STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the September 30, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

**Agenda Item #1. Request for Waiver of Late-Filing Penalty/Maine Center for Economic Policy**
Mr. Wayne explained that the Maine Center for Economic Policy was required to file monthly reports during 2010. The organization was late in filing the report due July 15, 2010, because its office manager was on vacation. The preliminary penalty amount is $100. The organization has requested a waiver of the penalty. The staff recommends denying the waiver request and assessing the $100 penalty.

Mr. Youngblood moved that the Commission adopt the staff's recommendation and assess $100 penalty. Ms. Matheson seconded.

Motion passed unanimously (5-0).

**Agenda Item #2. Complaint against Aroostook County Sheriff**
Mr. Wayne said on September 9, 2010, the Commission received a complaint from the Aroostook County Republican Committee claiming that the incumbent sheriff, James Madore, had improperly used public property, resources, and employees to promote his re-election. He explained that the complaint was also filed with the District Attorney's Office and three County Commissioners. He said after review, the

Commission staff and counsel believe that the matter is not within the Commission's jurisdiction. No action is required by the Commissioners.

Mr. Healy asked whether the candidates running for sheriff are required to report their contributions and expenditures with the Commission and also whether the use of public property for campaign purposes should be reported as a contribution or expenditure.

Mr. Wayne said these candidates are required to file campaign finance reports with the Commission and that a candidate's use of public resources could be viewed as a contribution and should be reported.

Mr. McKee said the complaint received was a general complaint and not one that was based on inaccurate reporting, which would bring it into the Commission's jurisdiction.

**Agenda Item #3. Audit Presentation by Vincent W. Dinan**

The Commission's auditor, Vincent W. Dinan, presented an overview of the audits of 2010 Maine Clean Election Act candidates and reviewed the first four audits completed. There were three legislative candidates with no exceptions found: Charles E. Bragdon, House District 120; Robert K. Emrich, House District 25; and Peter M. Sheff, House District 45.

Mr. Dinan also reviewed the audit finding of gubernatorial candidate Peter Mills. There was an audit finding regarding documentation to support payments over $500 to individuals for campaign work, but he recommended no finding of violation or penalty because the requirement is new this year. He also said that the Commission's guidelines for this requirement need to be defined better and more candidate education would be beneficial. He said overall the Mills campaign was very organized and well documented.

Mr. Dinan reviewed a concern he has with the issue of prepaying media brokers without any written contractual obligation between the parties. He said it is not good practice to disburse money without some control as to how the money is spent. He said neither the law nor the Commission rules establish any such controls. He said the Commission may want to consider this matter during the next rule-making.

Mr. McKee agreed with Mr. Dinan's concern over large sums of money being spent without some form of contractual agreement.

Mr. Healy said the media broker is the agent for the campaign and the money cannot be spent on anything other than media time. He said he believes the money goes into an escrow account and has to be disbursed only for the intended purpose of funds.

**Agenda Item #4. Scheduling Meetings during October 2010**

The Commission decided to set meetings as necessary or as directed by the Chair during the final weeks before the November 2 general election.

**Agenda Item #5. Proposed Procedures for Considering Statute and Rule Changes for 2011**

Mr. Wayne reviewed the past practice for developing statutory changes to propose to the Legislature after a general election. He said due to enforcement matters and requests for advice during an election year, the staff compiles a list of issues that may need to be addressed after the election.

Mr. McKee said the past practice has worked fine and the Commission will go forward as usual.

**Agenda Item #6. Update on Investigation of Cutler Files Website**

Mr. Wayne explained that at the Commission's meeting on September 9, 2010, the staff was authorized to investigate the Cutler Files website (Cutler Files) and has begun the investigation. He said staff has spoken to a witness who has knowledge of the website; however, the witness has declined to disclose information about who is responsible for the website to the Commission. The Chair issued a subpoena for that witness. However, just prior to serving the subpoena, the Cutler Files raised First Amendment objections to the investigation. Through legal counsel, the Cutler Files will present legal arguments to the Commission to discontinue the investigation. Mr. Wayne said the staff is in favor of going forward with the investigation recognizing that this could lead to litigation.

Daniel I. Billings, counsel for Cutler Files, said this was an unusual proceeding in that the party being investigated had no opportunity to address the Commission prior to the investigation being authorized. However, he acknowledged that matters that come before the Commission in the 60 days before the

Commission need to be addressed quickly. He explained the website was created a month ago with less than $100 spent to-date. He said the total expenditure amount anticipated to be spent through the election is $30.36. He said the promotion of the site has been through the media or word of mouth, noting that the number of hits on the site increased dramatically after the announcement of the Commission's investigation. He said the blog is not owned, controlled or operated by any political party, political committee, candidate or candidate's immediate family. He suggested the Commission contact one of the political entities that fall under the Commission's jurisdiction to determine whether any of their employees or agents are involved with this site.

Mr. Billings stated the U. S. Supreme Court has recognized that anonymous speech is protected by the First Amendment referring to *McIntyre v. Ohio Elections Commission* as one of the primary cases confirming the right to anonymous political speech. He said in that case the United Stated Supreme Court considered and struck down a disclosure statute similar to Maine's. The statute applied to all political speech and did not have any monetary thresholds that triggered applicability. The statutes that have been upheld by courts have thresholds or have limited applicability to candidates and political committees but not individuals. He said Maine's statute makes anonymous political speech illegal but is not narrowly tailored to an important governmental interests.

Mr. Healy asked if the McIntyre issue involved false statements.

Mr. Billings said it did not. The Court said if Ohio had a statute that was narrowly tailored to deal with false statements then that would likely be upheld.

Mr. Healy asked Mr. Billings if the Commission were to apply the statute only in cases where there was a demonstration of false statements in an anonymous communication, would that solve the First Amendment concern for him?

Mr. Billings said that it would not because that was not how the statute was written.

Mr. Healy asked whether enforcing the statute in this manner would recognize the First Amendment issue.

Mr. Billings said there is nothing in Maine statute that gives the Commission authority to pass judgment on the content of political communications. He said the Commission's jurisdiction relates only to campaign finance.

Mr. Healy said ordinarily a person would have to disclose their identity; however, this person wants to preserve their anonymity. He asked whether the Commission could decide, in a case where a person is anonymous and has a First Amendment right, and the communication is not false, not to enforce the statute. However, he expressed concern that someone could put out false material and would not have to disclose their identity to the public. The public has a right to know who is putting out false materials, he said. Mr. Healy acknowledged that he was not saying and does not know if the material on the website is false or not.

Mr. Billings said determining what is false and what is true in a political campaign is difficult. He said the Commission does not have the right or the resources to decide what campaign communications are false or true. He said if Mr. Cutler feels he has been defamed, he has access to the courts and could find out who is behind the website through those legal channels. He said Mr. Cutler should not be asking a government agency to investigate matters of political speech.

Mr. Healy said he agreed that the website is advocating political opinion; however, if there are false statements of fact, that is another matter. He said false statements of facts should be easily distinguishable from political opinions.

Mr. McKee said the Commission's position should be to presume the constitutionality of the statute and apply it to that matter at hand. Mr. McKee said it would be up to the court to stop the investigation if the statute was determined to be unconstitutional.

Mr. Billings said the Commission should uphold the statute as well as the Constitution. He said the underlying government interest is preventing corruption or the appearance of corruption. He said the "informational interest" to which the courts refer has to be put in the context of campaign spending and who is spending money to influence the election. He said the Commission could interpret the statute such that it would not apply to de minimis expenditures. He also said this Commission could interpret the statute in the same fashion as the FEC interprets the federal disclaimer statute, which is somewhat different

than Maine's but which refers to the federal definition of expenditure, including a media exception which is the same as in Maine law.

Mr. McKee asked whether he was proposing that the media exception be applied to the Cutler Files.

Mr. Billings said that he was proposing that. He said that if the FEC was considering this issue in a federal campaign, it would apply the media exception to the Cutler Files.

Ms. Matheson said that the FEC guidelines regarding bloggers were not entirely clear cut and that it appeared that the media exception may not apply to all bloggers.

Mr. Billings said that he believed the exception might not apply to a blogger who was paid by a party committee, for example. Mr. Billings said he feels the FEC has recognized the role of the traditional media played in elections is being played out by online media outlets, including blogs, which should be entitled to the same exception as traditional media outlets. He said the policy behind this was that a de minimis expenditure to write and post a blog should not result in the activity being regulated by the FEC.

Mr. Healy said he would not call this blog a newspaper or magazine. He asked if this is a periodical publication.

Mr. Billings said it could be considered a periodical. It has been updated periodically.

Mr. Healy said Mr. Billings made a factual conclusion that the blog was not a campaign communication but citizen journalism which Mr. Billings has the burden to prove. Mr. Healy said he believed it was not journalism but a campaign communication, intended to influence Mr. Cutler's campaign.

Mr. Billings said there were articles in the paper every day, usually editorials, that are unsigned.

Mr. Healy stated the editorial board is identified so the reader knows who is responsible.

Mr. Billings said that his client would be satisfied if the Commission were to determine that the expenditure was de minimis and that disclosure statement was not required. However, he thought that there is a larger issue in general regarding blogs and whether they should be required to have a disclosure statement on them, if the cost was not de minimis.

Mr. Duchette said it appears Mr. Billings would not have any objections to an investigation in to the matter with regard to determining whether this website was controlled by a party, candidate, etc. He said the concern is that an anonymous person would be difficult to determine whether they fell into one of those categories.

Mr. Billings said that is a legitimate concern. However, if an investigation is to be opened, he said there needs to be evidence that leads the Commission to believe it was controlled by a candidate, candidate's family member or political party or committee. He said if there is a process that would protect his client's identity he would be cooperative with that.

Mr. Healy stated the staff or Attorney General's Office could do an investigation and that information would not be public information. He would prefer there be a procedure which information could be given to the Commission under seal so it would not be public, but the questions of whether it is a political party, candidate, or committee could be answered.

Mr. Billings said the problem with that scenario would be keeping the information gained through an investigation out of the public record. He said there is an exception in the Freedom of Access Act that covers documents created or obtained in the course of a law enforcement investigation. But he did not believe that this case would evolve into a criminal investigation.

Mr. Healy asked Mr. Billings whether he felt his client had a constitutional right to remain anonymous if the material provided on the website is materially and seriously false.

Mr. Billings said if that is the case, Mr. Cutler could bring legal action through the court system.

Mr. Healy asked where the client's speech is constitutionally protected.

Mr. Billings said he/she is constitutionally protected when it is a governmental agency trying to establish an identity. It would be different in a private, civil action between two parties. He said he believes, as does the U. S. Supreme Court, his client or anyone else that speaks about political issues, has a right to speak anonymously.

Ms. Matheson asked Mr. Billings if he saw any distinction between a blog that promotes a political point of view along with encouraging other discussion and ideas versus a blog that just puts information up on a webpage.

Mr. Billings said he did not see any distinction. He said some blogs provide opportunity for discussion and some do not. He said that some blogs tend to come and go depending on the political issue that they are concerned with. He said some issues are active for a while and then fade away after the elections. He said this is a relatively new way for people to get their point of view out to the public.

Mr. Duchette asked how someone would draw the distinction between an advertisement and a blog.

Mr. Billings explained that if a distinction is to be made it should be based on the amount of money spent for the site and who controls the site. He said if it is a private citizen who is opposed to some candidate or some issue it would not fall within the Commission's jurisdiction. The Commission's purview is what amount of money is spent on an issue or campaign. If the owners of the site bought ads to drive people to the website, that could result in the expenditures that would bring the activity into the Commission's jurisdiction.

Richard Spencer, Esq., counsel for the Cutler campaign, said the so-called blog is a very carefully compiled political attack on Eliot Cutler. He said he believes it to be the creation of a professional political consultant. He said Maine law says express advocacy communications have to identify who is making the communication. He said this went up originally as express advocacy without any identification and it was in violation of the statute then. They have since changed a few items to make it appear not to advocate expressly, although he thinks it is still express advocacy. He said the site now violates the 35 day presumption period law because it clearly identifies a gubernatorial candidate. He stated the analogy Mr.

Billings makes to the Federal Election Commission law does not apply. He said this statute, § 1014, the Legislature specifically and directly worded regarding the disclaimer requirements which apply to a long list of entities, including publicly accessible sites on the internet.

Mr. Spencer stated this site is not a blog. He said the website address for the site is *Culterfiles* and the purpose of the site is a political attack ad on Eliot Cutler. He said he has been involved in Maine politics for some time and reading through this material, he strongly feels that the material was originally developed by a national opposition research firm hired by a primary election candidate regarding their opposing candidate to misrepresent that candidate's record. He suggested a cost of $50,000 - $100,000 worth of material invested in this site most likely by one of the primary campaigns in anticipation of running against Mr. Cutler in the general election. He said after spending this much money, this person decided to go ahead and use the negative material now. He said if this is true, the disclosure law has been violated before and after the presumption period began. He said Mr. Billing's legal arguments are refuted by the recent *Citizens United v. Federal Election Commission* in the U. S. Supreme Court. He said disclosure on materials that identify a candidate were addressed directly in this decision. He handed out the Court opinion (attached). He said the Court upheld the requirement that the identities of people making expenditures be disclosed. He said Mr. Billings relied on a 1995 case, *McIntyre*, upholding anonymous communications; however, Mr. Spencer explained that this case involved a ballot referendum question, not a candidate election. He said the eight-member majority of the Supreme Court upheld the requirement to disclose the identity of the person making an expenditure. He quoted from Justice Thomas' dissent, "Congress may not abridge the right to anonymous speech based on the simple interest in providing voters with additional information." Mr. Spencer said Justice Thomas also said in his dissent that the Court is not following the principle of *McIntyre* when applying the law to candidate elections. Justice Thomas' dissent clearly showed that the eight other Justices on the Court did not think that anonymous speech was protected in all instances. He said Mr. Billings' argument that *McIntyre* limited the ability to require disclosure is wrong and is contradicted by *Citizens United*. Mr. Spencer said the Federal Election Commission exception Mr. Billings referred to is not mentioned in Maine law and is not applicable.

Mr. Spencer said the Cutler campaign is simply requesting the Commission to follow Maine law. He said the Commission was successful in broadening the definition of express advocacy a few years back, with Mr. Billings' support. He said the regulations are clear. He said this is a website dedicated to the character

assassination of one person. He said someone spent a great deal of money with professional assistance to put this website together. He called it a political hatchet job and said the person or persons responsible need to step forward so that the public may evaluate their motive and interest in the Cutler campaign. He also urged the Commission to move forward on the investigation since the original complaint was sent to the Commission Office almost a month ago and too much time has already passed with the election just a month away.

Mr. Duchette asked, with regard to who is behind the website, whether a higher standard should be applied if the work was done by a professional even though that person decided to create the blog on his or her own and did not get paid.

Mr. Spencer said a higher standard should be applied if a significant amount of money were spent to create the material and he is very sure there was. He said at the penalty phase, especially, a professional should be held to a higher standard. He said a violation of the statute has been in effect for a month and the responsible party is refusing to abide by the law.

Mr. Healy asked with regard to *Citizens United*, if the First Amendment does not protect the anonymity of a person that creates a website or leaflet.

Mr. Spencer said Justice Thomas, in his dissent, said exactly that - the Court was refusing to apply *McIntyre* in the *Citizens United* case. However, the Court said if a group that can demonstrate it would be subject to harassment or retaliation if its identity became known and could prove that it had a legitimate interest in preserving its confidentiality, then the Court would review on a case-by-case basis. He said in that scenario the Court could allow confidentiality to outweigh the governmental interest in disclosure. Justice Thomas and Mr. Billings presented the same argument and that argument was rejected by the majority of the Court.

Mr. Healy asked Mr. Spencer whether *Citizens United* went as far as saying everyone should be required to disclose their identity on political communications.

Mr. Spencer said there is a media exception, and there are blogs that would fit into the exception. He said this website does not fall into that category. He said this is a website formed with no other purpose than to attack a candidate.

Mr. Billings, responding to Mr. Spencer's legal argument that § 1014 applies, explained that the first sentence in the disclosure statute starts with "*whenever a person makes an expenditure.*" You then have to look at the exception to an expenditure for media. If you interpret the media exception the same way the FEC does, there is no expenditure. He said there needs to be an expenditure in order for the law to apply. He also said the *Citizens United* case involved the Federal disclosure statute which is much more narrowly tailored than Maine law and involved broadcast ads in the period just prior to the election involving a great deal of money. He said that if the issue was a disclosure on a website involving a federal candidate, the federal disclosure statute would not apply under *Citizens United*. Maine's disclosure statute is very broad and applies to every, while the federal statute has a number of exceptions, including one for websites. *Citizens Unite*d did not change the requirement that a law be narrowly tailored.

Mr. Duchette asked why the Commission should not investigate whether the expenditure is de minimus as well as do an investigation of the affiliation of the individuals responsible.

Mr. Billings said there was no evidence that supports more money was spent. Setting up a website is very inexpensive.

Mr. McKee said procedurally, the Commission has already authorized the staff to do an investigation and is being asked to reconsider that authorization.

Mr. Wayne said the Legislature has enacted statutes that have constitutional problems. He said he believed there have been circumstances where the Commission should decline to enforce a statute due to constitutional problems. Mr. Wayne reviewed a 2006 case regarding a candidate's use of endorsements from a previous election during the primary election and for which he did not get the endorser's authorization as required by the statute. He said the Law Court struck down the statute as an unconstitutional abridgement of free speech. He said the Commission was simply administering the statute

that the Legislature had enacted, but because it was found to be unconstitutional, the Commission had to pay attorney's fees for the plaintiff of approximately $50,000.

Mr. McKee questioned whether the Commission should have to decide the constitutionality of the statutes it has to administer in every case.

Mr. Wayne said the staff often hears complaints from people about their First Amendment rights to speak being violated. From time to time, he said the Commission needs to evaluate those constitutional arguments when deciding how to administer the statute. He said he would recommend allowing the staff and counsel a limited amount of time to conduct the legal research necessary in order to give more consideration to the arguments presented by Mr. Billings and Mr. Spencer.

Ms. Gardiner agreed with Mr. Wayne and supported the need for the Commission to interpret and apply the statute consistent with the Constitution. The Commission does have some discretion in how it exercises its enforcement authority. She said she would appreciate the extra time and opportunity to analyze the arguments closely in order to come back with sound advice for the Commission. She said there may be a way, working with Mr. Billings, to gather some facts regarding the expenditures while preserving his client's anonymity.

Mr. McKee said in his view considering the language in the statute and the facts presented which no one has disputed, there is probable cause that there may be a violation in this case. He said a person made an expenditure for a communication which expressly advocates against a candidate on a publicly accessible website and is not authorized by the candidate. He said that he appreciated that there may be constitutional issues and suggested that the staff and counsel do the necessary research over the next two weeks.

Mr. Spencer expressed his concern over the time frame since there are only 35 days left before the election. They have already waited almost a month for a decision by the Commission. He questioned the need for another two weeks to go by before any result can be reached.

Mr. McKee said that he understood Mr. Spencer's concern. He said that he thought that it was everyone's goals to have the research done sooner rather than later. He said that everyone should work together to move the process along quickly.

Mr. Wayne suggested using the confidentiality provision in the investigation statute to gather facts in a confidential way. He cautioned the Commission that some people, especially the press, react negatively when agencies use this process.

Mr. Healy asked Ms. Gardiner as to whether further formal investigation would assist in the analysis of the constitutional issue. He agreed with Mr. McKee that, in light of the probable cause standard, the statute may have been violated but the constitutional issue needs to be taken very seriously.

Ms. Gardiner said the first issue that she would look into is an analysis of the de minimus argument based on the presumption that the facts presented by Mr. Billings are true, though they are contested by Mr. Spencer. She would not need to know the actual costs to analyze Mr. Billings' de minimis argument. She said that it would be efficient to do more factual investigation concurrently with the legal analysis so that the Commission has as much information as possible when deciding this matter.

Mr. McKee said he would support continuing with the factual investigation in a confidential manner.

**Agenda Item #7. Ratification of Minutes of the August 26, 2010 Meeting**

Mr. Duchette moved to adopt the minutes as written. Mr. Healy seconded.

Motion passed unanimously (5-0).

**Other Business**

**Request by Brant Miller for Investigation of Androscoggin County Republican Committee**

Mr. Wayne explained that Mr. Brant Miller, Republican nominee for House of Representatives in Bowdoinham, running against the Democratic incumbent, Seth Berry, objected to some of the content of an e-mail which Mr. Miller did not authorize even though the e-mail stated he did authorize it. Mr. Wayne said there was no legal violation in this matter and advised the Commission to deny the request for an investigation.

Mr. Healy asked if it was a violation to falsely state that a candidate did authorize something.

Mr. Wayne said if the communication was required to have the statement and the statement was false, that would be a violation; however, if the statement was not required but was put on the communication anyway and was false, it would not be a violation.

Mr. Duchette moved that the Commission deny the request for investigation. Mr. McKee seconded.

Motion passed (4-1). Ms. Matheson opposed.

**Request to Investigate Possible Unregistered Push Poll**

Mr. Wayne explained that the Maine Democratic Party (MDP) has requested that the Commission investigate whether a poll that involved live callers asking Maine residents questions that included negative statements regarding Democratic candidates for the State Senate constitutes an unregistered push poll.

Daniel Walker, Esq., counsel for the Maine Democratic Party, said this matter arose after receiving reports that calls were made from an organization in Utah to Maine voters that gave false information regarding specific candidates. He said push polling requires registration and there have been no registrations filed at this time. He said the callers gave untrue information regarding these candidates to persuade voters to vote a certain way.

Mr. Healy asked if there had been any investigating of Target Points Consultants by the Maine Democratic Party or any contact made to the organization.

Mr. Walker said the only research done was to conduct an internet search for the organization; no other research or contact with the organization had been made.

Mr. Billings said the MDP had filed an earlier complaint concerning polls the Senate Republican Committee had done and as a result of meeting with the Commission staff and the parties, the complaint

was withdrawn. He said he has received reports of these calls as well and stated for the record the Senate Republican Committee had no involvement in these calls.

Mr. McKee said this matter appears to meet the probable cause standard.

Mr. Youngblood said it appears that there is incorrect information being passed around. He said those who are inclined to do push polls need to know they need to register.

Mr. Youngblood moved that the Commission grant the request for investigation. Mr. McKee seconded.

Motion passed (4-1). Mr. Duchette abstained.

Ms. Matheson moved to adjourn and Mr. Youngblood seconded. Meeting adjourned at 11:30 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director

Attachments(2)

Item #6 Hand Out provided by Richard Spencer, Esq.



Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—Decided January 21, 2010

As amended by §203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate. 2 U. S. C. §441b. An electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election, §434(f)(3)(A), and that is "publicly distributed," 11 CFR §100.29(a)(2), which in "the case of a candidate for nomination for President . . . means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days," §100.29(b)(3)(ii). Corporations and unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U. S. C. §441b(b)(2). In *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 203–209, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, that political speech may be banned based on the speaker's corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party's Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast

U. S. 652, should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.

D

*Austin* is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures. As the Government appears to concede, overruling *Austin* "effectively invalidate[s] not only BCRA Section 203, but also 2 U. S. C. 441b's prohibition on the use of corporate treasury funds for express advocacy." Brief for Appellee 33, n. 12. Section 441b's restrictions on corporate independent expenditures are therefore invalid and cannot be applied to *Hillary*.

Given our conclusion we are further required to overrule the part of *McConnell* that upheld BCRA §203's extension of §441b's restrictions on corporate independent expenditures. See 540 U. S., at 203–209. The *McConnell* Court relied on the antidistortion interest recognized in *Austin* to uphold a greater restriction on speech than the restriction upheld in *Austin*, see 540 U. S., at 205, and we have found this interest unconvincing and insufficient. This part of *McConnell* is now overruled.

IV

A

Citizens United next challenges BCRA's disclaimer and disclosure provisions as applied to *Hillary* and the three advertisements for the movie. Under BCRA §311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that "'_______ is responsible for the content of this advertising.'" 2 U. S. C. §441d(d)(2). The required statement

must be made in a "clearly spoken manner," and displayed on the screen in a "clearly readable manner" for at least four seconds. *Ibid.* It must state that the communication "is not authorized by any candidate or candidate's committee"; it must also display the name and address (or Web site address) of the person or group that funded the advertisement. §441d(a)(3). Under BCRA §201, any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC. 2 U. S. C. §434(f)(1). That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. §434(f)(2).

Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley,* 424 U. S., at 64, and "do not prevent anyone from speaking," *McConnell, supra,* at 201 (internal quotation marks and brackets omitted). The Court has subjected these requirements to "exacting scrutiny," which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest. *Buckley, supra,* at 64, 66 (internal quotation marks omitted); see *McConnell, supra,* at 231–232.

In *Buckley*, the Court explained that disclosure could be justified based on a governmental interest in "provid[ing] the electorate with information" about the sources of election-related spending. 424 U. S., at 66. The *McConnell* Court applied this interest in rejecting facial challenges to BCRA §§201 and 311. 540 U. S., at 196. There was evidence in the record that independent groups were running election-related advertisements "'while hiding behind dubious and misleading names.'" *Id.*, at 197 (quoting *McConnell I*, 251 F. Supp. 2d, at 237). The Court therefore upheld BCRA §§201 and 311 on the ground that

they would help citizens "'make informed choices in the political marketplace.'" 540 U. S., at 197 (quoting *McConnell I, supra,* at 237); see 540 U. S., at 231.

Although both provisions were facially upheld, the Court acknowledged that as-applied challenges would be available if a group could show a "'reasonable probability'" that disclosure of its contributors' names "'will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *Id.*, at 198 (quoting *Buckley, supra,* at 74).

For the reasons stated below, we find the statute valid as applied to the ads for the movie and to the movie itself.

B

Citizens United sought to broadcast one 30-second and two 10-second ads to promote *Hillary*. Under FEC regulations, a communication that "[p]roposes a commercial transaction" was not subject to 2 U. S. C. §441b's restrictions on corporate or union funding of electioneering communications. 11 CFR §114.15(b)(3)(ii). The regulations, however, do not exempt those communications from the disclaimer and disclosure requirements in BCRA §§201 and 311. See 72 Fed. Reg. 72901 (2007).

Citizens United argues that the disclaimer requirements in §311 are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for any commercial advertisements, including the ones at issue here. We disagree. The ads fall within BCRA's definition of an "electioneering communication": They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. See 530 F. Supp. 2d, at 276, nn. 2–4. The disclaimers required by §311 "provid[e] the electorate with information," *McConnell, supra,* at 196, and "insure that the voters are fully informed" about the person or group

who is speaking, *Buckley, supra,* at 76; see also *Bellotti,* 435 U. S., at 792, n. 32 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected"). At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.

Citizens United argues that §311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising. It asserts that §311 decreases both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer. We rejected these arguments in *McConnell, supra,* at 230–231. And we now adhere to that decision as it pertains to the disclosure provisions.

As a final point, Citizens United claims that, in any event, the disclosure requirements in §201 must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U. S. C. §441b's restrictions on independent expenditures to express advocacy and its functional equivalent. 551 U. S., at 469–476 (opinion of ROBERTS, C. J.). Citizens United seeks to import a similar distinction into BCRA's disclosure requirements. We reject this contention.

The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech. See, *e.g., MCFL,* 479 U. S., at 262. In *Buckley,* the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. 424 U. S., at 75–76. In *McConnell,* three Justices who would have found §441b to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements. 540 U. S., at 321 (opinion of KENNEDY, J., joined by Rehnquist, C. J., and SCALIA, J.). And the Court has upheld registra-

tion and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. *United States* v. *Harriss*, 347 U. S. 612, 625 (1954) (Congress "has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose"). For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.

Citizens United also disputes that an informational interest justifies the application of §201 to its ads, which only attempt to persuade viewers to see the film. Even if it disclosed the funding sources for the ads, Citizens United says, the information would not help viewers make informed choices in the political marketplace. This is similar to the argument rejected above with respect to disclaimers. Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election. Because the informational interest alone is sufficient to justify application of §201 to these ads, it is not necessary to consider the Government's other asserted interests.

Last, Citizens United argues that disclosure requirements can chill donations to an organization by exposing donors to retaliation. Some *amici* point to recent events in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation. See Brief for Institute for Justice as *Amicus Curiae* 13–16; Brief for Alliance Defense Fund as *Amicus Curiae* 16–22. In *McConnell*, the Court recognized that §201 would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed. 540 U. S., at 198. The examples cited by *amici* are cause for concern. Citizens United, however, has offered no evidence that its members may face similar

threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation.

Shareholder objections raised through the procedures of corporate democracy, see *Bellotti, supra,* at 794, and n. 34, can be more effective today because modern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. See *McConnell,* 540 U. S., at 128 ("[T]he public may not have been fully informed about the sponsorship of so-called issue ads"); *id.,* at 196–197 (quoting *McConnell I,* 251 F. Supp. 2d, at 237). With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests." 540 U. S., at 259 (opinion of SCALIA, J.); see *MCFL, supra,* at 261. The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

C

For the same reasons we uphold the application of BCRA §§201 and 311 to the ads, we affirm their application to *Hillary.* We find no constitutional impediment to the application of BCRA's disclaimer and disclosure re-

quirements to a movie broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.

## V

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. See Smoodin, "Compulsory" Viewing for Every Citizen: *Mr. Smith* and the Rhetoric of Reception, 35 Cinema Journal 3, 19, and n. 52 (Winter 1996) (citing Mr. Smith Riles Washington, Time, Oct. 30, 1939, p. 49); Nugent, Capra's Capitol Offense, N. Y. Times, Oct. 29, 1939, p. X5. Under *Austin*, though, officials could have done more than discourage its distribution—they could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Modern day movies, television comedies, or skits on Youtube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made the "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value" in order to engage in political speech. 2 U. S. C. §431(9)(A)(i). Speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute's purpose