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FIRST AMENDMENT—CORPORATE FREE SPEECH

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

INTRODUCTION

In *First National Bank of Boston v. Bellotti*,[1] the United States Supreme Court, in a five to four decision, struck down a Massachusetts criminal statute[2] which prohibited corporate expenditures made to influence or affect the popular vote on matters not materially affecting the corporation. In overturning the decision of the Massachusetts Supreme Judicial Court,[3] the Court held that the corporation's speech was safeguarded by the first and fourteenth amendments. The Court found that freedom to speak did not depend upon the identity of the speaker.[4] And, since the first amendment was said to protect not just the speaker but also "the stock of information from which members of the public may draw,"[5] the Court noted that, especially where speech was related to "the process of governing,"[6] it could not be abridged absent a "compelling" state interest.[7] The Court acknowledged the important state interest in "sustaining the active role of the individual citizen in the electoral process and thereby preventing diminution of the citizens' confidence in government."[8] However, the Court concluded that this interest was not sufficiently compelling to justify a restraint of the corporation's first amendment rights.[9]

At issue in *Bellotti* was the First National Bank of Boston's desire to publicize its views on a referendum proposal that would amend the Massachusetts Constitution to allow a graduated personal income tax. The amendment was to be submitted to the voters as a ballot question at a general election. The Bank learned that Bellotti, the Attorney General of Massachusetts, intended to enforce the criminal statute prohibiting corporations from expending money to influence the outcome of any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation.[10] Any questions concerning taxation of individual income were statutorily deemed not material to corporate activity. Violation of the statute would make possible a maximum fine of $50,000 against the corporation, and $10,000 and not more than one year of imprisonment against the directors or officers of the corporation.

The Bank challenged the statute as a violation of the first and fourteenth amendments of the

[1] 435 U.S. 765 (1978).

[2] MASS. GEN. LAWS ANN. ch. 55, § 8 (West 1978).

[3] The state court had upheld the statute on the ground that a corporation's right to free speech derived from its property rights under the fourteenth amendment rather than from free speech rights under the first amendment. First Nat'l Bank of Boston v. Attorney Gen., Mass., 359 N.E.2d 1262, 1270 (1977). *See also*, note 13 and accompanying text *infra*.

[4] 435 U.S. at 784.

[5] *Id.* at 783.

[6] *Id.* at 786.

[7] *Id.*

[8] *Id.* at 787. Another interest considered by the Court was that of protecting the rights of minority shareholders whose views might have been different from those aired by the corporation through its officers. That interest, in conjunction with others, also was not sufficiently compelling to justify the statute. *Id.*

[9] *Id.*

[10] The relevant sections of the statute are:

> No corporation carrying on the business of a bank, trust, surety ... no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting, or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party, or influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation. No question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation....
>
> Any corporation violating any provision of this section shall be punished by a fine of not more than fifty thousand dollars and any officer, director or agent of the corporation violating any provision thereof or authorizing such violation, ... shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than one year, or both.

MASS. GEN. LAWS ANN. ch. 55 § 8 (West 1978).

United States Constitution.[11] It also argued that the referendum concerned a matter that would materially affect the corporation's business.[12] The case was submitted to a single Justice of the Supreme Judicial Court of Massachusetts for a declaratory judgment, upon agreed facts, to settle the question prior to the election. Judgment was reserved to the full bench. The Supreme Judicial Court upheld the constitutionality of the statute, finding that a corporation could only claim first amendment protection when speaking on an issue materially affecting the corporation's business, property or assets. The court reasoned that a corporation's right to free speech came not from the first amendment, but rather from the fourteenth amendment's property and business safeguards.[13] Where speech did not relate to business, the court considered it undeserving of constitutional protection. Accordingly, the court did not use the first amendment's standard of "strict scrutiny" in reviewing the restriction; rather, it employed "traditional scrutiny" under the fourteenth amendment.[14]

Supreme Court Interpretation

The bank appealed the state court's decision directly to the United States Supreme Court. Justice Powell's majority opinion first found that this case was not moot despite the fact that the referendum had already been held and that the proposed amendment had been defeated.[15] Instead, the Court held that the circumstances of the case fell squarely within the standards established by *Weinstein v. Bradford*,[16] where mootness was said to be precluded when the controversy was too short in duration to be fully litigated[17] and where there was reasonable expectation that the same party would be subjected to the same action again.[18]

The Court also found it unnecessary to decide the broad issue, addressed by the state court, of "whether and to what extent corporations have First Amendment rights."[19] Thus, the Court avoided deciding whether corporations' first amendment rights were equal to those of individuals. Rather, the Court simply considered "whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection."[20]

The Court clearly rejected the state court's finding that a corporation had no first amendment protection when its speech related to matters that did not materially affect its business. The Court noted that, although many prior first amendment cases protected corporations which happened to be in the business of publishing or broadcasting, none of those cases relied upon the fact that the expression materially affected the corporation's business.[21] Rather, the Court found that the cases stressed the first amendment's goal of protecting the public's interest in the "dissemination of information" and the "marketplace of ideas,"[22] as well as the speaker's right of self-expression.[23]

[11] The Court noted that the bank did not challenge the constitutionality of the sections of the Massachusetts statute that restricted corporate expenditures made to influence candidate elections. 435 U.S. at 788 n.26. Such limitations were upheld in Buckley v. Valeo, 424 U.S. 1, 28–29 (1976), where the Court upheld government ceilings on political contributions on the theory that there was a compelling interest in trying to prevent *corruption* in the political process. However, the *Buckley* Court struck down similar ceilings on political expenditures, finding that the reasons for these restrictions were not compelling enough. 424 U.S. at 45.

[12] The bank believed that the amendment would, in the words of the court below, discourage "highly qualified executives and highly skilled professional personnel from settling, working or remaining in Massachusetts; [promote] a tax climate which would be considered unfavorable by business corporations, thereby discouraging them from settling in Massachusetts with 'resultant adverse effects' on the plaintiff banks' loans, deposits, and other services; . . ." 435 U.S. at 770–71 n.4 (Powell, J., *quoting* Mass., 359 N.E.2d at 1266).

[13] Mass. 359 N.E.2d at 1270.

[14] 435 U.S. at 789 n.24, (citing Mass., 359 N.E.2d at 1275).

[15] 435 U.S. at 775.

[16] 423 U.S. 147 (1975).

[17] *Id.* at 149. The *Bellotti* case meets this standard since: In each of the legislature's four attempts to obtain constitutional authorization to enact a graduated income tax, including the most recent one, the period of time between legislative authorization of the proposal and its submission to the voters was approximately 18 months. This proved too short a period of time for appellants to obtain complete judicial review. 435 U.S. at 774.

[18] This standard was met in *Bellotti* because the 1976 election marked the fourth time in recent years that a graduated income tax amendment had been submitted to the voters of Massachusetts. It was reasonable to believe that the legislature would try again, and that the First National Bank of Boston would again be charged with violation of the statute. ___ U.S. at ___, 98 S. Ct. at 1415.

[19] 435 U.S. at 774–75.

[20] *Id.* at 778.

[21] *Id.* at 781.

[22] The Court cited the recent commercial speech cases, which found that advertising was protected by the first amendment not so much because of the need to protect the advertiser's ability to speak, but rather because of a

The Court also noted the possible ripple effects of permitting a state to restrict corporations' speech to matters materially affecting their business. Such a restriction, the Court said, could lead to legislative directions that other corporations, such as religious, charitable or civic organizations, "stick to their business."[24] Chief Justice Burger, in his concurrence, recognized the implications of applying the "materially affecting" standard to large corporations which own or control a variety of interests, including media subsidiaries.[25] According to Burger, "it could be argued that such media conglomerates as I describe pose a much more realistic threat to valid interests than do appellants and similar entities not regularly concerned with shaping popular opinion in public issues."[26]

The Supreme Court thus found that corporations do have some protection under the first amendment and that any restriction upon corporate speech, such as the one imposed by the Massachusetts criminal statute, must be justified by a clear and compelling state interest to survive strict constitutional scrutiny.[27] The Court next considered whether Massachusetts had such a compelling interest in this case to warrant the prohibition of the corporate expenditures regarding the referendum.[28]

The state had asserted an interest in sustaining the active role of the individual citizen in the electoral process, a role which the state claimed would have been eroded by corporate participation in the discussion of a referendum issue. The state claimed that corporate participation would have exerted an undue influence on the outcome of the election because of the vast wealth that corporations would be able to draw upon. However, the Court rejected this claim and noted that the record did not include evidence or legislative findings to support the state's prediction of corporate dominance of elections. The majority then cited its recent statement in *Buckley v. Valeo* that "the concept that the government may restrict the speech of some elements of society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . . "[29] The Court stated that suppression of corporate expenditures could not be justified by the fact that such expenditures might possibly have influenced the outcome of a vote.[30] Rather, the Court said that the very purpose of public discussion was to influence and that "the people in our democracy are entrusted with the

need to protect consumers' right to receive the information contained in advertisements. 435 U.S. at 783 (citing Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 764 (1976)). Also, in a note to its decision, 435 U.S. at 777 n.11, the Court cited the works of Thomas Emerson and Alexander Meiklejohn, whose theories on democratic government rely heavily on the public's right to a "marketplace of ideas." Meiklejohn has stated that "the point of ultimate interest is not the words of the speakers, but the minds of the hearers." A. MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT 25 (1948). Similarly, Emerson has said that "the crucial point, however, is not that freedom of expression is politically useful, but that it is indispensable to the operation of a democratic form of government." T. EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT 10 (1966).

[23] 435 U.S. at 783.

[24] *Id.* at 785.

[25] An additional consideration, which was not necessary to the determination of this case, was the effect that this statute would have had on media corporations. The state court expressly reserved that question since none of the appellants claimed to be part of the institutional press. 435 U.S. at 781-82 n.17 (citing Mass., 359 N.E.2d at 1270 n.13).

However, Chief Justice Burger's concurrence indicated concern over the distinction which would have to be made between media and non-media corporations. He noted that under the state court's rationale, only non-media corporations would be subject to the statute. The basis for such a distinction would have to be based on the press clause of the first amendment. However, the problem with such an interpretation, as Chief Justice Burger noted, was that "the Court has not yet squarely resolved whether the Press Clause confers upon the 'institutional press' any freedom from government restraint not enjoyed by all others." 435 U.S. at 795-98.

In the 1978 case, Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978), the press clause was again the subject of discussion. In *Landmark,* the Court struck down a criminal statute which allowed punishment of anyone who published the name of a judge who was the subject of a confidential government inquiry. Justice Stewart's concurrence in that case, justifying the imposition of criminal punishment for violation of the statute, proposed that the state had a compelling interest in protecting the quality of its judiciary. However, Stewart felt that extending this law to punish a newspaper violated the press clause. The majority in *Landmark* refused to accept that rationale, making no distinction between individual free speech and freedom of the press. The Court held that there was not a clear and present danger sufficient to restrict *any* speech.

[26] 435 U.S. at 796-97 (citing Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)).

[27] 435 U.S. at 796-97 (citing Buckley v. Valeo, inter alia, 424 U.S. 1(1976)). *See* note 11 *supra.*

[28] *See* note 14 and accompanying text *supra.*

[29] 435 U.S. at 790-91 (citing 424 U.S. at 48-49).

[30] 435 U.S. at 790.

responsibility for judging and evaluating the relative merits of conflicting arguments."[31]

The State of Massachusetts had also argued that its statute sought to preserve the interest of minority shareholders of corporations which would expend money to publicize views contrary to those of the minority. But, the Court concluded that if that was the true purpose of the statute, the provision was both under-inclusive and over-inclusive. The Court noted that a corporation was not precluded from lobbying to communicate its majority's views with respect to pending legislation or from making expenditures before an issue becomes the subject of a referendum. In finding the statute to be over-inclusive, the Court claimed that, by its language, the statute would have prevented corporate speech even if the shareholders gave unanimous consent to the speech. In addition, the statute did not restrict many business entities such as business trusts, real estate investment trusts, labor unions and similar associations. Thus, the Court found that the statute did not adequately serve the purpose of protecting minority interests. The Court also noted that shareholders may have sought relief through procedures of corporate democracy or through lawsuits. The Court concluded that even if the protection of minority shareholders was a compelling state interest in this case, there was "no substantially relevant correlation between the governmental interest asserted and the State's effort" to prohibit appellants from speaking.[32]

Furthermore, the Court considered it doubtful that the interests of minority shareholders actually were in the mind of the legislature when it passed the statute.[33] Justice Powell noted the peculiarity that "not a single shareholder has joined the appellee in defending the Massachusetts statute or, so far as the record shows, has interposed any objection to the right asserted by the corporations to make the proscribed expenditures."[34] Finding that the Massachusetts statute prohibited speech in a manner unjustified by any compelling state interest, the Court thus invalidated the statute and reversed the opinion of the Supreme Judicial Court.[35]

In dissent, Justice White, joined by Justices Brennan and Marshall, stated that the Massachusetts statute actually *furthered,* rather than restricted, the first amendment because it was aimed at preventing corporate domination of the political process—"the essence of our democracy."[36] According to White, the case presented competing first amendment interests in the corporation's freedom to speak and the voters' right to an untainted marketplace of election ideas. White considered it appropriate that that balance be struck by the state legislature rather than by the courts. Although corporate communications were considered to be clearly entitled to some protection under the first amendment, White said that, since the first amendment sought in part to protect self-expression and corporate speech was not self-expression, a lesser degree of first amendment protection was required for corporate speech than for individual speech.[37] White added that the public interchange of ideas would not be seriously infringed because shareholders, employees and customers of the corporation were free to make political communication individually at their own expense.[38]

White's dissent also strongly warned of infringement upon minority shareholders' first amendment rights. Although the majority failed to decide explicitly whether the state's interest in protecting minority shareholders was compelling, White found that this interest was compelling. White cited two cases[39] for the proposition that a state may not require an individual, as a condition of employment, to contribute to the expression of an ideological cause which he may oppose.[40] In those

[31] 435 U.S. at 765 (citing Meiklejohn, the first amendment is an absolute, 1961 S. Ct. Rev. 245, 263, as an authority for this proposition, as well as several cases which emphasized Meiklejohn's theories). 435 U.S. at 791-92 n.31.

[32] 435 U.S. at 795 (quoting Shelton v. Tucker, 364 U.S. 479, 485 (1960)).

[33] Justice Powell stated that "[t]he fact that a particular kind of ballot question has been singled out for special treatment undermines the likelihood of a genuine state interest in protecting shareholders. It suggests instead that the legislature may have been concerned with silencing corporations on a particular subject." 435 U.S. at 793. Justice Rehnquist aired a similar viewpoint. 435 U.S. at 826-27 n.6 (Rehnquist, J., dissenting).

[34] 435 U.S. at 794 n.34.

[35] 435 U.S. at 795.

[36] *Id.* at 821 (White, J., dissenting).

[37] *Id.* at 807 (White, J., dissenting).

[38] *Id.*

[39] 435 U.S. at 813-14 (White, J., dissenting) (citing International Ass'n of Mach. v. Street, 367 U.S. 740 (1961) and Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977)).

[40] 435 U.S. at 813-14. White also relied on a flag salute case, which held that public authorities could not require an individual to express support for a cause with which he disagreed. 435 U.S. at 813 (citing West Va. Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)).

cases, employees had been required by contract or law to pay union fees, part of which were used to pay for political expenditures. But, the Court in each case ordered the union to give its dissenting members a rebate in union dues. White stated that it was unlikely that a corporation could effectively rebate a pro rata share of the cost of communications to dissenting shareholders, and even if it could, a state may nevertheless restrict corporate expenditures for political communication to eliminate "the danger that investment decisions will be significantly influenced by the ideological views of corporations."[41] The majority, in a footnote, had distinguished the two union cases, finding that unlike the situations in which an employee was compelled as a condition of employment to pay union dues that were used to finance political speech, a corporate shareholder was free to withdraw his investment at any time.[42] Referring specifically to that footnote, White replied that dissatisfied employees were free to seek other jobs, just as shareholders were considered by the majority to be free to make other investments. But, according to White, "Clearly the state has a strong interest in assuring that its citizens are not forced to choose between supporting the propogation of views with which they disagree and passing up investment opportunities."[43]

White's dissent also presented evidence suggesting that the amount of money spent on the advocacy of a point of view in an election might indeed influence the outcome of that vote.[44] He noted that an organized political committee registered to oppose the amendment, which was introduced in 1972 to authorize a graduated income tax, expended approximately $120,000 raised primarily from large corporate contributions. However, a similar committee formed to support the amendment was able to raise only about $7,000.[45] Responding in a footnote on behalf of the majority, though, Justice Powell pointed out that the money expended independent of organized committees was not included in the data, and therefore the statistics may have been misleading.[46] Further, he noted, the voters had again rejected the amendment in the 1976 election, when corporate spending had been forbidden by the state court's opinion in this case.[47]

In a separate dissent, Justice Rehnquist expressed his agreement with the decision of the Supreme Judicial Court of Massachusetts. Rehnquist felt that a state need only give a corporation enough rights to protect its property.[48] Additionally, Rehnquist discussed the issue of the public's need and right to receive information, and claimed that:

> The free flow of information is in no way diminished by the Commonwealth's decision to permit the operation of business corporations with limited rights of political expression. All natural persons, who owe their existence to a higher sovereign than the Commonwealth, remain as free as before to engage in political activity.[49]

Analysis

The *Bellotti* decision was especially significant because the Supreme Court, for the first time, clearly stated that a corporation's speech was protected by the first amendment, even if that speech concerned matters not materially affecting the corporation's business. As a result, all future restrictions on corporate speech should be subject to the same "strict scrutiny" as individual speech.

However, it is not yet clear whether, in scrutinizing restrictions on corporate speech and in weighing conflicting interests, the Court might still consider the fact that the "person" being silenced was a corporation, and reach a decision different than if the speaker had been an individual. On the one hand, the *Bellotti* Court stated that the identity of the speaker would not determine the extent of first amendment protection.[50] But, after finding that there was no evidence to support the state's prediction of corporate undue influence on the stream of electoral communications, the Court stated that if corporate domination *had* been demonstrated, then the first amendment implications might merit consideration.[51] Thus, the majority opinion seemed to leave room for consideration of corporate "undue influence," if proven by evidence, as a "compelling" reason for restricting corporate speech. Similarly, the Court left open for consideration the question of whether an appropriately tailored statute aimed at preserving mi-

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[41] ___ U.S. ___, 98 S. Ct. at 1438 (White, J., dissenting).
[42] *Id.* at ___, 98 S. Ct. at 1425 n.34.
[43] *Id.* at ___, 98 S. Ct. at 1437 (White, J., dissenting).
[44] *Id.* at ___, 98 S. Ct. at 1434 (White, J., dissenting).
[45] *Id.*
[46] *Id.* at ___, 98 S.Ct. at 1423 n.28.
[47] *Id.* White indicated that evaluation of such data was within the province of the State. He did not, however, directly respond to the majority's misgivings concerning the validity of the data. *Id.* at 811.
[48] *Id.* at 828 (Rehnquist, J., dissenting).
[49] *Id.* at 828.
[50] 435 U.S. at 784.
[51] *Id.* at 789.

nority shareholder interests could be upheld as being in furtherance of "compelling" state interests. As indicated above, the *Bellotti* Court avoided this question when it determined that the specific statute at issue was both over- and under-inclusive.

The Court mentioned the possibility that dissatisfied minority shareholders could protect themselves against unwanted corporate speech expenditures through normal corporate procedures, including the vote for directors and the power to amend the bylaws to prohibit corporate officers from going against the interests of the shareholders.[52] In extreme cases, shareholders also have the right to sue corporate officers and directors for waste or for breach of fiduciary duties, where it is believed that the expense of the corporation's speech was not justified by any corporate purpose. However, corporations have many wide and varying interests, and it may be difficult for courts to determine what is and what is not material to corporate business.[53]

In promoting the rights of minority shareholders, Justice White relied primarily on two cases involving labor unions,[54] which were not directly on point. In those cases, the employees were *required* to pay union dues, part of which was used to finance political discussion. The employees did not join the unions as a matter of individual choice. A major reason for the existence of the unions was to represent the employees in bargaining with the employer. By contrast, an individual generally would invest in a corporation of his own free will,[55] and, as a result, he would choose to give the corporate management wider discretion to make decisions in many areas.

Furthermore, many expenditures made by corporations do not directly affect the corporations' business. One example would be corporate contributions to various charities. The dissent's position, if extended, suggests that a corporation could be precluded from contributing to a particular charity merely because a minority of shareholders did not want to support it.

In *Buckley v. Valeo*,[56] the Court upheld a *ceiling on contributions* to political candidates and political organizations, but struck down similar *ceilings on individual expenditures* for political issues.[57] The Court there concluded that, unlike contribution limitations, expenditure ceilings failed to serve sufficiently the governmental interest of preventing *corruption*, which was presumed to be linked to political campaign contributions. By contrast, in the instant case, the state's justification of the restriction on corporate expenditures for speech was *corporate domination and political influence* in a referendum issue. A ceiling on corporate contributions, similar to the one upheld in *Buckley*, in future cases could help restrain such undue corporate influence without completely restricting corporate speech. However, it should be emphasized that *Buckley* did not find the possibility of "domination" to be strong enough to justify its contribution ceiling. Rather, as indicated above, the major reason in that case for upholding the limitation on political contributions was the fear of corruption. It is not clear whether even corporate contribution ceilings would appropriately advance the state's purpose of protecting against corporate domination.

In discussing *Buckley*, the *Bellotti* Court briefly noted the *Buckley* conclusion that government could not restrict the speech of one group to enhance the relative voice of others.[58] Similarly, the Court also referred to *Miami Herald Publishing Co. v. Tornillo*,[59] where the Court had overturned a statute that forced newspapers to print editorial replies. *Bellotti* recognized that the *Miami Herald* Court had also chosen not to infringe upon the first amendment rights of one party so as to benefit another. Although an earlier decision, *Red Lion Broadcasting v. FCC*,[60] had upheld a "reply statute,"[61] that statute governed broadcast media which traditionally have been subject to greater government regulation because of the limited number of airwaves and the theory that broadcast media are therefore public resources. *Bellotti* indicated that *Miami Herald* actually may have presented a stronger case of potential domination of the marketplace of ideas; yet in that case, the Court rejected the notion that "free

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[52] *Id.* at 794-95.

[53] *Id.* at 796 (Burger, C. J., concurring).

[54] *See* note 39 *supra*.

[55] 435 U.S. at 794-95 n.34.

[56] 424 U.S. 1 (1976).

[57] The *Buckley* Court distinguished contributions from expenditures, limiting its definition of expenditures to one's own time and money expended to spread his own voice, as opposed to a contribution which was defined as money given to someone else so that they can spread the idea.

[58] 435 U.S. at 790-91 (citing Buckley v. Valeo, 424 U.S. at 48–49). *See also* note 29 and accompanying text *supra*.

[59] 418 U.S. 241 (1974).

[60] 395 U.S. 367 (1969).

[61] The statute in that case concerned the FCC's "fairness doctrine" which required a radio broadcast licensee to allow a person whose integrity was attacked on a broadcast to have an opportunity to respond. 418 U.S. at 244.

speech" would have been furthered by lessening the domination. As the Court noted:

> Far more than in [*Bellotti*], allegations were there made and substantiated of a concentration in the hands of a few of [those having] "the power to inform the American people and shape public opinion," and that "the public [had] lost any ability to respond or to contribute in a meaningful way to the debate on issues."[62]

Bellotti's emphasis upon the widest possible dissemination of ideas is consistent with recent free speech cases.[63] These cases, including *Bellotti,* stress the notion that, in a democracy, government should not interfere with the free flow of information to the public.[64] Those principles suggest that it should not matter who provides the information, since the people and not the government have the ability to choose for themselves what is best. For example, this reasoning was used by the Court in *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council,*[65] where the Court found that the State of Virginia could not restrict the free flow of commercial advertising, even though the advertisements involved did not foster public debate about any significant matters.[66] The Court there stressed the rights of consumers to receive the information and decide for themselves as to how to evaluate it.[67] The Court did not allow the state's fears that the people would not use the information intelligently to justify a restriction on the dissemination of that information.[68] This was precisely the type of paternalism rejected in *Bellotti.*

Corporate involvement in popularizing a referendum issue may actually be beneficial. The more an issue is publicized, the more the public may become interested and involved in the issue. As Mr. Justice Holmes recognized fifty-three years ago: "Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some belief outweighs it . . .. "[69]

The assumption that corporations can dominate the political forum and control the outcome of the vote, suggests that voters are unable to weigh rationally and independently the strong voice against the weak and to choose the proper victor. However true some may believe that assumption to be, judicial recognition of it would undermine the very essence of democratic government.[70] *Bellotti* indicated that the Court is not yet ready to alter the fabric of democracy. Only the future can determine whether the most fundamental of democratic concepts, free choice in an election, can withstand the "influence" of large corporate entities.

Conclusion

Although *Bellotti* did not close the door completely on restrictions of corporate speech, it did set an important precedent in establishing that a cor-

[62] 435 U.S. at 791 n.30 (quoting 418 U.S. at 250). U.S. at 250).

[63] *See e.g.,* Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 764 (1976), and Linmark Assoc., Inc. v. Township of Willingsboro, 431 U.S. 85, 95 (1977).

[64] *See e.g.,* New York Times Co. v. Sullivan, 376 U.S. 254, 269-71 (1963).

[65] 425 U.S. at 764.

[66] In *Virginia Pharmacy,* the Court stated:

> Our pharmacist does not wish to editorialize on any subject, cultural, philosophical, or political. He does not wish to report any particularly newsworthy fact, or to make general observations even about commercial matters. The "idea" he wishes to communicate is simply this: "I will sell you the X prescription drug at the Y price."

[67] *Id.* at 761. In Justice White's dissenting opinion in *Bellotti,* he tried to distinguish the commercial speech cases from the corporate speech situation. White claimed that commercial speech must be allowed, because if it is restricted, the information would have no other way to reach the public. However, in the case of corporate speech, White felt assured that the individual shareholders and directors would spread ideas the corporation was forbidden to spread. 435 U.S. at 807. This, too, was the assumption made by Justice Rehnquist in his dissent. 435 U.S. at 828. However, these assumptions may not have much support. Many people may not be as ready to spend their own money to publicize their views as they would be to spend the corporation's money. A significant amount of truthful information is likely to be kept from the public's ears. Additionally, the ideas from the corporate point of view, that corporations play a major role in our society may never reach the public.

[68] 425 U.S. at 764, 765, 770.

[69] Gitlow v. New York, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting).

[70] Thomas Emerson spoke of free speech as related to democracy in his book:

> The proponents of freedom of political expression often addressed themselves to the question whether people were competent to perform the functions entrusted them, whether they could acquire sufficient information or possessed sufficient capacity for judgment.... But these problems were actually questions concerning the viability of democracy itself. And once a society was committed to democratic procedures, or rather in the process of committing itself, it necessarily embraced the principle of open political discussion.

T. Emerson at 10-11.

poration's free speech rights were not curtailed if the speech extended beyond matters that materially affected the corporation's business. Future attempts by the government to restrict a corporation's speech, under *Bellotti*, must be justified by a "compelling" interest. The decision further indicated that the fundamentals of a democratic government were expected to survive despite the possibly unnatural influence of large corporations. It is still questionable whether the Court will allow some special treatment to the speech of a corporation as opposed to truly individual expression.