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Santa Clara County v. Southern Pacific Railroad **(1886)**: corporations are "persons" under the Due Process clause of the 14th Amendment.

Buckley v. Valeo **(1976)**: money = speech, i.e., "this Court has never suggested that the dependence of communication on the expenditure of money operates itself to introduce a non-speech element or to reduce the exacting scrutiny required by the 1st Amendment."

First National Bank of Boston v. Bellotti **(1978)**: Massachusetts passed a law restricting corporate expenditures for political speech from their own treasuries to express corporate points of view in state referenda campaigns. Since this law both burdened political speech and was content based, the Court applied strict scrutiny in examining its constitutionality under the First Amendment, which the law could not survive. Although Justice White famously wrote that "the State need not permit its own creation (i.e., a corporation) to consume it," Justice Powell wrote for the majority that "the inherent worth of speech does not depend on the identity of the source."

Austin v. Michigan Chamber of Commerce **(1990)**: Michigan passed a law barring corporations from making independent expenditures from general treasury funds on behalf of candidates in political campaigns. Writing for the Court, Justice Marshall upheld this law in light of "the 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."

Citizens United v. Federal Election Commission **(2010) (Justice Kennedy)**

Facts: A federal law (2 USC 441b) severely limited corporate and union expenditures to advocate the election or defeat of candidates through any form of media. In January 2008, Citizens United (C-U), a nonprofit corporation, released the movie *Hillary*, essentially a feature length negative advertisement urging viewers to vote against Hillary Clinton, a candidate for her party's nomination for President. Seeking to make Hillary available through video-on-demand, C-U produced two short ads for the movie (which provided C-U's website address) that it ran on broadcast and cable TV. Fearing that the ads violated 2 USC 441b, C-U sought a declaratory judgment from a Federal District Court. That court ruled for the FEC, and C-U appealed to the U.S. Supreme Court.

Issue: Whether sec. 441b violates the First Amendment Holding: Yes

Reasoning: Since 441b burdens political speech, it is subject to strict judicial scrutiny.

Since speech restrictions based on the identity of the speaker are often simply a means to control the content of the speech, *Bellotti* established that the First Amendment does not allow political speech restrictions based on a speaker's corporate identity.

Since the anti-distortion rationale accepted in *Austin* would allow government to ban speech simply because the speaker is an association with a corporate form, *Austin* is now overruled.

Media corporations amass wealth using the corporate form, yet the anti-distortion rationale would allow Congress to ban political speech of media corporations, which is unacceptable.

Most corporations are small, without large amounts of wealth.

"Independent expenditures, including those by corporations, do not give rise to corruption or the appearance of corruption. (The governmental interest accepted in *Buckley* was avoiding quid pro quo corruption), and independent expenditures do not lead to, or give the appearance of (such) corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption."

"The appearance of influence or access … will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The 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. This is inconsistent with any suggestion that the electorate will refuse to take part in democratic governance."

Scalia, Alito, Thomas, concurring: "The 1st Amendment is written in terms of "speech," not speakers. Its text offers no foothold for excluding any category of speaker …."

Stevens, Ginsberg, Breyer, Sotomayor, dissenting:

"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. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process…. The framers took it as a given that corporations could be comprehensively regulated in the service of the public welfare…. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech, it was the free speech of individual Americans that they had in mind…. Unlike natural persons, corporations have "limited liability" for their owners and managers, "perpetual life," separation of ownership and control, and favorable treatment of the accumulation of assets …. Unlike voters in U.S. elections, corporations may be foreign controlled."

Article V, U.S. Constitution:

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose Amendments to this Constitution, ***or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments,*** which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress …."