such greater solicitude in this context than in many others where equally important and controversial corporate decisions are made by management or by a predetermined percentage of the shareholders. MR. JUSTICE WHITE's repeatedly expressed concern for corporate shareholders who may be "coerced" into supporting "causes with which they disagree" apparently is not shared by appellants' shareholders. Not a single shareholder has joined appellee in defending the Massachusetts statute or, so far as the record shows, has interposed any objection to the right asserted by the corporations to make the proscribed expenditures.

The dissent of MR. JUSTICE WHITE relies heavily on *Abood* v. *Detroit Board of Education,* 431 U. S. 209 (1977), and *Machinists* v. *Street,* 367 U. S. 740 (1961). These decisions involved the First Amendment rights of employees in closed or agency shops not to be compelled, as a condition of employment, to support with financial contributions the political activities of other union members with which the dissenters disagreed.

Street and *Abood* are irrelevant to the question presented in this case. In those cases employees were required, either by state law or by agreement between the employer and the union, to pay dues or a "service fee" to the exclusive bargaining representative. To the extent that these funds were used by the union in furtherance of political goals, unrelated to collective bargaining, they were held to be unconstitutional because they compelled the dissenting union member " 'to furnish contributions of money for the propagation of opinions which he disbelieves . . . .' " *Abood, supra,* at 235 n. 31 (Thomas Jefferson as quoted in I. Brant, James Madison: The Nationalist 354 (1948)).

The critical distinction here is that no shareholder has been "compelled" to contribute anything. Apart from the fact, noted by the dissent, that compulsion by the State is wholly absent, the shareholder invests in a corporation of his own volition and is free to withdraw his investment at any time and for any reason. A more relevant analogy, therefore, is to the situation where an employee voluntarily joins a union, or an individual voluntarily joins an association, and later finds himself in disagreement

the board of directors or to insist upon protective provisions in the corporation's charter, shareholders normally are presumed competent to protect their own interests. In addition to intracorporate remedies, minority shareholders generally have access to the judicial remedy of a derivative suit to challenge corporate disbursements alleged to have been made for improper corporate purposes or merely to further the personal interests of management.

Assuming, *arguendo,* that protection of shareholders is a "compelling" interest under the circumstances of this case, we find "no substantially relevant correlation between the governmental interest asserted and the State's effort" to prohibit appellants from speaking. *Shelton* v. *Tucker,* 364 U. S., at 485.

V

Because that portion of § 8 challenged by appellants prohibits protected speech in a manner unjustified by a compelling state interest, it must be invalidated. The judgment of the Supreme Judicial Court is

Reversed.

[redacted]

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with its stance on a political issue. The *Street* and *Abood* Courts did not address the question whether, in such a situation, the union or association must refund a portion of the dissenter's dues or, more drastically, refrain from expressing the majority's views. In addition, even apart from the substantive differences between compelled membership in a union and voluntary investment in a corporation or voluntary participation in *any* collective organization, it is by no means an automatic step from the remedy in *Abood,* which honored the interests of the minority without infringing the majority's rights, to the position adopted by the dissent which would completely silence the majority because a hypothetical minority might object.