Center for American Progress
1333 H Street NW, Suite 100E
Washington, DC 20005
202.682.1611
americanprogress.org

Testimony Submitted to the
Senate Committee on Judiciary

In Strong Support of S 2619

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By
Tom Moore, Senior Fellow for Democracy Policy
Center for American Progress

Chair and Members of the Committee,

The Center for American Progress submits this testimony in strong support of S 2619, the Rhode Island Corporate Power Reset Act. My name is Tom Moore. I am a senior fellow for democracy policy at the Center for American Progress. Prior to joining CAP, I served for seven years at the Federal Election Commission as senior counsel and chief of staff to former Chair Ellen L. Weintraub.

And I come to you with good news.

For sixteen years, we have all been told that the only way to undo *Citizens United* is through a federal constitutional amendment or a new Supreme Court.

But there is another way. It is brand new, it is shockingly simple, and it is based on 200 years of foundational corporation law. And it is before you today in S 2619.

All Rhode Island has to do to get corporations out of its politics is decide to no longer grant corporations the power to spend in its politics. That's it.

The core distinction: corporate rights versus corporate powers

The Supreme Court has been asked, over and over, whether corporations have a *right* to spend in politics. What it has never been asked is whether corporations must have the *power* to spend in politics in the first place. As Justice Scalia wrote in his *Citizens United* concurrence: "To be sure in 1791 (as now) corporations could pursue only the objectives set forth in their charters." If Rhode Island defines its artificial entities as entities without political spending power, then political spending is ultra vires—beyond the power granted—and there is nothing left for *Citizens United* to protect.

Here is the clearest way I know to explain it.

You and I do not have the power to fly. I mean, flap-our-arms-and-fly. Our creator did not give us that power. Birds, bats, yes; people, no. Now, if the Supreme Court

announced tomorrow that humans have a constitutional right to fly, none of us would head to the roof of the Rhode Island State House to test it. No court can change the underlying reality that humans simply don't have the power to fly.

Corporations are the same. Rhode Island created its corporations. Rhode Island defines what they are. If Rhode Island defines its corporations as entities that do not have the power to spend in Rhode Island's politics, according to 200 years of unbroken Supreme Court precedent, no court can change that underlying reality.

A fundamentally different legal approach

Across the country, legislatures have spent the last sixteen years attempting to address money in politics through campaign finance regulation. Those efforts have repeatedly failed in federal court—not because the goals were misguided, but because the legal theory underlying them was flawed. Direct regulation of political spending by corporations and similar entities now faces overwhelming constitutional obstacles under existing First Amendment doctrine.

S 2619 takes a fundamentally different approach. Instead of regulating political speech or election activity, it rests on a principle that is both longstanding and firmly within state authority: the power of the state to determine which powers it grants to the artificial entities it creates.

Corporations, limited liability companies, and similar entities do not exist as a matter of natural right. They exist because the state brings them into being and confers specific privileges and powers, most notably limited liability. S 2619 simply defines the scope of those state-granted powers.

This distinction between powers and rights is critical. S 2619 does not restrict the rights of any natural person. Every individual in Rhode Island remains fully free to speak, to spend, to associate, and to participate in politics. The bill instead answers a prior and more basic question: whether state-created entities may claim political spending as a power granted by the state. That is a question the state is unquestionably entitled to decide.

The historical foundation

Some may find this approach unfamiliar, but legislation of this kind would have been quite ordinary a century ago. Corporate charters were specific grants of authority, and legislatures routinely determined what activities corporations could and could not undertake. In the landmark 1819 case *Trustees of Dartmouth College v. Woodward*, Chief Justice John Marshall established that "[a] corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it." That principle has never been overturned.

What makes this bill look unusual today is simply that legislatures have not exercised this particular authority very often in modern corporate statutes. Over the past century and a half, states competed for corporate registrations by issuing increasingly broad

general charters, granting corporations virtually unlimited powers. But as the Supreme Court has repeatedly affirmed, the underlying authority to define and limit corporate powers never disappeared. It simply went quiet: unused, untested, and unmentioned—until now.

Courts have consistently interpreted this authority so sweepingly that it may startle those accustomed to the much more narrowly defined boundaries of campaign finance law. In 1882, in *Greenwood v. Freight Co.*, the Supreme Court held that a legislature may exercise its authority to rewrite its corporation code for any reason whatsoever—or for no reason: "All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter."

Why this approach survives constitutional challenge

Some constitutional concerns raised about this type of legislation treat it as though it were regulating speech in the manner of a campaign finance statute. Respectfully, that is not what S 2619 does. It addresses the earlier question of corporate authority—an area of law historically defined by legislatures, not courts.

Citizens United addressed restrictions on political spending by corporations that already possessed the authority to engage in such spending. The Court held that when corporations are fully empowered to engage in political advocacy, the government may not suppress that speech based on the speaker's identity. But the Court did not hold that states are constitutionally required to grant corporations the power to spend money in elections in the first place.

To defeat this approach, a court would have to uproot doctrines that have been bedrock corporate law for nearly two centuries. It would have to shatter the rule of *Dartmouth College*, discard the long-held principle that a state may revise or revoke corporate privileges at will, apply strict scrutiny to a state's decision to grant or withhold powers—something courts have never done—and breach the separation of powers principle by effectively writing corporate powers into existence from the bench. Courts hold erasers, not pens. Only a legislature can write provisions into law.

Moreover, every corporation in every state exists subject to the understanding that at any time, the state has the power to rewire its charter by rewriting the law that underlies it. As the Supreme Court held in 1892 in *Hamilton Gaslight & Coke Co. v. City of Hamilton*: "The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation."

How S 2619 works

S 2619 is designed to survive litigation. It does its substantive work in its definitions, where courts cannot easily strike words. The bill:

- Revokes all previously granted artificial-person powers and regrants a narrower set of powers sufficient for ordinary business, charitable, cooperative, and organizational activity—but excluding political spending power (§7-9.1-3).

- Defines "political spending power" precisely as the legal capacity to pay, contribute, expend, transfer, or disburse money or anything of value to support or oppose candidates, parties, committees, ballot questions, or initiatives (§7-9.1-2).

- Appropriately includes a facilities-based press carveout for bona fide news and commentary and an exception for political committees so they can do the job they were designed to do (§7-9.1-2(4)).

- Makes unauthorized political spending ultra vires and void—void from the beginning, incapable of ratification, and creating no enforceable rights or obligations (§7-9.1-5).

- Provides real enforcement consequences, including forfeiture of all charter privileges—limited liability, perpetual duration, succession in entity name—with reinstatement available only upon full disgorgement, certification of future compliance, and satisfaction of any additional conditions (§7-9.1-6).

- Includes a nonrevival rule so courts cannot take a shortcut and snap the law back to broader preexisting power grants, and a preference clause making clear that it is the will of the General Assembly that an artificial person shall possess no powers at all rather than acquire political spending power (§7-9.1-11).

- Applies to foreign entities transacting business in or holding property in Rhode Island, and conclusively deems any entity that undertakes, finances, or directs political spending in Rhode Island to be transacting business here (§7-9.1-2(1), §7-9.1-4).

- Amends §17-25-10.1 by adding subsection (h)(3), which cross-references the Corporate Power Reset Act's definitions to make artificial-person political spending an unlawful campaign contribution or expenditure under Rhode Island's existing campaign finance framework. This integration is an especially effective feature of the Rhode Island bill.

Addressing dark money

This approach also squarely addresses the modern dark-money problem. Today, a significant share of political spending flows through 501(c)(4) organizations and similar entities that exist entirely by virtue of state law and operate with little or no donor transparency. Traditional campaign finance regulation has largely failed to reach these structures. A powers-based approach does. If an entity's existence and limited liability are conferred by state law, the state has the authority to define the scope of its powers—and to decide that political spending is not among them.

A growing national movement

Rhode Island is joining a growing national movement. Legislation based on this framework has now been introduced in more than a dozen states, including California, Georgia, Hawai'i, Maryland, Minnesota, Missouri, New York, Vermont, Virginia, and

Washington. Potential sponsors have draft bills in hand in Kansas, North Carolina, and Pennsylvania. Sponsors in Connecticut have indicated that they plan to introduce similar legislation during the 2027 legislative session. In Montana, supporters have qualified a statutory ballot initiative for the 2026 ballot. In Hawai'i, the Corporate Power Reset Act has advanced further through the legislative process than any version introduced elsewhere in the country.

S 2619 is among the strongest and most carefully constructed versions of this approach introduced anywhere in the country.

* * *

The first code name for this project was Operation Ruby Slippers—because as Glinda, the Good Witch of the North, told Dorothy: "You've always had the power, my dear. You just had to learn it for yourself."

The power to keep corporate money out of Rhode Island politics has been sitting in Rhode Island law for a very long time. You have always had it. S 2619 is, I suspect, how many of you are learning that you have it.

Getting this bill passed into law is not going to be as simple as tapping your ruby slippers together three times; it's going to take some effort and political courage.

But it's what the people of Rhode Island want—and deserve.

Many elected leaders—including many of you, I'm sure—have decried *Citizens United* over the years. We have all talked the talk; S 2619 is our opportunity to walk the walk.

For these reasons, the Center for American Progress strongly urges the Committee to move S 2619 forward. It offers a durable and legally sound path forward—one that addresses corporate and dark money at its root while fully respecting both constitutional limits and the rights of individual citizens.

I have fielded thousands of questions on this approach over the past year, and I welcome all of yours. I can be reached at tmoore@americanprogress.org.

ATTACHMENT A

The Corporate Power Reset That Makes *Citizens United* Irrelevant

Tom Moore
Senior Fellow
Democracy Policy
Center for American Progress

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https://www.americanprogress.org/article/the-corporate-power-reset-that-makes-citizens-united-irrelevant/

The Corporate Power Reset That Makes Citizens United Irrelevant

By using their authority to define what corporations are—and what powers they hold—states can end the era of corporate and dark money in U.S. politics.

Workers erect scaffolding around the exterior of the U.S. Supreme Court building in Washington, D.C., on April 4, 2025. (Getty/Bill Clark)

Introduction and summary

Ever since the Supreme Court shattered campaign finance law with its decision in *Citizens United v. Federal Election Commission* in 2010,[1] Americans have been told there are only two ways to stop corporate and "dark" money in politics: Amend the U.S. Constitution or wait for the court to

undo what it has done.

That is flat wrong.

Citizens United held that government may not regulate a corporation's right to spend money independently in elections. But the court did not say what a corporation is—it could not. That question lies beyond even the Supreme Court's reach.

> *"Each state creates and defines its corporations. It need not permit its creations to consume it."*

In American law, corporations are not born; they are built. Corporations are creatures of statute, not of nature. And for more than two centuries, the power to build them—to define their form, limits, and privileges—has belonged to the states and only to the states.

In the republic's early years, states exercised that power with care. They granted charters on a case-by-case basis and drew corporate powers narrowly. That changed in the mid-1800s, when states began offering general incorporation by default, no longer paying close attention to the powers they were handing out. And that has been the status quo ever since.

However, the underlying authority to define and limit corporate powers never disappeared. It simply went quiet: unused, untested, and unmentioned—until now. This report names that authority, explains it, and shows how states can reclaim it to, in effect, undo *Citizens United* by executing a reset of their corporations' powers. The sovereign authority to decide which powers states grant to the corporations they charter includes the authority to not grant their corporations the power to spend in politics.[2]

This truth has been hiding in plain sight, gathering dust for more than a century, simply because no one thought to look its way. "Why not?" asks University of Chicago law professor Vincent S.J. Buccola. "One possibility is that the average legislator thinks cases such as *Citizens United* and *Hobby Lobby* were sensibly decided. This might be true—it is unlikely—but in any event it is uninteresting. Another possibility is that legislators do not know their own legislative authority. If so, maybe they will soon discover it."[3]

This report aims to ignite that discovery. It examines the contours of states' vast corporation-defining powers, examines challenges to this approach, and provides a legislative line of attack that can be enacted by state legislatures or by ballot initiative to rid ballot issues and local, state, and federal elections of corporate and dark money spending.

The legal strategy developed by the Center for American Progress—the "Corporate Power Reset"—will, state by state, drain corporate and dark money from American politics. It does not overturn *Citizens United*; it makes it irrelevant.

Corporations are pure creatures of state law. And for more than two centuries, the Supreme Court has affirmed that states have virtually unlimited authority to modify and withdraw the powers they grant to their corporations.

This report explains how every state can use that authority to remove corporate and dark money from its local, state, and federal politics.

CAP's approach is already on the move in Montana, where local organizers have drafted and submitted a constitutional initiative for voters to consider in 2026—the first step in a movement built to spread nationwide.[4]

Citizens United: A primer

Citizens United has reshaped American campaign finance at every level of

government since 2010. The decision tossed aside a century of tight regulation over corporate political spending and threw open the floodgates for the unlimited super PAC spending and undisclosed dark money that dominate the U.S. political system today.[5]

The case had an immediate and dramatic effect. The reported independent expenditures of outside groups exploded by more than 28-fold from 2008 to 2024 (from $144 million to $4.21 billion).[6] Unreported money also skyrocketed. "Dark money groups spent millions influencing the 2024 election," reports the Campaign Legal Center. "For instance, Future Forward PAC, a super PAC that supports Democratic candidates, reported a $205 million contribution from an affiliated dark money group. Voters had no idea who spent these millions of dollars trying to influence their vote in the 2024 election, and the true source(s) of this spending will most likely remain unknown."[7]

What is a corporation?

Corporations are so ubiquitous today that it is easy to forget they are legal inventions, not naturally occurring entities. They have not always existed—and when they first appeared, they looked nothing like they do now.

> *"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law." – Chief Justice John Marshall, Trustees of Dartmouth College v. Woodward*

In his dissent in the 1978 Supreme Court case *First National Bank of Boston v. Bellotti*, Justice Byron White provided a comprehensive definition of a "corporation":

> Corporations are artificial entities created by law for the purpose of

> furthering certain economic goals. In order to facilitate the achievement of such ends, special rules relating to such matters as limited liability, perpetual life, and the accumulation, distribution, and taxation of assets are normally applied to them. States have provided corporations with such attributes in order to increase their economic viability and thus strengthen the economy generally.[8]

Scholars have floated many different theories of the corporation over the years,[9] but the Supreme Court's first stab at it has never been superseded.[10] American governments' relationship to corporations remains defined by a decision written by Chief Justice John Marshall in 1819, *Trustees of Dartmouth College v. Woodward*. Chief Justice Marshall wrote:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. . . . The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country; and this benefit constitutes the consideration, and, in most cases, the sole consideration of the grant.[11]

The principle that a corporation is limited to its charter remains good law. "To be sure in 1791 (as now) corporations could pursue only the objectives set forth in their charters," wrote Justice Antonin Scalia in his concurring opinion in *Citizens United*.[12]

That principle was set out forcefully in 1837 in *Charles River Bridge v. Warren Bridge,* where the Supreme Court reached back to English common law to hold that the breadth of corporate charters must be strictly construed in favor of the public—and ambiguity must cut against the corporation:

> This, like many other cases, is a bargain between a company of adventurers and the public, the terms of which are expressed in the

> statute; and the rule of construction in all such cases, is now fully established to be this; that any ambiguity in the terms of the contract, must operate against the adventurers, and in favour of the public, and the plaintiffs can claim nothing that is not clearly given them by the act.[13]

This canon—that ambiguity in corporate powers cuts against the corporation—is foundational to state corporate authority. If a state declines to confer political powers upon its creations, none can be inferred to exist.

This strict approach to charter interpretation reflects a broader concern: Left unchecked, corporations pose special dangers to democracy. In his *Bellotti* dissent, Justice White sounded a warning about corporate political spending that rings even truer today than it did in 1978. While state rules may have allowed corporations to strengthen the economy, "It has long been recognized … that the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process."[14]

The *Bellotti* majority held corporations in only slightly higher regard than Justice White, even as it held that corporations could spend on issue speech (but not in candidate elections):

> 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. 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.[15]

Between 1978 and 2010, the idea that it was important for the government to prevent elected representatives from being corrupted by corporate political spending went from "never been doubted" to "abruptly overturned."

The *Citizens United* court simply walked away from the concept with little analysis or explanation. "While a single *Bellotti* footnote purported to leave the question open," Justice Anthony Kennedy wrote, "this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."[16]

Citizens United's holding that independent spending cannot, as a matter of law, be corrupting threw open the floodgates to the current era of unlimited corporate political spending.

The ruling built upon the Supreme Court's 1976 decision in *Buckley v. Valeo,* which held that the primary governmental interest served by federal campaign finance laws was "the prevention of actual and apparent corruption of the political process" and that any restriction that did not directly serve that interest was unconstitutional.[17]

So, under *Citizens United* and *Buckley*, since independent spending cannot be corrupting, it cannot be regulated. In the real world since 2010, this has shown to be absurd—particularly the flat statement that unlimited corporate independent political spending cannot possibly even create the appearance of corruption. But it is, for the foreseeable future, the law.

Notably, though, *Citizens United* did not recognize that corporations possessed their own right to spend in candidate elections. Instead, the court recognized the right of the nonprofit corporation Citizens United, as an association of citizens, to exercise the collected individual rights of the U.S. citizens who gathered to create it.[18]

The decision also led to the creation of dark money groups, nonprofit corporations that operate under Section 501(c)(4) of the federal tax law as

"social welfare organizations" and spend in politics.[19] These groups are not required to disclose their donors and may spend in politics as long as their "major purpose" is not political, in which case they would have to register as a political committee.[20]

Citizens United seemed to slam the door on government's ability to stem corporate and dark money spending in politics. But states—either through their legislators or their citizens wielding ballot initiatives—can limit corporate political activity and dark money spending simply by redefining what their corporations are. By executing the Corporate Power Reset outlined in this report, states can reclaim the ability to draw the lines where they want them to be.

Rights versus powers

Every Supreme Court case on corporate political speech has asked the same question: Must a corporation have the *right* to speak? What the Court has never said—because it has never been asked—is that corporations must have the power to speak in the first place. This silence makes sense, since for more than a century, states have granted corporations the power to conduct all lawful acts and activities, so corporate power to speak is a question that does not come before the Supreme Court. But, as Buccola notes, "[O]ne needs to distinguish between the related but distinctive concepts of corporate rights and corporate powers."[21]

Because states have granted corporations powers very similar to humans for the past century and a half (for example, the Commonwealth of Virginia's corporation law currently grants corporations "the same powers as an individual to do all things necessary or convenient to carry out its business and affairs"[22]), courts have treated their rights similarly in the modern era.

But the power relationship humans and corporations have to government is quite different. America was founded on the proposition that humans are created fully empowered to act in the world:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.[23]

Humans are born with a full set of powers; they are not given to them by the government. In fact, the opposite is true: As the declaration states, government derives all its power from the consent of the governed.

Corporate power to act in the world is significantly different. Corporations are pure creatures of law; they do not exist without law and have zero powers until a government grants them some. Once the law, through corporation statutes, grants a corporation the power to do something, the law, through regulation, shapes its rights to do that thing.[24]

The right of humans to spend in politics is unquestioned because their power to do so is inherent and inviolable. Courts have held the right of corporations to spend in politics to be parallel to humans' because in the modern era, states have granted corporations the powers of humans. But if a state were to no longer grant that power to its corporations, the right could no longer attach; there would be nothing to attach it to.

> *"Corporations are pure creatures of law; they do not exist without law and have zero powers until a government grants them some."*

Though the Supreme Court did not use these exact terms, *Citizens United* centered on the ability of government to regulate the right of corporations to exercise powers of political speech that the state had granted them. When the court wrote, "Citizens United is a nonprofit corporation,"[25] it was a bit of shorthand. The long version is: *Citizens United is a nonprofit corporation to*

which the Commonwealth of Virginia has granted the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, among them (since Virginia law does not specify otherwise), the power to spend independently in candidate elections.

And because Citizens United was an entity to which Virginia had granted the power to spend in elections, the court found that Citizens United was an entity that had the right to spend in elections. Had Citizens United shown up in court as an entity to which Virginia had not given the power to spend in elections, the analysis would have to have been quite different.

A footnote in *Citizens United* itself underscores that the First Amendment comes into play only after a state chooses to grant corporations the power to engage in political spending. In his concurrence, Justice Scalia dismissed as irrelevant the dissent's claim that the common law was generally interpreted as prohibiting corporate political spending: "Of course even if the common law was 'generally interpreted' to prohibit corporate political expenditures as ultra vires [beyond its authority and therefore void], that would have nothing to do with whether political expenditures that were authorized by a corporation's charter could constitutionally be suppressed."[26] The necessary inverse is clear: When the state does withhold that power, it may treat any corporate political spending as unauthorized and void without triggering First Amendment scrutiny.

Think of it this way: Humans are born with the inherent power to live freely, pursue happiness, and shape their destiny. But they have not been granted the power to fly. Birds have, bats, pterodactyls—but not humans. It is useless to discuss whether humans have a right to fly, because without the power to do so, the right to do so has no meaning. Even if the Supreme Court decreed that humans had a constitutional right to fly, there is no amount of arm flapping that would result in humans taking to the skies, because they would still lack that ability. This lack of power to fly could not be held to infringe on the right to fly that the Supreme Court had recognized. It is simply an

underlying reality that no court—not even the Supreme Court—can touch.

> *"Even if the Supreme Court decreed that humans had a constitutional right to fly, there is no amount of arm flapping that would result in humans taking to the skies, because they would still lack that ability."*

Likewise, when a state exercises its authority to define corporations as entities without the power to spend in politics, it will no longer be relevant to discuss whether the corporations have a right to spend in politics, because without the power to do so, the right to do so has no meaning.

Every scrap of corporate speech jurisprudence centers on rights and the authority of government to regulate them—and courts have consistently held that authority to be sharply circumscribed. The jurisprudence regarding states' authority to grant powers to the corporations they create is entirely separate, and for more than a century, courts have consistently held that power-granting authority to be all but absolute.

State corporation laws

Notably, corporations are not just creatures of law; they are creatures of state law.[27] And the states that create them have full authority to decide what powers they do and do not possess. The Supreme Court wrote in 1979 in *Burks v. Lasker,* "[T]he first place one must look to determine the powers of corporate directors is in the relevant State's corporation law. … [I]t is state law which is the font of corporate directors' powers. By contrast, federal law in this area is largely regulatory and prohibitory in nature—it often limits the exercise of directorial power, but only rarely creates it."[28]

In 2014's *Burwell v. Hobby Lobby Stores, Inc.,* the Supreme Court held that

state corporate law dictates how a corporation can establish its governing structure and ordered federal courts to defer to state law: "Courts will turn to that structure and the underlying state law in resolving disputes."[29]

When one does turn to a state's underlying corporation law, one finds remarkable unanimity. Every state in the nation charters corporations and does so by issuing what is called a "general corporate charter," a document that allows a state's corporations to engage in all lawful acts and activities.[30]

This was not always the case throughout U.S. history. At the time of the American Revolution, writes University of Pennsylvania law professor Elizabeth Pollman, "Most businesses were organized as sole proprietorships and partnerships rather than as corporations. … By the end of the eighteenth century, the number of corporations increased to around 300."[31]

And the charters that states issued to these corporations were vastly different from the ones seen today. "As of the Founding, there were no business corporations operating under so-called general corporation statutes," note corporate law experts Leo E. Strine, Jr. and Nicholas Walter. "Rather, the only extant business corporations were specifically created by legislatures with detailed charters that their managers were obligated to follow with fidelity."[32]

For example, states "routinely issued corporate charters prohibiting a corporation from making investments in other corporations, or from incurring debt, or issuing capital stock, either at all or in excess of specified limitations, or from engaging in any business other than the single activity set forth in the charter, the enforceability of which were assumed and never questioned," writes scholar David B. Simpson.[33]

These limited charters did not include the authorization to engage in political speech. Harvard law professor John C. Coates IV writes, "The fact that corporations could only act in ways and to pursue ends authorized in their charters means that – until late in the nineteenth century, when 'general

purpose' clauses became common in corporate charters – none of the corporations in existence at the time the First Amendment … was adopted was legally authorized to engage in speech as a business activity, particularly political speech."[34]

"By the 1850s," writes Pollman, "Many states had enacted 'enabling' corporate laws eliminating the need for legislative action to incorporate. These general incorporation laws turned the special privilege of incorporation for purposes like public works into a mere administrative formality."[35]

States adopted general corporate charters as they competed for corporations' business, and over time, such broad charters have become entirely unremarkable.[36] But "ubiquitous" is not a synonym for "required"; nothing in U.S. federal or state law commands states to issue every possible power to every corporation. NYU law professor Richard A. Epstein notes that the change came "largely through competition between states in the chartering market, rather than through application of any constitutional principle."[37]

"We should not confuse a longstanding custom or competitive 'race' among states to craft attractive, business-friendly laws with legal or historical necessity, even if those practices reach deep into the nineteenth century," writes Washington & Lee law professor Lyman P.Q. Johnson. "Rather, for a long stretch of history, corporations have been permitted to advance private interests and corporate law itself has been deregulatory, but only because that particular approach was thought to be socially beneficial."[38]

When states "more or less ceased to restrict corporate powers," notes Buccola, "they did so as a matter of political expediency rather than legal compulsion. No doctrine in the development of modern corporate law suggests that the states surrendered their constitutional authority over domestic corporations' powers."[39]

Every state may have moved to granting general charters, but every state also held onto the power to create, define, and redefine corporations as it sees fit. This power is undimmed. "[L]egislatures that had moved to adopt general corporation statutes did so on the assumption that they reserved the power to restrict corporations from engaging in conduct inconsistent with the public interest," write Strine and Walter. "That is, corporations remained creatures of the state in the sense that they were granted a legal existence on the condition that they operate within the constraints imposed upon them by society."[40]

"Social control over corporations through corporate statutes may have substantially declined in the twentieth century," writes Johnson, "But it remains a potentially potent instrument."[41]

We see this play out in *Hobby Lobby,* a case that appears at first glance to greatly favor corporations. In *Hobby Lobby,* the Supreme Court held that a U.S. Department of Health and Human Services (HHS) rule requiring for-profit corporations to provide health insurance coverage for contraception violated the religious rights of the corporation's owners. "[T]he purpose of extending rights to corporations is to protect the rights of people associated with the corporation," wrote Supreme Court Justice Samuel Alito for the majority.[42]

Key to the plaintiff corporations' rights was the powers their home states had granted them. "[T]he laws of those States permit for-profit corporations to pursue 'any lawful purpose' or 'act,'" Justice Alito noted. Thus, he wrote, the corporations' power included "the pursuit of profit in conformity with the owners' religious principles."[43]

Justice Alito also noted that states reserve the right to limit those powers: "[T]he objectives that may properly be pursued by the companies in these cases are governed by the laws of the States in which they were incorporated."[44]

States exert this sort of control over their corporations already. Delaware's corporation code, for example, declines to grant the power to spend in elections to one category of its corporations: private foundations.[45] If the state has the authority to decline to grant election spending power to one type of its corporations, it would follow that it has the authority to do so for all of its corporations.

How states can execute a Corporate Power Reset to keep corporations out of politics

Between their corporation statutes and their constitutions, almost every state's law contains three provisions that provide the tools necessary to keep corporations out of its politics.

First, each state's laws state starkly and clearly that the state can alter—or revoke—its corporation law at any time, for any reason. In Florida, for example, "The Legislature has power to amend or repeal all or part of this chapter at any time."[46]

In the landmark 1819 case *Trustees of Dartmouth College v. Woodward*, the Supreme Court ruled that New Hampshire could not take over Dartmouth's assets, but only because there had been no provision in the law that had chartered Dartmouth that would allow the state to do so.[47] Supreme Court Justice Joseph Story suggested in his concurring opinion that states amend their laws to include such a provision.[48] They did so quickly.[49] Such provisions are classified as "reserved powers" of the state.

Second, every change in a state's corporation law applies to existing corporations as well as new corporations. In Florida, for example, "The provisions of this chapter extend to all corporations."[50]

According to the Supreme Court, these two provisions mean that every corporation in every state exists subject to the understanding that at any time, the state has the power to rewire its charter by rewriting the law that

underlies it.[51] "This reservation of power to alter or revoke a grant of special privileges necessarily became a part of the charter of every corporation formed under the general statute providing for the formation of corporations," the court held in 1892 in *Hamilton Gaslight & Coke Co. v. City of Hamilton*.[52] "The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation."[53]

Although this state power has remained largely dormant since the mid-1800s, courts have consistently interpreted it so sweepingly that it may startle those accustomed to the much more narrowly defined boundaries of campaign finance law. A legislature can exercise its authority to rewrite its corporation code for any reason whatsoever—or for no reason. In 1882 in *Greenwood v. Freight Co.,* the Supreme Court held*,* "All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it, or on the soundness of the reasons which prompted it."[54]

Moreover, in *Hamilton Gaslight*, the court held that the effect on the corporation or other parties does not matter. A legislature may act to revoke a corporation's powers "whatever may be the motive of the legislature, or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it."[55]

The Supreme Court has routinely upheld states' use of reserved powers to alter preexisting corporate charters in the public interest. For instance, in *Looker v. Maynard*,[56] the court sustained new cumulative voting requirements applied to earlier-chartered corporations; in *Polk v. Mutual Reserve Fund Life Association*,[57] it allowed reorganizations that changed corporate purposes; and in *Sutton v. New Jersey*,[58] the court upheld a new requirement that preexisting street railway corporations transport police officers for free. Across these decisions, the court emphasized that shareholders had no vested right in any given corporate power once a state

had reserved authority to amend corporate charters (which all of them have).

History offers striking examples of corporate power curtailment. The Texas Constitution of 1876 provides an early example. In response to concerns about corporate influence over currency, Texas lawmakers prohibited state-chartered banks from issuing bills of credit, an explicit revocation of an already-granted power.[59] Later, in 1913, New Jersey famously enacted the "Seven Sisters" acts under Gov. Woodrow Wilson (D), sharply limiting holding company privileges and forcing trusts to unwind or relocate.[60] These historical rollbacks demonstrate the authority held by states to reduce corporate powers.

Moreover, courts have routinely rejected reliance-based challenges when states alter corporate capacities. In *A.P. Smith Mfg. Co. v. Barlow,*[61] shareholders argued that a donation to Princeton was beyond its authority *("ultra vires")* because the company's original 1896 charter contained no such authority. But New Jersey had expanded the charitable donation powers it granted its corporations 20 years before the lawsuit was brought, and the state's Supreme Court upheld the donation, emphasizing New Jersey's "reserved power" to expand or modify corporate authority—even retroactively.

This is not how most people think about the relationship between states and corporations. Because states have given corporations virtually free rein for so long through general corporate charters, it is easy to forget that state law still authorizes, shapes, and stands behind every corporate charter, and that the states have retained the power to withhold some or all of those powers. "In modern practice, it has become customary to authorize corporations more broadly to engage in any lawful activity, but this does not render more restrictive grants of authority less enforceable than they once may have been," writes Simpson.[62]

From 1837 onward, starting with *Charles River Bridge,* the Supreme Court

has held that governments' authority over corporations does not diminish over time. "A state ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in preserving it undiminished,"[63] the court wrote. "The continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was designed to perform, transferred to the hands of privileged corporations."[64]

Delaware's Court of Chancery, long renowned for its expertise in corporate law, explained in 1900 that states held onto their authority over corporations "as a protection against improvident grants of privileges which are afterwards seen to be oppressive, or injurious to the public, or are so altered in practical effect, by changes consequent upon unforeseen conditions, as to become so."[65]

The **third** useful corporation law provision concerns corporations not chartered in the state, known as "foreign corporations."[66] This provision determines which powers a state grants to out-of-state corporations. When Florida, for example, grants a foreign corporation from Delaware the authority to operate in the state, it "does not authorize a foreign corporation to engage in any business or exercise any power that a corporation may not engage in or exercise in this state."[67]

This provision gives the first two their real power—a state that moves to no longer grant its domestic corporations the power to spend in elections is also denying that power to corporations chartered in the other 49 states.

Notably, the operation of the foreign corporation provision in each state's law means that this approach does not depend on its being adopted by Delaware, even though the state is home to the lion's share of major corporate registrations.[68] Every state that adopts this approach keeps every Delaware corporation out of its politics.[69]

None of this is new. Courts have long recognized the states' authority to circumscribe the powers of out-of-state corporations operating within their borders. For instance, in *Paul v. Virginia* in 1869, the Supreme Court noted, "The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created." It held that a state could decline to grant a foreign corporation powers to act within its borders that are "prejudicial to their interests or repugnant to their policy."[70] That holding remains good law. A state may refuse corporate political powers to any out-of-state entity whose activities it finds contrary to public policy.

> *"The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created." – U.S. Supreme Court in Paul v. Virginia*

Legal questions

Even small steps backing away from unlimited general corporate charters would represent a significant departure from how states have governed their corporations since the mid-1800s. It would be a sharp change in course, but would it be legal?

UCLA law professor Stephen Bainbridge, a renowned corporate law expert, in response to that question, wrote: "Would that fly? As a matter of corporate law, I assume so. In many states, many state statutes qualify the broad grants of power conferred by statutes like [Model Business Corporation Act] § 3.02 by including express limitations on the powers corporations may exercise."[71]

Corporation law is just the first hurdle. A far higher bar to clear is constitutional law, which trips up most legislation in this area of endeavor.

But while the Corporate Power Reset would undoubtedly face constitutional challenges, it fully complies with Supreme Court case law.

The Corporate Power Reset outlined in this report is unlike anything this court has considered. Every corporate speech case that has come before the Supreme Court in modern history has two facts in common: They all involved corporations that had been granted unlimited powers to act by their chartering states, and they all involved government efforts to regulate their right to act.

Scholar David B. Simpson noted that "decisions holding that corporate speech enjoys First Amendment protection [have never] directly confronted the implications of the *Dartmouth College* rule: that because corporations possess only the powers set forth in their charters, they would not inherently have a right to rely on First Amendment assurances in the face of charter limitations on their political speech and spending."[72]

As a practical matter, because this approach employs states' power-granting authority and not their authority to regulate, it would not be easy for a litigant to compel the Supreme Court to intervene. Litigants tread on familiar ground when they ask the Supreme Court to strike down state and federal restrictions on corporate political spending. The court has done so often and with enthusiasm.

This is not that. The Corporate Power Reset does not propose that states enact restrictions on any corporate rights. Instead, it proposes that states act to redefine the powers of corporations within their borders. This is not just a semantic difference. "[D]eclining to grant a power to do some act is importantly different from invading a person's right to do an act it is empowered to do," notes Buccola.[73]

A litigant seeking federal court review of a state's action to grant fewer powers to its corporations would be asking federal courts to go beyond their constitutional authority in the following two distinct ways:

Federalism: A litigant asking a federal court to assert jurisdiction over state corporation creation law would run into the 10th Amendment, which limits the federal government's reach to its enumerated powers.[74] Corporation law is state law. As the Supreme Court held in *CTS Corp. v. Dynamics Corp. of America,* "No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations."[75] While the Supreme Court has the final word on the federally guaranteed rights of corporations, the court has also recognized throughout American history that states have sovereign authority to decide which powers to grant to the corporations they create.

Separation of powers: Every court holds an eraser, not a pen. A court evaluating a regulatory restriction can strike down that provision if it finds it to be unconstitutional. But if a court—even the Supreme Court—evaluating a list of powers a statute grants to corporations believes that the list is not long enough, it lacks the power to add to that list, or to order the state to do so.

Even the current Supreme Court might think twice before undermining state corporation laws, not out of any reverence for constitutional principles, but because such a move could introduce a level of systemic instability that would ultimately jeopardize the very corporate interests the court has repeatedly reinforced.

Intruding upon state control over corporate governance would set a dangerous precedent, opening the door for future federal intrusions that could be used against corporate interests in unpredictable ways, potentially allowing for increased federal regulation or oversight that the court and its allies cannot easily control. In essence, the justices might avoid taking such a step not out of principle, but because it could backfire, threatening the stability and predictability that corporations—and by extension, the Roberts court's objectives—rely upon.

Setting aside these jurisdictional questions for the moment, it is not clear

what basis a court could use to justify overturning a state corporation law provision that declined to grant its corporations the power to spend in elections. Several legal doctrines could be argued, but they do not seem to apply directly:

The doctrine of unconstitutional conditions
The Privileges and Immunities Clause
Interstate and dormant commerce

The doctrine of unconstitutional conditions

The most prominent constitutional challenge to CAP's Corporate Power Reset would be the doctrine of unconstitutional conditions. Former Stanford Law Dean Kathleen M. Sullivan writes that the doctrine "holds that government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold that benefit altogether."[76]

The classic example of an unconstitutional condition is a government grant program that requires recipients to refrain from engaging in any political activities or speech, both within and outside the program's scope. In other words, to benefit from the government funds, one must surrender one's constitutional right to political speech.

While UCLA's Stephen Bainbridge wrote that he believes CAP's approach to be good corporate law, he also wrote that he believed it would fail under the doctrine of unconstitutional conditions.[77]

A careful application of the relevant precedent to whether a state is required to grant full political powers to its corporations indicates that the doctrine of unconstitutional conditions does not apply.

The legal test of whether a condition is unconstitutional is not whether the corporation's charter is limited (it is), but whether the charter recipient has

surrendered a constitutional right (she has not). Someone who seeks to charter a corporation surrenders no rights when she successfully does so. All she surrenders to the state is the filing fee. The moment a prospective incorporator turns over her check for the charter, she has no fewer speech rights than she had the moment before, no matter the contents of that charter.[78]

In *Rust v. Sullivan,* the Supreme Court considered the constitutionality of an HHS regulation that forbade the use of Title X funds in abortion-related activities. The court held that the limit was not an unconstitutional condition, explaining that "our 'unconstitutional conditions' cases involve situations in which the Government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program."[79]

The court found that HHS was not required to fund a program that enabled the exercise of every constitutional right. And it drew a bright line between a decision not to grant a benefit and a condition imposed on the recipient: "A refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity."[80]

Likewise, the creation of a corporation is a benefit, and states are not obligated to provide the benefit of corporations with the power to engage in every constitutional right. One who holds a charter to a corporation that has not been granted the power to spend in elections has surrendered nothing. She has not been prohibited from engaging in any protected conduct. She merely has not been granted any extra opportunity to exercise a right to spend in politics directly through the corporation she has chartered. She and all who own stock in such a corporation still have a perfect right to spend in politics outside the bounds of the state-chartered corporation.[81]

The withdrawal of political spending power from existing corporations would seem to provide a better basis for a claim that state action has caused rights

to be surrendered. Indeed, the Supreme Court first articulated the unconstitutional conditions doctrine in 1922 in *Terral v. Burke Construction Co.,* a case involving a state's action against an existing corporation. In that case, the court ruled that a state could not revoke a foreign corporation's license to do business as a penalty for invoking its federal right to access federal courts.[82] *Terral* established the principle that while states have broad authority over corporations they create, states cannot impose conditions that effectively curtail federally protected rights. However, note that this case involved a state's move to impose restrictions on a corporation that had been granted a full set of corporate powers by its laws and the laws of the corporation's home state. Moving to redefine corporations as entities incapable of spending in politics is an entirely different matter, as it employs a different tool in the state's toolbox: its uncontested authority to determine what powers a corporation does or does not possess.

The Supreme Court has consistently held that every corporation has come into existence with the knowledge that it was subject to the state's uncontested authority to rewrite its DNA. Dartmouth College won its case back in 1819 because New Hampshire did not have a provision allowing such changes, but as UCLA law professor Adam Winkler notes, "States easily maneuvered around the *Dartmouth College* decision by adding to new corporate charters provisions permitting the states to revise their bargains. Because incorporators agreed to this contractual provision, they could not complain."[83]

This is a critically important point when assessing the legality of this proposal. If a state were to exercise its contractual authority to redefine its corporation's powers, it would not be a seizing of corporate or shareholder rights. Not only has every corporation agreed to exist subject to the provision in its state's corporation law that allows the state to amend or rescind any part of the law at any time, but every shareholder has purchased stock in a corporation that has agreed that a state can redefine its nature and existence at any time.

Practically speaking, if a state acted to grant a shorter list of powers to its corporations and a litigant sought to overturn the action on the grounds that an unconstitutional condition had been imposed, a court would come up emptyhanded if it went looking for a condition, or a provision, to strike. Again, courts hold erasers, not pens. Only a legislature (or ballot initiative) can write provisions into law.[84] Courts can strike an unconstitutional law, but they cannot write new corporate powers into being. Only a legislature or a ballot initiative can do that.

The Privileges and Immunities Clause

When state actions affect the citizens of other states, the constitution's Privileges and Immunities Clause is frequently brought to bear: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."[85] It prevents states from discriminating against citizens of other states.

However, the Supreme Court has been clear that the Privileges and Immunities Clause does not apply to corporations, starting with the 1869 case *Paul v. Virginia*[86] and reaffirmed in 1981.[87]

Even if the Privileges and Immunities Clause did apply to corporations, it would not easily apply to this report's approach, as states are treating foreign corporations exactly equal to domestic corporations.

The authority of states to grant powers to out-of-state corporations operating within their borders is just as wide as their authority to grant powers to their domestic corporations. "[N]o matter where a firm is incorporated, each state has the sole right to decide whether it can do business within its territory," notes NYU law professor Richard A. Epstein.[88]

"If a state disempowered its own domestic corporations with respect to a particular activity, the state may well be within the Constitution's bounds to demand that foreign corporations play on a level field,"[89] writes Buccola.

Interstate and dormant commerce

Likewise, because the approach offered by this report treats foreign and domestic corporations equally, it is unlikely to violate the Dormant Commerce Clause.[90] The Supreme Court held in *CTS Corp. v. Dynamics Corp. of America* that when a state action applies equally to in-state and out-of-state entities, it does not discriminate against interstate commerce and is less likely to raise Dormant Commerce Clause concerns. By ensuring that all corporations are subject to the same rules within the state, this approach respects the principle of equal treatment and avoids any undue burden on interstate commerce.[91]

The legislative change

Those who try to legislate matters related to corporations and political speech are used to working under extremely tight limits. Laws that burden political speech "are subject to strict scrutiny," the Supreme Court held in *Citizens United,* "which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest."[92]

But the Corporate Power Reset is a different route that sidesteps these First Amendment hurdles entirely. This section outlines how a state can amend its corporation code to no longer grant the power to spend in politics without infringing on constitutional rights.

Strict scrutiny review is a tough test to meet. "All of the campaign deception statutes that have reached the courts since 2012 have failed to satisfy [strict scrutiny] and have been overturned," writes George Washington University law professor Catherine J. Ross.[93]

So lawmakers who shift their attention away from regulating speech rights and toward resetting corporate powers might find the breadth of their discretion a little disorienting. They no longer must thread a constitutional

law needle.

Courts have recognized two major kinds of corporate speech rights:

Commercial speech is any speech that promotes commerce, such as advertising and marketing.[94] This speech is protected at a lower level than political speech;[95] for instance, well-tailored laws that prevent deceptive practices and protect public health and safety are constitutional. Because this type of speech is essential for business operations, states would likely (and should) continue to grant their corporations the power to engage in commercial speech.

Corporate political speech falls into two categories: issue speech and election campaigns. In 1978, the Supreme Court recognized a corporation's right to spend its funds on issue speech, including ballot initiatives, in *First National Bank of Boston v. Bellotti*.[96] In 2010 in *Citizens United*, the court recognized the right of a corporation to spend its funds independently in candidate elections.[97]

There are two distinct types of corporations to consider:

For-profit corporations include publicly and privately owned companies and limited liability companies.

Nonprofit corporations operate under Section 501(c) of the federal tax law. They are the source of the dark money in politics, particularly social welfare organizations, which are organized under Section 501(c)(4). Charities, nonprofit corporations operating under Section 501(c)(3) of the federal tax law, are already barred by law from spending in politics.[98]

A state that wants to rid its politics of corporate and dark money spending can amend its corporation code to no longer extend to its for-profit and nonprofit corporations the power to spend in candidate elections or ballot issues.[99]

There are various ways to achieve this end. States grant corporations their

powers in very broad strokes. For example, Virginia grants its corporations "the same powers as an individual to do all things necessary or convenient to carry out its business and affairs."

The goal would be to convert that set of powers into one that includes every necessary power except the power to spend in politics. However, this must be done carefully, and here's why:

If a measure attempted to list every possible corporate power, omitting just political spending powers, it would almost certainly miss something. The contents of that list would be a flash point and would complicate the legislation's passage.
If the measure were structured as a general grant of powers with an exception (for example: "Corporations are granted all powers except the power to spend in candidate elections or ballot issues"), an activist court could take the exception as an opportunity to use its eraser and delete it.

To show how the Corporate Power Reset would work in practice, this report sketches the legislative approach rather than prescribing exact bill text. The key is to define corporate powers affirmatively and narrowly, instead of granting "all lawful powers" with carve-outs. Legislative language constructed in this way could work in any state. (The full in-practice text of The Montana Plan appears later in this report.)

Legislative language constructed in a way that grants powers using only positive terms may be the best approach:

> **Section 1. Definitions.** As used in this section, the following terms have the following meanings:
>
> (a) **Election activity:** Paying or contributing in order to directly or indirectly aid, promote, or prevent the nomination or election of any person, or to directly or indirectly aid or promote the interests, success, or defeat of any political party or organization.[100]

(b) **Ballot-issue activity:** Paying or contributing in order to directly or indirectly aid, promote, or prevent the passage of a ballot question or initiative.

(c) **Corporate powers**: Every power—other than those described in Sections 1(a) and 1(b)—held by an individual to do all things necessary or convenient to carry out its business and affairs.

Section 2. Revocation and grant of corporate powers.

(a) Effective immediately, all powers, privileges, and capacities previously granted to corporations under the laws of this state are revoked in their entirety. No corporation operating under the jurisdiction of this state shall possess any power, privilege, or capacity unless specifically granted by subsequent provisions of this statute.

(b) Every corporation has perpetual duration and succession in its corporate name and has the corporate powers contained in paragraph (c) of Section 1, unless its articles of incorporation expressly restrict the exercise of such powers, and no powers beyond those expressly granted. Nothing in this statute grants or recognizes any power to engage in election activity or ballot-issue activity.

Section 3. Severability, nonrevival, and priority.

(a) **Severability**. If any provision of this statute, or its application to any person or circumstance, is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining provisions or applications of this statute, which shall remain in full force and effect independently of the invalidated provision or application.

(b) **Nonrevival.** In the event of such invalidity or unconstitutionality, no previous law or code section granting corporate powers shall be revived or reinstated without an explicit enactment by the appropriate

> authority.[101] The people decline to revert to any broader grant of corporate powers that may have existed before this statute.
>
> (c) **Priority.** If a court invalidates any portion of this statute concerning the nongrant of powers described in Sections 1(a) or 1(b), the remaining provisions shall continue to operate, and no corporation shall thereby acquire any power to engage in election activity or ballot-issue activity. It is preferred that corporations hold no powers at all rather than be vested with powers for election activity or ballot-issue activity.

Limited exceptions must be made for media entities to allow for normal news reporting and opinion by news corporations and for political committees, which are often incorporated to gain limited liability protections, but which should be able to spend in politics because that is their only purpose.

Why this approach to undoing *Citizens United* works

Even if a court did not like the policy that resulted from this recommended legislation, its options are severely limited, if not curtailed altogether. And without a judicial remedy, the court has no jurisdiction.

This section explains why courts cannot rewrite power-granting statutes, cannot restore revoked powers, and cannot create remedies where none exist.

Courts ordinarily do not strike down legislative definitions unless they are unconstitutional, hopelessly vague, or conflict irreconcilably with other statutory provisions.[102] The Supreme Court has recognized "the respect we normally owe to the Legislature's power to define the terms that it uses in legislation."[103] The statutory definitions outlined in Section 1 are purely descriptive; they impose no direct legal consequences. They are clear, consistent, and lawful, and they represent a legitimate exercise of the legislature's prerogative to define terms within its enactments.

When a court moves to invalidate a law, it looks to the provisions that act, not those that describe—the verbs, not the nouns. But in this case, Section 2's revocation and regrant of corporate powers are legislative verbs a court may not be able to alter. There is nothing a court can do to these sections that would yield more powers being granted to the affected corporations.

Section 2(a)'s revocation of corporate powers is protected by an unbroken string of Supreme Court precedent dating back to 1819's *Trustees of Dartmouth College v. Woodward*.[104] The state possesses unquestioned power to revoke the privileges of its corporations, as corporate existence is a privilege bestowed by the state, not a natural right.[105]

Section 2(b)'s regrant of corporate powers is protected by the courts' lack of authority to rewrite statutes. "We will not rewrite a law to conform it to constitutional requirements, for doing so would constitute a serious invasion of the legislative domain," the Supreme Court held in 2010 in *U.S. v. Stevens*.[106]

A court cannot strike down either the grant of power in Section 2(b) or the entire law on the grounds that they do not provide a legally sufficient number of powers to the state's corporations because neither action would remedy the asserted harm. Striking the law would not restore the previous status quo; the section of state law that granted corporations their powers would simply cease to exist. This would leave domestic and out-of-state corporations without any powers whatsoever, failing to remedy the alleged harm and almost certainly making it worse.

The severability clause in Section 3 ("Severability, nonrevival, and priority") prevents a court from striking the whole of Section 2. A court cannot strike the paragraph rescinding all corporate powers out of disagreement with the paragraph that follows, because a state is undeniably within its authority to no longer grant its corporations any powers.

Section 3's nonrevival clause prevents a court from restoring a previous

version of the statute's power-granting provisions if part of the law is invalidated. This ensures that there is no remedial path to a broader set of corporate powers under preexisting law, foreclosing any easy judicial reversion to a status quo ante. The priority clause makes clear to a reviewing court what the legislature's aim is in passing this statute.

Because courts have no authority to strike, rewrite, otherwise alter, or restore previous versions of those provisions to address the alleged harm of insufficient corporate powers, they cannot provide an adequate remedy. Federal courts require redressability—"a likelihood that the requested relief will redress the alleged injury"—as part of the constitutional standing doctrine; without a viable remedy, courts do not have jurisdiction to proceed, no matter how much they may disagree with the outcome.[107]

The lack of judicial remedies vividly illustrates the fundamental legal differences between people and corporations in this context—and between subtractive regulations of rights and additive grants of power.

Both corporations and natural persons can challenge laws that regulate rights, and when a court invalidates such an enactment, the rights of those affected are restored. But when a court moves to strike a law that involves a natural person, that law will necessarily be one that acts to regulate the person's rights, never one that grants powers, as government does not grant people their powers—it derives its powers from them. And a court can always restore the status quo by striking an offending restriction.

However, unlike natural persons, corporations spring to life only through legislative grants of powers; there is no natural law of corporations. (Metaphysically speaking, God doesn't give corporations the power to spend in elections—states do.) If a court found a state's grant of corporate power to be insufficient and invalidated it, the insufficiency would not be remedied—it would be exacerbated. Without a statute to grant them powers, the state's corporations would become utterly powerless.

In short, the usual judicial mechanisms that work to restore regulated rights in the realm of campaign finance law do not apply here. Because these provisions involve granting powers rather than regulating rights, striking them down does not restore a preexisting status quo. This starkly contrasts with the familiar scenario in which invalidating a restrictive law immediately restores the freedom it curtailed. Because the sole source of corporate powers is the state corporation law, the judiciary cannot simply remove an inadequate power-granting provision to remedy a perceived problem. The very nature of corporate existence as a legislative creation deprives courts of the remedial leverage they typically enjoy.

Enforcement: the *ultra vires* doctrine reemerges

If a state revokes the power of its corporations to spend in politics, those corporations cannot lawfully do so. And if they try, the enforcement mechanism to stop them already exists: the *ultra vires* doctrine—long dormant, but still quite alive.

If a corporation took actions beyond the powers granted to it by the state, it would not be committing an illegal act, but it would trigger what is known as *ultra vires* provisions in state laws. The term is Latin for "beyond the powers," and ever since the dawn of general corporate charters, these provisions have sat dormant—but still valid—in most state corporation statutes.

As University of Pennsylvania law professor Elizabeth Pollman writes:

> Under the *ultra vires* doctrine all corporate acts not authorized by a corporation's charter were null and void. Shareholders were empowered to sue to enjoin any actions "beyond the powers" enumerated in the corporate charter. Further, states brought *quo warranto* actions against corporations for exercising unauthorized powers or failing to undertake the business for which they were chartered. As Herbert Hovenkamp explained, "this notion of corporate obligation rested on the premise that the proprietor of the corporation had been given a set of rights to

> something that was in the public interest but which one could not do without the state's permission." Although *quo warranto* actions could only be brought by the states, they had a powerful impact because they could result in the dissolution of the corporation.[108]

When a corporation commits an *ultra vires* act, it puts its directors, officers, and even the corporation's very existence at risk. For example, directors or officers who authorize *ultra vires* transactions might be personally liable if shareholders or the state attorney general bring suit, and the state could seek dissolution or other penalties. Shareholders may also bring a derivative action to enjoin or rescind such acts.

Before general corporate charters took hold, *ultra vires* actions were those that were beyond a corporation's powers, but not illegal. These provisions have sat dormant because once corporations were given the power to do everything legal, there was no distance between the limits of their powers and the limits of the law. Anything a corporation did beyond its powers was also against the law, so criminal law handled the matter.

But when they were used, *ultra vires* provisions had real bite. In 1890, in *People v. North River Sugar Refining Co.*,[109] a corporation's charter was revoked for transcending its powers by joining a monopolistic trust; similarly, in 1892, in *State v. Standard Oil Co.*,[110] Ohio dissolved Standard Oil's charter for abusing its privileges to restrain trade.

The Supreme Court has never invalidated a state's decision to treat a corporate act as *ultra vires;* on every occasion it has addressed the issue, the court has underscored that corporations have only those powers their state charters confer, and acts beyond those powers are void. States have full authority to withdraw or forfeit a corporation's charter—through *quo warranto,* dissolution, or other lawful proceedings—whenever the corporation exceeds the powers the state has granted it.[111]

Why legislating corporation law is profoundly

different from legislating campaign finance law

Courts frequently overturn campaign finance laws because they typically regulate speech rights that corporations or individuals already possess. In that context, striking a ban, a spending limit, or a disclosure obligation simply leaves a corporation (or a person) free to exercise its preexisting constitutional right.

But a state's decision to not grant a particular power to its corporations is an entirely different matter. "[A]lthough the First Amendment protects speech the corporation is empowered to make," writes Buccola, "It has nothing to say about speech that is *ultra vires*."[112]

To defeat this approach, a court would have to uproot doctrines that have been bedrock corporate law for nearly two centuries.

First, a court would have to shatter the rule of *Dartmouth College*, the iconic 1819 decision that established that corporations are "artificial beings" with only those properties that their charters confer.[113] While *Dartmouth College* itself emphasized that states could not breach an existing charter without reserving that right, almost every state quickly incorporated reservation clauses precisely so they could revise corporate powers in the future.[114] To overturn the type of law proposed above, a court would have to question whether states really do possess the authority to define the corporate form, even though that principle has stood unchallenged for generations.

Second, the court would need to dilute or discard the long-held principle that a state may revise or revoke corporate privileges at will once it has reserved that authority in its laws. Cases stretching back to the 1800s confirm that legislatures can withdraw corporate powers "whatever may be the motive,"[115] and courts have repeatedly recognized that corporations exist subject to ongoing legislative oversight.

Third, the court would have to apply strict or heightened scrutiny to the

state's decision to grant or withhold powers—something courts have never done. Legislatures' decisions about which powers to grant corporations have always been reviewed, if at all, under an extremely deferential standard—often termed the "reserved powers doctrine." Under that doctrine, legislatures may amend, revoke, or withhold a corporation's privileges at will, so long as they have reserved the right to do so. Even where a corporation claimed that its property or contractual interests were impaired, courts have historically asked only whether the legislature acted within its reserved authority, not whether it passed a "compelling interest" test or narrowly tailored its decision. This standard is less demanding than even rational-basis review in many respects, giving states exceptionally broad latitude. A decision requiring states to grant corporations full human-like powers in the realm of politics would mark a drastic departure from the notion that corporations are pure creatures of law.

Finally, to revive preexisting corporate law or restore "lost" corporate powers that the statute has revoked, a court would have to breach the separation of powers principle it typically follows. Under *U.S. v. Stevens,* courts cannot "rewrite" a law; they can only strike it.[116] Here, the concept of returning to the prior corporate regime conflicts with Section 3(b)'s prohibition on automatic revival. A judge ignoring that clause would effectively be legislating from the bench. That level of judicial lawmaking is highly unusual even in contentious First Amendment cases.

In short, flipping conventional campaign finance legislation often requires only a standard First Amendment analysis—courts can simply strike a law and restore the prior rule, leaving individuals or corporations free to do what they were always entitled to do. But to strike down a state's decision to not grant a power to corporations, courts would need to unmake a vast expanse of settled precedent establishing that corporations have only the powers bestowed by state law.

This sea change would reverberate far beyond elections, thrusting

fundamental corporate governance doctrines into uncertainty. It is one thing for a court to say, "You cannot place a limit on corporate speech," and quite another to say, "You must endow corporations with political powers they do not possess." The latter would uproot more than a century of foundational corporate jurisprudence—an especially heavy lift even for courts that have been friendly to corporate speech rights.

Case study: The Montana Plan

Local activists in Montana are pursuing the Corporate Power Reset approach and are working to place a ballot initiative on the state's 2026 ballot. The group organizing the effort, the Transparent Election Initiative (TEI),[117] opted to move to amend the state's constitution and tailored the language to meet Montana's specific requirements. TEI filed with the Montana Secretary of State's office on August 1, 2025; an annotated version is also available.[118] The Montana secretary of state referred this updated version to the state attorney general's office on September 8, 2025:

BALLOT STATEMENT

CI _____ would add a new section to Article XIII of the Montana Constitution to define the powers of artificial persons, including corporations, as only those the constitution expressly grants and provide that artificial persons have no power to spend money or anything of value on elections or ballot issues. The initiative affirms that the people of Montana did not intend for artificial persons to have the power to spend on elections or ballot issues. CI _____ provides that actions beyond those expressly granted powers are void. The initiative provides that political committees may be granted the power to spend on elections and ballot issues. It allows enforcement through forfeiture of state-conferred privileges. The initiative includes a severability clause that ensures that valid portions of the initiative remain effective if other parts are invalidated.

THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. * (CI-***)**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Article XIII of The Constitution of the State of Montana is amended by adding a new section 8 that reads:

Section 8. Powers of artificial person. (1) An artificial person exists only by grant of the state and may not have powers or privileges except those this constitution expressly provides.

(2) (a) The legislature may by statute create an artificial person consistent with subsection (1).

(b) The people never did, and do not, intend the powers of an artificial person to include election activity or ballot issue activity. This section revokes all powers granted to an artificial person and regrants only those powers that the people consider necessary or convenient to carry out an artificial person's lawful business or charitable purposes as described in subsection (6)(b). Powers related to election activity or ballot issue activity may not be considered necessary or convenient to those purposes under any circumstances.

(3) (a) The creation and continued existence of an artificial person is not a right but a conditional grant of legal status by the state and remains subject to complete withdrawal at any time. All powers previously granted to an artificial person under Montana law are revoked in their entirety. An artificial person operating under the jurisdiction of this state may not possess any power unless specifically granted by this constitution. A power revoked by this subsection (3)(a) may not be revived except by a constitutional provision that expressly reauthorizes that power in clear and specific terms.

(b) Nothing in subsection (3)(a) may be construed to invalidate, impair,

or modify any existing contract, debt instrument, security, or other legal obligation validly entered into before January 1, 2027, provided, however, that nothing herein authorizes election activity or ballot issue activity after January 1, 2027. Nothing in subsection (3)(a) may be construed to impair the continued existence or legal personhood of an artificial person, or to affect its ability to initiate, defend, or participate in legal actions or to maintain or remain eligible for licenses, permits, or approvals previously granted under state or federal law.

(4) (a) An artificial person possesses the powers defined in subsection (6)(b), unless its organizational documents limit the exercise of these powers, and does not possess powers beyond those expressly granted by the constitution. The constitution does not grant or recognize any power of an artificial person to engage in election activity or ballot issue activity, except as provided in subsection (4)(c). The regrant of powers under this subsection (4)(a) takes legal effect simultaneously with the revocation described in subsection (3)(a).

(b) Any language in the articles of incorporation, articles of organization, articles of association, or other organizational documents purporting to directly or indirectly confer election activity authority or ballot issue activity authority to an artificial person is void.

(c) Political committees registered under Montana law or federal law are entities created for the purpose of engaging in election activity and ballot issue activity. Political committees may be granted the power to engage in those activities provided they exist solely for that purpose and claim no charter privilege other than limited liability. This constitution does not grant any other artificial person the power to engage in election activity or ballot issue activity.

(d) A charter privilege may not be construed to authorize election activity or ballot issue activity. An artificial person that exercises election activity authority or ballot issue activity authority, unless expressly permitted

to do so under subsection (4)(c), initially forfeits all charter privileges as a matter of law. The legislature shall, during its first regular session following January 1, 2027, enact procedures that allow reinstatement on full disgorgement, certification of future compliance, and any additional conditions it considers appropriate.

(5) Any election activity or ballot issue activity conducted by an artificial person that is not a political committee is ultra vires and void and results in the forfeiture of charter privileges as provided in subsection (4)(d). An artificial person that conducts election activity or ballot issue activity is also subject to civil action by a member, shareholder, or the attorney general for injunctive relief, disgorgement, and confirmation or enforcement of the forfeiture. The legislature shall, during its first regular session following January 1, 2027, enact procedures to enforce this subsection.

(6) As used in this section, unless the context requires otherwise, the following definitions apply:

(a) "Artificial person" means an entity whose existence or limited liability shield is conferred by Montana law, including, without limitation:

(i) business corporations;

(ii) nonprofit corporations, such as public-benefit, mutual-benefit, and religious organizations;

(iii) limited liability companies;

(iv) unincorporated associations, limited liability partnerships, statutory trusts, professional corporations, cooperatives, and any successor form; and

(v) foreign entities that are authorized to transact business, are otherwise transacting business, or hold property in Montana. A foreign entity that directly or indirectly undertakes, finances, or directs election activity or ballot issue activity in the state of Montana is conclusively considered to be

transacting business in this state.

(b) "Artificial person powers" means powers necessary or convenient to carry out lawful business or charitable purposes, as the legislature may provide, excluding any power to directly or indirectly engage in election activity or ballot issue activity.

(c) (i) "Ballot issue activity" means paying, contributing, or expending money or anything of value to support or oppose a ballot issue or initiative.

(ii) The term does not include any bona fide news story, commentary, or editorial distributed through the facilities of a broadcasting station or of any print, online, or digital newspaper, magazine, blog, or other periodical publication, unless the broadcasting, print, online, or digital facility is owned or controlled by a political party, a political committee, or a candidate.

(d) "Charter privilege" means any benefit to an artificial person that exists only because the state of Montana confers it, such as, without limitation, limited liability, perpetual duration, succession in its corporate name, and tax credits and abatements.

(e) (i) "Election activity" means paying, contributing, or expending money or anything of value to support or oppose a candidate, a political party, or a political committee.

(ii) The term does not include any bona fide news story, commentary, or editorial distributed through the facilities of a broadcasting station or of any print, online, or digital newspaper, magazine, blog, or other periodical publication, unless the broadcasting, print, online, or digital facility is owned or controlled by a political party, a political committee, or a candidate.

(f) "Foreign entity" means an artificial person that is organized or exists under the laws of a jurisdiction other than the state of Montana.

NEW SECTION. Section 2 Severability. If any provision of [this act], or its

application to any person or circumstance, is invalid, the remaining provisions and applications that are severable remain in effect. In such event, no prior grant of corporate powers may be revived or reinstated, nor shall any court construe [this act] to authorize broader powers than are expressly conferred in [this act].

NEW SECTION. Section 3 Effective date. If approved by the electorate, [this act] is effective January 1, 2027.

The political climate favors undoing Citizens United

A move to eliminate corporate and dark money from politics is not just legally sound, it is politically potent. Americans, across party lines, want corporate and dark money out of politics. The courts may have embraced *Citizens United,* but the people never did. Corporate political spending and dark money in politics are wildly unpopular among Americans:

A poll conducted over five years (2015–2020) by the University of Maryland's Program for Public Consultation found that 75 percent of Americans—66 percent of Republicans and 85 percent of Democrats—support passing a constitutional amendment "that would allow governments greater freedom to regulate campaign financing and to restrict corporations more than individuals, thus overturning the *Citizens United* "[119]

A September 2024 poll conducted by Issue One found that 71 percent of Americans (and 73 percent of registered voters) want campaign finance reform that would "make campaigns more transparent and to limit opportunities for corruption and politicians being 'bought' by rich donors, interest groups, or corporations."[120]

A 2023 poll from the Pew Research Center shows that 71 percent of Republicans and 76 percent of Democrats favor limits on the amount of money individuals and organizations can spend on a political campaign.[121]

In three surveys conducted in 2017, 84 percent of Republicans, 92 percent

of Democrats, and 86 percent of independents said that it was important or very important to reduce the influence of big campaign donors, including special interests, corporations, and wealthy people.[122]
Public Citizen reports that as of August 2024, 842 local governments, 22 states, and Washington, D.C., have called for a constitutional amendment to overturn *Citizens United*.[123] A state statutory change, which is a much lighter lift than a federal constitutional amendment, would likely enjoy even higher levels of support.

State competition for charters

Some may worry that states adopting this approach will lose corporations to friendlier jurisdictions. But charter migration is rare, difficult—and in the case of political spending— ineffective for four reasons:

Such a change is not simple. The corporation may need to dissolve itself in its current state and reincorporate in the new state. It may then have to transfer existing contracts, licenses, permits, and other legal documents to the new entity. This can be a detailed, time-consuming, and expensive process.[124]
Most states have already lost this battle. Delaware is far and away the national leader in corporate registrations. It is the corporate home to 341 of the Fortune 500—68.2 percent.[125]
The financial impact of losing nonprofit corporate registrations is minimal, as they pay no taxes. For example, California charges $30 to register a new nonprofit corporation[126] and only collects $20 every two years after that.[127]
Most of all, a corporation that seeks to spend in the politics of a state that passes such a measure would gain no relief by changing its state of incorporation, as it would then be a foreign corporation to its previous home state and equally barred from spending in its politics.

It is unclear that corporations are even all that keen on participating in politics in the first place, according to University of Pennsylvania law

professor Jill E. Fisch and University of Utah law professor Jeff Schwartz: "We surmise that corporations themselves are ambivalent about taking policy positions but are caught in a feedback loop in which customers, employees, and investors demand political involvement. Corporations thus engage in response to competitive pressure, which normalizes the conduct and leads to escalating expectations for further engagement."[128]

Conclusion

The Supreme Court acted so decisively in *Citizens United* to shred campaign finance regulations on corporate spending—and has stuck to the decision so firmly since[129]—that there has been good reason to believe that lawmakers and citizens are powerless to protect elections from corporate money and dark money.

But a step taken long ago to retain the ability to rewrite their corporations' DNA offers a way forward. As former Supreme Court Justice Byron White put it, "The State need not permit its own creation to consume it."[130]

Americans from across the political spectrum overwhelmingly oppose *Citizens United* and would dearly like to rid the U.S. political system of corporate and dark money. Voters and the state legislators they elect have the power to do it.

Endnotes

1. *Citizens United v. Federal Election Commission,* 558 U.S. 310 (January 21, 2010), available at https://www.oyez.org/cases/2008/08-205.
2. This report originated from an independent inquiry into how state corporate law might provide a legislative path to undo *Citizens United*. After developing the core theory, the author encountered several especially brightly illuminating works, notably by Joseph K. Leahy, Vincent S.J. Buccola, and David B. Simpson. These authors powerfully articulated key components of the legal framework—especially the

distinction between powers and rights and the historical tradition of state-defined corporate limitations—even as their work stopped short of proposing the concrete legislative mechanism outlined here. See Joseph K. Leahy, "The Ultra Vires Solution to *Citizens United,"* Presentation at the National Business Law Scholars Conference, June 4, 2015, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802147; Vincent S.J. Buccola, "States' Rights Against Corporate Rights," *Columbia Business Law Review* 595 (2017), available at https://www.ssrn.com/abstract=2781514; David B. Simpson, "Does Federalism Provide a Means to Circumvent *Citizens United*?", *U.C. Davis Bus. L.J.* 20 (Spring 2020): 253.

3. Buccola, "States' Rights Against Corporate Rights," p. 623; see also Glinda, the Good Witch of the North, *The Wizard of Oz* (1939) ("You've always had the power, my dear. You just had to learn it for yourself").
4. See Transparent Election Initiative, "The Montana Plan," available at https://transparentelection.org/ (last accessed September 2025).
5. UCLA law professor Adam Winkler's book *We the Corporations* provides an exhaustive yet gripping look at the history of the political rights of corporations. See Adam Winkler, *We the Corporations* (New York: Liveright, 2018). For a quick corporate political rights timeline, see Tom Moore and Alexandra Thornton, "*Citizens United* Gave Corporations, But Not Their Boards, the Authority To Spend in Candidate Elections" (Washington: Center for American Progress, 2024), available at https://www.americanprogress.org/article/citizens-united-gave-corporations-but-not-their-boards-the-authority-to-spend-in-candidate-elections/, particularly the section entitled "Background on the political rights of corporations."
6. Open Secrets, "Outside Spending," available at https://www.opensecrets.org/outside-spending/summary (last accessed September 2025).
7. Campaign Legal Center, "How Does the *Citizens United* Decision Still Affect Us in 2025?", January 21, 2025, available at

https://campaignlegal.org/update/how-does-citizens-united-decision-still-affect-us-2025.

8. *First National Bank of Boston v. Bellotti,* 435 U.S. 765, 809 (1978), available at https://supreme.justia.com/cases/federal/us/435/765/#tab-opinion-1952583.
9. See, e.g., Michael J. Phillips, "Reappraising the Real Entity Theory of the Corporation," *Florida State University Law Review* 21 (4) (1994): 1061–1102, available at https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1548&context=lr.
10. Lyman Johnson, "Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood," *Seattle University Law Review* 35 (2012): 1135, 1148, available at https://digitalcommons.law.seattleu.edu/sulr/vol35/iss4/7/. "The 'artificial being' and 'mere creatures of law' language from the 1819 decision in *Dartmouth College* has never been renounced."
11. *Trustees of Dartmouth College v. Woodward,* 17 U.S. (4 Wheat.) 518, 636–637 (1819), available at https://supreme.justia.com/cases/federal/us/17/518/.
12. *Citizens United,* 558 U.S. at 386.
13. *Charles River Bridge v. Warren Bridge,* 36 U.S. (11 Pet.) 420, 544 (1837), available at https://scholar.google.com/scholar_case?case=8452832838576510185&q=Charles+River+Bridge+v.+Warren+Bridge&hl=en&as_sdt=20000006, *quoting* 2 Barn. & Adol. 793 (22 Eng. Common Law, 185).
14. *Bellotti,* 435 U.S. at 809.
15. Ibid. at 788–89, note 26.
16. *Citizens United,* 558 U.S. at 357.
17. *Buckley v. Valeo,* 424 U.S. 1, 53 (January 30, 1976), available at https://www.oyez.org/cases/1975/75-436.
18. For a discussion of the limits of and problems with the court's theory, see Ellen L. Weintraub, "Taking On Citizens United," *The New York Times*, March 30, 2016, available at

https://www.nytimes.com/2016/03/30/opinion/taking-n-citizens-united.html; Jonathan R. Macey and Leo E. Strine Jr., "Citizens United as Bad Corporate Law," *Harvard Law School John M. Olin Discussion Paper Series* 972 (2018): 5, available at http://www.law.harvard.edu/programs/olin_center/papers/972_Strine.php.

19. 26 U.S.C. § 501(c)(4).
20. See *Buckley,* 424 U.S. at 79.
21. Buccola, "States' Rights Against Corporate Rights," p. 598.
22. Code of Virginia, Virginia Nonstock Corporation Act § 13.1-826(A). Virginia grants stock corporations the same powers, see Code of Virginia, Virginia Stock Corporation Act § 13.1-627(A), available at https://law.lis.virginia.gov/vacode/title13.1/chapter10/.
23. National Archives, "Declaration of Independence: A Transcription," available at https://www.archives.gov/founding-docs/declaration-transcript (last accessed September 2025). The founders drew upon John Locke's work, which emphasized humans' inherent freedoms and rights. See John Locke, *The Two Treatises of Government, Second Treatise on Government,* Chapter 2, Sect. 4 (1689). "[A]ll men are naturally in… a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man."
24. See, e.g., Macey and Strine, "Citizens United as Bad Corporate Law," p. 881. "In fact, corporations had the opposite relationship to society as human beings in the Lockean-Jeffersonian sense, in that rather than possessing inalienable rights that society could not take away, corporations had only such rights as society explicitly gave them."
25. *Citizens United,* 558 U.S. at 319.
26. *Citizens United,* 558 U.S. at 389 n.5 (Scalia, J., concurring, joined by Alito; Thomas in part).
27. A handful of federally chartered corporations do exist, but these are

large public entities such as the Corporation for Public Broadcasting, Amtrak, and the Federal Deposit Insurance Corporation, and they are outside the bounds of this report. See Wikipedia, "Corporations Chartered by the United States Congress," available at https://en.wikipedia.org/wiki/Category:Corporations_chartered_by_the_United_States_Congress (last accessed September 2025).

28. *Burks v. Lasker,* 441 U.S. 471, 478, 99 S. Ct. 1831, 1837 (1979) available at https://scholar.google.com/scholar_case?case=225806612322868099, *citing Cort v. Ash,* 422 U.S. 66, 84 (1975) ("Corporations are creatures of state law"), available at https://scholar.google.com/scholar_case?case=14103697533263450234.
29. *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 719 (2014), available at https://scholar.google.com/scholar_case?case=13281614894426393848.
30. See, e.g., Delaware General Corporation Law § 102(a)(3). This language is typical, though as Buccola notes, "The precise formulation varies. *See, e.g.,* MODEL BUS. CORP. ACT § 3.01 (AM. BAR ASS'N 2010) (ascribing to the corporation the purpose of conducting 'any lawful business'); MODEL BUS. CORP. ACT § 3.02 (AM. BAR ASS'N 2010) (granting the corporation 'the same powers as an individual to do all things necessary and convenient' to its purpose)." Buccola, "States' Rights Against Corporate Rights," p. 12.
31. Elizabeth Pollman, "Reconceiving Corporate Personhood," *Utah Law Review* 1629 (2011), available at https://scholarship.law.upenn.edu/faculty_scholarship/2563.
32. Leo E. Strine, Jr. and Nicholas Walter, "Originalist or Original: The Difficulties of Reconciling *Citizens United* with Corporate Law History," *Notre Dame Law Review* 91 (2015-2016): 877, 880, available at https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4640&context=ndlr. See also Richard A. Epstein, "Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent,"

Harvard Law Review 102 (1988): 4, 29, available at https://chicagounbound.uchicago.edu/journal_articles/1205/.

33. Simpson, "Does Federalism Provide a Means to Circumvent *Citizens United*?", p. 259.
34. John C. Coates IV, "Corporate Speech & the First Amendment: History, Data, and Implications" (2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2566785.
35. Elizabeth Pollman, "Reconceiving Corporate Personhood."
36. The competition to issue corporate charters represented real money in the 1800s, before the modern system of income taxation. "[C]harter fees and dividends from state owned banks accounted for more than 30 percent of state revenue in Pennsylvania" in the 1830s. Molly Cohn, "The Political Economy of Corporate Charters," (Fairfax, VA: Mercatus Center at George Mason University, 2010), available at https://www.mercatus.org/research/working-papers/political-economy-corporate-charters.
37. Epstein, "Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent," p. 29.
38. Lyman Johnson, "Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood."
39. Buccola, "States' Rights Against Corporate Rights," p. 604.
40. Strine and Walter, p. 881.
41. Lyman Johnson, "Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood."
42. *Hobby Lobby,* 573 U.S. at 683.
43. Ibid. at 684.
44. Ibid. at 714.
45. Subchapter II of Title 8 of the Delaware General Corporation Law is entitled "Powers." Section 127 in that subchapter provides specific "powers and duties" to Delaware corporations that are private foundations under federal tax law. It requires them to "act or to refrain from acting so as not to subject [themselves] to the taxes imposed by ...

[26 U.S.C.] § 4945 (relating to taxable expenditures)." Among the expenditures defined as taxable in § 4945, in section (d)(2), is: "to influence the outcome of any specific public election." The Delaware Code Online, "Title 8: Corporations," https://delcode.delaware.gov/title8/c001/sc02/index.html (last accessed September 2025).

46. Justia U.S. Law, "2024 Florida Statutes: Title XXXVI, Chapter 607, Part I, 607.0102," available at https://law.justia.com/codes/florida/title-xxxvi/chapter-607/part-i/section-607-0102/ (last accessed September 2025).
47. *Trustees of Dartmouth College,* 17 U.S. (4 Wheat.) 518.
48. Ibid.
49. *Spring Valley Water Works v. Schottler,* 110 U.S. 347, 370 (1884) (dissenting opinion of Justice David D. Field) (writing that the states acted quickly on Story's suggestion, "and few charters were subsequently granted without a clause reserving to the legislature the power to alter or repeal them"), available at https://scholar.google.com/scholar_case?case=12642855440681029909.
50. Justia Law, "2024 Florida Statutes: Title XXXVI, Chapter 607, Part I, 607.0301."
51. Notably, voters in many states also have the authority to amend or repeal provisions in the corporation statute through the ballot initiative process. The Supreme Court established in *Pacific States Telephone & Telegraph Co. v. Oregon* that citizens have the power to act as legislators through ballot initiatives. See *Pacific States Telephone & Telegraph Co. v. Oregon,* 223 U.S. 118 (1912), available at https://scholar.google.com/scholar_case?case=16351559639154476313.
52. *Hamilton Gaslight & Coke Co. v. City of Hamilton,* 146 U.S. 258, 270 (1892), available at https://scholar.google.com/scholar_case?case=8765032962191885994.

53. Ibid.
54. *Greenwood v. Freight Co.,* 105 U.S. 13, 17 (1882), available at https://scholar.google.com/scholar_case?case=9250893626217715 6.
55. *Hamilton Gaslight & Coke Co.,* 146 U.S. 258.
56. *Looker v. Maynard*, 179 U.S. 46 (1900), available at https://scholar.google.com/scholar_case?case=3011444116954215 40.
57. *Polk v. Mutual Reserve Fund Life Association*, 207 U.S. 310 (1907), available at https://scholar.google.com/scholar_case?case=17930639145229822255.
58. *Sutton v. New Jersey*, 244 U.S. 258 (1917), available at https://scholar.google.com/scholar_case?case=11065825078893090295.
59. See Tex. Const. art. XVI, §16 (1876).
60. See Acts of the 137th Legislature of New Jersey (1913), ch. 12–18 (collectively called the "Seven Sisters").
61. *A.P. Smith Mfg. Co. v. Barlow,* 13 N.J. 145 (1953), available at https://scholar.google.com/scholar_case?case=3004854208996553743.
62. Simpson, "Does Federalism Provide a Means to Circumvent *Citizens United*?", p. 259.
63. *Charles River Bridge,* 36 U.S. (11 Pet.) at 547–548.
64. Ibid. at 548.
65. *Wilmington C. R. Co. v. Wilmington & B. S. R. Co.,* 8 Del. Ch. 468, 499 (1900), available at https://case-law.vlex.com/vid/wilmington-city-railway-co-897318959.
66. Every state except California, Delaware, Kansas, and Nevada already has such a provision; nothing bars a state from adding such a provision to its laws.
67. "A certificate of authority does not authorize a foreign corporation to engage in any business or exercise any power that a corporation may not engage in or exercise in this state." Justia Law, "Florida Statutes: Title XXXVI, Chapter 607, Part I, 607.15015(3)."

68. Delaware Division of Corporations, "Annual Report Statistics," available at https://corp.delaware.gov/stats/ (last accessed September 2025).
69. If every state but Delaware were to adopt this approach, Delaware-chartered corporations would only be able to spend in Delaware's politics (and there are only so many races to spend on in Delaware). And at a certain point, Delaware citizens may well ask why theirs are the only elections in the country where corporations are allowed to muck around.
70. *Paul v. Virginia,* 75 U.S. (8 Wall.) 168, 181 (1869), available at https://scholar.google.com/scholar_case?case=2483743883822209778 ("The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta v. Earle,* 'It must dwell in the place of its creation, and cannot migrate to another sovereignty. The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States — a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion.'"). *Paul's* holding regarding whether insurance is interstate commerce has been overturned, but its holding regarding the Privileges and Immunities Clause remains good law.
71. Stephen Bainbridge, "Could Corporate Purpose Statutes Provide a Way to End-Run Citizens United?" ProfessorBainbridge.com, May 25, 2024,

available at https://www.professorbainbridge.com/professorbainbridgecom/2024/05/could-corporate-purpose-statutes-provide-a-way-to-endrun-citizens-united.html. ("Let us suppose that the MBCA or the DGCL [Delaware General Corporation Law] were amended so as to provide that corporations have no power to make political contributions. Would that fly? As a matter of corporate law, I assume so. In many states, many state statutes qualify the broad grants of power conferred by statutes like MBCA § 3.02 by including express limitations on the powers corporations may exercise. DGCL sec. 125, for example, provides that corporations have no 'power to confer academic or honorary degrees unless the certificate of incorporation or an amendment thereof shall so provide and unless the certificate of incorporation or an amendment thereof prior to its being filed in the office of the Secretary of State shall have endorsed thereon the approval of the Department of Education of this State.' DGCL sec. 126 provides that no business corporation organized under the DGCL 'shall possess the power of issuing bills, notes, or other evidences of debt for circulation as money, or the power of carrying on the business of receiving deposits of money.'") Notably, Bainbridge did not cite a far more direct example, DGCL § 127. The provision, through reference to federal tax law (26 U.S.C. § 4945(d)), denies one type of Delaware corporation, the private foundation, the power to "influence the outcome of any specific public election."

72. Simpson, "Does Federalism Provide a Means to Circumvent *Citizens United*?", p. 260.
73. Buccola, "States' Rights Against Corporate Rights," p. 599.
74. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The federal government, like a corporation, is limited to the powers it has been given.
75. *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987).
76. Kathleen M. Sullivan, "Unconstitutional Conditions," *Harvard Law*

Review, Vol. 102, No. 7 (1989), 1413, 1415, available at https://www.jstor.org/stable/pdf/1341337.pdf.

77. Bainbridge, "Could Corporate Purpose Statutes Provide a Way to End-Run Citizens United?" ("In my view, the unconstitutional conditions doctrine would come into play. Yes, corporations are creatures of state law and there is case law positing that incorporation is not a right but rather a privilege granted by the state. But 'the modern "unconstitutional conditions" doctrine holds that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech" even if he has no entitlement to that benefit." *Bd. of Cnty. Com'rs, Wabaunsee Cnty., Kan. v. Umbehr,* 518 U.S. 668, 674 (1996).")
78. Buccola addresses this point at length. "As a basic doctrinal matter, the *sine qua non* of an unconstitutional condition is a proposed swap. In return for a valuable consideration from the state, you agree to give up a valuable right you would otherwise enjoy against the state. No such bargain is implicated when a state constitutes corporations unable to, say, make political contributions. The state offers a privilege it needn't offer— the opportunity to act through the corporate form. In return it asks prospective promoters for a modest filing fee, not to relinquish a constitutionally enshrined right. The promoters are able to make political contributions in their own names, whether or not they accept the state's 'deal.' The deal at stake with incorporation is not a trade; it is a kind of implicit subsidy of cooperative, especially capital-intensive, industry. It thus does not fit comfortably within the framework of unconstitutional conditions." Buccola, "States' Rights Against Corporate Rights," p. 620.
79. *Rust v. Sullivan,* 500 U.S. 173, 193 (1991) (emphasis in original), available at https://scholar.google.com/scholar_case?case=17204544980901899735.
80. Ibid. at 193 (*quoting Harris v. McRae*, 448 U.S. 297, 317, n. 19 (1980), available at https://scholar.google.com/scholar_case?

case=8833310949486291357. In *U.S. v. American Library Assn., Inc.*, in 2003, the Supreme Court made the point even more clearly when upholding a provision of the Children's Internet Protection Act, Pub. L. 106–554, that withheld federal assistance from public libraries unless they installed internet pornography-blocking software. Justice Stevens pointed out in dissent that a regulation penalizing a library for failing to install the software would violate the First Amendment. The majority opinion responded directly to Stevens' point, holding that the lack of funding was not a penalty but instead a reflection of Congress' decision to not subsidize unfiltered internet access. *U.S. v. American Library Assn.*, 539 U.S. 194, 212 (2003), available at https://scholar.google.com/scholar_case?case=7891716025089102487.

81. Indeed, it can be argued that incorporators who receive limited charters have been provided with an extra avenue to spend in politics, since being associated with a corporation opens up the ability to contribute to a separate segregated fund (also known as a corporate PAC) associated with that corporation. See Federal Election Commission, "Solicitable class of corporation," available at https://www.fec.gov/help-candidates-and-committees/fundraising-for-ssf/solicitable-class-corporation-ssf/ (last accessed September 2025).
82. *Terral v. Burke Constr. Co.*, 257 U.S. 529 (1922), available at https://scholar.google.com/scholar_case?case=7610609507016112738.
83. Adam Winkler, "Corporate Personhood and the Rights of Corporate Speech," Seattle University Law Review 30 (2007): 863–64, available at https://digitalcommons.law.seattleu.edu/sulr/vol30/iss4/2/.
84. If a state wanted to make perfectly clear that it was exercising its authority to grant powers (as opposed to regulating activity), it could strike the full list of corporate powers in one section of a bill and grant all but the power to spend in politics in the next.
85. U.S. Constitution, Article IV, Section 2.
86. *Paul,* 75 U.S. (8 Wall.) 168. Again, *Paul's* holding regarding whether

insurance is interstate commerce has been overturned, but its holding regarding the Privileges and Immunities Clause remains good law.

87. *Western & Southern Life Ins. Co. v. State Bd. of Equalization of Cal.,* 451 U.S. 648, 656 (1981), available at https://scholar.google.com/scholar_case?case=15510489539787257058.
88. Epstein, "Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent."
89. Buccola, "States' Rights Against Corporate Rights," p. 602–603.
90. Ibid., p. 603, noting that "courts have in general condemned only those host-state interventions that reflect a discriminatory policy." The Dormant Commerce Clause is the doctrine, inferred from the Constitution's Commerce Clause, that even when Congress is silent, states may not enact laws that discriminate against or unduly burden interstate commerce. It bars protectionism and ensures a national economic union.
91. *CTS Corp.,* 481 U.S. at 88 ("Because nothing in the Indiana Act imposes a greater burden on out-of-state offerors than it does on similarly situated Indiana offerors, we reject the contention that the Act discriminates against interstate commerce").
92. *Citizens United,* 558 U.S. at 339 (internal citations removed).
93. Catherine J. Ross, *A Right to Lie? Presidents, Other Liars, and the First Amendment* (2021), p. 77. See also Adam Winkler, "Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts," *Vanderbilt Law Review* 59 (2006): 793, 845, available at https://scholarship.law.vanderbilt.edu/vlr/vol59/iss3/3/ (finding that between 1990 and 2003, only 24 percent of campaign speech laws survived strict scrutiny).
94. Legal Information Institute, "Commercial Speech," available at https://www.law.cornell.edu/wex/commercial_speech (last accessed September 2025).
95. See *Central Hudson Gas & Elec. v. Public Svc. Comm'n,* 447 U.S. 557

(1980) (establishing a four-part test to determine whether a commercial-speech restriction is constitutional), available at https://scholar.google.com/scholar_case?case=19624828409675808827; see also *State Bd. of Pharmacy v. Va. Citizens Consumer Council,* 425 U.S. 748 (1976), available at https://scholar.google.com/scholar_case?case=8923583121361543 02.

96. *Bellotti,* 435 U.S. 765.
97. *Citizens United,* 558 U.S. 310.
98. See Internal Revenue Service, "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," available at https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations (last accessed September 2025). States may also want to evaluate whether they want to withhold from charities the power to endorse or oppose political candidates. The "Johnson Amendment," added to the Internal Revenue Code in 1954, prohibits charities from making such endorsements, but as a speech restriction, it is more vulnerable to challenge, and efforts abound to overturn it. See, e.g., Salvador Rizzo, "President Trump's shifting claim that 'we got rid' of the Johnson Amendment," *The Washington Post*, May 9, 2019, available at https://www.washingtonpost.com/politics/2019/05/09/president-trumps-shifting-claim-that-we-got-rid-johnson-amendment/.
99. States that have separate statutory provisions for nonprofit corporations will likely have to add this sort of language there as well.
100. This definition is adapted from, and pays homage to, Section 25 of the Montana Corrupt Practices Act of 1912, a campaign finance law invalidated by *Am. Tradition P'ship, Inc. v. Bullock,* 567 U.S. 516 (2012), available at https://scholar.google.com/scholar_case?case=14730023294192604799. Notably, Section 25 was invalidated not because of this definition but because of the actions it prescribed:

regulating the right of corporations to spend in Montana politics. The Act as Montana voters first passed it in 1912 is found at https://leg.mt.gov/content/Committees/Interim/2013-2014/State-Administration-and-Veterans-Affairs/Meetings/August-2013/Corrupt%20Practices%20Act%20Passed%20by%20Initiative%201912.pdf.

101. In certain jurisdictions, a ballot measure may include a clause stating that the measure may only be amended or repealed by a subsequent vote of the people. If that is allowed and desired, the following text could be added to Section 3(b): "No part of this statute may be amended or repealed except by a measure submitted to and approved by the voters at a statewide election."
102. See *Benjamin v. Jacobson,* 172 F.3d 144, 155–56 (2d Cir. 1999) ("If the statute includes an explicit statutory definition, we accord that definition controlling weight"), available at https://scholar.google.com/scholar_case?case=16510548133604170641; *Fox v. Standard Oil Co.,* 294 U.S. 87, 95-96 (1935) (When a statute "has attempted to secure precision and certainty" by clearly defining a term, "In such circumstances definition by the average man or even by the ordinary dictionary with its studied enumeration of subtle shades of meaning is not a substitute for the definition set before us by the lawmakers with instructions to apply it to the exclusion of all others. There would be little use in such a glossary if we were free in despite of it to choose a meaning for ourselves."), available at https://scholar.google.com/scholar_case?case=15272635646451118288.
103. *Meese v. Keene,* 481 U.S. 465, 484 (1987), available at https://scholar.google.com/scholar_case?case=13796872946132691159; *See also Ayotte v. Planned Parenthood of N. New Eng.,* 546 U.S. 320, 329 (2006) ("[M]indful that our constitutional mandate and institutional competence are limited, we restrain ourselves from rewrit[ing] state law to conform it to

constitutional requirements even as we strive to salvage it) (*internal quotes and citations omitted*)"), available at https://scholar.google.com/scholar_case?case=7068766648109737916.

104. *Trustees of Dartmouth College,* 17 U.S. (4 Wheat.) at 636.
105. Ibid. (discussing the nature of corporate charters and state authority); *Greenwood v. Freight Co*. "What is it may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends which may be repealed, so that it shall cease to be a law; or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change."
106. *U.S. v. Stevens,* 559 U.S. 460, 481 (2010), available at https://scholar.google.com/scholar_case?case=12907128943316010890.
107. See *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992), available at https://scholar.google.com/scholar_case?case=10150124802357408838; *Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 103 (1998) ("The courts must stay within their constitutionally prescribed sphere of action… there must be redressability—a likelihood that the requested relief will redress the alleged injury" (internal quotes and citations removed)), available at https://scholar.google.com/scholar_case?case=5075678674595179332.
108. Elizabeth Pollman, "Constitutionalizing Corporate Law," *Vanderbilt Law Review* 69: 639, 648-49 available at https://scholarship.law.upenn.edu/faculty_scholarship/2558/, *quoting* Herbert Hovenkamp, "The Classical Corporation in American Legal Thought," *Geo. L.J.* 76 (1988): 1593, 1659, available at https://scholarship.law.upenn.edu/faculty_scholarship/1940/.
109. *People v. N. River Sugar Ref. Co.,* 121 N.Y. 582 (1890), available at https://www.casemine.com/judgement/us/5914cf54add7b04934820de

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110. *State v. Standard Oil Co.,* 49 Ohio St. 137 (1892), available at https://app.midpage.ai/document/state-v-standard-oil-co-8342107.
111. See, e.g., *Standard Oil Co. of Indiana v. Missouri,* 224 U.S. 270, 288-89 (1912) (a corporation "may also be deprived of its charter for that which, though innocent in itself, is beyond the power conferred upon it as an artificial person"), available at https://scholar.google.com/scholar_case?case=8651921827193301735.
112. Buccola, "States' Rights Against Corporate Rights," p. 600.
113. *Trustees of Dartmouth College,* 17 U.S. 518.
114. *Spring Valley Water Works,* 110 U.S. at 370.
115. *Hamilton Gaslight & Coke Co.,* 146 U.S. at 270.
116. *U.S. v. Stevens,* 559 U.S. at 481.
117. See Transparent Election Initiative, "The Montana Plan," available at https://transparentelection.org/ (last accessed September 2025
118. The text as filed is available, with annotations, at The Transparent Election Initiative, "Montana Constitutional Initiative," available at https://transparentelection.org/montana-constitutional-initiative (last accessed September 2025).
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the-influence-of-ordinary-people-in-american-politics/.
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123. Public Citizen, "Overturning Citizens United: By The Numbers," available at https://www.citizen.org/article/by-the-numbers/ (last accessed September 2025).
124. UpCounsel, "Changing State of Incorporation to Delaware," updated November 4, 2020, available at https://www.upcounsel.com/changing-state-of-incorporation-to-delaware.
125. Delaware Division of Corporations, "Annual Report Statistics," available at https://corp.delaware.gov/stats/ (last accessed September 2025).
126. See California Secretary of State, "Articles of Incorporation – CA Nonprofit Corporation – Public Benefit," available at https://bizfileonline.sos.ca.gov/forms/business (last accessed September 2025). Note that out-of-state nonprofits that want to do business in California also need to pay $30. See California Secretary of State, "Registration – Out-of-State Corporation – Nonprofit," available at https://bizfileonline.sos.ca.gov/forms/business (last accessed September 2025).
127. California Secretary of State Shirley N. Weber, Ph.D., "Forms, Samples and Fees Corporations – California (Domestic)," available at https://www.sos.ca.gov/business-programs/business-entities/forms/corporations-california-domestic (last accessed September 2025). "Statement of Information – Nonprofit: Due within 90 days of initial registration and every two years thereafter. $20."
128. Jill E. Fisch and Jeff Schwartz, "How Did Corporations Get Stuck in Politics and Can They Escape?", last revised March 27, 2024, available at http://ssrn.com/abstract_id=4740866.
129. See, e.g., *Am. Tradition P'ship, Inc.,* 567 U.S. 516.
130. *Bellotti,* 435 U.S. at 809 (J. White, dissenting).